

# ABAC

**ABAC Complaints Panel**  
**Determination No: 65/08, 74/08, 82/08 & 87/08**

**In the COMPLAINT of Mr Russell Symans and Confidential complainants**  
**Product: Jim Beam Bourbon Whisky**  
**Advertiser: Jim Beam Brands Australia Pty Ltd**

Professor The Hon Michael Lavarch – Chief Adjudicator  
Jeanne Strachan – Member  
Professor Richard Mattick – Member

15 September 2008

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Jim Beam Bourbon Whisky by Jim Beam Brands Australia (“the Advertiser”) and arises from three complaints by confidential complainants received 15 August 2008, 23 August 2008 and 26 August 2008 and a further complaint by Mr Russell Symans received 19 August 2008.

## **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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising.

3. 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.
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 Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
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 four emails received by the ABAC Panel between 15 and 25 August 2008.
7. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. This complaint has been determined within that 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 obtained for this advertisement (**UL34/07**).

### **The Advertisement**

9. The complaints refer to a television advertisement. The advertisement begins with a head and shoulders shot of a beautiful sexy woman in a bar speaking to the camera. She says "Actually, I've never had a boyfriend, no I've just always preferred girls. I guess I just find them more fascinating." She is then shown sitting on a bench seat and being joined by her girlfriend, who is also a beautiful sexy woman. As the two of them sit close together touching and caressing each other the woman continues her monologue "Yes this is my girlfriend. I don't know why but blokes just don't do it for me. I just love girls." The scene is then replaced with an image of the Jim Beam logo and the words and simultaneous voiceover "The Tragedy". The shot is then replaced with a picture of a bottle of Jim Beam Bourbon with a voiceover "Jim Beam" followed by the words and simultaneous voiceover "The Bourbon" .

### **The Complaints**

10. The first complainant argues that the advertisement:

- (a) suggests to children staying up to watch the Olympics that same sex partners is good and it is all made possible by drinking Jim Beam.
11. The second complainant argues that the advertisement:
- (a) is homophobic/sexist/offensive in the way it describes the woman's sexual orientation as a tragedy; and
  - (b) may be suggesting that the woman would put out to men if she were drunk.
12. The third complainant argues that the advertisement:
- (a) is using sex (gay sex or men's sexual fantasies) to sell drugs (Jim Beam); and
  - (b) it is stupid and socially irresponsible in that Australian's do not need encouragement to consume alcohol.
13. The fourth complainant argues that the advertisement:
- (a) is a pathetic excuse to advertise some sick creative director's sexual fantasies; and
  - (b) with so many issues surrounding alcohol and its abuse of, you'd think we could raise the bar in terms of responsible drinking messages, instead each of these women are seen as unintelligent, stupid highly sexualized objects, really scraping the bottom of the barrel as far as Australian standards are concerned.

### **The Code**

14. 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:-
    - (i) must not encourage excessive consumption or abuse of alcohol;
    - (ii) must not encourage under-age drinking;
    - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - (b) not have a strong or evident appeal to children or adolescents....

### **Arguments in Favour of the Complaint**

15. In favour of the complaint it can be argued that the advertisement:

- (a) breaches section (a) of the ABAC Code by promoting an irresponsible approach to alcohol consumption by suggesting that use of the product will alter the sexual orientation of a woman;
- (b) breaches section (a)(iii) by the encouragement of excessive consumption through the use of a highly sexualized scenario and an appeal to male sexual fantasies;
- (c) breaches section (a)(ii) and (b) by encouraging under-age drinking through its screening during the Olympic Games when a high proportion of the audience will be children and adolescents.

### **The Advertiser's Comments**

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 5 September 2008. The principal points made by the advertiser are as follows:

- (a) In relation to the argument set out in paragraph 15(a) above, there is no visualized nor suggested use of a product in the commercial which could create a link between product and sexual orientation. There is no implied alteration of sexual orientation – the storyline is about two women who are what they are throughout the commercial. The only possible connection could be that because the film is endorsed by Jim Beam that some might consider it to mean that Jim Beam is in some way connected with the two girls being what they are. Whether or not this is true it still struggles to link the product with an alteration of any kind.
- (b) In relation to the argument set out in paragraph 15(b) above, it's reasonable to describe this TVC as using a sexualized scenario, it's also foolish to argue that it doesn't appeal to male sexual fantasies. The question is whether this content is used to encourage excessive consumption. If the girls were drinking irresponsibly or implying that drinking was desirable then the link would be clear and 'the reasonable person' would take out that message. Does 'the reasonable person' watch the commercial and link a sexual fantasy with drinking to excess? We believe the answer is no. We therefore feel the scenario is not being used to encourage excessive consumption.
- (c) In relation to the argument set out in paragraph 15(c) above, the Olympic Games audience comprised fewer young viewers than comparable FTA programming at similar times. The table below shows under 18's being the smallest contributor to this audience.

