

ABAC Adjudication Panel Determination No 112/21

Product: Heineken
Company: Lion Australia
Media: Television advertisement
Date of decision: 31 May 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Heineken (“the Product”) by Lion Australia (“the Company”). It arises from a complaint received on 17 May 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 17 May 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 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 obtained for the television advertisement (Approval Number 19198).

The Marketing

10. This determination relates to a television advertisement for Heineken that is set to a version of the song “You Don’t Own Me” and shows a number of instances where patrons in a bar receive the wrong drink, which they then swap with another patron to correct the mistake. The closing scene has the words “Men drink cocktails too.” superimposed. The following screenshots are provided to assist with visualising the advertisement:



The Complaint

11. The complainant has the following concerns about the marketing:

A bar tender was getting drinks mixed up, random strangers swapping drinks due to this.

It felt this ad was supporting a message that it is ok to accept strangers' drinks without question which to me promotes spiked drinking and taking advantage of women and sexual assaults.

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 by letter emailed on 24 May 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. As a responsible marketer, Lion maintains strict internal and external processes to help ensure this compliance with the ABAC Code, including taking all reasonable steps to ensure the advertising does not encourage irresponsible or offensive behaviour. In this instance, for the reasons set out below, we submit that complaint 112/21 should be dismissed by the ABAC Panel.
- The Advertisements referred to in the complaint all received Alcohol Advertising Pre-Vetting Service Approval for their content. Please find attached to this letter the relevant documentation.
- Heineken's 'Cheers To All' campaign takes a light-hearted view of the stereotypes associated with ordering certain drinks, supporting the brand's philosophy that everyone should feel free to enjoy their preferred choice of beverage. Through the campaign, and in particular, the Advertisement that is the subject of Complaint 112/21, Heineken encourages viewers to look at life with a fresh perspective, underpinned by the belief that you will enjoy it more because it opens your eyes. The Advertisement shows that beer is not just the chosen beverage for men, and the campaign seeks to challenge the status quo, breaking down outdated stereotypes.

- The Advertisement referred to by the complainant features a montage of men and women being served the wrong drink - a Heineken and a cocktail respectively. The bartender wrongly assumes who each belongs to and as the drinkers look around puzzled, they swap drinks so they can enjoy their real drink of choice.
- The average viewer would not perceive this storyline to encourage irresponsible or offensive behaviour related to the consumption or presence of an alcohol beverage. The interaction between the strangers featured in the Advertisement is very clearly designed to challenge tired stereotypes about beverage choices based on gender.
- In addition, there is no suggestion that the Advertisement condones 'swapping drinks', or that it is safe to accept drinks from strangers. The sequencing within the Advertisement makes it abundantly clear that the bartender makes an assumption that is then very swiftly corrected by the patrons at the bar. The drinks are not tampered with, sipped, and barely even touched, before being sent to the hand of the person who ordered it.
- Finally, Heineken includes the #SocialiseResponsibly hashtag at the conclusion of the Advertisement as a final reminder to viewers to consume its product in a responsible manner.

The Panel's View

14. This complaint relates to a television advertisement for Heineken beer that aims to challenge the stereotype that 'men drink beer and women drink cocktails'. The complaint expresses concern that the ad suggests that it is acceptable to accept a drink from a stranger which promotes spiked drinking, taking advantage of women and sexual assault.
15. The relevant ABAC Code standard is Part 3(a)(ii) which provides that an alcohol marketing communication must not show or encourage irresponsible or offensive behaviour related to the consumption or presence of alcohol.
16. The advertisement shows bartenders delivering drinks, a cocktail and a beer to patrons at a bar, and always making the assumption that the beer is for the male patron and the cocktail for the female patron. In each case the patrons smile and either swap drinks or reach for the other drink. It is very clear throughout the ad that neither the patrons, nor anyone else, have tampered with, contaminated or spiked any drinks between delivery by the bartender and receiving their ordered drink.
17. The Panel does not believe the ad would be viewed by a majority of people in the community in the way contended by the complainant and does not show any

irresponsible or offensive behaviour, related to the consumption or presence of alcohol, or otherwise.

18. The complaint is dismissed.