

ABAC

ABAC COMPLAINTS PANEL – DETERMINATION NO: 05/18 Jim Beam

IN THE COMPLAINT OF MRS LAURA RUCH

Product: Jim Beam
Advertiser: Jim Beam Brands Australia

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

19 May 2005

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication panel (“The Panel”) concerns a television advertisement for Jim Beam by Jim Beam Brands Australia (“The Advertiser”) and arises from a complaint received from Mrs Laura Ruch (“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. The complaint specifically 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 from Mrs Laura Ruch dated 6 April 2005, and received by the ABAC Complaints Panel on 18 April 2005.

7. 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. On this occasion, the complaint was received by the Panel during a peak time of assessing other advertisements, and as a result, the time frame to finalise the Panel's process has extended beyond the 30 day goal.

Pre-vetting Clearance

8. The external-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. The pre-vetting process was applied in this instance (No. UL 62/04)

The Advertisement

9. The complaint concerns a television commercial for Jim Beam and is part of a 'Stay True' advertising campaign. The commercial is set in a wrestling ring arena where, in front of a large, vocal crowd, the main hero, Dougie McKenna, is challenged to drink another bourbon alcohol product in contrast to 'staying true' to Jim Beam.
10. This advertisement commences with a shot of the edge of the wrestling ring, as the crowd encourages Dougie to re-enter the ring, he climbs up from the floor, where he has obviously fallen and re-enters the ring. There is a shot of the match commentator, located alongside the ring, speaking into the microphone, "He's coming back... to go fifty-seven rounds with the catalogue man... It tests a man's ability to stay true..."
11. As the commentator announces the fight, a sequence of four still images follows - snapshots of the posing male model Catalogue Man – to introduce the competitor. In the background, the audio continues with the sounds of the crowd in the stadium, and the announcer narrating the action. Following this is a sequence where the crowd eggs on Dougie, the catalogue man is in the ring proudly accepting applause and encouraging the crowd banter. Within the ring, we see a dwarf male character, physically small, wearing a suit and holding a cane, with a sinister, devious expression on his face.
12. A close up of Dougie shows his competitor coming up behind him, grabbing his neck and lifting him up into the air. With his body limply hanging in the air, he is wrestled, held up by his foe, crunched in the midriff, with his arms locked behind him. The dwarf character pushes a glass half-full of an alcoholic beverage toward Dougie's mouth, urging him to drink, his cane pushing up to Dougie's face in a threatening gesture. Over this shot, the commentator says "Dougie McKenna could end this right now, all he has to do is take a sip of that average bourbon." There is a close up shot of Dougie's face, the glass pushed to his lips, followed by another shot of the announcer. The next shot shows Dougie physically pushing the glass with his chin, out of the dwarf's hand, as the beverage splashes and the glass is knocked out of shot, he utters between clenched teeth, "it ain't Jim Beam". The announcer says, "Have you ever seen anything quite like this!"
13. The advertisement concludes with a long shot of the wrestling arena, with a product shot overlaid and the words "Stay True" in the centre of the shot.

The Complaint

14. The complainant argues that the advertisement depicts irresponsible consumption of alcohol by
 - associating the consumption with notions of violence and aggressive behaviour

- Depicting a situation similar to hazing, where the main character is forced to drink an alcohol product, and must physically resist his opponent.

The Code

15. The ABAC provides at Section a) 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;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages.

Section e) of the Code states that advertisements for alcohol beverages must not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content.

Arguments in Favour of the Complaint

16. In favour of the complaint it can be argued that the setting of the advertisement in a wrestling arena, with its notions of aggressive and violent behaviour is an irresponsible portrayal of alcohol consumption and promotes offensive behaviour.
17. It could also be argued that Section e) of the Code is breached by depicting a dare or challenge to sample an alcohol product in that the theme of the advertisement is based upon the temptation of the main character to stray from a commitment to drink only a particular type of alcohol beverage.

