

ABAC

ABAC Complaints Panel
Determination No: 32/12, 35-7/12 & 44/12

Complaint by Ms Penny Reed, Mr Kevin Forshaw, Mr Dave Meijer, a confidential complainant and Mr Tim Sheeran
Product: Jim Beam
Advertiser: Beam Global Australia Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

1 May 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns television advertisements for Jim Beam by Beam Global Australia Pty Ltd (“the Advertiser”) and arises from complaints received on 4, 10, 11 and 18 April 2011.

The Quasi-Regulatory System

- 2 Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - d) The Outdoor Media Association Code of Ethics which includes provisions about Billboard advertising.
- 3 The complaints systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.
- 4 The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of

Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.

- 5 The complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

- 6 The complaints were received by the ABAC Panel on 4, 10, 11 and 18 April 2012.
- 7 The Panel endeavour 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 complaints have been determined within this timeframe.

Pre-vetting Clearance

- 8 The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. The advertiser obtained pre-vetting approval for the advertisements [11376].

The Advertisements

- 9 The complaints refer to a series of television advertisements referred to as 'The Call'.
- 10 The first advertisement opens on a cityscape at dusk. We see a man move in front of the camera and look off into the distance and make a tarzan call and hear it echo over the city. The scene changes to a dormer window and we see the shutters open and a woman standing in the window make monkey sounds. The camera view widens and we see that the dormer window is in a house in a residential street and a man walking his dog looks up at the woman in the window. The scene changes to an escalator and we see a man standing on an escalator come into view as he is making a la-la-la-la-la sound. The scene changes to a woman in a short dress and heels with an evening bag standing on a city street singing a high note. The scene changes to a man's shadow in a tunnel in a park as we hear howling sounds. We then see close up face shots in quick succession of each of the people featured making their sound which is repeated six times and gets faster each time. We then see a blank screen with the text "It's time" with a high pitched laugh in the background. The scene then changes to 5 cans of Jim Beam & Cola that pop open in quick succession and then pulse to a background beat with accompanying screaming sounds.
- 11 The second advertisement is a cut down version of the first advertisement which features the first scene and then the closing scenes with the text "It's time" and the 5 cans of Jim Beam & Cola.
- 12 The third advertisement opens on a city street and the camera moves to a man on a balcony overlooking the street who walks to the edge of the balcony and calls loudly in a high voice "yeah, yeah, yeah...". The scene changes to a man stepping up out of a taxi and yodeling as 2 women also get out of the taxi in a city street. The scene changes to a woman making a loud calling sound. We then see a football team on an oval under lights with a cityscape in the background as a man's face pops up in front of the camera and makes a howling sound. We then see close up face shots in quick succession of

each of the people featured making their sound which is repeated six times and gets faster each time. We then see a blank screen with the text "It's time" with a high pitched laugh in the background. The scene then changes to 5 cans of Jim Beam & Cola that pop open in quick succession and then pulse to a background beat with accompanying screaming sounds.

- 13 The fourth advertisement is a cut down version of the third advertisement which features the first scene and then the closing scenes with the text "It's time" and the 5 cans of Jim Beam & Cola.

The Complaints

- 14 The first complainant argues that the advertisement:
- a) is loud and offensive; and
 - b) its message is that you must be drunk to listen to that amount of noise and Jim Beam and Cola is the way to get that way.
- 15 The second complainant argues that the advertisements:
- a) glorify the anti-social behaviour of exceptionally drunk people who screech and holler;
 - b) people screaming like banshees is not really behaviour associated with the responsible drinking of alcohol; and
 - c) are extremely annoying and it is unfair for consumers to have to listen to 30 seconds of solid screaming.
- 16 The third complainant argues that the advertisement:
- a) is unsettling and annoying; and
 - b) might encourage young children to start screeching for drinks.
- 17 The fourth complainant argues that the advertisement is broadcast on Austar in the afternoon when children will be viewing.
- 18 The fifth complainant argues that the advertisement makes it really hard for someone who suffers from alcoholism. It is no different to a heroine user watching an ad with a junkie injecting. They are both drugs and wreck lives.

The Code

- 19 The ABAC provides at Part 1 that advertisements for alcohol beverages must:
- a) Present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage underage drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.

- b) Not have a strong or evident appeal to children or adolescents...

