

# **ASA Adjudication on CN Creative Ltd**

## **CN Creative Ltd t/a Vype**

22 Tudor Street  
London  
England  
EC4Y0AY

### **Date:**

11 June 2014

### **Media:**

Poster, Television

### **Sector:**

Leisure

### **Number of complaints:**

15

### **Agency:**

Iris Worldwide

### **Complaint Ref:**

A14-260400

## **Background**

Summary of Council decision:

Five issues were investigated, four of which were Not upheld and one was Upheld.

## **Ad**

Two ads for a brand of e-cigarette:

a. A TV ad, which featured a young man and woman running through city streets at night, to an energetic soundtrack. On-screen text stated "Contains nicotine. 18+ only. Read leaflet in pack."

The man was shown running up to a building and pushing through a set of glass doors, marked with an '18+' sign, to enter. Both the man and the woman were then seen running until they launched into the air. As they leapt, a smoke-like substance wrapped around their bodies and faces and then appeared as a barrier they had passed through. The voice-over stated, "Pure satisfaction for vapers. Vype, e-cigarettes. Experience the breakthrough." A black case featuring the text "vype ... reload" was then shown against a black background, above the text "EXPERIENCE THE BREAKTHROUGH".

b. A poster featured a young woman in mid-air with a smoke barrier behind her. Prominent text stated "vype e-cigarettes ... EXPERIENCE THE BREAKTHROUGH ... No tobacco. No smoke. Just pure satisfaction for smokers". The product image showed a black case with a flipped open lid and two e-cigarettes emerging from the top". Footnote text stated "Contains nicotine. 18+ only. Read leaflet in pack".

## **Issue**

The ASA received 15 complaints.

Fourteen viewers challenged whether ad (a) was offensive, irresponsible and potentially harmful, because:

1. it promoted the use of e-cigarettes, which contained an addictive substance, nicotine, and glamorised e-cigarettes and smoking; and
2. it was likely to appeal to young viewers, and normalised the notion of e-cigarettes and smoking among that group.
3. Two complainants challenged whether ad (b) was irresponsible, because it glamorised an addictive substance, nicotine.

The ASA challenged whether:

4. ad (a) misleadingly implied the product could be used as a smoking cessation device; and
5. ad (b) misleadingly implied the product could be used as a smoking cessation device.

## **CAP Code (Edition 12)**

[1.312.112.113.1](#)

## **BCAP Code**

[1.210.310.410.511.1911.43.132.34.14.24.4](#)

## **Response**

CN Creative Ltd t/a Vype highlighted their belief that there was a potentially significant public health benefit if smokers could be persuaded to switch to e-cigarettes. They explained that Vype e-cigarette advertising presented the product as an alternative to tobacco and was targeted at adult smokers or nicotine users, both in terms of content and placement. They understood that the vast majority of e-cigarette users were smokers or ex-smokers and the aim of the ads was to target this group, in a responsible way, inviting smokers to try Vype e-cigarettes.

1. Vype explained that their TV ad was created to be dramatic and atmospheric, to drive awareness of Vype e-cigarettes as an alternative product for 'vapers'. The actors were portrayed as energetic, but were not dressed, and did not behave, in a particularly glamorous way; they were seen running through the streets at night before launching into the air and passing through a 'vapour boom'. Care was taken in editing the ad in relation to, for example, facial expressions and body language to avoid presenting the overall concept in an overtly glamorous manner. They believed the ad was not sexual in tone or offensive in any other way and pointed out that there was no image of an e-cigarette. The moment depicted was a solitary, personal one, which was not associated with any social situation that could imply glamour, popularity or sophistication and there was no suggestion that use of the product had a transformative effect. Tobacco products were not shown, or referred to, and they felt it was clear that the ad represented an e-cigarette product, which could be advertised, providing it was done in a responsible way.

Vype believed, although a Vype pack was shown, it did not resemble the style or design of a traditional tobacco cigarette pack and the vapour seen was visually distinct from the smoke of burning tobacco.

