



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Alcohol Adlaw Update

Europe, Middle East & Africa – 19th May 2022

Your Panel



Brinsley Dresden
Lewis Silkin
United Kingdom



Caroline Bouvier
Bernard-Hertz-Bejot
France



Jenny Pienaar
Adams & Adams
South Africa



Sylwia Macura-
Targosz
Sołtysiński Kawecki
& Szlęzak
Poland



Baran Güney
Gün + Partners
Turkey

What and Why?

- What are we going to talk about?
 - The recent trends and hot topics in alcohol advertising regulation in the EMA region.
 - How is regulation being applied to new and novel alcohol products, such as hard seltzers.
- Why should you listen?
 - We will help you understand how regulation varies across the region, with very little harmonisation, but some common concerns.
 - We will help you navigate the regulatory obstacles around international alcohol advertising campaigns.



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Reminder of the key principles

Based on the UK's CAP & BCAP Codes

Alcohol Advertising Do's and Don'ts

- Do be socially responsible.
- Don't exploit the young or vulnerable.
- Don't show irresponsible or immoderate drinking.
- Don't imply alcohol gives popularity or confidence.
- Don't imply alcohol enhances personal qualities.
- Don't imply alcohol gives social success.
- Don't imply a successful social event needs alcohol.
- Don't link alcohol with daring or antisocial behaviour.

Alcohol Advertising Do's and Don'ts

- **Don't** not link alcohol with **sexual activity** etc.
- **Don't** portray alcohol as **indispensable**.
- **Don't** imply drinking can **overcome problems**.
- **Don't** imply that alcohol has **therapeutic** qualities.
- **Don't** show alcohol as **nourishing**.
- **Don't** imply that alcohol can improve **performance**.
- **Don't** link alcohol to illicit **drugs**.

Alcohol Advertising Do's and Don'ts

- **Don't** encourage preference for **high alcohol content**.
- **Do** encourage a preference **low alcoholic strength**, provided that the alcohol content is clearly stated.
- **Don't** run promotions encouraging **immoderate** drinking.
- **Don't** show alcohol being **handled irresponsibly**.
- **Don't** link alcohol with **dangerous machinery or driving**.
- **Don't** imply **sports** undertaken **after** drinking alcohol.
- **Don't** usually show alcohol being drunk at **work**.

Alcohol Advertising Do's and Don'ts

- **Don't** allow ads to **appeal** strongly to people **under 18**.
- **Don't** include **people** with **strong appeal** to **under 18s**.
- **Don't** feature anyone looks **under 25** in a significant role.
- **Don't** feature **children**, except in context of **families socialising responsibly**, but only in an incidental role.
- **Don't** make **health claims**, e.g. fitness or weight-control.
- **Don't** make **nutrition** claims except "**low alcohol**", "**reduced alcohol**" and "**reduced energy**".

Differing definitions....

Country	Non/Zero Alcohol Beverage	Low Alcohol Beverage	Alcoholic Beverage	Notes
United Kingdom	Up to 0.5% ABV	>0.5% up to 1.2% ABV	>1.2% ABV	Ads for zero alcohol drinks must not indirectly promote alcohol variant.
France	Up to 1.2% ABV	N/A	>1.2% ABV	Ditto.
Poland	Up to 0.5% ABV	N/A	>0.5% ABV	Beer is a separate category.
South Africa	Up to 0.5% ABV	N/A	>1%ABV	Virtually alcohol free / alcohol free: 0.05%
Turkey	Up to 0.5% ABV	N/A	>0.5% ABV	



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

United Kingdom – Hot Topics

Brinsley Dresden, Lewis Silkin LLP

Low and Zero Alcohol drinks



Low alcohol drinks: Rule Changes: Jan 2022

- **Old Rule:**

- Ads may give factual information about the alcoholic strength of a drink.
- They may also make a factual alcohol strength comparison with another product, but only when the comparison is with a higher-strength product of a similar beverage.

- **New Rule:**

- Ads must not imply that a drink may be preferred because of its alcohol content or intoxicating effect.
- However, low-alcohol drinks may be presented as preferable because of their low alcoholic strength, provided that:
 - the ad could not be considered as promoting a stronger alcoholic drink, and
 - the alcohol content of the drink is stated clearly in the ad.
- Factual information should not be given undue emphasis for drinks with relatively high alcoholic strength in relation to their category.

