



ABAC Adjudication Panel Determination No. 65/14

Product: Southern Comfort
Company: Brown-Forman Corp.
Media: Television
Complainant: Colleen Forde
Date of decision: 13 October 2014
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Southern Comfort by Brown-Forman Corp. (“the Company”) and arises from a complaint received 24 September 2014.

The Quasi-Regulatory System

2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) State Liquor Licensing Legislation;
 - (b) a generic code (the AANA Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (c) an alcohol specific code (the ABAC Responsible Alcohol Marketing Code (the ABAC Code)) and complaints mechanism established under the ABAC Scheme;
 - (d) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when advertisements for alcohol beverages may be broadcast; and

- (e) The Outdoor Media Association Code of Ethics, which includes provisions about Billboard advertisements.
- 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 marketing 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 AANA Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC Code, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC Code and the AANA 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 AANA Code of Ethics issues.
- 5. The complaint raises concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

- 6. The complaint was received on 24 September 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 with this timeframe.

Pre-vetting Clearance

- 8. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication.

The Marketing Communication

- 9. The complaint refers to a television advertisement which is set in a bar.
- 10. The advertisement opens with a man walking to the bar counter from a back room as the 1950's song "Love Me" by "The Phantom" begins playing. We see another bartender measuring Southern Comfort into glasses. Seated at the bar counter are six to eight males and females, each with drinks, either in their hands or placed before them.
- 11. The man saunters over to the mixer guns behind the bar and picks one up in each hand in a manner reminiscent of a gun fighter drawing pistols from holsters. He stretches and then begins using the mixer gun to deliver liquid into the glasses that have measures of southern comfort while dancing to the music

in a gyrating fashion. As this is happening the following text is superimposed on the screen “Live Comfortably. Drink Responsibly. Liqueur, 30% Alc. By Vol. Southern Comfort Company, Louisville, KY © 2014”.

12. The man then turns and fires the liquid into the glass of a woman at the far end of the bar. To reach the glass, the liquid travels maybe a metre in the air and some of it splashes onto the bar in front of the woman as the text “Southern Comfort & Cola” is superimposed and moves from the bottom to the top of the screen. The woman is captivated by the man’s performance and continues to watch him as he replaces the mixer guns and saunters away down the other end of the bar. The man has a serious or neutral expression throughout the advertisement.
13. In the last scene we see a bottle and glass of Southern Comfort on a bar with a flag in the glass with the message “Whatever’s Comfortable” and an image of a can of Southern Comfort & Cola with the text “& Can” is superimposed and moves slowly from the middle to the top of the screen.

The Complaint

14. The complainant is concerned that the television advertisement is:
 - (a) overtly sexual and is designed for young men to see how to interact with young women; and
 - (b) is deeply offensive because it is promoting drinking and ‘manhood’ over any consideration of women at all (the woman’s face is shown being drenched by spurts of alcohol as young men are drinking).

The ABAC Code

15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage; or
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Company’s Response

16. Brown-Forman Corp. responded to the complaint and questions posed by the Panel on 7 October 2014 and made the following principal points:
 - a. We do not believe that the advertisement is in any way sexual in nature, and nor do we believe that it would have any bearing on or encouragement of irresponsible or offensive behaviour in any way that would be contrary to section 3(a)(ii) of the Code. The advertisement in

question had been previously submitted to the AAPS and was given approval for its release. It is the latest in a “whatever’s comfortable” campaign, of which the unifying theme or strand is the depiction of people doing “whatever’s comfortable”, i.e. doing everyday things, in their own unique, perhaps offbeat, way. In the case of this advertisement, the lead character is a barman, who is somewhat of an oddball or nerd, and appears to take a geeky professional pleasure in his ability to mix drinks with a soda-mixer gun in a variety of ways, all the while dancing in a jerky manner. Indeed, it is the humorous device and premise of the ad that the dancing is not any good, or co-ordinated, or likely to be attractive, but that the barman does not care – he seems to be pleased with his own quirky style and adeptness, being entirely absorbed with his drink-mixing and the music playing in the bar.

- b. While we accept that the bartender gyrates his hips, we do not believe that this is ‘sexy’ dancing, or that the dancing carries any sexual implication. The barman does not appear to ‘direct’ his dancing towards any person. In relation to the ‘long-distance’ spraying of the soda-mix into the female patron’s glass, this is intended, and in our view is fairly seen and understood as a comic and exaggerated example of the barman’s adeptness with the soda gun. In our view, there is minimal resultant ‘splash’ from the glass, and any such splash is only the result of the distant pour – it carries no secondary connotation, sexual or otherwise.
- c. We do not believe that the advertisement is in any way contrary to section 3(c)(ii) of the Code. We believe that the manner of the bartender’s service, or pouring of the woman’s drink, is merely comically exaggerated, and carries no sexual connotation. The woman served by the barman does look at the barman in a way which might variously be interpreted as bemusement, wonder (at his unusual bartending skill) or mild attraction. We believe that, even if a viewer were to interpret her look as one of attraction, the interaction between the pair, negligible as it is, remains well within the bounds of the Code. In particular, it can be observed that her look is not returned; the barman walks away, without engaging further with her beyond the drink service. The two characters remain on either side of the bar, and it is not clear that they even make eye contact, let alone have any further interaction which could be characterized as sexual success.

The Panel’s View

- 17. The advertisement is set in a busy bar and features a performance by a barman who delivers mixers to drinks in a unique manner. As part of his performance, he fires liquid from a mixer gun over an improbably long distance into the glass of a woman sitting at the bar. The woman is captivated by the performance and looks at the barman in a manner which the Company fairly sums up as potentially bemusement, wonder or mild attraction (or possible a combination of all three).
- 18. The complainant is concerned that the advertisement is overly sexual and promotes alcohol use in a manner that is disrespectful to women. The Company in response contends that this is not the case and the advertisement

shows a quirky or humorous situation of the barman following his own style irrespective of how others might view him.

19. The ABAC provides that alcohol marketing must not show or encourage irresponsible or offensive behaviour that is related to alcohol use. Marketing is also not to show alcohol use as a cause or contributor to the achievement of sexual success. In assessing if an advertisement has breached these standards, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person taking its contents as whole.
20. It seems that the complainant's recollection of the advertisement is somewhat different from the actual detail of the advertisement. For instance, the woman is not "drenched" by spurts of alcohol or mixers, as the complainant contended. Rather, the advertisement does show some liquid spilling from the glass in front of the woman onto the counter, but it does not seem that the woman herself is impacted by the liquid. It is clear that she is not "drenched" by it. Equally, the patrons at the bar are an even mix of men and women and not all men, as suggested by the complainant.
21. The Panel does not believe that the marketing breaches the ABAC standards. In reaching this conclusion, the Panel has noted:
 - (a) Neither the barman, the woman or any other person shown in the advertisement appears to be affected by excessive alcohol use;
 - (b) The scenario depicted of how the glasses are filled is quirky and somewhat fanciful, but cannot reasonably be said to be offensive or disrespectful to women;
 - (c) While the woman is shown to be captivated by the barman's performance, there is no reasonable indication of a connection between the two which is indicative of the achievement of sexual success.
22. Accordingly, the complaint is dismissed.