



ABAC Adjudication Panel Determination No. 127/17

Product: Jim Beam
Company: Beam Global
Media: Outdoor
Complainant: Confidential
Date of decision: 10 January 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Jim Beam in the Artarmon train station in Sydney by Beam Global (“the Company”) and arises from a complaint received on 22 December 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. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in the other codes as well as meeting the standards contained in the ABAC.
 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 22 December 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 was determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting

approval was obtained for the content but not placement of the marketing communication.

The Placement

10. A large poster advertising Jim Beam was placed where it can be viewed when descending the Artarmon train station stairs.

The Complaint

11. The complainant is concerned that:
 - a) when travelling on public transport with her children to see Santa a very large Jim Beam poster was the only thing that could be seen when descending the Artarmon train station stairs; and
 - b) constant exposure to alcohol ads is not good for children as it normalizes drinking alcohol and contributes to the current binge drinking culture and increases risk of chronic diseases.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
13. Part 6 of the ABAC Code includes definitions including:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

The Company's Response

14. The Company responded to the complaint by email dated 4 January 2018. The principal points made by the Company were:
 - a) The advertisement received pre-vetting approval, as to its content.
 - b) The outdoor media companies code their alcohol sites and wouldn't allow Jim Beam ad placement on sites that contravene the Outdoor Media Association Code - therefore confident this site does not breach any codes.

The Panel's View

15. This complaint concerns the placement of an advertisement for Jim Beam in Sydney's Artarmon railway station where it could be viewed as passengers descended the stairs in the station. It is argued that the advertisement is irresponsible because:
 - the station is accessed by families with small children; and
 - constant exposure to alcohol ads is not good for children as it normalises drinking alcohol and contributes to the current binge drinking culture and increases risk of chronic diseases.
16. The complaint therefore does not raise a concern about the content of the advertisement but rather the location of the poster at the railway station and a more general argument about the potential detriment caused by alcohol marketing as a whole is also raised.
17. The Placement Rules were incorporated into the ABAC on 1 November 2017. The Rules are aimed to the policy goal of avoiding the direction of alcohol marketing towards minors. The rules do not purport to regulate the placement of alcohol advertisements more generally other than the requirement in rule (i) that all other codes regulating placement published by Australian media industry bodies must be complied with.
18. The applicable code for an outdoor alcohol advertisement is the Outdoor Media Association Alcohol Guidelines. The guidelines provide that alcohol advertising is not to be placed on fixed signs located within a 150 metre sight line of a primary or secondary school. The Outdoor Media Association has confirmed and provided evidence that the Artarmon Railway station is not within 150 metres of a school and accordingly the guideline has not been breached.
19. The remaining Placement Rules relate to digital electronic and broadcast media and not to outdoor placement such as within Artarmon railway station.
20. The complainant raises a wider policy issue about the level of alcohol marketing and whether constant exposure to marketing normalises alcohol use and hence contributes to alcohol related harms such as chronic diseases. While this is a valid issue for community debate, it is matter well beyond the role given to the Panel.

Such matters of public policy are questions for Governments and Parliaments to consider.

21. The Panel has a defined role to assess if a particular marketing item compiles with the ABAC standards as to the content of the marketing and the Rules as to where the marketing is placed.
22. Accordingly, the placement of the advertisement is not in breach of the Placement Rules and the complaint is dismissed.