Consultation: Ads for 0% drinks

- Increasing popularity of alcohol free alternatives to alcoholic drinks means new rules and guidance is needed to clarify how these products should be marketed.
- Ads for non-alcoholic drinks often use imagery redolent of alcohol.
- ASA considered responsible ads and how 0% drinks intersect with alcoholic ones.
- Consultation presents new proposed rules to the Codes, one amended and one deleted BCAP Code scheduling rule, and new formal guidance on the marketing of alcohol alternatives.
- New rules & guidance covers definitions, misleading advertising, responsibility, and targeting and scheduling restrictions. The rules and guidance should be read together.
- Consultation closed **on 5 May 2022**.



Hard Seltzers: A healthy alternative?



Whisp Drinks – 7th July 2021

Website Claims:

“Whisp is a refreshing, low calorie, lightly alcoholic sparkling water – the perfect accomplice to a balanced lifestyle”

*“MILK THISTLE Natural detox hero!”
and “HEALTHIER CHOICE Low in sugar, calories and alcohol”.*



Whisp Drinks – 7th July 2021

The ASA challenged whether the claims:

1. “lightly alcoholic” and “Low in [...] alcohol” were not permitted claims for the drinks because the product had an alcoholic strength by volume (ABV) of 4%. **UPHELD.**
2. “low calorie” and “Low in sugar, calories ...” were nutrition claims that were not permitted for alcoholic drinks. **UPHELD**
3. “MILK THISTLE Natural detox hero”, “HEALTHIER CHOICE” and “the perfect accomplice to a balanced lifestyle” were general health claims that were not permitted for alcoholic drinks. **UPHELD**





GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Poland

Sylwia Macura-Targosz, Sołtysiński Kawecki & Szlęzak

General rules for alcohol ads in Poland

- Ban on the **public** advertising alcoholic beverages except for:
 - **beer** (you can advertise under certain conditions)
 - “**allowed channels of communication**”:
 - separate stands with alcoholic beverages in stationary stores
 - inside wholesale premises
 - points of sale of alcoholic beverages where alcohol may be consumed on site (licensed bars, restaurants, etc.)
 - **information about sponsorship**
- **Non-public communication is allowed** (e.g. at closed events with a defined list of guests)
- Self-regulation (the Advertising Council / the Code of Ethics in Advertising)



Browary Lubelskie S.A. t/a Perła beer – 1 Dec. 2021



Browary Lubelskie S.A./ Perła beer – 1 December 2021



1 complaint about the TV ad – the ad promotes: (a) the violation of traffic regulations and, regulations regarding drinking alcohol in public places, and (b) gambling and dangerous activities, and affects the viewer's subconscious

- Art. 7 of the Beer Advertising Standard (the Code of Ethics in Advertising): beer advertising may not present beer consumption in circumstances commonly regarded as irresponsible, inappropriate, or in breach of law, in particular, before or during any course of action which requires sobriety.



Response: due diligence was exercised, including compliance with all applicable legal standards

UPHELD: the AC concluded that the ad violated Art. 7 of the Code; the ad suggests that skateboarding is possible after drinking alcohol.

Carlsberg Polska t/a Seth and Riley's Garage – 9 Oct '19



Carlsberg Polska Sp. z o.o. t/a Seth and Riley's Garage – 9 October 2019



1 complaint about the TV ad – the ad is misleading because it mentions '*beer with squeezed lemon*'. However, there is no lemon in the product, only citric acid and flavourings.

- Art. 8 of the Code of Ethics in Advertising: ads should not abuse the trust of the recipients or exploit their lack of experience or knowledge.
- Art. 10 of the Code of Ethics in Advertising: ads should not mislead their recipients, in particular, regarding important characteristics, e.g. the nature, composition, method and date of manufacture, range of use, quantity, or origin (also geographical) of the advertised item.



Response: the label clearly indicates that the product contains natural flavours and citric acid while the label does not indicate that the product contains juice squeezed directly from a lemon. The ad does not contain information about the composition of the product, but only a suggestion of the way it should be served.

UPHELD: the AC concluded that the ad violated Arts. 8 and 10 of the Code; the ad could mislead consumers as to the characteristics of the advertised product, abuse consumer confidence, or exploit their lack of experience or knowledge.