Clearcast explained that the ad made clear that the product contained nicotine through the use of on-screen text "Contains nicotine - read label in pack" and that a careful approach had been taken to avoid linking the Vype product with tobacco smoking such that there were no references to smokers, smoking or smoking paraphernalia. They believed the ad was targeted at existing smokers, rather than appealing to 'new smokers' and pointed out that it did not suggest e-cigarettes were fun or safe to use. Neither the environment nor the actors were portrayed as seductive or glamorous, which they believed avoided any implication that the product was desirable or enhancing in any way.

2. Vype explained that the ad was designed to appeal to an adult audience and, in their view, contained no imagery or individuals that were likely to be of particular appeal to those under 18 years of age. Care had been taken with the choice of actors, both of whom were aged 29 years, and neither behaved in an adolescent or juvenile way. Vype pointed out that on-screen text indicated that the product was for those aged "18+ only" and an "18+ only" symbol was displayed on the glass doors that the male actor passed through to demonstrate that the setting he entered was an adult-only environment.

The ad was scheduled to appear only after 9 pm and during, or adjacent to, programming of an adult nature. Vype added that no ad space had been purchased for any channels, or during any programmes where Broadcast Audience Research Board (BARB) data indicated a particular appeal for under 18s.

They felt it was clear that the ad represented an e-cigarette and there were no signs or symbols referring to tobacco products or smoking that would lead to the normalisation of smoking tobacco among young viewers.

Clearcast explained that the concept of the ad was based on the practicality that people must interrupt their activities to go outside when they wish to smoke and believed smoking, whether through traditional means or with an e-cigarette, could be alluded to, but not explicitly referenced in advertising; that being so, those under 18 did not see what was being advertised. The ad was set in an adult, nightclub environment and featured actors who were clearly over the age of 18 and Clearcast felt there was no particular appeal for younger viewers. They cleared the ad, with a restriction to prevent it from being broadcast before, during or immediately after children's programmes in recognition that the product fell into a category of those that were not suitable for those under 16 years of age.

3. Vype believed the image was iconic and dramatic, rather than glamorous. The woman was portrayed as energetic, but was not dressed, or seen behaving, in a particularly glamorous way; she was jumping through a 'vapour boom'. The ad was not sexual in tone and there were no images of the product in use. They said the moment depicted was a solitary, personal one, which was not associated with any social situation implying glamour, popularity or sophistication. The ad did not promote tobacco or tobacco products and there was nothing to suggest that use of this product had a transformative effect.

The ad made reference to 'Vype e-cigarettes' to clarify the nature of the product and featured the statement "No tobacco. No smoke. Just pure satisfaction for smokers" to reference the product as one for smokers and as an alternative to tobacco cigarettes with a message that resonated with them. Further text – "Contains nicotine", "18+", "Read leaflet in pack" and "goVype.com" – made clear that the product contained nicotine, was intended only for over 18s and encouraged consumer caution, by providing sources of information they could visit to find out more.

4. & 5. Vype acknowledged that their product could not be advertised as a smoking cessation device. They believed the ads presented Vype as an alternative product for nicotine users and that it was acceptable to present e-cigarettes as an alternative to tobacco. The ads were directed at smokers and nicotine users, but there was an important distinction to be made between presenting the product as an alternative to smoking and implying it was a smoking cessation aid. The vast majority of e-cigarette users were ex-smokers and there was great difficulty in producing a responsible and appropriately targeted ad without presenting the product as an alternative, inviting smokers and nicotine users to try Vype e-cigarettes. Presenting e-cigarettes as an alternative was, they believed, consistent with the goal of achieving the potential public health benefit of the category.

