

ABAC

**ABAC Complaints Panel
Determination No: 69/11**

**Confidential Complaint
Product: Bundaberg Five
Advertiser: Diageo Australia**

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

8 September 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Bundaberg Five by Diageo Australia (“the Advertiser”) and arises from a complaint received 17 August 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 August 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 [10834].

The Advertisement

9. The complaint refers to a television advertisement. The visual elements of the advertisement are accompanied by a song sung by the barman and backup singers.
10. The advertisement opens with a young man walking into a bar with three friends. He and his friends look bored as do many of the patrons. As he walks to the bar a male voice and backup singers sing "**You're in the club with your homies, bunch of players, blandness all around you, so damn boring, make the call, you want it all, head to the bar, It's not that far, to buy a round, to buy a round, you're generous.**"
11. When the young man reaches the bar, the barman spins around and sings "**But then it hits you, feel it in the air, this ain't you man, you're a maverick...**" "**You want it all, you like it raw, time to get some, time to get some, player, player...**"
12. The bar splits in half and a gleaming white staircase forms and leads down below the bar. The barman and the young man walk down the stairs. The

staircase leads them down to a very grand, luminous white bar where there are fountains, men and women all wearing white with gold accessories. As they are walking down the stairs the lyrics continue: **“Ain’t no posers drink, It’s a players drink, Ain’t no boy band drink, it’s a manly drink. Ain’t no dandy drink! It’s a maverick’s drink, Ain’t no posers drink...”**

13. The young man is guided through the white bar by the barman to a second barman that pours him a drink. As the young man picks up the drink and takes a sip with the encouragement of the barman, the barman sings to him **“Pick up your drink now, so heavy, and take a sip, oh gosh damn”**.
14. The barman continues to guide the young man through the bar and points him toward a staircase in the middle of a fountain as he sings **“What’s that you see, that’s a fountain, your tongue is dancing, in your mouth”**.
15. The young man smiles as he and the barman begin to ascend the staircase and the barman and backup singers continue to sing **“You can’t believe it, and you laugh out loud, tastes amazing, problem solved, like algebra... ”**.
16. The Barman and the young man reach the top of the staircase and the platform they are standing on begins to lift to expose a large Bundy 5 bottle that they are standing on as the singing continues **“You got a clear drink, mucho-macho, 5-times filtered, oh-so- trans-lu-so no more blandness, no more blandness for youuuuuu...”**.
17. The Barman explodes disappearing and being replaced by birds which fly away leaving the young man standing on a large Bottle of Bundy 5 as the bar’s patrons look up at him. The scene is superimposed with either “Clear Character” or “Bundy 5. Get it. Player” depending on the version of the advertisement.
18. The advertisement is available on the Bundy Rum Facebook page and YouTube

The Complaint

19. The complainant argues that:
 - (a) the advertisement breaches section c of the ABAC by depicting the environment changing substantially in the presence of the Bundaberg Five drink, from a “typically boring bar” to a “world filled with players, gold, fountains and a camel”
 - (b) the advertisement breaches section c (i) by depicting the character filled world of Bundaberg Five with a fantasy-like scene featuring glamorous people drinking Bundaberg Five in an exclusive setting of luxury and extravagance which is only accessible with Bundaberg Five. This is in clear contrast with the first scene that depicts a typically boring bar with tired décor and dull people that does not feature Bundaberg Five. It is clearly the presence of Bundaberg Five that differentiates the two

environments. The advertisement clearly depicts the consumption and presence of the Bundaberg Five alcoholic beverage as contributing to personal, social and sexual success.

The Code

20. The ABAC provides that advertisements for alcohol beverages must-
- (c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - (i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

Arguments in Favour of the Complaint

21. In favour of the complaint it can be argued that the advertisement breaches section (c)(i) of the ABAC by suggesting that the presence or consumption of Bundaberg Five may create or contribute to a significant change in mood or environment or may be a cause of or contribute to the achievement of success by:
- (a) The bartender introducing the product to the customer and, as a result, moving the environment from “blandness” and “boredom” to excitement and engagement.
 - (b) The lyrics of the song sung by the bartender establishing:
 - The initial bar is bland and dull;
 - The consumption of the product alters this mood by phrases such as:
 - “But then it hits you”
 - “Tastes amazing / problem solved”
 - “No more blandness for you”;
 - (c) The “white bar” scenes, particularly when the bartender and customer ascend the staircase and the pair are elevated upon a bottle of the product, suggesting the product lifts the mood.

