



ABAC Adjudication Panel Determination No. 88/14

Product: XXXX Gold
Company: Lion
Media: Television
Complainant: Confidential
Date of decision: 6 January 2015
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 a television advertisement for XXXX Gold by Lion (“the Company”) and arises from a complaint received 4 December 2014.
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 December 2014.
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.

The Marketing Communication

10. The complaint refers to a television advertisement for XXXX Gold.
11. The advertisement opens with a beach scene where four men are sitting at the top of the beach in deck or beach chairs around a coffee table and each have a stubby of XXXX Gold. There is a tackle box, 2 crickets bats and a cricket ball in front of the men. Behind the men there is a sign with the heading “XXXX Island Welcome to the Good Life” with some fishing rods leaning against it.
12. There is a loud crash and the ground shakes, the fishing rods fall over and the men all cover the top of their stubby with their hand.
13. In the next scene a large luxury boat is shown as having run aground on a reef and is keeling over on its side. A close up shot of the boat shows four men in business clothing sliding or walking to get off the boat. The four men in casual clothing from the earlier scene are then shown standing on the beach watching the boat as one of them says “Here we go”.
14. In the next scene the four men in casual clothing walk up to the four men in business clothing who are now standing on the beach looking distressed as one is shouting “Mayday” into his mobile phone. The business men turn to the four men approaching them and one comes forward to speak as one of the casual men says “I got this boys I was one of them once.”
15. One of the business men says “boat trending down, salvage operation, ETA TBC ASAP” as the casual man says “boat stuffed, awaiting rescue, CGB?” The businessmen all look at the man speaking.
16. The next scene shows the eight men all sitting on the steps of a building overlooking the beach holding a stubby of XXXX Gold. One of the businessmen says “CGB Cold Gold Boys” and clinks his beer with the man next to him as someone says “Cheers”. The final scene depicts the seascape that the men are looking at and the XXXX Gold logo with the tagline “Good as Gold XXXX.COM.AU” is superimposed on the screen as is the Drinkwise Get the facts logo and the words “TO BE CONTINUED....”.

The Complaint

17. The complainant believes the advertisement is ill advised, insensitive, and in bad taste, due to:
 - a) The advertisement depicting a shipping disaster reminiscent of the loss of the Costa Concordia, which saw the death of over 40 people; and

- b) The implication that problems can be solved by drinking alcohol.

The ABAC Code

18. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
 - (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

19. The Company responded to the complaint by letter dated 18 December 2014. The principal points made by the Company were:
- a) The Advertisement that is the subject of this complaint is a Television Advertisement for XXXX. The video opens with a shot of 4 guys sitting on the beach having a beer when they hear a noise from afar. The next shot takes us to a boat that has been marooned on the island and we see four passengers, clearly busy business people dressed in suits, make their way off the boat and onto shore. As they leave the boat, they are greeted by people on XXXX Island, comparatively casual and relaxed. The focus of the advertisement is on the meeting of these two groups of four men, from very different walks of life. Recognising that the business men seem to speak only in acronyms, one of the 4 original members of the island suggests that the group get together and have a 'CGB'. The final image shows all 8 men sitting on steps, having taken up the offer to have 'cold gold boys' & enjoy a beer together.
 - b) Lion does not consider that the Advertisement breaches any section of the ABAC Responsible Alcohol Marketing Code (ABAC Code) or any other advertising code. As noted in further detail below:
 - 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; and
 - the Advertisement was approved through each of these processes prior to Lion's decision to broadcast it.

The Guidance Notes Section 3(c) for the ABAC Code outlines that alcohol marketing cannot show or encourage the following: *There can be no portrayal of the presence of alcohol as having any causal relationship with mood change, a celebration, success of any kind, a therapeutic benefit or being necessary to relax. There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success. Similarly there is no intention to restrict the depiction of alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion that it has caused or contributed to their circumstance. It is also possible to depict the presence of alcohol in a romantic situation provided there is no suggestion it has caused or contributed to the achievement of sexual or other success. It should be noted that the presence of alcohol includes any elements of the product or brand (such as packaging or brand marks) intended to represent the product.*

- c) Nowhere within the Advertisement are any of the behaviors and activities listed above depicted. In relation to the 4 breaches of the ABAC code cited:

Boat hitting rocks and keeling over:

There is no alcohol present on the boat when it hits the rocks and keels over, and therefore no suggestion that alcohol caused this issue or could solve this issue.

Four men in business suits sliding down off the boat and walking along the beach in an agitated state;

The four business men are agitated as a result of the boat wreck and their inability to get mobile reception. There is no portrayal of the presence of alcohol as having any causal relationship with mood change here - there is no alcohol present in this scene.

