

ABAC

**ABAC Complaints Panel
Determination No: 81/08 & 87/08**

**CONFIDENTIAL COMPLAINTS
Product: Jim Beam Bourbon Whisky
Advertiser: Jim Beam Brands Australia Pty Ltd**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

15 September 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Jim Beam Bourbon Whisky by Jim Beam Brands Australia (“the Advertiser”) and arises from two complaints by confidential complainants received 25 August 2008 and 26 August 2008.

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising.

3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.
4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of two confidential emails received by the ABAC Panel on 25 and 26 August 2008.
7. 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. This complaint has been determined within that 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. Pre-vetting approval was obtained for this advertisement (**UL33/07**).

The Advertisement

9. The complaints refer to a television advertisement. The advertisement begins with an attractive woman wearing a blue party dress walking toward a taxi with a house party in the background. As she enters the taxi, the driver asks "Good night love?". She replies "No, this party was just Uhrr... there was like a million beautiful girls and only like two guys, there was this huge screen showing the football and a whole pig on a spit, and then all the girls started wrestling each other in their bikinis". The taxi driver asks "Can ah anyone get in?". The scene is then replaced with an image of the Jim Beam logo and the words and simultaneous voiceover "The Party". The shot is then replaced with a picture of a bottle of Jim Beam Bourbon with a voiceover "Jim Beam" followed by the words and simultaneous voiceover "The Bourbon"

The Complaints

10. The first complainant argues that the advertisement:
 - (a) is using sex or men's sexual fantasies to sell drugs (Jim Beam); and

- (b) it is stupid and socially irresponsible in that Australian's do not need encouragement to consume alcohol.
11. The second complainant argues that the advertisement:
- (a) is a pathetic excuse to advertise some sick creative director's sexual fantasies; and
 - (b) with so many issues surrounding alcohol and its abuse of, you'd think we could raise the bar in terms of responsible drinking messages, instead each of these women are seen as unintelligent, stupid highly sexualized objects, really scraping the bottom of the barrel as far as Australian standards are concerned.

The Code

12. The ABAC provides that advertisements for alcohol beverages must-
- (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:-
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

Arguments in Favour of the Complaint

13. In favour of the complaint it can be argued that the advertisement breaches section (a)(iii) by the encouragement of excessive consumption through the use of a highly sexualized scenario and an appeal to male sexual fantasies.

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 5 September 2008. The principal point made by the advertiser was that a verbal reference to women in bikinis is not a highly-sexualised scenario. This verbal reference during a conversation set in the back of a taxi is also quite removed from any setting linked to the consumption of alcohol. They were of the view that a 'the reasonable person' would not watch the commercial and take from it a sexual fantasy used to encourage excessive consumption of alcohol?. In their opinion 'the reasonable person' would struggle to find any dots of this kind to connect up in this commercial.

The Panel's View

15. As explained in Paragraph 2, alcohol advertising is subject to a number of codes of practice and two distinct complaint systems operated by this Panel in the case of the ABAC, and the ASB in the case of the AANA Code of Ethics. This particular ad has attracted complaints which have raised issues under both Codes and both the ASB, and now the ABAC Adjudication Panel, have been called upon to make determinations about the ad.

16. In recent times it has become more common for the ASB and the ABAC Adjudication Panel to consider complaints about the same advertisement. For this reason, it is important to understand that each body is asked to apply quite different codes and to consider different issues. While both adjudication processes are conducted against the backdrop of an assessment of “community standards”, it is quite possible that the different criteria to be applied in the two respective codes can lead to different conclusions as to whether an ad is in breach of one or other of the two applicable codes.
17. In this case, the ABAC Panel is not called upon to decide if the ad discriminates on the basis of gender. Those matters are to be considered by the ASB. Rather, this Panel has to determine whether the ad complies with the standards set down in Section (a) and (a)(iii) of the ABAC, namely – does the ad present a mature, balanced and responsible approach to the consumption of alcohol and not promote excessive consumption.
18. In assessing if an ad is consistent with the standards in the ABAC, the Preamble to the Code provides that the conformity of an advertisement is to be assessed in the terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed, taking its content as a whole.
19. The issue is whether the ad breaches section (a)(iii) by the encouragement of excessive consumption through the use of a highly sexualized scenario and an appeal to male sexual fantasies. The advertiser argues that a verbal reference to women in bikinis is not a highly-sexualised scenario and this verbal reference during a conversation set in the back of a taxi is also quite removed from any setting linked to the consumption of alcohol.
20. The Panel notes the woman in the ad is describing a clichéd male fantasy of a party with a million beautiful girls to two guys, a whole pig on a spit, football on a huge screen and women wrestling each other in bikinis. Although it could be inferred that alcohol consumption would have occurred at the party, there is no specific reference to or depiction of alcohol in the ad other than the promotion of the product separate to the story. The Panel is of the view that there is insufficient link in this ad between the scenario described in the ad and drinking to excess.
21. Accordingly the complaint is dismissed.