



## ABAC Adjudication Panel Determination Nos 191 & 193/23

**Products:** Protein Vodka Seltzer  
**Company:** VodkaPRO  
**Media:** Social Media – Facebook and Instagram  
**Date of decision:** 27 December 2023  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from two complaints received on 4 December 2023 in relation to social media marketing for Protein Vodka Seltzer by VodkaPRO (“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 the 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 meet 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 complaints raise concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 4 December 2023.
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 an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the content of the marketing.

## The Marketing

10. The complaint relates to digital marketing by the Company, screenshots of which are provided below:

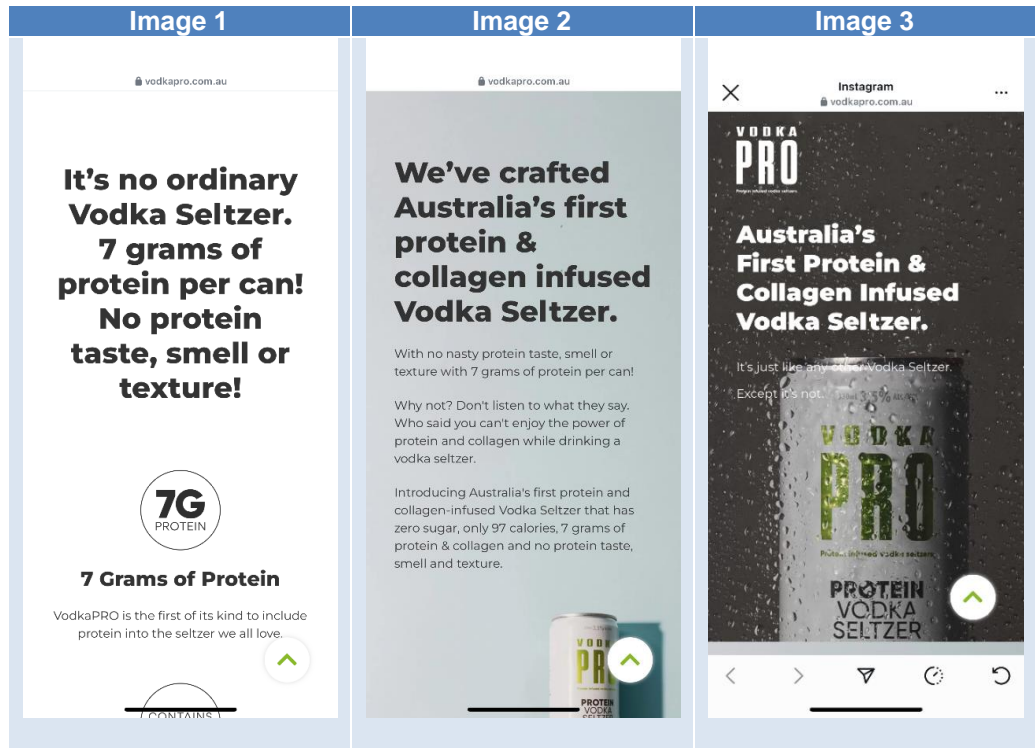


Image 4



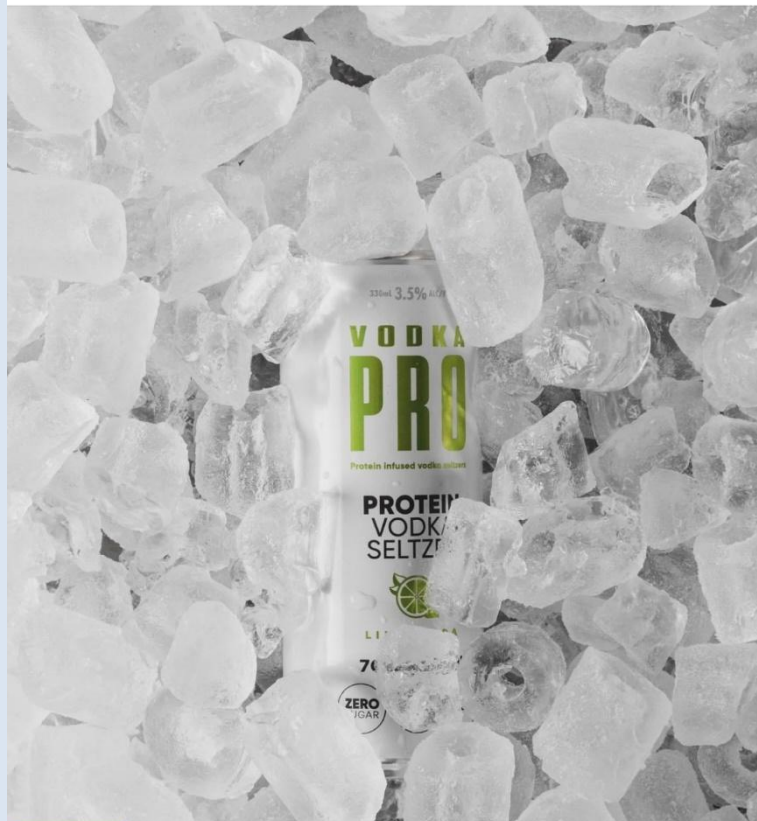
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1 Nov · 🌐

We're just like any other seltzer, except we're not. Each can contains 7 grams of protein, added collagen, zero sugar and just 97 calories.

#VodkaPro #VodkaSeltzer #Protein #Collagen #ZeroSugar #AustraliaSeltzer



## Complaints

11. The complainants object to the marketing as follows:
- *[The marketing] came up on my son's Instagram feed who is under the legal drinking age;*
  - *It's a canned vodka promoting it's infused with protein and collagen. It's advertised more like health product than alcohol;*
  - *It's a vodka brand promoting health claims;*
  - *The advert more looked like a health product proclaiming their Vodka contains 7 grams of protein, no sugar and 100% natural;*
  - *Advertising healthy alcohol. This is promoting alcohol consumption in a healthy manner and gives the view that consumption will provide a health benefit.*

## The ABAC Code

14. Part 3 (c) of the Code provides that a marketing communication must NOT:

...

- (iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

15. Part 4 (b) of the Code provides that:

Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.

## The Company Response

16. The Company responded to the complaint by email on 14 December 2023. The principal comments made by the Company were:
- For all new social media campaigns and posting we have applied a 18 + on the targeted marketing system in Instagram and Facebook. So it will never be on an under age person's phone again.
  - This should never have happened, and I do apologise.

- For the second complaint:
  - We have consulted legal advice from both legal firms and the regulators.
  - Our product has protein and collagen in it. This is not illegal.
  - What is illegal is if we try to use the ingredients to promote it as a health claim.
  - We can simply only state it is in there by saying a “vodka soda with protein and collagen”.
  - We cannot say "vodka soda with the power of protein and collagen" as this is using the ingredients as a health claim.
  - I will delete the posts where it says power of protein because it is a health claim.
  - In future we will only state ingredients as advised.

## **The Panel’s View**

### **Introduction**

17. This determination arises from two complaints about social media marketing for Protein Vodka Seltzer by VodkaPRO. The complainants’ concerns can be summarised as follows:
  - promotion of the product provides the impression that its consumption will provide a health benefit; and
  - the marketing appeared on the Instagram feed of a minor.
18. These concerns raise the following Code standards requiring that:
  - an alcohol marketing communication must not suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity – (Part 3 (c)(iv)); and
  - available age restriction controls must be applied to exclude Minors from viewing an alcohol marketing communication – (Part 4 (b)).

19. The marketing will be assessed against these Code standards in turn below. The Panel's role is to assess the consistency of alcohol marketing communications with ABAC standards from the standpoint of the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and attitudes found by most people in the community is the benchmark.

