



ABAC Adjudication Panel Determination No. 61/17

Product: Smirnoff
Company: Diageo
Media: Outdoor
Complainant: Confidential
Date of decision: 28 February 2017
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement for Smirnoff (“the Company”) and arises from a complaint received 6 February 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 6 February 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 was 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 (15280).

The Marketing Communication

10. The complaint relates to an outdoor advertisement for Smirnoff Pure Ginger, Lime & Soda. It is a photographic image of an empty park on a sunny day. Front and centre and positioned on the grass is a bottle of the product with mirrors placed behind and either side of the bottle to show the labels at the back of the bottle. Above the bottle is the text "Nothing to Hide Vodka & Natural Ingredients. That's All!" In the top left hand corner is the Text "Try New" and in the bottom right hand corner is the Drinkwise logo.

The Complaint

11. The complainant is concerned that:
 - a) The product appears to be a soft drink or health drink;
 - b) The advertising is deceptive in that it uses the statement "Nothing to Hide" when it is marketing an alcohol product in a way that makes it appear to be a soft drink;
 - c) Vodka is targeted at young people and children, and the advertisement seeks to normalise alcohol consumption;

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b) have Strong or Evident Appeal to Minors;
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;
13. Definition in Part 5 of the ABAC provides:

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

14. The Company responded to the complaint by letter dated 16 February 2017. The principal points made by the Company were:
 - a) Thank you for inviting us to provide comments for the Panel's consideration in determining this complaint. We would like to take this opportunity to make some general comments about the advertisement for consideration by the Panel and to respond to your specific questions. We also 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 'Nothing To Hide' for Smirnoff Pure Ginger, Lime & Soda, a new range of ready to drink beverages by Smirnoff. The 'Nothing To Hide' campaign refers to the products combination of vodka with all natural ingredients and no additives, artificial colours or flavours – the first of its kind in market. The creative displays an almost 360 degree view of the product in mirrors, proudly showcasing the back label featuring its natural ingredients listing. The advertisements were created by Leo Burnett Sydney on behalf of Diageo Australia.
 - c) The advertisement in question features an image of the Smirnoff Pure Ginger, Lime & Soda bottle on grass in a park in front of two mirrors which reflect the ingredients list on the back of the bottle. The words 'Nothing To Hide' appears in large, bold red text boxes above the product image and further text directly below states 'Vodka & Natural Ingredients. That's All!' As this is a new product in the Smirnoff range a 'Try New' call out is also placed in the top right corner. The DrinkWise 'Get the Facts' logo is also included in the lower right hand corner of the advertisement.
 - d) Diageo Australia's position is that the Smirnoff Pure Ginger, Lime & Soda 'Nothing To Hide' advertisement does not have a strong or evident appeal to children or adolescents as there are clear indications on the

advertisement that the product contains alcohol. The Smirnoff trademark is one of the most recognisable vodka brands in the world with 85% awareness as a vodka product in Australia and is featured in the advertisement. The word vodka appears in the statement 'vodka and natural ingredients' in bold font against a colourful background. The alcohol by volume (ABV) of the product is also shown on the product image. Furthermore, the DrinkWise 'Get the Facts' logo is included. These elements work in conjunction with the creative to indicate to the viewer that this advertisement is for an alcoholic product.

- e) The advertisement in question does not suggest that the product offers a therapeutic benefit by the inclusion of the words "Pure", "Nothing To Hide", "Natural Ingredients" and placing the products in an outdoor setting. The inclusion of the words "Vodka and Natural Ingredients" is not a therapeutic claim, but instead a true statement which Diageo can make on the packaging as the product contains only vodka and natural ingredients. Therefore, the claim "Nothing To Hide" is made, not to imply a therapeutic benefit, but to inform consumers this product contains nothing other than vodka and natural ingredients. This true statement is a major point of difference between our product and similar products which are in market from our competitors and has therefore been highlighted in our advertising. Furthermore, the product name "Smirnoff Pure" does not imply the product offers a therapeutic benefit, but instead is used as the name of a product which contains only vodka and natural ingredients. Taking into consideration the above, none of the statements including "Pure", "Nothing To Hide" and "Natural Ingredients" makes an assertion that use of this product would result in a therapeutic benefit.
- f) Lastly, placing the product in an outdoor setting reflects the current consumer trend in consumption environments and also the proposed occasion Smirnoff Pure Ginger, Lime & Soda would be consumed in. No assertion is made that consuming the product in an outdoor setting offers a therapeutic benefit.
- g) Diageo is committed to upholding Section c(iv) of the Code which provides that alcohol marketing must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit and as such would never make the assertion or claim that the use of a product would result in a therapeutic benefit.

The Panel's View

- 15. The compliant raises two issues of concern in relation to the outdoor advertisement, namely;
 - That the product is portrayed as a health drink; and

- That the advertisement would appeal to under 18 year olds particularly by appearing to be a soft drink
16. In response to the complaint, the advertiser argues that the advertisement makes no claim that the product has any therapeutic benefit. It is also asserted that the product's name is well known as an alcohol beverage and the reference to vodka within the advertisement establishes that the advertisement is not referring to a soft drink.
 17. The complainant points out that vodka is a product popular with younger drinkers. The ABAC scheme however does not assess the desirability of particular products being available on the market, but rather is directed at how products are marketed. This means that the Panel cannot make judgement as to whether a product type e.g. pre-mix spirit drinks, should be on sale as this is an issue for government. The Panel's job is to assess if the marketing of a product is strongly appealing to under 18 year olds.
 18. The Panel does not believe the advertisement would be confused as promoting a soft drink. The advertisement does place the product as a vodka beverage. Further, there are no other aspects of the advertisement which can fairly be concluded as creating a strong or evident appeal to under 18 year olds.
 19. The second concern raised is whether the advertising is implying the product is a health drink. Section (c)(iv) of the ABAC provides that alcohol marketing must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit.
 20. The advertisement uses language of "natural ingredients" and "pure" and places a bottle of the product on a patch of lawn in a pleasant outdoor location. The issue is whether a reasonable viewer of the advertisement would think that it was suggested that consuming the product would be say "good for your health".
 21. The Panel does not believe the advertisement is breaching the standard. The terms used in the advertisement go to the contents of the beverage and not to its impact. The advertisement is not claiming, for instance, that use of the product will benefit a consumer in terms of physical or mental wellbeing. It seems unlikely a reasonable viewer would conclude that the product was a health drink as suggested in the complaint.
 22. Accordingly, the complaint is dismissed.