

ABAC

ABAC Complaints Panel Determination No: 41/10, 47/10, 48/10 & 50/10

Complaints by Ms Maggie Korneblium and confidential complainants Product: VB Beer Advertiser: Fosters Group

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

28 October 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a series of television advertisements for VB Beer by Fosters Group (“the Advertiser”) and arises from a complaint received 7 September 2010, two complaints received 24 September 2010 and a complaint received 5 October 2010.

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 complaint 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The first complaint was received by ABAC on 7 September 2010, the second and third complaints were received on 24 September 2010 and the fourth complaint was received on 5 October 2010.
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. Given that the complaints all related to the same advertising campaign, it was decided to produce a composite determination. As a result the first complaint has been decided outside of 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 these advertisements [10323].

The Advertisement

9. The complaints refer to a series of television advertisement which consist of various compilations of several different scenarios displayed against the backdrop of the musical score "Hello Again" by Neil Diamond. The scenarios are:
 - A man with cocktails in a hotel bar (cocktails)
 - A man with a doctor apparently considering plastic surgery (doctor's surgery)
 - A man in a gym on an exercise bike (gym)

- A man at a backyard BBQ using hand-cream (BBQ)
 - A man trying to put on skinny jeans (jeans)
 - A man styling his hair in front of a mirror (mirror)
 - A man with a strange handshake (handshake)
 - A man in a spray tan booth (spray tan).
10. In each scenario the male principal character is behaving in a particular way which he comes to realise does not reflect his real character. The main character's realisation is shown as a generally emotional experience and in this emotional state he is supported by one or two male "mates".
 11. In the cocktails scenario, the principal character is shown in a hotel bar walking towards two male friends and one female friend carrying two large and elaborately decorated cocktails. His friends are both holding stubbies of beer. When he approaches the men, they look at the cocktails in a surprised and slightly disapproving manner and the main character also views the cocktails and appears to realise that his choice of drink is inappropriate. He becomes emotional and falls to his knees while being supported by his two mates. The main character is next seen still kneeling and drinking from a VB stubby as he calms down. His two friends exchange smiles as he does this. The 15 second advertisement ends prior to the man falling to his knees.
 12. The doctor's surgery scenario opens with the principal male character standing topless in front of a doctor who is marking his chest with a pen to show where the incisions for the plastic surgery will occur. The next scene shows two men apparently outside the doctor's surgery hitting on the door and yelling. The principal character is shown slowly turning around towards the door with the realisation showing on his face that possibly he is doing the wrong thing. We next see the principal character being held on either side by his two friends in the surgery. He is in an emotional state, while his friends appear pleased that he has "come to his senses".
 13. The gym scenario features a man on an exercise bike wearing bright orange lycra riding clothes, including a racing helmet. He is shown taking a drink from his water bottle. The scene then moves to show his two friends outside the glass walls of the gym tapping on the glass, endeavouring to attract the bike rider's attention. Both men have expressions of disbelief as they watch their friend on the bike. The rider removes his sunglasses to acknowledge his friends and, as in the other scenarios, he appears to realise that his behaviour is not reflecting his true self. The 30 second advertisement including this scenario ends here. In the 60 and 90 second advertisements the rider is then shown in a highly emotional state on the bike.
 14. In the BBQ scenario, a man is shown sitting on a ledge in a backyard with a number of people in the background standing, talking and drinking. The man is applying hand-cream from a small tube to each hand. He is then joined by another man who sits next to him. This second man is carrying two stubbies of

VB. They exchange friendly glances as the second man hands to the principal character one of the stubbies. The main character opens the stubby but, in doing so, the bottle slips from his hand and drops to the ground. The man then looks at his hands and begins to appear upset at what has happened. The 30 and 15 second advertisements incorporating this scenario end here. In the 60 and 90 second advertisements he is then seen in a highly emotional state and is comforted by his friend. The 60 second version ends here. In the 90 second version he is seen in the company of two men as he drinks from another stubby of the product. He is calming down as he drinks and his companions look approvingly as he also has “seen the light” and rediscovered his true character.

