



ABAC Adjudication Panel Determination No 103/23

Product: Jimmy Brings
Company: Endeavour Group
Media: Digital – Website and App
Date of decision: 13 July 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 23 June 2023 in relation to digital marketing for Jimmy Brings by Endeavour Group (“the Company”).
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 the 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 meet 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 complaints were received on 23 June 2023.
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 an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing.

The Marketing Communication

10. The complaint relates to website and app marketing by the Company:



The Complaint

11. The complainant objects to the marketing as follows:
 - *The presence of alcohol / the Cosmo cocktail may leave a reasonable person to believe that the alcohol will contribute to a change in mood / environment by enhancing the chance of sexual success.*
 - *The phrase "Sex and some cosmos" followed by a deal on the alcohol to make a cosmo: a reasonable person may assume sexual success from the consumption of the Cosmo cocktail.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;

(c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Company's Response

13. The Company responded to the complaint by letter emailed on 4 July 2023. Its primary comments were:

- Jimmy Brings thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. Jimmy Brings understands that the Panel is considering whether or not the Advertisement breaches Part 3 (c)(i) and Part 3 (c)(ii) of the ABAC Responsible Alcohol Marketing Code (the Code).
- At the outset, Jimmy Brings would like to note that:
 - Jimmy Brings, as part of Endeavour Group, is committed to maintaining our position as an industry leader in the responsible service of alcohol. 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 prepares all advertising within its reasonable control in accordance with the Code. As a signatory to ABAC, Endeavour Group commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.
 - Furthermore, Jimmy Brings maintains strict internal and external processes in addition to those required by the Code. As part of our 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 the responsible consumption of alcohol. These include:

- ID25; we ask for ID if a shopper looks under the age of 25;
 - Our Refusal of Service Policy (Secondary Supply, Intoxication and School Uniform); and
 - Staff training that exceeds legal requirements, including our 'Leading in Responsibility' training module, team talkers, regular refresher and reminder courses.
- The processes outlined above provide Jimmy Brings with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.

Alcohol Advertising Pre-vetting Service Approval

- Jimmy Brings notes that the Advertisement did not receive Alcohol Advertising Pre-Vetting Service Approval.

Responsible depiction of the effects of alcohol

- The Advertisement is a take on the iconically famous show “Sex and the City” - that is, the “Sex and some Cosmos” phrase is simply a play on words, in the sense that the main character of the show (ie, Carrie Bradshaw) is well known for drinking cosmopolitans. The intent of changing the name of the show was to align with Jimmy Brings’ marketing efforts in light of the release of season 2 of the sequel to the show, ‘And Just Like That’.
- Notwithstanding this, Jimmy Brings appreciates that the test is not what the marketer had in mind when creating the marketing message, but rather how a reasonable person would most likely understand the marketing.
- Respectfully, Jimmy Brings considers that it is far-fetched to suggest that the play on words alongside the promotion of the cocktail bundle would lead a reasonable person to believe that consumption of alcohol will contribute to a change in mood / environment ultimately leading to sexual success. This is for the following reasons:
 - alcohol consumption is not depicted in the Advertisement;
 - the reference to “Sex and some Cosmos” is more likely to be interpreted as a play on words, rather than being suggestive of any sexual connotations;

- the promoted cocktail bundle is not placed with individuals interacting in a romantic setting, nor is it placed with sexually suggestive imagery; and
 - taken as a whole, the Advertisement would be understood as drawing on the recent release of the new season of the 'Sex and the City' sequel for Jimmy Brings' brand promotion rather than suggesting (either directly or by implication) that the consumption of alcohol has any causal relationship to a change in mood / environment leading to sexual success. To interpret the Advertisement in any other way would require several assumptions which cannot fairly be based on the actual content of the marketing in question.
- For completeness, Jimmy Brings would also like to acknowledge the Panel's previous findings in Determination 44/23 that "it is not a breach of an ABAC standard for an alcohol company/brand to be involved in contentious or sensitive issues provided alcohol use is not shown or encouraged in a manner inconsistent with ABAC standards".
 - In view of the above, we respectfully ask that the Complaint is dismissed by the Panel. Please feel free to contact me should the Panel require any further information.

The Panel's View

14. 'Sex and the City' is a highly successful TV show that was initially screened for 6 seasons from 1998 to 2004 but has been continuously broadcast since that time via streaming services. The program is centred on the lives of four twenty something women who are close friends and who are living in New York City. The series name is derived from the fictional newspaper column written by one of the women, Carrie Bradshaw. The show has themes around relationships, and sex and the general life dramas faced by single professional women.
15. In late 2021 the show was reprised in 'Just Like That' featuring three of the four women, now in a later phase of their lives. The Company explains that the marketing communication that has drawn the complaint was a play on 'Sex and the City' imagery and timed to coincide with the premiere of the second season of 'Just Like That'.
16. The marketing is for the ingredients of a Cosmopolitan cocktail and appeared on the Company's website and app. It consists of two screens with the first showing the words 'Sex and Some Cosmos', with the Jimmy Brings face shown in the upper part of the 'X', against a representation of the New York skyline. The skyline is also shown in the second screen, behind pictures of a

bottle of vodka alongside a bottle of Cosmo Mix, as well as the price of \$69 and a brief description of the products.

17. The complainant is concerned that the promotion of alcohol with the tagline 'Sex and Some Cosmos' may lead a reasonable person to believe that the product will contribute to a change in mood or environment and enhance the chance of sexual success. These concerns raise two Code standards, namely that an alcohol marketing communication must not:
 - suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment – Part 3 (c)(i); and
 - show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of sexual or other success - Part 3 (c)(ii).
18. The Company contends that the marketing does not breach the ABAC standards, arguing:
 - alcohol consumption is not depicted;
 - the reference to 'Sex and Some Cosmos' is likely to be interpreted as a play on words and a direct reference to 'Sex and the City'; and
 - there is no depiction of people in a romantic setting, nor is there any sexually suggestive imagery.
19. In assessing if a Code standard has been breached, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. This means the attitudes, values and life experiences shared by most members of the community is the benchmark. If a marketing communication can be interpreted in several ways, the most probable understanding is to be preferred over a possible but less likely interpretation.
20. It can be accepted that the Company was using the 'Sex and the City' imagery as its motivation for the marketing item and no doubt many people, particularly those who watched the original TV series, will understand the references. That said, other consumers will not appreciate the TV show reference and the use of the term 'sex' will almost inevitably raise the issue posed by the complaint. It is safer practice not to link 'sex' with alcohol products in marketing.
21. That said and acknowledging the point made by the complainant, the Panel does not believe a reasonable person would probably understand the marketing as suggesting the product will alter a mood or lead to sexual success. In reaching this conclusion, the Panel noted:
 - the marketing shows no sexual or romantic imagery;

- the reference to 'Sex and Some Cosmos' would likely be taken as a play on Sex and the City and not a suggestion that the product would lead to sexual success; and
- taken as a whole, the marketing displays products and pricing information and would not likely be understood as creating a narrative of mood change and/or sexual success.

22. The complaint is dismissed.