

ABAC

ABAC Complaints Panel Determination No: 5-7,13,14,23,25-31 of 2013

**Complaints by Margaret Pascoe, Colin Acton, Douglas Walton, Robert Gerritse &
Kenneth Collinson
Product: Liquorland (various)
Advertiser: Liquorland**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Louisa Jorm – Member

14 March 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a series of television advertisements for Liquorland (“the Advertiser”) and arises from thirteen complaints received 7, 14, 21, 29, 30 & 31 January 2013.

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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - The Outdoor Media Association Code of Ethics which includes provisions about 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 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 7, 14, 21, 29, 30 and 31 January 2013.
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, the sheer number of complaints and the convenience of producing a single determination has resulted in the timeframe not being achieved.

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 advertiser is not a signatory to the ABAC Scheme and pre-vetting approval was not obtained for these advertisements.

The Advertisements

9. The complaints refer to five television advertisements which consist of various compilations of similar or the same scenes. The distinguishing feature of the advertisements is the alcohol product category that they promote and the reference to either 'Summer' or 'Australia Day'. For identification, the five advertisements will be referred to by reference to the product category they promote and the occasion either 'Summer' or 'Australia Day' referred to in the advertisement.
10. The first advertisement, which will be referred to as "Wine - Summer":
 - Opens with someone starting an oversized music player and then an upbeat song starts with the lyrics "You ready, 1, 2, 3, you ready 3" and

continues throughout the ad. People are shown walking out of a building wearing swimming clothing and holding open bottles of alcohol beverages and then scenes of people at or arriving at parties with bottles or glasses of wine.

- The advertisement has a voice over (V/O) at various points, commencing with: "Get ready for summer at Liquorland" as people are shown walking along a public footpath near the seaside, some in swimming clothing with towels and carrying alcohol in bottles that appear to be open followed by scenes of people holding out glasses of wine in celebration at a party.
- V/O: "With everyday savings of 20% off bottled wine when you buy 4 or more bottles of wine across the entire Liquorland range everyday" as the screen changes to an image of 4 bottles of wine with the text "When you buy 4 or more bottles of wine" and "20% off bottled wine" followed by further images of people holding glasses of wine at a party.
- V/O: "And get ready for Matt Skinner too".
- The advertisement then features a man casually dressed speaking to the camera (the man appeared in earlier scenes with people drinking): "Hi I'm Matt Skinner and I'm ready to help you drink better this summer" accompanied by images of Matt Skinner in a liquor store followed by images of people at a party holding out open 375ml bottles of alcohol.
- V/O: "Get ready for Matt's top picks at Liquorland" accompanied by an image of Matt Skinner with a group of people clinking glasses of wine.
- Matt Skinner: "My top picks are ready, you don't have to pay more to drink better" accompanied by images of Matt Skinner in a liquor store holding up 4 bottles of wine followed by an image of five women in a house pouring glasses of champagne and then a group of people holding up wine glasses as in a 'toast'.
- V/O: "Get ready for summer at Liquorland" accompanied by an image of Matt Skinner leaving a Liquorland store with two grocery bags and holding them up as he leaves.

11. The second advertisement which will be referred to as "Spirits – Summer":

- Opens with someone starting an oversized music player and then an upbeat song starts with the lyrics "You ready, 1, 2, 3, you ready 3" and continues throughout the ad. People in swimming clothing are seen walking out of a building near the beach with open bottles of alcohol, other people are shown arriving at a party with bottles of wine. The scene then shows a man sipping from a bottle of beer with one hand and a cricket bat in the other playing a game of cricket with a group of people in a park. The man is wearing cricket gloves and pads and the stump behind him is made up of beer cans.

- V/O: “Get ready for summer at Liquorland” accompanied by a group of people walking along a public footpath near the seaside, some in swimming clothing with towels and carrying alcohol in bottles that appear to be open.
- V/O: “With everyday savings of 20% off white spirits and liqueurs when you buy 2 or more bottles 500ml or larger including all the favourites like Bacardi, Baileys, Midori, Absolut Vodka and Jagermeister” as the screen changes to an image of 9 bottles of spirits with the text “When you buy 2 or more bottles of white spirits and liqueurs” and “20% off white spirits and liqueurs” followed by further images of people holding open bottle of alcohol at a backyard party, then a bag of alcohol being placed on a lawn in a group of people in swimming clothing that reach for products from the bag and then another image of 9 bottles of spirits with the same text.
- V/O: “Get ready for summer at Liquorland” accompanied by further images of a large number of people holding open bottles of alcohol and ‘toasting’ at a party, in someone’s house and outdoors including a scene where people are shown with their feet in a children’s swimming pool which contains a bucket of alcohol products. The final scene is of a man leaving a Liquorland store with two grocery bags and holding them up as he leaves.

12. The third advertisement which will be referred to as “Beer – Summer”:

- Opens with a man sipping a stubby with one hand and a cricket bat in the other hand about to play a ball and then a wider scene is shown of a group of people playing a game of cricket in a park followed by images of people at a party holding open bottles of alcohol and ‘toasting’ and cheering and then a group of men in cricket clothing opening cans of VB. The scenes are accompanied by an upbeat song with the lyrics “You ready? 1, 2, 3” which song continues throughout the ad.
- V/O: “Get ready for summer at Liquorland” as we see a group of people walking along a public footpath near the seaside, some in swimming clothing with towels and carrying alcohol in bottles that appear to be open.
- V/O: “With ice cold slabs of Corona bottles 45 bucks each save 5 bucks” as the screen changes to an image of a carton of Corona Extra beer with the text “24 x 355ml” and “\$45 ea Save \$5” followed by an image of a bag of alcohol being placed on a lawn in a group of people dressed in swimming clothing that reach for products from the bag.
- V/O: “Get ready for summer at Liquorland” accompanied by images of two large groups of people “clinking” drinks and then of a man leaving a Liquorland store with two grocery bags and holding them up as he leaves.

