

ABAC

ABAC Complaints Panel Final Determination No: 104 - 107/11

Complaints of Mr Alistair Brown & Confidential complainants Product: Skinnygirl cocktails Advertiser: Coles Liquor & Woolworths Limited

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

26 March 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns advertising for the products Skinnygirl Margarita and Skinnygirl Cosmo by Coles liquor (“Coles”) and Woolworths Limited (“Woolworths”). This determination results from a complaint by Mr Alistair Brown received 2 December 2011 and three confidential complaints received 2 and 5 December 2011. A separate determination has been made in relation to those aspects of complaints 104/11 & 106/11 relating to the name and packaging of these products.

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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by ABAC on 2 and 5 December 2011.
7. The Panel endeavour 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. These complaints have not been determined within the timeframe as the Panel has considered the name and packaging of the products separately and prior to consideration of the advertisements as naming and packaging complaints involve different procedures to advertising complaints.

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 Advertisers are not Code signatories and did not obtain pre-vetting approval for the advertisements.

Advertisements

9. The Woolworths advertisement features a bottle of Skinnygirl Cosmo Cocktail 750ml and Skinnygirl Margarita Cocktail 750ml.
10. The alcohol product label features a silhouette of a female. The female character is wearing a red top and a knee length skirt. Both top and skirt are figure hugging. The female character's hair is in a ponytail. In one hand the figure is holding a cocktail shaker and in the other a cocktail glass which is holding a liquid, presumably a "skinnygirl" brand beverage.
11. The figure is placed above the name "Skinnygirl" with the "Skinny" in black type and the "girl" in red type. The colours match those on the clothing of the female character. Under the product name, information is provided about the product such as:
 - The type of beverage i.e., "Cosmo" or "Magarita";

- The type of alcohol spirit used in the drink i.e., vodka or tequila
 - Calorie count per 100ml serve;
 - Alcohol content (%) and bottle volume (750mls);
 - The instructions “open pour accessorise” in a colour matching the female’s clothing and “Skinnygirl” brand name.
12. Next to the bottles in a red circle is the text “new”. In between the bottles and partially obscuring the bottom of them is a red circle with the text “Fewer than 100 calories per 100ml serve”.
13. Below the bottle is the text “Available at” above the logos for Woolworths liquor, Dan Murphys and BWS. On the bottom of the page is the “ID required if you look under 25” logo and the text “Available in SA stores only. Conditions apply, visit danmurphys.com.au. phone 1300 72 33 88 or see staff for details. We support the responsible service and consumption of alcohol. Not for sale to persons under the age of 18. Please drink responsibly.”
14. The Coles advertisement features a black and white cityscape. On the left side of the page is the Skinnygirl logo, namely the silhouette of a female described in paragraph 10 above. In the middle of the page is the text “Skinnygirl has finally arrived”, with the text “finally” on a banner drawn by an aeroplane. Below is the text “Now at all” followed by the logos for “1st Choice Liquor”, “Liquorland” and “Vintage Cellars”. On the right side of the page a bottle of Skinnygirl Cosmo Cocktail 750ml and Skinnygirl Margarita Cocktail 750ml described in paragraph 9 above are featured. Along the bottom of the page is the “ID required if you look under 25” logo and the text “Liquorland, 1st Choice and Vintage Cellars Supports the Responsible Enjoyment of Alcohol.” In smaller print is the text “Products available from Liquorland, 1st Choice & Liquorland stores. Not available through coles.com.au, Liquorland Direct, Liquorland Express stores or Coles Liquor Supermarkets. Liquor and tobacco not sold to under 18s.”

The Complaints

15. The first complainant argues that the advertisement referred to in the complaint:
- (b) is marketing fair and square at the teen market;
 - (c) provides confusing messages of being healthy due to the low calories and use of natural sweetening and yet has an alcohol content of 9% and 12%; and
 - (d) compounds the issues adolescents have with eating disorders.
16. The second complainant argues that the advertisement referred to in the complaint:
- (e) is deliberate marketing to underage drinkers;
 - (f) by marketing as having less calories implies you can drink as much as you like and stay ‘skinny’; and

(g) adds to problems girls have with underage drinking and poor body image..

17. The third complainant argues that the product by its name and packaging and the advertisement referred to in the complaint:

(h) targets young people, in particular girls; and

(i) promotes lower calories but not the alcohol content resulting in body image issues for adolescent girls.