15. The jeans scenario depicts a man sitting on the edge of a bed in a messy room trying to pull on tight jeans.
16. The mirror scenario features a man looking approvingly at himself in the mirror as he styles his hair and two men walk up behind him.
17. The handshake scenario opens with a man receiving a stubby of VB from the bartender and then turning to greet another man. The friends shake hands but the second man continues to carry out an elaborate and lengthy handshake as the first man looks at him strangely. The first man is then seen stopping the handshake and holding the second man’s hand still as he looks down at his hand. In the next scene we see the second man in a highly emotional state holding on to the first man for support who holds him up and pats him on the back.
18. The spray tan scenario shows a man in a shower cap in a spray tan booth looking down at his hands with a slightly bewildered expression.
19. The final scene in all except the 15 second advertisements shows a VB stubby being placed down on a coaster as the text “the real beer” and an “Enjoy Responsibly” message are superimposed on the screen. The text then changes to the VB logo above the word “real”. The 15 second advertisements only superimpose the VB logo and the text ‘real” over the final scene.

The Complaint

20. The first complaint relates to a 60-second advertisement containing the scenarios:
 - Cocktails
 - Doctor’s surgery
 - Gym
 - Mirror.

The complainant argues that:

- (a) the ad is homophobic and transphobic; and

- (b) the depiction of beer as a cure for men who behave in a metro/trans/homosexual manner is irresponsible as alcohol is commonly present at “interventions” that go out of control and end in tragedy.

21. The second complaint relates to the same ad as the first complaint and a second 60-second advertisement containing the scenarios:

- Handshake
- Cocktail
- BBQ
- Spray Tan.

The complainant argues that:

- (a) the ad is discriminatory toward males; and
- (b) the suggestion that males are not men if they don't drink VB and the depiction of males going out of their way to get their mates to drink VB and make them what they consider to be normal is inappropriate.

22. The third complaint does not specify the particular ad, but it appears it could have been ads containing the scenarios in the first two complaints, as well as the Jeans scenario.

The complainant argues that:

- (a) the ad is politically incorrect in its portrayal of “homosexual” and possibly a disabled man; and
- (b) the suggestion that only “real” men drink VB and the breaking into tears over a VB because their mates make fun of them for not being “normal” is inappropriate.

23. The fourth complaint relates to the 90-second ad featuring the scenarios:

- Handshake
- Cocktails
- Doctor's surgery
- BBQ
- Gym
- Spray tan.

The complainant argues that the ad implies that by consuming the alcohol the embarrassment /upset of the man using moisturizer and dropping his bottle of VB would be removed or lessened. It appeared to imply that the use of alcohol is helpful to overcome emotional distress and/or social awkwardness in breach of section (c) (iii) of the ABAC.

The Code

24. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages.....
25. The ABAC provides at Section (c) 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;
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

The Advertiser's Comments

26. The Advertiser responded to the first complaint and questions posed by the Panel by letter dated 17 September 2010. The points made by the Advertiser in relation to the advertisements were:
 - (a) It was never our intention for the scenarios presented in the TV commercial to represent stereotypical homosexual or transsexual behaviours. Rather, the advertisements were based on broad population research commissioned by Carlton & United Breweries on 'superficiality'. The commercial you refer to sits as part of a broader campaign that focuses on this societal trend and is based on various insights including specific research that demonstrated people are increasingly presenting an image that is not perhaps true to who they are and they often expend a lot of energy in manufacturing this façade which is at its most prevalent amongst current celebrity pop-culture and many of the role models we often see amongst film or sporting stars. The commercial brings this to life with much humour and some highly tongue in cheek and exaggerated scenarios. The scenarios presented – buying expensive cocktails, long drawn out and overcomplicated handshakes, doing a spin class in full Lycra, putting product in your hair and getting a fake tan - are representative of the diversity of behaviour in the broader community and do not reference any one group. Our

view is that the characters and scenarios are far removed from the stereotypical and one dimensional depiction of gay men, which are often very camp or sexualised. Our lead characters are encouraged by their friends to cease their behaviour because they are being superficial. This is a universal theme that we have brought to life in a series of diverse and entertaining ways. As evidence that there is no existing bias, in 2011 VB will be the official beer of Australia's largest celebration of gay and lesbian culture in the Sydney Mardi Gras. The team here believes VB is most definitely a beer for everyone, which is supported by the fact that VB is the largest selling beer in Australia and one of the most popular in every state and territory. In fact, after decades of very traditional male advertising, VB has included women, high profile gay men and a far broader cross section of the community in recent major advertising campaigns ("VB Regulars" - see vb.com.au). Additionally, in the development of this campaign we did extensive research around the country with hundreds of Australians across various age and demographic backgrounds. The research conducted on this campaign demonstrated that viewers 'got' the intended meaning of the ads and no-one raised any of the themes that have been flagged in these complaints. Research commissioned by Leading Edge articulated the most common outtake as "Stay true to yourself" and "not pretending to be something you are not". People understood that these are light-hearted commercials that show mates helping mates regardless of whether they are doing spin classes in lycra or spending a bit too much time in front of the mirror. I think it's also important to point out that whilst the plastic surgery office scene may have been incorrectly labelled as depicting male to female (MTF) surgery, it is in fact showing a male who is having a consultation to enhance his six pack/pec muscles – you can tell from the fact that his trousers are on and he has texta markings on his abdomen and chest. People have surgery for all kinds of reasons including vanity and men are no exception, in fact men are increasingly having cosmetic surgery procedures such as pectoral muscle implants and calf muscle implants, purely for aesthetic reasons. We don't believe the average viewer would view this scene and make the association re: MTF surgery.

