

# **ASA Adjudication on E-Cigilicious**

## **E-Cigilicious**

2-4 Royal Arcade  
Morgan Quarter  
Cardiff  
CF10 1AE

### **Date:**

2 April 2014

### **Media:**

Regional press

### **Sector:**

Leisure

### **Number of complaints:**

1

### **Complaint Ref:**

A13-252279

## **Background**

Summary of Council decision:

Three issues were investigated, of which two were Upheld and one was Not upheld.

## **Ad**

A national press ad, for a supplier of e-cigarettes, was headed "HELP YOUR LOVED ONES CHANGE THEIR LIFE THIS CHRISTMAS". Further text stated "E-Cigs make the perfect present - a safer, cheaper, odorless [sic] alternative to smoking!" The ad featured an image of a young woman wearing a Santa hat, holding an e-cigarette near her face.

## **Issue**

1. The complainant challenged whether the image used in the ad was irresponsible, because he felt it was likely to appeal to children; and

The ASA challenged whether

2. the claim that e-cigarettes were a "safer" alternative to smoking was misleading and could be substantiated; and

3. the ad breached the Code, because the claim "help your loved ones change their life this Christmas", implied that the product could be used as a smoking cessation device.

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

[1.312.112.113.13.7](#)

### **Response**

E-Cigilicious stated that the ad was no longer running and they had no plans to use similar ad campaigns. E-Cigilicious said that it was never their intention to mislead at any time and they took their business very seriously.

1. E-Cigilicious said that the female model used in the ad was a 23-year-old woman and that they judged her appearance to be sufficiently mature in order to avoid giving the impression that it was targeted at children. They believed that the use of a santa hat and the overall Christmas themed design were reasonable as the campaign was aimed at Christmas shoppers.

E-Cigilicious stated that they enacted a strict over 18s policy with all of their products, including those not directly connected to nicotine delivery.

2. E-Cigilicious stated that they were aware that e-cigarettes and their relative safety was a contentious and controversial issue and they asserted that they could not and had not claimed that e-cigarettes and e-liquid were absolutely safe. They recognised the unregulated nature of the industry at present and stated that they ensured all their electronics complied with Conformance Europeene (CE), Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and EU regulations. In addition, E-Cigilicious stated that their e-liquids were tested and certified through TUV.

They believed electronic cigarettes were a safer alternative to tobacco if they were manufactured and sold responsibly; they believed this was a sentiment shared within the medical and scientific community. They asserted that they took steps to ensure a high level of quality and absence of harmful components was independently verified. They believed that their products delivered nicotine as safely as possible.

They believed that given nicotine replacement therapies were declared a safer alternative by the Medicines and Healthcare products Regulatory Agency (MHRA), it was reasonable to say that

the presence of the same pharmaceutical grade nicotine in e-cigarette vapours were seen as preferable to traditional cigarettes.

3. E-Cigilicious stated that they did not promote e-cigarettes as a smoking cessation device, although they believed many people have successfully used e-cigarettes as an alternative to smoking tobacco. They believed that the wording on all their marketing material, including the ad in question, had always been to this effect.

They asserted that the statement "alternative to smoking" had been used by almost every study and recorded discussion on electronic cigarettes, which was natural given the product existed entirely to achieve that purpose.

## **Assessment**

### **1. Not upheld.**

We acknowledged the complainant's concerns that the model in the ad looked to be in her early twenties or younger and that she was made to look younger by wearing a santa hat. However, we noted that the model in the ad was 23 years old and that E-Cigilicious believed that she appeared to be sufficiently mature. Although the model in the ad appeared to be youthful looking, we did not consider her appearance was likely to give the impression that she was under 18 years of age.

We noted the overall Christmas themed design of the ad, including the use of a santa hat, which was relevant at the time of year when the ad campaign appeared. We acknowledged that this theme could appeal to children, but noted that it was likely to be common amongst ads for a variety of products during the festive period, rather than products exclusively aimed at children. As such, we did not consider that the image and the theme of the ad were likely to appeal to children and we concluded that the ad was not irresponsible.

This point was investigated under CAP Code (Edition 12) rule 1.3 (Social responsibility) but did not find it in breach.

### **2. Upheld.**

We acknowledged that the studies and literature referenced by E-Cigilicious in their response suggested that e-cigarettes in general could be a safer alternative to traditional cigarettes. However, we had not been provided with sufficient robust evidence to substantiate the claims that E-Cigilicious' own e-cigarettes were less harmful than traditional cigarettes. Furthermore, E-Cigilicious had not provided documentary evidence from MHRA specifically related to their own products in support of their claim. We noted that CAP Code required any medicinal product, for which medical claims were made, must have been licensed by the MHRA.

We concluded that the claim E-Cigilicious e-cigarettes were safer alternative to smoking had not been substantiated and was misleading.

This point was investigated under CAP Code (Edition 12) rule 3.1 (Misleading advertising), 3.7 (Substantiation) and 12.1 and 12.11 (Medicines, medical devices, health-related products and beauty products) and was found to be in breach.

### 3. Upheld.

We noted E-Cigilicious' stance that they did not promote e-cigarettes as a smoking cessation device and the wording in the ad reflected this.

We considered that the decision to give up smoking would be one which many recognised to have a significant impact on a person's lifestyle, and could be potentially life-changing, given the addictive nature of smoking and the known health implications. We considered that the phrase "Help your loved ones change their life" would be interpreted by potential customers as meaning that by purchasing E-Cigilicious, they would be assisting existing smokers to make a lifestyle change by switching to e-cigarettes.

As such, we considered that the ad implied e-cigarettes could be used as a smoking cessation device and we understood that E-Cigilicious e-cigarettes had not been licensed by MHRA as smoking cessation devices. Therefore we concluded that the ad was likely to mislead and was in breach of the code.

This point was investigated under CAP Code (Edition 12) rules 3.1 (Misleading advertising), 3.7 (Substantiation) and 12.1 and 12.11 (Medicines, medical devices, health-related products and beauty products) and found it to be in breach.

### **Action**

The ad must not appear again in its current form. We told E-Cigilicious to ensure that their future ads do not make any claims that imply E-Cigilicious e-cigarettes are a safe alternative to smoking and that their products could be used as a smoking cessation device, unless they hold robust evidence to substantiate the claims and the products have been approved by the MHRA.

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