



## ABAC Adjudication Panel Determination No 150/23

**Product:** Jack Daniels  
**Company:** Brown-Forman Australia Pty Ltd  
**Media:** TV – Free to Air  
**Date of decision:** 23 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 14 September 2023 in relation to a television advertisement for Jack Daniels (“the product”) by Brown-Forman Australia Pty Ltd (“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 14 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 Number 5748).

### The Marketing

10. The complaint relates to a television advertisement, a summary of which is provided below:

<p>The ad opens with a microphone on a bar or table and we see a person come over and pick up the microphone and walk off and at the same time the camera pans out and we see a bottle of Jack Daniels Whisky on the table/bar.</p>	
<p>We then see a person looking uncomfortable as he is standing on a stage adjusting and testing the microphone and clearing his throat.</p>	
<p>The camera shows a member of the audience shaking his head.</p>	

We then see the man on the stage performing.



We also see shots of the crowd enjoying the performance.



There is no voiceover during the advertisement, only the sounds of the bar and then the karaoke performance. The penultimate shot shows the text message 'There are labels we're given and those we make ourselves'.

The final shot shows a full bottle of the product next to a glass containing some product and the tagline 'Jack Daniels's Make it Count'



## Complaint

11. The complainant objects to the marketing as it shows a guy who cannot sing karaoke, shows Jack Daniels whisky and then the guy having the courage to sing, suggesting drinking alcohol gives you courage and alcoholism.

## 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;
  - (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;
  - (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 Response

13. The Company responded to the complaint by letter emailed on 29 September 2023. Its primary comments were:
- Brown-Forman Australia takes very seriously our responsibility to market our products in accordance with all applicable laws, the ABAC Code, and above all, responsibly, to Australian consumers. Therefore, it is always a matter of concern to receive a complaint contending that we are falling below the high standards we set for ourselves in this regard.
  - The advertisement in question is part of the Jack Daniel's marketing campaign – "Make It Count" originally launched in 2020 and with new creative assets that were launched this year. The "Make It Count" campaign consists of a series of multiple advertisements. This particular advertisement was submitted to the AAPS, and we received final approval on 14 April 2023 (Approval No. 5748).
  - This advertisement is among the series of "Make it Count: campaign of which the unifying theme or strand is the depiction of people in different scenarios making the most of every moment. This advertisement shows a professionally dressed man in a bar picking up a microphone, getting on stage and singing. The scene starts with a man grabbing a microphone off the bar ledge next to a bottle of Jack Daniel's. There is no glassware or ice bucket near the bottle of Jack Daniel's. More fundamentally, there is no visible or suggested consumption of our product by the man. As he grabs the microphone and goes on stage, he starts singing. He and the bar attendees appear to be enjoying themselves as everyone starts to groove along.
  - We do not believe that this marketing shows or encourages excessive or rapid consumption of an alcoholic beverage because at no point does the TV audience see any of the characters drinking or holding a glass of Jack Daniel's or any other alcoholic beverage. On the contrary, TV watchers only see a man performing on stage in front of an audience that starts nodding and dancing along. Even if this singing scene takes place in a bar, where there are drinks on the tables, nobody is seen consuming alcohol or holding an alcoholic beverage. Nowhere in the scene does it show or suggest that the man had been consuming any alcohol, let alone any evidence of excessive or irresponsible consumption of alcohol.
  - This scene appears to be shot in the evening given the attire of the bar attendees when people are off work and entitled to enjoy time off. The man is wearing a suit and some of the other attendees are wearing cocktail

dresses. Bars tend to be fun or easy-going environments where people gather to socialise. This particular bar is comparable to a classic karaoke bar with a stage where people can perform to music.

