

ABAC

ABAC Complaints Panel Determination No: 7/09

COMPLAINT OF THE ALCOHOL POLICY COALITION Product: Domino's Pizza with Jim Beam sauce Advertiser: Jim Beam Brands Australia Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Elizabeth Dangar – Member
Professor Richard Mattick – Member

3 March 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns a television advertisement for Domino's Pizza with Jim Beam sauce by Dominos Pizza ("Dominos") featuring a product by Gourmet Gifts Australia Pty Ltd ("Gourmet Gifts") and approved by Jim Beam Brands Australia Pty Ltd ("Jim Beam") and arises from a complaint from the Alcohol Policy Coalition received 22 January 2009.
2. The Alcohol Policy Coalition is a coalition of health agencies concerned about the level of alcohol misuse and the consequences of this in the community. The members of the Coalition and the signatories to the complaint are:
 - Australia Drug Foundation – John Rogerson, Chief Executive Officer
 - Cancer Council Victoria – Professor David Hill, Director
 - Turning Point Alcohol and Drug Centre – Trevor King, Deputy Director
 - Vic Health – Todd Harper, Chief Executive Officer

The Quasi-Regulatory System

3. 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.
4. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.
 5. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
 6. The complaint raises concerns under the ABAC and accordingly is prima-facie within the Panel's jurisdiction.

The Complaint Timeline

7. The complaint is in the form of a letter addressed to the ASB dated 23 December 2008. The letter was received by ABAC on 22 January 2009. The delay in referring the complaint to the ABAC Panel is explained by the ASB to have been caused by the Christmas/New Year office shut down and changes in staffing at the ASB.
8. 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 complaint has been determined within the 30 day timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed alcohol beverage advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

10. The complaint refers to a television advertisement for Dominos 8 meats pizza with Jim Beam BBQ sauce. There are four television advertisements by Dominos that feature the Jim Beam sauce, however, it is clear from the

complainant's description that it is one particular advertisement which is the focus of the complaint.

11. The advertisement commences by showing a bottle of Jim Beam BBQ sauce. Text below the bottle says "Sauce does not contain alcohol". The camera then zooms in on the Jim Beam Double Smoked barbecue Sauce bottle which appears to have the same print type and logo as Jim Beam Bourbon Whisky, and a voiceover states "How's this for a taste sensation". The picture changes to a pizza base being spread with a thick brown sauce. The voiceover continues "Thick, rich, smokey, Jim Beam barbecue sauce". The picture changes to a meat pizza with meat pieces hovering above the pizza and the voiceover continues "and eight tasty meats". The text "8 Meats Pizza" and in smaller print "2.50 surcharge applies" is superimposed on the picture of the pizza. The voiceover continues "The new Dominos eight meats pizza". A picture of Jim Beam sauce is superimposed on the picture and the voiceover continues "now with Jim Beam Barbecue sauce". The picture then changes to the Dominos Pizza logo above larger text "Order online Dominos.com.au" followed by the text "1300 Dominos". The voiceover says "Hoo-ah".
12. The Dominos website does not currently refer to Jim Beam sauce. However the complainant supplied printouts from the website that show that the homepage of the website featured a bottle of Jim Beam barbecue sauce, a reference to the "New 8 meats pizza with Jim Beam double smoked BBQ sauce" and the X-box game console promotion for online orders. The complainant also refers to a media release in which the 8 meats pizza with Jim Beam barbecue sauce is described as "the ultimate guy's pizza".

The Complaint

13. The complaint is a form of a detailed letter which is attached to this determination. In short, the complaint raises concerns under the ABAC and the AANA Code for Advertising and Marketing Communications to Children (The Children's Code). The Children's Code issues will be determined by the ASB and are not dealt with in this determination.
14. The ABAC concerns relate to sections (a) and (b) of the ABAC. The complainants argue:
 - The TVC has a strong or evident appeal to children and adolescents as pizza as a product has a 'natural target audience' children and adolescents.
 - Broadcast of the TVC after 8.30pm does not detract from the appeal of the advertisement to children and adolescents.
 - The advertisement is linked to a promotion of X box game consoles via internet ordering of the 8 meats pizza and this is evidence of the advertisement's appeal to children and adolescents.

