

ABAC

**ABAC Complaints Panel
Determination No: 49/10**

**Confidential Complaint
Product: Bundaberg Red Rum
Advertiser: Diageo Australia Limited**

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

11 November 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Bundaberg Rum by Diageo Australia Limited (“the Advertiser”) and arises from a confidential complaint received on 24 September 2010.

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 ABAC on 24 September 2010.
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 has not been determined within the 30 day timeframe due to availability of the Chief Adjudicator.

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 the outdoor advertisement [10397].

The Advertisement

9. The complaint refers to an outdoor advertisement located in a bus shelter opposite Shenton College (a secondary school).
10. The advertisement features a large stern looking Bundy bear character standing on two legs with mountains in the background. On the lower half of the advertisement the text "Make your smooth" and a bottle of Bundaberg Red Rum is superimposed over the picture and below that in smaller print is the text "Redgum filtered Real smooth Rum". At the bottom of the page in small print is the Drink Responsibly logo.

The Complaint

11. The complainant argues that the advertisement encourages underage drinking and has strong appeal to children by including a large picture of an animal, namely, Bundy R Bear, and by reason of its placement inside a bus shelter opposite the entrance to Shenton College which is a secondary school for students aged 12 to 17 years of age.

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 under-age drinking;
- b) not have a strong or evident appeal to children and adolescents...

The Advertiser's Comments

13. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 6 October 2010. The principle points made by the Advertiser are:
- (a) The Advertisement is part of a campaign for Bundaberg Red Rum which centres around a television commercial which parodies a scene from a famous 1970's film featuring a classic Mexican standoff. The scene features Bundy R Bear, a Bundaberg Distilling Company icon since 1961, and was filmed on a farm 45 minutes outside of Canberra. The advertisement conveys the message, in a humorous way, that Bundaberg Red Rum is smoother tasting than its bourbon competitors. The television commercial ends with the line "Make Your Smooth" again a parody of the line "Make Your Move" reinforcing the "smooth" credentials of Bundaberg Red Rum. The Advertisement features an image of Bundy R. Bear in the same outdoor setting as the television commercial, with an image of a Bundaberg Red bottle and the headline "Make Your Smooth".
 - (b) We do not believe that the advertisement encourages underage drinking and nor does it have a strong or evident appeal to children or adolescents. Diageo has gone to considerable lengths to ensure that the theme and the setting of this campaign, including the Advertisement, are aimed at a 25+ year old consumer. The 1970's movie genre reference; the treatment of the Bear as a mature, adult male, and the whole context and theme of the Advertisement are directed at the more mature consumer who appreciates the smoothness and distinguishing taste of the Bundaberg Red Rum filtered through red gum. The new Bundy R. Bear has been developed using computer generated imagery ("CGI"), a technology recognised globally for its ability to create life like characters. The Bundy R. Bear character as represented in CGI is even less reminiscent of a bear which could appeal to children or adolescents. This is because the CGI Bundy R. Bear looks less like a bear and more manlike, he stands on two feet, he is 6 foot and 8 inches tall, uses his hands like a human and also appears more serious and adult-like than the previous Bundy R. Bear. The bear has a furrowed brow, sharp teeth and claws. His build is muscular. His character and personality are structured around a 25+ year old male. The Bundy Bear is clearly distinguishable from popular children's characters. The Bundy Bear is also not behaving in a child-like or adolescent manner. The Bundy R. Bear character has been used with the product since 1961. Bundaberg Rum has an ageing consumer profile, meaning the age of the consumer of this product has increased over time. Bundaberg Rum is predominantly consumed by males over the age of 30 years. We believe that the appearance and gruff, serious character of Bundy R. Bear is not at all

child-like or adolescent nor does it appeal to children or adolescents. This is further emphasized when considered in the context of the setting of the Advertisement and the campaign from which it is drawn. As to the age of persons appearing in the advertisement, there are no human images in the Advertisement. 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 Advertisement does not depict any consumption of alcohol, nor does it present a situation in which consumption is encouraged.

