

ABAC

ABAC Complaints Panel Determination No: 13/12

Confidential Complaint Product: Various Advertiser: Liquorland Australia Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Richard Mattick – Member
Debra Richard – Member

16 February 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for various alcohol products by Liquorland Australia Pty Ltd (“the Advertiser”) and arises from a confidential complaint received on 1 February 2012.

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:
 - 2.1. a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - 2.2. an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - 2.3. certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - 2.4. The Outdoor Advertising Code of Ethics which includes provisions about the content of Billboard advertising.
3. The complaint 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 complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of an email received by the ABAC Panel on 1 February 2012.
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. This complaint has been determined within 30 business days.

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. This advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a Coles brochure that includes a Liquorland advertisement on two of its pages. One of the pages features the Liquorland name and logo at the top of the page above the text "35c per litre off fuel on the left side of the page and the Coles express logo and the text "When you buy any 2 of THESE products" on the left side of the page. The bottom half of the page features images of various cartons of beer and RTD products with their names and prices. Below the products is the text "Example of Savings: 40 Litres of fuel = \$14 discount, 50 Litres of fuel = \$17.50 discount or 60 Litres of fuel = \$21 discount. Take your valid Liquorland 4c Fuel Discount Docket plus valid fuel voucher to Coles Express to save 35c per Litre." The I.D required if you look under 25 logo and terms and conditions of the offer are set out at the bottom of the page.
10. The other page of the brochure referred to in the complaint includes a Liquorland advertisement at the bottom of a page advertising Coles grocery items. The advertisements includes the text "35c per litre off fuel when you buy any 2 selected products on page ** at Liquorland" followed by the Liquorland and Coles express logos,

The Complaint

11. The complainant argues that:
 - 11.1. the advertisement associates and links alcohol purchases with fuel purchases and driving;

- 11.2. consumption of alcohol prior to driving is a known factor in many road accidents and fatalities;
- 11.3. the advertisement requires that the customer spend considerable amounts of money on alcohol to receive the very generous discount of 35c per litre off fuel purchased at Coles Express. The generous discount is not offered for any other purchases.

The Code

12. The ABAC provides that advertisements for alcohol beverages must:

- (d) 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 and, accordingly:
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices...

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 14 February 2012. The principal points made by the advertiser were as follows:

13.1. In addition to complying with relevant legislative obligations and industry codes Liquorland Australia Pty Ltd (Liquorland) has a long-standing commitment to the responsible service of alcohol. Liquorland also maintains compliance measures and expectations of its liquor advertising materials. Liquorland considers its materials accord with all of these commitments which are generally consistent with the spirit of ABAC. Whilst acknowledging the importance of the aims of the ABAC Scheme, Liquorland considers that it has acted responsibly at all times and that it is reasonably apparent that the relevant advertising does not amount to a breach of the ABAC when assessed taking the content as a whole.

13.2. Since 2004 Coles has offered customers 4 cent per litre discount off fuel purchased at Coles Express when they spend \$30 or more at selected Coles group businesses, including Liquorland. In addition to this standard offer Coles uses fuel discount promotions from time to time as part of tactical marketing campaigns for the following reasons:

- To respond to a competitor offer;
- Stimulate sales or reward customer loyalty; and
- The desire to promote certain categories of goods or certain specified goods.

13.3. In Coles' experience of customer uptake and expectations, offering periodic, unique offers, product specific or larger discounts for limited

periods – such as the Advertisement – provides customers with greater incentive to shop and save with Coles group businesses when compared with every day promotions. Liquorland applied this understanding of its customer observations by offering the promotion contained in the Advertisement for a limited time for specific purchase types (Cascade lager or Pure Blonde/ Cold/ VB beer varieties or selected ready to drink (RTD) mixed drinks) 2 x 24 pack cartons between 1-7 February 2012.

- 13.4. The condition for obtaining the fuel discount was the purchase, not the consumption of alcohol beverages. To further differentiate the purchase of alcohol beverages and redemption of fuel discount, the redemption period until 6 March following the qualifying purchase evidences that there is no immediate drinking or driving conduct required by customers.
- 13.5. The pictorial representations in the Advertisement are of the qualifying products only, in the absence of motor vehicles or driving. Apart from displaying the Coles Express logo and mechanics of the offer – intended to identify the redemption location of the fuel discount component – the Advertisement does not directly or indirectly link consumption of alcohol with driving. There is no depiction of consumption of alcoholic beverages and driving. By admission of the complainant, any link between consumption of alcohol and driving is, at best “by inference” and in our view, tenuous. Prohibition in the Code requires a direct association.
- 13.6. The cross-promotion of two Coles group businesses is a common feature of Coles customer loyalty promotions, similar to fuel discount offered on Coles insurance purchases or promotional fuel discounts offered on grocery purchases from time to time. The ability to cross-promote different businesses and sectors is a unique feature available to diverse group companies such as Coles, which makes it a distinctive and attractive proposition for customers, consistent with Coles group marketing objectives.

The Panel’s View

14. There is a threshold issue raised by the nature of the advertising and the status of the advertiser which need to be considered before turning to the substantive matters posed by the complaint. The threshold issue is that Liquorland is not a member of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the advertiser has no contractual obligation to abide by a Panel decision. Liquorland, however, have stated their commitment to good practice in alcohol product advertising and have fully cooperated in the adjudication process. Therefore the Panel has proceeded to make this determination.
15. The complainant primarily argues that the offering of a 35 cent per litre fuel discount upon the purchase of two cartons of specified alcohol products associates and links alcohol consumption with fuel purchases and by inference driving. The complainant notes that consumption of alcohol prior to driving is a known factor in many road accidents and fatalities. The relevant provision of the ABAC is contained in section (d) which prohibits advertisements depicting a direct association between the consumption of alcohol beverages and the operation of a motor vehicle.

16. This issue has been considered in previous ABAC Determinations including Determination 39/08 in which the Panel noted that in order to breach section (d) of the Code there must be a depiction of a direct association between the *consumption* of alcohol beverages and the *operation* of a motor vehicle. Given that the advertisement refers to the purchase of alcohol beverages but not the consumption of alcohol and a discount on the price of petrol but not the operation of a motor vehicle, this advertisement does not breach section (d) of the ABAC.
17. Accordingly, the complaint is dismissed.