



ABAC Adjudication Panel Determination No 205/23

Product: Jim Beam
Company: Beam Suntory
Media: Outdoor Billboard
Date of decision: 8 January 2024
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 21 December 2023 in relation to the content of billboard advertising for Jim Beam (“the Product”) 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 21 December 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

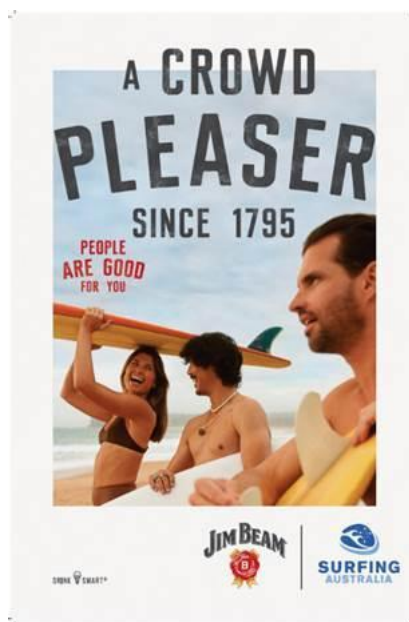
materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

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 marketing (Approval Number 7796).

The Marketing

10. The complaint relates to the content of a billboard advertising Jim Beam:



Complaint

11. The complainant objects to the marketing as follows:
 - *Two men and a woman are carrying surfboards and dressed in swimwear on a beach heading towards the water, suggesting they are about to go for a surf. Their hair and bodies are dry, and they are facing the water suggesting this is not a post-surf photo.*
 - *The text reads "A crowd pleaser since 1795" and "People are good for you". The logos most prominently on the ad are Jim Beam and Surfing Australia. The DrinkSmart logo is also present.*

- *The image along with the Jim Beam and Surfing Australia branding suggests combining drinking Jim Beam with surfing which we view to be an extremely dangerous combination.*
- *This ad is promoting drinking while surfing clearly a dangerous combination and a breach of section 3(d) of the ABAC code.*

The ABAC Code

12. Part 3 of the ABAC Code provides that:

- (d) An Alcohol Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of Alcohol 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

13. The Company responded to the complaint by email on 2 January 2024. The principal comments made by the Company were:

- Beam Suntory takes its adherence to the ABAC and responsible marketing code seriously. We are active members of the ABAC, utilising the pre-vetting service and view of the code to ensure the execution of marketing and advertising materials in line with the spirit of the code and through the eyes of a reasonable person.
- The advertising material received pre-vetting approval under application number 06349-2023.
- The advertising material referenced featured three adults on a beach, with surf boards. The primary branding referenced are two logos; Jim Beam (the advertiser) and Surfing Australia. There is no product featured and the persons featured are not in the water. The primary intention behind this campaign is to highlight the partnership between Jim Beam and Surfing Australia which has recently been announced.
- There is no suggestion in the ad that the alcohol is consumed, further there is no alcohol product featured, we believe that a reasonable person would not understand irresponsible alcohol use is being encouraged or suggested.
- Beam Suntory also has its own responsible marketing code which all marketing materials must adhere. This includes but is not limited to ensuring “content does not feature underage drinking, excessive drinking or other irresponsible consumption”.

- Beam Suntory is committed to the highest standards of responsible marketing practices across product, consumer marketing and communications through our own responsible marketing code, the principles of drink smart® in addition to local advertising regulations and the ABAC code. Responsible marketing of our products is at the core of our commercial purpose, and our commitment to conducting our business the right way. We believe this advertisement is in line with these codes, as viewed by a reasonable person.

The Panel's View

Introduction

14. This determination concerns a billboard advertisement for Jim Beam, promoting its recently announced partnership with Surfing Australia. The advertisement shows three people standing near the ocean, wearing swimwear and holding surfboards. At the top of the image are the words "A crowd pleaser since 1795", and in smaller font "People are good for you". Below the image are the Drink Smart, Jim Beam and Surfing Australia logos.
15. The complainant is concerned that the ad is promoting drinking while surfing which is a dangerous combination.
16. This concern raises Part 3 (d) of the Code, which requires that an Alcohol Marketing Communication must not show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as swimming.
17. In response to the complaint, the Company argued that:
 - there is no product featured;
 - the people are not in the water;
 - there is no suggestion in the ad that the alcohol is consumed; and
 - we believe that a reasonable person would not understand irresponsible alcohol use is being encouraged or suggested.
18. The issue to be decided by the Panel is how the ad would be understood by a reasonable person. The notion of the 'reasonable person' is taken from the legal system and means that the life experiences, values, and opinions found in a majority of the community is the benchmark. If the message in an ad could be understood in several ways, then it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.

19. The Panel has made a number of decisions which consider the Part 3 (d) standard in relation to various scenes and depictions of alcohol with water or water-based activities in some way. Clearly each case has been decided on its own merits, but some general guidance can be drawn from these past decisions, namely:

- the standard requires that alcohol consumption be shown, either directly or by necessary implication, and simply showing an alcohol product near or even in water will not be a breach if alcohol consumption cannot be reasonably taken to have occurred or that it will occur in the immediate future;
- if no alcohol consumption is shown or cannot be 'directly implied' then the standard will not be breached. Simply mentioning a product's name will not generally be sufficient of itself to directly imply that consumption has or will occur;
- the standard permits the association of alcohol with water-based activities. It is the showing of consumption (including by direct implication) that is not permitted by the standard;
- clearly framing that alcohol use occurs at the conclusion of the day, when activities requiring a high degree of alertness or physical coordination have been completed, may assist with demonstrating consistency with the Code;
- it is not a breach of the standard to show the consumption of alcohol after an inherently unsafe activity has concluded;
- placing a person with a bottle or can of alcohol actually in the sea or in a swimming pool will be a strong indicator that consumption may well occur even if the alcohol container is shown as unopened; and
- a marketing communication must be assessed as a whole, so a picture of an alcohol product in or near water without any person present could still be in breach of the standard if accompanying text would be understood as saying the product can be consumed while engaging in swimming or related activity.

20. While the marketing is linking the product with Surfing Australia, the Panel does not believe that the Part 3 (d) standard has been breached as:

- no product is depicted, only the Jim Beam logo beneath the image;
- alcohol consumption is not shown, nor can it be or directly implied i.e. there is no product in the scene;

- the people depicted do not appear affected by alcohol; and
- a reasonable person would likely understand the product is being associated with the sport of surfing but not that the ad is showing that actual consumption will take place before or during the pursuit of surfing.

21. The complaint is dismissed.