

ABAC

ABAC Complaints Panel Determination No: 78/10

Confidential Complaint Product: James Boag's Premium Lager Advertiser: Lion Nathan

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

17 December 2010

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns a billboard advertisement for Tasmanian Lager by Lion Nathan ("the Advertiser") and arises from a confidential complaint received on 8 December 2010.

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 Media Association Code of Ethics which includes provisions about Billboard advertising.
- 3 The complaints systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.
- 4 The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under

both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.

- 5 The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

- 6 The complaint is in the form of an email received by the ABAC Panel on 8 December 2010.
- 7 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. This complaint has been determined within 30 business days.

Pre-vetting Clearance

- 8 The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this advertisement.

The Advertisement

- 9 The billboard features a smaller poster superimposed on a larger one. The smaller poster features a large bottle of James Boag's Premium Lager against a black background with the tagline "From the pure waters of Tasmania". The label features a waterfall. This poster has been superimposed over a larger picture of two motor boats on still waters with mountains in the background and with one of the three people in each of the motor boats posing as if they are holding up the smaller poster.

The Complaint

- 10 The complainant argues that:
 - a) the advertisement is 2 metres in height and located in the Stirling train station thereby resulting in continuous exposure of alcohol advertising to children and adolescents; and
 - b) it is inappropriate for alcohol to be advertised on public transport and public transport premises.

The Code

- 11 The ABAC provides at Sections (a)(ii) and (b) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents...

The Advertiser's Comments

- 12 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 16 December 2010. The principal points made by the Advertiser were as follows:
- a) The advertisement contains an image of a James Boag product that features a waterfall as part of its label design. The waterfall appears on all James Boag Premium products and is a standard depiction of the natural surrounds in Tasmania where the product is made. The advertisement also features a boating scene at the base, as part of the background. The imagery depicts a common adult scene and does not feature anybody below the age of 25 and does not depict any alcohol consumption. The kind of bottle image is a typical format for alcohol advertising and we do not believe it has evident appeal to people under the age of 18 nor does it in any way encourage underage drinking.
 - b) All adults in this advertisement are over 25 and clearly depicted as adults. No children or adolescents appear in the advertisement.
 - c) A train station is a common placement for alcohol advertising, given the fact train stations are locations that are frequented in the vast majority by adults. All Lion Nathan advertisements abide by the Outdoor Media Association's Alcohol Advertising Guidelines, which state no alcohol advertisements should be placed within 150 metres of primary or secondary schools. The intention of these Guidelines is to ensure alcohol advertising is not placed near locations primarily intended for those under 18. The advertisement in question is at the Stirling Train Station, approximately 500 metres from the closest school.

The Panel's View

- 13 The complaint concerns a billboard advertisement located inside the Stirling Train Station in Western Australia. The complainant is principally concerned with the placement of the alcohol advertisement in or on public transport and its premises.
- 14 There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular advertising mediums. For instance, the Outdoor Media Association Code & Guidelines applying to billboards restricts alcohol ads appearing on an outdoor site within 150 metres sight line of any access gates to a primary and secondary school. This complaint has been referred to the Outdoor Media Association for their consideration on whether the placement of the advertisement is in breach of its Codes. The Association has advised that the advertisement does not breach its Code of Ethics or Alcohol Guidelines.
- 15 The ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. The issue of placement is indirectly raised by the ABAC's preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to "the class of persons to whom the advertisement is directed". This means that the ABAC does not prescribe the type of media within which an alcohol ad can be placed but, in assessing the standards as to the ad's content, the likely audience of a particular ad is relevant.
- 16 This means that the Panel has to examine the content of the alcohol ad for which a complaint has been lodged and determine whether the ad contains elements which are inconsistent with the relevant standard set out in the ABAC. In this case, the relevant ABAC provisions are found in sections (a) (ii) and (b). These provisions provide that the

content of an alcohol ad must not present an irresponsible approach to alcohol consumption and not encourage under-age drinking or have strong or evident appeal to children or adolescents.

- 17 The Panel does not believe the content of the ad has any elements that might encourage underage drinking or have a strong or evident appeal to children or adolescents. The Panel notes the complainant's concerns and suggests that the concerns are directed to the relevant Public Transport authority.
- 18 The complaint is dismissed.