

ABAC

ABAC Complaints Panel
Determination No: 61/07

COMPLAINT of Charlotte George, CAAN

Product: James Boag
Advertiser: J. Boag & Son Brewing Limited

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

31 July 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a website and black and white print advertisement for the alcohol beverage “James Boag” by J. Boag & Son Brewing Limited (“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 22 June 2007 which was received by the ABAC Adjudication Panel on 28 June 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 granted to the advertisement (VR 84/07).

The Advertisement

9. The advertisement is a photograph of two characters, namely an attractive woman and a man. The characters are placed upon a large spiral staircase in what appears to be a substantial building, such as a mansion. The main focus of the photograph is the woman.
10. The woman is dressed in an elegant evening gown which is backless and cut to slightly reveal the woman's right breast. She is wearing long earrings and her eyes are enhanced with makeup. The woman is placed on the stairs several steps higher than the male character and is posed with her body at a right angle to the man. She is looking back towards the man, with her head bowed and her eyes making contact with the man. Her gaze is intense.
11. The woman is holding a bottle of product by her side in her right hand, which is positioned at a 45 degree angle. Positioned adjacent to the woman's face are the words "Who is James Boag?". The man is only seen from his back. He is wearing a suit and has short hair. The man's expression is not shown. At the right hand corner of the ad is a picture of a full glass of the product, next to an opened bottle. The ad is cropped at the bottom by the words "James Boag Premium".

The Complaint

12. The complainant argues that the advertisement suggests that the consumption or presence of alcohol contributes to sexual success.

The ABAC

13. The ABAC provides that advertisements for alcohol beverages must:
 - c) 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;

Argument in Favour of the Complaint

14. The advertisement is argued by the complainant to be in breach of section (c) of the ABAC by depicting the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of sexual or other success, by a combination of:
 - a) its use of a strongly sexual image of a woman's body, posture and dress (being a revealing evening gown);
 - b) the suggestion from her stance and posture that the woman is ascending a flight of stairs, possibly to a bedroom;
 - c) the presence of a man at the base of the stairs;
 - d) the woman's expression and posture being suggestive of an invitation to the man to follow her up the stairs;
 - e) the presence of a James Boag beer in the woman's hand and in the bottom right hand side of the frame;
 - f) the use of the tag line "Who is James Boag" being suggestive of a mysterious and desirable man and suggesting that the woman in the photo desires him and intends to find out the answer to the question.

The Advertiser's Comments

15. The Advertiser responded to the complaint by letter dated 13 July 2007.
16. The Advertiser has advised that:
 - a) In the television advertisement that forms part of this campaign we see the woman mounting the stairs which lead to a mezzanine level overlooking the party she is attending;
 - b) It is an unreasonable and presumptuous leap to assume that she is luring the shadowy figure to a sexual assignation that is aided by the beer;
 - c) The fact that she is beautiful and alluring does not go hand in hand with her therefore necessarily having the intention to seduce;

- d) It is an even greater leap to presume that she “achieves sexual success” in the moments following this scene.

The Panel’s View

17. As pointed out by the advertiser, this particular ad is the latest in a series which uses the photographs of Helmut Newton, a well-known fashion photographer. A number of ads in the series for the product have attracted public complaints and have resulted in determinations by the Panel. Each of these determinations has raised quite difficult issues of judgment and this particular ad and complaint also raise matters which require relatively fine judgment.
18. The previous determinations have been:
- 04/9B January 2005
 - 04/9A
 - 41/06

The result in these determinations has been that the complaint was upheld in 04/9A (the “foaming glass” website ad); upheld in part (the “woman sitting on the stairs”); and dismissed in 41/06 (“woman on car bonnet”).

19. Each previous determination, as with this case, raised section c(i) of the ABAC. This provision provides that advertisements must not suggest that the presence or consumption of alcohol may create or contribute to a significant change in mood or environment and accordingly must not depict the presence or consumption of alcohol as a cause or contributor to the achievement of sexual success.
20. In its previous determinations, the Panel has noted that this provision does not exclude the use of sexual imagery *per se* or the depiction of characters, both male and female, as attractive and sexually confident. What it does prohibit is the suggestion that it is alcohol which changes the “mood or environment” so as to cause or contribute to the achievement of sexual success.
21. Determination 09/04 featured an ad which was a photograph of an attractive woman sitting on stairs, dressed and posed in a manner which could reasonably be said to be sexually provocative. A bottle of the product was placed next to the woman and the product strap line “Who is James Boag?” was displayed to the side of the woman’s head.
22. In Determination 04/17, the Panel considered a print advertisement which featured an attractive woman dressed in an evening gown sharing an intimate moment with a man. This ad was accompanied by text “Interested? Give it your best shot” and framed below with further text which read “The attraction is there alright. You felt it straight away didn’t you? How long has it been since you felt such anticipation? Be honest, it’s what you want isn’t it?”, “Well then, why don’t you just come right out and ask for it?” The next line is in bold, and refers directly to the product: “St Agnes Brandy. Go on, give it your best shot!”
23. In the first determination mentioned above (09/04) the Panel found the ad did not breach section c(i), while in the second determination (04/17) the Panel did find that the ad was in breach of the c(i) ABAC standard.

24. What this demonstrates is that each case has to be assessed on its own terms and that the Panel is called upon to apply its judgment to questions upon which opinions can quite reasonably vary. In undertaking this assessment, the preamble to the ABAC provides that the Panel is to have regard to the “probable impact” of the ad upon “a reasonable person within the class of persons to whom the advertisement may be communicated” and taking its “content as a whole”.
25. This particular advertisement might be said to fall somewhere in between the two previous examples. The ad does depict an interaction between the woman and the man. The woman’s expression and body language can fairly be said to be seductive. The woman is holding the product. There is, however, no accompanying text of sexual favour.
26. The advertiser argues that it is an “unreasonable presumptuous leap” to assume the woman is luring the man to a sexual assignation and that she will achieve sexual success in the moments following the scene. This, however, is not what section c (i) requires that ads avoid. The section uses phrases “suggest” and “may create” and “cause or contributing”. To offend the section, it is not necessary to depict certain sexual success but, rather, if the ad as a whole suggests that the presence of alcohol has contributed to a change in mood and the achievement of sexual success, then it would offend the standard.
27. On balance, and taking the ad as a whole, the Panel believes that the section c (i) standard has been breached.
28. Accordingly, the complaint is upheld.