- (b) In relation to section (a) we believe the commercial is compliant. There is a minimal focus on alcohol consumption and all characters are sober, alert and enjoying a quiet, social drink with friends. I think it's a tenuous link to draw regarding a connection with "interventions' that go out of control and end in tragedy". None of the scenarios end this way nor are they situations that could be classed as 'interventions' in the way that the complainant is perhaps referring to (those that involve drug and alcohol addicted behaviour). Additionally, there is certainly no "tragedy". In fact it's quite the opposite as we see mates helping their friends regardless of the situation they've found themselves in.
- (c) In relation to section (c) we also believe the commercial is compliant with this section of the code. The advertisement clearly does not depict that VB is a cure or offers a therapeutic benefit. No alcohol is consumed before or at the time of each lead character's self realisation. In fact,

many of these scenes do not have any alcohol present (for example the spray tan booth, cosmetic surgery office and spin class). The moments of exaggerated realisation are very clearly prompted by the character's male friends – sometimes through a simple look or by pounding on a door or encouraging them to shake hands the old fashioned way. The mates come across as sometimes bemused or surprised but always supportive and there for their friend. The only consumption shown is at the very end where two blokes are comforting a friend and enjoying a beer and this is well after the moment that the actors have 'realised' their moment of superficiality. This is what I think the reasonable person's outtake would be – not that the beer has 'cured' him. And in terms of the Real tagline at the end it encapsulates what VB is all about – not fancy or expensive but just a great tasting beer. I believe it's also unreasonable to imply the tagline infers that if you drink the beer it transforms you into a real man or that this would be the general outtake from watching the commercial. As additional context, VB has been using the "Real" tagline in various forms across several media channels over the last 2 years.

27. The Advertiser responded to the second, third and fourth complaints and an additional question posed by the Panel by letter dated 7 October 2010. The points made by the Advertiser in relation to the advertisements were:

- (a) The campaign went to air on September 7 and in a three week period has been viewed by more than six million Australians. With only four complaints raised through the ABAC complaints process we are confident that the campaign is resonating with the Australian public and that the (four) complainants' views are not representative of the general community or the average person's take out.
- (b) VB is more than 150 years old as a beer brand. It is Australia's largest selling and most popular beer and has been for more than 20 years. The VB brand is built upon a very long and powerful tradition of reward for effort, made famous by advertising that featured lines such as "hard earned thirst" and "best cold beer". This is still true, and it's a fundamental part of this current advertising. The VB advertisements were inspired by broad population research commissioned by Carlton & United Breweries on 'superficiality'. This increasing superficiality is most often evidenced as heightened vanity and puffery. This research was subsequently made public at a series of forums hosted by Australia's leading demographer, Bernard Salt and received broad exposure across television, print and radio. The advertisements focus on this societal trend and are based on insights including the fact that people are increasingly presenting an image that is not perhaps true to who they are and they often expend a lot of energy in manufacturing this façade which is at its most prevalent amongst current celebrity pop-culture and many of the role models we often see amongst film or sporting stars. It was also found to be particularly obvious in mediums like Facebook, where for

instance, the average person spends over two hours selecting their profile picture. The VB team invested in national research on the consumer reaction to the advertisements and hundreds of Australians across various age and demographic backgrounds shared their views. The research demonstrated that viewers 'got' the intended meaning of the advertisements and no-one raised any of the themes that have been flagged in these complaints. It was clearly understood that the hero's mates initiate the 'moment of realisation' that then leads to some exaggerated emotional responses and then VB is sometimes, but not always, enjoyed as the mates have a beer together. Some verbatim quotes from the research include; "The story is mates saving blokes who have become fake...and they all enjoy a VB when they're back to being real again"; "It's saying just be yourself...and don't take things too seriously"; "We all have mates like that...and you have to bring them back into line...it's your duty as a real mate".

