



ABAC Adjudication Panel Determination No. 24/15

Product: XXXX Gold
Company: Lion
Media: Outdoor
Complainant: Christie Kijurina
Date of decision: 23 February 2015
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 outdoor advertisement for XXXX Gold by Lion (“the Company”) and arises from a complaint received 4 February 2015.
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”) – 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 – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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 4 February 2015.
8. The Panel endeavour 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 has been determined with 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 this marketing communication (13817).

The Marketing Communication

10. The complaint refers to an outdoor advertisement on the Gold Coast.
11. The advertisement is in the format of a photograph of a 4WD, with equipment on a roof rack. The vehicle appears to be travelling at speed over a bump on a sandy outback track as the front two tires are airborne. The two passengers that can be seen have an excited look on their faces and the passenger is holding on to the ceiling. The vehicles number plate is XXXX 1.
12. Superimposed on the picture is the XXXX Gold logo with the text "Good as Gold XXXX.com.au" and the text "The Daily Commute". A small drinkwise logo is included on the top right hand of the picture.

The Complaint

13. The complainant is concerned that the advertisement links driving irresponsibly with drinking and portrays it as a fun recreational activity.

The ABAC Code

14. 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

15. The Company responded to the complaint on 13 February 2015. The principal points made by the company were:
 - a) The Advertisement that is the subject of this complaint is an outdoor poster for XXXX. The poster depicts a 4X4 4WD going across outdoor terrain with two men in the 4WD. The tag line at the bottom of the poster says "The Daily Commute". To the bottom right of the image is the XXXX Gold sign. The men in the advertisement are not drinking and alcohol does not feature in the advertisement except for the branding at the bottom right of the image as outlined above.
 - b) Lion does not consider that the Advertisement breaches any section of the ABAC Responsible Alcohol Marketing Code (ABAC Code) or any other official Australia advertising code. Lion takes its advertising

responsibilities extremely seriously and has a strong compliance track record in this regard. Lion has a number of strict internal and external processes against which any proposed advertisement is considered:

- Review and advice from external creative agencies well-versed and experienced with ABAC and ASB requirements;
 - Independent legal review and advice from an external legal team specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation;
 - Review by Lion's internal marketing compliance team to ensure its adherence to Lion's internal best practice policies;
 - Review and approval through the AAPs pre-vetting service at both concept and final stages to ensure its compliance with community standards and relevant advertising codes. I can confirm that each of the above requirements was complied with in relation to the Advertisement, prior to its broadcast.
- c) The Advertisement was approved through each of these processes prior to Lion's decision to broadcast it.
- d) The XXXX GOLD OOH campaign is based on the idea that there are multiple everyday occurrences that are tackled a little differently depending on your location. The images shown in the campaign depict the differences between an everyday 'city occurrence' as opposed to how the same occurrence may unfold in a regional/rural area, or whilst on holidays. In Lions view, the XXXX "daily commute" advert is very similar to sponsoring a sport's team (V8, NRL and Cricket); it is associating a brand with a way of life, brand or image, not suggesting you consume alcohol while participating in the particular activity. There are three (3) billboards in the series, that demonstrate this difference through titles of 'Working Late', 'Peak Hour Traffic' & 'The Daily Commute' which is the execution in question. Some points to clarify this particular execution;
- At no point does this image show alcohol in shot, nor does it suggest that the driver or his passenger have consumed alcohol before entering the vehicle or whilst in the vehicle. There is no direct implication or visible implication that alcohol is consumed before the activity, during or after this activity.
 - The driving isn't reckless, in the context of a 4WD adventure and the rear wheels of the 4WD are placed firmly on the ground & the front are raised as they are going over a bump in the road on the dirt track.
 - The headline 'The Daily Commute' does not suggest any link to alcohol consumption or have any correlation with drink driving. It highlights, again, that there are many forms of commuting and this depends on location and lifestyle and that city commuting is not the same as regional or rural/outdoor commuting.

- There is no sign of distress, no sign of reckless driving and nowhere on the image is it suggested to drink and drive.
- There is nothing in the advertisement to show or suggest that any of the behaviors and activities outlined in the complaint are being depicted.

The Panel's View

16. This complaint relates to an outdoor billboard advertisement for XXXX Gold beer that depicts two men in a four wheel drive coming over a bump in the road on an off-road track. The image is accompanied by the tagline 'The Daily Commute'. The complainant is concerned that the marketing communication depicts a link between alcohol consumption and irresponsible driving.
17. Section 3(d) of the Code provides that a marketing communication must not depict the consumption of alcohol before or during a range of activities, including driving a motor vehicle. The Code does not, however, prohibit alcohol companies from including images of people driving in their marketing communications. Rather, if a marketing communication does include images of individuals driving, it must not depict the consumption of alcohol before or during the operation of the motor vehicle.
18. The Panel does not believe the advertisement breaches the section 3(d) standard. In reaching this conclusion, the Panel has noted:
 - a) It appears that the complainant's concern is that the alcohol product is being advertised using an image depicting the operation of a motor vehicle. As noted above, subject to the requirement not to depict the consumption of alcohol prior to or during the operation of a vehicle, the Code does not prohibit companies from depicting individuals driving in marketing communications;
 - b) While the advertisement relates to an alcohol product, it does not depict the consumption of alcohol or the presence of any alcohol products;
 - c) Viewed within the context of the activity shown in the advertisement, namely off-road driving, the image of the four wheel drive motor vehicle coming over the bump in the road is not considered irresponsible, nor is there any suggestion that the driver is driving dangerously. Further, while the men appear to be enjoying themselves, there is nothing evident in the image to suggest that the men consumed alcohol prior to driving or that they are otherwise affected by alcohol.
19. Accordingly, the complaint is dismissed.