



## ABAC Adjudication Panel Determination No. 40/15

**Product:** Schweppes, Johnnie Walker & Smirnoff  
**Company:** Schweppes Australia Pty Ltd/Diageo Australia Limited  
**Media:** Cinema  
**Complainant:** Confidential  
**Date of decision:** 24 April 2015  
**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 cinema advertisements for Schweppes by Schweppes Australia Pty Ltd (“Schweppes”) that includes products owned by Diageo Australia Limited (“Diageo”) and arises from a complaint received 30 March 2015.
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 (“ABAC”) – 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 sites such as 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 30 March 2015.
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 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 these marketing communications.

## **The Marketing Communication**

10. The complaint refers to two 15 second cinema advertisements for Schweppes that include Diageo products and are part of a campaign called "This calls for a cocktail".

### **The Gone Viral**

11. The first advertisement opens with two women and three men dressed in business clothing dancing in a large empty room in an office building. One of the women is in front and is holding up a mobile phone as the text "Photo Got 2 Likes" is superimposed on the screen.
12. The scene then changes to a man standing at a kitchen bench on which various ingredients and utensils including a variety of Schweppes mixers, a bottle of Johnnie Walker red label, a bottle of Tanqueray Gin, lemons, limes, berries and herbs are placed. The text "This calls for a cocktail" is superimposed on the screen.
13. The scene returns to the dancing office workers as the text "Lets Mix "The Gone Viral"" and a picture of a cocktail is superimposed on the scene.
14. There is then a series of scenes in quick succession:
  - a) a bottle of Smirnoff Vodka with the superimposed text "30ML";
  - b) a man chopping a watermelon in half with his hand to accompanying sound effects with the superimposed text "#Watermelon";
  - c) basil leaves with the superimposed text "#Basil";
  - d) liquid being poured from a Schweppes bottle into a measuring cup with the superimposed text "#Cordial";
  - e) the lid of a bottle of Schweppes soda water being opened with the superimposed text "#Pour"; and
  - f) a glass filled with a cocktail garnished with watermelon with a bottle of Schweppes soda water and Smirnoff Vodka in the background and the text "#Hashtag".
15. In the final scene the man that mixed the cocktail is seen taking a photo of himself pointing to the cocktail with the ingredients around it using his mobile phone. The Schweppes logo, a plus sign, the Smirnoff logo and the text "The

Gone Viral” is superimposed on the screen. At the bottom of the screen is the Drinkwise, get the facts logo and the text “Contains 1 Standard Drink”.

### **Off the Grid**

16. The second advertisement opens with a mobile phone next to a computer keyboard in a dark room vibrating as we see that the caller is “The Boss”. The Text “Left Phone At The Office” is superimposed on the screen.
17. The scene then changes to a man standing at a kitchen bench on which various ingredients and utensils including a variety of Schweppes mixers, a bottle of Johnnie Walker red label, a bottle of Tanqueray Gin, lemons, limes, berries and herbs are placed. The text “This calls for a cocktail” is superimposed on the screen.
18. The scene changes to a man in a business suit carrying a briefcase skipping along a hill in the countryside as the text “Let’s Mix “Off The Grid”” and picture of a cocktail is superimposed on the screen.
19. There is then a series of scenes in quick succession:
  - a) a lemon being cut in half and then squeezed with the superimposed text “Squeeze”;
  - b) bottle of Johnnie Walker Red Label with the superimposed text “30ML”;
  - c) a bee on a piece of honeycomb with the superimposed text “Honey”;
  - d) ice being twisted out of an ice tray;
  - e) the lid of a bottle of Schweppes dry ginger ale being opened with the superimposed text “Pour”;
  - f) liquid being poured into a glass.
20. The scene returns to of the man skipping along the hill with the text “Enjoy It While It Lasts” superimposed on the screen.
21. In the final scene we see the man that mixed the cocktail is seen dropping a slice of lemon into the cocktail with the ingredients around it. The Schweppes logo, a plus sign, the Johnnie Walker logo and the text “Off The Grid” is superimposed on the screen. At the bottom of the screen is the Drinkwise, get the facts logo and the text “Contains 1 Standard Drink”.

