

ABAC

**ABAC Complaints Panel
Determination No: 57/12**

**Confidential Complaint
Product: Jack Daniels Tennessee Honey
Advertiser: Brown-Forman Australia**

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

16 August 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for Jack Daniels Tennessee Honey by Brown-Forman Australia (“the Advertiser”) and arises from a complaint received 15 June 2012.

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 15 June 2012.
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 not within the timeframe due to the unavailability of the Chief Adjudicator.

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 [11539].

The Advertisement

9. The advertisement is located at:
<http://www.youtube.com/user/JackDanielsAustralia>.
10. The advertisement is a digital animation set to a heavy metal song "I'm a king bee" and opens with a bee crawling over a flower wearing a helmet and goggles. The bee then flies away through the night and is followed by a spotlight as it flies through a forest bumping into flowers and through a branch that disintegrates before diving into a bottle of Jack Daniels through its label. The label changes from Jack Daniels to Jack Daniels Tennessee Honey and we then see the bee fly away through the forest.
11. In the final scene we see a bottle of Jack Daniels Honey as the following text appears next to the bottle "Introducing Jack Daniel's Tennessee Honey fJackDanielsAustralia Fly Straight Drink Responsibly".

The Complaint

12. The complainant argues that the advertisement:
 - (a) will appeal to younger children by its use of a highly engaging animated bee;
 - (b) depicts anti-social or dangerous behaviour by showing the bee destroying pieces of the forest as it flies erratically around; and
 - (c) the combination of alcohol, the bee destroying things and flying is heading into dangerous territory that could be aligned to drink driving.

The Code

13. 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:
 - ii) must not encourage underage drinking
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages
14. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children or adolescents.....
15. Section (d) of the ABAC provides that advertisements for alcohol beverages must:
 - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during the engagement of the activity in question and must in all cases portray safe practices.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by letter received 27 June 2012. The points made by the Advertiser in relation to the advertisement were:

- a. As part of Brown-Forman's corporate responsibility policies, we will only advertise in media (including the internet) if the composition of its audience is at least 70% of legal drinking age (over 18 years of age). We ensure that we have up to date demographic information from a third party source such as Nielsen to verify the actual demographics prior to any placement of our advertising. We followed this procedure with respect to the advertisement that is the subject of the complaint. Specifically, based on Nielsen's latest audit of YouTube's demographics from May 2012, 86.69% of its audience is composed of individuals at or over the legal drinking age in Australia (a copy of these demographics provided). Moreover, Brown-Forman takes an additional step and does not simply post our advertisements on the general YouTube site. Our placement is on a dedicated "channel" for our Jack Daniel's brand that we have created on YouTube. Importantly, our Jack Daniel's Channel is age-gated and, therefore, individuals cannot access our ads before confirming that they are at least 18 years of age.
- b. We firmly believe our advertisement does not breach Section (a)(ii) or Section (b) of the Code. In addition to the above responsibility measures taken by Brown-Forman Australia, to avoid the under-age viewing of this ad, it is important to highlight that the Jack Daniel's Tennessee Honey TVC has a central character called "King Bee" which is a real representation of a bee and does not have any element of an animated or cartoon character intentionally targeting under-age individuals. The King Bee character has an adult, masculine and daunting persona and appeal, which was designed to intentionally engage with adults and not with under-age individuals. Therefore, the ad does not breach section (a) (ii) of ABAC.
- c. The ad narrates a story of a real bee and its real life. The ad starts with a bee pollinating a real flower, which then flies across a forest seeding pollens during its flight, representing the bee's habitat, which seeks to explain briefly the initial stages of how bee's create honey. Moreover, throughout the ad, the bee does not consume alcohol and does not fly across the forest under the influence of alcohol. Ultimately, the bee flies into a bottle of Jack Daniel's Tennessee Whiskey, which then becomes a bottle of Jack Daniel's Tennessee Honey. We believe that only an adult would be cognitively capable to understand the intrinsic connotation of a bee diving into the label of a bottle of Tennessee Whiskey, and becoming a bottle of Tennessee Honey. The ad was designed for a mature audience and expresses the equally mature values of the Jack Daniel's brand. There are no human beings or children visible or depicted in this video, and therefore no one that may appear under age. Based on the above mentioned facts, we firmly believe the advertisement does not encourage under-age drinking and it does not have a strong or evident appeal to children or adolescents.
- d. At no point in this ad is there any indication that the main character, "King Bee," is demonstrating, acting or promoting offensive behaviour, or that the bee is engaged in any manner in the excessive consumption or misuse of alcohol beverages. The ad simply narrates the story of a real

