

<b>COMPLAINT NUMBER</b>	19/094
<b>COMPLAINANT</b>	R Brewer – Spirits New Zealand
<b>ADVERTISER</b>	Ketonic Vodka
<b>ADVERTISEMENT</b>	Ketonic Vodka Facebook, Instagram and website
<b>DATE OF MEETING</b>	14 May 2019
<b>OUTCOME</b>	Upheld in part, Not Upheld in part, Settled in part  Advertisement to be removed

## SUMMARY

Advertisements on three platforms for Ketonic Vodka were the subject of this complaint: Facebook, Instagram, Website. Some of the advertisements featured photos of one of the directors of the company, Nazanin (Naz) Khanjani, in togs, shorts and fitness gear, holding a bottle of vodka. Text promoted the “sexy” taste of Ketonic Vodka, and its “low carb” “low sugar” qualities.

The Complainant also queried the content of an article on the Newshub website.

The Complainant was concerned the advertisements were stating or implying that a health benefit and sexual/social success could be gained by the consumption of Ketonic Vodka, and the website was not age gated.

The Advertiser said they have deleted some posts from their Facebook and Instagram pages, and are in the process of adding an age gate to their website. The Advertiser said the Newshub article was not an advertisement, it was a news article about one of the directors of the company, Nazanin Khanjani, and other brands of alcohol are mentioned.

The Complaints Board ruled two of the Facebook advertisements and one of the Instagram advertisements were Not Upheld under Principle 1 and Guidelines 1(b), 1(c) and 1(d) of the Code for Advertising and Promotion of Alcohol and Rule 1(c) of the Advertising Standards Code.

The Complaints Board ruled two of the Facebook and Instagram advertisements were Upheld under Rule 1(c) of the Advertising Standards Code.

The Complaints Board ruled one of the Facebook and website advertisements was Settled under Principle 1 and Guidelines 1(b), 1(c) and 1(d) of the Code for Advertising and Promotion of Alcohol, and Rule 1(c) of the Advertising Standards Code.

The Complaints Board said the advertisements which were upheld use sex to sell an unrelated product and imply drinking Ketonic Vodka will make you socially successful by being “the life of the party”.

The Complaints Board ruled the complaint was Upheld in part, Not Upheld in part and Settled in part.

### **Advertisements to be removed.**

Please note this headnote does not form part of the Decision.

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the complaint with reference to Principle 1 and Guidelines 1(b), 1(c) and 1(d) and Principle 3 and Guideline 3 (i) of the Code for Advertising and Promotion of Alcohol, and Rule 1(c) of the Advertising Standards Code.

Principle 1 of the Code for Advertising and Promotion of Alcohol required the Complaints Board to consider whether the advertisement observed a high standard of social responsibility.

Guideline 1(b) required the Complaints Board to consider whether the advertisement, while depicting the consumption of alcohol as incidental to a friendly and happy social environment, promotes drinking alcohol as a better or more attractive lifestyle choice or implies that the success of a social occasion depends on the presence or consumption of alcohol.

Guideline 1(c) required the Complaints Board to consider whether the advertisement suggested that alcohol can lead to sexual, social, sporting or business success or popularity or was necessary to achieve social status with peers.

Guideline 1(d) required the Complaints Board to consider whether the advertisement depicted alcohol as a necessity or was required for relaxation or suggested it offers any therapeutic benefit.

Principle 3 of the Code for Advertising and Promotion of Alcohol required the Complaints Board to consider whether the advertisement was directed at an adult audience. Alcohol advertising and promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.

Guideline 3(i) says "Websites that primarily promote an alcohol brand and contain games, competitions or other interactive activities shall have an Age Verification Page at entry. Verification shall be by way of input of the visitor's date of birth."

Rule 1(c) of the Advertising Standards Code required the Complaints Board to consider whether the advertisement contained anything that is indecent, or exploitative or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt abuse or ridicule.

### **The Complaints Board ruled the complaint was Upheld.**

#### **The Complaint**

The Complainant was concerned about three types of Ketonic Vodka's advertising; Facebook, Instagram, website and a Newshub website article. The Complainant said the advertisements were stating or implying that a health benefit and sexual/social success

could be gained by the consumption of Ketonic Vodka. The Complainant also said the Ketonic Vodka website was not age gated.

### **The Advertiser's response**

The Advertiser said they have deleted some posts from their Facebook and Instagram pages, and are in the process of adding an age gate to their website. The Advertiser said the Newshub article was not an advertisement, it was a news article about one of the directors of the company, Nazanin Khanjani, and other brands of alcohol are mentioned. The Advertiser requested further clarification about which advertisements the Complainant was referring to. The Advertising Standards Authority (ASA) Secretariat sought additional information from the Complainant. This information was provided to the Advertiser. The Advertiser did not respond.

