



**ADVERTISING  
STANDARDS  
BUREAU**

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## **CASE REPORT**

1.	Complaint reference number	0467/10
2.	Advertiser	Diageo Australia Ltd
3.	Product	Alcohol
4.	Type of advertisement	TV
5.	Date of determination	Wednesday, 24 November 2010
6.	DETERMINATION	DISMISSED
7.	IR Recommendation	Reconfirm original decision

### **ISSUES RAISED**

- 2.6 - Health and Safety within prevailing Community Standards
- 2.2 - Violence Cruelty to animals

### **DESCRIPTION OF THE ADVERTISEMENT**

Two golfers drive their buggy to where one of their golf balls is lying on the green and notice a large crocodile next to the ball.

One man gets out of the buggy to assess the situation. The crocodile roars at him so he turns to his friend and says he'll take a drop shot from somewhere else.

We then hear the words "Drop nothing!" shouted from behind the golfers and they turn to see a group of men dressed in period clothing and driving a very old car approaching them. The man continues talking to them and explains that they are sugar millers who invented Bundaberg Rum, and that if they were able to deal with the surplus of molasses, then these golfers should be able to deal with the crocodile blocking their favourable lie.

One of the millers modifies his old-style golf club by removing the grip and the head so that it resembles a large pea-shooter. He then hands this to the golfer who inserts a tee and shoots it at the crocodile.

The tee lands between the crocodile's eyes and there is an expectant pause as they all wait to see what will happen. The crocodile explodes and the golfer catches the tail.

The golfer then takes his shot, the others all toast him and we see the ball ricochet off a bottle of Bundaberg Rum to land in the hole.

A male voice over states, "Bundaberg. The thinking man's rum".

## **THE COMPLAINT**

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

*Offended by the gratuitous violence. What is the link between killing a croc and drinking rum? Would not want children to see this but as an adult I was also disgusted by the vision of a decapitated crocodile.*

*I object to the suggestion/ implication that it is amusing to kill an animal by blowing it up. I consider that showing cruelty of any kind in an advertisement is offensive.*

*Breach of AANA Code of Ethics*

*It is alleged that the Favourable Lie communication breaches the AANA Code of Ethics and specifically with respect to articles 2.2 and 2.6:*

*2.2 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

*2.6 Advertising or Marketing Communications shall not depict material contrary to prevailing community standards on health and safety.*

*The "Favourable lie" advertisement portrays violence that is not justifiable in the context of the product being advertised. In fact one could argue that this may unfortunately reinforce alcohol consumption and violence. The fact that the violence is inflicted on an animal in no way excuses that violence especially as the ad promotes violence as a means to problem solution. The offence is exacerbated in that the golfer is initially prepared to play around the „obstacle“ but is „pressured“ by the leader of a large group of men to use violence – for which he is lauded as an intelligent thinker.*

*That a „promotion of violence“ message exists is evident in the comment (attached) of one of Bundy's Facebook friends: „the thinking man's rum“ ... probably not ... well only if he's thinking of smacking someone with a chair”.*

*The claim that this is „fantasy“ does not excuse the promotion of violence as an acceptable – in fact laudable – means to solve a problem. People are aware that movies showing violence do not actually involve people or animals being blown up shot or dismembered. Nevertheless the violence depicted can be shocking and distressing. In this case the crocodile appears to be a real crocodile; there is no attempt to make it look like a „fake“ animal resulting in a scene that many adults would find revolting or disgusting and many children and adolescents would find distressing.*

*The fact that this promotion of violence is by an alcohol marketer only serves to exacerbate the community's concern for alcohol related violence. It certainly sends a message that this particular alcohol marketer is totally insensitive to the violence related harm caused by excessive alcohol consumption. It is also totally insensitive to the issues around improvised explosive devices faced by Australian and allied troops in overseas theatres of war.*

