



ABAC Adjudication Panel Determination No. 68/15

Product: Tanqueray Gin
Company: Diageo
Media: Television
Complainant: Confidential
Date of decision: 11 August 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 Tanqueray Gin and arises from a complaint received 20 July 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 20 July 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 (14190).

The Marketing Communication

10. The advertisement features one of the presenters of the reality television program "MasterChef" Mr Matt Preston. The advertisement opens with a picture of a beverage as the words "Welcome to the G&T with a twist" appear next to the beverage accompanied by a voiceover by Mr Preston "this welcoming G&T can be prepared". The scene then changes to Mr Preston speaking to the camera in a residential kitchen "for work weary guests in seconds which is perfect". The scene then changes to a clock showing a time of around 1 minute to 7 o'clock, accompanied by the voiceover by Mr Preston continuing "as they'll be here any minute".
11. The advertisement continues with the following scenes accompanied by Mr Preston explaining the steps required to make the beverage:
 - Ice is placed in a glass – "We start with ice"
 - Mr Preston reaches for and picks up a bottle of Tanqueray Gin from a tray of a collection of spirit bottles and pours a measure of gin into the glass – "followed by 30ml of Tanqueray London Dry Gin"
 - Tonic water is added to the glass - "top up with tonic"
 - A crescent of grapefruit is added to the glass and then Mr Preston breaks off a sprig of mint and adds it to the glass – "and here's the twist a crescent of pink grapefruit and then a sprig of mint".
 - We see the completed beverage and then a plate of fishcakes and a bowl of olives - "this is the perfect palate cleanser with smoked salmon fishcakes and warm herby olives"
 - The final image is the top part of the completed beverage below the text "Find the perfect Welcome Drink at tenplay.com.au/WelcomeDrink". The Drinkwise logo and a trademark statement stating the beverage contains one standard drink is superimposed on the image of the beverage - "Find the perfect welcome drink at tenplay/welcomedrink".

The Complaint

12. The complainant is concerned that:
 - The advertisement was for a specific brand of alcohol;

- It was on during a family program;
- The advertisement for alcohol was hidden within a normal presentation of the type Matt Preston does;
- The segment did not explain that it was an alcohol beverage;
- Children have been exposed and encouraged by this deception.

The ABAC Code

13. Part 3 of the ABAC provides that a Marketing Communication must not:

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

14. Definition 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

15. The Company responded to the complaint by letter dated 29 July 2015. The principal points made by the Company are:

- (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) The advertisement in question is one of six advertisements that make up the Welcome Drink Series. The advertisements were created by Leo

Burnett in conjunction with Network Ten, on behalf of Diageo Australia and were produced by Network Ten. Diageo has entered into a talent contract with Matt Preston through our advertising agency. Diageo has not entered into a partnership or sponsorship with MasterChef.

- (c) The advertisement in question features Matt Preston preparing for a midweek dinner with friends. He is clearly in his home environment and preparing a Tanqueray cocktail as a 'Welcome Drink' to serve to his guests on their arrival. Matt talks to each ingredient as he prepares the cocktail, including making explicit mention to the ingredient of 30ml Tanqueray Gin. The Tanqueray Gin bottle is visible in several frames. Network Ten, on behalf of Diageo, obtained full and complete clearance for the advertisement from the Alcohol Advertising Pre-Vetting System (AAPS) throughout its production and prior to its finalisation.
- (d) **Part 3 (b)** of the Code does not apply to the placement of Marketing Communications, rather the content. As per **2 (b) (vi)** of the Code, it does not apply to the placement of a Marketing Communication. Furthermore, Diageo does not agree that the MasterChef series strongly appeals to minors. Based on MasterChef's audience data, on average, 87 percent of MasterChef's viewers are aged 18 years and older (Source: AdQuest eTam Analyser). Moreover, the advertisement in question was broadcast after 8.30pm, outside of the G and PG time zones. As the MasterChef series does not have strong appeal to minors, the advertisement in question cannot be considered to have strong or evident appeal to minors based on its format, should it be considered to be reminiscent of a 'masterclass' segment in the series. The host in question is Matt Preston, a prominent food editor and judge on MasterChef Australia. Matt has built his career as an expert within the food industry and should not be considered as a TV personality with strong or evident appeal to minors. Therefore, Diageo maintains that his inclusion in the advertisement is not in breach of **Part 3 (b)** of the Code.
- (e) Diageo has not partnered with MasterChef and therefore does not have permission to use MasterChef's intellectual property nor "format", thereby the advertisement cannot suggest that it is "part of the MasterChef programme". Instead, Diageo has partnered with Matt Preston. The advertisement depicts Matt in his home environment, not in his role as a MasterChef judge. As an individual awaiting his guests' arrival within the midweek dinner occasion, he prepares a Tanqueray cocktail. The "timing" of the advertisement is in line with reaching our target audience for this campaign (females between the ages of 35 - 54) which correlates with the demographic of MasterChef's viewers. However, we again refer to **2 (b) (vi)** of the Code, stating that the Code does not apply to the placement of a Marketing Communication.

