



# bsv

Back Schwartz Vaughan  
Lawyers

18 April 2013

Our Ref: TS:TP:24689  
Contact: Tony Schwartz  
Email: [tschwartz@bsv.com.au](mailto:tschwartz@bsv.com.au)

Your Ref: James Shand

Mr Paul Newson  
Director Compliance  
Office of Liquor, Gaming and Racing  
GPO Box 7060  
SYDNEY NSW 2001

EMAIL: [james.shand@olgr.nsw.gov.au](mailto:james.shand@olgr.nsw.gov.au)

Dear Sir

**RE: WOOLWORTHS LIMITED  
NOTICE TO SHOW CAUSE – SECTION 102A OF THE LIQUOR ACT 2007 (THE  
ACT).**

We act on behalf of Woolworths Limited (**Woolworths**) and have been provided with your letter dated 25 March 2013 (**the Letter**).

Woolworths has been invited to show cause why a notice to restrict or prohibit the licensee from carrying on or permitting "receipt rewards" promotions<sup>1</sup> (**the Promotion**) at its licensed premises in New South Wales (**NSW**) should **not** be issued.

We note the Letter states "the activity of offering a bonus 6 pack of beer may encourage irresponsible, rapid or excessive consumption of alcohol and is inconsistent with the risk assessment advice provided in the Office of Liquor, Gaming and Racing Liquor Promotion Guidelines". At paragraph 4 (page 1) of your Letter, you have also stated that you have formed the preliminary view that this activity presents an increased risk of encouraging the misuse and abuse of liquor as contemplated by s102A of the Act. However neither the Letter, nor the email correspondence provided by your Compliance Officer, has provided particulars of how or why this situation arises.

This preliminary view is disputed by Woolworths for the reasons outlined in this correspondence, and by way of summary we note in relation to the Promotion:-

- It was designed to attract customers to Woolworths Liquor (**WL**) and BWS – Beer Wine Spirits (**BWS**) stores as opposed to retail liquor stores operated by their competitors.

<sup>1</sup> The "receipt rewards" promotion in question was the offer of a bonus 6 pack of Sol Mexican Beer with the purchase of a specified bottle of wine, which was available for redemption from 2 to 29 January 2013. An example of the "receipt rewards" voucher was attached to the Letter.

- There is no evidence this type of marketing introduces new drinkers of alcohol to the market or somehow makes existing drinkers consume more (see Section 5 below).
- This type of promotion is common place within the liquor industry (see Section 2 below).
- It was not marketed to (nor found attractive to) the more vulnerable members of our community. It did not offer an “extreme” discount, with customers able to purchase other more value for money liquor products in-store, if they so wished (see Section 2 below).
- It passed the internal risk assessment carried out by Woolworths (see Section 6 below).
- It follows that the Promotion was otherwise appropriate and acceptable and therefore **not** contrary to the public interest.

We are instructed to respond to the Letter as follows:-

## 1.0 Confidentiality

- 1.1 For the purpose of this matter we note the Director is subject to the provisions of s17 of the *Gaming and Liquor Administration Act 2007* and in this respect we note that “*Liquor Legislation*” is defined to include the Act.
- 1.2 Woolworths intends writing to the OLGR separately regarding this issue, but suffice to say it is of the view that it was completely inappropriate for the OLGR to leak details of this matter to the press in circumstances where:-
  - Woolworths had not first been given the opportunity to respond to the Letter; and
  - The Director had not come to any conclusion with respect to the Promotion.

## 2.0 The Promotion, Standard Drinks<sup>2</sup> and the Characteristics of Customers

- 2.1 The Promotion involved the sale of a bottle of *South Island Marlborough Sauvignon Blanc (SIMSB)* to customers between the period 2 January 2013 and 29 January 2013 (**the Promotion period**). On the presentation of a “*receipt rewards*” voucher the customer was entitled to a bonus 6 pack of *Sol Mexican Beer*. The customer was entitled to redeem only one bottle of SIMSB together with the bonus 6 pack per “*receipt rewards*” voucher (**the Redemption**).
- 2.2 The “*receipt rewards*” voucher was provided to a customer at the conclusion of their supermarket purchase only and **not**, for example, at the point-of-sale of a transaction within a BWS or WL store.
- 2.3 Further details of the liquor products the subject of the Promotion are as follows:-

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<sup>2</sup> Information to determine “standard drinks within this correspondence has been based upon the position (or formula) advertised by the Australian Government. That is, the volume of the container in litres multiplied by the percentage of alcohol volume multiplied by 0.789, equals the number of standard drinks. 0.789 is the specific gravity of ethyl alcohol – see <http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/standard>

- SIMSB (750ml bottle at 12.5% alcohol). The SIMSB bottle = **7.4 standard drinks**. The purchase price of the SIMSB to the customer was \$15.99.
- *Sol Mexican Beer* (330mls each bottle at 4.5% alcohol X 6). Each bottle = **1.2 standard drinks** (or the 6 pack = **7.2 standard drinks**).

The Promotion therefore related to the sale (not consumption) of **14.6 standard drinks** only at \$15.99 per Redemption, which equals **\$1.10 for 1 standard drink**.

2.4 During the Promotion period Woolworths confirms it also sold, at its BWS or WL stores, either as a "special" or at its "standard" price:-

- Two (2) litre casks of white wine between \$10.00 and \$18.99 each, which equals on average 18 standard drinks<sup>3</sup>. This is equivalent to between **0.56 cents and \$1.06 for 1 standard drink**; and
- Four (4) litre casks of white wine between \$10.00 and \$19.99, which equals on average 36 standard drinks<sup>4</sup>. This is equivalent to between **0.28 cents and 0.56 cents for 1 standard drink**.