18. The fourth complainant argues that the advertisement referred to in the complaint:

(j) targets teenage girls;

(k) implies you can't get fat from drinking 'Skinnygirl' thereby encouraging drinking to excess; and

(l) misleading to a group that is vulnerable due to eating disorders.

The Code

19. Part 1 of 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 –

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

b) not have a strong or evident appeal to children or adolescents and, accordingly:

i) adults appearing in product material must be over 25 years of age and be clearly depicted as adults

i) children and adolescents may only appear in product material in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages

ii) adults under the age of 25 years may only appear as part of a natural crowd or background scene

The Supplier's Comments

20. Woolworths Limited responded to the complaints and questions posed by the Panel by letter dated 7 December 2011. Woolworths advised that the advertisement was

arranged with its supplier, the product's distributor, Coca Cola Amatil and that it believed the complaint should be dismissed.

21. Coca Cola Amatil responded to the complaints and questions posed by the Panel by letter dated 15 December 2011. The principal points made by Coca Cola Amatil were:

- (a) Coca-Cola Amatil and BGA advocate responsible consumption of alcohol by legal drinking age adults at all times. Skinnygirl is a premium priced product and the brand name was created in the United States by Bethenny Frankel, a 41 year old natural food chef and entrepreneur. Skinnygirl Cocktails are designed by Bethenny to target female consumers in demographics similar to her own well above the legal drinking age. BGA is committed to promoting this brand, like all of its products, to consumers of legal drinking age only. The brand also complies with the Distilled Spirits Industry Council of Australia (DSICA) guidelines.
- (b) BGA does not suggest the product is a healthy option. Skinnygirl Cocktails have fewer than 100 calories per 100ml serve; more specifically Skinnygirl Margarita is 82 calories per 100ml serve and Skinnygirl White Cranberry Cosmo is 78 Calories per 100ml serve, as stated on the product label. BGA offers this information to consumers so they can make their own informed decisions. The low-carb, lower carb beer or low-calorie wine segments are already established within the liquor market. Skinnygirl Cocktails are another product that falls into this segment, however do not claim to be low or lower. Skinnygirl Cocktails simply offer consumers calorie information to make their own decisions. Being a female orientated product, Skinnygirl Cocktails are befitting of an even handed approach to a male dominated segment such as low-carb beer -- why should women be denied similar options?
- (c) Sales data indicates over 93% of Skinnygirl Cocktails products were purchased by consumers over the age of 25. A large national retailer with access to shopper data has been able to supply us with information which identifies the demographics of people who purchased Skinnygirl Cocktails:
 - 93.6% of Skinnygirl Cocktails sales were purchased by consumers over the age of 25
 - Only 6.4% of sales were to 18-25 year olds, which is extremely low compared to spirits and pre-mix vodka.

Sales Mix by Age Brackets

Skinnygirl Results based on 1 weeks worth of sales.

54% of Total Skinnygirl Sales were able to be classified by Age.

Other categories based on 4 weeks worth of sales.

Age Bands	Skinny girl	Miscellaneous Spirits	Premix Vodka
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18 to 25	6.4%	18.28%	18.9%
26 to 35	19.8%	21.84%	19.6%
36 to 45	35.1%	24.45%	29.1%
46 to 55	20.3%	21.79%	23.0%
56 to 65	14.4%	10.24%	7.2%
66 to 75	4.0%	2.82%	1.9%
76 to	0.0%	0.57%	0.3%
100			

22. Coles Liquor responded to the complaints and questions posed by the Panel by letter dated 20 December 2011. The principal points made by Coles Liquor were:

