



ABAC Adjudication Panel Determination No. 54/19

Product: Liquorland
Company: Coles Liquor
Media: Digital (Email)
Date of decision: 9 September 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an email promotion for Liquorland by Coles Liquor (the Company) jointly with flybuys and arises from a complaint received 13 August 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, 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 13 August 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 has been determined within this timeframe.
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 the marketing communication.

The Complaint

11. The complainant is concerned that a promotion encourages excess consumption in excess of Australian Alcohol Guidelines by offering a financial reward for bulk purchases of alcohol made over a sustained period, in particular:
 - a) The advertisement leads customers to consume more alcohol than they otherwise would by giving a target purchase amount and providing a financial incentive/reward for meeting it
 - b) The incentive/reward of a Liquorland voucher or 10,000 flybuys points is conditional upon continued large purchases (\$50 a week);
 - c) The total amount (\$150 over three weeks) equates to an excessive amount of alcohol to consume in three weeks;
 - d) Even if you assume a minimum unit price of \$1AUD applied across every purchase, this would equate to 150 standard drinks over three weeks, which is 7 standard drinks per day;
 - e) In reality Liquorland has alcohol for sale for as little as \$.63 per standard drink (refer image below) which would allow the purchase of 238 standard drinks with \$150 over three weeks equating to 11 standard drinks per day;
 - f) The Australian Guidelines to Reduce Health Risks from Drinking Alcohol 2009 recommend no more than two standard drinks per day to reduce the risk of long term health harms and the Liquorland promotion encourages customers to exceed this threshold; and
 - g) The sustained nature of this promotion encourages customers to form a habit of purchasing large amounts of alcohol every week, which is a highly irresponsible promotional tactic which could generate or exacerbate alcohol dependency.

Home > Red Wine > Lindemans Bin 40 Merlot 750mL



Lindemans
Bin 40 Merlot 750mL
\$59.99 was \$79.99

Click & Collect Delivery Available


SAVE \$9

Lindemans Bin 40 Merlot features aromas of blackberry and plum with underlying spicy oak, while the palate is soft and generous with hints of spice and berry that supported by toasty vanilla oak and spicy tannins.

Product Details

Alcohol Content	13.5%	Coloring	Check here
Closure	Crown Cap	Packaging	Recycled
Standard Drinks	9.0	Origin	Australia, South Eastern Australia
Style	Pin & Reserve Series	Product Code	478224

Home > White Wine > Lindemans Bin 65 Chardonnay 750mL



Lindemans
Bin 65 Chardonnay 750mL
\$59.99 was \$79.99

Click & Collect Delivery Available

SAVE \$9

Lined around the world, Lindemans Bin Series wines are approachable in style, consistent in quality with great appeal. Designed to be enjoyed enjoyed and shared time and time again, these are wines people simply love to drink. Lindemans Bin 65 Chardonnay features aromas of fruit, spice, fig, toasty vanilla and oak, the mouth is braced with a fresh, crisp finish.

Product Details

Alcohol Content	13.5%	Coloring	Check here
Closure	Crown Cap	Packaging	Recycled
Standard Drinks	9.0	Origin	Australia, South Eastern Australia
Style	Reserve Pinemaster Series	Product Code	124762

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;

The Company's Response

13. The Company responded to the complaint on 26 August 2019. The principal points made by the company were:
- a) As you will be aware, 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. Coles Liquor 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 advertisement was a joint Flybuys and Liquorland promotion offering either 10,000 Flybuys points or a \$50.00 Liquorland gift card when a customer spends \$50.00 or more in one transaction each week for 3 weeks (**The Advertisement**).
 - c) Liquorland does not consider that The Advertisement breaches any section of the Alcohol Beverages Advertising Code (**the Code**) or any other advertising code for the following reasons:
 - There is no content in The Advertisement which leads to a conclusion that rapid or excessive consumption is being encouraged;
 - The offer is not for a long duration and requires participation over a consecutive three week period;
 - Liquorland generally promotes this campaign in the lead up to particular events where individuals are more likely to be celebrating with family and friends e.g. Easter, Spring Racing Carnival and Christmas;
 - In everyday life, there are a myriad of reasons for a shopper to take advantage of a product promotional bundle in which they receive discounts for a greater volume purchased. This could include the cellaring of a wine, the hosting of a weekend BBQ, and needing to cater for a variety of drink preferences.

