

ABAC

**ABAC Complaints Panel
Determination No: 26/06**

CONFIDENTIAL COMPLAINT

**Advertiser: Liquorland
Parent Company: Coles Myer**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Liz Dangar – Member
Ms Jeanne Strachan – Member

3 November 2006

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about a television advertisement for the alcohol retail outlet “Liquorland”. Liquorland is owned by the major Australian company Coles Myer (“The Advertiser”).

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The confidential complaint is in the form of an email dated 3 July 2006 which was received by the ABAC Adjudication Panel on 3 July 2006.
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. In this case, it has taken longer owing to Coles Myer not being a member of the ABAC Scheme; therefore it was necessary to make an approach to the company to ask if they would be prepared to participate in the process. It took time to establish the correct contact, explaining the ABAC process, and seek their agreement to participate.

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. As Coles Myer is not a member of the ABAC Scheme their advertisement was not subject to pre-vetting.

The Advertisement

9. The complaint concerns a television advertisement that promotes the sale of alcohol beverages available at Liquorland retail outlets, with a 20c a litre reduction in fuel price offer with the purchase of at least 6 bottles of wine and an expenditure of \$30.
10. The Liquorland brand tracks plays throughout the advertisement.
11. The advertisement opens with a Liquorland logo against a red background. The logo consists of a stylized depiction of 2 bottles.
12. The camera zooms into the bottles on the logo, and these bottles morph to form the petrol pump icon for the fuel offer. The petrol drop price point falls from the icon and land into a position on the product shot of 6 bottles of wine.
13. A statement appears at the bottom of the screen: "When you spend over \$30 on 6 or more bottles of wine".
14. At the same time as the above visuals, a voice over says: "Race into Liquorland and save 20 cents per litre on petrol when you spend over \$30 on 6 or more bottles of wine, that's 20c per litre off!"
15. The visual then cuts back to the Liquorland logo featuring the petrol pump in place of the bottles.

16. The Terms and Conditions then appear at the bottom of the screen. These read: “Ends 9 July. Excludes 2 litre fortified flagons, wine packs and bottles under 750mL. Excludes Liquorland Direct and Liquorland Express. See in-store for offer and redemption conditions. Enjoy responsibly.”
17. The Coles Express logo appears at the bottom of the screen for the remainder of the advertisement (approx. 6 seconds).
18. Finally the petrol pump in the logo morphs into the Liquorland bottles, with the voice over saying: “A high octane offer only from Liquorland”.

The Complaint

19. The Complainant argues the advertisement:
 - Undermines the drink-drive road safety message by linking, and providing incentive for, the increase use of alcohol with motor vehicle use.
 - Links fuel discount promotion to alcohol consumption.

The ABAC

20. The ABAC provides at Section a) that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - i) must not encourage excessive consumption or abuse of alcohol
 - ii) must not encourage under-age drinking
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages
 - iv) must only depict the responsible and moderate consumption of alcohol beverages.

Section (d) of the ABAC provides that advertisements must not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity...

Arguments in Favour of the Complaint

21. In favour of the complaint, it can be argued that:
 - The advertisement breaches section (a) (i) and (ii) in that the advertisement promotes excessive consumption of alcohol beverages in that people are encouraged to purchase 6 or more bottles of wine in order to get a discount on fuel.
 - The advertisement makes a direct association between the consumption of alcohol beverages and the operation of a motor vehicle in breach of section (d) of the ABAC.

The Advertiser's Comments

22. The Advertiser responded to the complaint by way of letter dated 10 October 2006. The principal points made by the Advertiser were:
- The complaint is inaccurate in one factual respect. The advertisement promotes 20c a litre off fuel rather than the 4c a litre as referred to in the complaint.
 - The advertisement does not depict any direct association between the consumption of alcoholic beverages and the operation of a motor vehicle.
 - The advertisement simply offers a fuel discount on the purchase of wine over a certain amount. In no sense does the advertisement contemplate or suggest that alcohol and fuel may be *consumed* in temporal proximity.
 - The advertisement does not even contemplate that alcohol and fuel may be *purchased* at the same time, or that alcohol will be consumed at the time fuel was purchased.
 - The only association being drawn is between the purchase of wine and the purchase of fuel. There is nothing in the advertisement which refers to the act of driving.
 - The final screen shot of the advertisement encourages people to “Enjoy Responsibly”.

The Panel’s View

23. This is the third time the Panel has dealt with complaints concerning advertisements from the advertiser involving the use of fuel discounts as part of an alcohol marketing campaign. The first occasion resulted in Determination 05/07 dated 31 March 2005. The second resulted in Determination 23/06 dated 30 May 2006.
24. As has been mentioned, Coles Myer is not a member of one of the 4 alcohol industry peak bodies which sponsor the ABAC scheme and as such the advertiser is not bound by the terms of the ABAC and the complaints management system. Coles Myer has at various points voluntarily engaged in the ABAC scheme, while on other occasions, it has elected not to submit itself to the ABAC complaints process. The Panel now understands that Coles Myer and its alcohol retail outlet Liquorland, has agreed to participate in the ABAC scheme on an ongoing basis. The Panel welcomes this decision which is consistent with the reputation of Coles Myer as a responsible retailer and a leader in corporate governance standards.
25. In essence the complaint raises the issue of whether the ABAC permits the promotion of alcohol by way of advertising and marketing which involves the purchase of petrol. Arguably, such advertising might contravene the general standard of responsibility in advertising contained in section (a) of ABAC and the more specific provision relating to the consumption of alcohol and the operation of motor vehicles contained in section (d) of the Code.
26. In interpreting the standards detailed in the ABAC, the Panel applies a common sense approach which is informed by the spirit and intent of the

ABAC. The Panel seeks to avoid a strict 'black letter law' reading of the provisions, while at the same time recognising that the ABAC needs to have a meaning which is sufficiently certain and consistently applied so as to guide advertisers in the development of advertising campaigns.

27. Turning firstly to section (d) of the ABAC. This provision has, at its heart the need for advertising to be consistent with the public policy goal of preventing drink driving. The section provides that advertisements must not:
 - Depict any 'direct association' between the consumption of alcohol and the operation of a motor vehicle and,
 - Not represent consumption as having taken place 'before or during' the engagement of activity such as the operation of a motor vehicle.
28. In this case, the advertisement offers a consumer the benefit of obtaining a discount on the purchase of fuel if 6 or more bottles of wine are purchased involving the expenditure of at least \$30. In its previous Determination 05/07, the Panel concluded that there was not a 'direct association' between the consumption of alcohol and the operation of a motor vehicle in a promotion of this kind. This is again the Panel's conclusion. The advertisement can not be said to breach section (d), as the purchase of the wine is not directly related to the manner of its ultimate consumption, nor to the use of a motor vehicle.
29. The second issue is whether section (a) of the ABAC is breached by the advertisement. Here the argument is whether promotions which seek to entice the purchase of multiple bottles of alcohol beverage is an encouragement of the excessive consumption of alcohol. The Panel does not believe the promotion can be fairly said to encourage excessive consumption, as it is extremely common for wine to be purchased in bulk, such as in cases of wine, and it does not follow that the wine will be consumed irresponsibly. An advertisement would need to do more than promote the sale of multiple bottles to offend the standard in section (a).
30. Accordingly, the complaint is dismissed.