

ABAC

ABAC Complaints Panel Determination No: 80/13

Confidential Complaint Product: Various Advertiser: Liquorland

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Richard Mattick – Member
Debra Richard – Member

30 July 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a digital advertisement on the ESPN football tipping website for Liquorland (“the Advertiser”) and arises from a confidential complaint by received on 9 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 9 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 alcohol special offer advertisements that he is constantly exposed to, in particular, a digital advertisement that appeared on the ESPN football tipping website (footytips.com.au). The advertisement appeared with reminders to the user to enter their tips and also on logging out of the site.
10. At the top of the page there is a heading "Liquorland" with the "ID 25" logo and the text "Liquorland Supports the Responsible Enjoyment of Alcohol". Below the heading is an image of 8 x 700ml bottles of branded spirits with two promotions in red circles "Any 3 for \$90" and "Any 2 for \$68". At the bottom of the page are the terms and conditions and a "Find nearest store" button.

The Complaint

11. The complainant argues that:
 - 11.1. While football tipping on the ESPN website he is continually bombarded with offers such as the Liquorland advertisement identified noting that this also occurs in the press and other electronic media.
 - 11.2. The blatant bulk price discounting of alcohol exploits customers to aid sales and it would take a very responsible drinker not to increase his/her alcohol intake when cheap specials always seem to be available, therefore this advertising would have a hand in increasing society's alcohol related problems.

The Code

12. 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

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

- 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 and expectations of 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. While acknowledging the importance of the aims of the ABAC, Liquorland considers it has acted responsibly at all times and that it is reasonably apparent that the relevant advertising does not amount to a breach of the Code when assessed taking the content as a whole.
- 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;
 - Multiple products for a single price;
 - Buy a number of bottles of spirits and receive a discount;
 - Buy a carton of beer/wine and get a bonus product.
- 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 licensees who sell packaged liquor nationally.
- Liquorland advertises in a wide range of external media including press, television, radio and online. Liquorland also advertises in the Coles supermarket catalogue. From time to time our advertising will feature special

offers such as “three bottles of spirits for a single price point”, the Advertisement features that promotion. The style and content of this advertising is aimed at adults.

- Offering consumers significant savings does not necessarily mean that promotion would encourage a person to consume alcohol in an irresponsible manner. Whilst this represents a significant saving to consumers it could not be regarded as “cheap”. We do not believe that this promotion encourages the consumption of liquor in an excessive or irresponsible manner.
- With respect to “specials”, being a special price that runs for a short period of time such as in the Advertisement, there is no evidence to suggest that “specials” offered at Liquorland result in more alcohol being consumed. A customer may save money due to purchasing at the “special” price or they may “trade up” to a brand which is normally beyond their budget, but this does not mean that they will necessarily consume more alcohol.
- We believe it is encouraging a consumer to purchase a particular brand of alcohol in a small multiple quantity for good value and as an alternative to another similar brand. 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.
- 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 the 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.
- Liquorland denies that providing reasonable value propositions amounts to encouraging 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 Advertisements provided eligible customers with the opportunity to purchase this product at good value for consumption at a later time.
- Liquorland does not believe there is anything in the Advertisement which could reasonably be said to encourage a person to consume alcohol in an irresponsible or excessive manner. The Advertisement simply shows the price and product, it does not make any statements that could reasonably be considered to encourage consumers to drink alcohol to excess or in an inappropriate manner. In any case alcohol is commonly sold in multiple quantities. We believe there is a clear difference between purchasing multiple quantities of alcohol and the subsequent consumption of it.
- Liquorland remains very committed to the responsible service of alcohol and considers that its marketing has an important part to play in that process. We believe that the Advertisement when viewed as a whole demonstrates a moderate, responsible approach to alcohol.

The Panel's View

14. 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.
15. 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 current complaint about advertising on Coles' supermarket dockets for their Liquorland retail outlet.
16. The complainant is concerned about alcohol related problems in Australian society and contends that the ubiquitous nature of alcohol advertising generally, and this style of alcohol advertisement in particular, must "have a hand" in causing the problems. It is argued that offering buyers bulk price discounting would increase alcohol intake.
17. The complainant's concern about alcohol related problems is clearly genuine and is widely shared amongst the community. There is extensive evidence that harm related to alcohol misuse creates significant problems throughout the community, both at a personal and collective level. Australian governments recognise the problem through various policy initiatives which include reviewing periodically the adequacy of the quasi regulatory system which applies to alcohol advertising.
18. Against this background, the Panel has a limited and defined role, which is essentially to assess individual alcohol advertisements against the standards contained in the ABAC. In this context, much of what concerns the complainant is not within the ability of the Panel to address. In particular, the Panel has no role to decide whether alcohol advertising should be allowed or not, or whether there should be limits on the frequency or the placement of particular alcohol advertising across media. Rather, the Panel has to assess the content of the advertisements complained about against the relevant standards.
19. In this case, the relevant standards are contained in (a) section (i) and (iii) of the Code. These provisions go to the prohibition of the encouragement or promotion of irresponsible or excessive consumption. The Panel has previously held that simply offering a discount for the multiple purchase of an alcohol product does not amount to the encouragement of subsequent excessive consumption of the purchased products.
20. Alcohol is often purchased in multiples and then consumed over a period of time or by numerous individuals. By their nature, most alcohol products have a reasonably long shelf life and making alcohol available at a cheaper price during a particular time period might encourage a person to purchase alcohol during that time to secure a better price, but it does not follow that the alcohol will then be consumed in an irresponsible manner such as in binge drinking.
21. In terms of the content of the advertisement itself, it contains pictures of various alcohol products and their pricing. It does point to the fact that alcohol can be purchased at a cheaper rate than might otherwise be the case if purchased outside of the discount offer. There is, however, nothing in the content which can

be fairly said to be encouraging a purchaser of the products to then consume them in an irresponsible or excessive manner.

22. Accordingly, the complaint is dismissed.