### **The Complaint**

22. The complainant believes the advertisement is irresponsible, by reason that it is promoting alcohol prior to a G rated children’s movie (Cinderella) at the cinema.

## **The ABAC Code**

23. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

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

24. Definitions in Part 5 of the ABAC provide:

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.

A 'Minor' means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia

## **The Company's Response**

25. Diageo responded to the complaint by letter dated 16 April 2015. The principal points made by Diageo were:

- 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) 'This Calls for a Cocktail' is a joint advertising campaign between Schweppes Australia & Diageo Australia and was created by GPY&R with all media booked through Carat Australia (Melbourne). Both GPY&R and Carat are employed by Schweppes Australia, not Diageo. All production and media costs were jointly funded for the life of the campaign period; November 2014 – January 2015. The campaign consists of multiple advertisements.
- c) Outside of this campaign period, Schweppes have continued to screen two of the multiple 'This Calls for a Cocktail' advertisements at their own cost, through a Val Morgan Gold Class media buy. The two 15 second advertisements currently appearing in Gold Class cinemas are titled "Off the Grid" and "The Gone Viral" and these executions, along with this

media buy, is the advertising currently in question and therefore our response relates to this.

- d) The 'This Calls for a Cocktail' campaign has been created to help 25-54 year old adults to overcome their lack of confidence in mixing simple cocktail serves whilst breaking the cultural convention that cocktails should be saved for 'special occasions'. The advertisements throughout the campaign feature four Diageo brands (Johnnie Walker, Smirnoff, Tanqueray & PIMM's) and a variety of Schweppes mixers.
- e) Schweppes Australia Ltd, through GPY&R, 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 was aware of the advertisements and they were jointly involved in their creation and funding. Diageo approved the advertisements, particularly in relation to the use of the Diageo brands (Johnnie Walker and Smirnoff in this case) and the depiction of Diageo products.
- g) In relation to whether the advertisements breach Part 3 (b) of the Code by having strong or evident appeal to Minors by broadcasting the advertisement during the pre-movie advertising for the new Cinderella movie, Part 2 (b) (vi) of the Code does not apply to the placement of a Marketing Communication and therefore Diageo believes that we are not in breach of the Code. Furthermore, Diageo did not place or fund the Val Morgan media buy. The Val Morgan media buy was placed by Carat Australia on behalf of Schweppes Australia, outside of the aforementioned campaign period.
- h) Diageo does not believe "the use of social media, in particular, excitement on getting two 'likes' for a photo" in the 'Gone Viral' advertisement depicts elements that have strong or evident appeal to minors. The use of social media spans all ages and therefore cannot be deemed to have specific appeal to minors. This stock footage was chosen to illustrate a 'non' special occasion, to help overcome the barrier that cocktails should be saved for 'special occasions'. It features four adult men and one female woman, dressed in corporate attire, positioned in an office environment enjoying the fact that their photo received two 'likes' with the corresponding super "PHOTO GOT 2 LIKES". Whilst there is evident excitement from these characters in receiving two 'likes' for their photo, all characters in question clearly look over 25 years old and are enjoying a light-hearted break from their office jobs, set in a clearly corporate environment.
- i) Diageo does not believe that "making a drink that features watermelon and cordial" and "making a drink using honey and ginger ale" have strong or evident appeal to a minor beyond the broad appeal the same ingredients would have for an adult. Further, both cocktails featured across the two advertisements are clearly depicted as alcoholic beverages with a dedicated frame within each execution clearly showing the alcoholic ingredient (through a close-up of each bottles' labels along