Bartłomiej
Misiewicz (former
politician) / Alleati
Holding sp. z o.o. –
pending criminal
case



Bartłomiej Misiewicz (former politician) / Alleati Holding sp. z o.o. – pending criminal case



- Charges: among others the advertising of "Misiewiczówka" vodka on the Internet: public profile on twitter.com, and on the website www.misiewiczowka.pl
- Polish Sobriety Act: Persons who breach the provisions of advertising alcoholic beverages are obliged to pay a fine

→ PLN 10,000 – 500,000



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Turkey

Baran Güney, Gün + Partners

ALLOWED

- Limited attraction on sales points
- Displays inside the restaurants
- (Indirectly) Organizing events
 - Dinner organizations
 - Guided tours to vine-harvest festivals
- Special trade shows and scientific publications and activities aimed to promote alcoholic beverages internationally
 - *It is uncertain from the regulations who is entitled to decide whether a publication is scientific or aimed at advertising of alcoholic beverages.*
- International fairs
 - *Permission should be taken from the Regulatory Council of Tobacco and Alcohol Markets at least 30 days before the date of the event*

BANNED

- June 2013: Total prohibition of alcohol advertisement in any media
- Every kind of advertisement, presentation, campaign, promotion and activity which encourages the consumption and sale of alcoholic beverages in any kind of media
- Any public notifications or announcements using the names, emblems, logos, pictures, photographs, hallmarks and any other similar elements of the alcohol products
- Any advertisements or presentations using the names, distinctive signs, trademarks or hallmarks of alcohol products and their producer firms
- Any campaign, promotion, advertisement or presentations promoting or encouraging the use and sale of alcohol products
- No promotional items, either as a gift or for free
- Sponsoring any event
- Hidden advertisement
- Brand stretching

Alibi Branding

Alternative Branding



- Advertisement Board Decision no. 2019/11462 dated November 2020
- Alibi Branding with #Birlikte Güzel (*#Together Beautiful in English*)



#BİRLİKTE
#GÜZEL

✓ Approved



Social Media

- Advertisement Board Decision no. 2021 / 1243 dated April 2021
- Advertising film of «Yeni Rakı» from global social media accounts of brand into Turkey



✓ Sanctioned

Hidden Advertising by Influencers

- Hidden «BUD» advertisement by influencer

✓ Sanctioned



- Promotion by social media influencer with #DirenWines

✓ Sanctioned





GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

France

Caroline Bouvier, Bernard-Hertz-Béjot

Key Principles

French Rules - Overview

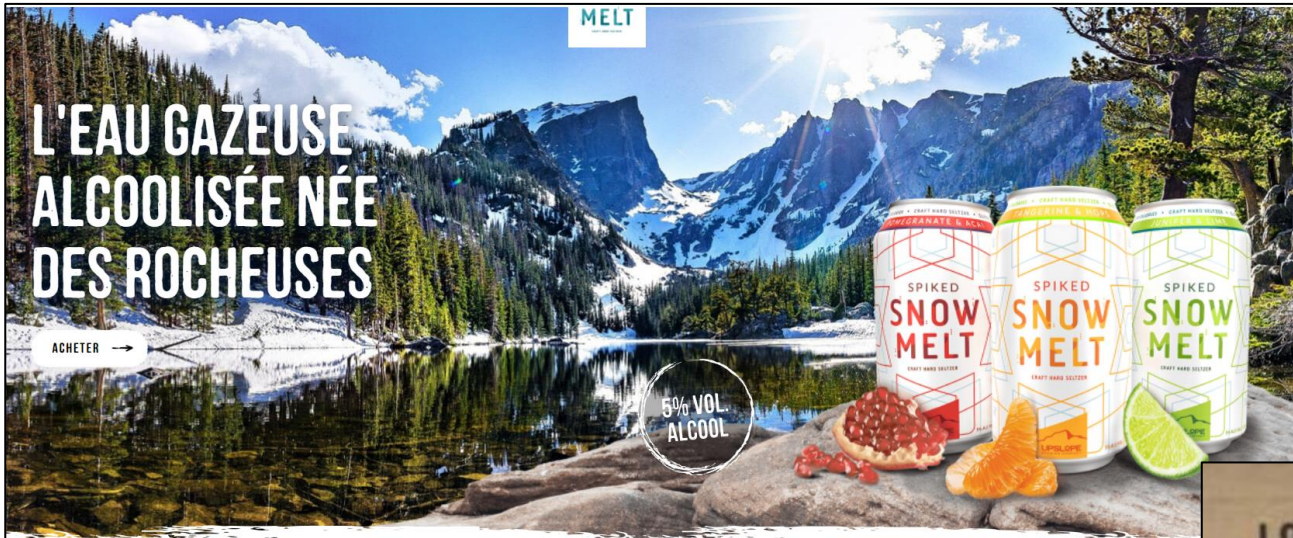
- What is not specifically allowed by Law is **prohibited**
- **Health message** : *'Abuse of alcohol is dangerous for your health, intake moderately'*
- **Objective and informative** character of the ad (**limited list of information allowed**: origin, composition, modalities of the sale, objective references to the color of the product, or its olfactory characteristics or taste, way to intake the product/recipes...etc.).
- **Limited list of media allowed**: in press for adults, certain categories of radio stations at specific times, billboards...etc., but not on TV or in cinemas.
- No sponsorship of **cultural or sport events** by an alcoholic beverage brand

