

ABAC

**ABAC Complaints Panel
Determination No: 58/12**

**Confidential Complaint
Product: VB
Advertiser: Carlton United Brewers**

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

16 August 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a facebook page for VB produced on behalf of Carlton United Brewers (“the Advertiser”) and arises from a confidential complaint received on 21 June 2012.

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 complaints 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 complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 21 June 2011.
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. The complaint has not been determined within the 30 day timeframe, due to the unavailability of the Chief Adjudicator and the complexity of the issues raised.

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 not obtained for this advertisement.

The Advertisement

9. The complaint refers to a facebook site at www.facebook.com/vb.
10. The site features a photograph of the product on ice and a hand reaching in and holding a beer at the top of the page and inset, a picture of a stubby of VB next to a glass of beer. Below the picture is the text "VB" and "The official Facebook page of the best cold beer www.vb.com.au". Below are both VB and user generated posts.
11. The site contains numerous posts by VB and users of the site. Relevant posts highlighted in the complaint are described following:
 - (a) 14 January 2011 (VB) - "It's nearly 5pm – time to crack the weekend's first VB" followed by a number of user-generated posts including "What's this 5pm crap. Cracked my first one hours ago", "lol your 6 hours late", "its never too early ern!", "Started already", "FUCK THAT I cracked my first 4 hours ago haha", "And actually beer o'clock is when the pub opens isn't it?", "I do it every day", "5pm, pfft, I cracked my first at 5 am", "On the 8th already", "I cracked my first vb 10 hours ago lol. Bring it on...."
 - (b) 25 January 2011 (VB) – "Besides VB, what's the next essential needed for a great Australia Day BBQ" followed by a number of user-generated posts including "Meat and bongs", "A beer bong", "Vb vb and more vb"

mmm mother's milk", "More VB", "Cocaine & strippers", "Another vb!", "More vb", "Extra vb as to much is never enough", "More V.B".

- (c) 15 February 2011 (VB) - "Could this be every man's dream job? VB's brewmasters get to taste each batch of VB six times before it goes out to you" followed by a number of user-generated posts including "As you can see from my police record im highly experienced look 4wd 2 da interview!lmfao", "Hook it to my veins!!!!!!!!!"
- (d) 23 September 2011 (VB) - "What are your plans for preliminary final weekend? Hope VB's involved", followed by a number of user-generated posts including "Get pissed with the fam, bottle my cousin!", "Drink a shit load & back the Mighty Storm".
- (e) 30 September 2011 (VB) - "Two massive grand finals in two days. Has there ever been a better reason to enjoy a few cold VBs than this?" followed by a number of user-generated posts including "A few VB????? More like A LOT OF VBs:)"

The Complaint

12. The complainant argues that:

- (a) the Facebook pages are openly accessible to Facebook users under the age of 18, who can view the content, 'Like' the pages so that any content is pushed to their news feeds, comment and post content;
- (b) content, including that produced by fans, that is in breach of regulatory codes should be moderated and removed;
- (c) a number of posts in response to a post by VB on 25 January 2011 celebrate excessive alcohol consumption;
- (d) a number of posts in response to a post by VB on 15 February 2011 celebrate irresponsible and excessive alcohol consumption and a direct association between consumption of alcohol and unlawful behaviour;
- (e) a post by VB on 14 January 2011 and a number of posts in response to it encourage and promote excessive alcohol consumption;
- (f) a number of posts in response to a post by VB on 23 September 2011 encourage and promote excessive alcohol consumption;
- (g) a number of posts breach the AANA Code of Ethics.

The Code

13. The ABAC provides 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;
- ii) must not encourage under-age drinking;
- iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
- d) 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

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel on 2 July 2012 with a lengthy response. The response is attached as "Annexure A" to this determination.

The Panel's View

15. This complaint raises both substantive and procedural issues which will be dealt with in turn.

Are the Facebook pages "advertisements for alcohol beverages" within the meaning of the ABAC?

