

# **A B A C**

## **ABAC COMPLAINTS PANEL – DETERMINATION NO: 05/07 LIQUORLAND**

### **IN THE COMPLAINT OF CAROL DURKIN**

**Product: Liquorland**  
**Advertiser: Coles Myer Liquor Group**

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

**31 March 2005**

#### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") complaints panel ("The Panel") concerns a print advertisement for Liquorland by Coles Myer Liquor Group ("The Advertiser") and arises from a complaint received from Ms Carol Durkin ("The Complainant").

#### **The External-Regulatory System and the Panel's Jurisdiction**

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. Currently, alcohol advertising is subject to both:
  - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
  - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme:
3. The ASB and the ABAC 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 Complaints Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. Ms Durkin's complaint specifically raises a concern under the ABAC and prima facie is within the Panel's jurisdiction.
6. The coverage of the ABAC Scheme is however dependent upon the agreement of individual alcohol industry participants to commit to the ABAC and abide by the decisions of the Panel. Such commitments have been given by the companies which are members of the four peak industry bodies who subscribe to the ABAC Scheme namely:



- Australian Associated Brewers Inc
  - Distilled Spirits Industry Council of Australia Inc
  - Liquor Merchants Association of Australia Inc
  - Winemakers Federation of Australia Inc
7. As mentioned, 'Liquorland' is an alcohol product retail outlet operated by the Coles Myer Liquor Group. By letter dated 2 March 2005 Mr Peter Scott, Managing Director of the Coles Myer Liquor Group confirmed that Liquorland is not a member of one of the ABAC Scheme sponsoring industry bodies.
  8. Accordingly, the Panel has no jurisdiction to make any determination on the complaint as such. Liquorland is not bound by the ABAC and can advertise alcohol beverage sales in accordance with the laws which apply to the community as a whole but can choose to either comply or not comply with the industry Codes of Practice.
  9. The Panel has nonetheless decided to proceed with making a 'determination' on the complaint even though this determination has no more force than an expression of opinion which the advertiser may or may not take into account. It is hoped by the Panel that a major and respected Australian company such as Coles Myer might reconsider its decision not to participate in the ABAC Scheme, as the absence of such a major retailer of alcohol products weakens the overall force of the ABAC Scheme and the ability to achieve best practice in the responsible marketing of alcohol beverages.

#### **The Complaint Timeline**

10. The complaint is in the form of a letter from Ms Durkin, dated 24 January 2005, received by the ABAC Complaints Panel on 4 February 2005.
11. The Panel endeavours to determine complaints within 30 days of receipt of the complaint, but this timeline depends on timely receipt of materials and advice and the availability of panel members to convene and decide the issue. As the advertiser is not bound by the ABAC, strict timelines are not relevant in this case.

#### **Pre-vetting Clearance**

12. The external-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. The pre-vetting process however does not apply to alcohol retail advertisements of companies that are not members of the ABAC system. The Coles Myer Liquor Group of which the brand, Liquorland, is a part, is not a member of an association committed to the ABAC.
13. Further, the pre-vetting scheme does not apply to so called retail advertisements and it is arguable that the newspaper advertisement for Liquorland, that is subject of this complaint, is a retail advertisement and would not be subject to the pre-vetting process even if Liquorland was committed to the ABAC Scheme.

#### **The Advertisement**

10. The newspaper advertisement promotes sale prices of alcohol beverages available at Liquorland retail outlets.
11. Divided into three columns, the left and right side feature images of six types of alcohol product on sale at retail outlets, these include Jim Beam, Cougar, Black Douglas, Tooheys New, Lindemans and Windham Estate. The centre column is a text only sentence that says 'Buy 6 or more bottles of wine & save 20c a litre on fuel'. Below this



is an image of the Shell Petrol logo, where the discount coupon is redeemable. There is also the slogan 'If you're going to drive don't drink'. At the bottom of the advertisement in small print is the terms and conditions of the discounts, as well as the phone number and website of the advertiser.

### **The Complaint**

12. The complainant argues that the advertisement is offensive and promotes the volume sale of liquor in an irresponsible manner, setting a precedent for other multi-national companies to follow poor advertising standards. The complainant also expresses concern with the advertisements contradiction of the intent of the NSW drink driving legislation.

### **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.
14. Section d) of the Code provides that advertisements for alcohol beverages must
 

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.

### **Arguments in Favour of the Complaint**

15. In favour of the complainant, it could be argued that the advertisement –
  - Encourages excessive consumption of alcohol, by offering financial discounts in return for volume purchases of wine.
  - Is an irresponsible approach to the advertising of alcohol products when considered against the policy intent of the drink driving laws of New South Wales, and Australia more generally.
  - Makes a direct association between alcohol consumption and the use of motor vehicles, by offering significantly discounted petrol in return for volume purchases of alcohol products.



