

# ABAC

**ABAC Complaints Panel  
Determination No: 20/14**

**Confidential Complaint  
Product: Jim Beam  
Advertiser: Beam Global Australia Pty Ltd**

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

28 April 2014

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Jim Beam by Beam Global Australia Pty Ltd (“Advertiser”) and arises from a complaint received 7 April 2014.

## **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 was received on 7 April 2014.
7. The Panel endeavour 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**

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 obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to a television advertisement. The advertisement opens with a scenic image with the words "Kentucky 200 years ago" superimposed.
10. We then see Mila Kunis dressed in period costume walking through an old distillery among others also in period costume as Ms Kunis speaks to the camera - "History asks questions of us all, even the Beam family".
11. We then see the Beam distillery on fire as with a voiceover from Ms Kunis - "Would you lead the way when disaster strikes?"
12. The scene then changes to a man with barrels behind him pouring a drink for soldiers in the civil war era during a gun battle as the voiceover continues "Would you fight for what is right?"
13. The scene changes again to barrels of Jim Beam being pulled off a truck and tipped out onto the street as a group including Ms Kunis dressed in 1920s period costume look on and Ms Kunis says, "Would you bide your time?"

14. We then see a nightclub scene as the fashions of those in the scene change across a number of different eras in quick succession as the voiceover continues “Would you chase fashion or stay true to yourself?”
15. We then see Ms Kunis seated next to a fire in a contemporary setting with a group of people in the background as she raises a glass and speaks directly to the camera - “One Bourbon, that’s how Jim Beam makes history, how will you make yours?”
16. The scene changes to a bottle and glass of Jim Beam bourbon superimposed on a background of water and fire as the voiceover continues, “Jim Beam Make History” and the words “Make History” are superimposed on the image.

### **The Complaint**

17. The complainant is concerned that:
  - (a) the final scene of the advertisement shows Ms Kunis, who is asserted to be currently pregnant, holding what is assumed to be a glass of bourbon, and raising it to her lips as the scene fades to text where there is a clear implication that she will consume the bourbon.
  - (b) the ad is contrary to most recent NHMRC alcohol guidelines for Australians which advises against drinking alcohol whilst pregnant or whilst trying to conceive. The depiction of a well-known actress consuming alcohol whilst pregnant is objectionable and has the potential to misguide individuals to think that consuming alcohol whilst pregnant or whilst trying to conceive is safe and healthy, which would be a clear contraindication to the NHMRC guidelines, and may place pregnant women and unborn children at risk of harm if following such an example.

### **The Code**

18. 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,
  - (g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

### **The Advertiser’s Comments**

19. The Advertiser responded to the substantive issues raised in the complaint and questions posed by the Panel by way of letter dated 14 April 2014. The principal points made by the Advertiser are as follows:
  - (a) Beam Global Australia vigilantly follows all alcohol advertising in Australia laws and codes of practice, in particular the AANA, ABAC, CTICP and the OMACE codes. Beam Australia advocates that self-regulation and the ABAC scheme can be a powerful guidance system

for the alcohol industry when the concepts behind the scheme are applied with proper diligence and fair evaluation of relevant evidence.

- (b) Beam Global is a code signatory of ABAC and obtained pre-vetting approval for this campaign 'Make History – Ups & Downs' and was approved on 31 January 2014 (12894).
- (c) Beam Australia has no knowledge of Ms Mila Kunis being pregnant, that would be a private matter for Ms Mila Kunis. Beam Australia has a commercial business agreement with Ms Mila Kunis that does not include her private life. As far as Beam Australia can ascertain there is no confirmed formal news that Ms Mila Kunis is pregnant and Ms Mila Kunis has not made any communication of this. Therefore, Ms Mila Kunis rumoured pregnancy is just media conjecture and the advertisement is clearly not in breach of the ABAC Code and aligns with the existing approval ruling from the ABAC pre-vetting process.
- (d) We are confident that Jim Beam is marketed appropriately and intend to continue responsibly marketing Jim Beam products to consumers above the legal drinking age.

### **The Panel's View**

- 20. Mila Kunis is a reasonably well recognised American actor, having appeared in a number of movies. She is engaged to another actor, Ashton Kutcher, and in recent times there has been media speculation that the couple is expecting a child. As at the time of this determination, there was no apparent confirmation by Ms Kunis that this speculation is accurate.
- 21. The complainant raises a novel objection to the advertisement which features Ms Kunis on the basis of the speculation about the pregnancy. It is argued that because of the "possible" pregnancy the advertisement is irresponsible as it, "has the potential to misguide individuals to think that consuming alcohol whilst pregnant or whilst trying to conceive is safe and healthy". It is then pointed out that the use of alcohol during pregnancy can place the mother and the unborn child at risk.
- 22. Section (g) of the ABAC provides that an alcohol beverage advertisement must not encourage consumption that is in excess of, or inconsistent with, the Australian Guidelines to Reduce Health Risks From Consuming Alcohol issued by the National Health Medical Research Council. Guideline 4 provides that, "Maternal alcohol consumption can harm the developing fetus and for women who are pregnant [...] not drinking is the safest option".
- 23. For its part, the Advertiser contends that it has no knowledge of Ms Kunis being pregnant and, in any event, this would be a private matter for her. It has pointed out that Ms Kunis has apparently not confirmed she is pregnant and, accordingly, media stories are purely conjecture. In short, the Advertiser doesn't believe that Ms Kunis' personal circumstances in this regard have anything to do with its advertisement or how it should be assessed against the ABAC standards.

24. The complainant's argument does raise an interesting point about how far the image and public perception of well-known personalities are to be imported into the message being conveyed by an advertisement. It is common for actors to be used in advertising, with George Clooney (Nescafe coffee machines), Nicole Kidman (Omega watches), and Hugh Jackman (Lipton's ice tea) all being recent examples of actors' involvement in advertising. Clearly, the public image of the actor is a factor in the advertiser seeking the personality's involvement. Presumably, it is hoped that the brand of the product being advertised will benefit from being associated with the celebrity's public persona.
25. While the Panel recognises the point being raised by the complainant, it is believed that the argument is fundamentally flawed. Apart from the fact that media speculation about the personal lives of celebrities often bear little resemblance to the truth, whether Ms Kunis is or is not now pregnant is not relevant for the advertisements' consistency with the ABAC standards for a number of obvious reasons, including:
- There is nothing within the actual content of the advertisement which encourages alcohol use during pregnancy.
  - Even if Ms Kunis is now pregnant in real life, the lead time for the production of the advertisement means she would not have been pregnant at the time the advertisement was made and the role she portrays in the advertisement does not purport to be pregnant.
  - To find the advertisement inconsistent with the ABAC on this ground would in effect preclude Ms Kunis and all women of fertile age from appearing in alcohol advertisements. Such an outcome would be untenable and most likely unlawful given the terms of the *Sex Discrimination Act*.
  - Viewers understand the difference between the roles actors portray in their working lives and their personal lives, and a reasonable person would not interpret the advertisement as encouraging alcohol use during pregnancy based upon Ms Kunis' personal circumstances.
26. Accordingly, the complaint is dismissed.