Beware: indirect advertising for alcohol

An ad for an alcohol-free beverage by reference to an alcoholic beverage brand is deemed an indirect ad for alcohol: health message



Hot Topic: Hard Seltzers



Snowmelt website



Posters affixed on Parisian buildings

Hot Topic: Hard Seltzers – Do & Don't

fefe. Drinkfefe
Sponsorisée · 🌐

Envie de profiter d'un apéro au soleil entre amis ? Mais pas envie de faire de compromis sur la qualité de ce que ... Afficher la suite



fé

BOIRE BIEN C'EST devenu SOIN !

REMPLEZ VOTRE FRIGO MAINTENANT

Cocktail craft de qualité bar entre 12% et 15% à base de Cognac, d'Armagnac ou de Calvados

L'ABUS D'ALCOOL EST DANGEREUX POUR LA SANTÉ. À CONSOMMER AVEC MODÉRATION

drinkfefe.com

Surprenez vos papilles

Faits en France

Acheter

Facebook



BEWIZ

HARD SELTZER

CITRON VERT, MENTHE FLEUR DE SUREAU

45% VOL

LA BOISSON PÉTILLANTE ALCOOLISÉE À DÉGUSTER TRÈS FRAIS !

CITRON VERT MENTHE FLEUR DE SUREAU

L'ABUS D'ALCOOL EST DANGEREUX POUR LA SANTÉ. À CONSOMMER AVEC MODÉRATION

Billboard

Recent Cases

ANPAA v. Kronenbourg – 15.06.2021

Grimbergen's website



ANPAA v. Kronenbourg – 15.06.2021

Grimbergen's website



ANPAA v. Kronenbourg - UPHELD

- The references to the color, the smell and the taste of the product are allowed if they are made objectively
- 1st video : **the ad is neither objective nor informative** (the *first instance judges* challenged the link between the intake of alcohol and a legendary animal : no reference, in the ad, to the taste of the product nor to its historical origin, but to the **exceptional strength of the phoenix**)
- 2nd video : **strong similarities with Game of Thrones Series' opening credits : the film is clearly aesthetic, attractive and intended to present a positive image of Grimbergen beer and it incites intake of alcohol. There is no objective nor informative reference to the composition of the product.**
- Slogan "*Intensity of a Legend*" : "**intensity**" may relate to the taste of the beer, but "**legend**" has nothing to do with the taste, the origin or the homeland of the beer ; **link between the intake of beer and a unique, magical and exceptional moment ; incitement** to intake of alcohol,

ANPAA v Pernod Ricard France 02.03.21

Print & Billboard



Example of a poster of the ad campaign

ANPAA v Pernod Ricard France: **Not Upheld**

- The ads present the **geographical origin** of the product :
 - Real Cuban bartenders working in real bars located in Havana
 - Map of Cuba, license certificate & Daiquiri Cuban cocktail
 - "CUBA MADE ME" & "EL RON DE CUBA"
- The references to the geographical origin of the rum are important because rums may originate from various countries
- The ads show **ways to intake the rum** and describe the **modalities of sale of the product**
- The mentions are **purely descriptive and informative**.
- The overall impression is **sober and neutral** : the bartenders are not smiling; the colors used do not imply a party, nor a friendly atmosphere, or the feeling of escape: they correspond to the **Cuban reality**



