



**Submission: Inquiry into the Regulation of Billboard Advertising
House of Representatives Standing Committee on Social Policy and
Legal Affairs
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Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth Joint Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Regulation of Billboard Advertising Inquiry

February 2011

Cancer Council WA is an independent not-for-profit organisation that conducts research, cancer prevention and support programs and advocacy in order to reduce the burden of cancer on the community. Cancer Council WA is concerned about the level of alcohol consumption in Australia due to the role alcohol consumption plays in increasing people's risks of developing certain cancers. We support measures that effectively regulate alcohol advertising, and consider improved regulation of alcohol advertising an important strategy by which to reduce alcohol-related harm in Australia. Cancer Council WA is particularly concerned about alcohol consumption and related harm in young people.

The McCusker Centre for Action on Alcohol and Youth (MCAAY) is an independent organisation committed to reducing harms caused by alcohol among young people. The work of MCAAY is directed towards raising awareness of the magnitude of alcohol-related harms among young people, the approaches we know can work, other options and the need to act without delay. Indicators of the extent of harmful drinking and alcohol-caused harm among young people are summarized in the attached factsheet, *Alcohol and Young People: the Problem*.

Young people are highly susceptible to alcohol advertising messages, which are frequently effective.¹ Exposure to alcohol advertising shapes young people's beliefs and attitudes about drinking, and their drinking behaviours – indeed, the evidence shows that exposure to alcohol advertising increases the likelihood that adolescents will start to use alcohol, and to drink more if they are already using alcohol.²

The Outdoor Media Association confirms the ubiquity of outdoor advertising in Australia: 'outdoor advertising can be seen at any time of day or night and cannot be turned off, fast-forwarded, put aside or be left unopened'.³ The substantial level of exposure outdoor advertising enjoys begs a strong regulatory approach to ensure that advertising content is of a high standard and that placement of outdoor advertising is appropriate.

Cancer Council WA and MCAAY welcome the opportunity to contribute to the Committee's inquiry into the regulation of billboard advertising. We consider the current arrangements for the self-regulation of outdoor media in Australia ineffective and insufficient, particularly with regard to the regulation of outdoor alcohol advertising. This submission outlines our issues and recommendations.

¹Alcohol Concern. *Not in front of the children – Child Protection and Advertising*. (2007) http://www.aerc.org.uk/documents/pdfs/finalReports/AERC_FinalReport_0046.pdf (Accessed 16 February 2011)

² Anderson, P, Bruijin, A, Angus, K, Gordon R and Hastings, G. (2009) Special Issue: The Message and the Media. Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies. *Alcohol and Alcoholism*, 44(3).

³ Outdoor Media Association Code of Ethics: <http://oma.org.au/code-of-ethics/> (Accessed 16 February 2011)

Summary of recommendations:

- (i) Voluntary regulation to be replaced by a system that applies to all relevant parties;
- (ii) Complete phase-out of outdoor alcohol advertising to occur in stages;
- (iii) Government takes over regulation of outdoor advertising, with jurisdiction over both advertising placement and content;
- (iv) Pre-vetting of outdoor alcohol advertisements to be done by a government regulator, using a new alcohol advertising code;
- (v) All Codes applicable to alcohol advertising are reviewed; and
- (vi) Overhaul of the complaints process to make it simpler and faster.

Issues:

A. A voluntary system does not include all relevant parties

Outdoor media is governed by a voluntary self-regulatory system, and the representative body for outdoor media entities is the Outdoor Media Association (OMA). However, OMA does not represent all of Australia's outdoor media display companies, production facilities, or media display asset owners. A proportion of outdoor media entities is therefore not signatory to OMA's Code of Ethics, which incorporates its Alcohol Advertising Guidelines, other industry codes such as the Alcohol Beverages Advertising Code, and a commitment to abide by decisions made by the Advertising Standards Board (ASB).

Cancer Council WA and MCAAY contend that the existing voluntary system does not extend to all entities involved in the production and display of outdoor advertising and that it will therefore never adequately regulate outdoor advertising. We recommend a government-led regulatory system that affects all of the relevant outdoor media entities.

B. Outdoor alcohol advertising and young people's exposure

OMA's Alcohol Advertising Guidelines place only one restriction upon the placement of outdoor alcohol advertising; its display is limited to outside a 150 metre sight line of a school gate. This restriction does not apply if there is a bottle shop, club or pub in the vicinity, and it does not extend to advertising on public transport that passes by schools.

Outdoor advertising is a medium to which all members of the community, including young people, are highly exposed; it dominates our public spaces, is visible 24 hours a day and it cannot be ignored. Indeed, young people are especially likely to be exposed to alcohol advertising on public transport and in transit stations, as younger people, particularly those ages 18-24, are more likely than older people to use public transport.⁴

⁴ Australian Bureau of Statistics (2008) Public Transport Use for Work and Study. *Australian Social Trends*. See: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter10102008> (Accessed 16 February 2011).

