

## ABAC Adjudication Panel Determination No 158/21

**Product:** VB Solar Exchange  
**Company:** Carlton and United Breweries (Asahi Beverages)  
**Media:** TV – Free to Air  
**Date of decision:** 23 June 2021  
**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”) arises from a complaint received on 2 June 2021 and concerns a television advertisement for the VB Solar Exchange by Carlton and United Breweries (“the Company”).
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 Code”) – 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 and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 Ad Standards 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 Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 2 June 2021.
8. 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 was completed in 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 marketing (Approval Number 19398).

## The Marketing

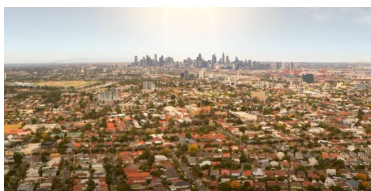
10. This determination relates to an advertisement for the VB Solar Exchange. The Company has advised that two advertisements for the VB Solar Exchange were being shown at the time of the complaint. Both of the ads, which are described in more detail below, follow a driver as they deliver VB to a householder:

### 30 Second TVC:

<https://www.youtube.com/watch?v=0dqav74H2AE>

The VB theme music is playing throughout.

**Voice Over (VO):** *Listen up Australia.*



**VO:** *This year the sun won't just be topping up your tans and scorching your seatbelts.*



**VO:** *This year it will be earning you BEER.*



**VO:** *Because in a world first, the solar energy that your home creates,*



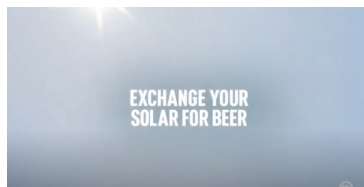
**VO:** can now be traded with us for VB



**VO:** So, the next time the sun is making you hot, just remember it could also be earning you a cold one.



**VO:** Matter of fact, you can sign up now.



## 15 Second TVC:

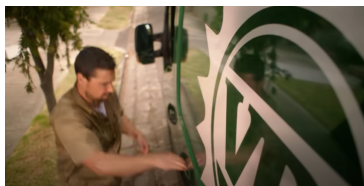
<https://www.youtube.com/watch?v=kM48BX8YD-c>

The VB theme music is playing throughout.

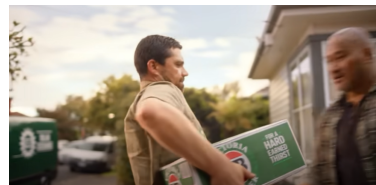


**VO:** Australia, for the first time ever

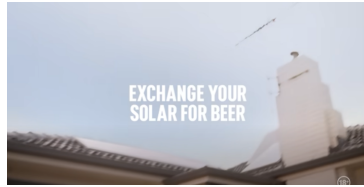
**VO:** you can now exchange your solar energy for VB.



**VO:** That's right, if you give us some sun, we'll give you some beer.



**VO:** *So what are you waiting for? Let's get the sun working for you.*



## The Complaint

11. The complainant has the following concerns about the marketing:

- *The ad encourages people to invest in solar and in doing so they can receive VB beer.*
- *This promotes and encourages people to drink and even though the intent is to invest in green energy, it opens the door to addiction or obtaining more alcohol than required. Replace the alcohol with any other substance that can be addicted to e.g. cigarettes or pain medicine or other drugs and it will be an absolute no-no.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (a)(i) show (visibly, audibly, or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.

## The Company Response

13. The Company responded to the complaint by letter emailed on 15 June 2021. The principal points made by the Company were:

### **Alcohol Advertising Pre-vetting Service Approval**

- Pre-vetting approval was granted on 21 April 2021, under application number 732/21.

### **Responsible and moderate portrayal of Alcohol Beverages**

- The relevant section of the code, Part 3(a)(i), states:
  - A Marketing Communication must not show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.

- As the complainant has correctly identified, the advertisement promotes the VB Solar Exchange, which allows signed-up participants to exchange excess solar energy for beer. Instead of 'selling' excess solar energy back to the grid and receiving a credit on their power bill, participants access a current feed-in tariff of 10.2c/kWh, with every \$30 of solar energy traded back to VB equating to one slab containing 24 x 375ml bottles or cans.
- The terms and conditions of the program clearly state that the maximum number of slabs VB will deliver in a calendar year is 30. Deliveries are made quarterly, and to take delivery of the beer participants must show ID and be 18+. Based on calculations provided to us by our program partners Power Ledger and Diamond Energy, we expect the average consumer will receive approximately one slab per month. The launch of the program follows Asahi Beverages' acquisition of Carlton & United Breweries last year, and forms part of Asahi's ambitious sustainability agenda, which includes a goal to be powered entirely by 100% renewable electricity by 2025.
- The intention of this scheme is to reward VB customers who have made the switch to solar power with what essentially equates to a great discount on a case of VB. As the Panel has previously concluded, off-premise discounts are not per se breaches of Part 3(a)(i), and "there is a significant distinction between the promotion of the purchase of a product and its subsequent consumption." Nothing in the advertisements promoting the Solar Exchange suggests that the slabs must be consumed immediately or by a single person.
- Care has been taken to avoid the any breach under Part 3(a)(i) by (1) the imposition of a cap on the number of slabs that can be earned, which is clearly stated on the sign-up page for the program, and (2) by ensuring that there is no depiction, encouragement or implication of excessive consumption in any of the promotional material associated with the Program.
- Asahi Beverages is committed to ensuring our promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to the placement and content of our advertising.

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

14. This determination concerns a television ad for VB. The ad shows a VB Solar Exchange delivery driver delivering a carton of VB to a man walking out of a house with solar panels. The accompanying voice over narration explains that home owners can exchange their solar energy for the product. In style and messaging the ad follows the longstanding positioning of the VB brand of a "hard

earned thirst needs a cold beer” but picks up the contemporary issue of responding to climate change.

15. While the complaint is about the TV ad, the concerns expressed by the complainant are really about the solar exchange scheme itself. The complainant believes a scheme which has consumers with solar panels trading excess electricity for alcohol is inappropriate as 'it opens the door to addiction or obtaining more alcohol than required'. The Panel has no jurisdiction to assess if the solar exchange scheme is fundamentally a good idea or not, rather the Panel is confined to assessing the TV ad against the relevant ABAC standard.
16. Part 3(a)(i) of the ABAC provides that an alcohol marketing communication (which includes a television ad) must not show or encourage the excessive or rapid consumption of alcohol. The Company responds by explaining the background to the ad, limits to quantities that can be earned, noting that it is essentially a discount offer and that purchase does not equate to consumption by one individual and there is no suggestion of excessive or irresponsible consumption in the ad.
17. The Panel does not believe the ad breaches the Part 3 (a) standard. It is noted:
  - the ad depicts a driver delivering a carton of beer to an adult;
  - the ad is promoting an offer that allows a solar powered home owner to exchange solar energy for beer, which is essentially offering an alternative way for eligible homeowners to pay for the product;
  - no particular levels of purchase or consumption of alcohol are shown or encouraged within the television advertisement;
  - merely having beer delivered to a home does not mean it will be consumed rapidly or excessively given alcohol has a long shelf life and might be consumed over a period by multiple people; and
  - taken within the context of the ad, a reasonable person would not believe that excessive or rapid consumption is being encouraged.
18. The complaint is dismissed.