



ABAC Adjudication Panel Determination No 4/21

Product: Byron Bay Premium Lager
Company: Lion – Beer, Spirits & Wine Pty Ltd
Media: Television – Free to Air
Date of decision: 27 January 2021
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 a television advertisement for Byron Bay Premium Lager by Lion – Beer, Spirits & Wine Pty Limited (“the Company”). It arises from a complaint received on 11 January 2021.
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 11 January 2021.
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 complaints were 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 obtained for the content of the advertising (Approval Number 18310).

The Marketing

10. The television advertisement may be viewed at:

<https://www.youtube.com/watch?v=8yJdU9PYAH8>.
11. The advertisement opens with a view of the shopfront of a store and is accompanied by retro seventies style music. We see a man walking out of the store carrying a skateboard and a six pack of unopened Byron Bay Brewery lager. We then see the legs of a man (who is barefoot) step onto his skateboard holding the unopened six pack and skate off. The scene then briefly changes to the legs of a person surfing before returning to the legs of the man skating. We then see a full length shot of a woman surfing, and then two men carrying surfboard up the beach away from the water with bottles of Byron Bay Brewery lager on ice off the beach in the foreground.
12. In the next scene we see six people, fully clothed, all holding or sipping from a bottle of lager, including the man who was skating, with his skateboard next to him and a man next to a bicycle. There is a surfboard and guitar leaning against a wall and an esky with additional bottles of lager.
13. The final scene is a scene of the beach with a bottle of lager placed on a bench in the foreground off the beach with the superimposed text "Open Byron" and the Drinkwise logo.

The Complaint

14. The complainant is concerned about the advertising as:

- *It is targeted to young Australians - focus on skateboarding (which is popular amongst teenagers).*
- *It promotes drinking in public - the actors take beer to the beach and sit outside in public drinking.*
- *I believe this is not responsible advertising.*

The ABAC Code

15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
 - (b)(i) have Strong or Evident Appeal to Minors.
16. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minor means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Response

17. The Company responded to the complaint by letter emailed on 15 January 2021. The principal points made by the Company were:
- We reiterate our commitment to the ABAC Scheme and take our obligations to responsibly promote our products very seriously. For the reasons set out below, and with respect to the complainant, we submit that there has been no breach by Lion – Beer, Spirits & Wine Pty Ltd (“Lion”) of Part 3(a)(ii) or Part 3(b)(i) of the ABAC Code and complaint 4/21 should therefore be dismissed by the ABAC Panel.

Alcohol advertising pre-vetting service approval

- The Advertisement referred to in the complaint received Alcohol Advertising Pre-Vetting Service Approval for their content (Approval Number 18310).

The advertisement

- The Advertisement features a man purchasing a six-pack of Byron Bay Brewery Premium Lager from a small bottle shop and general store, before the shot changes to his bare feet on the skateboard, and then immediately to a woman's bare feet on her surfboard riding a wave. The shot changes between the man's bare feet on the skateboard, and the woman's bare feet on the surfboard multiple times prior to showing a couple of individuals walking up the sand after surfing to meet a group of friends at a location overlooking the beach, where they each sit down to enjoy a Byron Bay Premium Lager to conclude the days' activities.
- The Advertisement was filmed in Byron Bay, New South Wales, and depicts a flow of typical daily activities that occur in Byron Bay. The "flow" of the Byron Bay lifestyle is shown in the free and easy way the people surf, their creativity, the spontaneity of their social lives, the bikes, skateboards and surfboards that cruise around town, by the beach and on the ocean.

Responsible and moderate portrayal of Alcohol Beverages

- The Advertisement does not breach Part 3(a)(ii) of the Code by encouraging irresponsible behaviour related to the consumption of alcohol, namely by showing someone carrying a six pack of beer while skateboarding. There is no consumption of alcohol depicted prior to the skating scene, which is at a slow, relaxed pace to reflect the pace of the Byron Bay lifestyle. The scene in the Advertisement which does show a group of friends enjoying Byron Bay Premium Lager in a relaxed, outdoor setting, in no way encourages drinking in a public area where the consumption of alcohol is prohibited. There are many properties in Byron Bay and along the coastal fringes of Australia that have direct access to the beach. In this case, the group of friends were relaxing in a private backyard, which overlooks the ocean. In addition, Lion can confirm that this particular scene of the Advertisement was filmed on a private property.
- When the Advertisement is viewed in its entirety, Lion contends the average viewer would not perceive this marketing as an encouragement to blatantly disregard local government, or any jurisdiction's rules when it comes to the consumption of alcohol in public areas.

- Given the rising popularity of socialising outdoors, due to the pandemic and restrictions on indoor gatherings, Lion would encourage consumers to check local council websites before planning to have picnics where alcohol might be consumed to ensure the consumption of alcohol is not prohibited in those places.

Responsibility towards Minors

- Lion also refutes any suggestion that the Advertisement breaches Part 3(b)(ii) of the Code by having strong or evident appeal to minors by showing a person skateboarding. While Lion accepts that skateboarding is an activity undertaken and enjoyed by minors, it should be acknowledged that it is an activity also undertaken and enjoyed by those over the age of 18.
- Furthermore, the individual who is shown to be skateboarding is clearly over 18 years of age, as he is seen purchasing a six-pack of Byron Bay Premium Lager prior to commencing his leisurely, relaxed skateboard by the beach.
- The Advertisement depicts a number of different activities being undertaken by individuals, all of whom are over the age of 25, in accordance with ABAC.
- At all times, it is clear the Advertisement is for a beer brand, which is targeted only to those over the age of 18. The placement of the Advertisement is also in accordance with ABAC, meaning the audience is at least 80% 18 years and over during the timeslots in which the Advertisement is aired on Australian television.
- This Advertisement uses no brand identification including logos on clothing, toys or other merchandise for use primarily by Minors, in particular, during the skating scene. The average viewer would understand that the Advertisement is targeted at an adult, as the person depicted in the skating scene is holding a product that is for those over the age of 18. He would not have been able to purchase this product at the bottle shop shown in the opening scene if he were underage.