2.5 The above "prices" are consistent with other NSW retail liquor stores. For example, Woolworths is aware that during the Promotion period:-

- *Liquor legends* sold 4 litre cask wine to its members at **0.42 cents for 1 standard drink**;
- *Bayfields* sold 4 litre cask wine to its members at **0.30 cents for 1 standard drink**;
- *BYO Cellars* sold 4 litre cask wine to its customers at **0.47 cents for 1 standard drink**;
- *Cellarbrations* sold 4 litre cask wine to its customers at **0.42 cents for 1 standard drink**;
- *Liquor Stax* sold 4 litre cask wine to its customers at **0.42 cents for 1 standard drink**;
- *Little Bottler* sold 2 litre cask wine to its customers at **0.78 cents for 1 standard drink** and 4 litre cask wine to its customers at **0.47 cents for 1 standard drink**; and
- *The Bottle-O* sold 4 litre cask wine to its customers at **0.42 cents for 1 standard drink**.

Evidence of the above "pricing" can be supplied to you, if necessary.

2.6 These examples demonstrate that there are many items that would deliver a greater number of standard drinks to the consumer for lower cost, however, Woolworths does **not** acknowledge that there is any kind of causal relationship between price and hazardous or harmful consumption. This argument is outlined in further detail at Section 5.

<sup>3</sup> See <http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/standard> and *standard drinks*

<sup>4</sup> *Ibid*

- 2.7 Woolworths operates 178 WL or BWS retail liquor stores in NSW that are associated with a Woolworths Supermarket, with an additional 132 freestanding BWS stores. Through data collected by its customer loyalty reward program known as *everyday rewards*<sup>5</sup>, Woolworths has accurately determined the shopping characteristics of its customers. Through additional in-store research<sup>6</sup>, Woolworths has also determined the "requirements" of its liquor store customers.
- 2.8 Woolworths is aware that 70.4% of shoppers to a BWS/WL retail liquor store, associated with a NSW Woolworths Supermarket, also purchase items at the Supermarket on the same day (these customers are referred to as *Cross-Shoppers*). 73.2% of *Cross-Shoppers* are aged 30 years or over, and there is a significant weighting towards female shoppers. As part of the research, 24% of all shoppers noted "convenience" as being the most important factor as to the place where they purchase their liquor supplies. In contrast, only 16% noted the "price or promotion" as the persuading factor.
- 2.9 Data obtained with respect to the Promotion (i.e. collected through the use of the *everyday rewards* system) confirms the characteristics of the customers who redeemed the Promotion. This data indicates that :-
- 87% of customers were aged 35 or older;
  - 10.5% of customers were aged between 26 and 34;
  - 2.5% of customers were aged between 18 and 25;
  - Where gender information was available, the split was 59.4% female and 40.6% male; and
  - Only a small percentage of supermarket customers that were issued with a *Receipt Rewards* voucher redeemed it (0.36% over the Promotion period).
- 2.10 The above data is relevant when compared with the 2010 *National Drug Strategy Household Survey*. This survey was released in July 2011 and confirms that it is the age group 30 plus that are predominant wine consumers and not the higher at-risk group of young persons (see the table reproduced at the following page).

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<sup>5</sup> To some extent the data provided is subjective, with some of the information provided not verified. For example, a person not wishing to disclose (or indeed provide false information about) their age and gender are able to do so.

<sup>6</sup> Independent study carried out by *House Brand Research* (September 2012 and updated quarterly) where 1400 respondents were asked to rate the factors most important to them, with the research applied across the brand names Dan Murphy's, BWS, WL and Cellarmaster

**Table 4.22: Main type of alcohol usually consumed, recent drinkers aged 14 years or older, by age and sex, 2010**

Age group (years)	Males	Females	Persons
12-17	Pre-mixed spirits (38.2%)	Pre-mixed spirits (62.1%)	Pre-mixed spirits (50.3%)
18-19	Regular strength beer (43.7%)	Pre-mixed spirits (46.9%)	Pre-mixed spirits (36.2%)
20-29	Regular strength beer (44.5%)	Bottled spirits/liqueurs (25.3%)	Regular strength beer (27.4%)
30-39	Regular strength beer (41.3%)	Bottled wine (50.7%)	Bottled wine (33.4%)
40-49	Regular strength beer (34.2%)	Bottled wine (54.8%)	Bottled wine (37.6%)
50-59	Regular strength beer (31.2%)	Bottled wine (59.2%)	Bottled wine (41.4%)
60+	Bottled wine (26.9%)	Bottled wine (53.6%)	Bottled wine (39.7%)

Source: The 2010 National Drug Strategy Household Survey (released July 2011)

2.11 Therefore with respect to the Promotion and the above evidence, there is ample material that supports the following presumptions:-

- Customers to Woolworths' retail liquor stores consider "convenience" as the main factor which determines why they visit a particular liquor store over another. That is to say a particular promotion or *special* is a secondary attraction only;
- The vast majority of customers that redeemed the offer were mature women (87% of all purchases were made by a customer over the age of 35 years);
- The characteristics of the customers that were attracted to the Promotion is consistent with the National evidence that suggests mature females enjoy **bottled** wine over other types of liquor products (whilst perhaps their husband/partner prefers a beer);
- Following on from the last dot point, the **consumers** of the liquor products were likely to be couples, with the female preferring the bottled wine and the male preferring the beer;
- The Promotion was **not** attractive to young persons at all (i.e. the more risky consumer of alcohol) with only 2.5% of persons between the 18-25 age category redeeming the offer.
- The products the subject of the Promotion were not cheap in nature (that is to say if "price" was the only contributing factor in the purchase of the products than the customer would have been far better off purchasing other liquor products).
- The Promotion was therefore attractive to a customer who generally prefers quality products (over inferior cheaper products), with these persons statistically less likely to be associated with risky drinking practices (due to their age category).

