



## ABAC Adjudication Panel Determination No. 87/15

**Product:** Various alcohol products  
**Company:** ALDI Liquor  
**Media:** Email communication  
**Complainant:** Confidential  
**Date of decision:** 25 August 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 an email communication by ALDI Liquor and arises from a complaint received 31 July 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 31 July 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. The complaint has been determined within this timeframe.

## **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 not obtained for this marketing communication.

## **The Marketing Communication**

10. The complaint refers to an email communication sent by ALDI Liquor to customers including the complainant.
11. The Email included the subject "Dry July is over – Celebrate with 10% off EVERYTHING this weekend" The body of the email included various links listed as "View this email in your browser", "Special Buys", "Beer & Cider", "[DRY JULY IS OVER! Celebrate 10% off EVERYTHING this weekend. ENDS SUNDAY!]", "TO REDEEM YOUR 10% DISCOUNT JUST ENTER YOUR UNIQUE CODE WHEN YOU CHEK OUT.", "SHOP NOW" and also includes terms and conditions.
12. The links take customers to various parts of the website. Relevant to the complaint, the first link takes customers to an ad that includes the text "DRY JULY IS OVER! Celebrate with 10% off EVERYTHING this weekend. ENDS SUNDAY!" on the left side of the page and on the right side of the page a drawn picture of an ALDI Liquor delivery van. Below the ad is details on how to redeem the offer, a link entitled "SHOP NOW" and terms and conditions.

## **The Complaint**

13. The complainant is concerned that the advertisement suggests celebrating the end of Dry July with alcohol discounts when Dry July is about trying to get alcohol out of your life, not about having time off and then getting right back into it.

## **The ABAC Code**

14. 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;
  - (c)(iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement;

## **The Company's Response**

15. The Company responded to the complaint by letter dated 10 August 2015. The Company advised that:

- ALDI takes responsible promotion of alcohol very seriously. ALDI is aware of the ABAC Code requirements and does all it can to ensure advertisements and marketing campaigns are in compliance with them. ALDI has policies in place to ensure compliance with all relevant alcohol and marketing Codes;
- ALDI stores does not believe that our email promotion dated Friday July 31 contravenes the ABAC Responsible Alcohol Marketing Code. The complainant's central assertion is that Dry July is a promotion related to long-term alcohol abstinence. While Dry July certainly promotes short-term abstinence for health benefits and to raise money for various cancer charities its core goal is not to promote long-term abstinence but rather sensible drinking, a position supported by ALDI, and implicit in our various promotions.
- The email in question was sent to customers whom had voluntarily signed up to receive emails from ALDIliquor.com.au, in line with The Spam Act 2003, and as such have consented to receive marketing communications related to the sale of alcohol – a database where it can reasonably be expected that consumers looking to abstain from alcohol for the long-term would unsubscribe.
- In addition the email did not encourage large volume purchases (as there was no minimum purchase to attain the discounts), nor related irresponsible behavior due to the relatively low level of discount offered in relation to regular offers from competitors in the market such as Dan Murphy's.
- The promotion did not receive pre-vetting service approval as we do not currently use this service due to our regular (twice weekly) communications and our relatively small database but each advertisement is approved by, at the very least, an eCommerce Manager and or Buying Director.
- The advertisement at no time makes any reference to excessive, rapid alcohol consumption nor the misuse or abuse of alcohol. ALDI customers were not required to purchase large volumes of wine to qualify for the moderate discount, which is below most case discounts on the market, and it could apply to purchases of a single bottle. A 10% off promotion is also relatively small and of low likelihood to encourage misuse of alcohol. The NSW Regulator (Office of Liquor Gaming and Racing) published industry guidelines regarding acceptable discounts of liquor products. That Regulator has the power to prohibit promotions which encourage irresponsible, rapid or excessive consumption of liquor or which are otherwise considered not to be in the public interest (s102 Liquor Act 2007 NSW). According to those guidelines it is only promotions involving discounts of greater than 50% off the normal retail price which attracts scrutiny.

Even then the guidelines state that “generally, a promotion involving a discount of over 50% should be undertaken with caution and risks should be properly assessed in relation to whether it will encourage rapid consumption of alcohol. As is well known in the marketplace, other operators regularly discount packaged liquor products by percentages much greater than 10%. It could hardly be supposed, in those circumstances, that a modest discount of this nature could be said to encourage excessive or rapid consumption, misuse or abuse of alcohol.