Summary

- When viewing the Advertisement as a whole, we contend that it is unlikely that a reasonable person would interpret the sequence of events in line with the suggestion or implication of any kind of irresponsible behaviour or have strong or evident appeal of minors. This is our contention for the following reasons:

- There is no consumption depicted at any stage of the Advertisement, until it is absolutely clear that the man has arrived home to his backyard, where he gathers with friends after a day of activities;
- All the bottles depicted in each frame, whether in the hand of the skateboarder, or basket of the bicyclist, are full and unopened;
- The group of people who have gathered – all clearly adults – to enjoy a Byron Bay Premium Lager have all converged after participating in various sporting endeavours – surfing, cycling, skating – and they are all fully clothed, seated and relaxed. There is no suggestion or implication whatsoever that they are going to partake in these activities again after having consumed the product;
- Contrary to the suggestion that the position of the man's skateboard next to him implies that he is going to go skating again, it would be more logical to conclude that he has concluded his outdoor activities for the day, and is now relaxing with friends whilst enjoying a Byron Bay Brewery Premium Lager, with no suggestion that he will engage in any activity that should not be undertaken after drinking. If consumers were to draw any association between the 'parking' of the skateboard, it is much more likely that they would conclude that he's finished such activities for the day, which is a positive message in support of responsible drinking.
- All activities depicted in the Advertisement appeal distinctly to adults. The skating scene depicts an adult who has purchased a six-pack of Byron Bay Premium Lager, who goes on to enjoy the product responsibly with a group of friends. The Advertisement must be considered as a whole, and Lion contends that the variety of activities depicted within this marketing material, appeal to an adult audience first and foremost.
- As a responsible marketer, Lion takes the content and placement of its advertisements very seriously and has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance.

The Panel's View

18. This is the second determination concerning a television advertisement for Byron Bay Premium Lager. The first decision (Determination 111/20) dealt with a concern that the ad modelled unsafe behaviour of carrying glass bottles while skateboarding. The current concern is also centred on the skateboarding depictions, but the argument is that the ad is targeted towards young people given the popularity of skateboarding with teenagers. A second concern expressed is that the ad promotes drinking in public.
19. Part 3 (b)(i) of the ABAC provides that an alcohol marketing communication (which includes a television advertisement) must not have strong or evident appeal to minors. This standard might be breached if the marketing material:
 - targeted minors;
 - had a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionary or soft drinks.
20. It is fair to say that skateboarding (and related activities such as roller skating and inline skating) is an activity undertaken across age groups but that the pursuit has more under 18-year-old participants than adults. For instance, a survey on public park facilities for the City of Melbourne showed 60% of skaters are under 18 and statistics on reported injuries from skating indicate the majority of skaters are minors. So, is the ad targeted at young people as argued by the complainant?
21. The Company submits this is not the case. It argues:
 - the skateboarder is shown to be an adult male over the age of 25;
 - the man is shown in the company of other adults and engaging in adult activities;
 - the ad was screened at a time when the audience could reasonably be expected to be at least 80% adult.
22. Assessment of the consistency of an ad with an ABAC standard is from the standpoint of the probable understanding of the ad by a reasonable person taking its content as a whole. The 'reasonable person' test is drawn from the common law system and means the life experiences, values and opinions found in most of the community is the benchmark.

23. The Panel does not believe the Part 3 (b)(i) standard has been breached. In reaching this conclusion the Panel noted:
- the skateboarding scenes are used within the context of the ad as demonstrating the relaxed lifestyle of Byron Bay and are not the defining feature of the ad;
 - the overall context of the ad establishes adults engaging in activities which culminate with a group of friends coming together where some moderate consumption of the product occurs;
 - the laidback feel and messaging of the ad is appealing with this appeal being probably more attractive to adults than minors; and
 - while skateboarding is relatable to minors, this needs to be balanced with the ad as a whole and the appeal to minors is considered to be incidental rather than strong or evident.
24. The complainant also contended the ad promoted drinking in public and this was considered as not responsible advertising. Presumably the complainant is concerned that drinking in public places can be unlawful and/or might contribute to anti-social behaviour. The applicable ABAC standard provides that an alcohol ad must not show or encourage irresponsible or offensive behaviour that is related to alcohol use (Part 3 (a)(ii)).
25. Liquor laws vary from State to State, with some States having a starting point that alcohol consumption in public places is not permitted unless a form of approval is given while the opposite approach is taken in other jurisdictions i.e. public consumption is permitted but can be prohibited in certain designated areas. In Bryon Bay, where the ad is set, the local Council has implemented outdoor alcohol restrictions which mean outdoor consumption is permitted except in:
- Alcohol Free Zones - public roads, footpaths and public carparks
 - Alcohol Prohibited Areas - designated public parks and reserves or areas within such spaces.
26. The ad shows moderate consumption occurring in an area adjacent to a beach. There is no indication the area would fall into one of the prohibited zones or areas. But more importantly, the ad would not be understood by a reasonable person as encouraging alcohol influenced anti-social behaviours, which is the intent of the Part 3 (a)(ii) standard.
27. The complaint is dismissed.