2.12 There is no known research that indicates a combination of wine/beer promotions carry a higher level of risk when compared with any other promotion, such as an offer to purchase 3 bottles of wine for the price of 2. However, if you are relying upon some

research which suggests otherwise we request that it provided to us for review and comment.

2.13 Whilst we note you are not, for present purposes, concerned with the promotions offered at other NSW retail liquor stores, it is however relevant to point out that the type of Promotion is also not out of character when considered with promotions offered by others liquor retailers (from time to time).

2.14 That is to say every retail liquor store offers some type of promotion by way of discount or "special", from to time. We do not intend to inundate you with examples (as you no doubt would be aware of the position), but the examples set out below are not an uncommon practice:-

- Porters Liquor (catalogue price at page 3 – see extract below) - *Angove Long Row Riesling* 750ml (9.5% alcohol) at \$6.99 for any 6, with the customer receiving a free 6 pack of *Stones Ginger Beer* (330ml per bottle at 4.8% alcohol). Total cost to customer for promotion = \$41.94. Promotion = the sale of 41.22 standard drinks or the equivalent of **\$1.01 for 1 standard drink**<sup>7</sup>.



- Liquorland* – buy 1 bottle of *Grapes Marlborough Sauvignon Blanc* 750mls (14% alcohol) and receive a second bottle for free (see docket at the following page). Total cost to customer for promotion = \$20.00<sup>8</sup>. Promotion = the sale of 16.6 standard drinks or the equivalent of **\$1.20 for 1 standard drink**<sup>9</sup>.

<sup>7</sup> standard drinks calculated as follows: *Angove Long Riesling* – 0.750 X 9.5 X 0.789 X 6 bottles = 33.72 standard drinks.

*Stones Ginger Beer* - 0.330 X 4.8 X 0.789 X 6 bottles = 7.5 standard drinks

<sup>8</sup> See <https://www.liquorland.com.au/Pages/Search.aspx?k=Grapes%20Marlborough%20Sauvignon&Rows=10&SortBy=&Asc=1>

<sup>9</sup> standard drinks calculated as follows: 0.750 X 14 X 0.789 X 2 (i.e. bottles) = 16.6 standard drinks



- Bayfields – buy a dozen Penfolds Koonunga Hill Shiraz Cabernet 750mls (13.5% alcohol) or a dozen Lobster Bay Marlborough Sauvignon Blanc 750mls (13.5% alcohol) and receive a **free carton** of Cascade Premium Lager or a further 6 bottles of wine (see promotion below). Total cost to customer for promotion = \$119.88. Promotion = (a) the sale of 131.86 *standard drinks* for the beer/wine combination; or (b) the sale of 143.79 *standard drinks* for the wine/wine promotion. This is equivalent to **0.90 cents** or **0.83 cents** for **1 standard drink**<sup>10</sup>.

<sup>10</sup> standard drinks calculated as follows: (a) Wine:  $0.750 \times 13.5 \times 0.789 \times 12$  (i.e. bottles) = 95.86 standard drinks (note: an additional 6 bottles of the wine = 47.93 standard drinks); and (b) beer: 375mls per bottle @ 1.5 standard drinks each X 24 = 36 standard drinks.

- 2.15 Accordingly, the Promotion clearly consists of an acceptable amount of alcohol by volume (and *standard drinks*) which is either low or reasonable in comparison with other promotions or other commonly purchased/consumed drinks. Additionally, the Promotion was **not** marketed towards *at-risk* members of our community, but rather towards the characteristics of the typical Woolworths customer, who are mature females.

### 3.0 Sections 102 and 102A of the 2007 Liquor Act

- 3.1 The Act details the types of promotions that may be restricted or prohibited. The Act states:

The Director-General may restrict or prohibit any such activity only if the Director-General is of the opinion that:

- (a) the promotion is likely to have a special appeal to minors because of the use of designs, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors or for any other reason, or
  - (b) the promotion is indecent or offensive, or
  - (c) the promotion involves the provision of liquor in non-standard measures or the use of emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication, or
  - (d) the promotion involves the provision of free drinks, or extreme discounts or discounts of a limited duration, that creates an incentive for patrons to consume liquor more rapidly than they otherwise might, or
  - (e) the promotion otherwise encourages irresponsible, rapid or excessive consumption of liquor, or
  - (f) the restriction or prohibition is otherwise in the public interest.
- 3.2 In addition to the above provisions, Section 102A of the Act indicates the Director-General may restrict or prohibit activities that encourage misuse or abuse of liquor (such as binge drinking or excessive consumption). The information within this correspondence confirms the Promotion did not contravene the provisions of either S102 or S102A of the Act.

