



Case Report

1	Case Number	0108/13
2	Advertiser	Diageo Australia Ltd
3	Product	Alcohol
4	Type of Advertisement / media	Transport
5	Date of Determination	10/04/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Depiction of smoking/drinking/gambling
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

There are two Advertisements for J&B Scotch Whisky currently in market. The 'Junkyard & Bling' Advertisement brings together two different elements: Junkyard, which starts with the letter J, and Bling which starts with the letter B. It consists of a photograph of people dressed in 'bling' outfits dancing in a car junkyard with text saying 'Junkyard & Bling: where unexpected parties start'. The 'Jelly & Bass' Advertisement brings together two different elements: Jelly, which starts with the letter J, and Bass, which starts with the letter B. It consists of a photograph of people dressed in party clothes dancing in a surreal scene where the speakers, DJ booth and couch are all made of jelly with text saying 'Jelly & Bass: where unexpected parties start'. Both Advertisements contain a responsible drinking message and standard drinks logo.

THE COMPLAINT

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

This suggests alcohol is needed to have a good time and is sending the wrong message to our already impressionable children.

In a society where domestic violence, binge drinking, anti-social behaviour and an unacceptable road toll are all impacted by excess alcohol I feel it is inappropriate to advertise alcohol on the sides of buses that come onto school grounds to transport children

aged between 5yrs and 18yrs. The young people in the advertisement appear to be leading a great life, partying without a care in the world. Of course, they are all beautiful and wearing the latest in high fashion. This does not in any way depict the true effects of over indulgence in alcohol. Our children should not be influenced in this misleading way.

The buses with alcohol advertisements are being used as school buses. I believe that this breaches Australian standards for advertisement a) must not encourage under age drinking and b) must not have a strong appeal to children.

Children are forced to catch these buses with alcohol being literally plastered all over them. Promoting drinking to underage students from K - yr12.

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 26 March 2013, concerning complaints received in relation to the J&B Scotch Whisky Advertisements appearing on bus transit and billboards in Newcastle. Thank you for inviting us to provide comments for the Board'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 in the context of the AANA Code of Ethics ("Code") and to respond to your specific questions. We would also like to confirm our long-standing support for the Advertising Standards Bureau and commitment to uphold the Code, the Alcohol Beverages Advertising Code (ABAC), as well as our internal best-practice global marketing standards.

General description of and comments on the Advertisement.

There are two Advertisements for J&B Scotch Whisky currently in market. We are not clear which Advertisement the complaint is specifically referring to, so we are responding broadly to the complaint. The 'Junkyard & Bling' Advertisement brings together two different elements: Junkyard, which starts with the letter J, and Bling which starts with the letter B. It consists of a photograph of people dressed in 'bling' outfits dancing in a car junkyard with text saying 'Junkyard & Bling: where unexpected parties start'. The 'Jelly & Bass' Advertisement brings together two different elements: Jelly, which starts with the letter J, and Bass, which starts with the letter B. It consists of a photograph of people dressed in party clothes dancing in a surreal scene where the speakers, DJ booth and couch are all made of jelly with text saying 'Jelly & Bass: where unexpected parties start'. Both Advertisements contain a responsible drinking message and standard drinks logo. These Advertisements were not in any way created with the aim or intention of appealing to children and/or adolescents.

Advertising pre-approval
We note that Diageo complies with the ABAC Code, DSICA Code and Diageo's own internal global marketing code. The Advertisement was submitted for APPS pre-vetting in both the concept and final creative stages. APPS reviewers did not believe that the final Advertisements had strong or evident appeal to children. Concerns raised during the APPS approval process were addressed and resolved before the Advertisement was released (Final APPS Approval No #12086).

1. Section 2.6 of the Code

The complaint alleges that the Advertisement is in breach of the Section 2.6 of the Code which reads "Advertising or Marketing Communications shall not depict material contrary

to Prevailing Community Standards on health and safety”.

The complainants allege that the Advertisement breaches the Code because:

1.1. Content: Underage or Irresponsible/Excessive Consumption

(The content of the Advertisement encourages underage, irresponsible or excessive consumption which is contrary to Prevailing Community Standards on health and safety)

We are confident that the Advertisement does not encourage underage consumption or have strong or evident appeal to children or adolescents. The Advertisement was targeted at people over the age of 18 years and we are confident that the Advertising has primary appeal to those over 18 years.

