



ABAC Adjudication Panel Determination No 149/23

Product: Jim Beam
Company: Beam Suntory
Media: Outdoor
Date of decision: 16 October 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 13 September 2023 in relation to outdoor marketing for Jim Beam by Beam Suntory (“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 complaint was received on 13 September 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

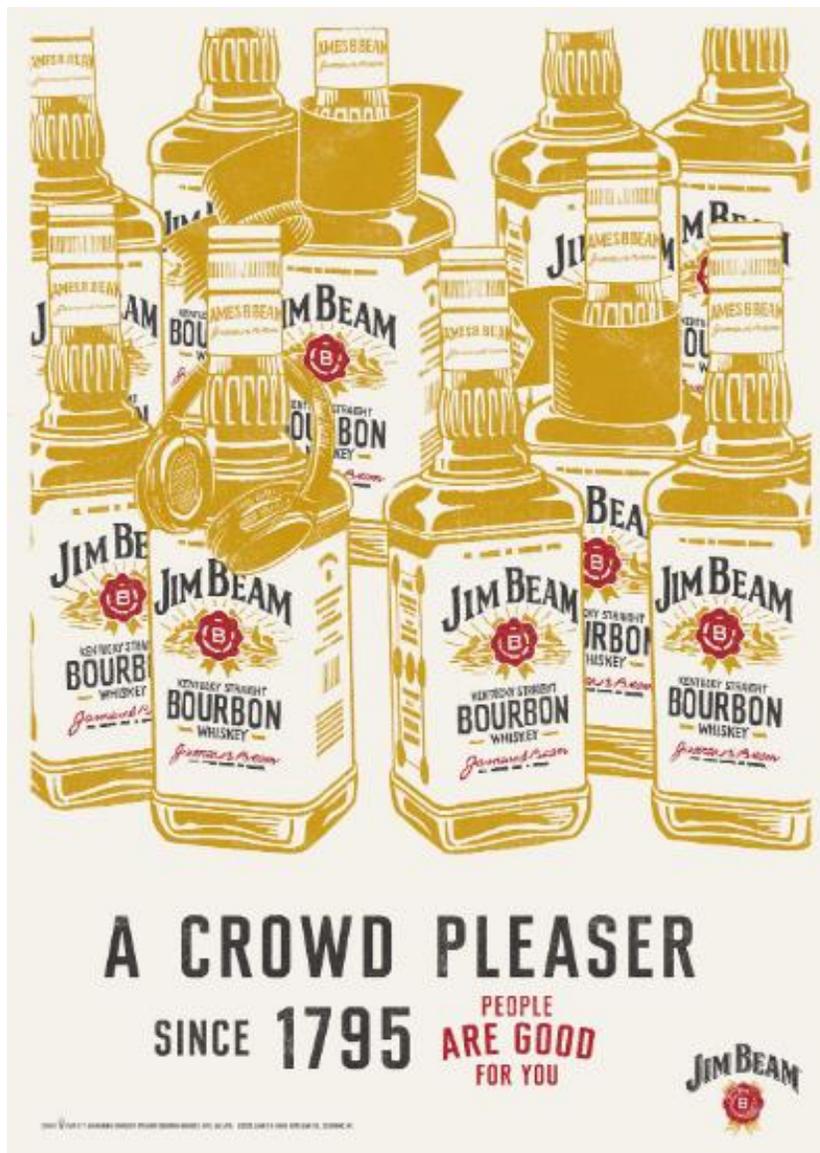
advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

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 obtained for the content of the marketing (Approval No 6051).

The Marketing

10. The complaint relates to the content of the following outdoor advertisement.



Complaint

11. The complainant objects to the marketing as follows:
 - It's a large transit poster, featuring a depiction of 10 massive bourbon bottles crowded into, and indeed bleeding off, the poster. The headline is "A Crowd Pleaser Since 1795".
 - The "crowd" is made up of bourbon bottles, with every individual making up said crowd is represented by an individual bourbon bottle. i.e. one person = one bottle.
 - While no specific volume (in litres) is represented on the bottles, the size of the headphones in the frontmost bottle, implies bottle size exceeding any reasonable amount of alcohol.
 - As a side note, these headphones further act to "personify" the bottle. Massive bottles don't, by nature, prance around with headphones around their neck.
 - The quantities thus implied in point 3, represent not just an irresponsible amount per person, but indeed a lethal dose.
 - All in all, the overwhelming takeaway is that binge drinking is not just a good idea but an essential element to a good time.
 - The tagline "people are good for you" might seem noble at first, but given there are no depictions of actual people, it rings hollow. And given the personification of the "crowd" made of bottles, this only seems to amplify the above mentioned personification factor.
 - The "drink smart" warning is so small as to be illegible to anyone less than a metre from the sign. It's certainly not visible to the intended audience of drivers going past.
 - And worst of all, it's creatively void. A weak idea executed with weak copy, weak art direction and weak design.

