

ABAC

ABAC Complaints Panel Determination No: 13/11

Complaint by Mrs Toni Powell
Product: Bundaberg Rum
Advertiser: Diageo Australia

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

11 February 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Bundaberg Rum by Diageo Australia (“the Advertiser”) and arises from a complaint received 17 January 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 complaint 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 complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 17 January 2011.
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 was decided within the 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 [10455].

The Advertisement

9. The complaint refers to a television advertisement for Bundaberg Rum.
10. The television advertisement is set on a golf course and commences with two golfers in a golf cart driving to where a shot lies – next to a large crocodile. The cart stops several metres from the crocodile and one of the men gets out of the cart and walks slowly toward his golf ball which is between him and the crocodile. The crocodile snarls at the man as he approaches and the man flinches and says to his friend "I'll just drop it over here and take a stroke".
11. We then see a man in period costume shouting "Drop nothing" and then a group of men in period costume in and running alongside a vintage motor vehicle driving toward the golfers. The other golfer gets out of the cart and both golfers stare in surprise at the group of men in period costume. The camera moves from the group posing in the vintage motor vehicle to the golfers and then back to the group in period costume now all standing in front of their motor vehicle closer to the golfers.

12. The spokesman of the group says “If we a band of sugar millers can invent Bundaberg Rum as an ingenious solution to our horrible molasses surplus then surely you sir can remove this horrible beast from your favourable lie”. The camera moves to other members of the group of sugar millers as he is speaking and then when he stops speaking two of the sugar millers remove the end of a golf club and hand it to the golfer. The golfer places a golf tee in the club and blows it at the crocodile where it lands in between his eyes and a few seconds later the crocodile blows up with a large explosion.
13. The scene moves to a second group of golfers some distance away, and of the golfers is put off her game by the explosion. The scene then returns to the men and pieces of crocodile are shown falling around the group. A large piece of the crocodile falls into the golfer’s arms as he stares at the spot where the crocodile was. The spokesman of the sugar millers toasts the golfer with a glass of rum and says “Top shelf thinking” and the golfer is shown hitting his golf ball which lands against a bottle of Bundaberg Rum and falls in the hole as the sugar millers shout “Huzzah”.
14. In the final scene we see three bottles of Bundaberg Rum sitting next to a hole on a golf green with the “Drink Responsibly” logo below as a voiceover says “The thinking man’s rum” and then the Bundaberg Rum logo appears on the screen.

The Complaint

15. The complaint goes to issues under both the AANA Code of Ethics and the ABAC. The complainant expresses concern that:
 - (a) An animal is killed to make room for golf;
 - (b) We have an issue in our society with teenagers being cruel to animals needlessly and this sort of advert does not make it any better; and
 - (c) It was an alcohol advert in the middle of a children’s movie on GO channel on 14 January 2011 at 9pmish .

The Code

16. The complaint raises issues under the AANA Code of Ethics, the Commercial Television Industry Code of Practice (CTICP) and the ABAC Code. The Code of Ethics issue goes to matters of taste and sexism and will be determined by the ASB.
17. The CTICP provides at paragraphs 6.7 to 6.13 that a commercial which is a direct advertisement for alcoholic drinks may be broadcast only in M, MA, or AV classification periods (8.30pm-5.00am & 12.00noon-3.00pm weekdays & 8.30pm-5.00am weekends and school holidays) or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.

18. The ABAC provides at Sections (a)(ii) and (b) that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - ii) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents...

The Advertiser's Comments

19. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 28 January 2011. The points made by the Advertiser in relation to the advertisement were:
- (a) The advertisement uses intelligent humour combined with mature adults to create a comical and absurd presentation of the message which is around the heritage of the Bundaberg Rum brand and product. Alcohol consumption is not depicted and adults are 30 years of age and clearly depicted as adults and no children or adolescents appear in the TVC.
 - (b) We were very concerned when we learnt of the complaint. Having investigated the matter our agencies and the television channel have given assurances that the TVC has not been aired on GO TV at all (but was aired at 9.15pm on 14 January 2011 during 20/20 cricket on QTQ9). We would never instruct that the TVC be aired during a children's movie.

The Panel View

20. The complaint raises issues as to cruelty to animals which are within the ambit of section 2 of the AANA Code of Ethics and will not be considered by the ABAC Panel. The complaint also raises an issue of the alcohol advertisement being placed during a children's movie which falls within the ambit of sections (a) (ii) and (b) of the ABAC which cover whether an ad appeals to children or adolescents?
21. It is claimed that the ad was broadcast on Friday 14 January 2011 at 9pmish on GO TV during a children's movie. The Advertiser has advised that having investigated the complaint they have been assured by their media buying agency and the television channel that the advertisement was at no time aired on GO TV but was aired during 20/20 cricket at 9.15pm on 14 January 2011.
22. The CTICP provides that alcohol ads are not to be broadcast prior to 8.30 pm unless the broadcast is in conjunction with live sport on weekends and public holidays. Accordingly it appears the CTICP has not been breached regardless of whether the complaint correctly identified the channel on which the advertisement was aired. A complainant may make a complaint direct to the

relevant television station where they believe that a provision of the CTICP has been breached.

23. It should be noted that the nature of the ABAC scheme means that, in order to function, the Panel relies on information provided by advertisers in response to complaints e.g. the supply of copies of advertisements subject to complaints. This means that the Panel relies in good faith on the advertiser providing factual information, such as when and where an ad was broadcast.
24. The Panel is obliged to act on this advice and must assume that the complainant is mistaken in the claim that the TVC was aired during a children's movie and that the TVC was broadcast at 9.15pm during 20/20 cricket.
25. As explained, the ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. The issue of placement is indirectly raised by the ABAC's preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to "the class of persons to whom the advertisement is directed". This means that the ABAC does not prescribe the type of media within which an alcohol ad can be placed but, in assessing the standards as to the ad's content, the likely audience of a particular ad is relevant. Given the complaint does not raise any concerns that the content of the ad is in breach of section (a)(ii) or (b) of the ABAC and that it appears that the complainant was mistaken that the advertisement was aired during a children's movie, the Panel is obliged to dismiss the complaint.
26. Accordingly, the complaint is dismissed.