



ABAC Adjudication Panel Determination No 178/21

Product: Heineken 0.0
Company: Lion
Media: Instagram
Date of decision: 26 July 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 an Instagram post for Heineken 0.0 (“the Product”), by Lion (“the Company”). It arises from a complaint received on 9 July 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:
 - 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;

- 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

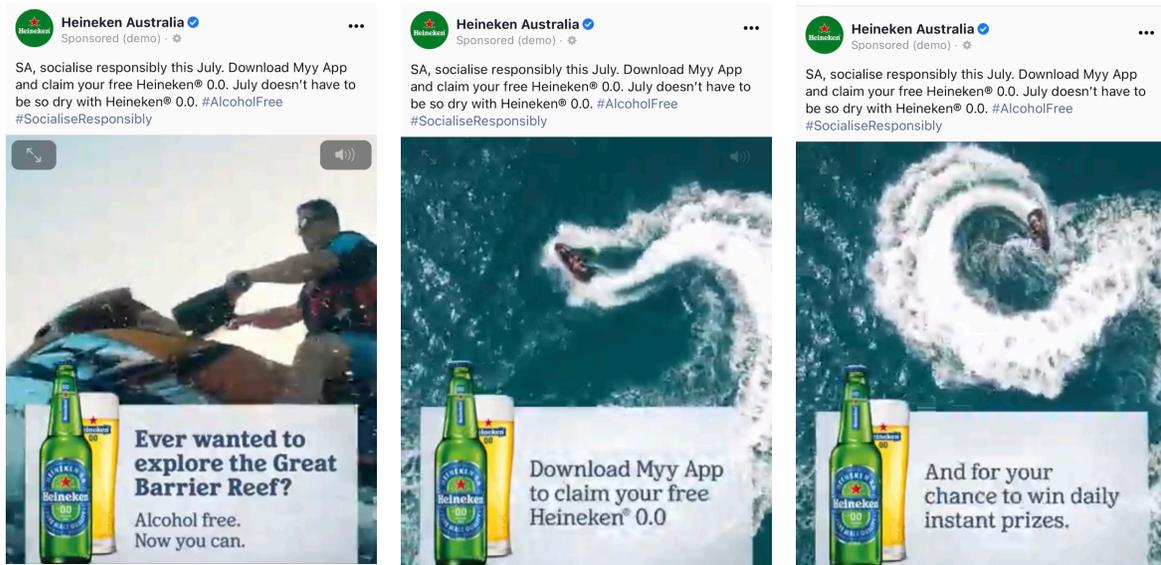
7. The complaint was received on 9 July 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 not obtained for the advertising.

The Marketing

10. The complaint concerns an Instagram advertisement for Heineken 0.0. The post included a video of a person jet skiing, with various messages superimposed on the scene, as follows:





The Complaint

11. The complainant objects to the advertising:

Because you can't just advertise alcohol or zero alcohol beer with serious water activities. We had a person drown in our family and it was due to alcohol on Sydney Harbour in 1995. This deeply offended us that alcohol companies are doing this trying to say its ok to just drink grog while navigating a major vessel.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

13. The Company responded to the complaint by letter emailed on 20 July 2021. Its principal comments were:
- We refer to your letter dated 12 July 2021 in relation to a complaint received by ABAC about a digital advertisement for Heineken 0.0 (the "Advertisement").
 - Thank you for raising this complaint with us and providing the opportunity to respond to the issues raised by the complainant. 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 2(a) or Part 3(d) of the ABAC Code and complaint 99/20 should be dismissed by the ABAC Panel.
 - The Advertisement referred to in the complaint did not receive Alcohol Advertising Pre-Vetting Service (AAPS) Approval for its content, as it was created for digital channels exclusively. ABAC stipulates that AAPS approval is not compulsory for digital advertising content.
 - Heineken 0.0 is an alcohol-free malt-based beverage that is not an 'Alcohol Beverage' as defined in the ABAC as it does not contain at least 0.5% alcohol by volume. In addition to Heineken 0.0 not meeting the ABAC Code definition of "Alcohol Beverage", for completeness we also note that the product is not classified as an "alcoholic beverage" for the purposes of Standard 2.7.1 of the Australia & New Zealand Food Standards Code.
 - Notwithstanding this, the product is an extension of the Heineken masterbrand and therefore Lion accepts that the marketing of Heineken 0.0 must meet the ABAC standards pursuant to Part 2(a) of the ABAC, including ensuring that all advertising materials do not encourage irresponsible behaviour related to the consumption of alcohol or have strong or evident appeal to minors.
 - The Australia & New Zealand Food Standards Code, which regulates the labelling requirements of food and beverages in Australia and New Zealand, does not require a product with less than 0.5% alcohol by volume to include a standard drinks marking, nor disclose ABV. For the panel's background, the trace amounts of alcohol that can be found in Heineken 0.0 equate to no more than the alcoholic content of a standard orange juice. More information about the labelling requirements for alcoholic and non-alcoholic food and beverages can be found [here](#).

