

ABAC

ABAC Complaints Panel Determination No: 84 & 88/12

Complaint by Seamus O’Keeffe & Candy Pang Product: Various Advertiser: Liquorland

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Louisa Jorm – Member
Debra Richard – Member

21 December 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns print advertisements for Liquorland (“the Advertiser”) and arises from a complaints by Seamus O’Keeffe received on 22 November 2012 and a complaint by Candy Pang received on 28 November 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by the ABAC Panel on 22 and 28 November 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. These complaints have 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 the advertisements.

The Advertisement

9. The complaints refer to Coles docket promotions.
10. At the bottom of the first complainant's Coles shopping docket the following two separate promotions were printed one after another:
 - 10.1. Liquorland Docket Deals. Buy One get one free on Zilzie Bulloak Sauvignon Blanc 750ml and range in one transaction at Liquorland from 7 November – 20 November 2012. Not available to under 18s, Excludes Coles online, Liquorland Direct, Liquorland Kununnurra, Sth Hedland or ANY Northern Territory stores. Limit of 3 free bottles per customer, while stock lasts. Docket cannot be used in conjunction with other offers and is not transferrable. Present your flybuys card and surrender this Docket at the time of purchase.
 - 10.2. Coles Fuel Offer – Save: 8c/L Expires: December 06, 2012 This receipt provides 8c/L off the fuel pump price (including LPG) at Coles Express. Limit 1 receipt per fuel purchases up to 150L per vehicle per customer. Not valid for Fleet Card, Shell Card, Motorcharge or Motorpass purchases or with other fuel offers or discounts unless otherwise specified.
11. At the bottom of the second complainant's Coles shopping docket the following promotion was printed:

- 11.1. Liquorland Docket Deals. Buy two get one free on Banrock Station range 750ml in one transaction at Liquorland from 17 October – 30 October 2012. Not available to under 18s, Excludes Coles online, Liquorland Direct, Liquorland Kununnurra, Sth Hedland or ANY Northern Territory stores. Limit of 3 free bottles per customer, while stock lasts. Docket cannot be used in conjunction with other offers and is not transferrable. Present your flybuys card and surrender this Docket at the time of purchase.

The Complaint

12. The first complainant argues that:

- 12.1. the advertisement is promoting discount alcohol and fuel purchases in the one environment showing an acceptance, through the shared environment of the advertising, of drink driving; and
- 12.2. it is impossible to target the advertising to adults and therefore underage shoppers are exposed to the advertising.

13. The second complainant argues that:

- 13.1. this kind of marketing is unethical and irresponsible as it involves exposing and attracting the masses to buy alcohol (by making it cheaper and bringing this to mind through the docket);
- 13.2. the vouchers are not optional (they come with your receipt) and they are also not infrequent (around 75% of the time I shop at Coles);
- 13.3. the vouchers do not discriminate between an adult (who understands the health effects and risks of alcohol), young adults and children thereby exposing young people who do not understand the health/social risks of alcohol to think drinking is acceptable and it lowers their inhibition as it is readily available and cheap; and
- 13.4. the children in my life could go into Coles, buy a kit kat and receive a receipt informing them that they can get cheap alcohol in liquorland.

The Code

14. 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 underage 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 [...]

(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

15. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 6 December 2012. The principal points made by the advertiser were as follows:

15.1. 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 maintains rigorous compliance measures to monitor its liquor advertising materials. Liquorland considers its materials accord with all of these commitments which are consistent with the spirit of the Alcohol Beverages Advertising Code ("ABAC") Scheme. Liquorland acknowledges the importance of the aims of the ABAC. We expect our advertising to be responsible at all times and we consider that the Advertisement does not amount to a breach of the ABAC when assessed taking the content as a whole. We also believe that the Advertisement meets the definition of "Retail Advertising" as outlined in ABAC and, even if Liquorland was a signatory to the ABAC, would not require pre-vetting.

15.2. As a general comment the broader Coles group uses cross brand 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
- To promote certain categories of goods or certain specified goods.

In Coles' experience of customer uptake and expectations, offering periodic, unique offers, product specific or larger discounts for limited periods – such as in the Advertisement – provides customers with greater incentive to shop and save with Coles group businesses when compared with every day promotions. 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.

- 15.3. Liquorland supports the responsible service and sale of alcohol and we do not believe the Advertisement encourages people to drink and drive, or consume large quantities of alcohol. The Advertisement was targeted at adults over the (legal consumption and driving) age of 18 years. The Advertisement was consistent with the objectives listed above and our commitment to provide value and loyalty to customers.
- 15.4. Liquorland advertises in a wide range of external media including press and radio. Liquorland also advertises in the Coles Supermarkets catalogue and in store at Coles Supermarkets, including on shopping docket. The style and content of this advertising is aimed at adults. From time to time our press and catalogue advertising will feature special offers, the shopping docket offers are an extension of those promotions. The Advertisement itself only shows the Promotion and the terms and conditions of it, including critically that it is not available to people under 18 years of age. It does not depict, or contain any message encouraging, the consumption of the product by anybody, let alone by persons who are under the age for legal consumption or who may consume it excessively. Liquorland does not believe the Promotion can reasonably be regarded as encouraging underage consumption. The Promotion can only be redeemed at a Liquorland store and is therefore subject to Liquorland's responsible service of alcohol procedures including:
- Any person who is under 25 years of age is required to provide proof of age prior to being served. If a customer cannot provide this proof of age they will be refused service.
 - Refusal of service to any person our team members believe may then supply that liquor to a minor or intoxicated person.
- 15.5. Since 2004 Coles has offered customers a 4 cent per litre discount off fuel purchased at Coles Express when they spend \$30 or more at selected Coles group businesses, including Liquorland. The condition for obtaining the fuel discount is the purchase, not the consumption of alcohol beverages. To further differentiate the purchase of alcohol beverages and redemption of fuel discount, there is a redemption period of several weeks following the qualifying purchase. This is evidence that there is no immediate drinking or driving conduct required by customers. The Advertisement does not feature any pictorial representation of motor vehicles or driving and 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.
- 15.6. 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 Promotion provided eligible customers with the opportunity to purchase this product at good value for consumption at a later time. Liquorland does not believe that there is anything in this Promotion which could reasonably be said to encourage a person to consume alcohol in an excessive manner. We believe it is encouraging consumers to purchase a particular brand of alcohol in a small multiple quantity for good value and as an alternative to another similar brand. The offer on the shopping