- The advertisement was broadcast during the screening of 'Jurassic Park' which is a movie with strong appeal to children and adolescents particularly males.
15. The complaint endeavours to establish that the advertisement is an 'alcohol beverage' advertisement and hence within the ambit of the ABAC scheme by arguing:
- The advertisement endorses and promotes a well known alcohol beverage brand i.e. Jim Beam.
 - The BBQ sauce bottle is intended to resemble the Jim Beam alcohol beverage bottle and is similar in size, shape and appearance.
 - The Jim Beam brand (logo) is featured.
 - The words 'Jim Beam' are repeated during the advertisement.
 - The advertisement's reference to 'does not contain alcohol' implies that generally a viewer would expect a Jim Beam branded product to contain alcohol.
 - In the USA a similar branded sauce does contain alcohol.

The Code

16. The Preamble to the ABAC states that the Australasian Associated Brewers, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of **all advertisements for alcohol beverages**, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code. The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons. The conformity of an advertisement with this code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.
17. The Definitions state "alcohol beverage includes any particular brand of alcohol beverage".

18. 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 or adolescents...

The Advertiser's Comments

19. Jim Beam responded initially to questions posed by the Panel as to its relationship with the Domino's ad campaign by email dated 2 February 2009. The principal points made by the advertiser are as follows:
- (a) The producer, distributor and supplier of Jim Beam sauce to Dominos is Gourmet Specialised Gifts Pty Ltd. This company is a licensee which manufactures products for a number of client brand owners including some alcohol companies ie chocolate sauces and liqueur chocolates for brands like Tia Maria and Kahlua. They have been in business for many years and have many similar licensee company competitors. Gourmet acquire the use of the Jim Beam brand name through a license agreement, they finance and profit from the products they produce and pay Jim Beam a royalty for use of its brand name. Promotion and marketing of the products is not carried out by the same entity or shared in any way and there is no arrangement for the cross-selling of the alcoholic and non alcoholic products.
 - (b) There is no relationship between Jim Beam whisky and Dominos other than the use of its licensee's sauce product in the pizza promotion which bears the Jim Beam name. The only involvement Jim Beam whisky had in relation to the ad complained about was that Jim Beam were approached about the use of the product and were referred to the licensee that produced the sauce and the approval by Jim Beam of the use of its brand name in the artwork for posters and the scripts for the TVC advertising which Dominos created for the promotion.
20. Dominos also supplied the following additional information about its relationship with Jim Beam by email dated 2 February 2009. The principal points made by Dominos are as follows:
- (a) The supplier of the Jim Beam sauce for the promotion is Gourmet Gifts Australia who is a licensee of Beam Global Spirits & Wine Inc.
 - (b) The producer of Jim Beam whisky is a promotional partner for the "8 meats with Jim Beam BBQ sauce promotion", ie Dominos received permission from Beam Global for the use of their intellectual property for product development and advertising. No financial consideration passed between the companies, the partnership was based on contra

value of media exposure (Jim Beam benefit) in exchange for permission to use intellectual property (Dominos benefit).

21. Jim Beam responded to the substantive issues raised in the complaint and questions posed by the Panel by way of letter dated 11 February 2009. The principal points made by the advertiser are as follows:

- (a) We think the television advertisement does not breach the ABAC code. The central premise made by the complainant, that the advertising is aimed at children, is not in any way true. Furthermore, Jim Beam does not create strong and evident appeal to children or adolescents because of the pairing of Pizza with Jim Beam Sauce.
- (b) Children and adolescents are not the 'natural target audience' for takeaway pizza. The viewer which the Domino's 8 meat pizza TV campaign reached is made up of the following;

Men 13 to 17	10% *
Men 18 to 25	35%
Men 18 to 29	35%
Men 18 to 39	55%
Men 25 to 39	55%

excludes versions of the 8 meats Pizza TVC featuring Jim Beam Sauce

The TVC media schedule was created to reach this audience, which is not made up of children or adolescents.

