

ABAC

**ABAC Complaints Panel
Determination No: 27/14**

**Confidential Complaint
Product: Jim Beam
Advertiser: Beam Suntory**

Professor The Hon Michael Lavarch – Chief Adjudicator
Ms Debra Richards – Member
Professor Richard Mattick – Member

27 May 2014

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Jim Beam by Beam Suntory (“Advertiser”) and arises from a complaint received 6 May 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 6 May 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. While pre-vetting approval was obtained for an electronic media campaign featuring the American actor Mila Kunis, the actual advertisement was not submitted for, nor given, pre-vetting approval.

The Advertisement

9. The complaint refers to the shop window display for Jim Beam at the bottleshop section of the IGA supermarket at Long Gully in Bendigo, Victoria. The display has a number of Jim Beam advertising materials and several cartons of the Jim Beam and cola pre-mix product. Specifically, the complaint goes to a poster featuring the American actor, Ms Mila Kunis.
10. The Mila Kunis poster shows Ms Kunis in the foreground of a photograph, apparently in a rural setting. She is wearing blue jeans and black boots, and a dark jumper or skivvy. Her long dark hair is worn so as to fall over her shoulders and over the top third of her body. She is not smiling, but has a quiet and intent expression.
11. Ms Kunis is seen standing on a gravel pathway which leads to a large wooden shed. The shed is painted white and features the Jim Beam logo and name. The sky above the shed is cloudy and the overall atmosphere created by the advertisement is somewhat dark and moody.

The Complaint

12. The complainant is concerned that:
- (a) the advertisement is aimed at young women;
 - (b) the girl in the advertisement looks about 16 years old;
 - (c) the advertisement encourages underage drinking; and
 - (d) in view of all the work put into education on alcohol this is a blatant breach and should incur a fine.

The Code

13. 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:
 - (ii) must not encourage underage drinking;
 - (b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - (i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - (ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - (iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel on 15 May 2014. The principal points made by the Advertiser are:
- a. Beam Suntory vigilantly follows all alcohol advertising in Australia laws and codes of practice, in particular the AANA, ABAC, CTICP and the OMACE codes.
 - b. There is nothing to suggest the image in question would be appealing to children or adolescents. We strongly dispute the claim Mila Kunis looks 16 in this image. Mila Kunis is 30 years of age and her styling/wardrobe is clearly that of a mature adult.

- c. The poster is housed completely in the confines of the IGA bottleshop in Bendigo.

The Panel's View

15. Ms Mila Kunis an American actor who is currently featuring in an advertising campaign for the product Jim Beam. This is the second occasion that an advertisement featuring Ms Kunis has been subject to a Panel determination, with the previous determination being 20/14 dated 28 April 2014.
16. The earlier determination concerned a television advertisement, while this complaint concerns a poster in a bottle shop window display on which Ms Kunis is featured. The concern expressed in the current complaint is about the advertisement's appeal to young women.
17. The complainant did not apparently recognise the woman in the poster as Ms Kunis or associate the poster with the wider Jim Beam marketing campaign featuring the actor. This is not a hugely relevant point as each advertisement has to be individually assessed against the ABAC standards and the concerns raised by a complainant. Ms Kunis' identity is only relevant to her age, given one point raised by the complainant is that the advertisement featured a young woman which the complainant took as appearing to be about 16 years old.
18. The ABAC provides in section (b) that alcohol advertisements must not have strong or evident appeal to children or adolescents and specifically adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults. This requirement as to the age of persons within alcohol advertisements therefore has two elements, namely:
 - (a) A factual element that a person must be actually over 25 years of age; and
 - (b) Irrespective of the actual age of a person in an advertisement, the person must be clearly depicted as an adult (i.e. someone at least 18 years of age).
19. The Advertiser has advised that Ms Kunis is 30 years of age and this is verified by a basic internet search which shows that she was born on 14 August 1983. Accordingly, the advertisement does not breach the first requirement of section (b)(i). The second issue is whether Ms Kunis is "clearly depicted" as an adult. While the photograph of Ms Kunis shows her to be slight in build and with a youthful appearance, the Panel does not believe she appears to be under the age of 18. Nor is the advertisement, when taken as a whole, showing any indications that the featured model is not an adult.
20. Section (b) also requires that the advertisement not have strong or evident appeal to children or adolescents more generally. In making this assessment, the Panel is to have regard to the probable impact of the advertisement upon a reasonable person taking the advertisement's content as a whole. Relevant to this consideration are factors such as the use of colours, imagery, or activities which might be considered strongly appealing to under 18 year olds. The Panel does not believe the rural setting and the passive and slightly dark atmosphere

created by the advertisement can be said to have strong or evident appeal to children or adolescents.

21. Accordingly, the complaint is dismissed.