

ABAC

ABAC Complaints Panel
Determination No: 78/07

COMPLAINT by Ms Regina Brindle of the Association of Participating Service Users

Product: James Boag Draught
Advertiser: J. Boag & Son Brewing Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Professor Elizabeth Dangar - Member

27 November 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a website advertisement (Tester Reserve Code of Honour) for the alcohol beverage “James Boag Draught” by J. Boag & Son Brewing Pty Ltd (“The Advertiser”).

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.

The Complaint Timeline

6. The complaint is in the form of a letter dated 24 October 2007 which was received by the ABAC Adjudication Panel on 30 October 2007.
7. The Panel endeavours 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 the 30 day timeframe.

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 not sought in relation to this advertisement.

The Advertisement

9. The complaint refers to a website advertisement. The advertisement complained of is the 'Code of Honour' located on the Tester Reserve website at www.testereserve.com.
10. On entering the Tester Reserve website the following statement is displayed "You must be over 18 to visit this site, numbnuts. Are you over 18?" The user must then nominate either "Sir Yes Sir" or "Sir No Sir". On selecting "Sir Yes Sir" the user is then taken to the Tester Reserve website.
11. On the left side of the site users are invited to join the Boag's tester reserve with the following statement "In the land of freshly brewed cold Boags draught glistening in fridges everywhere, all that is missing is for a few special recruits to fulfill their duty....This Spring Time, its Testing Time". Users then have an opportunity to win a \$15,000 adventure referred to as the Tour of Duty.
12. On the top right side of the screen users can log in to a reservists forum. Below this section, viewers are given the option to play drill sergeant television advertisements, and users have an opportunity to view the television advertisements in their entirety. The advertisements feature a drill sergeant training Boags Draught Tester recruits. At intervals this option changes to viewing the drill sergeant online, Ringtone downloads of the drill sergeant and a chance to enter the Tour of Duty competition. Below this users have an opportunity to view highlights of "Tour of Duty 1 Video" which appears to be a home movie taken by a winner of the Tour of Duty competition.

13. There are a number of options that can be selected across the top of the screen. The complaint relates to the option named "Code of Honour". Once this option is selected, the following text is displayed:

"Duty

I am duty-bound to maintain the fine quality of Boag's Draught by testing it regularly.

Respect

I must always respect the full-flavoured Boag's Draught taste and the master brewers responsible for it.

Self Sacrifice

I shall never say no to making a bottleshop run, no matter how far it is, or what time of day.

Courage

I will unflinchingly face up to any bouncer, bitchy barmaid or whining girlfriend who tries to stop me testing Boag's Draught.

Loyalty

I pledge to test Boag's Draught and only Boag's Draught as long as I have breath in my body."

Next to the text is a photograph of three men in army camouflage attire each holding a bottle of Boag's Draught.

The Complaint

14. The complainant argues that the "Code of Honour" part of the website:
- a) does not present a mature, balanced and responsible approach to the consumption of alcohol.
 - b) does not depict the responsible and moderate consumption of alcohol beverages.
 - c) encourages excessive consumption or abuse of alcohol.

The points made by the complainant are elaborated under paragraph 16 below.

The ABAC

15. The ABAC provides that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to consumption of alcohol beverages and accordingly-
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii)

- iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
- iv) must only depict the responsible and moderate consumption of alcohol beverages.

Argument in Favour of the Complaint

16. The advertisement is in breach of section (a) of the ABAC by:
- a) the code entitled 'Self Sacrifice' which implicitly gives permission to an individual to make a bottle-shop run no matter the amount of alcohol already consumed. This is not presenting a mature and responsible approach to the consumption of alcohol. As colloquially 'bottle-shop run' denotes driving to the bottle-shop, it can therefore also be argued that this Code encourages drink driving which is neither mature nor responsible.
 - b) the code entitled 'Courage' from which it may be inferred that testing the Boag's beer must continue no matter the opposition from those who hold positions of authority or from those with whom is shared an intimate relationship. It therefore follows that when an individual's drinking is of concern to those who surround him or her, this concern is to be disregarded no matter the level of danger to themselves and others. This is not depicting the responsible and moderate consumption of alcohol.
 - c) the code entitled 'Loyalty' encourages people to drink as long as they have breath in their body thereby encouraging excessive consumption or abuse of alcohol. The complainant notes statistics as to the ways that people can drink themselves to death.

