



ABAC Adjudication Panel Determination No. 91/20

Product: Bundaberg Rum, Tanqueray Gin, Johnnie Walker & Captain Morgan's Rum
Company: Diageo
Media: Television
Date of decision: 20 July 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel ("the Panel") concerns the placement of advertisements for Bundaberg Rum, Tanqueray Gin, Johnnie Walker & Captain Morgan's Rum by Diageo ("the Company") on Channel 7 between 5 and 6pm 26 June 2020 during The Chase and arises from a complaint received on 29 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”) – 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 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, 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 29 June 2020.
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.

Pre-vetting

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 of the advertisements.

The Placement

10. Advertisements for Bundaberg Rum, Tanqueray Gin, Johnnie Walker and Captain Morgan's Rum were seen by the complainant during a Channel 7 broadcast of The Chase between 5 and 6pm.

The Complaint

11. The complainant is concerned that showing four different alcohol ads with 2-3 shown in each ad break from 5 to 6 pm on Channel 7 seemed excessive.

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. Diageo responded to the complaint by letter dated 8 July 2020. The principal points made by Diageo were:
 - a) Diageo takes an industry leading approach to alcohol advertising, which complies with both local and global policies and practices. In partnership

with our media agency, Spark Foundry, we conducted a thorough investigation with the TV networks and Broadcast Video on Demand (BVOD) providers into the above complaint. This investigation involved:

- Reviewing the post spot logs for Channel 7 in Metro and Regional TV markets for 26th June to check which advertisers ran in this programme;
 - Seeking confirmation in writing from Channel 7 and 7 Affiliates that our spots did not run during The Chase on TV or before 20.30pm; and
 - Ascertaining whether ads for our products ran during The Chase via BVOD.
- b) Our investigation demonstrated that our brand ads did not appear during The Chase on TV via Channel 7 or Channel 7 Affiliates as evidenced by the TV spot reports and written confirmations by both Channel 7 and 7 Affiliates. Our ads did, however, run in The Chase on 7Plus via our BVOD buy.
- c) Our BVOD buying approach is governed by our industry-leading approach to digital marketing, called the Trusted Marketplace, which amongst other elements ensures compliance by digital publishers with our 75% LPA+ control. The placement of Diageo advertisements with the 7Plus on demand platform takes into consideration the following controls:
- **Use of age-verification & targeting:** As per Diageo's digital guidelines, Diageo only places advertisements where the audience is 75%+ above the legal purchase age (LPA) and where demographic targeting of all placements to people above the LPA can be applied. The audience data reflects this as Seven have advised that according to VPM data for The Chase, 93% of the audience is 18+ with the majority of the audience being over 40 years old.
 - **Avoiding programs 'primarily aimed at minors':** Diageo does not purchase media space where our advertisements are placed next to or within programs primarily aimed at children. This would not only breach ABAC, but our own marketing code and digital guidelines. Programming that is deemed to be primarily aimed at children is classified as 'children's programming' by 7Plus. Diageo does not purchase any media within this classification. Programming that is not primarily aimed at minors is categorised as 'general entertainment'. The Chase is classified as 'general entertainment' as it is targeted to adults, as indicated by the nature of the quiz show and the complexity of trivia questions.
- d) The content of the advertisements for Bundaberg, Captain Morgan, Tanqueray & Johnnie Walker received ABAC pre-vetting approval. Pre-vetting of the placement of the advertisements was not sought.

- e) These four ads have aired on traditional broadcast TV and complied with the Commercial Television Industry Code of Practice. We can find no evidence, however, that they appeared between 5-6pm on 26th June on Channel 7 (Metro or Regional). The content did run on the digital platform 7Plus during the time period, however, the Code of Practice does not apply in this instance.

The Panel's View

15. The Chase is a TV quiz show which originated in the United Kingdom in 2009. An Australian version of the program commenced in 2015 and is screened on the Seven Network. The essential format of the show features four contestants who compete individually and as a team against 'The Chaser' who is a quiz champion. The competition has two rounds. In the first round each individual contestant is pitted against The Chaser with the aim of building up the available cash prize. In the second round, the contestants who survived the first round compete against the clock to answer as many questions as possible. The Chaser seeks to 'chase down' the score gained by the contestants' collectively in a given timeframe by correctly answering questions.
16. The complaint stems from a broadcast of the program seen by the complainant on 26 June 2020. The complaint is not about the content of individual alcohol ads as such but about their placement with the show and the sheer volume of the advertising. The ABAC does not purport to regulate the number of alcohol ads which can be shown with a TV program. The regulation of the balance of advertising (not specifically alcohol but advertising of all types) to the minutes of programming sits with the Federal Government and the Australian Communications and Media Authority. The ABAC does have rules about the placement of alcohol marketing on various media platforms which have the policy aim of directing the marketing towards adults and away from minors. Accordingly, this determination concerns the ABAC Placement Rules and not the issue of the volume of advertising.
17. The complainant contended the alcohol advertisements screened with the episode of The Chase broadcast on 26 June between 5pm and 6 pm on the primary Channel 7, which is a free to air station. This however does not align with the information supplied by the Company and sourced from the Seven Network. The information from Seven is that no alcohol ads were broadcast with The Chase on 26 June or indeed any other day. This is because the primary free to air Channel 7 is subject to the Commercial Television Industry Code of Practice (CTICP) and the code places time of day restrictions on when alcohol advertising can be screened. Under the CTICP alcohol ads should not be screened at 5 to 6 pm (unless in conjunction with the broadcast of a live sports event).
18. The Chase is also available on the 'on demand digital' channels in the Seven Network. The Company confirmed that its advertising well could have been placed and shown with The Chase if it was accessed via this format. Given the 'on demand' service and programs can be viewed at any time, it is conceivable that the complainant was mistaken as to the platform on which The Chase was viewed. This would be consistent with both the complainant seeing the program

and the Company's ads and the data from the Seven Network which is that no alcohol ads appeared with The Chase when screened on free to air television.

19. The Panel is proceeding as if the program was seen via the 'on demand' service, as to do otherwise means a summary rejection of the complaint on the basis that the third party information from the Seven Network is that no alcohol ads actually screened at the time and with the show the complainant has raised. On this basis, the two relevant ABAC Placement Rules provide:
 - ads cannot be placed where the audience is reasonably expected to comprise less than 75% adults (Rule 3); and
 - ads must not be placed with programs or content primarily aimed at minors (Rule 4).
20. Assessing the expected audience of a television program can be based upon the public ratings system. This data indicates that The Chase attracts a predominantly adult audience in excess of the 75% benchmark. Equally, while the program, like all quiz shows, would appeal to some under 18 year olds, it is clear that the show is not primarily aimed at under 18 year olds. It is a show aimed at adults.
21. The complaint is dismissed.