

ABAC

ABAC COMPLAINTS PANEL – DETERMINATION NO: 04/9B Boag TVC

IN THE COMPLAINTS OF MRS SARAH FREEMAN & MS CARRIE OSMO

Product: James Boag Premium Lager
Advertiser: J Boag & Son

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

19 January 2005

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) complaints panel (“The Panel”) concerns a television advertisement for Boag Premium Lager by J Boag & Son (“The Advertiser”) and arises from two complaints received from Mrs Sarah Freeman and Ms Carrie Osmo (“The Complainants”).

The External-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. 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:
3. In addition, the commercial television industry Code of Practice places limits on the broadcast of “direct advertisement for alcoholic drinks”. Such advertisements are generally only to be broadcast in “M”, “MA” or “AV” classification periods or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.
4. The ASB and the ABAC complaints 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.
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. In this case the advertisement and the complaints raise issues under both the ABAC and the AANA Code of Ethics and accordingly the advertisement is subject to this determination by the Panel and a determination from the ASB (333/04 dated 7 December 2004).

The Complaint Timeline

7. The complaints are in the form of emails from Mrs Freeman dated 8 November and Ms Osmo dated 11 November 2004, both received at ABAC on 12 November.
8. 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. The complaints are part of a series of determinations involving advertising by J Boag & Son. Two previous Determinations, 04/09, and 04/09A, dated 9 December 2004 also concern complaints about advertisements from this producer.

Pre-vetting Clearance

9. The external-regulatory system for alcohol beverages advertising features independent examination of proposed advertisements against the ABAC prior to publication or broadcast. The advertisement was subject to pre-vetting.

The Advertisement

10. The complaints concern a television commercial shot in a black and white format. The advertisement opens with a depiction of an attractive woman wearing a flowing sun wrap and large fashion sunglasses. The woman is outside, with a breeze moving her clothes.
11. The next scene takes a wider view of the woman who is seen to be leaning on the rear of a black sedan later shown to be a Mercedes Benz. This scene shows the car and the woman to be in a waterfront location demonstrated by a boat on the water and several people resting on deck chairs in the background.
12. The scene then shows a person (shortly shown to be the male driver of the car) walking towards the vehicle. The woman turns her head to acknowledge the approach of the driver, but she remains leaning on the vehicle as he moves past to the driver's door. It is not apparent whether the man and woman know each other.
13. The driver is then depicted seated in the vehicle adjusting the rear view mirror to view the woman. She has her back to the driver but has turned her head to look at him. The woman smiles, and turns her head away.
14. The driver's hand is then shown placing the car's key into the ignition and the key is turned activating the car's radio aerial. A close up of the aerial shows it lifting and catching the woman's sun wrap and beginning to lift the woman's outer clothing from her. A very brief close up of the woman's face shows her startled for an instant, as she turns her head (presumably towards the driver).
15. A close up of the wrap being lifted up the woman's legs is then shown revealing her bikini bottom. The aerial continues to lift the wrap from the woman who then deliberately chooses to take the wrap off completely. This scene is shown from the view point of the driver's rear vision mirror. The man's face displays a slight smile as the woman moves away slightly from the car as her wrap is left on the fully extended car aerial and she is shown wearing a black bikini.