- (c) Specifically in relation to section (c) I believe the commercial is compliant. The advertisement, when viewed in its entirety and by the reasonable viewer, clearly does not imply that VB plays a role as a cure, that it offers a therapeutic benefit or significantly changes the mood or environment. No alcohol is consumed before or at the time of each lead character's self realisation. The majority of the scenes (in the 2 x 60 second and 90 second advertisement) does not have any alcohol present including the spray tan booth, hair preening, cosmetic surgery office and spin class. These scenes make up the bulk of the commercials. The two scenes – the flute glasses and man's beer slipping through his fingers because he just moisturised his hands – where consumption does take place are at the conclusion of the 'moment of realisation' and as such the characters have already had their emotional response. This is what I think the reasonable person's outtake would be upon watching the advertisements in their entirety (and what our research supports) – not that the beer has made him 'real' or played a role in the change in mood. The moments of exaggerated realisation are very clearly prompted by the character's male friends – sometimes through a simple look or by pounding on a door or encouraging them to shake hands the old fashioned way. The mates come across as sometimes bemused or surprised but always supportive and there for their friend. In these commercials, in every single scene without exception, we see the following construct in chronological order; hero character demonstrating common superficial behaviours; intervention by hero's mates; stark moment of realisation as the hero realises he has gone too far with his superficial behaviour; and finally, he's supported by his mates and in selected scenes only, enjoys a VB with his mates. Given this order of events, I'd also argue that a simple but important test further demonstrates that the advertisements are compliant with section (c) as all the scenarios or more specifically the changes to the character's demeanor would play out in the exact same way if you removed

VB from all the scenes. This is due to the fact that the moment of realisation, which is then followed by the exaggerated emotional response, very clearly happens because each character's mate stepped in and called them on their behaviour and subsequently is acknowledged by our hero. VB is NEVER shown as a key contributor or trigger; instead its role is incidental. In the final scenes we either see our hero being supported by their friends (by being carried out of the plastic surgery office or with a hug) or enjoying a quiet beer together. And in terms of the Real tagline at the end it encapsulates what VB is all about – not fancy or expensive but just a great tasting beer. I believe it's also unreasonable to imply the tagline infers that if you drink the beer it transforms you into a real man or that this would be the general outtake from watching the commercial. As additional context, VB has been using the "Real" tagline in various forms across several media channels over the last 2 years.

- (d) Overall, these advertisements have a very low level of beer shown throughout relative to the vast majority of other alcohol advertisements. As discussed earlier, consumption of VB features prominently in only two scenes in these 60 second television advertisements and its 'presence' insofar as stubbies or cans being visible (but not consumed) or as VB branding is minimal. There are a range of emotions expressed by our heroes in the four advertisements identified by the complainants (with the exception of the skinny jeans advertisement) but I believe it's made abundantly clear that these are triggered by the fact their mates stepped in and let our 'hero' know that he wasn't being true to himself. This then leads to a range of exaggerated emotional responses, that for a couple of characters in the final scenes changes to what could be described as relief or calmness – a relief that comes from a return to being yourself without any pretence and having your mates by your side.
- (e) In relation to the reference to the skinny jeans 15 second commercial made by one complainant who believes the ad depicts a person who has a disability, that was not our intention but we're confident that given the scenario, actor, early research findings and consumer feedback that this outtake would not be held by the vast majority of viewers. This advertisement brings to life another superficial trend where blokes feel compelled to wear fashion they perhaps shouldn't. This short advertisement shows a bloke struggling to get his super skinny jeans and very tight jeans past his calf muscles – something many men could relate to as skinny jeans only suit a small number of the male population although many attempt to wear them regardless.

The Panel's View

- 28. The complaints raise issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to discrimination on the basis of gender

or sexual preference. As explained earlier, Code of Ethics matters are determined by the ASB and this determination will not deal with these concerns.

