



## ABAC Adjudication Panel Determination No. 125/15

**Product:** Pimms/Johnnie Walker/Tanqueray  
**Company:** Diageo  
**Media:** Television  
**Complainant:** Confidential  
**Date of decision:** 3 December 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 television advertisements for Pimms, Johnnie Walker and Tanqueray Gin and arises from a complaint received 13 November 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 13 November 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

### Pimms

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 Mr Preston walking into a residential kitchen, removing a boater style hat and speaking to the camera "Now some associate Pimms with the whack of willow at the afternoon game of cricket. I on the other hand prefer it with the sizzle of snags and a barbecue with mates."
11. The camera then moves to a group of beverages as the words "Welcome to the Classic Pimm's" appear superimposed on the beverages accompanied by a voiceover by Mr Preston "And there's nothing better as a welcome drink at a barbecue than a classic Pimm's".
12. 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. Now the poms just use lemonade but I reckon dry ginger ale adds bite and sophistication."
  - The beverage in the jug is stirred and poured into glasses garnished with slices of cucumber and orange – "Then stir and pour into glasses, garnish with slices of cucumber and orange".
  - A sprig of mint is placed in one of the glasses – "To finish a sprig of mint."
  - Returns to Mr Preston speaking to the camera and an image of a group of the completed drinks with the recipe superimposed and then with prosecco being added - "There you have it classic Pimms the perfect crowd pleaser. You can always improve on a classic if you choose and a splash of prosecco will do just that, creating a sparkling Pimms spritz."

- We see a plate of prawn and chorizo skewers and a plate of fresh oysters and Mr Preston holding up and eating a potato chip - “this pairs wonderfully with prawn and chorizo skewers, fresh oysters or even a simple bowl of good quality potato chips”.
- The final image is the top part of the completed beverage below the text “Make your next welcome drink something special”.

### **Johnnie Walker**

13. The advertisement opens with Mr Preston in a residential kitchen wearing a football scarf and speaking to the camera “You’re having friends around to watch a game.”
14. The camera then moves to a beverages as the words “Welcome to the Classic Whisky Spritz” appear superimposed on the beverage followed by a man walking past and picking up a plate of food from the kitchen bench accompanied by Mr Preston saying “This pre-match welcome drink is perfect for any fan, even the enemy”.
15. The scene then changes to Mr Preston speaking to the camera at the kitchen bench laid out with cocktail ingredients and continues with the following scenes accompanied by Mr Preston explaining the steps required to make the beverage:
  - Ice is placed in a tall glass – “Right, first add ice”
  - A bottle of Johnnie Walker is picked up and 30ml measured and poured in the glass – “Then 30ml of scotch whisky. I’m using Johnnie Walker Red label as I love the bold, vibrant flavours”
  - A small bottle of Schweppes ginger ale is poured into the glass followed by a wedge of lemon being squeezed into the glass - “Then the classic addition of dry ginger ale, lemon just for that zest.”
  - Sparkling apple juice is then added to the glass – “Finally top with sparkling apple juice. There you have it a long cooling whisky spritz”.
  - Returns to Mr Preston speaking to the camera and an image of the completed drink with the bottle of Johnnie Walker behind it - “A new take on an old classic. Even I know that food isn’t the main event here.”
  - We then see a cheese plate, a plate of tacos and a plate of meat pies - “But its easy to pair this drink up with a strong blue, steak tacos, or that Aussie sporting icon, the pie ”.
  - Mr Preston is shown walking off with the plate of pies - “Hot Pies, get your hot pies.

- We then see an image of the completed drink with the bottle of Johnnie Walker behind it and the recipe superimposed – “There you have it, whisky spritz
- The final image is the top part of the completed beverage below the text “Make your next welcome drink something special”.

## Tanqueray Gin

16. The advertisement opens with Mr Preston speaking to the camera “Now if any of your friends prefer a white spirit its easy to fix them an iconic G&T but with a twist”.
17. The camera then shows 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 and who doesn’t love a race against the clock”.
18. 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 – “So 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 bruises it with his hands and adds it to the glass – “and here’s the twist a crescent of pink grapefruit and then a sprig of mint, now this may look over the top but that’s really going to bring out the flavor of that mint”.
  - We see the completed beverage and then a plate of fishcakes and a bowl of olives - “this is the perfect palate cleanser to partner beautifully with smoked salmon fishcakes and warm herby olives”
  - A door bell rings and we see the completed beverage next to a bottle of Tanqueray Gin with the recipe superimposed - “so there you have it not a moment too soon Gin & Tonic with a twist”
  - The final image is the top part of the completed beverage below the text “Make your next welcome drink something special”.