Recommendations:

Cancer Council WA and MCAAY recommend that advertising of alcohol products in outdoor media⁵ is completely phased out through legislation over time, starting with an initial ban on outdoor alcohol advertising within 500 metres of schools, universities and youth-centred facilities, within 500 metres of public transport stations, bus, train and tram stops, and on public transport. No loopholes, such as the 'sightline' exception, should be allowed. A phase out of outdoor alcohol advertising is in keeping with the key recommendations of the National Preventive Health Taskforce, which advises phasing out alcohol promotion in placements which have high exposure to young people.⁶

C. Regulation of outdoor alcohol advertising placement and content is ineffective:

(i) Placement regulation

Currently, breaches of the Alcohol Advertising Guidelines, such as placement of alcohol advertising close to schools, must be identified and reported by the public. There are no formal checks in place to monitor compliance with the Guidelines. This major flaw in the current system is compounded by the public's lack of knowledge of the Alcohol Advertising Guidelines and of the complaints process. Further, there exists no body with the power to enforce the placement restriction upon outdoor alcohol advertising.

It is no surprise that with no compliance monitoring or meaningful sanctions in place, breaches of the placement restriction occur. Between August and October 2010, Cancer Council WA identified three separate outdoor alcohol advertisements directly opposite (well within a 150 metre sight line) Shenton College, a high school in Shenton Park, Western Australia. Photographs of the offending advertisements are attached to this submission, along with media articles demonstrating community concern about this issue. In each case, the advertiser or outdoor media entity removed the advertisement after community displeasure became evident, not because it was required to by OMA. Since then, Cancer Council WA staff have found at least three more examples of alcohol advertising opposite two different local schools. Two were within 70 metres of a primary school, but were not removed as the advertiser exploited the 'sight line' exception.

⁵ 'Outdoor Media' is defined as including Roadside Billboards, Roadside Other (bus/tram shelters, kiosks, bus/tram exteriors, phone booths, taxis, free standing panels and mobile billboards), Transport advertising (airport externals, rail platform and concourse, bus interchange, bus/tram interiors, airport externals and airport internals), and Retail/Lifestyle advertising (shopping centres, malls and universities). See <http://oma.org.au/outdoor-formats/#Glossary> for more information (Accessed 16 February 2011).

Cancer Council WA and MCAAY do not intend the definition to extend to visual advertising displays around retail liquor outlets that observe the applicable regulations. We are willing to further discuss the definition of 'outdoor media' with the Committee.

⁶ National Preventative Health Taskforce (2009) Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia.

(ii) Content regulation

Under the current system, OMA members may only display outdoor alcohol advertisements that have been approved through the Alcohol Advertising Pre-vetting System (AAPS). The AAPS is a user-pays system which evaluates proposed advertisements against the Alcohol Beverages Advertising Code (ABAC). Membership of the ABAC Scheme is voluntary.

We attach the recent ABAC Determination 76-10 as an example of the fundamental flaws of the voluntary system for content regulation. The subject of the complaint was a series of outdoor advertisements on public transport for the alcoholic product Three Kings. The advertisements were not pre-vetted because the advertiser is not an ABAC signatory. OMA's requirement for pre-vetted content was evidently ignored by the outdoor media provider, which had no fear of an enforceable or meaningful sanction, and displayed the advertisement on public transport. The ABAC Adjudication Panel considered and upheld a subsequent complaint and found multiple breaches of ABAC, namely the advertisement appealed to adolescents, featured models who were not adults and not depicted as adults, and showed evidence of product consumption. However, the Panel could do no more than 'encourage the advertiser to become a signatory to the ABAC Scheme'. The advertiser and outdoor media provider flouted both the OMA requirement for pre-vetting and the ABAC content provisions, no sanctions ensued, and the advertisements remained in place until the campaign had run its course.

Recommendations:

Cancer Council WA and MCAAY recommend the government takes over the regulation of outdoor advertising, and allocates the regulator role either to an existing government agency or to a new, independent government body. There is a clear need to ensure all outdoor media entities and advertisers are subject to the same rules, and to remove the gaps, loopholes and misconduct a voluntary, industry-based regulatory system allows.

The government regulator should have jurisdiction over both the placement and content of outdoor advertising. It should have active monitoring duties and the power to take action on offending advertisements without waiting for a complaint. It should offer pre-publication advice, complaint resolution, and research and action on existing advertising, including spot checks, trend monitoring and swift action to handle identified breaches. Importantly, it should be given the power to impose meaningful, timely penalties for breach of advertising regulations.

Cancer Council WA and MCAAY reiterate our previous recommendation for a complete phase-out of outdoor alcohol advertising. In the meantime, however, it is essential to continue to pre-vet outdoor alcohol advertising content. We recommend a complete overhaul of the pre-vetting process and the standards against which the proposed alcohol advertisements are pre-vetted, namely the ABAC Scheme.

