



ABAC Adjudication Panel Determination No. 38/18

Product: Smirnoff
Company: Diageo
Media: Television
Complainant: Mr Hurst
Date of decision: 9 April 2018
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 complaint received on 5 March in relation to a television advertisement for Smirnoff (“the Company”).
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, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 Ad Standards Community Panel 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 5 March 2018.
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.
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 (15887).

The Marketing Communication

10. The video is set against a marble background with the Smirnoff logo visible in the top right corner of the screen with dance music in the background.
11. A series of 4 unusual cocktails slide onto the screen against the white marble background and with a red super appearing in front of the cocktails with white letters reading 'NO RIDICULOUS SERVING SUGGESTIONS' followed by a bottle of Smirnoff Pure Orange Mango and Soda and another copy stating 'JUST VODKA'. The bottle then spins transforming into a mango and then an orange before going back to its original bottle shape, all the time with a super delivering the line 'AND NATURAL INGREDIENTS'. The video then zooms into the bottle label and zooms back out to showcase the full range of 5 different Smirnoff Pure flavours with the end message reading 'NOTHING TO HIDE'.

The Complaint

12. The complainant is concerned that the advertisement depicts a bottle of alcohol with the caption "No Serving Suggestions" which implies there is no suggested rate of consumption of alcohol and this breaches Part (a)(i) of the ABAC.

The ABAC Code

13. 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.

The Company's Response

14. The Company responded to the complaint by letter dated 15 March 2018. The principal points made by the Company were:
 - We 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 complaint refers to a 15 second video asset of Smirnoff Pure Orange Mango and Soda developed for our digital channels, mainly You Tube and catch-up TV. This 15 second video clip is titled 'No ridiculous serving suggestions' and heroes our latest Smirnoff Pure – Orange Mango and Soda.
 - Diageo's position is that the advertisement does not breach part 3 (a) (i) of the code as it does not encourage excessive consumption of alcohol. The complaint received on March 4th 2018 does appear to reference the key line of copy in question incorrectly. The copy does not say "No Serving Suggestions", but "No ridiculous serving suggestions" – drawing attention to the simplicity and ease of a serving a Smirnoff Pure by making the comparison with a collection of ridiculous and 'over-the-top' cocktails.
 - This is not a breach of Part 3 (a) (i) of the Code because the message 'NO

RIDICULOUS SERVING SUGGESTIONS' doesn't encourage excessive consumption since it's clearly followed by 'JUST VODKA – AND NATURAL INGREDIENTS – NOTHING TO HIDE' which aims to communicate the product truths of convenience, low ABV and natural ingredients. The copy is given prominence via use of bold text on a bright coloured red background, which appears on screen for 5 seconds out of the 15 second video clip. Our position is that this time frame gives a sufficient window for an average viewer to comprehend and interpret the message meaning - that Smirnoff Pure, by comparison to "ridiculous" or "over-the-top" cocktails, offers a product benefit in its simplicity and ease of serve, not of excessive consumption encouragement.

- On Smirnoff Pure and all Smirnoff Products (individual units and all packaging) Diageo ensures that information on number of standard drinks per serve is visible and prominent for consumers and shoppers to make an informed choice on the amount of our products they consume. The Drinkwise Logo is also included on all communication to provide a comprehensive resource for consumers to understand responsible drinking behaviour.
- 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

15. This determination concerns a television advertisement for the product Smirnoff Pure. The complainant has interpreted the advertisement as suggesting that excessive consumption of the product is encouraged through the use of the caption 'no serving suggestions' or a similar expression.
16. Section 3(a) of the Code provides that an alcohol advertisement must not encourage excessive consumption or rapid consumption of alcohol products.
17. It appears that the complainant may have misinterpreted the advertisement. The advertisement shows a series of very elaborate cocktails super imposed over which is the caption 'no ridiculous serving suggestions'. It seems reasonably clear that the advertisement was endeavouring to contrast the relative simplicity of the product which is a vodka pre-mix drink, with the somewhat fanciful and highly contrived cocktails shown.
18. The Panel does not believe a reasonable viewer of the advertisement would take away a message that excessive consumption is being promoted.
19. Accordingly, the complaint is dismissed.