

ABAC

ABAC Complaints Panel Determination No: 76/13

Complaint by Ian Watson
Product: Secret Stone Marlborough Sauvignon Blanc
Advertiser: Coles - Liquorland

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Louisa Jorm – Member
Jeanne Strachan – Member

23 July 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement on a Coles shopping docket for Liquorland (“the Advertiser”) and arises from a complaint by Ian Watson received on 2 July 2013.

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 was received by the ABAC Panel on 2 July 2013.
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 the advertisement.

The Advertisement

9. The complaint refers to a Coles docket promotion.
10. At the top of the docket there is a heading "Docket Deals Coles" and "Liquorland".
11. On the left side of the docket appears an outline of two wine bottles and in between the bottles within a circle "Buy 1 get 1 free".
12. On the right side of the docket the offer states "Buy one get one free on Secret Stone Marlborough Sauvignon Blanc 750ml and Range in one transaction. Valid until July 9, 2013."
13. The following terms are included at the bottom of the docket "Not available to under 18s, Excludes Coles online, Liquorland online, Liquorland Kununnurra, Sth Hedland or ANY Northern Territory stores. Limit of 3 free bottles per customer, while stock lasts. Docket cannot be used in conjunction with other offers and is not transferrable. Present your flybuys card and surrender this Docket at the time of purchase."

The Complaint

14. The complainant argues that:
 - 14.1. the advertisement encourages unsafe drinking, unhealthy drinking levels and inflicts harm upon individuals by the offer of 2 for 1 and by using the advertisement itself as a voucher that needs to be used before it expires.

- 14.2. the advertising promotes alcohol, which damages the body, and alcohol abuse has a damaging effect on families, the community, domestic violence and personal violence and the harm this has on children.

The Code

15. 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. ...
 - iii. must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 8 July 2012. The principal points made by the advertiser were as follows:

16.1. In addition to complying with relevant legislative obligations and industry codes, Liquorland Australia Pty Ltd (Liquorland) has a long-standing commitment to the responsible service of alcohol. Liquorland maintains rigorous compliance measures to monitor its liquor advertising materials. Liquorland considers its materials accord with all of these commitments which are consistent with the spirit of the Alcohol Beverages Advertising Code ("ABAC") Scheme. Liquorland acknowledges the importance of the aims of the ABAC. We expect our advertising to be responsible at all times and we consider that the Advertisement does not amount to a breach of the ABAC when assessed taking the content as a whole. We also believe that the Advertisement meets the definition of "Retail Advertising" as outlined in ABAC and, even if Liquorland was a signatory to the ABAC, would not require pre-vetting.

16.2. As a general comment the broader Coles group uses cross brand promotions from time to time as part of tactical marketing campaigns for the following reasons:

- To respond to a competitor offer;
- Stimulate sales or reward customer loyalty; and
- To promote certain categories of goods or certain specified goods.

In Coles' experience of customer uptake and expectations, offering periodic, unique offers, product specific or larger discounts for limited periods – such as in the Advertisement – provides customers with greater incentive to shop and save with Coles group businesses when compared with every day promotions. The cross-promotion of two Coles group businesses is a common feature of Coles customer loyalty promotions,

similar to fuel discount offered on Coles insurance purchases or promotional fuel discounts offered on grocery purchases from time to time. The ability to cross-promote different businesses and sectors is a unique feature available to diverse group companies such as Coles, which makes it a distinctive and attractive proposition for customers, consistent with Coles group marketing objectives.

16.3. Liquorland supports the responsible service and sale of alcohol and we do not believe the Advertisement encourages people to drink and drive, or consume large quantities of alcohol. The Advertisement was targeted at adults over the (legal consumption and driving) age of 18 years. The Advertisement was consistent with the objectives listed above and our commitment to provide value and loyalty to customers.

16.4. Some common promotions that are offered by most licensees who sell packaged liquor nationally include:

- Buy a dozen bottles of wine and receive a percentage discount;
- “two for the price of one” offers;
- Buy a carton of beer/wine get a bonus product.

16.5. We do not believe these types of promotions encourage rapid and excessive consumption, rather, provide our customers with an opportunity to purchase products at good value to consume at home. These types of promotions are primarily wine offers that provide our customers with good value for money and are run by most packaged liquor licensees nationally.

16.6. Liquorland advertises in a wide range of external media including press, radio and on shopping dockets in Coles Supermarkets. From time to time our press and catalogue advertising will feature special offers, the shopping docket offers are an extension of those promotions. The style and content of this advertising is aimed at adults.

16.7. The shopper docket itself only shows the Advertisement and terms and conditions of it, including critically that it is not available to people under 18 years of age. It does not depict, or contain any message encouraging, the consumption of the product by anybody, let alone by persons who are under the age for legal consumption or who may consume it excessively. Liquorland does not believe the Promotion can reasonably be regarded as encouraging irresponsible, rapid or excessive consumption.

