

ABAC

ABAC Complaints Panel Determination No: 69/10 & 70/10

Complaints by Mr Simon Ruth & Ms Lynda Fielder Product: Bundaberg Rum Advertiser: Diageo Australia

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

17 December 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a series of television advertisements for Bundaberg Rum by Diageo Australia (“the Advertiser”) and arises from a complaint received 16 November 2010 and a complaint received 18 November 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 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The first complaint was received by ABAC on 16 November 2010 and the second complaint was received on 18 November 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 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 these advertisements [10455].

The Advertisement

9. The complaints refer to a campaign for Bundaberg Rum. The campaign includes cinema and television advertisements which are also accessible via the advertiser's website. The lead advertisement sets out the scenario to which two subsequent advertisements make reference.
10. The primary television advertisement is set on a golf course and commences with two golfers in a golf cart driving to where a shot lies – next to a large crocodile. The cart stops several metres from the crocodile and one of the men gets out of the cart and walks slowly toward his golf ball which is between him and the crocodile. The crocodile snarls at the man as he approaches and the man flinches and says to his friend "I'll just drop it over here and take a stroke".
11. We then see a man in period costume shouting "Drop nothing" and then a group of men in period costume in and running alongside a vintage motor vehicle driving toward the golfers. The other golfer gets out of the cart and both golfers stare in surprise at the group of men in period costume. The

camera moves from the group posing in the vintage motor vehicle to the golfers and then back to the group in period costume now all standing in front of their motor vehicle closer to the golfers.

12. The spokesman of the group says "If we a band of sugar millers can invent Bundaberg Rum as an ingenious solution to our horrible molasses surplus then surely you sir can remove this horrible beast from your favourable lie". The camera moves to other members of the group of sugar millers as he is speaking and then when he stops speaking two of the sugar millers remove the end of a golf club and hand it to the golfer. The golfer places a golf tee in the club and blows it at the crocodile where it lands in between his eyes and a few seconds later the crocodile blows up with a large explosion.
13. The scene moves to a second group of golfers some distance away, and of the golfers is put off her game by the explosion. The scene then returns to the men and pieces of crocodile are shown falling around the group. A large piece of the crocodile falls into the golfer's arms as he stares at the spot where the crocodile was. The spokesman of the sugar millers toasts the golfer with a glass of rum and says "Top shelf thinking" and the golfer is shown hitting his golf ball which lands against a bottle of Bundaberg Rum and falls in the hole as the sugar millers shout "Huzzah".
14. In the final scene we see three bottles of Bundaberg Rum sitting next to a hole on a golf green with the "Drink Responsibly" logo below as a voiceover says "The thinking man's rum" and then the Bundaberg Rum logo appears on the screen.
15. The second advertisement is set on the same golf course and the spokesman from the group of sugar millers in the previous ad is sitting on a chair next to an old fashioned television on a stand showing a still picture of a crocodile with smoke wafting behind him.
16. As the television shows the crocodile exploding and then the same scene rewinding, the man says "It has come to our attention that certain groups have gone off like a frog in a sock at the thought that we at Bundaberg would actually blow up a real live crocodile while making an advertisement. I am here to tell you that nothing of the sort would ever transpire. The crocodile in the ad was not harmed in the slightest. Unfortunately the next day it died of natural causes but take heart a piece of him will live on in us forever". He then turns and we see two of the sugar millers roasting the crocodile on a spit as he shouts "More marinade" and then the screen changes to the Bundaberg Rum logo.
17. The third advertisement begins with an old fashioned television showing the last part of the second television advertisement and then the spokesman stopping the television and saying "It has come to our attention that certain groups have caught their undergarments in a bunch at the mere notion that our last apology was insincere". We then see two of the group of sugar millers stacking crocodile skin luggage next to him as he continues "The proposition that we would explode let alone feast upon a beloved Australian icon is plain

poppycock” and finishes with an insincere laugh. The screen then changes to the Bundaberg Rum logo.