- The advertisement in no way encourages irresponsible behavior. Dry July, as outlined above is not concerned with promoting long term abstinence, rather short-term abstinence and a health conscious lifestyle. The email and promotion in question had no minimum limits and could reasonably apply to a single bottle of wine so, while promoting consumption the discount was measured to an audience of voluntary subscribers, whom it is likely only a small proportion of whom abstained in July.
- The “Dry July is over” email promotion did not suggest that consumption of any alcohol post Dry July reflected implied success or achievement. Rather the core element of the email – “Dry July is over – Celebrate with 10% off” highlight that the abstinence and choice of a healthier lifestyle in the month of July was the feature that the small proportion of ALDI customers whom had undertaken Dry July were being encouraged to celebrate, as well as our other customers whom had not participated in Dry July. In addition, as the voucher applied to any purchases without any minimum it allowed customers to take advantage of the promotion and celebrate their achievement with an alcoholic beverage in a measured way, if they so choose.

### **The Panel’s View**

16. ALDI is a global supermarket chain which commenced operations in Australia in 2001. The Company is not a signatory to the ABAC scheme, unlike the two major Australian supermarket companies, Coles and Woolworths, and hence is not bound by Panel decisions. That said, the Company has used the ABAC scheme’s pre-vetting service on occasions and has fully cooperated with the Panel’s process in relation to this complaint. Accordingly, the Panel has been able to make a determination.
17. ‘Dry July’ is an annual fundraising event in which participants undertake to remain alcohol free for the month with their period of abstinence supported by financial pledges. The funds raised go to cancer services. The concept builds on more general promotions pointing to the health benefits of individuals lessening or stopping alcohol use for a period of time.
18. The company ran an on-line marketing promotion to its list of subscribers to its liquor products at the conclusion of July 2015. The email sent to its subscribers referenced the end of ‘Dry July’ and stated that ‘Dry July is over – celebrate

with 10% off everything this weekend'. It is this email promotion of a discount on alcohol products which has concerned the complainant.

19. Essentially, the complainant is contending that the company's promotion is irresponsible as it seeks to encourage alcohol use on the back of an initiative which aims to encourage people not to drink. In response the company argues:-
  - 'Dry July' is not an initiative to encourage people to give up alcohol use on an ongoing way, but is a short term period of abstinence associated with a fund raising scheme for charity.
  - The promotion was limited to subscribers to an alcohol products information link.
  - The discounts offered were modest.
  - The promotion could not be seen as encouraging excessive consumption.
  - The 'celebration' referenced was not caused by alcohol but marked the end of the 'Dry July' period.
20. The complaint and the nature of the marketing raise ABAC standards going to the encouragement of excessive or rapid alcohol consumption and the suggestion that an alcohol beverage was a cause or contributor to the celebration of a success or achievement. In deciding if these standards have been breached, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person.
21. The Panel has previously considered the role of discounts in promoting the purchase of alcohol products. In these earlier determinations the Panel has noted that there is a clear distinction between the encouragement of the immediate consumption of alcohol and marketing which aims to promote the purchase of a product which will be consumed at a later point in time. Simply offering a discount on an alcohol product purchase is not an encouragement of excessive consumption given:-
  - By its nature, alcohol has a reasonably long shelf life and can be stored for periods of many months and for some products many years.
  - Alcohol is often purchased in a multiple eg. a carton of beer or a case of wine and then consumed over a period of time.
  - Alcohol purchased might later be consumed by multiple people and not a single person.
  - While a discount might encourage a person to purchase the discounted product in preference to a non-discounted product or purchase say, 2 bottles of wine instead of one bottle of wine, it does not follow that the

consumer will alter their usual pattern of consumption eg. engage in binge drinking because of a discount in purchase price.

22. Accordingly, the Panel does not believe the offering of a 10% discount is itself a breach of the ABAC standards. The second point raised by the complaint is whether linking the promotion to the celebration of the end of 'Dry July' is inconsistent with Code requirements.
23. Section c (iii) of the Code provides that an alcohol marketing communication must not show an alcohol beverage as a cause or contributor to the success or achievement which is being celebrated. Here the promotional email states 'Dry July is over – celebrate with 10% off everything' (ie. Available alcohol products).
24. The key concept in this ABAC standard is that of causation. An alcohol promotion cannot make out that alcohol is a reason to celebrate. It is acceptable for alcohol to be shown as being used as a means of marking an achievement caused by something other than alcohol. In this case the 'celebration' is caused by the end of Dry July. While the company's promotion might be regarded as somewhat ironic or even tacky given the underlying aim of Dry July, it is evident that the standard is not breached.
25. Accordingly, the complaint is dismissed.