

ABAC

ABAC Complaints Panel Determination No: 43/12

Complaint by Ms Elizabeth Heritage Product: Schweppes Soda/Johnnie Walker Advertiser: Schweppes Australia Pty Ltd

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

1 May 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement produced by Schweppes Australia Pty Ltd (“Advertiser”) which uses the Johnnie Walker name and product and arises from a complaint received 16 April 2012.

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 on 16 April 2012.
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. The complaint been determined within the 30 day timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed alcohol beverage advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a television advertisement. The advertisement opens on a drinks party at a private home as Devon Headland from the TV show Masterchef mixes a drink while saying "I love mixing drinks at home. There's no rules. There's no-one yapping in your ear, Devon that's too sour, Devon that's too salty, Devon its making my eye go funny. At home I can just relax and get inventive. Take some orange, brown sugar and add some ice, Johnnie Walker and some Schweppes Soda." He takes a drink. "Out of ten, seven. As if. Ten, perfect again Devon."
10. A bottle of Johnnie Walker Whisky is shown briefly during the advertisement. Superimposed on the screen at the beginning of the ad is the statement "Devon Headland Eliminated Week Two" and during the ad "Schweppes is not a sponsor of any prime time cooking shows" and at the end "You don't have to be a Masterchef to mix at home". Then the screen changes to the Schweppes logo with the statement "Drink Responsibly".

The Complaint

11. The complainant is concerned that the advertisement:
- (a) was broadcast prior to a children's movie at the cinema and was viewed by children thereby normalizing the drinking of alcohol to children; and
 - (b) links alcohol to soft drink which is a product children like.

The Code

12. 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;
 - (b) not have a strong or evident appeal to children and adolescents....

The Advertiser's Comments

13. Diageo responded to the issues raised in the complaint and questions posed by the Panel by way of letter dated 30 April 2012. The principal points made by Diageo are as follows:
- (a) We wish to confirm our long-standing support for the ABAC Scheme and commitment to upholding the Alcohol Beverages Advertising Code (**ABAC**), as well as our best-practice global marketing standards.
 - (b) We note that the advertisement that is the subject of the complaint was considered by ABAC last year (determination no: 63/11). The content of the advertisement has not since been altered. Essentially the only difference between complaint No: 63/11 and 43/12, is the placement of the advertisement. Last year it was a television commercial and in this instance it was a pre-film cinema advertisement.
 - (c) As per our submission in relation to last year's complaint, Diageo provided input on the content of the advertisement before it was finalised and approved the final version. The advertisement was developed and paid for by the Advertiser. Diageo has not provided any further input to the Advertiser since then.
 - (d) The advertisement is essentially a soft drink advertisement which features alcohol and it is aimed at an adult audience. In determination no 63/11 the Board noted that the advertisement depicts mature and responsible behaviour and that the Schweppes product is commonly used as a mixer with alcohol and other products.
 - (e) The Advertiser did not contact Diageo to advise that the advertisement would be used as a pre-film cinema advertisement or the timing of such

placement. Had we been contacted in this regard, we would not have given permission for the advertisement to be screened.

- (f) The advertisement does not encourage under-age drinking. There are no children depicted in the advertisement. All the people that appear in the advertisement are over the Australian legal drinking age of 18. This is essentially a soft drink advertisement which features alcohol, and is aimed at an adult audience. Both Diageo and the Advertiser have an internal policy that any people depicted in advertisements featuring alcohol of any kind must be adults aged 25 years or older. The advertisement complies with this policy.
 - (g) The advertisement was originally produced for the purpose of television screening. Diageo's involvement in the advertisement was limited to review of the advertisement last year to ensure it complied with Diageo's requirement that its brands are portrayed in a manner supportive of responsible consumption in line with Diageo's global marketing Code and in compliance with the ABAC. Diageo was not approached for approval for the advertisement to be screened before the movie 'The Lorax', and further to this, had no knowledge of the advertisement being screened in this instance until ABAC contacted Diageo in reference to this complaint. The advertisement was developed, produced and paid for by the Advertiser, and we ask that you refer to the Advertiser as the source of information regarding the placement of the advertisement.
14. The Advertiser (Schweppes) responded to the questions posed by the Panel by way of letter dated 30 April 2012. The principal points made by the Advertiser are as follows:
- (a) The advertisement features Devon Headland mixing Schweppes Soda Water with Johnnie Walker Red Label Scotch Whisky in his home kitchen. There are small groups of people socialising in the background.
 - (b) The advertisement does not encourage underage drinking. There are no children depicted in the advertisement. All the people that appear in the advertisement are over the Australian legal drinking age of 18. In fact, Schweppes has an internal policy that any people depicted in advertisements featuring alcohol of any kind must be adults aged 25 years or older. The advertisement complies with this internal policy.
 - (c) The advertisement does not have strong or evident appeal to children or adolescents as:
 - i) all the adults appearing in the advertisement are aged 25 years and over in accordance with Schweppes' internal policy mentioned above;
 - ii) there are no children or adolescents which appear in the advertisement; and