The Advertiser’s Comments

22. The Advertiser responded to the complaint and questions posed by the Panel in relation to the complaint by way of letter received 1 September 2011. The principal points made by the advertiser are as follows:
- (a) **Description of ad:** A guy called Nick and three of his friends (2 guys, 1 girl) walk into a bar. He notices it is filled with guys and girls so dull and grey. They all have limp clear drinks in their hands. Nick walks to the bar, and a male voice sings, as if in his head with backup singers.

When Nick reaches the bar, the barman spins around and sings “But then it hits you, feel it in the air, this ain’t you man, you’re a maverick...” “You want it all, you like it raw, time to get some, time to get some, player, player...”. Now the bar splits in half and a gleaming white staircase forms and leads down below the bar. The barman and Nick walk down the stairs. The staircase leads them down to a very grandiose white palace type place. It is very fantastical and other worldly, and everything is luminous white. Three female backup singers appear on the stairs behind them and sing. The world is filled with lots of interesting and odd characters. Nick is guided through this world by the barman and the backup singers, and they sing to him. The second barman pours Nick a drink. As Nick is guided through the world, he sees a staircase. The barman and backup singers continue to sing. The Barman and Nick walk up the staircase and, once they get to the top, the platform they are standing on begins to lift to expose a large Bundaberg Five bottle. The Barman explodes into a cloud of smoke exposing golden birds which fly away.

- (b) **Overall:** The two settings work as a visual metaphor - the first represents the blandness in lack of choice and the second represents the unique taste character of Bundaberg Five. The bartender is the vehicle for recommending it to the patron and the patron only consumes the product once already in the second environment
- (c) **Advertising pre-approval:** Diageo obtained full and complete clearance for the advertisement from the Alcohol Advertising Pre-Vetting System (“**AAPS**”) prior to final production and broadcast of the TVC.
- (d) We note that Diageo complies with the ABAC Code, DSICA Code and Diageo’s own internal global marketing code. We consider that the Bundaberg Five rum TVC complied with all aspects of these codes. Our reasoning is set out below.
- (e) **Part 1 section (c):** The transition between the two environments depicted in the advertisement acts as a metaphor. It depicts the difference between not trying something new (through lack of choice or motivation) and the excitement of trying an innovative product, Bundaberg Five. The move into an exciting and engaging setting aims to recreate the taste journey of Bundaberg Five, and not the personal, emotional or physical journey of the consumer following consumption of the product. There is no depiction of the product or of any alcohol consumption prior to the commencement of the environment change, it is therefore highly unlikely that a reasonable person in the target audience would assume a transformation or mood change occurs as a direct result of the product being consumed.
- (f) The song performed by the bartender references two elements:
- the moment of choice - when a consumer is at the bar;

- the characteristics and taste profile of the product.

At no point does this song imply that consumption of this product will change the mood of the consumer.

- (g) The song does not say that the initial bar is bland and dull - it says: "in the club with your homies - blandness all around you". Blandness is presented as the internalised feeling of boredom that can come from doing the same thing in the same club over and over again.
- (h) The song itself is an appeal to really think about your drink choice and consider a white spirit with real taste - at no point does the song attribute any mood altering effects to consumption of the product.
- (i) The full lyric "But then it hits you, feel it in the air, this ain't you man, you're a maverick" refers to the moment of inspiration when deciding what drink to order. A reasonable person in the target audience would not assume that this is referencing the effects of consumption of the product, due to the statement "feel it in the air" which is in no way related to the consumption of any alcohol product. The statement "this ain't you man" also speaks to a choice or preference (i.e. which drink to purchase).
- (j) The full lyric "Tastes amazing, problem solved, like algebra" refers to the taste of the product. The problem being solved (like algebra) is in reference to the decision of which drink to choose when ordering at a bar.
- (k) Blandness is presented as the internalised feeling of boredom that can come from doing the same thing in the same environment, in this case ordering the same drink at the same bar. The TVC suggests that with the launch of this new product there is an opportunity for the consumer to break away from this boredom as the Bundaberg Five product provides the consumer with an appropriate alternate choice when selecting a drink in a bar environment. As such it can be seen that this lyric does not refer to any alteration of mood or environment experienced as a result of consuming the product.
- (l) The product plays no role in elevating the mood as the bartender and customer ascend the staircase - they are simply walking up stairs. At no point during the advertisement do the bartender or customer consume the product, nor does their behaviour change, therefore making it unlikely for a reasonable person in the target audience to relate this 'elevation' to the consumption of the product. There are no other elements to suggest that the product elevates the mood, it is not referenced in the lyrics of the song or the visual creative drama. Furthermore, the elements of the white room scene of the advertisement simply reflect the product cues and characteristics, for example clear and white surroundings relating to the clarity and category of the product and contrasting with the greyed blandness of the original scene.

