

ABAC

**ABAC Complaints Panel
Determination No: 07/07 & 20/07**

**Complaint from a
Mr David Wilks & a Confidential Complainant**

**Product: Victoria Bitter
Advertiser: Foster's**

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

DETERMINATION
Date: 10 April 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns two complaints about a television advertisement for Victoria Bitter by CUB/Foster's Group ("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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The confidential complaint is in the form of two emails dated 28 January 2007 and 28 November 2007 which were received by the ABAC Adjudication Panel on 29 January 2007 and 14 March 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. In this case, it has taken longer owing to the complaint not originally being received by the ABAC Administrator and only being identified during an audit of complaints received by the ASB.

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 (JB84/05VB and VR112/06)

The Advertisement

9. The complaint concerns a television advertisement for one (of two) of the VB "Boonanza II" advertisements. VB Boonanza II is the sequel to VB's promotion launched in 2005 in support of VB's cricket sponsorship. The 2006 campaign featured two former cricketers, David Boon and Ian Botham, and toys modeled on the cricketers, namely "Talking Boony" and "Talking Beefy".
10. The advertisement starts with a voiceover announcement that "David Boon is back for the Ashes", whereupon Boon pops out of a giant birthday cake in the lounge room of a couple of incredulous looking guys who are enjoying the cricket on TV.
11. The voiceover then announces that "this time he is up against his old mate Beefy Botham" as the two figurines appear on screen.
12. The script goes on to say that to participate in VB Boonanza II, "Battle of the Tashes" – which is a reference to the overall theme of the campaign which purports that the moustache is cricket's secret weapon – you should grab some VB and "find out how these hairy lipped legends of the game can go pound for pound (with imagery of David Boon eating a mouthful of birthday cake), tash for tash (with archive TV coverage of Boon and Botham playing cricket in the 80s) and beer for beer there in your lounge room" (with imagery of the blokes in the lounge room each holding a bottle of VB and clinking them in a "cheers" gesture).

13. A voiceover tagline at the commencement of the ad says “A hard earned thirst needs a big cold beer”.

The Complaint

14. The first Complainant argues the advertisement:

- Features a person (David Boon) who is well known in Australian folklore as an alcohol abuser.
- Promotes the idea of heavy drinking with impunity.
- Suggests that after hard labour one needs to drink beer. (Beer is a diuretic and causes dehydration). This in turn misrepresents the effect of alcohol on the human body, and promotes an unhealthy way of relaxing after a hard day on the job.

The second Complainant argues the advertisement:

- Appears to promote binge drinking.
- Glorifies Boony’s alcohol intake as legendary, and uses it as a “cool” giveaway, which is irresponsible and offensive.

The ABAC

15. The ABAC provides at section (a) that advertisements for alcohol beverages must present a mature and balanced 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; and
- (iv) Must only depict the responsible and moderate consumption of alcohol beverages.

The ABAC also provides at section (c) that advertisements must not suggest that the consumption of presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –

- (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

16. The complaints raise issues under the ABAC, namely:

- Breaching section (a), (i), (iii) and (iv) by promoting or encouraging excessive consumption of alcohol by featuring David Boon, who is reputed to have heavily consumed alcohol, while a member of the Australian cricket team.

- Encouraging excessive consumption by reference to Boon and Botham matching each other in a competitive fashion by going “beer to beer”.
- Breaching section (c) of the ABAC by the use of the strapline “A hard earned thirst needs a big cold beer”, by suggesting that alcohol offers a therapeutic benefit.

