



## ABAC Adjudication Panel Determination No. 73/14

**Product:** Bundaberg Rum  
**Company:** Diageo Australia  
**Media:** Television  
**Complainant:** Confidential  
**Date of decision:** 10 November 2014  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Bundaberg Rum by Diageo Australia (“the Company”) and arises from a complaint received 13 October 2014.

### The Quasi-Regulatory System

2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
  4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
  5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process which matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
  6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 13 October 2014.
8. 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. The complaint has been determined within this timeframe.

## Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication (13454).

## The Marketing Communication

10. The complaint refers to a television advertisement. The advertisement was broadcast in several versions of different length and it is not clear which version the complainant saw. The description which follows is of the longest version of the advertisement
11. The advertisement opens with a man wearing a captain's hat chopping into a large log of wood with an axe. He is sweating and a voiceover shouts "ooh" as he hits the log. We then see a man in a dirty white suit and a Turkish fez hat call out "aah" and we can see men working on building a boat behind him. The camera moves back to the man in the captains hat and we hear the shout "ooh" as his axe hits the log again. The camera moves to a wider shot and we see the man in the fez hat is sawing a log with a man at the other end of the saw as we hear "aah". The log they are sawing is resting on a wooden support at one end and a man crouched down at the other end. There is a barrel of Bundaberg Rum behind them. In the background there is a partially built boat next to the sea and there are men carrying out various boat building tasks and a man carrying an upside down cow on his shoulders. The men are wearing a motley variety of costumes of different nationalities, occupations and eras.
12. The men all continue to carry out their boat building as they start to sing with the following scenes accompanying the lyrics:
  - (a) "Men like us like foreign lands" – man in fez hat sawing and singing as the man holding a cow upside down walks behind him;
  - (b) "We pound in spikes with our bare hands" – a tall man is shown using a shoe and a short man is shown using an oversize mallet to hammer into the side of the boat;
  - (c) "Our skills are always in demand" – a man carving a figurehead for the boat in the shape of a polar bear;
  - (d) "We like our faces hairy and our backsides tanned. Men like us have the upper hand" - small buckets of mud or tar being scooped out of a puddle in the ground, passed from man to man and then thrown back into the puddle. Then a group of men handing a barrel of Bundaberg Rum up into the boat from a pile of barrels;
  - (e) "We cut through trees with the sharpest saw" – a man with over exaggerated facial expressions and gestures uses a saw to cut a log;
  - (f) "We sail from here to Bogota" – two men standing over a fire and hot coals making an anchor by partially melting kitchen implements;

- (g) “This vessel wont have a single flaw, we’ll ignore that thing called “Murphy’s law” – as we see the boat mast being raised up with a man in the crows nest looking through a telescope and a bird nesting box above him;
- (h) “Men like us like a last hurrah” – a man chops a rope holding the boat on the shore (that now has passengers on board, including a man with a tuba) and it begins to move;
- (i) “The sun and stars will be our guide” – a man is painting the word “boat” onto the side of the boat as it moves and the paint runs;
- (j) “We prefer our steak bloody rare inside” – the men are singing and standing on the boat next to the upside down cow;
- (k) “Our sails are filled with wind and pride” – the boat moves into the water;
- (l) “Explore the world” – the boat sinks as the passengers appear not to notice and keep singing;
- (m) “Well at least we tried, men like us like rum, rum. Bundaberg Rum” – The men are all standing dripping wet in a bar mostly holding up in a salute a glass of rum, but the bartender is holding up a bottle of Bundaberg Rum, one man is holding up a crayfish, another a horn and another a trumpet. On the final scene the words “Welcome to Bundaberg” are superimposed.

### **The Complaint**

- 13. The complainant is concerned that the advertisement:
  - (a) features pirates singing which is targeting younger kids and teens; and
  - (b) includes a message that alcohol is all happy and positive.

### **The ABAC Code**

- 14. Part 3 of the ABAC Code provides that a Marketing Communication must not:
  - (b)(i) have Strong or Evident Appeal to Minors
  - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment
- 15. A Definition in Part 5 of the ABAC provides that Strong or Evident Appeal to Minors means:
  - (i) likely to appeal strongly to Minors;
  - (ii) specifically targeted at Minors;

- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

## **The Company's Response**

16. Diageo Australia responded to the complaint and questions posed by the Panel on 24 October 2014 and made the following principal points:
- a. We wish to confirm our longstanding support and commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as our best practice global marketing standards, the Diageo Marketing Code (DMC).
  - b. There are two versions of the 'Welcome to Bundaberg' advertisement, one 30 second and one 60 second. Both versions have been on WIN TV throughout October and therefore our response relates to both the 30 second and 60 second advertisement.
  - c. The Bundaberg Rum "Welcome to Bundaberg" campaign has been created to celebrate those who aspire to live a more interesting and fun life. It is designed to appeal to all Australians through a shared love of trying new things, expressed in a light hearted and humorous way. 'Welcome to Bundaberg' is inclusive and aimed at targeting existing adult consumers as well as inviting new adults to experience Bundaberg Rum.
  - d. The advertisement is simply about an eclectic group of friends who get together to try and build a boat. They fail in the process, but have a great time along the way. Each friend carries a different persona and plays a different character in the group - this is depicted by their different wardrobe. This subtlety conveys the inclusiveness of the brand. The campaign is specifically focused on sharing an experience with your friends. The outcome of the consumer experience is all about the journey, not the destination, and the fun that is had along the way.
  - e. Diageo Australia Ltd, 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.
  - f. Diageo submits the 'Welcome to Bundaberg' advertisement does not appeal to minors by using pirates or sailors. The characters in the advertisement are not meant to represent pirates or sailors. The advertisement is simply about an eclectic group of friends who get together to try and build a boat. The wardrobe of each character

represents a mismatch of different people from different walks of life with costumes cuing different inspirations, from miners to rugby players. They are designed to appear as dirty, rough and rugged, and not designed to appear friendly. Diageo also submits that if these characters are interpreted as pirates or sailors, their dirty, rough and rugged portrayal does not have primary appeal to children or adolescents.

