

# ABAC

## ABAC COMPLAINTS PANEL – DETERMINATION NO: 09A/04 Boag's Premium Lager

### IN THE COMPLAINT OF PROF ROB MOODIE, VICTORIAN PREMIER'S DRUG PREVENTION COUNCIL

**Product: Boag's Premium Lager**  
**Advertiser: J Boag and Son**

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

**9 December 2004**

#### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") complaints panel ("The Panel") concerns material found on the webpage of J Boag and Son ("The Advertiser") and arises from a complaint received from Prof Rob Moodie, Victorian Premier's Drug Prevention Council ("The Complainant").
2. This is the second complaint dealt with by the Panel about internet material, and comes after revisions to the external-regulatory systems applying to alcohol beverage advertising which were endorsed by the Ministerial Council on Drug Strategy on 20 May 2004. Because this complaint has been dealt with contemporaneously with a complaint dealing with a different advertisement on the advertiser's website, the Panel believes it is useful to again set out some background to the external-regulatory system that applies to alcohol beverage marketing.

#### **The External-Regulatory System**

3. 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:
4. The ASB and the ABAC 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. Whilst the two Codes complement each other in most areas, there are some differences. For example, since the revised ABAC Scheme came into full effect on 20 May 2004, the ABAC Code has covered internet advertisements and the promotion of alcohol beverages at events. The AANA Code of Ethics does not cover internet advertisements.
7. As mentioned, this determination concerns internet advertising and raises issues which are not solely within the province of the AANA Code of Ethics. Further, the advertisement satisfies the jurisdictional criteria set out in the ABAC Code, *i.e.* it appears on an internet site "*primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia*".

### **The Complaint Timeline**

8. The complaint was received as the Panel was considering an earlier complaint about internet advertising on the advertiser's website. The complaint is in the form of a letter from Prof Moodie dated 25 October 2004, received by the ABAC Complaints Panel on 8 November 2004.
9. 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. In this case, this complaint was received while the Panel was considering a complaint concerning another advertisement on the advertiser's internet site. This complaint concerned the "Woman on the Stairs" advertisement. For purposes of efficiency and fairness to the advertiser, the Panel decided to go back to the advertiser for further comment on both advertisements. Two letters were received from the advertiser in response to the Panel's requests for information, the first dated 27 October 2004, and the second dated 23 November, 2004.

### **Pre-vetting Clearance**

10. An important feature of the external-regulatory system for alcohol beverages advertising is the independent examination of proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting is not currently compulsory for internet advertisements, however in the case of the "Foaming Glass" image, the advertisement was subject to pre-vetting and granted approval for its use in the print media.

### **The Advertisement**

11. The complaint concerns a photograph which is one in a series featured in a section of the advertiser's webpage. The web site's home page features a heading "Welcome to the Boag's Site for Beer Lovers". Under the heading are four menu choices, each featuring a title and image. One choice is "Love Potion" which shows a photograph of three glasses of beer being carried in two hands.
12. By selecting this menu item, the viewer is taken to a page entitled "Love Potion – Boag's Beers". Displayed are four bottles of different varieties of Boag's Beer with the advice to "click on one of the bottles below for more information". By selecting the bottle for "Boag's Premium", the viewer is taken to a page entitled "Who is James Boag?".
13. The "Who is James Boag?" page provides viewers with further choices to view additional pages and media presentations. The page also features an explanation of the advertising campaign. The choices for further pages are for two television campaigns "Woman on the Building" and "Keyhole". A further choice of "View the Print Campaign" is provided. This is

explained as a selection of material from the company's print campaign in an online slide show.

14. Selecting the "View Print Campaign" choice takes the viewer to a page which is entitled "Who is James Boag?" and features one of the print advertisements used by the advertiser in this series. This viewer can select to view the next slide or end the slide show. The viewer is taken through a series of slides, one of which is the slide "Foaming Glass", which is the subject of the complaint.
15. The advertisement is a black-and-white photograph, entitled 'Foaming Glass', which is a close up of a woman's hand tightly gripping a glass of beer. The glass has the words 'J Boag & Son' written on it, and the beer froth is flowing over the top of the glass. The woman is holding the glass at an angle of about 70 degrees with the beer frothing over the glass rim, and running down the woman's hand and the glass. The woman's well manicured, polished fingernails become a focal point in the image, along with the white frothing fluid flowing down over her hands and the glass.

