

ABAC

ABAC Complaints Panel Determination No: 84/11

Complaint by Mr Julian Douglas-Smith
Product: Wild Turkey Bourbon
Advertiser: Campari Australia Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Fran Baum – Member

26 October 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Wild Turkey Bourbon by Campari Australia Pty Ltd (“the Advertiser”) and arises from a complaint received 4 October 2011.

The Quasi-Regulatory System

2. Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Media Association Code of Ethics and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon

receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.

4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 4 October 2011.
7. 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. This complaint was decided within the timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. The Advertiser is not a signatory to the ABAC; however, pre-vetting approval was obtained for this advertisement [10917].

The Advertisement

9. The complaint refers to a television advertisement for Wild Turkey Bourbon.
10. The advertisement is set in a public bar and features a group of four men at the bar with drinks either in their hand or on the bar in front of them. One of the men says "Hey look it's Jimmy Barnes." The men all look over the bar and the camera moves so that we see Jimmy Barnes leaning on the bar talking with another patron. He does not have a drink in front of him or in his hand.
11. The man goes on to say "Watch this, I'm gonna give him the bird". The camera moves to the face of one of his friends which changes from smiling to concern. The man shouts across the bar "Hey Barnesy" and his companions all cringe as we see Jimmy Barnes turn towards the man shouting to him. We then see the man's arm slowly rise as his friends look on with concern until his arm is fully raised toward Jimmy Barnes with a bottle of Wild Turkey Ready to Drink in his hand and a smile on his face. We see Jimmy Barnes smile at the man and one of his friends also smiling and saying "For a second there I thought you were going to".

12. We then see a bottle of Wild Turkey on the bar as a voiceover says “Give Em the Bird Wild Turkey” and super imposed text “Give Em the Bird” appears on one side of the bottle and a bottle of Wild Turkey Ready to Drink on the other side of the bottle. The text “Drink Responsibly” appears below the bottles. A hand turns the bottle of Wild Turkey Ready to Drink so the label is more visible. In the final scene we see the four friends standing at the bar, one with his arm around Jimmy Barnes and Jimmy Barnes holding a bottle of Wild Turkey Ready to Drink.

The Complaint

13. The complainant argues that it is inappropriate for an alcohol advertisement to feature Jimmy Barnes as:
 - (a) he is a well-known, self-confessed alcoholic;
 - (b) has a high profile history of drug and alcohol abuse;
 - (c) it send the wrong signals to anyone aware of his very public battle with alcoholism, implying he has in fact “fallen off the wagon”;
 - (d) he has very well publicized excesses with alcohol in the past, especially during his time as lead singer of the Australian rock band, Cold Chisel who is currently on a re-union tour.

The Code

14. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

The Advertiser’s Comments

15. The Advertiser responded to the questions posed by the Panel by letter dated 12 October 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. Campari Australia fully supports the ABAC and takes care when developing and executing advertising to ensure compliance with the ABAC and other Australian advertising and liquor licensing laws, regulations, codes and guidelines.
 - b. Campari believes Mr Barnes’ past history and personal issues are irrelevant considering the nature and content of the TVC. Nevertheless Mr Barnes’ struggle with alcohol has been well documented in the public arena and his achievement of sobriety has been equally well-documented. As such there is

no public perception that Mr Barnes has current issues with alcohol. In fact, we consider that in view of his achievement of sobriety, Mr Barnes is a role model for moderate and responsible consumption of alcohol. In addition, Mr Barnes has openly discussed his previous personal issues and the steps he has taken to change his lifestyle to the one he currently enjoys. Mr Barnes has been upfront about his issues and has never portrayed those issues, and in particular alcohol abuse, in a positive light.

- c. Campari strongly disagrees with the assertion that the TVC implies that Mr Barnes has “fallen off the wagon” by being portrayed in the TVC and by holding a bottle of Wild Turkey Ready to Drink. At no stage in the TVC is Mr Barnes shown consuming any alcohol. Indeed, no-one in the TVC is seen consuming alcohol. The conclusion that Mr Barnes has “fallen off the wagon” is a non sequitur to the portrayal of Mr Barnes in the TVC, in circumstances in circumstances where:
 - i. he is known to have overcome his past issues with alcohol;
 - ii. he is not shown to be consuming alcohol at any time during the TVC; and
 - iii. the TVC does not depict any excessive consumption, misuse or abuse of alcohol.
- d. Campari also considers Mr Barnes to be an appropriate role model and ambassador for the Wild Turkey brand. Mr Barnes was chosen to appear in the TVC and the broader WILD TURKEY Summer 2011 advertising campaign as his public persona is a perfect fit for the attitude of the WILD TURKEY brand – bold, yet genuine and uncompromising. The broader advertising campaign also includes sponsorship of Mr Barnes’ band, Cold Chisel’s 2011 concert tour.
- e. Campari considers that Jimmy Barnes is an Australian icon. He has been part of the Australian music industry – both individually and as a member of Cold Chisel for decades. He is a proud member of the Australian community and over the years has made a significant contribution to both the Australian music industry and various national and international community efforts. Some recent examples of his community contributions includes participation in a fundraising concert for the victims of Cyclone Yasi (North Queensland Cyclone Relief Fund 2011) and, along with family, releasing an album “Floodlight” with all proceeds being donated to the recent Queensland Disaster Relief Appeal (supporting those affected in the Queensland floods earlier this year). Mr Barnes is also a UNICEF Ambassador.
- f. Jimmy Barnes is very aware and protective of his status as a role model and his public persona which he uses to contribute to the community. Given the hard work that Mr Barnes has put in to building his career and reputation, he would not participate or endorse any activities which would jeopardise his ability to contribute to our community or encourage irresponsible behaviour by any Australians. Campari considers Mr Barnes an abundantly appropriate role model to use in the Wild Turkey advertising campaign, given the affinity between his persona and the brand’s attitude and his status as an Australian

