



ABAC Adjudication Panel Determination No. 45/15

Product: Bundaberg Rum
Company: Diageo Australia Limited
Media: Television
Complainant: Confidential
Date of decision: 4 May 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 a television advertisement for Bundaberg Rum by Diageo Australia Limited (“the Company”) and arises from a complaint received 8 April 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 8 April 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 this marketing communication (13871).

The Marketing Communication

10. The complaint refers to a television advertisement for Bundaberg Rum.
11. The advertisement is a series of drawn images with accompanying words that are the lyrics of the background song:
 - a) a screen full of figures cheering with the words and lyrics “Fan Like Us like To Get A”;
 - b) the screen is black as the words and lyrics continue “Tan When Our Team Is Hot As A Frying”
 - c) a hand holding a frying pan with food cooking appears as the words and lyrics continue “Pan”
 - d) the screen is again black but circles appear on the screen as the words and lyrics continue “We Learned To Bat”;
 - e) as the words and lyrics continue with “Before We Ran” footprints appear across the screen;
 - f) the words and lyrics continue with “We Celebrate With A Special Can” and then a hand holding up a can of Bundaberg Rum and Cola appears and arrows point to the can;
 - g) the screen full of figures cheering reappears with the hand holding the can of Bundaberg Rum and Cola in the foreground and the words and lyrics continue “Fans Like Us Like A”
 - h) the screen changes to a flag with various cheering hands and a ball being tossed around below it as the words appear on the flag and the lyrics continue with “Battle Plan”;
 - i) the words and lyrics continue with “We’ll Raise the Cup That Is Made of Gold” as a hand cheers and a trophy appears;
 - j) the words and lyrics continue with “We Cheer The Lads When Its Hot Or Cold” and a can of Bundaberg Rum and Cola appears in the word “Cold”;
 - k) the images change to seats with some spectators as the words and lyrics continue with “We’ll Find A Seat If It’s Oversold”;
 - l) the words and lyrics continue with “We’ll Stay Till The Very Last Ball Is Bowled” as the images change from a day to a night scene;

- m) we then see images of people cheering behind a white picket fence as the words and lyrics continue with “Fans Like Us Like Us Like Rum”
- n) In the next scene the words and lyrics continue with “Bundaberg Ruuuuum” and we see an image of hands holding up a carton of cans of Bundaberg Rum and Cola with the image of a trophy on the carton and the Welcome to Bundaberg logo appears together with the text “You won’t miss a moment if you DrinkWise.org.au.
- o) In the final scene we see the words “Official Rum Of” and then the ICC Cricket World Cup 2015 logo, the Drinkwise message from the previous screen and the text “Available at:” followed by the BWS Logo and “Today’s Special” tagline.

The Complaint

- 12. The complainant objects to the advertisement on the basis that:
 - a) It is alcohol advertising during a sporting event seen by children and adolescents; and
 - b) It shows that alcohol helps people succeed in sport and socially; and
 - c) It shows that alcohol is what you need.

The ABAC Code

- 13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

The Company’s Response

- 14. The Company responded to the complaint by letter dated 2015. The principal points made by the Company were:
 - a) The Bundaberg Rum campaign has been created to celebrate those who aspire to live a more interesting and fun life. It is designed to appeal to Australians through a shared love of trying new things, expressed in a light hearted and humorous way. The campaign is inclusive and aimed at targeting existing adult consumers as well as inviting new adults to experience Bundaberg Rum. The ‘Bundaberg ICC Cricket World Cup Can’ spot outlines Bundaberg Rum’s sponsorship of the ICC Cricket World Cup and the release of limited edition packaging to coincide with this. Throughout the spot a number of scenarios are presented that cricket fans may associate with. They emphasise that the most important

thing is the shared experience with friends and the fun on the journey, no matter what happens along the way.

