

## ABAC Adjudication Panel Determination No 206/20

**Product:** Reusable plastic bag  
**Company:** Coles Liquorland  
**Media:** Reusable plastic bag  
**Date of decision:** 21 January 2021  
**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 a reusable plastic bag with various slogans supplied to customers by Coles Liquorland (“the Company”). It arises from a complaint received on 23 December 2020.
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 Code”) – 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 and Policies – which place 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

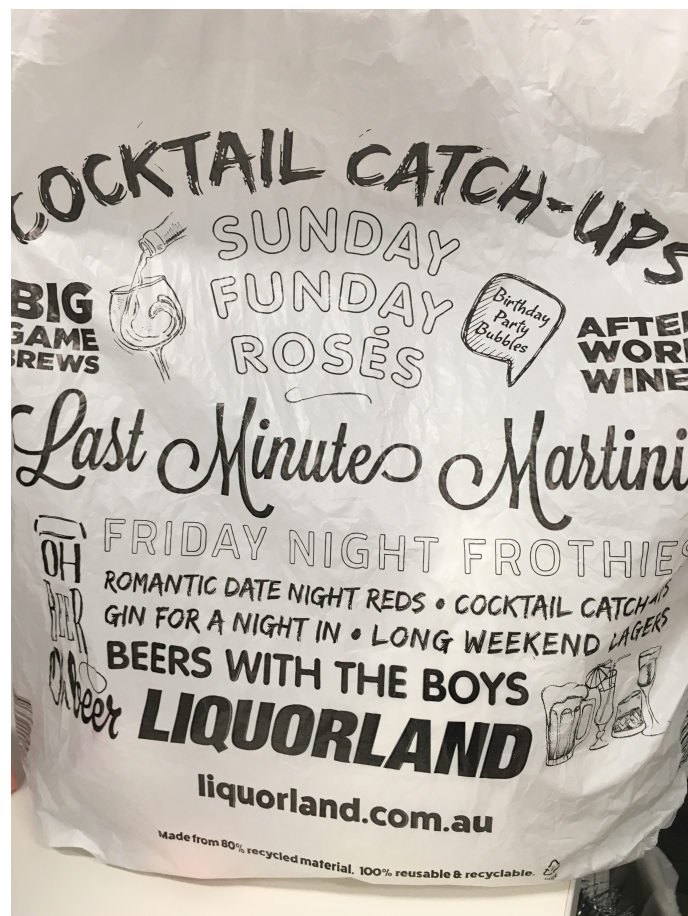
7. The complaint was received on 23 December 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaints were 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 not obtained for the content or placement of the advertising.

## The Marketing

10. The complaint relates to the following reusable plastic bag supplied by Coles Liquorland:



## The Complaint

11. The complainant raised the following concerns about the advertising:

*The slogans [on the bag] directly implicate and encourage excessive or rapid consumption inconsistent with the Australian Alcohol Guidelines.*

*The slogans on the bag are directed to minors through a breach of the placement rules as they are on a plastic bag promoted for reuse.*

*The slogans on the bag suggest that the consumption of alcohol or presence of an alcoholic beverage may create or contribute to a significant change in mood or environment and is a necessary aid to relaxation for that event (e.g. romantic date night reds, birthday party bubbles, beers with the boys, sunday funday rosé, big game brews, after work wines).*

## The ABAC Code

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

- (a)(i) show 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)(iv) be directed at Minors through a breach of any of the Placement Rules.
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
- (c)(ii) show the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.
- (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

13. Part 6 of the ABAC Code provides that:

### **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 Placement Policy).

- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (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.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

## **The Company's Response**

14. The Company responded to the complaint by letter emailed on 15 January 2021. The principal points made by the Company were:

### **Background**

- 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, advertising and promotion of alcohol. We maintain robust internal 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".

## **Alcohol Advertising Pre-vetting Service Approval**

- Pre-vetting approval was not obtained in this instance. The importance of ensuring all necessary marketing communications are pre-vetted, has been reinforced with the marketing team. We can however confirm that we are not aware of any previous complaints received about the slogans used on the reusable bag.

## **Responsible and moderate portrayal of Alcohol Beverages**

- Coles Liquor does not believe the slogans on the reusable bag encourage excessive or rapid consumption of an Alcohol Beverage or misuse or abuse of alcohol. We note that there is no image of people consuming alcohol or irresponsible messages around excessive or rapid consumption on the slogans. In fact, the slogans do not encourage any level of consumption. The slogans do nothing more than describe scenarios where alcohol is typically consumed. There is nothing to suggest misuse or abuse of alcohol inconsistent with the Australian Alcohol Guidelines.