- (c) It is disingenuous to 'assume' takeaway pizza is designed to appeal to children. Whilst it would be pointless to argue that children do not eat pizza at all, it is wrong to pigeonhole pizza as a child or adolescent product because the majority of people purchasing and eating takeaway pizza are men, as illustrated by the table below;

MEN AGE-14-17	MEN AGE-18-24	MEN AGE-25-34	MEN AGE-25-34
25.90%	31.50%	32.20%	32.20%

ROY MORGAN SINGLE SOURCE AUSTRALIA: OCT 2007 - SEP 2008

Domino's is a company whose products are predominantly aimed at men in their 20's and 30's. The 8 meats pizza in particular is designed for men in their mid 20's, as there is nothing anyone would argue is 'child-like' about the proposition of 8 meats.

- (d) The X-Box 360 appeals universally, but most of all to men in their twenties; the average age of gamers is 28 years. As a consequence, the X-Box 360 would be a very poor choice of promotional item to appeal to children.(Source: IEAA research 2007)

- (e) The choice of Jurassic Park is not clear evidence of a strategy appealing to children, it is clear evidence of a strategy aimed at men; Jurassic Park ran as a late movie on Channel Ten on Sat 29th Nov commencing 21.30 in 4 capital city markets, excluding Perth, where it ran from 20.30. Below is a summary of times when Jim Beam Sauce TV spots ran;

Sydney	22.44
Melbourne	21.50, 22.08, 22.43
Brisbane	21.35
Perth	20.51, 20.59

Because of its later time slot Jurassic Park performed strongest amongst 18-34 and 25-39 aged men.

- (f) Although the TVC campaign in question is not aimed at children or adolescents the complainant goes on to argue the pairing of Jim Beam BBQ Sauce and Pizza encourages underage drinking by ***“normalising alcohol” in the eyes of children, leading them to “perceive all Jim Beam products are risk-free items that are ‘normal’ to be consumed in conjunction with food.”*** It’s our view that Jim Beams products are normal, they are often consumed in conjunction with food, and when consumed responsibly are as risk-free as any alcoholic beverage. Therefore Domino’s and Jim Beam are entitled to promote their products to adults, responsibly, and within regulatory guidelines.
- (g) We object to the argument that Jim Beam and Domino’s seek to impose upon children or adolescents, because the product is neither designed for, nor aimed at them. There is no hidden message in this TVC, other than a pizza with Jim Beam BBQ sauce is a better quality pizza than one without. Jim Beam BBQ Sauce is depicted in a sauce bottle because, like the majority of ready-made sauces, it is practical to manufacture and sell in a bottle. Neither the pizza nor the Sauce contains alcohol, and although the Jim Beam brand has obvious associations, we see no reason why the pairing of Jim Beam Sauce and Pizza is any more likely to ‘normalise alcohol’ than chocolate liqueurs, cheese and wine, rum & raisin or beer nuts.
- (h) Nevertheless, respecting others have a different view on this matter, it is clear Domino’s have observed ‘prevailing standards’ by restricting Jim Beam versions of the TVC to post 8.30pm, alongside all other alcohol advertising, therefore all prevailing standards have been voluntarily exceeded, for which Domino’s should be commended.

