

# ABAC

**ABAC Complaints Panel  
Determination No: 7-8/11**

**Confidential Complaint  
Product: Jim Beam  
Advertiser: Beam Global Australia Pty Ltd**

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 two website advertisements for Jim Beam by Beam Global Australia Pty Ltd (“the Advertiser”) and arises from two confidential complaints received on 6 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 complaints 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The complaints were received by ABAC on 6 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. The complaints have been determined just outside the 30 day 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 not obtained for the advertisements.

### **The Advertisement**

9. The complaints refer to two website advertisements for Jim Beam.
10. The first website is [www.jimbeamthebreak.com.au](http://www.jimbeamthebreak.com.au).
11. The website opens with an age verification page which advertises a surfing competition. The page features a photograph of a man surfing with a silhouette of a man walking with a surfboard in a beach scene at the bottom of the photograph and the following text superimposed "Catch the break of a lifetime. Win men's sponsorship \$50,000 women's sponsorship \$25,000. Sponsorship is a combination of cash and prizes. Entrants must be over 18." Users need to enter their date of birth to enter the website.
12. On the top left hand side of the page is a picture featuring the text "Jim Beam" above a silhouette of a man walking with a surfboard in a beach scene. Below the picture is the text "The Break". Next to this picture is a photograph of two people on a boat on the ocean in front of a large wave. Superimposed on the picture are the Ripcurl logo and the text "Follow our search and you could win a weekly \$100 voucher". To the right is the Jim Beam logo with a picture of surfers and the text "The Spirit of Surfing". Along the bottom of the page is the text "Where do you draw the line? Know your limit – Drink responsibly" with a link to the Drink Smart website and logos and links to websites for Global surfmag, Tracks Magazine, Swellnet, Ripcurl and Sanyo.

13. Each page of the website has the “Jim Beam The Break” logo and “Jim Beam Spirit of surfing” logo on the top of the page with a banner advertisement in between for a Jim Beam promotion referred to as “The Label behind Live Music”. The logos at the bottom of the page are also reproduced on each page.
14. The home page features an embedded pod cast clip which is evidently updated on a regular basis. For instance, in December 2010 the pod cast dealt with “An introduction to Jim Beam the Break” and included Paige Houden and Dayyan Neve explaining the competition. By 14/1/11 the pod cast on the home page was entitled “Jim Beam the Break – Heat 9 Winners”. This pod cast featured Paige Houden, Dayyan Neve, Lisa Spencer and Steve Harrison announcing the winners of the final heat of the competition. The four presenters are shown seated at two tables with four opened and partially consumed Jim Beam products in front of each presenter.
15. The next page entitled “About” provides further information about the competition. The judges of the competition are featured and they include Paige Houden.
16. On the page entitled “Profile Gallery” each of the competition finalists is featured.
17. On the page entitled “Kooks Korner” users can upload video clips or photographs of whackiest moments in or out of the water to win a cash prize from Jim Beam.
18. The second website is [www.globalsurftag.com](http://www.globalsurftag.com).
19. On the top of the page is the Jim Beam Surftag logo next to a rotating banner advertisement for the Jim Beam The Break competition, the Jim Beam Surftag competition 2011 FCS Manufacturer’s Cup and O’Neill Hyperfreak.
20. The page entitled “Photos” referred to by the complainant contains links for various Jim Beam surftag events containing photographs from those events.

### **The Complaint**

21. The complainant argues that the first website:
  - (a) Features an inappropriate association between whisky and surfing;
  - (b) Has a strong or evident appeal to children or adolescents;
  - (c) Features a surfer and actress, Paige Houden who is 21 years of age in breach of section (b) of the ABAC;
  - (d) Features a profile for a surfer named Daniel Karren who is 20 years of age in breach of section (b) of the ABAC;
  - (e) Features profiles for other surfers that are probably not over 25 years of age; and
  - (f) People under the age of 25 years should not be participating in the promotional activity;
22. The complainant argues that the second website:

- (a) Some participants in this promotion appear to be well under the age of 25;
- (b) A small child is featured in a photograph on the WA link; and
- (c) Many photographs feature alcohol consumption (Jim Beam Party 2011 link) therefore contravening the section of the ABAC prohibiting any association between the consumption of alcohol beverages and the engagement in any sport (including swimming and water sports).