docket is comparable to offers that are available in store and also advertised in catalogues and press. 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.

- 15.7. Liquorland remains 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 the 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 the Advertisement is being conducted responsibly, consistent with the ABAC.

The Panel's View

Procedural issues

16. The Coles Group, which is the parent company of Liquorland, is not a signatory to the ABAC scheme. This means that the advertiser has no contractual obligations to comply with the Panel's decisions about its alcohol advertising.
17. Over the years, the Panel has nonetheless made a number of decisions about alcohol advertisements from the Coles Group. In each case, while asserting their independence of the ABAC scheme, Coles has cooperated with the Panel's processes by supplying a copy of the advertisement in question and providing comments in response to the complaint. This has again been Coles' practice in response to the two complaints about advertising on Coles' supermarket dockets for their Liquorland retail outlet. The Panel has accordingly made a decision on the complaints.

Substantive Issues

18. Both complaints have raised a similar point about the indiscriminate nature of advertising alcohol on supermarket dockets. The essential point being raised is that the dockets are generated randomly to all purchasers of goods at the supermarket and, accordingly, will be handed to anyone, from a primary school aged child to an adult. By implication it is contended that alcohol should not be advertised widely and indiscriminately but should be targeted expressly to adults.
19. For its part, Coles is unapologetic for using the dockets to promote specials at Liquorland. It points to its market position as the owner of multiple business types as giving it a natural advantage in being able to undertake "cross brand promotions". It is argued that this is done for products other than alcohol, but in relation to the alcohol advertising it is argued that there is nothing in the content of the advertisements which can be said to be appealing to children.
20. As mentioned in paragraph 2, alcohol advertising is subject to a range of different codes which apply to particular mediums by which the advertisement is published or broadcast. For instance, the code applying to free television restricts alcohol advertisements to broadcasts within programs broadcast after 8:30pm. Equally, the code which applies to billboards provides that alcohol advertisements cannot be placed within 150 metres of a school. Both of these examples can be described as placement codes.

21. In contrast, the ABAC is a content - as opposed to placement – code. What this means is that the ABAC establishes a set of standards about the content of alcohol advertising which the advertisement must satisfy irrespective of how the advertisement is transmitted or published. In other words, the advertisement must meet the standards whether it is transmitted on television, radio, over the internet, in conjunction with a movie at a cinema, in a newspaper or, in this case, on a shopping docket. The mere fact, however, that a wide and indiscriminate medium, such as a newspaper or shopping docket, is used to convey the advertisement will not of itself be a breach of the ABAC.
22. Rather, the ABAC provision on alcohol advertisements not having a strong or evident appeal to children means that the content of the advertisement must be examined. If that content, through the use of colours or characters or storyline, can be said to have an appeal to children, then the advertisement will breach the ABAC provision. If the advertisement does not have these features, then the mere fact that it might be seen by a child will not mean that the advertisement is inconsistent with the standards set out in the Code.
23. In this case, the content of the advertisement found on the dockets cannot be said to be appealing to children. It contains information about the wine special available at Liquorland and the fuel discounts available at the participating service stations. The content is not of a type which could be regarded as having strong appeal to children or adolescents.
24. The complaints then go on to raise other concerns. Firstly, it is argued that the fact that the dockets contain both alcohol and fuel discount advertising is an acceptance of drink driving. Section (d) of the ABAC goes to drink driving, but it is clear that the advertisements on the dockets do not breach this standard. It is a long bow to draw the conclusion reached by the complainant that simply having two advertisements about unrelated discounts would be seen as an acceptance of drink driving.
25. A final concern is that the advertisement encourages alcohol consumption by offering discounts on alcohol purchases. There is no ABAC standard that prevents advertisements from encouraging the consumption of alcohol. It is the encouragement of irresponsible or excessive consumption that is prohibited. The Panel's previously found that the offer of discounts for the purchase of multiples of alcohol products does not amount to the encouragement of excessive consumption as alcohol is often purchased in multiples (e.g. a case of wine, or a carton of beer) but consumed over a period of time or in conjunction with others. There is nothing in the content of the advertisement that encouraged irresponsible or excessive consumption and, accordingly, the Panel does not believe that the advertisement breaches section (a)(i) or (a)(iii) of the ABAC.
26. Accordingly, the complaints are dismissed.