



ABAC Adjudication Panel Determination No. 83/17

Product: Bundaberg Rum
Company: Diageo
Media: Television
Complainant: Ms Rogers
Date of decision: 6 June 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 a television advertisement for Bundaberg Rum by Diageo (“the Company”) and arises from a complaint received 1 May 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 1 May 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 [15409].

The Marketing Communication

10. The television advertisement comprises a series of consecutive scenes:
 - An American female newsreader in a dark studio is looking at someone off camera and puts down her papers and takes off her glasses and says “Aussies talk about mateship but they are always knifing their prime ministers in the back “.
 - A New Zealand rugby player standing on a sporting field on a foggy day says “Aussies having a crack? having a nap more like” then swigs from his water bottle.
 - An Englishman standing under shelter with an umbrella on a dark rainy day says “Australians optimistic? They’re just whiney and negative. An Australian man (“the Narrator”) walks into the scene in the rain and shouts “No I can’t take this!” and throws his microphone to the ground. He then walks with determination toward the camera and says “Can you?”.
 - Background music starts to play and we see the Narrator entering the cabin of a plane through yellow curtains and then he says “We can’t let our stature slip”. He reaches down and picks up a can of Bundaberg Rum and holds it up as he continues “From Albany to Bundaberg, isn’t it time we stood up for the values that made us famous” as he bumps into a trolley containing cans of Bundaberg Rum and a water jug and cups being pushed by a female flight attendant wearing a yellow scarf. He then says “I’ve run out of aisle, haven’t I” as the attendant smiles at him.
 - In the next scene the music becomes more uplifting and we see the Narrator surfing with the attendant on his back as he says “Mateship, no-one does it like us, who swims toward a shark attack, this mad bastard that’s who” as the camera moves to the surfer Mick Fanning on a wave next to a shark.
 - The scene changes to the narrator walking in a Mardis Gras Festival, flamboyantly attired as he continues “No-one does optimism like us, combining a protest with a pirouette.” The camera moves around the parade and we see that the flight attendant is dancing in the parade with the Narrator and a spectator is holding a can of Bundaberg Rum.
 - In the next scene we see Anna Meares riding a tandem bicycle with the Narrator followed by a man from the parade with the attendant on another tandem bicycle all dressed in White and Yellow suits (except the man

from the parade) in a velodrome as the Narrator continues “And no-one has a crack like us, coming back from a broken neck to breaking records.

- The scene then changes to the Narrator walking down a rural road with sugar cane on each side followed by a crowd of people as he says “These are the values that we...value”, everyone turns and walks into and through one of the sugar cane fields as he continues “We must unite behind them”. The group emerge from the sugar cane field and the Narrator pulls a snake off of his shoulders and looks ahead and smiles and says “Celebrate”.
- In the final scene the Narrator is shown walking through a crowd of people outside the Bundaberg Rum Distillery, some holding Bundaberg Rum cans and bottles stopping briefly to greet Anna Meares as he continues “with a drink as distinctive as we are”. The camera moves to Bundy Bear distributing a 375ml ready to drink bottle and cans of Bundaberg Rum to those in the crowd as the Narrator walks through a crowd of people wearing Bundaberg Rum branded shirts and continues “Thank goodness for our national nectar, actually don’t thank goodness, thank Graham” and the Narrator stops at a barrel on which we see three 750ml bottles of Bundaberg Rum and a glass of Bundaberg Rum and the Narrator picks up the glass and clinks glasses with another man standing at the barrel. The Narrator looks behind at the crowd and we see a close up of the three bottles on the barrel as he says “And the 34 other legends that made this Aussie spirit with plenty of this” and the Narrator places his hand over his heart and continues “Aussie Spirit. Australia, no one does life like us and no one does rum like us. Bundaberg Rum” as the camera pans out over the crowd of people on the lawn outside the distillery and shows other people joining the central crowd from all angles. The Bundaberg Rum logo is then superimposed on the screen with the tagline “Unmistakably Ours” along with the “Drinkwise” logo on the bottom right corner of the screen as we hear the narrator shout “Unmistakably Ours”.