## The Code

23. The ABAC provides 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 under-age drinking;
  - b) not have a strong or evident appeal to children and adolescents and accordingly:
    - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
    - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverage;
    - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.
  - 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....
  - 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 engagement of the activity in question and must in all cases portray safe practices...
24. The ABAC contains provisions relating to internet advertisements: “The required standard for advertisements outlined in (a) to (g) above applies to internet sites

primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.”

25. The ABAC contains the following relevant provisions in relation to the promotion of alcohol at events:

“Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age. The protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard...

### **Third Parties**

At many events, alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol. “

### **The Advertiser’s Comments**

26. The Advertiser responded to the complaints and questions posed by the Panel by email dated 6 January 2011. The principal points made by the Advertiser are:
- (a) Jim Beam has been heavily supporting grassroots surfing in Australia for the last 10 years and has always been very strict that all sponsorships are for those of legal drinking age (LDA). All Jim Beam owned websites have an age statement entry to ensure LDA access follows ABAC guidelines.
  - (b) Global Surftag is an independent company that owns and manages surf events via Boardriders Clubs in Australia. Jim Beam has sponsored the Surftag and Boardriders Cup Series for ten years. [www.globalsurftag.com](http://www.globalsurftag.com) is owned and operated by Global Surftag. All surfers that participate in these events must be over 18 years of age.
  - (c) Jim Beam The Break is a Jim Beam instigated competition for up and coming surfers to win a sponsorship package from Jim Beam enabling the successful entrant to compete in the World Series. [www.jimbeamthebreak.com.au](http://www.jimbeamthebreak.com.au) is owned and operated by Beam Global Australia and is a competition entry website with

DOB requested on entry. All competition entrants must be over the age of 18 and identification is checked.

- (d) Jim Beam's involvement in surfing certainly adheres to the mature, balanced and responsible approach to consumption. At all Jim Beam sponsored surfing events, Jim Beam do not provide any alcohol for consumption and all competitors are over the legal drinking age of 18. Parties related to Jim Beam sponsored surfing events are held at licensed venues with rules and guidelines adhered to by venue staff and security as governed by each particular licensed premises.
- (e) The Spirit of Surfing is a Jim Beam Trademark and logo used at all Jim Beam surfing related sponsorships and in Jim Beam surfing publicity. The logo is a direct translation of the Jim Beam Trademark, in no way altered or amended to exhibit evident appeal to children.
- (f) Page Houden is a judge of the competition and a contracted employee of Beam Global Australia. Paige, with her wealth of knowledge and understanding, being on the WQS herself, has a natural role as spokesperson for the competition. This is not advertising.
- (g) Daniel Karren, amongst the other competitors, is an entrant to a competition. All footage is their own. All entrants must be over the age of 18.
- (h) The competition is for 1 male and 1 female over the LDA of 18, to achieve their dream of surfing on the WQS via a Jim Beam sponsorship.
- (i) Jim Beam is the official spirit sponsor of the Rip Curl Pro and activates the brand in a licensed area for over 18's only.
- (j) Actual script pertains to a responsibility message in a relevant language which surfers can relate to:
  - Dayyan – "You'll need to get our attention but nothing dodgy"
  - Paige – "It's Jim Beam so it's all good but just like surfing it's about staying in control"
- (k) All participants of Global Surftag events, sponsored by Jim Beam, sign a waiver with Global Surftag to allow their photographs to be used. All surfers that participate in Jim Beam sponsored events are over the legal drinking age (LDA) of 18. These are photos of Global Surftag events, published by Global Surftag for the interest of the participants, fans and the general public.
- (l) There is no direct association between the consumption of alcohol beverages and the engagement in the sport of surfing. There is no alcohol available at the events during the surfing competition. Jim Beam encourages surfers to be responsible both in and out of the water. All parties are held after the event at a licensed premises as previously stated.
- (m) All surfing events/competitions associated with Jim Beam are targeted at LDA surfers only.