16. The Advertiser contends that the VB Facebook page should not be considered to be "alcohol beverage advertising" within the meaning of the ABAC Scheme. This raises a fundamental threshold issue as to whether the Advertiser is obliged to meet the ABAC Standards in how its Facebook operates. This is because the ABAC is not all encompassing in its application to activity which might be regarded as marketing and promotion of alcohol products. Rather the ABAC applies to a particular type of marketing, namely advertising.
17. The ABAC Scheme came into operation in 1998 and was based upon an earlier Code of Practice and public complaints system. It is evident that the Scheme was designed to create a Code of Practice to govern the dominant form of alcohol marketing of the period, namely advertising via "traditional" mediums of TV, radio, print and outdoor sites, such as billboards. At the time of the Scheme's creation, the internet as it currently operates and social media such as, Facebook simply did not exist.
18. In 2004 the Scheme was extended to capture advertising via the internet but this extension still did not anticipate social media. Increasingly, however the Panel has been required to consider complaints which have raised social media and the role it plays within the promotion of alcohol brands by alcohol beverage companies.

19. The advertiser argues that its Facebook page should not be considered to be advertising of the kind that the ABAC Scheme was design to apply. In making this argument several observations are made such as:
- Social media is dynamic, informal and allows people to subscribe to communities of interest;
 - It is conversational in tone and content and reflects diversity of language and views expressed;
 - The interactive and “real time” nature of the medium makes it appealing to marketers of products but also makes it very challenging to control;
 - The users of social media are to a larger extent “self regulating” in that only people wanting to engage in the virtual conversation take part. In this context, it should be noted that the conversation is not broadcast more widely.
20. These observations can be accepted as can be the conclusion that social media is not of the same character as traditional broadcast media which the ABAC Scheme was designed in mind. It does not follow however, that the ABAC Standards do not apply to alcohol advertising via social media such as a Facebook page. The answer to this question rests on whether the page can be fairly be regarded to be “alcohol beverage advertising” for ABAC Scheme purposes.
21. The ABAC does not define the term “advertising”. Rather the Code provides in its preamble that the industry sponsors of the Scheme are committed to the goal of “all advertisements for alcohol beverages” complying with the spirit and intent of this Code. “Internet advertisements” are defined in the Code as “internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia and to banner advertising of such products on third party sites”.
22. This can be contrasted with the AANA Code of Ethics which defines “advertising or marketing communications” as meaning “any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of advertiser or marketer, and
- Over which the advertiser or marketer has a reasonable degree of control and;
 - That draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct but does not include excluded advertising or marketing communications”.
23. The ASB which consider complaints under the Code of Ethics, has recently concluded that an alcohol company’s Facebook page falls within this definition noting:
- The advertiser has a reasonable degree of control over the site;

- The site draws attention of a segment of the public in a manner calculated to promote the product and;
- User generated as well as the content generated by the page creator itself fell within the definition and is required to meet the AANA Code of Ethics Standards.

A recent decision of the Federal Court as well as observations from an ACCC Commissioner lend weight to the conclusion that a Facebook page is “an advertisement” and that the scope of the advertisement includes user generated content.

24. The Panel first considered whether a Facebook page was an advertisement for the purpose of the ABAC Scheme in its determination 38/09 dated 11 May 2009. After considering the overseas experience and the spirit and intent of the ABAC Scheme as well as the actual characteristics of the Facebook page, the Panel concluded that the particular Facebook page referred in that Determination was captured by the ABAC Scheme.
25. The Panel believes that the same conclusion is to be reached in relation to the advertisers Facebook page. The page contains the product name, product logo and photographs of the products. These characteristics are common to advertising and would be recognised as such. Further it is clear that the advertiser has control over its Facebook page even though the principal concerns expressed by the complainant arise from users of the site and not through posts made by the advertiser itself.
26. While it is concluded that the Facebook page is “advertising” for the purposes of the ABAC Scheme, the Panel non-the-less does acknowledge the difficulties of applying a Scheme designed for a very different type of advertising to the medium of social media. Many of the points raised by the advertiser have also been recognised in the past by the Panel itself. This includes the suggestion that it is timely for the Management Committee and the sponsors of the ABAC Scheme to conduct a holistic review of the interaction of social media with the ABAC and whether this form of marketing and advertising should be governed within the ABAC Scheme or through some other mechanism. It is noted in passing that the Management Committee of the Scheme has indicated that such a review will be undertaken in the near future.

