

ABAC

ABAC Complaints Panel Determination No: 9-12 & 32/13

Complaints by Jenni Wright, Aaron Shepherd & a confidential complainant
Product: VB
Advertiser: Carlton & United Brewers

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Louisa Jorm – Member

18 February 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns three advertisements for VB appearing on free to air television, foxtel and youtube produced on behalf of Carlton & United Brewers (“the Advertiser”) and arises from three complaints received on 7 January and 1 February 2013.

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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by ABAC on 7 January and 1 February 2013.
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 complaints have been determined within the 30 day timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the advertisements (11892).

The Advertisement

9. The first advertisement is named "Sweat" and includes a voiceover (set out below in italics and brackets) accompanying the following sequence of scenes. Each scene has the sounds of machinery or tools being used.
 - a close up shot of a man starting a lawnmower (*It's a funny thing, sweat.*);
 - a man sitting in a dark space working with a length of pipe and using his T-shirt to wipe the sweat off his face, then a man in a hard hat working with some machinery (*They tell us not to do it.*)
 - a man standing next to a lawnmower (*But when you've worked one up,*)
 - a man wearing safety goggles raising a garage door (*you wear it like a badge.*)
 - a pickaxe being moved, a mallet being struck into a concrete beam and an axe in a stump of wood (*None of that artificial, airy fairy sweat.*)
 - a man wearing safety clothing sitting with his hands between his legs and his hard hat falling off his head (*Real sweat.*)

- a close up of a man's face with sweat dripping down his face as he tightly shuts his eyes (*Sting your eyes sweat.*)
- a close up of a man's face with two screws held between his mouth as a drop of sweat falls from his face (*Salty in your mouth sweat.*)
- a man mowing a lawn as the clippings fly into his feet and he wipes his forehead with his arm (*The stuff that gets in your socks. That turns your forearm into a towel.*)

VB theme starts

- a shovel being pushed into dirt (*Mixed with a bit of dirt*)
- a man using a piece of machinery and wiping his forehead with his arm (*and sawdust*)
- a man walking through a construction site past a vehicle and equipment while men are working (*and stuck to your back.*)
- Two men sitting with their feet in a trench opening cans of VB with a spade in the foreground and then a close up of a man drinking from a can of VB (*Yep, there's nothing wrong with a bit of sweat.*)
- The advertisement concludes with the text "For a hard earned thirst" and the 18+ logo with the text "For people over the age of 18 only" superimposed on the final scene.

10. The second advertisement is named "Hands" and includes a voiceover (set out below in italics and brackets) accompanying the following sequence of scenes. Each scene has the sounds of machinery or tools being used.

- a finger tapping on a piece of wood covered in sawdust (*There are two things that define a man.*);
- a paramedic lifting a person on a stretcher (*His left hand,*)
- a man on a construction site pulling a hammer out of its holster (*and his right.*)
- a man using pliers to remove a splinter from a finger (*Take a look at yours.*)
- a man holding a piece of cloth to his finger as blood seeps through (*Every scar is a memory.*)
- a man righting in pen on his hand (*Each callous,*)
- a man connecting a trailer (*a job done.*)

- a man working on a furniture leg on a lathe (*Because when its hand made,*)
- an overweight woman sitting down on a timber chair (*its made well.*)
- an axe being sharpened (*Hand cut,*)
- a man working on a car (*hand polished,*)
- a man putting a seat on a bicycle (*then handed down.*)

VB theme starts

- Several men leveling a cement slab (*Be hands on.*)
- Dirty hands being washed in a sink (*Get 'em dirty.*)
- Three men standing around a leveled slab one with his foot on the edge as one hands the others and himself a stubby of VB from an esky and they open and lift their beers then a close up of a man drinking from a stubby of VB (*Yep, you can tell a lot about a man by his hands.*)
- The advertisement concludes with the text “For a hard earned thirst” and the 18+ logo with the text “For people over the age of 18 only” superimposed on the final scene.

11. The third advertisement is named “Shirt” and includes a voiceover (set out below in italics and brackets) accompanying the following sequence of scenes. Each scene has the sounds of machinery or tools being used.

