



## **ABAC Adjudication Panel Determination No. 12, 15, 20 & 23/15**

**Products:** BWS & Liquorland  
**Company:** Woolworths Liquor Group and Coles Liquor  
**Media:** Print & Television  
**Complainants:** Cameron Sutton, Confidential, Lee Simpson and Steve Chadwick  
**Date of decision:** 27 March 2015  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### **Introduction**

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns shopping receipt, catalogue and television advertisements by the Woolworths Liquor Group and Coles Liquor (“the Companies”) and arises from four complaints received 16 and 19 January and 2 February 2015.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 16 and 19 January and 2 February 2015.
8. The Panel endeavour 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. Due to the number of complaints received raising related issues, and the desirability to provide a comprehensive statement on the

application of the new ABAC provisions, the timeframe has not been met on this occasion.

## **Pre-vetting Clearance**

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the television marketing communication.

## **The Marketing Communications**

### **First complaint (Shopping receipts)**

10. The first complaint concerns supermarket receipts from the retailers Woolworths and Coles. The Woolworths shopping receipt contained information regarding the following BWS promotions:

- a) BWS Receipt Rewards

Buy 1 Get 1 Free on Essenze Marlborough Sauv Blanc or Peter Lehmann Portrait Shiraz 750ml bottle. Present this receipt at any BWS store. Valid until 13<sup>th</sup> February 2015.

- b) Deli, Seafood & Fresh Meat Reward Offer

For purchasing Seafood, Fresh Meat or Deli items you get any one of the following six packs for \$10:

XXXX Gold 6 Pk 6 x 375ml

Heineken Lager 6 Pk 6 x 330 ml

Or get \$10 off any one of the following items:

Wither Hills Marlborough Sauv Blanc 750ml

XXXX Gold 30 Pk 30 x 375ml

Heineken Lager 24 Pk 24 x 330ml.

Present this receipt at any BWS store Valid until 16<sup>th</sup> February 2015.

\*Not available to under 18's. Each offer is limited to 1 redemption per receipt. Not available in conjunction with any other offer. #Above wines not available in certain drive-in stores in VIC. For store locations and terms and conditions visit [bws.com.au](http://bws.com.au).

11. The Coles supermarket shopping receipt contained the following Liquorland promotion:

- a) Docket Deals Coles Liquorland Buy 1 get 1 Free. Buy one get one free on Zilzie Estate Shiraz 750ml in one transaction. Valid until 27 January 2015. Not available to under 18s. Excludes Coles online, Liquorland online or any WA North or Northern Territory stores. Limit of 3 free bottles per customer while stocks last. One docket per customer per day. Dockets cannot be used in conjunction with other offers and is not transferable. Surrender this docket at the time of purchase.

## **Second complaint (Shopping receipts and Catalogues)**

12. The second complaint concerns Woolworths and Coles shopping receipts and catalogues from both supermarket chains which contain pages related to alcohol products available at BSW and Liquorland, respectively. The Woolworths shopping receipts contained the following BWS promotions:

- a) BWS Receipt Rewards

Buy 1 Get 1 Free on Essenze Marlborough Sauv Blanc or Peter Lehmann Portrait Shiraz 750ml bottle. Present this receipt at any BWS store. Valid until 13<sup>th</sup> February 2015.

- b) BWS Receipt Rewards

Buy 1 Get 1 Free on Wither Hills Marlborough Sauv Blanc 750ml or Palladium Watchman Shiraz 750ml bottle. Present this receipt at any BWS store. Valid until 16<sup>th</sup> January 2015.

- c) Deli, Seafood & Fresh Meat Reward Offer

For purchasing Seafood, Fresh Meat or Deli items you get an extra \$10 off any of the following:

James Boags Premium Lager Ctn 24 x 375ml

James Boags Premium Lager 6 Pk 6 x 375ml

James Boags Premium Lager Taping Twin Pack 2 x 3.2L

Present this receipt at any BWS store Valid until 13<sup>th</sup> January 2015.

\*Not available to under 18's. Each offer is limited to 1 redemption per receipt. No further discounts apply. #Above wines not available in certain drive-in stores in VIC. For store locations and terms and conditions visit [bws.com.au](http://bws.com.au).