Substantive issues

27. The Advertiser argues that the User Comments must be considered in terms of the Preamble to the Code, namely “its probable impact on a reasonable person within the class to whom the advertisement or product material is directed and other persons to whom the advertisement or product material may be communicated, and taking its content as a whole”. In particular:
 - (a) The VB Facebook page can only be accessed by persons registered as over 18 years of age and does not appear on pages of people registered as 17 and under via news feeds.

- (b) Those who visit the page are actively seeking it out and can opt out at any time if it is not to their liking, unlike more traditional forms of advertising a consumer is required to take an active step (ie searching for VB on facebook) to be exposed to the VB page. Therefore the VB page will most likely only ever be seen by consumers who are already familiar with the VB product and who are likely to be familiar with the tongue in cheek, self deprecating and ironic tone by which it is marketed. They will view the User Comments as “throw-away lines”.
28. The Panel must consider the advertisement in context and in considering probable impact must consider impact not only on the class of persons to whom the advertisement is directed but also other persons to whom the advertisement “may be communicated”. The Panel accepts that the age settings applying to Facebook, if followed would result in an over 18 years old audience to the page. It is noted however, that a false age can be used for an underage person to access sites of this type. Likewise the Panel cannot assume that it will only be seen by consumers familiar with the product. It may be accessed by any Facebook users registered as over 18 years of age which is a broad cross-section of the community.
29. The Panel will consider each provision of the ABAC that the complaint relates to in turn.

Section (a) (i) (iii)

30. The complaint suggests that the advertisement is in breach of Section (a)(i) and (iii) of the Code by failing to present a mature, balanced and responsible approach to the consumption of alcohol and promoting offensive behaviour and/or encouraging and promoting excessive consumption, misuse or abuse of alcohol by:
- (a) Comments made in response to a post by VB on 25 January 2011 “Besides VB, what’s the next essential needed for a great Australia Day BBQ”, in particular:
- Meat and bongs;
 - A beer bong;
 - Vb vb and more vb mmm mother’s milk;
 - More VB;
 - Cocaine & strippers;
 - Another vb!;
 - More vb
 - Extra vb as to much is never enough;
 - More V.B

- (b) Comments made in response to a post by VB on 15 February 2011 “Could this be every man’s dream job? VB’s brewmasters get to taste each batch of VB six times before it goes out to you”, in particular:
 - As you can see from my police record im highly experienced look 4wd 2 da interview!!mfao;
 - Hook it to my veins!!!!!!!
- (c) A post by VB on 14 January 2011 “It’s nearly 5pm – time to crack the weekend’s first VB” (implying and encouraging the consumption of the first of many units of the product in a culture where weekends are characterised by alcohol consumption) and comments in response to that post, in particular:
 - What’s this 5pm crap. Cracked my first one hours ago;
 - lol your 6 hours late;
 - its never too early ern!
 - Started already;
 - FUCK THAT I cracked my first 4 hours ago haha;
 - And actually beer o’clock is when the pub opens isn’t it?
 - I do it every day;
 - 5pm, pfft, I cracked my first at 5 am;
 - On the 8th already;
 - I cracked my first vb 10 hours ago lol. Bring it on....
- (d) Comments made in response to a post by VB on 23 September 2011 “What are your plans for preliminary final weekend? Hope VB’s involved”, in particular:
 - Get pissed with the fam, bottle my cousin!
 - Drink a shit load & back the Mighty Storm;
- (e) Comments made in response to a post by VB on 30 September 2011 “Two massive grand finals in two days. Has there ever been a better reason to enjoy a few cold VBs than this?”, in particular:
 - A few VB????? More like A LOT OF VBs:)

31. The Advertiser argues that the comments should be considered in context of their audience and as such will be seen as light-hearted and not intended to be taken literally for the reasons set out in paragraph 25 above and also by reason of the use of

expressions such as “lol” (laugh out loud), “haha” and “pfft”. Further, the Advertiser argues that the Brand Post referred to in paragraph (c) above contains no express or implied encouragement to drink immoderately.

32. The Panel does not believe that the posts from the advertiser read alone are in breach of Section (a) (i) (iii) of the Code. However, the user generated content read in conjunction with the posts from the advertiser do suggest that excessive consumption of alcohol is acceptable and is encouraged. Accordingly, this ABAC standard has been breached by the webpage at the time the complaint was made.