The Panel's View

Introduction

22. The complaint raises fundamental threshold issues as to whether the ABAC scheme has any application to the particular advertisement and whether the advertisers drawn into the complaint, namely Dominos, Gourmet Gifts and Jim Beam, are bound by the Panel's processes. These are complex issues and the Panel will step through the various questions involved in this determination. In many respects, the complaint raises policy matters which need to be considered by the scheme's Management Committee and, more broadly, by Australian governments in terms of the overall regulatory framework which should best apply to alcohol use and advertising.
23. The Panel will deal with the following issues in this determination:
- The nature of the ABAC scheme and the quasi-regulatory framework
 - Application of the ABAC to non-ABAC scheme entities
 - Will reference to alcohol within an advertisement always bring the ad within the ABAC scheme?
 - Is this particular ad within the scope of the ABAC?
 - Does the ad breach the substantive ABAC standards?

The nature of the ABAC scheme and the quasi-regulatory framework

24. The ABAC Complaints Management Scheme can be described as a co-regulatory system. Australian governments are involved in the system to the extent that the terms of the ABAC and the Rules and Procedures which govern the Panel's operation have been considered and approved by governments at the State, Territory and Commonwealth levels. Further, a governmental official sits on the Management Committee of the Scheme.
25. In terms of coverage of the ABAC, however, the Scheme can be characterised as self-regulatory in nature. This means that the ABAC does not apply to all advertising which promotes or features an alcohol beverage, but only to advertising broadcast or published on behalf of a company which has agreed to be bound by the terms of the ABAC and the complaints determination process. The companies to which the ABAC applies are those who are members of one of three peak alcohol industry bodies, namely:
- Brewers Association of Australia and New Zealand Inc
 - Distilled Spirits Industry Council of Australia Inc
 - Winemakers Federation of Australia Ltd.

26. The vast majority of participants in the alcohol industry are members of one of the three peak industry bodies. This means most advertising for alcohol products is covered by the ABAC scheme, but some alcohol companies are not members of their industry association and some advertising which features alcohol beverages may come from an organisation which is not in the alcohol beverage industry. In some cases non peak body members have become individual signatories to the scheme.
27. It is beyond the scope of this determination to canvass the inherent merits and limitations of self regulation. Suffice to say that while the Panel has no power to compel co-operation from any party to enable the Panel to undertake its task, the companies involved in the advertisement have answered questions and supplied materials when requested. This has enabled the Panel to reach a decision on the complaint.

Application of the ABAC to non-ABAC scheme entities

28. This case involves an example of advertising by a non-alcohol industry body, namely Dominos. Dominos is not a member of one of the three industry associations who collectively sponsor the ABAC scheme. Further Gourmet Gifts which is the company that produces Jim Beam sauce is also not a member of one of the alcohol industry associations. Accordingly, *prima facie* the ABAC standard for alcohol beverage advertising does not apply to Dominos or Gourmet Gifts. Equally, the Panel has no authority as such to make a determination which has any force with Dominos or Gourmet Gifts.
29. While this is the starting point, the situation is somewhat more complex. As is explained later, the advertisement in question can be described as 'surrogate advertising' in that the alcohol producer Jim Beam has entered into a licence arrangement with Gourmet Gifts where the Jim Beam brand is utilised by Gourmet Gifts in return for a royalty payment to Jim Beam Brands Australia, the owner of the intellectual property in the Jim Beam brand.
30. The Panel has not sought to be provided with a copy of the licence agreement between Jim Beam and Gourmet Gifts, nor has the Panel sought a copy of any agreement reached between Gourmet Gifts and Domino's or Domino's and Jim Beam. The Panel has rather sought advice from Domino's and Jim Beam as to the level of control or influence Jim Beam exercised over the advertisement. The advice from the companies is that Jim Beam did exercise a measure of control over how its brand was used in the advertisement. The importance of this fact is canvassed later, but the Panel's conclusion is that because of the control exercised by Jim Beam over the advertisement, it is appropriate for this determination under the ABAC scheme to be made, even though Domino's is not an alcohol beverage company and is not bound by this determination.

Will reference to alcohol within an advertisement always bring the ad within the ABAC scheme?

31. The core threshold question which the Panel is obliged to answer is whether the reference in the advertisement to Jim Beam BBQ sauce brings the

advertisement within the ambit of the ABAC scheme. This is not a straight forward question.

