



ABAC Adjudication Panel Determination No. 123/18

Product: Liquorland
Company: Coles Liquor
Media: Outdoor
Date of decision: 25 October 2018
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 the placement of outdoor advertising for Liquorland in the entrance to a Coles Supermarket by Coles Liquor (“the Company”) and arises from a complaint received 10 October 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:
 - 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;
 - 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 marketing 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, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 Ad Standards 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 Ad Standards Community Panel 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 10 October 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 completed in 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 “Gotta Love” overarching campaign (49816). The specific products were not included in the original approval as these are changed periodically.

The Marketing Communication

10. The complaint relates to the following billboard that was placed in the entrance to a Coles Supermarket in Clifford Gardens shopping centre, Newtown.



The Complaint

11. The complainant objects to the marketing as it was placed inside a shopping centre and supermarket, facing a café and a custom child's play area erected by Coles and also a permanent child's play area next to the café.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
13. Part 6 of the ABAC Code includes definitions including:

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

Placement Rules means:

- (ii) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (iii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience
- (iv) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
- (v) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

The Company's Response

14. The Company responded to the complaint by letter dated 23 October 2018. The principal points made by the Company were:
 - a) Coles Liquor 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 Liquor 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.
 - b) 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".
 - c) The advertising complained about was a Liquorland alcohol promotion inside the Clifford Gardens shopping centre located just inside the entrance to the Coles Supermarket. This was part of our "Gotta Love" campaign and products featured are rotated depending on weekly specials.

- d) Liquorland does not consider that the advertisement breaches any section of the ABAC or any other advertising code, specifically the placement rules as outlined in the Outdoor Media Association Alcohol Guidelines. In particular:
- i. Liquorland takes its advertising responsibilities very seriously and has a strong compliance track record in this regard;
 - ii. Liquorland has a number of internal and external processes against which any proposed advertisement is considered;
 - iii. the advertisement is not within 150 metre sight line of a primary or secondary school;
 - iv. centre management was running a healthy cooking program for children in the centre on 7 October 2018 between 10am and 2pm. Liquorland team members were not advised of this event by Centre management; and
 - v. while Liquorland maintains this is not a breach of the Code it has reminded team members at this store of the requirements of the code.
- 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

15. Like many shopping centres, the Clifford Gardens centre in the Sydney suburb of Newtown contains an alcohol retailer. In this case the outlet is a store from the national alcohol retailer Liquorland. Liquorland in turn is owned by Coles and this complaint concerns the placement of a poster advertising products from Liquorland at the internal entrance of the Coles supermarket.
16. The complainant believes an alcohol ad of this nature shouldn't be placed where the public and particularly children will be passing to access the supermarket. It's also pointed out that the poster was relatively close to a children's play area. The concern isn't that the content of the ad was objectionable as such but rather its position.
17. The ABAC contains requirements which go to both the content of alcohol advertising and where advertising can be placed. In this case the concern is solely about the placement of the ad. The ABAC placement rules create differing requirements on advertising conveyed by different mediums. For instance, digital platforms such as Facebook or Instagram have technical capacities which enable under 18 year olds to be excluded from viewing alcohol marketing and the ABAC rules require these restrictions be used. In the case of outdoor installations such as billboards or bus

shelter sheds it's not possible to exclude under 18 year olds from seeing alcohol ads.

18. For outdoor advertising, the ABAC in placement rule (i) adopts the restrictions contained in the Outdoor Media Association's Code of Ethics. These restrictions state that an alcohol ad cannot be placed within 150 metres of a school. There is no restriction on advertising within shopping centres. The poster was internal to the centre and in any event was not within vicinity of a school.
19. While the Panel recognises the point being made by the complainant, it can only apply the Code requirements and there is no breach of the ABAC placement rules to place a poster at the internal entrance of a supermarket. Accordingly the complaint is dismissed.