



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0272/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Diageo Australia Ltd</b>
<b>3</b>	<b>Product</b>	<b>Alcohol</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet - social</b>
<b>5</b>	<b>Date of Determination</b>	<b>11/07/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.6 - Health and Safety Depiction of smoking/drinking/gambling
- 2.5 - Language inappropriate language
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.1 - Discrimination or Vilification Gender
- 2.1 - Discrimination or Vilification Race

### DESCRIPTION OF THE ADVERTISEMENT

The complaint refers to the official Smirnoff Facebook Page and the various comments and photographs uploaded by Smirnoff and members of the community.

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*This submission asks that the Alcohol Advertising Review Board examine content on the Australian Facebook pages of VB and Smirnoff. When applying the AANA and ABAC codes to material openly available on the Facebook pages of VB and Smirnoff it appears that some of it features:*

- Sexism racism and other forms of discrimination or vilification
- Irresponsible drinking and excessive consumption
- Obscene language depiction of under-25 year olds consuming alcohol
- Material that connects alcohol consumption with sexual or social prowess

*We have detailed examples of each of these practices in the attached appendix.*

*The Facebook pages are also openly accessible to Facebook users under the age of 18.*

*Users under the age of 18 are able to view the content 'Like' the pages so that any content posted is pushed to their news feeds and they are also able to comment and post content. Some of the examples we attach here concern content produced by these brands other examples relate to content created by 'fans' that is instigated facilitated or allowed by the brand. The Alcoholic Beverages Advertising Code (ABAC) presents itself as 'media neutral' and therefore also applies to brand activity on social media platforms. This would imply that brands maintaining official Facebook pages are charged with the responsibility to moderate fan conversations on their Facebook pages and to remove content that is in breach of the Australian Association of National Advertiser's Code of Ethics and the Alcoholic Beverages Advertising Code (ABAC). The view that brands are responsible for consumer created content on their social media pages has been supported by a recent decision of an Australian Federal Court (Australian Competition and Consumer Commission v Allergy Pathway Pty Ltd (No 2) [2011] FCA 74)1 that a health company was responsible for Facebook and Twitter comments by fans on its account in defiance of a court order that the company not make misleading claims about its allergy treatments The Federal Court concluded that Allergy Pathway was responsible for third-party comments where it knew of them and made a decision not to remove them from its Facebook page In this context one could come to the conclusion that some of the content posted on the official Facebook pages of VB and Smirnoff breaches the self-regulatory guidelines as outlined in the ABAC-scheme This involves content that is created and posted by these brands and their fans Following the interpretation of the court in the case outlined above it is plausible to ask that the board consider if and to what extent alcohol brands are responsible for the content on their Facebook pages including fan produced content they facilitate instigate or allow.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*We refer to your letter of 21 June 2012, concerning a complaint received by ASB in relation to the Official Smirnoff Australia Facebook page (Smirnoff Facebook Page). 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 long-standing support for the Advertising Standards Bureau (ASB) and commitment to upholding the Australian Association of National Advertisers Code of Ethics (AANA), as well as our best-practice global marketing standards.*

### *1. Description of and comments on the Smirnoff Facebook Page*

*The complaint refers to the official Smirnoff Facebook Page. The AANA defines Marketing or Advertising Communication as "any material that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product". The Smirnoff Facebook Page is a tool to network with adult consumers of legal purchase age for alcohol (18 years in Australia), given that the consumers who "like" the page are generally already Smirnoff purchasers. On this basis, we assert that the Smirnoff Facebook Page and all inclusive content should not be considered as advertising.*

*Facebook brand pages, just like individual Facebook user pages, contain a wide range of content. Some of this content is said to be advertising purchased by Diageo, but much of it is not. At the time of writing this response, the Smirnoff Facebook Page wall contains links to Youtube videos, posts requesting comments on current issues, and requests for cocktail recipes. The Smirnoff Facebook Page also includes a number of other sections, such as the Photo Albums, an 'Etiquette' section, and a game that allows users to mix their own music. To further clarify, Diageo does purchase advertising space on Facebook to run branded advertising but none of this advertising has been included in the complaint. This 'paid-for' advertising is fully assessed to ensure compliance with the AANA and with the principle policy of the Alcohol Beverage Advertising Code (ABAC).*