Section (a)(ii)(b)

33. The complaint suggests the advertisement is in breach of Section (a)(ii) of the Code by encouraging underage drinking by reason that the Facebook page is openly accessible to Facebook users under the age of 18 who are able to view the content, comment, post content and also ‘Like’ the pages so that any content posted is pushed to their news feeds.
34. This issue is one of placement of the advertisement, rather than the actual content of the advertisement. The ABAC is principally concerned with the content of an ad and only indirectly refers to placement by reference in the ABAC preamble to assessments to conformity of an advertisement with the ABAC to be undertaken “in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated”. The ABAC does not state alcohol ads should not be broadcast at particular times, or placed in particular styles of media. Accordingly, the Facebook page is not in breach of this Section of the Code, merely because it can be accessed by persons under 18 and who falsely state their date of birth.

Section (d)

35. The complaint suggests the advertisement is in breach of Section (d) of the Code by depicting a direct association between the consumption of alcohol beverages and the operation of a motor vehicle... or potentially hazardous activity by:
 - (f) A comment made in response to a post by VB on 15 February 2011 “Could this be every man’s dream job? VB’s brewmasters get to taste each batch of VB six times before it goes out to you”, namely:
 - As you can see from my police record im highly experienced look 4wd 2 da interview!!mfao;
36. The Panel has considered this post and does not believe that it is a breach of section (d) of the Code as it is not clear what type of behaviour lead to the police record and it is a long bow to draw to find this comment depicts a direct association between the consumption of alcohol beverages and the operation of a motor vehicle.
37. The complaint is upheld in part, for the reasons outlined above.

Jayne Taylor
Executive Officer
ABAC Adjudication Panel

Monday 2 July 2012

Dear Ms Taylor

Thank you for your correspondence in relation to the single complaint (58/12) about the VB Facebook page (VB page), which raises concerns primarily about a number of User Comments. The VB page has been live since July 2009 and is managed by one of our agencies in conjunction with members of the Carlton and United Breweries (CUB) marketing team.

Questions raised by your letter

The following questions have been raised:

1. Please confirm that the Facebook fan page was produced by or on behalf of Fosters Group.
2. Does the advertisement breach Section (a)(i) and (iii) of the Code by failing to present a mature, balanced and responsible approach to the consumption of alcohol and promoting offensive behaviour and/or encouraging and promoting excessive consumption, misuse or abuse of alcohol by:
 - a. Comments made in response to a post by VB on 25 January 2011 "Besides VB, what's the next essential needed for a great Australia Day BBQ".
 - b. Comments made in response to a post by VB on 15 February 2011 "Could this be every man's dream job? VB's brewmasters get to taste each batch of VB six times before it goes out to you".
 - c. A post by VB on 14 January 2011 "It's nearly 5pm – time to crack the weekend's first VB" (implying and encouraging the consumption of the first of many units of the product in a culture where weekends are characterised by alcohol consumption) and comments in response to that post.
 - d. Comments made in response to a post by VB on 23 September 2011 "What are your plans for preliminary final weekend? Hope VB's involved"
 - e. Comments made in response to a post by VB on 30 September 2011 "Two massive grand finals in two days. Has there ever been a better reason to enjoy a few cold VBs than this?".

3. Does the advertisement breach Section (a)(ii) of the Code by encouraging underage drinking by reason that the Facebook page is openly accessible to Facebook users under the age of 18 who are able to view the content, comment, post content and also 'Like' the pages so that any content posted is pushed to their news feeds.

4. Does the advertisement breach Section (d) of the Code by depicting a direct association between the consumption of alcohol beverages and the operation of a motor vehicle... or potentially hazardous activity by:

a. A comment made in response to a post by VB on 15 February 2011 "Could this be every man's dream job? VB's brewmasters get to taste each batch of VB six times before it goes out to you".

Response to questions raised by your letter

1. Yes, the Facebook fan page was produced by or on behalf of CUB.
2. We do not propose to comment on each of the individual User Comments highlighted in your letter – our general remarks below (which include illustrative examples based on some of the individual User Comments) are intended to address your question 2.
3. No, the Facebook page is not accessible to Facebook users under the age of 18 and Facebook users under the age of 18 are not able to view the content, comment, post content or 'Like' the pages so that any content posted is pushed to their news feeds. See the discussion below.
4. No, it does not breach Section (d) of the Code by depicting a direct association between the consumption of alcohol beverages and the operation of a motor vehicle... or potentially hazardous activity by a User Comment made in response to a Brand Post by VB on 15 February 2011 "Could this be every man's dream job? VB's brewmasters get to taste each batch of VB six times before it goes out to you". We address this specific User Comment below.