The Advertiser's Comments

17. The Advertiser responded to the complaint by a letter dated 5 November 2007 which was received by email on 6 November 2007. The Advertiser has advised that:
- a) The Boag's Draught Tester Reserve website was developed in September 2006 and is an online community people aged 18 plus can join. The website's aim is to engage and entertain Boag's Draught enthusiasts. The core premise behind the Tester Reserve is that we are asking our drinkers to help us ensure that we maintain the high quality standards of Boag's Draught through them acting in the voluntary role as product testers or tasters. The Tester Reserve carries many themes associated more typically with the Army Reserve. The language, visuals and characters of the Tester Reserve are all very much army inspired. Our members are called recruits and we have a Drill Sergeant who has become the face of the Tester Reserve. The tone of the website is humorous, with interactive games and amusing anecdotes relating to the brand making up the site content. The 'Code of Honour' on the site spells out the requirements for joining up and becoming a 'role model' tester reservist.

- b) Firstly we refute the concern that the Code encourages excessive consumption or abuse of alcohol. The Code is clearly written in a humorous tone, with the only underlying message being that as a Tester Reservist you will regularly test Boag's Draught. All references within the Code (found under Duty, Courage and Loyalty) to drinking are made to testing, which does not imply excessive drinking. On the contrary to properly test a product you need to maintain sobriety. The complainant alleges that the Loyalty section of the Code in particular encourages excessive consumption or abuse of alcohol. The complainant thinks that 'I pledge to test Boag's Draught and only Boag's Draught, as long as I have breath in my body' means that you will drink your self to death. We believe that the average person would interpret this line as it was intended; that it implies that you will remain a tester of Boag's Draught for your whole life and will not drink other beers.
- c) Secondly, we refute the concern that the Code does not depict the responsible and moderate consumption of alcohol beverages. The complainant believes that the Self Sacrifice section of the Code condones drink driving. We believe that the average person will interpret 'I shall never say no to making a bottleshop run, no matter how far it is, or what time of the day' as a pledge to always provide Boag's Draught when asked for it, even if it means having to go out and buy it. There is no implication that you must drive to get it, there are many other ways of travelling (literally running, taking a bus, taxi etc). We think it is a false assumption to think that the average person will believe we are implying that drink driving is acceptable with this statement. The complainant also alleges that the Courage section of the Code does not depict responsible or moderate consumption. We believe that the average person who reads this section of the Code 'I will unflinchingly face up to any bouncer, bitchy barmaid or whining girlfriend who tries to stop me testing Boag's Draught' will read it in the humorous context of the overall site and Code and will not interpret it as permission from J. Boag & Son to behave anti-socially.
- d) In conclusion we believe that almost everyone who reads the Code on the Tester Reserve website will interpret it as a humorous attempt to promote loyalty to Boag's Draught.

Panel's View

18. The ABAC Scheme was extended to advertiser websites as a result of reforms to the scheme implemented in 2004. Since that time the Panel has made a number of determinations concerning advertising material contained on websites.
19. The ABAC in substance and its preamble were drafted some years prior to internet advertising becoming a standard feature of alcohol beverage (and indeed many products) marketing campaigns. As such, the ABAC does, in some respects, reflect an assumption that the advertising to which it is to be applied is relatively static, such as print advertising or a television or radio ad. When these assumptions have to be applied by the Panel to the internet, certain challenges often arise.

20. For instance, the challenges include:

- the dynamic nature of the medium and the possibility that the material which was viewed by a complainant has been altered by the stage the complaint can be determined by the panel, and
- the prospect that a particular part of a website which contains material causing concern to a complainant might be reached using various pathways on the website. This means it can be difficult to gain the complete context of how the complainant came across the material in question.