- When the man first gets on stage, he seems a bit nervous, but as the music continues, he starts singing, and dancing. He is never shown drinking or holding an alcoholic beverage. It is clear that he becomes more comfortable “performing” as the bar attendees support and enjoy his performance. They embrace his enthusiasm and start dancing along. Again, the attendees are not shown consuming an alcoholic beverage. The entire singing scene takes place in a bar where it is expected that the mood or environment is more light-hearted than, for example, an office. Given that the venue and characters are the same during the entire advertisement it is difficult to believe there is a significant change in mood or environment or personal success simply because a man takes the stage. It is common for people to perform on stages or dance at bars when there is music. Therefore, we do not believe that the marketing breaches Part 3(c)(i) or (ii) of the Code.
- We believe that our commercial is fully compliant with the ABAC Code and firmly disagree that any aspect is violative of the Code or our overriding commitment to promoting responsible consumption of beverage alcohol. Our alcohol marketing communication was pre-vetted and approved by ABAC. Brown-Forman is and remains committed to maintaining the highest standards in its marketing activities and we ensure our communications show responsible and moderate portrayal of alcohol beverages.

### **The Panel’s View**

14. This determination has arisen from a complaint about a television advertisement for Jack Daniels. The advertisement creates a scenario of a man performing karaoke in a bar. The man begins nervously but quickly hits his stride and his performance is well received by the staff and patrons of the bar. The opening and closing shots of the ad show a bottle of Jack Daniels.
15. The complainant is concerned that the advertisement suggests alcohol provides courage and encourages alcoholism.
16. These concerns raise the following Code standards requiring that an alcohol marketing communication must not:
  - 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 – Part 3 (a)(i);

- 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);
  - 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 – Part 3 (c)(ii).
17. 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.
18. The basis of the complainant's concern is that the ad shows or at least suggests alcohol is used to give the man the courage to perform karaoke. The complainant also suggests the ad encourages alcoholism. Given that the ad does not show the main character or anyone else actually drinking, the interpretation of the ad turns on what reasonable implications can be drawn from what the ad does depict.
19. On the ad encouraging alcoholism, possibly the complainant has made a series of extrapolations to reach this interpretation such as:
- the man needs alcohol to overcome his nerves to perform karaoke; and
  - if the man needs alcohol on this occasion, then the ad is saying it's ok to always use alcohol to deal with every stressful life situation; and
  - hence the ad is endorsing alcohol use up to the point of a person becoming alcohol dependent.
20. The Panel does not believe a reasonable person would understand the ad in this way. The ad creates a scenario of the karaoke experience in the bar. There are no prompts given about alcohol use in life and nothing that can be fairly taken as endorsing or encouraging alcohol use as a life prop to overcome stress.
21. The more substantive concern is whether the ad is showing alcohol as a cause of a significant change in mood or as a contributor to achieving social success. The ad does show a journey of the main character. He starts nervous and apprehensive as he first approaches the microphone as a member of the



crowd gives him a sceptical look. But the main character immediately overcomes his nerves, gives a spirited performance and wins over the crowd.

22. The issue is what role does the alcohol product play in this transformation from apprehension to seizing the moment. It is permitted to place an alcohol product with confident and successful people. But is not permitted to portray alcohol use as a cause or contributor to a person being confident or successful.
23. The Company contends the ad is consistent with the ABAC standards. It is submitted:
  - the main character who performs karaoke is never shown drinking or holding an alcoholic beverage;
  - it is clear that he becomes more comfortable 'performing' as the bar attendees support and enjoy his performance as they embrace his enthusiasm and start dancing along;
  - the attendees are not shown consuming an alcoholic beverage;
  - the entire singing scene takes place in a bar where it is expected that the mood or environment is more light-hearted than, for example, an office; and
  - given that the venue and characters are the same during the entire advertisement it is difficult to believe there is a significant change in mood or environment or personal success simply because a man takes the stage - it is common for people to perform on stages or dance at bars when there is music.
24. The Panel believes the most probable understanding of the ad is that the product is being associated with the main character seizing the moment but that the use of the product is not a cause of the success of the man. In reaching this conclusion the Panel noted:
  - while the product is placed at the scene, it is not depicted as being consumed;
  - it cannot be directly implied that the main character has been drinking as no cues of alcohol use are shown such as glasses or other patrons of the bar drinking;
  - it is not usual for a person to begin a public performance like a speech or a karaoke song hesitant and then become more confident;

- while it is also not unusual to associate alcohol use (Dutch courage) with such a scenario, as noted no alcohol consumption by the main character is shown or reasonably implied; and
- taken as a whole the depiction of the product within the ad would be probably understood as positioning the product and not as suggesting the product caused the success of the main character or as changing the mood.

25. The complaint is dismissed.