*Given the community's concerns for violence – of all kinds the promotion of violence as a means for solving one's problems and the clear encouragement in the ad for others to use violence when they are not disposed to do so is clearly contrary to prevailing community standards on health and safety.*

*I was horrified to see an add for Bundaberg Rum where a crocodile is blown to pieces on a golf course. The add then continues with pieces of the animal falling to the ground. In the area where I live we have had a situation where someone tried to blow an echidna to pieces. This sort of behaviour should not be shown on TV especially at this time and in this program where younger people are watching. There is enough cruelty to animals in this world without this type of advertising encouraging more. I was truly disgusted by this add. I also believe that crocodiles are protected in Australia*

*My husband and I have just seen a Bundaberg Rum commercial during the lead up to commencement of the Four Nations game between Australian and New Zealand and were extremely concerned by the depiction in that commercial of the killing by explosion of a crocodile. Not only were we both appalled at the commercial itself but also by the inference that killing any animal is acceptable behaviour. To allow this or any such commercial to remain on television is in our view desensitising and encouraging younger viewers to believe that such violent behaviour is acceptable.*

*Immediately following the viewing of this commercial we contacted Channel Nine Sydney to express our concern and were summarily directed to the address within Channel Nine to whom we could write our complaint. Having had our concerns so quickly dismissed by Channel Nine we have chosen to complain through this more formal process*

*I would like to add that neither my husband nor myself have ever made any complaint in regard to program or commercial content previously. However this commercial has offended us in such a way that we feel we must make our views known. We are constantly hearing of cruelty to animals with the RSPCA prosecuting these sick people who perform barbaric stunts to animals including setting fire to them. This add almost promotes it as a sport! It is unacceptable and I hope RSPCS take a stand on this. It is shameful and tells me more about the psyche of the advertisers. Sadly sick people will try and copy what they saw on the ad.*

*because we are a race of people which either protect our wildlife or destroy it.....this advocates the destruction of one of the oldest animals on our planet...they deserve respect not this rubbish....shame on you bundaberg rum company and shame on your station for running this trash....shame shame shame.*

*Obviously the crocodile is fake but the depiction and concept is offensive. Both myself and my husband were quite disturbed by the nature of it and the fact that it is considered humorous. There is too much cruelty that goes on in the world that this is no joke and should not be treated as such.*

*I found the advertisement totally tasteless. I object to simulated animal cruelty no matter what animal is depicted.*

*Explicit violence; depiction of dismembered animal; cruelty to animals (even if it is a crocodile). And (although it's probably not relevant) the ad made no sense at all.*

*They killed the crocodile for no reason. this is a stupid advert and gives the impression it is ok to kill a living animal because of convenience. It was cruel. Absolutely disgusting and the culture this depicts is despicable.*

## THE ADVERTISER'S RESPONSE

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

*We would like to take this opportunity to make some general comments about the TVC 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 best-practice global marketing standards.*

*1. General description of and comments on the TVC 1.1. The Bundaberg Rum "Favourable Lie" TVC is intended to be a humorous advertisement which parodies a group of 1880's sugar millers who played a significant part in the history of Bundaberg Rum. These sugar millers were responsible for the creation of Bundaberg Rum and the history of Bundaberg Rum tells the story of these sugar millers overcoming significant adversity. The TVC places these sugar millers in a modern day scenario where they challenge modern day consumers to think laterally when solving day to day problems.*

*1.2. The TVC sees two 30 year old men on a suburban golf course, walking up to see where one of their golf balls has landed. They are faced with an absurd situation where a large crocodile is resting near the golf ball. Upon seeing the crocodile, the golfer decides against playing his ball and opts to play another shot away from the crocodile. Suddenly the sugar millers from the 1880's, in period costume and in an absurd pose, appear from nowhere on the golf course. The head miller states that if they could create Bundaberg Rum as a solution to a large molasses surplus, then surely the golfer can solve the problem of the crocodile resting near his ball.*