### 4.0 Liquor Promotion Guidelines

- 4.1 The current Liquor Promotion Guideline (**the current LPG**) together with the draft Liquor Promotion Guideline dated January 2013 (**the new LPG**) are clearly directed towards licensed premises and promotions where the sale and consumption of liquor occurs on the premises. Whilst we note OLGR provided a copy of the current LPG to Woolworths undercover of the Letter, it has little to no relevance to the Promotion.
- 4.2 The current LPG states (at page 1) "*this guideline is published by the Director of Liquor and Gaming under section 102 of the Liquor Act 2007, and indicates the kinds of*



activities or promotions that the Director would restrict or prohibit". **The current LPG makes no reference to S102A of the Act or its application under that section.**

- 4.3 With respect to the new LPG it states, with respect to Section 102A of the Act, that "it is noted that this section does not just apply to promotions, but applies to any activity within a licensed premises which is likely to encourage the misuse and abuse of liquor. Section 102A does not require guidelines and can consider issues more broadly than just promotions. However, where consideration is being given to issuing a notice under section 102A for a liquor promotion related issue, the principles in these Guidelines will provide some guidance as to acceptable and unacceptable practices".
- 4.4 The new LPG also states "a distinction can be made between promotions offering alcohol to be consumed immediately on a licensed premises and promotions offering alcohol that may be stored for consumption later away from the premises. As a result, the extent to which each principle in this document applies to different licence types varies". It follows that the new LPG may provide limited assistance to the Promotion, with there being an acknowledgement that not all "7 principles" are relevant to promotions conducted by retail liquor stores.
- 4.5 We note the "7 principles" are mirrored within the requirements within S102 of the Act – see Section 3 above). As the new LPG does not specify which principles are relevant to retail liquor store promotions, Woolworths has taken the step of duplicating each of the "7 principles" and providing a brief response to each as follows:-

Principle:	Response:
<p><b>Principle 1:</b> Appeal to minors  <i>The promotion must not have a special appeal to minors, because of the designs, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors or for any other reason.</i></p>	<p>The Promotion had no appeal to minors. The higher price tag (i.e. calculated as a dollar value for 1 <i>standard drink</i>) attached to the Promotion clearly discourages its attractiveness to persons who are seeking to purchase liquor products at the cheaper end of the market. Additionally, the data collected after the Promotion expired confirmed the Promotion was attractive to over 35 year olds only (see evidence at Section 2 above).</p>
<p><b>Principle 2:</b> Indecent or offensive  <i>The promotion must not be indecent or offensive.</i></p>	<p>This Principle is clearly irrelevant to the Promotion.</p>
<p><b>Principle 3:</b> Non-standard measures  <i>The promotion must not involve the use of non-standard measures that encourages irresponsible drinking and is likely to result in intoxication.</i></p>	<p>The Principle (relating to the use of <i>standard measures</i>) is irrelevant to the Promotion. Further, the labelling of the products the subject of the Promotion clearly outlines the number of <i>standard drinks</i> they contain (see Section 2 above).</p>
<p><b>Principle 4:</b> Emotive descriptions or advertising  <i>The promotion should not use emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication.</i></p>	<p>The Principle is again irrelevant to the Promotion as there were no emotive descriptions used in the Promotion (see the "receipt rewards" voucher provided undercover of the Letter).</p>

<b>Principle:</b>	<b>Response:</b>
<p><b>Principle 5: Extreme discounts</b>  <i>The promotion should not involve the provision of free drinks or extreme discounts, or discounts for a limited duration that creates an incentive for patrons to consume liquor more rapidly than they otherwise might.</i></p>	<p>This Principle is directed towards <i>on-premises</i> venues. Whilst the Promotion offered a free 6 pack of beer, the offer was first subject to the proviso that the customer purchased items at the Woolworths Supermarket (to become the recipient of a "receipts rewards" voucher) and secondly, it was subject to the purchase of a quality bottle of wine which was <b>not</b> cheap in price. There was no incentive for customers to consume the liquor products rapidly or consume more alcohol than what they might otherwise do (see evidence at Section 5 below; paragraph 4.9 below and the response to Principle 6).</p>
<p><b>Principle 6: Irresponsible, rapid or excessive consumption</b>  <i>The promotion should not otherwise encourage irresponsible, rapid or excessive consumption of liquor.</i></p>	<p>The Principle is again irrelevant to the Promotion, as the Principle is clearly aimed at on-premises licensed premises. Whilst we note OLGR's reference that the Promotion <i>may encourage irresponsible, rapid or excessive consumption of alcohol</i>, there is no evidence (of any nature) of a relationship between this type of Promotion and customers drinking at harmful levels. A correlation between two variables (which in this case is the purchase of the products the subject of the Promotion and a belief this <i>may encourage irresponsible, rapid or excessive consumption of alcohol</i>) is not indicative of causality. That is to say, a connection between these two variables (in this case the liquor products themselves and their consumption at some point in the future) does <b>not</b> imply that one (i.e. the purchase) causes the other (i.e. <i>irresponsible, rapid or excessive consumption of alcohol</i>). The logic behind the assumption that there could be some connection does not exist and any suggestion otherwise is clearly flawed.</p>
<p><b>Principle 7: Not in public interest</b>  <i>The promotion should not be otherwise considered to not be in the public interest.</i></p>	<p>Whether or not the Promotion is against the public interest must be considered on the facts (as outlined in this document) and not upon an unsubstantiated assumption what might or might not occur. Based on the evidence in this correspondence (see Introduction and Sections 2 and 5, as examples), the Promotion was not marketed towards the more vulnerable members of our community, but rather the responsible consumers of alcohol.</p>

