

ABAC

**ABAC Complaints Panel
Determination No: 168/13**

**Confidential complaint
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 5 December 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 5 December 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 within the 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 obtained for this advertisement (12674).

The Advertisement

9. The complaint refers to an outdoor advertisement for Smirnoff located on public buses in Sydney. The advertisement is a horizontally long photograph like image which can be broadly understood in three parts.
10. The first part on the left third of the image is a depiction of four figures apparently falling from the sky towards the ground (possibly sky divers yet to activate their parachutes). The figures are clad in black body hugging clothing and in body shape appear to be female. Each figure is trailing a long tail of sparks behind them, somewhat reminiscent of a comet. Immediately under the picture of the four figures is the Drinkwise "Get the Facts" logo and a drink responsibly message.
11. The second part of the advertisement consists of the centre scene and extends to the right third of the image. In the centre is a structure on the ground which is brightly lit and has a number of beams of light emanating from the building. These beams of light are of various colours. In the background to the structure are mountains and nestled between the mountains are the lights of a distant town or city.

12. The third part of the advertisement is positioned to the right hand side and features a picture of a bottle of Smirnoff Double Black vodka. Next to the bottle and to the left is the tagline, "Arrive Boldly".

The Complaints

13. The complainant is concerned that:
- (a) The ad promotes pre-loading on alcohol before attending events;
 - (b) The only words appearing on the ad (arrive boldly) are a direct promotion of the concept of drinking to inebriation before an evening out which is a practice prevalent in youth groups in particular.
 - (c) The ad suggests that preloading on alcohol prior to arrival at a venue will give an individual added confidence.
 - (d) The ad depicts a scene very much like one that appears in the Star Trek movie directed by JJ Abrams and the use of the term "boldly" is closely linked to the Star Trek franchise. The correlation with a science fiction film clearly targets a youth audience.
 - (e) The killer of the 18 year old king hit in King's Cross last year had consumed 24 bottles of Smirnoff Ice Double Black with two other friends before traveling to the city and the overt correlation between pre-loading and this product is offensive.

The Code

14. 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 –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage under-age drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - b) not have strong or evident appeal to children or adolescents...
 - 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;

- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content;
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

The Advertiser's Comments

15. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 16 December 2013. The points made by the Advertiser in relation to the advertisement was:

- a. In its most simple form, we briefed Leo Burnett to come up with a campaign targeting Legal Purchase Age (LPA) to 24 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' campaign 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. The 90 second film is the lead execution of communication and represents 70% of the total campaign spend across Cinema and digital video. The outdoor transit channel acts as an awareness driver of the new Smirnoff Double Black product and drives reach of the "Arrive Boldly" message nationally (20% of the total campaign spend). As per the film, the creative is a static depiction of the metaphor demonstrating a group of four people arriving together. This static execution is 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. No consumption is depicted in the creative, nor is it inferred by the line 'Arrive Boldly'. The 'Arrive Boldly' message is in regards to the arrival at a premium party occasion, and positions Smirnoff Double Black as the choice of beverage for these types of occasions
- b. Diageo believes the ad does not promote irresponsible or excessive consumption. 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. The consumer insight that drives the positioning is that LDA-24 year old consumers live in a world of quick judgment and have a desire to stand out while still having fun with their friends. The moment to stand out as a group, is the moment you arrive at the occasion, setting the tone for the night. There is no depiction or intent in regards to the concept of consuming excessive alcohol before, during or after an evening out through the creative execution.

- c. Diageo does not believe there is any association between the product and any pre-loading incident. The ad does not promote irresponsible or excessive consumption. There is no depiction or intent to consuming alcohol before an evening out through the creative execution, nor is it inferred by the line 'Arrive Boldly'.
- d. Diageo believes the ad does not promote the "concept of consuming excessive alcohol before an evening out" or "have strong appeal to adolescents" through the use of the words of 'Arrive Boldly'. The ad is targeted at LPA -24 year old consumers and this execution is 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. No consumption of alcohol is depicted in the creative, nor is it inferred by the line 'Arrive Boldly'. The 'Arrive Boldly' message is in regards to the arrival at a premium party occasion, and positions Smirnoff Double Black as the choice of beverage for these types of occasions.
- e. Any similarities to a scene in the Star Trek movie and the adults in the Advertisement are purely coincidental. Diageo does not believe the adult female skydivers are similar to one that appears in the Star Trek franchise or encourages under-age drinking or has strong or evident appeal to adolescent females. Further, Val Morgan data on the viewership of the latest Star Trek film, released in 2013, illustrates that 85% of the audience was over the age of 18, and 63% of the audience was male – indicating that this franchise does not have a primary appeal to a young audience, or adolescent females.
- f. Diageo does not believe there is a suggestion "that the consumption or presence of the product may create or contribute to a significant change in mood or environment or the achievement of personal or social success by the use of the words "arrive boldly". The Smirnoff Double Black 'Arrive Boldly' advertisement launches Smirnoff Double Black as a dramatic statement to demonstrate how the boldest of nights are yours. The moment to stand out as a group, is the moment you arrive at the occasion, setting the tone for the night. There is no depiction or suggestion to consuming alcohol before an evening out to deliver "confidence" through the creative execution. 'Arrive Boldly' is used as line to deliver the key message that from the moment you arrive, you set the tone of the night – it is not associated at all with pre-drinking occasions.
- g. Diageo does not agree with the interpretation that the use of the words 'Arrive Boldly' are in reference "to the concept of consuming excessive alcohol before an evening out thereby challenging or daring a person to consume the product". 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. 'Arrive Boldly' is used as line to deliver the key message that from the moment you arrive, you set the tone of the night – it is not associated at all with

pre-drinking occasions or “challenging or daring a person to consume the product”. There is no also no depiction or suggestion to consuming alcohol (excessive or otherwise) before an evening out.

