

ABAC

**ABAC Complaints Panel
Determination No: 39/08**

**COMPLAINT of Mr Desmond Taylor
Product: Woolworths Liquor
Advertiser: Woolworths**

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

11 July 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a poster/billboard for Woolworths Liquor by Woolworths (“the Advertiser”) and arises from a complaint by Mr Desmond Taylor received on 12 June 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:
 - 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 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 received by the ABAC Panel on 12 June 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 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 poster that was seen on the external wall of the Woolworths Store at the Dog Rock Shopping Centre in Albany.
10. The poster features the text "Shop at Woolworths Liquor Save 20c per litre on fuel " over a background of green with a red star in the centre (being the Woolworths Caltex logo). Below the star a separate panel that is a lighter shade of green contains an image of a sign as seen at a Caltex Woolworths fuel outlet with the text "Save 20c per litre on fuel Conditions apply." and to the right of the image the text " Buy any 6 or more bottles of wine at Woolworths Liquor and save 20c per litre on fuel*" Below the light green panel there are conditions of the offer in small black print and the Woolworths Liquor logo to the right of the conditions. Below the conditions, Yellowglen, Rosemount, Wolf Blass and Penfolds logos are featured.

The Complaint

11. The complainant argues that:
 - The advertisement encourages the purchase of alcohol in association with vehicles and driving;
 - Woolworths should offer 20 cents per litre off fuel for more healthy or other products;
 - The promotion is offensive and counter productive and does not encourage family values, only promotes and sells a drug product.

The Code

12. The Preamble to the ABAC states that the Australian Associated Brewers Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages, **other than point of sale material**, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

13. 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.

14. The ABAC provides that advertisements for alcohol beverages must:

- (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle....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.

Arguments in Favour of the Complaints

15. In favour of the complaint it can be argued that by offering a fuel discount voucher on the purchase of 6 or more bottles of wine:

- 15.1. the advertisement breaches section (a) of the ABAC Code by encouraging excessive drinking;
- 15.2. the advertisement breaches section (d) of the ABAC Code by encouraging the purchase of alcohol in association with vehicles and driving.

The Advertiser's Comments

16. On 16 June 2008 John McGennis, the business manager for Woolworths Liquor, advised verbally:

- 16.1. Two copies of the advertisement complained of are located inside frames on the external walls of the Woolworths store located at the Dog Rock Shopping Centre in Albany, Western Australia.
- 16.2. The advertisements are 60 x 40cm 'paper banners' and between 1 and 3 new paper banners are provided to each store for fixing in the frames each week. The banners are usually the lead component in the weekly

Woolworths catalogue. The advertisement complained of has been used in catalogues, as paper banners on the external walls of Woolworths stores and as 'shelf talkers'.

- 16.3. One of the paper banners is located on the external wall directly outside the entrance to the Woolworths Liquor department and the other is located 47 metres from the Woolworths liquor department. The Woolworths Liquor department is within the Woolworths store in a section divided off from the supermarket department.
17. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 2 July 2008. The principal points made by the advertiser were as follows:
 - 17.1. Woolworths is not currently a signatory to the ABAC Scheme but takes its advertising obligations very seriously. Woolworths operates under its own ethical and responsible liquor advertising guidelines which are not inconsistent with the ABAC scheme.
 - 17.2. Woolworths denies the advertisement encourages drink driving. The advertisement does not encourage or suggest that the alcohol should be consumed prior to driving, or otherwise link the consumption of alcohol to the operation of a motor vehicle. To the extent that the advertisement links the purchase of alcohol to the purchase of petrol, it is not correct to say that this alone amounts to an encouragement of drink driving. For example, many consumers already use their cars to purchase alcohol from bottle shops and many bottle shops provide car parking facilities for their consumers. Although the provision of a car park clearly links driving and the purchase of alcohol, no-one would suggest that offering such consumer facilities amounts to an encouragement of drink driving. Similarly, merely offering a discount on the purchase of wine does not encourage drink drinking. Wine, the subject of the offer, is sold sealed and is not consumed on Woolworths Liquor premises, meaning that even if there was a temporal link between the purchase of the alcohol and the purchase of the petrol, there is no link between the consumption of the alcohol and driving.

The Panel's View

18. There are two threshold issues 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 first 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 ABAC's adjudication process has no binding effect on the company. 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.
19. The second threshold issue is whether the advertising which has attracted the complaint is "point of sale material" and hence is "carved out" from the operative provisions of the ABAC. The scope of "point of sale" material was recently considered by the Panel in its Determination No: 18/08 (WKD). The Panel

decided that it takes the “point of sale” carve out to incorporate advertising material which:

- Is displayed adjacent to the point at which the alcohol beverage is purchased,
- Is a fixture or akin to a fixture *i.e.* not intended to be taken away from the premises by a customer, and
- Has limited exposure to a wider audience beyond the clientele of the premises from which the alcohol beverage is purchased.

20. The advice received from the advertiser is that:

- The advertisements were posters placed inside frames fixed to the external wall of a Woolworths supermarket, and
- The licensed premises (Woolworths Liquor) which are the subject of the advertisement are located inside the Woolworths building in a separate area to the supermarket.

21. Based on this information and the criteria developed by the Panel for assessing if an ad is point of sale, the Panel concludes that as the advertisement is visible to a wider audience than the clientele of Woolworths Liquor and is as far as 47m from the premises, the complaint does not relate to “point of sale material” and as such is required to comply with the ABAC.

22. In relation to the substantive issues raised in the complaint, 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 part of the current complaint, the essence of the concern is that offering a discount will encourage excessive consumption of alcohol.

23. 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”.

24. 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)”.

25. In Determination 03/07 the Panel considered a catalogue advertisement that offered a discount, this time in the form of a \$10 voucher for grocery purchases, for the purchase of six or more bottles of wine. In dismissing the complaint the Panel concluded that the advertisement did not breach section (a) of the ABAC. Again, it did 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.

26. The advertisement that is the subject of this complaint does not offend section (a) for the same reason that previous complaints about this type of advertisement were dismissed.
27. The complaint in this matter raises an additional concern that the voucher that is offered is for a discount on fuel purchases and therefore the advertisement links driving with the purchase of alcohol.
28. In order to breach section (d) of the Code there must be a depiction of a direct association between the *consumption* of alcohol beverages and the *operation* of a motor vehicle. Given that the advertisement refers to the purchase of alcohol beverages but not the consumption of alcohol and the operation of a motor vehicle, this advertisement does not breach section (d) of the ABAC.
29. Accordingly, the complaint is dismissed.