- a man rolling up a sleeve of his shirt (*There's a lot to be said*);
- a shirt sleeve being ironed (*about a man's shirt. There's your going out shirt.*)
- a tumble dryer operating (*Your work shirt.*)
- a man putting work boots on while sitting on a door step (*And then there's your getting stuff done shirt.*)
- a man lifting a wheelbarrow of broken bricks and three men lifting a timber frame (*It's the weekend uniform of the doer.*)
- a flooded area being swept up (*When you put it on, you're ready for business.*)
- a man climbing under a barbed wire fence and tearing his shirt on a barb (*Tattered and torn,*)
- a man chainsawing timber (*and like the rings on a tree,*)

- a man using his shirt as a cloth (*layered with history.*)
- VB theme starts
- a man using a pressure hose (*Never washed.*)
- a man sanding a ceiling (*Never ironed.*)
- a man wearing no shirt lifting a ladder (*And when it'll no longer stay on your back,*)
- a man tearing a shirt and a portion of the same shirt hanging from a beam on a vehicle (*it's torn into squares*)
- Several men leveling a cement slab
- Two men standing around a barbecue in a backyard holding stubbies of VB as one uses his shirt to open his stubby and then a close up of the man drinking from his stubby of VB (*for one last job.*)
- The advertisement concludes with the text "For a hard earned thirst" and the 18+ logo with the text "For people over the age of 18 only" being superimposed on the final scene.

The Complaint

12. The first complainant is concerned by the VB "sweat" ad by reason that:
 - zero alcohol and drugs in the workplace is to be encouraged due to occupational health and safety concerns;
 - many workplaces have introduced mandatory testing because of the issue of alcohol consumption at lunch time; and
 - the workers are shown drinking on the worksite leaving the impression that it is okay to drink on the job.
13. The second complainant is concerned by all three ads by reason that:
 - people are shown drinking at worksites;
 - it is encouraging workers to drink on the job and this is against all workcover guidelines and is a bad image to project especially to kids who have just left school to work; and
 - in the case of the "sweat" ad:
 - workmen on site are shown drinking beer in a plumbing trench when it is not safe to drink alcohol on any worksite especially in a trench;
 - a bobcat is shown and could imply it is being operated;

- the ad in no way demonstrates that the work day is over, they just sit in an open trench (contrary to best practice and workcover) and drink beer.

14. The third complainant is concerned by the advertisements generally by reason that:

- men working in construction are shown using and surrounded by various tools and machines and then are shown drinking beer; and
- consumption of alcohol is not permitted in the workplace and does not portray the correct image.

The Code

15. The ABAC provides that advertisements for alcohol beverages must:

- (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 practise;

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel on 25 January 2013. The principal points made by the Advertiser are:

- a. VB is running a national campaign across various media based on a theme of "For a hard earned thirst". The first campaign brings to life the Aussie tradition of working with your hands/working up a sweat and knocking off with a VB. It's fair to say that enjoying a beer after a hard day's work is an ingrained part of our culture. VB has been saluting this tradition for decades through the brand's now iconic advertisements. The television campaign has three advertisements that celebrate hardworking capable Aussie blokes. Also running is an extensive radio campaign based on the concept of "Knock off drinks".
- b. In terms of the VB "Sweat advertisement (30 seconds) it is a compilation of images of Aussie blokes doing every day activities ranging from mowing at home to chopping wood to digging dirt with a shovel to a building site. All images are standalone – that is they do not tell a sequential story with one image setting the scene for the next. It is best described as a compilation of different images accompanied by a voiceover that pays tribute to 'sweat'. "Hands" (30 seconds) is similar in that it also shows a range of images including writing measurements on a hand to making a chair to working on a car to laying cement for a shed. "Shirt" (30 seconds) shows images that range from ironing/washing a shirt to pushing a wheelbarrow to painting to cleaning up after a flood. Both "Hands" and "Shirt"

also have a voiceover. The voiceover, heard throughout each advertisement, never references alcohol/alcohol consumption but pays tribute to the idea of working up a sweat, the getting stuff done shirt and the value of hand made (all Australian traditions). The majority of scenes in all three TV advertisements have no alcohol consumption with only the final frames depicting this. The work is done and so the blokes enjoy the reward of a beer.