bee living in its habitat, in the context of our brand. The ad starts with a bee pollinating a real flower, which after this pollination flies across a forest seeding pollens during its flight, as a true representation of a bee's habitat, and in an interesting and very brief way attempts to portray the basic elements of how bees produce honey; a key ingredient in the product. Moreover, throughout the ad, the bee does not consume alcohol and does not fly across the forest under the influence of alcohol. There simply are no instances of erratic behavior in this advertisement. The flowers and branches breaking apart as the bee flies through them have no correlation to the consumption of alcohol or acting irresponsibly. They are representative of the environment the bee coexists within. Ultimately, the bee flies into the label of Jack Daniel's Tennessee Whiskey, which then becomes a bottle of Jack Daniel's Tennessee Honey. Following that last sequence, the bee disappears and does not perform any additional role in the advertisement, in summary, we can find no basis to argue there is a breach of section (a)(iii) of this code by our advertisement.

- e. Throughout this ad, its main character "King Bee" does not engage in any potentially hazardous activity such as the use of or operation of a motor vehicle, boat or aircraft, or the engagement in any sport, and therefore a breach of section (d) cannot be considered. Furthermore, the bee does not engage in any sport or activity that humans engage in. In addition to the above, it is important to highlight, that the ad starts with a bee pollinating a real flower, which then flies across a forest seeding and collecting pollens during its flight as a true representation of a bee's habitat. The bee does not engage in the consumption of alcohol, thus it does not fly across the forest under the influence of alcohol, nor are there any suggestions to this assertion. Ultimately, the bee flies into a bottle of Jack Daniel's Tennessee Whiskey, which then becomes a bottle of Jack Daniel's Tennessee Honey. As the product transition occurs, the bee disappears, having fulfilled his role in the production of honey, or our depiction of the transition to Tennessee Honey in this case. There is no consumption of alcohol portrayed in this ad. As the activities of pollinating flowers, flying through the forest, and ultimately diving while in flight are clearly the activities of a bee and not related to humans in any way, there is no breach of (d)(i).
- f. In conclusion, we remain confident our advertisement for Jack Daniel's Tennessee Honey is fully compliant with the Code. It is a humorous but adult focused advertisement which is designed to appeal to adults, not children or adolescents.

The Panel's View

- 17. The complaint raises concerns relating to three separate provisions of the ABAC and each concern will be considered in turn.

Section (a)(ii) and (b)

- 18. The first concern raised in the complaint is that the advertisement will appeal to younger children by its use of a highly engaging animated bee. The relevant

ABAC provisions provide that an alcohol advertisement must not encourage underage drinking or have a strong or evident appeal to children or adolescents.

