

ABAC

**ABAC Complaints Panel
Determination No: 06/08**

**CONFIDENTIAL COMPLAINT
Product: Cougar Volt Bourbon
Advertiser: Foster's Group Limited**

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

22 February 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns a billboard advertisement for Cougar Volt Bourbon by the Foster's Group Limited ("the Advertiser") and arises from a confidential complaint.

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 an email received by the ABAC Panel on 10 January 2008.
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. Determination of this complaint has been impacted by illness experienced by the Panel's Administration Officer.

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 the advertisement.

The Advertisement

9. The complaint refers to a billboard advertisement which features:
 - (a) a picture of a man resting against the ledge of a roof or balcony area of a building which is overlooking a city skyline;
 - (b) the man is dressed in "70s style" clothing, in particular an orange dinner shirt and dark brown trousers with a light grey jacket;
 - (c) the man is holding a can of the product and is looking at the can with a slightly quizzical, if not critical, expression on his face;
 - (d) superimposed over the backdrop of the city skyline is the phrase placed in inverted commas "Someone's put energy drink in my bourbon";
 - (e) shown in the right-hand corner of the shot is a depiction of a stylized can of the product which features three (3) scratch marks as would be made by a cougar. A "drink responsibly" message is contained in smaller print on the left-hand side of the shot.

The Complaint

10. The complainant argues that the advertisement is irresponsible in that it is promoting alcohol with an energy drink. Specifically, the complainant argues:
 - a) Energy drinks imply that a person will get more energy and will be mentally stimulated through drinking them;

- b) Combining alcohol with an energy drink will imply that alcohol gives a person energy and will make that person perform better mentally or physically;
- c) Use of the phrase "Someone's put energy drink in my bourbon" encourages people to drink more and gives the impression that they will get more energy when they drink this particular product.

The Code

11. The ABAC provides at Sections (a)(i) and (iii) and Section (c)(iii) 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 excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - c) iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

Arguments in Favour of the Complaint

12. In favour of the complaint it can be argued that the advertisement breaches sections (a) and (c) of the ABAC as follows:
- (a) Section (a) is breached by the use of the advertisement's strapline which implies the consumer will obtain a benefit from consumption and this will lead to excessive consumption;
 - (b) Section (c)(iii) of the ABAC is breached through the implication that alcohol with an energy drink will offer a therapeutic benefit;

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 1 February 2008. The principal points made by the advertiser are as follows:
- (a) The product was developed to meet consumer-driven trend for spirits brands plus energy drink which has been an established choice for legal age drinkers for several years. "Spirit + Energy" is a common combination and a growing bar call, bourbon being no exception to this trend. The fact that it is a spirit plus energy drink is not of itself irresponsible, given it is a commercial product developed for a thriving market.
 - (b) The product is responsibly labeled with the number of standard drinks per can alongside an "enjoy responsibly" message. The

advertisement meets relevant guidelines for alcohol marketing and was given pre-vetting approval.

- (c) The advertisement makes no erroneous claims and makes no suggestion of a change in behaviour or mood as a result of consuming the product. The campaign message is a straightforward product descriptor which tells consumers that Cougar Volt is an RTD made from Cougar Bourbon plus an energy drink.
- (d) The advertisement and its strapline underpin the product's rationale and literally tell Cougar drinkers that they can now enjoy their favourite bourbon with the addition of energy drink. It makes no claim, nor does it imply through its language or visual cues, that a consumer will reap any benefit by drinking the product, such as enhanced mental or physical performance.
- (e) The advertisement features one can which is held by a single adult individual and does not depict any direct consumption and does not encourage excessive consumption. The advertisement delivers a straightforward product message and no more.

The Panel's View

- 14. In essence, the underlying concern expressed in the complaint is about the undesirability of producing and selling an alcohol and energy drink product. As expressed by the complainant: "I find it irresponsible that they are able to promote alcohol with energy drinks".
- 15. The ABAC is a code about advertising standards. It is concerned about how a product is advertised. It does not go to whether a product should be produced in the first place. Decisions about whether it is acceptable on health, social or other grounds to create a type or style of alcohol beverage is beyond the scope of the ABAC scheme. These are matters for industry with oversight by government.
- 16. Accordingly, it is not the Panel's role as such to express an opinion on the value or otherwise of the product as an addition to legally-available alcohol beverages market. The Panel can only examine how the product is advertised against the standards in the ABAC. The relevant standards raised by the complaint are contained in Sections (a) and (c).
- 17. The Section (a) issue goes to whether the ad is implying that people will drink more alcohol because of the energy drink component. In reality, this is a concern about the characteristics of the product, more than the actual ad itself. The ad depicts a single individual holding a can of the product with the strapline "Someone's put energy drink in my bourbon". The ad does not contain elements which can reasonably be said to encourage excessive or irresponsible levels of alcohol consumption.
- 18. Section (c) goes to the issue of an ad suggesting that the consumption of alcohol offers a therapeutic benefit. On this point, the complainant argues that the ad implies that a consumer will be mentally stimulated and get more energy by using the product. Again, this is really a concern about the implicit

characteristics of the product and the ad itself makes no claims about any benefit to be derived from its consumption.

19. In short, the Panel is dismissing the complaint as the advertisement itself does not breach the ABAC. The issue of the desirability of combining alcohol with energy drinks as a product line is not a matter for this Panel, but for industry and government.