The assertion that the “young people” in the Advertisement encourage underage consumption is also broad and undefined. Diageo took great care to ensure that the Advertisement would not have strong or evident appeal to adolescents or children by certifying that all models featured in the Advertisement were and looked over 25 year old and had their proof-of-age ID checked before they were recruited for the Advertisement. There are no open containers of alcohol and no alcohol consumption depicted in the Advertisement and a responsible drinking message has been included.

Some complainants assert that “colourful... eye-catching graphics” or the depictions of an “irresponsible party culture” encourages underage consumption. We believe that these statements are broad and lack adequate definition. Diageo believes that there is no basis for the claim that “colourful... eye-catching graphics” or a “party culture” supports underage consumption. In fact, as stated above, there are no open containers of alcohol and no alcohol consumption depicted in the Advertisement and a responsible drinking message has been included in the Advertisement.

Similarly, some complainants allege that the Advertisement encourage excessive, irresponsible or underage drinking because the Advertisements “show people enjoying life” that “by drinking J&B their social life will be fantastic”, “suggest[ing] alcohol is needed to have a goodtime” and “unless you are drinking alcohol you cannot have fun”. We believe that these statements are unfounded and do not indicate that the Advertisement encourages underage or excessive or irresponsible consumption. The Advertisement does not imply that drinking J&B will make you happy or result in social success. There is no transformative moment in the static Advertising. We believe that it is reasonable to depict a positive view of our product and that showing people having fun or failing to depict the “true effects of over-indulgence in alcohol” does not equate to encouraging excessive or underage consumption, particularly given that there is considerable evidence to show that the majority of adults consume alcohol responsibly.

Further to this, the Advertisement was submitted for APPS pre-vetting in both the concept and final creative stages (Final APPS Approval No #12086). At no time did APPS reviewers express concerns about the Advertisement having strong or evident appeal to children.

Concerns raised during the APPS approval process were addressed and resolved before the Advertisement was released. Therefore, we believe that the content of the Advertisement does not encourage underage consumption.

1.2. Placement: Underage Consumption

The advertisement is placed in on buses that are “used to transport school students to and from school” and this “encourages underage drinking”.

While placement of an advertisement is not a requirement of the ABAC or AANA codes, Diageo requests our agencies to ensure our transit advertising is not placed on buses that travel on school routes. We can confirm that by virtue of our obligations under our own global Diageo Marketing Code, we would never instruct that the Advertisement be displayed on a bus servicing a high school nor any school bus. Furthermore, our contractual arrangements with our media buying agencies and more generally, our creative agencies

require that they agree to abide by all applicable laws, codes and regulations relating to the content and placement of our marketing materials. They are also responsible for ensuring that third party subcontractors abide by both the ABAC and the Diageo Marketing Code. In order that this requirement is understood and complied with, we regularly provide training to our agencies on these requirements so that they are in no doubt as to their obligations.

Accordingly, we were very concerned when we learnt of the complaint.

We do not believe that the placement of the Advertisement breaches the code for the following reasons:

1.2.1. The Advertisements were placed on public commuter buses and, as members of the general public, school children are able to catch public commuter buses. Diageo takes great care to ensure that our marketing material is placed in locations where more than 70% of viewers can be reasonably expected to be over the age of 18. According to Nielsen Consumer Media View (CMV) 2013 SO10 "Travel to work or study by bus", 78% of people who catch the bus for work or study are aged 18-55. Consequently, we do not believe that this placement is in breach of the Code.

1.2.2 The Advertisement was not placed inside a shopping centre.

1.2.3 Disappointingly in one incident, the Advertisement was placed on a commuter bus that was wrongly re-routed by the bus company, CDC, to servicing a high school. We were unaware of this occurrence and did not authorise it. In fact, the placement breaches our contractual agreement with Ikon which requires it to ensure that its subcontractors abide by the Diageo Marketing Code and ensure that transit advertising does not appear on school buses.

This placement of the Advertisement was out of our immediate control. CDC did not seek prior approval from Diageo, Moove Media or Ikon to re-route the bus displaying the Advertisement to a school route.

We became aware of this issue upon receiving an ABAC complaint and we immediately addressed the issue. We informed Ikon of the incident who then contacted Moove Media who had the advertisement removed from the bus within eight hours of receiving notification of the complaint. We attach a letter from Moove Media addressing our complaint. Additionally, the following measures have been taken to ensure that this mistake is not repeated:

a. Moove Media has marked the buses that have been allocated to school runs in their system to ensure that they do not place any inappropriate material in these advertising spaces.

b. Moove Media will scrutinise every alcohol placement individually and check every bus prior to installation of advertising.

c. Ikon has reiterated to Moove Media the importance of complying with all applicable laws, codes and regulations relating to the content and placement of our marketing materials.