The Complaint

11. The complainant is concerned that the advertisement promotes alcohol as fun to drink, when it would be more appropriate to highlight the harm caused by alcohol misuse such as domestic violence and car crashes.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.

The Company’s Response

13. The Company responded to the complaint by letter received 11 May 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 television commercial Bundaberg Rum 'Unmistakable Ours' begins with our lead interviewing foreigners who are questioning whether the inherent Australian values of mateship, optimism and having a crack still exist today. To show that they do, our lead flies back to Australia. The ad progresses with three scenes to bring each value to life using recent, well known and modern examples. To demonstrate mateship we reference Julian Wilson who swam towards a shark at the Jeffery's Bay Surf Open in 2015 to save his fellow surfer and mate, Mick Fanning. To demonstrate optimism, we show a Pride parade which brings to life the optimistic LGBTQI members who march to raise awareness for their community every year. To demonstrate 'having a crack' we show Anna Meares, who broke her neck in a cycling accident in 2008 and went on to win Olympic gold for Australia at London 2012. Finally, all these people come together at the distillery to show that despite their differences, the Australian values which make Australians unique are still alive and should be celebrated.
- Diageo does not believe that the advertisement in question breaches Part 3(c)(i) of the Code by suggesting that the consumption or presence of Bundaberg Rum creates or contributes to a significant change in mood or environment. The purpose of this advertisement is to identify, portray and celebrate three core Australian values and to draw attention to the fact that Bundaberg Rum is a unique Australian product that aligns with these values. The opening scenes show the perspectives of an Englishman, an American and a New Zealander questioning whether the Australia values of mateship, optimism and having a crack still exist today. The scenes that follow are by nature more positive as they bring to life for the audience the core Australian values that are still alive through three distinct examples. While Bundaberg Rum is associated with the positive tone of these scenes, it is not suggested that the presence or consumption of alcohol caused or contributed to a significant change in mood. Rather, the principal cause of the change in environment within the ad arises from the change of view on Australian values from the foreigners' view to the Australians' view. The following information provides further detail on our response in relation to each of the specific aspects of the advertisement raised.
- The opening scenes of the ad portray alternate views on core Australian values from easily identifiable national stereotypes:
 - The Englishman comments on Australia's optimism which is an attempt to use irony. That is under the grey sky (which is

indicative of the climate in England which is called temperate maritime); an Englishman declares that Australians are less optimistic than the English.

- The American comments on Australia's inability to demonstrate examples of mateship; sighting the example of Australian Prime Ministers being replaced by their colleagues. The context of the message is from a news room to add credibility that the newsreader would have the insight and understanding to comment on Australian politics and is believed to be an accurate depiction of a behind the scenes setting of a newsroom; and
- The New Zealand man comments on Australia's willingness to "have a crack" from the context of a sporting field. The scene utilises fog to assist in locating the New Zealand man within the cooler climate of New Zealand. These scenes are structured to utilise the irony of national stereotypes to engage with Australian viewers that our national values are "under attack" and to provide a context for the advertisement to identify, explore and celebrate core Australian values. To further differentiate these opening scenes from the core advertisement we applied the following production techniques:
 - (ii) The opening scenes are not supported by music. This aids in comprehension of the dialogue due to accents; and
 - (iii) The opening scenes are filmed with an effect for a low-fi production quality i.e. filmed on a handycam with an unsteady hand to make them look more like 'vox pox' than high production advertising.
- After the opening scenes, the remainder of the ad focuses on identifying, exploring and celebrating three core Australian values. The use of the plane scene is to provide a median for the relocation of the lead from the three countries in the opening scenes back to Australia. It is from Australia where he then interrogates the assertions from the Englishman, American and New Zealander that the core Australian values of mateship, optimism and having a crack are no longer relevant. Bundaberg Rum is first introduced in this plane scene in two ways. Firstly, through the lead picking up a can as it falls off a tray table which prompts the lead to say 'From Albany to Bundaberg', this is used to show that the Australian values are alive from two of the furthest points across the country. Secondly, the product is introduced through the inclusion of an air steward pushing a catering trolley that has a small number of Bundaberg Rum products on top of it. In both of these instances, it is believed they are reasonable reflections of actual events that could occur during air travel. Neither the lead actor nor air steward, who continue throughout the ad, consume the product in this scene nor take it with them into the "value" scenes which follow.