with the 30ml measure). Therefore, there can be no confusion that these are non-alcoholic beverages. In order to convey to 25 – 54 year old adults that cocktails can be simple to mix, the ingredients selected for the campaign recipes needed to be easily accessible and well known within our target market. The inclusion of cordial was made because cordial features as part of Schweppes' portfolio and is a simple way to introduce some sweetness to a vodka and soda mix. The inclusion of watermelon was made to show the diversity of garnish options available to create simple and delicious cocktail serves. The inclusion of honey was made to add a point of differentiation to the classic whisky and ginger ale serve. The inclusion of Schweppes Dry Ginger Ale was to showcase one of Schweppes' mixers (as imperative to Schweppes as showcasing Johnnie Walker is to Diageo), a popular mixer choice for a whisky cocktail.

- j) Diageo does not believe that “naming a cocktail ‘The Gone Viral’ has strong or evident appeal to minors. The name of each cocktail within the ‘This Calls for a Cocktail’ campaign directly links back to the occasion portrayed within each advertising execution. ‘The Gone Viral’ does not have strong appeal to minors, nor is it specifically targeted at minors due to the context of the advertisement. ‘The Gone Viral’ sarcastically refers to the two ‘likes’ the group of adults featuring within the stock footage receive. This breaks the convention of naming a cocktail by its ingredients, therefore achieving a greater level of resonance with our 25-54 year old target audience.

26. Schweppes responded to the complaint by letter dated 20 April 2015. The principal points made by Schweppes were:

- a) The content of this advertisement is part of a series of “This Calls for a Cocktail” themed advertisements which have been run as a partnership between Schweppes and Diageo. Each of the advertisements in this series was submitted to ABAC for approval, through Diageo. Diageo was aware of these particular advertisements’ creative content, but they did not approve the final advertisement (Diageo did not see the “please turn off your phone” screen shot). Schweppes is however, permitted under our arrangement with Diageo to use and depict the Diageo brands as they are depicted in the advertisements.
- b) Schweppes strongly denies any assertion that the advertisements breach section 3(b) of the ABAC Code. The ‘This Calls for a Cocktail’ campaign is only being screened in Gold Class cinema sessions. Gold Class cinemas are an adult, licensed environment. Anyone under 18 must be accompanied by an adult. It is an environment which is clearly targeted to and designed for adults. We also note the 2015 live action film version of Cinderella, is considered a modern contemporary take of a classic fairytale and not specifically created for children.
- c) Schweppes does not consider that there is any one element in the advertisements that appeals to minors, nor do we consider that either of the advertisements on the whole would appeal to minors. We note there are no children depicted in either advertisement and any person who

appears in the advertisement are over 25 (it is Schweppes policy that all participants must be over the age of 25). Further, the adults in the “Gone Viral” advertisement are wearing business suits and business attire which clearly illustrates how the advertisement is targeted to an adult audience.

- d) Social media is not a tool that is specially designed or aimed at minors. Social Media is a form of media that is used by all generations and appeals to everyone. In fact, Facebook (the largest social media network) data shows that the age group 25 to 34, which represents 29.7% of users, is the most common age demographic (Source: Emarketer 2012). We do not consider that referencing social media specially accords to an advertisement being appealing to minors.
- e) The cordial being used in the advertisement is Schweppes Cordial which sits in a category called (and labelled in store) ‘Adult Cordial’. The range is made up of traditional flavours with packaging tailored to older users and is not targeted to minors in any way.
- f) In terms of the use of “watermelon”, we do not consider that watermelon is a fruit that would be attractive to minors any more than any other age bracket. Watermelon is a fruit, we would not see it as having any particular evident appeal to a minor audience, especially as compared to chocolate or lolly flavours which may be more appealing.
- g) As with watermelon, we cannot identify any specific reason why honey and ginger would be flavours that would necessarily have an evident appeal to minors. If anything, we would consider ginger to be a flavour that minors would strongly dislike as it has more appeal for an adult palate.
- h) The term “gone viral” has become part of the everyday vocabulary for majority of Australians and would be used in any conversation from the boardroom to the train station. We do not consider that using the term would have any specific appeal to minors.
- i) As noted above, the Advertisements on the whole are quite clearly targeted at adults. When the different elements of the Advertisements are looked at, we consider that the reasonable person would see that there is no particular imagery or creative element that is aimed at minors - the “look and feel” of the Advertisements is quite mature.
- j) Schweppes takes the responsible promotion of alcohol very seriously. Whilst we are not strictly bound by the Code, Schweppes is aware of the ABAC requirements and does all it can to ensure that its advertisements and marketing campaigns are in compliance with ABAC guidance. We request that the Panel takes the above submissions into account when reaching a decision in respect of the Complaint.