13. The Coles supermarket shopping receipts contained the following Liquorland promotions:

- a) Docket Deals Coles Liquorland Buy 1 get 1 Free. Buy one get one free on Silver Ridge Central Valley Sauvignon Blanc 750ml in one transaction. Valid until 23 December 2014. Not available to under 18s. Excludes Coles online, Liquorland online or any WA North or Northern Territory

stores. Limit of 3 free bottles per customer while stocks last. One docket per customer per day. Dockets cannot be used in conjunction with other offers and is not transferable.

- b) Docket Deals Coles Liquorland Buy 1 get 1 Free. Buy one get one free on Story Bay Semillon Sauvignon Blanc in one transaction. Valid until 20 January 2015. Not available to under 18s. Excludes Coles online, Liquorland online or any WA North or Northern Territory stores. Limit of 3 free bottles per customer while stocks last. One docket per customer per day. Dockets cannot be used in conjunction with other offers and is not transferable. Present your flybuys card and surrender this docket at the time of purchase.
14. The Woolworths supermarket catalogue included a full page BWS advertisement with the heading "Australia's Coolest Specials". The advertisement includes a range of offers on beer, wine and spirit products with savings for purchasing 2 or 3 items in a bundle. Also featured is a picture of a flag, 2 stubby holders and a cap in the colours of the Australian flag with the caption "Australia Day Get your merchandise in-store now". At the bottom of the page there is the line "200 Specials Today & Every Day" and in small print the terms and conditions.
15. The Coles supermarket catalogue includes a full page Liquorland advertisement with the heading inside a picture of a tennis ball of "We've aced low prices". The advertisement includes a range of discounts on single and bundle purchases of wine and spirits. Terms and conditions are included in small print at the bottom of the page.

### **Third complaint (Shopping receipt)**

16. The third complaint concerns a Woolworths supermarket shopping receipt that promotes discounts on a range of alcohol products.

### **Fourth complaint (Television)**

17. The fourth complaint concerns a television commercial for BWS. The advertisement opens with the text and voiceover "Today you saved on the ultimate Aussie Combo" as a kettle barbecue appears on the screen.
18. The voiceover continues "At BWS buy any case of beer Like Fosters Classic for \$40" as the text of the offer and a carton of Fosters Classic appears on the screen. The kettle barbecue appears on the screen with prawns cooking on top as the voiceover and text continues "and get \$5 off giant Raw Australian Tiger Prawns at Woolworths". The Woolworths logo and the text "Between 1-2kgs" appears on the screen.
19. The screen splits in two and on one side is the BWS logo and 3 cans of Fosters Classic on the arm of the barbecue and on the other is the Woolworths, Love Australian Prawns and Australian Seafood logos, with a shopping trolley with a + in it and the barbecue with prawns cooking in the middle. The voiceover continues "Its what we like to call win win".

20. The screen changes to the BWS logo and text "Today's Special" with the ID25 and Drinkwise logos as the voiceover continues "BWS Today's Special.
21. In small print at the bottom of the screen throughout the advertisement is the text "Buy any case of beer and surrender the original unaltered BWS receipt at a participating Woolworths supermarket to receive \$5 off your purchase of between 1-2kgs of Giant Green Tiger Prawns (from behind the counter). Valid 14.01.15 to 10.02.15. Conditions: While stocks last, not redeemable for cash and discount not available with any other offer or online. One coupon per transaction.

## **The Complaints**

22. The first complainant is concerned that the shopping receipt advertisements:
  - a) promote alcohol and alcohol brands to children as any person under 18 can buy from a supermarket and receive this advertising;
  - b) link food purchases to alcohol discounts;
  - c) encourage higher volume purchase of alcohol than one person could consume;
  - d) offer extremely low prices where low pricing appeals to children/adolescents who are not yet loyal to brands;
  - e) use price to lure vulnerable people into liquor retail outlets.
23. The second complainant is concerned that:
  - a) when groceries are purchased the receipt given contains advertising for alcohol products from retailers owned by the supermarket chain;
  - b) alcohol should not be advertised with general day to day food products as this normalizes alcohol in society;
  - c) shopping receipts and catalogues include excessive double up offers ie 2 for 1 and buy 1 get 1 free deals which encourages binge drinking;
  - d) alcohol is advertised in grocery catalogues;
  - e) receipts are given to underage customers via supermarkets that attract all society, including minors;
  - f) catalogues are viewed by underage persons and children use them to 'play shop';
  - g) its irresponsible to advertise alcohol as an everyday product, that should be purchased in bulk, consumed regularly and put in everyone's shopping trolley no matter how old you are or what the cost is to society.