## **Responsibility toward Minors**

- Coles Liquor does not consider the slogans are in any way directed at minors. Coles notes that the slogans do not depict a person who is or appears to be a minor and that the bags were only used at our liquor stores, which are for customers who are 18 years or over. Coles Liquor has extensive responsible sale of alcohol practices in place ensuring unaccompanied minors are not permitted on premises and alcohol is not sold to minors. This includes our ID25 policy.
- The bags in question are stored out of customer view in store (behind the service counter) along with other bag options available for purchase. The bags are only provided to a customers who have purchased alcohol and must be over 18 to be served at Liquorland.

## **Responsible depiction of the effects of alcohol**

### Change in mood or environment

- Coles Liquor does not consider the slogans suggest an Alcohol Beverage contributes to a change in mood or environment or suggest a celebration or event would be more enjoyable than it would be without an alcoholic beverage. The slogans are merely a description of typical and common scenarios where alcohol is consumed which would be familiar to a reasonable member of the public. There is no suggestion that the presence of alcohol has any causal relationship to mood change, success of any kind, or it being necessary to relax. Alcohol is referenced as being incidental to the

various social environments or celebrations, not as transforming any of those occasions. The ABAC guidance notes state 'There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success'.

- Coles group would like to draw the panel's attention to the ABAC determination 149/20 in relation to an Instagram post featuring Saintly Hard Seltzer for a relevant example. One of the slogans used was "Worship Sunday's drink" which was approved by the ABAC pre-vetting panel and the complaint was dismissed. Coles Liquor would argue that a reasonable person would understand the slogan "Sunday Funday Rosé" to be referring to Sundays being a fun day where most adults are not working rather than being a reference to the rosé transforming the day.

#### Achievement of success

- Coles Liquor does not consider that the slogan "Romantic Date Night Reds" suggests or implies the presence of an alcoholic beverage would contribute to sexual success. A reasonable person reading the slogan would consider it refers to drinking wine in a romantic setting not that they will achieve 'sexual success' by drinking red wine as part of a date night. The ABAC guidance notes states 'It is also possible to depict the presence of alcohol in a romantic situation provided there is no suggestion it has caused or contributed to the achievement of sexual or other success.'
- Coles Liquor would like to refer to the ABAC determination 7/20 where a complaint about an ALDI advertisement with the wording "date night" was dismissed. The complaint in this instance was that the wording "date night", coupled with some alcoholic products pictured, suggested alcohol is needed for romantic purposes and can lead to unwise sexual choices. It would be a common experience for a couple going on a date to consume alcohol.

#### Therapeutic benefit or aid to relaxation

- Coles Liquor is of the view that the slogans on the reusable bags are generic in nature to ensure they do not construe any emotional benefit from the consumption of alcohol. There is no suggestion or reference to any therapeutic benefit or aid to relaxation but rather a description of typical scenario's or occasions in which responsible drinking Australians like to consume alcohol. A reasonable person reading the slogan would not consider the slogan is implying the consumption of alcohol will provide a therapeutic aid or aid relaxation but rather understand they are referring to common scenarios where alcohol is commonly consumed.

## Conclusion

- Coles remains committed to the responsible supply and promotion of alcohol and considers that its marketing and advertising has an important part to play in that process.
- Coles understands the importance of ensuring that our advertisements do not encourage rapid or excessive consumption of alcohol, are not directed at minors or suggest an Alcohol Beverage may create or contribute to a significant change in mood or environment or benefit.
- Coles is of the view that the slogans on the reusable bag are generic in nature, in line with prevailing community standards and are aligned with the ABAC Responsible Alcohol Marketing Code and the AANA Code of Ethics.

