



ABAC Adjudication Panel Determination No 124/22

Product: XXXX
Company: Lion – Beer, Spirits & Wine Pty Ltd
Media: Billboard
Date of decision: 18 January 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 21 December 2022 and concerns an outdoor billboard for XXXX (“the Product”) by Lion – Beer, Spirits & Wine Pty Ltd (“the Company”).
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 the 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 meet 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 21 December 2022.
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 an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for marketing (Approval Number 20932).

The Marketing Communication

10. The complaint relates to an outdoor billboard marketing XXXX:



The Complaint

11. The complainant objects to the marketing as follows:
 - *The ad encourages people to drink XXXX beer like their lives depend on it. In doing so, the ad challenges or dares people to consume XXXX beer in order to live a full life. This contravenes section 3(a)(iii).*
 - *By implication, the ad suggests that the consumption of XXXX beer will contribute to the achievement of a full life and personal success. This contravenes section 3(c)(ii).*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(iii) challenge or dare people to consume an Alcohol Beverage; or
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Company's Response

13. The Company responded to the complaint by letter emailed on 9 January 2023. The principal comments made by the Company were:

- Thank you for raising this complaint and providing the opportunity for us 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 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)(iii) or Part 3(c)(ii) of the ABAC Code and the Complaint should be dismissed by the ABAC Panel.
- Our responses to the questions in your Letter are set out in the following sections.

Pre-vetting approval

- The Advertisement received approval through the Alcohol Advertising Pre Vetting Service (AAPS). Please find enclosed the certificate of approval for AAPS Application No. 1040 / 21.

Responsible and moderate portrayal of Alcohol Beverages

- For the following reasons, we do not consider that the Advertisement breaches Part 3(a)(iii) of the ABAC Code:
 - the Advertisement is part of XXXX's "Give a XXXX" campaign launched in April 2022 (Campaign), which is a call to action for beer drinkers to give a XXXX (care) about preserving the good life;
 - the Campaign is intended to demonstrate why consumers should care (give a XXXX) about the environment – namely, people who enjoy beer should prioritise treating the planet with care, to ensure they can continue to enjoy it in the future. This is best encapsulated in the Campaign's 'Do It For the Beer' television commercial (see: <https://www.youtube.com/watch?v=tYgHRkZ1st0>) (Campaign TVC). We understand that the Campaign TVC reached 47.38% of the target demographic of males between the age of 25 and 54 years of age more than once in the state of Queensland. This means that a significant part of the population is aware of the context of the Advertisement in the Campaign;
 - to further convey this message, other parts of the Campaign have used taglines including "Beer Needs Humans To Survive" and "Global Warming Equals Warmer Beer". XXXX has also committed to a range of environmental initiatives such as a three-year partnership with the Great Barrier Reef Foundation as

well as the launch of Australia's first carbon neutral, alcohol-free beer (see: <https://www.xxxx.com.au/sustainability/> for further information);

- in the context of the Campaign, the Advertisement's use of the language "Live Life Like Beer Depends On It" is clearly encouraging viewers to "give a XXXX" (care) about the health of the planet and the environmental factors that will impact beer and its ability to be enjoyed responsibly; and
- contrary to the Complaint, a reasonable person viewing the Advertisement would not understand it to be challenging or daring people to consume XXXX beer to live a full life. Further, given the reach of the Campaign, including the Campaign TVC, out of home, digital and social media advertising, the meaning of the Advertisement would be clearly understood to be referring to the overarching environmental message.

Responsible depiction of the effects of alcohol

- For the following reasons, we do not consider that the Advertisement breaches Part 3(c)(ii) of the ABAC Code:
 - As previously noted, the billboard is part of a wider campaign, and a significant part of the population is aware of the context of the Advertisement in the Campaign;
 - in the context of the Campaign, the Advertisement's use of the language "Live Life Like Beer Depends On It" is clearly encouraging viewers to "give a XXXX" (care) about the health of the planet and the environmental factors that will impact beer and its ability to be enjoyed responsibly;
 - notably, Part 3(c)(ii) prohibits the "show[ing]", including "visibly, audibly or by direct implication" of the "consumption" or "presence" of beer as being "a cause" of or "contributing [factor]" to the named forms of success. The Advertisement does not show anything other than an image of a beer, so there is no causal link between the presence of the beer and any positive outcome; and
 - contrary to the Complaint, a reasonable person viewing the Advertisement would not understand it to be suggesting that the consumption of XXXX beer will contribute to the achievement of a full life and personal success, rather it would be taken in the context of the overall message of the Campaign that life should be lived in a way that cares for our planet.
- 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

