

ABAC

ABAC Complaints Panel Determination No: 112/09

Complaint by Ms Karen Steadman Product: Hahn Super Dry Advertiser: Lion Nathan

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

8 December 2009

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Hahn Super Dry by Channel 9 for Lion Nathan (“the Advertiser”) and arises from a complaint by Ms Karen Steadman received on 27 November 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 complaints systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.
- 4 The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under

both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.

- 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 an email received by the ABAC Panel on 27 November 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 30 business days.

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 advertiser advised that the ad was produced by Channel 9 and although Lion Nathan has an advertising agreement with them this ad was produced as a bonus without Lion Nathan's knowledge and pre-vetting approval was not obtained for this advertisement.

The Advertisement

- 9 The advertisement takes the form of a "Program sponsorship" for the Channel 9 program "The Apprentice Australia". This program was broadcast commencing at 9.30 pm on a weekly basis with the complaint relating to the broadcast on 23 November 2009.
- 10 The advertisement begins with a voice-over stating "The Apprentice Australia, brought to you by the Spring-break sale at your Chrysler Jeep Dodge dealer now and Hahn Super Dry". Accompanying the voiceover is a screen shot of promotional logos and graphics for both the car company and the alcohol product. The first features a billboard style graphic for Chrysler which shows an orange background with a sun in the centre that is covered by the words "Spring break" combined with "Chrysler-Jeep-Dodge". Underneath are the words "Sale". Accompanying the text is a static outline of four people dancing – two men and two women – who appear to be young adults.
- 11 The text and picture then fade and are replaced with the logos of the car brands Dodge, Chrysler and Jeep and an email address "springbreaksale.com.au". On the borders of the screen are palm trees. The billboard then turns, to reveal its other side. On this side is displayed the branding for "Hahn Super Dry". This is a simple logo with a white background with the word "Hahn" in black type and "Super Dry" in white type contrasted against a blue colour oval-shaped centre feature.

The Complaint

- 12 The complainant argues that the ad is irresponsible in that it associates schoolies, driving a new big car and drinking alcohol and encourages youth drinking and drink driving.

The Code

13 The ABAC provides at Sections (a)(ii) and (b) that advertisements for alcohol beverages must:

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - ii) must not encourage under-age drinking;
- b) not have a strong or evident appeal to children and adolescents...
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle....
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices....

The Advertiser's Comments

14 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 4 December 2009. The principal points made by the Advertiser were as follows:

- (a) Lion Nathan has an annual advertising agreement with Channel 9, managed by media agency, Zenith Optimedia, however, the billboard advertisement that is the subject of this complaint was provided as a 'bonus' and was done so unbeknown to both Zenith Optimedia and Lion Nathan.
- (b) The advertisement was aired during "The Apprentice" on November 23, 2009. As with all Hahn Super Dry TVC's currently in market, the advertisement was aired after 8.30pm. The primary demographic of "The Apprentice" is adult with 93% of viewers over the age of 18 that evening.
- (c) The advertisement does not encourage or imply underage drinking, nor does it have strong or evident appeal to children or adolescents. The sharing of billboards is common practice across all networks and does not imply any connection between the two brands featured as program sponsors. There is a clear interval between the two billboards, where it spins to the next brand.
- (d) Beyond the fact the brands are not connected the paired content does not breach the ABAC. The Chrysler ad features the Spring Break sale logo and individual brand logos and the voiceover references the brand's Spring break sale but it does not show imagery of any vehicles, people driving or people drinking. It is a fairly static display promoting a sale only. The reference to Spring Break is in relation to the name of the sale only. No imagery of Spring Break is included, nor is any reference made to parties, students or drinking. This is then followed by a separate billboard, featuring the Hahn Super Dry logo only; again no people, product or consumption is featured.
- (e) A reasonable person would not make a connection to operating a motor vehicle whilst drinking from this advertisement.

The Panel's View

- 15 The complainant, Ms Steadman, has taken the promotional slide for the car company and the alcohol product to be associating "schoolies driving a new big car and drinking alcohol" and hence encouraging irresponsible behaviour and particularly drink-driving. The fact that the annual "schoolie" events on the Gold Coast were occurring at the time of broadcast no doubt heightened Ms Steadman's concern.
- 16 The Panel accepts that Ms Steadman is legitimately worried by the promotion; however it is the Panel's role to assess the ad against the ABAC standards applying to alcohol beverage advertising. In doing this, the preamble to the code provides that conformity of an ad with the code is to be assessed in terms of its probable impact upon a reasonable person, taking the content of the ad as a whole.
- 17 The relevant code standards are found in sections (a), (b) and (d). Combined for current purposes, the ad will breach the ABAC if it:
- Encouraged under-age drinking, or
 - Had strong or evident appeal to children or adolescents, or
 - Depicted a direct association between the consumption of alcohol and the operation of a motor vehicle.
- 18 The Panel does not believe the ad is in breach of the ABAC. In reaching this conclusion, the Panel has noted:
- The ad is promoting two distinct products and brands and the ad clearly shows the products to be separate.
 - Both products are so-called "sponsors" of "The Apprentice" program. This program does not have themes or a format which can be said to be strongly appealing to children or adolescents and the demographic of the audience of the program is not "schoolies".
 - The actual alcohol product reference is a straight depiction of the product brand and logo. There is no alcohol use shown or implied.
 - While it may not be ideal to ever immediately show a car promotion and then an alcohol brand promotion, there is no reasonable suggestion that drink-driving is being encouraged; and certainly the section (d) standard of the ABAC is not breached.
- 19 The complaint is dismissed.