

Decision of the ADVERTISING REGULATORY BOARD

Advertiser	Nasty Online (Pty) Ltd
Consumer/Competitor	Consumer
File reference	3978 – Nasty Vapes SA - VPASA
Outcome	Upheld
Date	17 June 2025

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint submitted by an industry representative organisation against several Tik Tok videos posted online.

Description of the advertising

The Complainant provided 21 URLs that link to different TikTok videos featuring people discussing, smoking or handing out Nasty Vapes products.

Some of the URLs provided were duplicates. However, there were 15 unique URLs. These were:

1. <https://vm.tiktok.com/ZMBaEXYf7/> (uploaded by “cailyn_goliath”)
2. <https://vm.tiktok.com/ZMBDAaYFx/> (uploaded by “lylo_swarts”)
3. <https://vm.tiktok.com/ZMBKQEpKg/> (uploaded by “mainly.lebo”)
4. <https://vm.tiktok.com/ZMBKQTBQN/> (uploaded by “mainly.lebo”)
5. <https://vm.tiktok.com/ZMBmY72Ey/> (uploaded by “lilprofit____”)
6. <https://vm.tiktok.com/ZMBnDoVbF/> (which was unavailable at the time of ruling)
7. <https://vm.tiktok.com/ZMBnDwo4K/> (uploaded by “gsty.fx”)

Directors: GD Schimmel (CEO) K Denalane (Chair)

A Allison C Borain S Fakir A Gcoyi G Leck N Motsoeneng M Neethling C Khanyile A Pimentel

NPC 2018/528875/08 Block 4, 1 Magalieszicht Ave, Dunkeld West, 2196

Tel 011 593 3104 Email info@arb.org.za www.arb.org.za

8. <https://vm.tiktok.com/ZMBnU2n7v/> (uploaded by “eescoo”)
9. <https://vm.tiktok.com/ZMBnU4bPJ/> (an interview about the dangers of vaping)
10. <https://vm.tiktok.com/ZMBnU5L98/> (uploaded by “banaza.smoke”)
11. <https://vm.tiktok.com/ZMBnUbpe2/> (uploaded by “jnralienmaxbe”)
12. <https://vm.tiktok.com/ZMBnUqTkT/> (uploaded by “leethu.n2”)
13. <https://vm.tiktok.com/ZMBnUuCr5/> (uploaded by “emmanicoleburgers”)
14. <https://vm.tiktok.com/ZMBnUyq6d/> (which was unavailable at the time of ruling)
15. <https://vm.tiktok.com/ZMkyvVMCb/> (uploaded by “laurenandlaratiktok”)

Complaint

The Complainant objected to the Advertiser’s “*irresponsible marketing practices involving underage individuals*”. It noted, *inter alia*, that the examples submitted include “*underage*” individuals. In a separate document, it argued that there has been a noticeable increase in partnerships and collaborations between the Advertiser and young influencers, many of whom appear to be “just over 18”. These promotions range from direct brand partnerships to more subtle endorsements.

The Complainant added that young people who are not officially affiliated with the brand are promoting Nasty Vapes on their own, hoping to gain recognition or secure future collaborations. This trend has sparked an increase of engagements in the comments sections, where individuals are actively seeking partnership opportunities and asking advice on how they can become brand ambassadors.

Response

All reasonable attempts were made to elicit a response from the Advertiser. However, no response was received.

Application of the Code of Advertising Practice

The Directorate considered Clause 2 of Appendix L: (Advertising Restrictions - Vapour products) to be relevant to this dispute.

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

Jurisdiction

The Advertiser did not submit a response, and the Directorate therefore assumes that it does not consider itself bound by the jurisdiction of the ARB. For the purposes of clarity, the Directorate notes:

Clause 3.3 of the ARB's Memorandum of Incorporation reads as follows:

“3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.”

This position has been confirmed by the Supreme Court of Appeal, in a judgement against which leave to appeal to the Constitutional Court was refused.

The ARB will rule on whatever is before it when making a decision for the guidance of its members.

Merits

Clause 2 of The Vapour Products Appendix states, *inter alia*:

- Advertisers shall not target persons under the age of 18.
- Advertising for such products shall not include persons who are, or appear to be under the age of 25.
- Advertising shall not be published unless at least 75% of the intended audience is people over the age of 18.

The Complainant has provided several examples, but appears to have overlooked the fact that none of them appear to have been placed by the Advertiser, and very few can reasonably be said to imply any association to the Advertiser.

As is evident from the descriptions above, these are all individuals posting content on their own TikTok accounts. While the Directorate accepts that they are likely to do so in an attempt to gain followers and possibly become a sponsored influencer, there is very little to show that there is any relationship between most of these individuals and the Advertiser, save for a few exceptions, which will be discussed below.

