



## ABAC Adjudication Panel Determination No. 144/20

**Product:** Quincy Seltzer  
**Company:** Lion – Beer, Spirits & Wine Pty Ltd  
**Media:** Digital (Instagram)  
**Date of decision:** 16 October 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post by Lion – Beer, Spirits & Wine Pty Ltd (“the Company”) promoting Quincy Seltzer and arises from a complaint received 28 September 2020.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 28 September 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

### **Pre-vetting Clearance**

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this marketing communication.

## The Marketing Communication

10. The complaint relates to a video Instagram post that includes the following scenes:
- a woman smiling and kneeling on a picnic blanket on a hill and holding and then sipping from a bottle of Quincy Seltzer as the camera pans around her to take in the idyllic view. The footage is superimposed with the text “Quincy A New Style of Alcoholic Drink”;
  - different coloured blank screens with the text “Australia’s First Alcoholic Seltzer”, “Tastes Like Sparkling Water Only Alcoholic” and then an image of a can of the product with a drink being assembled;
  - a picnic scene which shows a hamper with cheese, crackers, figs and a bottle of the product superimposed with the text “As Loved By” where a woman comes into view and her name is superimposed on the screen and then the video quickly flicks through an image of a variety of people, with their names on the screen (including the woman in the opening scene), in various settings with a bottle of Quincy Seltzer and concludes with an image of a hand holding the product;
  - different coloured blank screens with the text “Gluten Free”, “Lower Sugar” and “Lower Carb”;
  - an image of a person pouring from a can of the product into a glass with half a passionfruit with the text “Refreshing and Light” superimposed;
  - a headshot of a man and woman in an outdoor setting with the woman holding a bottle of Quincy Seltzer up in front of her face and the camera zooming in on the label;
  - a coloured blank screen with the text “Available from Bottlemart, Sip’N’Save and Independent Liquor Retailers” which then changes to “quincyaustralia.com.au”.

## The Complaint

11. The complainant objects to the marketing as:
- featuring a pregnant woman (or who appears to be pregnant), which normalises drinking alcohol in pregnancy which is harmful to the health of the baby;
  - the ad is targeting pregnant women as the complainant had been googling research on ‘Fetal Alcohol Syndrome’ earlier before the ad appeared in her social media feed on Instagram and believes the ad has been linked to that search; and
  - the ad could include a health warning “not drinking in pregnancy”.

## **The ABAC Code**

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;

## **The Company's Response**

13. The Company responded to the complaint advising that none of the models featured in the advertisement are pregnant and Lion would never target its alcohol advertising toward pregnant women.

## **The Panel's View**

14. The complaint raises the serious issue of drinking alcohol while pregnant. The complainant has interpreted a video advertising the product, accessed by the complainant on Instagram, as normalising alcohol consumption during pregnancy by showing a woman who is pregnant or appeared to be pregnant consuming alcohol. The Company very strenuously refutes that the video would be interpreted in the manner contended and categorially states it would never endeavour to market its products to pregnant women.
15. The ABAC does not expressly reference a prohibition of marketing towards pregnant women but such a practice would clearly be captured by Part 3(a)(ii) as showing or encouraging irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage. Assessment of a marketing communication against an ABAC standard is from the viewpoint of the probable understanding of a reasonable person.
16. The Panel does not believe the video is in breach of the ABAC standard. The woman shown in the video identified by the complainant is not pregnant. And while the woman is not unrealistically thin like models often featured in advertising of all kinds, a reasonable person would not believe she appears or is portrayed in a manner which implies she is pregnant. There is nothing in the way the product is depicted or in the messaging of the advertisement which would lead a reasonable person to conclude that the product is being marketed towards pregnant women.
17. The complaint is dismissed.