- (n) All entries for Jim Beam The Break is footage owned and provided by LDA surfers, Paige is over the LDA and is employed by Jim Beam to support this competition. Global Surftag own and have the permission of LDA surfers to include their photographs and footage at Global Surftag properties.

### **The Panel's View**

27. The basis of the complaint is that it is entirely inappropriate that an alcohol beverage company should be marketing itself by means of sponsoring a surfing competition given the popularity of surfing as a sport and as a 'culture' with younger people. Specifically, the complaints go to two websites and the featuring of people on the websites who are under the age of 25.
28. The ABAC scheme and code are primarily directed at 'alcohol beverage advertising'. The model of the scheme assumes that individual advertisements for alcohol beverages are to be consistent with the standards contained in the code. This model was created in the late 1990s and in turn was based on earlier industry advertising codes of practice. As has been pointed out by the Panel in previous determinations, the ABAC scheme does not easily sit with marketing and promotion strategies which go beyond single execution advertisements, such as sponsorship arrangements.
29. The ABAC scheme does not provide standards for sponsorships by alcohol companies of sports or other cultural or community activity. As a result, the Panel has no role in assessing such arrangements. The ABAC scheme can however intersect with sponsorship arrangements in two respects, namely
- An individual 'alcohol beverage advertisement' which flows from the sponsorship arrangement may be subject to the ABAC code and processes; and
  - The scheme protocol relating to the promotion of alcohol at events may apply to some activities which take place as a consequence of a sponsorship arrangement.
30. This means that the Panel has no jurisdiction to make decisions as to whether or not it is appropriate for surfing as a sport, or indeed any other sport or activity, to be associated with alcohol products. Rather, it is a matter for government to ultimately decide if it is in the public interest for sponsorship arrangements to be regulated in some form.
31. Accordingly, it is the Panel's role to assess the two websites specifically identified by the complaints and to determine:
- are the websites 'alcohol beverage advertising' and/or promoting alcohol at events to which the ABAC scheme applies? and if so
  - are ABAC standards breached as argued by the complainant?
32. The ABAC scheme was extended in 2004 to apply to the internet. The terms of the extension was that the advertising standards apply to "internet sites primarily intended for advertising developed by or for producers as importers of alcohol products available

in Australia...and to banner advertising of such products on third party sites.” Read with the code provisions as a whole, this means websites and internet items will be subject to the ABAC standards when

- the site or item is an ‘alcohol beverage advertisement’ and
  - The advertisement is from an alcohol company operating or selling products in Australia.
33. The ‘global surftag’ website is owned and operated by Global Surftag. This appears to be an entity which runs surfing competitions and is not an alcohol company which has committed itself to the ABAC scheme. Jim Beam sponsors surfing competitions and 70 board-riding clubs which participate in the competitions. The Jim Beam logo and brand and name feature heavily on the website. Several other corporate sponsors’ names and logos also feature on the site.
34. Based on the advice the Panel has received and from examining the global surftag website, the Panel concludes that the site is a ‘Third party site’.
- The site reflects the sponsorship of the surfing competitions and boardriding clubs by Jim Beam. The site does contain freestanding ‘alcohol beverage advertising’ beyond the Jim Beam brand and logo and the ‘banner’ which links to the ‘Jim Beam The Break’ website. These Jim Beam television ads are found via the link from the ‘Jim Beam Surftag Videos’ section of the site’s home page. These actual advertisements are not the subject of the complaints.
  - The Surftag website does contain images of surfers and others who would be under the age of 25. However, the pictures and video clips are of the surfing events and related activities and are not contained in the specific Jim Beam advertisements placed on the site.
35. In contrast, the ‘Jim Beam The Break’ website is owned and operated by the advertiser. The site is essentially about ‘The Break’ surfing competition which enables winners to join a professional surfing competition as an entrant. The site features the Jim Beam brand and logo, and presumably forms part of the company’s strategy to position and build its brand. The site does not describe attributes of particular Jim Beam products as such.
36. Like the Surftag site, ‘The Break’ site features pictures and videos of surfing and related activities and undoubtedly numerous participants shown in the videos and pod casts would be under 25 years of age. The presenters of the embedded podcast, e.g. Heat 9 winners such as Paige Houden, are readily accepted by the advertiser as being under 25.
37. The advertiser in response to the complaints essentially argues that the websites are not alcohol advertisements but are a direct manifestation of the sponsorship by Jim

