

ABAC

ABAC Complaints Panel Determination No: 16/11

Complaint by Mr Martin Ditmann
Product: Jack Daniel's
Advertiser: Brown Forman

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

21 February 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a billboard advertisement for Jack Daniel’s by Brown Forman (“the Advertiser”) and arises from a complaint received 18 January 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 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 18 January 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. Pre-vetting approval was obtained for this advertisement [10545].

The Advertisement

9. The complaint refers to a billboard advertisement located near the corner of South Road and Nepean Highway, Moorabbin.
10. The left side of the billboard features a group of hands raised and a camera pointing toward the centre of the billboard. The centre of the billboard features part of a bottle of Jack Daniels & Cola. The right side of the billboard contains the following text on a black background "Raise your Jack. It's Summer. Responsibility is always in season. Jack Daniel's. A summer tradition."

The Complaint

11. The complainant argues that the advertisement suggests that the consumption of the beverage is essential to maintaining a social mood (that of summer) and the word "jack" also has some sexual connotations.

The Code

12. The ABAC provides that advertisements for alcohol beverages must-

- (c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - (i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

Arguments in Favour of the Complaint

- 13. In favour of the complaint it can be argued that the advertisement breaches section (c)(i) of the ABAC by suggesting that the presence or consumption of Jack Daniel's may create or contribute to a significant change in mood or environment or may be a cause of or contribute to the achievement of sexual success by depicting:
 - (a) a group of hands raised as if at a party or concert facing a bottle of Jack Daniel's & Cola next to the tagline "Raise your Jack It's summer" thereby implying that the presence or consumption of Jack Daniel's may create or contribute to a social or holiday mood; and
 - (b) the term "Raise your Jack" which has two possible meanings, namely encouraging viewers to raise a glass of Jack Daniels and secondly a sexual connotation and the combination of the two imply that consumption or presence of Jack Daniels may be a cause of or contribute to the achievement of sexual success.

The Advertiser's Comments

- 14. The Advertiser responded to the complaint and questions posed by the Panel in relation to the complaint by way of letter received 8 February 2011. The principal points made by the advertiser are as follows:
 - (a) This outdoor advertisement is part of a summer campaign that celebrates that summer has arrived. The entire campaign, including the specific ad that is at issue was reviewed and approved by the ABAC in December of last year. This campaign was in market from the 1st December to end of January 2011.
 - (b) While we take all complaints concerning our advertisements seriously, we are a bit perplexed by this one. The tagline "Raise your Jack" is a modification to the well known admonition that you "raise your hand" if you are volunteering for something, usually celebrating or cheering. It is with this intent that we are suggesting that our consumers raise a "Jack" in celebration that summer has arrived... and winter/cold weather is over. This celebration of summer is underscored by our slogan that Jack Daniel's is "A Summer Tradition".
 - (c) To respond specifically to your questions, we do not believe that a group of raised hands suggests that consumers need to consume Jack Daniel's in order to create a social or holiday mood. The

provision of the Advertising Code cited precludes ads that somehow suggest that you need to consume alcohol to “create or contribute to a significant change in mood.” I am struggling to understand how the ad portrays a “significant change in mood” when the only visual is raised hands. To reiterate, the “raise your jack” is meant to remind consumers that summer is here and Jack Daniels is a great product to consume responsibly in the summer. Admittedly, consumers may be on vacation or holiday during the summer months, but I do not think anything in the advertisement suggests that you cannot enjoy your summer unless you drink.

- (d) As to the second question on whether “Jack” has a sexual connotation, seems a bit abstract. I am unaware of Jack being any form of a slang term for any part of the body and if it is then we are not referring to this considering the creative clearly highlights a pack shot of our product which adorns the Jack Daniel’s logo. In closing, please accept my assurances that our advertisement in no manner was designed to somehow incorporate a subliminal sexual connotation. Moreover, our suggestion that consumers enjoy summer and enjoy our brand does not in any manner suggest that consumption of Jack Daniel’s will impact one’s mood. We firmly believe our advertisement is in full compliance with the Alcohol Beverages Advertising Code.

The Panel’s View

15. This complaint raises issues under the ABAC dealing with concerns about whether the ad is suggesting that alcohol consumption will contribute to a change in mood or the achievement of sexual success. The complaint argues that the picture of hands raised as if at a party together with the tagline “Raise your Jack. It’s summer.” suggests that the consumption of the beverage is essential to maintaining a social mood (that of summer) and also that the word “Jack” has a sexual connotation.
16. The Advertiser argues that “Raise your Jack. Its summer” is meant to remind consumers that summer is here and Jack Daniels is a great product to consume responsibly in the summer. They argue that they are not aware of the term “Jack” having a sexual connotation and that their advertisement was not designed to incorporate any subliminal sexual connotation.
17. In previous determinations involving billboard advertising, the Panel has noted that a reasonable and common viewing of the billboard will be from a moving vehicle and that the average viewer will not stop and examine the ad in minute detail. This means that the impression created by the ad is important.
18. In applying the ABAC standards, the Code’s preamble provides that conformity is to be assessed in terms of the probable impact of the ad upon a reasonable person, taking the ad’s content as a whole.
19. The Panel does not believe the ad can be said to breach the ABAC standards. In reaching this conclusion the Panel noted:

- The ad shows a high shot with a crowd of people with only the raised arms of the crowd in the shot.
- While an impression of a concert or similar event is evoked by the depiction, there is no suggestion that the people's behaviour is impacted by alcohol.
- The strap line "Raise your Jack" does seem to be a play on the expression "raise your glass" suggesting a toast or celebration of a milestone.
- The references to "summer" and "responsibility is always in season" seem to imply that the summer season is being recognized.
- Taken as a whole, the ad is not establishing a causal relationship between a festive mood and alcohol use.

20. Accordingly the complaint is dismissed.