



ABAC Adjudication Panel Determination No. 6/18

Product: Liquorland
Company: Liquorland
Media: Digital
Complainant: Confidential
Date of decision: 9 February 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a digital advertisement by Liquorland (“the Company”) and arises from a complaint received 18 January 2018.
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. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
 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 18 January 2018.
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 was 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 these marketing communications.

The Marketing Communication

10. The complaint relates to advertisements for Liquorland on the digital music, podcast and video streaming platform, Spotify. The three audio advertisements that were broadcast in the week that the complainant heard the advertising are described following:
 - Number 1: (sounds of talking and laughter) “When it takes six guys standing around a barbie to cook a single steak” (clicking of fingers and music starting) “We’ve got a drink for that at Liquorland, with 24 bottles of Coopers Original Pale Ale for a low \$48. Liquorland, we’ve got a drink for that.”
 - Number 2: (sounds of talking and laughter) “When the party goes quiet just as you’re saying something awkward” (clicking of fingers and music starting) “We’ve got a drink for that at Liquorland, like 10 cans of Somersby cloudy apple cider for a low \$19. Liquorland, we’ve got a drink for that.”
 - Number 3: (sounds of talking and laughter) “When you turn up to your mates barbie and you’re both wearing the same outfit” (clicking of fingers and music starting) “We’ve got a drink for that at Liquorland, like 10 cans of Bundaberg Lazy Bear for a low \$30. Liquorland, we’ve got a drink for that.”

The Complaint

11. The complainant is concerned that the advertisements suggest you should drink alcohol to overcome embarrassment or mental health issues and this is not a message that should be promoted.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (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)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

The Company’s Response

13. The Company responded to the complaint by letter dated 5 February 2018. The principal points made by the Company were:
 - a) As you will be aware, 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 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”.

- b) The concept behind the “We’ve got a drink for that” campaign centres on Australians living busy, socially active lifestyles and Liquorland promoting that we have a drink for each of these occasions. The occasions featured are simple occasions that most people engage with in over the Summer period e.g. BBQ’s, catching up with friends, parties etc.
- c) I confirm pre-vetting approval was unfortunately not obtained for these radio marketing communications. This was due to human error and is not consistent with our internal policies and procedures. As a result, the correct marketing approval process, including the importance of ensuring all necessary marketing communications are pre-vetted, has been reinforced with the marketing team to ensure that such an error does not occur again
- d) Liquorland does not consider that the campaign breaches any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code. As noted in further detail below:
 - a. Liquorland takes its advertising responsibilities very seriously and has a strong compliance track record in this regard;
 - b. Liquorland has a number of internal and external processes against which any proposed advertisement is considered;
 - c. The campaign only ever refers to “a drink” being matched for an occasion or meal and does not promote “multiple drinks” or any amount of alcohol that would have a mood or mind changing effect; and
 - d. These scenarios are not intended to call out any shame or social gaffs as requiring alcohol to enable an enhanced feeling of any kind. Instead our intention was to try and describe relatable scenarios in a light-hearted way which we felt a reasonable individual could connect with.
- e) As a responsible advertiser, Liquorland has demonstrated a long standing commitment to supporting and adhering to the Alcohol Beverages

Advertising Code (ABAC) to ensure its compliance with community standards and relevant advertising codes.

The Panel's View

14. Liquorland is an alcohol retailer operated by the major Australian retail network Coles. The Company is conducting a marketing campaign on the theme 'We've got a drink for that'. Part of the campaign consists of the placement of audio advertisements on the digital streaming site Spotify.
15. The complainant accessed one of the Company's advertisements on Spotify in January 2018. The Company has advised that three executions in the campaign have been made available on Spotify and it is not clear which execution has led to the complaint. For this reason, the Panel is assessing each of the three possible advertisements that may have been heard by the complainant.
16. The Company explains that the concept behind the campaign is based on people living busy and socially active lifestyles and the Company promoting itself as having beverages suitable for social occasions. The three scenarios depicted in the advertisements are based upon people attending either a barbecue or a party.
17. The complainant is concerned that the advertisements create an awkward or embarrassing circumstance which can be overcome by alcohol. The ABAC provides that alcohol marketing must not:
 - Suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment (section (c)(i)); or
 - Suggest the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation (section (c)(iv)).
18. The Company contends the advertisements are consistent with the ABAC standards. It is argued that the advertisements match a drink to an occasion, but do not suggest that multiple drinks be consumed or that alcohol was needed to overcome shame or a social gaffe.
19. The key concept in the section (c) standards is that of causation. It is permitted to place alcohol use in social settings and with happy attractive successful people. It is not permitted to imply that alcohol causes a change in mood e.g. from bored to engaged or sad to happy, or that alcohol is a reason why a person is attractive or successful. Equally, it is not permitted to suggest that alcohol provides a therapeutic benefit or aids in relaxation.
20. In assessing if an ABAC standard has been breached, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person taking its content as a whole. The reference to a reasonable person is drawn from the Common Law system and means that the attitudes, values and

life experiences common in a majority of the Australian community is to be the benchmark.

21. Each of the advertisements follows the same format, namely:
 - A narrator describes a social scenario. During this description, background noise of people talking is heard. At the end of the scenario, the background noise is replaced by the clicking of fingers;
 - Upon the description being completed, the strapline 'We've got a drink for that at Liquorland' is introduced. At this point, music replaces the previous background noise of people talking; and
 - Then product names and price information is given by the narrator while music and the clicking of fingers continue to be heard.
22. The assessment to be made in relation to section (c)(i) is whether the mood or environment established by the narration of the scenarios is significantly changed by the introduction of alcohol as marked by the strapline 'We've got a drink for that'.
23. The assessment in relation to section (c)(iv) is whether the use of alcohol offers a positive health benefit or aids in relaxation by say overcoming a tense situation.
24. The Panel does not believe the first advertisement breaches the section (c) standards. The scenario depicted describe a circumstance which many people could relate in social settings. The introduction of the presence of alcohol through the use of the strapline would not reasonably be seen to alter the situation outlined in the scenario. The mood would be taken as remaining constant throughout. Nor could it be said that alcohol is offering a positive health benefit or aiding relaxation.
25. The second advertisement is more problematic. The scenario is described as an awkward moment. The tone and manner of the narration gives emphasis that a person was saying something awkward when the surrounding party fell silent. A reasonable interpretation of this is that a person would commonly feel awkward or embarrassed by the event occurring.
26. At this point in the scenario, alcohol is introduced through the strapline. On balance, the Panel does believe the advertisement breaches the section (c)(iv) standard. The combination of the scenario described, the tone of the narration and the use of the word 'awkward' would reasonably establish that a person has been embarrassed or made uncomfortable. Alcohol is then introduced in response to the scenario – 'We have a drink for that' – i.e. an embarrassing and uncomfortable personal moment. The reasonable implication is that alcohol consumption will be an aid in overcoming the tense moment.
27. The third advertisement places two people arriving at a BBQ wearing the same outfit. This scenario is sometimes portrayed as embarrassing if it occurs to two women. On balance, the Panel does not believe the advertisement breaches the section (c) standards. The overall mood or environment does not alter and

the even tone of the narration and expression 'your mates BBQ' seems to imply the situation has occurred between two males rather than two females. Further, the situation is not described as 'awkward' as occurred in the second advertisement.

28. Accordingly, the complaint is upheld in relation to advertisement number 2 and dismissed in relation to advertisements number 1 and 3.