



ABAC Adjudication Panel Determination No. 37/18

Product: Diageo
Company: Smirnoff
Media: Outdoor
Complainant: Ms Filmer
Date of decision: 12 April 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Smirnoff at a bus shelter by Diageo (“the Company”) and arises from a complaint received on 1 March 2018.
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 marketing 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 the other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 Ad Standards Community Panel 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 1 March 2018.
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.
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 marketing communication (15860).

The Marketing Communication

10. An advertisement for Smirnoff was placed on a bus shelter at Wakehurst Parkway in Seaforth NSW.



The Complaint

11. The complainant is concerned that the advertisement:
 - a) Is positioned as a natural drink, inferring its good for you.
 - b) The packaging and image used could be mistaken for a soda drink.
 - c) Is inappropriately placed as teenagers and children who regularly catch the bus should not have to see advertisements for alcohol.
 - d) Is an enticing advertisement that targets young or new to alcohol drinkers.

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
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules

(c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation

13. Part 6 of the ABAC Code includes definitions including:

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.

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. The Company responded to the complaint by email dated 16 March 2018. The principal points made by the Company were:

- a) We 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 is 'Nothing To Hide' for Smirnoff Pure Orange, Mango & Soda, a new product within the range of ready to drink beverages by Smirnoff. The 'Nothing To Hide' campaign refers to the product's combination of vodka with all natural ingredients and no additives, artificial colours or flavours – the first of its kind in market. The creative displays an almost 360 degree view of the product in mirrors, proudly showcasing the back label featuring its natural ingredients listing. The advertisements were created by Leo Burnett Sydney on behalf of Diageo Australia.
- c) The advertisement in question features an image of the Smirnoff Pure Orange, Mango & Soda bottle on grass in a park in front of two mirrors which reflect the ingredients list on the back of the bottle. The words 'Nothing To Hide' appears in large, bold red text boxes and further text directly states 'Vodka & Natural Ingredients. That's All!' As this is a new product in the Smirnoff Pure range a 'Try New' call out is also placed in the top right corner. The DrinkWise 'Get the Facts' logo is also included in the lower right hand corner of the advertisement.
- d) Diageo Australia's position is that the Smirnoff Pure Orange, Mango & Soda 'Nothing To Hide' advertisement does not have a strong or evident appeal to children or adolescents as there are clear indications on the advertisement that the product contains alcohol. The Smirnoff trademark is one of the most recognisable vodka brands in the world with 85% awareness as a vodka product in Australia and is featured in the advertisement. The word vodka appears in the statement 'vodka and natural ingredients' in bold font against a colourful background. The alcohol by volume (ABV) of the product is also shown on the product image. Furthermore, the DrinkWise 'Get the Facts' logo is included. These elements work in conjunction with the creative to indicate to the viewer that this advertisement is for an alcohol beverage.
- e) Diageo's position is that the advertisement in question does not suggest that the product offers a therapeutic benefit by the inclusion of the words "Pure", "Nothing To Hide", "Natural Ingredients" and placing the products in an outdoor setting. The inclusion of the words "Vodka and Natural Ingredients" is not a therapeutic claim, but instead a true nature statement which Diageo can make on the packaging as the product contains only vodka and natural ingredients. Therefore, the claim "Nothing To Hide" is made, not to imply a therapeutic benefit, but to inform consumers this product contains nothing other than vodka and natural ingredients. This true statement is a major point of difference between our product and similar products which are in market from our competitors and has therefore been highlighted in our

advertising. Furthermore, the product name “Smirnoff Pure” does not imply the product offers a therapeutic benefit, but instead is used as the name of a product which contains only vodka and natural ingredients. Taking into consideration the above, none of the statements including “Pure”, “Nothing To Hide” and “Natural Ingredients” makes an assertion that use of this product would result in a therapeutic benefit.

- f) Lastly, placing the product in an outdoor setting reflects the current consumer trend in consumption environments and also the proposed occasion in which Smirnoff Pure Orange, Mango & Soda would be consumed in. No assertion is made that consuming the product in an outdoor setting offers a therapeutic benefit. Diageo is committed to upholding Section c(iv) of the Code which provides that alcohol marketing must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit and as such would never make the assertion or claim that the use of a product would result in a therapeutic benefit.
- g) As per the Outdoor Media Association of Australia (OMA), Australia’s Out of Home (OOH) advertising industry has its own code that restricts the placement of alcohol advertising within 150 metres of schools, to reduce the risk of youths being exposed to alcohol advertising. As Diageo we have implemented stricter regulations per the following disclaimer that we apply to all OOH media briefs, bookings and final site lists:
 - i. The media owner must not place any advertisements nears schools or areas that could be seen to be targeting underage people
 - ii. In the case of schools, pre-schools, colleges, TAFEs or any areas targeting underage people, we need to ensure that we are at least 500m away.
 - iii. If they do accidentally get placed near a school, they must remove the poster within 4 hours of notification (at their cost)
- h) Further to this, we have identified all sites that match the description of the panel referenced in the complaint. We have manually checked all of these panels via Google Maps and confirm that they are not within a 500m distance of a school, TAFE, University or College, thus upholding our adherence to the placement rule.
- a) We are pleased to have had this opportunity to confirm our long-standing support for the ABAC Scheme and commitment to uphold the Responsible Alcohol Marketing Code (ABAC).

The Panel's View

15. This is the second determination made by the Panel concerning outdoor advertising for the product Smirnoff mixed with soda. The earlier determination 61/17 dated 28 February 2017 dealt with similar concerns regarding the content of the advertisement i.e. appeal to minors and the suggestion the product has health benefits.
16. The earlier determination dismissed the complaint, noting:
 - The advertisement does ground the product as an alcohol beverage and not a soft drink;
 - It does not have elements which can be fairly said to create a strong or evident appeal to under 18 year olds; and
 - The references to the product contents do not got to its impact and it is unlikely that a person would conclude the product would provide a benefit in terms of physical or mental wellbeing.
17. Given the earlier decision, the Panel would not normally make a further determination on the same advertisement where the complaint raises the same concerns which had previously been considered. Since the previous determination, however, the ABAC has been amended to include requirements as to the placement of alcohol marketing. It is because of these new requirements that a further determination is required.
18. The complainant is concerned that the advertisement is located at a bus shelter and as a result it will be seen by children and teenagers who regularly catch the bus. The Placement Rules inserted in the Code in November 2017 provide requirements on the Placement of marketing in mediums such as television, radio, print and digital platforms like Facebook and Instagram.
19. The requirement in relation to outdoor advertising is that it be conducted consistent with the terms of the Outdoor Media Association Guidelines. These Guidelines provide that an alcohol advertisement cannot be placed within 150 metres of a school.
20. In this case, the advertisement is not located within 150 metres of a school and the Guidelines and hence the ABAC Placement Rule has not been breached.
21. Accordingly, the complaint is dismissed.