



## ABAC Adjudication Panel Determination No. 71/20

**Product:** Diageo  
**Company:** Bundaberg Rum  
**Media:** Television (Subscription)  
**Date of decision:** 13 June 2020  
**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 June 2020.
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 Code”) – 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 and Policies – which place 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 other codes as well as meeting the standards contained in the ABAC.
  4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 Ad Standards 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 1 June 2020.
8. 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 was completed in 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 (18439).

## **The Marketing Communications**

10. The complaint relates to a 15 second television advertisement seen on Foxtel. The advertisement opens with a table display of various cocktail equipment and garnishes under the text “Australia’s Most Famous Cocktail”. The voiceover says “How to make Australia’s Most Famous Cocktail”. We then see a bear’s paw pushing all of the items on the table to one side as the voiceover changes to a more informal voice and says “Right, you don’t need any of this, yeah get rid of it. Just this.” The camera then moves along the table to a bottle of Bundaberg Rum, a jug of cola and a wedge of lime. We then see the beverage being made as the informal voiceover continues “heap a ice, nip a bundy and a splash a cola. Lime is optional, like crowds at the footy, apparently.” The text “The Famous” and the Bundaberg Rum logo is superimposed on two corners of the screen and the Drinkwise logo in another corner and then the paw pushes the finished beverage forward. The voiceover concludes with “Enjoy”.

## **The Complaint**

11. The complainant objects to the marketing communication as:
  - the statement ‘Australia’s most popular cocktail’ or similar outrageous claim is untrue, inaccurate and false and misleading advertising; and
  - the ads during live sport and not bound by time restrictions are a risk to younger audiences who may be influenced by these inaccurate claims to ‘popularity’.

## **The ABAC Code**

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

## **The Company’s Response**

13. The Company responded to the complaint by letter dated 10 June 2020. The principle points made by the Company are:
  - This advertisement is a tongue in cheek play on cocktail culture. It’s intent is to make the viewer smile by juxtaposing the outlandish cocktail paraphernalia used to create most modern cocktails with what is Australia’s ‘most famous’ local cocktail - a Bundaberg Rum and Cola.
  - The ad is simple in structure showing an adult outdoor bar setting, drinks accessories and the assembly of the famously simple cocktail. The smile comes from the intentionally humorous adult male voiceover and the use of our famous brand icons paw to remove the offending complex drinks. We followed all ABAC guidelines during the production of this commercial including gaining interim approval on scripts and storyboards (of which the final commercial is a direct translation) and approval of the final edit (Approval Number 18439). In addition, all scripts, storyboards, and edits were approved

by our internal Diageo Marketing Code (DMC) approval team who assess everything against both the ABAC and Diageo codes. We believe all due diligence has been taken in ensuring adherence to the Code during the making of this advertisement.

- The line 'Australia's most famous cocktail' in no way uses language intended to specifically target or reach minors or use language that has appeal to minors beyond its general attractiveness to an adult. Furthermore, the line does not invoke imagery that appeals to minors or create confusion with other categories. In fact, cocktails as a category are mostly purchased and enjoyed by people 25-50 (source Roy Morgan Jan-Dec 2019) and the rejection of 'trendy' cocktail culture should further move appeal away from young people.
- The wording of 'famous' is a play on two things. Firstly, 'the Famous Bundaberg Rum' is the longform brand name and appears on brand packaging and collateral. Secondly Bundaberg Rum is Australia's most well-known local spirit brand. Both of these facts have no particular appeal to minors beyond their general appeal to adults. Using 'Famous' in this way is clearly positioned as a 'joke' as the entire premise of the ad is rejecting 'cocktails' as a construct.
- Bundaberg Rum's brand icon is a polar bear, which has been used since the 1960s and appears on product packaging and collateral. The ad uses the paw of a polar bear to remove the offending complex drinks and introduce Australia's 'most famous cocktail'. The paw has been used in a number of previously approved and aired content including Lazy Bear OOH (approval number 15021) and Lounge Room legends videos (approval number 16394). The paw used in the ad is not a cartoon or animated. Rather, it has been designed to be as lifelike as possible. The special effects company Creature NFX created the paw using the cast of a real polar bear arm, with real claws moulded into the cast. Therefore, the paw used in the ad is as real as possible, without using an actual polar bear. Furthermore, the paw is introduced in an adult setting, with an adult male voiceover. Taking the lifelike visual of the paw into consideration and the setting in which it is used, it cannot be said that it is likely to have strong appeal to minors beyond the general appeal it would have for an adult.
- We are pleased to have had this opportunity to confirm our long-standing commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as our best-practice global marketing standards, the Diageo Marketing Code.

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

14. This determination concerns a television advertisement for Bundaberg Rum which screened during a broadcast of a rugby league game by the subscription channel Fox Sports on Saturday 30 May 2020. The complainant is concerned that the ad makes a false claim as to the popularity of a cocktail made with Bundaberg Rum and coke and this claim of popularity might influence minors to consume the product.

15. Australian Consumer Law (ACL) is the relevant regulatory framework for advertising generally (ie including but not limited to alcohol advertising) in relation to false and misleading statements. The ACL falls within the province of the Australian Competition and Consumer Commission and not the ABAC. Accordingly, this determination does not purport to consider that aspect of the complainant's concern and is limited to the question of whether the advertisement has strong or evident appeal to minors.
16. The advertisement essentially shows the paw of the 'Bundy Bear' character dismissing ingredients and equipment used in making elaborate cocktails in favour of the simple combination of the product, coca cola and ice. The ad is 15 seconds long and is narrated by a male voiceover. The Company contends that the ad does not have elements which would make it strongly appealing to under 18 year olds.
17. The Panel does not believe the advertisement is in breach of the ABAC standard on marketing not having a strong or evident appeal to minors. In reaching this conclusion the Panel noted:
  - the ad depicts a contrast between elaborate cocktails and a simple drink made with the product in a light-hearted manner;
  - there are no particular elements of the ad likely to draw it particularly to the attention of minors nor capture the strong interest of minors;
  - the ad does not assert that the product and coke drink is hugely popular, but it does state the mixed drink is 'Australia 's most famous cocktail'. This claim would be probably understood by a reasonable person to be the usual puffery found in advertising and not given much weight;
  - in any event, it is not considered that under 18 year olds will be overly influenced by the claim of the drink being famous and any appeal to that age group would be incidental and not strong or evident.
18. The complaint is dismissed.