## The Panel's View

15. Liquorland is a major Australian retailer of alcohol products and is part of the Coles group of companies. When a consumer purchases product from a Liquorland store, the store makes available several different options for carrying the products. One of the options is a plastic reusable carry bag. The bag is white and has printed on it the Liquorland brand name with a number of alcohol themed slogans or phrases. It is this bag which has drawn the complaint.
16. The slogans/phrases printed in a range of fonts and styles on the bag are listed by the complainant to be:
  - cocktail catch-ups
  - Sunday funday rose`s
  - after work wines
  - big game brews
  - last minute martinis
  - Friday night frothies
  - birthday party bubbles
  - oh beer oh beer
  - romantic date night reds
  - gin for a night in



- long weekend lagers
  - beers with the boys.
17. The concern expressed by the complainant is that the bag is a form of point-of-sale marketing and is sending irresponsible messages about alcohol use. Specifically, it is argued:
- by being reusable, the bag will be directed at minors in breach of the ABAC Placement Rules and
  - several of the ABAC content standards are breached namely
    - encouragement of excessive consumption or consumption inconsistent with the Australian Alcohol Guidelines (Part 3 (a)(i));
    - suggesting alcohol may create or contribute to significant change in mood or the achievement of social or sexual success (Part 3(c));
    - suggesting that alcohol use is a necessary aid to relaxation (Part 3 (c)(iv)).
18. If the bag was point-of-sale marketing, then it would not be captured by the ABAC standards. This is because Part 2 (b)(iv) of the Code states retailer point of sale marketing is excluded from the Code unless the marketing material was under the control of a producer or distributor of alcohol. In this case, the bag does not reference any branded alcohol products and is purely marketing from Liquourland as an alcohol retailer.
19. The bag however is not point-of-sale marketing. While the bag is handed over to the consumer at the time of the purchase of alcohol products, it is designed to be taken away from the store. Point-of-sale marketing is designed for the customers within a licensed premise and will generally be fixed or circulated within the confines of the store or venue. The bag is more akin to marketing collateral and hence is a marketing communication within the meaning of Part 2 (a) of the Code. In short, the messaging on the bag needs to meet ABAC standards.
20. The complainant contends the bag is directed at minors and will be in breach of the ABAC Placement Rules. The rules do have the aim of directing alcohol marketing towards adults and away from minors and seek to achieve this aim via a cascading series of requirements which are based upon the technical capacity of the communication medium to be age targeted. The Company submits the bags are not directed at minors, are distributed only to adult customers purchasing alcohol from the retail outlets and are kept out of view until required.

21. The bags are not in breach of any of the Placement Rules. It is questionable whether the Placement Rules apply to a marketing communication of this type but in any event:
- there is no media industry code regulating marketing collateral or retailer carry bags - Rule 1;
  - no age restriction controls are available to carry bags - Rule 2;
  - given the outlets are licensed premises and the bags are supplied only to adult customers, the reasonably expected audience of the bags would exceed 75% adults - Rule 3
  - the bags are not placed 'with programs or content primarily aimed at minors'- Rule 4; and
  - the bags are not electronic direct mail - Rule 5
22. Aside from the formal rules, the complainant's contention is that because the bags are reusable, this makes them appealing to minors. The reusable nature of the bags means there is more potential for a minor to see a bag in a home as opposed to a disposable plastic bag. But it is difficult to envisage that under 18-year olds are going to be captivated by a plastic bag.
23. The balance of the complainant's concern is that the slogans/phrases on the bag encourage irresponsible or immoderate use of alcohol. The Company argues the bags are consistent with applicable ABAC standards. It is contended:
- the slogans/phrases describe scenarios where alcohol is consumed and don't encourage a level of consumption;
  - no causal link between achieving success and alcohol is suggested by the slogans/phrases; and
  - the slogans/phrases do not suggest alcohol offers therapeutic benefit or aids in relaxation.
24. In assessing the consistency of a marketing communication with an ABAC standard, the Panel adopts the probable understanding of the marketing item by a reasonable person taking the contents of the marketing as a whole. A 'reasonable person' is someone who shares the values, opinions and life experiences found in most of the community. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their take on the material would not be shared by most people.

25. The Panel does not believe the messaging on the bags would be understood to be in breach of the ABAC standards. In reaching this conclusion the Panel noted:

- the bags are printed with slogans/phrases and do not contain images of alcohol consumption;
- the slogans/phrases capture stereotypical circumstances when alcohol is present and consumed;
- however, no pattern of consumption is suggested and there is nothing to suggest excessive consumption is being encouraged or consumption inconsistent with Alcohol Guidelines;
- the slogans/phrases associate alcohol with occasions such as a romantic night or Sunday as a funday - but there is no assertion that alcohol is needed to make these occasions a success;
- further the phrases do not suggest alcohol offers a health benefit or is needed for relaxation; and
- taken as a whole, a reasonable person would not interpret the messages as advocating irresponsible use.

26. The complaint is dismissed.