



ABAC Adjudication Panel Determination No. 97/15

Product: Lemon Ed
Company: Vok Beverages
Media: Outdoor/Transit
Complainant: Confidential
Date of decision: 22 September 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an advertisement on Transperth buses for Lemon Ed and arises from a complaint received 1 September 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

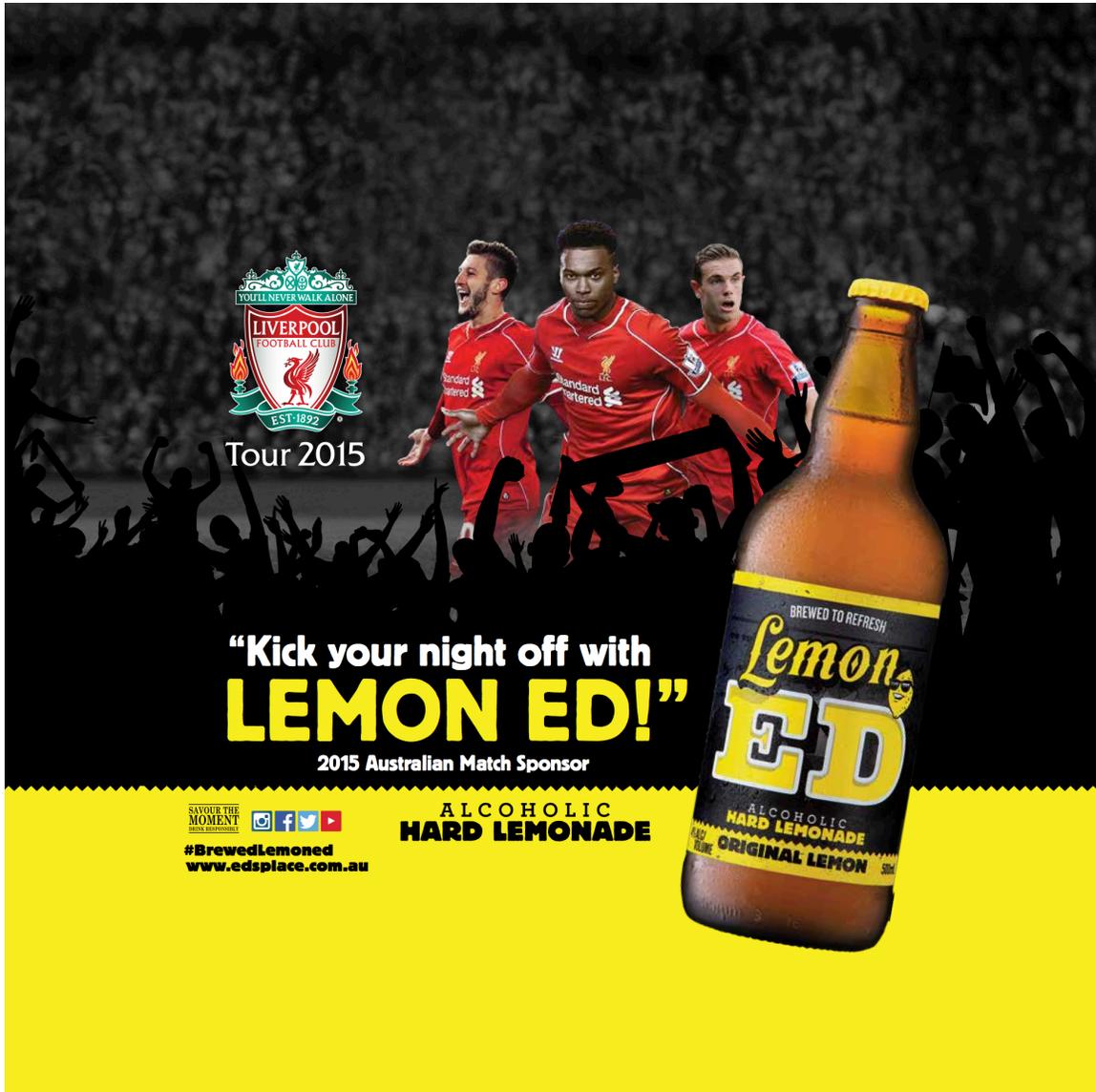
7. The complaint was received on 1 September 2015.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint has been determined within 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.