The Advertiser's Comments

20 The Advertiser responded to all five complaints and questions posed by the Panel by way of letter dated 23 April 2012. The principal points made by the Advertiser were as follows:

- a) The advertisement in question, 'The Call', depicts adults communicating to their friends to come together for an adult social occasion.
 - I. This advertisement shows no consumption of alcohol;
 - II. This advertisement shows adults communicating loudly with no influence (obvious or hidden) of alcohol at any time;
 - III. This advertisement shows everyday environments during the day and the night with no surrounding licensed premises;
 - IV. This advertisement shows adults over 25 years of age and are clearly depicted as adults;
 - V. This advertisement shows no situation that actively appeals to youth;
 - VI. This advertisement does not show or encourage any drinking; and in no manner does it encourage under-age drinking;
- b) Beam Australia appreciates the opportunity to comment to the complaint for the consideration of the Panel as part of this process. With the above statements in the description of the advertisement it is clear that this commercial abides with all parts of the ABAC code. However further supporting information is provided in response to each part of the code to ensure no ambiguity:
- c) The advertisement depicts adults over 25 communicating with others to join together for a social occasion. This commercial does not show any consumption of alcohol nor does their behaviour indicate any alcohol has been consumed at all. The adults are behaving in an overtly communicative manner, however the 'reasonable person' would not see that as a result of excessive consumption of alcoholic beverages but rather may be annoyed due to the unusual noise. We acknowledge that some individuals may take annoyance due to the unusual nature of the ad and the noise contained in it, but this cannot in itself be deemed to be offensive or anti-social.
- d) The adult loud calls are made by 25+ year adults with the adult intention of communicating to each other. Yelling may be argued to have some appeal to children, but no more so than it would to any other member of the community and this is incidental to the advertisement in question and has no correlation with the consumption of alcohol.
- e) In acknowledgement that there is a product shot at the conclusion to the advertisement and our media placement is very strict to ensure we are only targeting the adult male demographic. If children were to see this advertisement it would only be by watching programs designed for the 25+ age demographic under adult supervision.
- f) Media placement for the advertisement excludes free to air day time television as per the code requirements.

- g) Although Pay TV has no restrictions on when commercials can be shown, there is a clause with the ASTRA code of practice of PAY TV that acknowledges the unique relationship between a Licensee and its audience.
- h) As an advertiser of Alcoholic Beverages we always adhere to this code as part of our analysis of the intellectual and emotional maturity of the intended audiences of the programs when scheduling all advertisements.
- i) All programs were chosen predominantly targeting males 25+. The Network A&E on which the advertisement appeared, targets 22-54 year old males with all programs containing an 'M' or 'PG' rating. The show 'Big Shrimpin' is rated PG and has an overwhelmingly adult (18+) audience. This has been evident through the latest results where in the months of Feb-April 2012, 91.5% of the audience was within this bracket. (Source: OzTAM, National STV, 16/02/12 – 11/04/12, A&E (Big Shrimpin'), S-S 0600-2359, Total People, P18+, P0-17, Consolidated until 03/04/12)
- j) We have operated within the ASTRA codes of practice and have placed all advertising responsibly to minimise reach of under 18's but primarily because our target audience is adults 25+. If a child did view this advertisement it should only be whilst under adult supervision.
- k) The pre-vetting approval process enabled us to work closely with ABAC to give us the guidance to ensure the consistency of the advertisement aligns to the prescribed standards of good marketing practice and the ABAC code. Whilst approval through the pre-vetting process by ABAC does not guarantee preclusion from alternative determinations as a result of consumer complaint, it did ensure Beam conformed to the code "in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole". In terms of probable impact it is quite clear that the 'reasonable person' would not see adults communicating through vocal expression into the air as suggesting or promoting excessive consumption of alcohol; nor would the 'reasonable person' see that the process of yelling would specifically or overtly appeal to children as proposed in the complaint, nor does the advertisement feature any consumption of alcohol nor suggestions of consumption.
- l) Therefore this advertisement is clearly not in breach of sections (a)(i),(ii), (iii) & (b) of the ABAC Code and aligns with the existing approval ruling from the ABAC pre-vetting process. We are confident that Jim Beam is marketed appropriately and intend to continue responsibly marketing Jim Beam products to consumers above the legal drinking age.

The Panel's View

- 17 The Advertiser's "The Call" campaign has attracted a number of complaints which raise issues under the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to the questions as to whether the ads are "offensive" in a general sense. These elements of complaints will be decided by the ASB. The ABAC issues are dealt with in this determination.
- 18 In essence each of the complaints is suggesting that the ads are portraying offensive behaviour which is caused or influenced by the misuse of alcohol. Several complaints also express a concern children might be encouraged to behave badly or that children will view the ad because of the time it was broadcast on Pay TV.

