



ABAC Adjudication Panel Determination No. 104/19

Product: Jim Beam
Company: Beam Suntory
Media: Outdoor
Date of decision: 12 December 2019
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 outdoor advertisement for Jim Beam by Beam Suntory (“the Company”) and arises from a complaint received 13 November 2019.
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, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 Ad Standards Community Panel 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 13 November 2019.
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.
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 not obtained for this marketing communication.

Marketing Communication Placement

10. The following advertisement for Jim Beam was located on hoardings installed by Supercars in Newcastle East.



The Complaint

11. The complainant is concerned that:
- Huge alcohol advertising hoardings have been erected one month prior to the event in front of terrace homes of families with young children.
 - Supercars advised the complainant:

The placement of our barrier signage is predicated by their visibility on the TV broadcast and has no connection to the geographic location around the circuit. These signs will remain in place until after the Supercars event.

- With the number of recent accidents at Supercars events, it is indefensible to link alcohol consumption and speeding cars.

The ABAC Code

12. Part 2 of the ABAC Code provides that the Code does not apply to
 - (b)(v) Sponsorship
13. 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
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming
14. Part 6 of the ABAC Code includes definitions including:

Available Age Restriction Controls means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a third party platform, website or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used to place a Marketing Communication.

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) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (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).

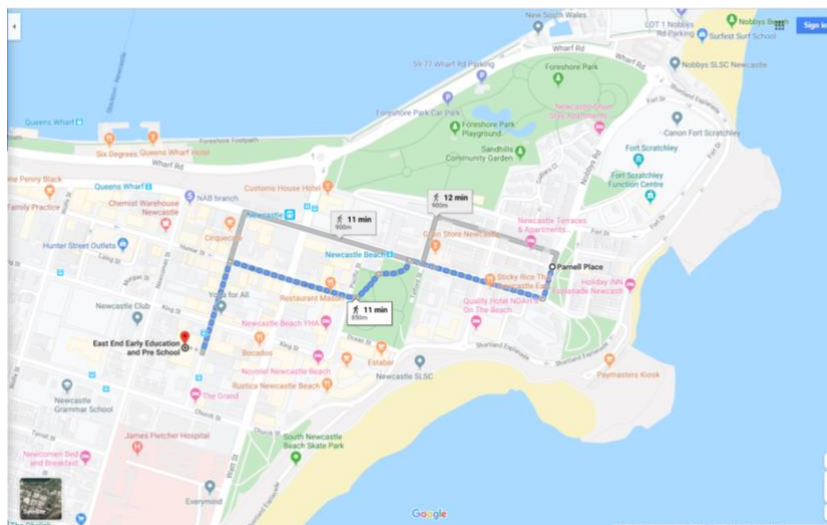
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor’s Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event or on uniforms of participants (excluding branded merchandise).

The Company’s Response

15. The Company responded to the complaint by email dated 22 November 2019 advising that:

- We have spoken to Supercars who are the promoter of the Newcastle event. Due to the size and scale of the event, the build schedule and erection of signage can occur at any time within the 6 week lead up to the event.
- Jim Beam is the official dark spirits partner of the Supercars and as part of our sponsorship agreement receive logo placement/signage benefits, which in turn appear in broadcast (hence the distortion of the logo in the photos provided), the placement (location) is predicted based on visibility within the TV broadcast and will likely be visible to those walking past, or living on Parnell Terrace.
- Beam Suntory takes it’s adherence to the ABAC and OMA policies seriously, according to our research the signage does not conflict with these policies with regards to proximity placement to school’s– please see attached google image.



The Panel's View

16. In 1960 the first Australian Touring Car Championship was held. In 1963 the famous Bathurst event was staged for the first time and over the decades the championship has taken a number of forms and gone under various names. It is currently known as Supercars. The Supercars championship consists of 16 races in various cities and locations. Since 2017 one race has been held in Newcastle known as the Coates Hire Newcastle 500. This race for the 2019 season was held on 24 November.
17. In the period leading up to the Newcastle race, work is undertaken to prepare the track which is based on city streets. In part the track abuts Parnell Place in East Newcastle. Newcastle East has a local resident's group. Such groups typically consist of residents from a location who come together to discuss and advocate on issues which impact on their local community. The complaint has been made on behalf of the resident's group.
18. The complaint concerns stencilled advertisements for Jim Beam which are placed on the concrete barriers located at points along the track including near Parnell Place. The complainant's primary concern is that the ads are visible to families and children for a prolonged period leading up to the race and this is considered offensive. It is pointed out that no consultation took place with the local residents. A secondary concern is that it is irresponsible to link alcohol use and speeding cars.
19. The Company advises that it is one of the corporate sponsors of the Supercars. Part of its sponsorship agreement is the placement of signage along parts of the track so that the ads will be visible in the background during the television broadcast of races. It is argued that the signage for Jim Beam is consistent with the requirements of the ABAC.
20. The ABAC contains both standards which go to the messaging within alcohol marketing communications and rules which go to where the marketing material can be placed. While the Code applies generally to alcohol marketing conducted in Australia, the Code provisions do not apply to 'sponsorship'. This means the ABAC scheme does not purport to examine the terms of agreements reached by alcohol companies in sponsoring sporting events such as Supercars.
21. Further, the direct manifestation of the sponsorship such as the placement of brand logos on player uniforms or the placement of a brand name at a venue is within the scope of the sponsorship exception. The exception is limited in that marketing which flows from the existence of the sponsorship such as a TV ad needs to meet the ABAC standards but the placement of the Jim Beam name on the trackside barriers is within the sponsorship exception.
22. It is further noted that the trackside ads do not appear to be located in areas which would, even aside from the sponsorship question, be in breach of the Code Placement Rules. The Rules in relation to the outdoor placement of alcohol ads require that the ads not be within 150 metres of a school. Here the concern is the

location of the ads near residential housing. It does not seem the ads are within 150 metres of a school.

23. Finally, the complaint goes to the link between the consumption of alcohol and the driving of 'speeding cars'. The Code does not permit alcohol consumption to be shown before or during any activity such as driving a motor car which requires a high degree of alertness or physical coordination. Here the Company seeks to associate its brand with Supercars, but no alcohol consumption is shown. A reasonable person would not understand the placement of the brand name on the barriers as suggesting that it is acceptable to consume alcohol before or during the use of a motor vehicle.
24. It is recognised that the complainant will find this determination to be an unsatisfactory outcome. The points raised in the complaint are well made and it is a legitimate question of public policy to ask if alcohol companies should be able to sponsor sports events and if so on what terms. The fact that residential areas are impacted by the staging of the Supercars no doubt is also problematic to local people directly disadvantaged by the road closures and issues such as noise. On the other hand, the Supercars have a very strong following in the community and presumably the communities which host the events gain benefits economically and otherwise.
25. Ultimately the balancing of interests required by the general issues raised in the complaint is a matter for government. The Panel has a much more confined and specific remit and that is to apply the Code as it is drafted. On this basis the complaint must be dismissed.