



ABAC Adjudication Panel Determination No. 20/19

Product: BWS
Company: Endeavour Drinks Group
Media: Print
Date of decision: 27 March 2019
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 an alcohol promotion for BWS by Endeavour Drinks Group (“the Company”) and arises from a complaint received on 12 March 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 12 March 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 a Woolworths supermarket catalogue that included the following alcohol promotion.

Freezer 23

<p>\$3.40 SAVE \$3.40</p> <p style="text-align: center;">1/2 Price</p>  <p><small>Suggested Retail Price on Brand Item \$6.80 per 100g</small></p>	<p>\$4 SAVE \$4</p> <p style="text-align: center;">1/2 Price</p>  <p><small>Suggested Retail Price on Brand Item \$8.00 per 100g</small></p>	<p>\$4.32 SAVE \$4.33</p> <p style="text-align: center;">1/2 Price</p>  <p><small>Four N Twenty Angus Aussie Beef</small></p>
<p>\$4 SAVE \$1</p>  <p><small>Lean Cuisine Chicken & Veggie 250-350g</small></p>	<p>\$4.80 SAVE \$1.20</p>  <p><small>Bingo Battered Fish & Chips 322g \$1.60 per 100g</small></p>	<p>\$6.40 SAVE \$6.40</p> <p style="text-align: center;">1/2 Price</p>  <p><small>Patties Meat & Veg 225g per 100g</small></p>

Buy
any McCain Family Pizza



\$5
SAVE \$1.50

44-54cm Family Pizza 550g \$4 per 100g

Get
a VB 6 Pack for \$12



SAVE FROM \$7.50

To redeem this offer, either scan your Rewards card or provide the Woolworths receipt at BWS after the McCain Pizza has been purchased

Offer available from 13/03/19 - 26/03/19. Purchase any McCain family pizza or Four N Twenty frozen pie from Woolworths to be eligible to receive this offer. Scan your Rewards card or provide the Woolworths receipt to BWS after the McCain family pizza or Four N Twenty frozen pie has been purchased. Available on Victoria Bitter bottles and cans 6x375ml. Offer not available on BWS online. 1x redemption per Woolworths receipt. At this great offer, no further discounts apply.

1025 54% responsible service of alcohol. See page 34 for full T&Cs and more great specials.

The fresh food people 

The Complaint

11. The complainant raises the following concerns with the promotion:
 - a) It is aimed and targeted to anyone.
 - b) Half price alcohol and \$10 beer is encouraging an easy add on sale and promoting alcohol to 18+ people who can enjoy eating junk food and get drunk for only \$15.
 - c) BWS supports responsible service of alcohol and yet they have this promotion advertised on a freezer section in a catalogue with other frozen products that families would buy.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines
- (b)(i) have Strong or Evident Appeal to Minors

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

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

The Companies' Responses

13. Endeavour Drinks Group (EDG) responded to the complaint by letter dated 25 March 2019. The principal points made by the Company were:
 - a) This response addresses advertising, marketing and retail activities under the control of Endeavour Drinks. Endeavour Drinks' 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, Endeavour Drinks' demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. Endeavour Drinks' maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context.
 - b) Endeavour Drinks 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, Endeavour Drinks' is fully aware of the requirement not to publish material that has a strong or evident appeal to minors. We have been careful to observe this, including ensuring that marketing in our Woolworths catalogues has been limited to the price of adult beverages that are available to purchase from BWS stores.
- d) The ABAC Rules and Procedures state that retailer brand and price advertising do not require to be pre-vetted. As such, BWS did not submit this cross-shop promotion for pre-vetting, however, the offer and its messaging were subject to stringent internal control to ensure compliance with internal policies and ABAC.
- e) In consideration of Part 3(b)(i) of the code we would like to make the following points:
- i. Cross-shop promotions (in this case the purchase of a McCain Pizza) do not at any point make a suggestion for the alcohol being promoted to be consumed excessively, rapidly or by people under the legal purchase age. Cross-shop promotions are designed to provide shoppers who are loyal customers with a special offer that is only available as a direct result of that shopping loyalty. It is ultimately up to the customer to choose to redeem that offer, and if the customer chooses to redeem the offer that redemption would be subject to the usual stringent controls in BWS stores the responsible service of alcohol and ensuring that it is not sold to minors.
 - ii. Focusing on the content of the cross shop advertisement there are no words, visuals, iconography, designs, motifs, symbols or imagery used that a reasonable person would view as having a strong or evident appeal to minors. It is simply advertising the offer to receive a discount on a product that is available as the result of a purchase of a grocery line.
 - iii. When considering the type of products for a cross promotion with our other businesses, care is taken to ensure we do not use products that may have a strong or evident appeal to a minor. In this instance it is our view that the choice of using McCain and their range of pizzas is not a product that would be more appealing to minors. Pizza is universally appealing and in consideration of the advertising design (it is presented in a mature, understated and matter-of-fact manner) we do not believe it has a strong or evident appeal to minors. We should also note that, based on an analysis of the reach of Woolworths catalogues distributed between July and September