None of the posts referenced in the complaint feature words like “Sponsored” or “Promoted” (a common indicator of an established commercial relationship which would mean that the Advertiser carried some liability for the content). This made it hard to determine whether the Advertiser has knowledge of, endorses, or possibly provides any form of compensation for this content. To illustrate:

- At least one post appears to have originated in Canada (the post by “banaza.smoke” features the tags “#torontotiktok”, “#torontolife”, “#canada_lifeCA” and “#canadaCA”), and is therefore arguably irrelevant to this dispute.
- At least one post does not appear to feature or reference the Advertiser at all, and does not appear to feature the Advertiser’s product (“jnralienmaxbe”).

- At least two links provided by the Complainant did not appear to work at the time of considering the complaint and drafting this ruling (see <https://vm.tiktok.com/ZMBnDoVbF/> and <https://vm.tiktok.com/ZMBnUyq6d/>), which means that the Directorate could not consider these examples.
- In some instances, the posts include tags that might appear to reference the advertiser, but do not actually link to the Advertiser as much as to generic posts that might carry the same tag (examples include “@nasty.southafrica” posted by “Cailyn_goliath”, “gsty.fx” and by “laurenandlaratiktok”, or “#nasty” by “lylo_swarts”).
- Some of the URLs provided by the Complainant link to TikTok posts that actively discourage vaping and explain the dangers and risks associated with vaping. These are clearly not published at the instance of the Advertiser, and are largely irrelevant for the purposes of this ruling.

It was difficult for the Directorate to determine that any of the TikTok posts were published by, or at the instance of the Advertiser. This is a platform that allows virtually anyone to post virtually anything without any oversight or monitoring. Given this, it would be irresponsible for the ARB to issue a ruling against any advertiser when there is no reasonable basis to conclude that such content was posted by or at the instance of such an Advertiser.

The Directorate was only able to find reasonable evidence to suggest a relationship between the Advertiser and the following persons:

- The examples posted by “mainly.lebo” specifically mention that the event at which she were filming was “... sponsored by Nasty”, with a clearly visible “Nasty” banner behind her.
- The post by “lilprofit___” displays the “Nasty” logo in his post. He also has a logo for “Nasty SA” displayed on his Instagram page, which redirects to the Advertiser’s website. His TikTok page also includes posts labelled as “Brand Partnership”, where the Advertiser’s brand is promoted.
- The post by “gsty.fx” indicates that he is a “nasty ambassador” in his bio.

- The post by “leethu.n2” refers to herself as a “brand collab” and features a link to “nastyworldwide.co.za” in her TikTok bio.

In the absence of anything more concrete, the Directorate can only consider these examples in relation to the Advertiser, as there appears to be a publicly stated relationship between these influencers and the Advertiser.

The question now becomes whether these posts contravene the provisions of Clause 2 of the Vapour Products Appendix.

When viewing the relevant posts, the Directorate could not see any attempt to ensure that the videos are primarily targeted at people older than 18 (as required by Clause 2.1 of the appendix). There is also no statement or icon to indicate that the products featured are not intended for people under 18.

Given that viewers as young as 13 can legally access TikTok, it can reasonably be assumed that anyone under the age of 18 is able to view these posts, which clearly encourage the use of these products. Judging by the comments below many of the videos, there are several people desperate to acquire the products featured.

In addition, none of the examples listed above contained the mandatory warning that these products contain nicotine and are addictive (refer Clause 2.5 of the Appendix).

Finally, some of the examples appear to feature instances where vape cartridges are simply placed somewhere public (like behind a flowerpot in a mall) with an implied invitation for anyone to find it and keep it. Not only is this arguably irresponsible and hazardous behaviour, but it clearly circumvents the intention of Clause 2 of the Appendix (which was crafted to avoid having young people exposed to, or encouraged to use these products).

These examples, therefore, appear to be in contravention of Clause 2 of Appendix L. Given the apparent link between these influencers and the Advertiser, the Directorate finds that the Advertiser, by virtue of its apparent relationship with these influencers, is in contravention of this appendix.

Instructions to Members

Members of the ARB are, therefore, requested to refuse to publish the following videos unless they are amended to comply with the provisions of Appendix L of the Code:

- <https://vm.tiktok.com/ZMBKQEpKg/> (uploaded by “mainly.lebo”)
- <https://vm.tiktok.com/ZMBKQTBQN/> (uploaded by “mainly.lebo”)
- <https://vm.tiktok.com/ZMBmY72Ey/> (uploaded by “lilprofit___”)
- <https://vm.tiktok.com/ZMBnDwo4K/> (uploaded by “gsty.fx”)
- <https://vm.tiktok.com/ZMBnUqTkT/> (uploaded by “leethu.n2”)