



ABAC Adjudication Panel Determination No. 109/16

Product: Jim Beam
Company: Beam Suntory
Media: Television
Complainant: Bradley Marks
Date of decision: 20 October 2016
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Jim Beam by Beam Suntory (“the Company”) and arises from a complaint received 13 September 2016.
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 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”) – 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 – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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 13 September 2016.
8. 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 complaint has been determined within this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features 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 communication (15013).

The Marketing Communication

10. The television advertisement opens in an outdoor entertaining space and features Mila Kunis standing behind a table that has a large block of ice and also a Jim Beam badged bucket of ice, bottle of water and a Jim Beam badged chopping board with whole and cut oranges. A couple are seen talking in the background and a man is seen moving around in a kitchen that features oranges in a Jim Beam badged box and several glasses.
11. Ms Kunis says "Bourbon has been refreshed by the citrus highball". She reaches for a measure of Jim Beam and pours it into a hole in the block of ice along with soda and a squeeze of citrus and continues "pour smooth bourbon from Jim Beam in, then soda and a touch of citrus, don't forget the ice."
12. She taps the ice block and it breaks up showing a can of Jim Beam Citrus Highball in the centre of the crushed ice. She concludes by saying "Jim Beam Citrus Highball".
13. We see a close up of a can and glass of Jim Beam Citrus Highball next to the text "The Refreshing Side of Jim Beam", the Jim Beam logo and the text "Make History Since 1795". Ms Kunis' voice is heard saying "A refreshing new mix from Jim Beam".
14. In the final scene we see Ms Kunis sipping from the can and then smiling at the camera.

The Complaint

15. The complainant is concerned that the advertisement clearly depicts a change in mood as Ms Kunis drinks from the can at the end.

The ABAC Code

16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;

The Company's Response

17. The Company responded to the complaint by letter dated 20 September 2016. The principal points made by the Company were:

- The complaint notes, ‘The ad clearly depicts a change in mood as she drinks from the can in the end.’ Beam Suntory do not believe this to be the case. By way of rebuttal, Beam Suntory believe that the mood of the commercial remains consistent throughout. Beam Suntory supports this suggestion via the following:
 - The commercial begins with Mila Kunis in a social setting, a gathering that includes other guests and suggests a light-hearted, warm and fun social occasion.
 - Mila Kunis regularly engages the viewer in a warm and friendly manner throughout the commercial – in particular, when she playfully suggests, ‘This part’s optional’, before tapping the ice block (around 0:09 – 0:10 seconds).
- Thus, when Mila Kunis smiles after taking a small sip from the can, the mood does not change, but is a continuation of the consistent mood and tone throughout the commercial.

The Panel’s View

18. The complaint concerns a television commercial featuring the actress Mila Kunis. In the advertisement, Ms Kunis is depicted making a Jim Beam Citrus Highball drink, which converts into a can of the product situated in a block of ice.
19. The concern of the complainant relates specifically to the final scene of the advertisement. In this scene, Ms Kunis is shown in profile drinking a can of the product, then turning her face to the camera and breaking into a large smile. It is argued that this scene suggests that the consumption of the product has created or contributed to a significant change in Ms Kunis’ mood.
20. Section 3(c)(i) of the ABAC provides that a marketing communication must not suggest that the consumption of an alcohol beverage creates or contributes to a significant change in mood or environment.
21. In assessing if a Code standard has been breached, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person taking its contents as a whole.
22. The Panel does not believe the advertisement breaches the ABAC standard. If the final scene depicting the sipping of the drink, and Ms Kunis smiling was to be viewed in isolation of the content of the ad as a whole, then the argument of the complainant is understandable. However, the ad must be viewed as a whole and a reasonable viewer would interpret the ad, not only from its final one or two seconds but it’s entire length. Taken as a whole, the ad establishes that the mood of the advertisement including Ms Kunis herself is lighthearted and open, and the depiction of her smiling after drinking the product is consistent with the mood demonstrated throughout the commercial.

23. Accordingly, the complaint is dismissed.