### **Responsible depiction of the effects of Alcohol**

20. In response to the complaint in relation to the promotion of health benefits, the Company advised that it had obtained legal advice that it is not illegal for its products to contain protein and collagen and to state this in marketing. The Company accepts that it should not promote that the inclusion of these ingredients means the use of the product provides health benefits. Posts making such claims will be deleted and not repeated.
21. Alcohol marketers are entitled to choose their brand posture and highlight that alcohol beverages are produced or distilled in a particular fashion and contain (or exclude) various elements. As the Company acknowledges, the ABAC standard prohibits marketing claims that the way a product is made or its constituent parts, results in the consumption of the product giving a consumer positive health benefits.
22. Further it should be noted that the ABAC does not regulate physical beverages, but simply how alcohol beverages are marketed. The regulation of physical beverages and foodstuffs including issues of safety, quality and accuracy in relation to the listing of ingredients falls directly within the domain of government agencies. Accordingly, the Panel has no role in assessing if the Company's product does in fact contain protein, collagen or any other claimed element.
23. The complainants provided four images of digital marketing undertaken by the Company.

#### Image 1

24. Image 1 contains the words 'It's no ordinary Vodka Seltzer. 7 grams of protein per can! No protein taste, smell or texture!', in a relatively large bold font. Below this, a circle containing '7G Protein' is shown, followed by the words '7 Grams of Protein', and in smaller font, 'VodkaPRO is the first of its kind to include protein into the seltzer we all love'.
25. The Panel does not believe this post breaches the Part 3 (c)(iv) standard. The post states the product contains protein with no taste, smell or texture of protein. No assertion is made that the product offers a health benefit.

## Image 2

26. Image 2 includes the following text:

# **We've crafted Australia's first protein & collagen infused Vodka Seltzer.**

With no nasty protein taste, smell or texture with 7 grams of protein per can!

Why not? Don't listen to what they say. Who said you can't enjoy the power of protein and collagen while drinking a vodka seltzer.

Introducing Australia's first protein and collagen-infused Vodka Seltzer that has zero sugar, only 97 calories, 7 grams of protein & collagen and no protein taste, smell and texture.

27. Again, the marketing promotes that the product contains protein and does not have a nasty protein taste, smell or texture. The post however goes beyond a factual statement and claims the product provides the benefit of the 'power of protein and collagen'. The Panel believes a reasonable person would probably understand this description is making a positive claim of the product offering a health advantage and hence breaches the Code standard.

## Images 3 and 4

28. Image 3 depicts a can of the product. In the top left corner of the ad, 'VodkaPRO' is shown, followed by the words 'Australia's First Protein & Collagen Infused Vodka Seltzer'. Superimposed in very light lettering across the top of the can is 'It's just like any other Vodka Seltzer. Except it's not.'
29. Image 4 depicts a can of the product surrounded by ice cubes. It is accompanied by the following text:





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We're just like any other seltzer, except we're not. Each can contains 7 grams of protein, added collagen, zero sugar and just 97 calories.

[#VodkaPro](#) [#VodkaSeltzer](#) [#Protein](#) [#Collagen](#)  
[#ZeroSugar](#) [#AustraliaSeltzer](#)

30. The Panel does not believe that Images 3 and 4 breach the Code standard. No assertion of positive health benefit is made with the reference to the product's contents.

### **Responsibility toward Minors**

31. One of the complainant's raised a concern that a post from the Company was served to a minor's Instagram feed. This concern raises the Placement Standards in Part 4 of the Code.
32. The Company has a responsibility to have its social media posts directed towards adults and away from minors by meeting the requirements of the ABAC Placement standards. The relevant standard requires that available age restriction controls be utilised to exclude minors - Standard 4 (b).
33. Instagram has age restriction controls that enable individual alcohol marketing posts to be age restricted even if the entire account is not age restricted. The failure to apply this restriction is a breach of Placement Standard 4 (b).
34. The Company accepts that at the time its Instagram feed was not age restricted but explains that it has now applied age restriction controls to both its Facebook and Instagram accounts. However, the Instagram feed was not age restricted at the time of the complaint and accordingly the Company was in breach of Part 4 (b).

### **Conclusion**

35. ABAC provides a pre-vetting advice service to alcohol marketers on whether proposed alcohol marketing communications comply with the ABAC Code. Use of this service would be prudent risk management on the Company's part as its brand posture will require Company marketing to be careful to not make claims which could be understood as offending the ABAC standard.
36. The complaints are upheld in relation to the failure of the Company to apply age restriction controls to its Instagram feed and in relation to its Instagram

post shown in Image 2. The complaints on the other social media posts are dismissed.