



ABAC Adjudication Panel Determination No 24/24

Product: James Squire
Company: Lion - Beer Spirits & Wine Pty Ltd
Media: Television
Date of decision: 19 February 2024
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 5 February 2024 in relation to a television advertisement for James Squire (“the product”), by Lion - Beer Spirits & Wine 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 5 February 2024.
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 Advice






9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was obtained for the content of the marketing (Approval Number 7969).

The Marketing

10. The complaint relates to television advertising for James Squire, which can be viewed on YouTube at the following link:

<https://www.youtube.com/watch?v=bl8InWnWhgl>

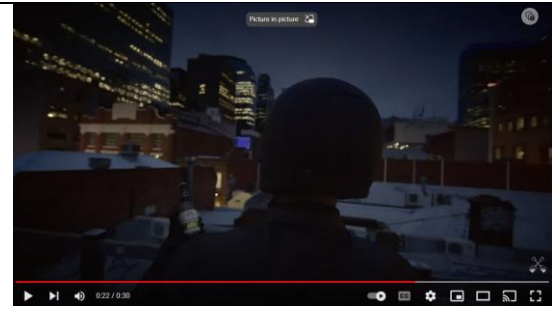
<p>The ad commences in what appears to be a bar, where a person says:</p> <p><i>“Dave says to get him a James Squire”</i></p>	 A YouTube video player showing a man with long hair and a beard in a bar setting, looking upwards and to the right. The video player includes standard controls like play, volume, and a progress bar at 0:00 / 0:30.
<p>A person working behind the bar picks up a bottle of James Squire and slides it to another person while saying:</p> <p><i>“Pass it to Dave.”</i></p> <p>The beer is then thrown to another person in the bar, and we again hear someone say:</p> <p><i>“Pass it to Dave”</i></p>	 A YouTube video player showing a woman with long dark hair behind a bar, smiling and looking towards the camera. The video player includes standard controls like play, volume, and a progress bar at 0:04 / 0:30.

	 <p>A woman with blonde hair is holding a bottle of Lashes beer. The bottle is condensation-covered and has a white label with 'LASHES' in green and black text. The background is a dimly lit bar or restaurant.</p>
<p>A person tucks the bottle into their bag, and we see the bottle's point of view as the person leaves the bar. The person passes the bottle to another person travelling in the opposite direction on an escalator and we again hear someone saying:</p> <p style="text-align: center;"><i>"Pass it to Dave"</i></p>	 <p>The camera is positioned inside a bottle, looking out through the opening. The view shows a person's legs and feet as they walk on an escalator. The background is dark with some lights.</p>
	 <p>A person is walking down an escalator. The camera is positioned above them, looking down. The escalator has a metal railing and a dark background.</p>
<p>We see the bottle being passed from inside an elevator.</p>	 <p>A person wearing a bright pink suit is walking in a hallway or elevator. They are holding a bottle. The background is a modern, brightly lit interior.</p>
<p>The bottle is then passed through a hatch into a kitchen area of a restaurant, and a person is seen opening the back door and placing the bottle on the back of a motor scooter. The motor scooter drives off, with the bottle balancing on the back.</p>	 <p>A bottle of Lashes beer is balanced on the back of a motor scooter. The scooter is parked on a dark surface, and the background is dark with some lights.</p>

We then see a man removing his coat from his shoulder and throwing it aside, picking up a bottle opener, and walking out onto the balcony of his high-rise apartment.



A person wearing a helmet is shown on a rooftop.



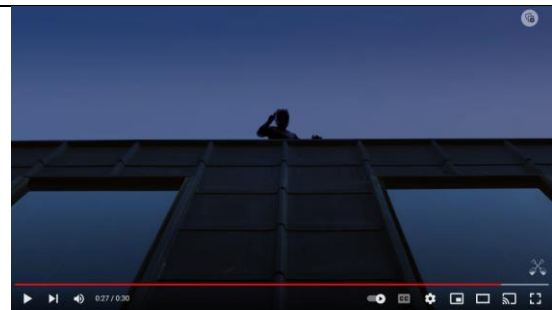
We then see the man leaning against his balcony balustrade as a bottle falls into his hand.



The man does not watch the bottle as it falls, but after it lands in his hand, he turns to look at it and then looks upwards.



The person on the rooftop looks over the edge of the building and waves.



The man then takes a drink of James Squire, while still on his balcony.



Complaint

11. The complainant is concerned that:
- At the end of the advert a bottle of beer is dropped from the roof of an apartment block to a person standing on a balcony below. The person catches the bottle, but what would happen if he didn't?
 - If someone copies this action and misses, a person walking on the street below may be hit on their head with the bottle or the bottle may smash and scatter broken glass on the street.
 - It is such a dangerous concept which should not be part of an advertisement.

The ABAC Code

12. Part 3 of the Code provides that a marketing communication must not:
- (a)(ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;
 - (d) 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 letter emailed on 14 February 2024. The principal comments made by the Company were:
- Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of the complainant. Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously.
 - For the reasons set out below, and with respect to the complainant, we submit that there has been no breach of Part 3(a)(ii) and (d) of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel.

AAPS Approval

- The advertisement received approval through the Alcohol Advertising Pre-Vetting Service (AAPS) - Application No. 857-2023 and Approval No. 7969.

