

# **EXHIBIT 5**

# STATE BAR OF TEXAS



## ADVERTISING REVIEW COMMITTEE

February 7, 2012

Tom Bagby  
Mauze & Bagby, PLLC  
2632 Broadway  
Ste. 402 South  
San Antonio, TX 78215

RE: File Number: 51354  
Bar Card Number: 24059409  
Application, Lawyer Advertising  
Please include your unique file number (referenced above) on all correspondence pertaining to this application.

Dear Tom Bagby:

The Advertising Review Committee or staff has reviewed the above-referenced application filed with the Advertising Review Committee pursuant to Rule 7.07(b), Texas Disciplinary Rules of Professional Conduct. The advertisement or writing either requires additional information to substantiate representations that are contained therein, or it violates Part 7 of the Texas Disciplinary Rules of Professional Conduct in the following particulars: **You must send two copies of all corrections. The Advertising Review Committee does not accept fax transmissions or email for either submissions or corrections of advertisements. Please send either via mail or by courier.**

\* The material indicated requires substantiation of representations made therein as required by 7.07(f). (Please refer to attached advertisement, letter, or production script for specific material indicated.)

You did not request a pre-approval of this advertisement or writing. The application you submitted indicates that this advertisement or writing containing the above-referenced violations is currently being disseminated to the public. According to Official Comment No. 2 to Section 7.07, it is presumed that the Committee will report to the appropriate grievance committee any lawyer whom it finds from the reviewed products has disseminated an advertisement or writing that violates Part 7. However, in an initial effort to handle violations administratively before reporting an attorney to the grievance system, the Committee will allow you one opportunity to remedy the situation. **Within ten (10) days from the date of this letter,** please return one of the following two documents to the Advertising Review Committee:

- (1) the advertisement or writing in which the appropriate corrections have been made, or
- (2) a notice certifying that you have stopped public dissemination of the advertisement or writing.

Such a notice should contain one of the following explanations:

- (a) Dissemination has been temporarily stopped for the purpose of making corrections. (Include the date corrections will be forwarded to the Committee.); or
- (b) Dissemination has been permanently stopped. There is no intention of beginning public dissemination of this advertisement or writing in the future.

If the requested documents are not received in this office by tenth (10th) day following the date of this

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letter, we will assume that the advertisement or writing continues to be disseminated publicly, and the Committee may forward this matter to the appropriate grievance committee for disciplinary action. If the appropriate corrections are made and submitted, you will be sent an approval of the amended advertisement or writing. If you end dissemination permanently, you will receive a disapproval of the advertisement or writing but no further action will be taken.

You are not required to submit additional fees at this time. **Please include your unique file number (referenced above) on all correspondence pertaining to this application.** Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Major".

Gene Major  
Director, Advertising Review Department

enc.



**APPLICATION FORM****LAWYER ADVERTISING AND SOLICITATION COMMUNICATIONS**

Effective July 29, 1995, Part VII of the Texas Rules of Disciplinary Procedure require that a lawyer file with the Advertising Review Committee a copy of all public media advertisements and solicitation communications, except those exempt by Rule 7.07(e), contemporaneously with first dissemination or mailing. If desired, pre-approval may be obtained by submitting a copy of the advertisement or writing at least 30 days prior to its first dissemination or mailing. (If pre-approval is requested for an advertisement that is to be placed in a telephone directory or similar publication, the ad must be submitted at least 30 days prior to the printing deadline of the publication rather than 30 days prior to dissemination date of the publication.) If a pre-approval is requested, a response will be mailed within 25 days of the date of receipt of a completed application packet.

**For Committee Use Only**

☒ Fee Enclosed  
☐ Letter/Email  
☐ Brochure/Newsletter  
☐ Print Ad  
☒ Script  
☐ Recording  
☐ Website  
☐ Billboard

Case No. 51354Date Rec'd. 2/3/12**INSTRUCTIONS FOR SUBMISSION OF A COMPLETE APPLICATION PACKET**

- Complete Application in full. You can either complete each space on this form online or print the form and complete it manually by printing your replies. This form may be reproduced.
- Attach advertisement or solicitation communication.
  - > For a solicitation letter, attach a sample of the letter and the envelope in which it will be mailed. Emails must look like emails.
  - > For a television, radio or online audio or video ad, attach a detailed production script, including ad title or number, and an audio or video recording.
  - > If requesting pre-approval of a TV or radio ad that has not yet been produced, a production script can be submitted without a video or audio recording.
  - > For an ad or solicitation in any language other than English, attach a complete, accurate English translation along with the ad or solicitation in the original language.
  - > **For a website, include URL and two printed copies of the initial access page.**

- Enclose check or money order in the amount of **\$75.00** payable to the State Bar of Texas for each ad or writing OR complete the credit card information section on the second page.

- Mail two copies of each completed application packet to: Advertising Review Committee  
State Bar of Texas  
P.O. Box 12487  
Austin, TX 78711-2487

\*Note exception: It is not necessary to include an additional copy of the video or audio disk, tape or USB Flash drive submitted for TV or radio commercials.

A separate application packet must be submitted for each advertisement/solicitation. If submitting more than one packet at a time, TV, radio or online audio or video commercials may be combined onto one disk/tape/USB Flash drive. Filing fees may be also combined into one check. Incomplete application packets will be returned. They will not be docketed for review.

For questions concerning filing requirements, call 1-800-566-4616 or visit [www.texasbar.com/adreview](http://www.texasbar.com/adreview).

