



## ABAC Adjudication Panel Determination No. 13/19

**Product:** Liquorland & BWS  
**Companies:** Coles Liquor Group & Endeavour Drinks Group  
**Media:** Print  
**Date of decision:** 4 March 2019  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the content and placement of alcohol marketing in supermarket catalogues by Endeavour Drinks Group & Coles Liquor Group (“the Companies”) and arises from a complaint received on 13 February 2019.
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 February 2019.
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.

### **The Marketing Communications**

10. The complainant refers to Woolworths & Coles supermarket catalogues that include alcohol promotions.

## The Complaint

11. The complainant raises the following concerns with the inclusion of alcohol promotions in supermarket catalogues:
  - a) It infers alcohol is an everyday grocery items.
  - b) Supermarket catalogues are used in Prep and Early Learning Centres for children to cut out pictures for food groups and other reasons.
  - c) The alcohol stores are separate to the Supermarkets and their advertising should be the same as children should not be allowed to think that alcohol is another grocery item.

## The ABAC Code

12. 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.
  - (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 Companies' Responses

14. Endeavour Drinks Group (EDG) responded to the complaint by letter dated 25 February 2019. The principal points made by the Company were:
  - a) EDG aim is to be Australia's most responsible retailer of alcoholic

beverages. In 2013 we formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. Prior to becoming a signatory, EDG demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. EDG maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context.

- b) EDG has also instigated a range of industry-leading initiatives to ensure that children are not served alcohol, including:
- ID25 (ask for ID from anyone who looks under 25)
  - Don't Buy It For Them (stopping secondary supply to minors)
  - Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses, and implementation of the award winning training program "Safe".
- c) In marketing alcoholic products, EDG is fully aware of the requirement not to encourage irresponsible behaviour related to the consumption of alcohol. We have been careful to observe this, including ensuring that our marketing has been limited to promotion on the price of adult beverages that are available to purchase every day from BWS stores in our catalogues. Advertising price specials across a variety of mediums has been regularly used by BWS and nearly every other liquor retailer as a common promotional mechanism.
- d) Up until the 1st November 2017 the ABAC Scheme did not adjudicate on the placement of advertising. It is EDG's understanding that this will be the Panels first decision on the placement of alcohol within a supermarket catalogue.
- e) The ABAC Rules and Procedures makes it clear that standard product and price advertisements are not required to be pre-vetted and as such these advertisements were not subject to pre-vet approval, however, they are subject to stringent internal policies. We were unable to ascertain from the complaint which catalogue they were referring to.
- f) In consideration of Part 3(a)(ii) of the code we would like to make the following points:
- i. Focusing on the content of the catalogue advertisement there are no words, visuals, iconography, designs, motifs, symbols or imagery used that could possibly lead the viewer into thinking the advertisement is an appeal to rapidly or excessively consume alcohol. There is nothing in the advertisement that a reasonable person would view as likely to encourage a person to consume all the alcohol in a single sitting or carry out an irresponsible activity.
  - ii. We note that in some jurisdictions, alcohol can be sold next to general grocery merchandise. We also note that Australian drinking habits are improving across all major indicators including the number of young people abstaining from alcohol increasing by 50% between 2004 and 2016.

- iii. The panel has previously adjudicated on alcohol advertising within supermarket catalogues . The most recent decision 12, 15, 20 and 23/15 made the following determinations:

“The Panel does not believe that the marketing of the availability of discounts of alcohol products of itself can be said to encourage excessive or rapid consumption of alcohol.”

“As it stands alcohol is a lawful product able to be purchased and consumed by adults. It’s use is regulated” and its misuse can result in civil or criminal penalties but there is no restriction on an adult using alcohol everyday.”

“The ABAC contains no provision which can be interpreted as requiring that marketing must not imply that alcohol use is not ‘normal’. In fact the Code assumes its use is normal but that alcohol should not be consumed irresponsibly or excessively or marketed inconsistently with the standards laid out in the Code.”

“No provision of the ABAC can be said to be breached by the argument of the normalization of alcohol use. For the marketing to be inconsistent with the ABAC it will need to breach one of the specific standards going to issues such as irresponsible or excessive use of alcohol or the marketing having strong or evident appeal to minors”.

- g) In consideration of the panels prior determinations and our above comments we argue that the ABAC Part 3(a)(ii) has not been breached.