### **Precedent**

The Complaints Board referred to precedent decision 18/076, which was Upheld in part. The website, Beer the Beautiful Truth featured videos of New Zealand celebrities talking about and consuming beer and provided information on how beer is manufactured and its nutritional content.

The Complaints Board considered whether the representation of beer in the advertisements implied beer was healthy or nutritious. The Complaints Board took into account the website contained factual information about the composition of beer and how it is made. It noted the website referred to consuming alcohol as part of a balanced lifestyle in moderation and responsibly. The Complaints Board said the references to "nutrition", "99% sugar-free" and the carbohydrates in the context of information about the content of beer and alongside other nutritional facts, including the calories on the website, did not create a misleading impression that beer was healthy and nutritious. The Complaints Board said the website and the other advertisements were not in breach of Guideline 1(h) of the Code for Advertising and Promotion of Alcohol and this aspect of the complaints was Not Upheld.

The Complaints Board ruled the complaints were Upheld, in part, due to the use of Eric Murray, a retired Olympian and hero of the young, in non-restricted advertising mediums for the promotion of alcohol products.

### **Complaints Board Discussion**

#### *Consumer Takeout*

The Complaints Board agreed the consumer takeout of the advertisements was a new "sexy" vodka drink was being promoted, that is healthier than other drinks because it has fewer calories.

The Complaints Board agreed some consumers may associate the name of the drink "Ketonic Vodka" with the "ketogenic diet", a low carb, high fat diet.

The Complaints Board noted the Advertiser had made some changes to its advertising following this complaint but had not responded to a subsequent letter from the ASA requesting comment on whether the advertisements complied with Rule 1 (c) Decency and Offensiveness of the Advertising Standards Code. The guidelines for Rule 1 (c) say "Sexual imagery or language must be appropriate to the audience and medium" and "Sexual depictions of people or groups of people may only be used to advertise relevant products and services".

The Complaints Board noted the Advertiser had added a statement to the website, which says "By clicking on this website you are acknowledging that you are over 18 years of age".

The Complaints Board noted that a more robust form of age verification is to require a visitor to enter their date of birth.

The Complaints Board ruled the Newshub article dated 13 December 2018 was outside the jurisdiction of the ASA, following confirmation from Mediaworks that the article was not an advertisement, it was an editorial piece of content in the Lifestyle section.

The Complaints Board then discussed each of the remaining advertisements in turn and considered whether any of the relevant codes had been breached. (A detailed description of each advertisement is on page 7 of this decision).

#### **Facebook ad 1: Not Upheld**

**The advertisement showed a bottle of Ketonic Vodka with the text “The wait is finally over.”**

*Did the advertisement promote alcohol as a better or more attractive lifestyle choice, or imply that the success of a social occasion depends on the presence or consumption of alcohol?*

The Complaints Board agreed this advertisement did not promote alcohol as a better lifestyle choice or imply that the success of a social occasion depends on the presence of alcohol.

*Did the advertisement suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?*

The Complaints Board agreed this advertisement did not suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?

*Did the advertisement depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit?*

The Complaints Board agreed this advertisement did not depict alcohol as a necessity or required for relaxation or suggest it offers any therapeutic benefit.

*Is the sexual imagery or language appropriate to the audience and medium?*

The Complaints Board noted no sexual imagery or language was used in this advertisement and agreed the language used was appropriate to the audience and medium.

#### **Facebook ad 2: Not Upheld**

**The advertisement showed a photo of two women on a red carpet. The text said “The world’s sexiest tasting vodka... Low carb...Low sugar...99% fat free!”**

*Did the advertisement promote alcohol as a better or more attractive lifestyle choice, or imply that the success of a social occasion depends on the presence or consumption of alcohol?*

The Complaints Board agreed this advertisement did not promote alcohol as a better lifestyle choice or imply that the success of a social occasion depends on the presence of alcohol.

*Did the advertisement suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?*

The Complaints Board agreed this advertisement did not suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?

*Did the advertisement depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit?*

The Complaints Board agreed this advertisement did not depict alcohol as a necessity or required for relaxation or suggest it offers any therapeutic benefit. The Complaints Board said the references to “low carb... low sugar... 99% fat free” were in the context of information about the content of the vodka.

