



## ABAC Adjudication Panel Determination No. 27-29/16

**Product:** Pure Blonde  
**Company:** Carlton & United Breweries  
**Media:** Digital  
**Complainant:** Ms Bell & Mr Gurnett  
**Date of decision:** 1 March 2016  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital and television advertisements for Pure Blonde beer by Carlton & United Breweries (“the Company”) and arises from complaints received 29 January and 1 February 2016.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;
  - (b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
  4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
  5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
  6. The complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 29 January and 1 February 2016.
8. The Panel endeavour 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 this timeframe.

## Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for these marketing communications [143441].

## The Marketing Communications

### Television - wine

10. The advertisement opens with two women standing at a bar laughing and smiling together as one orders from the barman "Can I get a white wine and a Pure Blonde please". The barman places a glass in front of one of the women and begins pouring white wine from a bottle into the glass as the smiling women watch. Once the glass is full the top of the bar cracks and the glass drops down into the cracked surface. The woman being served the wine stops smiling and looks alarmed.
11. The other woman continues smiling as she is served a stubby of Pure Blonde and she picks up her stubby and walks further down the bar. She replaces her stubby onto the bar as she joins two men holding stubbies of Pure Blonde and the voiceover states "Pure Blonde now 50% less calories than wine" and the superimposed text next to the stubby states "Now 50% less calories than wine per ml".

### Television - beer

12. The advertisement opens with two men standing at a bar smiling together as one orders from the barman "Just a beer and a Pure Blonde". A stubby of beer is pushed down the bar to the first man and cracks the surface of the bar as it travels along it. A stubby of Pure Blonde is pushed along the bar to the second man and travels smoothly without cracking the bar.
13. The second man picks up his stubby and walks further down the bar. He replaces his stubby onto the bar as he joins two men holding stubbies of Pure Blonde and the voiceover and superimposed text states "Pure Blonde now 80% less carbs than regular beer".

### Internet - <https://www.pureblonde.com.au/product/pure-blonde-ultra-low-carb-lager>

14. The Company website page referred to in the complaint includes the headings "Products" and "Pure Blonde". On the left side of the page it includes changing images of a 355ml bottle of Pure Blonde, a 375ml can of Pure Blonde and the bottle and can together. On the right side of the page the following text is included:

#### **PURE BLONDE ULTRA LOW CARB LAGER**

A refreshing, full-flavoured lager, brewed using the finest ingredients. Pure

Blonde is brewed with no preservatives to deliver an easy-drinking, ultra low carb beer. Hersbrucker hops add a floral and herbal aroma balancing the light style of the beer.

## ULTRA LOW CARB

Pure Blonde is brewed longer to break down more natural sugars than usual, delivering a brew with 80% less carbohydrates than regular beer.

## LOWER CALORIE

With 50% less calories than wine per mL \* and 30% less calories than regular beer, Pure Blonde is loved for its pure, crisp taste.

\*50% less calories than wine per ml, based on average calorie content of the leading 100 Wine SKUs in Australia. IRI-Aztec wine data, MAT 31/01/15

## LOW GLUTEN

Although we make Pure Blonde with malted barley (which contains Gluten), our brewing process breaks down the Gluten. We have had Pure Blonde tested by professionals and the beer contains around 10 parts per million (10 PPM), which equates to 1mg per 100g. Pure Blonde is low in Gluten, but if you're not 100% sure then please seek professional advice.

## PRODUCT RANGE

355mL Bottle, 700mL Bottle, 375mL Can, Grab n Go (12 Packs in BWS only)

15. Below this is a section entitled "Tasting Notes" that is not relevant to the complaint.

### **The Complaints**

16. The complainants object to the marketing for the following reasons:
  - a) It is misleading as it gives the impression that a single bottle of Pure Blonde has 50% less calories than a glass of wine using data that is not publicly available and therefore cannot be checked but which the complainants did not believe could be accurate given their calculations with publicly available data;
  - b) It is misleading as although the comparison is stated in written material to be on a per ml basis the visual footage of a single glass of wine causing the bar to crack, together with the voiceover stating "Pure Blonde: now 50% less calories than wine" creates the impression that a single bottle of Pure Blonde has 50% less calories than a single glass of wine. Consumers would not consider in ml as they would be comparing the relevant portion sizes.

- c) Further, one ad states that Pure Blonde has 80% less carbs than normal beer, showing the normal beer crack the table while the Pure Blonde does not, when carbs are not the issue in weight gain, rather the alcohol /calorie content is and the comparisons of reductions in percentages confuses consumers.
- d) Seeks to exploit the vulnerabilities of people who might be trying to lose weight but want to continue drinking beer;
- e) Suggests the consumption of an alcohol beverage offers a therapeutic benefit by virtue of the fact that it has less calories compared to wine.