The nature of social media

Before we address the questions raised we'd like to share our approach to the social media medium and how our brands participate. The nature of Facebook is that it is dynamic, informal, easy to use and a tool that allows people to subscribe to communities that are of interest to

them. As a medium its content is diverse in terms of the language and views expressed – it is like any conversation that people would engage in. It is this combination that makes it a compelling space for its users but equally the companies who participate. It's worth noting that the opportunity to engage continuously and directly with a group of highly engaged 'fans' is very appealing to brands. That said, those unique benefits can at times also make it a challenging space.

A brand's Facebook pages reflect the personality of the brand but largely the community who participates in discussions on those pages. For instance, whilst a brand may post a question or comment (Brand Post), the bulk of the posts that follow will then be generated by users (User Comments), who may then keep the conversation flowing by bouncing User Comments off each other. As a result of a single Brand Post there could be anywhere from 0 to 100s of User Comments. The User Comments will vary greatly depending on their age, interests, beliefs and education – just as you would expect if you were privy to a conversation say at a restaurant or pub in Glen Waverley or Subiaco or Wallsend or Kirribilli. If the Facebook 'conversation' is not to your liking you can either attempt to influence its direction through your own User Comments or not view the page. In reality if you stay and participate it's likely you have something in common with the community and/or you enjoy the types of discussions that take place.

Probable impact of VB Facebook page upon a reasonable person

The Preamble to the Alcohol Beverages Advertising (and Packaging) Code (the **Code**) states that "The conformity of an advertisement... with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement... is directed and other persons to whom the advertisement... may be communicated, and taking its content as a whole." To this end, given our comments above about social media, in relation to the complainant – we question whether they are a consumer genuinely participating in the pages given they have very deliberately searched 'archived' comments (clicking through repeatedly to find old User Comments no longer immediately visible) it would seem, in search of perceived breaches to the various advertising codes. As such we'd argue the complainant does not represent the views of a reasonable person and the complaint is not an indication of the probable impact of the VB page upon a reasonable person. Further, for the reasons set out below, these pages are unlikely to be communicated to persons who do not actively seek them out as the complainant has presumably done.

The User Comments are not “Advertisements for alcohol beverages”

In relation to the specifics of the complaint, first up, we do not believe the User Comments constitute advertisements. The Alcohol Beverages Advertising (and Packaging) Code (the Code) applies to “Advertisements for alcohol beverages”. The User Comments on the VB Facebook fan page (the VB Page) fall outside the scope of the Code as they are not part of (and would not be understood by the relevant audience as part of) any advertisement for an alcohol beverage. In context, the User Comments will be understood as spontaneous comments that do not necessarily have anything to do with VB beer or if they do, may or may not be favourable to VB. While many User Comments do mention VB beer very few, if any, could be understood as advertising VB, even on the broadest possible definition of “advertisement” – at most they could be understood as a statement of personal preference by an individual, to the effect that they enjoy (or in some cases dislike) VB. It is not unusual for those who ‘like us’ to express a preference for competitor product via their User Comments.

The Code indicates that it applies to Internet sites primarily intended for advertising developed by or for producers of alcohol products available in Australia. We submit that it is implicit in the Code that the Code only applies to an Internet site that promotes an alcohol product, to the extent that the producer of the product creates or signs off on the content of the site. For the reasons outlined above, User Comments should not be understood as falling within the ambit of the Code as they are not an “advertisement”.