*1.3. One of the sugar millers hands over a golf club after removing the club head. The golfer is inspired to think laterally, he takes the club, inserts a golf tee, and proceeds to blow it at the crocodile (like a dart). The golf tee hits the crocodile, and several seconds later, a large explosion removes the crocodile from near the ball. Large pieces of fake crocodile rain down on the golfers.*

*1.4. The golfer proceeds to hit the ball from its original position, and the ball bounces off a conveniently placed bottle of Bundaberg Rum, and falls into the hole. The sugar millers shout "Huzzah" in celebration, with a voiceover stating: "Bundaberg Rum. The thinking man's rum".*

*1.5. There are two follow up TVC's which are not the subject of these complaints, which also poke fun at the situation. These follow a similar tone to the main TVC.*

*1.6. The first follow up TVC features the head sugar miller apologising to those who may have been offended by the first advertisement, and reassures viewers that the crocodiles was not harmed in any way by the explosion. He also describes that the crocodile died the next day of natural causes, and that a piece of the crocodile will live on in all of us. The camera pans out and we see the crocodile, intact, on a rotisserie being turned by two of the other sugar millers.*

*1.7. The second follow up TVC also features the head sugar miller, apologising to those who thought the previous apology was insincere, and the camera pans out to a large pile of crocodile skin luggage, however no further verbal reference to the crocodile is made.*

1.8. *The overall tone of the TVC and the follow up TVC's is one of humour and absurdity. The director's influence for the tone of the advertisements was Monty Python, which is an example of the most absurd sketch comedy. The presence of the period costumed sugar millers, the over the top explosion, and the fake crocodile clearly contribute to this being a comedic TVC which is in no way meant to be violent or to condone or focus on any cruelty to animals.*

## *2. Advertising pre-approval*

2.1. *Diageo obtained full and complete clearance for the advertisement from the Alcohol Advertising Pre-Vetting System (AAPS) prior to final production and broadcast of the TVC. The AAPS approval number is 10455. A copy of this clearance is attached for your reference.*

2.2. *We note that Diageo complies with the ABAC Code, DSICA Code and Diageo's own internal global marketing code. The "Favourable Lie" TVC complied with all aspects of these codes.*

## *3. Details of the advertisement included with this response*

3.1. *As requested a copy of the script for the advertisement has been submitted through the ASB online process.*

3.2. *The CAD reference number is LTICCABA, and the classification for the advertisement is L (which is the classification given to all Alcohol advertisements).*

3.3. *A digital copy of the advertisement has been submitted through the ASB online process*

3.4. *The advertising agency which produced the TVC is Leo Burnett in Sydney and the media buyer is MindShare Australia Pty Limited.*

## *Specific Response*

4. *We note that the complainants specifically allege that the TVC breaches sections 2.2 and 2.6 of the Code. We address these specific sections in more detail below. We appreciate that the Board will also review the TVC against the rest of Section 2 of the Code and accordingly we would like to take this opportunity to address the remaining sections of the Code:*

4.1. *Section 2.1: The TVC does not discriminate against or vilify any person or section of the community on any grounds.*

4.2. *Section 2.3: There is no sex or nudity depicted in the TVC.*

4.3. *Section 2.4: The TVC is not advertising or marketing to children and so this section is not applicable.*

4.4. *Section 2.5: No strong or obscene language is used in the TVC.*

4.5. *Section 2.7: Not applicable.*

4.6. *Section 2.8: We consider that the Advertisement complies with all sections of the AANA Food & Beverages Marketing Communications Code.*

5. *Section 2.2 of the Code*  
5.1. *Section 2.2 of the Code reads "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised."*

5.2. *We also refer to the ASB's Determination Summary on Violence in Advertising, which states on its page 2 that "The Board has generally considered violence to be justified where it is mild in impact for the viewer, generally does not depict any person injured or in pain, and the action*

*does not include aggression.” As mentioned above, the overall tone of the TVC is one of humour and absurdity and the focus is on a positive message of thinking outside the square to overcome apparent obstacles (as did the founding fathers of Bundaberg Rum). We consider that the combination of:*

