



## ABAC Adjudication Panel Determination No. 100/17

**Product:** Bundaberg Rum  
**Company:** Diageo  
**Media:** Outdoor  
**Complainant:** Mr Terrett  
**Date of decision:** 20 October 2017  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor advertising for Bundaberg Rum by Diageo (“the Company”) and arises from a complaint received 11 September 2017.
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. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
  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 11 September 2017.
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 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 (15425).

## The Marketing Communication

10. The complaint relates to the following outdoor advertisement for Bundaberg Rum. The advertisement was located on a digital billboard on a city bound freeway, Southern Cross Drive at Eastlakes in New South Wales.



## The Complaint

11. The complainant is concerned that the billboard would appeal to under 18 year old high school students that are of an age to attend or think about attending their high school formal for the following reasons:
  - a) The Billboard includes the word "Formal" prominently alongside the Bundaberg Rum product and imagery.
  - b) This is a time of year when high school formals are generally being planned or are taking place.
  - c) When travelling at high speed on an inner city freeway the smaller text and therefore the context of the advertisement is lost and the message appears to provide an association between the product and a high school formal that may influence minors to consume Bundaberg Rum before, during or after their high school formal.

## 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;

Definition in Part 5 of the ABAC provides:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;

- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A 'Minor' means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

### **The Company's Response**

13. The Company responded to the complaint by letter dated 22 September 2017. The principal points made by the Company were:
  - a) Thank you for inviting us to provide comments for the Panel's consideration in determining this complaint. We would like to take this opportunity to make some general comments about the advertisement for consideration by the Panel and to respond to your specific questions. We also wish to confirm our longstanding support and commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as our best-practice global marketing standards, the Diageo Marketing Code (DMC).
  - b) The advertisement in question was created by Leo Burnett Sydney on behalf of Diageo Australia and is part of a broader campaign by Bundaberg Rum ('Unmistakably Ours') which celebrates the values and things that make Australia and Australians so unique. From our willingness to have a crack, to our unending support of our mates and our optimistic approach to life. The outdoor advertisements in particular celebrate some of those things that make us distinct – from giant spiders as room-mates to zinc as make-up. The 'Formal' execution follows this same approach. It shows a man from the lower calf down to his feet wearing suit pants with thongs. The image is from the lower calf to the feet. It reads "No one does formal like us and no one does rum like us". The tagline "Unmistakably Ours" is included in the lower right hand corner next to an image of Bundaberg Rum UP. In the upper left-hand corner the DrinkWise 'Get the Facts' logo is included.
  - c) Diageo does not believe that the advertisement in question breaches Part 3 (b) of the code by having strong or evident appeal to adolescents. In celebration of the things that make Australians so unique, the advertisement highlights that Australians are widely known for wearing thongs everywhere. In support of this, a dominant image of a man wearing suit pants with thongs is shown, along with the headline "No one

does formal like us and no one does rum like us". To the right of the headline is an image of Bundaberg Rum. Given the image portraying the man in suit pants with thongs is the dominant focal point of the advertisement, it would be very unlucky to be missed when observing the advertisement, even if just momentarily.

- d) Diageo does not believe that the advertisement in question breaches Part 3 (b) of the code by having strong or evident appeal to adolescents by appearing at a time when school formals are occurring or being planned. Together, the imagery and headline celebrate the type of footwear Australians are known to wear as part of their formal attire. The structure of the headline with a singular 'formal' as an adjective further supports that the advertisement is speaking to a certain dress style (i.e. formal wear) rather than an occasion (i.e. school formals). Furthermore, this creative execution was run from March in the launch campaign on other large format sites in multiple markets.
- e) Diageo would like to reiterate that it takes the placement of its advertisements very seriously when it comes to ensuring advertisements are only placed where 75%+ of the audience is above the legal purchase age. The placement complies with the rules set in place for minimum distance in which alcohol advertising can be displayed in proximity to schools or other areas where there may be a high concentration of minors.

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

- 14. The Company is currently promoting Bundaberg Rum as part of a multi-media campaign called 'unmistakeably ours'. This complaint concerns a particular execution within the wider campaign namely a billboard which features a man's legs in long pants wearing thongs. The strapline used on the billboard is 'No one does formal like us and no one does rum like us'.
- 15. The complainant viewed the billboard from a moving vehicle and the strong impression created was an association of the word 'formal' with a depiction of a bottle of the product. The complainant was concerned that the advertisement would be appealing to school age children who might be attending a school formal.
- 16. The complainant makes the valid point that a person will not generally stop and read carefully everything on a billboard but rather will absorb a quickly formed impression of the advertisement while moving past in a vehicle. Understood in this context, it is argued that the association of the word 'formal' and the product will be the impression from the billboard and this impression is undesirable particularly as a number of school formals are currently being held or being planned.
- 17. The Company for its part makes clear that it had no intention to associate its product with a school formal and that the billboard is a type of advertisement within a broader marketing campaign. It argues that the picture of the man in suit pants and thongs is very prominent and would not easily be missed even if

the billboard was viewed just momentarily. The Company contends this image contextualises the word 'formal'.

18. Section 3(b) of the Code requires that an advertisement not have a strong or evident appeal to under 18 year olds. In assessing if a standard has been breached, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person taking its content as a whole. The reference to a 'reasonable person' means that the attitudes, values and ideas common in a majority of the community is to be the benchmark.
19. The Panel understands the argument made by the complainant that many people will take a quick impression from a billboard obtained from a moving vehicle, rather than the impression created of the same advertisement if studied closely. The same observation can be made about most advertising viewed on TV or even from turning over pages in a magazine. The impression might alter if the advertisement is seen on repeated occasions, but generally people will pay less attention to an advertisement than say the program they are watching at the time.
20. That said, the test to be applied is an 'objective' rather than 'subjective' test. This means that while an individual may genuinely have taken a particular interpretation from an advertisement, this may not be the interpretation taken by the majority of viewers.
21. The Panel does not believe the advertisement is in breach of the ABAC standard. In reaching this conclusion the Panel noted:
  - The term 'formal' used in the advertisement is established, by the picture of a man in suit pants and thongs, to be taken ironically;
  - The image of the man's legs is larger than the image of the product and would likely be seen by most viewers even from a moving vehicle;
  - A reasonable interpretation of the advertisement would not generally associate the term 'formal' with a school formal given the context of placing the word with the picture of the man wearing suit pants and thongs; and
  - Taken as a whole the advertisement cannot be fairly taken as associating the product with the holding of a school formal and the advertisement is not strongly or evidentially appealing to under 18 year olds.
22. Accordingly, the complaint is dismissed.