The Advertiser’s Comments

17. The Advertiser responded to the complaint by way of letter dated 14 March 2007. The principal points made by the Advertiser were:
- a. The advertisement is part of VB’s cricket sponsorship, and the link between David Boon and the VB Boonanza promotion is all about the cricket.
 - b. David Boon’s cricketing pedigree should be acknowledged – not only did he represent his country at an elite level (and was recently inducted into the Sports Australia Hall of Fame), playing in 107 tests and 181 One Day Internationals, to this day he remains involved in the sport through his current role as National Selector for Cricket Australia.
 - c. David Boon is a cricketing legend, an all round good bloke, honest, down to earth, unpretentious and understated and that’s what makes him such a good ambassador for the brand.
 - d. There is no suggestion of excessive consumption or inappropriate behaviour. When the adult characters (including David Boon) are seen drinking they are simply enjoying a beer at home as they watch cricket.
 - e. The consumption of beer in the ad is represented responsibly and is in keeping with the guidelines for advertising in Australia.
 - f. “A hard earned thirst needs a big cold beer” has long been VB’s tagline.
 - g. The tagline expresses the idea of a reward for effort (a position associated with VB for decades) – it is not suggesting that alcohol offers a therapeutic benefit.
 - h. It does not make any suggestion that by drinking a beer you will feel more relaxed or that your body will be hydrated.
 - i. “Hard labour” is referenced yet there is no activity of this type depicted – it’s simply blokes enjoying a beer while they watch the cricket.

The Panel’s View

18. The complaints raise issues under section (a) and section (c) of the ABAC. Dealing firstly with section (c), the issue revolves around the slogan “A hard-earned thirst needs a big cold beer” and whether this could be taken in the total context of the advertisement to imply that the consumption of the product

offers any therapeutic benefit, in breach of the standard specified in section (c) (iii) of the ABAC.

19. The complainant takes the slogan to mean that, if you are thirsty, then beer is a suitable drink for hydration, when it is not suitable for this purpose. The advertiser contends that the slogan has long been used in marketing the product and means that the product can be viewed as a reward for hard work or effort. The advertiser denies that a reasonable person viewing the ad would take the use of the slogan to have the meaning contended by the complainant.
20. The preamble of the ABAC gives basic guidance as to how the Code is to be interpreted. The key points for current purposes are:
 - The advertisement is to be assessed in terms of “probable” impact upon a “reasonable person”; and
 - The advertisement contents are to be taken as a whole.

In addition to this guidance, the Panel adopts a common-sense approach to the ABAC, which is mindful of the intent of the ABAC Scheme and is not blindly literal in interpretation.

21. In this case it is difficult to see that the content of the advertisement lends much support to the complainant’s contention about the advertisement suggesting the product has a therapeutic benefit. Nothing suggests, other than the particular interpretation the complainant places on the slogan, that the product should be consumed for hydrating purposes. The Panel believes the meaning of the slogan as advanced by the advertiser is one which a reasonable viewer could take from the advertisement.
22. The second issue for consideration is whether the reputed history of David Boon’s use of alcohol brings into play section (a) of the ABAC which is concerned about responsible alcohol consumption and prohibits advertising encouraging or promoting the excessive consumption of alcohol. The complaint essentially argues that, because Mr Boon reputedly consumed alcohol heavily (at least on one occasion on a flight between Australia and England), then his presence in the advertisement promotes excessive consumption.
23. However, in the absence of any prior knowledge of Mr Boon and his reputed use of alcohol, the advertisement does not depict excessive consumption. The product is seen in the advertisement, but consumption is moderate. The complainant’s argument only has any weight if it is assumed a viewer automatically associates Mr Boon with heavy alcohol consumption.
24. The Panel does not believe that the complainant’s argument can be accepted. The advertisement has to be assessed as presented and it cannot be assumed that:
 - It is at all reasonable to associate Mr Boon with excessive alcohol use; or
 - A reasonable viewer will take the advertisement as promoting excessive alcohol use, because of Mr Boon’s appearance.

25. It would be very difficult to apply the ABAC by going beyond the actual advertisement and attempting to imply a message into the advertisement by the use of a contested opinion as to whether a particular person is associated with a specific view or particular behaviour. Each advertisement has to be taken on its own terms.
26. The final point is whether the advertisement encourages excessive consumption by its creation of a competitive atmosphere between the Boon and Botham characters who are said to go “pound to pound, tash to tash and beer to beer”. One complainant took the view that this reference to “beer to beer” suggested a binge drinking session. Further support for this view might be said to come from the voiceover’s reference in the advertisement to ‘grab “cartoons” of VB’.
27. A majority of the Panel believed that, in the context of the advertisement, particularly the promotion of the figurines and the moderate depiction of actual consumption, it was not reasonable to place the interpretation on the advertisement argued by the complainant.
28. Accordingly, the complaint is dismissed.