

ABAC Adjudication Panel Determination No. 54/18

Product: Jack Daniels
Company: My Bottleshop
Media: Digital
Complainant: Confidential
Date of decision: 11 May 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an email digital marketing communication promoting Jack Daniels by My Bottleshop (“the Company”) and arises from a complaint received 19 April 2018.
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.
2. 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 other codes as well as meeting the standards contained in the ABAC.
 3. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 4. The complaint is independently assessed by the Chief Adjudicator and Ad Standards 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 Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 5. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

3. The complaint was received on 19 April 2018.
4. 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 completed in this timeframe.

Pre-vetting Clearance


5. 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 not obtained for this marketing communication.

The Marketing Communication

6. The complaint relates to the following email digital marketing communication promoting Jack Daniels by My Bottleshop.

JACK DANIELS FREE MEGA CAN COOLER



JACK DANIEL'S & COLA
A PERFECT MIX OF WHISKEY & COLA IN A CAN

BUY 2
JACK DANIELS AND COLA MEGA CAN
AND GET A FREE CAN COOLER
WHILE STOCKS LAST!

WWW.MYBOTTLESHOP.COM.AU

ORDER NOW

Jack Daniels and Cola Mega Can is a new and **massive 500mL hit of your favourite Jack and Coke**. Perfect for footy games or long drives. MyBottlehop even has the Mega Can Cooler available **FREE** for all members and shareholders.

The Complaint

7. The complainant is concerned that the message in the advertisement, "Jack Daniels and Cola Mega Can is a new and massive 500mL hit of your favourite Jack and Coke. Perfect for footy games or long drives." is inconsistent with public health messages against drink driving and consumption of alcohol in moving vehicles.

The ABAC Code

8. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;

The Company's Response

9. The Company responded to the complaint by email dated 7 May 2018 advising:
- a) We removed the product immediately upon notification from ABAC and re-worded according to a request from Brown-Forman the brand owner. The original description was not intended to convey drink driving, or irresponsible consumption of alcohol and was created by a junior internet content person.
10. Brown Forman (brand owner of Jack Daniels) responded to the complaint by email dated 3 May 2018 as follows:
- a) Brown Forman had nothing to do with the ad. The first we knew of it was when it was notified to us by ABAC on 26 April. The ad/mybottleshop.com.au did not use authorised creative materials (evidenced by the 'real' campaign materials supplied to retailers for use in relation to this product, below. None of the copy was approved by Brown Forman, and nor is the name 'mega can', which we do not use or permit to be used.
 - b) Within 24hrs of notification, we had engaged with mybottleshop.com.au, had them take down the ad, and started conversations regarding an alternative ad, with our supervision.



The Panel's View

11. My Bottleshop is an online alcohol retailer. The Company has sought to promote the product Jack Daniels and Cola via an email distribution to the company's contact list. The complainant received an email which contained messaging which is contended as being inconsistent with public health advice against drink driving.
12. The producer of the Jack Daniels line of products is Brown Forman. Brown Forman has advised that it was unaware of the email advertising and did not approve it. My Bottleshop has advised that it will no longer use advertising in this format though it claims that there was no intention to encourage irresponsible consumption or condone drink driving.

13. It is evident that the email and the advertising copy is not consistent with good marketing practice. The reference to “Mega Can” and “massive 500ml hit” can both be reasonably taken to be an encouragement to excessive alcohol consumption in breach of section 3(a)(i) of the ABAC. Further the statement that the product in a mega can is “perfect for long drives” is also inconsistent with section 3(a)(i) and may be taken as an encouragement to consume the product while in control of a motor vehicle.
14. Accordingly the complaint is upheld.