- h) Turning then to the new placement rules. We attach for the panels information an analysis of the reach of our catalogues from the most recent available review date of catalogues distributed between July and September 2018. We believe that this review is representative of our catalogue reach. On average the Woolworths Supermarket catalogue is distributed to a demographic and readership of at least 83% aged between 25 and 65+ therefore satisfying the 75% placement requirement. The panel has previously commented on the accessibility of marketing to children with the determination finding:

“Supermarket catalogue advertisements contain factual information about alcohol discounts on particular products. The content is not the type that could be regarded as having strong or evident appeal to minors. The Panel recognizes that it is conceivable that a child might play with a catalogue, this fact makes the advertisement no more susceptible to breaching the ABAC standards than the fact that a child might see an alcohol advertisement on a television.”

- i) It is EDG’s belief that the content of our supermarket and BWS catalogues are not evidently appealing to minors and are constructed with the adult household shopper as their target market. As evidenced by our attached market insights the average reader of our catalogues are female between 25 and 65. With these interpretations in mind, it is EDGs position that the BWS

advertisements within the Woolworths catalogues are not in breach of either the content and placement rules.

- j) Accordingly, the complaint should be dismissed on both content and placement grounds, and the Panel should determine that there has been no breach of the Code.

15. Coles Liquor responded to the complaint by letter dated 22 February 2019. The principal points made by the Company were:

- a) Coles has been a signatory to the Alcohol Beverages Advertising Code (ABAC) since 2013. Coles Liquor takes its alcohol advertising obligations very seriously and is committed to industry best practice.
- b) 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.
- c) 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”.
- d) We have investigated this matter and provided responses to the questions you have raised in your correspondence and additional supporting information below.
- e) I confirm pre-vetting approval is not obtained for alcohol advertising in Coles catalogues. Supermarket catalogues only display price details and product names. The ABAC Rules and Procedures make it clear that retailer brand and price advertising is not required to be pre-vetted. As such, Coles Liquor 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.
- f) The liquor advertising in Coles catalogues is not presented in such a way that it would encourage irresponsible or offensive behaviour related to the consumption or presence of an alcohol beverage. It is therefore not a breach of part 3(a)(ii) of the Code.
- g) The Coles Supermarket catalogue is distributed nationwide. As noted in ABAC determination 137/18, approximately 22.5% of Australian residents are under 18. It therefore follows that less than 25% of the audience reading a Coles Supermarket catalogue would be under 18.
- h) There is nothing included in the promotional material which has particular appeal to minors as the advertising only features details of what the products

are and their price which is not information that is strongly appealing to minors.

- i) Further to the above, the alcohol advertising generally appears in the last two pages of the catalogue, making the alcohol advertising less visible than it would be in a standalone liquor catalogue.
- j) While we acknowledge the concern raised in the complaint about Coles catalogues being re-used for children's projects, Coles has no control over what its catalogues are used for once they have been distributed to households.
- k) The content of the catalogue includes photos, names and prices food, beverages and household items. These items are targeted at persons completing shopping activities on behalf of themselves or their household. Grocery shopping in the vast majority of instances is completed by an adult.
- l) 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**

- 16. Coles and Woolworths are the two major Australian supermarket chains with stores operating across the country. Both companies are also significant players in the retailing of alcohol beverages with Coles operating Liquorland stores and Woolworths operating BWS. This determination concerns the practice of both companies to promote the availability of alcohol products from their alcohol retailers in catalogues which also, if not primarily, promote products available from their supermarkets.
- 17. The complainant advises that advertising brochures are regularly received at the complainant's home from both companies and these brochures often include alcohol promotions amongst the information on food and household items sold at the supermarkets. The complainant argues that including alcohol products is highly undesirable as it makes out that alcohol is just another everyday household item when it is not. It is contended that children will get the wrong message and this marketing practice contradicts government advertising which aims to raise awareness that children will pick up behaviours about alcohol use from their parents use in the home.
- 18. The complainant's point that alcohol is not just another household product is of course quite correct. While all foodstuffs are subject to levels of regulation to ensure basic public safety, alcohol is subjected to additional layers of regulation due to the detrimental impact to both individuals and the wider community if alcohol is misused. For instance, the law provides a prohibition on the consumption of alcohol by persons under the age of 18, it is illegal to drive a motor vehicle under the influence of alcohol and liquor licensing regimes regulate premises in which alcohol can be publicly consumed. Indeed the very fact that the ABAC Scheme exists to

provide specific requirements on the marketing of alcohol over and above requirements applying to marketing more generally is an illustration that alcohol is not just another product.