<b>BEIJING AUDIENCE</b>			
<b>Combined Agg. Mkts</b>			
<b>Target</b>	<b>AUD</b>	<b>TARP</b>	<b>Commercial Shr</b>
Ppl<18	47,299	3.4%	55.1%
Ppl 18-29	36,543	4.1%	50.7%
Ppl 30-39	55,805	7.2%	56.4%
Ppl 40-54	96,228	7.5%	59.1%
Ppl 50-64	104,112	9.0%	60.1%
Ppl 55+	173,757	10.4%	61.3%

Source; Seven Affiliates Networks

### The Panel's View

17. As explained in Paragraph 2, alcohol advertising is subject to a number of codes of practice and two distinct complaint systems operated by this Panel in the case of the ABAC, and the ASB in the case of the AANA Code of Ethics. This particular ad has attracted complaints which have raised issues under both Codes and both the ASB, and now the ABAC Adjudication Panel, have been called upon to make determinations about the ad.
18. In recent times it has become more common for the ASB and the ABAC Adjudication Panel to consider complaints about the same advertisement. For this reason, it is important to understand that each body is asked to apply quite different codes and to consider different issues. While both adjudication processes are conducted against the backdrop of an assessment of "community standards", it is quite possible that the different criteria to be applied in the two respective codes can lead to different conclusions as to whether an ad is in breach of one or other of the two applicable codes.
19. In this case, the ABAC Panel is not called upon to decide if the ad discriminates against lesbians or breaches community standards of sex, sexuality or nudity. Those matters are considered by the ASB. Rather, this Panel has to determine whether the ad complies with the standards set down in Section (a)(ii) and (b) of the ABAC, namely- whether the ad encourages underage drinking or has strong or evident appeal to children or adolescents and also Section (a) and (a)(iii) of the ABAC, namely – does the ad present a mature, balanced and responsible approach to the consumption of alcohol and does not promote excessive consumption.
20. In assessing if an ad is consistent with the standards in the ABAC, the Preamble to the Code provides that the conformity of an advertisement is to be assessed in the terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed, taking its content as a whole.
21. The first issue is whether the ad breaches section (a) of the ABAC Code by promoting an irresponsible approach to alcohol consumption by suggesting that use of the product will alter the sexual orientation of a woman. The advertiser argues that there is no implied alteration of sexual orientation – the storyline is

about two women who are what they are throughout the commercial. One of the complainants felt that the endorsement of the Jim Beam product by the ad amounted to a suggestion that if the woman drank the product she might “put out” to men. The Panel was of the view that the ad is a light hearted portrayal of an attractive woman being unavailable to heterosexual men being a tragedy and that a reasonable viewer of the ad would be unlikely to draw the conclusion suggested by the complainant.

22. The second issue is whether the ad breaches section (a)(iii) by the encouragement of excessive consumption through the use of a highly sexualized scenario and an appeal to male sexual fantasies. The advertiser does not dispute that the ad appeals to male sexual fantasies but argues that the content is not used to encourage excessive consumption as the girls are not drinking irresponsibly or implying that drinking is desirable. The Panel is of the view that there is insufficient link in this ad between the highly sexualised scenario including male sexual fantasies and drinking to excess.
23. The final issue is the screening of the ad during the Olympic broadcast. The ABAC is a code which deals with the content of ads, as opposed to where ads are placed. While the code preamble refers to the class of persons to whom the ad is directed, and hence indirectly raises the question of the placement of an ad, this is an incidental rather than primary matter for the code’s operation.
24. In contrast, the Commercial Television Industry Code of Practice (CTICP) deals expressly with the timeslots in which alcohol ads may be broadcast. This code provides that alcohol ads are restricted to certain timeslots *i.e.* after 8.30 pm, unless shown with sporting events broadcast on weekends. This complainant has not specified the date or time of the ad in question but has referred to children “staying up” to watch the Olympics so it appears to have been shown late in the evening. This means that the ad was shown during a time which is approved by the CTICP. The Panel accepts children and adolescents will form part of the audience of the ad; however, this is consistent with the operation of the CTICP and is not inconsistent with the terms of the ABAC.
25. Accordingly the complaint is dismissed.