



## ABAC Adjudication Panel Determination No. 82/19

**Product:** Bundaberg Rum  
**Company:** Diageo  
**Media:** Packaging/Brand Extension  
**Date of decision:** 11 November 2019  
**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 Bundaberg Rum branding on Ice Break iced coffee by Diageo (“the Company”) and arises from a complaint received 14 October 2019.
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 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 Panel endeavours 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.
8. 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 packaging and key visual with the headline, “Match Made in Qld”.

## The Marketing Communication

9. An image of the Bundaberg Rum branded Ice Break drink.



## The Complaint

10. The complainant is concerned that iced coffee being sold to minors is advertising Bundaberg Rum and therefore encouraging exposure to alcohol products and brands.

## The ABAC Code

11. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors
12. Definition in Part 6 of the ABAC provides:

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

**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.

**The Company's Response**

13. The Company responded to the complaint by letter dated 24 October 2019. The principal points made by the Company were:
- We wish to confirm our longstanding support for and commitment to upholding the ABAC Code as well as our best practice global marketing standards, the Diageo Marketing Code (DMC).
  - Ice Break flavoured with Bundaberg Rum is a new iced coffee flavoured milk product. Bundaberg Rum and Ice Break's coffee is a "mature and intense" iced coffee product designed for adults – a bold mix of real Bundaberg Rum (containing 0.3-0.5% alcohol) and two shots of coffee per 500 ml bottle. This product is available exclusively in Queensland for a limited time. The product is available to purchase in petrol, convenience and independent grocery from Monday, 14<sup>th</sup> October, with distribution in Coles and Woolworths planned for November.
  - Iced Break have confirmed to Diageo that the product contains 0.3% alcohol per 500 ml bottle; affirming it contains no more than 0.5% alcohol by volume, in compliance with the Australia New Zealand Food Standards Code and the State and Territory based legislation. The packaging on the product contains a clearly visible statement calling this out. To put this in perspective you would need to drink approximately 35.7 x 500ml bottles, or 17 Litres of this product, to register one standard drink.
  - This collaboration between Bundaberg Rum (Diageo) and Ice Break (Lactilis) is managed by an independent licensing agency, Assembl. Diageo and Lactilis entered into a licensing agreement whereby Diageo gave Lactilis a license to use the Bundaberg, Bundaberg Rum, Bear Device and Bundaberg Bear & Rum device trademarks to create this product in exchange for a royalty fee. The concept, packaging and key visual were all developed in partnership between Diageo and Lactilis and internally approved by both parties.
  - Diageo does not believe that the product in question breaches Part 3(b)(i) of the Code as the product was not developed for or targeted to consumers under the legal purchase age. This product has been designed as an adult treat, similar to Diageo's Bailey's iced coffee currently in market.

- The primary consumer targets of Ice Break coffee are 18-29 year olds, with a secondary consumer target being 30+ year olds. This is aligned with Diageo's marketing code, which requires we only target consumers over the legal purchase age. The product, key visual, and packaging have all been designed for an adult market through the creation of a visually clean and plain key visual. The flavour profile is a strong and robust coffee flavour with a hint of rum, which is appealing to an adult palate.
- The profile of the petrol and convenience iced coffee shopper is:
  - 35 years old – average age in 2018
  - 37 years old – average age in 2019
- Whilst the product is available from locations where minors can purchase it, we do not consider this product appeals to minors.
- Both Ice Break and Bundaberg Rum announced the product launch on their Facebook platform. Ice Break posted a restricted organic post targeted at Queenslanders who are 18 years or older. Bundaberg Rum posted a social post (boosted by spend) targeted at 21-35 year old males and females.
- In November an out of home media launch is planned across multiple formats funded by Lactilis. Diageo connected Lactilis' media agency with our own media agency to ensure media complies with ABAC guidelines for placement around schools and childcare centres.
- Diageo would like to reiterate that it takes the use of its trademarks very seriously, ensuring we only enter into product collaborations that are developed for the adult market.