29. Rather, this determination deals with that part of the complaints which argue that:
 - (a) alcohol beverages should not be advertised in a manner which suggests that it is responsible to use them within an “intervention” to help “cure” a person from being a homosexual or a metrosexual. This concern by the first complainant brings into play sections (a) and (c) of the ABAC; and
 - (b) the consumption or presence of VB changes the mood or environment, transforms the male characters into “normal” or “real” men and helps them overcome emotional distress and/or social awkwardness. This concern by each of the complainants brings into play sections (c) (i) & (iii) of the ABAC.
30. Given the relative complexity of the multiple versions of the ad and the range of complaints, it is proposed to examine each scenario in turn against the ABAC provisions raised by the complaints, namely section (a) and Section (c) (i) and (iii). In applying the Code standards, the Panel is advised by the Code preamble to assess the ad as a whole and to take into account the probable impact of the ad upon a reasonable person. This is important as, though each scenario is described in full in the determination for ease and understanding, the actual ads comprise snippets of each scenario interwoven, rather than as a whole scenario being shown in full before moving to the next scenario. The ads as shown need to be assessed.

The Cocktail

31. This scenario involves a man in a bar who purchases two elaborately decorated cocktails for himself and a female companion. He approaches two male friends, exchanges glances, becomes emotional and drops to his knees. He is comforted by his mates and calms down while drinking from a stubby of VB.
32. The Panel does not believe the scenario or the ads in which it is incorporated breach section (a) of the Code. The ad does not suggest excessive consumption or an irresponsible approach to consumption.
33. Section (c) of the ABAC provides that an ad must not suggest the consumption or presence of alcohol beverages may create or contribute to a significant change in mood and must not depict the consumption or presence of alcohol as a cause or contributor to the achievement of success or that consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. Each of the complaints and the fourth complainant specifically refer to the change in mood depicted in the ads and the impact of alcohol as a means to overcome emotional distress.

34. The advertiser's argument on this point is as follows:
- No alcohol is consumed before or at the time of each lead character's self-realisation
 - Self-realisation is prompted by the lead character's male friends – by a look or gesture – and not alcohol
 - Alcohol only enters the scene after the change in mood and alcohol is not depicted as the cause or contributor to the change in mood and the character's demeanor
 - The mood changes would play out in the same manner without any depiction of the alcohol product
 - VB is never shown as a key contributor or trigger: instead its role is incidental.
35. Section (c) of the ABAC is expressed in expansive terms and has been considered by the Panel in previous determinations. From these decisions it can be noted:
- The section focuses on the casual relationship between alcohol use and a change in mood, achievement of success or gaining of a therapeutic benefit
 - The section does not prohibit the "association" of alcohol with success with the key assessment as to a causal relationship between alcohol and success.
 - Alcohol is not to be suggested as a cause or contributor to the change in mood or achievement of success. This is wider than alcohol use being portrayed as the only or sole cause of the change in mood or achievement of success.
 - The section also refers not only to consumption, but includes the presence of alcohol.
36. There are several aspects of the scenario which bring section (c) (i) and (iii) into consideration. These are:
- Is the lead character's move into an upset self-realisation mood caused or contributed by the presence or consumption of alcohol?
 - Is the lead character's mood adjusting from upset to calm caused or contributed by the presence or consumption of alcohol?
 - Does the consumption of the alcohol product in the final scene of the scenario suggest the product has a therapeutic value?

37. The Panel accepts the advertiser's argument that the initial change in the lead character's mood is caused by "self-realisation" and not the presence or consumption of alcohol. At this point of the ad, alcohol is present but is not shown as having been consumed by the lead character. Equally the context of the ad as a whole at this point establishes that each lead character is brought into self-reflection by the intervention of their "mates" and alcohol is not suggested as a cause of or contributor to this moment of self-reflection.
38. The Panel believes however that the ads containing the cocktail scenario do breach section (c) (i) in so far as alcohol use is depicted in the scene where the lead character is shown in an emotional state, which then moves to a calm state. Here the man is shown drinking the product and a reasonable person would take from the ad that alcohol use was a contributor to the man's mood changing from upset to calm. While the principal reason for the change in mood might be the emotional support offered by the lead character's two mates, alcohol is shown as a part of the men lending support. The advertiser itself argues that VB is "never shown as a key contributor" but in an "incidental" role; however, showing any causation role for alcohol influencing mood is not permitted by section (c) (i).
39. The fourth complainant also raises section (c) (iii) of the Code. This provision provides that an advertisement must not suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. The Panel does not believe the ads would be taken by a reasonable person that alcohol is suggested as a "cure" for problems or causes the moments of self-reflection. But the same scene when alcohol use is shown while the lead character calms himself could be seen as suggesting that alcohol is an aid in achieving relaxation and emotional stability. For this reason, the Panel believes the final scene of the "cocktail" scenario breaches section (c) (iii) of the Code.