- h. We are pleased to have had this opportunity to confirm our long-standing support for the ABAC Scheme and commitment to uphold the Alcohol Beverages Advertising Code

The Panel’s View

16. This is the second determination concerning the “Arrive Boldly” campaign for Smirnoff. The first determination, 137/13, concerned a cinema advertisement, which like the current advertisement featured sky divers arriving at a dance party held in a venue on the outskirts of a town. While relating to the same themed campaign, the advertisements are different and the concerns raised in the respective complaints are also different. For that reason, the Panel has made two separate determinations.
17. The underlying concern raised in the complaint relates to the advertisement’s imagery, combined with the tagline, “Arrive Boldly”. It is argued by the complainant that this expression as used within the context of the advertisement refers to “pre-loading”. Pre-loading describes the practice of drinking alcohol before attending a party or external venue, such as a nightclub.
18. Specifically, it is argued by the complainant that the advertisement breaches the following ABAC standards:
 - Section (a) – by the advertisement failing to present a mature, balanced and responsible approach to the consumption of alcohol by encouraging excessive consumption and encouraging underage drinking.
 - Section (b) – by the advertisement having strong or evident appeal to children or adolescents.
 - Section (c) – by the advertisement suggesting that alcohol is a cause or contributor to the achievement of social success.
 - Section (e) – by the advertisement challenging a person to drink or sample a particular alcohol beverage.
 - Section (g) – by encouraging consumption that in excess or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

A General Point

19. The preamble to the ABAC provides guidance in how consistency with ABAC standards is to be assessed. The Panel is to have regard to the probable impact of the advertisement upon a reasonable person, taking the advertisement’s content as a whole. The concept of the “reasonable person” is borrowed from the Australian common law system and means that regard is to

be had to the opinions, attitudes and beliefs commonly held by a majority in the community.

Is the advertisement presenting a mature, balanced and responsible approach to the consumption of alcohol? Is excessive consumption inconsistent with NHMRC guidelines being encouraged?

20. The underlying concern expressed by the complainant is that the advertisement is promoting the concept of pre-loading and that it is acceptable for persons to drink to “inebriation before an evening out”. This is said to be the reasonable implication from the tagline, “Arrive Boldly”, and the images in the advertisement.
21. The advertiser states that the advertisement and the ‘arrive boldly’ message are not related to pre-loading. Rather, it is argued that the premise of the advertisement is 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”.
22. The Panel does not believe the advertisement is presenting an irresponsible approach to alcohol consumption or is encouraging excessive consumption. It seems too long a bow to draw that the advertisement and tagline would be interpreted by a reasonable person as:
 - (a) firstly, encouraging the consumption of alcohol prior to attending an event; and
 - (b) secondly, that this consumption should be excessive or irresponsible; and
 - (c) thirdly, as a result, it is desirable to arrive at an event drunk or inebriated.
23. The complainant’s concern about alcohol related instances of violence is both understandable and shared across the community. The Panel, in performing its task, is mindful of the policy intent behind the ABAC Scheme, which is that alcohol advertising (which is lawful) should occur in a manner which does not condone or encourage irresponsible use of alcohol. The Panel, however, must assess advertising on its merits against the Code standards and cannot import into its decision making factors which cannot be fairly said to flow from the advertisement itself.

Does the advertisement have strong or evident appeal to children or adolescents?

24. It is argued that the advertisement draws an “overt suggestion of a correlation with the product and the Star Trek movie directed by J J Abrams” and this contributes to the advertisement’s strong appeal to children or adolescents. This claim is refuted by the advertiser, which argues that any similarities with the movie are coincidental and, in any event, the Star Trek movie had a predominately adult audience.

25. While the Star Trek movies and TV shows have a loyal following, it seems unlikely that most people would be sufficiently familiar with the movie to draw the comparison. Further, Star Trek is a science fiction franchise which probably has more appeal to Baby Boomers and Generations X and Y, than it has to under 18 year olds. The Panel does not believe the advertisement has appeal to children or adolescents which is any more pronounced or evident than its appeal to the community as a whole.

Does the advertisement suggest that alcohol is a cause or contributor to the achievement of social success?

26. It is argued that the advertisement suggests pre-loading on alcohol prior to arrival at a venue or party will give an individual added confidence. If it could be fairly concluded that the advertisement was in fact conveying such a message, then this would be inconsistent with the ABAC standard.
27. The Panel does not believe that the advertisement is conveying this message. The advertisement does not depict alcohol consumption, but creates a visually interesting but fanciful image. As explained earlier, it seems a great deal of assumption is needed to reach the conclusion drawn by the complainant which is, in essence, that "Arrive Boldly" means 'arrive drunk'. The Panel does not believe it can be fairly concluded that the advertisement breaches section (c) of the Code.

Does the advertisement challenge or dare people to drink or sample a particular alcohol beverage?

28. The advertisement is obviously endeavouring to promote the product brand, but this is quite different from the intent of section (e) of the Code which goes to "challenges" or "dares" to drink a particular beverage. The Panel believes there is no basis to conclude that this section of the Code has been breached by the advertisement.
29. Accordingly, the complaint is dismissed.