

ABAC

**ABAC Complaints Panel
Determination No: 51/06**

CONFIDENTIAL COMPLAINT

**Product: St George Brew Beer
Advertiser: J Boag & Son**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Liz Dangar – Member
Ms Jeanne Strachan – Member

26 February 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about a bus poster advertisement for St George Brew Beer by J Boag & Son (“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 confidential complaint is in the form of an email dated 5 October 2006 which was received by the ABAC Adjudication Panel on 5 October 2006.
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. In this case, delay has been caused by the Christmas/New Year period and the non-availability of Panel members.

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. The advertisement was subject to pre-vetting and given approval (UL50/06).

The Advertisement

9. The complaint concerns a transit advertisement located inside a bus.
10. The advertisement is a 3-colour landscape poster. The background to the poster is a yellow/malt colour with bubbles.
11. In black larger type are the words "What is gallantry?" Underneath this in smaller type and printed over 3 lines are the words: "Is it saving a seat for your chums? Or is it saving your chums by taking the wheel Keanu-style when you notice the driver has passed out?"
12. A bottle of Boag's St George beer, lying on its side, is on the bottom right hand corner of the poster, with the words "Gallantry is back" printed opposite.

The Complaint

13. The Complainant argues the advertisement:
 - Is offensive because it makes light of excessive drinking.
 - Implies it is a "gallant" act to get in the car with your mate who is about to pass out and take control of the car when they do.
 - Because of the road toll, sends the wrong message by making light of a friend passing out while driving.
 - Appears to condone drink/driving.

The ABAC

14. The ABAC provides at section (a) that advertisements for alcohol beverages must present a nature, balanced and responsible approach to the consumption of alcohol beverages and accordingly:
- (i) must not encourage excessive consumption or abuse of alcohol;
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.

Section (c) of the ABAC provides that advertisements 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.

Section (d) of the ABAC provides that advertisements must not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity.

Arguments in Favour of the Complaint

15. The complaint raises issues under the ABAC, namely in breach of section (a) (i) and (iii), section (c) (i) and section (d). In favour of the complaint, it can be argued that:
- The advertisement breaches section (a) (i) and (iii) of the ABAC by encouraging excessive consumption of alcohol by implying that the driver of a bus or other motor vehicle has “passed out” through the consumption of alcohol.
 - Section (c) (i) is breached by suggesting the presence of the alcohol product contributed to the achievement of personal success by implying that the product is linked to a “gallant” action such as saving the lives of friends.
 - Section (d) of the Code is breached by directly associating the product with the operation of a motor vehicle by posing the question of whether “gallantry” involves taking the wheel of a bus when the driver has “passed out”.

The Advertiser’s Comments

24. The Advertiser responded to the complaint by way of letter dated 3 November 2006. The principal points made by the Advertiser were:
- (a) The advertisement does not detail any consumption of alcohol whatsoever by any character, especially the bus driver.

- (b) The “saving a seat for your chums” refers to the standard practice of saving a bus seat for your friends.
- (c) The second gallantry statement refers to a plot line from the 1994 film “Speed”. Keanu Reeves plays the lead character who saves a bus load of people from a potential disaster after the bus driver can no longer control the bus. The driver in the film was not affected by alcohol, nor does the advertisement convey that the bus driver has consumed alcohol.
- (d) At no stage does the advertisement suggest that the person performing the gallant act has consumed alcohol.
- (e) There is no implication that the consumption or presence of the beer has influenced someone as to which gallant act they would perform. Whilst the brand encourages gallant behaviour it does not follow that you must partake in the brand to behave gallantly.
- (f) Taking control of the bus in a fanciful and extreme situation is indeed a very gallant act. However, we do not imply that you must partake in alcohol to behave gallantly.
- (g) The advertisement does not depict the bus driver as being under the influence of alcohol.

The Panel’s View

- 25. The basis of the complaint is an association that the complainant contends is established by the advertisement between excessive drinking and driving. This raises potential compliance of the advertisement with the standards set out in sections (a), (c) and (d) of the ABAC. The Panel readily accepts the importance of not promoting or encouraging excessive consumption of alcohol or associating the consumption of alcohol with the operation of a motor vehicle. The Panel, however, does not believe the advertisement can fairly or reasonably be said to offend the standards in the ABAC about these matters.
- 26. Dealing firstly with section (a), the advertisement refers to the popular movie “Speed” where a character played by the actor, Keanu Reeves, takes control of a bus after a criminal attack and the disabling of the bus driver. There is no alcohol consumption involved in the plot of this movie, and a reasonable viewer of the advertisement with knowledge of the movie will not take the reference to the driver passing out in the advertisement as bringing to mind the consumption of alcohol.
- 27. Of course it cannot be assumed that a viewer of the advertisement will recognise the movie reference. In this case, the Panel does not believe that a reasonable person will conclude that a bus driver “passing out” will be the result of excessive alcohol consumption. Rather, the scenario posed by the question in the advertisement is fanciful and cannot reasonably be taken to encourage excessive consumption and driving, to which the “gallant” act of taking the wheel, when the drunk driver passes out, is proposed as an appropriate response.

28. The Panel also does not believe either sections (c) or (d) of the ABAC are breached by the advertisement. There is no suggestion that alcohol has led to a “significant change in mood” as prohibited by section (c), nor does the advertisement provide a direct association between alcohol consumption and the operation of a motor vehicle as prohibited by section (d).
29. Accordingly, the complaint is dismissed.