13. The fourth advertisement, which will be referred to as “Wine – Australia Day”:

- Opens with someone starting a music player and then an upbeat song starts with the lyrics “You ready, 1, 2, 3, you ready 3” and continues throughout the ad. People are shown walking out of a building wearing

swimming clothing holding open bottles of alcohol beverages, a different group of people are shown popping a cork on a champagne bottle and a third group of people are shown arriving at a house with bottle of wine.

- V/O: "Get ready for Australia Day at Liquorland" as people are shown at a party holding glasses of wine, a different man is shown wearing cricket pads and holding a cricket bat in one hand while taking a sip from the stubby of beer he is holding in his other hand. A wider shot reveals the cricket stumps are made from cans of beer stacked on an esky behind him. The shot goes on to show a cricket game being played in a park, before turning to a group of people, including Matt Skinner, sitting on a sofa holding up glasses of wine.
 - V/O: "Drink Australian wine with 20% off bottled wine when you buy 4 or more bottles of wine across the entire Liquorland range everyday" as the screen changes to an image of 4 bottles of wine with the text "When you buy 4 or more bottles of wine" and "20% off bottled wine" followed by further images of people holding and clinking glasses of wine at a party.
 - V/O: "And Matt Skinner has his top picks ready for Australia Day too" accompanied by an image of Matt Skinner pouring himself a glass of wine at a party, and then Matt Skinner and a group of people clinking glasses of wine, then a group of different people are shown walking along a public footpath near the seaside, some in swimming clothing with towels and carrying alcohol in bottles that appear to be open.
 - Matt Skinner: "Hi I'm Matt Skinner and I'm ready to help you drink better this summer" accompanied by images of Matt Skinner in a liquor store then swirling a glass of wine at a party.
 - V/O: "Get ready for Matt's top picks at Liquorland" accompanied by a shot inside a liquor store showing "Matt's Top picks" signage.
 - Matt Skinner: "My top picks are ready, you don't have to pay more to drink better" accompanied by images of Matt Skinner examining a glass of wine, Mr Skinner in a liquor store holding up 4 bottles of wine followed by an image of a group of people holding out small bottles of various alcohol beverages and then a group of people 'toasting' with wine glasses.
 - V/O: "Get ready for Australia Day at Liquorland" accompanied by an image of Matt Skinner leaving a Liquorland store with two grocery bags and holding them up as he leaves.
14. The fifth advertisement which will be referred to as "Beer – Australia Day":
- Opens with three men walking along a road wearing casual clothing and carrying a cricket bat, stumps, an esky and a Liquorland shopping bag, followed by a scene of the men setting up a cricket stump made of 9 cans of VB beer on an esky, then a man rubbing a cricket ball with one hand preparing to bowl while holding a can of VB beer in the other. The scenes

are accompanied by an upbeat song with the lyrics “You ready? 1, 2, 3” which song continues throughout the ad.

- V/O: “Get ready for Australia Day at Liquorland” as we see a man wearing cricket pads waiting to receive a delivery followed by a wider shot of the cricket game including a player fielding while holding a beer, then two men ‘toasting’ and taking a sip from cans of VB, one wearing a cricket glove.
- V/O: “Where ice cold Victoria Bitter is back to its best. Buy two slabs for \$78 or \$42 each” as the screen changes to an image of an esky with cans of VB on ice, a can of VB being opened, three men clinking cans of VB and then an image of a carton of VB beer with the text “2 for \$78 save \$6” “or \$42 ea”. The scene then changes to a man batting awaiting a delivery with the stump made from VB cans behind him as another man playing wicket keeper behind the stump removes a can of VB. The batsman turns to look at him as the wicket keeper who is sipping from the beer raises his can to the batsman and smiles.
- V/O: “Get into Liquorland for a slab of the original big cold beer now. Get ready for Australia Day with ice cold Victoria Bitter at Liquorland” accompanied by the group of cricket players opening cans of VB and one drinking from his can, followed by an image of a man bowling, the batsman missing and the ball hitting the VB can stumps and the wicket keeper jumping up and cheering. The scene moves to one of the cricketers drinking from a stubby bottle of VB and then three of the cricketers holding up their cans of VB and cheering followed by an image of a man leaving a Liquorland store with two grocery bags and holding them up as he leaves.

The Complaint

15. The first complaint refers to the Wine-Summer and Spirits-Summer advertisements. The complainant argues that:
 - the ad shows attractive young people gathering up large quantities of alcohol to have a good time with summer activities;
 - the ad is contrary to the aim of preventing the deaths of young people through binge drinking, the need to consume alcohol to have a good time and to warn of the dangers associated with swimming etc and alcohol;
 - by promoting two for one offers or bulk buying perks the message is “more is better”;
 - the ad appears on afternoon TV with an audience of all ages;
 - sport is promoted as a healthy thing for all yet the ad links it with a potentially large consumption of alcohol; and
 - the timeslot and event during which the ad is shown is inappropriate.

