



ABAC Adjudication Panel Determination No. 75/14

Product: Johnnie Walker
Company: Diageo Australia
Media: Television
Complainant: Rod Tweddle
Date of decision: 18 November 2014
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Johnnie Walker by Diageo Australia (“the Company”) and arises from a complaint received 27 October 2014.
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 that 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 27 October 2014.
8. The Panel endeavour 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 with 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 (13554).

The Marketing Communication

10. The complaint refers to a television advertisement.
11. The advertisement opens with an old fashioned gramophone as a hand moves the needle onto a record and the song "Kill of the Night" by Gin Wigmore commences. The camera moves around a room, which appears to be within a historic home, and we see that it is filled with antiques and collectables, including an antique car.
12. We then see a black paint dripping onto the record as it spins around and then a man pouring black paint from a bucket onto a spinning globe. The man is then shown standing on a car and pouring a bucket of black paint over it, walking around the room and pouring a bucket of the black paint over the walls and portraits on the walls. He is then shown pouring a glass of Johnnie Walker Black Label and sitting on a couch with his glass.
13. A woman is then shown walking into the room, lighting a cigarette lighter and throwing it over her shoulder. The woman has dark, black hair and is dressed in gothic style. The lighter lands in a grand piano and it catches fire. The woman then pours herself a glass of Johnnie Walker Double Black and stands holding her glass next to where the man is sitting and both the man and woman are facing the camera with the fire in the background.
14. The screen changes to the range of Johnnie Walker products as the Double Black product is placed in the middle and the words "Step Inside the House of Walker" are superimposed on the screen. The screen then changes to the "Johnnie Walker" logo.

The Complaint

15. The complainant is concerned that the advertisement:
 - (c) shows a piano being set on fire after a drink; and
 - (d) sets a really bad example to impressionable young adults.

The ABAC Code

16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage; or

(b)(i) have Strong or Evident Appeal to Minors

17. 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

18. Diageo Australia responded to the complaint and questions posed by the Panel on 10 November 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 is one 30 second version of the Johnnie Walker "Have Character" advertisement. This has been on national television throughout October 2014 and therefore our response relates to this advertisement. The Johnnie Walker "Have Character" campaign has been created to entice adults to experience Johnnie Walker as a luxurious, aspirational, crafted and pioneering brand with a quest to deliver big bold flavours and taste experiences. The advertisement focuses on two of the Johnnie Walker brand variants, Johnnie Walker Black Label and Johnnie Walker Double Black Label, with the content of the advertisement bringing to life the taste characteristics of each variant.
- c. These two brand variants represent an intense and demanding spirit that is beautifully expressed through the black artwork of Mattia Biagi, a well-known Italian artist who resides in Los Angeles and paints objects black for a living. Through Mattia's art, the perfect expression of Black Label's character is created by covering a scene containing symbols of luxury in black. We follow the graphic and dramatic transformation of the scene as golden turns beautifully black and intense, until part of the scene is lit, to signify the charred taste and character of Johnnie Walker Double Black.

- d. 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.
- e. Diageo submits the Johnnie Walker “Have Character” advertisement does not encourage alcohol related irresponsible behaviour. The “Have Character” advertisement is set in an adult, dark apartment with expensive, luxurious furniture and accessories, and depicts a well-known Italian artist, Mattia Biagi, covering the scene of luxury symbols of various shades of gold, with black matt paint. This is done in a stylish and artistic way, with the covering of gold to black representing the intense flavour and character of Johnnie Walker Black Label. Once Mattia has completed covering the scene with black paint, he then pours and sips from a small glass of Johnnie Walker Black Label. An alcohol beverage is not portrayed until Mattia has completed covering the scene.
- f. A separate, female character, representing Johnnie Walker Double Black, then enters the scene, creating a small fire in the contained area of a piano. This fire represents the charred taste and character of Johnnie Walker Double Black. Once the female character has created the fire, she then pours a small glass of Johnnie Walker Double Black. There is no presence of Johnnie Walker Double Black prior to the pouring of the product.
- g. Diageo submits the Johnnie Walker “Have Character” advertisement upholds its responsibilities towards minors and does not have strong or evident appeal to minors, nor does it depict people who appear to be a minor, or depict adults who are under the age of 25. The advertisement contains adult themes only – a dark apartment, luxurious furniture and luxury symbols in various shades of gold. The male character artistically covers the scene in black matt paint and a piano is lit. These themes represent the tastes and characters of Johnnie Walker Black Label and Johnnie Walker Double Black.
- h. Diageo also submits that the music in the “Have Character” advertisement has clear adult appeal. The music is “Kill of the Night” by New Zealand born-artist Gin Wigmore. Gin is 28 years of age and her style has been categorised as folk rock, soul, blues rock and jazz, styles which are generally synonymous with a mature audience. The latest streams of her music on Spotify saw 89.5% of listeners over LPA and Gin’s Australian email database is 97.7% over LPA. She has previously toured with Pete Murray, Sheryl Crow and John Mellencamp who all have an audience base well over 18 years of age, and her music has appeared in television series such as The Good Wife, which target a mature demographic.
- i. Finally, Diageo submits that the “Have Character” advertisement doesn’t depict people who appear to be a minor, or depict adults who are under the age of 25. The first person shown in the “Have Character” advertisement, who represents Johnnie Walker Black Label, is Mattia Biagi, a well-known Italian artist that resides and works in Los Angeles and paints objects black for a living. Mattia was born 1974, and was

