

ABAC

ABAC Complaints Panel Determination No: 20/08

In the COMPLAINT of Mr Peter King Product: Liquorland Advertiser: Coles Group Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Professor Elizabeth Dangar – Member

17 April 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Liquorland retail outlets by Coles Group Limited (“the Advertiser”) and arises from a complaint by Mr Peter King received on 18 March 2008.

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 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 by Mr Peter King received by the ABAC Panel on 18 March 2008
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 the 30 day timeframe.

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. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a television advertisement. The advertisement begins with a voiceover, "There's some cracking offers this Easter at Liquorland" accompanied by:
 - (a) a screen showing the Liquorland logo and the name Liquorland; and
 - (b) the name Liquorland moving off the right of the screen and the logo rotating and changing into an outline of an easter egg.
10. The advertisement continues with a voiceover, "Like buy any cartons of these beers for just \$39.99. That's any carton for \$39.99" accompanied by:
 - (a) the easter egg rotating and bouncing onto a picture of eight different cartons of beer; and
 - (b) the egg then splitting in half and a price tag emerging and moving to the top right corner of the picture.
11. The advertisement finishes with the voiceover, "So stock up for a smashing easter at Liquorland. Ends Sunday. Excludes Liquorland Express" accompanied by:
 - (a) the easter egg bouncing off the picture onto a screen that features the name, Liquorland, followed in smaller print by its website address and small print as to terms of the offer; and
 - (b) the easter egg changing back into the Liquorland logo.

The Complaint

12. The complainant argues that:
 - (a) The use of the word “smashing” in the advertisement refers to the action of getting “smashed” on public holidays with alcohol.
 - (b) In light of the current government campaign to “rethink drink” it is a deliberate and poor choice of words.

The Code

13. The ABAC provides at Section (a) that advertisements for alcohol beverages must 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

14. In favour of the complaint it can be argued that the advertisement breaches section (a)(i) & (iii) of the ABAC Code by its use of the voiceover “Stock up for a smashing Easter at Liquorland”. This phrase could amount to a suggestion to consumers to stock up on alcohol and “get smashed” during the Easter public holidays, thereby encouraging excessive consumption, misuse and abuse of alcohol in breach of the Code.

The Advertiser’s Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 31 March 2008. The principal points made by the advertiser are as follows:
 - (a) In the advertisement, Liquorland uses the word “smashing” as distinct from the word “smashed” which has a different meaning. Smashing is used in the advertisement as an adjective to wish customers a happy and wonderful Easter. Other similar uses of the word include, “You look simply smashing!” to compliment somebody on the way they look. In contrast “smashed” is a verb and form of slang to indicate intoxication which is not the word used in the advertisement.
 - (b) We believe the complainant has misheard and/or confused the different words (which a reasonable person to whom the advertisement is directed would not do). Coles is not encouraging excessive consumption or abuse of alcohol, nor offensive behaviour. Accordingly Coles considers that the advertisement does not breach the Code. We take our regulatory obligations seriously and have in place a comprehensive compliance program.

The Panel's View

16. The complaint raises the issue of whether the ad is promoting excessive consumption of alcohol through the use of the word "smashing" and the connotation this has with the popular usage of the term "smashed", which is taken to mean drunk or intoxicated. This connection is denied by the advertiser who argues that the word "smashing" as used in the ad relates to having an enjoyable time over the Easter period.
17. The advertiser is not a full participant in the ABAC scheme and, while it has given its consent to be subject to the public complaint side of the scheme, it does not submit its advertising for pre-vetting approval. This means that the advertiser does not have the benefit of an independent and experienced "set of eyes" reviewing its material prior to broadcast and which can often identify potential concerns with an ad in terms of the ABAC standards.
18. In this case, the ad would have benefited from a discussion with the pre-vetters as it contains elements which had the potential to attract some concerns. For instance, the ad is promoting the sale of bulk alcohol through cartons of beer during a holiday period when alcohol consumption might be expected to increase; and it uses the term "smash" which is similar to "smashed" which is a euphemism for being drunk. While the ad is basically factual, giving brand and price information, it could have easily achieved its same purpose with the use of another term, such as "cracking", which most likely would not attract a complaint.
19. That said, the Panel's role is to assess the ad against the relevant ABAC standards. In performing this task, the preamble to the ABAC provides that conformity is to be tested using a "reasonable person" standard and considering the ad as a whole. Applying this test, a majority of the Panel does not believe the ad breaches the ABAC.
20. The ad does not depict alcohol consumption and, while the Section (a) standard is wider than actual consumption and encompasses a "responsible approach" to alcohol use, the ad does not suggest any immoderate behaviour or excessive consumption, other than the use of the word "smashing". As stated, a more appropriate word could have been used, but within the context of the ad, it is quite clear that the word does not relate to drunkenness or intoxication, as argued by the complainant.
21. In dismissing the complaint, the Panel again asks that the advertiser reconsider its position not to fully participate in the ABAC scheme.