Firstly, we contend that industry involvement in the ABAC Scheme precludes the possibility of truly impartial judgment of alcohol advertising. We therefore restate our recommendation for the establishment of a government regulator independent of industry to regulate the content of all outdoor advertising, and so replace the ABAC Scheme's current role in pre-vetting outdoor alcohol advertising.

Secondly, we recommend replacing the Alcohol Beverages Advertising Code with legislation that aims to ensure the content of marketing and advertising communications about alcohol products pays heed to public health and safety objectives and is socially responsible.

Replacing the alcohol advertising code will ensure alcohol advertisements are pre-vetted against a higher standard, but alcohol advertisements may still be judged against other applicable Codes after they are released. Cancer Council WA and MCAAY contend that the other applicable Codes, in particular the AANA Code of Ethics, are weak and skewed in favour of advertisers. We therefore recommend a comprehensive review of all of the Codes applicable to alcohol advertising. We are willing to consult further with the Committee on this matter.

D. Complaints process

The current complaints resolution process administered by the Advertising Standards Bureau is complicated and protracted. Often, a determination is not reached until after an advertising campaign subject to complaint has run its course. The complaints process should be swift, and operate to meet the needs, expectations and rights of all complainants.⁷ Importantly, the complaints procedure should be easy to use, and accessible to all.

We recommend that the previously proposed government regulator handles complaints in a simple and swift manner. We also propose the identification or establishment of the new advertising regulator is accompanied by a public education campaign about outdoor advertising placement and content restrictions, and about complaints processes.

Conclusion

Cancer Council WA and MCAAY submit to the Committee that the current arrangements for regulation are ineffective and do not manage outdoor advertising, particularly alcohol advertising, in line with the Australian community's expectations. It is vital to note that the issues relating to outdoor advertising outlined in this submission are symptomatic of the fundamental weaknesses of the self-regulatory approach to advertising regulation in Australia. We strongly recommend that approaches to strengthening outdoor advertising regulation are introduced as part of a comprehensive overhaul of advertising regulation in Australia. Cancer Council WA and MCAAY are willing to present on these matters to the Committee.

⁷ 'Key features of an effective complaint handling process' (2009) Ombudsman Victoria, <http://www.ombudsman.vic.gov.au/www/html/99-key-features-of-an-effective-complaint-handling-process.asp> (Accessed 16 February 2011).

Alcohol-caused harm is a problem for the whole community. Alcohol is not just a young people's problem. However, the drinking habits of young people are causing significant harm.

In Australia

- One in five Australians aged 14+ years drink at short-term risky/high-risk levels at least once a month. This equates to more than 42 million occasions of risky or high-risk drinking in Australia each year.¹
- Alcohol consumption causes over 5,000 deaths and 80,000 hospitalisations in Australia every year.²
- Up to 70 per cent of all police responses are alcohol-related.^{3,4}
- Alcohol affects people other than the drinker. Over 42% of adult Australians reported being either verbally or physically abused or put in fear in the previous year by someone under the influence of alcohol.⁵
- An estimated 46,957 Western Australian 12 to 17 year old school students consumed alcohol in the past week.⁶

'One of the main reasons I drink is to get drunk'
report 43.3% of 16-17 year old WA school students.⁶

'It is ok to get drunk occasionally'
report 66.3% of 16-17 year old WA school students.⁶

'Drinking is the best way of relaxing'
report 50.1% of 16-17 year old WA school students.⁶

Harmful drinking among young people

- More than a quarter of 14 to 19 year olds put themselves at risk of alcohol-related harm in the short term at least once a month.¹
- Over 70% of 14 to 19 year olds consumed alcohol in the previous year despite the fact that the minimum legal drinking age is 18.⁵
- 80% of alcohol consumed by people aged 14 to 24 years is consumed in ways that put the drinker's (and others') health at risk of acute harm e.g. falls, assault injuries, road crashes, burns.²
- 24.3% of WA 12 to 17 year old school students who had consumed alcohol in the last week reported drinking at levels considered to place adults 'at risk' of short term harm in 2008.⁶
- Levels of risky drinking in those aged 18 to 24 years have increased since 1995.⁷

Alcohol-caused harm among young people

- Rates of alcohol-related harm in young people have increased significantly over recent years, particularly those aged 16 to 24 years.⁸
- Over the last ten years, about 15% of *all* deaths among 15 to 24 year olds were due to risky or high risk drinking.⁹
- On average, five Australians under 25 die from injury and disease caused by hazardous drinking in a week.⁹
- Indigenous young people are more than twice as likely as their non-Indigenous counterparts to die from alcohol-attributable injury and disease.⁹

References available at www.mcaay.org.au

Factsheet references

Alcohol and Young People: The Problem

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ABAC

ABAC Complaints Panel Determination No: 76/10

Confidential Complaint Product: Three Kings alcohol beverages Advertiser: Independent Distillers

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

17 December 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a series of outdoor transit advertisements for Three Kings alcohol beverages by Independent Distillers (“the Advertiser”) and arises from a confidential complaint received on 24 November 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 which includes provisions about 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 was received by ABAC on 24 November 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. This complaint 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 Advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for these advertisements.

