



## ABAC Adjudication Panel Determination 145/21

**Product:** UDL Vodka  
**Company:** Diageo Australia  
**Media:** Packaging and Billboard  
**Date of decision:** 29 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”) concerns the packaging of UDL Vodka (“the Product”) by Diageo Australia (“the Company”), as well as a billboard advertising the Product. It arises from a complaint received on 24 May 2021.
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 is within the Panel’s jurisdiction.

## The Complaint Timeline

7. The complaint was received on 24 May 2021.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

## 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 billboard (Approval Number 19437).

## The Marketing

10. This determination relates to the packaging of the Product, as well as a billboard advertising it.



## The Complaint

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

*The bright, colourful and playful nature of the advertisement as well as the product packaging would have strong appeal specifically to minors.*

*The advertisement could easily be interpreted as an advertisement for soft drink by any unknowing individual, especially minors.*

*Use of the phrase “new can who dis?” appeals directly to minors and young people as it is a reference to the phrase “new phone who dis?”, most commonly used by minors and young people.*

## The ABAC Code

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

(b)(i) have Strong or Evident Appeal to Minors.

13. Part 6 of the ABAC Code provides that:

### **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.

## The Company's Response

14. The Company responded to the complaint by letter emailed on 1 June 2021. The principal points made by the Company were:

- Thank you for inviting us to provide comments for the Panel's consideration in determining this complaint. Diageo takes an industry leading approach to alcohol advertising, which complies with both local and global policies and practices. We wish to confirm our longstanding support and commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well

as our best-practice global marketing standards, the Diageo Marketing Code (DMC).

- The UDL packaging was released in April 2021 and supporting billboard advertising was first live from 11 April 2021. The packaging and billboard advertising showcase a distinct retro style, reminiscent of the 1980s and 1990s, which favours bold colours and geometric shapes.
- The packaging includes the term 'vodka' and the alcohol to volume percentage (i.e., 4% ALC/VOL), the UDL brand logo, the words 'Since 1965' and the flavour variant(s). The back of the can includes serving size and corresponding standard drinks, the DrinkWise the 'Get the facts' logo, reference to Diageo's DRINKIQ.com website, and 'vodka' clearly stated in the ingredients list.
- The billboard advertising was approved on 31 March 2021 with Approval Number 19437.
- Packaging for UDL Vodka & Watermelon, UDL Vodka & Tropical Punch and UDL Vodka & Passionfruit, along with key visuals were submitted under Application Number 276/20. Approval was given on 4 June 2020 with Approval Number 18561 for the key visual which included an image of the packaging on it.
- The UDL packaging and billboard advertising adopt designs that are instantly recognisable as reminiscent of the 1980s and 1990s. They use bold colours and geometric shapes that are synonymous with these decades. The retro style is intended to appeal to 18+ consumers who would have an association with the style of these decades.
- In consultation with the ABAC Pre-vetter, initial colours used on the packaging were revised to be darker to address concerns of potential appeal to minors. These changes were carried through to the key visuals. The revised colour scheme across the whole range was approved by the ABAC Pre-vetter.
- All premix flavours within the current range are original to the UDL range, except for Watermelon and Tropical Punch which were added in 2020. All flavours are consistent with the premix alcohol category in Australia and not characteristic of only fruit juice. Please see the following IRI Aztec Scan Data document illustrating the flavour variants across the industry as of 25 April 2021.

