



## ABAC Adjudication Panel Determination No. 82 & 84/17

**Product:** Pure Blonde  
**Company:** Carlton & United Brewers  
**Media:** Television & Digital  
**Complainant:** Mr Dew & Confidential  
**Date of decision:** 30 May 2017  
**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 a television advertisement and digital advertising for Pure Blonde (“the Company”) and arises from complaints received 28 April and 4 May 2017.
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 28 April and 4 May 2017.
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 complaint was 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 the television advertisement but not the digital advertising (15423).

## **The Marketing Communications**

### Television Advertisement

10. The television advertisement opens with a man walking into a bar and looking around. He looks toward another man who calls out to him and points to the bottle of beer he is holding up and the camera zooms in so we see the beer is Pure Blonde.
11. The man that entered the bar smiles and picks up his pace (as does the music) as he moves toward the bar and we see the following scenes in quick succession:
  - a) the man's shoes as he is walking through the bar
  - b) the man's shoes and then a wider shot as he is playing a friendly game of basketball in a public space
  - c) the man running across a bridge over a river
  - d) the man weaving through the crowd in the bar
  - e) the camera zooms into a bottle of open Pure Blonde on the bar
  - f) the man diving into a swimming lane and swimming in a lane
  - g) the man boxing into a punching bag
  - h) the man reaching the end of the swimming lane
  - i) the man picking up the bottle of Pure Blonde beer and drinking from the bottle
  - j) the man talking to the group at the bar
12. The advertisement finishes with an image of a bottle of Pure Blonde on a bar with the message "80% Less Carbs than regular beer" as the voiceover says "Pure Blonde 80% Less Carbs than regular beer".

### Pure Blonde Website

13. The following images and messages appear on the Pure Blonde website:

- a) Images of Pure Blonde Premium Mid with message “Pure Blonde Premium Mid 67 Calories per 355ml bottle”.
- b) Images of Pure Blonde beer with message “Ultra Low Carb Lager”.
- c) Image of a man and woman smiling and running along a beach hand in hand with message “Less Carbs, More Rewards. Pure Blonde Active. Join Now”.
- d) Images of Pure Blonde Cider with “Pure Blonde Cider 60% less sugar than regular cider”
- e) “Ultra Low Carb. Full Flavour. No Compromise.”
- f) “Pure Blonde Active. Exclusives, Experiences, Prizes. Subscribe Now.” With an image of two women and a man playing a friendly game of basketball in a public space;
- g) When selecting Subscribe Now: “Join Pure Blonde Active. Life should be full of good things. Join Pure Blonde Active now for exclusive experiences, prizes and more ” with an image of a man and woman smiling and running along a beach hand in hand;
- h) “Facebook Check out the latest Pure Blonde news and photos” with an image of a bottle of pure Blonde beer on a post with a beach in the background.
- i) “Instagram Follow our Instagram to see the latest Pure Blonde photos” with an image of clothing and equipment for a physical workout plus a book, a towel and a six pack of Pure Blonde beer.
- j) Images of the three Pure Blonde products and their carbohydrate, sugar and calorie and alcohol content respectively.

### Pure Blonde Facebook page

14. The complaint relates to fitness themed social media posts by Pure Blonde on Facebook. A selection from December 24 to the date of the complaint include:
  - Facebook May 1: “Start your May the right way” with an image of a woman running along a riverbank in exercise clothing.
  - Facebook April 23: “Join Pure Blonde Active by April 30<sup>th</sup> for your chance to WIN the ultimate Stand Up Paddle Board Package from Tyrant ..” with an image of a man and woman stand up paddle boarding at sunset.
  - Facebook April 23: “The journey is more important than the destination” with an image of a man in lycra cycling next to the ocean.
  - Facebook April 13: “Go hard or go home” with an image of a woman and man at a boxing gym having a break in a workout.
  - Facebook April 4: “We all need a little motivation now and then. What’s your go to running song..” with an image of a man in exercise clothing stopping at a flight of steps to stretch.