16. The second complaint relates to the Beer-Summer advertisement. The complainant argues that:
 - the ad shows a person with a cricket bat in one hand and a container of alcohol in the other playing cricket,
 - the ad shows groups of young people drinking;
 - the whole ad promotes excessive consumption of alcohol; and
 - the ad is promoting the wrong message to young people.
17. The third complaint relates to the Spirits-Summer advertisement. The complainant argues that:
 - the ad portrays groups of people drinking and having fun in groups;
 - there are enough problems with young people being involved in excessive drunkenness and alcohol related violence without trying to portray alcohol consumption in such a light-hearted, party-friendly way;
 - the ad has gone too far given current social issues; and
 - the ad is obviously aimed at younger party people.
18. The fourth complaint relates to the Wine-Summer and Spirits-Summer advertisements. The complainant argues that:
 - the ad advertises 20% reductions on their range of wine and other stronger alcoholic beverages;
 - the ad targets a teenage audience;
 - is aired during a sports program (the international tennis matches in Brisbane and Sydney); and
 - this kind of advertising should not occur at all, particularly with the ban on advertising alcoholic drinks on TV.
19. The fifth complaint relates to the Wine-Summer advertisement. The complainant argues that:
 - the ad features very young people having a wonderful alcohol fuelled party, drinking alcohol in excess together with a presenter advising where to get it;
 - the ad does not present a "Mature, balanced and responsible approach to alcohol consumption;

- the ad clearly encourages excessive consumption by depicting young consumers under the age of 25, having a wow of a time with whole bottles of wine in hand; and
 - it encourages through visual depiction the excessive consumption misuse and abuse of alcohol.
20. The sixth complaint relates to the Australia Day advertisements. The complainant argues that:
- Australia Day is not just an excuse for getting drunk; and
 - the ad is just encouraging men to consume large amounts of alcohol.
21. The seventh complaint relates to the Australia Day advertisements. The complainant argues that:
- the chorus of singing sounds very much like primary school children singing, perhaps at a school sports carnival and the complainant was shocked when seeing alcohol was being advertised and that the pictures are of adults, further the singing is inappropriate and could be construed as marketing alcohol to children;
 - the chorus of singing continues as though the kids are saying to the adults 'are you ready to have another drink' and is suggesting alcohol is needed to have a good day on Australia Day;
 - the ad familiarises kids and adults to alcohol being a normal part of life; and
 - the ad associates alcohol with the healthy activity of sport.
22. The eighth complaint relates to the Beer-Australia Day advertisement. The complainant argues that:
- the actors appear to be under 25;
 - the drinking is excessive and continuous;
 - the drinking is associated with sport e.g. stumps made from beer cans;
 - the piling up of beer cans indicates excessive drinking;
 - the catchy music lyrics are "Are you ready?", over and over again suggesting that young men need to go out and buy slabs of VB in order to have a good time on Australia Day; and

- the drinking is in the daytime and everything indicates a long session with a lot of drinking.
23. The ninth complaint relates to the Beer-Australia Day advertisement. The complainant argues that:
- the ad depicts an excessive amount of alcohol being consumed verses the number of people shown;
 - everyone always has a drink in their hand;
 - we are led to believe that unless there is alcohol involved Australia Day is boring and that Australia Day and alcohol go hand in hand; and
 - children who are tennis fans are exposed to alcohol advertising.
24. The tenth complaint relates to the advertisements generally. The complainant argues that:
- the ad shows a group of young people brandishing bottles of alcohol with such gay abandon and this will have an effect on younger viewers; and
 - this is detrimental to younger members of the community particularly given the daily problems associated with young people affected by drinking alcohol.
25. The eleventh complaint relates to the Summer advertisements. The complainant argues that:
- the ad features young active people and urging them to buy strong liquor; and
 - the ad is irresponsible when so much heartache and tragedy is being caused by young people drinking excessively.
26. The twelfth complaint relates to the Summer advertisements. The complainant argues that:
- the chorus of singing sounds very much like primary school children singing, perhaps at a school sports carnival and the complainant was shocked when seeing alcohol was being advertised and that the pictures are of adults, the catchy jingle might be sung by kids to parents when they see a Liquorland outlet;
 - the ad could be interpreted as 'grooming' children to believe that alcoholic drinks are a normal and even essential part of adult life and are integral to being able to enjoy summertime and an active outdoor lifestyle;

- the ad familiarises kids and adults to alcohol being a normal part of life; and
 - the ad associates alcohol with the healthy activity of sport.
27. The thirteenth complaint relates to the advertisements generally. The complainant argues that:
- the ads constant repetition and 'cool' presentation, especially in the afternoon hours of family viewing time are meant to portray how exciting a lifestyle of hanging out with friends in leisure activities is meant to be;
 - the ads show a group of very fit, attractive, young adults sloshing themselves in every alcoholic beverage available at affordable special prices from Liquorland, bags are full of spirits and liqueurs, the pool, the cricket match and every activity is fuelled by liquor; and
 - children do not need any more encouraging to drink in our already over-saturated culture.

The Code

28. 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;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages;
 - b) not have a strong or evident appeal to children or adolescents and, accordingly-
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 -
 - 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

29. The Advertiser responded to the complaints and questions posed by the Panel by letters dated 25 January and 1 February 2013. The points made by the Advertiser in relation to the advertisements were:

- Although we are not a signatory to your scheme or the ABAC Code we are happy to provide feedback on this complaint. In addition to complying with relevant legislative obligations and industry codes 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 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 ABAC when assessed taking the content as a whole.
- We confirm that all of the people featured in the advertisements were all over 25 years of age.
- The musician/singer featured in the music is 27 years old and no children or adolescents were used in the music.
- Liquorland does not believe that there is anything in the advertisements which could reasonably be said to encourage a person to consume alcohol in an excessive manner. The advertisements were intended to capture the Australian values of optimism, warmth free-spiritedness and sharing great times with friends and had a theme of togetherness, camaraderie and group activity. The advertisements featured groups of friends on a number of distinct, varied occasions participating in different activities.
- Whilst some of the people featured in the advertisements had drinks in their hands, we do not believe there were any signs of conspicuous or over-zealous consumption. We believe the advertisements depicted a number of social settings where alcohol was reasonably available but clearly not essential to the proceedings. In a number of the scenes the people featured are seen holding aloft bottles or cans – these were used as props in which to toast or greet others in the social settings and do not show excessive or rapid consumption. The drinks were being

held, carried or clinked in a toast with firm grips by individuals who were not drunk or affected by alcohol.