The Advertisement

9. The complaint refers to a series of outdoor advertisements located on the side of and also inside public transport, in particular buses.
10. The first advertisement features a photograph of three young men, one on a skateboard and another with a skateboard over his shoulder facing away from the camera above or below the text "Three Kings" next to three bottles of the product, one of which is Cider, another Dry Lager and the third is vodka and ginger. There is also a reference to the product website threekings.com.au.
11. The second advertisement is the same as the first but with a different photograph of the same three young men, this time sharing a joke and holding bottles of the product.
12. The third advertisement is the same as the first two but with a different photograph of the same three young men, sitting on a bench with graffiti in the background talking and holding bottles of the product.

The Complaint

13. The complainant argues that the advertisement encourages underage drinking and has strong appeal to children by:

- (a) including models that look very young, under 18 years of age and carrying skateboards which appeal to young boys and early teens.
- (b) Style of ad, clothing and overall attitude appeals to very young men and boys.
- (c) It is not clearly marked that the beverage is an alcohol beverage.
- (d) There is no warning about responsible consumption of alcohol in the ads.
- (e) The series of ads is on bus sides and inside buses including the afternoon school bus in Bondi Junction which is inappropriate placement.

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 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 (eg family barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverage
 - 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. The Advertiser responded to the complaints and questions posed by the Panel by email dated 8 December 2010. The principal points made by the Advertiser are:
- (a) In the advertisement that depicts a male skateboarding there is no product being drunk or product in their hands.
 - (b) Models are wearing on trend fashion apparel – there was no intention to deliberately dress the models in a more youthful way than how they would dress themselves.
 - (c) Skateboarding has a broad appeal which is promoted by riders such as Tony Hawke, the world's most famous skate board rider who is over 40. This is an ageless lifestyle choice particularly long boarding which is featured in the advertisement.

- (d) In regard to placement on buses, out of home advertising has become a proven channel of communication for the alcohol category. Many of the category leaders such as Corona have been using this medium for the past 3-5 years.
- (e) The models are of legal drinking age.

The Panel's View

- 16. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

- 17. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:
 - Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
- 18. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means that the outdoor advertising was not subject to pre-vetting prior to its showing. Further, this decision by the Panel does not have any binding force on the advertiser. That said, the advertiser has cooperated with the Panel in enabling the determination to be made.

The Substantive Aspects

- 19. This complaint raises an issue of whether the advertisement breaches section (a)(ii) and (b) of the ABAC by encouraging underage drinking and having a strong and evident appeal to children. The complainant specifically raises the issue of the age of the models in the ads. Section (b)(i) of the ABAC provides that adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
- 20. The complainant contends that the advertisement is in breach of the ABAC by reason of both its content and placement. The ABAC applies across all media *i.e.* print, television, radio, billboards and the internet and is a content based set of standards. This means that, regardless of where an alcohol ad is placed, its content is to meet the standards laid down in the ABAC. The issue of where the ad is placed is indirectly relevant in terms of assessing the content of the ad in that the audience of the ad is a relevant consideration.

21. The complainant is primarily concerned that the age, dress, style and in one execution the use of a skateboard will have strong or evident appeal to children or adolescents in breach of the ABAC.
22. The advertiser responds to this concern by pointing out that:
 - Models are of legal drinking age and wearing their usual style of clothing;
 - Skateboarding has broad appeal with the world's most famous skateboard rider, Tony Hawke, being over 40. It is an ageless lifestyle choice, particularly longboarding which is depicted in the ad.
23. The central issue is whether the ad has a strong or evident appeal to children. The Panel has considered this question in previous determinations and has noted that:
 - each ad has to be assessed on its merits
 - the intention of the advertiser as to its target audience is not material; rather, it is the "probable impact" of the ad which is important
 - the ABAC standard accepts that an ad might have some residual or incidental appeal to children but it is "a strong or evident" appeal which is prohibited
 - the overall context of the ad is critical.
24. This means an overall impression of the ad must be formed. The placement of the ad on and inside public transport does mean that the ad will be viewed by children and adolescents. This does not, however, of itself mean that the ad, irrespective of its content, automatically can be said to have "strong or evident" appeal to children or adolescents.
25. The Panel believes that the advertisements breach section (b)(i) and (iii) of the ABAC. Section (b)(i) requires that adults depicted in alcohol advertisements must as a matter of fact be 25 years or over and secondly, irrespective of the models actual age, adults need to be clearly depicted as adults. The advertiser's advice on the actual age of the models featured in the advertisement is that they 'are of legal drinking age'. This means the models are at least 18 years old but may well be under the age of 25.
26. Without specific advice from the advertiser on the models' age, the Panel can only make an estimate based on appearance. The three models appear to be young adults, and their dress and demeanour suggest they may be in either late teens or early 20's. In the Panel's view the models do not appear to be 25 years or over in age.
27. Equally, the Panel believes that it is quite ambiguous as to whether the models are 'clearly depicted as adults'. While it is accepted that people who use skateboards would cover a variety of ages, it would be fair to say that the activity and skateboard culture is predominantly youth and young adult focussed. The Panel concludes that the advertisements do not show the models 'clearly depicted as adults'. Further, it follows that as the models are the primary focus of the advertisements, that section (iii) is also breached.

