



ABAC Adjudication Panel Determination No 140/23

Product: Jim Beam
Company: Beam Suntory
Media: Digital – 3rd Party Website
Date of decision: 18 September 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 28 August 2023 in relation to an image of the 2014 Women’s SURFTAG Champions (“the Image”), posted to the SURFTAG website.
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:
 - 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;

- 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 complaint was received on 28 August 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 content of the marketing.

The Marketing

10. The complaint relates to an image posted to the Surftag website:

<https://surftag.au/about/past-champions/>



Complaint

11. The complainant objects to the marketing as follows:
 - *Individuals in possession of Jim Beam products or donning attire branded with the Jim Beam logo, could reasonably be perceived as potentially underage.*
 - *Engaging in the simultaneous actions of holding alcoholic beverages while attired in swimwear at a beach setting is inadvisable, as it promotes an inherently perilous conjunction of surfing and alcohol consumption.*

The ABAC Code

12. A [new ABAC Responsible Alcohol Marketing Code](#) commenced on 1 August 2023. As the marketing communication is based on a photograph from 2014, it is reasonable to assume the image has been used on the website prior to 31 July 2023 and therefore the complaint will be assessed under the [previous Code](#). References in this determination are therefore to Code standards as contained in the previous Code.

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
 - (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 coordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company Response

14. The Company responded to the complaint by email on 31 August 2023. The principal comments made by the Company were:
- Beam Suntory takes its adherence to the ABAC code seriously.
 - With regards to complaint **140-23**, we can confirm the contents of the website (SURFTAG) are not under the control, or ownership of Beam Suntory or the Jim Beam brand. As such, we are unable to answer your questions regarding source and pre-vetting.
 - We have utilised the contact details on the website to request the removal of any content with reference to the Jim Beam brand.
 - At the date of this response, we are yet to receive a reply.

The Panel's View

15. This determination arises from a complaint in relation to an image on the SURFTAG website showing the 2014 SURFTAG women's champions. The image shows five women, each wearing rashies with the Jim Beam logo, one of whom is holding an unopened carton of Jim Beam. They are holding an oversized "winners cheque" prop with Jim Beam branding, and standing alongside a collapsible shelter also with Jim Beam branding.
16. The complainant is concerned that the image is an alcohol marketing communication that shows people under the age of 18, and also shows the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as swimming.
17. While each of these concerns are of a nature that fall within the standards contained in the ABAC, the threshold question is whether the webpage image is an 'alcohol beverage marketing communication' over which the ABAC Scheme has

jurisdiction. If a post is a marketing communication for ABAC purposes, then the Panel can make a substantive decision on the consistency of the content of the post with the applicable ABAC standard. If the post does not fall within the ambit of the ABAC Scheme, then the Panel has no authority to decide if the image meets the ABAC standard or not.

18. On any given day there will be many thousands of references to alcohol and alcohol brands on social media platforms from private individuals and mentions or images of alcohol in the media including websites. Not every reference to alcohol is 'alcohol marketing', and even items that are promotional in nature do not necessarily fall within the scope of the ABAC Scheme.
19. The ABAC Scheme applies to 'marketing communications in Australia generated by or within the reasonable control of a marketer' i.e., an Australian producer, distributor, or retailer of alcohol beverages. This means to fall within the ambit of the Scheme an alcohol marketing communication must be within the reasonable control of a producer, distributor or retailer of alcohol beverages.
20. It is a reasonable assumption that in 2014 there must have been a sponsorship or some other relationship between the Company and Surftag that resulted in Jim Beam branding appearing on the rashies, shelter and the oversized cheque. The Company is no longer a sponsor of Surftag, and while the Surftag website provides the list of current sponsors, there is no information on past sponsors.
21. In response to the complaint, the Company has advised that the contents of the website (SURFTAG) are not under the control, or ownership of Beam Suntory or the Jim Beam brand. Notwithstanding this, the Company has contacted Surftag to request the removal of any content with reference to the Jim Beam brand. As at the date of this determination however, the image remains on the webpage.
22. It is likely that in 2014, and in any other year when it may have provided support to the Surftag competition, the Company would have had rights as to how Surftag used its brand name and logo in public communications. That said, in 2023 it seems the Company has no relationship with Surftag and there is no basis to conclude that the Company has 'reasonable control' over the website or the choice that Surftag has made to use the photograph in showing a past winning team.
23. As the ABAC obligations apply to alcohol companies, not private organisations such as surfing competition organisers, there is no jurisdiction for the Panel to make a ruling on the substance of the complaint.
24. The complaint is dismissed.