- It is unreasonable to suggest that Advertisement breaches Part 3(d) of the Code by showing (visibly, audibly, or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness of physical coordination, given that Heineken 0.0 is not classified as an 'Alcohol Beverage' by the ABAC's definition, given it has less than 0.5% alcohol by volume.
- The Advertisement is part of the Heineken 0.0 Now You Can campaign that positions Heineken 0.0 as a non-alcoholic choice for all traditionally "non-beer" moments. There has been phenomenal growth in the Low and No Alcohol beer category, and the Now You Can campaign communicates some of the different drinking occasions where Heineken 0.0 can be enjoyed. In this instance, that applies to jet skiing.
- The low and alcohol-free beer category is growing rapidly both domestically and in the global marketplace, and there has been significant media coverage following this trend (particularly in Australia). It follows that consumers in Australia have increased awareness of the alcohol-free options that are now available from their favourite beer brands, and these products enable them to enjoy a beer in circumstances where they have previously couldn't (or choose not to) drink alcohol.
- The Advertisement provides multiple cues to inform them the product advertised is a new, alcohol free alternative. A reasonable consumer would understand that an alcohol-free beer containing less than 0.05% ABV can be responsibly consumed without resulting in intoxication, nor that it immediately appeals to minors due to it being alcohol-free.
- As a responsible marketer, Lion 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

16. With an increase in the popularity of non-alcoholic beers, the Panel has received public complaints to consider about its marketing. Since late 2018, the Panel has made determinations concerning Heineken 0.0 and a rival brand, Carlton Zero. On each occasion the Panel has considered complaints about marketing for a non-alcohol beverage on the basis that the beverages are an extension of an alcohol beverage masterbrand (in this case Heineken). The Company accepts that, while Heineken 0.0 is not an alcohol beverage within the ABAC and also Food Standards definitions, their marketing of Heineken 0.0 must meet ABAC standards as a brand extension of the Heineken alcohol products.

17. The complaint relates to an Instagram post promoting Heineken 0.0 that includes a video of a person on a jet ski with superimposed messaging and a caption. The complainant is concerned that the underlying message of the advertisement is that it is acceptable to drink alcohol while undertaking a serious water activity, and this can lead to drowning. The complainant has had a personal experience of a family member drowning due to alcohol use during water activities.
18. Part (d) of the ABAC standards prevent an alcohol ad showing or directly implying the consumption of an alcohol beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination. This would include operating a jet ski.
19. It has previously been noted by the Panel that the application of the ABAC standards to marketing communications in the form of brand extensions is 'clunky' as the standards are clearly designed for alcohol beverages and sit awkwardly when applied to non-alcohol beverages or products. As a result, the Panel applies a common-sense and 'spirit and intent' approach to applying the Code in these cases. This flows from the 'reasonable person' benchmark which, Part 5 of the ABAC provides, the Panel uses in interpreting the Code. The test might be expressed as follows - would a reasonable person understand that the brand extension marketing communication is promoting alcohol use inconsistently with ABAC standards.
20. As the complainant has identified it is very important that alcohol marketing, including for zero alcohol brand extensions, does not encourage alcohol use before or during the operation of a jetski. The video shows a man operating a jetski in the sea. The caption for the post promotes the consumption of Heineken 0.0 during Dry July and a rewards programme, Myy App, that includes an offer of a free Heineken 0.0. The caption includes the hashtags, #AlcoholFree and #SocialiseResponsibly. Messages superimposed on the jetski video next to a bottle and glass of Heineken 0.0 include 'Ever wanted to explore the Great Barrier Reef? Alcohol free. Now you can.' 'Download Myy App to claim your free Heineken 0.0' 'And for your chance to win daily instant prizes'. The final frame of the video is 'Heineken 0.0 Great taste Zero alcohol Now you can.'
21. The core question is whether a reasonable person would understand the Instagram post as suggesting that alcohol can be consumed in conjunction with the inherently dangerous activity of operating a jetski. In the Panel's opinion the ad would not be understood in this way given:
 - the product is clearly identified as containing no alcohol through prominent references to 'Alcohol free' and 'Zero Alcohol' and there is no prospect it will be confused with an alcohol beer in the Heineken range;

- the premise of the ad is to reinforce that zero alcohol beer is the only acceptable beer to consume when undertaking an activity like operating a jetski; and
- a reasonable person would not interpret the ad as encouraging alcohol use while operating a jetski.

22. Accordingly, the complaint is dismissed.