

ABAC

ABAC Complaints Panel Determination No: 7/14

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

Professor The Hon Michael Lavarch – Chief Adjudicator
Ms Debra Richards – Member
Professor Louisa Jorm – Member

27 March 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 3 February 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 3 February 2014.
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 been determined outside the 30 day timeframe due to unavailability of the Chief Adjudicator.

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 (12830).

The Advertisement

9. The complaint refers to a television advertisement. The advertisement opens in a country setting with acoustic country music in the background. A man is shown waving to a vintage truck driving away from an old warehouse bearing the Jim Beam logo.
10. The scene then changes to the same man walking through a barrel room in an old warehouse as the voiceover with an American accent commences "Here at Jim Beam..".
11. The scene changes to a row of different Jim Beam bottles and a hand reaching for and lifting up one of the bottles as the camera focuses on the side of the label where the text "Legacy" and "Seven Generations of the Beam family is followed by seven sketches of men in various period attire. The voiceover continues "...for the last 218 years we been doing things well, just right". The man looks up from the bottle and walks over to a portrait on the wall and straightens it.

12. The man is then shown walking into a room named "Special projects", walking over to a window and smiling as he looks at a woman welding and several men sanding and painting what looks to be a giant can of Jim Beam & Cola as the voiceover continues "And because we take our bourbon making seriously here at Kentucky.."
13. The scene changes to the man standing outside on the top of a ladder attaching a giant can of Jim Beam & Cola to a helicopter and giving a thumbs up signal as the voiceover continues "..we got to thinking".
14. We then see five giant Jim Beam & Cola cans being transported over the ocean by helicopters as the voiceover continues "..that the world's number one bourbon". In small print near the bottom of the screen the following text appears from here until the last frame "Giant cans, amazing as they are, contain no Jim Beam".
15. The scene changes to an aerial view of Sydney and then the man inside the helicopter wearing a helmet with the Jim beam logo and looking down at a pool at the famous Sydney venue of "Icebergs", located at Bondi Beach. The pool is filled with more than 30 giant cans and next to it the Jim Beam logo. The voiceover continues "deserves something a little, let's just say, special, to keep it cold".
16. The music changes to energetic dance music and we see a crowd of people energetically dancing to music around the pool filled with the giant cans surrounded by large ice blocks as another can is lowered into the pool by a helicopter. The man that features throughout the advertisement is shown dancing in the crowd.
17. We again see an aerial shot of the Icebergs pool as a helicopter flies away. The Jim Beam Logo with the text "Make History" followed by the smaller text "To find out how we did it go to JimBeam.com.au", is superimposed on the ocean next to the pool and the voiceover concludes with "Jim Beam make history".

The Complaint

18. The complainant is concerned that:
 - (a) the advertisement, like cigarettes, sends the message that it's good to drink;
 - (b) his underage son, after seeing the advertisement, said that he wants to drink alcohol to have fun;
 - (c) the advertisement is disgusting because it glorifies the drinking of alcohol;
 - (d) all such advertisements should be banned as was done with smoking.

The Code

19. 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 underage drinking;
 - (b) not have a strong or evident appeal to children or adolescents...
 - (c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –

The Advertiser's Comments

20. The Advertiser responded to the substantive issues raised in the complaint and questions posed by the Panel by way of letter dated 6 February 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 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) AAPS approval was secured for this advertisement after numerous changes were made as part of this rigorous process to ensure no breaches to the code could be raised.
 - (c) The advertisement presents a mature and responsible approach to alcohol, as a significant part of the advertisement is featured within the actual Jim Beam distillery in Kentucky, USA, which showcases the history and heritage of the Jim Beam brand. In addition no alcohol is shown to be consumed in any part of the advertisement.
 - (d) In the advertisement there is nothing that would suggest irresponsible consumption or the glorification of drinking alcohol as no alcohol is shown to be consumed throughout the advertisement, and to avoid misrepresentation or confusion, the advertisement features a message highlighting this – “Giant cans, amazing as they are, contain no Jim Beam”. The Giant cans depicted contain no actual alcohol.
 - (e) The advertisement depicts adults over 25 years of age, and a stringent casting and editing process was undertaken to ensure all actors depicted in the advertisement were above 25 years of age.
 - (f) The advertisement depicts a fictional geographic change of scene from the Jim Beam Distillery Kentucky, USA, to Bondi Beach, Sydney, Australia, in which a change of music genre and addition of a crowd of

people is used to help depict this in the advertisement. Within this change of scene no alcohol is shown to be consumed, and the message included to confirm that the giant cans contain no actual alcohol.

- (g) In acknowledgement of the product shots depicted within the advertisement, our media placement is very strict to ensure we are only targeting the adult male demographic. If children were to see this advertisement it would only be by watching programs designed for the 25+ age demographic under adult supervision. Although Pay TV has no restriction on when commercials can be shown, there is a clause within the ASTRA code of practice of PAY TV that acknowledges the unique relationship between a Licensee and its audience. As an advertiser of Alcohol Beverages we always adhere to this code as part of our analysis of the intellectual and emotional maturity of the intended audiences of the programs when scheduling all advertisements. We have operated within the ASTRA codes of practice and have placed all advertising responsibly to minimise the reach of under 18's but primarily because our target audience is adults 25+. If a child did view this advertisement it should only be whilst under adult supervision.
- (h) The pre-vetting approval process enabled us to work closely with ABAC to give us the guidance to ensure the consistency of the advertisement aligns to the prescribed standards of good marketing practice and the ABAC Code. Whilst approval through the pre-vetting process does not guarantee preclusion from alternative determinations as a result of consumer complaint, it did ensure Beam conformed to the code "in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement may be communicated, and taking its content as a whole.
- (i) In terms of probable impact it is quite clear to the 'reasonable person', that the fictional nature of the advertisement involving a quick change of geography from the USA to Australia and giant cans flown by helicopter, would not specifically or overly glorify the consumption of alcohol as per the complaint. The giant cans contained no alcohol (as communicated through the advertisement), and that alcohol is not shown to be consumed throughout the advertisement.