21. In this case, the complainant has helpfully identified the precise part of the website which has caused concern and it does not appear that there are multiple entry points to this particular section of the website. The part of the website in question is accessed from the website's main page and is one of nine (9) options listed for viewers in a line of options placed along the top of the page. The option attracting the complainant's concern is entitled "Code of Honour".

22. The ABAC preamble provides that, in assessing compliance of an ad to the ABAC standards, the content of the ad as a whole is to be taken into account. In the case of websites, the Panel interprets this to mean that some regard should be had to the pages which have to be navigated in order to gain access to the page actually containing the material which has attracted the concern of the complainant. This is because these earlier pages form part of the context and content of the ad as a whole. In this case this is relatively simple as only two (2) prior pages are navigated to reach the detailed "Code of Honour" page.

23. The complainant is concerned that a viewer of the "Code of Honour" section of the website will be encouraged towards irresponsible and excessive consumption, including the possible encouragement of drink-driving. The advertiser refutes this suggestion and argues that the website as a whole is humorous and that this particular section would not be interpreted by a reasonable person as promoting irresponsible or excessive consumption.

24. The ABAC standard in section (a) of the ABAC consists of both a positive requirement that alcohol ads be mature, balanced and responsible in presenting an approach to alcohol consumption and a negative requirement to not do certain things, such as:

- encourage excessive consumption, and
- promote offensive behaviour.

25. The Panel accepts that the website is endeavouring to create a humorous parody of life within the army. The main character used to achieve this is a drill sergeant and a recruit who has some "Gomer Pile" like characteristics. A viewer gains a sense of this by having to navigate two (2) pages of the website, including the main page, before accessing the "Code of Honour" page.

26. In previous determinations the Panel has considered the use of humour in ads. Essentially, the approach adopted by the Panel is that humour is a relevant factor in assessing the ad as a whole and the probable impact of the ad on a reasonable person; however, an ad which is in breach of an ABAC standard cannot be saved by the fact that humour is used. Each ad of course has to be assessed on its own terms.

27. In this case, the complainant argues that use of the language such as:

- “testing it regularly”
- “never say no”
- “unflinchingly face up Who tries to stop me testing”
- “pledge to test ... as long as I have breath in my body”

Create an encouragement to excessive consumption and irresponsible behaviour such as drink-driving. The advertiser refutes these arguments and asserts that a viewer would take the references to relate essentially to brand loyalty.

28. The Panel believes that, on balance, this part of the website does breach section (a) of the ABAC. The nature of the site and this section is lighthearted; however the standard in section (a) requires advertising to present a mature, balanced and responsible “approach to consumption” of alcohol. In the Panel’s view, this part of the website invites an “approach” to the consumption of the product which can be reasonably taken to suggest that a consumer is being encouraged to go to any lengths to consume the product on repeated occasions and irrespective of the product being readily accessible. This is not considered to be consistent with the intent of the section (a) standard.

29. In particular the Panel believes that expressions such as ‘never say no to making a bottleshop run’ and ‘unflinchingly face up to any bouncer, bitchy barmaid or whining girlfriend’ implicitly convey the message that an irresponsible approach to alcohol consumption is acceptable.

30. The Panel notes that the website was not subject to the pre-vetting process. This process of independent examination of advertising material prior to public release, and often during the formulation stage of a marketing campaign, assists advertisers in complying with the ABAC standards. While the ABAC scheme does not require the advertiser to have submitted the internet site to pre-vetting (as opposed to specific executions of the campaign such as television ads), it would be advisable for this to occur.

31. In making this decision, the Panel is not suggesting the “tester” campaign as a whole is inconsistent with the ABAC, nor that other components of the website breach the ABAC. The decision relates solely to the specific part of the website which was the subject of the complaint.

32. Accordingly, the complaint is upheld.