

ABAC

**ABAC Complaints Panel
Determination No: 137/13**

**Complaint by Pippa Hurst
Product: Smirnoff
Advertiser: Diageo Australia**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Louisa Jorm – Member
Jeanne Strachan – Member

10 January 2014

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Smirnoff by Diageo Australia (“the Advertiser”) and arises from a complaint received on 25 November 2013.

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 includes provisions about Billboard advertising.
3. The complaint 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 was received by ABAC on 25 November 2013.
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 was decided outside the timeframe due to the Christmas/New Year period.

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.

The Advertisement

9. The complaint refers to a cinema advertisement for Smirnoff that screened prior to a 6.30pm session of the movie "The Hunger Games Catching Fire" at Hoyts Cinema on 23 November 2013.
10. Taken as a whole, the advertisement depicts a large group of adults at a rave or dance style party set in what appears to be a disused factory or warehouse in a location on the outskirts of a town. The advertisement alternates the scenes described below which focus on the party and four skydivers seen falling to the ground trailing flares. The skydivers, once landed, are revealed to be four young women who join the party.
11. The advertisement opens at dusk with bells ringing and a female dancing in time with the ringing. A number of scenes follow in quick succession accompanied by a Lana del Ray song:
 - a. a male standing in a field in front of a large hole in the ground playing drums;

- b. a female staring at a light falling downward across the sky;
- c. the same female smiling and clasping her hands to her mouth;
- d. an empty warehouse;
- e. lights flashing as if at a dance party;
- f. a hole in the ground of the empty building with light emanating;
- g. a female standing in a large group of people dancing turns around toward the camera;
- h. a group of skydivers with flares attached leaving a trail of fire;
- i. a large group of people dancing;
- j. a male dancing;
- k. the skydivers with flares;
- l. a female dancing among a group;
- m. the skydivers with flares holding hands as they fall;
- n. a male skateboarding over a jump in an empty building;
- o. the female at the start of the ad dancing in the empty building;
- p. a dance party in the basement of the empty building;
- q. the skydivers with flares continuing to fall separately;
- r. a group of people dancing;
- s. a male running through trees looking up at the sky;
- t. the skydivers with flares continuing to fall;
- u. a group of people dancing;
- v. the skydivers with flares continuing to fall as the flares extinguish;
- w. the skateboarder in the empty building;
- x. the dance party with a male dancing and then a couple kissing;
- y. the skydivers continuing to fall;
- z. people at the dance party moving their arms across coloured lights;
- aa. a skydiver falling with their parachute open;

- bb. three people in a field looking and walking toward something;
- cc. a person in a helmet and skydiving suit emerging from smoke, wrapping up her parachute, taking off her helmet and smiling and then three other women coming into view taking their skydiving equipment off, talking, smiling and laughing together, as they walk through a field toward a warehouse;
- dd. a male at a table pouring a clear beverage onto ice in 4 tumbler glasses;
- ee. the women at the dance party, greeting friends, dancing and laughing;
- ff. a female in the group of dancers turning to look at something;
- gg. a bottle of Smirnoff Double Black with the "Get the Facts Drinkwise" logo to one side and then the text "Arrive Boldly" appears either side of the bottle.

The Complaints

- 12. The complainant is concerned that:
 - a. any alcohol ads are shown with a film aimed at young people under 18, particularly a film of a book that is popular with teenage girls (Hunger Games);
 - b. the advertisement is constructed to be pitched directly at teenage girls, and takes advantage of vodka being the drink of choice for underage girls.
 - c. The advertisement glamorises alcohol and is directed to children.

The Code

- 13. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - ii) must not encourage underage drinking
 - b) not have strong or evident appeal to children or adolescents

The Advertiser's Comments

- 14. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 9 December 2013. The points made by the Advertiser in relation to the advertisements were:
 - a. In its most simple form, we briefed Leo Burnett to come up with a campaign targeting Legal Purchase Age (LPA) to 22 year olds, that

positioned Smirnoff Double Black as a drink for more premium party occasions. The brief focused on the occasions where adults want to make an impression, a statement, and have a memorable experience with friends. The Smirnoff Double Black 'Arrive Boldly' advertisement launches Smirnoff Double Black as a dramatic statement to demonstrate how the boldest of nights are yours, and you can make anything you want from the night from the moment you arrive.