### The Advertiser's Comments

14. The Advertiser replied to the complaint by way of letter dated 2 March 2005, in which Mr Scott outlines the terms of the discount offer, and responds to the claims made by the complainant. Specifically, it is argued -
- Liquorland's view is that the advertisement presents a mature, balanced and responsible approach to the consumption of alcohol. The offer to receive a 20 per cent a litre fuel discount with any 6 or more bottles of wine purchased does not, in any way, encourage excessive consumption or abuse of alcohol.
  - The purchase of 6 bottles of wine does not constitute, nor does it encourage, excessive consumption or abuse of alcohol. No greater discount is awarded if more than 6 bottles of wine were purchased.
  - There are a number of current promotions in the market which offer a discount on volume purchases of wine.
  - There is little difference between offering a monetary discount or saving on the usual selling price of 6 or more bottles of wine, and an offer to receive a discount on fuel. Both forms of advertising result in a monetary saving to the consumer and do not encourage excessive consumption or abuse of alcohol.
  - In relation to the claims that the advertisement breaches Section d) of the ABAC, the advertiser argues that there is no direct association between the consumption of alcohol beverages and the operation of a motor vehicle. No image of a motor vehicle or reference to a motor vehicle appears in the advertisement.
  - The advertisement does not make any representation as to the consumption of alcohol or whether such consumption occurs prior to or after activity involving motor vehicles. The advertisement does promote safe practices by containing an anti-drink driving message, which appears prominently in the advertisement and is not contained in the fine print as part of the disclaimer.
  - Liquorland is not a member of an association that is signatory to the ABAC, and therefore the basis on which the Panel is prepared to hear the complaint is questioned.

### The Panel's View

15. Essentially the advertisement in question is a retail advertisement which contains information about products and prices. The ABAC provides that such advertisements must comply with the spirit and intent of the Code but are not subject to any process of prior clearance through pre-vetting. What brings the advertisement to Ms Durkin's attention is apparently the reference to a discount fuel offer upon purchasing 6 or more bottles of wine.
16. The complaint is in two parts. Firstly it is argued that the promotion for sale of multiple bottles of alcohol, in this case wine, encourages excess consumption. Secondly, the linkage of alcohol purchase with motor fuel discounts is irresponsible.
17. The Panel does not believe the advertisement can be fairly said to be encouraging excessive consumption of alcohol within the intent of Section a) of the Code. The Panel takes the prohibition in Section a) to be on advertisements which give positive encouragement to excessive consumption. This might be done by say linking excessive consumption with desirable personal or social qualities. Merely advertising that more



than one bottle of a product can be purchased on a single occasion and this results in savings for the purchaser is not in itself a breach of the Code.

18. The Panel is of course mindful of research, such as that summarised in the National Alcohol Research Agenda, which identifies that price is a predictor of the level of alcohol consumption in some circumstances and that consumption trends amongst young Australians does show tendencies towards so called binge drinking. Advertisers would be well advised to also be mindful of such public health concerns.
19. The second point of the complaint is linking the sale of the alcohol product with obtaining a fuel discount. The Panel does not believe this marketing device is in breach of Section d) of the Code. This Section requires association of the consumption of alcohol with the operation of a motor vehicle for a breach to occur. It would be stretching the meaning of that Section too far to say a fuel discount offer offends the prohibition.
20. It is a more open question as to whether such a means to promote alcohol sales is a responsible and balanced approach to alcohol product marketing. The very great individual and community harm which has resulted from road accidents in which alcohol consumption has been a contributing factor is well understood. The very great lengths that government, police and road safety authorities take to establish responsible patterns of driver behaviour in relation to alcohol use is also well known.
21. The Advertiser argues that the particular sales promotion used in the advertisement is not exceptional, as it is common practice for 'discounts' to apply for multiple purchases of a product. Equally, fuel discounts are now a standard feature of the commercial relationships between major retailers and petrol outlets, in this case, Coles Myer and Shell.
22. Alcohol however is not simply another product. The Advertiser itself recognised the sensitivity of using fuel discounts as a marketing device, by placing the 'If you're going to drive don't drink' message immediately under the column advertising the fuel discount promotion.
23. Assessment of whether an advertisement meets the standard of 'mature, balanced and responsible' is essentially a test made against community standards. This in turn is a standard upon which opinions can vary. The Panel believes that great caution should be exercised in using fuel discounts to promote alcohol sales and it would be best practice not to use such devices.
24. The Panel believes however that the ABAC is not breached by the advertisement. While the linkage of gaining discounted fuel for a particular alcohol product purchase will cause some to question the social responsibility of the advertiser, the ABAC Section a) is focussed on responsible consumption of alcohol and thus is several steps removed from the purchase of an alcohol beverage from a retail outlet for consumption at some later point and at a remote location. The ABAC would be breached if say a licensed premise in promoting a product for sale and consumption on the premises linked a fuel discount with purchasing multiple glasses of alcohol.
25. Accordingly, in the opinion of the Panel, the complaint should be dismissed.