24. The third complainant is concerned about a docket that provides discounts on a range of alcohol when making a small purchase of \$11.24 and that these offers are made to indigenous people who are not permitted to use Government benefits for cigarettes and alcohol. This complainant believes that rewards should be given for the purchase of healthy products rather than alcohol.
25. The fourth complainant is concerned that a discount on prawns is only offered if a carton of beer is purchased and that alcohol is the root of all evil.

### **The ABAC Code**

26. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
  - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
  - (b) have Strong or Evident Appeal to Minors;

### **The Companies' Response**

27. Woolworths Liquor Group responded to the complaint on 2 February 2015. The principal points made by the company were:
  - (a) WLG aim is to be Australia's most responsible retailer of alcoholic beverages. In 2013 we formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. Prior to becoming a signatory, WLG demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. WLG maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context. WLG has also instigated a range of industry-leading initiatives to ensure that children are not served alcohol, including:
    - ID25 (ask for ID from anyone who looks under 25)
    - Don't Buy It For Them (stopping secondary supply to minors)
    - Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses, and implementation of the award winning training program "Safe".
  - (b) In marketing alcoholic products, WLG has been fully aware of the requirement not to encourage excessive consumption or risky drinking

or appealing to people not of legal purchase age. We have been careful to observe this, including by ensuring that our marketing has been strictly limited to promotion on the price of adult beverages that are available for purchase everyday from BWS stores. Advertising price specials across a variety of mediums has been regularly used by BWS and nearly every other retailer as a common promotional mechanism.

- (c) BWS *receipt rewards* and *cross-shop promotions* (fuel or prawns) advertisements do not at any point make a suggestion for the alcohol being promoted to be consumed excessively, rapidly or by people under the legal purchase age. Receipt rewards and cross-shop promotions are designed to provide shoppers who are loyal customers with a special offer that is only available as a direct result of that shopping loyalty. It is ultimately up to the customer to choose to redeem that offer, in which circumstances normal legal licensing obligations arise as to the responsible service of alcohol and ensuring that it is not sold to minors. Receipt rewards are but one component of other loyalty rewards that promote a range of goods and services across Woolworths Limited businesses.
- (d) Through membership of the EveryDay Rewards program, customers are offered regular specials and rewards for a variety of grocery items within our supermarkets as well as linking to petrol discount offers. Across this broad range of promotions we believe we are offering a strong suite of rewards to all our customers and their shopping preferences.
- (e) We note that in some jurisdictions, alcohol can be sold next to general grocery merchandise. We also note that Australian drinking habits are improving across all major indicators:
- In 1974-1975 Australians consumed the equivalent of 13.1 litres per person. This has fallen considerably since the early 80s, decreasing to 9.9 litres in the most recently reported year of 2012-13.
  - Since 2007, there has been a 29% increase in abstention for all young people aged 12-17 years. The increase has been most marked for girls, with a 33% increase in abstention, compared with a 22% rise in abstention for boys.
  - The latest findings of the National Drug Strategy Household survey reveals that more Australians overall are abstaining from drinking alcohol and fewer people are undertaking risky drinking practices.
  - While any alcohol related violence is unacceptable, encouragingly and contrary to popular belief, alcohol related incidents in NSW have decreased by 30% in the last six years. This trend is also supported by Australia wide data from the Australian Institute of Health and Welfare (AIHW) which shows a decrease in violence (such as physical, verbal and being put-in-fear) across a similar timeframe.