- Facebook March 29: “Balling on a weeknight” with an image of a friendly basketball game in a public space.
- Facebook March 27: “Start the week right” with an image of a man running across a bridge at sunrise.
- Facebook March 17: “When you’ve worked hard all week, go that final stretch” with an image of a friendly basketball game in a public space.
- Facebook February 19: “Right where you left them before the swim” with an image of a six pack of Pure Blonde beer on a fence post next to a towel with the ocean in the background.
- Facebook February 8: “That pre-workout stretch” with an image of a man in exercise clothing sitting on the grass and stretching.
- Facebook February 6: “Join Pure Blonde Active for your chance to win \$200 in active gear from the good sports Jaggad and free your inner athlete... ” with an image of a woman in exercise clothing running on a path next to a beach.
- Facebook February 4: “Suiting up on the weekend” with an image of a man in a wetsuit with a surfboard entering the ocean.
- Facebook January 31: “Longboard beer run” with an image of a man holding a long board in one hand and a six pack of Pure Blonde in the other.
- Facebook January 31: “Photo safari essentials” with an image of clothing and equipment for a photo safari plus 3 bottles of Pure Blonde beer.
- Facebook January 23: “On your marks” with an image of a man about to dive into a swimming pool.
- Facebook January 14: “What goes up, must come down” with an image of a woman trail running.
- Facebook January 1: “What’s your New Year’s resolution?” with an image of a man running along the water’s edge at sunset.
- Facebook December 24: “Take a break from work, not your work-out” with an image set out with tinsel and Christmas decorations in the shape of a tree with exercise equipment, a drink bottle with the Pure Blonde logo, four bottles and two cans of Pure Blonde beer and a case of Pure Blonde beer.

### **The Complaint**

15. The first complainant is concerned that the television advertisement sends the message that drinking Pure Blonde Beer is part of the man’s healthy, active lifestyle (a healthy choice that matches his lifestyle).
16. The second complainant is concerned that Pure Blonde is promoting a healthy lifestyle in connection with their alcohol beverage which is incredibly bizarre and misleading. Alcohol is not a workout aid and shouldn’t be presented as such and one’s fitness will not improve by drinking a Pure Blonde alcoholic beverage.

### **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.

- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

## **The Company's Response**

- 18. The Company responded to the complaint by letter dated 15 May 2017. The principal points made by the Company were:
  - a) .Complaint 82/17 relates to a 30-second television commercial currently showing on free-to-air television networks, titled "The Final Stretch", which can be viewed here:  
<https://www.youtube.com/watch?v=DaihyU48O-4> The advertisement promotes CUB's Pure Blonde Ultra Low Carb Lager (Pure Blonde). It uses a "match- cut" editing technique that juxtaposes the lead character's workout regime of social basketball, boxing, swimming and jogging with his journey through a bar to enjoy a Pure Blonde with his friends on a different day, as a reward.
  - b) Complaint 84/17 relates to various pieces of material published on the Pure Blonde website ([www.pureblonde.com.au](http://www.pureblonde.com.au)) and Facebook Page ([www.facebook.com/PureBlonde/](http://www.facebook.com/PureBlonde/)) (respectively, the Website Posts and Facebook Posts). It is not clear from the complaint or your letter which specific pieces of material on the Facebook Page are referred to. I refer to telephone correspondence on Friday 5 May 2017, when you indicated that the Panel would be reviewing specific posts from the last 12 months. Attached to this letter is a document detailing which material we understand to be the subject of the complaint. If there is any additional material the Panel deems to be the subject of the complaint, please provide CUB with notice, and further opportunity to respond regarding any additional material.
  - c) The overall Pure Blonde campaign is designed to position Pure Blonde as the number one beer for active Australians. CUB has identified that Australians are living more and more active lives with research highlighting that 54% of Australian beer and cider drinkers now define themselves as 'Healthy and Active'. These are consumers who already consume beer and cider. This means that there are 8.3 million Australians exercising at least once a week (primarily undertaking running, gym work, swimming, cycling and social sports) and who are conscious of the food and beverages they consume (Kantar Brand Health Tracker 2016). These consumers are looking to be both physically active and socially active and make smarter choices about their wellbeing. This campaign aims to position Pure Blonde as a well-suited beer for these consumers because it is lower in carbohydrates and calories than regular beer. Pure Blonde is

not in any way suggesting or marketing itself as a “health” drink, but rather as “smarter” choice versus other available alcoholic products when these consumers choose to drink an alcoholic beverage.

