

# ABAC

**ABAC Complaints Panel  
Determination No: 152/08**

**CONFIDENTIAL COMPLAINT  
Product: Johnnie Walker Scotch Whiskey  
Advertiser: Diageo Australia Limited**

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

22 December 2008

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Johnnie Walker by Diageo Australia Limited (“the Advertiser”) and arises from a confidential complaint received 2 December 2008 (“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;
  - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTVICP) 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 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 concerns under the ABAC and accordingly is within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The complaint is in the form of an email dated 30 November 2008 and referred to the ABAC Panel by the ASB on 2 December 2008.
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 this 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. The Advertiser advised that pre-vetting approval was obtained for the advertisement [VR201/08], however the pre-vetter that purportedly approved the advertisement advised that she did not approve and had not ever seen this version of the ad. She advised that the version that she approved commenced with the same scene but then showed different historical scenes.

### **The Advertisement**

9. The advertisement is a 30 second television commercial which takes the form of a sequence of scenes, each depicting a particular event, some of which have historic importance. The commercial is shot in black-and-white and each scene is accompanied by music that has a strong beat and is based on the Proclaimers' song "I'm on my way".
10. The opening scene shows wooden barn doors which open to reveal a manual worker wearing clothing of the mid-1800s. The man is rolling a barrel from the barn which has the product logo on its end. Superimposed on the screen is a text which reads: "Johnnie Walker 1840s". The scene then moves seamlessly to show another manual labourer, this time a bridge builder, who is depicted walking along a girder suspended high above a harbour. The man is pushing a segment of iron which is supported from above by chains. The superimposed text explains the scene as "building the Harbour Bridge 1930s".
11. The next scene begins with a close-up of an ice-pick breaking ice which is then contextualized by a wide shot of three (3) figures shown ascending an ice-covered area. The superimposed text explains the scene as "conquering Mt Everest 1950s". The following scene shows an astronaut floating in space above the moon, with the text reading "One giant leap 1969".
12. The next scene begins with a shot of the feet and lower legs of a cricketer who is wearing pads and holding a bat. The cricketer is on a cricket field and is walking to the crease to face the bowling. The scene then shifts to the cricketer's head and face which reveals that he is wearing an Australian team

helmet and that he is in deep concentration. The cricketer is then depicted advancing down the wicket to dispatch a ball while a crowd shown in the background rises to applaud the shot. Along the fence in front of the crowd is banner advertising displaying the product's name and logo. The superimposed text reads "Reclaiming the Ashes 2006".

13. The scene then moves to a beach and depicts a group of male lifesavers running towards the waterline carrying a surf ski. The text reads "Saving Lives for 100 Years 2007". The final scene shows a man in a business suit walking briskly alone amongst a line of trees. The superimposed text reads "Where will a stride take you?". The man then morphs into the product logo which is accompanied by the slogan "Keep Walking". A small "Drink responsibly" message is also displayed at the bottom of the screen.

### **The Complaint**

14. The complainant argues that the advertisement contravenes section (c)(i) of the ABAC Code by depicting 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 by:
  - a) implying that Johnnie Walker scotch whisky could in some way contribute to success in the fields of sport, personal achievement and saving lives; and
  - b) superimposing an alcoholic brand with images of success or achievement.

### **The Code**

15. 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;

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

16. In favour of the complaint it can be argued that the advertisement breaches section (c)(i) of the ABAC Code by depicting the consumption or presence of alcoholic beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success through a combination of:
  - a) The image of a man rolling a keg of Johnnie Walker out of a barn with the super-imposed message "Johnnie Walker 1840s";
  - b) A series of images following that depict subsequent successful achievements in history;

- c) In conclusion an image of a smart business man walking with a super-imposed message “Where will a stride take you?” which changes into the Johnnie Walker logo and the message “Keep Walking Johnnie Walker”;
- d) The use of music based on The Proclaimers’ song “I’m on my way”.