19. That said and recognising the specific controls on alcohol use, it is also true that alcohol is a lawful product freely available for purchase and use by adults. Alcohol is able to be marketed if this marketing occurs consistently with government regulatory requirements and the standards created in the ABAC and other codes of practice. Hence the question for the Panel is not whether as a matter of principle alcohol products should ever be contained in supermarket catalogues, but the more narrow question as to whether the inclusion of the promotion of alcohol in the brochures is consistent with the terms of the ABAC.
20. The ABAC sets out two general categories of requirements for alcohol marketing. The first category goes to the content of alcohol marketing items and this requires that alcohol marketing should not contain messages that it is acceptable to consume alcohol excessively, or that a person needs alcohol to be successful in life. One of the ABAC content standards provides that an alcohol communication must not have strong or evident appeal to a minor( a person aged under 18).
21. This standard might be breached if an alcohol ad could be said to be targeting minors or if the ad has an attractiveness to minors beyond its general appeal to adults. Equally the use of cartoon characters or packaging which could be confused with a soft drink are other examples which could breach the standard. In this case the complainant doesn't point to a specific ad in the brochures which is said to have features appealing to minors but rather a more general point is made that any alcohol product advertising is undesirable in material which is promoting everyday households goods.
22. Typically the content of alcohol promotions in catalogues will go to the product's name, type and price and there won't be extensive or any references to the product's attributes. While the Panel acknowledges the argument advanced by the complainant, there is no code standard which prohibits adult use of alcohol being portrayed as 'normal'. The requirements on marketing go to the use being portrayed as moderate and responsible. It is possible that an alcohol ad in a supermarket brochure might breach the standard going to strong or evident appeal to children but the mere fact that the ad appears in the brochure will not of itself be a breach of the ABAC content standard.
23. The second category of requirements in the ABAC are the Placement Rules. The policy aim of the rules is to direct alcohol marketing towards adult audiences and away from audiences where minors are a significant proportion. The rules create differential obligations on marketers which are linked to the technical capacity of the medium or platform in which the marketing item is conveyed or located. For instance, the rules require that in using digital platforms such as Facebook, the capability of the platform to age restrict the streaming of posts be used so that under 18 year olds not receive alcohol advertising at all. In contrast a broadcast medium such as television does not have this capacity and the rules incorporate time of day restrictions on when alcohol ads might be shown.
24. The supermarket catalogues are a form of print advertising. Typically the catalogues will be distributed in a few ways such as 'letterboxing' homes in the residential

catchment areas of the supermarket. The brochures might also be available from stands at the supermarket or sent electronically to consumers by email. The complainant advised the brochures received in this case came to the complainant's home, presumably by being letterboxed.

25. For a printed brochure distributed in hard copy, the Placement Rules place two obligations on alcohol marketers. Firstly the ad may only be placed where the audience is reasonably expected to comprise at least 75% adults. Secondly, irrespective of the publication's audience an ad cannot be placed with content primarily aimed at minors.
26. Both companies were asked to supply data as to the readership of their supermarket catalogues. Coles did not supply data but pointed to the overall make up of the Australian population to found an expectation of the adult audience of the catalogues. Woolworths did supply data based upon research conducted by the market research firm Roy Morgan. This data looked at the period of July to September 2018 and showed the readership of the catalogues as:
  - age 14-24 – 17%
  - age 25-34 - 18%
  - age 35-49 - 23%
  - age 50-64 - 20%
  - age 65 plus - 22%
27. The data doesn't directly identify the readership of the catalogues by minors but even in the improbable scenario that all readers in the 14 to 24 age group were under 18, it is clear that this data shows Woolworths catalogues are read predominately by adults. This data reinforces a common sense view that the catalogues are most likely read by adult consumers of supermarket products.
28. The Placement Rules also provide that irrespective of the expected audience of a publication, an alcohol ad cannot be placed with content primarily aimed at minors. The Panel does not believe the content of a supermarket catalogue is aimed at minors. It is aimed at those responsible for household purchases and while this group won't exclusively be adults it will be overwhelmingly adults and not minors.
29. Accordingly the complaint is dismissed.