- b. Ikon purchases advertising and media opportunities on behalf of Diageo from a number of companies around Australia including Val Morgan. For the Smirnoff Double Black advertisement, Diageo instructed Ikon to communicate to 18-24 year olds in key channels to drive awareness of the new Smirnoff Double Black product. In response to this brief, Ikon purchased advertising space across Cinema, Outdoor and Digital channels in which the audience is 75% LPA+. Diageo, through Leo Burnett, obtained full and complete clearance for the advertisement from the Alcohol Advertising Pre-Vetting System (AAPS) throughout its production and prior to its finalisation and broadcast.
- c. While placement of an advertisement is not a requirement of the ABAC or AANA codes, Diageo requests our agencies ensure our advertising is placed only where 75% or more of the audience can reasonably be expected to be older than LPA. Through our agencies, we monitor audience composition of the media in which we advertise regularly to ensure compliance to the highest practical level. All advertising for Smirnoff Double Black within cinema is targeted at films with an expected audience greater than 75% LPA+. "The Hunger Games", the first film in the series released in 2012, had a cinema viewership of 79.4% LPA+. Attached is a letter from Val Morgan cinemas with this data. Based on this data, we placed the Advertisement prior to "The Hunger Games Catching Fire" as it was reasonably expected the audience would be more than 75% LPA+. The Hunger Games Catching Fire is also rated M15+ and is recommended for mature audiences. The movie is violent in nature and has a broad appeal to consumers far beyond adolescent females, as shown by the cinema audience data for the first film.
- d. Diageo believes there is no basis for the claim that "a dance party in a warehouse having fun with coloured lights and dance music", "four young female skydivers enjoying a shared activity, all holding hands as they fall and then after the activity walking together with arms around one another, laughing together in the manner of young girls or women", "a young couple kissing" and "a male skateboarding over a jump in an empty warehouse" encourages under-age drinking or has strong appeal to adolescent females. These assertions are broad and have no correlation with encouraging under-age drinking or appealing to female adolescents. The "Arrive Boldly" Advertisement depicts a metaphorical arrival to a party in which a group of four, 25+ year old females arrive together. This was designed to convey a larger than life entrance to an occasion where adults want to make an impression and have a more memorable experience with their friends. Diageo believes that it is

reasonable for us to portray young adults at a dance party arriving in style; an adult couple aged 25+ kissing and a 25+ year old male skateboarding over a jump in an empty warehouse, as none of these events have strong or evident appeal to female adolescents. The use of a bartender in the advertisement to pour alcohol demonstrates the responsible service of alcohol. There are no open containers of alcohol and no alcohol consumption depicted in the Advertisement, and a responsible drinking message has been included. Therefore, Diageo believes that the Advertisement meets the ABAC code and presents a mature, balanced and responsible approach to the consumption of alcohol.

- e. Any similarities to character costumes in the film and the adults in the Advertisement are purely coincidental. The Smirnoff Double Black film was filmed in July 2013 and released in October in Australia, ahead of the Hunger Games Catching Fire movie release. We do not believe the female skydivers are reminiscent of one of the costumes of the characters in the film, nor do we believe the portrayal of “females skydiving from a plane with flares attached to them so they fall leaving a trail of fire which is reminiscent of one of the costumes of the characters in the film”, encourages under-age drinking or has strong or evident appeal to adolescent females. Again, these assertions are broad and lack definition.
- f. Further, audience data from the first Hunger Games film, released in 2012, demonstrated the film had a cinema viewership of 79.4% LPA+. The Hunger Games Catching Fire is rated M15+ and is recommended for mature audiences. The movie is violent in nature and has a broad appeal to consumers far beyond adolescent females as shown by the cinema data for the first film. This would indicate that The Hunger Games does not have strong or evident appeal to adolescent females as viewership by individuals aged 18 and over significantly outweighs viewership by adolescent females.
- g. Diageo does not believe that the use of the Lana Del Rey soundtrack has strong appeal to adolescent females or encourages under-age drinking. Lana Del Rey is an alternative artist who has a broad appeal to a wide audience. Data obtained from the artist’s Australian record label, Universal Records in Australia, says 80.2% of Lana Del Rey’s Facebook fans are 18+ and 88.4% of Spotify streams are 18+. Lana Del Rey is also currently aged 27 years old and therefore over the age of 25.
- h. Diageo took great care to ensure that all people featured in the Advertisement were and looked over 25 year old and had their proof-of-age ID checked before they were recruited for the Advertisement. This proof is available on request. As previously mentioned, Diageo believes the activities and events depicted in the Advertisement are reasonable, and appeal to the adult population. Any adults under the age of 25 only appeared as part of a natural or

background scene, and therefore Diageo believes that the Advertisement meets all elements of the code Section b.