The Advertiser's Comments

18. Jim Beam Brands responded to the complaint by way of email letter dated 5 May 2005, received by the Panel on 6 May 2005.
19. The Advertiser argues that the purpose of the story in each of the advertisements in the 'Stay True' series is to show resistance to the temptation to drink an inferior alcohol product. The purpose of the aggressive moves in the boxing ring is to exaggerate the lengths to which the main character will go to resist the temptation. No consumption takes place at any stage which makes it difficult to associate aggressive behaviour with consumption of Jim Beam. The Advertiser argues that the main character, Dougie, in fact does not enter into any violent or aggressive behaviour, instead he is conspicuously tolerant and passive thereby reinforcing an association between the product and non-aggressive behaviour.
20. The Advertiser interprets Section e) of the Code as intended to prevent advertisers depicting consumption of their product as a challenge and thereby highlighting its potency or desirability as a mark of success or achievement. Although the main character is physically coerced, the story is one of positive resistance to, and repeated rejection of an inferior product, and not the product which the advertising seeks to promote. It does not use a challenge or dare to promote the potency of the product being advertised, instead it is used to promote the quality of Jim Beam.

21. The Advertiser points to consumer research and feedback received during campaign development to explain that the advertisements are perceived as parody and fantasy, and not taken to represent real life situations. The Advertiser claims that during research, they did not encounter any literal interpretation of the action in the boxing ring bearing resemblance to a conceivable reality. Consumers perceive the commercials as 'advertising nonsense' dramatizing Dougie's loyalty to his favourite bourbon, and using characters that are larger than life, with exaggerated features, such as the Catalogue Man and the Golum-like dwarf man.

The Panel's View

22. The complaint raises two elements which the Panel will address in turn. Firstly, it is argued that the advertisement promotes offensive behaviour through its setting in a wrestling match.
23. The Advertiser argues that the advertisement is a parody and a fantasy and could not reasonably be taken literally. It is, in the Advertiser's own words, interpreted by viewers as 'advertising nonsense'.
24. The Panel is obliged to deal with a number of complaints about advertisements where the critical point turns on whether the use of parody or an exaggerated depiction of a scenario means that a reasonable viewer would not take the advertisement as promoting consumption or behaviour in breach of the ABAC standards. Most recently the Panel made determinations 05/12 and 05/13 concerning two advertisements for a beer product which raised similar considerations.
25. The ABAC sets out some guidance in how the Panel is to approach its task. The Code Preamble states that 'conformity of the advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person'. The Panel's previous determinations also indicate that it should interpret the ABAC in a common sense, 'spirit not black letter' approach.
26. The Panel is mindful that a key governmental and social concern about the irresponsible use of alcohol flows from alcohol related violence. The minimisation of harm from alcohol related violence is a goal of the National Drug Strategy and the advertising of alcohol beverages in accordance with the standards set out in the ABAC aim to comply with the National Drug Strategy.
27. On balance, the Panel has concluded the advertisement does breach Section a) (iii) by presenting an irresponsible approach to the consumption of alcohol beverages through the promotion of offensive behaviour. The Panel rejects the Advertiser's argument that the fact the main character is physically restrained in the 'wrestling' match means he is 'conspicuously tolerant and passive thereby reinforcing an association between our product and behaviour which avoids aggression'.
28. On the contrary, the setting of the advertisement in a wrestling match brings about a very direct association between consumption and violence. While the argument that the wrestling match is exaggerated and hardly a 'real life' scenario is an important factor, the use of parody and humour cannot of itself repair a breach of the Code. The advertisement, taken as a whole, is in breach of Section a) (iii) of the Code.
29. The second element of the complaint concerns Section e) of the ABAC. This Section prohibits challenges or dares to sample a particular alcohol product as an advertising device. On the face of the Section, it is clear that the challenging of the main character to drink the 'average bourbon' is a breach of the Section.
30. The Advertiser argues that the Panel should not apply the Code in this way, and advances the view that the Section is intended to prohibit positive challenges to sample

the desirable characteristics of a particular beverage. The advertisement in contrast, is showing the character resisting an invitation to drink another product.

31. The Panel accepts that the drafters of the ABAC may have had in mind a different style of inducement to sample a particular beverage than that portrayed in the advertisement. However the Code is written in clear language and it would take a curious interpretation of Section e) not to find the advertisement in breach, when the central part of the advertisement concerns a forceful challenge to sample an alcohol beverage. As a result, the Panel finds the advertisement in breach of this section of the ABAC.
32. Accordingly, the complaint is upheld.