



ABAC Adjudication Panel Determination Nos 131, 142, 143 & 144/24

Product: VodkaPRO - Protein Vodka Seltzer
Company: Vodka Pro Pty Ltd
Media: Social Media and Website
Date of decision: 11 October 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Ms Jeanne Strachan
Professor Richard Mattick
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from four complaints about the marketing of Vodka Pro (“the Company”). The first complaint received on 3 September 2024 is about social media marketing. A further three complaints were received from a different complainant on 25 September 2024 and relate to the Company’s marketing on both its website and social media pages.
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:
 - 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;
 - 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, and 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.

- The complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

- The complaints were received on 3 September and 25 September 2024.
- 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

- A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards before public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the marketing items.

The Marketing Communication

- The complaint relates to the following social media posts:

Complaint 131/24:

Image 1



Image 2

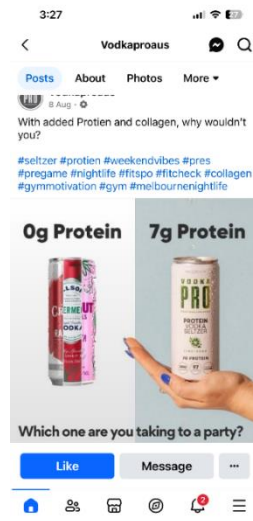
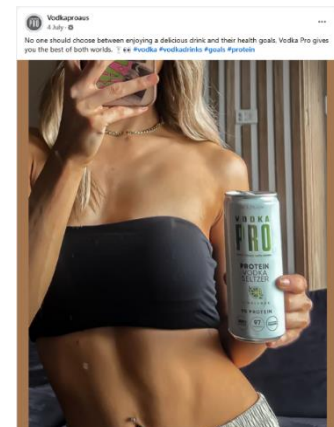


Image 3



Complaint 142/24

Image 4: Screenshot from the webpage (<https://vodkapro.com.au/>)

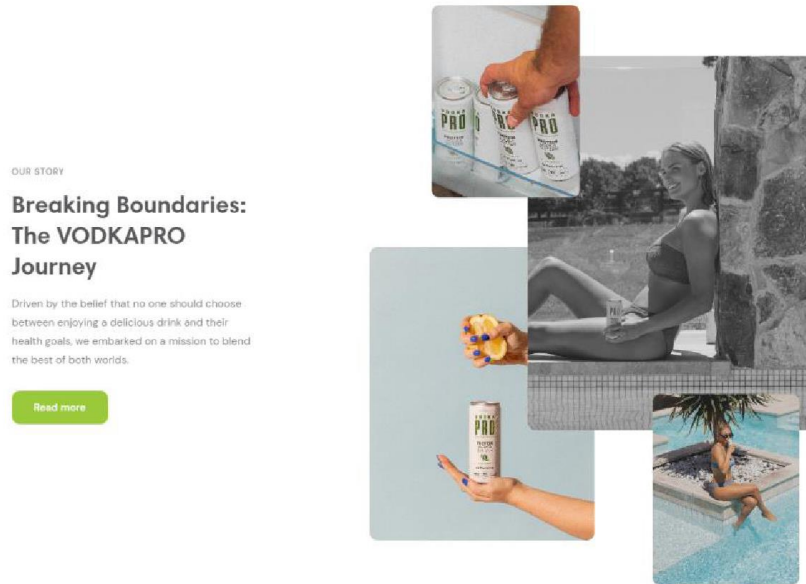


Image 5: Screenshot from VodkaPro webpage (<https://vodkapro.com.au/products/protein-vodka-seltzer-lime>)

