



## ABAC Adjudication Panel Determination No. 57/16

**Product:** Vodka Plus  
**Company:** Vodka Plus  
**Media:** Digital  
**Complainant:** Confidential  
**Date of decision:** 18 May 2016  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital advertising by Vodka Plus (“the Company”) and arises from a complaint received 7 April 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 7 April 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 complaint has 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 not obtained for this marketing communication.

## The Marketing Communications

10. The advertising complained of is a Facebook page for Vodka Plus, which contains a series of posts that cover the period of 7 January to 7 April 2016. The Facebook page includes the following selection of posts relevant to the issues raised in the complaint and which are listed from (a) to (p) for ease and subsequent reference:
  - a. 7/4/16 - "Good news travels fast I guess. If it's good enough for Rosanna Arkle then it must be good. Vodka+ is No sugar, No carbs & No soft drink. Not to mention it's lightly sparkled purified water, infused with electrolytes and triple distilled vodka." Image of a woman wearing a bikini, lying back with her back arched, one arm raised over head and a finger held to her lips with a glass of ice and a 375ml bottle of Vodka+ next to her.
  - b. 6/4/16 - "A little behind the scenes look at Vodka Plus being bottled. Each bottle of Vodka+ ready to drink vodka contains no sugar and no carbs. We use lightly sparkled purified water rather than soft drink. Infused with electrolytes and a refreshing lemon and lime flavour. Shop now at [www.vodkaplus.com.au](http://www.vodkaplus.com.au)." Video clip of the product being bottled.
  - c. 4/4/16 - "We're doing our best to stock the shelves of your nearest bottle shop with Vodka Plus, but for now shopping online is a great option with free shipping on all cases at [www.vodkaplus.com.au](http://www.vodkaplus.com.au). Vodka+. Zero carb, zero sugar and infused with electrolytes \*Always drink in moderation and responsibly." Images of the product in a bottle, glass, 4 pack and cartons.
  - d. 3/4/16 - "9 TIPS TO PREVENT A HANGOVER!"
    1. Eat food before drinking as it will somewhat line your stomach and slow absorption.
    2. Drink plenty of water.
    3. Don't mix drinks.
    4. Avoid caffeine on top of alcohol, it will further dehydrate you and effect your sleep.
    5. Avoid fatty or sugary foods while drinking (although you will crave it) your body will burn the bi product of alcohol as an energy source, meaning you will store much of the food you eat

as fat!

6. Have lots of vitamins and minerals before bed, your body has been stripped of them.
7. Don't binge drink. Keep it classy!
8. Avoid sugary beverages, by drinking a no carb option you can save up to 35 grams of sugar per bottle!
9. Drink Vodka +! It has no carbs, no sugars, we use premium vodka distilled 12 times, we mix with purified sparkling water and have infused electrolytes.

#vodkaplus #healthieralternative #nocarbs #smarterchoice”

Image of a man and woman wearing lingerie embracing as the woman is pouring sugar out of a measuring jug, a glass of vodka+ being poured and the caption “how many grams did you save”.

- e. 2/4/16 - “Big brother contestant @mattfilippi

Knows exactly what goes hand in hand with a game of golf on a Saturday afternoon!

Shop now: [www.vodkaplus.com.au](http://www.vodkaplus.com.au)“

Image of Matt Fillipi smiling and holding up a bottle of Vodka+ with a golf course in the background.

- f. 1/4/16 - “@shane\_nettleton (via Instagram) has the right idea for this sunny Friday afternoon Grab a case of Vodka Plus, your mates, a piece of grass and let the good times roll Vodka+. Zero carb, zero sugar and infused with electrolytes ... See More

Image of 4 packs of the product lying on a lawn.

- g. 30/3/16 - Not that you need a reason to drink vodka, but here's 5 reasons to drink Vodka Plus

✓ No carbs ✓ No sugar ✓ Mixed with purified sparkling water ... See More

Image “Love? No. I prefer vodka.”

- h. 29/3/16 - “Don't know where to find Vodka Plus? Head to our Stockists page, find the closest one to you. Even better! Take advantage of our FREE shipping on all cases... “

Image of glass and bottle of Vodka+

- i. 22/3/16 - “Vodka Plus feeling happy

Cheers to summer for hanging around an extra month

Have you tried Vodka Plus? We're Australia's first zero carb, zero sugar triple distilled ready to drink vodka.