Lawyer\*: Tom Bagby (James Thomas Bagby, III)

Bar Card #: 24059409

Firm: Mauze &amp; Bagby, PLLC

Firm's Principal Office Address\*: 2632 Broadway, Suite 402 South

San Antonio, Texas 78215

Phone\*: 1-800-200-9096

Fax:

E-mail:

Nature of advertisement or solicitation communication\*:

- A. ☐ Letter (Complete Addendum Form) D. ☐ Brochure Newsletter (Complete Addendum Form) G. ☐ Other (Billboards, etc.)  
 B. ☐ Telephone Directory E. ☒ Television/Radio  
 C. ☐ Magazine/Newspaper F. ☐ Website, URL: \_\_\_\_\_

It is extremely important that you review the explanation of the difference between filing and pre-approval at top of this page before answering the following question:

Does applicant seek pre-approval? Yes (pre-approval) \_\_\_\_\_ No (filing) ☒If you answered No, state the date the advertisement or solicitation was first disseminated or mailed. 2/3/12

This form (updated 02/19/10) supersedes all prior forms.

(.....page 2 of 2, form continued from front)

(Form continued on back.....)

\* Required Fields



Is it likely that a case or matter resulting from the advertisement or solicitation will be referred to another lawyer or law firm? Yes \_\_\_\_\_ No X

Does the advertisement or solicitation disclose or allude to a specific fee, range of fees, or that the lawyer or law firm will render fees on a contingent fee basis? Yes \_\_\_\_\_ No X

Does the advertisement or solicitation disclose the existence of an office other than the firm's principal office? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered Yes, is the satellite office staffed by a lawyer at least three days per week? Yes \_\_\_\_\_ No X

Does the advertisement or solicitation designate or allude to one or more specific areas of practice? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered Yes, is the lawyer board certified in the areas of practice advertised? Yes \_\_\_\_\_ No X

Has another lawyer or law firm paid any part of the advertisement or solicitation? Yes \_\_\_\_\_ No X

If you answered Yes, identify the lawyer or law firm. \_\_\_\_\_

In what geographic location(s) will the material be disseminated? Texas (west and south Texas)

Identify any lawyers depicted in the submitted material. \_\_\_\_\_

Identify any actual clients depicted in the submission along with such clients' addresses and phone numbers.\* \_\_\_\_\_

**Note:** The Advertising Review Department may request substantiation of any statement or representation made in the submitted advertisement or solicitation communication.

**Payment by credit card:** Name of cardholder \_\_\_\_\_ (circle one) AMEX MC Visa \$ \_\_\_\_\_

Number: \_\_\_\_\_ Date of Expiration \_\_\_\_\_

ATTEST: I HAVE REVIEWED THE ADVERTISEMENT OR WRITING SUBMITTED AS REQUIRED BY RULE 7.04(e) OR 7.05(d), TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT. THE REPRESENTATIONS CONTAINED THEREIN AND THE INFORMATION IN THIS APPLICATION ARE TRUE AND CORRECT.

Signature of Applicant [Signature] Date 2/2/12

**FOR COMMITTEE USE ONLY**

PRE-APPROVED	APPROVED	ADD'L INFORMATION REQUESTED	DISAPPROVED	REFERRED TO CHIEF DISCIPLINARY COUNSEL
DATE _____	DATE _____	DATE <u>2/2/12</u>	DATE _____	DATE _____
BY _____	BY _____	BY <u>SM</u>	BY _____	BY _____

This form (updated 04/12/10) supersedes all prior forms.

Title: Kool Smiles Claims

Attention Parents!

Did you take your child to Kool Smiles?

(Was your child literally strapped down, crying, and terrified?) - 7.07(F)

(Did your child leave Kool Smiles with a mouth full of stainless steel crowns?) - 7.07(F)

If so, call toll free for a free consultation: 1.800.200.9096.

(Did Kool Smiles place ugly, and possibly unnecessary, crowns on your child's baby teeth?) - 7.07(F)

(Did Kool Smiles place unwanted crowns on your child's permanent teeth?) - 7.07(F)

(Did they tell you...your child will have to replace these crowns many times during his or her life; and the cost will be thousands of dollars?)

Who is going to pay for this dental work for the rest of your child's life?

7.07(F)

You may have a CLAIM.

Call 1.800.200.9096. That's 1.800.200.9096

Or go to: [koolsmilesclaims.com](http://koolsmilesclaims.com) [koolsmilesclaims.com](http://koolsmilesclaims.com)

This message is brought to you by Attorney Tom Bagby. Principal office, San Antonio, Texas.

Please be sure to read telephone number as follows: "One"

"Eight Hundred"

"Two Hundred"

"Ninety"

"Ninety-Six"

# 51354

Title: Kool Smiles Claims

¡Atención Padres!

¿Ha llevado a su hijo a Kool Smiles?

¿Sujetaron a su hijo mientras el lloraba aterrorizado?

- 7.07(F)

¿Su hijo salió de Kool Smiles con la boca llena de coronillas de acero?

- 7.07(F)

Si fue así, llame sin costo para una consulta al 1.800.200.9096.

7.07(F)

Kool Smiles le puso horribles, y posiblemente innecesarias, coronillas a los dientes de leche de su hijo?

Kool Smiles le puso indeseables coronillas a los dientes permanentes de su hijo?

7.07(F)

¿Le informaron que...estas coronillas tendrán que ser remplazadas muchas veces durante la vida de su hijo; y que esto costaría miles de dólares?

7.07(F)

¿Quien pagará por este servicio dental el resto de la vida de su hijo?

Usted puede calificar para un RECLAMO LEGAL.

Llame al 1.800.200.9096. El número es 1.800.200.9096.

O visite [koolsmilesclaims.com](http://koolsmilesclaims.com) ... [koolsmilesclaims.com](http://koolsmilesclaims.com)

\*\*\*Por favor lea el número teléfono de la siguiente manera "Uno"

"Ochocientos"

"Doscientos"

"Noventa"

"Noventa y seis"