- c. I want to be very clear that our approach with the three television advertisements was not to show drinking whilst on the job at a building site. We do not condone this kind of alcohol consumption and it was never our intention for the television advertisement to be perceived in this way. Alcohol consumption is extremely limited in all three TV advertisements and only occurs in the last few frames. In each case, the drinking takes place at a backyard BBQ (“Shirt”) and at a private residence post the completion of work on a DIY project (“Sweat” and “Hands”). For your information a Safety Supervisor was on set to ensure that all scenes were realistic but also followed Occupational Health and Safety (OH&S) guidelines where relevant. We do not condone alcohol consumption whilst on the job at a building site and we are disappointed the TV commercial has been perceived in this way by the two complainants. We recognise the importance of a considered approach to alcohol consumption in the workplace and we have our own CUB Alcohol Policy in relation to the consumption of alcohol at our various sites.
- d. The bulk of the advertisements show capable Aussie blokes doing everyday jobs/activities under completely safe conditions and without any alcohol/alcohol consumption. The reasonable person/viewer is savvy and would get that we are celebrating the work that blokes do and that once they have finished working/at the end of the day they enjoy a VB to reward a hard earned thirst. This is what VB is all about and has been for decades. I do not believe a reasonable person would interpret that the advertisements in their entirety are advocating people work and drink simultaneously. Simply because we have images of people doing every day jobs/activities in an alcohol advertisement. Further to this, none of the ‘talent’ appears as if under the influence of alcohol and where there is alcohol consumption it is limited to the final frames in each television advertisement.
- e. There is no consumption of alcohol on work sites depicted in the three television advertisements. In each case, the drinking takes place at a backyard BBQ (“Shirt”) and in a private residence post the completion of work in a DIY project (“Sweat” and “Hands”). Alcohol consumption is limited to only the final frames of each television advertisement. Again, in each advertisement the blokes are simply enjoying a beer after a hard day’s work.
- f. “Hands”, in the last few frames only, depicts blokes in the final stages of laying concrete (right size for a backyard shed) at a private residence (not a work site), two hands being washed and then (with work gloves off) cracking open a beer. The concrete job is clearly completed with the slab filled and smooth. The only thing left to do is wait for the concrete to set. At a minimum you’d leave this overnight. Tools are down (set against the wall). The three blokes enjoy a VB. And then the advertisement end. The advertisement does not show consumption before the ‘job’ being undertaken or during the laying of the concrete. The men

don't appear as if under the influence of alcohol either. When the job is done and then only, do the blokes enjoy a beer in their backyard.

- g. In "Sweat" the scene in question ("Trench") shows a private backyard you see a weatherboard house in the background. The father and son are dressed in civilian clothing and are sitting in a shallow trench (600mm deep). It's a home improvement/do it yourself (DIY) job. Tools are deliberately laid down in order to act as an indicator that work is finished. It's late afternoon (there is no sunlight). They have a beer in hand. Trench is the second last frame in the television advertisement. The next frame shows a close up of a VB can being consumed. The Trench scene is not a worksite. It's a couple of blokes who have completed work in their backyard and who are now 'admiring' their hard work and enjoying a quiet beer. We believe that showing blokes enjoying a beer after hard physical activity is reasonable (and a common practice amongst our target market) and that they don't need to leave their own backyard to do this. There was a reference to a bobcat/worksite in one of the complaints – I'll call that scene "Bobcat". This scene does show a building site. Bobcat and Trench represent different scenes – one a busy building site and the other a private residence with a home improvement/DIY project. To this end, Bobcat was shot at a different location (a building site that was in progress), on a different day and with different talent to the Trench scene (shot in the backyard of a private residence). Importantly in Bobcat, there is no alcohol consumption. In "Sweat" the trench scene is also at the end of the advertisement and this helps signify that the work is done. It's end of day (there is no sunlight) and tools are down and very deliberately in shot to show this. The advertisement then concludes. It might seem obvious to state but no---one at the end of either advertisement is working (when the drinking is happening) and given the advertisements end I don't believe it's feasible to extrapolate that they then go 'back' and start working – particularly given we don't show this. CUB takes its commitment to responsible marketing very seriously.
- h. This is a national high rotation campaign with two of the three television advertisements on air since November 2012 and the third on air from early January 2013. During this time we have received a total of three complaints and so whilst we respect the complainants' views we don't believe they are representative of the broader community. Overall we have been delighted by the response to this new VB campaign. The advertisements have genuinely resonated with consumers and we believe it's because they celebrate what Aussie blokes do day in day out (and will continue to do) and of course that long held pleasure of "For a hard earned thirst" – a quiet beer with your mates after a long day's work.

The Panel's View

17. The Panel has before it two complaints concerning three advertisements in the advertising campaign for VB, which has as its theme the slogan, "For a Hard Earned Thirst". Each of the advertisements shows a collection of scenes of men performing strenuous physical labour in a series of work related scenarios. These scenarios are sometimes set within a formal worksite, while others depict work around the home. As explained by the advertiser, the basic concept of the advertisements is that they

“celebrate hardworking, capable Aussie blokes” who enjoy a beer at the conclusion of their labours.