	Australia Liquor Unweighted	
	MAT To 25/04/21	
	Dollars (000s)	Dollars (000s) Growth % YA
Total Mango Premix	7269.0	14529.7
Total Other Flavour	0.9	1797.2
Total Pomegranate Premix	1482.1	1288.4
Total Butterscotch Premix	191.7	572.5
Total Other/Multi Mix Flav	3630.1	499.5
Total Grapefruit Premix	6546.5	385.6
Total Orange	750.7	268.3
Total Pineapple	1369.9	247.8
Total Soda Premix	6932.7	236.4
Total Apple Premix	2246.0	191.1
Total Lime Premix	31577.9	167.0
Total Cherry	47.5	163.8
Total Raspberry	3583.9	155.0
Total Peach Premix	8315.6	135.8
Total Other/Multi Mix Flav Premix	87236.9	134.7
Total Plum Premix	4.9	132.9
Total Watermelon Premix	39161.9	122.1
Total Margarita Premix	114.2	113.8
Total Berry Premix	73811.0	113.4
Total Other Flavour Premix	15960.5	101.7
Total Creamy Premix	7229.8	96.0
Total Passionfruit	4129.1	94.2
Total Lemon Lime Premix	31909.6	93.9
Total Raspberry Premix	63751.9	87.2
Total Guava Premix	41740.8	85.9
Total Rose	10948.0	69.6
Total Cocktail Flavour Premix	4945.6	62.2
Total Strawberry Premix	4321.4	61.5
Total Energy Premix	21550.0	56.6
Total Tonic Premix	39551.4	56.3
Total Pineapple Premix	41003.7	53.4
Total Lemon Premix	27120.4	49.1
Total Cola Sugar Free Premix	102730.2	47.0
Total Tropical Premix	4572.6	43.5
Total Blueberry Premix	3426.1	39.9
Total Guava	1939.2	35.3
Total Lem/Lim & Tonic/Soda Premix	31471.4	31.3
Total Lychee Premix	2.9	28.1

	Australia Liquor Unweighted	
	MAT To 25/04/21	
	Dollars (000s)	Dollars (000s) Growth % YA
Total Cooler	6189.2	28.1
Total Citrus Premix	102075.4	26.1
Total Exotic Fruit Premix	477.7	25.8
Total Chocolate Premix	5347.7	24.8
Total Cola Flavour Premix	1621535.6	23.9
Total Passionfruit Premix	29324.7	23.5
Total Dry/Ginger Premix	306758.3	20.7
Total Tropical	1265.0	16.1
Total Hazelnut Premix	23.3	10.2
Total Blackberry	4502.7	10.1
Total Grape Premix	941.3	10.0
Total Orange Premix	9867.1	4.5
Total Pear	30034.1	4.3
Total Cola Flavour	212.8	1.6
Total Cranberry Premix	1704.3	-1.5
Total Aniseed Premix	2297.1	-1.5
Total Non Premix Premix	104.9	-2.4
Total Lemonade Premix	10669.7	-3.8
Total Ginger Premix	6128.4	-5.2
Total Berry	5465.1	-5.8
Total Apple	153485.4	-6.1
Total Acai Premix	40.4	-8.0
Total Strawberry	14524.1	-8.4
Total Coffee Premix	2992.6	-9.9
Total Elderflower	243.6	-11.2
Total Ginger	2546.2	-11.3
Total Mango	1136.1	-14.9
Total Lemon	345.4	-18.9
Total Watermelon	3223.1	-31.6
Total Elderflower Premix	1799.1	-33.7
Total Feijoa	73.9	-36.0
Total Grape	2.7	-50.1
Total Blueberry	4.5	-51.4
Total Blackcurrant	3.4	-52.4
Total Soda	12.1	-54.4
Total Plum	1.7	-61.1
Total Honey	148.2	-66.0
Total Lemon Lime	3.9	-67.1
Total Boysenberry Premix	11.8	-78.0

- Whilst using flavours that are also consumed by children in drinks and/or food, confusion with a fruit juice is mitigated by the use of the packaging container (a can) whereas fruit juices are commonly packaged in plastic bottles or prima packs. Furthermore, labelling elements also establish the product as an alcoholic beverage.
- The various packaging design elements establish that the product is an alcoholic beverage. The term 'VODKA' is in bold, uppercase letters, appearing in a colour block so that the term stands out. This term would be understood by the broader community, including minors, to mean the product is an alcoholic beverage.
- The hierarchy of messaging on the packaging and billboard advertising place the term 'VODKA' before (and above) each of the flavour descriptions. The alcohol by volume statement (4% ALC/VOL) is also included on the packaging.
- The flavour descriptions are describing the flavour of the various UDL variants. The flavour variants are common across the ready-to-drink alcohol category and characteristic not only of fruit juices or soft drinks. Please see the attached IRI Aztec Scan Data document illustrating the flavour variants across the industry as of 25 April 2021. Even so, the labelling and use of the packaging container (a can) establish the product as an alcoholic beverage.
- The design elements of the packaging and billboard adverting, whilst using bold colours and geometric shapes, are entirely reflective of the styles of the 1980s and 1990s. They were selected to reflect these decades and not chosen for any likely appeal to children. The specific colours used are reflective of the various flavour variants. Through the pre-vetting process, the colours were darkened to avoid potential appeal to minors. The ABAC Pre-vetter approved the revised colours across the whole range and these changes were carried across the key visuals.
- Above and beyond the design elements and labelling, UDL is a long-standing Australian alcoholic product that has been available to consumers since 1965. Recognition of the brand as an alcoholic product is high amongst 18+ Australians. Through an online perception study that was conducted by Kantar, UDL has 62% 'Prompted Awareness' amongst Australians aged 18 – 65 when asked the question 'What brands of alcohol (Beer, Cider, Wine, Spirits, Liqueurs) have you ever heard of?' The average prompted awareness within the Light Spirit Premix brands is 49%.
- 'New Can Who Dis?' is a current colloquial idiom borrowing from the expression "New phone who dis?" that began in the early 2010s. This expression started when people would get new phones that did not have