16. The woman is then shown moving away from the aerial and her discarded sun wrap. Her facial expression is neither angry nor smiling but gives a look of determination, as she moves away from the car. A shot shows the woman walking from the vantage point of underneath the car. The woman is wearing high stiletto shoes. A wide shot then shows the woman walking towards a table with a white table cloth.
17. On the table is an ice bucket and several beer and wine glasses. In the ice bucket are three bottles, the middle one of which is shown in colour to be a bottle of Boag's Premium Beer. The woman's hand takes this bottle and a longer shot is taken of the product's label.
18. The woman is then depicted walking alongside the car towards its bonnet holding the bottle by the neck. Her arms are swinging by her side with the focus of the shot being on the product adjacent to the woman's bathers. A brief shot then shows the woman walking by from the vantage point of the driver inside the car.
19. The woman stops when she reaches the front of the car and briefly looks back at the driver. She then climbs onto the car. She moves onto the bonnet on her knees and elbows, before becoming upright on her knees facing the front of the car (i.e. her back is towards the driver). A brief shot of the driver during the period that the woman is climbing onto the car, shows him placing his fingers to his lips.
20. The woman then leans forward towards the distinctive Mercedes Benz hood emblem. A close up of the bottle being opened by use of the emblem as a bottle opener is depicted. Upon the bottle opening, the bonnet in the area immediately adjacent to the emblem is showered with beer foam.
21. The scene then moves to a close up of the product, still held by its neck against the backdrop of the woman lying on the car bonnet by resting on her hip and one arm. The other hand holds the bottle in front of her torso. The woman's body is displayed from her shoulders down, but her head and face is not seen in this shot.
22. The final scenes show the man moving his hand from his mouth to reveal a smile. A full length shot of the woman lying on the bonnet is displayed. She is lying on her side facing the windscreen, with her legs apart and one hand holding the product. She is looking directly at the windscreen and would appear to have eye contact with the driver. She slightly opens her mouth, but her expression is impassive. The final shot shows the strap line, "Who is James Boag?", in white lettering against a black background.
23. Taken as a whole, the advertisement is fast moving, somewhat artistic in feel and set in affluent surroundings. The impression gained brings to mind a sense of wealth and sexual interplay.

The Complaints

24. Mrs Freeman argues the advertisement:
 - Communicated offensive sexual behaviour and inappropriate sexual advances by the male that are closely connected to the presence and consumption of the alcohol product.
 - Showed that female behaviour will be altered after offering/consuming/being connected with the alcohol product, by showing her being stripped in public, presumably in front of a stranger and displaying sexually provocative behaviour.

25. Ms Osmo argued that the advertisement featured sexual exploitation of a compliant woman through
- showing the woman 'fetching' a beer for the man accosting her in the car and
 - 'shaming' the woman by 'making' her walk in public in a state of undress for the man's gratification and
 - posing the woman in a degrading position across the car's bonnet.
26. Ms Osmo made the point that one message she took from the advertisement is that a person drinking the product will own a Mercedes' and be able to demean beautiful women in public.

The Code

27. The ABAC provides at Section a) that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
- iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.

and 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

28. The complaints in essence go primarily to concerns about inappropriate or offensive behaviour. These particular issues are dealt within the ASB determination. In terms of the ABAC issues, it could be argued in favour of the complainants:
- The presence of the alcohol product is a contributor to the success of the man (demonstrated by the expensive car) and the sexual confidence of the woman (demonstrated by her reaction to the aerial lifting her sunwrap).

The Advertiser's Comments

29. The advertiser has replied in the form of a letter dated 17 December 2004, whereby the scenes are described as a playful interaction between a man and a woman who are equally matched in confidence and wit. Specifically, the advertiser makes the following points in response to the complaint:
- There is no suggestion that the woman has partaken of any alcohol in the advertisement and her actions do not suggest that she is drunk or under the influence. Her behaviour is bold and playful, not offensive or drunken or rude and it is reciprocated by the man's behaviour. The man's behaviour is not

offensive or overtly sexually provocative, but is cheeky, non-aggressive and engaging.

- The advertisement does not depict a relationship between the beer and the achievement of sexual success. The woman uses the beer as a tool to invite further interaction from the man, but there is no implication that the interaction is sexual. The question left hanging at the end of the advertisement is whether or not he will drink the beer being offered, as this is all that we reasonably assume is being offered by the woman. Her pose on the bonnet of the car is not an invitation to indulge in sexual activity, rather her pose is active, confident and keeps her stable on the car bonnet.
- The advertisement is part of a longstanding campaign centring on the question, "Who is James Boag?". In these advertisements he is still not revealed, but in this television commercial, we see him taking a greater role in interacting with the female protagonist.

The Panel's View

30. As mentioned, the advertisement has been subject to complaints which have raised concerns that have triggered consideration by both the ASB under the AANA Code of Ethics and the Panel under the ABAC. The ASB has considered if the advertisement offends the AANA Code in terms of its portrayal of sex and sexuality. It is the Panel's task to assess if the advertisement breaches ABAC provisions, specifically the section which precludes the promotion of alcohol beverages as a cause or contributor of social, financial or sexual success.
31. As the Panel debated at length its decision, it is proper to examine the ABAC provisions and how the Panel believes the provisions should be interpreted and applied before turning to its reasons for its decisions.

