



ABAC Adjudication Panel Determination No. 40 & 50/17

Product: Liquorland
Company: Coles Liquor
Media: Television
Complainants: Confidential
Date of decision: 20 February 2017
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Liquorland by Coles Liquor (“the Company”) and arises from complaints received 19 and 25 January 2017.
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. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 19 and 25 January 2017.
8. The Panel endeavour 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 have been determined within 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 obtained for the marketing communication (15334 & 15346).

The Marketing Communication

10. The television advertisement opens with three people standing around a barbecue. A woman is holding a glass of wine in one hand and barbecue tongs in the other turning meat on the barbecue as another man holding a stubby of beer looks on and another man holding an open wine bottle and wine glass walks toward the woman and pours wine into her glass as she smiles at the man and the voiceover says "Gotta love a summer barbie" and "Ah nice pour".
11. The camera angle changes so we see one side of the barbecue where meat is cooking and the wok burner with a metal grill over it is to the side of the barbecue. The voiceover continues "Yeah, just leave it there Darren" as the man holds the bottle near the side of the barbecue which is taken up by a wok burner and hesitates before placing it on the wok burner on the side of the barbecue. The voiceover continues "No-one uses the wok burner anyway" as we return to first camera angle and see the three people socializing and tending the barbecue with the wine bottle in the foreground on the wok burner.
12. We then see a garden scene with two people in the background to the side each holding a stubby of beer and a woman holding a plastic cricket bat as the voiceover continues "At Liquorland pick up a bottle from the Wolf Blass Red Label range for a low \$7, save 5, gotta love low prices" as three bottles of Wolf Blass wine are superimposed on the screen with the text "40% off" and "Save \$5, \$7 ea Wolf Blass Red Label Range 750ml" with terms and conditions in small print at the bottom of the screen.
13. In the final scene we see three men and three women each holding an alcohol beverage and standing in a garden (one of the women is sitting on an esky) as the voiceover (coupled with superimposed text) continues with "Gotta Love Low prices at Liquorland".

The Complaint

14. The complainants are both concerned that:
 - an open bottle of alcohol is placed on a wok burner, right next to a working hotplate/flame, which is dangerous given alcohol is a flammable liquid and could easily be knocked over onto the open flame of the hotplate
 - this is dangerous and a safety issue for those near the working flames of the BBQ

The ABAC Code

15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

16. The Company responded to the complaint by letter dated 3 February 2017. The principal points made by the Company were:
- The 15 second commercial (the Advertisement) shows adults standing around a BBQ. One individual attends to the BBQ while another pours wine into their glass and then places the bottle on a non-functioning wok burner. This is followed by an image of three Wolf Blass bottles of wine. A copy of the Advertisement was forwarded to your office on 23 January 2017. We note that the same commercial (with a Jacob's Creek product insert) is being aired at the same time.
 - Coles has been a signatory to the Alcohol Beverages Advertising Code since 2013. Coles takes its alcohol advertising obligations very seriously and is committed to industry best practice. 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. 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".
 - Section 3(d) of the Alcohol Beverages Advertising Code states: "A Marketing Communication must not show (visibly, audibly or by direct implication) the consumption of an alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming." In our view, the Advertisement complies with section 3(d) of the Code for the following reasons:
 - The Advertisement shows a standard drink being poured into a glass and there are no signs of excessive amounts of alcohol being consumed.
 - There is nothing to suggest that any individual in the Advertisement is under the influence of alcohol, thereby compromising their alertness, physical co-ordination or their safety.

- The barbecue has a guard which is clearly visible.
 - There are no exposed flames and the solid metal hotplate, sits behind the guard.
 - The bottle placed on the unused wok burner is not full.
 - Even if the wine bottle were to tip or fall towards the barbecue, the amount of alcohol leaving the bottle would likely be small (i.e. a splash) and unlikely to make its way over the guard and into the grill's heat source (particularly given the presence of the hotplate).
 - The lowest temperature at which wine can form enough alcohol vapour to ignite (the flash point) is approximately 52 degrees Celsius. The conditions depicted in the Advertisement are not conducive to this flash point being reached and therefore it is highly unlikely that the wine would ignite. As white wine is likely to be chilled or at room/ambient temperature, the wine is well below its flash point (the temperature at which a compound ignites with the aid of a naked flame).
 - There are no exposed flames which is a requirement for ignition at or above the flash point and the hotplate (a solid piece of metal) sits behind the guard.
 - In the unlikely event that wine were to make contact with the heat source, it would be unlikely to catch fire as the alcohol content of the wine in the footage (ABV) is 12.5% and the ethanol vapour from the small amount likely to spill would dilute/evaporate in the air.
- The Advertisement was classified by Commercials Advice Free TV (CAD) on 17 January 2017 (CAD No. LL0441NAT3A) and was broadcast in accordance with the Code of Practice for Alcohol Advertising. The Jacob's Creek commercial was also classified by CAD on 17 January 2017 (CAD No. LL0441NAT8A) and was broadcast in accordance with the Code of Practice for Alcohol Advertising. The Advertisement does not appeal to minors.
 - Coles remains committed to the responsible service, supply and consumption of alcohol and considers that its marketing and advertising has an important part to play in that process. Coles recognises that alcohol marketing should not encourage unsafe practices and understands the importance of not associating alcohol consumption with activities where a degree of alertness or physical co-ordination is required to ensure safety. Nevertheless, Coles is of the view that the Advertisement is in line with prevailing community standards regarding alcohol and safety and that the Advertisement is aligned with the ABAC Responsible Alcohol Marketing Code and the AANA Code of Ethics.

The Panel's View

17. The advertisement is based on the stereotypical Australian activity of the backyard BBQ. In the advertisement, a woman is tending to the BBQ when she is joined by a man who tops up her glass of wine. The man then places the bottle of wine on a wok burner adjacent to the hot plate. The mood is light hearted and makes fun that BBQs have features that are rarely used.
18. The complainants are concerned that the advertisement is portraying dangerous behavior in that the bottle of wine could easily be knocked over onto the flame heating the hotplate. The Company in response argues that the advertisement does not show dangerous practice and that wine would not ignite if accidentally spilt onto a flame or hotplate.
19. Section (d) of the ABAC provides that alcohol marketing must not show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination.
20. In determination 127/15, the Panel considered section (d) in the context of a television commercial which also featured a BBQ. The Panel noted:
 - Tending to a BBQ is an activity which requires alertness and awareness of the inherent risk;
 - That said, the moderate consumption of alcohol in association with the tending of a BBQ is a very common practice in Australia and occurs in the vast majority of occasions without any physical harm; and
 - It is not a breach of the ABAC standard to show alcohol use with the tending of a BBQ, however a case by case assessment is required of how the use of alcohol is depicted in the advertisement to assess if a reasonable person would conclude that the standard was breached.
21. In this example, the Panel does not believe the standard has been breached. In reaching this conclusion, the Panel has noted:
 - The use of alcohol is moderate and no one shown in the advertisement appears affected by alcohol;
 - The bottle of wine is placed adjacent to the hot plate, but not within a distance that it is particularly likely that the bottle would be knocked over;
 - The flame of the BBQ is covered by a hotplate and the side of the hotplate is protected with a grill;
 - The bottle is not full of wine and wine as an alcohol beverage, as opposed to some spirits, is not highly flammable;
 - Taken as a whole, a reasonable person would not interpret the advertisement as encouraging or showing unsafe behaviours.
22. Accordingly the complaints are dismissed.