The Marketing Communication

10. The advertisement was placed on the rear of Transperth buses some of which do school specific runs.
11. The top two thirds of the advertisement is set against a black background and features a crowd silhouette below a photographic image of three Liverpool soccer players in playing uniform who are in the centre of this part of the advertisement. To the left of the players is the Liverpool Football Club logo above the text "Tour 2015" and to the right is the top two thirds of a bottle of Lemon Ed. Below the crowd silhouette and to the left of the bottle is the text ""Kick your night off with LEMON ED!" 2015 Australian Match Sponsor. The text is all in white except for "Lemon Ed!" which is in bright yellow large capitalised font. The white text is in smaller font with "2015 Australian Match Sponsor" in the smallest font.
12. The bottom third of the advertisement is set against a bright yellow background and includes the text "ALCOHOLIC HARD LEMONADE" in black capitalized font that is in smaller font than the yellow "Lemon Ed!" text set against the black background. The word "Alcoholic" is in a narrower font than "Hard Lemonade". To the left of that text in smaller black font is a drink responsibly logo with the message "Savour the moment" and also the text "#BrewedLemoned" and "www.edspace.com.au". To the right is the bottom third of the bottle of Lemon Ed.
13. The bottle of Lemon Ed is an amber colored 500ml bottle, similar to that used for a stubby of beer, with a black and bright yellow label and bright yellow bottle top. The label is mostly black with yellow strips at the top and bottom. At the top of the label under the yellow strip is the white text "Brewed to refresh", followed by the word "Lemon" in a fancy yellow font with a picture to the right of the text of a small lemon wearing black sunglasses and smiling. Below is the text "ED" in larger bold yellow block lettering with a white outline. In much smaller print below is the text "ALCOHOLIC" in white narrow font and "HARD LEMONADE" in the same size but bolder yellow font. In the yellow strip at the bottom of the label on either side is small narrow black font for the alcohol/volume and quantity details. In the centre of the yellow strip at the bottom is the text "ORIGINAL LEMON" in black font the same size and shape as for the text "Hard Lemonade" immediately above the yellow strip.



The Complaint

14. The complainant is concerned that the advertisement:
- (a) Includes the message “Kick your night off with Lemon Ed” which is “hard lemonade” suggesting the product would kick off your night at a football game;
 - (b) Only reference to the product being alcoholic is one word in small black lettering along the bottom left side;
 - (c) Is highlighting sport in bold, full color photos of players that take up 90% of the ad;
 - (d) Is 90% geared and promoted as a lemonade drink;

- (e) Is on the rear of numerous Transperth buses, some of which do school specific runs (both primary and secondary), and this is against applicable guidelines.

The ABAC Code

- 15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (b)(i) have Strong or Evident Appeal to Minors;
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;

The Company's Response

- 16. The Company responded to the complaint by email dated 4 September 2015. The Principal points made by the Company are:
 - (a) We do not believe the ad encourages excessive drinking. It does not state to drink more than one, nor that having more than one will make your night better. The advertisement also includes the drink responsibly logo.
 - (b) The product is hard lemonade and it also references the word 'brewed' twice, indicating an alcoholic product, along with two references to alcoholic (including one large and prominent on the ad, plus one large on the actual product).
 - (c) The reference to Kick is a reference to 'start your night with' and it does not indicate that doing so will make your night any better or worse.