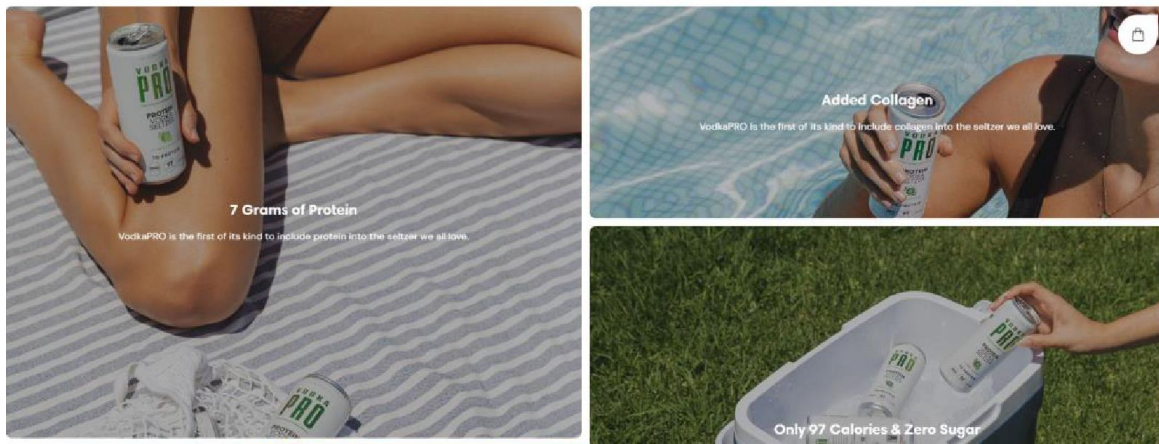


Image 6: Screenshot from VodkaPro webpage (<https://vodkapro.com.au/pages/our-story>)



A Mission of Balance

Driven by the belief that no one should choose between enjoying a delicious drink and their health goals, we embarked on a mission to blend the best of both worlds.

Image 7: Screenshot from VodkaPro webpage (<https://vodkapro.com.au/pages/our-story>)

Defying Expectations

This journey led us to develop a guilt-free beverage that defies expectations, inviting everyone to question, "Why not?" and embrace the innovative fusion of pleasure and wellness.



Complaint 143/24

Image 8 - Instagram - https://www.instagram.com/reel/C9Jw0_Jyk_5/

The video posted to the Instagram account is accompanied by the following words:



The video posted to the Company's Instagram account shows an interview of @txictez (TT) as he drinks a can of VodkaPRO.

They are each sitting on swivel chairs and there are six cans of VodkaPro on the table in front of them.

Interviewer (I): *Toxic Tez [motions towards Toxic Tez].*

Toxic Tez (TT): *What's up?*

I: *He's in the building. Have you ever mixed protein and vodka?*

TT: *Never, I like vodka and soda so alright then.*

I: *Alright, then, so you'll love this. Okay, so you're going to try Vodka Pro for the first time.*

[Interviewer leans forward and picks up a can of VodkaPro and passes it to TT.]

TT: *First impressions. The fact that it has protein in it – it's already won me over. Go to the gym, whether you're shredding or bulking gotta get the protein in. Why not get your protein while you're having fun?*

[Interviewer picks up another can of Vodka Pro and looks at the label.]

I: *Protein, collagen.*

TT: *Collagen, 97 cal, and lime, so we're good.*



[Both open the can of Vodka Pro they are holding.]

TT: *Cheers, cheers.*

[Each takes a sip of the product.]

TT: *Now that just actually tastes so good.*

I: *Mmm.*

TT: *I can't even taste the vodka. But it tastes good.*

I: *Can you taste the protein?*

TT: *I can't taste the protein. There's a strong sense of lime and soda obviously. On a night out I'd have 10. Pre workout.*

[TT takes another small drink.]

I: *Just neck it.*

TT: *Literally? Okay, I'm going. Alright I'm going to neck it.*

[TT then drinks the remainder of his can in one motion, while being cheered on by the interviewer and a person off camera.]

