

ABAC

ABAC Complaints Panel
Determination No: 04/07

CONFIDENTIAL COMPLAINT

Product: Johnnie Walker Red Label
Advertiser: Diageo Australia

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Liz Dangar – Member
Ms Jeanne Strachan – Member

16 May 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about a television advertisement for Johnnie Walker Red Label by Diageo Australia (“The Advertiser”).

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 in specific locations e.g. near schools.
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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The confidential complaint is in the form of an email dated 21 January 2007 which was received by the ABAC Adjudication Panel on 27 February 2007.
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. In this case, it has taken longer owing to the original complaint being sent to an incorrect email address and then problems in contacting the advertiser.

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. The advertisements were subject to pre-vetting and given approval (VR206/06 & VR195/06B).

The Advertisement

9. The advertisement commences in club-like venue with background music. On a table or bar is a bottle of Johnnie Walker Red label and a glass of Johnnie Walker which is picked up by an invisible hand and raised to the camera lens in a drinking motion.
10. The door at the venue is opened by the invisible hand and the invisible person walks out and along the street. A voiceover is heard to say: "Walking as always, sir".
11. The streetscape features a range of clothed but invisible people to a soundtrack in which we hear "Don't judge me by the clothes I wear...".
12. We return to an indoor shot of the "Red Room" with invisible people walking around.
13. The camera then pans to a shot of Johnnie Walker which morphs into the Johnnie Walker logo.

The Complaint

14. The Complainant argues the advertisement:
- Encourages young Australians to be cool by drinking alcohol.
 - Shows that the figures have disappeared because of the alcohol effects on their brains.

The ABAC

15. Section (a) of 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:
 - ii) must not encourage underage drinking.

Arguments in Favour of the Complaint

16. In favour of the complaint, it can be argued that:
- The advertisement breaches section (a) and (a) (ii) by irresponsibly depicting scenes which indicate that drinking alcohol is 'cool'.
 - Attracting underage persons to consume the product, and
 - Using visual effects that feature 'invisible' characters which imply excessive alcohol consumption has impaired the characters' perceptions.

The Advertiser's Comments

17. The Advertiser responded to the complaint by way of letter dated 30 April 2007. The principal points made by the Advertiser were:
- The advertisement was developed with respect and regard to the ABAC, AANA, BSC and the Diageo Marketing code.
 - It is intended to represent the well-established global brand position for Johnnie Walker in a way that is relevant to the mature Australian audience.
 - Extensive consumer research was undertaken throughout the development of the commercial to ensure the communication was clear and well within the guidelines as set by the AANA and ABAC.
 - The commercial presents a mature, balanced and responsible approach to the consumption of alcohol.

- The consumption of alcohol is not a main focus within the ad; rather it focuses on the broad range of people encountered on an average night out.
- The people are not intended to represent 'cool', but rather an eclectic mix of people that are representative of all walks of life; hence the key message of not judging people based solely on their appearances.
- The commercial is not intended to attract underage persons.
- Whilst the people in the commercial appear without faces, it is standard policy for all people appearing in Diageo commercials to be over the age of 25 years old.
- The core target consumers are males aged 22-34 years old.

The Panel's View

18. The essence of the complaint is that the ad encourages young Australians to drink alcohol in order to be cool. A second point is whether the use of "invisible characters" in the ad implies that excessive alcohol consumption has impaired perceptions. The ABAC provides that alcohol advertising must not encourage under-age drinking and must not have a strong or evident appeal to children or adolescents. The ABAC also requires advertising to present a mature, balanced and responsible approach to alcohol consumption. Excessive consumption must not be encouraged.
19. In applying the ABAC, the Code's Preamble provides that the Panel is to assess an advertisement in terms of its probable impact upon a reasonable person, taking its content as a whole. The Panel applies a commonsense approach and seeks to give effect to the spirit and intent of the Code's provisions.
20. Often advertising will adopt a particular creative device and, in this case, the advertiser explains that the use of the invisible characters and the accompanying soundtrack of "Don't Judge Me by the Clothes I Wear" encourage viewers not to make judgments on people by appearances alone. The advertiser rejects that a reasonable person would take the invisible characters to represent an alcohol-impaired perception of people brought on by excessive consumption, as suggested by the complainant.
21. The Panel does not believe a reasonable person would take that the "invisible characters" represent the effects of excessive consumption. The second point raised by the complainant is that young Australians would take the ad to be "cool" and hence encourage consumption of the product.
22. The ABAC does not prevent alcohol advertising being "cool" or clever or creative. Characters used in advertising can be attractive and sexy. In other words, the standard created by the ABAC is not that alcohol advertising must be colourless, boring or unattractive. Rather, the ABAC sets a series of particular standards for advertising and then goes on to detail how these standards are not satisfied if particular depictions or suggestions are made (*i.e.* a combination of positive and negative standards).

23. The Panel does not believe the ad breaches the standard relating to the encouragement of under-age drinking or that it has a strong or evident appeal to adolescents. Indeed, while the characters are “invisible”, the context of where the characters are placed and the clothing being worn does not give to rise an impression of adolescents or younger people being depicted.
24. Rather, the advertisement depicts a scene in a city street as the main character, Johnnie Walker, strolls to a club-like venue. It is the use of the invisible characters which make the ad distinctive. It would otherwise be unexceptional.
25. The complaint is dismissed.