their contact information in it. When someone would text them, they would not know who it was, so they would say, "New phone, who dis?". It is now used as a quick, tongue in cheek, glib response to an unknown enquirer.

- Whilst the expression is informal, it cannot be said to be commonly used by and likely to appeal to minors. The original expression is used most by millennials (ages 25 to 40 in 2021) who are found to not perform mobile or computer backups regularly and are most at risk of losing their contact information.
- Recently, on 11 May 2021 a variation on the expression was discussed in culture by Ben Fordham on 2GB radio. In a segment discussing a list of 'signs you're getting old' focusing on the new word 'cheugy' (which means someone who is out of date or trying too hard), Mr Fordham stated "If you put on your social feed "New Hair, Who Dis?... they say you're cheugy too – another list that makes us feel old." The clip can be found here (at the 6:55 minute mark).
- The expression 'New Can Who Dis?' is used in this instance to position our product and new packaging to tap into informal language commonly used with millennials.
- The design, whilst using colours, and various labelling elements establishes the product as an alcoholic beverage. It is therefore likely that a reasonable member of the broader community would not believe that the overall impact of the product creates an illusion of a smooth transition from non-alcoholic to alcoholic beverages.
- We are pleased to have had this opportunity to confirm our long-standing commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as our best-practice global marketing standards, the Diageo Marketing Code (DMC). We would be happy to provide you with any further information should you require.

## The Panel's View

15. UDL is reputedly the first pre-mixed alcoholic beverage introduced to the Australian market and has been consistently on sale since 1965. During that time the packaging of the product has been redesigned on several occasions and this determination concerns the 2021 refresh of the core branding and packaging of the product. Because the packaging is new, the 'grandfathering' provisions in Part 2 for the branding of products on retail sale prior to 31 October 2009 do not apply to the packaging although the provisions would apply to the 'UDL' name itself.
16. The complainant has raised concerns with both the packaging of the product and a billboard advertising the product located within a shopping centre. The complainant submits the marketing has strong appeal to minors, stemming from:
  - the bright, colourful and playful nature of the advertisement as well as the product packaging would have strong appeal specifically to minors;
  - the advertisement could easily be interpreted as an advertisement for soft drink by any unknowing individual, especially minors;
  - use of the phrase “new can who dis?” appeals directly to minors and young people as it is a reference to the phrase “new phone who dis?”, most commonly used by minors and young people.
17. These concerns bring into play Part 3 (b) (i) of the ABAC which provides that an alcohol marketing communication (which includes product packaging and billboard advertising) must not have strong or evident appeal to minors. This standard might be breached if the marketing:
  - is likely to appeal strongly to minors;
  - specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
  - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
18. The Company argues that its packaging and billboard advertising does not breach the ABAC standard. It is submitted:
  - the packaging and billboard advertising showcase a distinct retro style, reminiscent of the 1980s and 1990s, which favours bold colours and geometric shapes;
  - the packaging does not use containers generally employed for fruit juices;