- d) Pure Blonde Ultra Low Carb Lager contains 80% less carbohydrates than regular beer. It is the most popular low carbohydrate beer in Australia. 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. CUB has made carbohydrate claims in relation to Pure Blonde for many years. CUB believes Pure Blonde is well positioned to appeal to the subset of Australians who identify as healthy and active, and are conscious of the food and beverages they consume, but do not want to restrict themselves from enjoying a beer with friends on occasion as a reward. In other words, Pure Blonde is the beer that should be chosen when choosing to drink beer. Pure Blonde is in no way marketed or promoted as anything but an alcoholic product.
- e) Based on previous decisions of the Panel in relation to the carbohydrate and calorie claims made in relation to Pure Blonde, it is clear that the Panel’s interpretation of Part 3(c)(iv) allows for a marketing communications piece to make statements about the carbohydrate and calorie content in comparison to other alcohol products. In dismissing previous complaints relating to Pure Blonde marketing materials (see Determination Nos. 112/15 and 27-29/16), the Panel has noted: “The advertising is not suggesting that the product has a therapeutic benefit in that its consumption is beneficial for a person’s health or wellbeing. The claim about its calories or carbohydrate levels are comparative to other alcohol products and endeavour to distinguish the product from other alcohol drinks. This is a different thing than implying that the product is good for you.” In the advertisement currently in question, while the visuals show relatively healthy, active and fit people enjoying Pure Blonde, the carbohydrate claim stays in the area of comparison with other beers rather than implying any kind of therapeutic benefit.
- f) Part 3(c)(iv) of the Code provides that a Marketing Communication must not “suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation”. CUB’s view is that the advertisement does not suggest that Pure Blonde has any therapeutic benefit. This follows previous determinations on other Pure Blonde marketing materials considered by the Panel (further detail below). The inclusion of the carbohydrate claim at the end of the advertisement is simply providing the audience with factual information about the product, and not implying that there is any “therapeutic benefit”. CUB’s goal in developing this advertisement was not to imply that

drinking Pure Blonde will make a consumer healthier or more active, or that it should be used as a tool in recovering from or preparing for physical activity. The goal is to show that it is possible to enjoy a healthy and active lifestyle but also, on separate and unrelated occasions, enjoy a beer with friends as a reward. The reasonable person viewing this advertisement would consider that the talent has worked out over the course of a week, as many healthy Australians do, and is enjoying a beer with friends as a reward on a separate occasion, well afterwards. The beer has not contributed to his health or his sporting success. It is clear that the man has recovered from his workout and is meeting friends socially some time afterwards.

- g) CUB, in consultation with AAPS, took various steps in developing this content to ensure that it did not breach any part of the Code, in particular Part 3(c)(iv) relating to therapeutic benefit and also Part 3(c)(ii) (in relation to showing an Alcohol Beverage as a cause of contributing to the achievement of sporting success). We note that the Panel, in its request to CUB for a response, has not raised Part 3(c)(ii) as being relevant in relation to this complaint. Various “watch-outs” were identified by CUB, Clemenger and AAPS throughout the content development process, and steps were taken to avoid risks and take on board AAPS feedback.

Directive	Steps taken
<p>The talent cannot look like he has come straight from the bar to his workout, or straight from the workout to the bar.</p>	<p>Wardrobe, hair and makeup, lighting, scenery and time of day were used to ensure it is clear the talent is going to the bar on an entirely separate occasion to the various workouts.</p> <p>For example, in the bar scene the main talent is wearing a grey/blue button-up shirt, casual boots and is not sweaty or dirty. In various sports scenes he is wearing different T-shirts, sports footwear, and has a clearly different appearance (sweaty, red-faced). Additionally, the time of day oscillates throughout the advertisement to indicate that the sport scenes and bar scenes have occurred at separate, unconnected and extended points in time. For example, the bar scenes have afternoon lighting, while the swimming and jogging scenes have morning lighting, and the basketball and boxing scenes have midday lighting.</p>
<p>The physical activities should not appear that they are all occurring on the same day.</p>	<p>Various lighting differences, as noted above, make it clear that the main talent is participating in each sport on different days, over a medium-term period.</p>
<p>The talent cannot look super fit or an</p>	<p>The main talent was specifically chosen as a regular, average man who does not look noticeably fit or athletic. While he knows how to participate in each physical</p>