Vype pointed out that there was no reference to smoking, smokers (in ad (a)), tobacco products, or to smoking cessation in any form, such as 'quitting', 'cutting back' or 'satisfaction of cravings'. No reference was made to any stop-smoking campaign, any claims that could be considered medicinal, or an indication that the product was licensed. In Vype's view, an explicit reference to the product not being a smoking cessation aid could be seen as a discouragement for smokers to quit and therefore sustain a damaging habit.

Vype understood that 55% of conflicted smokers (those looking to reduce the amount they smoke) did not feel that e-cigarettes delivered on satisfaction and taste; neither did they have confidence in the sector, which had been led predominantly by small, online companies. They said they wanted to raise awareness that Vype was a new, satisfying alternative to other e-cigarettes available and encourage those conflicted smokers to 'experience the breakthrough' for themselves. They explained that testing had shown the key meanings of the "Experience the Breakthrough" statement to be that Vype was a more satisfying e-cigarette than others on the market and that e-cigarettes generally were a technological breakthrough. There was also an understanding of 'freedom', reflecting that e-cigarettes were subject to fewer restrictions than tobacco in terms of where they may be used. Vype understood that one interpretation could be related to a user moving away from tobacco, but believed that this was tied to the notion of the product being an alternative. In their view, an average consumer would recognise the Vype ads as representing a product, or alternative product, intended for nicotine users, rather than as a licensed smoking cessation device.

Clearcast felt the ad was in line with other e-cigarette advertisements, in that the product was presented as an alternative to smoking, but not something that was preferable in terms of health. There were no claims made about low tar or additives. Although they understood that some consumers used e-cigarettes as a method of cutting down or quitting smoking traditional cigarettes, they were very careful to avoid the suggestion that the product carried a health benefit or was recommended as a smoking cessation device.

## **Assessment**

### 1. Not upheld

The ASA acknowledged Vype's view that the aim of the ad was to be dramatic and atmospheric and also that the individuals in the ad did not behave in a manner that viewers were likely to interpret as glamorous. The ad clarified at its close, through voice-over and a shot of the product packaging, that it represented Vype e-cigarettes and on-screen text alerted viewers to the fact that the product contained nicotine.

We considered that it was acceptable for e-cigarettes to be advertised, providing it was done in a responsible way, in line with the Code administered by the ASA and all other regulatory requirements. In this example, the presentation was abstract and highly stylised and the individuals were not seen using the product or appearing in situations where e-cigarettes were being used by others. Although viewers were likely to infer that the substance the subjects passed through was tobacco smoke, it was unlikely to be seen as a positive reference to cigarettes or smoking. The soundtrack reflected the ad's choreography and added to the drama of the narrative, but in itself this was unlikely to be understood as glamorising either e-cigarettes or smoking.

We concluded that the presentation of ad (a) was unlikely to cause serious or widespread offence, or be seen as irresponsible or harmful by presenting the product, or smoking more generally, in a glamorous way.

On this point, we investigated ad (a) under BCAP Code rules 1.2 (Social Responsibility), 4.2 and 4.4, (Harm and offence) and 10.3 and 10.4 (Prohibited categories), but did not find it in breach.

## 2. Not upheld

We acknowledged the viewers' concern that young people should be protected from advertising material and products that were unsuitable for them. In this example, we noted the views of Vype and Clearcast that the overall presentation was designed to appeal to adults, through the actors and their behaviour as well as the environment they occupied. In addition, although the action of the ad was fast-paced to a point, it was unlikely to be interpreted as child-like or representative of youth culture. In line with point 1, although viewers were likely to understand that the substance the subjects passed through was tobacco smoke, it was unlikely to be seen as a positive reference to cigarettes or smoking.

The ad had been cleared by Clearcast with a restriction to keep it away from programmes that were of particular appeal to children and, in addition to this, it had been scheduled for broadcast only after 9 pm.

In light of the content in ad (a) and the applied scheduling restrictions, we concluded that it was unlikely to cause serious or widespread offence, or be seen as irresponsible or harmful by appealing to young viewers.