### **The Panel’s View**

27. The complaint concerns the screening of two advertisements for Schweppes soft drinks, and alcohol products shown at a cinema on Queensland’s Gold

Coast. The advertisements were placed in the pre-screening advertising of the movie "Cinderella".

28. The complainant was surprised to see the advertisements, as the film was given a 'G' classification by the Australian Classification Board. The Board is a Commonwealth statutory agency responsible for the classification of films and computer games made available in Australia. The classification assists consumers in making choices as to whether a film or game is suitable for them and particularly for their children.
29. The Australian classification regime for films places each film into a classification category which is determined according to a hierarchy of impact. The 'G' classification means that the Board believes the film has a very mild impact, and is appropriate for general audience. The impacts are considered against the elements of themes, violence, sex, language, drug use, and nudity.
30. Presumably, the assumption of the complainant is that there would be a relationship between a film's classification and the type of the advertising that would be screened prior to the film. In the case of alcohol advertising, the assumption that the complainant may have made is that there would be restrictions which would limit alcohol advertising to, say, films given a 'MA 15+' or 'R' classification. In this assumption, however, the complainant is mistaken.
31. Unlike free to air television, where there are restrictions on the broadcast time of alcohol advertising, there are no formal restrictions in place for alcohol advertising at cinemas. This means that the fact that the advertisements were screened in advance of the 'G' classified "Cinderella" movie is not of itself a breach of any applicable code or legal requirement.
32. For its part, the ABAC is a content, rather than a placement, Code. This means that the ABAC creates a series of standards which the content of alcohol marketing is to satisfy, and these standards apply irrespective of the medium or the location in which the marketing occurs. In other words, the ABAC is not breached by the mere fact that an alcohol advertisement is accessible by viewers under the age of 18, but the Code will be breached if the content of the marketing can fairly be said to have strong or evident appeal to under 18 year olds.
33. The complainant raised no particular issue about the content of the two advertisements. The concern was based on the fact that there was alcohol advertising at all. The Panel, however, has reviewed the two advertisements to assess if their content could be said to contain elements which might be strongly or evidently appealing to under 18 year olds. In making this assessment, the Panel is to have regard to the probable impact of the marketing upon a reasonable person, taking its content as a whole.
34. The Panel does not believe that the two advertisements can be regarded as having strong or evident appeal to under 18 year olds. The content of the advertisements feature adult characters in generally adult settings. While one of the advertisements refers to social media, it would not be reasonable to assume mere reference to social media makes the advertisement strongly or evidently appealing to under 18 year olds given that digital platforms or

communications, such as Facebook, are used extensively across the community and by all demographic groups. In fact, the largest users of social media, such as Facebook and related platforms, are adults in the 25 and over age group.

35. The two companies advised that the advertisements were screened in the 'Gold Class' cinema venues which are more expensive than regular theatres and which are catered, including with alcohol products. The presumption seems to be that adults will predominantly be the audience in those cinemas.
36. While the complaint is dismissed, the Panel refers to its Management Committee the issue of whether any guidance should be given to marketers regarding the placement of alcohol advertisements with cinema screenings.