The Panel's View

- 21. Jim Beam is a well known brand of bourbon whiskey which is available in a number of forms, including a ready to drink product mixed with cola. The complaint concerns a television commercial for the Jim Beam & Cola pre-mixed product which is available on the Australian market via a 375mL can.
- 22. The complainant expresses two basic concerns about the advertisement. Firstly, there is a high level argument that alcohol advertising should be banned as occurred with cigarette advertising some years ago. Secondly, it is argued

that the advertisement appeals to underage persons and promotes fun through its presence or use and glorifies the consumption of alcohol.

23. The issue as to whether alcohol advertising should be permitted is a matter for government and not the Panel. The Panel's role is more limited and is based upon an assessment of an advertisement against the standards contained in the ABAC. In this case, the relevant standards are contained in sections (a), (b) and (c) respectively.
24. In undertaking its task, the Panel is to have regard to the probable impact of an advertisement upon a reasonable person taking the content of the advertisement as a whole. The notion of a "reasonable person" is drawn from Australia's common law system and means that regard is to be had to the attitudes, values and beliefs commonly held in a majority of the community. A person holding a different view is not 'unreasonable', but their view may not accord with the opinions held by the majority of the community.
25. Beginning with the section (c) standard, section (c) provides that an advertisement must not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment. This is a broad provision and does not require that an advertisement depict the actual consumption of alcohol, but also covers the presence of alcohol beverages within the advertisement. Equally, a change in the mood or environment shown in the advertisement need not be primarily or solely caused or created by the alcohol beverage to breach the standard. Rather, alcohol cannot be seen to be a contributor amongst potentially several contributors to a change in mood or environment.
26. The Advertiser contends that the advertisement is consistent with the ABAC standards. It points out that the prop cans do not in fact contain alcohol and argues that alcohol is not shown to be consumed throughout the advertisement.
27. On balance, the Panel believes that the advertisement does not breach the section (c) standard. In reaching this conclusion, the Panel notes:
 - (a) That the mood and atmospherics of the advertisement in the Kentucky distillery scenes is laid back and quiet.
 - (b) This mood at the Icebergs venue is quite different, as evidenced by:
 - an active party scene compared to the earlier laid back narrative;
 - the different music, which is dance as opposed to acoustic.
 - (c) The advertisement is essentially in two halves, set in Kentucky and in Sydney and while the mood is different in each half, the advertisement establishes that Sydney's mood was in place prior to the arrival of the product via the helicopter delivery. It is concluded that the mood was not altered by the product.

28. Moving to section (a). This section creates a positive requirement that alcohol advertisements present a balanced, mature and responsible approach to alcohol consumption. The section goes on to state that this standard will not be satisfied if an advertisement promotes excessive consumption, amongst other things. The complainant contended the advertisement glorified alcohol use.
29. The advertiser argued that the advertisement did not breach section (a) as no alcohol consumption is shown and the message, "Giant cans, amazing as they are, contain no Jim Beam", confirms that excessive consumption is not implied. Further, it is contended that a reasonable viewer would understand the fictional nature of the advertisement.
30. The Panel believes the advertisement, on this point, falls within the category of advertisements where reasonable people might reach different conclusions. It is accepted that a reasonable viewer would not take literally that the giant prop cans would contain alcohol and, further, the Sydney party scene does not depict party goers consuming excessive amounts of alcohol (it is not correct to state that no alcohol use is depicted as the party scene does very briefly show persons with drinks in their hands).
31. The standard in section (a), however, goes beyond depictions of actual consumption and requires alcohol advertisements to present a balanced and responsible approach to alcohol consumption. In this case, the Panel has concluded on balance that the advertisement does breach the standard. In reaching this view, the Panel has noted:
 - (a) The party scene is based around the swimming pool filled with giant cans and, while the cans do not physically contain alcohol, a reasonable impression is established of alcohol use being a central component of the event.
 - (b) The atmosphere of the party is in stark contrast to the earlier half of the advertisement in pace, behaviour and mood and this, together with symbolism of the multiple giant cans, creates a message that the approach to alcohol consumption being endorsed is not balanced, mature or responsible.
32. The Panel does not believe that the advertisement has strong or evident appeal to children or adolescents or encourages underage drinking. While the advertisement would have appeal across the viewing audience as a whole, it does not have features which elevate this general appeal to a level which could be said to have strong or evident appeal to adolescents and children as a group. Rather, the content of the advertisement as a whole is adult in feel and is more likely to be appealing to an older demographic, as opposed to a younger audience.
33. In reaching its view, the Panel recognises that the advertiser was aware of its obligations under the ABAC and acted consistently with good practice and with the intent to craft the advertisement to meet the standards through the pre-vetting process.
34. Accordingly, the complaint is upheld in relation to section (a) of the Code.