- (f) Additionally, the advertisement makes no attempt to disguise the fact that this is a “separate advertisement for an alcohol beverage” for the following reasons:
- a. Matt Preston verbally states “30ml of Tanqueray London Dry Gin” as he visibly pours gin into the glass, carefully measuring out 30ml of the alcohol in a jigger;
 - b. The Tanqueray Gin bottle is clearly visible in multiple frames throughout the advertisement;
 - c. The copy ‘Contains 1 standard drink’ appears on the final frame; and
 - d. The DrinkWise logo also appears on the final frame stating ‘Get the facts DrinkWise.org.au’.
- (g) Diageo does not believe that the alcohol beverage being prepared could be confused as a soft drink due to its colourless and carbonated presentation and the inclusion of grapefruit and mint. Gin is a clear liquid and is traditionally mixed with tonic water, creating a cocktail that is “colourless and carbonated”. The advertisement clearly depicts an alcoholic beverage being prepared, with dedicated frames showing the alcoholic ingredient, Tanqueray Gin, being added to the beverage and Matt verbally stating “30ml of Tanqueray London Dry Gin” as he visibly pours gin into the glass. The ingredients of grapefruit and mint do not have strong or evident appeal to a minor beyond the broad appeal they would have for an adult. Grapefruit is used to add a sour citrus fruit flavour to the cocktail. This flavour is generally unsuited to a young palate. Mint is used as a garnish, which it commonly is on cocktails. The advertisement does not attempt to disguise the alcoholic content within the drink in question and the use of grapefruit and mint could not be considered as misleading.

The Panel’s View

16. MasterChef is a long running reality television program broadcast on the Ten network. The program features contestants preparing meals which are assessed by three prominent chefs or food critics. Mr Matt Preston is one of the program’s presenters and judges.
17. While watching MasterChef, the complainant became concerned when an advertisement for Tanqueray Gin was broadcast which featured Mr Preston. In the complainant’s view the advertisement resembled the MasterChef program itself and this could well have confused viewers particularly under 18 years old as the show is a ‘family program’ in the complainant’s opinion.

18. The company has provided background as to how the advertisement came to feature Mr Preston explaining :
 - A total of 6 advertisements have been produced in the 'Welcome drink' series each featuring Mr Preston.
 - The company has a 'talent contract' with Mr Preston rather than a 'partnership or sponsorship' with MasterChef.
 - Each advertisement is in a similar format with Mr Preston making an alcoholic drink and talking through the ingredients and method of making the drink.
19. The ABAC provides at section 3 (b) that an alcohol advertisement must not have a strong or evident appeal to under 18 year olds. This standard might be breached if an advertisement can be said to be specifically targeting under 18 year olds, or have an appeal to under 18 year olds beyond the general attractiveness it has for an adult. Another way the advertisement might be inconsistent with the standard is if the marketed alcohol product created confusion with a soft drink.
20. In assessing if an advertisement is in breach of an ABAC standard, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person, taking its content as a whole. The reference to a 'reasonable person' is drawn from Australia's common law system and means that the opinions, values and beliefs commonly held by a majority of the community are the benchmark.
21. Divorced from the MasterChef context, there is little in the advertisement which could be fairly said to be strongly or evidently appealing to under 18 year olds. The advertisement is adult in theme and essentially sets a scene of a middle age man preparing a mixed drink for guests arriving for a dinner party. This is not a scenario which a typical 15 year old for instance, seems likely to find particularly appealing.
22. The twist in the advertisement is the association with Mr Preston and its broadcast within the MasterChef program of which Mr Preston is a co-host. The company contends that the substantive ABAC standard on appeal to minors does not apply to the placement of the advertisement within the MasterChef program. This is however not entirely correct, as while the advertisement cannot be found in breach of the Code for the reason alone that it was placed within the program, its placement within MasterChef may impact upon how a reasonable person might interpret the advertisement in terms of the substantive ABAC standards.
23. In any event, the Panel does not believe the advertisement is in breach of section 3 (b) of the Code. In reaching this conclusion the Panel has noted:
 - The advertisement is adult in theme and does not contain images or references considered likely to have strong or evident appeal to minors

- The placement of the advertisement within the MasterChef show featuring a MasterChef host does imply the product is endorsed by the program
- The program itself has a predominantly adult audience and association of the product within the program via the presence of Mr Preston is not considered likely to be strongly appealing to children or adolescents.

24. Accordingly the complaint is dismissed.