

ABAC

**ABAC Complaints Panel
Determination No: 27/09**

**Confidential Complaint
Product: Hahn Beer
Advertiser: Lion Nathan Limited**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

24 April 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Hahn Beer by Lion Nathan Limited (“the Advertiser”) and arises from a confidential complaint received 30 March 2009.

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 Media Association Code of Ethics which includes provisions about Billboard advertising.
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 a concern under the Commercial Television Industry Code of Practice and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of a confidential email received on 30 March 2009.
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 obtained for this advertisement.

The Advertisement

9. The advertisement is a television commercial for Hahn Superdry that was allegedly broadcast during the 7.30pm timeslot on the Seven network in South Australia.
10. The advertisement features what appears to be a special occasion family meal at home. The camera pans to a young man and woman as the man says "I just hope I can make Lizzy as happy as you guys obviously are". The happy mood is interrupted by a mobile phone ringtone with the lyrics "I'm a tits and ass man". The young man looks embarrassed and is fumbling for his mobile phone to switch it off when a middle aged woman stands and points her 375ml bottle of Hahn Superdry toward the young man and shouts "In the spirit of good taste turn the damn thing off." He switches the phone off and everyone continues the meal in uncomfortable silence. The lyrics resume as the screen changes to a picture of two 375ml bottles of Hahn Superdry with the tagline "great taste low carb also in 3.5% alc/vol". The website address "spiritofgoodtaste.com.au" is also shown.

The Complaint

11. The complainant argues that:
 - (a) The ringtone is derogatory toward women and offensive to men and women; and

- (b) The ad has been seen during the 7.30pm timeslot on Channel 7 in the past week.

The Code

12. The complaint raises an issue under the AANA Code of Ethics and the Commercial Television Industry Code of Practice (CTICP). The Code of Ethics issue goes to matters of taste and sexism and will be determined by the ASB. The complaint does not raise an issue under the ABAC as such.
13. The CTICP provides at paragraphs 6.7 to 6.13 that a commercial which is a direct advertisement for alcoholic drinks may be broadcast only in M, MA, or AV classification periods (8.30pm-5.00am & 12.00noon-3.00pm weekdays & 8.30pm-5.00am weekends and school holidays) or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.

Arguments in Favour of the Complaint

14. In favour of the complaint it is alleged that the advertisement was broadcast in the 7.30pm timeslot in breach of the CTICP.

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by way of emails dated 15 and 20 April 2009. The points made by the Advertiser in relation to the advertisement were:
- (a) Seven Affiliates (regional Seven network) has uncovered an error where the spot was run seven times outside of the allowed time zones. They used the ad as free 'filler' and incorrectly coded it so the classification of the ad was not adhered to. They have put in place processes to ensure that this error could not be repeated.
- (b) The advertiser's media buying agency has:
- Checked Metro TV for all networks for the first two weeks of the campaign and are confident no spot appeared on metro TV networks before 8.30pm; and
 - Re-issued statements to all the metro and regional TV networks reminding them of their obligations.

The Panel View

16. The complaint raises two (2) quite separate issues. The first is that the ringtone featured on the ad is derogatory toward women and offensive to men and women. This issue falls squarely under section 2 of the AANA Code of Ethics and will result in a decision on the ad by the ASB.
17. The rules applying to the ABAC scheme provide that, if an ad raises "issues which are solely within the province of the AANA Code of Ethics", then the "complaint will not

normally be further considered” by the ABAC Adjudication Panel. The substance of the complaint raises issues which are solely within the Code of Ethics and does not raise a concern under the ABAC. This means, in the absence of any other consideration, that the Panel would not have proceeded to make this determination.

18. The complaint, however, raises a second point and that concerns a claim that the ad was broadcast on the Seven network in South Australia prior to 8.30 pm. This claim raises an issue under the CTICP which goes to the restrictions placed on when alcohol ads can be broadcast. As such, an issue which is more than a matter arising solely within the Code of Ethics is in play and accordingly the ABAC Panel, pursuant to its rules, is to make a determination.
19. Advice as to when the ad was broadcast was obtained from the advertiser. This advice confirms that the complainant is correct and the ad was broadcast by the Seven regional network in breach of paragraphs 6.7 to 6.13 of the CTICP. It is explained by the advertiser that this was an error by the Seven network and did not occur on the instructions of the advertiser.
20. While the ad may have been broadcast prior to the 8.30 pm timeslot in error, it is clearly a breach of the CTICP and, as a result, the complaint must be upheld.
21. This is the first occasion that the Panel has made a determination finding that the CTICP has been breached. As there is no finding about the content of the ad (the substantive issue of taste and sexism will be decided by the ASB), then the usual action of the advertiser either withdrawing the ad or modifying the ad is not required. (This might be required, depending on the decision of the ASB.)
22. The Panel notes the steps outlined by the advertiser which are aimed at avoiding a future breach of the CTICP. The Panel also draws this breach to the attention of its Management Committee and requests that all free-to-air networks be advised of the breach and that confirmation be given that procedures which should ensure compliance with the CTICP are being followed.
23. The complaint is upheld.