

ABAC

ABAC Complaints Panel
Determination No: 58/07

COMPLAINT of Todd Harper (VicHealth)

Product: Hahn Superdry
Advertiser: Lion Nathan

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

24 August 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about an internet advertisement for the alcohol beverage “Hahn Superdry” 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 Advertiser Code of Ethics ("the AANA Code"). 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. This 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 letter dated 7 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 delayed due to the ASB initially deciding not to consider the complaint against the AANA Code (which decision was subsequently altered) and the Advertiser's late response to the complaint.

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 has advised that they do not pre-vet their websites.

The Advertisement

9. This complaint refers to a company website advertisement for Hahn Superdry.
10. Upon entering the website, a short video clip plays featuring a close up shot of what appears to be breasts being held by female hands with the hands and breasts moving in motion to the background music. As the video clip continues to play, the close up shot of the breasts and hands opens to a wider view which slowly reveals that the breasts are those of a topless man and the hands those of a woman standing behind him. As the video clip draws to an end, a number of textual messages appear, such as:
 - a) "Boobs. Great on women."
 - b) "Not so good on Men"
 - c) "Hahn Superdry, Super Honest, Low Carb"
 - d) "That's so wrong. Here's the real Hahn love boobs."
11. Once the video clip ends we are taken to the main webpage where there is a photo of a young woman in a bikini and alongside her photo are the words: "Hahn [image of upside down love heart representing breasts] boobs, Watch the real love boobs, Star in a Hahn ad."

12. Below the main photo are five photo images which display textual messages when selected. One of the images is a photo of a young woman in a bikini standing in shallow water on a beach. When this image is selected, the words "Take her home" appear.
13. On selecting this message we are taken to a page which allows users to download wallpaper to their PC of various images including the bikini clad woman.
14. Alongside the five photo images is a picture of a bottle of Hahn Superdry and below the images are the words "Super honest. Super refreshing."

The Complaint

15. The complainant argues that the statement in the advertisement "Take her home" overtly suggests that the consumption or presence of this alcohol beverage may create or contribute to the achievement of sexual success.

The ABAC

16. The ABAC provides that advertisements for alcohol beverages must:
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly-
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

Argument in Favour of the Complaints

17. The advertisement is in breach of section (c) of the ABAC by depicting the presence of alcohol beverages as a cause of or contributing to the achievement of sexual or other success by using the statement "Take her home" next to a photo of a bikini clad woman on an internet advertisement for Hahn Superdry.

The Advertiser's Comments

18. The Advertiser responded to the complaint by way of letter dated 23 July 2007. The Advertiser has advised that:
 - a) No component of the website suggests to the reasonable person that drinking the product will lead to sexual success;
 - b) When the button 'Take Her Home' is pressed on the site, it is abundantly clear that the button relates to a choice of screen wallpapers that relate to components of the ad and include characters from the ad. This is common across all advertising. Australians are wise enough to understand the difference between literal references and puffery. No reasonable person will interpret this component of the site to show the consumption or presence of the product will make them more sexually successful.

The Panel's View

19. The complaint is in the form of a letter which identifies elements of the website which it is argued breach both the AANA Code of Ethics and the ABAC. The coverage of the generic ASB scheme and the ABAC scheme dealing with alcohol advertising is not identical, with the ASB scheme until very recently not addressing internet advertising.
20. The Management Committee of the ABAC scheme has resolved that the Panel should act as a "safety net" to capture complaints which might raise Code of Ethics issues, but which the ASB scheme does not cover because of the wider notion of "advertising" contained within the ABAC scheme. The Panel was initially advised by the ASB that it would not be dealing with the Code of Ethics aspects of the complaint and, in these circumstances, this Panel would need to make a determination encompassing both codes.
21. Subsequently, but after some delay, the ASB indicated that it would deal with the Code of Ethics issues and would more broadly adjust its approach to cover most internet alcohol advertising. The Panel regrets that these developments have resulted in delay to its consideration of the ABAC issue raised by the complainant.
22. The complaint raises section (c) of the ABAC. This section provides in part that an advertisement must not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood and accordingly, must not depict the presence of alcohol as a contributor to the achievement of sexual success. In essence, the complainant argues that the words "take her home" which appear when the cursor is placed over the picture of the bikini-wearing woman imply that the presence of the product leads to sexual success.
23. The preamble of the ABAC gives guidance as to how the Panel is to apply the ABAC. The preamble provides that conformity is to be assessed in terms of probable impact upon a reasonable person, taking the advertisement's content as a whole. The Panel has also considered section (c) in past determinations. The section does not preclude ads being "sexy" or male and female characters being shown as sexually confident. The key element is the portrayal of the impact of alcohol on the environment depicted in the ad and whether this impact suggests that alcohol will lead to achieving success. If such a suggestion is made, then the ad will not meet the ABAC standard.
24. In this case, the complainant places weight on the use of the phrase "take her home" as presumably meaning that the woman will be available for a sexual encounter. The advertiser argues that this phrase relates to use of the image as "wallpaper" on a computer and is mere "puffery" which would not be taken as an implication of sexual success.
25. In its determination 04/13, the Panel considered a website featuring advertising for the product Jim Beam. Like the current ad, this case involved bikini-top wearing women and some text which arguably had a *double entendre*. The panel dismissed the complaint which raised section (c) concerns on the basis that, although the ad might be juvenile and "tacky", the ABAC did not preclude the use of sexy outfits or attractive women in advertising as such. The linkage between the presence of the product and achievement of sexual success was not present.

26. A majority of the Panel is of a similar view in this case, that the ABAC is not breached. Whether the ad objectifies women and is “tacky” and beyond the prevailing community standard for such portrayals are matters for the ASB and the Code of Ethics. The ABAC standard goes to other matters and on this the Panel believes it cannot be concluded that a reasonable person would take the reference to “take her home” in the context of the ad as a whole as offending the ABAC provision.
27. Accordingly, the complaint is dismissed.