

ABAC

**ABAC Complaints Panel
Determination No: 57/07**

COMPLAINT of Sarah Jaggard

**Product: McKenna Bourbon
Advertiser: Lion Nathan**

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

9 July 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a radio advertisement for the alcohol beverage “McKenna Bourbon” by Lion Nathan (“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 pro forma reply-paid card dated 5 June 2007 which was received by the ABAC Adjudication Panel on 19 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. The radio advertisement was not subject to pre-vetting.

The Advertisement

9. The complaint concerns a radio advertisement on "Nova" 93.7 for the Advertiser. The Advertiser has advised that:
 - (a) The advertisement complained of was not an advertisement but a sponsorship credit for Nova's drive program (4-7pm) in WA.
 - (b) The McKenna drive sponsorship involved approximately 4-7 McKenna spots airing throughout the drive program Monday to Friday. The spots did not run in relation to specific elements of the program such as traffic/ weather/ news report, etc (ie there were no billboards just prior to, or following, individual parts of the program such as "brought to you by").
 - (c) The sponsorship credit used by Nova was "Here's hoping for a smooth drive home. McKenna Bourbon – double distilled for extra smoothness."

The Complaint

10. The Complainant argues that the advertisement depicts a direct association between the consumption of alcohol and the operation of a motor vehicle.

The ABAC

11. The ABAC provides at section (d) that advertisements for alcohol beverages must not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly:
 - (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;..

Argument in Favour of the Complaint

1. The complaint raises issues under the ABAC, namely depicting a direct association between the consumption of alcohol and the operation of a motor vehicle in breach of section (d). In favour of the complaint, it can be argued that the reference to a “smooth drive home” followed by the description of McKenna Bourbon as “double distilled for extra smoothness” and the timing of the broadcast during peak hour traffic results in the advertisement depicting a direct association between the consumption of McKenna Bourbon and a smooth drive home from work.

The Advertiser’s Comments

2. The Advertiser responded to the complaint by way of emails dated 19 June 2007. The Advertiser has advised that:
 - (a) They were not aware of the use of this phrase by Nova in their sponsorship credit;
 - (b) They required Nova to cease using the phrase effective immediately on the date the complaint was received by ABAC and the Advertiser was advised of the complaint and have confirmed with both their media agency and Nova that it will not be aired again;
 - (c) They agree that the use by Nova of the phrase does not meet their obligations under the Code and the phrase should not have aired;
 - (d) 47% of total radio spots for alcohol run during the drive program (4-7pm);
 - (e) The McKenna Bourbon spots did not run in relation to specific elements of the program such as traffic/ weather/ news report, etc (ie there were no billboards just prior to, or following, individual parts of the program such as “brought to you by”).
 - (f) The credit in question ran as a result of a misunderstanding that involved the agencies working on their behalf and they have reviewed and tightened the process to avoid a repeat.

The Panel's View

1. This case involved section (d) of the ABAC which provides that advertisements for alcohol beverages must not depict any direct association between consumption and the operation of a motor vehicle. The ad in question was in the form of a short endorsement used by a radio station which stated "Here's hoping for a smooth drive home – McKenna Bourbon – double distilled for extra smoothness".
2. The advertiser has advised that, while it booked the radio spots, it did not specifically approve the form of the endorsement used. Upon receiving the complaint, the endorsement was stopped and the radio station was instructed to not repeat an endorsement of this kind. The Panel notes the actions of the advertiser and believes the immediate cessation of the endorsement was appropriate.
3. While the advertisement has been withdrawn, it remains the responsibility of the Panel to make a determination. The rules and procedures applying to the Panel do not provide that the withdrawal of an advertisement ends the complaints process.
4. The Panel believes the ad does breach the standard set out in section (d) of the ABAC. The ad draws a direct association between the consumption of the product and driving, through the comparison of the "smoothness" of the taste of the product and the "smooth" (meaning trouble-free) drive home. The endorsement complained of was aired during the afternoon "drive time" period which further emphasizes the association between consumption and motor vehicle operation.
5. The Panel acknowledges the action of the advertiser in responding to the complaint and its clear statement that the endorsement is inconsistent with its standard of alcohol advertising. Nonetheless, the complaint is upheld.