I: *Wow, that is a talent.*

TT: *That was good.*

I: *Laughs.*

TT: *I rate that. So if anyone doesn't like the taste of alcohol it's perfect for you. I'll drink responsibly always.*



Complaint 144/24

Image 9a

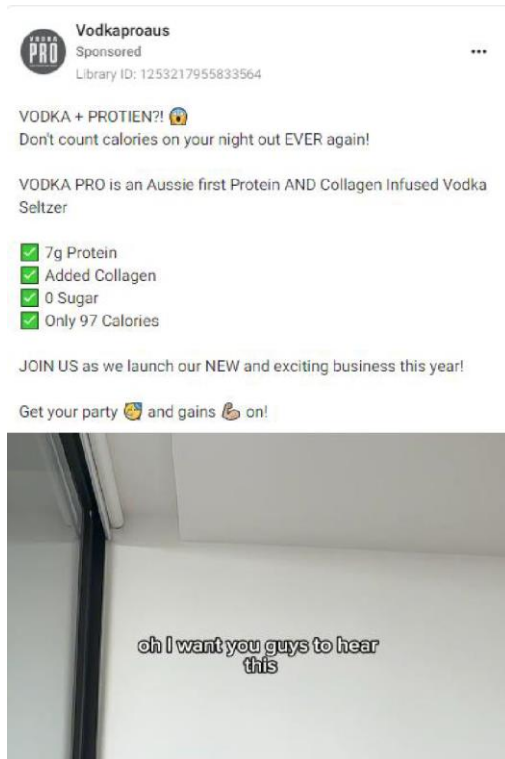


Image 9b



Images 9a and 9b provided by the complainant are from a video posted to the Company's social media accounts. It shows a woman in a room with two swivel chairs, speaking about and drinking VodkaPro. The following is a transcript of what she says:

I had never heard of protein vodka before.

The first one in Australia.

This is Vodka Pro. They're vodka-infused vodka seltzers and I thought let's unbox it together.

Look how pretty it is.

[Holds four cans up to the camera]

I want to try one now.

Zero sugar, 97 calories AND has collagen.

Every fitspo gal's dream.

[Separates one can from the group of four]

Oh I want you guys to hear this.

[Opens a can]

Oh.

Oh yeah, you can see the fizz.

Bottoms up.

[Takes a drink of VodkaPRO]

Oh that tastes so good.

Very zesty, it's lime and soda.

You know how hard it is to find drinks, trying to find drinks that actually taste good when you're trying to shred or lose weight – whatever it is in your fitness journey.

It's hard.

This is a game-changer.

It's definitely got my tick of approval.

[Takes a drink]

