



ABAC Adjudication Panel Determination No 208/23

Product: Hahn Ultra Low Carb
Company: Lion - Beer Spirits & Wine Pty Ltd
Media: Instagram
Date of decision: 21 January 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 22 December 2023 in relation to an Instagram video for Hahn Ultra Low Carb (“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 22 December 2023.
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

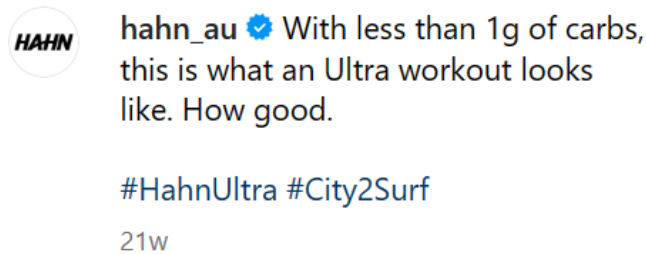
9. The quasi-regulatory system for alcohol beverage marketing features an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing.

The Marketing

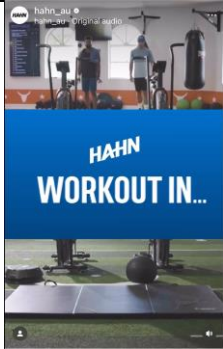
10. The complaint relates to a 16 second (approximately) video posted to Instagram:

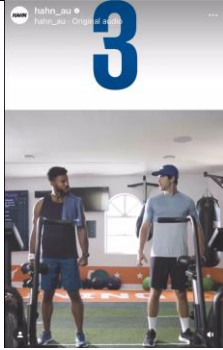









[With less than 1g of carbs, this is what an Ultra workout looks like. How good. #HahnUltra #City2Surf | Instagram](#)

The Instagram post has the accompanying text:



The soundtrack playing throughout is Urban Zone by Glow City.

<p>The video commences by showing two people alongside exercise bikes in a gym.</p>			
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<p>It counts down (from 3) to the start of their workout.</p>			
<p>The people start cycling.</p>			
<p>The timer on the screen shows that the workout took 1 minute and 14 seconds. Lapsed time on the video is approximately 2 seconds.</p>			
<p>The video concludes with screens advising that there is:</p> <ul style="list-style-type: none"> • less than 1 carb in every Hahn Ultra; • and • less than 1 carb to work off. 			

Complaint

11. The complainant objects to the marketing as follows:
- *This ad shows two men exercising to burn off the carbs found in Hahn Ultra Low Carb.*
 - *This ad is misleading as it is trying to deceive and mislead consumers that one beer + 1 second of exercise reverses the effects of drinking on weight loss.*
 - *It is not showing the other 5 minutes required to burn off the calories from the ethanol.*
 - *I only know this as I have a background in exercise science. The general consumer would be hoodwinked.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a marketing communication must NOT:
- (c)(iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

The Company Response

13. The Company responded to the complaint by letter emailed on 5 January 2024. The principal comments made by the Company were:
- Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of the complainant. Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously.
 - Upon further review of the advertisement, we accept the complaint and agree to take down the content from the Hahn Instagram account within five (5) business days of the date of this letter.

The Panel's View

14. This determination relates to Instagram marketing for Hahn Ultra Low Carb. The video, which is set in a gym, promotes that the product contains only one gram of carbohydrates and shows that just a brief workout – 1 minute and 14 seconds on an exercise bike - is required to work off the carbohydrates consumed.
15. The complainant is concerned that the marketing:

- is misleading as it is trying to show that one second of exercise reverses the effects of drinking on weight; and
 - it is not showing the other five minutes required to burn off the calories from the ethanol.
16. The Company has advised that it accepts the complaint and has undertaken to remove the marketing. It did not explain if this decision is related to the complainant's concern that the ad is misleading or if the ad breaches the Part 3 (c)(iv) standard.
 17. In any event, the Panel is to make a decision on the complaint and the issue raised under the Code. The view of the Company in responding to the complaint will be considered, but this view is simply one factor in making the decision. Even if a marketer accepts that a breach has occurred, this does not mean that the Panel is obliged to accept the marketer's position any more than the Panel is obliged to accept a marketer's argument that a Code provision has not been breached.
 18. The complainant's primary concern is that the ad is misleading as to the very short exercise time to equalise the product's effect on weight. This issue is not one for the ABAC, but rather falls under the general requirement for all marketing (not simply alcohol marketing) not to offend Consumer Law on deceptive and misleading advertising. Responsibility for Consumer Law rests with government regulators namely the ACCC and State Fair Trading bodies.
 19. While not the complainant's contention as such, the complaint can be understood as raising Part 3 (c)(iv) of the Code and it is this issue alone that the Panel is called upon to decide. This Code standard requires that an alcohol marketing communication must not suggest that the consumption of alcohol offers any therapeutic or health (including mental health) benefit.
 20. In assessing the consistency of alcohol marketing communications with an ABAC standard, the Panel is to view the marketing from the standpoint of the probable understanding of a reasonable person. This means the life experiences, values and attitudes found by most people in the community is the benchmark.
 21. Alcohol marketers are entitled to choose their brand posture and highlight that alcohol beverages are produced or distilled in a particular fashion and contain (or exclude) various elements. What a marketer cannot do under the Part 3 (c)(iv) standard is then suggest that either the way the product is made or its constituent parts, results in the consumption of the product giving a consumer positive health benefits.
 22. The Panel believes that the marketing does not breach the Part 3 (c)(iv) standard. The Panel noted:

- the video seeks to emphasise the low carb content of the product;
- it does this by the device of the time required of exercise to use the energy equivalent of the claimed carb content of the product;
- the ABAC does not go to the factual accuracy of alcohol marketing with the regulation of this aspect of marketing resting with government regulators;
- while the post might be taken as the product will have a limited impact on weight gain, it does not suggest the product will positively assist health.

23. The complaint is dismissed in terms of the Part 3 (c)(iv) standard. This finding should not be interpreted as concluding that the primary concern about the post being misleading is dismissed. This is not a question for the Panel and hence no finding is made on this point.