therefore almost 40 years of age when this advertisement was filmed. Diageo also submits that his suit, facial stubble and hat are all adult-themed. The second person shown is actress Lauren Switzer, who was born in 1988 and is therefore aged 26. Diageo submits that Lauren is also dressed and accessorised to look 25 years or older. We also have proof of age for Lauren, which is attached for your reference.

The Panel's View

19. Mattia Biagi is an Italian artist based in the United States. One stream of Mr Biagi's work is his so called 'tar' installations, which feature objects such as motor vehicles, crucifixes, and even plants being covered in thick, black tar. The advertisement features both Mr Biagi and a version of his technique, as he covers the contents of a grandly furnished room in black, matt paint.
20. In one scene of the advertisement, after Mr Biagi has finished in effect painting and covering the room and everything in it in black paint, a woman with black hair and dressed in gothic fashion is shown walking into the room. She walks past a grand piano, lights a cigarette lighter, and throws the lighter into the piano, which catches fire.
21. It is this fire scene which has particularly concerned the complainant, who argues that the combination of starting a fire and alcohol is a 'really bad example to impressionable young adults'. The complaint requires the Panel to consider Part 3 (a)(ii) and (b)(i) of the ABAC which goes to alcohol marketing not encouraging irresponsible behaviour that is related to alcohol use, and the appeal of marketing to under 18 year olds.
22. In response to the complaint, the Company points to the artistic style of the advertisement. It is argues that Mr Biagi and the woman are both over the age of 26 and that the style, tenor, and atmospherics created by the advertisement is clearly artistic and would appeal to an adult audience. In further support of this view, the Company advises that the accompanying music by the New Zealand artist Gin Wigmore, has overwhelming appeal to adult listeners, as opposed to a younger audience.
23. Part 3(a)(ii) of the Code provides that alcohol marketing must not encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage. In assessing whether an advertisement is in breach of a Code standard, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person, taking its contents as a whole.
24. The Panel does not believe that the advertisement breaches Part 3(a)(ii) of the Code. In reaching this conclusion, the Panel has noted:
 - (a) the advertisement taken as a whole is clearly artistic and somewhat fanciful in terms of its depiction of real life behaviour;
 - (b) a reasonable person would take the fire scene within the frame of the advertisement as a whole, and would not believe that the burning down of a room is being encouraged or actually suggested;

- (c) more likely the advertisement would be viewed with other visual pieces of similar genre, such as music video clips where special effects, including fire effects, are often shown but would not generally be taken by a viewer as encouraging arson or other antisocial behaviour.
- 25. Part 3(b) of the Code goes to the issue of alcohol marketing and responsibility towards minors. The Code provides that a marketing communication must not have strong or evident appeal to minors. The definition section in the Code gives illustration of when this standard might be breached, such as an advertisement specifically targeting under 18 year olds, or having a particular attractiveness for an under 18 year old beyond the general attractiveness it has for an adult.
- 26. There is no doubt that the advertisement is quite visually striking. The work of the artist in spreading the paint over the objects in the room, combined with the ornate furnishings in the room and the general gothic feel, would resonate with a particular section of the community. The challenge for the Panel is to assess whether this appeal is particularly strong to under 18 year olds.
- 27. On balance, the Panel does not believe that the advertisement breaches Part 3(b)(i) of the Code. In reaching this conclusion, the Panel has noted:
 - (a) the advertisement as a whole is highly adult in its content and features a style of artwork which would be most strongly appealing to an older, rather than younger, audience;
 - (b) both the characters featured in the advertisement are over the age of 26 and are clearly depicted as adults;
 - (c) the nature of the room indicates affluence and wealth, which is more likely to be associated with an older audience who have secured a level of financial security, rather than under 18 year olds;
 - (d) while the advertisement would have appeal across demographic groups, it is not considered to appeal strongly to under 18 year olds.
- 28. Accordingly, the complaint is dismissed.