28. The Panel further believes that in addition to the specific question around the age or apparent age of the models featured in the ad, the advertisements breach section (a)(ii) and (b) of the ABAC. In reaching this conclusion the Panel has had regard to:
- The apparent youth of the models
 - That several ads depict scenes which strongly suggest that the three featured characters have consumed the product (eg. opened bottles, empty or partially empty bottles in the hands of the characters)
 - The dress of the characters which is suggestive of a youth/young adult culture
 - The association of the characters and product with skateboard use which is popularly regarded as a predominantly youthful activity
29. In upholding the complaint, the Panel strongly encourages the advertiser to become a signatory to the ABAC Scheme and take advantage of pre-vetting process. Pre-vetting would have identified the inconsistency of the advertising approach with ABAC Standards and enabled the advertiser to consider alternative creative means to pursue its marketing objectives in a manner reflective of ABAC Standards of good alcohol advertising practice.

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MAKE YOUR SMOOTH



REDGUM FILTERED • REAL SMOOTH RUM



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DRINK RESPONSIBLY

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ADWHT



**MAKE
YOUR
SMOOTH**

SMOOTHIES - BEAR BRAND



LIFE WAST WOP

ABAC

**ABAC Complaints Panel
Determination No: 49/10**

**Confidential Complaint
Product: Bundaberg Red Rum
Advertiser: Diageo Australia Limited**

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

11 November 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Bundaberg Rum by Diageo Australia Limited (“the Advertiser”) and arises from a confidential complaint received on 24 September 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 which includes provisions about 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 was received by ABAC on 24 September 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. This complaint has not been determined within the 30 day timeframe due to availability of the Chief Adjudicator.

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 the outdoor advertisement [10397].

The Advertisement

9. The complaint refers to an outdoor advertisement located in a bus shelter opposite Shenton College (a secondary school).
10. The advertisement features a large stern looking Bundy bear character standing on two legs with mountains in the background. On the lower half of the advertisement the text "Make your smooth" and a bottle of Bundaberg Red Rum is superimposed over the picture and below that in smaller print is the text "Redgum filtered Real smooth Rum". At the bottom of the page in small print is the Drink Responsibly logo.

The Complaint

11. The complainant argues that the advertisement encourages underage drinking and has strong appeal to children by including a large picture of an animal, namely, Bundy R Bear, and by reason of its placement inside a bus shelter opposite the entrance to Shenton College which is a secondary school for students aged 12 to 17 years of age.

The Code

12. 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 and adolescents...

The Advertiser's Comments

13. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 6 October 2010. The principle points made by the Advertiser are:
- (a) The Advertisement is part of a campaign for Bundaberg Red Rum which centres around a television commercial which parodies a scene from a famous 1970's film featuring a classic Mexican standoff. The scene features Bundy R Bear, a Bundaberg Distilling Company icon since 1961, and was filmed on a farm 45 minutes outside of Canberra. The advertisement conveys the message, in a humorous way, that Bundaberg Red Rum is smoother tasting than its bourbon competitors. The television commercial ends with the line "Make Your Smooth" again a parody of the line "Make Your Move" reinforcing the "smooth" credentials of Bundaberg Red Rum. The Advertisement features an image of Bundy R. Bear in the same outdoor setting as the television commercial, with an image of a Bundaberg Red bottle and the headline "Make Your Smooth".
 - (b) We do not believe that the advertisement encourages underage drinking and nor does it have a strong or evident appeal to children or adolescents. Diageo has gone to considerable lengths to ensure that the theme and the setting of this campaign, including the Advertisement, are aimed at a 25+ year old consumer. The 1970's movie genre reference; the treatment of the Bear as a mature, adult male, and the whole context and theme of the Advertisement are directed at the more mature consumer who appreciates the smoothness and distinguishing taste of the Bundaberg Red Rum filtered through red gum. The new Bundy R. Bear has been developed using computer generated imagery ("CGI"), a technology recognised globally for its ability to create life like characters. The Bundy R. Bear character as represented in CGI is even less reminiscent of a bear which could appeal to children or adolescents. This is because the CGI Bundy R. Bear looks less like a bear and more manlike, he stands on two feet, he 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. His build is muscular. His character and personality are structured around a 25+ year old male. The Bundy Bear is clearly distinguishable from popular children's characters. The Bundy Bear is also not behaving in a child-like or adolescent manner. The Bundy R. Bear character has been used with the product since 1961. Bundaberg Rum has an ageing consumer profile, meaning the age of the consumer of this product has increased over time. Bundaberg Rum is predominantly consumed by males over the age of 30 years. We believe that the appearance and gruff, serious character of Bundy R. Bear is not at all

