

ABAC

ABAC COMPLAINTS PANEL – DETERMINATION NO: 04/10 Diageo Guinness Draught

IN THE COMPLAINT OF MURRAY McKAY

Product: Guinness
Advertiser: Diageo Australia Ltd

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

17 December 2004

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) complaints panel (“The Panel”) concerns the television commercial for Guinness Draught by Diageo Australia Ltd (“The Advertiser”) and arises from a complaint received from Mr Murray McKay (“The Complainant”).

The External-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. Currently, alcohol advertising is subject to both:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme:
3. In addition, the commercial television industry Code of Practice places limits on the broadcast of “direct advertisement for alcoholic drinks”. Such advertisements are generally only to be broadcast in “M”, “MA” or “AV” classification periods or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.
4. The ASB and the ABAC 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.
5. 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 Complaints Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.

The Complaint Timeline

6. The complaint is in the form of an email from Mr McKay dated 21 October 2004, received by the ABAC Complaints Panel on 28 October 2004.
7. The Panel endeavours to determine complaints within 30 days of receipt of the complaint, but this timeline depends on timely receipt of materials and advice and the availability of panel members to convene and decide the issue. A letter was sent to the advertiser requesting a response to the complaint on 15 November 2004, and to date a written response has not been received from the advertiser to this letter. By way of email received on 7 December 2004, the advertiser has provided the Panel with a copy of a letter sent directly to the complainant dated 15 October, 2004.

Pre-vetting Clearance

8. The external-regulatory system for alcohol beverages advertising features independent examination of proposed advertisements against the ABAC prior to publication or broadcast. The television commercial has been approved by AAPS process.

The Advertisement

9. The complaint is about a television advertisement for Guinness draught beer. It is a form of animation and centres on the conversation of two men, portrayed as inventors. The dress, speech, colour and style of the animation suggests the advertisement is set in the early 1900s. The men's accents suggest they are Irish, which reflects the history of the Guinness product.
10. The advertisement opens with animation of a pigeon pulling a worm out of the ground outside the gates of the Guinness factory. This is followed by a cartoon scene of two inventors inside a room, with a refrigerator in the centre of the scene. The inventor is holding a bottle of Guinness Draught, and announces to his colleague that he has invented a machine that will chill their bottles of Guinness, because they like to drink them cold.
11. His colleague excitedly responds, "Brilliant!" and climbs inside the refrigerator, closing the door, as if to proceed to drink the product. He then says, "I can't get out!". The inventor replies, "You're not supposed to climb in". Whereby his colleague says, "Don't climb in? Brilliant". The scene then shows the colleague's arm stretching out of the refrigerator, holding a bottle of Guinness, which he holds up and salutes with the bottle held by the inventor.
12. The commercial concludes with a still shot of a crate of Guinness bottles and a male voiceover that says "drink the product cold, enjoy it responsibly", and the voice of the second inventor completes the commercial with "Brilliant!".

The Complaint

13. The complainant argues that the advertisement depicts the dangerous activity of climbing into a refrigerator and closing the door. It is argued that:
 - The advertisement may encourage young children to repeat the action of climbing into a refrigerator, thereby suffocating, an act that costs the lives of several children in Australia each year. The advertisement's jovial presentation risks encouraging children to play hide-and-seek in the refrigerator.

The Code

14. The ABAC provides at Section d) that advertisements for alcohol beverages must:

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. In favour of the complainant, it could be argued that the advertisement portrays the potentially hazardous activity of climbing inside a refrigerator and closing the door. This activity takes place before consuming the product and the character stays inside the refrigerator to consume the product.

The Advertiser's Comments

16. The Advertiser replied to ABAC by way of letter sent to the complainant, dated 15 October 2004, in which they said that the commercial is designed to drive the message that Guinness Draught can be drunk straight from the bottle and is best served cold. The airing of the commercial is post 8.30pm, and is placed in programs that are targeting people of legal drinking age.

The Panel's View

17. It is disappointing that the advertiser did not take the opportunity to respond specifically to the complaint and the question posed by the Panel about the conformity of the advertisement to the ABAC.
18. The Panel accepts that the point raised by Mr McKay is genuine and that children may be injured if trapped while playing with a refrigerator. The Panel also believes that an advertisement which could be reasonably concluded as associating the consumption of alcohol products with the potentially hazardous activity of being sealed in a refrigerator, would breach section d) of the Code.
19. The Panel, however, does not believe the advertisement can be reasonably said to be in breach of the ABAC. The Panel notes that the advertisement adopts a humorous style and could not be taken to be actually promoting the consumption of the product inside a refrigerator. Further, the text of the advertisement itself includes the line "You're not supposed to climb in".
20. The advertisement, in accordance with the commercial television industry Code of Practice, is broadcast in the later evening time slots. This means the audience which the advertisement is directed towards will predominantly be adult. Taken as a whole, the advertisement is not considered to breach the ABAC.
21. Accordingly the complaint is dismissed.