

# ABAC

**ABAC Complaints Panel  
Determination No: 100/11**

**Confidential Complaint  
Product: Johnnie Walker  
Advertiser: Diageo Australia Limited**

Professor The Hon Michael Lavarch – Chief Adjudicator  
Debra Richards – Member  
Professor Richard Mattick – Member

15 December 2011

## **Introduction**

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet banner advertisement for Johnnie Walker Scotch Whisky by Diageo Australia Limited (“the Advertiser”) and arises from a confidential complaint received on 22 November 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 complaints 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 the ABAC Panel on 22 November 2011.
- 7 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. This complaint has been determined within 30 business days.

### **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. This advertiser obtained pre-vetting approval for this advertisement [11054].

### **The Advertisement**

- 9 The advertisement opens with a well-dressed man standing in an opulent city apartment or office standing in front of a table with three decanters on a silver tray as he puts down a glass next to the tray. The man begins a dialogue with the camera, "Scotch, poured from decanters that look like large perfume bottles for men." The man puts some of the liquid in one of the decanters on his hand and rubs it onto his face as if aftershave. The dialogue continues, "Or bottles like this", at which point he holds up a bottle of Johnnie Walker Scotch Whisky. The closing screen includes the text "Johnnie Walker Keep Walking" next to the Johnnie Walker logo and in the bottom right corner of the screen in small text "Drink Responsibly".

### **The Complaint**

- 10 The complainant argues that the advertisement was placed before a youtube video designed to educate children, about children with autism and associating child welfare issues with alcohol is not in the community's interest.

### **The Code**

- 11 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

12 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 5 December 2011. The principal points made by the Advertiser were as follows:

- a) Diageo would like to confirm its long standing support for the ABAC Scheme and commitment to upholding the Alcohol Beverages Advertising Code and our best-practice global marketing standards.
- b) The Advertisement is part of a campaign for Johnnie Walker called "The Important Man" which centres on a television commercial that parodies traditional Scotch whisky advertising. The advertisement conveys the message – in a humorous way – that Scotch whiskey is "often poured from decanters that look like large perfume bottles made for men." The important man splashes his face with the contents of the decanter, Scotch whiskey, to reinforce the ridiculous notion that Scotch whiskey is only savoured by important men.
- c) In August 2011, AC Nielsen conducted a study to assess the average age of You Tube viewers. It was found that on average You Tube reached an audience comprised 85.65% over the legal purchase age for alcohol. We understand that You Tube does not make subjective judgments about the match between a publisher's content and the appropriateness of specific advertising content. Instead, on the basis that the majority of viewers are over the legal purchase age for alcohol, advertising is uploaded onto You Tube and is randomly allocated against different clips.
- d) Diageo applies a strict policy of only placing marketing in communications media where 70% or more of the audience can reasonably be expected to be older than the legal purchasing age of alcohol, and must not be associated with images or themes which are likely to be considered disrespectful to disability or any other particularly sensitive subject. Our media space is purchased on our behalf by our media space buyer (IKON Communications) who in this instance has purchased the space from online media space supplier (You Tube). Whilst IKON Communications bought media on Diageo's behalf from You Tube against an audience where 70% or more of the audience can reasonably be expected to be older than the legal purchasing age of alcohol, the content of the clip against which the Advertisement was randomly placed was not filtered.
- e) Based on the findings of the AC Nielsen study referred to above, we are satisfied that You Tube meets our viewer age requirements. However, while our age requirements are met, we are concerned that, as highlighted by this complaint, there is no filtering of the content of clips against which the Advertisement will be shown. Upon receipt of the complaint from ABAC, the Advertisement was immediately removed from You Tube. Whilst this particular placement of the Advertisement is regrettable, we are pleased to inform you that there has been a constructive outcome through this process. As already mentioned, as soon as this shortfall was brought to our attention the Advertisement was removed from You Tube with the aim of avoiding any further offence. Additionally, as a result of this complaint we have reviewed the media buying process and implemented additional steps with the aim of guarding against a recurrence of this situation. We consequently have what we consider to be an even more robust process for purchase and use of online media space.
- f) To date, prior to briefing any online media supplier, IKON Communications would inform the media supplier of Diageo's requirement that our advertisements must be placed where 70% or more of the audience can reasonably be expected to be older

than the legal purchasing age of alcohol, and must not be associated with images or themes which are likely to be considered disrespectful to disability or any other particularly sensitive subject. Previously there would be no further checks on the placement of advertisements. The new additional process step which we have implemented in response to the identified current shortfall, is that IKON Communications will now only buy online media from You Tube against pre-approved content themes on You Tube channels. This means that our advertisements will no longer be shown randomly but will be limited to pre- approved content themes which satisfy both our age requirements and “good taste” thresholds.

- g) Firstly, we note that we are not qualified to comment on whether the disability awareness video clip is appropriate to educate children and adolescents about disability. We reserve this judgement to an expert on the subject. Nonetheless, we have reviewed the ABAC in light of the complaint you have received and the Advertisement in question and strongly believe that this Advertisement does not breach section (a)(ii) or section (b) of the ABAC Code. The adult appearing in the Advertisement is over 25 years of age and is clearly depicted as an adult.
- h) The Advertisement presents a balanced and responsible approach to the consumption of alcohol beverages. There is no suggestion of, nor encouragement of, excessive consumption or abuse of alcohol, underage drinking or other offensive behaviour.

### **The Panel's View**

- 13 The complaint concerns an internet advertisement for Johnnie Walker Scotch Whisky located on youtube. The complainant is concerned about the placement of the advertisement before a disability awareness video clip in relation to children with autism that is likely to be viewed by children.
- 14 This issue primarily relates to placement of the advertisement. There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular advertising mediums. For instance, the Outdoor Media Association Code & Guidelines applying to billboards restricts alcohol ads appearing on an outdoor site within 150 metres sight line of any access gates to a primary and secondary school. There is no Code that specifically restricts placement of alcohol advertisements on the internet.
- 15 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.
- 16 The actual content of the ad has adult themes and it is not considered that the content of the ad would have strong or evident appeal to children or adolescents. It would be highly inappropriate for any alcohol ad to be placed on a site which targets children, but the Panel does not believe that the video clip to which the complainant refers specifically targets children or adolescents.
- 17 Accordingly the complaint is dismissed. The Panel notes the steps that the advertiser has taken to better control the placement of its advertisements on youtube and refers the question of whether placement of alcohol advertisements on the internet should be covered by the ABAC Code to the ABAC Management Committee.