Image 10: Screenshot of post made on 20 August 2024 -

<https://www.instagram.com/p/C-42PjbybQ8/>

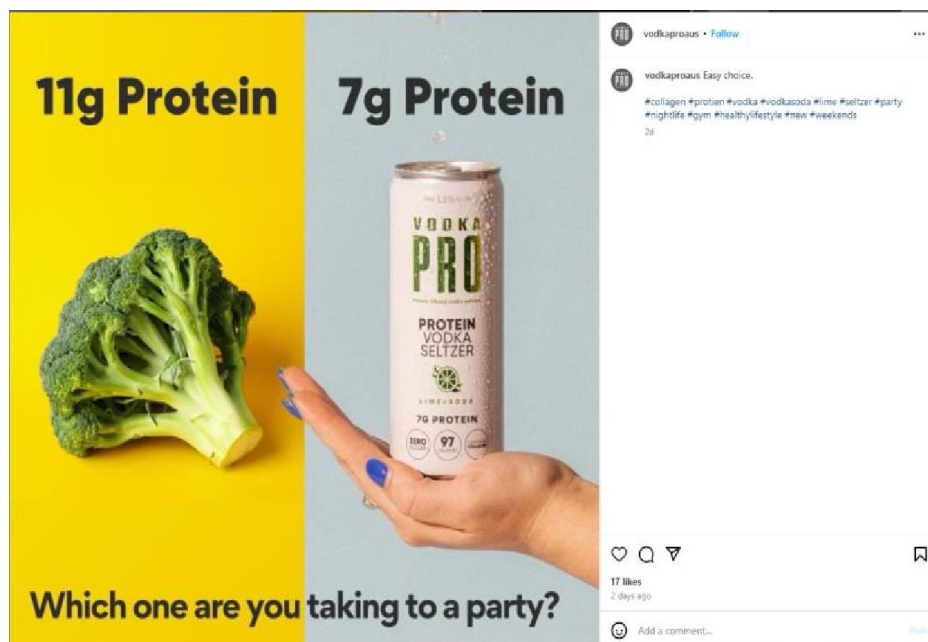


Image 11: Screenshot from 4 July 2024 https://www.instagram.com/p/C8_kiz6Sp5q/

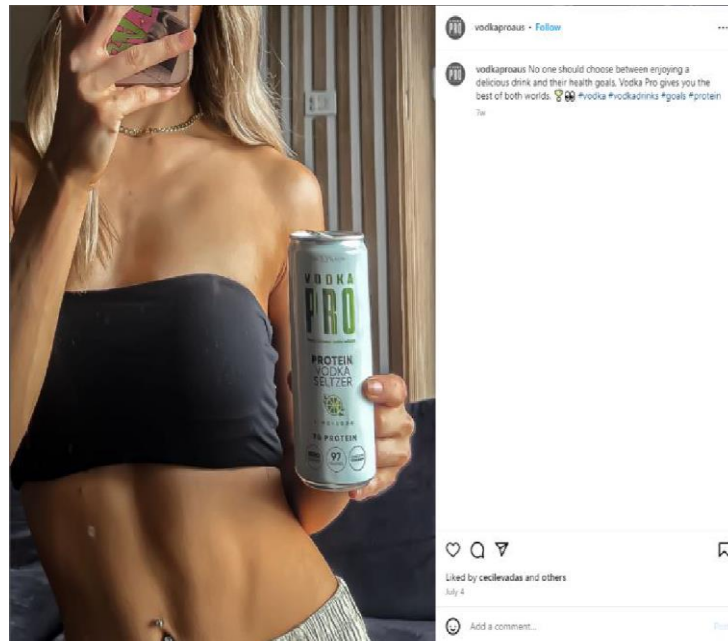


Image 12: Screenshot of post made on 8 July 2024 - <https://www.instagram.com/reel/C9MMjHKPIT1/>



Image 12 provided by the complainant is from a video posted to the Company's social media accounts. It shows a man speaking about and drinking VodkaPro, as he announces that they are now sponsoring his team. The following is a transcript of what he says:

Guys, we are super excited to announce that VodkaPro has come on board as one of our major sponsors.

Now guys, why this drink is so fantastic is that it has zero sugar, 97 calories, contains collagen and it is absolutely divine in your mouth.

So guys, you will see these at the tables at the show, at the bar, make sure you purchase it, it's a fantastic drink and what's better than having protein after a nice little workout?

I'm going to have one right now.

[Separates one can from a pack of four, opens it and drinks from it]

Aaaah.

[Opens door and leaves]

The Complaints

11. The complainants object to the marketing as follows:

Complaint 131/24

- *Has lines like 'No one should choose between enjoying a delicious drink and their health goals, Vodka Pro gives you the best of both worlds' along with images of physically fit people.*
- *Advertising the health benefits of their vodka by promoting that it has protein in it.*

Complaint 142/24

- *We believe photos and imagery used on the VodkaPro web pages are in breach of Standard 3 (d) Alcohol and Safety of the ABAC Responsible Marketing Code.*
- *The complaint relates specifically to images of people consuming VodkaPro while swimming in a pool. [Images 4, 5, 6 and 7] showcase a number of screenshots taken from the VodkaPro website which depict the consumption of the VodkaPro product in or around a swimming pool.*
- *We submit that [Images 4, 5, 6 and 7] showcase models drinking an alcohol product whilst submerged in or around a swimming pool. Given that swimming is explicitly listed as an example under Standard 3 (d) of ABAC due to the unsafe and high-risk nature of the activity when combined with the consumption of alcohol, we believe that this advertisement should be removed from public circulation.*