*Is the sexual imagery or language appropriate to the audience and medium?*

The Complaints Board agreed the imagery and language used in this advertisement did not reach the threshold to be considered inappropriate. The Complaints Board said the phrase “The world’s sexiest tasting vodka” was hyperbole and the meaning of this phrase would be difficult to define.

### **Instagram ad 3: Not Upheld**

**The advertisement showed a photo of two women in cabaret outfits standing by a pink flamingo. The text said “Made with real coconut water... Low carb...Low sugar...99% fat free!”**

*Did the advertisement promote alcohol as a better or more attractive lifestyle choice, or imply that the success of a social occasion depends on the presence or consumption of alcohol?*

The Complaints Board agreed this advertisement did not promote alcohol as a better lifestyle choice or imply that the success of a social occasion depends on the presence of alcohol.

*Did the advertisement suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?*

The Complaints Board agreed this advertisement did not suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?

*Did the advertisement depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit?*

The Complaints Board agreed this advertisement did not depict alcohol as a necessity or required for relaxation or suggest it offers any therapeutic benefit. The Complaints Board said the references to “low carb... low sugar... 99% fat free” were in the context of information about the content of the vodka.

*Is the sexual imagery or language appropriate to the audience and medium?*

The Complaints Board agreed the imagery and language used in this advertisement did not reach the threshold to be considered inappropriate.

### **Website and Facebook ads 4 and 7: Settled**

**The advertisements showed a photo of Naz wearing red togs holding a bottle of vodka. The text says “WE’RE DRINKING SEXY BACK. Ketonic lets you still be the life of the party while you maintain that banging body”**

*Did the advertisements promote alcohol as a better or more attractive lifestyle choice, or imply that the success of a social occasion depends on the presence or consumption of alcohol?*

The Complaints Board agreed these advertisements did promote alcohol as a better lifestyle choice or imply that the success of a social occasion depends on the presence of alcohol. This is because the advertisements imply drinking Ketonic Vodka will make you socially successful by being “the life of the party”.

*Did the advertisements suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?*

The Complaints Board agreed these advertisements did suggest that alcohol can lead to sexual, social, sporting or business success or popularity. The Complaints Board agreed these advertisements suggested drinking “low carb” “lean” vodka could assist the consumer to have fun while at the same time maintaining their level of sexual attractiveness or “banging body”.

*Did the advertisements depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit?*

The Complaints Board agreed these advertisements suggested drinking “low carb” “lean” vodka could assist the consumer to maintain a sexually attractive or “banging” body.

*Is the sexual imagery or language appropriate to the audience and medium?*

The Complaints Board agreed the sexual imagery and language used in this advertisement were not appropriate to the audience and medium, particularly when there was no age gate on the website.

The Complaints Board noted the text “WE’RE DRINKING SEXY BACK. Ketonic lets you still be the life of the party while you maintain that banging body” was removed from the advertisement, after the Advertiser was notified of this complaint.

*Are the sexual depictions being used to advertise a relevant product?*

The Complaints Board agreed the sexual imagery and language were being used to advertise an unrelated product, alcohol.

The Complaints Board noted this advertisement has been removed, so this aspect of the complaint is settled.

#### **Instagram and Facebook ad 5: Upheld**

**The advertisement showed a photo of Naz wearing shorts, holding a bottle of vodka. The text said “Want to know what sexy taste like?... Come and meet Naz and have a taste...”**

*Did the advertisement promote alcohol as a better or more attractive lifestyle choice, or imply that the success of a social occasion depends on the presence or consumption of alcohol?*

The Complaints Board agreed this advertisement did not promote alcohol as a better lifestyle choice or imply that the success of a social occasion depends on the presence of alcohol.

*Did the advertisement suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?*

The Complaints Board agreed this advertisement did not suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?

*Did the advertisement depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit?*

The Complaints Board agreed this advertisement did not depict alcohol as a necessity or required for relaxation or suggest it offers any therapeutic benefit.

*Is the sexual imagery or language appropriate to the audience and medium?*

The Complaints Board agreed the sexual imagery and language referring to “taste” in this advertisement was not appropriate to the audience and medium,

*Are the sexual depictions being used to advertise a relevant product?*

The Complaints Board agreed the sexual imagery was being used to advertise an unrelated product. The Complaints Board referred to the use of the phrase “Want to know what sexy taste like?... Come and meet Naz and have a taste...”

**Instagram and Facebook ad 6: Upheld**

**The advertisement showed a photo of Naz wearing exercise gear. The text said “Taste sexy”**

*Did the advertisement promote alcohol as a better or more attractive lifestyle choice, or imply that the success of a social occasion depends on the presence or consumption of alcohol?*

The Complaints Board agreed this advertisement did not promote alcohol as a better lifestyle choice or imply that the success of a social occasion depends on the presence of alcohol.