- The voiceover tells people to get ready for Australia Day at Liquorland – we do not believe this statement encourages or promotes consumers to consume alcohol in an excessive or irresponsible manner.
- Liquorland denies that providing reasonable value propositions amounts to encouraging excessive consumption of alcohol and otherwise considers the advertisements do not encourage any consumer to engage in excessive consumption of alcohol. Alcohol is commonly sold in multiple quantities such as a case of wine or carton of beer. We believe there is a clear difference between purchasing multiple quantities of alcohol and the subsequent consumption of it. The advertisements provide eligible customers with the opportunity to purchase this product at good value for consumption at a later time.
- We believe it is encouraging the consumer to purchase a particular brand of alcohol in a small multiple quantity for good value and as an alternative to another similar brand. Just because a customer purchases multiple quantities does not mean that they will drink all that alcohol on one occasion or in any rapid or excessive manner. For example, a customer may purchase the product to consume over a period of time either by themselves or with others.
- Alcohol is commonly sold in multiple quantities such as a case of wine or a carton of beer. The “red bag” featured in the advertisement holds 6 bottles – like a case of wine. We believe there is a clear difference between purchasing multiple quantities of alcohol and the subsequent consumption of it. The advertisements provide eligible customers with the opportunity to purchase this product at good value for consumption at a later time.
- Liquorland advertises its products in a wide range of external media including press and radio. Liquorland also advertises in the Coles Supermarket catalogue and in store at Coles Supermarkets, including on shopping docketts. The style and content of this advertising is aimed at adults.
- The advertisements feature a number of differing social settings which includes groups of people getting together. We do not believe that any single drink shown contained an irresponsibly sized serving of alcohol and the advertisement did not imply that any individual would consume more than one drink.
- Liquorland does not consider that the advertisement breaches the code by either encouraging underage consumption of alcohol or having a strong appeal to children. The advertisement does not encourage, reward or suggest excessive consumption, abuse of alcohol or other offensive behaviour. Further, the appeal of the advertisement should be considered in context of the target consumers of the product to which it

relates. Based on our data the products featured in the advertisements are generally consumed by male and female consumers aged 30+ years. This is reflected in the branding and marketing associated with these products. In addition the average age of the Liquorland customer is 30+ years.

- The advertisements show groups of people, who are clearly friends, enjoying themselves. It is clear that the people in the advertisement are happy, confident and having a good time, but the behaviour they exhibited was consistent with that typically displayed at social gatherings. We advise that it is commonplace to use attractive and appealing models in advertising and confirm that all the people used in the advertising were over 25 years of age. Whilst they are attractive in appearance they are also relaxed and comfortable there was no loud, high intensity or anti-social behaviour.
- We do not believe the advertisement features any direct link between water activities and the consumption of alcohol. The water featured is very much in the background of the advertisement and the people featured in the advertisement are not swimming or on the sand close to the water.
- Alcohol advertising is permitted during the live broadcast of sporting events on weekends and public holidays. The advertisements were featured during this time frame.
- The advertisement shows groups of people, who are clearly friends enjoying themselves by playing cricket. The people featured in the advertisement are all over 25 years of age. As noted above, whilst some of the people featured in the advertisement had drinks in their hands we do not believe there were any signs of conspicuous or over-zealous consumption.
- Liquorland 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 to the Code we hope the above information will satisfy the complainant's concerns and the Panel that the advertisement is being conducted responsibly consistent with the Code.

The Panel's View

Introduction

30. This determination deals with 13 separate complaints raising issues with 5 separate executions of a television advertising campaign on behalf of the alcohol retailer Liquorland. It was decided because of the similarity in both the nature of the executions and the issues raised in the various complaints to combine all of the complaints into a single determination. This does mean, however, that the determination is lengthy and somewhat complex.

31. The determination is structured as follows:

- Liquorland and the ABAC scheme.
- General issues.
- ABAC's standards reviewed:
 - i. Irresponsible approach to alcohol consumption and the encouragement of excessive consumption;
 - ii. Encouraging underage drinking and appeal to children and adolescents;
 - iii. Alcohol use and engagement in sporting activities.
- Summary of findings on each advertisement.

Liquorland and the ABAC Scheme

32. The ABAC Scheme is, at its heart, a self-regulatory model which is underpinned by the commitment of alcohol industry participants to bind themselves contractually to independent assessment of their alcohol beverage advertising. As a general statement, the ABAC Scheme counts amongst its members alcohol producers and distributors, but not alcohol retail outlets, such as Liquorland.

33. As a non ABAC signatory, Liquorland and its parent company, Coles, is not contractually bound to follow Panel decisions. As a matter of choice and practice over the years Coles has, however, cooperated with the Panel when complaints have been received about its alcohol advertising. This has been the case again in this determination, although Liquorland has made it clear that as a non-member to the ABAC Scheme it does not accept that the ABAC standards apply to its advertising. It has also stated that it would be inappropriate for the Panel to make a determination about its advertising.