- 4.6 The new LPG further states *“these Guidelines are not intended to stifle business innovation or healthy competition, but rather assist in the development of a sustainable and responsible liquor industry by defining clear expectations for the conduct of liquor promotions”*. It is Woolworths' view (which is supported by the information outlined in this correspondence) that the Promotion was an example of business innovation and offered healthy competition.
- 4.7 The Trade Practices Act 1974 encourages a free market where the natural forces of robust competition are allowed to operate. The discounting of liquor is clearly intended and encouraged by Government Policy. With respect to retail liquor stores (where liquor products can be purchased and stored for later consumption) the impact of discounting must be considered in the fullness of time; and not by isolated promotions, which are temporary or subjected to media scrutiny because of the apparent success of a promotional gimmick.
- 4.8 That is to say, the normal day-to-day market forces, coupled with the sustainability of a retail liquor business, which in turn is based upon its profitability (i.e. the difference between income and expenditure) must mean that the level of discounting on a Nation wide basis should be looked at over a reasonable period of time.
- 4.9 We note the current LPG also outlines the types of promotions which represent an unacceptable, medium, or low risk. Based upon the those guidelines, and for the reasons outlined within this correspondence, the Promotion cannot fall within either an unacceptable or medium risk because:-
- The products sold were clearly labelled as to the number of standard drinks they contain (see Section 2). The customer was therefore aware (at the time of purchase as also consumption) of the number of *standard drinks* within each product;
  - The products the subject of the Promotion are of a style and nature that they are not consumed rapidly (i.e. a bottle of wine is not *skulled* but rather shared amongst friends, whilst the 6 pack of beer is designed to be consumed slowly, either over a period of time (i.e. days, weeks or months later) or again shared amongst friends); and
  - The price tag that applies to the Promotion discourages the abuse of alcohol. This is because when the number of *standard drinks* is compared to other liquor products available in-store, the liquor products the subject of the Promotion were not cheap in comparison (see Section 2 above).
- 4.10 Whilst the new LPG states *“It is important that licensees be mindful of whether a particular promotion may be discriminatory or demeaning to a group or individual, whether it promotes or encourages unlawfulness, whether it is misleading or if it inappropriately targets vulnerable groups or individuals”*, this clearly does **not** apply to the Promotion. Following on from the above dot points:-
- The Promotion was not marketed towards or aimed at the more vulnerable members of our community. If such persons purchased a two (2) litre or a four (4) litre cask of wine from the same store during the Promotion period, they could have left that store with more *standard drinks* at a cheaper price than what was spent on the Promotion (see Section 2 above).

- 4.11 We note the Letter states “the activity of offering a bonus 6 pack of beer may encourage irresponsible, rapid or excessive consumption of alcohol and is inconsistent with the risk assessment advice provided in the Office of Liquor, Gaming and Racing Liquor Promotion Guidelines”. As evident from the above information, there has been no breach of the current or new LPG with respect to the Promotion which we note contradicts your preliminary assessment.

## 5.0 Alcohol Related Research

- 5.1 The research in this Country, on this issue, is clearly directed towards licensed premises, where the consumption of alcohol occurs *on-premises*. Whilst there is some research on alcohol marketing strategies, there is no known research that confirms there is any correlation between the circumstances that relate to this type of promotion on the one hand, and the potential for increased alcohol consumption by that customer on the other. Further, for the reasons referred to in our response to Principle 6 above, neither the facts nor logic supports a conclusion that the Promotion could be the cause of or encourage irresponsible, rapid or excessive consumption of alcohol.

### The sale of standard drinks

- 5.2 We are aware of research<sup>11</sup> where the point-of-sale (POS) alcohol marketing strategies within bottleshops within the Perth and Sydney Metropolitan areas were examined, such as ‘reward’ purchasers with free gifts. This research did **not** relate to the effect (if any) between POS marketing promotions and the potential for increased levels of alcohol consumption, but rather the nature and extent of the POS alcohol promotions themselves.
- 5.3 The research therefore has little relevance to the Promotion, but one very important point can be taken from the research; that is of the 3 types of liquor stores examined (namely independent stores, liquor chains, and supermarket chains) the average number of *standard drinks* for each in-store promotion was found to be:-
- Independent Liquor Stores = average 20.1 *standard drinks* per promotion;
  - Liquor Chains = average 19.2 *standard drinks* per promotion; and
  - Supermarket Chains – average 19 *standard drinks* per promotion.
- 5.4 The relevance of this research is that the Promotion involved the sale of **14.6 standard drinks** only (see Section 2), significantly less than the averages noted above. Therefore it is very clear that the Promotion did **not** relate to the sale of an unreasonable number of *standard drinks*. This is so in circumstances where the *standard drinks* sold pursuant to this Promotion were also **not** provided within containers that are typically designed to be consumed rapidly (see above comments).

### Discounting or Pricing

- 5.5 With respect to “*specials*” (i.e. promotions) and the like and liquor stores (that is where one product is advertised as a “*special*” price or “*bonus*” product is offered) there is generally a higher short term demand for that product whilst it remains promoted. This does not however equate to increased consumption because there is the capacity for liquor products to be stored for later use.