- (f) The ABAC Rules and Procedures makes it clear that retailer brand and price advertising do not require to be pre-vetted. As such, BWS has never had submitted its receipt rewards or cross-shop promotions for prevetting, however, they are subject to stringent internal controls over the offer and its messaging to ensure compliance with internal policies and ABAC. For example, advertised products are generally limited to premium wine or beer and do not feature RTDs or cask wine offers.
- (g) Cross-shop promotions exclude items that may appeal to children such as toys. While the offers do represent substantial savings, the consumer will find even more affordable priced offers on a range of wine and beers in store. For example, the purchase of a cask wine would deliver more standard drinks per customer spend dollar than any receipt reward offer. WLG disputes that advertising price specials on alcoholic beverages using the communication medium of shopping receipts encourages the excessive or rapid consumption of alcohol. The “specials” on offer are similar to those BWS and other retailers use across a broad range of advertising mediums – billboards, posters outside store, letterbox catalogues, print advertising in newspapers and online, televisions and radio, etc. As such, they have no special appeal to people under the legal purchase age than what they may otherwise be exposed to across other communication mediums. ABAC is a content – rather than placement – code which focuses the question on whether the advertisement meets with the ABAC standards whether it is transmitted on television, radio, over the internet, in conjunction with a movie at a cinema, in a newspaper or, in this case, on a shopping docket. The mere fact that a medium such as a newspaper or shopping docket is used to convey the advertisement will not of itself be a breach of the ABAC.
- (h) Focussing then on the content, there are no words in the promotion, visuals, iconography, designs, motifs, or symbols or imagery used that could possible lead the viewer into thinking the advertisement is an appeal to rapidly or excessively consume alcohol. Equally, there is nothing in the promotional offer that depicts a person under 25 years of age, or has strong and evident appeal to a Minor. Taking the advertisement as a whole, a ‘reasonable person’ would view the advertisements as simple retail price advertising. There is nothing in the advertisement that a reasonable person would view as likely to encourage a person to consume all the alcohol in a single sitting or carry out an irresponsible activity; or that has strong or evident appeal to children.
- (i) The Panel has previously made determinations on receipt rewards promotions or multiple item (multibuy) discounts and WLG is surprised that this matter was not dealt with under ABAC’s ‘consistently dismissed provisions’.
- (j) In everyday life, there are a myriad of reasons for a shopper to take advantage of a product promotional bundle in which they receive discounts for a greater volume purchased. This could include the

cellaring of a wine, the hosting of a weekend BBQ, or the gathering of family over the holiday period and needing to cater for a variety of drink preferences. Alcoholic beverages are regularly consumed with food in most Australian households and drinking occasions. This practice is more likely to lead to the moderate and responsible consumption of alcohol over that of just consuming an alcoholic beverage on its own. It simply doesn't follow that the "promotion" of a special offer on an alcoholic beverage will then lead to the "purchase" of an alcoholic beverage from a liquor store which will translate immediately into the "consumption" of the entire volume of alcohol in one sitting by that individual alone.

- (k) A selection of previous ABAC determinations confirm this has been a consistent approach stretching back over many years:

**Determination 26/06**

The second issue is whether section (a) of the ABAC is breached by the advertisement. Here the argument is whether promotions which seek to entice the purchase of multiple bottles of alcohol beverage is an encouragement of the excessive consumption of alcohol. The Panel does not believe the promotion can 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).

**Determination 05/07**

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.

**Determination 80/09**

The Panel does not believe that the ad can fairly be said to be encouraging excessive consumption. It is highly questionable whether the giveaways could reasonably be expected to lead to multiple purchases of the product being promoted. It might reasonably be expected that the giveaway might influence a consumer to choose a particular retailer and a particular brand or product over alternatives, but it does not follow that a person would likely purchase more alcohol than would otherwise be the case, simply to obtain the giveaways. More critically, however, even if it was accepted that the impact of the advertisement was to increase the purchase of the particular products being promoted, it does not follow that a consumer will modify their consumption pattern to consume more alcohol.

It is very common for alcohol to be purchased in multiples e.g. a case of wine or a carton of beer. Simply because a case or carton of a product is purchased

does not mean that the product is then consumed on a single occasion or in an excessive manner. In other words, there is an obvious distinction between the purchase of multiple products for “take away” use and the rate of consumption of the product. At its highest, the ad might be encouraging the purchase of more of the promoted products, but it cannot be said that it is encouraging excessive consumption of the products which have then been purchased.

#### **Determination 34/10**

“The Panel has on a number of occasions considered ads which promote the sale of multiple bottles or cans of alcohol at a price which is more attractive than the “usual” price if a single bottle or can was purchased.

Alcohol is commonly sold in multiples e.g. a case of wine or carton of beer. The ABAC standard goes to advertising not promoting excessive consumption and consumption in excess of NHMRC guidelines. The Panel believes there is a clear distinction between purchasing multiple bottles or cans of alcohol and the subsequent consumption of the product. It does not follow that, if a person buys, for instance, a case of a dozen bottles of wine, the person will then either endeavour to drink all of the wine alone or in a binge drinking session.

