



ABAC Adjudication Panel Determination No. 18/17

Product: Liquorland
Company: Coles Liquor
Media: Television
Complainant: Confidential
Date of decision: 19 January 2017
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 a television advertisement for Liquorland by Coles Liquor (“the Company”) and arises from a complaint received 3 January 2017.
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 3 January 2017.
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 obtained for the marketing communication (15276).

The Marketing Communication

10. The television advertisement opens with a yellow banner in the middle of a beach scene with the sounds of the sea and showing sand in the foreground and sea in the background.
11. The words "GOTTA LOVE SUMMER" are heard by voiceover and appear in the banner.
12. In the next scene we see the rear of a man walking down a residential street. The shot is cropped so it focuses on the man's shorts and is accompanied by a voiceover "How good are boardies".
13. We then see the scene of the man walking from the side as he joins and holds hands with a woman wearing a top and shorts and the voiceover continues "One minute they're your shorts". Then the same man and woman are shown with the man just wearing his shorts and the woman a bikini as they jump into a swimming pool holding hands and the voiceover continues "next they're your bathers and you haven't changed a thing".
14. There is then footage of a group of men and women in and around a swimming pool as the voiceover continues "At Liquorland you've gotta love that summer feeling"
15. We then return to the first beach scene with a green coloured banner that shows a 6 pack of Pacific Beverages Radler with lemons and lemon juice around the package and the text "\$10 Pacific Beverages Radler Lemon Bottles 6 x 330ml" as the voiceover continues "with Pacific Beverages Radler a crisp lager mixed with refreshing natural lemon and its just half a standard drink". We then see a 6 pack of Pacific Beverages Radler with blood oranges and juice around the package and the text "\$10 Pacific Beverages Radler Blood Orange Bottles 6 x 330ml" as the voiceover continues "and right now new Blood Orange Radler is available at Liquorland. So at just \$10 a six-pack you can't go wrong.
16. The scene then returns to the man lying on an inflated lounge in a swimming pool focusing on his board shorts as the voiceover continues "Find it in the fridge or cool room today".
17. We then return to the first beach scene with a red banner with the text "GOTTA LOVE LOW PRICES" and then "LIQUORLAND" as the voiceover finishes with "Gotta love low prices at Liquorland".

The Complaint

18. The complainant is concerned that:
 - showing people jumping into a swimming pool and partying, then cutting to advertising drink specials with a pool in the background creates a clear association between summer/pool activities and drinking alcohol;
 - alcohol and pools don't mix and the ad is in poor taste at a time when drownings and water safety is an issue killing people.

The ABAC Code

19. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

20. The Company responded to the complaint by letter dated 13 January 2017. The principal points made by the Company were:
 - Coles has been a signatory to the Alcohol Beverages Advertising Code since 2013. Coles Liquor takes its alcohol advertising obligations very seriously and is committed to industry best practice. Coles has also demonstrated a long-standing commitment to the responsible service, supply and promotion of alcohol. We maintain robust internal compliance processes in relation to liquor advertising and have a strong culture of compliance training embedded throughout the business to ensure our teams have the necessary skills to successfully navigate this heavily regulated environment. Coles is also a key contributor to DrinkWise, an independent, not-for-profit organisation whose "primary focus is to help bring about a healthier and safer drinking culture in Australia".
 - The imagery used in the Advertisement simply reflects the season. "Gotta Love Summer" is Liquorland's catch phrase across all marketing during this period and associated summer imagery and activities are used for this campaign (e.g. BBQs, picnics and other outdoor activities) Section 3(d) of the Alcohol Beverages Advertising Code states: "A Marketing Communication must not show (visibly, audibly or by direct implication) the consumption of an alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming." In our view, the Advertisement complies with section 3(d) of the Code for the following reasons:

- At no point is the consumption of alcohol depicted (e.g. no individual in the Advertisement is holding an alcoholic beverage)
- There is nothing to suggest that any individual in the Advertisement is under the influence of alcohol
- The Advertisement does not condone or encourage excess consumption of alcohol
- The Advertisement does not depict any unsafe, antisocial or dangerous behaviour around water or otherwise airing the advertisement during a family friendly timeslot
- We also note that the Advertisement:
 - Only depicts adults enjoying the use of a swimming pool, responsibly
 - Was classified by CAD (Commercials Advice Free TV) on 9th January, 2016 (FOSV972 CAD No. L43S3ABA and FOSV972H L43S4ABA) and was broadcast in accordance with the Code of Practice for Alcohol Advertising
 - Does not appeal to minors
- Coles remains committed to the responsible service, supply and consumption of alcohol and considers that its marketing and advertising has an important part to play in that process. Coles understands the importance of pool safety and the risks associated with the consumption of alcohol in and near water. Nevertheless, Coles is of the view that the general theme and behaviours displayed in the Advertisement are in line with prevailing community standards regarding alcohol and safety and therefore the Advertisement is aligned with the ABAC Responsible Alcohol Marketing Code and the AANA Code of Ethics.

The Panel's View

21. It is argued by the complainant that the television advertisement is creating a clear association between summer and pool activities and drinking alcohol. It is pointed out that swimming and alcohol use is a dangerous combination, and deaths occur when alcohol affected individuals get into trouble in the water.
22. The ABAC recognises that alcohol marketing should not encourage unsafe practices in relation to alcohol use. Standard (d) of the Code provides that an alcohol marketing item must not show, including by direct implication, the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination. Swimming is an activity requiring alertness and co-ordination.

23. The advertisement does not show any consumption of alcohol. It does show people in and around a swimming pool and the voiceover refers to the benefit of “Boardies” being both pants and bathers. The issue therefore is whether the advertisement is creating a “direct implication” that alcohol consumption is to occur before or during swimming.
24. In answering this question, the Panel is to adopt the view point of a “reasonable person” and how such a person would probably understand the advertisement taking its content as a whole. The reasonable person benchmark is borrowed from the Australian Common Law system and means the benchmark is the opinions, attitudes and values held by a majority of the community.
25. In the Panel’s view, the advertisement does not raise a direct implication that a person will or is being encouraged to drink alcohol and then go swimming. Rather the advertisement is drawing an association between the alcohol brand and the summer period and uses the swimming pool as an illustration of a summer activity. The ABAC does not prohibit the association of alcohol with an activity such as going to the beach or having a BBQ in a backyard with a pool. It does prohibit the encouragement of unsafe practices involving alcohol and an activity such as swimming but the advertisement does not offend this requirement.
26. Accordingly, the complaint is dismissed.