We submit that the Code must be read with recognition of the commercial realities that apply in the marketplace. It would be unduly onerous on alcohol beverage producers to interpret the Code as including User Comments on Facebook pages as falling within the scope of “Advertisements for alcohol beverages”. The only ways for a producer to be certain that no inappropriate User Comments appear on a Facebook page for its product would be either not to have that Facebook page at all (which is commercially unsustainable given the importance of social media in marketing in 2012 and its likely increased importance in future), or to review every User Comment before allowing it to appear on the page. A requirement for pre-moderation of every User Comment would be contrary to the spirit of social media and would cause users to become disengaged from the page, i.e. they are unlikely to tolerate the inevitable delay between their submitting a User Comment and it appearing on the site, which runs contrary to the sense of immediacy and spontaneity that users expect from a Facebook page. Further it would require an unreasonably high level of resourcing by the producer – effectively, moderation staff would need to be engaged 24/7, every day of the year, to review every User Comment as quickly as possible after it is submitted. This is commercially unrealistic.

The audience and context of the VB Facebook page

For the reasons outlined above, we submit that the Code does not apply to the User Comments on the VB Page. However, if it is determined that the Code does apply the words we have quoted above from the Preamble to the Code, about the need to consider an advertisement in terms of its probable impact on a reasonable person within the class to whom the material is directed, states that: The conformity of an advertisement... with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement or product material is directed and other persons to whom the advertisement or product material may be communicated, and taking its content as a whole. On this basis make it clear that the context of the content of the VB Page (in particular the User Comments) is extremely important.

Contrary to the assertions in the complaint, the VB Page can only be accessed by persons over 18 years of age. This age restriction has been set up through Facebook. In relation to CUB's brand Facebook sites, there are filters in place that allows access only to those of drinking age in their relevant country to view alcohol brand pages. We can also confirm that content from the VB Page does not appear on those pages for people who are registered as 17 and under via news feeds (or under the relevant drinking age required by their respective country). A member of the Melbourne Facebook office supplied the following information in support of this: "Yes I can confirm that if you have settings in place around alcohol that people under the legal drinking age cannot access the page and they will also not see organic stories from friends that interact with the page who are of legal age." The latter ensures the VB Page is compliant with section Part 1(a) (ii) of the Code. In addition, those who like us or even if they simply visit the pages, are actively seeking us out. Unlike traditional advertising they either request to be exposed to material or they are choosing to be in the clearly branded space. As such at any time they are able to opt out if it is not to their liking.

The tone of the VB Page is tongue in cheek and ironic. This is consistent with the overall tone of Facebook and much of the Internet generally. It is also the tone of VB marketing in recent years (see for example the VB website at <http://www.vb.com.au/>) and of mainstream beer marketing in Australia. It is a tone commonly used and understood by the demographic principally targeted by VB (i.e. males aged 35 plus) and reached by the VB Page (see Appendix A). Unlike more traditional forms of advertising, a consumer is required to take an active step (i.e. searching for the VB Page on Facebook) in order to be exposed to the VB Page. Therefore the VB Page will most likely only ever be seen by consumers who are already familiar with the VB product and who are likely to be familiar with the tongue in cheek, self deprecating and ironic tone by which

it is marketed. In fact, to be inspired to search for the VB page it is likely that the consumer already relates to (and engages with) the marketing style of VB.

In this context, readers of the VB Page will view the User Comments (and to a lesser degree, the VB Brand Posts) as “throw-away lines” i.e. spontaneous contributions that are not well thought through (in many cases they are not even grammatical), that are expressed in the vernacular and that are not to be taken seriously. For example, a User Comment on the VB Page such as *“extra VB as to much is never enough”* (in response to a VB Brand Post asking *“Besides VB, what’s the next essential needed for a great Australia Day BBQ?”*) should not be understood, in context, as encouraging excessive consumption or abuse of alcohol or depicting the irresponsible or immoderate consumption of alcohol beverages (part 1(a) of the Code) or encouraging consumption in excess of or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC (part 1(g) of the Code). This is clearly a light-hearted User Comment, not intended to be taken literally.

The VB Brand Post on the VB Page stating *“It’s nearly 5pm – time to crack the weekend’s first VB”* does not encourage excessive consumption or abuse of alcohol or depict the irresponsible or immoderate consumption of alcohol beverages (part 1(a) of the Code) or encourage consumption in excess of or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC (part 1(g) of the Code). There is no express or implied encouragement in this Brand Post to drink immoderately – for example a person could responsibly drink one VB at 5pm on a Friday, another VB on the Saturday and another on the Sunday. Further, the User Comments in response to that VB Brand Post listed in your letter are clearly intended to be humorous and ironic. This is made abundantly clear by the use of expressions such as *“lol”* (“laugh out loud”), *“haha”* and *“pfft”* (a dismissive sound) amongst the User Posts. Whilst we have addressed the concern regarding the only VB Brand Post that was referenced by the complainant, we’d like to highlight that we believe all the VB Brand Posts comply with the Code.