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<sup>11</sup> *Point-of-sale alcohol promotions in the Perth and Sydney metropolitan areas* by Sandra C. Jones (University of Wollongong) and Lance R. Barrie (University of Wollongong) 2010

- 5.6 This is the case across nearly every market commodity. For example (and relying on the experience of Woolworths), if a particular breakfast cereal is on special one week, consumer behaviour is such that the customer has a greater than usual potential to purchase more than 1 box. The following week (when the item returns to its regular price) there is a notable decline in purchases for that item, but in the following weeks after the special ends the demand for that item returns to its normal level where it plateaus, until the item then returns to a "special" price, and the above scenario is repeated again. There is nothing unusual or of concern with the above activity. The customer makes the "double" purchase because of the saving they receive, but the customer does not consume two boxes of cereal in one day or week, but rather holds the second box over to the following week when it is consumed through their established consumption behaviour.
- 5.7 This logic also applies to liquor purchased from a retail liquor store. A customer might purchase an item when they find a product appealing, but when the *price* is no longer appealing (or promoted) they either "product switch" or consume products they have previously stored. The potential to "store" liquor simply does not apply to *on-premises* venues, where products purchased are consumed very quickly following their purchase. This is why the current LPG and the new LPG (referred to above) are directed towards *on-premises* venues, rather than *off-premises* venues. The *risk* of abuse is no-where near the same.
- 5.8 This proposition is also supported by the official data released by the Australian Bureau of Statistics (ABS) on alcohol consumption in this Country. Evidence has been provided to the NSW *Independent, Liquor and Gaming Authority*, on many occasions in the past, that:-
- Whilst the number of liquor licences in Australia has increased significantly for the period 1997 to 2011 (from 32,269 liquor licences to 54,297 – an increase of about 66%), apparent alcohol consumption data provided by the ABS indicates that consumption levels have remained relatively stable (ie between 9.92 and 10.57 litres of alcohol per person) over the same period of time.
  - In fact for the fourth consecutive year per capita alcohol consumption has fallen in this Country – this time by a statistically significant 2.72% in volume terms from 10.27<sup>12</sup> litres of pure alcohol per head per annum in 2010 to 9.99 in 2011.
  - Beer consumption fell even further from last year's 60 year lows and Australians are now drinking half as much beer as they were in the mid-seventies.
  - Wine consumption showed the next biggest decline and most of this was in red wine consumption although white also declined marginally.
  - RTD's consumption is flat and the entire RTD category is only responsible for 7% of the pure alcohol consumed by Australians. This was partly offset by bottled spirits which was the only category that showed any increase, even then the increase amounted to a single nip of spirits over the year for the entire population.
- 5.9 It follows that it is a powerful argument to note that by free trade and competition (i.e. Promotions of this kind) that the individual prices of liquor products sold by bottleshops throughout this Country has **not** resulted in people consuming more alcohol. In fact they are consuming less despite Promotions of this kind.

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<sup>12</sup> Revised downwards from 10.37 to 10.27 in the release of the 2011 data

5.10 With respect to alcohol pricing and promotions in general, international research<sup>13</sup> has shown that with respect to off-premises promotions that *“only quite tight restrictions on the level of discount offered would have noticeable policy impacts. For example, banning only buy-one get-one free offers has very little effect on consumption and harm. Bans on discounts only for lower-priced alcohol ..... are also not effective in reducing consumption”*. With respect to a total ban (which would apply across every retail liquor store) the research states *“a total ban on off-trade discounting is estimated to reduce consumption by 2.8%”* only but this must be emphasised is a total ban rather than curbing one particular promotion. Discounting is at the heart of every market commodity for sale by retail in this Country and therefore this finding relevant to a total ban (although not assessed as to its application to NSW/Australia) has no relevance to the Promotion or this matter.

#### **At-Risk Consumers of Alcohol**

- 5.11 The “at-risk” consumers of alcohol are, in the main, heavy consumers of alcohol and those persons who partake in binge drinking practices (which in the main comprise young persons).
- 5.12 With respect to heavy consumers of alcohol the evidence<sup>14</sup> is very clear that those persons are **not** price sensitive to alcohol, having an **inelastic** demand for alcohol, whereas moderate and low risk drinkers who consume alcohol responsibly are the most price-sensitive and may have an externality close to zero.
- 5.13 In general, the demand for a product is said to be *inelastic* when the changes in price has a relatively small effect on the quantity of the product demanded. The demand for a product is said to be *elastic* when changes in price has a relatively large effect on the quantity of a product demanded.
- 5.14 Accordingly, with respect to “heavy drinkers” research<sup>15</sup> states they *“showed virtually no response to price change, with an elasticity not significantly different to zero”*. The author of this research also stated *“this specific finding has been held up by many commentators to show that the heaviest drinkers are unresponsive to price changes”* and that heavy drinkers also have a *“greater willingness to substitute between beverages when the price of one type of alcohol product changes compared with another”*.
- 5.15 With respect to “youth drinking” the same research indicates that this group responds differently to alcohol price because they generally have smaller incomes. The author states (at paragraph 17.55) that *“young adults were somewhat less responsive to price than adults”*. In Australia the introduction of the RTD tax is the best indicator as to what young people do when the product of choice is no longer appealing, due to its price – they simply product switch. This therefore places them in the same category as heavy drinkers, having an *inelastic* demand for alcohol.
- 5.16 It follows that any suggestion that there should be a minimum pricing for the sale of alcohol in this Country, to reduce alcohol related harm, would be completely ineffective. Research<sup>16</sup> confirms *“there is little to be gained by making moderate drinkers reduce their consumption”*. The same research also confirms the information

