

ABAC

**ABAC Complaints Panel
Determination No: 52/09**

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

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

5 June 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 15 May 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 ABAC Code and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of a confidential email received on 15 May 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 [BH59/09].

The Advertisement

9. The advertisement is a television commercial for Hahn Superdry.
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 as the song continues to play 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 in the current climate that is highlighting the abuse of alcohol and women in sport and the spillover effect into daily life, this campaign send the wrong message, yet again. The complainant also claims the ad was broadcast at approximately 8pm on Wednesday 13th May 2009.

The Code

12. The complaints raise issues under the Commercial Television Industry Code of Practice (CTICP) and the ABAC Code.

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.
14. The ABAC provides at Sections (a)(i) and (iii) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible 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.

Arguments in Favour of the Complaint

15. In favour of the complaint it is alleged that:
 - (a) the advertisement was broadcast at approximately 8.00pm on Wednesday 13th May 2009 in breach of the CTICP;
 - (b) the ad's use of the 'tits and arse' ringtone promotes a demeaning attitude toward women which combined with alcohol use encourages offensive behaviour and/or alcohol misuse in breach of sections (a) (i) & (iii) of the ABAC.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of email dated 1 June 2009. The points made by the Advertiser in relation to the advertisement were:
 - (a) With the exception of the 7 affiliates issue that we have already dealt with, the advertisement has been broadcast in line with our watershed obligations.
 - (b) In relation to the other issue raised in your questions, there is no suggestion of misuse in the advertisement or of alcohol being a factor in the phone owner's choice of phone ring. The phone ring is a creative device that is depicted as inappropriate for the circumstances and is clearly used in jest. The ring has been chosen as it is representative of some of the music found in popular culture. No reasonable person would be caused to disrespect women as a consequence of viewing the advertisement

The Panel View

17. This advertisement has been the subject of two previous determinations, namely 27/09 dated 24 April 2009 and 32/09, 42/09 and 43/09 dated 11 May 2009, which examined issues of appeal to children and breaches of the CTICP. This complaint raises a new issue relating to misuse/ abuse of alcohol and offensive behaviour and also a new alleged instance of breach of the CTICP. It is these new issues that will be considered by the Panel.
18. Turning firstly to the times when the ad was broadcast, it is claimed that the ad was broadcast on Wednesday 13th May 2009 at approximately 8.00 pm.
19. The CTICP provides that alcohol ads are not to be broadcast prior to 8.30 pm unless the broadcast is in conjunction with sport on weekends and public holidays. On the face of it, if the ad was broadcast at 8.00 pm on Wednesday 13th May 2009 (which was not a Public Holiday), then the CTICP has been breached.
20. The Panel sought advice from the advertiser as to when the ad was broadcast. It should be noted that the nature of the ABAC scheme means that, in order to function, the Panel relies on information provided by advertisers in response to complaints *e.g.* the supply of copies of advertisements subject to complaints. This means that the Panel relies in good faith on the advertiser providing factual information, such as when an ad was broadcast.
21. The advertiser has advised that the ad was not broadcast in breach of the CTICP as claimed. Further, advice from the advertiser is that the ad has only been broadcast consistently with the CTICP requirements, since a mistake was identified regarding some executions of the ad being broadcast incorrectly in March 2009 (see Determination 27/09 which found the advertiser had breached the CTICP requirements).
22. The Panel is obliged to act on this advice that the ads have been broadcast in correct timeslots and must assume that the complainant's recall of the broadcast at approximately 8.00 pm was in fact 8.30 pm or shortly thereafter. Accordingly, the complaint as far as it goes to the CTICP is dismissed.
23. The next issue concerns whether the ad encourages offensive behaviour and/or alcohol misuse. The complainants suggest this might arise from the ringtone's demeaning attitude to women in a climate of abuse of women and alcohol in sport. This raises consideration of section (a) of the ABAC.
24. As was explained in paragraph 2 above, there are several codes of practice applying to alcohol advertising and two bodies *i.e.* this Panel and the ASB, which make decisions on complaints about alcohol ads. This means in some instances that an ad might be subject to decision by the two different adjudication processes. This is the case in relation to this particular ad.
25. The ASB has made a decision on the ad in relation to concerns that the ad is offensive and that it discriminates against women and is vilifying to women. Such concerns fall for adjudication under section 2 of the AANA Code of Ethics. The ASB decision on

this point was made on 14 May 2009 and is reported as Case Report 140/09. In short, the decision was that the ad does not breach the AANA Code of Ethics.

26. As noted, this Panel has also made two previous decisions on the ad. This is because the rules and procedures applying to the ABAC adjudication system do not provide for a complete review of an ad against all ABAC standards upon a complaint being made. Rather, the decision the Panel is to make is confined to the nature of the complaint made about the ad. Because the ABAC standards cover a range of issues, it is quite possible for a single ad to be subject to several separate determinations because different complainants are concerned about distinct issues.
27. In relation to this ad for Hahn Super Dry, the earlier decisions by the Panel related to the specific broadcast time of the ad and that the ad had strong or evident appeal to children. The current complaint raises a distinct issue, namely the ad demeans women and encourages offensive behaviour. Section (a) (iii) of the ABAC provides that an alcohol ad must not promote offensive behaviour or excessive consumption, misuse or abuse of alcohol beverages. The Panel has previously considered this provision and noted that "offensive behaviour" in the context of the section relates to alcohol-influenced or related behaviour, such as drunken loutish behaviour, and is not a freestanding standard such as those contained in the AANA Code of Ethics.
28. The Panel does not believe the ad breaches the section (a) standard. There is nothing in the behaviour of the characters depicted in the ad which indicates that their actions are affected by alcohol use. In essence, the complainant's concern is about the ringtone being demeaning to women and, while this concern is understandable and is reflected in other public complaints about the ad, this issue has been determined by the ASB in its decision.
29. Accordingly, the complaint is dismissed.