



ABAC Adjudication Panel Determination No 192/24

Product: Kirin Hyoketsu Lemon
Company: Lion – Beer, Spirits & Wine Pty Ltd
Media: Billboard at a Bus Stop
Date of decision: 10 December 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 25 November 2024 about billboard marketing for Kirin Hyoketsu Lemon (“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 places 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, and 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 is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 25 November 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

Pre-vetting Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards before public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was obtained for the marketing item (Approval Number 9998).

The Marketing

10. The complaint relates to the following marketing item:



Complaint

11. The complainant objects to the marketing as follows:
 - *This ad for alcohol shows girls consuming alcohol in a manner that depicts underage drinking.*
 - *It's offensive, and sends the wrong message to adolescents, especially young girls.*
 - *It should be removed.*

The ABAC Code

12. Part 3 (b) of the Code provides that An Alcohol Marketing Communication must NOT:

(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role and there is no implication they will consume or serve Alcohol; or

(iii) depict in a visually prominent manner:

(A) paid models, actors or Influencers that are and appear to be Adult but are under 25 years of age; or

(B) other people that are and appear to be Adult but are under 25 years of age UNLESS the depiction has been placed within an Age Restricted Environment.

13. Part 8 of the Code contains the following definition:

Age-Restricted Environment means:

- licensed premises that do not permit entry by Minors; or
- age-restricted account or post within a social media platform which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as being an Adult.

The Company Response

14. The Company responded to the complaint by letter emailed on 3 December 2024. Its primary comments were:

- We refer to your letter dated 26 November 2024 (Letter) in relation to a complaint received by ABAC about a Kirin Hyoketsu advertisement appearing on a bus stop in Tarragindi, Brisbane (Advertisement).
- 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.

- For the reasons set out below, and with respect to the complainant, we submit that there has been no breach of Part 3(b)(ii) or (iii) of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel.
- The Advertisement received approval through the Alcohol Advertising Pre-Vetting Service (AAPS). Please find enclosed the certificate of approval for AAPS Application No. 06741-2023 (Approval No. 9998).
- For the following reasons, we do not consider that the Advertisement breaches Part 3(b)(ii) or (b)(iii) of the ABAC Code:
 - each model used in this Advertisement is well over the age of 25; and
 - in our view, they do not appear to be a minor or under the age of 25 nor are there any other cues that would suggest that this is the case e.g. their clothing, accessories or haircuts.
- Lion ensures that the talent used in its campaigns are compliant with the ABAC Code in the following ways:
 - all briefs to our agencies expressly require that talent is and appears to be over the age of 25; and
 - prior to capturing any content for our campaigns, Lion or agency team members sight photo identification for all talent to confirm they are over the age of 25 years.
- We confirm that the names and ages of the talent shown in the Advertisement are as follows (from left to right):
 - Person 1 – 28 years old;
 - Person 2 – 33 years old; and
 - Person 3 – 28 years old.
- To maintain the privacy of these individuals, we ask that ABAC does not publish their names.
- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure its compliance.

The Panel's View

15. This determination arises from a complaint about the ages of the models shown in a bus stop billboard for the ready to drink alcohol beverage Kirin Hyoketsu – Lemon. The complainant believes the ad shows young girls and this sends an irresponsible message to minors.
16. A key standard of good alcohol marketing practice is that alcohol ads should not strongly appeal to minors. For a public facing alcohol ad such as a billboard, one element in meeting this standard is that the people shown must not only be adults, but should be aged at least 25 years old. Minors should only ever be seen in incidental roles such as being in the background at a family dinner where alcohol is being consumed by adults.
17. The purpose of the 25-year-old age threshold is twofold. Firstly, to avoid confusion by showing adults who have a youthful appearance and may be thought to be under 18. Secondly to portray alcohol use maturely and responsibly and this is assisted by featuring adults who are a bit older than 18.
18. The age of a model used in advertising is a question of fact. A person is aged 25 or over or they are not. On this point the Company states the three people in the Kirin Hyoketsu billboard are aged from 28 to 33 years old. The Company asked that the names of the models not be released but they were supplied to the Panel. An internet search confirmed they are aged over 25.
19. The models are in the background of the billboard behind the depiction of a can of the product and this makes assessing their age and appearance more difficult. The Company argued that the models do not appear to be minors or under 25 given their clothing, accessories and haircuts. While the models are young adults, they don't appear to be minors.
20. The Panel finds that each of the models are over 25 years old and do not appear to be minors. Accordingly, the billboard ad is not in breach of Part 3 (b)(ii) and (iii) of the Code.
21. The complaint is dismissed.