The ABAC provisions

32. The ABAC consists of a preamble and operative sections. The Preamble provides some important guidance as to how its provisions are to be interpreted. The Preamble states:
 - The Alcohol Industry Peak Bodies are committed to the goal of all advertisements complying with the 'spirit and intent of this Code'.
 - Conformity with the Code is to be assessed in terms of its 'probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated'.
 - The advertisement's impact is to be assessed 'taking its content as a whole'.
33. The Panel takes this guidance to mean that in undertaking its role;
 - a legalistic or 'black letter' approach to interpretation of ABAC provisions is to be rejected;
 - it is relevant to have regard to the likely audiences of the advertisement;
 - the overall impression or 'message' of the advertisement is critical.

34. The complaints raise Section c (i) of the ABAC. The elements of this part of the Code provide 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.
 - 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.
35. A key point is how this provision is to be interpreted against a back drop in which alcohol products within advertisements are often placed in settings where people are portrayed as attractive, sexually confident and apparently successful in their personal, social or business lives. Most complaints dealt with by the Panel concern advertisements with these features.
36. In England, similar provisions to Section 1 (c) are contained in the Code which regulates alcohol beverage advertising. In its published guidelines to the English Code, the Portman Group provides the following guidance to issues of sexual success and social success:
- ‘It is not necessarily a breach of the Code simply to allude to romance or intimacy (for example by showing an image of a couple)’.
 - ‘There is not necessarily a problem with suggesting that people who drink the product are sociable and popular, for example by showing or alluding to consumption of the drink in a happy, group setting’.
 - ‘It should not be suggested however that the consumption of the drink is the key to that sociability and popularity’.
37. The Panel takes Section 1 (c) to mean that to breach the Code an advertisement must do more than associate or place the alcohol product within a setting where people are shown to be successful. An advertisement will breach the Code if it suggests the consumption or presence of the alcohol creates, causes or contributes to the achievement of the success. If the ‘mood or environment’ depicted in the advertisement changes because of the alcohol product, then the advertisement will offend the Code. Placing the product in an existing environment, which is not altered by the presence of the product, will not offend the Code.

The Boag’s Advertisement

38. The advertisement, taken as a whole, creates an impression of wealth, success and sexual interplay. This is done through -
- The apparently expensive waterfront setting
 - The fashion clothing of the woman and the luxury car
 - The placement of the alcohol product in an ice bucket on a table with a fine white table cloth

- The use of sexual imagery

39. As explained above, the Code does not preclude the placement of an alcohol product with apparently successful people in an expensive setting. Nor does it preclude advertisements from being sexy or men and women being shown as sexually confident. What is precluded is the suggestion that alcohol is a contributor to these attributes.
40. The Panel believes that the 'mood or environment' created by the advertisement is established before the alcohol product is introduced into the storyline. The advertisement's opening scenes establish the setting in the expensive waterfront location. The exchange between the characters opens with the woman leaning against the car and the man thereafter using the car aerial to lift the woman's sunwrap. The woman chooses to remove the sunwrap and after this point the alcohol product is introduced into the story.
41. The key issue then becomes the impact of the alcohol product on the mood and environment established up to that point and whether the presence of the alcohol product can be fairly said to be a contributor to the business, social or sexual success of the characters depicted in the advertisement.
42. The woman is shown as taking the product from the ice bucket, returning to the car, climbing on the bonnet, opening the bottle with the hood emblem and then reclining on the bonnet holding the beer. As noted earlier, the ASB has made a determination as to whether the advertisement breaches the AANA Code of Ethics as to its portrayal of sexuality. Accordingly, it is not the Panel's role to assess if the woman's pose and demeanour once on the car bonnet offends community standards of taste and decency.
43. The Panel does not believe it can be concluded that the presence of the alcohol product has contributed to a significant change in mood. The mood and atmosphere was established before the introduction of the product which is used as part of the interplay between the characters. The product does not alter the atmosphere.
44. Nor does a majority of the Panel believe the advertisement depicts the presence of the product as a contributor to sexual success. The sexual interplay between the couple was established prior to the introduction of the product into the story. The woman does act in a sexually provocative manner with the product in hand, but her actions were set in train prior to the alcohol beverage being present. It is not considered that the presence of the product contributed to a chain of events which were already in motion in terms of the behaviour of the characters.
45. Accordingly, for the reasons outlined, the complaints are dismissed.