

ABAC

ABAC COMPLAINTS PANEL – DETERMINATION NO: 04/13 JIM BEAM

IN THE COMPLAINT OF MAJOR BRIAN WATTERS AO, AUSTRALIAN NATIONAL COUNCIL ON DRUGS

Product: Jim Beam

Advertiser: Jim Beam Brands Australia Pty Ltd

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

14 January 2005

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) complaints panel (“The Panel”) concerns the internet advertising for Jim Beam by Jim Beam Brands Australia Pty Ltd (“The Advertiser”) and arises from a complaint received from Major Brian Watters AO, Chair of the Australian National Council on Drugs (“The Complainant”).

The External-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. Currently, alcohol advertising is subject to both:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme:
3. The ASB and the ABAC 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.
4. 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 Complaints Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. Whilst the two Codes complement each other in most areas, there are some differences. For example, since the revised ABAC Scheme came into full effect on 20 May 2004, the ABAC Code has covered internet advertisements and the promotion of alcohol beverages at events. The AANA Code of Ethics does not cover internet advertisements.

6. This determination concerns internet advertising and raises issues which are not solely within the province of the AANA Code of Ethics. Further, the advertisement satisfies the jurisdictional criteria set out in the ABAC Code, *i.e.* it appears on an internet site "*primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia*".

The Complaint Timeline

7. The complaint is in the form of a letter from Major Brian Watters, Chair of the Australian National Council on Drugs dated 22 November 2004, received by the ABAC Complaints Panel on 2 December 2004.
8. The Panel endeavours to determine complaints within 30 days of receipt of the complaint, but this timeline depends on timely receipt of materials and advice and the availability of panel members to convene and decide the issue. Major Watters' letter also raised issues with the internet site of another alcohol beverage producer. This aspect of the matters raised by Major Watters was dealt with in Panel Determinations 04/09 and 04/09A. In this particular case, a response to the complaint from the advertiser was not received until 23 December 2004. With allowance for the Christmas and New Year public holidays, the complaint will be determined close to the 30 day goal.

Pre-vetting Clearance

9. The external-regulatory system for alcohol beverages advertising features independent examination of proposed advertisements against the ABAC prior to publication or broadcast. Internet sites are not subject to the full pre-vetting process, and this site has not been externally pre-vetted within the ABAC scheme.

The Advertisement

10. The complaint is about an internet site for Jim Beam featuring a “stay true” theme and five sections where visitors can click through to obtain more information. To enter the site, the visitor must provide date of birth details. If the visitor enters a date to show they are over 18 years, then the entire site is open to them, if the date is under 18 years, then the visitor cannot proceed into the site.

The sections on the internet site are: Dougie v, Can You Stay True?, Stay True Stories, Jim Beam Millionaire and Party Crew.

11. Clicking on the Party Crew section, a page opens with a photograph of three women dressed in white cow-girl outfits alongside the text:

“If you didn’t like sexy chicks you wouldn’t be here. Check out the Jim Beam Party Crew at your local for the most popular pub night in Australia. From competitions and challenges to lots of Jim Beam they’ll show you and your mates a night to remember.”

The image of the three women has them posed wearing white western-style hats, white Jim Beam t-shirts cut tight and short to reveal their waistlines, and white jeans with slim red belts. They are posed, smiling direct into the camera.

12. Clicking on the Jim Beam Millionaire section opens a page for a sales promotion where purchasers have the opportunity to win up to \$2 million, one year’s supply of Jim Beam, or thousands of instant prizes. This is a competition whereby the visitor is encouraged to purchase the Jim Beam Promotional Packs to enter. Entries closed on 6 December, 2004.

13. The internet site section, Can You Stay True, is a direct marketing tool to obtain information on drinking habits and preferences of visitors. Opening into the section, the visitor is welcomed by a blonde woman wearing a white bikini, posing side-on and looking direct to the camera. Alongside this image is the text:

“Hi Boys! If you’d like to get a clearer picture of my particulars, I’m gonna need yours first. So tell me about yourself, fill in the survey and you won’t be disappointed.”

With each question answered, a background image used of a woman’s chest comes more and more into focus, finally revealing a clearer picture of the bikini clad chest of the woman who welcomed visitors to this section of the site.

14. Dougie v section is the series of television commercials used in the campaign, and replayed here for the internet visitor.
15. Stay True Stories is a section that features apparently true stories of Jim Beam drinkers in amazing situations. Headlines include: When the Catch is More Important than a Limb, I’d Walk a Million Miles for a Bitch on Heat, Once a Friend Always a Friend, and You Only Need One Arm to Drink Jim Beam.

The Complaint

16. The complainant draws attention to the ‘Jim Beam Millionaire’ and ‘Party Crew’ sections of the website and argues that the advertisement makes deliberate references to sexual and other success. It is argued that:
- The internet site makes deliberate references to sexual success and a ‘Party Crew’ of women used to promote the beverage.

The Code

17. The ABAC provides at Section c) that advertisements for alcohol beverages must:
- 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

18. In favour of the complainant, it could be argued that the internet site creates an association between the consumption of the alcohol product and sexual success with phrases such as "If you didn't like sexy chicks you wouldn't be here", and "they'll show you and your mates a night to remember", juxtaposed with images of women dressed in sexy cow-girl costumes.
19. The Jim Beam Millionaire promotion may imply consumption of the product with sexual and other success, breaching section c) (i) of the ABAC.

20. As a whole, it could be argued that the internet site breaches section a) the ABAC in terms of the mature and responsible promotion of alcohol beverages.

The Advertiser's Comments

21. The Advertiser replied to the complaint by way of letter dated 21 December 2004, in which they stated that the website was established in August 2004 to support a TV campaign entitled "Stay True". The site features the same characters, including sexy girls who have traditionally played a role in sporting events, such as the boxing depicted in the television campaign. Specifically, the advertiser argues that:

- The Party Crew section has a specific purpose, of keeping Jim Beam drinkers informed of where Jim Beam events will be taking place in forthcoming months. The Party Crew was established more than three years ago.

The commentary "if you didn't like sexy chicks..." attempts to capture the customer's enthusiasm for the Party Crew in a humorous way and makes no association between the product and sexual success.

The concluding commentary "they'll show you a night to remember" refers to events at local venues where games and competitions take place and prizes are won. There is no overt link between The Party Crew, Jim Beam and sexual success.

- The Jim Beam Millionaire promotional section of the site has now been removed. The promotion complied with respective state guidelines and the terms and conditions were posted on the internet site. The promotion was a conventional prize promoted in a conventional fashion. In keeping with the site, the girl was used as a guide. There was no implication that consumption of Jim Beam related to financial success.
- Taken as a whole this website is a source of information for those interested in Jim Beam. It is dressed in the style of a current TV campaign in order to be recognizable. The characters used, including the girl, are those seen on TV. References to promotion of Jim Beam products at events are for information only and are imparted in an entertaining fashion which abides by the ABAC code for advertising and promotion.

The Panel's View

22. Major Watters' complaint goes specifically to those sections of the Advertiser's website entitled 'Jim Beam Millionaire' and 'Party Crew' and generally to the content of the website as a whole. As mentioned earlier, the addition of internet sites to the standards set by the ABAC has occurred relatively recently and the Panel has to date, made two determinations concerning a website (Determinations 04/09 and 04/09A).
23. The ABAC Complaints system is based upon the concerns about a particular advertisement expressed by a complainant. The Panel appreciates that most complainants will not be familiar with the precise terms of the ABAC and as a result, the

Panel looks to the 'essence' and 'spirit' of the complaint and does not artificially restrict its consideration of complaints. However, a complaint does not trigger a complete review of the advertisement against all provisions of the Code. This is particularly relevant when considering websites which invariably contain a large body of material.

24. Accordingly, the Panel has not considered those parts of the website entitled 'Dougie v', 'Stay True Stories' and 'Can You Stay True?' as the complaint specifically goes to the other elements of the site. To the extent that it is necessary to navigate parts of the site to reach the sections complained about, then these parts are considered by the Panel in order to view the website in its proper context.
25. The Advertiser advises that the 'Jim Beam Millionaire' section of the site has been changed given the competition to which the section related was closed on 6 December 2004 shortly after the complaint was made. The 'Party Crew' section remains in place as at the time the Panel made this determination.
26. While the website as a whole and the use of cowboy clothed 'cheer girl' type images of women might be considered by many to be juvenile and tacky, the Panel is unable to find the website, in the aspects complained of by Major Watters, in breach of the ABAC. The site has sexual overtones but the ABAC does not preclude the use of 'sexy' outfits or attractive women to promote alcohol products. What is prohibited is the suggestion that the alcohol product is the cause of or a contributor to the achievement of sexual success.
27. While opinions can differ whether a particular advertisement breaches this standard, the Panel does not believe the standard is breached by the sections of the website in question and accordingly the complaint is dismissed.