



ABAC Adjudication Panel Determination No. 24/20

Product: Lion Beer Australia
Company: James Squire 150 Lashes
Media: Television
Date of decision: 25 March 2020
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 a television advertisement for James Squires 150 Lashes by Lion (“the Company”) and arises from a complaint received 3 March 2020.
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 Code”) – 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 and Policies – which place 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 other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 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.
 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 3 March 2020.
8. 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 was completed in 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 this marketing communication.

The Marketing Communication

10. The complaint concerns a television advertisement which is largely in the form of an animation. It opens with a bottle of James Squire One Fifty Lashes and we hear

a whip crack in the background, the camera focuses on the label and the green dye on the label is shown floating off the label as a voiceover and visual scenes continue as follows:

- “A rough sentence is no match for a smooth talker, take the story of the convict James Squire” – as the green dye floats onto a sheet of parchment where we see an image appear of a convict carrying two barrels of beer over his shoulders with two large hops either side of him;
- “who arrived in a country where there was no beer – tragedy” – as the image changes to one of three male convicts in chains in front of a sailing ship;
- “so he stole hops to make Australia’s first brew” – as the image changes to a treasure chest of hops and a hand removing one of the hops;
- “he ended up with a reduced sentence of one fifty lashes” – as the image changes to a gavel entwined with a snake and a rose and then a whip, with a pink mark next to the whip;
- “and the judge ended up with two barrels of ale – funny that” – as the image changes to a wiggled judge with a glass of beer in front of him with the words “justice served” who winks at the camera;
- “James Squire One Fifty Lashes – Full of Character – [whip cracks]” – as we see a bottle of James Squire next to all the images and the dye from all the pictures is shown returning to the label.

The Complaint

11. The complainant believes the imagery of the ad uses violence of ‘a particularly vile and illegal type’ to sell the beer. The ad is argued to be disgusting and is totally inconsistent with public efforts to end personal violence.

The ABAC Code

12. 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

The Company’s Response

13. The Company responded to the complaint by letter dated 17 March 2020. The principal points made by the Company were:
 - a) The advertisement does not show, directly imply or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage in breach Part 3 (a) (ii) of the Code by associating alcohol with convicts, theft, punishment and physical violence.

- b) James Squire is well-known for being Australia's first convict brewer. The advertisement tells the story of how James Squire got caught stealing hops to make beer, however he got off lightly after giving the judge presiding over his case some of his prized brew. This story is a factual account of how this beer got its name. In no way does the content set out to encourage irresponsible or offensive behaviour in relation to the consumption of James Squire 150 Lashes.
- c) Lion strongly contends that the reasonable Australian consumer is likely to understand that the purpose of the advertisement is to tell the story of James Squire as a convict brewer, and the way in which his legacy lives on today as the name of Australia's number one craft beer brand. The story is one many are familiar with and it is unlikely, given the historical references in the advertisement, it could be taken to encourage irresponsible behaviour. The practices outlined are commonly associated with a bygone era. For instance, the broader Australian community would not reasonably be encouraged to give someone 150 lashes in 2020 after viewing this marketing communication.
- d) As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance. As part of Lion's marketing approvals processes, the advertisements for Iron Jack were subject to:
- internal legal review and advice from an external legal firm specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation;
 - review by Lion's internal marketing compliance team to ensure its adherence to all relevant advertising codes; and
 - review and approval through ABAC's external and independent pre-vetting service (AAPS) at both concept and final stages, receiving approval before going to market.

The Panel's View

14. The ad is a depiction of an origin story of the James Squire 150 Lashes beer. It is produced in an animation format and shows a cat of nine-tails whip and at times features the sound of a whip being cracked. The complainant believes the ad is in very poor taste and associates alcohol with violence.
15. The ABAC standards go to the responsible marketing of alcohol as a product. In addition to the ABAC, the marketing of alcohol must also comply the generic standards contained in the AANA Code of Ethics. The Code of Ethics goes to issues of taste and decency and in large measure the complainant's concerns are more closely related to matters within the Code of Ethics than the ABAC.
16. The Panel does not assess the consistency of an ad against the Code of Ethics as this is the responsibility of Ad Standards, a separate self regulatory body. Rather the Panel looks to the ABAC Requirements and in this case the relevant standard is contained in Part 3(a)(ii) and provides an alcohol ad must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol.

17. In assessing the consistency of an ad with the ABAC standards the Panel adopts the standpoint of the probable understanding of the ad by a reasonable person, taking the content of the ad as a whole. The concept of a reasonable person is drawn from the common law system and means the life experiences, values and opinions shared by a majority of the community is the benchmark. A person who takes a different interpretation of an ad is not 'unreasonable' but possibly their view would not be shared by most people.
18. The Panel does not believe the ad breaches the ABAC standard. It would be likely seen as a stylised version of how beer was allegedly first brewed post British colonisation of Australia. While the backdrop of the origin story involves the convict receiving 150 lashes, which is by contemporary sensibilities a barbaric punishment, the ad doesn't show the flogging nor does it suggest the current use of the product is endorsing whipping as an acceptable punishment. It cannot be reasonably taken as promoting violence. No doubt the complainant is entirely genuine in the concern expressed but a reasonable person would not understand the ad in the way the complainant has taken the message.
19. The complaint is dismissed.