The Panel's View

15. In late November 2013, the complainant attended a session of the movie "The Hunger Games – Catching Fire", screened at a cinema in the Western Australian city of Freemantle. The complainant explained that the audience for the movie consisted of a large number of adolescents and the pre-movie advertising contained two advertisements for alcohol products, including the Smirnoff execution.
16. The complainant was concerned by the alcohol advertisements contending:
 - That no alcohol advertisements of any kind should have been screened in conjunction with a movie which was, in the complainant's view, made for under 18 year olds; and
 - The Smirnoff advertisement in particular was "pitched directly at teenage girls".
17. The concerns expressed raise the question of the consistency of the advertisement with section (a)(ii) and (b) of the ABAC. Collectively, these provisions provide that an alcohol advertisement must not encourage underage drinking and/or have strong or evident appeal to children or adolescents. It is argued that the inconsistency arises on two grounds, namely the placement of the advertisement, irrespective of its content, with The Hunger Games movie and, secondly, the content of the advertisement is pitched at teenage girls rather than adults.
18. The ABAC is, at its heart, a Code about the content of alcohol advertisements, rather than the placement of the advertising. What this means is that the Code sets out a series of standards that advertisements must satisfy, irrespective of when the advertisement is broadcast or where it is printed or placed. In contrast, the Commercial Television Code of Practice is a placement code which does not specify what may be contained within an alcohol advertisement, but does place restrictions on when alcohol advertisements may be broadcast. For free to air television, alcohol advertisements can only be broadcast after 8:30p.m. or in conjunction with a live sports broadcast.
19. The screening of films in Australia is subject to a classification system which is administered by a Federal Government statutory body called the Classification Board. The Hunger Games – Catching Fire, was given an 'M' classification by the Board. This classification means that the film is recommended for mature audiences, i.e. for persons aged 15 years and over. The 'M' classification is, however, an advisory category only, which means that children under the age of 15 may access the film without the requirement to be accompanied by an adult. This can be contrasted to the 'M 15+' classification, where children under 15 cannot access the movie in a cinema unless accompanied by an adult.

20. The advertiser contended in its response to the complaint that it directed its advertising agency to place the advertisement where 75% or more of the audience would most likely consist of persons over the legal purchase age of alcohol, i.e. 18 years old. It is stated by the advertiser that the audience for the first Hunger Games movie was over 79% 18 years or older and, as a result, it could have been reasonably expected that this would have been the same for the current Hunger Games instalment. The complainant states, however, that the session that she attended had a large female adolescent audience.
21. It is not a breach of the ABAC to place the Smirnoff advertisement, or indeed any alcohol advertisement, in the pre-movie advertising with an 'M' classified movie. There is no restriction, as such, on the placement of alcohol advertisements with films, although, as a matter of practice, it seems that alcohol companies do not place advertisements with movies with classifications of 'G' or 'PG'.
22. The more substantive issue for consideration is whether the content of the advertisement satisfies the requirement of section (a)(ii) and (b) of the Code, i.e. does the content have a strong or evident appeal to children or adolescents or can be said to encourage underage drinking? The complainant believes this is the case, as she contended that the advertisement was pitched at teenage girls.
23. The advertiser refutes that the advertisement is directed at teenagers and argues:
 - The intention of the advertisement was to target 18 to 22 year olds with the product positioned as a drink for premium party occasions.
 - The images and scenes in the advertisement convey a larger than life entrance to an occasion where adults want to make an impression.
 - All people featured in the advertisement were over 25 years of age.
 - The characters and costumes used in the advertisement were not designed to have any similarity to the characters within the Hunger Games film and any similarity was purely coincidental.
 - The advertisement does not have strong or evident appeal to children or adolescents.
24. In assessing whether an advertisement is consistent with an ABAC standard, the Code preamble provides that the Panel is to have regard to the probable impact of the advertisement on a reasonable person, taking its content as a whole. In previous Panel determinations, the Panel has noted that in assessing advertisements against section (a) and (b) of the Code the following matters had been taken into account:
 - The advertiser's intention as to its target audience is not material, rather it is the probable impact of the advertisement which is important.

- Alcohol advertisements directed towards adults may have some consequential appeal to children and adolescents and not breach the Code.
 - What is not permitted is advertising which has strong and evident appeal to children and adolescents.
 - Whether an advertisement has strong or evident appeal is a case by case assessment, in which context, imagery, use of animation and characters are amongst the things which are important in deciding the overall impact of the advertisement.
25. The advertiser's stated target audience for the advertisement is 18 to 22 year olds. It is clearly difficult to craft an advertisement aimed at this demographic which would have no appeal to, say, 16 to 17 year olds. The Panel believes that a reasonable person would form the view that the advertisement does have appeal to adolescents, particularly females, given that the main characters in the advertisement are young women. The question is, however, whether this appeal can be said to be "strong or evident", i.e. greater to children or adolescents than to the community as a whole.
26. There are some brief scenes within the advertisement, such as the depiction of a male breakdancing and another male skateboarding which could be said to be a portrayal of activity most associated with adolescents and this arguably contributes to the appeal of the advertisement to that group. These scenes, however, need to be placed within the context of the advertisement as a whole.
27. On balance, a majority of the Panel believes that the advertisement does not breach the ABAC standards. In reaching this conclusion the Panel has noted:
- While the dance party theme which is associated with younger, as opposed to older, persons, it is nonetheless adult in appearance.
 - All characters depicted are clearly adults and the setting indicates a level of sophistication (and affluence) which is adult rather than adolescent.
 - The appeal to adolescents is no greater than the advertisement's appeal to an audience of young adults.
28. Accordingly, the complaint is dismissed.