



## ABAC Adjudication Panel Determination No. 114/16

**Product:** Smirnoff  
**Company:** Diageo  
**Media:** Outdoor  
**Complainant:** Confidential  
**Date of decision:** 4 November 2016  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor advertising for Smirnoff by Diageo (“the Company”) and arises from a complaint received 10 October 2016.
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 10 October 2016.
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 (15047).

## **The Marketing Communications**

10. The advertising complained of is an outdoor advertisement at Platform 10, Redfern Station.
11. The advertisement is a collage of images, including a woman wearing sunglasses and smiling, a woman dancing, and a group of silhouetted people dancing.
12. Centre and left side of the collage features the tagline in large white print against a red background "The Right Dress Code is the One You're Wearing".
13. On the right side of the collage is an image of the top half of an opened bottle of Smirnoff with a neon sign over the top of the bottle "We're Open". In the left corner is a small 'Drink Wise' logo.

## **The Complaint**

14. The complainant is concerned that the advertising:
  - Triggers people with addiction problems to consume alcohol;
  - By the phrase "the dress code is what you're wearing" encourages consumption of alcohol by anyone walking past at any time of the day. In a public place such as Redfern Station this is irresponsible messaging to the public.
  - Is located next to another advertisement for a second alcohol product and together, both advertisements occupy a large area at the station.

## **The ABAC Code**

15. Part 3 of the ABAC Code 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;
  - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.

## The Company's Response

16. The Company responded to the complaint by letter dated 21 October 2016. The principal points made by the Company were:

- The advertisement in question is 'The Right Dress Code Is The One You're Wearing', one of six creative executions that make up the Smirnoff We're Open outdoor campaign. The advertisements were created by the Smirnoff global brand team in the United Kingdom and repurposed for use in Australia by Leo Burnett on behalf of Diageo Australia.
- Inclusivity is at the centre of Smirnoff's brand purpose and celebrates how inclusivity makes the world more fun. The 'We're Open' campaign is an invitation to accept everyone and a provocation to be more inclusive. The 'The Right Dress Code Is The One You're Wearing' advertisement sits alongside the other campaign creative executions, which include the following bold statements of inclusivity: 'Can Dance, Can't Dance, Just Dance', 'Drink Responsibly, Dance Irresponsibly', 'We Still Say I do' (previously 'You Say I Do, We All Say I do'), 'Whether You're Coming Out Or Going Out' and 'Pride and No Prejudice'.
- The advertisement in question features a collage background of people dancing and socialising in various environments. The words 'The Right Dress Code Is The One You're Wearing' are placed over the images in large, red text boxes and a Smirnoff bottle with a 'We're Open' neon sign at the top appears to the right of the text. The DrinkWise 'Get the facts DrinkWise.org.au' logo appears on the bottom left-hand side of the advertisement.
- The tagline in question 'The Right Dress Code Is The One You're Wearing' is a statement of inclusion intended to challenge people on the exclusion of some people or groups in society due to the way they dress. Many people who have visited an on-premise venue in Sydney and other cities, have been faced with a dress code that ultimately excludes them from the venue. This tagline was developed in direct response to this type of exclusion that many people face and challenges it by offering a statement of inclusivity.
- Diageo does not believe it could be said by a reasonable person that the 'We're Open' sign over a bottle of Smirnoff in combination with the tagline is intended to trigger immediate consumption and therefore encourage either the misuse of alcohol or irresponsible behaviour as per **Part 3(a) (i)** or **(ii)** of the Code. The 'We're Open' sign is a statement from Smirnoff to accept everyone and a provocation to be more inclusive. The placement of the sign over a bottle of Smirnoff is to show that inclusivity is at the core of the Smirnoff brand.

- Diageo does not believe that the collage of images of people dancing or socialising in the advertisement, or in combination with the tagline and the 'We're Open' sign, trigger immediate consumption and therefore encourage either the misuse of alcohol or irresponsible behaviour as per **Part 3(a) (i) or (ii)** of the Code. The collage of images of people dancing or socialising depicts people enjoying themselves and having fun in an inclusive environment, and provides a cue for the appropriate occasion to drink Smirnoff.
- **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**. Diageo does not believe that the placement of this advertisement at a railway station platform impacts how it is understood by a reasonable person, taking into account the tagline, the 'We're Open' sign and the image of people dancing or socialising. Specifically, Diageo does not believe that the location of the billboard, along with the above advertisement aspects, encourages the immediate consumption of alcohol.
- The advertisement in question is centred on inclusivity with the tagline 'The Right Dress Code Is The One You're Wearing', the 'We're Open' sign and the imagery used. In Diageo's view the advertisement does not breach **Part 3(a)(i) or (ii)** of the Code by encouraging either the misuse of alcohol or irresponsible behaviour related to the consumption of alcohol by triggering immediate consumption of the product through a combination of the above advertisement aspects or separately.
- 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**

17. The Company advises that it is promoting the vodka product Smirnoff via an outdoor advertising campaign which features 6 different executions including the version located at the Redfern Railway Station in Sydney. It is this execution which has concerned the complainant who believes the advertisement will trigger alcohol consumption by persons experiencing alcohol addiction. Equally, the complaint raises a concern about the location of the advertisement and its placement next to a second advertisement for another alcohol product.
18. In expanding on their concerns, the complainant explains that the phrase 'the right dress code is the one you're wearing' would be taken to encourage

alcohol use at any time of the day. In response, the Company contends that the phrase relates to a message of inclusivity, in the sense that dress and appearance are used to exclude certain people from full participation in activities, such as dress codes governing entry into a nightclub.

19. In terms of the ABAC, the nature of the complaint raises two issues. Firstly, is the location of the advertisement and its placement adjacent to a second alcohol billboard a breach of Code standards. Secondly, does the content of the advertisement encourage irresponsible alcohol use in breach of section (a) of the Code.
20. As explained in paragraph 3, the ABAC is based upon the content of alcohol marketing irrespective of where the marketing might be found or the medium by which it is conveyed to its audience. The fact that the billboard was placed at a railway station is not a breach of the Code. Nor does the Code go to the issue of the quantity of advertising placements, so the fact that two billboards advertising alcohol were at the railway station is not of itself a breach of the Code.
21. Section (a)(i) and (ii) of the Code collectively provide that an alcohol advertisement must not show or encourage the excessive consumption or misuse of alcohol, nor irresponsible behavior related to alcohol use. In assessing if these standards have been breached, the benchmark is the probable impact of the advertising on a reasonable person.
22. The Panel acknowledges the concern of the complainant to the welfare of persons suffering from alcohol dependency. The Panel however is tasked to apply the Code as it is framed and on this basis, it cannot be fairly concluded that the advertisement is encouraging irresponsible behavior or the excessive consumption of alcohol. The advertisement is promoting the particular brand and the use of the product by associating the product to various brand attributes. This will encourage the purchase of the product by those people who relate to the message in the advertisement. But this can't be concluded as encouraging the use of the product in an irresponsible or excessive manner.
23. Accordingly the complaint is dismissed.