child-like or adolescent nor does it appeal to children or adolescents. This is further emphasized when considered in the context of the setting of the Advertisement and the campaign from which it is drawn. As to the age of persons appearing in the advertisement, there are no human images in the Advertisement. The Advertisement presents a balanced and responsible approach to the consumption of alcohol beverages. There is no suggestion of, nor encouragement of, excessive consumption or abuse of alcohol, underage drinking or other offensive behaviour. The Advertisement does not depict any consumption of alcohol, nor does it present a situation in which consumption is encouraged.

- (c) Diageo applies a strict policy of not placing outdoor advertisements within a 500 metre radius of any school. The placement of the Advertisement opposite Shenton College was an error by Diageo's media space buyer (Mindshare) and outdoor media space supplier (Adshel). We had been made aware of this error prior to receiving notice of the complaint received by ABAC and had already demanded that Mindshare have the Advertisement removed immediately. We have been informed that the Advertisement was removed immediately. The outdoor supplier (Adshel) is investigating how the error occurred. It may be that the particular bus shelter had been incorrectly coded and it was therefore not identified as being near a school. Whilst this error is regrettable, we are pleased that there has been a constructive outcome. As soon as this error was brought to our attention the Advertisement was removed hence minimising any associated risks and as a result of this breach we have reviewed the media buying process to guard against such an error reoccurring. We consequently have an even more robust process for purchase and use of outdoor media space. To date, prior to briefing any outdoor supplier, Mindshare would inform the outdoor supplier of Diageo's requirement that our advertisements not be placed within a 500 metre radius of schools. There would be no further checks on the placement of advertisements. As a result of the error which has occurred and which is the subject of this complaint, a new and more robust process has been implemented. This new process requires that Mindshare obtain a pre-approved proposed site list from Adshel which will be checked by Mindshare to ensure that there are no selected sites which fall within a 500 metre radius of schools prior to the placement of advertisements.

The Panel's View

14. This complaint raises two separate issues. The first issue is whether the advertisement breaches section (a)(ii) and (b) of the ABAC by encouraging underage drinking and having a strong and evident appeal to children and this issue will be considered by the Panel. The second issue is whether the advertisement breaches the OMA guidelines relating to alcohol advertisements due to its placement near a school. In the past the Panel has considered whether the placement of the advertisement breached the OMA guidelines. However, recently, the OMA has advised that they will take responsibility for considering and resolving this issue when it arises in alcohol advertising complaints. Accordingly, in this case, the OMA has considered and resolved the issue of whether the placement of this advertisement has

breached the OMA guidelines and this second issue will not be considered by the Panel.

15. The complainant contends that the advertisement is in breach of the ABAC by reason of both its content and placement. The ABAC applies across all media *i.e.* print, television, radio, billboards and the internet and is a content based set of standards. This means that, regardless of where an alcohol ad is placed, its content is to meet the standards laid down in the ABAC. The issue of where the ad is placed is indirectly relevant in terms of assessing the content of the ad in that the audience of the ad is a relevant consideration.
16. The Panel has considered the use of the Bundy Bear character in several previous determinations, such as:
 - 11/06 – dated 25 April 2006
 - 107/08 – dated 6 November 2008
 - 58/09 – dated 26 June 2009 and
 - 37/10 – dated 14 October 2010.
17. From these determinations, the Panel has indicated that the Bundy Bear character would have appeal to children. Whether this appeal elevated the ad as a whole into having “strong or evident” appeal to children in breach of section (b) of the ABAC will depend on the context in which the character was used and depicted.
18. The Panel notes that the nature of the Bundy Bear as used in this advertisement and the TV campaign considered in Determination 37/10 differs from the earlier depictions of the character. The Bundy Bear is now a computer-generated version resembling characters used in computer games; whereas the older version was slightly more akin to characters such as Humphrey Bear.
19. The advertiser explains the outdoor media execution is part of a wider marketing campaign featuring a television ad. While many viewers of the outdoor ad may have seen the TV ad, no doubt some viewers of the bus shelter shed ad will not have seen the TV ad. In any event, the outdoor ad needs to be assessed in its own right.
20. The placement of the ad in the vicinity of a school does mean that the ad will be viewed by adolescents. The advertiser accepts the placement on the bus shelter shed was a mistake and is contrary to the OMA guidelines on the location of alcohol advertising. This does not, however, of itself mean that the ad, irrespective of its content, automatically can be said to have “strong or evident” appeal to children or adolescents.
21. The Panel does not believe the ad breaches section (a) (ii) or (b) of the ABAC. In reaching this conclusion, the Panel noted:
 - The ad is in essence a still shot of a scene drawn from the TV advertisement. In Determination 37/10 the Panel did not find the TV ad in breach of the Code.

