



ABAC Adjudication Panel Determination No. 84/15

Product: Pimms
Company: Diageo
Media: Television
Complainant: Mr Brochier
Date of decision: 19 August 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Pimms and arises from a complaint received 27 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 27 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 (14263).

The Marketing Communication

10. The complaint concerns a television advertisement featuring one of the hosts of the reality TV show MasterChef, Mr Matt Preston. The advertisement opens with an image of a group of beverages as the words "Welcome to the Classic Pimm's" appear superimposed on the beverages accompanied by a voiceover by Matt Preston "There's nothing better as a welcome drink at a barbecue than a classic Pimm's".
11. The scene then changes to Mr Preston speaking to the camera in a residential kitchen laid out with cocktail ingredients and continues with the following scenes accompanied by Mr Preston explaining the steps required to make the beverage:
 - A jug of ice is held up – "To start fill a jug with ice"
 - Pimm's Liqueur is poured into the jug – "Pour over 180ml of Pimm's"
 - A small bottle of Schweppes lemonade and Schweppes ginger ale is simultaneously poured into the jug - "Add lemonade and ginger ale"
 - The beverage in the jug is stirred and poured into glasses garnished with slices of cucumber and orange – "Stir and pour into glasses with slices of cucumber and orange".
 - A sprig of mint is placed in one of the glasses – "To finish a sprig of mint".
 - We see a plate of prawn and chorizo skewers and a plate of fresh oysters - "this pairs wonderfully with prawn and chorizo skewers and fresh oysters".
 - The next image is a partial shot of three completed beverages and a bottle of Pimm's as the voiceover by Mr Preston continues "Classic Pimm's the perfect crowd pleaser"
 - The final scene is the top part of a group of completed beverages 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 and the voiceover by Mr

Preston concludes with “Find the perfect welcome drink at tenplay/welcomedrink”.

The Complaint

12. The complainant is concerned that the alcohol ad is disguised as a recipe.

The ABAC Code

13. Part 3 of the ABAC provides that a Marketing Communication must not:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;

The Company’s Response

14. The Company responded to the complaint by letter dated 6 August 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 casual barbecue with friends. He is clearly in his home environment and preparing a jug of PIMM’s as a ‘Welcome Drink’ to serve to his guests on their arrival. Matt talks to each ingredient as he prepares the cocktail, including explicitly mentioning the ingredient of 180ml PIMM’s. The PIMM’s 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 (a)(i)** of the Code does not apply to the placement of Marketing Communications. Instead it refers to encouraging the “excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines”. Diageo believes that “broadcasting the advertisement during the MasterChef

series that has wide appeal” does not encourage “excessive” nor “rapid consumption”, nor the “misuse or abuse of alcohol”. Furthermore, as per **2 (b) (vi)** of the Code, it does not apply to the placement of a Marketing Communication. For these reasons, Diageo therefore believes that we are not in breach of the Code.

- (e) Additionally, Diageo does not agree with the statement that the MasterChef series has “wide appeal” should the implication of “wide appeal” refer to a range of age groups. 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.
- (f) 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 program rather than a separate advertisement for an alcohol beverage”. 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 casual barbecue occasion, he prepares a PIMM’S jug to share with these guests within this occasion.
- (g) 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.
- (h) Additionally, the advertisement makes no attempt to disguise the fact that this is a “separate advertisement for an alcohol beverage”. Within the advertisement in question, the PIMM’S bottle is visually apparent in multiple frames. Matt clearly and carefully measures 180ml of PIMM’S using a measuring jug as he says “pour over 180ml of PIMM’S”. He then proceeds to pour the finished cocktail into six glasses, clearly showing that this is a shared serve. In the final frame, it is clearly stated that this cocktail contains “4 standard drinks” alongside the DrinkWise logo stating “Get the facts DrinkWise.org.au”. For these reasons, Diageo believes that it is not in breach of Part 3 (a)(i) of the Code.

The Panel’s View

15. This is the second determination the Panel has made in relation to the ‘Welcome drink’ series promoting various products of the company and each featuring Mr Matt Preston. Mr Preston is one of the three regular hosts of the

television program MasterChef. MasterChef is a reality TV show which depicts a competition of “ordinary people” preparing meals within a set time period. The resulting meals are then judged by professional chefs or food critics including Mr Preston.

16. The previous determination (83/15) considered an advertisement broadly similar in format to the current advertisement but the concern raised was that the advertisement would be appealing to under 18 year olds. In this complaint the concern is solely focussed on the similarity of the ad with the MasterChef format and whether this gives the advertisement the potential to encourage the misuse or abuse of alcohol.
17. The company explains the background to the ‘Welcome drink’ series as resulting from a ‘talent contract’ it has entered into with Mr Preston. It is stated that the company is not a sponsor of MasterChef as such, but it is evident that the advertising campaign is closely linked to the 10 network’s promotion of MasterChef. This is established by the advertisement identifying the webpage link ‘tenplay.com.au’ which in turn contains a series of webpages about the MasterChef program on an official 10 network internet site.
18. Accordingly it can be readily accepted that it was both intended and would be interpreted by a reasonable viewer that the ‘Welcome drink’ campaign is endorsed by the MasterChef program irrespective of the legal arrangements between the company and the owners of MasterChef. The question which follows is whether this means the advertisement is in breach of an ABAC standard.
19. For the complainant, the concern is that the advertisement is ‘disguised’ as a recipe within the format of the MasterChef show. Presumably the harm which might flow from this is that a viewer might not realise that they were watching an advertisement and put more legitimacy on the drink making ‘segment’ than would occur if it was evident that Mr Preston was doing a paid advertisement separate from the content of the program.
20. While the Panel recognises the point being raised, the advertisement is not in breach of the ABAC. There is no ABAC standard which requires an alcohol marketing communication to be clearly and unambiguously identified as an advertisement as such. Rather the Code sets out standards which the marketing is to meet irrespective of the form it takes. These standards go to matters such as not encouraging under age alcohol consumption, or excessive alcohol use or suggesting that alcohol is necessary to be successful.
21. The Panel does not believe the content of the advertisement can be said to be encouraging the misuse or abuse of alcohol. Nothing can be taken from the advertisement that alcohol should be consumed in a irresponsible manner. It is not a breach of the Code for an alcohol brand owner to seek to promote its product through association with a minor celebrity such as Mr Preston or a popular program such as MasterChef if in doing this the substantive standards on the responsible use of alcohol are not impinged.
22. Accordingly the complaint is dismissed.