



ABAC Adjudication Panel Determination No. 49/17

Product: Bundaberg Rum/Liquorland
Company: Diageo/Coles Liquor
Media: Television
Complainants: Confidential
Date of decision: 22 February 2017
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 Liquorland by Coles Liquor (“the Company”) and arises from a complaint received 25 January 2017.
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 25 January 2017.
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 the marketing communication (15334).

The Marketing Communication

10. The 15 second commercial (the Advertisement) is set in a residential backyard and shows adults sitting around a table enjoying a meal and holding a variety of drinks. A voiceover then says “Gotta love a summer barbie, even when it’s you on the menu”. Each individual then simultaneously slaps their neck where a “mozzie” appears to have bitten them.
11. The voiceover continues, “And at Liquorland whatever’s being served enjoy it with Bundaberg Lazy Bear Dry and Lime for a low \$17, Save 5” as the scene changes to a 6 pack of Bundaberg Rum Lazy Bear Rum, Dry & Lime and its price superimposed on an outdoor table as we see a group of adults playing backyard cricket in the background.
12. As the voiceover and superimposed text concludes with “Gotta Love Low Prices at Liquorland” we see the group playing cricket from a different angle.

The Complaint

13. The complainant is concerned that:
 - The ad shows children playing backyard cricket, gentle family happy times music, lazy bear like a teddy bear for babies and cool lazy bear Bundaberg Rum mixer drinks.
 - The ad is subliminally directed at children and babies during a family cricket show
 - It looked like the ad was advertising teddy bears, lazy bear and sleep and play time for kids.

The ABAC Code

14. Part 3 of the ABAC Responsible Alcohol Marketing Code (“Code”) provides that:
 - (b) A Marketing Communication must NOT:
 - (i) have Strong or Evident Appeal to Minors;
 - (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol; or

(iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:

A they are not visually prominent; or

B they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.

15. A Definition in Part 5 of the ABAC provides that 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 Companies Responses

16. Coles responded to the complaint by letter dated 8 February 2017. The principal points made were:

- Coles has been a signatory to the Alcohol Beverages Advertising Code since 2013. Coles takes its alcohol advertising obligations very seriously and is committed to industry best practice. Coles has demonstrated a long-standing commitment to the responsible service, supply and promotion of alcohol. We maintain robust internal compliance processes in relation to liquor advertising and have a strong culture of compliance training embedded throughout the business to ensure our teams have the necessary skills to successfully navigate this heavily regulated environment. Coles is also a key contributor to DrinkWise, an independent, not-for-profit organisation whose "primary focus is to help bring about a healthier and safer drinking culture in Australia".
- The imagery used in the Advertisement is designed to reflect activities associated with the summer season. "Gotta Love Summer" is Liquorland's catch phrase across its marketing during this period and

therefore associated summer imagery and activities are used for this campaign (e.g. backyard cricket, BBQs and other outdoor activities).

- In our view, the Advertisement complies with section 3(b) of the Code and does not have a strong or evident appeal to Minors for the following reasons:
 - The Advertisement does not use language, imagery, designs, animations or cartoon characters that are likely to appeal to Minors, or that create confusion with confectionary or soft drinks.
 - There are no children or adolescents featured in the advertisement. All individuals are over the age of 25.
 - Cricket is a sport played by people of all ages.
 - The advert does not have a particular attractiveness to Minors beyond the general attractiveness it has for an adult
 - The advert does not use brand identification (including logos), for use primarily by Minors
- With respect to the additional concerns raised by the complainant:
 - The Advertisement does not, in our view, depict a family atmosphere. It depicts a group of friends (all adults) enjoying time together over a meal and a game of cricket.
 - The music in the Advertisement is not intended to conjure feelings of “gentleness”, “family” or “happy times”. The music is licenced for use by Liquorland and has been used in a number of Liquorland advertisements.
 - In our view, it is clear that the Advertisement is not promoting a teddy bear for children. The bear that appears on the product label is the Bundaberg Rum bear that is synonymous with the brand. It is a relatively realistic depiction of a polar bear and has no resemblance to a “teddy bear”. The Advertisement is promoting Liquorland and a product sold by Liquorland.
- We also note that:
 - The Advertisement clearly displays the “DrinkWise” logo.
 - The Advertisement was classified by Commercials Advice Free TV (CAD) on 17 January 2017 (CAD No. LL0441-NAT- 7A) and was broadcast in accordance with the Code of Practice for Alcohol Advertising

- Coles remains committed to the responsible service, supply and consumption of alcohol and considers that its marketing and advertising has an important part to play in that process. Coles recognises that alcohol marketing must not have strong or evident appeal to minors and that when advertising to this age group it must not be for, or relate in any way to alcohol products. For the reasons outlined above, in our view the Advertisement is in line with prevailing community standards regarding alcohol advertising and marketing and therefore, the advertisement is aligned with the ABAC Responsible Alcohol Marketing Code and the AANA Code of Ethics.
- Coles provided the ages of the talent as 26, 30, 31, 32(2) and 36.

