

# ABAC

**ABAC Complaints Panel  
Determination No: 58/09**

**Complaint by Mrs Lynda Fielder  
Product: Bundaberg Rum  
Advertiser: Diageo Australia Limited**

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

26 June 2009

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Bundaberg Rum by Diageo Australia Limited (“the Advertiser”) and arises from a complaint by Mrs Lynda Fielder received 1 June 2009.

## **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 ASB and the 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 a concern under the ABAC Code and accordingly is within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The complaint is in the form of an email from Mrs Lynda Fielder received on 1 June 2009.
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 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 advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this advertisement [UL16/09].

### **The Advertisement**

9. The advertisement is a television commercial for Bundaberg Rum.
10. The advertisement opens with Bundy Bear standing outside a bar, looking up a neon sign which reads "Billy Bob's Bourbon Bar", as three males walk up behind him. One of the males is wearing a red safety hard-hat and carrying a ladder, the other two carry a red esky between them. One of the males comments: "It's just un-Australian", to which Bundy Bear replies: "Yeah, ya ready?" to which one male replies "Yep". Bundy Bear says "Okay boys we're on." As the male with the ladder stands looking up at the neon sign, Bundy Bear and the two other males enter the bar as one comments "Good luck Scotty."
11. Inside the bar Bundy Bear and the two males approach the bar behind which stands the barman identified by his shirt monogram as 'Billy'. As one of the males places the red esky on a bar stool, Bundy Bear asks Billy: "Got any smooth Bundy Red Rum?" to which he replies "No, we're a bourbon bar and rum ain't smooth." Bundy Bear replies "Lucky we brought our own then" as one of the males removes the cap from a bottle of Bundaberg Red Rum taken from the open red esky - which is filled with the same bottles - and hands it to Billy the barman. Billy takes a drink and says "Damn that is smooth", then smiles at Bundy Bear. He then says "...but you can't bring it in here." Bundy Bear and the male standing next to the esky turn as Bundy points and says "Why not? You're BYO right?"
12. The scene changes to show the male wearing the red hard-hat standing on a ladder next to the neon sign which now reads 'B..Y..O...BAR'. The scene changes again as Billy is seen smiling and shaking his head as he raises the bottle of Bundaberg Red

Bourbon to Bundy Bear while the voiceover says: “New redgum filtered Bundy Red...”. The scene changes to a glass of rum and ice next to a bottle of Bundaberg Red Rum as large text that reads “REAL BUNDY RED RUM...REAL SMOOTH”, as the voiceover continues “...the rum so smooth even bourbon drinkers will go for it.”. The final scene shows Bundy Bear and the three males surrounded by bar patrons all drinking Bundaberg Red Rum and/or smiling. Bundy Bear is shown standing next to a stuffed grizzly bear. He looks at the bear and says “Loosen up mate” as the ad ends and in small print the following text is superimposed on the screen “Bundaberg Rum applauds fine form”.

### **The Complaint**

13. The complainant argues that:
  - (a) The ad depicts a hazardous activity, namely ascending a ladder to carry out electrical work on a neon sign;
  - (b) The ad includes an animal character that would appeal to children and underage youth; and
  - (c) The ad was broadcast during a live sporting match when children and adolescents are viewing.

### **The Code**

14. The ABAC provides at Sections (a)(ii), (b) and (d) that advertisements for alcohol beverages must:
  - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
    - i) must not encourage under-age drinking;
  - b) not have a strong or evident appeal to children and adolescents...
  - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly-
    - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices..

### **Arguments in Favour of the Complaint**

15. The advertisement is in breach of sections (a)(ii) and (b) of the ABAC Code by encouraging underage drinking and appealing to children through a combination of:

- (a) The use of a large animal character (bear) which stands out in a friendly, happy, humorous scene (noting that the inclusion of animals in an ad is one of the factors to be considered in determining whether an ad is directed to children for the purposes of the CTICP);
  - (b) The decision to broadcast the ad during a daytime live sporting event watched by many underage youth and adults.
16. The advertisement is in breach of section (d) of the ABAC Code by depicting a direct association between the consumption of alcohol beverages and the engagement in a potentially hazardous activity by depicting a man ascending a ladder to carry out electrical work on a neon sign so that his friends can BYO alcohol to licensed premises, which is allegedly not permitted regardless of the alteration to the sign.

### **The Advertiser's Comments**

17. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 12 June 2009. The points made by the Advertiser in relation to the advertisement were:
- (a) The storyline for this TVC is set around four Aussie mates who realise that an American-style "bourbon only" bar has opened in their suburb. They want to show the owner/ bar-tender that such an idea in Australia is ludicrous to them as they are drinkers of Bundaberg Rum, the Australian spirit brand. Bundaberg Rum recently introduced a smoother style of rum that has a taste profile more similar to that of bourbon, relative to traditional Bundaberg Rum. They play a practical joke on the bartender to get him to try the product, of which he approves and allows them to enjoy in his bar.
  - (b) The idea and intent behind the ad is to bring the essence of Australian pride in our home grown Bundaberg Red rum to life and to show to consumers that the new Bundaberg Red rum is a smooth rum and with a taste and flavour similar to bourbon. The BYO concept and the Aussie "cooler" are culturally recognisable Aussie icons. The intention of the BYO reference is to create a setting, in a humorous way, which the average Australian over 25 year old adult can relate to.
  - (c) Bundaberg Rum has a communications heritage of bringing the best mateship moments to life. Pride in our home grown products and mateship are at the heart of this ad.