18. The complaints each raise essentially the same concern, namely that the advertisements expressly or implicitly condone the consumption of alcohol in conjunction with the performance of physical work in potentially dangerous settings. Specifically, the complainants identify:
 - That there are well recognised occupational health and safety standards which establish alcohol cannot be consumed during the performance of work, such as in construction or tasks which involve the operation of machinery.
 - Further, alcohol cannot be consumed during a work day (i.e. at a lunch break or at an afternoon tea break).
 - The advertisements offend this essential occupational health and safety requirement by showing or implying consumption on work sites during the work day.
19. Section (d) of the ABAC goes to advertising which associates alcohol use and the engagement in potentially dangerous activity. The section does not place a prohibition on advertisements associating alcohol and dangerous activities, such as driving a car, playing sport or using tools and equipment. Rather, the section states that an advertisement is not to portray certain things, namely:
 - the depiction of a **direct association** between:
 - the **consumption of alcohol**; and
 - the **operation of a motor vehicle** or the **engagement** in any potentially hazardous activity.
20. These standards are then further elaborated by section (d)(i) which states that any depiction of consumption in connection with the above activities must not be represented as having taken place before or during the activity in question and must in all cases portray safe practices.
21. The advertiser accepts that alcohol consumption and the performance of construction tasks or other labour involving tools and equipment is a dangerous mix. It states, “We do not condone this kind of alcohol consumption and it was never our intention for the television advertisement to be perceived in this way”. The test, however, is not the advertiser’s intention, but the impact of the advertisement on a reasonable person viewing the content of the advertisement as a whole.
22. The advertisements clearly portray physical and potentially dangerous activities. The advertisements also show alcohol being consumed. The question for the Panel is whether the consumption is represented as taking place before or during the engagement of the activity or after the activity has been completed. If it is concluded that consumption is occurring during the activities or that the activities may resume after the depiction of consumption then the advertisement will be in breach. If the

advertisement shows a clear 'ending' of the activity before consumption occurs, then it will not be contrary to the Code.

23. The complainants presumably believe that by placing alcohol consumption at one of the locations in which the labour has occurred (i.e. next to the freshly laid concrete or the open trench) as opposed to a remote location, such as a pub, indicates consumption is occurring during the performance of the activities. While the men may have stopped to drink the beer, they could easily return to work (e.g. the men are on lunch break or afternoon tea break). The advertiser contends that the advertisements clearly establish that work has finished for the day and that a reasonable viewer will interpret the advertisement and its overall context and theme as meaning the consumption of the beer follows the end of the work and is in effect a reward for hard work.
24. Turning to the advertisements individually, the Panel does not believe that the "Shirt" advertisement breaches section (d). In this advertisement, the consumption is clearly placed at the conclusion of any potential dangerous activity and remotely to the activities at the backyard BBQ.
25. The "Hands" advertisement places consumption occurring at the site of the laying of concrete. The job, however, is clearly finished as the slab is complete, and while the concrete is fresh, a reasonable viewer would believe the beer is provided as a reward at the end of the task. Hence, the Panel does not believe this advertisement breaches section (d).
26. The "Sweat" advertisement is more problematic. The scene depicting consumption has elements which might be taken as indicating alcohol use is occurring with the potentially dangerous activities and other elements which indicate work has finished for the day. Considering the advertisement as a whole, on balance the Panel has concluded that it does breach the section (d) standard. In reaching this conclusion, the Panel has noted:
 - The scene depicts a home construction site in which a length of pipe is being laid in an open trench. The advertisement establishes that the job involves the use of shovels and picks and using these tools is a 'potentially hazardous activity'. It is clear that the job of laying the pipe is not completed.
 - While the scene is set in the afternoon, this does not necessarily mean that all work has been completed for the day. For instance, the men's tools have been dropped nearby and not placed away and this may indicate the men might resume using the tools upon finishing the consumption of the product.
 - The advertisement as a whole consists of quite separate and independent scenes of different working environments, and not a single environment which might indicate that the final scene shows the end of the working day. Each work scene is self-contained and are not sequential with the common feature being hard work leading to a sweat, rather than showing the passage of time during a working day.

27. The complaints are dismissed in relation to the "Shirt" and "Hands" advertisements and upheld in relation to the "Sweat" advertisement.