Shop online [www.vodkaplus.com.au](http://www.vodkaplus.com.au)”

Image of two cocktails

- j. 21/3/16 - “One of our founders Shane Nettleton in the news discussing the launch of Vodka Plus! With 2 new flavours on the way and launches booked in at some of the counties most iconic spots, it's going to be an exciting year! Big discounts on deliveries to your door at [www.vodkaplus.com.au](http://www.vodkaplus.com.au)... See More

Shared post from Sunshine Coast Daily:

It's sugar-free, carbohydrate-free, is made with triple distilled vodka and purified water, and is infused with electrolytes: <http://ow.ly/ZJE8O> Is this the 'diet' drink for vodka lovers?”

- k. 21/3/16 – “\*\*\* EASTER SPECIAL \*\*\* No Sugar, No Carbs, Infused with ELECTROLYTES while still tasting refreshing and delicious we have you covered for this easter break! FREE Vodka+ T-Shirts will be given out with ALL purchases this week so get online or into one of our stockist to receive yours! ... See More”. Image of a man and woman wearing smart clothing. The man with a glass and bottle of Vodka Plus in front of him and the woman leaning on his side with the caption “we have you taken care of” and a promotion for a free T-Shirt with any order.
- l. 14/3/16 – “Mondayitis? Let us help you get over it. With FREE DELIVERY! on all 24x330ml cases. ... See More” Image of a man wearing a suit embracing a woman wearing lingerie with black high heels with a superimposed image of the product and its logo.
- m. 10/3/16 – “Why do we mix all of our drinks with sparkling purified water? # drinkresponsibly # vodkaplus # innovation # betterchoice” Poster that includes claims about the dangers of diet soda.
- n. 4/3/16 – “DELIVERY TO YOUR DOOR IS ON US! As part of our launch celebration we are covering shipping on all slabs to major cities and heavily discounting 4 pack purchases. Enjoy your night and the day after with:
- no sugars
  - no carbs
  - mixed with purified sparkling water
  - premium triple distilled vodka

- infused with electrolytes
- your favourite lemon and lime taste!

Have your cake and eat it!

[www.vodkaplus.com.au](http://www.vodkaplus.com.au)

Image of a woman and man in lingerie on a bed with the woman eating from a plate of cake on the man's back with the caption "have your cake and eat it" and the product superimposed.

- o. 17/2/16 – "Have you had your VODKA+ hit yet? We tick all the boxes..
- ✓ No sugar
  - ✓ No carbs
  - ✓ No soft drink
  - ✓ Lightly sparkled purified water
  - ✓ Infused electrolyte formula
  - ✓ Full strength triple distilled vodka
  - ✓ Amazing refreshing lemon and lime taste

PURCHASE ONLINE NOW @ [www.vodkaplus.com.au](http://www.vodkaplus.com.au)" Image of a man wearing formal clothing with a mixed drink in front of him and the product superimposed with the caption "Break the rules Set the trend".

- p. 1/2/16 - "Rosanna Arkle knows where its at! #vodkaplus #nobeerbellieshere." Image of a woman wearing a bikini, lying back with her back arched, one arm raised over head and a finger held to her lips with a glass of ice and a 375ml bottle of Vodka+ next to her.

## The Complaint

11. The complainant is concerned that the advertising:
- suggests that consumption of the product will result in social or sexual success by implying that consumption of the product will result in slim, attractive bodies that will attract the ideal man;
  - objectifies women by showing fully clothed men with a woman in a bikini and high heels inferring that a woman's beauty is her greatest commodity;
  - claims that the product is healthy and reduces or does not cause hangovers;

- may encourage people to drink more because of supposed health benefits, lack of hangover and fewer calories;
- free delivery and heavily discounted 4 pack purchases may encourage excessive consumption;
- implies a connection between consumption of the product and sporting success by referring to Big Brother contestant and fitness professional, Matt Filippi as enjoying a Vodka Plus “hand in hand with a game of golf”; and
- there is inappropriate age gating in place for the ads and in addition young people will lie about their age enabling them to access the advertising.

### **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;
  - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
  - (b)(i) have Strong or Evident Appeal to Minors;
  - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
  - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - (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.