- (c) Diageo applies a strict policy of not placing outdoor advertisements within a 500 metre radius of any school. The placement of the Advertisement opposite Shenton College was an error by Diageo's media space buyer (Mindshare) and outdoor media space supplier (Adshel). We had been made aware of this error prior to receiving notice of the complaint received by ABAC and had already demanded that Mindshare have the Advertisement removed immediately. We have been informed that the Advertisement was removed immediately. The outdoor supplier (Adshel) is investigating how the error occurred. It may be that the particular bus shelter had been incorrectly coded and it was therefore not identified as being near a school. Whilst this error is regrettable, we are pleased that there has been a constructive outcome. As soon as this error was brought to our attention the Advertisement was removed hence minimising any associated risks and as a result of this breach we have reviewed the media buying process to guard against such an error reoccurring. We consequently have an even more robust process for purchase and use of outdoor media space. To date, prior to briefing any outdoor supplier, Mindshare would inform the outdoor supplier of Diageo's requirement that our advertisements not be placed within a 500 metre radius of schools. There would be no further checks on the placement of advertisements. As a result of the error which has occurred and which is the subject of this complaint, a new and more robust process has been implemented. This new process requires that Mindshare obtain a pre-approved proposed site list from Adshel which will be checked by Mindshare to ensure that there are no selected sites which fall within a 500 metre radius of schools prior to the placement of advertisements.

The Panel's View

14. This complaint raises two separate issues. The first issue is whether the advertisement breaches section (a)(ii) and (b) of the ABAC by encouraging underage drinking and having a strong and evident appeal to children and this issue will be considered by the Panel. The second issue is whether the advertisement breaches the OMA guidelines relating to alcohol advertisements due to its placement near a school. In the past the Panel has considered whether the placement of the advertisement breached the OMA guidelines. However, recently, the OMA has advised that they will take responsibility for considering and resolving this issue when it arises in alcohol advertising complaints. Accordingly, in this case, the OMA has considered and resolved the issue of whether the placement of this advertisement has

breached the OMA guidelines and this second issue will not be considered by the Panel.

15. The complainant contends that the advertisement is in breach of the ABAC by reason of both its content and placement. The ABAC applies across all media *i.e.* print, television, radio, billboards and the internet and is a content based set of standards. This means that, regardless of where an alcohol ad is placed, its content is to meet the standards laid down in the ABAC. The issue of where the ad is placed is indirectly relevant in terms of assessing the content of the ad in that the audience of the ad is a relevant consideration.
16. The Panel has considered the use of the Bundy Bear character in several previous determinations, such as:
 - 11/06 – dated 25 April 2006
 - 107/08 – dated 6 November 2008
 - 58/09 – dated 26 June 2009 and
 - 37/10 – dated 14 October 2010.
17. From these determinations, the Panel has indicated that the Bundy Bear character would have appeal to children. Whether this appeal elevated the ad as a whole into having “strong or evident” appeal to children in breach of section (b) of the ABAC will depend on the context in which the character was used and depicted.
18. The Panel notes that the nature of the Bundy Bear as used in this advertisement and the TV campaign considered in Determination 37/10 differs from the earlier depictions of the character. The Bundy Bear is now a computer-generated version resembling characters used in computer games; whereas the older version was slightly more akin to characters such as Humphrey Bear.
19. The advertiser explains the outdoor media execution is part of a wider marketing campaign featuring a television ad. While many viewers of the outdoor ad may have seen the TV ad, no doubt some viewers of the bus shelter shed ad will not have seen the TV ad. In any event, the outdoor ad needs to be assessed in its own right.
20. The placement of the ad in the vicinity of a school does mean that the ad will be viewed by adolescents. The advertiser accepts the placement on the bus shelter shed was a mistake and is contrary to the OMA guidelines on the location of alcohol advertising. This does not, however, of itself mean that the ad, irrespective of its content, automatically can be said to have “strong or evident” appeal to children or adolescents.
21. The Panel does not believe the ad breaches section (a) (ii) or (b) of the ABAC. In reaching this conclusion, the Panel noted:
 - The ad is in essence a still shot of a scene drawn from the TV advertisement. In Determination 37/10 the Panel did not find the TV ad in breach of the Code.

- The ad features the Bundy Bear character, a picture of the product and the strap line “make your smooth!” Taken as a whole, these elements are not considered to have a strong appeal to children or adolescents.

22. Accordingly, the complaint is dismissed.