### **The ABAC Code**

- 17. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

### **The Company's Response**

- 18. The Company responded to the complaints by letter dated 9 February 2016. The principal points made by the Company were:
  - a) The complaint relates to Pure Blonde Ultra Low Carb television commercial (TVC) aired on Foxtel, Network Ten's online streaming and playback platform 'tenplay' and on the Pure Blonde website. The advertisement is part of an advertising campaign to increase consumer awareness of the revised Pure Blonde beverage, which includes fewer carbohydrates and lower calorie content than the original product.
  - b) The Australian and New Zealand Food Standards Code permits nutritional content claims relating to carbohydrates and energy content to be made in respect of alcohol beverages. There are a number of alcoholic beverages on the market that promote such claims, and CUB's Pure Blonde brand has made carbohydrate claims for many years.
  - c) All creative developed for Pure Blonde Ultra Low Carb has been about ensuring consumers are aware of the carbohydrate and calorie content of the beer. The claims made such as 'now 80% less carbs than regular beer' and 'now 50% less calories than wine per mL' are factual and position the beverage firmly within the alcohol category, not the broader beverage category. By calling out the evidenced-based lower calorie and carbohydrate content of the drink it does not identify itself as a health drink, nor does it imply that the audience could consume it for potential net health benefits. The TVC in no way encourages consumers to drink Pure Blonde if they want to lose weight, but rather makes the carbohydrate and calorie content in Pure Blonde clear for those

consumers that are conscious of these.

- d) The nature of the claim between the glass of wine and bottle of Pure Blonde is clearly identified by the 'PER mL' copy which features prominently on the final frame of the TVC. In that regard we are clearly providing consumers with all relevant information regarding the nature of the comparison that is being made to calculate the calorie reference. We feel it is important consumers make informed choices when it comes to alcohol consumption, which is enabled by clear and factual communication of the nutritional properties and alcohol content.
- e) CUB has been, and will remain, vigilant in ensuring lower calorie, carbohydrate, and alcohol content beverages are not seen to be promoted as a 'health drink'.

### **The Panel's View**

- 19. The complaints concern a series of advertisements including an explanatory page on its company website and two television advertisements.
- 20. The complainants are concerned about two primary issues related to the advertising which can be summarised as follows:
  - Its misleading nature.
  - The suggestion Pure Blonde offers a therapeutic benefit for the weight conscious consumer, namely fewer calories than wine and "regular" beer.
- 21. The first point made by the complainant is a concern as to the misleading nature of the ad. Standards related to false or misleading advertising are covered by the Australian Consumer Law and are not addressed by the ABAC Code. Accordingly the Panel will not be considering this issue.
- 22. The second point is a concern that the ad is seeking to exploit the vulnerabilities of people who might be trying to lose weight but want to continue drinking beer and is suggesting that consuming Pure Blonde offers a therapeutic benefit for those consumers, namely fewer calories.
- 23. Section (c)(iv) of the ABAC provides that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit.
- 24. The Company argues that its marketing of the product has been about ensuring consumers are aware of the product's lower carbohydrate and calorie level compared to regular beer and wine. It is stated that this information is factual, but in emphasising this attribute, no claim is being made that the product should be consumed for a potential net health benefit. It is claimed that the ads are not encouraging consumers to drink Pure Blonde if they want to lose weight, but rather the ads make the carbohydrate and calorie content in Pure Blonde clear.

25. In October 2015 the Panel in Determination 112/15 considered a concern that similar advertising for the product implied that the product is 'almost a health drink'. The Panel noted that if the ads could be fairly interpreted as implying the product is a health drink, then the section (c)(iv) standard would be breached. The Panel concluded that the Standard had not been breached as the advertising was not suggesting that the product had a therapeutic benefit in that its consumption would be beneficial for a person's health or wellbeing. Rather, the claims about calories or carbohydrate levels were comparative to other alcohol products and endeavour to distinguish the product from other alcohol drinks on that ground. This is a different thing than implying that the product is good for you.
26. The Panel does not believe the ads are inconsistent with the section (c)(iv) Standard. While the ads use the image of the other alcohol products cracking the bar top and hence implying these products are "heavy" compared to the company's products, a reasonable viewer would not interpret that the company's product is "good for you". The ads would be taken as using special effects to reinforce the message about the claimed calorie content of the compared products.
27. Accordingly the complaints are dismissed.