

ABAC

**ABAC Complaints Panel
Determination No: 64/09**

**Confidential Complaint
Product: Bundaberg Rum
Advertiser: Diageo**

Professor The Hon Michael Lavarch – Chief Adjudicator
Elizabeth Dangar - Member
Professor Fran Baum – Member

4 August 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Bundaberg Rum by Diageo (“the Advertiser”) and arises from a confidential complaint received 3 July 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 and Alcohol Guidelines which include provisions about the content and placement of 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 is in the form of a confidential email received 3 July 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 that 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 not obtained for this advertisement.

The Advertisement

9. The Advertisement was a stadium announcement for Bundaberg Rum played 10 minutes before the end of a rugby match on 27 June 2009 between Australia and France at ANZ stadium, Olympic Park, Sydney. The announcement was "This is a message for the guy who always leaves 10 minutes before full time to beat the traffic. You know who you are. In the interests of honouring the 80 we have parked your car in. Sit back, grab a Bundy and enjoy the end of the game. This has been an Honour the 80 announcement from Bundaberg Rum."

The Complaint

10. The complainant argues that the advertisement promotes and encourages drinking alcohol before driving.

The Code

11. The ABAC provides that advertisements for alcohol beverages must-

- (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle 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

12. In favour of the complaint it can be argued that the advertisement breaches section (d) of the ABAC Code by associating alcohol consumption and the operation of a motor vehicle by recommending to drivers that normally leave the game 10 minutes before full time to “sit back, grab a Bundy and enjoy the end of the game”.

The Advertiser’s Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 23 July 2009. The principal points made by the advertiser are as follows:

- (a) We have reviewed the ABAC in light of the complaint you have received. Our interpretation when we were in the creative stage of this project was that the announcement did not breach section (d) of the ABAC. We do not consider that the advertisement directly associates the consumption of alcohol with the operation of a motor vehicle for the following reasons:
- Only low alcohol Bundaberg rum products are sold at ANZ stadium, which have an ABV of 3.5%. This is below the definition of “low alcohol beverage” in the ABAC which defines “low alcohol beverages” as those which contain less than 3.8% ABV.
 - The announcement was played only once, 10 minutes before the end of the game. At the time of the announcement all of the bars within the stadium were already closed as they have a policy of closing mid-way through the second half. The intention of the announcement (which is re-iterated by the timing of this announcement as well as its jocular and playful tone, see further under Question 2 below) is to encourage people to stay and finish watching the end of the game, rather than leave early; it is certainly not to encourage or directly associate the consumption of alcohol and the operation of a motor vehicle.
 - The announcement does not specify that they are referring to the driver of the motor vehicle; it simply refers to the “guy who always leaves 10 minutes before full time to beat the traffic”. It is highly unusual for someone to drive by themselves to the football, normally a group of friends’ car pool to these events.

- The announcement is a voiceover announcement and does not depict the consumption of alcohol beverages in connection with the operation of a motor vehicle.
- (b) The announcement was a tailored message aimed towards 25 to 45 year-old males in stadiums where the Bundaberg Rum Rugby Series was being played. The humorous nature of the announcement was to lampoon fans that, as “fair-weather supporters”, tend to leave the game early. The announcement has a deliberately jocular and playful tone and is aimed at encouraging people to stay and finish watching the end of the game, rather than leave early. The focus (re-iterated by its timing, elaborated on further below) is certainly not to encourage or directly associate the consumption of alcohol and the operation of a motor vehicle. The announcement was intended to be of an irreverent and comical nature.
- (c) This announcement was played once only during the evening, 10 minutes before the end of the game. It should also be noted that at the time of the announcement, all of the bars within the stadium were already closed as they have a policy of closing mid-way through the second half. This means that it would not be possible for someone to hear the announcement and go and purchase a Bundy – and this was not the intention of the announcement.
- (d) Diageo has a long-term history of educating consumers about responsible drinking, both through its wider marketing activities as well as in-venue at events such as rugby games. Responsible Drinking messaging appears on all marketing materials throughout the stadiums, with a particular emphasis on the bar locations. It is against this background that we created what was intended to be a harmless and fun announcement to amuse the crowd, with absolutely no intention to create any linkage in their minds that consumption of alcohol and driving could or should be condoned. However, given the fact that at least one of the people attending the game concerned did jump to that impression, we have decided that we will remove the announcement in its current form from further use during future rugby games.
- (e) I hope that our intentions and actions will be understood and appreciated by the Adjudicators. We stand proud of our record on respecting the Alcohol Beverages Advertising Code and will continue to maintain the highest standards in our marketing activations in support of our brands. We are pleased to have had this opportunity to confirm our long-standing support for the Advertising Standards Bureau and commitment to uphold the Alcohol Beverages Advertising Code (ABAC).