17. Diageo responded to the complaint by letter dated 8 February 2017. The principal points made were:

- Diageo refers to the response by Liquorland in relation to the content of the ad.
- Further, Diageo does not believe that the advertisement has strong or evident appeal to children or adolescents by promoting a product that includes the name “Lazy Bear” and the image of a bear. The name “Lazy Bear” is mentioned in the voiceover as part of the product description “Bundaberg Lazy Bear Dry and Lime”. The image of the bear is of the Bundaberg Rum bear and appears on the product label, a six pack of Bundaberg Rum Lazy Bear Rum and Dry. The bear only appears on the packaging below the words “Bundaberg Rum” and above the words “Chilled Rum and Dry”. It is depicted resting, with its arms behind its head looking up, which is not an activity that Diageo believes would have strong or evident appeal to children or adolescents. Furthermore, the context of the advertisement in which “Lazy Bear” is mentioned and in which it appears (i.e. on a six pack of Bundaberg Rum Lazy Bear Rum and Dry) is adult in nature and lessens any level of appeal that it may have to small children or babies.
- Diageo does not believe that a reasonable person would believe that the advertisement in question is for a teddy bear for children. References to a “bear” are made in the voiceover by reference to the product description, which states “Bundaberg Lazy Bear Dry and Lime”, and the image of the Bundaberg Rum bear, which appears on the product label of a six pack of Bundaberg Rum Lazy Bear Rum and Dry. Furthermore, the context of the advertisement as a whole is adult in nature and does not feature any children or anyone under the age of 25.
- 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

18. 'Lazy Bear' is the brand name of the alcohol pre-mix product produced by the alcohol company Diageo and retailed on this occasion through the Liquorland outlets owned by the Coles supermarket group. Lazy Bear is within the 'Bundaberg Rum' range of rum based alcohol products. The logo for Bundaberg rum is a stylised polar bear character.
19. The actual item of marketing to which the complaint concerns is a television advertisement for retail outlet Liquorland which pays particular attention to the Lazy Bear product. The advertisement is set in the context of an outdoor meal which features a subsequent background scene of a game of backyard cricket. The advertisement was viewed by the complainant during the broadcast of a 20/20 cricket match.
20. The complainant believes that the advertisement is highly irresponsible and is directed (subliminally at least) towards 'children and babies'. This appeal to children is argued to arise from the combination of the Lazy Bear logo, family setting, children playing cricket and the style of music used in the advertisement.
21. The ABAC provides that alcohol marketing must not have strong or evident appeal to under 18 year olds. This standard will be breached, for instance, if an advertisement can be said to be specifically targeted at under 18 year olds or have a particular attractiveness to minors beyond the appeal it has for an adult. Persons depicted in alcohol advertisements must be at least 25 years in age.
22. Both Liquorland and Diageo argue that the advertisement is consistent with the Code standard. It is pointed out that all persons shown in the advertisement are in fact over 25 years of age and it is contended that neither the Lazy Bear logo nor the advertisement as a whole is directed towards children.
23. In assessing if a marketing item is in breach of an ABAC standard, the Panel is to have regard to the probable understanding of the marketing item by a reasonable person taking its contents as a whole. The reference to a 'reasonable person' is drawn from the Australian common law system and means the values, opinions and attitudes of a majority of the community is to be the benchmark.
24. Advertising featuring the Bundaberg bear character has been the subject of previous Panel determinations. The Panel has noted that particular depictions of a bear could have strong and evident appeal to children and hence the use of animals such as a bear in alcohol marketing needs to be undertaken carefully. The context of the marketing item will be decisive in whether it can be said to be strongly or evidently appealing to children.
25. The Panel does not believe the advertisement to be in breach of the ABAC standard. In reaching this conclusion, the Panel has noted:
 - The persons shown in the advertisement are all adults and over the age of 25. This includes the final scenes in the advertisement which show people in the background playing a game of backyard cricket;

- The tone of the advertisement is adult and is not considered to be particularly attractive to under 18 year olds as such;
- The depiction of the bear character on the product packaging does not show the bear in any way which can be fairly said to be directed at children or to be evidently appealing to children; and
- Taken as a whole, the advertisement shows adults at a backyard meal and playing a game of backyard cricket. These scenes and the choice of music is not strongly or evidently appealing to under 18 year olds.

26. Accordingly the complaint is dismissed.