- Following the plane scene, in which Bundaberg Rum is introduced, the ad goes on to showcase the diverse people and places which make up Australia, including a surf scene, a night parade, and the velodrome. The overall tone of the scenes is positive and builds a sense of comradery amongst Australians as it challenges the audiences to once again be proud of the Australian spirit as the dialogue references examples of our core values in action. The scenes are:
 - The surf scene encapsulates the core Australian value of mateship. That is, a stranger and a professional have become “mates”. Further, the new “mates” recall the incident in South Africa involving Mick Fanning, Julian Wilson and a shark. Swimming towards a shark to save your mate – considered to be the ultimate representation of mateship; a core Australian value that was initially challenged by the American newsreader.
 - The Pride parade scene, similar to the annual Pride event which takes place in Sydney, celebrates the core Australian value of optimism. This scene aims to challenge the issue of marriage equality which hasn’t been passed as Australian law, but despite this, the LGBTQI community continue to be optimistic that it will change in the future and recognise this growing part of the population.
 - The velodrome scene, which is the final values scene, demonstrates the core Australia value of always having a go. To depict this, we show Anna Mears, the Australian Olympic cyclist who had an accident in 2008 where she broke her neck but didn’t give up and went on to win Olympic gold in London 2012. This is the ultimate demonstration of always having a crack and giving something a go, a value shared by Australians.
- Each of the scenes above is distinct, set in a specific setting, time of day and non-consecutive, and as such cannot be said to “culminate” in a celebration in the final scene. The final scenes itself shows a representation of Australians coming together to show that despite everyone’s different backgrounds and lifestyles, they can all celebrate the values inherent with being an Australian. The ad then suggests that these Australian values should be celebrated with something as unique and distinctive as Australians – Bundaberg Rum. The fact that Bundaberg Rum is present in scenes that are positive in tone, following scenes that are less so, does not in itself suggest that the presence or consumption of alcohol caused or contributed to a significant change in mood or environment. The principal cause of the change in environment arises from the change of view on Australian values from the foreigners’ view to the Australians’ view. Furthermore, at no point in any of the above scenes do any of the lead characters consume any Bundaberg Rum product and there is no suggestions that drinking the product leads to a better time.

The Panel's View

14. This determination arises from a complaint concerning a television commercial for Bundaberg Rum. The complainant believes the commercial portrays the use of the product being fun and uplifting whereas alcohol misuse can lead to considerable harm such as domestic violence and car crashes.
15. The commercial is styled as a 'call to arms' for Australians to shake off a sense of negativity and embrace a 'true' Australian positive spirit and a corresponding set of values. The product is associated with the positive attitudes displayed in the commercial.
16. The ABAC sets out a number of specific standards of good marketing practice which alcohol marketing are not to breach. Some general observations about the Code can be made relevant to the complaint:
 - An underlying assumption is that alcohol is a lawful product which is able to be consumed responsibly by adults;
 - The standards are expressed in the negative i.e. a marketing communication is not to do something such as encourage excessive consumption or appeal to underage drinkers; and
 - There is no requirement that alcohol be marketed in a 'balanced' manner i.e. that negative consequences from misuse be referenced as well as brand attributes.
17. The relevant standard raised by the complaint is contained in section 3(c)(i) and provides that a marketing communication must not suggest that the consumption or presence of an alcohol product creates or contributes to a significant change in mood or environment. In the complainant's view the commercial promotes alcohol use as fun.
18. The commercial does display a change in mood from negativity to positivity. The issue is whether the introduction of the product is a cause or contributor to the change in mood.
19. The Panel does not believe the commercial is in breach of the section (3)(c)(i) standard. While the mood in the commercial does change, the context of the commercial establishes the change is caused by the assertion of the so called Australian values and a positive attitude and not through the use or presence of the product. Equally, there is no Code requirement that alcohol marketing display negative consequences of alcohol misuse.
20. Accordingly, the complaint is dismissed.