19. The advertiser argues that:
 - a. Placement is with a mature audience and the advertisement is age-gated for a mature audience;
 - b. The Jack Daniel's Tennessee Honey TVC has a central character called "King Bee" which is a real representation of a bee and does not have any element of an animated or cartoon character intentionally targeting under-age individuals;
 - c. The King Bee character has an adult, masculine and daunting persona and appeal, which was designed to intentionally engage with adults and not with under-age individuals; and
 - d. Includes concepts only an adult would be cognitively capable to understand.
20. The first line in the advertiser's defense is that the medium used for the advertisement, namely an age gated YouTube channel has a predominantly adult audience. The Panel notes this information but the essence of the ABAC is that it is a content and not placement based code. This means that the standards within the code apply to advertising irrespective of the medium over which an ad might be transmitted.
21. In other words, an ad will not breach the ABAC simply because it is visible to a large number of children or adolescents eg. a billboard on a public road way. On the other hand the fact that the likely audience of an ad will be predominately adult will not protect the ad if the ad's content can fairly be said to have strong or evident appeal to children or adolescents.
22. The preamble to the code provides that the likely audience of an ad is a consideration but only in terms of assessing the content of the ad. Hence the fact that the ad may have a predominately adult audience is taken account by the panel in assessing the ad's consistency with Section (a)(ii) and (b) of the code.
23. In making its assessment the Panel examines each advertisement on its own merits and takes account of:
 - a. The 'look and feel' of the advertisement;
 - b. Imagery, music, use of animation and characters;
 - c. Its reach to different audiences;
 - d. The overall context of the ad;

- e. The overall impact of the ad (the intention of the advertiser as to its target audience for an ad is not material, rather it's the "probable impact" of the ad which is important).
24. The use of animation and computer generated graphics is wide spread in popular entertainment. Some examples of this technique are clearly associated with children's entertainment and the nature of the animation and the accompanying storylines are clearly directly towards children. In other instances however the technique is used to produce entertainment which is very clearly adult in theme eg. types of Japanese anime or the computer generated Gollum character in the Lord of the Rings movies. Each case has to be assessed on its own terms and sometimes reasonable persons might view an ad and reach different conclusions as to the ad's appeal. In this case the Panel believes that the ad is not inconsistent with Section (a)(ii) and (b) of the Code. In reaching this conclusion the Panel has noted:
- The style and graphics used in the ad was not akin to children's entertainment but rather is more similar to the type used in adult programming;
 - The accompanying music to the ad was not considered to have strong appeal to children;
 - The depiction of the bee was of a life like and strongly masculine creature. In this regard it was quite different from the depiction of insects often seen in children's entertainment.

Section (a)(iii)

25. The complainant's second concern is that the advertisement depicts anti-social or dangerous behaviour by showing the bee destroying pieces of the forest as it flies erratically around.
26. The relevant ABAC standard is section (a)(iii) of the ABAC which provides that alcohol advertisements must present a mature, balanced and responsible approach to the consumption of alcohol beverages and must not promote offensive behaviour.
27. The Panel has considered section (a)(iii) of the Code in previous determinations. From these decisions the following points can be taken:
- The term "offensive behaviour" within section (a) (iii) needs to be understood in context and relates to behaviour related to or influenced by alcohol use and is not a general standard;
 - Section (a) refers to more than the actual consumption of alcohol and incorporates the wider concept of a "responsible approach to the consumption of alcohol";
28. The Panel believes that the advertisement does not depict offensive behaviour related to or influenced by alcohol use. Looking at the advertisement as a whole

there is no suggestion that the bee has consumed alcohol and the advertisement sufficiently establishes the context, namely that the role of the bee is to add honey to create a new alcohol product.

Section (d)

29. The complainant's final concern is that the combination of alcohol, the bee destroying things and flying is heading into dangerous territory that could be aligned to drink driving.
30. The relevant ABAC provision states that an ad must not depict a direct association between alcohol consumption and the operation of a motor vehicle or a potentially hazardous activity. In particular alcohol consumption must not be represented as having taken place before or during engagement of the activity.
31. In order to breach Section (d) any direct association between alcohol and the activities needs to involve alcohol "consumption". Specifically, consumption of alcohol must not be represented as having taken place before or during engagement of the activity. In assessing consistency with an ABAC standard the Panel is to have regard to the probable impact on a reasonable person of the content of the ad as a whole.
32. The Panel does not believe the ad can fairly be said to breach the terms of section (d). In reaching this conclusion, the Panel has noted the bee is not depicted as consuming any alcohol and there is no basis on which the Panel can reasonably imply the bee had been consuming alcohol.
33. The complaint is dismissed.