Complaint 143/24

- *The complaint relates to a social media post for the VodkaPro product posted on their Meta (Facebook and Instagram) accounts.*
- *The video is an interview-style video with influencer '@txic.tez' who has a following of over 220,000. In the video, @txic.tez makes comments about how easy it is to drink such as:*
 - *"Can't even taste the vodka"*
 - *"On a night out, I'd have 10"*
- *The interviewer in the reel then tells @txic.tez to "Just neck it" and @txic.tez then continues to rapidly consume or 'skol' the VodkaPro seltzer product. During this, the interviewer and others can be heard cheering him on. Once @txic.tez consumes the seltzer in full, the interviewer comments "Wow, that is a talent."*
- *We believe these posts are in breach of Standard 3 (a) Responsible and moderate portrayal of Alcohol Beverages (i) and (ii) of the ABAC Responsible Marketing Code.*
- *The Instagram reel referred to in the Image encourages people to consume the product in an irresponsible and excessive manner. This is shown by the influencer @txic.tez 'skolling' the VodkaPro product, being encouraged to do so and later being 'praised' for doing so by the interviewer.*

Complaint 144/24

- *The complaint relates to four social media posts for the VodkaPro products posted on their Meta (Facebook and Instagram) accounts.*
- *We believe these advertisements are in breach of Standard 3 (c) Responsible depiction of the effects of Alcohol (iv) of the ABAC Responsible Marketing Code.*
- *[Images 9a and 9b] are screenshots taken from Meta Ads library of a targeted advertisement posted by VodkaPro. The advertisement uses an influencer or speaker within a 'reel' style video with the speaker reviewing the product and making repeated comments that claim health benefits of the VodkaPro seltzer product including:*
 - *"97 calories and has collagen, every fitspo gals dream".*
 - *"Do you know how hard it is trying to find drinks that actually taste good when you're trying to shred or like to lose weight, whatever it is in your fitness journey, it's hard."*

- [Images 10 and 11] *The complaint relates to four social media posts for the VodkaPro products posted on their Meta (Facebook and Instagram) accounts.*
- [Image 10] *depicts the VodkaPro seltzer product in comparison to broccoli asking, 'Which one are you taking to a party', implying that both products have a similar health or fitness benefit to consuming a nutritious vegetable.*
- [Image 11] *shows a post with accompanying text that states that "No one should choose between enjoying a delicious drink and their health goals, Vodka Pro gives you the best of both worlds". Such language aims to imply that the product is a health substitute compared to other alcoholic products.*
- [Image 12] *is a screenshot of a joint video or 'reel' post made between the VodkaPro and Team Ellis Boxing accounts. Team Ellis Boxing is a Boxing Club which hosts boxing events. The post named VodkaPro as a sponsor of the club. Team Ellis Boxing's Instagram account has a following of over 18,000. During the video, the presenter promotes the key benefits of the VodkaPro seltzer product including protein, low calories, zero sugar and collagen. For example, the presenter states, "What's better than a bit of protein after a workout!" suggesting that the product has therapeutic benefits akin to protein shakes typically ingested after exercise.*
- *We submit that the above-mentioned advertising and social media posts have deliberately used health and therapeutic benefits to promote the VodkaPro seltzer product by:*
 - *Repeated references to ingredients commonly associated with healthy non-alcoholic drinks including protein, low sugar, low calories, and collagen.*
 - *Indicating that the VodkaPro product has a therapeutic or health benefit similar to other high-protein products such as vegetables or protein shakes.*

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), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:

(A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day);
or

(B) Alcohol consumption while pregnant or breastfeeding;

- (a)(ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;
- (c)(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;
- (d) show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Responses

13. The Company responded to the first complaint (131/24) by email on 19 September 2024. The principal comments made by the Company were:

- We are very careful on what we post as we know we are 100% not allowed to promote the drink as a health drink and can only just state the ingredients.
- For these two posts, this has been incorrectly approved and promoted. They must be removed asap.

14. The Company responded to the subsequent three complaints (142, 143 & 144/24) by email on 2 October 2024. The principal comments made by the Company were:

- Thank you for letting me know.
- Please see the responses to all complaints. Again, we are more than happy to work with you and are also happy to remove anything posts you believe are not correct. Just let me know.

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- The models are not swimming with the drink but lying around or in the pool. We do not believe this has breached Standard 3 (d) of ABAC. But in order to avoid any issues we are happy to remove the image. Please advise if you would like me to.

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- The shots are taken for social media purposes and the interviewer does not proceed with skulling the drink as it is referred to. So, we believe it does not breach Standard 3 (a) Responsible and moderate portrayal of Alcohol Beverages (i) and (ii) of the ABAC Responsible Marketing Code. But in order to avoid any issues we are happy to remove the image. Please advise if you would like me to.