### **The Complaint**

16. The complainant argues that the advertisement is in breach of section (c) (i) of the ABAC. It is argued that:
  - The advertisement depicts a link between sexuality and alcohol where no such link logically exists. It conveys a direct relationship between drinking the James Boag product and sexual success.
  - The advertisement is a blatant use of sexual imagery to promote the product. Professor Moodie also describes the possible social consequences of the irresponsible use of alcohol.

### **The Code**

17. The ABAC provides at section (c) (i) 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 Complaint**

18. In favour of the complaint, it could be argued that the advertisement is using sexual imagery which invokes a strong connotation of male ejaculation. This imagery goes to the achievement of sexual success, by use of the woman's grip on the glass, the angle the glass is held and the foam being similar to seminal fluid.

### **The Advertiser's Comments**

19. The advertiser has responded to the complaint through written comments provided in letters by Anthea Pritchard, Marketing Manager of J Boag and Son. Ms Pritchard argues:
  - The beer in the glass is foaming because it is being poured. This is a natural result of pouring a glass of beer. The foam overflowing on the glass is to evoke thirst connotations.

- The glass is being held in the natural way that a beer glass is held when being filled with beer.
- The advertisement does not imply that the beer will give rise to the achievement of sexual success.
- The photograph is not featured in mainstream media and needs to be searched for on the advertiser's website.
- The theme of the advertiser's website centres on the concept that many people love their beer. The 'Love Potion' theme is introduced on the splash page and continues throughout the site.
- The references to 'love' are made humorously and in reference to the consumer's reverence for their beer. In this context it is clear that the advertiser is not implying that through the label 'Love Potion' that the beer will alter a person's mood, or improve their chances of achieving personal, sexual or other success. Rather it implies that the consumer will fall in love with the product, thereby it may be called a love potion.

### **The Panel's View**

20. This advertisement is one in a series contained on the advertiser's website, the majority of which use sexual imagery to some extent. The ABAC does not expressly prohibit the use of sexual imagery as an advertising device, but section c(i) requires that advertisements not suggest a product is a cause or contributor to a significant change in mood or environment and/or depict the product being the cause or contributor to the achievement of sexual success.
21. As stated, the use of sexual imagery is not contrary to the ABAC as such. This means advertisements can be "sexy" and each complaint about each advertisement on this ground of inappropriate sexual imagery must be considered individually to assess if the ABAC provision is breached. This can be a difficult task, as inevitably advertisements which are approved by pre-vetting fall either within a "green zone" of being clearly non-controversial in terms of the ABAC, or are within an "orange zone" where different people might reach different conclusions. Advertisements which are clearly within the "red zone" of offending the ABAC will not be approved by the pre-vetting process.
22. This advertisement falls within the "orange zone". The advertiser contends that the advertisement is not invoking a sexual image, but rather the over-flowing foam is used to evoke thirst connotations. Professor Moodie argues that the image is clearly of a sexual nature.
23. The Panel believes the advertiser's argument cannot be accepted. The purpose of pouring a beer into a glass at an angle is to control the size of the head of beer; not to encourage its overflow. The advertisement as a whole, namely the way the glass is being held by the female hand, the angle of the glass and the manner which the foam is depicted, covering the glass and the hand, is clearly a reference to male ejaculation.
24. Having accepted the advertisement does use sexual imagery, the question is whether the image offends section c(i) of the ABAC by suggesting a change in mood and/or the achievement of sexual success. The Panel believes the advertisement does breach the ABAC, in that an image which evokes male ejaculation is directly linking the product with the achievement of sexual success.
25. Because of this conclusion, the Panel is not required to further assess the impact of the surrounding internet material on the advertisement. A discussion of this point is contained in the Panel's Determination 09/04.
26. Accordingly the complaint is upheld.