



ABAC Adjudication Panel Determination No 115/24

Product: Jim Beam
Company: Beam Suntory
Media: TV - Pay
Date of decision: 29 August 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 29 July 2024 in relation to a television advertisement 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 29 July 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target 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 marketing (Approval Number 5891).

The Marketing

10. The complaint relates to a television advertisement for Jim Beam, which can be viewed at the following link:

[Jim Beam Commercial \(05/2023\) \(youtube.com\)](#)

A summary of the advertisement follows:

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| <p>The ad is set in a busy and full bar.</p> <p>The patrons are all singing “Sweet Caroline”, and the barman is shown serving Jim Beam.</p> |  |  |
| <p>The ad shows various people up close, as well as long shots of the room as everyone continues singing “Sweet Caroline”.</p> |  |  |
| <p>People are shown waving their arms in the air and swaying or dancing as they sing.</p> |  |  |
| <p>A woman is shown entering the bar by herself and looking at everyone singing.</p> <p>The final scene is superimposed with the words “People are good for you”,</p> |  |  |

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| beneath which is the Jim Beam logo. | | |
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Complaint

11. The complainant objects to the marketing as follows:
- *The Jim Beam “Sweet Caroline” advertisement is clearly depicting intoxicated individuals in a pub singing “Sweet Caroline” together.*
 - *It’s not hard to determine that random singing in pubs occurs because the individuals engaging in these activities are highly intoxicated.*
 - *I honestly don’t know what to explain to my 4-year-old who asks me why these people are singing. Obviously, I cannot explain that they are drinking alcohol, are drunk and therefore probably signing.*

The ABAC Code

12. Part 3 (a) of the Code provides that An Alcohol Marketing Communication must NOT:
- (i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:
 - (A) excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day).

The Company Response

13. The Company responded to the complaint by email on 30 July 2024. Its primary comments were:
- The ad has AAPS approval – approval number 5891.
 - People singing in a bar doesn’t constitute being intoxicated.
 - The people in this engaging and positively uplifting spot as they come together via the power of song are not representing being intoxicated.

The Panel's View

14. This determination arises from a complainant's concern about a Jim Beam television ad, which is argued to be portraying a group of intoxicated people in a bar singing Neil Diamond's "Sweet Caroline". This concern raises Part 3 (a)(i) of the Code, which requires that an alcohol marketing communication must not show, encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, i.e. more than 4 standard drinks on a single occasion.
15. The Company contends the ad is consistent with the ABAC standard, arguing that people singing in a bar doesn't mean the patrons are intoxicated. It is submitted that the ad is engaging and uplifting as the group have come together via the power of song.
16. The test of the consistency of a marketing communication against Code standards is assessed from the standpoint of the probable understanding of the marketing item by a reasonable person. The reasonable person concept is drawn from the common law system and means the benchmark is the attitudes, opinions, values and life experiences shared commonly in the community.
17. If a marketing communication could be interpreted in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the marketing message. A person who takes the message in a marketing item in another way is not 'unreasonable' but possibly their understanding would not be shared by most people in the community.
18. The Panel acknowledges the point being made by the complainant but does not believe that the ad breaches the Code standard. In reaching this conclusion the Panel noted:
 - while the product is placed in the bar and some consumption is implied, there are no images suggesting excessive consumption has occurred eg multiple empty glasses are not shown nor is any individual depicted actually drinking;
 - no individual is depicted as apparently intoxicated eg no one is unsteady on their feet or appears uncoordinated;
 - singing by the entire crowd is suggestive of organisation and structure such as occurs with a pub choir and the quality of the singing does not suggest the participants are collectively intoxicated;
 - it is more likely that excessive consumption would result in a single table of people or a single individual singing in public rather than everyone in the location; and

- a series of extrapolations are needed to reasonably conclude that excessive alcohol consumption has caused the crowd to sing, and such extrapolations are not supported by the ad as a whole.

19. The complaint is dismissed.