Images 9a and 9b

- We are simply stating the ingredients of the drink i.e. the drink has collagen inside it. We are not saying the benefits of collagen, we are not promoting it as a health drink. So, we do not believe this is in breach. But in order to avoid any issues we are happy to remove the image. Please advise if you would like me to.

Image 10

- We are simply stating the ingredients of the drink i.e. the drink has protein inside it. We are not saying the benefits of protein, we are not promoting it as a health drink, we are doing a simple comparison. So, we do not believe this is in breach. But in order to avoid any issues we are happy to remove the image. Please advise if you would like me to.

Image 12

- We are simply stating the ingredients of the drink i.e. the drink has protein inside it. So we do not believe this is in breach. But in order to avoid any issues we are happy to remove the image. Please advise if you would like me to.

The Panel's View

Introduction and Context

15. This determination arises from four complaints about the website and social media marketing for Protein Vodka Seltzer by VodkaPRO. Between them, the complainants contend that the Company is:
 - encouraging the excessive and rapid consumption of alcohol;
 - suggesting that the product offers health benefits; and is
 - showing the consumption of alcohol before or while swimming.

16. These concerns raise three Code standards, namely that an alcohol marketing communication must not:
 - show, encourage, or treat as amusing, consumption such as excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day) or rapid Alcohol consumption – Part 3 (a)(i) and (a)(ii);
 - 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
 - show the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming – Part 3 (d).
17. There are a large number of alcoholic seltzers on the Australian market and each brand naturally seeks to carve out something distinctive about their product in a crowded field. For Protein Vodka Seltzer, the point of distinction relates to its ingredients which are stated to contain protein and collagen. This is then described on the Company's website as 'challenging the status quo' and 'driven by a belief that no one should choose between enjoying a delicious drink and their health goals'.
18. Several contextual observations should be made before turning to the individual marketing communications and their consistency with the applicable Code standards. Firstly, alcohol marketers can choose their brand posture and the ABAC Code does not purport to apply a desirability or undesirable lens over physical alcohol beverages. To some extent government regulatory regimes such as that contained in the NSW Liquor Act do enable products to be declared 'undesirable', but this is not the domain of the ABAC Scheme.
19. From time to time claims are made that a particular alcohol product if consumed at a specific level might provide some health benefits such as red wine and heart health. Generally, such claims will be vigorously disputed and dismissed by public health advocates. Health experts make the point that any alcohol consumption is detrimental whereas the Australian Guidelines to Reduce Health Risks from Drinking Alcohol take a pragmatic approach that goes to harm minimisation from alcohol use.
20. The Panel's role is not to assess the validity of health claims. Its task is more straightforward and that is to fairly apply the Code standards. The Code provides

that a marketing communication must not suggest that the consumption of alcohol offers any therapeutic or health (including mental health) benefit.

21. Put simply, alcohol marketing is not permitted to make any assertion of a health benefit from alcohol use. The standard does permit information about a product to be included in marketing. In practice this means:
 - claims that a product contains specific ingredients or is produced via a particular method are acceptable;
 - assertions of health benefits from the claimed ingredients or production method are not acceptable;
 - statements of comparison between product A and product B can be acceptable. For example, - 'product A contains less calories than a standard beer' will be acceptable; and
 - a comparison coupled with a claim of benefit will not be acceptable. For example - 'product A has fewer calories than the usual beer and this means it's better for you' will not be acceptable.
22. Each marketing communication must be assessed individually as to whether it only makes claims about ingredients or other product characteristics or goes beyond this to assert the product offers health benefits. In doing this, the assessment is 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 are the benchmark.
23. The balance of the determination reviews each of the posts complained about with the issues grouped as follows:
 - Part 3 (c)(iv) - Health benefit concerns;
 - Part 3 (a)(i) and (ii) - Excessive or rapid consumption concerns; and
 - Part 3 (d) - Safety concerns.