In relation to the User Comment you reference in your letter - *“As u can see from my police record im highly experienced look 4ward 2 da interview!!mfao”* (in response to a VB Brand Post about brewing being every man’s dream job), this would not be understood by the relevant audience as depicting any direct association between the consumption of alcohol beverages and the operation of a motor vehicle or the engagement in any potentially hazardous activity (part 1(d) of the Code). There is no mention at all in this User Comment of the operation of a motor vehicle or the engagement in any potentially hazardous activity. A police record may have been established on any number of grounds, which the User Comment does not elaborate on. In any event this is clearly an ironic User Comment, intended to be humorous because it is intentionally outrageous. The final acronym, meaning “Laughing my f-ing arse off”, puts it beyond doubt that

the User Comment is intended to be ironic and not to be taken at face value. It's worth remembering that the User Comments highlighted by the complainant are being viewed here in isolation but in reality represent a tiny number of the total number of User Comments generated by our fans/people who have liked us (currently 39,874 as at 19.12 Thursday 28 June 2012) over a number of years.

The management of our brand Facebook pages continues to evolve and improve and we invest time and money to do this. We have recently consolidated the number of agencies who manage our Facebook sites and a number of new initiatives are being developed. We now have a range of strict mandates in place including the following: house rules, twice daily monitoring of User Posts (including removal of inappropriate posts), language filters, age restrictions and a "way of working" document for each brand that outlines no go topics, watchouts and a response matrix.

Whilst we do not consider the User Comments on the VB Page to be advertisements (see our views above) we have nevertheless adopted a procedure for moderating the pages as per our house rules. Some of the content may not be to the taste of some members of the broader public however it is clearly to the taste of our fans. Whilst we choose to enforce house rules, high levels of censorship are contentious particularly when people are seeking us out and choosing to be part of a community with its unique traits and style. That said, we acknowledge some of the User Comments identified in the complaint arguably fall foul of our house rules (without necessarily breaching the Code) in which case and our agency that was retained to monitor this space should have removed a number of them. Out of an abundance of caution and willingness to support the process all the User Comments highlighted in the complaint have been removed from the VB Page (although this is not an admission by CUB that they breach the Code).

Need for guidance from the ABAC management committee

The Code was developed to apply to traditional forms of media such as print, radio, cinema and television. Since that time, new ways of interacting with consumers – for instance social media - have emerged. We do not believe that the Code as it stands sits easily with these new mediums and a robust and appropriate set of guidelines should be developed and issued by the ABAC management committee, taking into account our comments above. Other signatories no doubt face very similar issues to those faced by CUB in relation to this complaint.

If you require any more information please do not hesitate to contact me on 03 8626 3626.

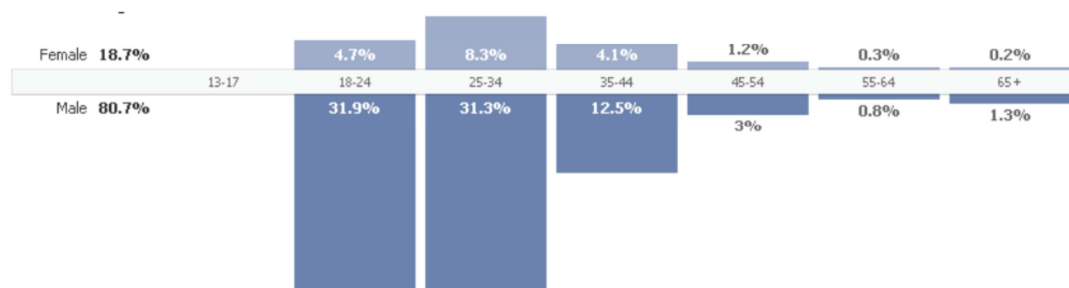
Kind regards

Felicity Watson

On behalf of the VB team

Carlton and United Breweries

APPENDIX A



The age breakdown of those who LIKE VB's Facebook page (and share their actual age) as at 24th June 2012.

Source: Facebook Insights.