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

South Africa

Jenny Pienaar, Adams & Adams

Key Principles

Combination of Self Regulation



Website: <https://aware.org.za/>



Website: <http://arb.org.za/>



And Statute

- Liquor Act, 2003



- Liquor Products Act, 1989



- Consumer Protection Act, 2008

- Foodstuffs, Cosmetics & Disinfectants Act, 1972



The 10 Commandments

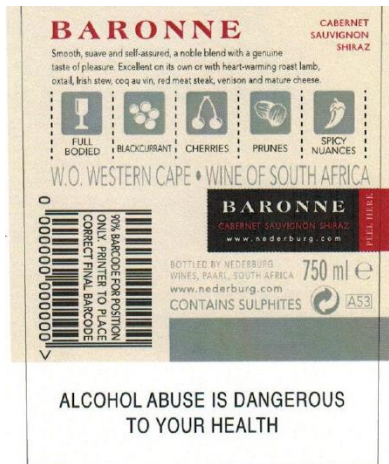


- 1. Prevent underage appeal – no persons under 25 shown to be drinking in adverts
- 2. Portray only responsible consumption
- 3. No promotion of social or sexual success
- 4. No promotion of alcohol content and performance
- 5. No suggestion of health benefits





- 6. No association with violence or anti-social imagery
- 7. ALL communication to include responsibility messaging
- 8. ALL media, including digital content must be compliant with the Code
- 9. ALL packaging must clearly indicate that the product contains alcohol
- 10. Alcohol-free and non-alcohol products may ONLY be promoted to persons who may legally drink alcohol