- 19 The ABAC provides in section (a) that alcohol ads must present a mature, balanced and responsible approach to the consumption of alcohol. This standard will not be satisfied if the ad encourages excessive alcohol consumption, or promotes offensive behaviour. An ad will also breach the ABAC if it can be said to encourage under-age drinking or if it has a strong or evident appeal to children or adolescents.
- 20 The Advertiser contends that the ads are consistent with the ABAC standards. It argues that the ads do not show the consumption of alcohol, nor can the behaviour of the characters depicted in the ads be said to be influenced by alcohol use. In essence, the Advertiser contends that the ads theme is "The Call" of people to gather for a social occasion. Presumably any alcohol consumption might occur after people have responded to "The Call", but alcohol was not an influence in the actual "Call" (ie. The yelling and screaming) in the first place.
- 21 The Panel has considered section (a) of the Code in previous determinations. In Determination 12/08, the ad considered was a billboard which depicted a photo of a statue of 3 males lifting kilts and showing their bare backsides. A picture of an alcohol product bottle was also shown. The ad was showing a scene of Scottish warriors displaying defiance to the English in the historical conflict between the 2 nations. The issue before the Panel was whether the context was sufficiently established to overcome the implications that the ad was depicting offensive behaviour influenced by alcohol misuse. In that case the panel noted:
- The term "offensive behaviour" within section (a) (iii) needs to be understood in context and relates to behaviour related to or influenced by alcohol use and is not a general standard;
 - Section (a) refers to more than the actual consumption of alcohol and incorporates the wider concept of a "responsible approach to the consumption of alcohol";
 - In this instance the ad did not sufficiently establish the context and a reasonable person may well have believed that the ad was associating the offensive behaviour of "flashing" with the use of the product;
- 22 In Determination 65/08, 68/08, 72/08, 87/08 and 97/08 the ad considered was a television advertisement which featured a young woman sitting and drinking within a bar relating her actions in stalking a former boyfriend. The Panel found the ad was in breach of section (a) (iii) noting:
- The behaviour of stalking was criminal and offensive;
 - The demeanor and attitude of the woman may well have been influenced by alcohol given her placement within a bar and her consumption of alcohol.
- 23 In Determination 144/08 and 154/08, Section (a) (iii) was again considered, this time in relation to television commercial featuring a "woodsman" in a forest urinating in a highly exaggerated manner. The Panel dismissed the complaint. In doing so it was accepted that urination was both potentially offensive and related to alcohol use but the context of the ad clearly established that the character had not been consuming alcohol and the highly fanciful nature of what was depicted made it unlikely a reasonable viewer would take the man's actions as real or linked to alcohol use.
- 24 The take out point from these previous decisions is that each ad has to be examined on its own merits and that overall context is always critical in assessing the probable impact of an ad on a reasonable viewer.

- 25 The Panel recognises that depictions of a person screaming or yelling might in a particular circumstance indicate that the person had been drinking and was engaging in “offensive behaviour”. In this case however, the Panel does not believe the “Calls” are offensive within the sense of Section (a) (iii) of the Code.
- 26 Further, the ads establish that the “Calls” were not caused or influenced by alcohol consumption and hence the behaviour of the callers would not be taken by a reasonable person to be alcohol related. In this regard the Panel notes:
- None of the characters are shown as consuming alcohol and
 - The images of the cans of the product are introduced at the conclusion of the ad and when the “calling” by individuals has finished.
- 27 As a result, the Panel believes the ads do not breach Section (a) (iii).
- 28 It was also argued in 2 complaints that the ads could appeal to children. One complaint linked this to the ad appearing on Pay TV in the afternoon while children were watching. Another complaint argued that children might begin “screeching” for drinks.
- 29 The Panel does not believe the ads breach the ABAC Standards in this regard. Firstly, the ABAC does not prescribe the medium where alcohol ads can be broadcast and hence it is not a breach of the ABAC for an alcohol ad to appear on Pay TV at a particular time of day. Secondly, the complaint on “children screeching” is a more general concern about the ad and does not seem related to alcohol use as such. In other words, if the ad was selling milk using the same “calling” theme, then presumably the complainant would be equally concerned about the encouragement of children “screeching” for drinks. This concern is one for the ASB to assess.
- 30 Accordingly the complaints are dismissed.