#### **Determination 80/13**

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. 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. 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.

#### **Determination 135/13**

The point is, however, that at the present stage alcohol advertising and marketing is permitted. The form of the marketing is subject to a particular set of standards, as contained in the ABAC and related codes, but the standards presume that alcohol can be promoted and that alcohol use does occur throughout the community. Provided that an advertisement does not suggest that alcohol should be consumed in an irresponsible manner, in excessive volumes, in a way that will appeal to children and adolescents, or imply that alcohol is required to be successful in life, etc., then the advertisement is able to be used.

- (l) The receipt rewards and cross-shop promotional offers continue this long line of using a price promotion mechanic. Like any other retailer, using a special price or offer is very common promotional tool. BWS has had a long history of offering great specials on wine, beer and spirits. There is quite simply no encouragement for a consumer to purchase and then rapidly or excessively consume any of the receipt reward offers nor is there any strong or evident appeal to Minors in the offer. Accordingly and consistently in line with the Adjudication Panel decision reached most recently in **84,88-12**, the complaint should be dismissed, and the Panel should determine that there has been no breach of the Code. With respect to complaints made concerning the promotion of petrol discounts on shopping docket, the key point is that there is no depiction of a direct association between the *consumption* of alcohol beverages and the *operation* of a motor vehicle or an activity that requires alertness or physical coordination. The fuel discount offer is only valid through the purchase of alcohol. There is no requirement or encouragement to consume the alcohol in order to claim the fuel discount. There is no communication on the receipt or in the advertisement that shows the consumption of an Alcoholic Beverage or the activity of driving or operating a motor vehicle. In line with the Panel's first decision of **05/07** and its most recent determination **13/12** the complaint should be dismissed:

“Given that the advertisement refers to the purchase of alcohol beverages but not the consumption of alcohol and a discount on the price of petrol but not the operation of a motor vehicle, this advertisement does not breach section (d) of the ABAC”.

28. Coles Liquor responded to the complaint on 4 February 2015. The principal points made by the company were:

- a) The advertisements meet the definition of “Retail Advertising” as outlined in the ABAC Code and as such, did not require pre-vetting.
- b) The Panel has previously considered complaints alleging the encouragement of excessive consumption of alcohol in relation to promotions for the purchase of multiple products. The Panel considered this question under the revised Code on 23 December 2014 in determination 82, 86 & 90/14:

*the ABAC has been substantially revised, with the current version of the Code commencing on 1 July 2014. For this reason, it is useful to state some general propositions which were established under the previous Code and which are equally applicable to the current Code. These propositions are as follows:*

- (a) *Advertising a discounted sale price for the purchase of multiples of a product, such as beer or wine, is not of itself an encouragement of excessive consumption, as:*

- *There is a clear distinction between the purchase of a product to be taken away from a retail outlet and the subsequent pattern of the product's consumption;*
- *Alcohol is commonly purchased in multiples, such as a carton of beer or a case of wine, and this does not mean that the purchased product will be consumed in an excessive manner. For instance, the product might be consumed over a considerable period of time, or by multiple people;*

Taking this under consideration, Coles Liquor does not believe that it is, in any manner, encouraging excessive consumption of alcohol by providing a value based offering to our customers.

- c) Liquorland advertises in a wide range of media including press, television and radio. Liquorland also advertises in the Coles supermarket catalogue and on shopping docketts. The style and content of this advertising is aimed at adults. Section 2(b)(vi) of the code states that the Code does not apply to the placement of a marketing communication, except to the extent that placement may impact on how the Marketing Communication is understood in accordance with section 4. For this reason Coles liquor is of the opinion that the placement of the advertising itself is not in breach of the code, furthermore, we do not believe that the nature of these advertisements is normalising or encouraging regular consumption of alcohol.
- d) All alcohol advertising in Coles catalogues and shopping docketts only display the cost and details of promotions. All offers must be redeemed in Liquorland stores, licensed premises in which all team members are required to adhere to responsible service of alcohol guidelines. Consequently, Coles Liquor considers that the claim that the advertisements promote alcohol as an everyday item are unfounded.
- e) Coles Liquor shopping docket advertisements have been previously considered by ABAC. The complaint, which was dismissed, related to whether Coles shopping docket advertisements were attractive to children due to the indiscriminate nature of distribution. ABAC determined in 84 & 88/12 that this type of advertising was not attractive to children and that a child merely seeing the advertisement was not a breach of the code (refer paragraphs 21-23).
- f) While the code was revised in 2014, section 3(b) remains unchanged therefore, this decision is still valid. It is Coles Liquor's belief that this decision also applies directly to promotional advertising in Coles Supermarkets catalogues. Like shopping docketts, liquor advertising in Coles Supermarket catalogues only display the price details, product name and an image of the product. This is not content which would have strong appeal to children and adolescents, this being a clear and factual statement.