elite athlete.	activity, he is not particularly skilled or elite at any of them.
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<p>If the bar scene includes beer in brown bottles or otherwise clearly not Pure Blonde, the main talent drinking Pure Blonde cannot appear fitter or more healthy in the bar scenes if the others are drinking products other than Pure Blonde.</p>	<p>The advertisement only includes people drinking Pure Blonde (no other beers are shown). None of the talent consuming Pure Blonde are particularly fit-looking – they are regular people you might see in a bar.</p>
<p>The sports themselves should be low intensity and not those of an elite athlete, and there should not be too many sports.</p>	<p>We reduced the number of sports shown in the advertisement from initial scripting and storyboards. The final creative shows social outdoor basketball, jogging, swimming, and boxing in a gym with a bag.</p> <p>The sports that the main talent participates in are not elite sports; they are regular ordinary examples of physical activity that the average active Australian would typically participate in. Particular sports were avoided after consultation with AAPS (for example, tyre-flipping, chin ups and other more intense gym exercises).</p>
<p>The main talent's participation in the sports activities should be focused on participation, not sporting success – it should not look like he is blitzing the field.</p>	<p>As noted above, the main talent does not appear to be an elite athlete or to be particularly good at any of the sports. He does not 'win' any sports or seem like he is better than any other people participating. For example at 9 seconds into the advertisement, the main talent is depicted being rejected by a friend when attempting to score in basketball indicating he is not of superior sporting ability.</p>

- h) In summary, AAPS feedback throughout the development process was that the overall advertisement could not, when taken as a whole, imply that the consumption of Pure Blonde will help you recover better or make you healthier, stronger, or fitter. CUB's view is that the advertisement does not show or imply this when taken as a whole. It shows that Pure Blonde has appeal to consumers who enjoy both exercising and socialising, and that consumers may enjoy Pure Blonde when selecting which beer to consume at the time of consumption, as a reward, but not that consumption of Pure Blonde will provide therapeutic or any other net benefit to those consumers.

- i) CUB's view is that none of the Website Posts or Facebook Posts breach Part 3(c)(iv) or Part 3(d) of the Code, as the posts do not show or imply consumption of alcohol before or during a workout, and do not imply that Pure Blonde offers a therapeutic benefit. For context, the Website Posts mainly serve to promote Pure Blonde Active, which is Pure Blonde's member/reward program. Consumers can join Pure Blonde Active by entering their details into an online form. By joining the program as members, those consumers then receive emails from Pure Blonde giving them the opportunity to win prizes and receive other benefits. Members are also entered into a monthly prize draw. Pure Blonde Active is not an active lifestyle club – the only engagement is through email communication, prize draws and other promotional activity. Pure Blonde Active and the associated prize giveaways are run in accordance with trade promotions laws and regulations, and CUB internal policies and procedures.
  
- j) In relation to each of the separate Website Posts:
  - a. "Less Carbs, More Rewards. Pure Blonde Active. Join Now" with an image of a man and woman smiling and running along a beach hand in hand In this image, the featured actors are not wearing exercise clothing, and they are not exercising. There is no indication that they have exercised or will exercise. There is no consumption of product in the image, or any product featured in the image at all. It is not implied that any people will consume alcohol before, during or after a workout, or that drinking Pure Blonde will in itself result in a 'reward'. The line "Less Carbs, More Rewards" refers to the Pure Blonde Active rewards program (indicated by the 'Join Now' button). The line simply indicates that Pure Blonde has less carbs than regular beer, and the Pure Blonde Active rewards program includes the opportunity for rewards to consumers who join the program. It is not shown or implied that alcohol will be consumed before, during or after a workout.
  
  - b. "Join Pure Blonde Active. Life should be full of good things. Join Pure Blonde Active now for exclusive experiences, prizes and more" with an image of a man and woman smiling and running along a beach hand in hand This post uses the same image as the post addressed above, which does not show or imply exercise, and does not show any product or consumption. Again, the copy included in this post clearly speaks to the Pure Blonde Active rewards program and its features when referencing why "[L]ife should be full of good things".
  
  - c. "Pure Blonde Active. Exclusive, Experiences, Prizes. Subscribe Now" with an image of two women and a man playing a friendly game of basketball in a public space This image portrays people engaging in light social

exercise, but does not feature or imply any product or consumption of product – before, during or after the basketball game. Again, the copy speaks exclusively to the Pure Blonde Active rewards program.