Therefore, we believe that the placement of the Advertisement does not encourage underage drinking and does not contradict Prevailing Community Standards on health and safety.

In light of the above, we do not believe that the advertisement is in breach of section 2.6 of the Code.

Specific Response to Section 2 of the Code

We appreciate that the Board will review the Advertisements more broadly against Section 2 of the Code and accordingly we would like to take this opportunity to address the remaining sections of the Code:

2. Section 2.1: The Advertisement does not discriminate against or vilify any person or section of the community on any grounds.

3. Section 2.2: The code states that advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading any individual or group of people. Complaints received by the ASB on 21 March 2013 describe the

Advertisement as “depicting men and women wearing bathing suits...at a party” and “partying... in a club environment and in a ‘junkyard’ with women in this particular environment wearing short shorts, crop tops etc.”

Diageo does not believe that the choice of the models’ clothing employs sexual appeal in a manner which is exploitative and degrading any individual or group or people. The clothing of the models was intended to reflect the popular fashion choices amongst young adults above legal purchase age when they attend parties at the time the Advertisement would be in market (summer season). The choices reflect fashions for attending themed parties outdoors, in the case of the Junkyard & Bling creative, or inside nightclubs, in the case of the Jelly & Bass creative. We are confident that this has been achieved and that the Advertisement does not employ sexual appeal in an exploitative or degrading manner.

4. Section 2.3: The Advertisement does not present or portray violence.

5. Section 2.4: Section 2.4 states that Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience. As stated above, complaints received by the ASB on 21 March 2013 describe the Advertisement as “depicting men and women wearing bathing suits...at a party” and “partying... in a club environment and in a ‘junkyard’ with women in this particular environment wearing short shorts, crop tops etc.” Diageo believes that the choice of the models’ clothing is compliant with the AANA code. Please refer to our answer to 3 above.

6. Section 2.5: No strong or obscene language is used in the Advertisement.

7. The AANA Code of Advertising & Marketing Communications to Children: We consider the Advertisement compliant with all sections of the AANA Code for Advertising and Marketing to Children as Section 1 of this code specifically applies to Advertising or Marketing Communications which... are directed primarily to Children”. The Advertisement was targeted at people over 18 years old and we do not believe that the Advertisement would have strong, evident or primary appeal to children (those aged less than 14 years).

8. The AANA Food & Beverages Advertising & Marketing Code: We consider that the Advertisement complies with all sections of the AANA Food & Beverages Marketing Communications Code as Section 1 of this code specifically excludes alcoholic beverages. We are pleased to have had this opportunity to confirm our long-standing support for the AANA Advertiser Code of Ethics and commitment to uphold the 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 concern that the advertisement depicts scenes that encourage drinking and is not suitable for viewing by children.

The Board viewed the advertisement and noted the advertiser’s response.

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 that the first advertisement features a brightly coloured background of large speakers and people dancing in the foreground. The right hand side of the image has a large

bottle of J&B Scotch and the words Jelly & Bass. The second advertisement is a junkyard scene with a man holding a large portable boom box and people dancing around. The right hand side includes the bottle of scotch and the words Junkyard & Bling. The images also include the text “where unexpected parties begin.”

The Board noted that the images are part of a series of images with depictions that are clearly intended to be stylized and fanciful.

The Board noted that the people used in the images are clearly over the age of eighteen and appear to be gathered with friends in party style environments. There Board noted that there is an obvious connection to the music component and dancing and the people all appear to be having fun.

The Board noted the use of the tagline “where unexpected parties begin” and the words preceded with J & B. The Board considered that the link between the brand name J&B scotch and the use of words that start with these same letters is evident in juxtaposition with the images. The Board noted the first image has large speakers made of Jelly and the Bass meaning the music. The second image including a scene within a Junkyard combined with people wearing heavy jewellery and shiny jackets portraying Bling.

The Board noted that there is no evidence of alcohol consumption at all in the advertisement and the Board felt that the advertisement does not promote or encourage excessive alcohol consumption in order to have fun or participate in the party culture featured in the images.

The Board noted that dancing and hanging out with friends is an activity common among young people and such an activity is not directly associated with excess alcohol consumption.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

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