- (a) In addition to complying with the relevant legislative obligations and industry codes, Coles Liquor has a long-standing commitment to the responsible service of alcohol. Coles Liquor also maintains compliance measures and expectations of its liquor advertising materials. Coles Liquor considers its materials accord with all of these commitments which are generally consistent with the spirit of the ABAC.
- (b) Coles Liquor used artwork provided by its supplier/manufacturer for the launch of the product but included conditions “Liquor and tobacco not sold to under 18’s”, “Coles Liquor supports the Responsible Enjoyment of Alcohol” and the ID 25 badge which are larger and more prominent than the product ingredient information. The information included by Coles Liquor is in direct contrast with the complaint’s concerns. Coles Liquor’s advertisement did not refer to calorie information. Coles Liquor disagrees that the advertisement directly or indirectly encourages excessive consumption of alcohol or promotes offensive behaviour simply by displaying the name of the product, a product picture (which includes product ingredient information) and the female character from the product packaging depicted in adult clothing as a caricature of sophistication. Presenting factual product information and product packaging does not, of itself, encourage excessive consumption or offensive behaviour.
- (c) Coles disagrees that a caricature of itself has appeal to young persons or that the caricature of a female with adult features and clothing wearing a ponytail hairstyle is a skinny, young girl below 25 years.
- (d) Coles Liquor remains very committed to the responsible service of alcohol and considers that its marketing has an important part to play in that process. Although it would be inappropriate for ABAC to make a determination in relation to a non-signatory we hope that the above information will satisfy the complainant’s concerns and the Panel that Coles Liquor elements have actually reflected the principles of the Code.

The Panel’s View

23. This determination is best understood when considered in conjunction with Determination 104/11 & 106/11 which goes to the actual name and label of the ‘Skinnygirl’ alcohol beverages. Briefly;

- The associated Determination considers if the name and label of the product is consistent with Part 2 Sections (a)(ii) and (b) of the ABAC.
 - This determination is considering if the ads appearing in newspapers for alcohol retailers promoting the product are consistent with Part 1 Sections (a) and (b) of the ABAC.
24. The ABAC Scheme applies to both alcohol beverage advertisements (Part 1) and the names and packaging of alcohol beverage products (Part 2). While the standards contained in both Part 1 and Part 2 of the ABAC are the same, the process for the Panel considering complaints under the different components of the scheme are different. Critically, in making a decision under Part 2, dealing with names and packaging, the Panel is to first make a 'provisional determination' which permits the distributor of the alcohol product to make further representations on the issues prior to the Panel making a final determination.
25. While the ABAC Scheme was extended to product names and packaging in late 2009 this is the first occasion on which the Panel has dealt with a case of considering both a complaint about a product name and label as well as associated advertising for the products.
26. Accordingly, it has been necessary to settle how best to co-ordinate the two processes bearing in mind the overarching objectives of the ABAC Scheme and the goals of making decisions in a fair, efficient and timely manner.
27. The critical inter-relationship between Determination 104/11 & 106/11 dealing with the product name and label and this determination dealing with two separate advertisements for the product is that the ads in large part consist of depictions of the product and hence the name and label considered in the associated Determination. Hence it has been necessary to firstly finalise the associated Determination (with its different and longer procedural pathway involving making a provisional determination) before the Panel could finalise its position on the advertisements.
28. In Determination 104/11 and 106/11, the Panel assessed the product material as a whole and found the product material to have a strong or evident appeal to adolescents and that the image of the female character used on the label is not a depiction of a person over the age of 25 years. Its reasons are set out within that determination.
29. It follows therefore, that the two advertisements which also feature the same depiction of the female characters on the bottles of the product breach section (b) and (b)(i) of Part 1 of the ABAC which is identical in terms to the equivalent section in Part 2.
30. The complaints however go beyond this point and raise another issue about the advertisements which need to be considered, namely, do the ads encourage excessive consumption by implying you can't get fat from drinking the product.
31. Dealing firstly with the Woolworths ad. This ad features a depiction of the bottles of the product, which is named "Skinnygirl" with two highlighted red circles. The first red

circle contains the word 'New'. The second red circle contains the words 'fewer than 100 calories per 100ml serve'.

32. The Panel does not believe it is tenable that the advertisement can be said to be encouraging excessive consumption. It is certainly drawing attention to the calorie count in the product and by implication that the calories are less than other products. There is quite a distance from this point however to accept that a reasonable viewer of the ad would then take a message that it is ok or encouraged to consume excessive amounts of the product. It is more likely that the ad is distinguishing the product from competitor products rather than putting out a call to consume the product at a rate beyond which a responsible person should drink alcohol. The same conclusion on this point is reached on the Coles advertisement.
33. The Panel finds the advertisements to breach section (b) and (b)(i) of the ABAC in relation to appeal to adolescents but not sections (a)(i) & (iii) in relation to encouragement of excessive consumption.
34. Accordingly, the complaints are upheld in part.