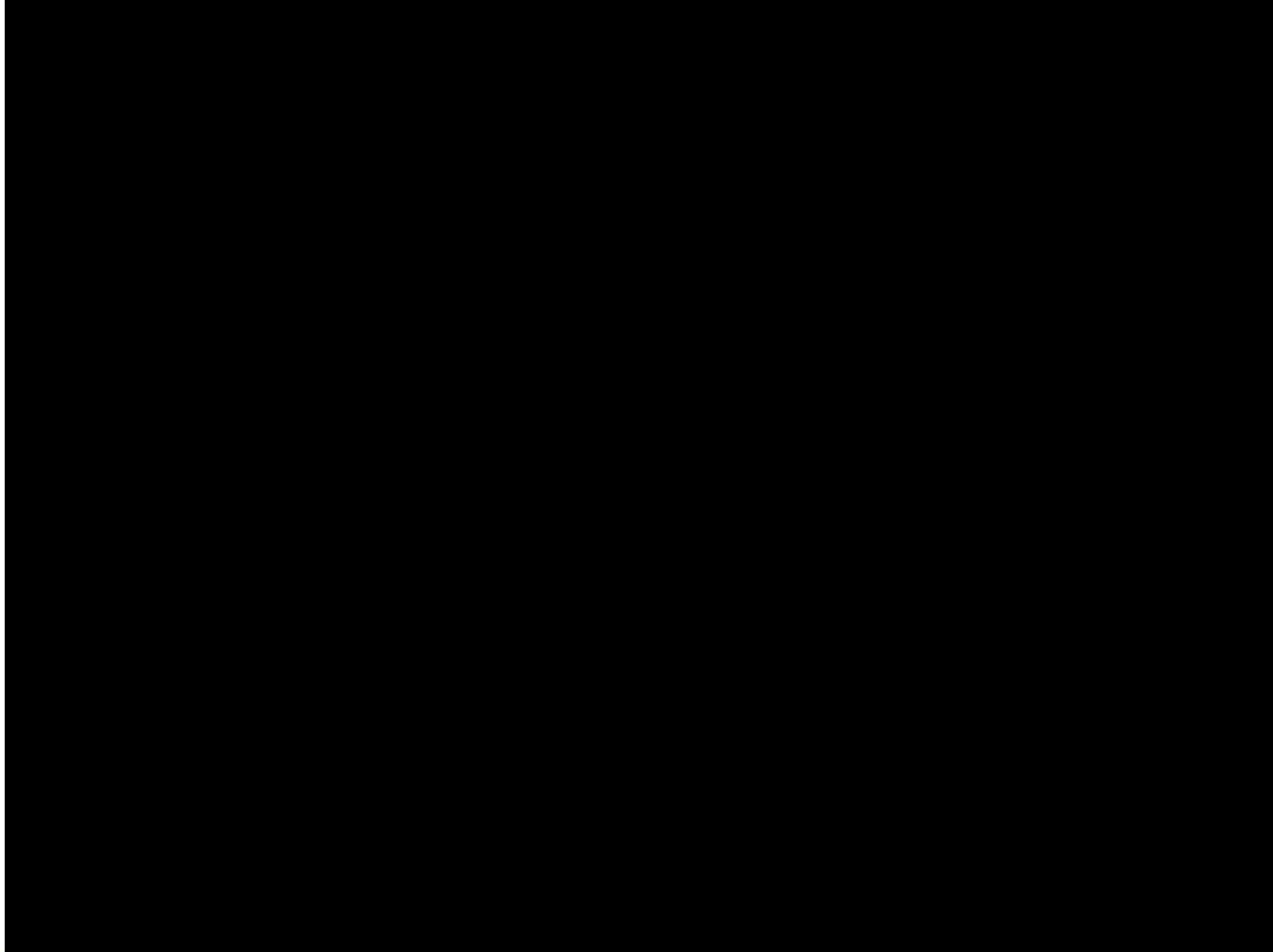
Hot topics – Hard Seltzers

Before seltzers were marketed as seltzers

VAWTER alcoholic sparkling spring water went from this type of promotion



Before seltzers were marketed as seltzers



To this new VAWTER seltzer look

Welcome to HARD SELTZER LIGHT LIVING

<https://www.vawter.co.za>

NEW

VAWTER
HARD SELTZER
CUCUMBER FLAVOUR
VODKA & SPARKLING WATER
330ML

VAWTER
HARD SELTZER
GRAPEFRUIT FLAVOUR
VODKA & SPARKLING WATER
330ML

VAWTER
HARD SELTZER
LIME & LIME FLAVOUR
VODKA & SPARKLING WATER
330ML

VAWTER
HARD SELTZER. LIGHT LIVING.

VODKA AND SPARKLING WATER WITH NATURAL FRUIT FLAVOURS.

LOW SUGAR
29 kCal
PER 100ML
LOW ALC 3.5%

<18

To this new VAWTER seltzer look

Welcome to HARD SELTZER LIGHT LIVING



#NO18 aware!org
www.aware.org.za

DRINK RESPONSIBLY. NOT FOR PERSONS UNDER THE AGE OF 18.

Recent decisions - ARB

Martin & Carr/Wine Time Online

- Clause 1 – Offensive
- Clause 3.5 – Unacceptable (gender)
- Appendix A
 - Portrayal of responsible consumption
 - Alcohol content & performance

23 March 2022 - UPHELD



Aadila Agjee/Heineken South Africa



Not for Persons Under the Age of 18. Enjoy Responsibly.

Aadila Agjee/Heineken South Africa

[Gerard Butler Windhoek Beer Commercial - YouTube](#)

- Clause 1 – Offensive
- Clause 3.4 – Unacceptable (discrimination)
- Clause 3.5 – Unacceptable (gender)
- Toxic Masculinity
- Gender Stereotyping

20 January 2021 - UPHELD

Appeal: Heineken/A Agjee

- ARB Advertising Appeals Committee ruling 1 April 2021
- Overturned the ruling of the ARB saying that the decision had:

“involved reading-in messages into the commercial that are not borne out by the presentation of the commercial and the facts relayed or portrayed in the commercial”

BUT also:

“..there is a word of caution that must be sounded..”

“..the minority of female beer drinkers must not be treated as a silent majority in the design of marketing material by producers such as Heineken..”



GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Resources



Final Tips and Any Questions?



Brinsley Dresden
Lewis Silkin
United Kingdom



Caroline Bouvier
Bernard-Hertz-Bejot
France



Jenny Pienaar
Adams & Adams
South Africa



Sylwia Macura-
Targosz
Sołtysiński Kawecki
& Szlęzak
Poland



Baran Güney
Gün + Partners
Turkey