### **The Advertiser’s Comments**

17. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 12 December 2008. Key points made by the Advertiser in relation to the advertisement were:

- (a) We assure you of our long standing support for the ASB and our commitment to uphold the ABAC. We consistently apply the letter and spirit of the ABAC, in addition to our own global marketing code of practice which includes a similar provision to section (c) (i).
- (b) In this commercial we see a series of scenes which depict significant milestones or strides through history with no implicit or explicit, direct or indirect implication that alcohol was in any way part of these achievements. Specifically there is no actual consumption or depiction of alcoholic beverages visible in the advertisement. The only indirect link to alcohol throughout the advertisement is in the closing scene (via the brand logo/strap line) and the opening scene with the barrel roller. This was a deliberate decision to ensure there was no link between the first scene and any of the subsequent scenes, or between any of the individual scenes, other than the concept of significant strides throughout history. There is no suggestion that the indirect reference to alcohol in the opening scene is a cause of or contributing factor to any type of success or achievement.
- (c) For your background the purpose of the advertisement is to celebrate significant and iconic moments in history, which reflect the progress of mankind. This is consistent with Johnnie Walker’s long running global “Keep Walking” campaign which celebrates progress but does not in any way suggest the product has a part to play in achieving progress. It is also important to understand this in the context of the Johnnie Walker brand story. Johnnie Walker has always been a pioneering and progressive brand and was in fact one of the first global brands by the early 1800s, well ahead of other significant global brands, which was a significant achievement for its time. It is this essence of progress, which the TVC is meant to portray.
- (d) Extensive research has been conducted locally prior to the production of this commercial and post-production. Throughout this research process consumers did not suggest that the advertisement links the consumption or presence of alcohol as contributing to success, as suggested by the complainant.
- (e) The commercial was continually and thoroughly assessed and approved by AAPS.

- (f) We do not believe the commercial breaches the Code.

### **The Panel's View**

18. The issue raised by the complaint is whether the ad is in breach of section (c) (i) of the ABAC. This section provides that ads must not suggest that the consumption of alcohol may create or contribute to a significant change in mood and alcohol use cannot be depicted as a cause or contributor to the achievement of success.
19. The complainant argues that the ad suggests the use of the product will lead to success in various fields. The advertiser argues that there is no direct link to alcohol use throughout the advertisement and no suggestion that the indirect reference to alcohol establishes alcohol as a cause of or contributing factor to any type of success or achievement.
20. Section (c) of the ABAC is a broad provision. It deals not only with depictions of alcohol consumption, but also the "presence" of alcohol in circumstances where alcohol "may" create or contribute to a significant change in mood or environment. Alcohol is not to be depicted as "a" cause of the achievement of success. Presumably, this means that achieving success might have a number of causes, and alcohol is not to be depicted as any one of the causes, even if it is a secondary reason for the success.
21. The ad does clearly associate the product with success and achievement. This much is readily acknowledged by the advertiser who advises that "the purpose of the advertisement is to celebrate significant and iconic moments in history". The advertiser goes on to argue that the ad "does not in any way suggest the product has a part to play in achieving progress". In contrast, the complainant takes the ad as implying that the product does contribute to the achievement of the various successes and achievements outlined in the advertisement.
22. The advertiser's response makes clear that it is quite sensitive to the standard contained in Section (c) (i) of the ABAC in which it is stated reflects a similar internal standard which the company applies to its advertising. To this end, the advertiser advises that the ad only creates an indirect link to alcohol through the closing scene (via the brand logo/strap line) and the opening scene with the barrel roller. This is not quite accurate as the Panel notes that the cricket scene, through the depiction of banner advertising on the fence on the cricket ground, also displays the product's name and logo. The cricket scenario is given the longest airplay of any of the historic events which are depicted in the advertisement.
23. If the ABAC standard was that alcohol is not to be associated with the achievement of success, then there is little doubt that the ad would be in breach of this standard. The Section (c) (i) standard, however, is not as simple as the association of alcohol with success, but rather goes to the prohibition of the depiction of the consumption or presence of alcohol as being a cause or contributor to the achievement of success. It is this question of whether the ad suggests a causal relationship between alcohol and the achievement of the business, social or other success which is the key issue for determination in this complaint.

24. A majority of the Panel does not believe the ad breaches Section (c) (i) of the ABAC. The ad does not, in the Panel's view, suggest a causal relationship between the various historic events and the use or presence of the product. In reaching this conclusion, the Panel has noted:
- No alcohol consumption is depicted and there is no implication in any of the characters shown that alcohol has been used by them;
  - The association of alcohol with success is the theme of the ad, but such association is not prohibited by the ABAC standard.
25. Accordingly, the complaint is dismissed.