*(i) the sudden appearance on the golf course of a crocodile; and*

*(ii) the sudden appearance on the golf course of the 1880’s sugar millers in period clothing and in an absurd pose with over dramatised facial expressions and behaviour; and*

*(iii) the use of a golf club and golf tee as an improvised blow dart against a large, plastic, fake crocodile; and*

*(iv) the resultant large explosion which is clearly a disproportionate and absurd outcome from a golf tee being used as a dart,*

*all combine to create a comic and absurd presentation of the message which is around the heritage of the Bundaberg Rum brand and product.*

*5.3. Diageo has gone to considerable lengths to ensure that the theme and the setting of this TVC are aimed at a 25+ year old consumer. The tone, comedy, style and production values of the TVC all combine to deliver a TVC directed at the more mature consumer who appreciates the heritage of the Bundaberg Rum brand and product. We strongly consider that a reasonable person, especially within the target audience for the TVC, would not take the TVC seriously and/or interpret it as a portrayal of violence. We further consider that the TVC is in line with community expectations and values as it presents a positive message (which is to challenge consumers to, like the founders of Bundaberg Rum, think laterally to overcome apparent obstacles in life) in a humorous way.*

*5.4. In light of the above, we consider that the TVC does not offend section 2.4 of the Code.*

## *6. Section 2.6 of the Code*

*6.1. Section 2.6 of the Code reads “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.*

*6.2. Specifically, the complainant alleges that the TVC promotes the use of violence to solve problems, and contravenes prevailing community standards on health and safety.*

*6.3. For the following reasons we strongly disagree that the advertisement promotes the use of violence to solve problems, and we strongly disagree with the allegation that the TVC contravenes prevailing community standards on health and safety:*

*6.3.1. As stated above, the advertisement as a whole does not portray a realistic scenario, nor does it suggest that violence is the solution to the problem. The message of the TVC is to challenge viewers to think laterally and use the type of ingenious thinking that saw the creation of Bundaberg Rum, and apply it to solve day to day problems and obstacles.*

*6.3.2. In regards to health and safety, at no stage are any people in the advertisement shown to be placed at risk, nor do we depict any impact of the explosion on any of the actors in the advertisement.*

*6.4. The comic course of events in the TVC all combine to reinforce the absurdity and unrealistic nature of the TVC. By our very own omission we demystified any concerns surrounding violence by proactively introducing a follow up apology commercial that overtly dismisses any claims that the crocodile was real or that violence was ever used.*

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

*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 AANA Advertiser Code of Ethics (the "Code").

The Board noted complainants' concerns that the violent depiction of killing a crocodile is gratuitous and unrelated to the advertised product (rum), reinforces the concept of alcohol consumption and violence, encourages violence as a means of solving problems, desensitises young people to violence and depicts and condones violence towards animals.

The Board noted section 2.2 of the Code which requires that 'advertising or marketing communications not use violence unless it is appropriate in the context of the advertised product or service.'

The Board noted the depictions in the advertisement and the unrealistic scenario of olden day sugar millers driving up to a modern golf course. The Minority of the Board considered that the advertisement did depict violence against animals (even though it would be clear to viewers of the advertisement that the crocodile used was not a real crocodile) and that such a depiction was unjustified and in breach of section 2.2 of the Code. The Majority of the Board considered however that the explosion of the crocodile was so exaggerated and unrealistic that most members of the community would consider it humorous and not a depiction of or condoning of violence against animals.

The Board also considered complaints the advertisement condones violence and encourages a link between alcohol consumption and violence. The Board noted the advertisement does not depict people consuming alcohol nor is there a suggestion that the people on the golf course have been consuming alcohol. The Board noted that there is a significant level of community concern about alcohol fuelled violence and considered that any such association in an advertisement would breach the Code. In the circumstance of this particular advertisement however the Board considered there is not a suggestion of an association between alcohol consumption and violence.