- The offer is only marketed to active Liquorland customers who have made a purchase at Liquorland in the 12 weeks prior to the promotion;
- The qualifying spend threshold means that \$150 must be spent to qualify for the bonus points or gift card. This spend amount is not beyond reasonable limits and these points can be used at other flybuys retail partners of the customer's choice;
- The offer does not require a minimum volume of alcohol be purchased. That is, the weekly \$50 spend amount could be spent on one item. Additionally, a number of alcohol products by their nature have a reasonably long shelf life and can therefore be consumed over an extended period of time;
- While The Advertisement may encourage a consumer to participate in the offer, it does not follow that this will result in the consumer drinking more of a product on a single occasion, excessively or irresponsibly. Previous ABAC determinations confirm this has been a consistent approach over many years.

The Panel's View

14. In the first quarter 2019 the Company ran a promotion via email to particular customers on its database. This promotion allowed a consumer to obtain a \$50 gift card or 10,000 flybuy points if the person for three consecutive weeks spent \$50 or more in a single purchase of an alcohol product(s) at one of the Company's retail outlets. This promotion was time limited and to be accessed, a consumer needed to act in the first week and then continue to make purchases in each of the following two weeks.
15. The complainant argues that the promotion encourages alcohol consumption and/or consumption in excess of Australian Alcohol Guidelines. The reasoning advanced is essentially:
 - a consumer will change their pattern of purchase and consume more alcohol than they would have otherwise in order to obtain the reward;
 - the reward requires large alcohol purchases and \$150 worth of alcohol equates to excessive consumption levels over the three week period;
 - when translated to the price of a standard drink, the implicit consumption level ranges from 7 to 11 standard drinks per day well in excess of the Alcohol Guidelines; and
 - the sustained nature of the promotion would encourage a consumer to form a habit of purchasing large amounts of alcohol which could contribute to alcohol dependency.
16. The Company contends the promotion is consistent with ABAC standards. It points out:
 - the promotion is for a defined period and is a type conducted in the lead up to events such as Easter, Christmas and the Spring Racing Carnival;

- there is no minimum volume of alcohol purchase requirement, but a spend requirement which could be allocated to a single item; and
 - the email to customers encourages participation in the offer and it does not follow that excessive consumption is encouraged or will occur.
17. The ABAC provides in Part 3 (a)(i) that an alcohol marketing communication must not show or encourage the excessive or rapid consumption of an alcohol beverage or consumption inconsistent with the Australian Alcohol Guidelines. Compliance with the standard is to be assessed in terms of the probable understanding of a marketing communication by a reasonable person, i.e. in light of the life experiences, values and opinions held commonly in a majority of the community.
 18. Over time the Panel has made a number of decisions on the application of Part 3(a)(i) in relation to the offering of discounts and other promotional activities. The key feature of the standard is that it seeks to prohibit the encouragement of excessive consumption. The current complaint draws a direct line from the assumed impact of the promotion on purchase patterns to the subsequent pattern of consumption of alcohol. In short, the contention is that if a prescribed level of purchase is required to obtain the reward, then a participant in the promotion will likely consume more extensively and/or more quickly as a result.
 19. The difficulty with this argument is that there is an evident distinction between the purchase of an alcohol product from an off-premise retailer such as Liquorland and its subsequent pattern of consumption. Alcohol has a long shelf life. It can be purchased and stored for months, or in the case of wines and spirits, many years before it is consumed. It can be purchased in bulk but then consumed by multiple people. Accordingly, an incentive to purchase might well have an impact on the consumer's buying choice but it is harder to conclude that the subsequent consumption pattern will veer towards excessive consumption due to the purchase incentive.
 20. The complainant extrapolates the required expenditure of \$50 per week for three weeks to the number of standard drinks this would amount to looking at the price of inexpensive products. However, the promotional email or the terms of the promotion itself doesn't require that any particular products be purchased. A consumer could purchase one bottle of relatively expensive wine or a single bottle of a spirits and satisfy the monetary expenditure threshold for the promotion. If this is then extrapolated to supposed consumption levels, it would not be excessive.
 21. The point is that the marketing communication itself says nothing about consumption. The promotion goes to a monetary level of purchases which could be in the form of a number of cheaper priced products or it could be a single more expensive product. The promotion does not go to how a purchased product should be consumed.
 22. Further, the ABAC does not endeavour to regulate alcohol price nor how often purchases of alcohol should occur. Hence the argument that the promotion embeds a pattern of regular alcohol purchase and this is irresponsible cannot be accepted as a breach of a Code standard. Issues such as volumetric pricing of

alcohol are valid questions for public policy but are well beyond the remit of the Panel.

23. Accordingly, the complaint is dismissed.