

# ABAC

## ABAC Complaints Panel Determination No: 79/10

### Confidential Complainant Product: Bundaberg Rum & Yellowglen Advertiser: Diageo Australia & Fosters Group

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

7 January 2011

#### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a billboard advertisement for Bundaberg Rum by Diageo Australia (“Diageo”) and a billboard advertisement for Yellowglen by Fosters Group (“Fosters”) both located in the Peninsula Fair Shopping Centre Kippa-Ring and arises from a complaint by a confidential complainant received 9 December 2010.

#### 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 and Alcohol Guidelines which include provisions about the content and placement of Billboard advertising.
3. The complaints 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 is in the form of an email received by the ABAC Panel on 9 December 2010.
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. In this case, the advertisement has been determined within the 30 day 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. The Advertisers obtained pre-vetting approval for the advertisements.

### **The Advertisement**

9. The billboard for Bundaberg Rum is placed on the floor of the shopping centre at the Donut King and beside a newsagency, Lennards Chicken outlet and the walkway to Coles supermarket and 30 metres from the nearest alcohol retailer, BWS.
10. The billboard features a polar bear opening an esky full of ice and the product and the focus of the ad is the enlarged polar bear's paw holding a can of Bundaberg Rum Crisp with soda and lime. Above the bear is the tagline "Find the Crisp within Refreshingly Tasty Bundaberg Rum Soda & Lime Limited Release". The Drink Responsibly logo is in small print at the bottom of the advertisement.
11. The billboard for Yellowglen is wedged up against a table at Muffin Break in the shopping centre and is 10 metres from the nearest alcohol retailer, BWS.

12. The billboard features a bottle of Yellowglen White Champagne resting on sugar cubes with the Yellowglen logo, the text “New” and the tagline “A little bit sweeter”. At the bottom of the advertisement in smaller print is the Enjoy Responsibly logo and the text “Available in store now”.

### **The Complaint**

13. The complainant argues that:
- (a) The shopping centre is a family centre and it is school holidays.
  - (b) The signs are inappropriately placed and advertise inappropriate material not close enough to an alcohol outlet.

### **The Code**

14. The ABAC provides that advertisements for alcohol beverages must –
- (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:-
    - (ii) must not encourage under-age drinking;
  - (b) not have a strong or evident appeal to children or adolescents.....

### **The Advertiser’s Comments**

15. Fosters responded to the complaint and questions posed by the Panel in relation to the Yellowglen billboard by way of letter received 18 December 2010. The principal points made by the advertiser are as follows:
- (a) The Yellowglen panel is 10 metres from the store as the complaint states.
  - (b) In respect of paragraph 2(a) of your letter, we wish to ensure that the ABAC Panel is aware that Foster’s takes its responsible marketing commitment very seriously and is vigilant in upholding the codes that apply to the advertising industry and specifically the alcohol industry. We note the ABAC does not contain a restriction on alcohol advertising and the positioning of panels within a shopping centre and as such it is an allowed site under the guidelines. For your reference this site was one of a number purchased nationally as part of a package of close proximity sites to Liquor Stores. The Yellowglen panel is within line of sight of the BWS liquor store and the tables are not fixed furniture, but may be moved by the centre (or its customers) at any time. We do not believe that the fact that the Yellowglen panel is positioned next to some tables and chairs in a shopping centre creates, in any way, a strong or evident appeal to children. Additionally, we have spoken to the agency responsible for executing the campaign (oOh! Media) and they are adamant that they have not breached any other laws or guidelines relating to this campaign. Importantly, they note that: *“In relation to the location of the sign, it is in direct relation to the BWS store and the site has*

*been approved by the Centre owner. We cannot control what the Muffin Break store does in relation to its business and are not privy to agreements made between it and the Centre in relation to the placement of chairs and tables.”*

- (c) The advertising creative contains a photograph of a single bottle of our new sparkling wine product, “Yellowglen White”, on a white background, which on close inspection can be seen to be sugar cubes. The tagline “A little bit sweeter” is placed to the right of the bottle and a large horizontal purple banner with the Yellowglen brand logo runs the width of the advertisement. The tagline is clearly a description of the style or taste profile of the product, which is a moscato style sparkling wine, and is targeted at adults. We believe the creative fully complies with ABAC and we do not see any basis to support a claim that the tagline or the overall creative creates a strong or evident appeal to children or adolescents. There is an absence of any of the elements that constitute strong or evident appeal to children or adolescents as it does not depict any person, colourful cartoon characters, toys, G rated/PG rated film personalities.
- (d) Advertising in this manner at such sites purely aims to capture the attention of the adults who are en route to the existing liquor store in the shopping centre. We do not believe the placement nor the content (both singular and collectively) create strong or evident appeal to children or adolescents.