32. The ABAC is a code about advertisements for alcohol beverages. The term 'alcohol beverage' is defined in the code's definition provision as 'includes any particular brand of alcohol beverage'. This definition gives limited guidance when compared to definitions used in other codes of practice. For instance, the Children's Code defines 'Alcohol Product' as meaning 'products which have some association with alcohol including alcoholic beverages, food products that contain alcohol or other products that are associated in some way with alcohol including in the sense of being branded in that way'.
33. The New Zealand Code for Advertising Liquor is the New Zealand equivalent of the ABAC. This code 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 sponsorship advertisement or an advertisement in which reference to or depiction of liquor packaging or a liquor outlet is incidental to its purpose'.
34. Clearly the principal intention of the ABAC scheme is to capture advertising from companies who are members of the sponsors of the scheme. In the vast majority of cases, this means brand specific alcohol advertisements emanating from companies producing and distributing alcohol beverages.
35. Reviewing the decisions of the Panel since the ABAC scheme commenced operation in 1998 it is possible to place advertisements considered by the Panel into 5 broad categories namely:
 - Brand specific advertisements by the producer or distributor of the particular alcohol beverage (Category 1)
 - Advertisements from a liquor retailer which promote a particular brand of alcohol beverage (Category 2)
 - Advertisements from a liquor retailer which promote the sale of alcohol from the outlet rather than the sale of a particular brand of alcohol beverage (Category 3)
 - Advertisements which are from non-alcohol entities but which promote alcohol products or alcohol use in some way (Category 4)
 - Material which might contain some reference to alcohol but can't fairly be said to be 'alcohol beverage advertising' (Category 5)
39. The vast majority of matters referred to the Panel fall into Category 1 and the ABAC scheme clearly applies to these advertisements. Category 2 advertisements sometimes involve liquor retailers who are not signatories to the ABAC but almost without exception the Panel receives co-operation from the advertiser and determinations are made. Previous determinations that fall within this category include:

- 15/08 – Woolworths radio advertisement promoting Bundy and coke 24 packs at BWS.
 - 4/8/08 - Thirsty Camel bottle-shops newspaper and internet advertisement that offered a free 1.25L bottle of coca cola with bottles of Jack Daniels and Southern Comfort.
 - 20/08 – Liquorland television advertisement offering cartons of particular brands of beer at a special price.
 - 3/08 – Cellarbrations liquor outlet television advertisement offering specific branded alcohol products at a special price.
40. Category 3 includes retail outlets promoting the sale of alcohol more broadly rather than the sale of a particular brand as such. It is not always clear cut that an advertisement of this kind will be ‘alcohol beverage’ advertising and each case will turn on its individual circumstances. Previous determinations which can be said to fall within this category are:
- 148 & 160/08 – Sip’n’Save television ad for late night trading by Sip’n’Save drive thru outlets that depicted two men drinking beer, running out of beer and then promoting its late night trading to solve that problem thereby raising the ABAC issue of drink driving.
 - 39/08 – BWS billboard offered a 20c discount fuel voucher with the sale of 6 or more bottles of wine.
 - 3/07 – Liquorland catalogue offered a \$10 grocery voucher when purchasing 6 or more bottle of wine.
 - 23/06 & 26/06 – Liquorland television ad offered a 20c discount fuel voucher with the sale of 6 or more bottles of wine.
 - 7/05 - Liquorland print ad offered a 20c discount fuel voucher with the sale of 6 or more bottles of wine.
41. Category 4 involves third party entities which are not prima-facie alcohol product companies. The advertisements in question make reference to an alcohol beverage because of some relationship between the third party and an alcohol product company. This category includes examples of sponsorships by alcohol companies. Four examples of determinations by the Panel in this category are:
- 49/07 – The Vines resort ran radio advertisements in which it offered a carton of Pure Blonde beer with every round of golf.
 - 26/08 – Woodstock Bourbon Honda Thor Racing Team featured the Woodstock Bourbon brand on its rider’s racing livery and equipment which could be seen at events and on its website.