The ABAC Code

12. On 1 August 2023 an updated version of the ABAC Code came into effect. As it was placed on 11 September this marketing communication will be considered against the revised Code. References in this determination are therefore to Code standards as contained in the revised Code.
13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (a)(i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as;
- (A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day); or
- (B) Alcohol consumption while pregnant or breastfeeding;
- (c)(iii) suggest that the success of a social occasion depends on the presence or consumption of Alcohol;

The Company Response

14. The Company responded to the complaint by email on 28 September 2023. The principal comments made by the Company were:
- Beam Suntory takes its adherence to the code and responsible advertising seriously. We actively engage and consult ABAC with regards to campaign and advertising in line with the code requirements. Pre-vetting approval was obtained for the advertisement which was placed on 11 September 2023.
 - Through the ABAC pre vetting process communication to Beam Suntory was “While the visual does show multiple bottles of Jim Beam, there is no suggestion that the alcohol be consumed all at once and hence I believe it is within the Code.” This is in line with the intent of the broader campaign and within what we believe is a reasonable person’s interpretation of the images in the context of the brand and the broader campaign.
 - We have reviewed and responded to the complaint in line with the intent of the ABAC code and the interpretation of a reasonable person.

The Panel’s View

15. This complaint relates to an outdoor advertisement for Jim Beam. The complainant believes the ad is highly irresponsible as it promotes excessive alcohol consumption if not binge drinking and suggests alcohol consumption is essential to have a good time. If the complainant’s interpretation of the ad would be shared by most people, then the ad would breach two ABAC standards namely that an alcohol marketing communication must not:
- directly imply or encourage consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day) - Part 3 (a)(i); or

- suggest that the success of a social occasion depends on the presence or consumption of alcohol – Part 3 (c)(ii).
16. The Company contends the ad is consistent with the ABAC standards. It is argued that there is no suggestion in the ad that the alcohol is consumed at all. Further, it is submitted that the ad is in line with the intent of the broader campaign for the product and a reasonable person would not understand irresponsible alcohol use is being encouraged or suggested.
 17. In assessing the consistency of a marketing communication with an ABAC standard, the Panel is to adopt the standpoint of the probable understanding of the marketing item by a reasonable person. This means the benchmark is based on the attitudes, opinions, values and life experiences shared commonly in the community. If a marketing communication could be interpreted in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the marketing message.
 18. The ad shows a group of bottles of the product, one of which is draped with a set of headphones and two have a piece of tape or ribbon around the neck. The ad uses the taglines 'A Crowd Pleaser since 1795' and 'People are Good for You'. No people are included in the ad and it does not expressly show or reference any consumption of the product. In essence, the complainant is contending that:
 - the bottles are intended to reference a crowd of people as they are personified due to the inclusion of a set of headphones and due to the reference in the tagline to a crowd;
 - that each member of that representative crowd will then consume an entire bottle of the product; and
 - alcohol consumption is essential to having a good time.
 19. While no doubt the complainant genuinely believes the messaging in the ad is irresponsible, this interpretation does require a series of extrapolations that probably would not be made by most people in the community. The ad shows bottles of the product with the tagline 'A crowd pleaser since 1795'. Most probably, this would be understood as saying the product is a popular choice for 'crowds' which can be taken to be a social event such as a party where people gather and alcohol consumption commonly occurs. Beyond this however, the ad is not imparting any message about a pattern of alcohol consumption.
 20. No alcohol consumption is depicted. The bottles are unopened. There is no basis to reasonably imply that a person is being encouraged to consume an entire bottle or drink the product quickly or consume more than the levels contained in the Alcohol Guidelines. There is nothing in the ad that goes to the rate and amount of alcohol consumption.

21. The second contention that the product is essential to having a good time raises a new provision in the revised ABAC Code. The standard provides that an alcohol marketing communication must not suggest that the success of a social occasion depends on the presence or consumption of alcohol.
22. The key word in this standard is 'depends'. It is permitted to place alcohol at a social occasion or suggest that a product is a good addition to a social occasion, provided it is not suggested that the success of the social occasion depends on the presence or consumption of alcohol.
23. The Panel does not believe that a reasonable person would interpret the ad as suggesting that the success of a social occasion would depend on the presence or consumption of the product. The ad directly implies that the product is pleasing and could be reasonably interpreted as also implying it would be a popular choice at an event. However it is unlikely that a majority in the community would share the complainant's contention that the ad is suggesting the presence of the product is essential to having a good time or an event being successful.
24. For completeness, the complainant raised a point about the size of the 'drink smart' message on the ad. There is no regulatory requirement that alcohol ads carry a responsibility message, let alone stipulations as to the relative size of the message.
25. The complaint is dismissed.