- iii) there are no adults under the age of 25 years which appear in the advertisement.
- (d) The advertisement does include an alcoholic product (ie Johnnie Walker Red Label Scotch Whisky) in an advertisement for a non-alcoholic product (ie Schweppes Soda Water). However, Schweppes Soda Water is not a product which is marketed towards children or adolescents and is not a product which has a strong or evident appeal to children or adolescents. Soda products are traditionally seen by consumers as a mixer rather than a standalone drink. Schweppes mixers, through the years, have been marketed as confident, adult and stylish and this is consistent with the image we have portrayed in the advertisement. Further, Schweppes mixers (including Schweppes Soda Water) have been advertised as a component of alcoholic mixed drinks since the 1850s (overseas) and as long as the products have been in Australia (late 1800s). All marketing materials associated with Schweppes Soda Water and other mixers are aimed at the adult market.
- (e) Although the advertisement appeared in a cinema before a children's movie, The Lorax, the advertisement did appear in a Gold Class cinema. Gold Class cinemas are traditionally frequented by adults as they are licensed premises which serve alcohol. Although anyone can attend a session in Gold Class, anyone under the age of 18 must be accompanied by a responsible adult at all times. Unbeknown to us, when loading the advertisement into the system, Val Morgan mistakenly placed the advertisement under the "carbonates" rating which has no restriction. We have since been in contact with Val Morgan who has re-categorised the advertisement with an "alcohol" rating which always carries a restriction on when it can be shown. We have also directed Val Morgan not to show the advertisement before any movies other than R18+ movies to ensure that we are strictly in compliance with the AANA Code for Advertising & Marketing Communications to Children
- (f) Schweppes takes the responsible promotion of alcohol very seriously. Whilst not strictly bound by the ABAC or the AANA Code, it is aware of the requirements of these codes and does all it can to ensure that its advertisements and marketing campaigns are in compliance with them. Schweppes also has internal "best practice" policies in place which incorporate the key requirements of the relevant codes and alcohol marketing guides. Schweppes agrees to accept the Panel's decision in relation to the complaint.

The Panel's View

Procedural issues

15. The Panel has previously considered a complaint in relation to this advertisement in Determination 63/11. In that determination the Panel considered whether the ABAC scheme has any application to this particular advertisement and whether the advertisers drawn into the complaint, namely Schweppes Australia and Diageo, are bound by the Panel's processes. The Panel will not reconsider these issues and

for the reasons set out in Determination 63/11 it is appropriate for this determination under the ABAC scheme to be made.

Substantive issues

16. The current complaint raises two issues that were not raised in the previous complaint about this advertisement, namely:
 - (a) The placement of the advertisement prior to a children's movie in a cinema;
 - (b) The portrayal of alcohol in an advertisement for soft drink where soft drink is a product that children like.
17. The first issue raised in the complaint is one of placement of the advertisement, rather than the actual content of the advertisement. The ABAC is principally concerned with the content of an ad and only indirectly refers to placement by reference in the ABAC preamble to assessments to conformity of an advertisement with the ABAC to be undertaken "in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated". The ABAC does not state alcohol ads should not be broadcast at particular times, or placed in particular styles of publication or shown with particular films. The placement of an ad only comes into play when assessing content issues and is not a free-standing standard of itself. However, the Panel understands the complainant's concern as to placement of an advertisement portraying alcohol before a children's film and refers the issue of placement of alcohol advertisements in cinemas to the ABAC Management Committee.
18. The second issue raised in the complaint is a concern as to the content of the ad, namely the portrayal of alcohol in an advertisement for soft drink where soft drink is a product that children like. The relevant operative provisions of the ABAC go to alcohol advertising not encouraging under-age drinking or having strong or evident appeal to children or adolescents.
19. The Panel has considered the advertisement as a whole and does not believe that the advertisement is in breach of the relevant ABAC standards. The advertisement has a mature 'look and feel' that the Panel does not consider would encourage underage drinking or have a strong or evident appeal to children or adolescents. Further the ad is for a 'mixer' drink, namely soda water, rather than a soft drink such as lemonade which would have a more recognised attraction to children.
20. Accordingly, the complaint is dismissed. The Panel would encourage Diageo when approving third party advertisements that include its products to require the advertisement to be pre-vetted and Schweppes to have its advertisements containing alcohol beverages pre-vetted.