2018 (the most recent data available to us, which we believe is representative of our catalogue reach), on average the Woolworths catalogue is distributed to a demographic and readership of at least 83% aged between 25 and 65+.

- f) Taking the advertisement as a whole, a 'reasonable person' would view the advertisements as simple retail price advertising of a cross promotion. There is nothing in the advertisement that a reasonable person would view as likely to have strong or evident appeal to children. With these interpretations in mind, it is Endeavour Drinks' position that the BWS pizza and beer cross promotion are not in breach of the Code.

The Panel's View

14. The cross promotion of products by way of offering a better price for a product if a second product is purchased is a reasonably common marketing technique. This determination concerns the cross promotion of an alcohol product with a foodstuff by the major supermarket chain Woolworths. Woolworths is also the parent company of the alcohol retailer BWS. The promotion is advertised in a supermarket catalogue and enables a customer who has purchased a frozen pizza from a Woolworths store to purchase a discounted beer product from BWS.
15. The complainant believes the cross promotion is irresponsible because the offer is freely available, encourages excessive alcohol use and the combination of the consumption of junk food and alcohol is not desirable. The company responds by saying the promotion is consistent with applicable codes of practice, the alcohol product cannot be purchased by a minor at a BWS store, and the ad itself is not appealing to minors.
16. The task for the Panel is not to make a value judgement about the desirability of cross promoting pizza with a beer product but to assess if the marketing is consistent with the terms of the ABAC. The relevant ABAC provisions go to alcohol marketing not:
 - encouraging excessive consumption of alcohol; or
 - strongly appealing to minors (under 18 year olds).
17. A few observations can be made. Firstly, the ABAC does not preclude cross promotion of alcohol products with other products as a matter of principle. Rather any marketing, be it in the form of a cross promotion or otherwise, cannot have the impact of encouraging excessive alcohol use or encouraging under-age drinking amongst other requirements. Secondly, the ABAC standards generally go to the impact the marketing can be said to have on patterns of alcohol use rather than the encouragement of the purchase of a specific alcohol product. So for instance, a discount might encourage the selection of one alcohol product over another or encourage the purchase of a greater quantity of a product than might occur if there was no discount. But given alcohol has a long shelf life and once purchased can be

consumed over time and by more than one person, this often will not mean excessive consumption is being encouraged.

18. In this case the promotion provides that a consumer can obtain a discounted 6 pack of beer upon proving the pizza has been purchased. The Panel does not believe this offer encourages excessive consumption. The ad states the promotion is available and how the discount can be obtained. It does not imply that the beer should be consumed rapidly or in an irresponsible manner.
19. Further, the ad cannot be said to be strongly appealing to minors. No doubt pizza is a food popular amongst under 18 year olds, as it is with all age groups. That said, the ad is passive in format, advising the availability of the promotion and has no active elements, nor uses designs or characters or dynamic colouring or any other features which would bring it particularly to the attention of or make it strongly appealing to minors.
20. Accordingly the complaint is dismissed.