Beam of surfing in Australia. Paige Houden, for instance, is argued to be a spokesperson for the competition and is not shown in an 'advertisement'.

38. The ABAC does not define the term "advertisement". This is in contrast to several other codes, for instance:

*(a) Advertising Standards Authority of New Zealand*

The Authority administers two codes of relevance. The code for Advertising Liquor defines "Liquor advertisement" as meaning "an advertisement, by whatever means it is disseminated, that promotes liquor by product, brand or outlet, but does not include a sponsorship credit or a sponsorship advertisement or an advertisement in which reference to or the depiction of liquor packaging or a liquor outlet is incidental to its purpose".

The second code of relevance is the Code for the Naming, Labelling, Packaging and Promotion of Liquor. In this Code, issues of sponsorship are dealt with, as well as novel issues such as the incorporation of liquor references in a computer game.

*(b) Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks*

The Portman Group is an industry initiative that complements a governmental system regulating alcohol advertising in the United Kingdom. The Portman Code contains the following definitions:

2.11 *Promotional material and activity* encompasses point-of-sale material and activity, websites, sponsorship, press releases, branded merchandise, advertorials and sampling whenever these are generated by the producer to promote a drink in the UK.

2.13 *Sponsorship* means the terms of an agreement or part of an agreement to support a live sporting or cultural product, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's drink(s).

2.14 *A website* refers to any website, or part of a website, managed by or on behalf of an alcoholic drinks producer for the promotion of their brand(s) primarily to the UK market and over which the producer has editorial control.

*(c) AANA Code of Ethics*

The Code of Ethics defines advertising or marketing communication to mean:

- (a) Matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or

Any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the

public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct, but does not include Excluded Advertising or Marketing Communications.

39. "The Break" site is fully controlled by the advertiser and while its primary content relates to the surfing competition, it does actively promote Jim Beam products and the Jim Beam brand. For instance, the "Heat 9 Winners" podcast features the four (4) presenters, each with opened and partially consumed Jim Beam products. The clear implication is that each presenter is drinking the product placed in front of them.
40. The Panel believes that an element of the site, specifically the Heat 9 Winners podcast, is an "alcohol beverage advertisement" within the spirit and intent of the ABAC scheme. The podcast is clearly promoting Jim Beam products.
41. The ABAC standard on underage drinking is found in section (a) (ii) and provides that advertisements must present a mature, balanced and responsible approach to the consumption of alcohol and must not encourage underage drinking. The Panel as a matter of longstanding practice considers this provision in conjunction with section (b) which provides that advertisements are not to have a strong or evident appeal to children or adolescents. This section goes on in (b) (i) to require adults appearing in advertisements must be over 25 years of age and clearly depicted as adults.
42. If it is accepted that the "Break" website, at least in part, contains an alcohol advertisement, then those elements must be consistent with the ABAC standards. The Heat 9 Winners podcast featuring adults under the age of 25 is inconsistent with section (b) (i) and (iii) of the Code and accordingly is in breach of the Code.
43. In addition to the substantive code standards applying to advertisements, the ABAC scheme contains a protocol which deals with alcohol promotion of events. While the promotional activity at these events is not treated as "advertisements" the scheme does create a set of requirements which alcohol companies are to satisfy in conducting the promotional activity. The prime requirement is that the promotional activities do not "clearly target" under age persons.
44. The nature of the "events and activities" to which the protocol is intended to apply is not dealt with in the terms of the protocol. The Panel takes the view that the various activities associated with conducting "The Break" surfing competition as described on the website would fall within the concept of promoting alcohol at community events and activities and, as a result, the advertiser is required to conduct its activities consistently with the protocol.
45. The protocol commits participating alcohol companies to endeavour to ensure, amongst other things:

- Promotional advertising in support of events does not clearly target under age persons and as such is consistent with the ABAC standard
  - Promotional staff at events are of legal drinking age
  - Promotional materials distributed at events do not clearly target under age persons.
46. The protocol is crafted to be less prescriptive than the standards applying to advertisements in relation to the use of adults in promotional activities. The protocol focus is on not “clearly targeting people under the legal drinking age” *i.e.* 18 years old. The protocol clearly envisages that persons aged 18 or over but under 25 might be involved in promotional activities, *e.g.*
- Promotional staff at events are of legal drinking age; and
  - A condition of entry into giveaways...is that participants must be over the legal drinking age and prizes given....only to winners who are over the legal drinking age.
47. Accordingly, the inclusion of photographs or videos on “The Break” website of persons under 25 will not of itself be inconsistent with the protocol. What is inconsistent with the protocol is promotional activity and advertising which “clearly targets people under the legal drinking age”.
48. It seems the protocol envisages promotional activity which will involve and be pitched at 18 year olds and older, but activity “clearly” pitched at 17 year olds or below is not allowed. In contrast, the ABAC standard for alcohol beverage advertising contains provisions which expressly limit persons under 25 from featuring in the advertisements. In terms of the current case, Paige Houden at 20 is not permitted to feature in an “alcohol advertisement” as understood in the ABAC scheme, but she can appear as a “spokesperson” in promotional activity for the sponsored surfing competition.
49. A final argument of the complainant is about ‘The Break’ website establishing an inappropriate association between whiskey and surfing. The ABAC provisions go to the prohibition of the implication that alcohol causes or is needed for sporting success or in section (d), that alcohol use occurs before or with the actual conduct of the sport or activities. There is no prohibition in either the code provisions or the protocol on associating alcohol and sport. ‘The Break’ website does not depict alcohol use occurring in conjunction with the actual performance of surfing, nor does it establish that alcohol use is a cause or contributor to success in surfing.

## **Conclusion**

50. The Panel has concluded that:

- The ABAC scheme does not apply to the terms of sponsorship arrangements and the Panel is given no role in assessing the suitability of such arrangements.
- The Surftag website is a third party site and is not subject to the ABAC scheme as it is not an 'alcohol beverage advertisement'; nor is it an alcohol company which has committed itself to the ABAC scheme.
- The Surftag site does contain within it separate alcohol ads. These ads were not the subject of the complaints.
- 'The Break' website is an alcohol company site and prima facie is subject to the ABAC provisions.
- 'The Break' website, at least in part, goes beyond sponsorship arrangements and contains elements which are "alcohol beverage advertisements" within the spirit and intent of the ABAC scheme.
- The alcohol beverage advertisement on "The Break" site depicts persons under the age of 25 and accordingly is in breach of section (b) of the ABAC, and shows a strong and an evident appeal to children and adolescents.
- "The Break" website associates surfing with alcohol, but such association is not prohibited by the ABAC.
- The site does not breach sections (c) or (d) of the Code.
- The website does promote alcohol within the scope of the protocol dealing with the promotion of alcohol at events; however, the depiction of persons under 25 is not inconsistent with the terms of the protocol.

51. In upholding the complaint, the Panel repeats its statements in previous determinations that the ABAC scheme as currently designed does not deal with sponsorship arrangements. It is an entirely legitimate question as to whether such arrangements should be subject to specific regulation via a quasi-regulatory scheme such as the ABAC, or by direct government regulation. This question is one for government, industry, public health advocates and the wider community. As it stands, an incomplete and narrow scrutiny of sponsorship might occur via the occasional intersection of the arrangements with the ABAC scheme in cases where an "alcohol beverage advertisement" within the scope of the ABAC scheme is produced. When it occurs, this scrutiny is of the ad, not the actual sponsorship arrangements, and all which might be involved in the arrangements. The Panel can identify the issue. It is for others to decide if some policy response should follow.