



ABAC Adjudication Panel Determination No. 137/18

Product: Liquorland
Company: Coles
Media: Print
Date of decision: 10 December 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of a Liquorland advertisement on a Coles Supermarket receipt by Coles (“the Company”) and arises from a complaint received on 13 November 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 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 the other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 13 November 2018.
8. The Panel endeavours 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.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing communication.

Placement of the Marketing Communication

10. The complainant refers to a promotion for liquor products on a supermarket receipt provided to a customer at a Coles Supermarket.

The Complaint

11. The complainant is concerned as their 11 year old boy purchased a product at a Coles Supermarket and the receipt he was handed had a promotion for the purchase of a bottle of wine for \$12 or a 6 pack of beer for \$10. The complainant feels that including the promotion on supermarket receipts promotes an alcohol culture among teenagers.

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:

Placement Rules means:

- (i) 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).
- (ii) 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
- (iii) 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)
- (iv) 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 26 November 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". We have investigated this

matter and provided responses to the questions you have raised in your correspondence and additional supporting information below.

- b) Coles Supermarket receipts feature various alcohol promotions for the Coles Group Liquor brands and these promotions change on a weekly basis. The promotions complained about appear to have been a wine promotion for \$12.00, and a beer promotion for \$10.00. On 12 November 2018 the following promotion appeared on Coles supermarket receipts.



- c) I confirm pre-vetting approval was not obtained for these promotions. The supermarket receipts only display the price details and product names. The ABAC Rules and Procedures make it clear that retailer brand and price advertising are not required to be pre-vetted. As such, Liquorland does not submit these types of promotions for pre-vetting however all forms of alcohol advertising are subject to stringent internal controls to ensure compliance with internal policies and ABAC requirements.
- d) Liquorland does not consider that the campaign breaches any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code. There is nothing included in the promotion which has particular appeal to minors as it only features details of what the product is and the price.
- e) It is reasonable to expect that less than 25% of the audience receiving a receipt at Coles Supermarkets are minors. Of the 50% of Coles shoppers that are flybuys members 86% are over 18 years old, we assume the same ratio of minors for non-flybuys members. Additionally, approximately 90.7% of Retail Shopping Centre audiences are over the age of 18. Coles Liquor's media agency sourced this information from a Shopping Centre digital signage company that use a tool named Quividi within their digital retail panels. It has the ability to detect the audience's estimated age demographic when passing the panel.
- f) Coles Liquor shopping docket advertisements have also previously been

considered by ABAC. The complaint, which was dismissed, related to whether Coles shopping docket advertisements were attractive to children due to the indiscriminate nature of distribution. ABAC determined in 84 & 88/12 that this type of advertising was not attractive to children and that a child merely seeing the advertisement was not a breach of the code (refer paragraphs 21-23).

- g) 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. I trust the information provided clarifies that we are compliant with the code in this instance.

The Panel's View

15. Liquorland is an alcohol retailer which is part of the Coles group of companies. Quite often Liquorland stores are co-located with Coles Supermarkets within shopping centres. This determination concerns a cross promotion of Liquorland by a Coles Supermarket whereby a special for alcohol products is included in information contained on a receipt for goods purchased at the supermarket.
16. This practice of promoting alcohol products on shopping receipts issued by the supermarket is reasonably longstanding and has been the subject of previous Panel determinations. Like this complaint the previous decisions have been about whether marketing of this fashion can be said to have strong or evident appeal to under 18 year olds. For instance the Panel's determination in 84 & 88/12 made in December 2012 dealt with a Coles receipt which also promoted products available at Liquorland. The Panel found that the content of the advertising which provided price information about alcohol products was not strongly appealing to minors.
17. At the time of these earlier decisions the ABAC contained only standards going to the content of marketing. In November 2017 the scope of the ABAC scheme was expanded to include the Placement Rules. The aim of the rules is to better direct alcohol marketing towards adult audiences and away from minors. This means the issue for this decision is whether marketing by way of the promotion of alcohol products on shopping receipts is consistent with the Placement Rule requirements.
18. The approach adopted by the rules is to apply differential requirements on alcohol marketing dependent on the capability of the medium involved to be manipulated to target specific audiences. This means that if there are technological abilities to better direct marketing towards adults and away from minors then these capabilities are to be used. This is most apparent with marketing via digital platforms such as websites and social media platforms like Facebook and Instagram. These platforms have age restriction filters and the ABAC Placement Rules require that available age restriction controls be utilised to endeavour to exclude under 18 year olds from viewing alcohol marketing communicated through these channels.
19. The position is obviously different with broadcast mediums like free to air television. It is not possible to restrict the audience of a television program like it is with a narrowcast medium such as Facebook and hence here the Placement Rules work differently. The relevant rules adopt restrictions on the time of day alcohol ads can

be broadcast and also require that the likely audience of a program within which the ad is placed be at least 75% adult.

20. The shopping receipts are a form of print marketing. The relevant Placement Rule for print marketing is rule (iii) which provides that an alcohol ad can only be placed where the audience is reasonably expected to comprise at least 75% adults. This rule is quite workable when applied to television and radio which has a public ratings system which enables audience composition to be reasonably reliably estimated. Its application to a shopping receipt is somewhat more clunky.
21. Coles is by definition an open market and people of all ages access the supermarkets. While young children would typically be in the company of adults who would most likely be collecting the receipts, older children and adolescents like the complainant's 11 year old son will not uncommonly use the store and get a receipt, some of which will contain the alcohol product information.
22. The Company provided some data which indicated that the users of its supermarkets are well in excess of 75% adults based on the membership of its flybuys scheme and other data from a media company. It is reasonable to surmise that a flybuys program is far more likely to be joined by adults than minors and possibly not a great deal of weight can be given to that information as being decisive.
23. The makeup of the total population is that around 22.5% of Australian residents are under 18. Clearly some venues will attract a higher proportion of minors than others. Self-evidently a school for instance is a location with predominantly under 18 year olds in attendance. Common sense indicates that a supermarket overall will likely be attended far more by adults than minors although minors will often be present at supermarkets.
24. The Panel believes the Placement Rule is not breached. Further, the advertisement itself is not in its design, or content considered to be strongly appealing to minors. So while the Panel acknowledges the genuine nature of the complaint and the point raised, it cannot be said that the ABAC provisions have been breached.
25. Accordingly the complaint is dismissed.