- g) Coles Liquor remains committed to the responsible promotion, service and sale of alcohol and considers that its marketing has an important part to play in that commitment. Coles liquor acknowledges the importance of ABAC and the ABAC Responsible Alcohol Marketing Code. We expect our advertising to be responsible at all times and we consider that the advertisements do not amount to a breach of the ABAC Code when assessed taking the content as a whole.

## **The Panel's View**

### ***Introduction***

- 29. Australia's major supermarket chains, Woolworths and Coles, are the parent companies of several retail outlets for alcohol products. A longstanding marketing technique employed by Coles and Woolworths is to cross promote their supermarket offerings with their subsidiary alcohol product retail outlets. This is done in various ways, such as:
  - a) Loyalty type programs, whereby the purchase of goods at the supermarket might enable a consumer to obtain a discounted price on alcohol products at the alcohol retailer, or vice-versa; and
  - b) Placing alcohol outlet advertising within catalogues which predominantly relate to their supermarket offerings.
- 30. Over time, the Panel has considered public complaints about specific advertisements from alcohol retailers which utilise these marketing techniques. These previous decisions were decided under the terms of the ABAC as it was drafted from the Scheme's inception in 1998 to 30 June 2014. On 1 July 2014, a new ABAC came into effect. This new Code replaced the earlier version and, importantly, formally extended the Scheme to explicitly cover the marketing of alcohol product retailers, in addition to the previous reach of the Scheme which included the producers and distributors of specifically branded wine, beer, and alcohol spirits products.
- 31. Between 16 January and 2 February 2015 the Panel received four separate complaints concerning the marketing by Coles and Woolworths of their liquor retail outlets Liquorland and BWS, respectively. While each of the complaints was specific in its own terms, they all related to similar issues regarding the form of marketing being employed. For this reason, and the fact that it will be beneficial for the ongoing operation of the ABAC scheme to have clarity on the operation of the new Code provisions the Panel has decided to produce this composite determination.
- 32. The determination will examine the consistency of the marketing communications highlighted in the four complaints against relevant Code provisions on the following issues:
  - a) The 'normalisation' of alcohol use;
  - b) The offering of discounts for the multiple purchase of alcohol products;

- c) The use of marketing channels which can be readily viewed by under 18 year olds.

### ***Some general propositions***

- 33. Before turning to the three specific issues, it is helpful to lay down some general propositions about how the ABAC operates and how the Code provisions are to be applied by the Panel in considering complaints.
- 34. The new ABAC, when compared to its predecessor, provides a more comprehensive explanation of the Code's application to various kinds of marketing and establishes in Part 3 four standards which marketing communications are to comply with. These are:
  - a) Responsible and moderate portrayal of alcohol beverages;
  - b) Responsibility towards minors;
  - c) Responsible depiction of the effects of alcohol;
  - d) Alcohol and safety.
- 35. The standards created under each of these headings are framed in the negative rather than the positive. In other words, the Code states what marketing communications are NOT to do, rather than what it should do (e.g. don't encourage irresponsible or offensive behaviour, rather than encourage responsible and respectful behaviour).
- 36. In assessing if a marketing communication is compliant with a Code standard, Part 4 of the ABAC provides that the marketing communication is to be assessed in terms of the probable understanding of the marketing communication by a reasonable person to whom the material is likely to be communicated and taking its content as a whole. The notion of the 'reasonable person' is borrowed from the Australian common law system and means that regard is to be had to the opinions, beliefs, and values which are common in a majority of the community. A person having a different interpretation is not 'unreasonable', but their view may not be that which is shared by a majority of the community.
- 37. Finally, it should be noted that the ABAC scheme places responsibility for what is contained within the Code with the Code owners as represented by a Management Committee. The Panel does not write the Code or determine what the standards should be. Rather, it is the Panel's role to apply the Code as settled by the Code owners.