16.8. The Advertisement can only be redeemed at a Liquorland store and is therefore subject to Liquorland’s responsible service of alcohol procedures including:

- Any person who is under 25 years of age is required to provide proof of age prior to being served. If a customer cannot provide this proof of age they will be refused service.
- Refusal of service to any person our team members believe may then supply that liquor to a minor or intoxicated person.

- 16.9. The shelf price of a single bottle of the Stone Marlborough Sauvignon Blanc featured in the Advertisement was \$20. Offering consumers significant savings does not necessarily mean that cheap alcohol is sold. If a customer redeemed the offer at Liquorland they would have paid \$20 for two bottles of wine, equating to \$10 per single bottle. While this represents a significant saving to consumers the single bottle price could not be regarded as “cheap”. Additionally the amount a customer could purchase was limited to a total of six bottles of wine. We do not believe that a promotion where a customer purchases two bottle of wine for \$20 encourages the consumption of liquor in an excessive or irresponsible manner. We believe the Promotion enables consumers to purchase a particular brand of alcohol in a small multiple quantity for good value and as an alternative to another similar brand.
- 16.10. Customers have fourteen days to redeem the offer. Just because a customer purchases multiple quantities does not mean that they will drink all that alcohol on one occasion or in any rapid or excessive manner. For example, a customer may purchase the product to consume over a period of time, either by themselves or with others. In addition it is common to have “end dates” for a promotion. All our promotions featured in catalogue press or other media include a date that the offers included in that promotion will end. This is consistent with existing consumer behaviour in Australia for other goods and services. If a particular brand of product is on special one week, a customer often purchases additional quantities of the product. When products return to their original price after the “special” ends there is a decrease in the purchase of that product. There is nothing unusual or of concern with this activity.
- 16.11. Liquorland does not believe that providing reasonable value propositions encourages excessive consumption of alcohol and otherwise considers the Advertisements do not encourage any consumer to engage in excessive consumption of alcohol. Alcohol is commonly sold in multiple quantities such as a case of wine or carton of beer. We believe there is a clear difference between purchasing multiple quantities of alcohol and the subsequent consumption of it. The Advertisement provided eligible customers with the opportunity to purchase this product at good value for consumption at a later time.
- 16.12. We further note that these offers were targeted at adults over the (legal consumption) age of 18 years. The Advertisement was consistent with the objectives listed above and our commitment to provide value and loyalty to customers. Liquorland remains committed to the responsible promotion, service and sale of alcohol and considers that its marketing has an important part to play in that process.

The Panel’s View

Procedural issues

17. The Coles Group, which is the parent company of Liquorland, is not a signatory to the ABAC scheme. This means that the advertiser has no contractual obligations to comply with the Panel’s decisions about its alcohol advertising.
18. Over the years, the Panel has nonetheless made a number of decisions about alcohol advertisements from the Coles Group. In each case, while asserting their

independence of the ABAC scheme, Coles has cooperated with the Panel's processes by supplying a copy of the advertisement in question and providing comments in response to the complaint. This has again been Coles' practice in response to the complaint about advertising on Coles' supermarket dockets for their Liquorland retail outlet. The Panel has accordingly made a decision on the complaint.

Substantive Issues

19. The complainant raises two concerns:

19.1. Firstly, that the advertisement encourages unsafe drinking, unhealthy drinking levels and inflicts harm upon individuals by the offer of 2 bottles of wine for the price of 1 and by using the advertisement itself as a voucher that needs to be used before it expires.

19.2. Secondly, that alcohol advertising itself is irresponsible.

20. The complainant's first concern brings into play sections (a)(i) and (iii) of the ABAC which prohibit the encouragement or promotion of irresponsible or excessive consumption. The Panel has previously found that the offer of discounts for the purchase of multiples of alcohol products does not amount to the encouragement of excessive consumption as alcohol is often purchased in multiples (e.g. a case of wine, or a carton of beer) but consumed over a period of time or in conjunction with others.

21. The Panel has, however, not previously been called upon to consider whether placing an expiry date on such an offer encourages the more rapid purchase and by implication consumption of the product. While the inclusion of an expiry date on an offer encourages uptake of the offer by the specified time, the Panel does not believe that this implies more rapid and therefore excessive consumption of the product will occur. Alcohol products such as wine have a long shelf life and in the case of some red wines, this can be for periods well over 10 years. Promoting the purchase of multiple bottles of wine to obtain a price advantage does not of itself mean that the purchased product will be irresponsibly consumed. There is nothing in the advertisement which can be said to be encouraging excessive or irresponsible consumption of the purchased products.

22. The second concern raised by the complainant is a general observation that alcohol advertising of any kind is irresponsible and by inference should not be permitted. The question of whether alcohol advertising should be permitted at all is a policy question which is in the remit of Australian Governments. The Panel has no authority to make such an assessment and can only assess the consistency of individual advertisements against the ABAC standards.

23. Accordingly, the complaint is dismissed.