Responsible portrayal of Alcohol

- For the following reasons, we do not consider that the Advertisement breaches Part 3(a)(ii) of the ABAC Code:
 - on the whole, the premise of a bottle being delivered in this manner is surrealistic;
 - there are numerous and deliberate cues throughout the Advertisement that indicate the product's journey doesn't reflect reality – these include the way the bottle spins across the counter (0:04 – 0:06), the arc of the bottle when it's initially passed into the crowd (0:06), the bottle defying well-known physics principles by remaining on the back of the motor scooter (0:15 – 0:17) and the bottle being delivered from above and caught without the recipient looking (0:23 – 0:25). Notably unreal cues appear well before the scooter and balcony scenes, and act to contextualise these sequences; and
 - we respectfully submit that the reasonable consumer would recognise these surreal cues and understand that the Advertisement isn't showing or encouraging irresponsible or offensive behaviour relating to the consumption or presence of alcohol.

Alcohol and Safety

- For the following reasons, we do not consider that the Advertisement breaches Part 3(d) of the ABAC Code:
 - we repeat our response above;
 - the bottle remains closed throughout the Advertisement until the final scene when its journey is complete (0:27 – 0:28) – this is clearly demonstrated by the bottle’s cap being intact each time it is shown and the final recipient grabbing a bottle opener during his walk to the balcony;
 - the individual who passes down the beer has their helmet on and visor closed throughout the whole time they appear in the Advertisement; and
 - we respectfully submit that these elements would cause the reasonable consumer to understand that no consumption has occurred before or during the balcony sequence.
- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure its compliance.

The Panel’s View

14. This determination has arisen from a complaint about a television advertisement for James Squire beer. The ad opens in a bar where a man announces ‘Dave says to get him a James Squire’. The ad then tracks the journey of a bottle of James Squire, as it travels from the bar to Dave’s apartment via being passed to several people. The bottle is seen in a person’s bag, being passed between people on an escalator and in a lift and restaurant. The final two shots show the bottle balancing on the back of a moving motor scooter and finally being dropped from a rooftop into Dave’s hand as he stands on a balcony several floors below.
15. It is the final scene of the bottle dropping from above to Dave on the balcony that particularly has triggered the complainant’s concern. It is contended that the advertisement shows dangerous and irresponsible behaviour, with the complainant suggesting people on the street below could be injured if the bottle was not caught.
16. The concerns articulated by the complainant enliven the following Code standards that an alcohol marketing communication must not:

- show, encourage, or treat as amusing, rapid alcohol consumption, misuse or abuse of alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of alcohol – Part 3 (a)(ii); and
 - show 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 – Part 3(d).
17. Assessment of the consistency of a marketing communication with an ABAC standard is from the standpoint of the probable understanding of the marketing by a reasonable person. A 'reasonable person' means that the life experiences, values, and opinions held by most of the community is the benchmark. A person who interprets a marketing item in another way is not 'unreasonable' but possibly their understanding would not be shared by most people.
18. It is self-evident that it is dangerous and irresponsible to drop a glass bottle from height off a building in the hope that it might be safely caught by someone standing on a balcony below. It is also self-evident that the ad is showing a fanciful and unrealistic series of events as the bottle takes its journey from the bar to the apartment where it is dropped into the hands of Dave. The question to be determined is how a reasonable person probably understands the ad given these two self-evident propositions.
19. The Company argues that the marketing does not breach the ABAC standards submitting that:
- on the whole, the premise of a bottle being delivered in the manner portrayed is surrealistic and there are numerous and deliberate cues throughout the advertisement to indicate that the product's journey doesn't reflect reality; and
 - the reasonable consumer would recognise these surreal cues and understand that the advertisement isn't showing or encouraging irresponsible or offensive behaviour relating to the consumption or presence of alcohol.
20. Clearly a reasonable person knows the difference between reality and fantasy in popular culture depictions be it in entertainment programs like a movie and in advertising. For instance, it is understood in a Marvel superhero movie that being bitten by a radioactive spider doesn't actually make a person Spiderman. Equally a person watching the ad knows that people aren't going to pass the beer along in the fanciful sequence of its journey and they know a bottle can't rest unsecured on the seat of a motor bike during a trip along a road.
21. Often advertising adopts unrealistic scenarios which a reasonable viewer doesn't take at face value. In these cases, the critical issue is not so much what

the ad is literally depicting as to what is its underlying message about the acceptable use of alcohol. And is its underlying message consistent with the standards of responsible alcohol marketing contained in the ABAC.

22. For example, an ad might depict a fanciful romantic scene which doesn't reflect real life but the ad's implicit message is that the use of alcohol enhances the chance of being romantically or sexually successful. This is not because a viewer would take the actual scenario being depicted as serious, but because it draws on an assumed common community understanding that alcohol helps in achieving success or overcoming nerves or stress and this is an acceptable use of alcohol. To give this message about alcohol use breaches an ABAC standard.
23. In the current case the Panel does not believe a reasonable person would take the ad as actually encouraging irresponsible or dangerous behaviour. In reaching this conclusion the Panel noted:
 - the ad is self-evidently not showing a real life scenario;
 - there is no alcohol consumption by either the driver of the motor scooter or Dave prior to the scene of the bottle being dropped to Dave on the balcony and neither is affected by alcohol;
 - the underlying message of the ad would not be taken as endorsing dangerous behaviour; and
 - more likely the message of the ad would be taken to be that the product is the choice of cool successful people and it's worth a wait or a journey to obtain the product.
24. Accordingly, while the Panel fully understands the point the complainant has made, it does not believe a reasonable person would probably understand the ad as breaching the ABAC standard. The complaint is dismissed.