



ABAC Adjudication Panel Determination No. 76 & 79/21

Product: Jimmy Brings
Company: Endeavour Group
Media: Digital (Instagram)
Date of decision: 17 May 2021
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”) relates to Instagram marketing for Jimmy Brings by Endeavour Group (“the Company”) and arises from complaints received 6 and 7 April 2021.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 6 and 7 April 2021.
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

- 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

- The complaints relate to the following two Instagram advertisements.

First Advertisement



Second Advertisement



The Complaint

11. The complainant objects to the marketing as:
 - *A photo of Amy Schumer with an oversized wine glass, the glass would hold at least one bottle of wine maybe more. This is a breach of Section 3(a) encouraging excessive serving sizes and excessive consumption.*
 - *A video of the late Bob Hawke sculling a beer at the cricket. The caption reads "This weekend, we commemorate Bob Hawke with FREE DELIVERY. RIP Ol' Silver, you were a dollar floating, beer sculling Legendary Larrikin that will live on FOREVER in our hearts and livers. Jimmy Salutes you." The ad tries to use the reputation of Bob Hawke to boost their own brand recognition. This is a breach of Section 3(a) encouraging rapid consumption of beer.*

The ABAC Code

12. 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

13. The Company responded to the complaint by letter emailed on 15 April 2021. The principal points made by the Company were:
 - Jimmy Brings maintains the position that the Complaints do not breach any Part of the Code for the reasons outlined below and it, therefore, requests the Panel dismiss the Complaints.
 - It is Endeavour Group's aim to be Australia's most responsible retailer of alcoholic beverages. This is highlighted by the fact that Endeavour Group formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it strives to prepare all its advertising in accordance with the Code.
 - Endeavour Group maintains strict internal processes in addition to those required by the Code. As part of its community charter 'Our Community, Our Commitment', Endeavour Group has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
 - ID25 (ask for ID from anyone who looks under 25 years of age);

- Don't Buy It For Them (stopping secondary supply to minors);
 - Intoxication Policy (refusal of service to anyone who may be intoxicated); and
 - staff training that exceeds legal requirements, including 'Don't Guess, Just Ask', team talkers, regular refresher and reminder courses, and implementation of the award-winning training program 'Safe'
- Additionally, Jimmy Brings has adopted industry-leading initiatives including:
 - a self exclusion service that allows Jimmy Brings' customers to exclude themselves from the service should they identify they have a problem. When customers attempt to place their next order, this will not go through the ordering system and will be cancelled automatically; and
 - an automated system which reviews customer order data to detect potentially harmful consumption by flagging repeated and/or large alcohol orders. This is a revolutionary step in being the most responsible alcohol retailer in Australia.
 - The processes outlined in paragraphs 2 and 3 above provide Jimmy Brings with a compliance framework to ensure that it serves customers in accordance with its obligations under the applicable laws and regulations.
 - It should be noted that the Advertisements were posted on Jimmy Brings'instagram account approximately two years ago. Given how precipitous and transient social media can be, Alcohol Advertising Pre-Vetting Service Approval was not sought for the Advertisement.
 - Jimmy Brings periodically reviews the content on its social media channels. As part of the review, Jimmy Brings has now removed the Advertisements on the basis that it may not fit the stringent standards it upholds itself to.
 - The intention of the first Advertisement is to pay tribute to the former Prime Minister and Australian icon Bob Hawke shortly after news of his passing was released. The caption humorously juxtaposes one of Mr Hawke's greatest economic initiatives of floating the Australian dollar with his apparent liking to the public drinking alcohol. The use of the phrase 'Legendary Larrikin' is not directed to his consumption of alcohol, but is rather a common descriptor attributed to Mr Hawke in popular culture (For example, <https://www.abccommercial.com/contentsales/program/hawke-larrikin-and-leader>, <https://www.afr.com/politics/federal/bob-hawke-labor-s-most-successful-pm-was-a-larrikin-and-scholar-20190516-p51o8r>, <https://www.reuters.com/article/us-australia-politics-election-hawke-idUSKCN1SM0Z7>). This Advertisement makes no call to action for anyone to

consume alcohol in a rapid or excessive manner. Therefore, Jimmy Brings believes that this Advertisement would be understood by a reasonable person to be a humorous tribute to Mr Hawke, and would not be in breach of Part 3(a)(i) of the Code.