### **The Panel's View**

14. Bundaberg Rum is a well-known alcohol brand within the Company's range of products. Ice Break is a coffee milk drink within the range of dairy products of the international company Lactilis. The Company has entered into a licensing agreement with Lactilis whereby the Company's branding for Bundaberg Rum is able to be used on an Ice Break variant product which is described as 'Ice Break flavoured with Bundaberg Rum'. For granting a license enabling the use of its branding by Lactilis the Company receives a royalty.
15. The complainant is concerned that the Ice Break product is being sold and is encouraging an alcohol product/ brand to minors. It is taken that the complainant believes that the product itself is undesirable and the presence of the Bundaberg Rum branding on the Ice Break labelling is inappropriate marketing of alcohol to minors.
16. The ABAC scheme is not a regulator of physical beverages which are able to be lawfully sold in Australia as this responsibility rests directly with government. This means, to the extent the complainant's concern is founded upon the actual availability of an iced coffee 'flavoured' with Bundaberg Rum, then this concern is not within the Panel's remit.

17. What the ABAC is directed at is the marketing of alcohol beverages and hence the issue is whether the marketing materials identified by the complainant used to promote the Bundaberg Rum brand through the relationship with the ice coffee product is consistent with ABAC standards. Usually the marketing communications assessed by the Panel are the direct marketing of an alcohol beverage. So, a starting point is to check whether the Ice Break product is an 'alcohol beverage'.
18. The ABAC defines an alcohol beverage to be a beverage containing at least 0.5% alcohol by volume. The Company advises the iced coffee contains 0.3% to 0.5% alcohol (and two coffee shots) per 500ml bottle. It seems that the alcohol content can possibly be within a range, but the average content is 0.3%. On this basis the iced coffee cannot be regarded as an alcohol beverage. It is for reason that the product can be sold lawfully to under 18 year olds consistent with state liquor licensing requirements.
19. While the product is not an alcohol beverage, it is still possible that the marketing items for the product featuring the Bundaberg Rum branding fall within the ambit of the ABAC scheme. This is because the ABAC adopts an expansive view of what is within the scope of an alcohol beverage marketing communication. One form of marketing captured by the Code is 'alcohol brand extensions to non-alcohol products'. Hence the placement of the Company's branding on the Ice Break packaging and subsequent portrayals of the Company's branding through the advertising of Ice Break can be captured by the ABAC.
20. The Panel has acknowledged in previous determinations that the application of the ABAC standards which have self-evidently been conceived to deal with the promotion of alcohol beverages, on occasions sit awkwardly when the brand extension is to a non-alcoholic beverage. In this case the marketing materials which the complainant has taken issue is simply the showing of the Ice Break packaging which contains the images of the Bundaberg Rum branding.
21. The Company contends that the demographics for the drinkers of iced coffee from stores associated with petrol stations and convenience stores from which the product has been sold to date is older adults aged 35 and 37 and that the target for the product is adults aged 18 to 29.
22. The ABAC provides that an alcohol marketing communication must not have strong or evident appeal to minors. This standard might be breached if the marketing:
  - specifically targets minors or has a particular attractiveness for minors beyond the general attractiveness it has for adults; or
  - uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with a soft drink.
23. This is a little unusual in that the alcohol branding is appearing on a 'soft drink' i.e. a drink that does not contain alcohol, but it is not a case where there would likely be

any confusion that the product was a coffee when it was actually an alcohol beverage.

24. While it is possible that marketing for the iced coffee might offend the ABAC standards, simply depicting a picture of the product without anything else is not considered as strongly appealing to minors. Iced coffee as a product cannot be said to be strongly or evidently appealing to minors and the label of the product is mature, uses bland coffee colours and does not contain images likely to appeal strongly to minors.
25. Accordingly, the complaint is dismissed.