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ABAC COMPLAINTS PANEL – DETERMINATION NO: 09/04 Boag's Premium Lager

IN THE COMPLAINTS OF GEOFF MUNRO, CAAN AND PROF ROB MOODIE, VICTORIAN PREMIER'S DRUG PREVENTION COUNCIL

**Product: Boag's Premium Lager
Advertiser: J Boag and Son**

Professor The Hon Michael Lavarch - Chief Adjudicator
Prof Fran Baum - Member
Ms Jeanne Strachan - Member

9 December 2004

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") complaints panel ("The Panel") concerns material found on the webpage of J Boag and Son ("The Advertiser") and arises from two complaints received, firstly from Geoff Munro, the Director of the Community Alcohol Action Network and secondly, from Prof Rob Moodie, Victorian Premier's Drug Prevention Council ("The Complainants").
2. This is the first complaint dealt with by the Panel about internet material and comes after revisions to the external-regulatory system applying to alcohol beverage advertising which were endorsed by the Ministerial Council on Drug Strategy on 20 May 2004. Because it is the first time it has dealt with internet material, the Panel believes it is important to set out some background to the external-regulatory system that applies to alcohol beverage marketing.

The External-Regulatory System

3. 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. Currently, alcohol advertising is subject to both:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme:
4. The ASB and the ABAC 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.

5. 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 Complaints Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
6. Whilst the two Codes complement each other in most areas, there are some differences. For example, since the revised ABAC Scheme came into full effect on 20 May 2004, the ABAC Code has covered internet advertisements and the promotion of alcohol beverages at events. The AANA Code of Ethics does not cover internet advertisements.
7. As mentioned, this determination concerns internet advertising and raises issues which are not solely within the province of the AANA Code of Ethics. Further, the advertisement satisfies the jurisdictional criteria set out in the ABAC Code, *i.e.* it appears on an internet site "*primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia*".

The Complaint Timelines

8. The first complaint is in the form of a letter from Mr Munro to the ASB dated 13 October 2004. The ASB stamp mark on the letter indicates that the complaint was received on 18 October 2004. The ASB referred it to the administrator of the ABAC Panel and it was received on 25 October 2004.
9. The second complaint is in the form of a letter from Prof Moodie dated 25 October 2004, received by the ABAC Complaints Panel on 8 November 2004.
10. The Panel endeavours to determine complaints within 30 days of receipt of the complaint, but this timeline depends on timely receipt of materials and advice and the availability of panel members to convene and decide the issue. In this case, the second complaint was received while the Panel was considering the first complaint and it was decided to deal with both complaints in the single determination. This required the Panel to await the further comments of the advertiser to the second complaint from Professor Moodie before being able to make a determination. Two letters were received from the advertiser in response to the Panel's requests for information, the first dated 27 October 2004, the second 23 November, 2004.

Pre-vetting Clearance

11. An important feature of the external regulatory system for alcohol beverages advertising is the independent examination of proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting is not currently compulsory for internet advertisements, however in the case of the "Woman on the Stairs" image, the advertisement was subject to pre-vetting and granted approval for its use in the print media.

The Advertisement

12. The complaint concerns a photograph which is one in a series featured in a section of the advertiser's webpage. The web site's home page features a heading "Welcome to the Boag's Site for Beer Lovers". Under the heading are four menu choices, each featuring a title and image. One choice is "Love Potion" which shows a photograph of three glasses of beer being carried in two hands.
13. By selecting this menu item, the viewer is taken to a page entitled "Love Potion – Boag's Beers". Displayed are four bottles of different varieties of Boag's Beer with the advice to "click on one of the bottles below for more information". By selecting the bottle for "Boag's Premium", the viewer is taken to a page entitled "Who is James Boag?".

14. The “Who is James Boag?” page provides viewers with further choices to view additional pages and media presentations. The page also features an explanation of the advertising campaign. The choices for further pages are for two television campaigns “Woman on the Building” and “Keyhole”. A further choice of “View the Print Campaign” is provided. This is explained as a selection of material from the company’s print campaign in an online slide show.
15. Selecting the “View Print Campaign” choice takes the viewer to a page which is entitled “Who is James Boag?” and features one of the print advertisements used by the advertiser in this series. This viewer can select to view the next slide or end the slide show. The viewer is taken through a series of slides, of which the last slide is the advertisement which is the subject of the complaint.
16. This particular slide is a black-and-white photograph of a young adult woman sitting on carpeted internal stairs. The woman is wearing high stiletto shoes, high-cut underwear and a black jacket. She is in a provocative pose, with her legs apart and holding a glass in her right hand, and her left hand gripping her jacket adjacent to her left breast. She is leaning back and appears to be looking intently at a point to her left and out of camera shot.
17. There is a bottle of the advertiser’s product sitting on the stairs adjacent to the woman’s right leg. The strap line “Who is James Boag?” is shown in the left side of the shot above and to the side of the woman’s head. Beneath the photograph is a depiction of a glass and a bottle of the product with the words “James Boag Premium”.

