

ABAC

**ABAC Complaints Panel
Determination No: 41/06**

CONFIDENTIAL COMPLAINT

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

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

3 November 2006

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about a print advertisement for Boag Premium Lager 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 20 July 2006 which was received by the ABAC Adjudication Panel on 25 July 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, it has taken longer owing to a change of personnel handling ABAC administration matters.

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 advertisements were subject to pre-vetting and given approval (JB56/03).

The Advertisement

9. The complaint concerns a black and white format print advertisement which depicts a full length shot of an attractive woman lying on a car bonnet. The woman is at a sunny outside location. Water and rocks feature in the background which suggests that the scene is set at a waterfront location.
10. The woman is wearing a black bikini and large fashion sunglasses. She is lying on what appears to be the bonnet of a motor vehicle. Part of the steering wheel and the instruments on the driver's dash board feature at the bottom of the scene.
11. The woman is facing the camera as if she is looking at the driver through the windscreen of the vehicle. It should be noted, however, that the woman is the only person featured in the advertisement.
12. The woman is resting on her hip and one arm, with her legs apart. The other hand holds the neck of the bottle of Boag's Premium Beer in front of her torso. The woman's expression is impassive.
13. The strap line "Who is James Boag?" features in the top left hand corner of the advertisement. A picture of the product and a glass of beer features in the bottom right hand corner of the advertisement. The name of the product "JAMES*BOAG'S*PREMIUM" is featured in white lettering against a black background across the bottom left hand corner of the advertisement.

The Complaint

14. The Complainant argues the advertisement:
 - Associates the drinking of the product with a man's financial, personal and sexual success and prowess.
 - Implies that if a man drinks the product, he will seem irresistible to women and they will willingly submit to him sexually.
15. The Complainant also makes the point that the woman's positioning of her hand on the neck of the bottle of the product is offensive as it is sexually suggestive – it suggests some form of "phallic symbolism".

The ABAC

16. 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:
 - (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.

Arguments in Favour of the Complaint

17. The complaint raises issues under the ABAC, namely promoting offensive behaviour in breach of section (a) (iii) and the suggestion that the consumption or presence of alcohol contributed to a significant change in mood in breach of section (c). In favour of the complaint, it can be argued that:
 - The advertisement breaches section (a) (iii) of the ABAC by presenting an immature and irresponsible approach to the consumption of alcohol by promoting offensive behaviour in the form of provocative sexual behaviour with the female character's suggestive pose on the motor vehicle.
 - Section (c) is breached by depicting the consumption or presence of an alcohol beverage which causes or contributes to the achievement of personal, business, social, sporting, sexual or other success, by its portrayal of a woman in a sexually inviting pose on the bonnet of a luxury motor vehicle.

The Advertiser's Comments

24. The Advertiser responded to the complaint by way of letter dated 29 August 2006. The principal points made by the Advertiser were:

- (a) In relation to the print advertisement, the photograph is taken from the driver's point of view, but we have no knowledge about who is in the car as the photograph does not show the driver.
- (b) The woman is striking a confident and self-assured pose on the car bonnet, and does not appear in any way to be out of control. The advertisement shows her to be a beautiful and confident woman.
- (c) We disagree with the assertion that the woman is merely "a dumb sex object". The woman is dressed in a bikini, but as this is common attire in our communities at beaches which the car is parked, this attire is not overtly sexual.
- (d) The advertisement received AAPS approval and was launched in mid-2004. Since then it has been in magazines and on billboards around the country without receiving any complaints.
- (e) 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 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 Panel's View

- 25. The complaint went to both the print advertisement dealt with in this determination and a television advertisement which also featured the same female model and the motor vehicle. The television advertisement was subject to an earlier complaint and Determination 04/9B of January 2005.
- 26. In Determination 04/9B, the Panel by majority dismissed the complaint and in doing so observed:
 - The ABAC does not prohibit the use of 'sexy' images to promote alcohol beverages but rather prohibits the suggestion that the alcohol product causes or contributes to the achievement of sexual and other success.
 - The difference between an advertisement which is 'sexy' and provocative, but within the spirit of the ABAC and an advertisement which does link the achievement of success with the presence of the product is often difficult and a matter which different people can easily reach different conclusions.
- 27. The print advertisement raises the same considerations dealt with in the earlier Determination. It remains an 'on balance' decision as to whether the ABAC is breached as the advertisement has clear sexual overtones. The Panel by majority believes the ad does not breach the ABAC. In reaching this decision, regard was had for the following:
 - It is not apparent that the presence of the alcohol product has changed the mood or environment depicted in the advertisement

- The woman is wearing a bikini, however as the advertisement is set against a waterfront backdrop, the woman's apparel is not out of place.

28. Accordingly the complaint is dismissed.