- The ad features the Bundy Bear character, a picture of the product and the strap line “make your smooth!” Taken as a whole, these elements are not considered to have a strong appeal to children or adolescents.

22. Accordingly, the complaint is dismissed.

The Advertising Standards Bureau
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20 September 2010

Dear Sir/Madam,

Re: Bundaberg 'Make Your Smooth' Outdoor Advertisement opposite Shenton College, Stubbs Terrace, Shenton Park, WA

Cancer Council WA is an independent not-for-profit organisation that conducts research, cancer prevention programs and advocacy in order to reduce the burden of cancer on the community. Cancer Council WA is concerned about the level of alcohol consumption in Australia due to the role alcohol consumption plays in increasing people's risks of developing certain cancers.

Shenton College is a leading coeducational state school in Western Australia. We strive to empower students to reach their true potential so that they can be active contributors to our society, both in their local community and beyond.

The McCusker Centre for Action on Alcohol and Youth (MCAAY) is an independent centre which aims to reduce alcohol-related harms in young people.

Cancer Council WA, Shenton College and MCAAY are concerned about the level and harms of alcohol consumption by adolescents and young people in Australia, which is precipitated by alcohol companies' marketing their products to adolescents and young people. Our concern in this instance relates to the outdoor advertising at the bus stop directly opposite the entrance to Shenton College.



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T 08 9388 4333
F 08 9388 4399

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T 08 9382 9333
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Cancer Council
Helpline 13 11 20
www.cancerwa.asn.au

We contend that the advertisement breaches:

- (i) Section 5 of the 'Responsibilities towards the community' section of the Outdoor Media Association's (OMA) Code of Ethics; which incorporates a breach of Part 1(b) of the Alcohol Beverages Advertising Code; and
- (ii) Section 6 of the 'Responsibilities towards the community' section of the Outdoor Media Association's Code of Ethics.

Description and placement of the advertisement

The product advertised is Bundaberg Rum, a brand owned by Diageo Australia. The advertisement features the Bundy Bear character standing behind the slogan 'Make Your Smooth' and an image of a bottle of Bundaberg Rum. The advertisement is placed on the inside of the bus shelter directly opposite the entrance to Shenton College. The advertisement is displayed at the main bus stop where Shenton College students are dropped off and picked up from school. The students at Shenton College are between the ages of 12 and 17.

Section 5 'Responsibilities towards the community': OMA Code

Section 5 of the OMA Code incorporates other advertising Codes in to OMA's ethical commitments. Section 5 reads: *'We only endorse the display of advertising that adheres to the following advertising industry codes of practice: ... the Alcohol Beverages Advertising Code (ABAC).'*

The ABAC was established to ensure that Australian advertisers of alcohol beverages promote their products in a responsible manner and do not direct their advertisements at, or encourage alcohol consumption by, underage persons.¹ Under Part 1(b) of ABAC, advertisements for alcohol products must not have strong or evident appeal to children or adolescents.²

Cancer Council WA, Shenton College and MCAAY contend that the Bundaberg Rum advertisement breaches ABAC as it has strong or evident appeal to children or adolescents. We submit that both the placement and the content of the advertisement appeal to children and adolescents.

Firstly, the advertisement is placed at a bus stop opposite a school. It commands direct and frequent attention from school children, which should in itself be regarded as sufficient evidence of evident appeal to children.

Secondly, the advertisement features a large animal character, the 'Bundy Bear'. We note that the inclusion of animals in an advertisement is one of the factors to be considered in determining whether an advertisement is directed to children for the purposes of the Commercial Television Industry Code of Practice.³ We submit evidence that a majority of Australian children recognize the 'Bundy Bear' character and associate it with Bundaberg Rum, and contends that the content of the advertisement has a strong or evident appeal to children, in breach of ABAC.⁴

Section 6 'Responsibilities towards the community': OMA Code

The OMA Code of Ethics states that OMA is *'Committed to the responsible advertising of alcoholic beverages, including limiting their display around schools, as outlined in the OMA's Alcohol Advertising Guidelines.'* The Guidelines include a policy that requires all members to

¹ See *Alcohol Beverage Advertising Code* at [http://www.abac.org.au/uploads/File/ABAC%20Code%20\(October%202007\).pdf](http://www.abac.org.au/uploads/File/ABAC%20Code%20(October%202007).pdf)

² ABAC defines "child" to be a person under 14 years of age and "adolescent" to be a person aged 14-17 years inclusive.

³ Advisory Note: Commercials or Community Service Announcements Directed to Children: 2010 Commercial Television Industry Code of Practice.