- In relation to the second advertisement Jimmy Brings repeats the submissions contained in the previous paragraph. This Advertisement depicts a still image of a skit from comedian Amy Schumer. Ms Schumer is shown holding a comically and unrealistically large glass of undisclosed contents. This Advertisement does not show the consumption of any alcohol, and does not imply or encourage the consumption of alcohol in a volume displayed in the image. Rather, the caption asks viewers to consider if 'it's time to treat yourself to a glass of wine', which would be understood by a reasonable person to be a reference to a standard glass of wine and not the unrealistic glass that is depicted in the image.
- Therefore, Jimmy Brings believes that this Advertisement would be understood by a reasonable person to be a tongue-in-cheek congratulations to the end of Dry July by enjoying a glass of wine, and would not be in breach of Part 3(a)(i) of the Code.
- For the reasons outlined above, Jimmy Brings believes that the Advertisements do not breach Part 3(a)(i) of the Code and requests the Panel to dismiss the Complaints.

The Panel's View

14. This determination concerns two Instagram advertisements for the home delivery retailer, Jimmy Brings. Both advertisements advise of a free of charge delivery promotion, with the first complaint going to a post made on 2 August 2019 showing the comedian Amy Schumer with an oversized wine glass. The second complaint is about a video of former Prime Minister Bob Hawke sculling a beer while in the crowd at a cricket test match. This post was made on 17 May 2019 shortly after Mr Hawke's death.
15. The complainant argues both posts encourage excessive or rapid alcohol consumption in breach of Part 3 (a) (i) of the ABAC. The Company believes the posts are consistent with the Code contending:
 - no call to action is made to consume alcohol in a rapid or excessive manner; and
 - the advertisements are humorous and would be understood as such.
16. The first advertisement is framed to mark the end of 'Dry July' which is an annual fundraising initiative based on participants abstaining from alcohol use during the

month of July. The post shows an oversized wine glass containing what appears to be white wine held by American actor and comedian, Amy Schumer. Ms Schumer's comedy routines and on-screen personas sometimes reference excessive alcohol use. While Ms Schumer is well known, she is not identified by name in the post and it cannot be assumed that all or even most viewers would recognise her and be familiar with her style of comedy.

17. The post would be understood by a reasonable person as being light-hearted and not seriously advocating the consumption of alcohol in the amount contained in the prop wine glass. That said, the humour assumes a shared and implicitly acceptable understanding in the community that after a period of abstaining from alcohol, a person might have a 'big night' and consume alcohol more heavily than would be usual. It is the basis of the humour which makes the post inconsistent with the Part 3 (a) (i) standard.
18. The second post features a viral video clip of the former Prime Minister being offered a glass beer by a spectator in the 'outer' at the Sydney Cricket Ground in 2012. Mr Hawke sculls the beer to the cheers of the crowd. The video has had over 1.9 million views on YouTube. Mr Hawke was a self-confessed heavy drinker prior to becoming Prime Minister and then famously refrained from drinking alcohol entirely during his time in the Parliament. In his later life he did consume alcohol once more. The Company explains it posted the video on Mr Hawke's death as a tribute to his well-known and much-loved larrikin persona.
19. Like the first advertisement, a reasonable person would understand that the post is not seriously advocating rapid or excessive alcohol consumption and it would be taken as intended as a good-natured acknowledgement of a much admired Australian. However, the video combined with the accompanying reference in the text to 'beer sculling' and 'live on Forever in our hearts and livers' does rely on an assumed shared community sense of humour about rapid alcohol consumption being acceptable on occasions. It is this assumption about alcohol use which makes the post inconsistent with the Code standard.
20. The complaints are upheld.