- d. “Instagram Follow our Instagram to see the latest Pure Blonde photos” with an image of clothing and equipment for a physical workout plus a six pack of Pure Blonde beer. This post promotes Pure Blonde’s Instagram page, which consumers can view and follow. The image in this post features Pure Blonde product and exercise clothing and equipment. Nothing in the image or copy, or the combination of the two, implies that the product will be consumed before, during or immediately after a workout, or that doing so would provide any perceived therapeutic or other benefit.
- k) In relation to the Facebook Posts set out in the attachment, we see these as falling into two main categories: those that feature Pure Blonde product, and those that do not.
  - a. Facebook Posts that do not feature any product: As there is no consumption of product shown or implied, it is not implied that Pure Blonde should or has been consumed before, during or immediately after exercise, or that doing so would have any therapeutic benefit to consumers. These types of images are posted on the Pure Blonde Facebook Page because of the insights CUB understands about the Pure Blonde consumer community, as outlined earlier in these submissions.
  - b. Facebook Posts that do feature product: We have identified four posts of this type in the attachment. There are no talent/people in any of these images. The product featured is packaged bottles, which are closed – these could be consumed at any time as a reward after a particular workout using the equipment or clothing that is also pictured. The intention of the posts is to position Pure Blonde as a reward, in a similar vein to the television advertisement, in a way that appeals to physically active beer drinkers who incorporate both physical activity and social moderate consumption of beer into their lives.
- l) CUB has been, and will remain, vigilant in ensuring that alcoholic beverages which are lower in carbohydrates and calories are not promoted in a way that would have consumers view them as a ‘health drink’. CUB is committed to ensuring its promotional and marketing material responsibly depicts the effects of alcohol, and complies with the Code in all respects. Our goal is for consumers to enjoy our products responsibly and in moderation.

## The Panel's View

19. This determination concerns a marketing campaign for Pure Blonde beer with two separate complaints taking issue with campaign executions on television and the Company's digital platforms, specifically a website and Facebook page. Both complaints argue that the impression created by the marketing is that the use of the product assists a healthy and active lifestyle.
20. The ABAC creates a code of marketing standards for alcohol products. Section (3)(c)(iv) provides that an alcohol marketing communication must not suggest that the consumption of alcohol offers any therapeutic benefit. The core question is whether the marketing campaign materials breach this requirement.
21. The intent of the 3(c)(iv) standard is that alcohol products cannot be promoted by suggesting that alcohol use is good for your health or offers a positive benefit to a person's mood or sense of wellbeing. The standard does not prohibit the association of an active and healthy person with alcohol, however it cannot be suggested that the consumption of the alcohol product provided a health benefit.
22. The two complainants have taken the television advertisement and the digital marketing to be suggesting that the product is a healthy beverage or an aid to physical exercise like a sports drink. The Company in response contends that the marketing positions the product as a better choice for beer drinkers than regular beer because it has less calories but no claim that the product is healthy is made.
23. In assessing if a marketing communication is consistent with a Code standard, the Panel is to have regard to the probable understanding of the marketing by a reasonable person. The reference to a reasonable person is drawn from the common law system and means the opinions, attitudes and values common in a majority of the community is to be the benchmark. A person who interprets a marketing communication in a different way is not 'unreasonable' but possibly their interpretation would not be shared by a majority of viewers.
24. The Panel does not believe the marketing communications are inconsistent with the Section(c) standard. In reaching this conclusion the Panel has noted:
  - the marketing associates the use of the product with active and health conscious individuals which is not of itself a breach of the code;
  - the product is not portrayed as being consumed during actual high level physical activity such as playing a sport or swimming;
  - the marketing seeks to compare the product's calories to other alcohol products and make a contention that the product is preferable to those products if the consumer is wishing to select alcohol products on the basis of calories and carbohydrates; and
  - a reasonable viewer would not interpret the marketing as claiming the product made a person healthier or more active.

25. The marketing does not breach Section(d) of the Code which goes to the use of alcohol and the engagement in physical activity such as sport. The marketing places the use of the product in social settings and not within the actual conduct of sporting activity such as basketball or swimming.
26. Accordingly, the complaints are dismissed.