<sup>13</sup> [http://www.ias.org.uk/resources/publications/alcohol/alert/alert200901/al200901\\_p15.html](http://www.ias.org.uk/resources/publications/alcohol/alert/alert200901/al200901_p15.html)

<sup>14</sup> An example see (a) Ayyagari P et al, 2009 and (b) research by the New Zealand Law Reform Commission Report “Alcohol in our lives” (2010)

<sup>15</sup> New Zealand Law Reform Commission Report “Alcohol in our lives” (2010) – see paragraphs 17.41 to 17.52

<sup>16</sup> Duffy, John C, and Snowdon, Christopher - *The Minimal Evidence for Minimum Pricing – The fatal flaws in the Sheffield Alcohol Policy Model.*

set out above, with the author (relying on other evidence) stating “*that price elasticity for the heaviest drinkers is “not significantly different from zero” – they will, in other words, purchase alcohol at almost any cost*”.

5.17 With respect to young persons, the *National Drug Strategy Household Survey* undertaken in 2010 (released July 2011) also found:

- The proportion of the population aged 14 years or older who consumed alcohol daily declined between 2007 (8.1%) and 2010 (7.2%) (nb: a clear trend of decline has been established as the rate within the 1991 survey was 10.2%).
- There was little change in the proportion of people drinking alcohol at levels that put them at risk of harm over their lifetime (20.3% in 2007 and 20.1% in 2010), or from a single drinking occasion at least once a month (28.7% in 2007 and 28.4% in 2010).
- A higher proportion of 12–17-year-olds abstained from alcohol (61.6%) than had consumed it in the last 12 months (38.4%). The proportion of 12–15-year-olds and 16–17-year-olds abstaining from alcohol increased in 2010 (from 69.9% in 2007 to 77.2% and from 24.4% to 31.6%, respectively).
- Since the previous survey (2007) there was a modest but statistically significant decline in risky drinking over the previous 12 months from 41.5% to 39.7%.

5.18 In summary it can be concluded that:-

- Heavy drinkers do **not** change their established consumer behaviour as to alcohol use because of a “special” or promotion. The evidence is that they continue to follow their existing patterns of behaviour and consume alcohol irresponsibly no matter what the promotion or cost (it is their overall attitude towards alcohol use that requires change before any positive impact can be made);
- Young persons are the most likely to product switch when the price of a liquor product no longer appeals to them. This has nothing however to do with a change in their drinking habits, but rather a switch to a more affordable product.
- Moderate and low risk drinkers are more easily persuaded to swap to a product on *special* or the subject of a promotion, but this does **not** change their habits as to the amount of alcohol they would otherwise consume.

5.19 Whilst it is acknowledged that the majority of all alcohol is consumed in the home, it equally applies that the vast majority of all Australians consume alcohol responsibly, which has been acknowledged by the NSW Parliament. For instance, Mr Greene<sup>17</sup>, in his *Introduction Speech*, reminded the House that the “*overwhelming majority of the people in this State do the right when it comes to enjoying a drink. They are more than capable of enjoying a drink or two now and then without getting themselves involved in violent situations*”.

5.20 The Promotion was clearly **not** directed to the more vulnerable members of our community (i.e. heavy drinkers or young persons) but rather the moderate and low risk drinkers, who enjoy quality alcohol, over lower priced inferior products. Further, as provided within Section 2, the characteristics of the customers who were most attracted to the Promotion were the female shopper over 35 years of age. There is no evidence

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<sup>17</sup> Mr Kevin Greene’s (Minister for Gaming and Racing and Minister for Sport and Recreation) Introduction Speech to Parliament, introducing the Bill amending the 2007 Liquor Act with the introduction of a 6-hour closure period on licensed premises.

(of any nature) of any correlation between by this category of customer on the one hand, and there being an increased risk that the misuse and abuse of liquor is encouraged on the other, which is what S102A of the Act is directed towards.

- 5.21 It follows that despite many “two for one” promotions (that is buy one product and receive another for free) and the like being regularly offered in this Country today, alcohol consumption and risky drinking practices in this Country are on the decline. Whilst OLGR has indicated that it has formed the preliminary view that the Promotion (and presumably others like it) presents an increased risk of encouraging the misuse and abuse of liquor as contemplated by s102A of the Act, the evidence clearly stands against OLGR’s view. Rather the evidence confirms that despite free trade and competition (including the promotion of the kind offered) there is no correlation between the Promotion (and others like it) on the one hand, and increased alcohol consumption by the public on the other.

### Summary

- 5.22 This Promotion (and others like it offered by Woolworths) does **not** encourage irresponsible consumption of alcohol.
- 5.23 There is no evidence the Promotion had any influence on customers as to the way they consume alcohol or behave. Whilst it is accepted that a range of negative impacts can result from undesirable alcohol promotions, or ones which are not appropriately managed, which can contribute to alcohol-related anti-social behaviour and violence, having negative impacts on the amenity of the local community, and have health impacts for the individual; those outcomes are not evident here. Woolworths is mindful of and clearly manages the risks and responsibilities associated with its promotional material with the Promotion assessed as being in the public interest (see Section 6).

