



ABAC Adjudication Panel Determination No. 80/17

Product: Jameson Whisky
Company: Pernod Ricard Winemakers
Media: Digital
Complainant: Mr South
Date of decision: 16 May 2017
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 digital advertisement on Instagram for Jameson Whisky by Pernod Ricard Winemakers (“the Company”) and arises from a complaint received 18 April 2017.
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) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
 4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 18 April 2017.
8. 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 this timeframe.

Pre-vetting Clearance

9. 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 the marketing communication (15476).

The Marketing Communication

10. The advertisement was delivered via Instagram as a sponsored post by Jameson Whisky with a short video clip. The post was "jameson_au The motto on our label has inspired every drop of our whisky since 1780. Now we're sharing it with you. #SineMetu".
11. The video clip includes the following series of scenes and accompanying dialogue (Irish accents) in quick succession, accompanied by acoustic music:
 - a man hammering a barrel, then a house with a "Jameson Whisky" neon sign in the window, close up of the neon sign and a close up of the product label– "Everything begins with two words: Sine Metu"
 - A man working with a barrel, a man behind a bar, a band playing at an event – "It's the Jameson family motto but it belongs to all courageous individuals"
 - Two people dancing together, a person videoing a bar that has the Jameson's logo on the door and a shot of a man behind the bar – "born with the kind of fearlessness that John Jameson stood for";
 - a man standing next to a barrel with a fire burning in it next to a wall with graffiti that includes the motto "Sine Metu", a man walking through a factory and a lady checking the product in a factory – "The type of willingness to take the extra step, to go that extra mile,"
 - Two men holding glasses of a beverage and talking, a man operating a sound mixing desk at an event – "the courage to follow your passion"
 - Scenes of groups of people dancing at a party at night - "not to be afraid of change".
 - Three people sitting at a table outside, one holding a cup with the Jameson logo, scene of groups of people at an outdoor event- "here's to those that carry the Sine Metu banner";
 - People embracing, a hand holding a glass of the product, - "Its in our bottle, it's in your heart"
 - In the final scene a group of people clinking glasses of the product as the "Sine Metu" motto is superimposed.

The Complaint

12. The complainant is concerned that the advertisement is 'in breach of the codes of practice' because:
 - It explains the history of the product's motto "Sine Metu" by using phrases such as "everything begins with", "for the greatest individuals" and "born with a kind of fearlessness";
 - It appears as a documentary of the history and manufacturing practices of Jameson but in reality it is a promotional video to encourage the purchase and consumption of their products; and
 - Children can view the promotion.

The ABAC Code

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b) have strong or evident appeal to minors;
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
 - (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;
 - (c)(iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement;

The Company's Response

14. The Company responded to the complaint by letter dated 2 May 2017. The principal points made by the Company were:
 - Pernod Ricard Winemakers is a signatory to the ABAC Code and takes compliance with this Code very seriously. We are a company committed to ethical marketing of our products and we abide by not only the Code, but also any other applicable advertising codes and the law. As a member of the global Pernod Ricard Group, we are also committed to the promotion of responsible marketing and consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.
 - The advertisement is a video promoting Jameson Whisky. It appeared as a sponsored post on Instagram between 7th and 21st April 2017. The advertisement explains the meaning of the Jameson family motto, *sine metu* (meaning "without fear") and describes what it means to have the *sine metu* spirit embodied by the brand's founder, John Jameson.

- It has been clearly established in many prior decisions that the Code is a content code and not a placement code (for example, ABAC Determinations 159/08, 71/07 and 6/12 as well as being addressed in section 2(b)(vi) of the Code). It is therefore difficult to see the relevance of the placement of the advertisement to a complaint under the ABAC Scheme.
- Furthermore the advertisement was age-restricted and therefore not available for viewing by minors. It appeared on Instagram as a “sponsored post”, meaning that it was visible only to a targeted audience selected by Pernod Ricard Winemakers. We take great care to ensure that our ads are targeted only to users with a profile age over the legal drinking age. In this case the target audience was males within Australia between the ages of 22 and 38. The targeted males must also have previously, via their Instagram search habits and the pages they follow on Instagram, demonstrated an online interest in the alcohol category, (specifically in any of the categories and brands of bourbon whisky, irish whisky, Jameson Irish Whisky, Jack Daniel’s or Johnnie Walker) and also one of the categories of bars, concerts, music festivals or nightclubs.
- Although minors may access Instagram, any user registered on Instagram who has declared him or herself to be under 22 years of age would not have had access to this advertisement. The age of a user is determined by the information provided when they sign up to Facebook or Instagram (both platforms are subject to the same ownership and accordingly they share information and functionality across each). Our understanding of Instagram, is that if a user does not provide any information about their age upon sign up, Instagram will ask the user to confirm their date of birth before it will allow the user to view content subject to age gating or targeting, such as the Jameson Whisky content. Accordingly unless a minor has entered his or her user information incorrectly or a minor accessed the advertisement through another person’s Instagram account, the advertisement could not have been viewed by anyone under the age of 18.
- For the sake of completeness we also deny that the content of the advertisement has strong or evident appeal to minors. The advertisement features the following elements, none of which can be considered to have strong or evident appeal to minors:
 - a cooper preparing a whisky barrel;
 - footage from within a bar;
 - performers on stage at a music concert;
 - footage from within a distillery; and
 - musicians and revellers at a music festival.