- g. Diageo believes the 'Welcome to Bundaberg' advertisement does not appeal to minors by showing pirates or sailors singing as they are building a boat, attempting to sail it, as it is sinking and then while consuming the product in a bar. As discussed above, the characters in the advertisement are not meant to represent pirates or sailors. The fact that they are singing while building a boat does not carry clear or evident appeal to minors. The lyrics in the song they are singing include adult concepts such as having the "upper hand" as well as clever humour such as "ignoring that thing called Murphy's law" and "sailing from here to Bogota" (which is inland). These lyrics are designed to be interpreted by an adult audience.
- h. Diageo believes the 'Welcome to Bundaberg' advertisement does not appeal to minors through the use of the format of an old-fashioned, humorous musical. While the advertisement could be interpreted as an old-fashioned musical, it is more of a working song. One of the main references and inspiration for the advertisement was the 1957 movie "Bridge Over River Kwai", which is more than 50 years old, indicating that the reference material for the advertisement was clearly targeted at people over LPA. We also submit that old fashioned musical themes have a high appeal amongst adult audiences. To help illustrate this point our media agency has pulled the audience figures of a sample of old fashioned musicals:

Fiddler on the roof (1971) – More than 84% of the audience were over LPA

Man of La Mancha (1972) – More than 89% of the audience were over LPA

Monty Python's The Meaning of Life - More than 89% of the audience were over LPA

- i. Diageo submits that the 'Welcome to Bundaberg' advertisements do not suggest the consumption or presence of Bundaberg Rum creates or contributes to a significant change in mood or environment. The mood of the characters is consistently upbeat and positive throughout the advertisement. The presence of Bundaberg Rum – the brand or the product - does not contribute to this, nor is it inferred that Bundaberg Rum contributes to this, in any way. Bundaberg Rum – the brand or the product - is not depicted as the primary cause of the shipbuilding endeavour in the first instance, and is not consumed in any way during the shipbuilding scenes, nor is it implied that it has been consumed during the shipbuilding scenes. The presence of the wooden carving of the Bundaberg Bear on the head of the ship, and sealed barrels of

Bundaberg Rum loaded onto the ship, are intended only as a subtle reference to the Bundaberg Rum brand and do not suggest in any way the effect of Bundaberg Rum during the shipbuilding scenes. Further, there is nothing in the advertisement that suggests the presence of the carving or the barrels is the cause for the generally up-beat and positive mood of the advertisement, which as stated above, is consistent throughout the advertisement. Once the ship sinks, the characters are shown to be singing “well at least we tried” then toasting their failed attempt at building a ship with Bundaberg Rum. Bundaberg Rum is not depicted as the cause for the celebration itself.

- j. We are pleased to have had this opportunity to confirm our long-standing support for the ABAC Scheme and commitment to uphold the Responsible Alcohol Marketing Code (ABAC).

### **The Panel’s View**

- 17. The complaint raises two concerns about the Company’s television advertisement, namely that it is targeting children and teenagers and, secondly, that it is imparting a message that alcohol use is “all happy and positive”. Both of these concerns will be considered in turn.
- 18. The ABAC provides that marketing communications must not have strong or evident appeal to minors (under 18 year olds). Strong and evident appeal is to be assessed on a case by case basis and will be breached if the advertisement is specifically targeting minors as the complainant argues. It would also be breached if the marketing had particular attractiveness for a minor beyond a general attractiveness it had for an adult. The use of imagery, designs, motifs, animations or cartoon characters that are likely to strongly appeal to minors is an illustration of how the standard may not be satisfied.
- 19. The complainant believes that the advertisement evokes the imagery of singing pirates and that this will have strong appeal to under 18 year olds presumably because pirates sometimes feature in children’s stories or entertainment. For its part, the Company contends that the men depicted are not pirates, but “an eclectic groups of friends who get together to try and build a boat”. The Company goes on to state that the characters’ “costumes cue different inspirations from miners to rugby players”. In any event, the Company argues that the “dirty, rough and rugged portrayal” would not have primary appeal to children or adolescents.
- 20. The Panel does not believe the advertisement has strong or evident appeal to minors. In reaching this conclusion, the Panel has noted:
  - (a) all of the characters shown are older, with some in middle age;
  - (b) while the characters could be taken to be pirates, this does not automatically mean that the advertisement has strong or evident appeal to under 18 year olds given that many portrayals of pirates in storytelling and fiction are highly adult in nature and presentation;

(c) taken as a whole, the advertisement is adult in content and messaging.

21. The second issue raised by the complainant is whether the advertisement makes alcohol appear “happy and positive”. The relevant ABAC standard provides that marketing must not suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment.
22. There is no ABAC standard that requires that alcohol marketing present a somber or unappealing image of the product. What is not allowed is the suggestion that an individual’s success is contributed by or changed by the use or presence of alcohol or that the introduction of the product results in a significant change in mood. In the current advertisement, the product is not seen consumed until the final scene and throughout the balance of the advertisement only passing reference is made to the product. There is no suggestion that the presence or introduction of the product changes the overall atmospherics or mood of the men, which appears consistent throughout the advertisement.
23. Accordingly, the complaint is dismissed.