

ABAC

ABAC Complaints Panel Determination No: 20/12

Complaint by Mr Michael Bollard
Product: Bundaberg Five
Advertiser: Diageo Australia

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Debra Richards – Member

27 March 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a billboard advertisement for Bundaberg Five by Diageo Australia (“the Advertiser”) and arises from a complaint received 5 March 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 and Alcohol Guidelines 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 5 March 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 obtained for this advertisement [11295].

The Advertisement

9. The advertisement depicts a man, naked from the waist up and covered by a sheet or quilt from the waist down, lying in a very large and ornate bed with a blue bedhead with gold painted detail around the edges.
10. Lying on each side of the man in his arms is a dolphin whose body below its flippers is under the sheet. The blue sheet or quilt covering the man and the dolphins is wet at the top and bottom of the cover where the dolphins are lying and one of the dolphins' tails can be seen poking out of the end of the cover.
11. The tagline "Clear Character 5 times filtered" is superimposed above the scene and a bottle of the product is superimposed next to the scene. A drink responsibly and standard drinks logo appears in small print at the bottom of the advertisement.

The Complaint

12. The complainant argues that the advertisement's message is:

- (a) Drink rum and bestiality is ok;
- (b) Having multiple sex partners, even animals, is ok.

The Code

13. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
14. Section (c) of the ABAC provides that advertisements for alcohol beverages must:
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - (i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by letter received 19 March 2012. The points made by the Advertiser 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. The advertisement is located on a billboard at the corner of the Gold Coast Highway and Stewart Road in Tugun, Queensland. It advertises Bundaberg Five, a new white rum with extra character. The scene in the advertisement depicts a man who has 'larger than life' character in a room that includes computer generated images of two dolphins. The scene portrays the impossible merging of two unrelated environments: a bed and the ocean. The situation is so far removed from reality that it can only be considered fantasy.
 - c. The overall tone of the advertisement is one of humour and absurdity, presenting a visual metaphor that represents the unique taste character of Bundaberg Five. The intention of the advertisement was to introduce Bundaberg Five to consumers and to reinforce in a humorous way that Bundaberg Five is full of character and not what consumers might

expect from a white rum. The rationale behind the advertisement was to portray the clear character and 'not what you'd expect' aspect of the product, using an extremely outlandish and unrealistic setting to deliver the message.

- d. There is no depiction of the product being consumed in the advertisement. The product shot of Bundaberg Five is superimposed in the forefront of the advertisement, with no physical link to the scene behind it. The intention of the advertisement was to demonstrate the clear and full character of Bundaberg Five by reference to the eccentric character of the man in the advertisement.
- e. The advertisement was not designed to demonstrate or imply that the man has *gained* this clear character by consuming Bundaberg Five. Rather, he *already* possesses it.
- f. The scene in the advertisement is clearly not one fixed in reality, and is so far stretched from realism that we do not consider that any reasonable person could believe or understand it to be realistic.
- g. The advertisement depicts a scene which is clearly fantasy and completely removed from reality. It was not designed to, nor do we consider that it does imply that consuming Bundaberg Five has resulted in the character ending up in that situation; rather, we consider that it advertises the clear and full character of both the man and Bundaberg Five.
- h. Diageo does not consider that the advertisement presents an approach to the consumption of Bundaberg Five, or if consumption is implied, that the approach is one that is at odds with the Code.
- i. We note again that the advertisement does not show or imply consumption of Bundaberg Five. In this sense we reference ABAC Determination No: 113/11 in which the Panel stated that *'showing an unopened bottle of the product cannot be said to be a representation of "consumption", even accepting that consumption captures more than physical swallowing of the liquid'*.
- j. Further, there is no link between the product shot of the Bundaberg Five product in the forefront of the advertisement, and the imaginary scene behind it. The advertisement also does not portray a before/after scenario, and the scene is unchanged with or without the presence of Bundaberg Five. Diageo considers that the advertisement demonstrates the clear and full character of both the man and Bundaberg Five without reference to consumption.
- k. In relation to the complainant's concern about location of the advertisement on the billboard, we note that the location of the billboard conforms to the requirements of the Diageo Marketing Code which requires Diageo to take reasonable steps not to place advertising on any outdoor stationary location in close proximity to schools. The media

buyer, Ikon, will not recommend a site for a Bundaberg Five (or any other Diageo product) advertisement that is within 500m of a school. Ikon has advised us that they completed the due diligence for this site and the location did not raise any concerns.

The Panel's View

16. The complaint raises issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issue is probably the overarching concern of the complainant and goes to the complainant's view that the ad is in extremely poor taste and exposes younger viewers to possible moral decay. This concern is not so much related to alcohol as a product, but rather reflects the depiction of the man in bed with the dolphins. Presumably the concern would exist equally if the ad was for any other product e.g. shoes or milk, and this aspect will be dealt with by the ASB and not this determination.
17. This determination deals with the ABAC issues and these can be expressed as follows:
 - a. Does the ad breach section (a) (iii) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol by promoting offensive behaviour; and
 - b. Does the ad breach section (c) (i) of the ABAC by suggesting that the presence or use of the alcohol product may contribute to a significant change in mood and contribute to the achievement of sexual success.
18. The Panel has examined alcohol advertising and "offensive behaviour" within the meaning of section (a) (iii) on previous occasions. The section is not creating a general standard of good taste (this is the domain of the AANA Code of Ethics) but rather relates to "offensive behaviour" which is related to or influenced by the misuse of alcohol e.g. drunken loutish behaviour.
19. In this case, a man is depicted in a bed with two dolphins. The scene is clearly fanciful and ridiculous but can it be fairly said to promote offensive behaviour through an immature or irresponsible approach to alcohol consumption? In the Panel's view, the ad does not breach the ABAC provision. Firstly, it is not evident that the man has consumed alcohol, but even if it was taken that he had consumed the product, the placement of the dolphins in the bed is bizarre and unbelievable, but not of itself offensive.
20. Nor does the Panel believe the ad has breached section (c) (i). The key point of this provision is the causal link between alcohol and the achievement of success. In this case, the scene depicted is so fanciful that a reasonable person is not likely to take the implication which has troubled the complainant.
21. Accordingly, the complaint is dismissed.