#### Section (a)(ii)(b)

- (d) We do not believe that the ad has a strong or evident appeal to children or adolescents nor does it encourage underage drinking for the following reasons.

#### Character & behaviour of the bear

- (e) The Bundy bear character is a large polar bear, with a standing height of 8ft, which is well above the height of the average man. The bear has a deep gruff voice, sharp teeth and claws with a muscular build. His character, tone and personality are structured around a 25+ year old male. He does not wear clothing, jewellery or items to gain the attraction of children or adolescents as is the case with most children's characters. The Bundy bear is clearly distinguishable from popular children's characters.
- (f) The Bundy bear is not behaving in a child-like or adolescent manner, but like a typical 25+ year old male socialising with his mates and having a bit of a jibe, through a practical joke, at the bourbon "only" bar, which is humour directed to over 25's. The bear is not the centre of attention from the fellow patrons of the bar. Fellow patrons are going about their evening as if the presence of the bear were a normal event, as if he were simply one of the guys. The bear acts like and is simply part of a group of "mates".
- (g) The Bundy bear character has been used with the product since 1976. 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 aged over 30 years.
- (h) We believe that the appearance of a gruff, mate-like character of the Bundy bear is not at all child-like or adolescent nor does it appeal to children or adolescents. This is further emphasised when considered in the context of the setting of the ad.

#### Setting and theme of the advertisement

- (i) The use of a large animal character alone is not solely determinative of whether an ad has a strong or evident appeal to children or adolescents. The context of the ad as provided by the theme, atmosphere and setting are critical factors in determining whether this ad has a strong or evident appeal to children or adolescents
- (j) The ad takes place in a clearly adult-only venue. A bourbon bar is a bar specializing in many different types of bourbon, which requires a mature taste and would not appeal to adolescents as a typical setting. The ad takes place in this venue in the evening, clearly after dark as the neon lights are on and traffic is absent. The patrons of the bar are adults only who are (and appear to be) over the age of 25 years.
- (k) The music playing in the background is older style Deep South American blue grass music that generally has an older 30+ male skewed appeal, and is certainly not part of the Top 40 hit list or usual listening practices of adolescent Australians.
- (l) We have gone to considerable lengths at many levels to ensure the setting is for a 25+ year old consumer. The rustic nature of the bar; the bar full of 25+ year old consumers; the premium and more expensive

range of bourbons, the dimly lit and noisy adult setting, and the careful choice of music. The whole context and theme of the ad is directed to the more mature consumer who appreciates the smoothness and distinguishing taste of Bundaberg Red rum filtered through red gum.

#### Age of persons appearing in the advertisement

- (m) All persons in the ad are over 25 years and appear to be over that age.

#### Responsible approach to alcohol consumption

- (n) The ad presents a balanced and responsible approach to the consumption of alcohol. There is neither suggestion of nor encouragement of excessive consumption or abuse of alcohol, underage drinking or other offensive behaviour. The ad depicts only moderate consumption of alcohol and the Bundy bear does not at any time consume alcohol.

#### Timing of advertisement

- (o) The ad has only been broadcast at times consistent with the CTICP provisions which allow ads to be broadcast as an accompaniment to the live broadcast of a sporting event on weekends and public holidays. The ad was broadcast at 1.35pm on a Saturday during the live broadcast of an AFL football game between North Melbourne and Fremantle.
- (p) The decision to broadcast the ad during the live broadcast of the AFL game was because this event is typically enjoyed by an audience of which over 80% are over 18 years of age. This is supported by data from OzTAM – the industry TV audience measurement system. For this particular game the OzTAM data shows that 92% of the audience for this particular match was over 18 years of age.

#### Section (d)

- (q) The TV ad does not depict that the man climbing the ladder has consumed any alcoholic beverages prior to or during the activity of climbing the ladder and turning off the lights on the neon signs.
- (r) The man is also portraying safe practices in safely carrying and using a sturdy ladder (which satisfies Australian safety standards) and an Australian standard safety helmet. The man does not ascend further than 1m. The average Australian does not put on a hard hat to climb a ladder and the fact the man in the ad has done so shows he takes safety seriously. He is carrying a tool belt and his attention to safety indicate that he is a professional licensed electrician, and thereby formally trained in health safety practices of this specialized field. He has not scaled the side of a building nor is he clambering over a roof.

