

ABAC

ABAC Complaints Panel Determination No: 23/06

CONFIDENTIAL COMPLAINT

Advertiser: Liquorland
Parent Company: Coles Myer

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Liz Dangar – Member
Ms Jeanne Strachan – Member

30 May 2006

Introduction

1. By email dated 20 April 2006 a complaint was received by the Advertising Standards Bureau (ASB) about a television advertisement for the alcohol retail outlet "Liquorland". Liquorland is owned by the major Australian company, Coles Myer ("the Advertiser"). The complaint was forwarded to the ABAC Adjudication Panel by the ASB on 24 April 2006.

The Quasi-Regulatory System

2. Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

Coles Myer and the ABAC

6. The ABAC Scheme is an initiative of Australia's alcohol industry peak bodies, namely:

Australian Associated Brewers Inc (AAB)

Distilled Spirits Industry Council of Australia Inc (DSICA)

Liquor Merchants Association of Australia Ltd (LMA)

Winemakers Federation of Australia Inc (WFA)

7. The Scheme is underpinned by the commitment of the companies which are members of the four industry peak bodies to comply with the ABAC. The ABAC Scheme is not prescribed by legislation and hence is not compulsory, and an alcohol industry participant which is not a member of an industry body may choose to subject itself to the ABAC process or may choose not to follow the ABAC.
8. Coles Myer has advised the Panel by letter dated 18 May 2006 that it is not a member of the ABAC Scheme sponsoring industry bodies and the company has decided not to respond to the complaint in a substantive manner.

Approach to non-ABAC participants

9. The ABAC Scheme applies to the vast majority of alcohol industry participants and hence to nearly all alcohol beverage advertising in Australia. However, like Coles Myer, there are some companies which are not committed to the Scheme through their non-involvement in the relevant peak industry body. From time to time, advertising from a non-ABAC Scheme participant attracts a public complaint.
10. The Panel has raised this issue with its Management Committee. On advice from the Management Committee, the Panel seeks to make a determination in all cases where the complaint raises an ABAC issue. In cases of non-participant companies, however, the Panel is constrained by the willingness of the advertiser to provide materials and responses to enable the Panel to make a determination. Further, compliance with a determination cannot be ensured as no undertaking has been given to follow the Panel's decisions by the non-ABAC Scheme participant.

The position of Coles Myer to this complaint

11. By letter dated 10 May 2006 the Panel sought from Coles Myer a response to the complaint. In response, the advertiser responded as follows:

I refer to your letter dated 10 May 2006 to Peter Scott.

As you point out in your letter, our records indicate that we are not a member of one of your scheme sponsoring industry bodies and so we do not feel it appropriate to respond substantively to your letter.

I would point out however that we did choose to respond to a very similar complaint which your organisation referred to us on 10 February 2006 (No. 05.08). We have also responded in full to the Advertising Standards Bureau with regards to the present complaint.

Yours sincerely
Oliver Lewis
Legal Services - Coles Myer Liquor Group

12. This means that the Panel has not been supplied with a copy of advertisement, nor does it have a substantive response from the advertiser to the complaint. Without a copy of the advertisement, it is not practicable for the Panel to make a determination.
13. The advertiser makes reference to an earlier determination by the Panel on a Print advertisement. On that occasion, Coles Myer agreed to respond substantially to the complaint and this enabled the Panel to make a decision. A copy of this determination is **attached**.

The Complaint

14. The complaint raises a concern about the advertisement, which is a television commercial, linking the purchase of alcohol with the purchase of petrol. It is argued that advertising of alcohol beverages in this matter is inconsistent with the public policy message of stopping drink-driving.

The ABAC

15. The ABAC provides at section (a) that advertisements for alcohol beverages must present a nature, balanced and responsible approach to the consumption of alcohol beverages and accordingly:

(i) must not encourage excessive consumption or abuse of alcohol;

Section (d) of the ABAC provides that advertisements must not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity.

The Panel's View

16. The Panel is unable to make a substantive determination as it has been refused a substantive response to the complaint by the Advertiser and it does not have a copy of the advertisement in question.
17. The continued failure of Coles Myer to engage in the ABAC Scheme is surprising and disappointing. Coles Myer would generally purport to be a company which follows good standards of corporate practice and it is reasonable to assume this applies to its advertising. By standing aside from

the ABAC Scheme, the company is acting inconsistently with the standards to which its competitors are willing to hold themselves.

18. In other instances, non-alcohol industry body members have nonetheless agreed to comply with the ABAC Scheme. Coles Myer did this for an earlier determination, which makes its refusal on this occasion even more perplexing.
19. The Panel is unable to determine if the complaint should be upheld or dismissed. This will be rightly disappointing for the Complainant and does nothing for the reputation of Coles Myer. The Panel asks that its Management Committee raises directly with Coles Myer its attitude to the ABAC Scheme and that the relevant Federal and State Ministers comprising the Ministerial Council on Drugs and Alcohol be advised of Coles Myer's "rogue" position in relation to alcohol beverage advertising.