

ABAC

**ABAC Complaints Panel
Determination No: 88/11**

**Confidential Complaint
Product: Woolworths Liquor
Advertiser: Woolworths Limited**

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

26 October 2011

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 6 October 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 6 October 2011.
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 a red disc spinning on the screen and then stopping as the text "This week only!" appears in the middle of the red disc accompanied by the voiceover "This week only at Woolworths Liquor". Then the screen changes to a banner with the text "Save 20c per litre" with small print below "To save 20c per litre on fuel at Caltex Woolworths co-branded outlets simply purchase any 2 participating products in a single transaction at Woolworths Liquor". The voiceover continues "Save 20c per litre on fuel when you buy any 2 cases of selected beer" as the screen changes back to the red disc with the text "Buy any 2 cases" as cartons of XXXX Gold, XXXX Summer Bright Lager, James Boags Premium Lager and Tooheys Extra Dry beer appear on the screen. The red disc spins to reveal the text "Save 20c litre on fuel" as the voiceover continues "That's 20c off every litre with 2 cases of beer". 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 Tuesday 11 October 2011." The voiceover continues "So fill up on savings at Woolworths Liquor" as the screen changes to the Woolworths Liquor logo.

The Complaint

10. The complainant argues that the advertisement:
 - encourages the purchase of alcohol in preference to food as the fuel discount offered for the purchase of alcohol is 20 cents per litre compared with 4-8 cents per litre offered for the purchase of food;

- could lead to excessive alcohol consumption and violence;
- encourages the purchase and consumption of large quantities of alcohol to obtain a fuel discount voucher; and
- makes the offer prior to schoolies week.

The Code

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

The Advertiser's Comments

12. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 17 October 2011. The principal points made by the advertiser were as follows:

12.1. Woolworths takes its advertising obligations very seriously.

12.2. Woolworths denies the advertisement is in breach of the ABAC. 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.

12.3. On no basis can it be concluded that the advertisement encourages underage drinking by reason of the 20 cent petrol incentive.

The Panel's View

13. 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.

14. The complainant argues that the offering of a 20 cent per litre fuel discount upon the purchase of two cases of beer could result in excessive alcohol consumption and violence. It is also pointed out that standard supermarket petrol discount schemes offer 4-8 cents per litre reduction in fuel costs and the complainant

contends behaviour might be influenced to see some people choosing to purchase and consume alcohol, rather than buy food.

15. 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.
16. 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 at a price which is less than purchasing it by single container is not a breach of the ABAC provisions.
17. The Panel is also unable to accept the complainant's argument that the ad, which is offering a fuel discount greater than the "standard" fuel discount associated with general purchases from a supermarket, will cause consumers to choose alcohol use over food. Again, to accept this argument relies upon assumptions built on assumption as to consumer behaviour and is far too long a bow to draw.
18. There is no doubt that the complainant is entirely genuine in their concern and neither is there any doubt that the misuse of alcohol is a cause or contributor to considerable social, health and economic harm in society. However, the Panel can only fairly and objectively apply the ABAC provisions to the advertising which is the subject of decisions and, in this case, the ad is consistent with the code.
19. Accordingly, the complaint is dismissed.