## **The Complaint**

19. The complainant is concerned that the advertisements:
- were broadcast during meal times;
  - uses a well known chef and television show judge;
  - is in the style of a food recipe as though part of a food menu;
  - has a presentation and style that portrays the alcohol as a non-effective element of a nice drink with no reference to alcoholic content; and
  - doesn't make the inclusion of alcohol clear and a child watching may not realize the main element is alcohol, it could be cordial.

## **The ABAC Code**

20. Part 3 of the ABAC provides that a Marketing Communication must not:
- (b)(i) have Strong or Evident Appeal to Minors;
21. 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**

22. The Company responded to the complaint by letter dated 26 November 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 advertisements in question feature Matt Preston preparing for an at-home casual get-together with friends. He is clearly in his home environment and, in each execution, he is preparing a Johnnie Walker and PIMM'S 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 180ml PIMM'S in the 'Classic PIMM'S' and 30ml Scotch Whisky in the 'Whisky Spritz'. Both the PIMM'S and Johnnie Walker bottles are visible in several frames throughout each execution.
- (d) Diageo believes that neither the use of a "recipe style format" nor the use of a "well known chef and television judge" has strong or evident appeal to minors in the advertisements in question. The content of the advertisements features an adult, middle age character in a generally adult setting. We therefore believe that the advertisements are not in breach of Part 3 (b) of the code. In order to be able to successfully communicate to our consumers on how to mix an alcoholic drink at home, we need to supply a recipe for them to follow. The advertisements in question make no attempt to disguise the fact that both recipes contain alcohol. Matt Preston is a prominent food journalist (not "chef") and judge on MasterChef Australia. Matt has built his career as an expert within the food industry, a regular contributor to publications such as The Daily Telegraph, Herald Sun and Delicious Magazine. As such, Matt Preston should not be considered to have 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) Part 3 (b) of the Code does not apply to the placement of the Marketing Communication, rather it applies to the content. As per Part 2 (b) (vi) of the Code, the Code does not apply to the placement of a Marketing Communication, except to the extent that placement may impact how the Marketing Communication is understood in accordance with section 4. In addition, it is not clear what the complaint is referring to with regards to "meal times". This reference is ambiguous.

- (f) Diageo maintains that the advertising in question does not create “confusion that the alcohol beverage being prepared might be a non-alcoholic drink”. By no means does the advertising fail “to make it clear that the drink depicted contains alcohol” for the following reasons:
- In both advertisements, the alcoholic brand name is included in each recipe title; ‘Classic PIMM’S’ and ‘Whisky Spritz’ which is written on screen within the first 10 seconds of each advertisement.
  - In the PIMM’S advertisement, Matt Preston verbally states “180ml of PIMM’S” as he visibly measures in a Pyrex measuring jug and pours this alcoholic ingredient into the jug. In the Johnnie Walker advertisement, Matt Preston verbally states “30ml of Scotch Whisky” as he visibly measures and pours this alcoholic ingredient into the glass using a jigger.
  - A written recipe has been provided towards the end of both advertisements clearly stating the measure of alcohol in each beverage alongside a message outlining the number of standard drinks in the beverages.
  - The PIMM’S and Johnnie Walker bottles are clearly visible in multiple frames throughout both advertisements.
  - The DrinkWise logo appears on the final frame in both advertisements stating ‘Get the facts DrinkWise.org.au’.

### **The Panel’s View**

23. This complaint relates to three separate advertisements. Shorter versions of both the Pimms and Tanqueray advertisements referred to in the complaint have previously been considered by the Panel but only the complaint in relation to the Tanqueray ad considered and dismissed the issue raised in this complaint. For this reason the complainants’ concern will not be considered by the Panel in relation to the Tanqueray ad but will be considered in relation to the Pimms and Johnnie Walker advertisements.
24. The MasterChef is a long running reality television program broadcast on the Ten network. The program features contestants preparing meals that are assessed by three prominent chefs or food critics. Mr Matt Preston is one of the program’s presenters and judges. The complainant is concerned about advertisements for various mixed alcoholic drinks that featured Mr Preston.
25. The complainant is concerned that the advertisements would have strong appeal to children or adolescents due to its recipe format and the inclusion of a prominent television personality and also that the drink could be confused with a non-alcoholic beverage due to its failure to make it clear that the drink has an alcoholic content.

26. 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.
27. 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.
28. 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.
29. There is little in the advertisements which could be fairly said to be strongly or evidently appealing to under 18 year olds. The advertisements are adult in theme and essentially set a scene of a middle age man preparing a mixed drink for guests at his home to watch a football game or have a barbecue. These are not scenarios that a typical 15 year old for instance, seems likely to find particularly appealing.
30. The Panel does not believe the advertisements are 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.
  - While the word alcohol is not used in the ad the use of well known alcohol beverages is clearly shown and the Panel does not believe a reasonable person would mistake the advertisements as being for non-alcoholic beverages.
31. Accordingly the complaint is dismissed.