34. The complainants and members of the community more broadly would no doubt be surprised to learn that a major Australian company, such as Coles, would stand apart from independent review of its alcohol advertising. This is particularly the case when major alcohol companies accept the discipline and scrutiny that comes from their membership of the ABAC scheme.

35. The Panel has made this determination as it is the Panel's practice to consider all complaints about alcohol beverage advertising, even if the complaints are about the advertisements of a non ABAC signatory company. Whether Liquorland and its parent company, Coles, decide to accept and follow this determination is, however, a matter for them as they are not contractually bound to do so.

General Issues

36. The ABAC sets out a series of standards which alcohol advertisements are to meet. Mostly, these standards are expressed in the negative, i.e. an advertisement is not to do certain things, like encourage excessive consumption of alcohol or encourage underage persons to drink or suggest that alcohol is necessary to be successful in life. The Panel assesses advertisements against the standards, which are raised by the nature of the complaints received.
37. In assessing the consistency of an advertisement against the relevant ABAC standard, the Panel is to have regard to the probable impact of the advertisement on a reasonable person, taking the content of the advertisement as a whole. The 'reasonable person' test is borrowed from Australia's common law system and means that the Panel will have regard to the views, attitudes and opinions which are commonly held throughout the community in making its assessment of the issues raised by a particular complaint.
38. The complaints in a number of instances raise some matters which have been considered and resolved in earlier determinations concerning other advertisements and hence can be answered at the beginning. These are:
- Alcohol advertising is permitted in Australia (one of the complaints mistakenly contended that alcohol advertising had been banned);
 - The ABAC does not purport to restrict the broadcast times of alcohol advertising on television (several complaints expressed concern that the advertisements were broadcast at times that children might be watching or in conjunction with sports events. There are restrictions on broadcast times contained in the CTICP, however this free to air television Code does allow broadcast of alcohol advertisements with live sporting events);
 - It is not a breach of the ABAC to advertise that alcohol is available in multiples, such as cartons of beer or a case of wine (several complaints expressed concern that this implied excessive consumption would take place);
 - It is not a breach of the ABAC to advertise that favourable or discounted pricing is available for the purchasing of multiples of an alcohol product, as opposed to a single product (several complaints raised this point, but the ABAC standards go to issues around the consumption of alcohol and not to its purchase as such).
39. To some extent, these issues will be touched upon again in the detailed discussion of the complaints and each individual advertisement, but it is useful to set out these conclusions which have been reached by the Panel in a range of earlier decisions made over time.

Irresponsible Approach to Alcohol Consumption and the Encouragement of Excessive Consumption

40. Many of the complaints about the advertisements raised concerns that the advertisements were irresponsible in their approach to alcohol consumption and their perceived promotion of excessive alcohol consumption. This was said to arise because of factors such as:

- The large amounts of alcohol shown in various scenes in the advertisements;
- Images of people gathering and consuming large quantities of alcohol;
- The implication that alcohol was needed to mark summer and Australia Day.

41. For its part, the advertiser argues that the advertisements do not encourage excessive consumption or promote an irresponsible approach to alcohol use. The advertiser contends:

- The advertisements capture Australian values of optimism, warmth, free spiritedness and sharing great times with friends;
- The depictions of alcohol consumption are not conspicuous or overzealous;
- Displays of bottles or cans being held aloft by people at the various gatherings do not indicate excessive consumption, but are merely props which show that hosts or friends are being greeted;
- Excessive or rapid consumption is not shown and people displayed in the advertisements are not ostensibly affected by alcohol use;
- Single drinks are not shown in irresponsibly sized servings and it is not implied that any individual would consume more than one drink.

42. Section (a) of the ABAC provides that alcohol advertising must present a mature, balanced and responsible approach to alcohol consumption. This standard will not be satisfied if excessive consumption is being encouraged. Section (a) lays down a general positive requirement for alcohol advertisements to be responsible and balanced in their “approach to the consumption of alcohol”. This is a wider concept than simply the depiction of the consumption of alcohol and invites focus on the overall message the advertisement is conveying about alcohol use.

43. The advertisements use a common narrative, namely groups of people coming together where alcohol is present and consumed as a prominent feature of the social occasions. It’s not irresponsible to show alcohol use amongst groups of

friends, but in each of the advertisements the amount of alcohol shown is extensive and the atmosphere created by the advertisements does give rise to questions as to whether the standard of a responsible approach to the consumption of alcohol is satisfied. Each advertisement, however, needs to be assessed on its own merits on this point.

44. The 'Wine – Summer' advertisement is considered by the Panel to be in breach of the section (a) standard by failing to represent a balanced and responsible approach to alcohol consumption and by encouraging excessive consumption. In reaching this conclusion, the Panel has noted:

- i. The scenes where each person is shown with an alcohol product and the exuberant demeanour of the individuals and the behavior of the groups collectively.
- ii. Individuals who join the parties being greeted by others holding alcohol and the new comers generally bringing along bottles of product and, in some instances, multiple bottles.
- iii. The group of people shown walking along a public footpath near the seaside while each of them is consuming alcohol.
- iv. The demeanour of the party goes 'toasting', which could reasonably indicate that the individuals in the group have been affected by alcohol use.
- v. A scene showing Matt Skinner holding four bottles of wine.
- vi. Mr Skinner depicted leaving the Liquorland store holding aloft two large bags, which a reasonable person would assume to contain multiple alcohol products.
- vii. That none of the party or group activity scenes show water or non-alcoholic beverages being consumed or even present, and there is only two very fleeting shots of food being present or possibly present, let alone consumed, at the activities.