- (s) We do not believe the activity depicted is a “potentially hazardous activity” and the activity does not take place nor does it give the impression that it has taken place after or during the consumption of alcohol.
- (t) Notwithstanding the issues raised by this complaint with effect from 1 July 2009, Diageo has separately and voluntarily announced its intention to conduct a 12 month trial whereby we will be moving all of our product advertising on free to air television to after 9pm on every night of the week. We would like to confirm our long standing support for the ASB and commitment to upholding the ABAC as well as our best practice global marketing standards.

### **The Panel View**

18. The complaint has put forward a well-researched argument which raises two substantive issues which will be addressed in turn. These issues are:
  - Does the ad breach section (a)(i) and (b) by having a strong or evident appeal to children?
  - Does the ad breach section (d) by depicting a direct association between alcohol consumption and the engagement in a hazardous activity?
19. The complainant argues that the ad breaches the ABAC standard going to the encouragement of underage drinking and/or having a strong or evident appeal to children. This argument is based on the particular appeal that animal characters have to children and, in this instance, the “Bundy Bear” character is depicted in a friendly, happy and humorous scene which is argued to have considerable appeal to children. The complainant also refers to an advisory note to the CTICP on “commercials or community service announcements directed to children” and to two previous determinations made by this Panel in making the argument.
20. For its part, the advertiser refutes the complainant’s arguments by claiming:
  - The bear character used in its advertising is not similar to children’s characters in appearance or behaviour.
  - The advertisement is set in a clearly adult scene, with neither the characters depicted, the music used nor the overall context having an evident appeal to children or adolescents.
21. As mentioned by the complainant, the Panel has dealt with two previous advertisements which feature the “Bundy Bear” character over the last five years. This of itself is not surprising, as the advertiser operates very regular advertising campaigns for the Bundaberg Rum products and these campaigns all feature the “Bundy Bear” character. The first decision, 11/06, upheld a complaint against a TV advertisement, with the Panel noting:
  - The Bundy Bear character does resemble characters which have long been popular or associated with children’s entertainment

- There is a potential for advertising featuring the Bundy Bear to have appeal to children
  - Whether this moves from incidental appeal to “strong or evident appeal” will depend on the context in which the “Bundy” character is used.
22. The ad dealt with in Determination 11/06 was set in a private home and featured a party including balloons and party goers wearing cowboy hats. The Panel believed that ad, taken as a whole, had an evident appeal to children.
23. In the second decision, 107/08, the complaint went to matters other than the appeal of the ad to children and the Panel did not make a ruling on the issue of appeal to children. It should be noted that an Adjudication Panel’s decision goes specifically to the ABAC standards which have been raised by a complainant. The pre-vetting process, in contrast, reviews the ad against each of the ABAC standards.
24. The complainant also made reference to an advisory note to the CTICP which is “intended to provide guidance on the features licensees (free to air TV networks) will consider in assessing who a commercial is directed to”. This note does not relate to the ABAC, but to a different code applied by the TV networks. In so far as the note is of relevance, it refers to the theme of a commercial as being critical with characters such as animals possibly indicating an ad is directed as children. As the Panel observed in Determination 11/06, the use of characters in context is important.
25. The complaint also notes that the ad was broadcast during a sports program and would be viewed by children. The ABAC is a code about the content of an ad rather than where an ad is placed. The Panel accepts the ad will have been viewed by children, although the advertiser indicates that this time slot has a predominantly adult audience. The broadcast of the ad with a sports program is not a breach of the ABAC.
26. Accordingly, the matter for assessment turns on the overall context created by the ad and whether a reasonable viewer, taking the ad as a whole, would take the ad as having evident appeal to children. In this case the ad is set in a bar with clearly adult characters. The tone of the ad is humorous and irreverent. The Panel does not believe that the ad, absent the Bundy bear, has elements that have a strong appeal to children and adolescents. The use of the Bundy bear does not in the context of the ad, in the Panel’s view, breach the ABAC standard.
27. The second issue raised by the complainant is whether the ad breaches section (d) of the ABAC by associating a hazardous activity with alcohol use. Section (d) is a somewhat complex provision which has several elements which an alcohol ad must not in combination contain, namely:
- Depiction of any direct association between
  - Alcohol consumption; and
  - Engagement in any potentially hazardous activity.



28. The section goes on to provide in sub-section (i) that an ad might depict alcohol consumption in “connection” with a potentially hazardous activity but this must not be shown either before the activity or during the activity.
29. In this case the potentially hazardous activity is argued to be the depiction of one of the “mates” using a ladder to access a neon sign to change how it reads. This scene is clearly separated from the later scenes showing alcohol use and there is nothing in the demeanor of the man indicating he has been drinking.
30. The Panel does not believe the section (d) standard is breached by the ad, as no alcohol consumption is depicted in conjunction with or prior to the activity; and the neon sign scene is quite clearly separated from the final scenes showing the men drinking in the bar.
31. Accordingly, the complaint is dismissed.