- 6/09 – Belgian Beer Café website featured an ad for the venue but also promotes Stella Belgian beer.
 - 41/05 – New South Wales Rugby Union which involved a TV advertisement for a rugby competition sponsored by Lion Nathan the producers of Toohey’s beer. The advertisement featured a can of beer being superimposed on a rugby field in an acknowledgement of the naming of the competition as the ‘Toohey’s New Cup’.
42. In each of these determinations, the Panel was required to consider if the advertisement and the advertiser came within the ABAC scheme. Each case turns on its own facts but an important issue considered by the Panel in three of the four decisions was the notion of an alcohol beverage company having a measure of control and approval over the advertisement and the portrayal of the alcohol brand in question.
43. Category 5 involves material with a reference to alcohol but which cannot be regarded as either ‘advertising’ or an advertisement promoting alcohol beverages. Complaints received which have fallen into this category have included:
- 149/08 – Complaint about the sale of Bundaberg soft drink being a product unrelated to Bundaberg Rum Distilling Co.
 - 40/08 – Complaint about a Gold Lotto ad in which people were celebrating a win with an unbranded glass of champagne.
 - 17/05 – Road Safety Task Force of Tasmania ad in which people were discussing how they go out and drink to excess.
 - 10/05 – Carnarvon Community newspaper editorial that the complainant felt promoted alcohol to teenagers.
 - 4/98 – Complaint about a fashion spread which appeared in a fashion magazine where in the corner of each page there is a slightly crumpled can of VB and in a separate shot three models are shown sitting around a table which has 6 cans of VB on display. Both the magazine and the alcohol company asserted that there was no prior knowledge or approval given for the use of the VB cans in the fashion advertisement.
44. The current complaint concerns an advertisement and advertisers which fall either into category 4 or category 5, depending on the factual situation in this case.

Is this particular advertisement within the scope of the ABAC?

45. This is the first occasion that the Panel has been called upon to decide if a ‘surrogate advertisement’ of this type (i.e. an alcohol brand on a non-alcohol product) can or should be brought within the ambit of the ABAC. For this reason the Panel has undertaken a limited review of the approaches adopted in other jurisdictions which have in operation schemes which are broadly equivalent to the ABAC to assess if similar questions have been confronted.

46. The term 'surrogate marketing' is used in a 2006 consultation paper issued by The Portman Group¹ as "the indirect promotion of a product through the marketing of an associated product"². The discussion paper explains that surrogate marketing could be problematic "if an alcoholic drink is promoted through the marketing of a non-alcoholic product in ways that would not be permitted under The Portman Group Code"³.
47. The Panel was unable to identify an example of a decision within the United Kingdom or New Zealand which was directly on point. In any event, the Panel needs to base its decision on the policy, intent, wording and operation of the ABAC and has, upon reflection, concluded that the advertisement is "alcohol beverage" advertising within the ambit of the ABAC.
48. In reaching this decision, the Panel has had regard to the following:
- The "spirit and intent" of the ABAC scheme is that advertising by and for the producers and distributors of alcohol beverage companies will be subject to the scheme and the adjudication processes.
 - The Code definition of 'alcohol beverage' recognises the importance of 'brands' as well as physical beverages.
 - The definition uses the word 'includes' as opposed to 'means' in defining 'alcohol beverage'. As pointed out in Determination 6/09, this establishes that the definition is non-exhaustive.
 - A reasonable viewer would normally associate a product branded "Jim Beam" as an alcohol product given that Jim Beam is a well established alcohol beverage.
 - The information provided by Domino's and Jim Beam establishes that Jim Beam as an alcohol company was both aware of the advertising and had some level of entitlement to approve the advertising at least in relation to the portrayal of the Jim Beam brand.
 - Consistent with the Panel's Determinations 49/07 and 26/08, the fact that Jim Beam exercised a measure of control over the advertisement brings the advertisement into the ABAC scheme coverage.