One of the men already on the beach offering a solution of “CGB” meaning “Cold Gold Boys” resulting in the four men becoming quiet and less agitated and focusing on the man speaking to them;

The four business men become quiet and less agitated upon being greeted by the four men from the island and the realisation there are other people there who can help them. They are unfamiliar with their new surroundings and when greeted by 4 other men, they become more at ease in their new surroundings. They do not become quiet and less agitated due to a relationship with alcohol – there is no alcohol present in this scene;

The four men in suits sitting with the men who were already on the beach on the steps of a building looking over the beach holding stubbies of XXXX Gold in a calmer and happier state:

There is no material change in mood from the quiet and less agitated state the four business men are in following them meeting the four island men, as outlined above, and when they are all sitting down enjoying a beer. The scene is quiet, calm and moderate.

It is not implied at any point within this Advertisement that the presence of alcohol has any causal relationship with mood change

- d) None of the behaviours featured by the people in this Advertisement breaches the letter, intent or spirit of Section 3(c) of the ABAC Code – there are no depictions of alcohol as having any causal relationship with mood change, a celebration, success of any kind, a therapeutic benefit or being necessary to relax. All scenes shown, with and without alcohol present, demonstrate a fictional and social environment where behaviour is in line with social standards and drinking is in moderation
- e) As a responsible advertiser, Lion has demonstrated a long-standing commitment to supporting and adhering to the ABAC Responsible Alcohol Marketing Code (ABAC) and Advertising Standards Bureau (ASB). In acknowledgment of Lion's position of support for ABAC and ASB, Lion maintains strict internal and external processes. As well as upholding the standards outlined within these advertising codes, Lion maintains internal best practices which often exceed these requirements. As part of Lion's marketing approvals process, this Advertisement for XXXX was subject to:
- 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.

The Panel's View

20. The advertisement is set on the so called XXXX Island in Queensland's Whitsundays Island group and sits within a series of advertisements from the Company broadcast over time featuring the exploits of a group of men staying on the island. On this occasion, four casually attired and apparently holidaying men interact with four business clad men whose large luxury motor yacht has run aground on the island.
21. The complainant believes the advertisement is ill advised and in poor taste for two reasons. Firstly, the depiction of the floundered yacht is argued to be reminiscent of the Costa Concordia cruise ship which was wrecked off the coast of Italy in early 2012. Secondly, it is contended that the advertisement shows alcohol as "solving" the problems of the four ship wrecked men.
22. The well-known images of the Costa Concordia disaster are reminiscent of the ship wreck shown in the advertisement, to the extent that in both cases the vessel is heavily listing. While this similarity is acknowledged, there is no "good taste" requirement for alcohol marketing within the ABAC unrelated to depictions of alcohol use, and there is no suggestion that alcohol played any part in the grounding of the yacht in the advertisement. As such, this aspect of the complaint cannot be the basis of a breach of the ABAC.
23. Part 3 (c) of the Code does, however, go to the second aspect of the complaint. The provisions provide that alcohol marketing communications must not show the consumption or presence of an alcohol beverage as a cause or contributor to the achievement of success, nor can it be suggested that an alcohol beverage may create or contribute to a significant change in mood or environment. The complainant takes the advertisement as implying that alcohol will solve the stranded men's problem and, if this is a fair interpretation of the advertisement, then it will be inconsistent with the ABAC standards.
24. In response to the complaint, the Company accepts that the advertisement does depict a change in the mood and behaviour of the stranded men from an agitated to a calmer state. This change in mood, however, is argued not to be caused by alcohol but from meeting the four men already on the island, and the realisation that help is at hand.
25. In assessing the consistency of a marketing communication with an ABAC standard, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person taking its contents as a whole. The 'reasonable person' test is borrowed from the Australian common law system, and relates to the views, opinions, and beliefs commonly held in a majority of the Australian community. A person who holds a different view is not 'unreasonable', but their interpretation of the material may not be that shared by a majority of the community.
26. The critical element of the requirement in Part 3 (c) of the Code relates to the concept of causation. An alcohol product can be portrayed within an advertisement which shows a change of mood, provided that it is not suggested that it is the alcohol product which has been a cause or contributor of the change in mood. Accordingly, the critical question to determine is

whether the alcohol product played a part in the change in the state of mind of the four stranded men depicted in the advertisement.

27. On balance, the Panel does not believe the advertisement breaches the ABAC standard. In reaching the conclusion, the Panel has noted that while the mood does shift from an agitated to calm state, this occurs when the men begin talking to the island dwelling group and before the introduction of the product. In relation to the four shipwrecked men, the product is introduced into the final scene of the advertisement where the combined group of men are seen sitting on some steps consuming the product. By this stage the men from the standard yacht have already become less agitated. It seems that the shift in the men's mood occurred when they were first interacted with the island dwelling group of men, as opposed to through the presence of the alcohol product.
28. Accordingly, the complaint is dismissed.