*Facebook is a communications channel or medium just like TV and radio and therefore it is not appropriate to consider all content as advertising material. Facebook, just like television and radio, is a platform for engaging with people in a myriad of different ways (e.g. advertising, relationship building, and entertainment). It therefore follows that Facebook fan pages and the content they contain should not be assessed as traditional, paid-for advertising. We also wish to note that a Facebook fan page can be created at no cost to an individual or brand owner. Supplementary activities are charged at a cost, but the content under complaint is in fact free content.*

*The photographs of adult consumers referred to in complaint 0272/12 are content uploaded by the Smirnoff brand owner, Diageo, during or following events, and for the benefit of those who feature in the photographs. Events are held at licensed premises which are regulated by Responsible Service of Alcohol, and attendees are of legal purchase age. The various photo albums housed on the Smirnoff Facebook Page (Photo Albums) consist of photographs taken at events which have already taken place, thus not advertising for consumers to attend.*

*Images in the Photo Albums are taken at events such as Splendour in the Grass and Smirnoff Nightlife Exchange Program. Adult consumers featured in the photographs are in specific areas reserved for adults and were confirmed by staff at the event to be over the legal purchase age. Photos are taken, assessed against internal and external codes, and uploaded to the Facebook Page. This process was managed by Profero, the digital agency working on the Smirnoff brand at the time of the activity. Before uploading the images, staff reviewed all photos to ensure that none contained irresponsible drinking or offensive behaviours and that all individuals featured were adults of legal purchase age or old (Legal Purchase Age, LPA +).*

*Diageo operates to the highest standards of marketing practice. We are committed to ensuring that all content contained within the Smirnoff Facebook Page complies with the letter and spirit of the AANA, ABAC and our own Diageo Marketing Code (DMC).*

*2. Specific Response to ASB issues raised by complainants as per your letter dated 21 June 2012*

*We are unclear as to exactly how the ASB issues raised directly relate to the Smirnoff Facebook Page, however have responded to each section of the AANA highlighted in the complaint. Along with this, we have addressed what we perceive to be the main underlying concerns.*

*2.1. Does the advertisement breach section 2.6 of the AANA by depicting material contrary to Prevailing Community Standards on health and safety.*

*We do consider that there are any instances of material appearing in the Photo Albums which is contrary to Prevailing Community Standards on health and safety, whether in the form of an image or user comments.*

*2.2. Does the advertisement breach section 2.5 of the AANA by failing to use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium)*

*The Smirnoff Facebook Page's "audience" consists of adults – people who are of legal purchase age (18 years old) or above. All comments made on individual images are moderated for offensive language, cursing, insults and generally upsetting content. With that said any opinions or statements posted to images by fans are not the opinion or view of Diageo, and to demonstrate this we try and allow Facebook to be an honest open channel for discussion not controlled or closed off by Diageo. This is a universal strategy recommended by Facebook and applied by many successful, global brands.*

*Does the advertisement breach section 2.4 of the AANA by failing to treat sex, sexuality and nudity with sensitivity to the relevant audience*

*The audience in this instance consists of adults. We do not consider there to be any images contained in Appendix D or E of the complaint or elsewhere in the Photo Albums which depict sex, sexuality or nudity inappropriately. There is no user generated content in the Photo Albums; therefore Diageo controls all images which are uploaded. Images are individually vetted against the DMC, a code which is reflective of the values of the ABAC code and the AANA. A photograph of a consumer posing with an attractive woman, both over the LPA, is not offensive.*

*2.4. Does the advertisement breach section 2.1 of the AANA by depicting gender discrimination or vilification*

*We do not consider there to be any instances of gender discrimination or vilification in content appearing in the Photo Albums, whether in the form of an image or user comments. Promotional staff members are both male and female and are widely used in brand marketing of both alcohol and non-alcohol brands. This is behaviour which is not tolerated by Diageo and is regulated by our Diageo Code of Business Conduct, which applies to all third parties acting on our behalf.*

*2.5. Does the advertisement breach section 2.1 of the AANA by depicting racial discrimination or vilification*