The Complaint

18. The first complaint goes to issues under both the AANA Code of Ethics and the ABAC. In relation to the ABAC, the complaint references all three advertisements which were shown in a cinema prior to a showing of “Jackass 3D”. The complainant argues that:
 - (a) The advertisements, with the byline “Thinking man’s rum”, imply direct personal and sporting success related to Bundaberg Rum; and
 - (b) Imply a therapeutic benefit of increasing intelligence.
19. The second complaint also raises issues under both the Code of Ethics and ABAC. In relation to the ABAC, the complaint concerns the lead television advertisement. The complainant argues that:
 - (a) The golfer is toasted with Bundaberg Rum for his ‘successful’ strategy of removing the crocodile by blowing it up;
 - (b) Depiction of consumption of alcohol on a golf course which would presumably be illegal (and certainly discouraged by golf clubs);
 - (c) The vehicle appears to be carrying cartons of bottles of Bundaberg Rum on the sides of the vehicle. The association between drinking on a golf course and driving around in a vehicle loaded with alcohol does not promote a mature, responsible use of alcohol;
 - (d) The fantastic or fictional nature of the ad provides no relief of the advertiser’s obligations to depict the presence or consumption of alcohol beverages in a manner that is consistent with the Code; and
 - (e) The ad is freely available for download from the Bundaberg Rum website and there is no age gateway restriction.

The Code

20. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

21. The ABAC provides at Section (c) 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;
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

The Advertiser's Comments

22. The Advertiser responded to the first complaint and questions posed by the Panel by letter dated 6 December 2010. The points made by the Advertiser in relation to the advertisements were:
- (a) The Bundaberg Rum "Favourable Lie" TVC is intended to be a humorous advertisement which parodies a group of 1880's sugar millers who played a significant part in the history of Bundaberg Rum. These sugar millers were responsible for the creation of Bundaberg Rum and the history of Bundaberg Rum tells the story of these sugar millers overcoming significant adversity. The TVC places these sugar millers in a modern day scenario where they challenge modern day consumers to think laterally when solving day to day problems.
 - (b) The TVC sees two 30 year old men on a suburban golf course, walking up to see where one of their golf balls has landed. They are faced with an absurd situation where a large crocodile is resting near the golf ball. Upon seeing the crocodile, the golfer decides against playing his ball and opts to play another shot away from the crocodile. Suddenly the sugar millers from the 1880's, in period costume and in an absurd pose, appear from nowhere on the golf course. The head miller states that if they could create Bundaberg Rum as a solution to a large molasses surplus, then surely the golfer can solve the problem of the crocodile resting near his ball. One of the sugar millers hands over a golf club after removing the club head. The golfer is inspired to think laterally, he takes the club, inserts a golf tee, and proceeds to blow it at the crocodile (like a dart). The golf tee hits the crocodile, and several seconds later, a large explosion removes the crocodile from near the ball. Large pieces of fake crocodile rain down on the golfers. The golfer proceeds to hit the ball from its original position, and the ball bounces off a conveniently placed bottle of Bundaberg Rum, and falls into the hole. The sugar millers shout "Huzzah" in celebration, with a voiceover stating: "Bundaberg Rum. The thinking man's rum".
 - (c) There are two follow up TVC's which follow a similar tone to the main TVC. The first follow up TVC features the head sugar miller apologising

to those who may have been offended by the first advertisement, and reassures viewers that the crocodiles was not harmed in any way by the explosion. He also describes that the crocodile died the next day of natural causes, and that a piece of the crocodile will live on in all of us. The camera pans out and we see the crocodile, intact, on a rotisserie being turned by two of the other sugar millers. The second follow up TVC also features the head sugar miller, apologising to those who thought the previous apology was insincere, and the camera pans out to a large pile of crocodile skin luggage, however no further verbal reference to the crocodile is made.

- (d) The overall tone of the TVC and the follow up TVC's is one of humour and absurdity. The director's influence for the tone of the advertisements was Monty Python, which is an example of the most absurd sketch comedy. The presence of the period costumed sugar millers, the over the top explosion, and the fake crocodile clearly contribute to this being a comedic TVC which is in no way meant to be violent or to condone or focus on any cruelty to animals.
- (e) We note that Diageo complies with the ABAC Code, DSICA Code and Diageo's own internal global marketing code. We consider that the "Favourable Lie" TVC complied with all aspects of these codes.
- (f) It is our very strongly held view that the TVC series subject of this complaint does not breach section (a) (including section a(iii)) of the ABAC. This is on the basis that the overall tone of the TVC is one of humour and absurdity, and the focus is on a positive message of thinking outside the square to overcome apparent obstacles (as did the founding fathers of Bundaberg Rum). We consider that the combination of the sudden appearance on the golf course of a crocodile; the sudden appearance on the golf course of the 1880's sugar millers in period clothing and in an absurd pose with over dramatised facial expressions and behaviour; the use of a golf club and golf tee as an improvised blow dart against a large, plastic, fake crocodile; and the resultant large explosion which is clearly a disproportionate and absurd outcome from a golf tee being used as a dart, all combine to create a comic and absurd presentation of the message which is around the heritage of the Bundaberg Rum brand and product. We consider that it would not be reasonable to view the TVC or follow up TVCs and consider that it portrays any realistic course of events or depiction of violence. The follow up TVCs further dispel any potential for any reasonable person to consider that a real crocodile was hurt by proactively introducing a follow up apology commercial that expressly dismisses any claims that the crocodile was real or that violence was ever used. The only depiction of alcohol in the TVC is the scene where the sugar millers (not including the driver of the old fashioned vehicle) raise a small glass of rum to toast the golfer's ability to think outside the square and overcome the obstacle. It is not the explosion which is being toasted or any use of violence but rather the golfer's ability to think laterally. At no stage is alcohol consumption depicted. The vehicle is shown carrying an array of bottles, canisters and sugar cane, however is not carrying any bottles