### ***Normalisation of alcohol use***

- 38. Each complaint implicitly and the second complaint explicitly raises the concern that the forms of marketing in question 'normalise' alcohol use. For instance, it is argued that this is done through placing alcohol product advertising within supermarket catalogues or including alcohol product promotion on shopping dockets. The argument goes that this encouragement of alcohol purchases and

use means that alcohol is seen as an everyday product, no different to, say, purchasing and using milk and bread.

39. The arguments advanced raise valid questions about the portrayal and use of alcohol in the community, however, the Panel's role is confined to assessing the consistency of the marketing against the terms of the ABAC. Wider public policy considerations as to the best method to achieve the responsible use of alcohol in the community is ultimately a matter for government. As it stands, alcohol is a lawful product able to be purchased and consumed by adults. It's use is regulated, and its misuse can result in civil or criminal penalties (e.g. driving under the influence of alcohol), but there is no restriction on an adult using alcohol every day.
40. The ABAC contains no provision which can be interpreted as requiring that marketing must not imply that alcohol use is not 'normal'. In fact, the Code assumes its use is normal, but that alcohol should not be consumed irresponsibly or excessively, or marketed inconsistently with the standards laid out in the Code.
41. Accordingly, no provision of the ABAC can be said to be breached by the argument of the normalisation of alcohol use. Rather, for the marketing to be inconsistent with the ABAC it will need to breach one of the specific standards going to issues such as the encouragement of irresponsible or excessive use of alcohol, or the marketing having strong or evident appeal to under 18 year olds.

#### ***Use of discounting***

42. Each of the complaints take issue with the offering of discounts in marketing alcohol products. In the examples raised by the complaints, the discounts can arise from buying a particular product and obtaining a second bottle 'free', or a price discount on alcohol products from purchasing certain supermarket items, or obtaining a better price on alcohol products by purchasing multiples as opposed to a single product. The concerns expressed take several forms, namely:
  - a) That greater volumes of alcohol products will be purchased than will occur without discounting;
  - b) That excessive consumption will be encouraged by the product being cheaper in price;
  - c) That under 18 year olds are particularly sensitive to price points and, hence, discounting appeals to under 18 year olds;
  - d) That discounts should be confined to 'healthy products' and not used for alcohol products;
  - e) That offering discounts on food stuffs (prawns) for purchasing alcohol products is perverse.



43. To some extent, these concerns are similar to the normalisation argument dealt with above. It is valid to raise arguments about the use of cross promotions and discounting strategies, but these questions are for industry, health professionals, the community and, ultimately, government to debate and decide. The Panel must limit its role to applying the ABAC as it is written and the standards that are established.
44. In terms of the ABAC, the relevant standards raised by the concerns on discounting require that marketing communications must not:
- a) Encourage excessive or rapid consumption of alcohol beverages or consumption inconsistent with Australian alcohol guidelines (3a(i)) and have strong or evident appeal to minors (3(b)(i)).
45. In relation to standard 3(a)(i), the key point is that it applies to the consumption of alcohol products, and not the purchase of alcohol products. The discounting argument requires a chain of reasoning in order for the conclusion to be reached that the standard has been breached. An example of the chain of reasoning might be as follows:
- A consumer might be in the habit of purchasing a single bottle of a beer for personal consumption during a single drinking session;
  - Due to the discounting, the consumer purchases two or more bottles of beer;
  - Having made the purchase of multiple bottles of beer, the consumer then alters their usual pattern of consumption to consume more than a single bottle of beer in a single drinking session;
  - Hence, the association of the discounting leading to a change in the consumer's purchasing habit has led to a subsequent change in the consumer's consumption habit;
  - The resultant level of consumption is excessive, or at least inconsistent with the Australian Alcohol Guidelines, and hence the marketing which promotes the availability of the discount is in breach of the ABAC standard.
46. In the Panel's view, this chain of reasoning cannot be sustained for the following reasons:
- a) There is a clear distinction between the purchase of an alcohol product from an off premise retailer and the subsequent consumption of the product by a consumer;
  - b) Alcohol products by their nature generally have a reasonably long shelf life (e.g. a bottle of wine or spirits can be stored for years, and other alcohol products generally for many months);
  - c) The availability of a discount may impact on a consumer's pattern of purchase so that a different (cheaper) brand is purchased or more than a

usual amount of a product is purchased while the discount period is available;

- d) It does not follow, however, that the purchase of more alcohol at a particular period means that the consumer then drinks more of the product in a single session or in an irresponsible manner;
- e) It is perfectly likely, that the consumer will store the product and continue to consume in the same pattern which was followed without the discount. The opportunity to obtain a better price during the discount period means that the consumer could utilise the product over a period of time or in conjunction with a number of people.