45. No one scene outlined above is of itself necessarily contrary to the ABAC standards. A reasonable person looking at the scenes collectively, however, would have the impression that an irresponsible approach to alcohol consumption is being presented together with an encouragement of excessive use of alcohol. This conclusion is reinforced by both the style of the accompanying music and the overall pace and timing of the advertisement. The failure to clearly place non-alcoholic beverages and food at the gatherings further buttresses the conclusion that an unbalanced approach to alcohol consumption is presented.

46. The 'Spirits – Summer' advertisement is considered to be in breach of section (a) standards by failing to present a balanced and responsible approach to alcohol consumption and by encouraging excessive consumption. In reaching this conclusion, the Panel has noted:

- i. The same or similar scenes as outlined in the 'Summer – Wine' advertisement, detailed in paragraph 44 (i), (ii), (iii), (iv) (vi) (vii).
- ii. The scene of a cricket game with the stumps made up with multiple cans of VB and a man holding a cricket bat in one hand and sipping from a bottle of beer in the other during play.
- iii. The scene where people are shown with their feet in a children's' swimming pool, which contains a bucket with multiple products of alcohol within it.
- iv. A scene where multiple products are shown taken from a red Liquorland carry bag by persons who appear already to have consumed alcohol.

47. Again, no one scene of this advertisement would necessarily be in breach of the ABAC standard in section (a). The advertisement as a whole, however, creates an impression for a reasonable person that a mature and balanced approach to alcohol consumption is not presented and that excessive consumption is being encouraged. Again, the failure of the advertisement to show non alcoholic beverages at the gatherings, with only a possible suggestion of food in one scene, is a significant contributor to a lack of balance in presenting a responsible approach to alcohol consumption.

48. The 'Beer – Summer' advertisement is considered by the Panel to be in breach of section (a) by failing to present a balanced and responsible approach to alcohol consumption and encouraging excessive consumption. In reaching this conclusion, the Panel has noted:

- i. The same or similar scenes as outlined in the 'Wine – Summer' advertisement in paragraph 44 (i) (iii) (iv) (vi).
- ii. The same or similar scenes as outlined in the 'Spirits – Summer' advertisement in paragraph 46 (ii) (iv).
- iii. The scene of the cricket players each opening a can of VB.

49. The 'Beer – Summer' is shorter in length than the other two 'Summer' executions, but the same overall impression of irresponsible alcohol consumption is created. This cannot be attributed to a single scene, but is created by the advertisement as a whole. Once again, none of the gatherings depicted have the participants consuming anything other than alcohol, with no food or non-alcohol beverages being represented.

50. The 'Wine – Australia Day' advertisement is considered to be in breach of section (a) standards by failing to present a balanced and responsible approach to alcohol consumption and by encouraging excessive consumption. In reaching this conclusion, the Panel has noted:

- i. The same or similar scenes as outlined in 'Summer – Wine' advertisement, detailed in paragraph 44 (i) (ii) (iii) (iv) (v) (vi).

- ii. The scene of a cricket game with the batsman facing the bowling while drinking from a stubby of beer.
- iii. That none of the scenes of party or group activity show water or non-alcohol beverages or food being consumed or even present.

51. This execution is very similar to the 'Summer – Wine' advertisement and has the same features leading to the overall impression that an irresponsible approach to alcohol consumption is being presented. Once again, non-alcohol beverages or food are not represented at the group gatherings, which would offer some balance to the concern that irresponsible and excessive consumption of alcohol is being encouraged.

52. The 'Beer – Australia Day' advertisement is considered to be in breach of section (a) standards by failing to present a balanced and responsible approach to alcohol consumption and by encouraging excessive consumption. In reaching this conclusion, the Panel has noted:

- i. The players building cricket stumps by using multiple cans of VB.
- ii. A player holding a can of VB while preparing to bowl a cricket ball and another scene where a player fielding is shown holding a stubby of beer.
- iii. Several scenes showing players drinking alcohol in a prolonged and highly exuberant manner, which a reasonable person might conclude as indicating that their behavior had been influenced by alcohol consumption.
- iv. A player acting as wicket keeper removing and consuming a beer from the beer can stumps.
- v. The final scene of a man exiting a Liquorland store holding aloft two large bags, which a reasonable person would assume contains multiple alcohol products.

53. In short, the scenario of the cricket game created by the advertisement displays the presence and consumption of alcohol by seemingly all those present, including spectators. The advertisement displays the players taking long and deep swallows of beer. No other beverage other than beer is seen and there is no depiction of either the players or spectators having with them food, which might indicate that alcohol was being consumed in conjunction with other beverages and food stuffs. A reasonable person would take that the advertisement is only portraying the use of alcohol throughout the afternoon period in which the game is being played and this does not present a balanced and responsible approach to alcohol consumption and can be taken to be encouraging excessive consumption.

Encouragement of Underage Drinking and Strong or Evident Appeal to Children and Adolescents

54. A number of the complainants raised concerns that the advertisements were strongly appealing to underage persons. Some of the points raised in the complaints included:

- Images of young, attractive people under the age of 25 engaging in activities, such as cricket, walking near the beach and social gatherings, consuming alcohol and having a good time.
- Setting the advertisements to upbeat music, with catchy lyrics that would appeal to children or adolescents.
- Including a chorus that sounds like children chanting or singing and would appeal to a young audience.
- Placement during daytime television and tennis coverage, during which children and adolescents are viewers.

