

ABAC

ABAC Complaints Panel Determination No: 5/12

Confidential Complaint Product: Woolworths Liquor Advertiser: Woolworths Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Richard Mattick – Member
Jean Strachan – Member

19 January 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Woolworths Liquor by Woolworths Limited (“the Advertiser”) and arises from a confidential complaint received on 3 January 2011.

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 3 January 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 television advertisement. The advertisement opens with the Woolworths liquor logo rotating onto the screen followed by the text "This week only!" appearing in the middle of a green ring accompanied by the voiceover "At Woolworths Liquor this week only". Then the screen changes to a banner with the text "Save 30c per litre" with small print below "To save 30c per litre on fuel at Caltex Woolworths co-branded outlets simply purchase any 2 participating products in a single transaction at Woolworths Liquor".
10. The voiceover continues "You can save 30c per litre on fuel when you buy any 2 cases of selected beer" as the screen changes back to the green ring around the text "Buy any 2 cases" as cartons of Heineken, James Boags Premium lager, XXXX Summer Bright Lager and Tooheys Extra Dry beer appear on the screen. The green ring spins to reveal the text "Save 30c litre on fuel" as the voiceover continues "That's 30c off every litre with 2 cases of beer".
11. The screen changes back to the red banner over a Woolworths branded sign with the small print "Fuel discount valid for 28 days after purchase. See in store for full terms and conditions. Offer ends 20th December 2011." The voiceover continues "So fill up on savings at Woolworths Liquor" as the screen changes to the Woolworths Liquor logo.

The Complaint

12. The complainant argues that the advertisement endorses drink driving as it encourages more consumption of beer and more driving thereby negating the government's drink driving ads;

The Code

13. 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;
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.
- (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

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

14.1. Woolworths takes its advertising obligations very seriously.

14.2. Woolworths believes the complaint should be dismissed.

14.3. Alcohol beverages are a regulated product which can only be purchased by persons over 18 years of age. There is no credible link between the purchase of an alcoholic product and the petrol offer to suggest this would lead to the excessive consumption or abuse of alcohol.

14.4. On no basis can it be concluded that the advertisement encourages drink driving by reason of the 30 cent petrol incentive.

The Panel's View

15. 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 Woolworths 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. Woolworths, however, have stated their commitment to good practice in alcohol product advertising and have fully cooperated in the adjudication process. Given the advertiser's willingness to comply with the ABAC scheme in this instance, the Panel has proceeded to make this determination.

16. The complainant argues that the offering of a 30 cent per litre fuel discount upon the purchase of two cases of beer results in more alcohol consumption and endorses drink driving. The relevant provisions of the ABAC are contained in section (a)(i) and (iii) which provide that alcohol advertisements must not encourage or promote excessive consumption of alcohol and section (d) which prohibits advertisements depicting a direct association between the consumption of alcohol beverages and the operation of a motor vehicle.
17. Alcohol retailers quite often use give-aways and inducements, such as fuel discounts, as part of their marketing strategies. The Panel has made several determinations on complaints about alcohol beverage advertisements which feature the offering of fuel discounts, including Determination 39/08 which also concerned a Woolworths Liquor ad promoting a 20 cent per litre fuel discount, offered upon the purchase of six or more bottles of wine.
18. The Panel's previous decisions have recognised that there is a clear distinction between the purchase of alcohol packages of multiple containers e.g. carton of beer, case of wine - and the consumption of alcohol. Essentially, the Panel recognises that purchasing alcohol is not the same as consuming alcohol. For instance, it does not follow that, because a consumer buys a carton of beer, it means that the consumer will then consume the alcohol in a binge-drinking session or otherwise in an excessive or irresponsible manner. Quite often the purchased beer might be consumed over several weeks, or by many people, and not a single individual. Merely advertising that alcohol can be purchased in multiples with an incentive not available when purchasing it by single container is not a breach of section (a)(i) and (iii) of the ABAC provisions.
19. The second concern raised in the complaint is that the promotion offers a discount on fuel purchases with the purchase of any 2 cases of selected beer and therefore the advertisement endorses drink driving.
20. This issue was also considered in ABAC 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.
21. Accordingly, the complaint is dismissed.