- We are confident that neither the content nor the placement of the advertisement has strong or evident appeal to minors and as such does not breach section (b) of the ABAC.
- The advertisements purpose is to explain the *sine metu* motto in the context of the Jameson brand history. The spoken words “Everything begins with two words: Sine Metu” refers to the fact that the Jameson brand story begins with the awarding of the *sine metu* crest to the Jameson family in 1500 for fighting pirates off the Scottish coast. Jameson’s brand identity is intertwined with the story of the Jameson family and in particular John Jameson, the founder of Jameson Whisky, who encapsulated the *sine metu* family motto by leaving his job in Scotland in order to pursue his dream of being a whisky maker in Ireland. John Jameson showed the spirit of *sine metu* in that he had the courage to follow his passion and as a result the Bow Street Distillery in Dublin opened its doors and produced its first drop of whisky in 1780. The purpose of this advertisement is to invite people to understand and celebrate the meaning of *sine metu* and to celebrate those who share the values embodied by the Jameson family: “It is the Jameson family motto, but it belongs to all courageous individuals”. If we were required to remove the statements outlined above, our ability to tell the unique history of the Jameson brand would be removed with the result being a homogenized whisky advertisement which is similar to other whisky ads in this market.
- Importantly at no point does the advertisement depict or suggest that consumers will become courageous or gain any of the abovementioned characteristics by drinking Jameson. Rather the advertisement specifically mentions that one is born with the *sine metu* spirit: “Born with a kind of fearlessness that John Jameson stood for”. Similarly, the “willingness to go that extra mile”, “the courage to follow your passion” and “not to be afraid of change” are references to personal inherent characteristics of those who carry the *sine metu* spirit, not characteristics acquired by consuming Jameson.
- The visual images that accompany the voiceover story do not in any way imply that one receives the *sine metu* characteristics of courage and fearlessness by drinking Jameson. On some occasions people are holding or drinking drinks. However, the mere fact that the *sine metu* story is accompanied by infrequent and reasonable (and Code compliant) shots of people drinking Jameson or holding drinks does not infer that drinking Jameson will in any way alter one’s mood, environment or personal success.
- Although the advertisement depicts activities which may be linked to drinking, such as a cooper building whisky barrels and people working in or visiting a distillery, these are to demonstrate the work ethic, the creativity and the craftsmanship behind the Jameson brand and make no actual link with consumption.

- Neither the advertisement taken as a whole, nor any individual element of the advertisement breaches section (b), (c)(i) or (c)(ii) as it cannot reasonably be interpreted as showing strong or evident appeal to minors, nor suggesting the consumption or presence of Jameson will result in a significant change in mood or environment or personal success.

The Panel's View

15. The complaint concerns a video for the product, which was accessed by the complainant via an Instagram feed. The complainant was troubled by the video on several grounds, namely:
 - That the video was disingenuous in that it purported to provide 'documentary' style information about the history of the product but was in reality a sales video;
 - That it used expressions such as 'everything begins', 'greatest individuals' and 'born with a kind of fearlessness' that implied that the product gave these characteristics to drinkers; and
 - That the Instagram feed and hence the video could be accessed by children.
16. The Company provided a lengthy explanation of the rationale behind the video which it argues is not inconsistent with ABAC standards. It also explained the age gating protections associated with the distribution of the video via Instagram which it argued should not readily permit the video to reach an audience under that age of twenty two.
17. The Panel has reviewed the video against the relevant ABAC standards, namely section (b) and (c). In doing this, the Panel applied a test of assessing the probable understanding of the video by a reasonable person i.e. a person with the opinions, values and attitudes common in a majority of the community.
18. The Panel does not believe that the video is in breach of the Code. In reaching this conclusion the Panel has noted:
 - The fact that an alcohol marketing item might be viewed by someone under the age of eighteen is not of itself a breach of the Code;
 - The Company apparently followed the age gating and targeting facilities permitted by Instagram;
 - In any event, the content of the video cannot be said to have strong or evident appeal to under eighteen year olds, and has a message and production values more likely to appeal to an older audience;
 - There is no Code standard which requires promotional materials to clearly distinguish between 'documentary' style formats and styles more akin to clear advertising; and

- While the marketing video does associate the product with desirable personal characteristics such as strength of character, in doing this the video does not suggest that the use of the product leads to the achievement of personal success nor is it the reason someone has desirable characteristics.

19. Accordingly, the complaint is dismissed.