



## ABAC Adjudication Panel Determination No. 65/16

**Product:** XXXX Summer Bright Lager  
**Company:** Lion  
**Media:** Outdoor  
**Complainant:** Confidential  
**Date of decision:** 4 June 2016  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement for XXXX Summer Bright Lager by Lion (“the Company”) and arises from a complaint received 5 May 2016.
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 5 May 2016.
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 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 not obtained for this marketing communication (14460).

## **The Marketing Communications**

10. The marketing is in the form of a billboard and consists of an image set on a balcony overlooking a park with the sea in the distance.
11. A woman is leaning against the balcony, holding a stubby of the product and smiling back at a group of 4 people that appear to be 3 men and a woman (only their midriff to feet are visible), 3 of which are visibly holding a stubby of the product and all of which are sitting in deck chairs and wearing casual clothing and thongs with their feet up on the balcony.
12. The tagline across the top of the image reads "Easy does it. Less Bitter. Less Heavy. Goes down easy."
13. The bottom right quarter of the image has a stubby of the product superimposed.
14. The bottom left of the image has the Drinkwise, facebook and Instagram logos with the website address XXXX.COM.AU

## **The Complaint**

15. The complainant is concerned that the advertisement suggests that consumption of the product will result in sexual success by including a tagline with sexual innuendo together with an image of a woman smiling at a group of men with their feet up and everyone holding beers, the men near their crotch.

## **The ABAC Code**

16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (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**

17. The Company responded to the complaint by letter dated 24 May 2016. The principal points in the Company's response were:

- a) The advertisement that is the subject of this complaint is an outdoor billboard for XXXX Summer Bright Lager.
- b) The billboard shows a group of five people (two women and three men) sitting on a balcony enjoying a social occasion. We see four people sitting with their feet up on the balcony while a female is standing up engaged in conversation with one of the people seated. Four of the people in the billboard have one XXXX Summer Bright Lager each. The headline reads Easy Does it, Less bitter, Less heavy, Goes down easy.
- c) Lion does not consider that the advertisement breaches any section of the Alcohol Beverages Advertising Code(ABAC) or any other advertising code.
- d) There is no indication on the outdoor billboard that XXXX Summer Bright Lager is a cause of or a contributor to sexual success. There are no signs of sexual success in this advertisement. A female is chatting to a group of friends while enjoying a XXXX Summer Bright Lager in a social environment. The tag lines used in the advertisement – “easy does it”, “goes down easy”, “less bitter” and “less heavy” – all relate to the beer style and flavour. The imagery of the advertisement is casual and relaxed, reflecting the style of the beer.
- e) As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and intent of the ABAC. Lion maintains strict internal and external processes to ensure this compliance. As part of Lion’s marketing approvals processes, this commercial was subject to:
  - Internal legal review and advice from an external legal firm 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 all relevant advertising codes;
  - Review and approval through ABAC’s external and independent pre-vetting service (AAPS) at both concept and final stages, receiving approval before going to market.

### **The Panel’s View**

18. The complainant has taken a billboard advertisement for the product as implying that the product will result in the achievement of sexual success. This is argued to arise from a combination of the images used and the taglines, which together are said to imply sexual activity.

19. The Company in response argues that the images and taglines clearly relate to the brand attributes of the product and any suggestion of sexual activity related to the product is denied.
20. The ABAC standard provides that marketing must not show or imply that the presence or use of a product is a cause or contributor to sexual or other success. The key concept in the standard is causation. It is permitted to associate alcohol with attractive and sexually confident individuals but it cannot be suggested that a cause of a person being attractive or sexually successful is alcohol.
21. In assessing if an advertisement is consistent with the standard, the Panel is to have regard to the probable understanding of the ad by a reasonable person, taking the content of the ad as a whole.
22. The Panel does not believe the ad breaches the ABAC standard. The ad as a whole creates a scene of a group of people socialising with the product on a balcony overlooking the water. This scene and the taglines would be taken by a reasonable person to relate to the product attributes and would not be taken as implying sexual success will be achieved by the use of the product.
23. Accordingly, the complaint is dismissed.