Doctor's Surgery

40. This scenario is set in a doctor's surgery and involves a man apparently discussing forthcoming plastic surgery. Two male friends intervene to help "bring him to his senses". No alcohol is shown within this specific scenario but the ad in which it appears shows alcohol use or its presence on some occasions *e.g.* the final scene where a stubby is shown with the VB logo.
41. The Panel does not believe this scenario breaches either section (a) or (c) of the Code. No alcohol is present in the scenes and there is nothing in the behaviour of the characters which indicates that alcohol use has affected their behaviour. It cannot be reasonably said that excessive consumption is being promoted, nor that alcohol is a cause for the changed emotional state of the lead character.

Gym

42. The Gym scenario depicts a lycra-clad bike rider within a gym who has taken his exercise regime to an excessively serious length. He becomes emotional when two male friends see him in the gym and he apparently reassesses his

attitude to his “full on” style of exercise. No alcohol is shown within the scenario, but alcohol features in other segments of the ad within which the scenario is played out.

43. The Panel does not believe this scenario breaches sections (a) or (c) of the Code. As with the Doctor’s Surgery scenario, it cannot reasonably be said that the gym scene encourages excessive consumption of or an irresponsible approach to consumption. The mood of the lead character does alter through the scenes depicted, but there is nothing in the scenario itself or in the scenario’s inclusion in the ad as a whole which can reasonably be concluded that alcohol is a cause of the change in mood or demeanor.

BBQ

44. The BBQ scenario features a man at a backyard BBQ using hand cream prior to endeavouring to open a stubby of the product. The stubby drops from his hands, he becomes very upset and then is shown recovering his composure and drinking alcohol in the company of two mates. Shorter versions of the scenario in some ads do not show the scenes beyond the dropping of the stubby following the use of the hand cream.

45. The Panel does not believe the scenario breaches section (a) for similar reasons to those explained earlier. The Panel does believe the longer version of the scenario does breach sections (c) (i) and (c) (iii). This is because:

- The mood of the lead character moves from calm to highly emotional and upset, to recovering composure and calm.
- The first change in mood arises because of the “self-realisation” moment after the stubby has been dropped.
- The second change in mood from upset to calm is contributed, at least in part, by the man having a drink of the product.
- While the advertiser’s argument that the change in mood was not primarily caused by the presence or consumption of alcohol might be accepted, nonetheless a reasonable viewer would take the ad as suggesting that alcohol use assisted in the lead character improving his mood and such implication is not permitted by section (c) (i).
- Equally, it can be reasonably said that the end scenes of the scenario suggest that alcohol consumption is an aid in relaxation and assists in stabilizing a person’s mood, in breach of (c) (iii) of the Code.

Jeans

46. The Jeans scenario is a very short scene where a man is shown on a bed endeavouring to pull on a very tight pair of jeans. There are no other characters depicted in this scenario, nor is any alcohol product shown. The Panel does not believe the scenario breaches either of the relevant sections of the Code.

Mirror

47. The Mirror scenario is another short scene showing a man admiring his hair style in the mirror. It shows two other men, but no alcohol products are depicted. The Panel does not believe the scenario breaches the relevant provisions of the Code.

Handshake

48. The Handshake scenario depicts friends shaking hands and one of the men continuing with an elaborate handshake. He becomes emotional after his male friend holds his hand still and he holds onto his friend for support. The Panel accepts that the change in the lead character's mood is caused by "self-realisation" and not the presence or consumption of alcohol. As in the Cocktail scenario, alcohol is present at this point but is not shown as having been consumed by the lead character.
49. The Panel does not believe this scenario breaches sections (a) or (c) of the Code. As with the Doctor's Surgery and Gym scenario, it cannot reasonably be said that the handshake scene encourages excessive consumption of or an irresponsible approach to consumption. The mood of the lead character does alter through the scenes depicted, but there is nothing in the scenario itself or in the scenario's inclusion in the ad as a whole which can reasonably be concluded that alcohol is a cause of the change in mood or demeanor.

Spray Tan

50. The Spray Tan scenario is a short scene showing a man wearing a shower cap and standing in a spray tan booth. No alcohol products or a significant change in mood or environment is depicted. The Panel does not believe the scenario breaches either of the relevant sections of the Code.

Conclusion

51. The Panel upholds the complaints in relation to section (c) (i) and (iii) and those versions of the ads which contain the complete scenarios "The Cocktail" and "The BBQ". The Panel does not believe the scenarios breach section (a) of the Code in relation to the issues raised by the complainants. The issues in the complaints about discrimination or homophobia are matters for the ASB and are not dealt with in this Determination.