*Did the advertisement suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?*

The Complaints Board agreed this advertisement did not suggest that alcohol can lead to sexual, social, sporting or business success or popularity, or is necessary to achieve social status with peers?

*Did the advertisement depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit?*

The Complaints Board agreed this advertisement did not depict alcohol as a necessity, or required for relaxation or suggest it offers any therapeutic benefit.

*Is the sexual imagery or language appropriate to the audience and medium?*

The Complaints Board agreed the sexual imagery and language referring to “taste sexy” in this advertisement was not appropriate to the audience and medium.

*Are the sexual depictions being used to advertise a relevant product?*

The Complaints Board agreed the sexual imagery was being used to advertise an unrelated product. The Complaints Board referred to the use of the phrase “ketonic vodka Taste sexy...”

*Are the advertisements socially responsible?*

The Complaints Board said two of the Facebook and Instagram advertisements and one of the Facebook and website advertisements were not socially responsible, taking into account context, medium, audience and product.

**Summary**

The Complaints Board ruled two of the Facebook advertisements and one of the Instagram advertisements were Not Upheld under Principle 1 and Guidelines 1(b), 1(c) and 1(d) of the Code for Advertising and Promotion of Alcohol and Rule 1(c) of the Advertising Standards Code.

The Complaints Board ruled two of the Facebook and Instagram advertisements were Upheld under Rule 1(c) of the Advertising Standards Code.

The Complaints Board ruled one of the Facebook and website advertisements was Settled under Principle 1 and Guidelines 1(b), 1(c) and 1(d) of the Code for Advertising and Promotion of Alcohol, and Rule 1(c) of the Advertising Standards Code.

The Complaints Board ruled the complaint was Upheld in part, Not Upheld in part and Settled in part.

**DESCRIPTION OF ADVERTISEMENTS**

Advertisements on three platforms for Ketonic Vodka were the subject of this complaint: Facebook, Instagram, Website. The Complainant also queried a Newshub article on the product.

The Newshub article was ruled No Jurisdiction by the Complaints Board.

1. One of the Facebook advertisements showed a photo of a bottle of Ketonic Vodka with the text: "THE WAIT IS FINALLY OVER!! Ketonic Lean Vodka has officially hit the Auckland shelves!! ... thank you for supporting Ketonic Vodka! Now's your chance to get your hands on her!! Enjoy!"
2. The second Facebook advertisement showed a photo of two women in cabaret outfits standing on a red carpet next to a large, lit-up display of the word "Ketonic" The text said: "About: Made with real coconut water!!...Low carb...Low sugar...99% fat free... 'The world's sexiest tasting vodka'".
3. The Instagram advertisement for Ketonic Vodka showed a photo of two women in Les Folies Bergeres type cabaret outfits, standing by a pink flamingo. The text said "Made with real coconut water... Low carb...Low sugar...99% fat free!"
4. The website (and Facebook) advertisement showed a photo of Naz in red togs, holding a bottle of vodka. Behind Naz's head is a splash of frothy liquid. The text says: "WE'RE DRINKING SEXY BACK. Ketonic lets you still be the life of the party while you maintain that banging body".

When the Advertiser requested further clarification in support of the complaint, the Complainant provided images of the following Facebook, Instagram and website advertisements:

5. The third Facebook (and Instagram) post showed a photo of Naz wearing shorts and a sparkly top leaning against a wall and holding a bottle of Ketonic Vodka. The text says: "Want to know what sexy taste like? You are all invited to our official taste testing! Come meet Naz and have a taste..."
6. The fourth Facebook (and Instagram) post showed a photo of Naz wearing exercise clothing and displaying a bottle of Ketonic Vodka. The bikini top says "VILLIN". The text says: "Taste sexy".
7. The website advertisement showed a photo of Naz in red togs, holding a bottle of vodka. Behind Naz's head is a splash of frothy liquid. The text says: "WE'RE DRINKING SEXY BACK." (This was a modification of advertisement number 4.)

