



## ABAC Adjudication Panel Determination No 260/21

**Product:** XXXX  
**Company:** Lion  
**Media:** Outdoor Billboard  
**Date of decision:** 8 December 2021  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor billboard advertising for XXXX (“the Product”) by Lion (“the Company”). It arises from a complaint received on 8 November 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 8 November 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 content of the advertising (Approval Number 19930).

## The Marketing

10. The complaint refers to an outdoor billboard, shown below:



## The Complaint

11. The complainant is concerned about the outdoor billboard as follows:
  - *The poster simply displays XXXX beer over a pristine beach with 2 4wds as the focus.*
  - *Encourages drink driving.*

## 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 18 November 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, 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 260/21 should be dismissed by the ABAC Panel.
  - The Advertisement referred to in the complaint received Alcohol Advertising Pre-Vetting Service Approval for their content.
  - The Advertisement depicts a bird's eye view of a typical Queensland beach, with two four-wheel drives leaving tracks on the sand next to the clear turquoise ocean.
  - Super-imposed on to the beachscape are a can of XXXX GOLD and a bottle of XXXX DRY. The Advertisement aims to show the best elements of the Queensland outdoor lifestyle, which would involve a day of activity like four-wheel driving on a beach, followed at the end by an iconic Queensland beer, like XXXX GOLD or XXXX DRY.

- This Advertisement does not show (visibly, audibly, or by direct implication) the consumption of an Alcohol Beverage before or during any activity, that for safety reasons, a requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle.
- There is no direct interaction between the XXXX products depicted in the Advertisement, and the four-wheel drives, or the drivers of these vehicles. Nor is any consumption depicted.
- In addition, there is no suggestion that the Advertisement condones drinking and driving. Australians are well-versed when it comes to drink driving laws. There is a broader cultural trend around outdoor activities and lifestyles, which may involve four-wheel driving for a day, and then camping and enjoying a beer at the end of a day.
- The Advertisement aims to capture a lifestyle enjoyed by many in an entirely responsible way. The average viewer would not perceive it to encourage or suggest any sort of irresponsible behaviour.

### **The Panel's View**

14. This determination concerns a bus stop poster for XXXX beer. The poster shows an aerial shot of a beach scene, with two vehicles driving along the sand. The product name XXXX, as well as pictures of a can of XXXX Gold and a bottle of XXXX Dry are superimposed on the scene.
15. The complainant believes the advertisement is irresponsible. It is argued that alcohol should not be promoted on the basis of its consumption occurring before or while driving. Part 3 (d) of the ABAC provides that an alcohol marketing communication (which includes a poster at a bus stop) must not show or directly imply 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. The question is whether the bus stop advertisement breaches this standard.
16. The Company argues the ad is consistent with the standard. It is submitted:
  - There is no direct interaction between the XXXX products depicted in the advertisement, and the four-wheel drives, or the drivers of these vehicles.
  - No consumption is depicted.
17. The assessment of a marketing communication with an ABAC standard is from the probable understanding of the marketing item by a reasonable person taking its content as a whole. The 'reasonable person' test means that if a marketing communication could be interpreted in several ways, it is the most probable

interpretation which is to be preferred over a possible but less likely understanding of the marketing message.

18. The Panel believes the billboard ad does not breach the standard. It is noted:
  - the scene depicted does not show or reasonably imply that alcohol consumption has occurred; and
  - placing two oversized images of bottles of the product on the poster would be understood by a reasonable person as establishing the brand and not that the beer is being consumed by the drivers of the vehicles at that moment.
19. The complaint is dismissed.