which are specifically recognisable as containing alcohol. It would not be reasonable to assert that this creates any direct link between the consumption of alcohol and driving on golf courses. This is even more so in the context that the appearance of the sugar millers is so fanciful and absurd and they are certainly not playing or about to play any sport.

- (g) The function of this TVC is a celebration of the ingenious thinking that lead to the creation of Bundaberg Rum, and to encourage this type of lateral thinking today. At no stage does the TVC suggest that the presence or consumption of Bundaberg Rum causes or contributes to overcoming obstacles or to any success. The byline “The thinking man’s rum” infers that Bundaberg Rum would be the choice of those who demonstrate the type of thinking that lead to the creation of Bundaberg Rum. It in no way suggests that consumption of Bundaberg Rum will cause you to become a ‘thinking man’. The reasonable person would understand that the message in the line is that Bundaberg Rum is a good choice of rum rather than any suggestion that the consumption or presence of the rum makes you smart. The sugar miller in the TVC who raises a glass is merely celebrating the golfer’s lateral thinking that helped him overcome an obstacle by solving the problem of a fake crocodile near his golf ball. There is no depiction nor suggestion that drinking rum will help you find a solution to an obstacle, rather it is merely used as a toast after the problem has been solved. Similar to the preceding comments, the use of the phrase ‘Top Shelf Thinking’ references the ingenious solution that the golfer used to solve his dilemma. The parallel is drawn between the ingenious thinking that created Bundaberg Rum, and the ingenious thinking that solved the golfer’s problem. There is no suggestion that ‘Top Shelf Thinking’ is a result of either the presence or consumption of alcohol. We consider that it would not be reasonable to interpret the use of the phrase other than as a celebration of great thinking and the fact that great lateral thinking by the founders of Bundaberg Rum is what lead to the creation of the product. The TVC makes no suggestion that the product is associated with being either smart or intelligent. The overall message from the TVC is a celebration of the thinking that created Bundaberg Rum – applied to modern day problems. The inference is that Bundaberg Rum is the result of ingenious thinking – and not that it contributes to being smart or intelligent. For these reasons we believe very strongly that the TVC in no way contravenes section (c)(i) of the ABAC.
- (h) The byline “The thinking man’s rum” suggests that Bundaberg Rum would be the choice of those who demonstrate the type of thinking that lead to the creation of Bundaberg Rum. It in no way infers or suggests that the presence or consumption of Bundaberg Rum will cause you to become a ‘thinking man’ or more intelligent in any way. Use of the phrase ‘Top Shelf Thinking’ references the ingenious solution that the golfer used to solve his dilemma. The parallel is drawn between the ingenious thinking that lead to the creation of Bundaberg Rum, and the ingenious thinking that helped to solve the golfer’s problem. We strongly submit that no reasonable interpretation of the advert would find that

use of the phrase ‘Top Shelf Thinking’ is being used to suggest that intelligence results from either the presence or consumption of Bundaberg Rum. For these reasons we believe very strongly that the TVC in no way contravenes section (c)(iii) of the ABAC.

- (i) We reiterate our earlier comments that at no stage is consumption of alcohol depicted in the TVC. The only depiction of alcohol in the TVC is the scene where the sugar millers (not including the driver of the old fashioned vehicle) raise a small glass of rum to toast the golfer’s ability to think outside the square and overcome the obstacle. It is not the explosion which is being toasted or any use of violence but rather the golfer’s ability to think laterally. At no stage is alcohol consumption depicted. The historical vehicle of the sugar millers is shown carrying an array of bottles, canisters and sugar cane, however is not carrying any bottles which are specifically recognisable as containing alcohol. It would not be reasonable to assert that this creates any direct link between the consumption of alcohol and driving on golf courses. This is even more so in the context that the appearance of the sugar millers is so fanciful and absurd and they are certainly not playing or about to play any sport. For these reasons we believe very strongly that the TVC in no way contravenes section d of the ABAC.

