



ABAC Adjudication Panel Determination No. 68 & 73/17

Product: Captain Morgan
Company: Diageo
Media: Outdoor
Complainants: Confidential
Date of decision: 22 March 2017
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 an outdoor advertisement for Captain Morgan by Diageo (“the Company”) and arises from complaints received 1 and 6 March 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 1 and 6 March 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 complaints have 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 [15393].

The Marketing Communication

10. The marketing communication is an outdoor advertisement that the first complainant viewed on the back of a phone booth situated in front of the Centrelink/Human Services office in Joondalup- Reid Prom and the second complainant viewed the advertisement at a bus stop.
11. The advertisement includes the name of the product "Captain Morgan" at the top of the billboard. Below the product name is the message in large bold text "Party like it's Payday". Below the message is a 750ml bottle of Captain Morgan Spiced Rum, a 375ml bottle of the product mixed with cola and a glass of the product. Floating above the glass is the disembodied head of the Captain featured on the product packaging.
12. At the bottom of the billboard is the Drinkwise logo.

The Complaints

13. The first complainant is concerned that the sign:
 - includes the message "Party like its payday";
 - is aimed at those that come to get their fortnightly welfare benefit which is insensitive as those on welfare benefits are most vulnerable and many already have problems with alcoholism; and
 - encourages those on welfare benefits to consume more alcohol and to spend their welfare payment on alcohol.
14. The second complainant is concerned that the sign tells people they should live week to week wasting all their money on a dangerous and destructive drug.

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 complaints by letters dated 7 and 14 March 2017. The principal points made by the Company were:

- 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).
- The advertisement in question is the 'Party Like It's Payday' execution for the Captain Morgan signature range of products. There are two additional creative executions that are part of this campaign and which are also in circulation. They include the statements 'Captain Your Cola' and 'The Captain's Back On Campus'. All of the advertisements were created by Leo Burnett Sydney on behalf of Diageo Australia
- The advertisement in question is for Captain Morgan signature products. It is a photographic image of a signature serve of Captain Morgan in a glass with ice and lime, a single bottle of Captain Morgan Original Spiced Gold and a single ready-to-drink bottle of Captain Morgan & Cola, on a red background. Next to the product image is a logo of Captain Morgan, the brand character. Above these images is the Captain Morgan logo and the text 'Party Like It's Payday'. In the bottom left hand corner is the DrinkWise logo.
- Diageo does not agree that the 'Party Like It's Payday' advertisement breaches Part 3 (a)(i) or (ii) of the Code by implying that persons in receipt of social security benefits are encouraged to expend benefits on alcohol consumption. The content of the advertisement only includes product shots and the statement 'Party Like It's Payday' and there are no references to excessive consumption, misuse of alcohol or alcohol-related irresponsible behaviour. Furthermore, the use of the term 'payday' is not specific to people receiving social security benefits, but would be interpreted by a reasonable person to be applicable to all those who are employed and receive an income.
- It is reasonable to suggest that getting paid is a positive occasion. The statement 'Party Like It's Payday' suggests to the audience that for a positive occasion, such as on payday, they could mark or celebrate it with a Captain Morgan beverage. While someone may choose to purchase a Captain Morgan product in this occasion, it does not follow that this will

result in a consumer drinking excessively or misusing alcohol in a way that is inconsistent with the NHMRC guidelines.

- Diageo does not agree the 'Party Like It's Payday' advertisement in question breaches Part 3 (a)(i) or (ii) of the Code by implying that rapid or excessive consumption will occur in association with a party to mark the receipt of income or benefits.
- As above, the statement 'Party Like It's Payday' suggests to the audience that for a positive occasion, such as on payday, they could mark or celebrate it with a Captain Morgan beverage. While someone may choose to purchase a Captain Morgan in this occasion, it does not follow that this will result in a consumer drinking excessively or misusing alcohol in a way that is inconsistent with the NHMRC guidelines. Furthermore, the content of the advertisement does not encourage excessive consumption or misuse of alcohol, nor alcohol-related irresponsible behaviour as a result of alcohol as it contains only product shots and no visual representation of consumption.
- The term 'party' taken within the content of the advertisement as a whole does not encourage irresponsible or offensive behaviour related to the consumption or presence of alcohol. The content of the advertisement only includes product shots, the statement 'Party Like It's Payday' statement, and the Captain Morgan logo and character image. Furthermore, the advertisement does not show or specify that an allocation of income be spent on alcohol consumption or encourage irresponsible behaviour by spending all one's income on alcohol.

The Panel's View

17. Captain Morgan is a line of rum based alcohol products distributed by the Company. In promoting the products, the Company has placed executions in various outdoor locations and it is these executions, which have attracted the concern of the two complainants. The first complainant stated that the advertisement was placed in the vicinity of a Centrelink office in Joondalup in Western Australia.
18. While expressed slightly differently, both complaints make a similar argument to the effect that the slogan 'Party Like It's Payday' is irresponsible as it encourages regular alcohol consumption. This is said to arise from the implication that it is ok to live from pay to pay and 'waste' money on alcohol. The placement of the advertisement near a Centrelink office is considered particularly insensitive.
19. It should be noted that the ABAC model is based upon standards applying to the content of alcohol advertisements rather than the placement of the advertisements at a particular location. This means that while the first complainant's point about location of the advertisement near the Centrelink

office being insensitive is a fair comment, this of itself will not amount to a breach of the ABAC. The Outdoor Media Association has issued guidelines which state that alcohol advertisements can't be placed within a 150 metres of a school, but there is no restriction in relation to Centrelink offices or similar social support services.

20. Accordingly, the assessment that the Panel is called upon to make goes to the content of the advertisement against the standards detailed in the code. The relevant code standards provide that an advertisement must not encourage excessive consumption or irresponsible behavior related to alcohol use.
21. The Company contends the advertisement is consistent with the standards. It is argued that the advertisement does not suggest excessive alcohol use and the reference to 'Party Like It's Payday' refers to a 'positive occasion' which could be marked or celebrated with a Captain Morgan product.
22. The benchmark to assess if a standard has been satisfied is the probable understanding of the advertisement by a reasonable person. The reference to a 'reasonable person' is taken from the Australian legal system and means that the values, opinions and attitudes common in the community are to be used as a guide.
23. The key issue is how the phrase 'Party Like It's Payday' would be understood by a reasonable person. If it means, drink excessively or rapidly then, the standard is breached. Equally, if it means for instance 'spend money that you don't have on alcohol consumption' then this would also be inconsistent with the standard.
24. The Panel does not believe the advertisement can fairly be said to breach the section(a) standard. 'Party' would likely to be taken to mean celebrate, but it does not follow that a celebration means drink excessively or rapidly. The reference to 'Like It's Payday' might raise inferences that alcohol use is a regular occurrence e.g. people are often paid each fortnight, but the standard does not say that the alcohol use cannot be implied as occurring regularly. What it does say, is that marketing must not encourage irresponsible levels of consumption when alcohol is used.
25. The complaints are dismissed.