### 6.0 Risk Assessment for Advertising, including *Receipt Rewards Promotions*

- 6.1 Woolworths, as a public Company, is constantly under the media spot-light. Research<sup>18</sup> also confirms that larger chains may be better resourced to develop policies and procedures to ensure compliance with regulations. In addition, there is the argument that large chains may have more incentive to ensure compliance for public relations reasons.
- 6.2 Woolworths has a framework around everything that it does so as to ensure it acts in the best interest of the community at all times. It is to be acknowledged however that alcohol consumption is ultimately an issue of individual responsibility (as shown above).
- 6.3 Woolworths is however well aware that the sale and consumption of alcoholic beverages brings with it considerable responsibilities, with many of these obligations defined by legislation, which seek to protect individuals and society from harm caused by excessive alcohol consumption. As a responsible retailer of alcoholic beverages, Woolworths goes beyond regulatory compliance and abides by a strict buying charter that governs all aspects of their liquor operations.

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<sup>18</sup> Report by Marsden Jacob Associates for the National Competition Council – Victoria (June 2005)



6.4 For example, any alcoholic or alcohol branded product (such as branded chocolate, chips or soft drinks) submitted for potential sale by any buyer within the Woolworths Liquor Group must first be benchmarked against a checklist. Any product failing to meet these guidelines will not be considered for ranging. The charter includes ten principles (see list provided at the next page) that aim to avoid the sale of any products that appeal to minors, encourage inappropriate drinking practices or make inappropriate associations.

PRINCIPLE 1	The product should not have the potential to appeal to minors.
PRINCIPLE 2	The product should not have an appearance that could potentially lead to confusion with confectionery or soft drinks.
PRINCIPLE 3	The product should not have an appearance which may lead to confusion about its alcoholic nature or strength.
PRINCIPLE 4	The products should not draw any association with drug culture, narcotics or other illicit drugs or drug paraphernalia.
PRINCIPLE 5	The product should not encourage illegal or immoderate consumption such as binge drinking, drunkenness or drink-driving.
PRINCIPLE 6	The product should not suggest any association with dangerous, violent, aggressive or antisocial behaviour.
PRINCIPLE 7	The product should not suggest that consumption can lead to social, sporting or sexual success.
PRINCIPLE 8	The product should not feature imagery or language that could be deemed offensive on cultural, religious, ethnic or gender grounds.
PRINCIPLE 9	The product should not suggest that any physical or mental health benefit can be obtained by consumption.
PRINCIPLE 10	Ready to drink (RTD) products containing more than two standard drinks per single serve container will not be ranged by WLG.

6.5 Woolworths pays a lot of attention to ensuring that everything carried out in the “promotional space” is done responsibly. The *Receipt Rewards* Promotions that it offers (from time to time) must be approved and assessed against an internal checklist to ensure the type of promotion being offered does not appeal, for example, to young persons or more vulnerable groups in our community, and that the promotion is otherwise reasonable and acceptable. For example, Woolworths has a protocol that it will **not** offer RTD in *Receipt Rewards* Promotions, because of their association with high risk consumers of alcohol (i.e. young persons). Accordingly, Woolworths does everything within its power to act responsibly at all times.

6.6 As evident from this correspondence, the Promotion was a low risk to consumers, with it clearly providing a public benefit to consumers (being a group of persons that were assessed as low-risk for alcohol misuse or abuse). By far the majority of consumers in this case were mature women aged over 35 who were unlikely to consume the products on their own but rather with their husband, partner, family or friends (either in their home with a meal or at someone else’s residence, or perhaps in a restaurant or some other social environment).

In conclusion, Woolworths supports the Legislative framework for the supply of alcohol and agrees with the need to have a safe and responsible harm minimisation and responsible

supply as its central objectives, which is the foundation of Section 3 of the Act and reflected in Sections 102 and 102A.

Woolworths treats its role in the liquor industry seriously and respectfully. It believes that it makes a positive contribution to the economic and social fabric of communities in which it operates, in meeting the needs of its customers, the community (as a whole) and the administration and associated legislative framework in which it operates. It recognises that the Government, licensees, regulators and consumers have common but differentiated responsibilities. It believes that its business operates beyond legal compliance, and in doing so ensures that its business adds value to communities rather than adding harm.

It is clear, from the information referred to in this document, that this aim has been achieved with respect to the Promotion and accordingly we urge you to reconsider the "preliminary view" that you have taken (at page 1 of your Letter).

Further, there has been little or no consideration given to the benefits of alcohol consumption (and Promotions of this type) provided to the many people who drink responsibly, or how those benefits should be taken into account when designing interventions for the relatively few who impose a cost on others from alcohol abuse. It is erroneous to suggest there is cause to issue a notice to restrict or prohibit the Promotion (or kinds like it by Woolworths) where the minority group that misuses or abuses alcohol was not attracted to this Promotion, and where the issuing of such a notice would completely contradict some of the objects of the Act at s3(1); namely:-

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*

This is especially so when the rest of the s3. objects have been satisfied and the threshold test within s102A has not been satisfied because the evidence is clear this Promotion combined with the circumstances of its implementation and outcome cannot, in any way, be said to encourage the misuse or abuse of alcohol as contemplated by s.102A of the Act.

There is **no** evidence (of any nature) that "the activity of offering a bonus 6 pack of beer may encourage irresponsible, rapid or excessive consumption of alcohol and is inconsistent with the risk assessment advice provided in the Office of Liquor, Gaming and Racing Liquor Promotion Guidelines" as alleged in the Letter.

Should you require any further information or documents from us to please your further review, please do not hesitate to contact the writer.

Yours faithfully



Tony Schwartz  
Partner

**BACK SCHWARTZ VAUGHAN**