- the packaging clearly identifies the product as alcoholic by including the prominent term 'vodka' in bold uppercase letters in colour block above and before the flavour variant, the alcohol to volume percentage; and
  - 'New Can Who Dis?' is an informal colloquial expression used most by millennials (ages 25 to 40 in 2021).
19. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community is to be the benchmark. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their understanding would not be shared by most people.
20. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
  - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
  - illusion of a smooth transition from non-alcoholic to alcoholic beverages;
  - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
  - depiction of activities or products typically undertaken or used by minors;
  - language and methods of expression used more by minors than adults;
  - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
  - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
  - use of a music genre and artists featuring in youth culture.
21. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element which shapes how a reasonable person will understand the item.
22. Product packaging can give rise to strong appeal to minors if it creates confusion with confectionary or a soft drink. Confusion with a soft drink might occur if:

- the packaging fails to clearly identify the product as an alcohol beverage through use of an alcohol term like beer, ale, vodka, style of wine etc or reliance is made of more subtle alcohol references or terms understood by regular adult drinkers but less likely to be understood by minors e.g., IPA, NEIPA;
- the packaging has a visual design that resembles a soft drink, such as the display of fruit images, bright block colours and the use of a font style or iconography found typically on soft drinks or fruit juices;
- the use of terms commonly associated with a soft drink or fruit juice e.g., orange, lemon, blueberry, pop, smash etc; or
- the type of physical package used and whether this is like that used by soft drinks or fruit juices e.g., prima style juice box.

23. Pre-mixed alcohol beverages such as vodka-based drinks and the more recently introduced alcoholic seltzers are often fruit flavoured and carry the name of a fruit such as lemon, lime, passionfruit, or watermelon. Sometimes these flavourings are also used for soft drinks and as a result there is some potential for confusion between an alcohol beverage and a similarly flavoured soft drink or fruit juice. Several points can be noted:

- the ABAC does not regulate physical beverages, with the standards applying to marketing material;
- it is not improper as such for an alcohol beverage to reference fruit flavours; and
- there is no ABAC standard which requires that alcohol marketing, including packaging, unambiguously identify the beverage as being alcoholic, rather the relevant standard goes to potential confusion with a soft drink or confectionery, being a factor in the marketing item having a strong appeal to minors.

24. The Panel believes the UDL packaging identified in the complaint does not have a strong or evident appeal to minors. In reaching this conclusion, the Panel noted:

- while there is potential for the reference to fruit flavours to create confusion with a soft drink, on the front of the packaging the term 'vodka' is employed which is a well-recognised alcohol descriptor and the additional cue '4%ALC/VOL';
- the product has a long history in the Australian market and while this does not guarantee the brand name 'UDL' will be associated with alcohol by all consumers, in combination with the alcohol descriptors it is likely a reasonable person would recognise the packaging as containing an alcohol beverage;

- while bright eye-catching colours are used in the watermelon packaging, the geometric designs and colour combinations are clearly 80's - early 90's retro rather than current;
  - the reference to 'since 65' on the packaging reinforces the nostalgic association between a brand and design that would be primarily recognised by adults that recall the 1980-90's era; and
  - taken as a whole, the packaging would have appeal across age groups however the appeal to minors would likely be incidental rather than strong or evident.
25. The shopping centre billboard depicts three cans of the product, an overlay of the UDL brand name and the geographic patterns used on the packaging. In addition, the billboard features an overlay of the message 'New Can -Who Dis?'. This expression is identified by the complainant as a reference to the phrase 'new phone - who dis?' which is argued to be used by minors and young people.
26. The phrase is adapted from 'new phone - who dis' which seems to have been first used in 2009 and thereafter became more broadly used, including on TV programs in 2012 and 2014. The expression has become slang to avoid a conversation<sup>1</sup>. It is also now the name of an adult party game which is similar in concept to the popular game 'Cards against Humanity'. While the complainant believed the adaption of the phrase captured prevailing youth culture, this is probably not the case with the expression resonating more with an adult audience of late twenties to late thirties.
27. Drawing this together, and consistent with the decision on the product packaging, the Panel does not believe the billboard can be said to have strong or evident appeal to minors, although the bright eye-catching design will have some appeal to minors. The Panel acknowledges the concerns raised by the complainant are valid points and the decision in this case was finely balanced. The Company's detailed response highlighted how the packaging was altered through the pre-vetting process to address the potential appeal to minors and this demonstrates the challenge in getting the messaging right in marketing of this style.
28. Accordingly, the complaint is dismissed.

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<sup>1</sup>Refer: <https://www.urbandictionary.com/define.php?term=New%20phone%2C%20who%20dis%3F>