icon and music legend. A reasonable viewer of the TVC would not view the TVC, or Mr Barnes' appearance in the TVC as promoting, encouraging or portraying excessive consumption of alcohol. Indeed, Campari believes that reasonable people immediately associate Jimmy Barnes with his successful music career and status as a rock music icon and not issues with alcohol.

- g. From concept to final TVC AAPS approval was sought and obtained.
- h. Only one complaint was received in relation to the TVC. In addition, the TVC has been positively received with extensive feedback applauding the TVC for its humour and clever execution. The TVC is intended to be humorous and is centred on a play on the colloquial phrase of "giving the bird".
- i. The core demographic for the product is men aged in their 30s and 40s.

The Panel's View

- 16. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

- 17. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:
 - Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
- 18. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means that the advertiser is not contractually bound to follow a panel decision. That said, the advertiser has advised that it supports the ABAC and regularly obtains AAPS approval for its advertising.

The Substantive Aspects

- 19. The argument of the complainant is that it is entirely inappropriate and irresponsible to feature the Australian rock singer, Jimmy Barnes, in an alcohol advertisement because of his publicly well-known past problems with alcohol addiction. It is argued that his presence in the ad "sends the wrong signals ... implying that he has in fact 'fallen off the wagon'."

20. The advertiser argues at two levels: firstly, that the ad has to be assessed on its nature and content and not through imputing particular attributes or history to Mr Barnes; and secondly, and in a sense in the alternative, that Mr Barnes is well-known for overcoming past alcohol abuse issues and he is a "role model for moderate and responsible consumption of alcohol".
21. The relevant provision of the ABAC provides a combination of a positive requirement for alcohol beverage ads to satisfy, and which will be breached if particular negative depictions or implications are contained in the ad. The positive requirement is that ads must present a mature, balanced and responsible approach to the consumption of alcohol. This standard is not satisfied if an ad encourages excessive consumption or under-age drinking, or promotes offensive behavior or the misuse or abuse of alcohol. Ads must only depict responsible and moderate consumption of alcohol beverages.
22. The complainant does not take issue with the content of the ad, other than its use of Jimmy Barnes. The ad does not show or suggest excessive consumption of alcohol, nor offensive behaviour, although the strapline "Give em the bird" does allude to a rude gesture. In the context of the ad, however, it is not considered that the ad can be fairly said to be promoting offensive behaviour within the meaning of section (a) (iii) of the ABAC.
23. The issue therefore is whether the inclusion of Mr Barnes in the ad of itself means that the ad fails to present a mature, balanced and responsible approach to the consumption of alcohol beverages.
24. In Determination 07/07 and 20/07 of 10 April 2007, the Panel considered a TVC featuring the former Australian cricket player, David Boon. The complainant in that case argued that Mr Boon was well-known as having a history of excessive alcohol consumption and, as a result, it was inappropriate for him to feature in an alcohol ad. The Panel dismissed the complaint, noting:
 - The content of the ad itself did not depict excessive consumption and the argument that the ad offended section (a) only had weight if it assumed a viewer automatically associates Mr Boon with heavy alcohol consumption;
 - It was not reasonable to associate Mr Boon with excessive alcohol use, nor would a reasonable viewer take the ad as promoting excessive consumption simply because of Mr Boon's appearance.
25. The Panel concluded in Determination 07/07 and 20/07 that "it would be very difficult to apply the ABAC by going beyond the actual advertisement and attempting to imply a message into the advertisement by the use of a contested opinion as to whether a particular person is associated with a specific view or particular behaviour. Each advertisement has to be taken on its own terms".
26. The Panel believes that it cannot find the ad in breach of section (a) of the code. While Mr Barnes is a well-known musician, the extent it is publicly known about his past history of alcohol problems is uncertain, nor is it possible to assess if the community generally knows he has overcome his alcohol problems. The Panel is obliged to assess ads on what is portrayed within the ad and how a reasonable

person would likely view the ad as a whole. On this basis, the content of the ad does not breach section (a). That said, the Panel believes it is highly questionable that Mr Barnes should be featured in an alcohol beverage ad.

27. Accordingly, the complaint is dismissed.