Does the ad breach the substantive ABAC standards?

49. The complainant argues that the ad breaches sections (a)(ii) and (b) of the ABAC. These provisions provide that alcohol ads are not to encourage under-age drinking or have a strong or evident appeal to children and adolescents.

¹ The Portman Group consists of alcohol companies in the United Kingdom who sponsor a self-regulatory scheme on alcohol packaging and labelling.

² Consultation paper October 2006, page 13

³ Consultation paper page 14

50. It is argued by the complainant that children and adolescents are a “natural target audience” for pizza advertising. Further, it is claimed that the scheduling of the ads with the movie “Jurassic park” and the “tie in” advertising with the video game console “X-Box” is further evidence of the appeal of the ad to younger viewers, particularly to young males.
51. Each of these arguments is contested by Jim Beam and, to some extent, Dominos. Jim Beam argues that the natural audience for pizza is young males in their 20s and 30s, rather than children or adolescents. In support of this argument, Jim Beam provides audience breakdowns of the ad which indicate that a majority of the audience of the ads was males in their 20s and 30s. For their part, Dominos state that any television advertising for X-Box was not related to their pizza advertising, although it is accepted that an X-Box promotion was taking place on the company’s website in conjunction with the online ordering of pizzas.
52. The Panel has made a number of previous decisions on the application of sections (a)(ii) and (b) of the ABAC. These previous determinations include:
- 39/05 Sass Bubbly
 - 11/06 Bundaberg Rum
 - 52/07 Tooheys New
 - 76/07 Little Creatures
 - 03/08 Cellarbrations
53. In determinations 11/06 and 76/07, the Panel found the ads in breach of section (b). In both instances the content of the ads contained elements which were considered as establishing a strong and evident appeal to children, eg a bear character placed in a party within a private home which resembled a children’s birthday party. The key point being that it was the content of the ad which had elements which taken as a whole were inconsistent with the Code standard. It is hard to find elements in the television ad currently before the Panel which indicate that the ad has a strong or evident appeal to children or adolescents. The real concern of the complainant is that alcohol should not be cross-sold with a product such as pizza on the basis that pizza is inherently appealing to children and adolescents; and that the promotion of pizza in conjunction with an alcohol brand promotes a “normalisation” of alcohol use.
54. The complainant’s argument really raises policy issues about alcohol marketing which should be addressed by Government, industry and relevant health advocacy groups. It is not the Panel’s role to decide if surrogate advertising should be permitted or not, or if some further set of standards should be applied to advertising of this type. The Panel does note that the ABAC is not easily applied to surrogate marketing.
55. The Panel has concluded that the TV ad does not breach sections (a)(ii) and (b) of the ABAC. In reaching this conclusion, the Panel has noted:

- The section (b) standard accepts that an ad might have a residue or incidental appeal to children and it is an advertisement with a “strong or evident” appeal, which is not permitted.
- The ad does not contain elements which can be said to be particularly appealing to children or adolescents.
- While pizza is a popular food amongst children and adolescents, the information before the Panel on the audience of the ad and target market for Dominos pizza is that its demographic is reasonably broad-based, but with a particular focus on males in their 20s and 30s.
- The X-Box promotion was internet-based and related to online ordering. The X-Box promotion was not a feature of the TV ad which is the subject of the complaint.
- The broadcast of the ad with “Jurassic Park” is an issue of placement and is not directly relevant to the ABAC standard.
- In any event, the audience reach information on the ad as broadcast with “Jurassic Park” does not reveal a predominantly youthful audience.

56. The complaint is therefore dismissed. In reaching this conclusion, the Panel is aware that it has been required to make a policy decision about the scope of the ABAC scheme. The issues of surrogate advertising as well as sponsorship of teams and events etc by alcohol companies require careful thought and most likely a process of consultation and policy development by the ABAC scheme’s management committee and/or Australian governments.