- 47. Accordingly, the Panel does not believe that the marketing of the availability of discounts of alcohol products of itself can be said to encourage excessive or rapid consumption of alcohol. It is possible that an individual advertisement promoting a discount might be inconsistent with the ABAC standard. For instance, if a discounted product was sold with the slogan, "Buy now because there's never been a better time to get off your face" then there would be a relationship between the availability of a discount and the encouragement of excessive consumption.
- 48. In the current examples, the shopping docket, catalogue, and television advertisement do nothing more than advise of the name and type of product, the availability of the discount and the price of the products. There is no other element that can be taken from the content of the marketing which leads to a conclusion that rapid or excessive levels of consumption are being encouraged.
- 49. The second argument advanced about marketing discounts of alcohol is that this will have a strong or evident appeal to minors. The argument here seems to be that younger people will be particularly sensitive to the price of an alcohol product and, hence, advertising a discount will make the advertisement and the advertised product particularly appealing to this group of consumers.
- 50. Part 5 of the Code provides guidance as to how 'strong or evident appeal' is to be understood. This provision means that a marketing communication will breach the ABAC standard if it:
  - a) Specifically is targeted at minors;
  - b) Has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
  - c) Uses imagery, designs, motifs, or characters that are likely to appeal strongly to minors or that create confusion with confectionary or soft drinks;
  - d) Uses brand identification, including logos on clothing, toys, or other merchandise, which is used primarily by minors.

51. The price of an alcohol product will clearly be a factor in a consumer's choice to select a particular alcohol product, however, it will be one factor within a range of factors largely related to the perceived brand attributes of the product. It should be noted that in the examples cited in the complaints that each of the products were not at the low price end of the alcohol market (e.g. cask wine and ready to drink products), but related to premium wines and six-packs or cartons of beer.
52. The advertisements themselves do not feature information other than the name of the product, the price, and the terms of the discount. There is no imagery or other advertising device used which might be argued to be particularly appealing to under 18 year olds. It should also be noted that in order to access the discount, a consumer would need to present at one of the liquor retail outlets and that state licensing laws prohibit under 18 year olds from purchasing alcohol from such outlets.
53. The Panel does not believe that the mere fact of promoting the availability of a discount related to a cross promotion with a supermarket item, or that a cheaper price can be obtained by buying a multiple of an alcohol product, as opposed to buying a single alcohol product, is strongly or evidently appealing to under 18 year olds.

#### ***Accessibility of marketing to children***

54. A number of the complaints raise the concern that the marketing techniques utilised, namely shopping receipts and catalogues, promote alcohol to under 18 year olds by:
  - a) The receipts being accessible to anyone who purchases an item at the supermarket, including under 18 year olds;
  - b) The catalogues being viewed by under 18 year olds and children playing shop with the catalogues containing the alcohol product advertising.
55. In large measure, these concerns go to the placement of the marketing, rather than the content of the marketing. It has been noted earlier, the ABAC is a content and not a placement code. This means that the mere fact that an alcohol advertisement might be accessible to under 18 year olds will not of itself be a breach of the Code. What is required in order for the Code to be breached is that the content of the marketing can be said to have strong or evident appeal to under 18 year olds, irrespective of the form the marketing takes or where the marketing might be viewed.
56. The shopping docket and supermarket catalogue advertisements contain factual information about alcohol discounts on particular products. The content is not of the type that could be regarded as having strong or evident appeal to minors. While the Panel recognises that it is conceivable that a child might play with a catalogue, this fact makes the advertisement no more susceptible to breaching the ABAC standards than the fact that a child might see an alcohol advertisement on television or pass a billboard containing an alcohol advertisement on the street or while in a motor vehicle.

57. A review of the actual advertising in question leads to the conclusion that the ABAC standard has not been breached.
58. Accordingly each of the complaints are dismissed.