- b) The 'Bundaberg ICC Cricket World Cup Can' commercial does not suggest that "to fit in socially as a cricket fan you need to be a Bundaberg Rum drinker and celebrate your team's success with Bundaberg Rum." Throughout the commercial a number of scenarios are presented that one could experience during a cricket match that may make it enjoyable. Cricket fans may like or associate with one or more of the scenarios presented. It is not suggested however that one must specifically associate with one or more of the scenarios to fit in as a cricket fan. Furthermore, it is not suggested that one is more or less of a cricket fan (or excluded as one) if they do or do not associate with one or more of the scenarios, including celebrating a team's success with Bundaberg Rum or being a Bundaberg Rum drinker.
- c) Throughout the commercial fans are shown enjoying cricket together without the presence of Bundaberg Rum. These scenes do not change in appearance before and after the introduction of Bundaberg Rum's ICC Cricket World Cup special edition packaging/product. This suggests that the presence of Bundaberg Rum will not change the experience, one's ability to fit in socially as a fan or is required to celebrate a team's success. Similarly, the accompanying audio does not infer that one must celebrate with Bundaberg Rum. The overall outtake is that being a fan and enjoying cricket is about the journey defined by the many variables one can come to expect and experience during a game no matter what the result and what happens along the way.
- d) Additionally, the can and case are shown in the commercial with the intent of demonstrating the limited edition design and positioning Bundaberg Rum as the Official Rum of the ICC Cricket World Cup in line with the sponsorship agreement. This depiction does not suggest that one cannot celebrate without this product or that you must be a Bundaberg Rum drinker to be a cricket fan.
- e) Diageo believes there is no basis for the claim that "Bundaberg Rum as the official rum of the ICC Cricket World Cup 2015, together with the call for cricket fans to consume Bundaberg Rum, contributed to the success of the event and the team's successes." A reasonable person would not attribute the presence or consumption of Bundaberg Rum nor Bundaberg Rum's association with the ICC Cricket World Cup as a contributing factor to the success of a Cricket World Cup event. In the commercial, there is no suggestion that the consumption or presence of Bundaberg Rum could contribute to a team's sporting success. Team success is referenced in the commercial when "our team is as hot as a frying pan" is seen and

heard. This is merely a reference to when a team is succeeding and it's not suggested that the presence of consumption of Bundaberg Rum could somehow contribute to this. Furthermore, Bundaberg Rum has no affiliation with a specific cricket team.

- f) 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

- 15. This complaint concerns a television commercial for Bundaberg Rum that was aired during the ICC Cricket World Cup. The Company was one of the sponsors of the tournament. The complainant is concerned that the advertisement:
 - a) is seen by children and adolescents because it was aired during a sporting event;
 - b) depicts alcohol assisting people succeed in sport and socially; and
 - c) shows that 'alcohol is what you need'.

Each of these aspects of the complaint will be considered in turn.

- 16. The first aspect of the complaint relates to the alcohol advertisement being accessible to under 18 year olds by reason of it being aired during the World Cup. As has been noted in previous determinations, section 2(b)(vi) of the Code expressly provides that the ABAC does not apply to the placement of a marketing communication. That is, the ABAC is a content and not a placement code. This means that while an alcohol advertisement may be accessible to under 18 year olds by reason of its placement, this will not of itself constitute a breach of the Code. Further, the ABAC does not apply to sponsorship arrangements, so the decision of the Company to sponsor the ICC Cricket World Cup is not an activity to which the ABAC applies. The Panel also notes that the code applying to commercial television permits alcohol advertising during the broadcast of live sporting events and, as such, the advertisement is not in breach in this regard.
- 17. The substance of the complaint for ABAC purposes, therefore, is the complainant's concern that the advertisement depicts alcohol helping people succeed in sport and socially, and that 'alcohol is what you need'. This aspect of the complaint raises section 3(c)(ii) of the Code, which provides that alcohol marketing communications must not show 'the consumption or presence of an alcohol beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success'.
- 18. The critical concept of this section is that of 'causation'. This means alcohol marketing can depict success, and successful and attractive people, but it

cannot depict, either expressly or by implication, alcohol leading to such success, or to a person achieving success or appearing attractive.

19. In assessing if a marketing communication is compliant with a Code standard, Part 4 of the ABAC provides that the marketing communication is to be assessed in terms of the probable understanding of the marketing communication by a reasonable person to whom the material is likely to be communicated and taking its content as a whole. The notion of the 'reasonable person' is borrowed from the Australian common law system and means that regard is to be had to the opinions, beliefs, and values which are common in a majority of the community. A person holding a different view is not 'unreasonable', but his or her interpretation may not be that which is shared by a majority of the community.
20. The Panel does not believe the advertisement breaches the section 3 (c)(ii) standard. In reaching this conclusion, the Panel notes:
 - a) While the advertisement relates to an international cricket sporting event, it does not depict the success of any of the participant cricket teams, nor does it depict the presence or consumption of alcohol as causing or contributing to sporting success;
 - b) While the advertisement includes a line stating, "We celebrate with a special can", it does not depict or imply that the cause for celebration is a direct or indirect result of the presence or consumption of alcohol;
 - c) The advertisement shows a range of fanciful settings in relation to the ICC Cricket World Cup and fans attending cricket matches, but it does not imply that alcohol is necessary for a fan to enjoy a cricket game or support a team;
 - d) Alcohol is portrayed as a means of celebrating the success of a team, but is not of itself the cause of the celebration or success.
21. Accordingly, the complaint is dismissed.