



ABAC Adjudication Panel Determination No. 128/17

Product: Johnnie Walker
Company: Diageo
Media: Outdoor
Complainant: Confidential
Date of decision: 4 January 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Johnnie Walker at the Lang Park bus stop in Sydney by Diageo (“the Company”) and arises from a complaint received on 22 December 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. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in the other codes as well as meeting the standards contained in the ABAC.
 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 22 December 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.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the content but not placement of the marketing communication.

The Placement

10. A large poster advertising Johnnie Walker & Ginger on Sydney's Lang Park bus shelter.

The Complaint

11. The complainant is concerned that:
 - a) when travelling on public transport with her children to see Santa a large Johnnie Walker & Ginger poster was seen on a bus top shelter; and
 - b) constant exposure to alcohol ads is not good for children as it normalizes drinking alcohol and contributes to the current binge drinking culture and increases risk of chronic diseases.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
13. Part 6 of the ABAC Code includes definitions including:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

The Company's Response

14. The Company responded to the complaint by letter dated 3 January 2018. The principal points made by the Company were:

- a) The advertisement in question is for Johnnie Walker & Ginger. The advertisement includes the headline “The new taste of the weekend” next to an image of the product and a drink. In the background is a blurred image of the ocean and mountains. In the bottom left corner of the advertisement is the ‘Drinkwise Get the Facts’ logo.
- b) The Johnnie Walker & Ginger advertisement in question does not breach Part 3(b)(iv) of the Code by directing the marketing at minors by a breach of the placement rules. The out-of-home advertisement was placed at a bus stop at Lang Park in Wynyard, which is a high foot traffic area of Sydney’s Central Business District. There is no school located within 150m of this location.
- a) The placement of this advertisement, therefore, complies with the Outdoor Media Association Alcohol Guidelines, which detail that alcohol advertising cannot be within 150 metre sight line of a primary or secondary school.

The Panel’s View

Introduction

15. The ABAC scheme commenced in 1998 and since that time the Code has been reviewed and revised on several occasions. The most recent revision took effect on 1 November 2017 and the Panel has now made a number of decisions in relation to the new provisions. The first determination considering these new provisions in relation to outdoor advertising was ABAC Determination 115/17.
16. This complaint concerns the placement of an advertisement for Johnnie Walker & Ginger on Sydney’s Lang Park bus shelter. It is argued that the advertisement is irresponsible because:
 - the advertisement can be seen by families with small children; and
 - constant exposure to alcohol ads is not good for children as it normalizes drinking alcohol and contributes to the current binge drinking culture and increases risk of chronic diseases.
17. The complaint accordingly raises issues which go solely to the placement of the marketing.
18. The complainant is concerned that the advertisement is placed where it will be seen by under 18 year olds.
19. As explained in Determination 115/17, the Placement Rules are confined to the policy goal of avoiding the direction of alcohol marketing towards minors. The rules do not purport to regulate the placement of alcohol advertisements more generally other than the requirement in rule (i) that all other codes regulating placement published by Australian media industry bodies must be complied with.

20. The applicable code for an outdoor alcohol advertisement is the Outdoor Media Association Alcohol Guidelines. The guidelines provide that alcohol advertising is not to be placed on fixed signs located within a 150 metre sight line of a primary or secondary school. The advertising at the Lang Park bus shelter is not within 150 metres of a school and accordingly the guideline has not been breached.
21. The remaining Placement Rules in rule (ii) and (iii) relate to digital electronic and broadcast media and not to outdoor placement such as on a bus shelter. Further the advertising in this case does not fall within rule (iv) and (v) which go to advertising placed with programs e.g. a tv show or cinema movie or the sending of materials by direct mail.
22. Accordingly, the placement of the advertisement is not in breach of the Placement Rules and the complaint is dismissed.