On this point, we investigated ad (a) under BCAP Code rules 1.2 (Social Responsibility), 4.1, 4.2 and 4.4, (Harm and offence), 10.3, 10.4 and 10.5 (Prohibited categories) and 32.3 (Scheduling), but did not find it in breach.

## 3. Not upheld

We considered that the model appeared youthful and the pose indicated a level of energy and movement, but also noted the product was not seen in use. The image was likely to be interpreted as an abstract one, representative of the advertisers' intention to distinguish their product, but not as one depicting glamour or attractiveness in association with e-cigarette use. The text "Just pure satisfaction for smokers" indicated that the product was intended for those who already smoked cigarettes, and who were therefore aware of the nature of nicotine, and implied they could achieve a similar level of 'satisfaction' with a Vype e-cigarette as from their tobacco brand. We also noted the ad contained text to alert readers to the fact that the product contained nicotine and was suitable only for those over 18 years.

In consideration of both the graphic content and text in ad (b), we concluded that it was unlikely to be seen as irresponsible.

On this point, we investigated ad (b) under CAP Code rule 1.3 (Social Responsibility), but did not find it in breach.

## 4. Not upheld

We acknowledged the assertion of Vype and Clearcast that they did not intend for the product to be regarded as a smoking cessation aid, but rather as an alternative product for tobacco smokers and other e-cigarette brand users. We also understood that Vype was not licensed by the Medicines and Healthcare Products Regulatory Agency (MHRA) as a smoking cessation tool.

The ads used the concept heading "Experience the Breakthrough" and we acknowledged that there were a number of interpretations that could be associated with the "Experience the Breakthrough" claim, including, as Vype had pointed out, that a Vype user moved away from tobacco, selecting an e-cigarette as an alternative product, one with fewer restrictions applied to it than their cigarette brand.

We considered that viewers were likely to interpret ad (a), in the absence of any reference to tobacco or smoke, or, for example, phrases such as 'stopping' or 'quitting', as presenting Vype as an alternative e-cigarette for users; a breakthrough experience in terms of product satisfaction. The voice-over, "Pure satisfaction for vapers" classified the product as being for e-cigarette users and positioned Vype as a preferable choice in the opinion of the advertisers. We considered that the overall impression viewers were likely to take, was that Vype was a product aimed at e-cigarette users, which offered a different 'vaping' experience to other brands.

We concluded that ad (a) did not misleadingly imply Vype could be used as a smoking cessation device.

On this point, we investigated ad (a) under BCAP Code rules 1.2 (Social Responsibility), 3.1 (Misleading advertising) 11.4 and 11.19 (Medicines, medical devices, treatments and health), but did not find it in breach.

## 5. Upheld

Ad (b) included the text "No tobacco. No smoke. Just pure satisfaction for smokers". This clarified the nature of the product and its intended appeal to smokers. Together with the text "Experience the breakthrough" we considered that ad (b) was likely to be interpreted as meaning that smokers could achieve satisfaction from this product instead of from cigarettes; a breakthrough alternative as a substitute for tobacco. In this context, the product was likely to be understood as a smoking cessation aid.

Given the presentation, together with the fact that the product did not have a certificate of authorisation from the MHRA, we concluded that ad (b) misleadingly implied Vype could be used as a smoking cessation device.

On this point, ad (b) breached CAP Code rules 1.3 (Social Responsibility), 3.1 (Misleading advertising), 12.1 and 12.11 (Medicines, Medical Devices, Health-related products and beauty products).

## **Action**

Ad (b) must not be used again in its current form. We told Vype to ensure that their product was not portrayed as a smoking cessation device in future.

[http://www.asa.org.uk/Rulings/Adjudications/2014/6/CN-Creative-Ltd/SHP\\_ADJ\\_260400.aspx#.U5oXEnbKS9Y](http://www.asa.org.uk/Rulings/Adjudications/2014/6/CN-Creative-Ltd/SHP_ADJ_260400.aspx#.U5oXEnbKS9Y)