



## ABAC Adjudication Panel Determination No. 95/15

**Product:** Beer  
**Company:** Liquorland  
**Media:** Outdoor  
**Complainant:** Confidential  
**Date of decision:** 11 September 2015  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor marketing communication by Liquorland, Trinity Beach and arises from a complaint received 21 August 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 21 August 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 a marketing communication on a blackboard on an external wall adjacent to the entrance to Liquorland, Trinity Beach.
11. The marketing communication is written in chalk on the blackboard and states "Beer Because no good story ever started with eating a salad".

## **The Complaint**

12. The complainant is concerned that the advertisement incites the consumption of alcohol for a 'good time', fuelling alcohol related incidents and activities in the community.

## **The ABAC Code**

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (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)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
  - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

## **The Company's Response**

14. The Company responded to the complaint by letter dated 3 September 2015. The Company advised that:
  - Coles Liquor takes the responsible promotion of alcohol very seriously. It understands the importance of the ABAC requirements and does all it can to ensure advertising and marketing campaigns are in compliance with them. Coles Liquor has policies in place to ensure compliance with all relevant alcohol and marketing codes.
  - The message was not a national campaign but limited to this store only and was a creative initiative of a team member.

- Coles Liquor does not believe that the message contravenes the Code. It was displayed on a chalkboard on an external wall of the store. It did not promote misuse of alcohol or encourage behavior that could be perceived or lead to being irresponsible or offensive and was not accompanied by images suggesting this. There was no association with “alcohol being needed to have a good time.”
- There was no intention for the message to suggest that alcohol is needed to start a conversation. There is no association between alcohol consumption and change in mood conveyed in the message and therefore Coles Liquor does not believe the message contradicts the Code.
- When advised by ABAC of the complaint, Coles Liquor identified the store and the message was immediately removed from display to avoid distress to any of our customers.
- As one of the key liquor retailers in Australia Coles Liquor is supportive of the responsible sale, service and promotion of liquor. Coles Liquor is aware that there are significant responsibilities involved when promoting and advertising liquor. We are committed to operating at an extremely high standard, beyond the responsibilities governed by laws to ensure that we are industry leaders and have a best practice approach at all levels of our business. In addition to being a signatory to the Code any advertising and promotion is checked against the ABAC principles.

### **The Panel’s View**

15. The complaint concerns a message written on a blackboard which forms part of the outward facing wall of the Liquorland store located in Trinity Beach in North Queensland. The message states “Beer – because no good story ever started with eating a salad”.
16. When the complaint was drawn to the Company’s attention, the message was immediately removed. The Company has explained the blackboard message was not part of a Company wide promotional strategy, but rather reflected a one-off activity by a staff member at the store in question. Given the temporary nature of the medium used – chalk on a blackboard – the Panel fully accepts the message was not part of any structured marketing activity.
17. While the Company acted to have the message removed, it nonetheless argues that the message was consistent with ABAC standards. In the complainant’s view, the message is irresponsible as it implies alcohol is needed to have a good time. The complainant then also raises concerns about alcohol related incidents in the community.
18. The Panel does not believe the marketing communication can credibly be said to be encouraging irresponsible or offensive behaviour related to alcohol use eg. alcohol related violence. The message may arguably, be inconsistent with Section(c) of the Code which provides an alcohol marketing communication

must not suggest that alcohol may contribute to a significant change in mood or contribute to the achievement of social success.

19. In assessing if a marketing communication is consistent with a Code Standard the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person, taking the content of the marketing item as a whole. The 'reasonable person' concept establishes that a common sense approach is to be adopted.
20. The Panel does not believe a 'reasonable person' would find the message concerning in the way it is presented. It would be taken as slightly amusing and would not be considered as saying alcohol is likely to cause a significant change in mood or be taken as suggesting that alcohol is required to achieve success.
21. Accordingly, the complaint is dismissed.