

ABAC

**ABAC Complaints Panel
Determination No: 11/06**

COMPLAINT OF MRS NEROLI LIEBKE

**Product: Bundaberg Rum
Advertiser: Diageo**

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

25 April 2006

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television commercial for the alcohol beverage ‘Bundaberg Rum’ produced by the company Diageo (“The Advertiser”) and arises from a complaint by Mrs Neroli Liebke (“The Complainant”).

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; and
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast.
3. The ASB and the ABAC 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 complaint raises concerns under the ABAC and the Code of Ethics and accordingly is within the Panel's jurisdiction as far as the ABAC matter is concerned.

The Complaint Timeline

6. The complaint is the form of an email dated 14 February 2006 and was received by the ABAC Adjudication Panel on 21 February 2006.
7. The Panel endeavours to determine complaints within 30 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.

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 advertisement was subject to pre-vetting and given approval (VR94/05).

The Advertisement

9. The complaint concerns a television commercial. The commercial opens with a shot of the familiar Bundaberg Rum bear "Bundy" standing at the doorway of a suburban house. It is evening. The shot is taken from a distance looking towards Bundy who is facing the door.
10. Bundy is seen pushing the door-bell which is heard to ring. A close-up of a party invitation is shown in Bundy's hand. It reads: "Macca's party, 4 Acacia Avenue". Bundy comments to himself: "This looks like the place." He is seen then front-on through the vantage point of the door's peephole and he is carrying a bottle of Bundaberg Rum.
11. The door is opened by a woman who smiles and says "Hi, everyone's here so come through" as she gestures into the house. Bundy is seen passing through the doorway and as the door shuts behind him it causes a draft of wind to move a shrub which is obscuring the house number located on the wall adjacent to the door. The previously visible number "4" is in fact shown to be number "14". This establishes that Bundy is at the wrong house.
12. The scene moves to the woman and Bundy walking down the entrance hallway of the house. The woman is seen to be walking backwards looking at Bundy as she asks "Didn't we order a fireman?" The woman and Bundy then are seen entering into a large room.

13. As Bundy enters the room he comments, more to himself than the woman "Am I in the right ... party" as he surveys the room which is decorated for a party but is filled with only women. The women are dressed casually and are mostly seated along the walls of the room.
14. The shot returns to Bundy who is standing at the entrance of the room with the alcohol product in one hand. A female voice is heard saying: "Let's get started!". This woman is seen briefly to be wearing a cowboy hat as she turns on a CD player and dance music begins to play.
15. A brief close-up of Bundy's face is shown as he says "Aahh" and then the shot quickly focussed on one of the seated women who is wearing a wedding veil. This establishes the woman as a would-be bride attending her "hens' night". The shot moves to a second woman who is standing and who gestures with both hands for Bundy to start dancing.
16. The shot moves back to Bundy who commences to dance in a slow, somewhat clumsy fashion. The next scene is of the woman in the cowboy hat beginning to dance. She is depicted wearing blue jeans and a pink off-the-shoulder top. The other women begin to cheer as the would-be bride is encouraged by two companions to get up to dance.
17. The shot quickly moves to another location where three men are shown standing and seated. Each has a bottle of Bundaberg pre-mixed drink in their hands. One of the men asks "I wonder what's happened to Bundy?" The seated man raises his left arm as if to look at his wrist watch.
18. The scene returns to the "hens' party". The would-be bride is shown dancing and says to Bundy "Take your top off", in a boisterous manner. Laughter is heard in the background. To this refrain, Bundy replies "Sure!". The bear is seen dancing with the "bride" and several other women. The shot then shows him removing the lid of the Bundaberg Rum bottle and throwing it.
19. The lid lands into a cocktail glass. The logo on the lid is seen as it rests in the glass and the slogan "Classic" is shown with a voice-over of "Classic". In much smaller print a message "Drink responsibly" is displayed in this final shot.

The Complaint

20. The complaint lists a number of grounds of concern, namely:
 - That the advertisement is offensive to women;
 - That the advertisement is broadcast in timeslots which mean that it will be viewed by children. In Mrs. Liebke's case, the advertisement was viewed by her two year old daughter;
 - That children will be attracted to the advertisement because of its use of the polar bear "Bundy" character.

The ABAC

21. The ABAC provides at Section (b) that advertisements for alcohol beverages must not have a strong or evident appeal to children or adolescents.

The Code of Ethics and the CTICP

22. The complaint raises matters not only under the ABAC which are dealt with by this determination, but also matters for the ASB under the AANA Advertiser Code of Ethics, and potentially an issue under the CTICP relating to the time of broadcast of the advertisement. As is explained later, the ABAC Adjudication Panel has jurisdiction for the ABAC and not the other two Codes.

Arguments in Favour of the Complaint

23. In favour of the contention that the advertisement offends the ABAC, it could be argued that the use of the polar bear character has evident appeal to children. Often children's stories and television programs feature animal characters e.g. Humphrey Bear, and the "Bundy" character might attract children as a result.

The Advertiser's Comments

24. The Advertiser responded to the complaint and a question posed by the Panel by way of letter dated 22 March 2006. The principal points made by the Advertiser were:
- (a) The commercial depicts a light-hearted, humorous situation that "any down-to-earth Australian might find themselves in";
 - (b) There is no visually inappropriate sexual themes/imagery used in the advertisement. Rather, the storyline is about an innocent mistake which ends up with a fun and lively outcome;
 - (c) There is "no way" that the advertisement aims to attract consumers under the legal drinking age and all characters used are over 25 years of age;
 - (d) The "hens' night" situation clearly establishes the setting as adult;
 - (e) Bundy bear is not similar to popular children's characters and his character is never associated or seen with anyone under 25 years of age, let alone children. The character has been used with the product since 1961;
 - (f) The advertisement was aired within the time slots specified in the CTICP, which means it showed after 8.30 pm Monday to Friday and weekends during televised sport, including the cricket;
 - (g) Cricket attracts an 80 percent over-18 year old television audience.

