

ABAC

ABAC Complaints Panel Determination No: 64/12

Complaint by Mr Knight Product: Bundaberg Rum and BWS Advertiser: Diageo & Woolworths Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

20 August 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a broadcast of the Australian Rugby League (ARL) Schoolboy Cup during which a Bundaberg Rum advertisement by Diageo Australia (“Diageo”) and a BWS advertisement by Woolworths Limited (“Woolworths”) on the sporting field were visible and arises from a complaint received 25 July 2012

The Quasi-Regulatory System

2. Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Media Association Code of Ethics which includes provisions about Billboard advertising.
3. The complaint systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.
4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of

Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.

5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 25 July 2012.
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. This complaint was decided within the timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for these advertisements.

The Advertisement

9. The complaint refers to two advertisements in the form of stencils created on the football playing field which were clearly visible during a television broadcast of the ARL Schoolboy Cup.
10. The first advertisement featured a bottle of Bundaberg Red Rum with the tagline "Extra Smooth".
11. The second advertisement featured a bottle of Bundaberg Rum and the BWS logo with the tagline "Be Game Ready with Bundy". BWS is an alcohol retailer operated by Woolworths.

The Complaint

12. The complainant argues that the advertisement:
 - (a) was advertising alcohol as part of an event involving and aimed at people almost exclusively under the legal drinking age of 18.
 - (b) was broadcasting alcohol during children's viewing hours.

The Code

13. The ABAC provides at Section (a) that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - ii) must not encourage under-age drinking

14. The ABAC provides at Section (b) that advertisements for alcohol beverages must not have a strong or evident appeal to children and adolescents and, accordingly:
- i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.

The Advertiser's Comments

15. Diageo responded to the complaint and questions posed by the Panel by letter dated 6 August 2012. The points made by Diageo in relation to the advertisement were:
- (a) We wish to confirm our long-standing support for the ABAC Scheme and commitment to upholding the Alcohol Beverages Advertising Code (**ABAC**), as well as our best-practice global marketing standards.
 - (b) Diageo has a partnership agreement with the Australian Rugby League Commission (ARLC), with the NRL being one of many leagues run by the ARLC. The GIO Cup for schoolboys is separate to the NRL, and in turn, Bundaberg Rum has no commercial association with the GIO Cup. The Advertisement is made up of logos and visuals painted on the football field grounds that are optimised for viewing during the television broadcast of the NRL Friday Night Football. Photographs of the advertisements are attached to this letter.
 - (c) Our commercial sponsorship agreement with the ARLC requires the ARLC to give Diageo, for approval, a copy of any NRL advertisement or publication which promotes, refers or relates to Diageo or any Bundaberg branding featured in NRL activities outside of the Bundaberg sponsorship. This is a case of advertising activity which is independent of the Bundaberg sponsorship agreement. In this case, the ARLC did not contact Diageo for approval of this activity. We were therefore not made aware of the branding or television footage featuring the Advertisement. Upon investigation, we were told that this incident occurred because there is not sufficient drying time for the Advertisement to be painted on the field between the schoolboys' game, and the NRL game. This led to the Advertisement being painted in advance and subsequently being visible during the schoolboys' game, which was done without our knowledge or approval.
 - (d) While this specific complaint fell outside the commercial arrangement with the ARLC, we take any complaint seriously and have therefore investigated the incident fully with the Commission. As a result, we are able to provide some general comments about the advertisement for consideration by the Panel and to respond to your specific questions. You may also wish to direct questions to the ARLC.
 - (e) We were not advised that the Advertisement would be visible during a schoolboys' game, nor were we advised that the GIO Cup matches were being

broadcast. The placement of the Advertisement was out of our immediate control. While the ARLC did not seek our prior approval, they have advised us that the Advertisement is incidental to the schoolboys' game and there has been no attempt to promote alcohol in association with the GIO Cup.

- (f) The advertisement does not encourage under-age drinking. There are no children depicted in the advertisement. The Advertisement consists of the Bundaberg Rum logo, bottle shot and text with no consumption depicted.
 - (g) Diageo was not approached for approval for the advertisement to be displayed on the grounds during the schoolboys' game, nor the subsequent television screening of this game. Further to this, we had no knowledge of the advertisement being displayed in this instance until ABAC contacted Diageo in reference to this complaint. The ARLC have provided us with audience data for the television broadcast. This data was sourced from the broadcaster, Channel 9. We are heartened to note that the vast majority (93.3%) of the audiences have been aged 18 years or older, based on the average age of viewing audiences across games that have been televised during the Sunday 6:00am – 7:00am timeslot. Where we have control of advertising placement, we apply the placement principles in our own code (DMC) which states that at least 70% of the audience to which our marketing is directed can reasonably be expected to be older than the legal purchasing age.
 - (h) We do not want our brands associated with sporting teams, or any group for that matter, made up of individuals who are playing in schoolboys' matches. Subsequently, we have asked the ARLC to take immediate action to move the School Boy Cup matches to venues that do not feature our branding on the field of play. The ARLC confirmed on Thursday 2 August that they had engaged with the broadcaster to ensure that no further schoolboys' games were played and/or broadcasted that carried alcohol advertising.
 - (i) Although we were not involved in this activity in any way, as our sponsorship agreement does not extend to the GIO Cup, we have investigated the placement of our branding in association with this activity. A request was made to the ARLC for the immediate removal of any association between Bundaberg Rum and the GIO Cup, and they have since that they will ensure that there would not be a repeat of the incident.
16. Woolworths responded to the complaint and questions posed by the Panel by letter dated 7 August 2012. The points made by Woolworths in relation to the advertisement were:
- (a) Woolworths takes its advertising obligations very seriously. It is Woolworth's submission that the complaint should be dismissed and no further action taken in the matter for the reasons expressed below.
 - (b) The appearance of the BWS logo during a junior rugby league match occurred without the consent or knowledge of Woolworths.
 - (c) The logo appeared during the televised Friday night NRL match as a result of a promotional partnership between BWS and Diageo, the owner of the Bundaberg Rum brand. Woolworths does not have any direct financial or sponsorship relationship with the NRL or the ARL. The sponsorship relationship and contract regarding the use and placement of corporate identities exists between Diageo and the Australian Rugby League.

