

ABAC

**ABAC Complaints Panel
Determination No: 109/09**

**Confidential Complaint
Product: Smirnoff
Advertiser: Diageo Australia**

Professor The Hon Michael Lavarch – Chief Adjudicator
Elizabeth Dangar – Member
Professor Richard Mattick – Member

2 December 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a banner advertisement on the “Windows Live Messenger” website for Smirnoff by Diageo Australia (“the Advertiser”) and arises from a complaint received 4 November 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 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 on 4 November 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. This advertisement has pre-vetting approval.

The Advertisement

9. The complaint refers to a banner advertisement featured on the "Windows Live Messenger website.
10. The advertisement features the Smirnoff logo flashing on to the screen and then the screen changing to a crowd of hands moving across the scene as a man inside a bubble appears being held up by the hands. On the left side of the screen the text "I WAS THERE" appears. The screen then returns to the Smirnoff logo.

The Complaint

11. The complainant argues that the ad should not be placed on this website which is commonly viewed by children.

The Code

12. The ABAC provides at Sections (a)(ii) and (b) 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...

Arguments in Favour of the Complaint

- 13. In favour of the complaint it can be argued that the advertisement breaches section (a)(ii) and (b) of the ABAC thereby encouraging underage drinking and having a strong or evident appeal to children and adolescents by its placement on a website used by children and adolescents and by its depiction of “zorbing”.

The Advertiser’s Comments

- 14. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 19 November 2009. The points made by the Advertiser in relation to the advertisement were:
 - (a) We do not believe the advertisement has a strong or evident appeal to children or adolescents nor does it encourage underage drinking.
 - (b) Prior to gaining access to Windows Live Messenger, persons are required to create a Windows Live ID for which they need to enter their birth date. This information is then stored and used to deliver relevant advertisements.
 - (c) The banner advertisement which is the subject of the complaint was only delivered to Windows Live Messenger users that who fell within the target group of males aged 18 to 29, using the registration details of these users to confirm their age and sex. This advertisement was not shown on Windows Live Messenger generally. Persons younger than 18 years of age registered on Windows Live Messenger would not have been able to view this advertisement and it was never our intention or expectation that they would be able to view it.
 - (d) The advertisement depicts a professional tumbler and all of the persons depicted are 25 years of age or older. The rolling in a ball (“Zorbing”) was a constructed stunt that was created for the purpose of this campaign and was executed in a controlled adult-only environment to depict a memorable moment. It does not depict an activity which is able to be easily replicated by the general public, particularly not by adolescents or children, nor should have an appeal to adolescents or children as it is not an activity normally conducted by that group, nor is it easily replicated. The theme and visuals of the advertisement are clearly adult – it is dark, clearly in the evening and the height of the hands all indicate it was an adult only event. The theme of the ad is aimed at 18 to 30 year old males and it was only placed on sites where the registered user had to enter their birth date to ensure it was only delivered to persons over 18 years of age.
 - (e) The ad does not depict nor encourage the consumption of alcohol, but rather focuses on the Smirnoff BE THERE campaign, the essence of which is to inspire and celebrate great moments that can later be recalled and shared with friends. The experience depicted is aimed at adults of

legal drinking age and celebrates events that bring together friends and celebrate great moments. These experiences do not centre on alcohol consumption and no alcohol is consumed or shown in these ads.

The Panel View

15. The complainant argues that alcohol ads, and in particular, this alcohol ad should not be placed on a site used by children and adolescents.
16. The Advertiser has advised that the ad is only delivered to registered users that are 18 to 30 years old and male and it is not able to be viewed generally on the site or by users under the age of 18 years.
17. The Panel's role is to make decisions on the consistency of individual alcohol ads against the standards contained in the ABAC. The ABAC is a content code, which goes to what is contained within an ad, irrespective of where the ad is placed *e.g.* TV, print, radio, billboards, websites. Whether the ad, irrespective of its content, should or should not have been placed in the medium in the first place is not a decision the Panel is given responsibility to make.
18. The issue of placement is indirectly raised by the ABAC's preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to "the class of persons to whom the advertisement is directed". This means that the ABAC does not prescribe the type of publication within which an alcohol ad can be placed but, in assessing the standards as to the ad's content, the likely audience of a particular publication is relevant.
19. The Advertiser's restriction on the age of registered users to whom the ad is delivered means that the likely audience of the advertisement is 18 to 30 year old males. While registered users could provide incorrect information about their age or view the ad while someone over 18 years of age is using the programme, the target audience is the older age group of young adults.
20. What all this means is that the Panel has to examine the content of the alcohol ad against which the complaint has been lodged and determine whether the ad contains elements which are inconsistent with the relevant standard set out in the ABAC. Given the nature of the complaint, the relevant ABAC provisions are found in sections (a) (ii) and (b). These provisions provide that the content of an alcohol ad must not encourage under-age drinking or have strong or evident appeal to children or adolescents.
21. The ad depicts a scene apparently set in a night club, where a man is seen being propelled by the crowd (crowd surfing) within a large plastic sphere known as a Zorb. The scene is accompanied by the company logo and the strapline "Be There!".
22. The Panel does not believe that the ad can be said to have elements which are strongly appealing to children or adolescents as opposed to a wider audience. The scene is adult in nature and the people depicted are adults.
23. Accordingly, the complaint is dismissed.