The Board determined that the advertisement did not breach section 2.2 of the Code as it does not depict realistic violence or condone violence against animals nor does it make any association between alcohol consumption and violence. The Board also considered whether the advertisement met the requirements of section 2.6 of the Code by depicting material contrary to prevailing community standards on health and safety. In particular the Board noted the complainants' concern the advertisement desensitises young people to violence. The Board noted that this is an alcohol advertisement and is targeted to adults. The Board considered that the advertisement is unrealistic and is not likely to be seen by young people as violence or as

condoning violence against animals. The Board determined that the advertisement does not depict material contrary to prevailing community standards on health and safety and does not breach section 2.6 of the Code. Finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaint.

## **INDEPENDENT REVIEWER'S RECOMMENDATION**

I have been asked to review the above decision made by the Advertising Standards Board (Board). The Board decided, by a majority, that the advertisement in question did not breach section 2.2 of the relevant Code (AANA Code of Ethics), nor was it depicting material contrary to prevailing community standards on health and safety (section 2.6 of the Code).

Those seeking review based their argument on the ground that “there was a substantial flaw in the Board’s determination having regard to the provisions of the Code”. To consider that issue I have accepted the application for review. Section 2.2 relevantly states “advertising or marketing communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised”.

Those requesting review argue that the logical implications from this statement are that:

- “shall not” is mandatory and therefore should be the default position of advertisers and Board determinations
- the onus is therefore on the advertiser to justify any violence shown, and
- justification must show the relevance of the violence to the product or the service advertised. That is, regardless of whether the violence is realistic, absurd, exaggerated, mild, humorous etc.etc. , if the violence is not relevant to the advertised product or service then the code unambiguously states that ads **shall not** portray or present violence.

There is no “onus” in considering whether this advertisement complies with section 2.2 or 2.6 of the Code. This is not a “merits review” (i.e. the remaking of the decision) or an adversarial process (as in a court case). The Reviewer must be “satisfied” that the determination of the Board in applying the Code is justified.

Section 2.2 contains a number of mixed questions of fact and law. Put simply, the section prohibits any advertisement that presents or portrays violence subject to an exemption. The clause to operate requires the portraying of violence. What constitutes violence or its portrayal is not limited to any particular subject and thus would include violence to animals. However, violence has many meanings and nuances as referred to in the decision as does “justifiable violence”. To categorise a particular advertisement as complying or not complying with the Code, the Board must consider a range of factors:

- The product advertised
- The target market
- The time of advertising
- The manner of presentation (humorous and unrealistic; or serious and realistic)
- The overriding objectives of the Code in section 2.6



Other determinations of the Board provided for my consideration on this matter on the same section in the code, concluded that the portrayal of violence in those advertisements was obviously intended to be humorous (albeit in bad taste) and was unrealistic. The same considerations operate in this matter. This advertisement has in my view many of the characteristics of a “road runner” or “Tom and Jerry” cartoon where unrealistic violence is created for children as amusement.

While it is not my role as Reviewer to make a “merits review” decision, I accept the advertiser’s submission that “to suggest that a golf club and tee can be used to blow up a crocodile is far-fetched and removed from reality”. It does not appear and apparently was not intended to be believable – if it was, the whole ad would make no sense – it has, however a non-literal meaning that is: ingenious lateral thinking presented humorously.

In relation to section 2.6 which was also considered by the Board, its reference to the fact that the advertisement was targeted to adults and did not realistically condone violence against animals is a reasonable conclusion that section 2.6 was not contravened.

The Board, as is stated in the *Determination Summary on Violence in Advertising*, “has generally considered violence to be justified where it is mild in impact for the viewer, generally does not depict any person injured or in pain, and the action does not include aggression”. In my view, this advertisement can fall within this Summary both factually and legally.

I therefore conclude there was no substantial flaw in the Board’s determination having regard to the provisions of the Code.

I recommend that the original determination of the Board be confirmed.