The Panel’s View

23. The complaints raise issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to the portrayal of violence and cruelty to animals. As explained earlier, Code of Ethics matters are determined by the ASB and this determination will not deal with these concerns.
24. Rather, this determination deals with that part of the complaints which argue that:
 - (a) Advertisements for alcohol beverages should portray a mature, balanced and responsible approach to the consumption of alcohol beverages and must not promote offensive behaviour bringing into play sections (a) and (a)(iii) of the ABAC; and
 - (b) the consumption or presence of the product changes the mood or environment and is a cause or contributor to personal or sporting success or offers a therapeutic benefit, namely intelligence. These concerns bring into play sections (c) (i) & (iii) of the ABAC.
25. The first argument raised is that the ad breaches section (a) because:
 - It is associating alcohol use with the ‘blowing up’ of the crocodile and
 - Drinking alcohol on a golf course would be illegal or at least discouraged by the management of the courses and
 - Driving on a golf course with a vehicle ‘loaded with alcohol’

26. The advertiser responds to this argument by stating:
- The ad is a parody, is clearly absurd in both its concept and portrayal and would be viewed as such
 - The actions of the 'Millers' the 'over the top' explosion of the fake crocodile and the whole tone of the ad establishes it wouldn't be taken literally or seriously
 - The Miller's vehicle is not carrying containers 'specifically recognisable' as containing alcohol
 - The ad celebrates 'ingenious thinking' not alcohol use
27. The Preamble to the Code provides that in assessing the consistency of an ad against Code standards, the Panel is to have regard to the probable impact of the ad upon a reasonable person taking its content as a whole.
28. Section (a) of the code creates a positive standard for alcohol ads, namely that they present a mature, balanced and responsible approach to alcohol consumption. This standard is breached if the ads promote offensive behaviour, excessive consumption, underage drinking or the misuse or abuse of alcohol beverages.
29. In this case the essential issue turns on how a reasonable person would assess the ad in light of its use of parody and its somewhat offbeat concept. Certainly humour or parody are relevant considerations in assessing the probable impact of an ad, but the use of humour cannot provide an antidote if the ad, fairly considered as a whole, is suggesting or promoting behaviours or attitudes towards alcohol use or alcohol's affects which are inconsistent with the ABAC standards.
30. Almost invariably judgments on an ad of this kind might vary from one person to another person. Clearly the complainants found the ad offensive and contrary to community standards concerning a responsible approach to alcohol consumption. On balance, a majority of the Panel however do not believe the ad breaches section (a) of the Code. In reaching this view, the Panel has noted:
- The entire scenario is so far-fetched that a reasonable viewer would clearly recognize that the ad is a parody and would assess the actions of the characters depicted accordingly
 - Alcohol consumption depicted is moderate (a toast) and none of the characters appear affected by alcohol use
 - The Miller's vehicle is not obviously (or even on examination in freeze frame) carrying large amounts of alcohol
 - The farcical means of causing the explosion and its exaggerated nature establish the scene as completely fictional

31. The second argument is that the ad breaches section (c) (i) and (iii) because
- The use of the expression ‘thinking man’s rum’ implies direct personal and sporting success is related to the product and
 - The expression also suggest a therapeutic benefit of increasing intelligence and
 - The toasting of the golfers’ ‘successful strategy’ in removing the crocodile
32. In response the advertiser argues that the ad is ‘a celebration of the ingenious thinking that lead to the creation of Bundaberg Rum and to encourage this type of lateral thinking today’. The expression ‘thinking men’s rum’ implies the product is the choice of clever thinkers, not that the product is the cause of becoming a thinking man.
33. Section (c) of the Code is framed in wide terms. Its essential point is that an advertisement is not to imply that the consumption or presence of alcohol is a cause or contributor to achieving success. The key issue being the casual link between alcohol and success.
34. The ad clearly associates the product with success, however such an association of itself is not prohibited by the Code. The question is whether the ad suggests alcohol contributed to achieving the success, rather than it being subsequently brought in to mark the success. This is a judgment call upon which different people might reach different conclusions.
35. On balance, a majority of the Panel believes the ad does not breach section (c) (i) or (iii) of the Code. In reaching this conclusion the Panel noted:
- Alcohol is depicted in a scene following the ‘removal’ of the crocodile and the playing of the golf shot
 - Alcohol is neither consumed nor shown as present while the plan to remove the crocodile is developed and implemented
 - The expression ‘thinking man’s rum’ would not be taken by a reasonable viewer as suggesting that the product is a cause of smart thinking but rather it is the choice of a smart thinker
36. Accordingly, the complaints are dismissed.