The Panel's View

- 17. In mid-2015 the Liverpool Football Club played a number of exhibition games against Australian A League football teams. The Company apparently was a match sponsor for one or more of these games and this association between the "Lemon Ed" product brand and the Liverpool team became a theme in the Company's marketing.
- 18. One particular form of the Company's marketing was the placement of advertisements on the back of Transperth buses. Transperth is the name of the public transport system servicing Perth. It was the advertisement placed on the buses that has raised the concerns of the complainant.
- 19. The complaint raises a number of separate issues, which will be addressed in this Determination. These issues are as follows:

- Whether the advertising has a strong or evident appeal to under 18 year olds.
- Whether the advertising encourages excessive alcohol consumption.
- Whether the advertising suggests that the product may create or contribute to a significant change in mood.

Strong or evident appeal to under 18 year olds

20. The complainant argues that the placement of the advertising on buses used for school bus runs is inappropriate and against applicable guidelines. As mentioned in paragraph three, ABAC establishes standards regarding the content of alcohol marketing and does not of itself impose restrictions on where alcohol advertising might be placed. While the Outdoor Media Association guidelines restrict the placement of alcohol advertisements on billboards and bus shelter sheds within 150 metres of a school, there does not appear to be any restriction on the placement of alcohol advertising on buses. This means that the fact that school age children may ride on a bus on which alcohol advertising is placed or that a bus with an alcohol add is used for a school run will not of itself be a breach of the ABAC.
21. The ABAC standards do however provide that alcohol marketing cannot have strong or evident appeal to under 18 year olds. One way this standard might be breached is if the marketing uses imagery that is likely to appeal strongly to minors or create confusion with confectionary or a soft drink. The complainant argues that the ad makes only one reference to the product being alcoholic and presumably this may cause the product to be confused with lemonade soft drink.
22. In response the company points out that the word “alcoholic” appears twice in the ad ie on the product label and in the body of the ad. Further it is stated the word “brewed” also appears twice and this indicates the product is alcoholic.
23. There are some elements of the advertisement which could bring to mind a soft drink for instance the word lemonade as well as the colouring and the stylised lemon figure placed on the product label. In assessing if an ABAC standard has been breached the Panel is to stand in the shoes of a “reasonable person” viewing the content of the ad as a whole. This means that the probable understanding of the ad by a person sharing the views, attitudes and opinions common within a majority of the community is to be the benchmark.
24. Taking the ad as a whole the Panel does not believe it does create confusion with a soft drink. While the product is termed as a “hard lemonade” the use of the terms “alcoholic” “brewed” and “hard” all identify the product and the advertisement as relating to an alcohol product rather than a soft drink. Further the stubby of beer shape of the bottle and the beer bottle like lid also reinforce an overall impression that the advertisement relates to an alcohol product and not a soft drink.

Encourages excessive consumption

25. The complainant interprets the ad as influencing alcohol consumption by arguing that up to 90% of the ad refers to the Liverpool soccer team and the promotion of the product as a lemonade drink. These concerns bring into play Section (a) (i) of the Code which provides that alcohol marketing must not show or encourage excessive or rapid consumption of an alcohol beverage.
26. The Panel does not believe that the advertisement can reasonably be said to encourage excessive alcohol use. While the backdrop of the advertisement does show a crowd scene, this scene is consistent with a crowd celebrating at a football match and within the context of the ad would not be taken as showing a group of people who have been affected by excessive alcohol consumption. Further there are no other indications in the ad suggesting that an excessive volume or rate of consumption of alcohol is being promoted.

Suggesting a significant change in mood

27. The complainant goes on to make particular reference to the expression “kick off your night” which is taken as implying that the product will impact on a drinker’s mood. Section (c) (i) of the Code provides that alcohol marketing must not suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment.
28. Conceivably the term “kick off your night” might be taken to mean that the use of the product will change a person’s mood. Alternatively the slogan might be interpreted as a play on the football match and is raising the suggestion that a viewer of the match might start the occasion through consuming the product.
29. The Panel does not believe that the ad breaches the Section (c) standard. The use of the slogan “kick off your night” would be interpreted by reasonable person to be a play on the product’s association with the football game. At its highest, the suggestion is that the product might be used to mark the beginning of the night but this of itself does not suggest that the product has changed the mood of a consumer or the overall environment in which the product is being used.
30. Accordingly, the complaint is dismissed.