⁴ Carter, O., Phan, T. & Donovan, R. (accepted August 2010) (letter) Three-quarters of Australian children know the Bundaberg Rum Bear: are current alcohol advertising restrictions working? *ANZJPH*.

'limit the advertising of alcohol products on fixed signs that are located within a 150 metre sight line of a primary or secondary school.'

The Bundaberg Rum advertisement is placed at a bus stop directly opposite the entrance to Shenton College. The advertisement is in direct line of sight from the school, and the bus stop is viewed by hundreds of children catching the bus to and from school each day. The images attached to this complaint show the proximity of the advertisement to the entrance of the school.

We submit that the Bundaberg Rum advertisement is a direct and flagrant contravention of Section 6 of the OMA Code and the associated Guidelines for advertising around schools.

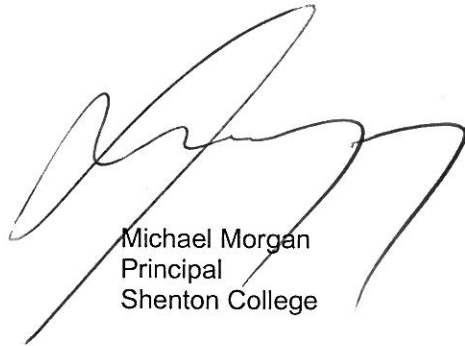
Action by the Advertising Standards Board

The placement and content of the Bundaberg Rum Advertisement directly opposite Shenton College actively appeals to the school's adolescent students, and breaches the restrictions on alcohol advertising around schools. Cancer Council WA, Shenton College and MCAAY consider the advertisement unacceptable, and we urge the Advertising Standards Board to act swiftly and decisively to rectify clear breaches of the OMA and ABAC Codes.

Sincerely,



Terry Slevin
Education and Research Director
Cancer Council WA



Michael Morgan
Principal
Shenton College



Mike Daube
Professor of Health Policy
Curtin University
Director
McCusker Centre for Action on Alcohol and Youth

ADSHIELD



SHIELD





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Fight over beer billboard near school

CATHY O'LEARY

MEDICAL EDITOR

WA health groups have complained about a billboard for Pure Blonde Naked beer which, they say, breaches guidelines because it is opposite a high school and could entice teenagers to drink.

Shenton Park College, the Cancer Council of WA and the McCusker Centre for Action on Alcohol and Youth are complaining to advertising industry group, the Outdoor Media Association, saying the billboard breaches its code of ethics by advertising alcohol within a 150m sightline of a school.

They say it is not the first time alcohol has been advertised near schools — despite the harm from under-age and binge drinking.

Cancer Council nutrition and physical activity co-ordinator Rebecca Johnson said the sign was about 75m from the school's main entrance.

It was visible daily to hundreds of children as young as 12.

She said it was yet another failure of the self-regulatory system that governs alcohol advertising.

She said that alcohol companies

appeared to ignore the rules.

Ms Johnson said such advertising should be pre-vetted and the Outdoor Media Association needed to monitor compliance of its ethics.

McCusker centre director Mike Daube said the industry could not be trusted to control itself.

A Foster's Group spokeswoman said the company took advertising guidelines seriously and would act on any breach.

A year ago, health groups fought similar Bundy Bear adverts and won.



Row brewing: Rebecca Johnson, of the Cancer Council, in front of a billboard close to Shenton College.

Picture: Nic Ellis



Strip show for naked blonde

A billboard advertising Pure Blonde Naked beer has been ripped down less than 24 hours after complaints about its position near Shenton College were made public.

Billboard owner APN Outdoor is a signatory to the Outdoor Media Association's voluntary code of ethics, which prevents advertising alcohol within 150m of a school.

CEO Richard Herring said he was investigating what went wrong.

"We've got many signs and we're aware of the sensitivities of this," he said. "We self-regu-

late, so we act very quickly when we are notified."

He said the company was reviewing its internal systems to ensure it didn't happen again.

The Cancer Council of WA complained to the Outdoor Media Association (OMA) on Wednesday that the advertising breached the voluntary code of ethics.

The OMA is the peak industry body for outdoor advertising in Australia. APN Outdoor is a member.

Cancer Council nutrition and outdoor activity coordinator Rebecca Johnson said it was a straightforward rule and if advertisers were unaware of it,

OMA had a lot of work to do to educate its members.

"The company acted quickly because the community expects it to," she said. "There are clear guidelines and this was a flagrant breach of those guidelines."

She said it was the second time in several weeks the council had complained about alcohol advertising around Shenton College.

School principal Mike Morgan threw his support behind the council saying the advertisers should either adhere to the policy or the policy should be changed.



Get it off ... APN Outdoor workers strip the beer sign from the billboard in Stubbs Terrace, Shenton Park, after complaints that it breached the outdoor advertising standards. Photo: Paul McGovern