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ASA Adjudication on Must Have Ltd

Must Have Ltd t/a VIP Electronic Cigarettes

Unit 14, Dale Street Industrial Estate
Radcliffe
Manchester
M26 1AD

Date:

24 December 2014

Media:

Television

Sector:

Leisure

Number of complaints:

199

Agency:

Hubbleberry Stiltskins Ltd

Complaint Ref:

A14-284650

Background

Summary of Council decision:

Four issues were investigated, of which one was Upheld and three were Not upheld.

Ad

Two TV ads for VIP electronic cigarettes ("e-cigarettes"):

- a. The first ad showed a woman using an e-cigarette and exhaling vapour. A voice-over stated, "Find out why 89% of our consumers said they preferred VIP over other brands. VIP e-cigarettes and e-liquids. Quality assured since 2009. VIP."
- b. The second ad showed the same depiction of the woman using an e-cigarette. A voice-over stated, "The great taste of VIP. E-cigarettes and e-liquids. VIP."

Issue

The ASA received complaints from ASH (Action on Smoking and Health), the Association of Directors of Public Health UK (ADPH), the British Medical Association (BMA), North Lincolnshire Smokefree Alliance, the Vale of York Clinical Commission Group, the Director of Public Health, Sheffield City Council (DPH Sheffield), North East Lincolnshire Health and Wellbeing Board, UK Health Forum and 187 viewers, who each raised one or more of the following points.

1. Sixty-eight, many of whom considered the depiction of the woman glamorised smoking tobacco products, challenged whether the ads promoted the use of tobacco products.
2. Sixteen, who considered the depiction of the woman was overtly sexual, challenged whether the ads were offensive.
3. ASH, ADPH, BMA, DPH Sheffield, North Lincolnshire Smokefree Alliance, the Vale of York Commissioning Group, North East Lincolnshire Health and Wellbeing Board, the UK Health Forum and 36 viewers challenged whether the ads were irresponsible, because they were likely to have particular appeal to people under 18 years of age.
4. ASH, ADPH, BMA, DPH Sheffield, North Lincolnshire Smokefree Alliance, the Vale of York Commissioning Group, North East Lincolnshire Health and Wellbeing Board, the UK Health Forum and 109 viewers challenged whether the ads were irresponsible, because they believed they encouraged non-smokers or non-nicotine users to use e-cigarettes.

BCAP Code

[4.2](#)

Response

1. Must Have Ltd t/a VIP Electronic Cigarettes (VIP) said the ads stated that the product was an e-cigarette, which they believed was sufficient to make clear that it was not a tobacco product that was being promoted.

Clearcast believed it was clear from the final pack shots shown in both ads that the product was an e-cigarette. They also believed the shape, construction and material of the e-cigarette that was shown, along with the small bottles of e-liquids, made it clear that the ads did not promote tobacco products. They said there was nothing in either ad that looked like a tobacco product.

2. VIP believed there was nothing overtly sexual in either ad. They said that, nevertheless, the ads were only broadcast after 9 pm.

Clearcast believed both ads showed straightforward, non-sexual and non-suggestive shots of the woman as she used an e-cigarette and exhaled vapour. They believed there was nothing sexually suggestive in her demeanour, manner, behaviour or depiction.

3. VIP believed the woman seen in the ads clearly appeared to be over 25 years of age and was not behaving in an adolescent or juvenile way.

Clearcast believed neither ad was likely to have particular appeal to people under 18. They said no juvenile behaviour was shown; that there was no association with youth culture and that the ads did not use a celebrity who under 18s were likely to follow. They believed the ads were mature in tone and referred mainly to product features rather than using techniques likely to attract people under 18.

4. VIP said that, to reach their target of tobacco smokers and e-cigarette users, they had advertised around programmes that appealed to an "all adults" audience. As stated above, they believed it was clear that the product was an e-cigarette.

Clearcast believed neither ad encouraged non-smokers or non-nicotine users to start using e-cigarettes. They said the ads did not address any specific group of consumers and contained nothing that would encourage viewers who had never smoked tobacco cigarettes or used nicotine products to start.

Assessment

1. Upheld

The ASA noted that the product did not resemble a traditional tobacco cigarette, that the ads did not use terminology associated with tobacco products, and that the voice-over and on-screen text towards the end of the ads referred to e-cigarettes and e-liquids.

The ads consisted primarily of a close up of a woman's face as she used the product. The woman's long dark hair and dark eye make-up gave her a glamorous look and the intimacy of the shot drew particular attention to her mouth and, specifically, to the vapour that circulated in her mouth before she inhaled, paused and then exhaled. We considered that the manner in which the vapour was exhaled and the heightened focus on this action created a strong association with traditional tobacco smoking. We also considered that, in combination with the softly spoken voice-over throughout, the woman's appearance and the manner in which she was shown using the product gave the ads a sultry and glamorous tone.

Because the ads created a strong association with traditional tobacco smoking and presented it, as the central focus of the ads, in a sultry and glamorous way, we considered that they indirectly promoted the use of tobacco products.

On this point, the ads breached BCAP Code rules 33.1 and 33.3 (Electronic cigarettes).

2. Not upheld

As noted above, we considered that the depiction of the woman and the voice-over combined to give the ads a sultry and glamorous tone. Although we recognised that some viewers had found the ads distasteful for that reason, we considered that the depiction of the woman was unlikely to be seen as overtly sexual. Because of that, we concluded that the ads did not cause serious or widespread offence

and that they did not breach the Code.

On this point, we investigated the ads under BCAP Code rule 4.2 (Harm and offence), but did not find them in breach.

3. Not upheld

The ads featured a close-up image of a woman who appeared to be over the age of 25 against a plain background and did not include any elements that might be associated with youth culture. Although we had concerns about the tone of the ads for other reasons, we considered that they were unlikely to have any particular appeal to people under 18. Because of that, we concluded that the ads did not breach the Code.

On this point, we investigated the ads under BCAP Code rules 33.1 and 33.9 (Electronic cigarettes), but did not find them in breach.

4. Not upheld

We acknowledged that the product was presented in a sultry and glamorous way and that the use of e-cigarettes was presented as an activity that could be considered to be of relevance to any adult. However, there was no explicit encouragement in either ad to non-smokers or non-nicotine users to use e-cigarettes and we therefore concluded that the ads did not breach the Code

On this point, we investigated the ads under BCAP Code rules 33.1 and 33.8 (Electronic cigarettes) but did not find them in breach.

Action

The ads must not appear again in their current form. We told VIP Electronic Cigarettes to ensure their ads did not promote the use of tobacco products.

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