- (d) Woolworths was concerned that our BWS logo appeared to be associated with schoolboy sport. Our understanding was that our logo would only be used in conjunction with the televised senior game. We have contacted Diageo and asked them to clarify the nature of the placement arrangements.
- (e) Diageo have assured us that placement occurred without their knowledge and that they have received assurances from the ARL that they will no longer schedule junior games on fields to which the logo has already applied.

The Panel's View

17. The issue in this complaint is a simple one from the view of the complainant. The complainant saw a television broadcast of a school boy's rugby league match early one Sunday morning and was disturbed by two alcohol ads displayed prominently on the playing field. The complainant understandably believes that alcohol and children's sport should not be associated in this way. Unfortunately for the Panel in deciding the complaint the background circumstances are not straight forward as they raise complicated issues of how the ads came to be displayed on the football field and who was responsible for this. Following from these considerations is the issue of whether the Panel has the authority to be making a substantive ruling on the concern raised by the complainant.
18. The complexity arises because of the scope of the ABAC Scheme which governs the public complaints process. This scope is defined by matters such as:
 - The Scheme binds alcohol beverage companies and not non alcohol entities such as the Australian Rugby League Commission;
 - While the vast majority of alcohol advertisers are signatories to the ABAC Scheme, Woolworths as a major alcohol retailer is not currently a member the Scheme. (It should be noted however that Woolworths does cooperate with Panel processes);
 - The ABAC Scheme is directed at "advertising" and not all forms of marketing and promotion of alcohol products and brands. This means that sponsorship arrangements such as between Diageo and the ALRC are not subject to Panel review.
19. In the large of majority of matters that come before the Panel, these factors are of no importance because the complaint will concern an alcohol ad from an alcohol company. In this case however, the ads while clearly promoting alcohol brands did not appear on the playing field due to the direct action of an alcohol company. Rather the ads got there because of the actions of the ARLC as the controlling body of rugby league in Australia. The ARLC operates several different competitions including the GIO Cup for school boy rugby and the NRL for A grade adult football.
20. Diageo has explained that it is one of the sponsors of the NRL. As stated the ABAC Scheme does not cover sponsorship relationships and questions such as whether alcohol companies should be sponsors of sporting competitions or not is outside the of the Panel's remit to consider. What the Panel can consider is an alcohol ad which might flow as a result of the existence of a sponsorship relationship.
21. In this case an alcohol ad did result from a sponsorship arrangement but apparently not as the sponsorship arrangement intended. Diageo advises that it does not sponsor the school boy competition and in fact it states that it considers that it would be quite

- inappropriate for it as an alcohol company to be involved in children's sports. What Diageo did sponsor was the adult NRL completion.
22. The problem has arisen due to the ARLC organising its games so that a school boy game and an NRL game took place on the same playing field and apparently at times sufficiently close together that it was not possible for the ads for the NRL game to be placed on the field after the conclusion of the school boy game. The Commission decided to place the NRL ads on the field in advance of the school boy game and as a result the school boy game was played on the field containing the ads and this game was subsequently broadcast and viewed by the complainant.
23. Diageo makes it clear:
- ads at school boy games were not part of their sponsorship arrangement;
 - use of their brand, logo and product names outside of the terms of the sponsorship arrangement was to be subject to their prior approval and that this did not happen on this occasion;
 - the fact that the ads were placed on the field is of concern to Diageo and they have taken action to have the ARLC revise their practices so that this "mistake" will not reoccur;
 - it was unaware that it had occurred until the complaint process brought it to their attention;
24. For their part, Woolworths appear to have had no particular role in the appearance of the ads at all. Woolworths are not a party to the sponsorship arrangement between Diageo and the ARLC.
25. Putting all this together means that the Panel really is unable to make a substantive decision regarding the complaint as it falls outside of the authority of the Panel to make a ruling. That said, it is common ground that the ad should not have appeared on the playing field used by the school boy team and the broadcast of a school boy game with alcohol ads should not have occurred. In essence the concern expressed by the complainant is accepted by all parties.
26. Accordingly the complaint is dismissed on procedural as opposed to substantive grounds. The Panel however endorses the concern as expressed by the complainant and encourages the ARLC and Diageo to take steps to avoid alcohol advertising occurring during junior matches.