The Panel's View

25. The complaint raises issues which go to the intersection of three Codes which apply in whole or in part to alcohol beverage advertising. Before turning to the substantive issue raised under the ABAC, it is useful to discuss the interplay between the ABAC, AANA Advertisers Code of Ethics and the CTICP.

26. The first part of Mrs Liebke's complaint is that the advertisement is "offensive because of the lustful, sexual behaviour shown by the women". This element of the complaint raises an issue under the AANA Advertiser's Code of Ethics and has been subject to a determination by the ASB.
27. The ASB by decision dated 14 March 2006 dealt with this aspect of the complaint. Section 2 of the Code of Ethics goes to issues of taste and decency in advertising and specifically requires that advertisements shall treat sex and sexuality with sensitivity to the relevant audience and where appropriate the relevant program time zone. The ASB dismissed the complaint noting:
- The portrayal of women at a "hens' night" was not inappropriate as such functions are common; and
 - Sexual connotations in the advertisement were very mild and would not be seen by most consumers as lustful or sexual.
28. The ASB noted that the advertisement screened in times considered appropriate under the CTICP and that the treatment of sexuality in the advertisement was appropriate to the audience. Hence, the advertisement's broadcast during the day was not considered a concern for the ASB, although its broadcast time was a particular issue for Mrs Liebke. She pointed out that the advertisement was broadcast during a cricket game which was played during a time that her two-year old daughter was awake and in vicinity of the TV.
29. The CTICP contains a number of provisions which deal with alcohol advertising such as:
- Section 2.9 – advertisements aimed at children "must not be for, or relate in any way to, alcoholic drinks or draw any association with companies that supply alcoholic drinks;
 - Sections 6.7.1 and 6.7.2, which go to the time which "direct advertisements for alcohol drinks" may be broadcast, namely:
 - only in *M*, *MA* or *AU* classification periods (in effect this means after 8.30 pm); or
 - as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.
30. The Advertiser states that the television commercial has only been broadcast at times consistent with the CTICP provisions. Accordingly, it would seem unlikely that the advertisement would be found in breach of the CTICP.
31. The role of the ABAC Panel is not, however, to make decisions about the consistency of an advertisement against the Code of Ethics or the CTICP. The rules and procedures applying to the Panel result in the Panel confining its determinations to the ABAC provisions. This means it is conceivable for a single complaint about an alcohol advertisement to lead to three separate processes of assessment and decision. As is the case here, it is not uncommon for there to be two decisions – one from the ASB and one from this Panel – arising from a single complaint about an advertisement.

32. The issue which this determination must resolve is whether Mrs Leibke's complaint about the advertisement having appeal to children indicates that the advertisement is in breach of the ABAC. The relevant section of the ABAC provides that advertisements for alcohol beverages must not have a strong or evident appeal to children or adolescents.
33. Mrs Liebke argues, in effect, that if the evidence of the reaction of her two-year old daughter to the advertisement is any guide, then the use of the polar bear "Bundy" character will breach the ABAC. In contrast, the advertiser argues that it is clear that the advertisement does not attract children as it depicts an adult setting *i.e.* a hens' night, and uses characters over the age of 25. It is pointed out that the "Bundy" character is long-standing – since 1961 – and has never been placed in association with children.
34. The Advertiser's points can be accepted, but this does not necessarily end the debate. The ABAC provision does not go to whether the Advertiser had any intention to appeal to children or adolescents, but rather whether the advertisement does in fact have strong or evident appeal. To determine this question, the preamble to the ABAC indicates that an advertisement is "to be assessed 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 and taking its content as a whole".
35. The preamble in effect provides that the Panel is to take account of the likely audience of the advertisement in assessing how a 'reasonable person' would view the advertisement as a whole. In this case, the advertisement was broadcast during the cricket which means it showed in timeslots during the day and not only the later timeslots of the M, MA or AV classification programs.
36. The advertiser argues that 80% of the audience of TV cricket games is over 18, but it is clear that as an iconic Australian sport, that cricket broadcast during the weekend and public holidays would have a significant audience of children and adolescents. Accordingly, the advertisement 'may be communicated' to children.
37. The Panel accepts that without the use of the "Bundy" character, the advertisement would not have "strong or evident appeal" to children. However the "Bundy" character is central to the advertisement and this character in appearance (not behavior) does resemble characters which have long been popular or associated with children's entertainment.
38. This means the use of the polar bear character has always a potential to have "appeal" to children. Whether this moves from an incidental or residue appeal to a "strong or evident appeal" in breach of the ABAC standard will depend on the context in which the "Bundy" character is used. The advertiser needs to be careful about the use of the character.
39. In a particular context, the use of the character will not have a strong or evident appeal to children, whereas in another context, the character's use might offend against the ABAC standard. In this particular case, a majority of the Panel on balance believes the advertisement does breach the ABAC.

40. In reaching this decision, the Panel takes account that the character is placed at a party within a private home. The scene has balloons, bright colours, music and dancing. While all the persons at the party are adult, the party scene will be familiar to children and placing the “Bundy” character in this context creates an overall impression which has an evident appeal to children.
41. Accordingly the complaint is upheld.