16. Diageo responded to the complaint and questions posed by the Panel in relation to the Bundaberg Rum billboard by way of letter dated 24 December 2010. The principal points made by the advertiser are as follows:

- (a) Bundaberg Rum Crisp has been launched as a summer product and therefore its promotion is conducted during the summer period (and not school holidays as suggested by the complainant). The advertisement is placed in a walkway which is close to and leads towards a BWS liquor outlet.
- (b) The advertisement received AAPS approval and was also assessed under the DSICA Statement of Responsible Marketing Practices and Diageo’s own internal marketing code. Both of these policies scrutinise the content and placement of adverts to ensure they have primary appeal to an adult (legal purchase age and above) audience.
- (c) We do not believe that the advertisement encourages underage drinking nor does it have strong or evident appeal to children or adolescents as:
  - The placement of this advertisement was consistent with all applicable regulations;
  - The advertisement is placed in a walkway which is close to and leads towards a BWS liquor outlet within the shopping centre;
  - Crisp has been launched as a summer product and as such its promotion is necessarily conducted during the

- summer period (and not school holidays as suggested by the complainant);
- The new Bundy R. Bear which is depicted in the Advertisement, has been developed using computer generated imagery, a technology recognised globally for its ability to create life like characters. The CGI Bundy R. Bear character is even less reminiscent of a bear which could appeal to children and adolescents as he looks less like a bear and more manlike, stands on two feet, is 6 foot and 8 inches tall, uses his hands like a human and also appears more serious and adult like than the previous Bundy R. Bear. The bear has a furrowed brow, sharp teeth and claws, a muscular build and his character and personality are structured around a 25 + year old male. The Bundy Bear is clearly distinguishable from popular children's characters and is not behaving in a child-like or adolescent manner. The character has been used with the product since 1961 and Bundaberg Rum has an ageing consumer profile and is predominantly consumed by males over the age of 30 years. We strongly believe that the appearance and gruff, serious character of Bundy R. Bear is not at all child-like or adolescent not does it appeal to children or adolescents;
- The line "Refreshingly Tasty" does not increase the appeal to children or adolescents but rather captures the summer appeal of the product to its target adult audience
- The advertisement does not depict any consumption of alcohol and there is no suggestion of excessive consumption, abuse of alcohol, underage drinking or other offensive behaviour.

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

17. The essence of the complaint is that it is inappropriate for alcohol advertisements hoardings to be located within a shopping centre which is accessed by children. The complainant points to the fact that the two hoardings subject to the complaint are some distance from an alcohol retail outlet located in the centre.
18. The complaint does not identify particular aspects of the actual advertisements which are of concern as such, but rather the issue is that alcohol advertisements, presumably of any type, are placed in the shopping centre other than immediately adjacent to the actual retail outlet.
19. The ABAC is a code based on the content of ads rather than the placement of ads. This means that the ABAC does not limit where alcohol ads can be published, broadcast or located. Rather, ABAC standards are concerned about what is contained within the ads irrespective of where the ads are positioned.
20. By contrast, other codes applying to aspects of alcohol advertising do go to the question of where those ads might be placed. For instance, Outdoor Media Association guidelines do limit the placement of billboards

advertising alcohol within 150 metres of a school. The Outdoor Media Association have advised that their guidelines however do not prohibit the display of alcohol advertising within a shopping centre.

21. Together, this means the ABAC does not restrict the placement of ads at shopping centres and the Panel cannot find an ad in breach of the Code simply because of the placement of an ad in a location where children will see it. The complainant doesn't raise any particular concern about the content of the ads and in these circumstances the Panel is unable to find that the ads offend the ABAC standards.
22. Accordingly, the complaint is dismissed.