14. Since April 2022 the Company has been running a marketing campaign for the beer XXXX called 'Give a XXXX'. The theme of the campaign is that beer drinkers should care (give a XXXX) about the environment so that conditions continue to allow high quality beer to be made. It is intended to be a light-hearted way to convey a serious message.
15. While the major execution in the campaign has been a TV ad, the campaign has involved other forms of marketing including a billboard advertisement positioned on the roadside in Queensland's Sunshine Coast. The billboard displays the tagline 'Live Life Like Beer Depends On It', beneath which are the words "Give a XXXX" wrapped around a glass of beer.
16. The complaint centres around the tagline shown on the billboard, namely, 'Live Life Like Beer Depends On It'. The complainant is concerned that the ad:
 - encourages people to drink XXXX beer like their lives depend on it, which is a dare or challenge; and
 - by implication, suggests that the consumption of XXXX beer will contribute to the achievement of a full life and personal success.
17. These concerns raise the following Code standards requiring that a marketing communication must not:
 - challenge or dare people to consume an Alcohol Beverage – Part 3 (a)(iii); or
 - show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success – Part 3 (c)(ii).
18. The Company argues that:
 - a large proportion of the Queensland population would understand the billboard in the context of a wider XXXX campaign encouraging people to care about the health of the planet and the environmental factors that will impact the production of beer;
 - 47.38% of the brand's target demographic in Queensland, being males aged from 25 to 54, have seen the television commercial at least once which would provide context to the billboard;
 - there is no causal link between the presence of the beer and any positive outcome; and

- a reasonable person would not understand the advertisement as suggesting that the consumption of XXXX beer will contribute to the achievement of a full life and personal success, rather it would be taken in the context of the overall message of the campaign that life should be lived in a way that cares for our planet.
19. The consistency of a marketing communication with an ABAC standard is assessed from the standpoint of the probable understanding of the marketing item by a reasonable person. This means the benchmark is based on the attitudes, opinions, values and life experiences shared commonly in the community. 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.
20. The Company contends the billboard would be understood by a viewer within the context of the wider 'Give a XXXX' campaign. There are brands and marketing campaigns which are so ubiquitous that it is reasonable to assume that an average person would be familiar with them and will associate the established brand attributes when viewing a new campaign about the product. XXXX is a well-known brand particularly within Queensland, but it might be a bit of stretch to think a very large proportion of the viewers of the billboard will immediately associate the advertisement with the environmental theme of the wider campaign.
21. It is more likely that viewers seeing the billboard will range from people who have no familiarity with the wider campaign, to others with some exposure to the TV ad but who don't associate the billboard with the TV campaign, to those who connect the dots as contended by the Company. This means the billboard ad has to be assessed on its own terms and without great reliance that viewers will import the meanings gained from the wider campaign.
22. The core question is whether a reasonable person would take an irresponsible message about alcohol from the strapline - 'Live Life like your Beer Depends on it'. Again, the reactions are likely to vary somewhat, but the Panel does not believe most people will particularly understand what the strapline means and won't believe irresponsible alcohol use is being encouraged. In reaching this conclusion the Panel noted:
- the strapline would be recognised as a play on the expression 'like your life depends on it' as signifying a matter of great importance;
 - it would be probably taken as a tongue in cheek statement that beer is of great importance;
 - however it does not say beer is necessary for life nor is it likely most people would interpret the message as a dare or challenge to drink the product;

- further the message does not suggest the use or presence of the product will contribute to success in life;
- the overarching take out from a moving car of the roadside billboard is that the ad is promoting XXXX without much else being taken from the somewhat obscure meaning of the strapline.

23. The complaint is dismissed.