13. Definition in Part 5 of the ABAC provide:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A 'Minor' means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

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

14. The Company did not respond to the complaint.

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

#### **Introduction**

15. Vodka Plus is a new entrant to Australia's alcohol beverage market. The Company has employed a standard array of digital marketing platforms to promote its product, including a website and social media services such as Facebook. Alcohol industry participant's marketing via digital platforms are captured by the ABAC. This includes both posts from the Company and user-generated comments posted by third party viewers of the Company's digital sites.
16. The complaint relates to various posts on the Vodka Plus Facebook page. The complainant is concerned that the posts:
- suggest that the consumption of the alcoholic product will result in social or sexual success as the product is depicted next to images of slim attractive women;
  - objectify women by showing fully clothed men and women in a bikini and high heels;
  - falsely claims the product is healthy and reduces hangovers;
  - encourages more drinking because of claims of health benefits, reduction of hangovers and low calories;
  - encourage excessive consumption with free delivery and heavily discounted 4 pack purchases;



- implies a connection between alcohol consumption and sporting success;
  - are not appropriately age-gated, and young people are able to access the advertisements by lying about their age.
17. The ABAC scheme administrator contacted the Company and invited a response to the complaint. The Company chose not to respond. The ABAC scheme is based on the commitment of alcohol industry participants to meet good marketing practice and facilitate Panel processes on public complaints by supplying copies of relevant marketing communications.
18. Notwithstanding the failure of the Company to respond, the Panel was able to source a screenshot of the Facebook posts and accordingly has been able to make the determination. There is a reasonable public expectation upon the Company that it adopts the determination and adjusts its marketing approach to meet responsible marketing standards. Ignoring complaints is unacceptable corporate behaviour.

### **ABAC - Scope**

19. The complaint raises several issues which are beyond the scope of the ABAC, namely:
- concerns that elements of the marketing objectify women; and
  - concerns that the social media sites do not contain an appropriate age-gating restriction to stop under 18 year olds accessing the marketing material.
20. Concerns as to the objectification of women do not fall under the ABAC, but rather are within the scope of the AANA Code of Ethics. This means that complaints raising Code of Ethics issues will not be canvassed in this decision, but will be considered by the Advertising Standards Board as the body responsible for the Code of Ethics.
21. In relation to the concern about age-gating, as explained in paragraph 3, the ABAC scheme is focused upon the content of marketing rather than where marketing might be found. This means that the scheme does not contain a specific set of standards requiring the age-gating of internet marketing sites. It should be noted however that the scheme's Management Committee has developed Good Practice Guidelines in terms of digital marketing, which do go to the appropriate use of age-gating. A failure, however, to meet these Guidelines is not itself a breach of an ABAC standard.

### **ABAC – Standards**

22. The complaint does raise a number of concerns in relation to the Facebook site. The Panel has reviewed this material against the relevant standards and concludes that a number of the posts are in breach of ABAC standards. In reaching this conclusion, the Panel has considered the individual marketing communications against the test of the probable understanding of the posts by a reasonable person, viewing the content as a whole.

23. Marketing communication (d) provides a list of 9 tips to prevent a hangover. One of the so-called tips is to drink the product. This suggests that the consumption of the product offers a therapeutic benefit in breach of section (c)(iv) of the Code.
24. Marketing communication (f) consists of a photograph of 4 x 4 containers of the product and another two bottles (a total of 18 bottles) resting on a patch of grass. The accompanying text states in part 'grab a case of Vodka Plus, your mates, a piece of grass and let the good times roll'. This post is in breach of sections (a)(i) and (c)(i) of the Code by:
- raising a reasonable implication that excessive consumption of the product is being encouraged; and
  - implying that the presence or consumption of the product is a cause or contributor to a significant change in mood i.e. creating the 'good times to roll'.
25. Marketing communication (l) is a picture of a man in a suit embracing a woman wearing lingerie. The seemingly unrelated accompanying text reads in part 'Mondayitis? Let us help you get over it with free delivery'. This post breaches section (c)(i) of the Code by creating a reasonable implication that a low mood will be significantly changed by the introduction of the product.
26. While the Panel has reviewed the balance of the posts and some are borderline in their consistency with the Code, the Panel has not breached further posts on the Facebook page. In relation to the specific examples raised by the complainant, the Panel notes:
- Promoting the availability of the product by multi-packs and free delivery cannot fairly be taken as an encouragement of excessive consumption as there is a clear distinction between the purchase of alcohol and its subsequent pattern of use. Alcohol, by its nature, has a reasonably long shelf- life and is often purchased in multiples such as a case of wine or a carton of beer. Alcohol purchased in a multiple can be consumed by multiple people or by one person over a long period of time.
  - The post concerning Mr Filippi and golf would not be interpreted as implying that the product would contribute to Mr Filippi being successful in a golf game.
  - While the marketing does draw attention to its claimed low calories, the posts do not (other than post (d)) suggest that the product has a positive health benefit.
27. In upholding the complaint the Company is strongly urged to not only amend its Facebook page to become consistent with the ABAC standards, but equally to engage in the ABAC scheme through the utilisation of the ABAC pre-vetting service. Advice from the pre-vetters will give independent verification to the Company that its advertising and marketing is consistent with good industry standards.