The Complaint

18. The first complainant from Mr Munro argues that the advertisement is in breach of section (c) (i) of the ABAC. It is argued that:
 - The advertisement creates an association between alcohol and sexual success by portraying an attractive woman in a seductive pose drinking the product. This suggests that women who drink the product will be more desirable to men and therefore more successful;
 - The advertisement conveys a message about women who drink the product and their sexual availability. This is done through her clothing and body language, creating a seductive effect and indicating a willingness to have sex;
 - Suggesting women drinking the product are open to men’s sexual advances is dangerous and irresponsible, given the linkage of sexual assault to alcohol consumption.
19. The second complainant, Professor Moodie, also argues that the advertisement is in breach of section (c) (i) of the ABAC. It is argued that the advertisement:
 - Depicts a link between sexuality and alcohol where no such link logically exists. It conveys a direct relationship between drinking the James Boag product and sexual success.
 - The advertisement is a blatant use of sexual imagery to promote the product. Professor Moodie also describes the possible social consequences of the irresponsible use of alcohol.

The Code

20. The ABAC provides at section (c) that advertisements for alcohol beverages must:
- not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
- i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

Arguments in Favour of the Complaints

21. In favour of the complainants, it could be argued that the advertisement uses sexual imagery to promote the product and that such imagery is in contravention of section (c) (i) of the ABAC. Specifically, it could be said that the woman's dress and pose shown with the product indicates that the product contributes to achieving a sexual mood.

The Advertiser's Comments

22. The advertiser has responded to the complaint through written comments provided in two letters by Anthea Pritchard, Marketing Manager of J Boag and Son. Ms Pritchard argues:
- The advertisement has been present on the website for the past three years and has been used from "time to time" in GQ and Black-and-White magazines;
 - The photograph is the work of Helmut Newton, a famous photo-artist and fashion photographer;
 - The advertisement does not imply that the woman's consumption or association with the product will contribute to her sexual success;
 - The pose and clothing of the woman suggests a fashion shot rather than a real-life depiction. She is alone and there is no suggestion that sexual involvement is to take place;
 - Women have "every right" to dress attractively and provocatively without it being taken as a statement of openness to sexual advances;
 - The presence of the product exudes an air of masculinity and a statement of control about her own destiny and not that she is open and available to men's sexual advances;
 - The imagery depicted is one of a fashion model whose femininity is juxtaposed by her association with the product and creates interest in the strap line of "Who is James Boag?"
 - The photograph is not featured in mainstream media and needs to be searched for on the webpage.
 - The theme of the advertiser's website centres on the concept that many people love their beer. The 'Love Potion' theme is introduced on the splash page and continues throughout the site.

- The references to 'love' are made humorously and in reference to the consumer's reverence for their beer. In this context it is clear that the advertiser is not implying that through the label 'Love Potion' that the beer will alter a person's mood, or improve their chances of achieving personal, sexual or other success. Rather it implies that the consumer will fall in love with the product, thereby it may be called a love potion.

The Panel's View

23. In many ways this complaint illustrates the difficult role which the Panel confronts in assessing advertisements and complaints. It reflects the broader public debate about the differences between being sexy and overtly sexual; between depictions of women as strong, sexually confident and independent and portraying women as sexual objects; and even at one level the difference between art and pornography is raised.
24. The Panel has considered the complaints in two parts. The first deals with the substantive advertisement itself, irrespective of the fact it is found on the advertiser's website. Secondly, the Panel has considered the additional features of the website, together with the advertisement.
25. Turning firstly to the substance of the advertisement, in essence the principal argument advanced by the complainants is that the use of sexual imagery in the advertisement is contrary to section 1(c) of the ABAC. This argument asks the Panel to consider the difference between advertisements which are "sexy" and do not breach the ABAC, and advertisements which suggest the consumption or presence of alcohol beverages create or contribute to a significant change in mood or environment and/or cause or contribute to the achievement of sexual success.
26. The ABAC does not expressly prohibit the use of sexual imagery in advertisements. Sexual imagery breaches the ABAC if it suggests a change in mood or the achievement of sexual success. This means advertisements can be sexy and, consistent with community standards, women and men can be depicted as sexually confident.
27. The argument here is whether associating the product with an attractive woman who is dressed and posed provocatively suggests that the product is causing a change in mood or environment and the achievement of sexual success. The Panel does not believe the advertisement alone breaches the ABAC. The advertisement does not display any personal or sexual interaction, nor does it show how the "mood" has been altered by the product.
28. The second matter considered by the Panel is the material on the advertiser's website required to be navigated by a user to bring up the advertisement, and in particular, the use of the term "love potion" as the link to the slide show displaying the advertisement.
29. The advertiser advises that the use of the term reflects a love of beer by many people and is a humorous reference and should not be taken that it implies that the product has an effect to change a mood or achieve sexual or other success. The Panel believes the use of the term is ambiguous at best and could be taken to imply that the product has a quality of changing the mood or environment. The definition of "potion" includes a drink having medicinal, if not magical qualities.
30. Taken with the advertisements in the slide show, a reasonable person might conclude that the message is that the product is a "love potion" which will contribute to sexual success. In this way, the sexual imagery in the advertisement which alone is considered not to breach the ABAC gains the additional dimension of the product being held and consumed by the woman is a designated "love potion". In the Panel's view, this

additional element provided by the context of webpage material does offend the standard set out in section (c) (i) of the Code.

31. Accordingly the complaint is upheld.