- (m) **Part 1 section (c) (i):** The Bundaberg Five product is not present in the initial bar scene - so a reasonable person in the target audience would not assume that the product allows "access" to luxury or extravagance. The bartender is the vehicle for moving from one setting to the next, by way of introducing the customer to this new product in a humorous and exaggerated way. The word 'maverick' by definition it means a feral bovine creature that has not been branded and roams the countryside as a free beast. When used colloquially this word means 'independence' - it is not a word commonly associated with success. The word 'maverick' in the context of the advertisement aims to promote trying something new, not being afraid to be different and independent. In the context of this advertisement, these lyrics refer to the customer's desire to have the best product available, a fresh, crisp, clear rum and that it is now available for him to have. The use of the term 'player' in the context of this advertisement is explained below.
- (n) A poser is a widely accepted term for a person who behaves with excessive pretence in a social environment. The term poser is used in the context of the TVC to refer to people who are concerned about what other people perceive of them to the extent that they are hesitant to go out on a limb and try something new. The reference to "player" is intended to refer to an extrovert, maverick and generally someone who is willing to take a chance and try something new. Of course this in turn refers to the fact that the Bundaberg Five product is a new innovation and that it will appeal to people willing to try a new innovation rather than stay with the same old drink choice

The Panel's View

23. This complaint raises section (c) and (c) (i) of the ABAC. This section essentially is concerned with alcohol advertising suggesting that either the consumption or presence of an alcohol beverage can cause or contribute to a change in mood or environment and imply that alcohol leads to the achievement of success. The key element is that of causation i.e. would a reasonable person take the ad as suggesting that alcohol is a cause or contributor to a change in circumstances or the achievement of success.
24. The advertiser argues that the ad is carefully constructed so as to not offend the standard laid down in section (c). Specifically, it is contended:
- While the ad does depict two environments (a bland bar and the exciting white bar) these environments act as a metaphor between the difference of trying or not trying something new;
 - The product is not introduced prior to the commencement of the change in the environment;

- The song is an appeal to think about your drink choice and does not attribute any mood altering effects to the consumption of the product;
 - The bartender, and not the product, is the vehicle for moving from one setting to the next; and
 - The ad is exaggerated and humorous and would not be taken by a reasonable viewer as suggesting that the product changes a mood or leads to success.
25. The preamble to the ABAC provides that in assessing the consistency of an ad with an ABAC standard the Panel is to have regard to the probable impact of the ad upon a reasonable person taking the content of the ad as a whole. In considering section (c) in previous determinations the Panel has noted that it is a broad provision which deals not only with depictions of alcohol consumption but also with the “presence” of alcohol and circumstances where alcohol “may” create or contribute to a significant change in mood or environment. Alcohol is not to be depicted as “a” cause of the achievement of success. Presumably this means that achieving success might have a number of causes and alcohol is not to be depicted as any one of the causes even if it is a secondary reason for the success.
26. The Panel believes that the advertiser’s construction of the ad in which the product plays no part in the change in mood and environment cannot be sustained. The Panel believes that a reasonable person viewing the ad as a whole would take away a message that the presence of the product was a cause of the significant change in mood and environment. In reaching this conclusion, the Panel noted:
- The presence of the product is materially linked to the change in environment;
 - Scenes such as the elevation of the customer and the bartender on the bottle of the product imply the mood lifting characteristics of the product;
 - Song lyrics such as “you can’t believe it, and you laugh out loud, tastes amazing, problem solved...” and “no more blandness, no more blandness for you” imply the consumption of the product is a cause or contributor to success and mood change.
27. Accordingly, the complaint is upheld.