55. The advertiser refuted the concerns that the advertisements would appeal to children or adolescents. The advertiser argued:

- That all people shown in the advertisements were over 25 years of age.
- The music features a 27 year old singer and no children or adolescents were used in the music recording.
- The advertisements did not encourage underage drinking, nor did they have strong appeal to children or adolescents. The market data for the products advertised show that these products are generally consumed by adults over 30 and the average age of a Liquorland customer is also over 30.
- The advertisements use attractive models, but this is allowable. The behaviour of people at the gatherings would not be strongly appealing to underaged persons.

56. Section (a)(ii) of the ABAC provides that alcohol advertising must not encourage underage drinking. Section (b) provides that advertisements are not to have a strong or evident appeal to children or adolescents. The Panel has considered these provisions in previous determinations and has found that each advertisement has to be assessed on its own merits, taking into account matters such as:

- The look, feel and overall content of the advertisement.
- Imagery, music, use of animation and characters.
- The reach of the advertisements to different audiences.

- The overall impact of the advertisement (as opposed to the intention of the advertiser) is the important consideration.
57. The Code requires that an advertisement not have strong or evident appeal to children. This means it is possible that an advertisement might have residual or incidental appeal to these groups and not be in breach. Section (b)(i) also requires that adults in advertisements be at least 25 years of age and clearly depicted as adults.
58. Some of the complaints raised the prospect that the featured adults did not appear to be 25 years old. The advertiser advises that in fact all models used in the advertisements are over 25 years old. The Panel accepts this advice. Further, the Panel does not believe that any of the models used are not depicted as adults, nor do they appear to be under 18 years of age. Accordingly, the advertisements are not in breach of section (b)(i).
59. The issue is then whether the advertisements are in breach of the standard relating to strong or evident appeal to children or adolescents. This needs to be assessed individually for each of the five advertisements. Given the similarity of the advertisements in terms of the scenes critical for assessing consistency with these standards, the Panel has grouped 'Wine – Summer' and 'Wine – Australia Day' and 'Spirits – Summer' together.
60. The 'Wine – Summer', 'Wine – Australia Day', 'Spirits – Summer' advertisements are considered by the Panel to be in breach of section (a)(ii) and (b) standards by encouraging underage drinking and by having strong or evident appeal to children or adolescents. In reaching this conclusion, the Panel has noted:
- i. The scenes where young adults are shown with alcohol products acting in an exuberant and party like manner.
 - ii. The scenes which depict young adults dressed in swimming or beach wear.
 - iii. The frenetic pace of the advertisements as a whole which, when combined with the style of accompanying music, creates a strong or evident appeal to children or adolescents.
61. No one scene alone leads to the conclusion that the advertisements are in breach of section (a)(ii) and (b). The advertisements as a whole, however, taking into account the nature of the critical scenes, the general look and feel of the advertisements, the music, and its timing and pace is considered by the Panel to breach the standards.
62. The 'Beer – Summer' advertisement is considered to be in breach of section (a)(ii) and (b) of the standards. The advertisement is somewhat similar to the 'Wine – Summer' and 'Spirits – Summer' advertisements in that it shares a number of the same scenes. While the advertisement is shorter in length and has some other scenes which may not be as strongly appealing to children or adolescents, taken as a whole, the Panel believes the advertisement would

have strong or evident appeal to children or adolescents and hence be in breach of the standards.

63. The 'Beer – Australia Day' advertisement is not considered to be in breach of section (a)(ii) and (b). While the advertisement shares some of the characteristics of the other advertisements in the campaign, e.g. the accompanying music, overall the advertisement is different in its approach. It features characters who appear to be older than those featuring in the other advertisements. The advertisement does not have the various scenes of young adults in beach clothes or the general exuberant and party atmosphere apparent in a number of scenes in the other advertisements. Cricket is a game which has broad appeal in the community including to children and adolescents, however, the way in which the game is portrayed and the actions and demeanour of the players and spectators is not considered to particularly have strong or evident appeal to children or adolescents.

Alcohol use and engagement in sporting activities

64. Many of the complaints about the advertisements raised concerns that the advertisements depicted a direct association between the consumption of alcohol beverages and the engagement in sport. This was said to arise because of factors such as:

- Images of people consuming alcohol while playing cricket.
- Images of people dressed for swimming consuming alcohol.
- Image of beer cans being piled up to create a cricket stump.
- Placement of the advertisement during tennis broadcasts.

65. For its part, the advertiser argues that the advertisements do not depict a direct association between the consumption of alcohol beverages and the engagement in sport. The advertiser contends:

- The advertisement does not feature any direct link between water activities and the consumption of alcohol. The water featured is very much in the background of the advertisement and the people featured in the advertisement are not swimming or on the sand close to the water.
- Alcohol advertising is permitted during the live broadcast of sporting events on weekends and public holidays. The advertisements were featured during this time frame.
- The advertisement shows groups of people, who are clearly friends enjoying themselves by playing cricket. The people featured in the advertisement are all over 25 years of age. As noted above, whilst some of the people featured in the advertisement had drinks in their hands we do not believe there were any signs of conspicuous or over-zealous consumption.