Health Benefit Concerns

24. Combined, the complainants have raised six images of digital marketing which it is argued breach the Code requirement that alcohol marketing must not suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit.
25. Image 1 advises that the product is Australia's first protein and collagen-infused vodka seltzer, before stating '*all in a guilt-free packaging of Zero Sugar and only 97 Calories*'. An image of an egg is shown beside a picture of a can of Vodka Pro,

and it is indicated that both contain seven grams of protein. Beneath the image are the words *'Which one are you taking to the party?'*

26. Image 2 includes the words *'With added Protein & collagen why wouldn't you?'* and uses a collation of three alcoholic drinks which it is contended do not contain any protein. A picture of the product is shown alongside and it is stated that it contains seven grams of protein. Beneath the images are the words *'Which one are you taking to the party?'*
27. Images 3 and 11 depict a woman holding a can of the product and are accompanied by the words *'No one should choose between enjoying a delicious drink and their health goals. Vodka Pro gives you the best of both worlds.'*
28. Images 9a and 9b are from a video posted to social media, showing a woman speaking about and drinking from a can of VodkaPro. Specifically, the woman says:
 - *'97 calories and has collagen, every fitspo gals dream';* and
 - *'Do you know how hard it is trying to find drinks that actually taste good when you're trying to shred or like to lose weight, whatever it is in your fitness journey, it's hard.'*
29. Image 10 shows some broccoli alongside a can of VodkaPRO being held by a woman. Above the broccoli it is communicated that it has 11g of protein, and above the can it says 7g of protein. At the bottom of the picture, it says *"Which one are you taking to the party?"*. The hashtags #gym and #healthylifestyle accompany the image.
30. Image 12 is a video posted to the VodkaPro social media. It shows a man announcing that VodkaPro is sponsoring his boxing team and includes him saying *"What's better than a bit of protein after a workout?"*
31. The Company accepts some statements in the posts do breach the Part (c)(iv) standard but believes others are no more than a statement of the ingredients of the product and do not go on to make health benefit claims.
32. Given the large number of posts involved, the Panel won't go through a detailed explanation on each post but the following statements in the context of their use within the posts suggest the product offers a health benefit:
 - *'No one should choose between enjoying a delicious drink and their health goals. Vodka Pro gives you the best of both worlds';*
 - *'Get your party 🎉 and gains 💪 on!';*

- 'You know how hard it is to find drinks, trying to find drinks that actually taste good when you're trying to shred or lose weight – whatever it is in your fitness journey';
- 'every fitspo gals dream';
- #healthylifestyle; and
- 'What's better than a bit of protein after a workout?'

Excessive Consumption concerns

33. The second concern relates to the video in Image 8 which features the influencer Toxic Tez as he is interviewed while trying VodkaPro for the first time. Specifically, the complainant alleges that the marketing shows both the excessive and rapid consumption of alcohol.
34. The Panel believes the video breaches the Code standard in Part 3 (a)(i) and (ii). Firstly Toxic Tez advised that he would drink 10 cans of VodkaPro on a night out, which, based on a 330ml can with a 3.5% alcohol by volume, would be a little over nine standard drinks. Secondly, Toxic Tez, after taking two small drinks from a can of the product then 'necks' the remainder in one continuous action, which a reasonable person would consider the rapid consumption of alcohol.

Safety concerns

35. The third concern is that a number of the images promote the dangerous activity of consuming alcohol while swimming. This concern raises Part 3 (d) of the Code which requires that an alcohol marketing communication must not show the consumption of an alcohol beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as swimming.
36. The Company contends that the website images provided by the complainant are consistent with the ABAC standard. It is argued that the models are not swimming with the drink but lying around or in the pool, which they do not believe is a breach of Standard 3 (d) of the Code.
37. Each of the four images taken from the Company's website shows people wearing swimwear and holding an often open can of the product while either sitting next to or in the water. The probable understanding that a reasonable person would take

from the marketing is that people are drinking either before or while using the swimming pool. These images breach the Part 3 (d) standard.

Conclusion

38. 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 ABAC standards, particularly regarding the product offering health benefits.
39. The complaints are upheld in relation to all of the posts referenced except the first two (Images 1 and 2).