#### **COMPLAINT FROM R BREWER – SPIRITS NEW ZEALAND**

SNZ would like to draw the ASA's attention to, and lay a formal complaint, regarding the promotion and advertising approach of Ketonic Vodka. Our complaint draws upon the imagery, wording a promotional vehicles uses by the company which can be see on their Instagram, Facebook and website feeds below –

<https://www.newshub.co.nz/home/lifestyle/2018/12/the-bachelor-s-naz-releases-new-vodka-drink-ketonic.html> <https://ketonicvodka.com/>

<https://www.facebook.com/ketonicvodka>

[https://www.instagram.com/ketonicvodka/?utm\\_source=ig\\_embed](https://www.instagram.com/ketonicvodka/?utm_source=ig_embed)

Wholly and in part these promotional/advertising vehicles are in breach of the ASA Codes relating to alcohol advertising in the following manner:

1. Stating that a health benefit can be gained from the consumption of Ketonic Vodka - breaches Guideline 1(d) of the ASA Alcohol Code (Ketonic lets you still be the life of the party while you maintain that banging body – website. Also see Newshub link above)
2. That social success or 'having more fun' can be achieved through the consumption of



Ketonic Vodka – breaches Guideline 1(b) of the ASA Alcohol Code (see Facebook and Instagram posts) 3. The use of sexualised imagery in many of the company’s promotional vehicles implies that sexual/social success can be achieved through the consumption of their product – breaches Guideline 1(c) of the ASA Alcohol Code (throughout all channels above).

We would also note that their website has no age gate.

We would ask that the ASA investigate the above matters and direct the company to cease using the claims, wording and imagery in breach of the ASA codes.

### **ADDITIONAL INFORMATION FROM COMPLAINANT**

Thank you for the opportunity to comment further on the Ketonic approach to promotion and advertising.

I include below a couple of social media posts appearing on Instagram and Facebook plus an article from Newshub as an indication of the type of imagery and messaging accompanying the product.

Posts – still promoted. Note the wording associated with the photo.

(The Complainant provided three additional images from the Ketonic Vodka Facebook and Instagram pages, numbers 5,6 and 7 under “Description of Advertisements”, above).

### **CODES OF PRACTICE**

#### **CODE FOR ADVERTISING AND PROMOTION OF ALCOHOL**

**Principle 1:** Alcohol advertising and promotions shall observe a high standard of social responsibility.

**Guidelines:** 1(b) While alcohol advertising and promotions may depict the consumption of alcohol as incidental to a friendly and happy social environment, it shall not promote drinking alcohol as a better or more attractive lifestyle choice nor imply that the success of a social occasion depends on the presence or consumption of alcohol.

1(c) Alcohol advertising and promotions shall not suggest that alcohol can lead to sexual, social, sporting or business success or popularity or is necessary to achieve social status with peers.

1(d) Alcohol advertising and promotions shall not depict alcohol as a necessity, nor required for relaxation nor suggest it offers any therapeutic benefit.

**Principle 3:** Alcohol advertising and promotions shall be directed at adult audiences. Alcohol advertising and promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.

**Rule 3(i)** Websites that primarily promote an alcohol brand and contain games, competitions or other interactive activities shall have an Age Verification Page at entry. Verification shall be by way of input of the visitor’s date of birth.

### **ADVERTISING STANDARDS CODE**

**Rule 1(c): Decency and Offensiveness:** Advertisements must not contain anything that is indecent, or exploitative or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt abuse or ridicule.

#### **RESPONSE FROM ADVERTISER, KETONIC VODKA**

Our Facebook Messenger and Insta DMs are managed by contractors who won't have any knowledge on these matters and are also dealing with large quantities of mail.

Can you also clarify which advertisement you are referring to exactly? Your previous email was extremely broad and included screen shots of our entire Insta profile, Facebook and website? This makes it very difficult to respond using your template.

Changes we have made prior to your email to aid in the compliance of Advertising standards below:

Facebook - We have deleted posts which have been flagged by our own team members as a possible breach. \*please revisit our FB page for an update and come back to me with the exact posts you would like us to change for compliance purposes. (We are open to editing posts if need be).

Instagram - Please revisit our instagram profile, we have made extensive changes to the language used in our Biography and posts.

Website - We are currently in the process of adding an age gate to our website. Take this email as confirmation that this is being actioned. (please advise any further changes that may need to be made).

\*Newshub article - This is completely out of our control and is not advertisement from our end. This was a "News article" made on one of our Director's Nazanin Khanjani and a venture she is involved in. There was no monetary transaction made for any purpose of PR or advertising between Newshub and Consume Limited. If you have read the article you would see there are 3 other brands mentioned alongside Ketonic Vodka in this article Clean Collective, Parklanes and Sundown Gin. This was not a paid exclusive article written about Ketonic Vodka.

#### **RESPONSE FROM MEDIA, FACEBOOK**

No response was received from Facebook.

#### **APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.