The Panel's View

14. The complaint raises an issue about the association of alcohol use in conjunction with the operation of a motor vehicle. The ABAC provides in Section (d) that ads are not to depict any direct association between the consumption of alcohol, other than low alcohol beverages, and the operation of a motor vehicle. The section goes on to provide that any depiction of alcohol consumption must not be represented as having taken place before or during engagement of the activity in question.
15. The complaint is straightforward. It is argued that the announcement at the rugby game promotes and encourages drink-driving. In response, the advertiser makes a number of points, principally:
 - There was no intention to encourage drink-driving, but rather to humourously encourage people to stay to the end of the game.
 - Only low alcohol Bundaberg Rum products are sold at the stadium and hence the “low alcohol” exception to section (d) is brought into play.
 - There is no depiction of a “direct association between the consumption of alcohol beverages and the operation of a motor vehicle” in the ad.
 - It was played when all the bars within the stadium were closed.
16. Whatever the intention of the advertiser, the Panel's task is to assess the probable impact of the ad upon a reasonable person within the class of persons to whom the advertisement is directed, taking the content of the ad as a whole. The Panel does not believe the ad brings into play the “low alcohol” exception to section (d). This exception presumably has the intent of allowing low alcohol products to be advertised as an alternative to higher alcohol content products in the context of responsible use of motor vehicles. As discussed in Determination 76/08, the exception should not be read as to allow advertising which depicts alcohol consumption occurring with inherently dangerous activities, simply because it is a low alcohol product.
17. In any event, the ad itself makes no reference to the strength of the product being advertised. It simply refers to “Bundy” and “Bundaberg Rum”. The fact that only lower alcohol content products are available at the stadium does not mean a reasonable person would automatically assume the ad was referring solely to low alcohol varieties of Bundaberg Rum.
18. The second substantive point raised by the advertiser is that the ad does not depict the consumption of alcohol with the operation of a motor vehicle. In the same vein, it is contended that the ad refers to “the guy who always leaves 10 minutes before full time to beat the traffic” and this does not necessarily mean the driver of a vehicle. The Panel cannot accept these arguments.
19. The Panel has previously noted that the concept of “consumption” is wider than depictions of the actual swallowing of the product. In Determination 51/05, a

television advertisement displayed a can of beer being placed next to a player in a football match, with a sound effect of the can being opened and a voice-over stating "Here's one for you, champion!". The Panel concluded that this amounted to a depiction of consumption for the purposes of section (d) of the ABAC.

20. In Determination 49/07, the Panel considered a radio ad. In this case the ad used language which invoked the idea of consumption when describing a golf game. Again, no actual swallowing of liquid was described, but the overall impression could reasonably be said to suggest that the product was being consumed in conjunction with the sporting activity.
21. In this ad, the announcement states "sit back, grab a Bundy and enjoy the end of the game". The reasonable implication is that the person is being encouraged to consume a Bundaberg Rum product prior to leaving the game, as it will not be possible to leave earlier because of their vehicle being "parked in". Equally, a reasonable person would take that the ad is referring to the person who has control over the operation of a motor vehicle. This is established by references to the "guy" leaving to "beat the traffic" and "parked your car in".
22. Finally, it is argued that the ad is intended to be "a harmless and fun announcement with no intention to create any linkage between the consumption of alcohol and driving". The Panel notes the advertiser's commitment to high standards in advertising. However, the intention behind the ad is not the test to be applied in assessing the ad's consistency with the ABAC. As set out in the ABAC preamble, conformity is assessed in terms of the ad's probable impact upon a "reasonable person" listening to the ad.
23. While the ad is light-hearted and humour is a relevant factor in assessing how a reasonable person might understand the ad, humour is not a cure-all for an ad which, taken as a whole and within context, breaches an ABAC standard. In this case the Panel concludes that the ad breaches the section (d) standard.
24. Accordingly, the complaint is upheld.