66. Section (d) of the ABAC provides that alcohol advertising must not depict any direct association between the consumption of alcohol beverages and the engagement in any sport (including swimming and water sports) and that 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.
67. The placement of an alcohol advertisement during a sports broadcast is not of itself a breach of section (d) of the ABAC. The section is clear that the depiction of both consumption of an alcohol beverage and the engagement in sport must occur within the alcohol advertisement. Placing an alcohol advertisement in an advertising slot within a sports broadcast on television does not convert the advertisement into a breach of section (d) if the content of the advertisement does not breach the section (d) requirements.
68. Several of the advertisements include scenes where people are playing cricket while consuming or holding an alcohol beverage. Each of these scenes are clearly in breach of section (d) of the ABAC. Other depictions of alcohol in association with cricket (cans piled up as a cricket stump, cricketers consuming alcohol outside the game) or swimming (people dressed for swimming) are not as clear and need to be considered in context. Each advertisement will be assessed against the section (d) standard in turn.
69. The 'Wine – Summer' advertisement is not considered by the Panel to be in breach of the section (d) standard in that it does not depict a direct association between the consumption of alcohol beverages and the engagement in swimming or water sports and in particular the consumption of alcohol beverages before or during engagement of such an activity. In reaching this conclusion, the Panel has noted:
- i. While people are shown wearing swimming clothing they are removed from the beach or water and are not shown engaging in swimming or water sports. It is too long a bow to draw to find that the scenes depict consumption of alcohol prior to swimming or water sports. They could as easily be leaving the beach or only intending to sunbathe.
70. The 'Spirits – Summer' advertisement is considered by the Panel to be in breach of the section (d) standard by depicting a direct association between the consumption of alcohol beverages and the engagement in cricket (but not swimming or water sports). In reaching this conclusion, the Panel has noted:
- i. While people are shown wearing swimming clothing they are removed from the beach or water and are not shown engaging in swimming or water sports. It is too long a bow to draw to find that the scenes depict consumption of alcohol prior to swimming or water sports. They could as easily be leaving the beach or only intending to sunbathe.

- ii. The scene of a cricket game with the batsman facing the bowling while drinking from a stubby of beer and a stump made from beer cans. This scene is in breach of section (d) of the ABAC as it clearly depicts consumption of alcohol while engaging in a sport.

71. The 'Beer – Summer' advertisement is considered by the Panel to be in breach of the section (d) standard by depicting a direct association between the consumption of alcohol beverages and the engagement in cricket (but not swimming or water sports). In reaching this conclusion, the Panel has noted:

- i. While people are shown wearing swimming clothing they are removed from the beach or water and are not shown engaging in swimming or water sports. It is too long a bow to draw to find that the scenes depict consumption of alcohol prior to swimming or water sports. They could as easily be leaving the beach or only intending to sunbathe.
- ii. The scene of a cricket game with the batsman facing the bowling while drinking from a stubby of beer. This scene is in breach of section (d) of the ABAC as it clearly depicts consumption of alcohol while engaging in a sport.
- iii. The scene of the cricket players each opening a can of VB. While this scene could be at the conclusion of the cricket game this is not clear and the men are still at the location of the cricket game and wearing cricket clothing including gloves indicating they have not concluded their game. Accordingly this scene is also in breach of section (d) of the ABAC.

72. The 'Wine – Australia Day' advertisement is considered by the Panel to be in breach of the section (d) standard by depicting a direct association between the consumption of alcohol beverages and the engagement in cricket (but not swimming or water sports). In reaching this conclusion, the Panel has noted:

- i. While people are shown wearing swimming clothing they are removed from the beach or water and are not shown engaging in swimming or water sports. It is too long a bow to draw to find that the scenes depict consumption of alcohol prior to swimming or water sports. They could as easily be leaving the beach or only intending to sunbathe.
- ii. The scene of a cricket game with the batsman facing the bowling while drinking from a stubby of beer and the stumps made from cans of VB. This scene is in breach of section (d) of the ABAC as it clearly depicts consumption of alcohol while engaging in a sport.

73. The 'Beer – Australia Day' advertisement is considered by the Panel to be in breach of the section (d) standard by depicting a direct association between the consumption of alcohol beverages and the engagement in cricket and in

particular depicting the consumption of alcohol beverages during engagement of the activity. In reaching this conclusion, the Panel has noted:

- i. The scene of three men walking along a road carrying a cricket bat, stumps, an esky and a Liquorland shopping bag.
- ii. The players building cricket stumps by using multiple cans of VB.
- iii. A player holding a can of VB while preparing to bowl a cricket ball and another scene where a player fielding is shown holding a stubby of beer.
- iv. A player wearing cricket pads waiting to receive a delivery.
- v. Two men clinking cans of VB and taking a sip, one of whom is wearing a cricket glove.
- vi. A player acting as wicket keeper removing and consuming a beer from the beer can stumps as the batsman is awaiting a delivery.
- vii. Further scenes of the cricket game being played and the ball hitting the stump made from VB cans.
- viii. Several scenes showing players drinking alcohol in a prolonged and highly exuberant manner which a reasonable person might conclude as indicating that their behavior had been influenced by alcohol consumption.

74. Some of the scenes outlined in the previous paragraph clearly depict consumption of alcohol while engaging in sport, in other scenes consumption is occurring either during a break in the game or at the conclusion of the cricket game. The Panel noted that in these scenes the men are still at the location of the cricket game and wearing cricket clothing including gloves indicating they have not concluded their game. In any event, looking at the advertisement as a whole, it depicts alcohol consumption while playing sport and is in breach of section (d) of the ABAC.

Summary

75. The Panel finds each of the advertisements referred to in the complaints to be in breach of the ABAC, in particular:

- The Wine-Summer advertisement is in breach of sections (a)(i)(ii)(iii) and (b) of the ABAC.
- The Spirits-Summer advertisement is in breach of sections (a)(i)(ii)(iii), (b) and (d) of the ABAC.

- The Beer-Summer advertisement is in breach of sections (a)(i)(ii)(iii), (b) and (d) of the ABAC.
- The Wine-Australia Day advertisement is in breach of sections (a)(i)(ii)(iii), (b) and (d) of the ABAC.
- The Beer-Australia Day advertisement is in breach of sections (a)(i)(iii) and (d) of the ABAC.