*We do not consider there to be any instances of racial discrimination or vilification in content appearing in the Photo Albums, whether in the form of an image or user comments.*

*2.6. Material available on the Facebook Page features irresponsible drinking and excessive consumption*

*We do not consider there to be any photographs of irresponsible drinking or excessive consumption in the Photo Albums. Adult consumers featured in such images are pictured with one drink each (and in some cases, no drinks at all) and are shown to be enjoying themselves responsibly. The photographs depict responsible, moderate consumption in a relaxed social setting. The photograph of the bottles does not intend to (nor does it actually) imply that people have been consuming Smirnoff in an irresponsible and/or excessive way. The photograph was taken at an event attended by a large numbers of patrons.*

*2.7. Material openly available on the Facebook Page features under 25 year olds consuming alcohol*

*The AANA does not prohibit consumers who are under 25 years old from appearing on the Facebook Page. The adult consumers shown in the photographs are legally entitled to purchase and consume alcohol in this country.*

*2.8. The Facebook Page is openly accessible to Facebook users under the age of 18. Users under the age of 18 are able to view the content, 'Like' the pages so that any content posted is pushed to their news feeds, and they are also able to comment and post content.*

*This is incorrect. The Smirnoff Facebook Page has an age gate put in place by Facebook. Facebook has such a control in place to ensure that alcohol content cannot be viewed by individuals under the legal purchasing age (LPA) which in Australia is 18 years old.*

*Facebook users who are under the LPA are not able to view the Smirnoff Facebook Page and it does not appear when searched for. It is only once the Facebook user reaches LPA that*

*alcohol related brands will begin to appear when searched for within Facebook. Facebook users must be over the LPA to 'like' the Facebook Page and view content on the Facebook Page. Facebook Users may only comment on an image in the Photo Albums if a Facebook user (over the LPA) has tagged him/herself in that image and it therefore appears on their own personal timeline. No Facebook user may post content.*

*All images that are located in the Photo Albums are owned by Diageo and users are not able to upload content into the Photo Albums or onto the Smirnoff Facebook Page. Individuals under LPA are not able to view such images as these images are housed on the Smirnoff Facebook Page, unless they have been downloaded by a user who is of LPA and added to their own Facebook profile page. This behaviour, as you will hopefully appreciate, is not within the ability of Diageo to control.*

*We are pleased to have had this opportunity to confirm our long-standing support for the ASB and commitment to uphold the AANA Code.*

*We would be happy to provide you with any further information which you may require.*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement contains material that depicts the excess consumption of alcohol and depicts people under 25 consuming alcohol.

The Board reviewed the material provided by the complainant which included images taken from the Facebook page. The Board also noted the advertiser's response to the material provided.

The Board first considered the definition of advertising or marketing communications. Under the Code, advertising and/or marketing communication means "any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct."

The Board considered that the Facebook site of an advertiser is a marketing communication tool over which the advertiser has a reasonable degree of control and could be considered to draw the attention of a segment of the public to a product in a manner calculated to promote or oppose directly or indirectly that product. The Board determined that the provisions of the Code apply to an advertiser's Facebook page. As a Facebook page can be used to engage with customers, the Board further considered that the Code applies to the content generated by the advertisers as well as material or comments posted by users or friends.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the advertisement includes a number of images of young people in a variety of settings and venues, some of whom are shown with a drink in their hand. The people in the images appear to be confident and in control and no images of people appeared to indicate an excessive consumption of alcohol.

The Board noted the complainant’s concern about the apparent age of the people appearing in the photographs and considered that the question of under 25’s appearing in alcohol promotions is not covered by the Code, but remains an issue to be considered by the ABAC under the Alcohol Beverages Advertising Code scheme. The Board noted that all of the images of people appear to be taken in licensed premises where people under the legal drinking age of 18 are not able to enter lawfully.

The Board noted one image showing a number of empty bottles of Smirnoff vodka however there was no other information in the photograph to accurately determine the context of the photograph in terms of location, occasion or numbers of individuals consuming the product.

The Board considered that the advertisement did not material that was contrary to prevailing community standards on health and safety and was not in breach of Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaints.