

ABAC

ABAC Complaints Panel Determination No: 111/09

COMPLAINT OF Ms Linda Zibell Product: Jim Beam Potato Chips Advertiser: Beam Global Australia Pty Ltd

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

14 January 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns packaging of Jim Beam potato chips produced by Snack Brands Australia which uses the Jim Beam name and logo under license with Beam Global Australia Pty Ltd and arises from a complaint from Ms Linda Zibell received 20 November 2009.

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 complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of an email to the ASB dated 20 November 2009 that was received by the ABAC on 20 November 2009
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 complaint has not been determined within the 30 day timeframe due to the Christmas/New Year period.

Pre-vetting Clearance

8. 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

9. The complaint refers to the packaging of Jim Beam potato chips which were distributed via a vending machine on the campus of the Ballarat University.
10. The front of the packaging features the Jim Beam brand and logo at the top of the package against a white background. Below the logo against a gold background is the text "Kentucky Straight Cuts". Below this against a brown background is the text "BBQ Sauce premium potato chips "bursting with downhome Southern flavours people really want to eat"" alongside a picture of a pile of potato chips.
11. The back of the packaging features the Jim Beam brand and logo above the text "Kentucky Straight Cuts BBQ Sauce premium potato chips" at the top left side of the package against a white background. Below this text against a gold

background is the signature “James B Beam” followed by the text “None genuine without my signature”. Below this against a brown background is the nutrition information. On the right side of the back of the packaging is a box with the title “Kentucky Straight Cuts” followed by the following text “Premium potato chips bursting with downhome Southern flavours people really want to eat”. A sketch of a field is inserted followed by the further text, “We make Bourbon from the simplest ingredients but the secret is treating them well and cooking them right. It’s a fascination Jim Beam has practiced more than 200 years. These crunchy golden Kentucky Straight Cut Potato chips sound straightforward, but the same obsession goes into getting the finest flavour, making these chips a shade better than any other. What you’ve got here are potato chips people really want to eat”.

The Complaint

12. The complainant is concerned that the use of the Jim Beam logo on potato chips is the equivalent of grooming children for hard drinking and consumption of spirits, an activity which is all too destructive in the cohort of university students today and a cause of strongly antisocial and drunken behaviour. Ms Zibell is concerned that such advertising familiarizes children with and encourages imaginings about adult life and play around drinking alcohol.

The Code

13. 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.
14. The Definitions state “alcohol beverage includes any particular brand of alcohol beverage”.
15. The ABAC Part 1 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...

16. The ABAC Part 2 provides that the naming or packaging of alcohol beverages (which is also referred to within these standards as “product material”) 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

17. The Part 2 standards apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trade mark which a supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for *bona fide* retail sale in the ordinary course of business in a State or Territory of Australia, prior to 31 October 2009.
18. Jim Beam responded initially to questions posed by the Panel as to its relationship with Snack Brands Australia by email dated 25 November 2009. The principal points made by the advertiser are as follows:
 - (a) Snack Brands Australia manufacture and distribute the chips under license for Jim Beam Australia and pay Jim Beam to use the logo and manufacture the products under their name. Jim Beam Australia advertises the products and also worked with Snack Brands Australia to design the packaging. They have 100% control over what the brand and logo look like but not over where the product is sold.
 - (b) There is no alcohol in this product.
19. Jim Beam responded to the substantive issues raised in the complaint and questions posed by the Panel by way of email dated 16 December 2009. The principal points made by the advertiser are as follows:
 - (a) The packaging is designed to identify and make attractive a potato chip snack product. In our view advertising is a communication designed to actively make a specific product more attractive than its competitor, and to persuade consumers of its specific merits, and benefits. The Jim Beam Snack pack advertises a snack product, it talks about the potato chip, its flavour and its origins. The pack doesn’t talk about alcoholic beverage nor does it attempt to make a connection between alcoholic beverage and the snack product it contains, other than identifying Jim Beam as a company which also makes bourbon – for the purpose of highlighting a preoccupation with high quality.
 - (b) The complainant suggests the presence of a Jim Beam Logo is an attempt to promote alcoholic beverage, thus acting as surrogate advertising. We would argue the presence of a Jim Beam logo alone does not constitute surrogate advertising. It is a reality that in a world

where alcoholic beverage products exist, the trademarks of those products will be visible from time to time, but that this does not constitute surrogate advertising. The mere presence of a logo is not an attempt to persuade consumers one way or another, it is entirely passive.

- (c) Potato chips do appeal to children and adolescents, but they equally appeal to adults. The snack market is quite clearly divided into those products designed to appeal to children – using bright colours, cartoon characters and hyperbolic statements about their benefits, contrasting with those designed to appeal to adults – high quality product photography, subdued colours and relatively low-key description. We think Jim Beam snacks are quite evidently the latter, and we market them as such, believing this to be a responsible approach.
- (d) Universities are populated by tertiary students between the age of 18 and 25 in the main. It is only by very rare exception that individuals attend before they attain the age of 18 years. We believe this falls within the ABAC guidelines with respect to placement.

The Panel's View

Introduction

- 20. The complaint by Ms Zibell arises from her concern that placing a well-known alcohol name and brand on a non-alcoholic product, namely potato chips, will contribute to the normalisation of alcohol use amongst the population. This concern is further heightened by the fact that she came across the product in a vending machine at a university campus and this will, in her opinion, “groom” younger people into alcohol use.
- 21. The essence of the complaint is not about an alcohol beverage advertisement as such, as there is no “ad” involved in the complaint in the form of a television commercial or a radio ad or a magazine advertisement. The concern is that a type of potato chip should be sold under the name of an alcohol beverage in the first place. In contrast, the ABAC scheme deals with in Part 1 - the standards that alcohol beverage advertising must comply with; and in Part 2 - the standards to be applied to naming and packaging of alcohol beverages.
- 22. The Panel believes the complaint falls outside the intended scope of the ABAC and, as a result, the complaint needs to be dismissed. In reaching this conclusion, the Panel is not saying that it approves of surrogate marketing of alcohol by way of branding potato chips or any other non-alcohol product with a well-known alcohol beverage name. Rather, the code which the Panel is charged to adjudicate upon does not cover the complaint for various reasons, including:
 - Snack Brands Australia, the producer of the product, is not an alcohol company and is not bound to comply with the ABAC provisions in marketing its goods.

- While the advertising of an alcohol “brand” does fall within the ABAC definition of an “alcohol beverage”, there is no actual advertisement as such involved in this case.
- Part 2 of the ABAC deals with naming and packaging of alcohol beverages and these provisions commenced operation on 31 October 2009. It is problematic, however, that the packaging of potato chips can be considered as “alcohol beverage packaging” but, in any event, the product would have been supplied for *bona fide* sale in the ordinary course of business prior to 31 October 2009 and hence falls within the exception to the naming and packaging provisions.
- Finally, the ABAC goes to how products are advertised and not to whether there should be a product of a particular type at all. The essence of the complaint is a concern about the sale of the potato chip product at all, rather than a concern about the way in which it is particularly marketed.

23. In dismissing the complaint, the Panel notes that surrogate marketing of this type does deserve to be considered at a policy level by government and the alcohol industry. There are very real policy questions to be debated as to whether surrogate marketing should be freely permitted or should be prohibited or should be subject to standards beyond those embodied in the ABAC scheme as it currently operates. Policy issues of this nature are beyond the role of the Panel.

24. Accordingly, the complaint is dismissed.