

ABAC

**ABAC Complaints Panel
Determination No: 03/07**

CONFIDENTIAL COMPLAINT

**Product: Coles Catalogue – various products
Advertiser: Coles/Liquorland**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Liz Dangar – Member
Ms Jeanne Strachan – Member

DETERMINATION 12 April 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about a catalogue advertisement for \$10.00 grocery giveaway by Coles Liquorland (“The Advertiser”).

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) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.

3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.
4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

Coles Myer and the ABAC Scheme

6. The ABAC Scheme is sponsored by the four peak alcohol industry associations, namely:
 - Australian Associated Brewers Inc (AAB)
 - Distilled Spirits Industry Council of Australia (DSICA)
 - Liquor Merchants Association of Australia Ltd (LMA)
 - Winemakers Federation of Australia Inc (WFA)
7. The Scheme is underpinned by the commitment of the members of the four industry peak bodies to comply with the ABAC. Coles Myer is not a member of any of the relevant industry bodies but, by letter dated 26 March 2007, the company has advised of its willingness to submit to the complaint process and the Panel's Determination.

The Complaint Timeline

8. The confidential complaint is in the form of an email dated 21 January 2007 which was received by the ABAC Adjudication Panel on 27 February 2007.
9. 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, it has taken longer owing to a backlog of complaints received from the ASB.

Pre-vetting Clearance

10. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. The advertisement is a retail advertisement which must comply with the spirit and intent of the ABAC, but does not require pre-vetting clearance.

The Advertisement

11. The complaint concerns a Coles catalogue which was letterboxed to premises in the suburb of the complainant. The catalogue contains 20 pages of information on various products available for purchase at Coles Supermarkets, including the back page which features various alcohol products.
12. The alcohol products page features a section which reads "...\$10 grocery giveaway – save \$10 at Coles when you buy 6 or more bottles of wine". At the bottom of the page is the "Liquorland" brand name and logo. The balance of the page contains pictures of various alcohol products, namely wine, beer and spirits with price information.

The Complaint

13. The Complainant argues the advertisement:
 - Could be seen to be enticing people to buy wine to receive free groceries.
 - Is therefore irresponsible as there is a huge alcohol abuse problem.

The ABAC

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

Arguments in Favour of the Complaint

15. In favour of the complaint, it can be argued that:
 - The advertisement breaches section (a) (i) and (iii) by encouraging excessive consumption of alcohol by promoting multiple purchases of bottles of wine to obtain a \$10 grocery voucher for purchases of six or more bottles of wine.

The Advertiser's Comments

16. The Advertiser responded to the complaint by way of letter dated 26 March 2007. The principal points made by the Advertiser were:
 - The advertisement does not encourage the excessive *consumption* of alcohol.
 - It merely encourages the multiple *purchase* of wine in order to receive the voucher in question.

- There is no requirement or encouragement to the consumer to consume all 6 bottles of wine within a particular time frame.
- The incentive to purchase six or more bottles is of a fairly modest nature. It is common practice within liquor retailing to provide discounts for bulk purchase of wine.

The Panel's View

17. The Panel has dealt with three (3) previous complaints about advertising from Liquorland/Coles Myer which feature the offering of discounts for the multiple purchase of bottles of wine. On each of these previous occasions, as with the current complaint, the essence of the concern is that offering a discount will encourage excessive consumption of alcohol.
18. In its Determination 05/07 dated 31 March 2005, the Panel considered a newspaper advertisement which contained the statement "buy 6 or more bottles of wine and save 20c a litre on fuel". In dismissing the complaint, the Panel held *inter alia* that "merely advertising that more than one bottle of a product can be purchased on a single occasion, and that this results in savings for the purchaser, is not in itself a breach of the Code".
19. In its Determination 26/06 dated 14 October 2006, the Panel considered a television advertisement which stated that a fuel discount would be available if over \$30 was expended on the purchase of six or more bottles of wine. In dismissing the complaint, the Panel concluded that it did not believe "the promotion could be fairly said to encourage excessive consumption, as it is extremely common for wine to be purchased in bulk, such as in cases of wine, and it does not follow that the wine will be consumed irresponsibly. An advertisement would need to do more than promote the sale of multiple bottles to offend the standard in section (a)".
20. In this case the Panel reaches the same conclusion, that the advertisement does not breach section (a) of the ABAC. Again a discount, this time in the form of a \$10 voucher for grocery purchases, is offered for the purchase of six or more bottles of wine. It does not follow, because six or more bottles are purchased on a single occasion, that all six bottles will be consumed on a single occasion. Section (a) does not prohibit advertising which seeks the multiple purchase of alcohol products.
21. Accordingly, the complaint is dismissed.