

CAP

ASA

The UK's independent regulator for advertising across all media

Home

About ASA

Consumers

Industry

Rulings

News & resources

Rulings

Non-compliant online advertisers

ASA / Rulings / Rulings / Sorse Distribution Ltd

Like

Share

0

0

ASA Adjudication on Sorse Distribution Ltd

Sorse Distribution Ltd t/a 5 Colors

The Northern & Shell Tower

4 Selsdon Way

London

E14 9GL

Date: 25 September 2013

Media: Television

Sector: Leisure

Number of complaints: 7

Agency: Five Creative

Complaint Ref: A13-219212

Background

Summary of Council decision:

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

On 12 June 2013 the Medicines and Healthcare Products Regulatory Agency (MHRA) announced that, following a public consultation on how to regulate nicotine-containing products (NCPs) such as electronic cigarettes (e-cigarettes), all NCPs were to be regulated as medicines. The UK government will press for EU law to create a Europe-wide legal position on NCPs as medicines. The European Commission has said it expects the new legislation to be adopted in 2013 and for it to come into effect in the UK from 2016, at which point NCPs will require a medicine licence. Until that time, e-cigarettes which make no medicinal claims will continue to be regulated as consumer products in the UK.

The following adjudication relates to an ad broadcast prior to the MHRA's announcement, and to a type of e-cigarette which does not contain nicotine.

Ad

A TV ad for e-cigarettes, viewed at various times between 9 pm and 1 am, began with on-screen text that stated "5 COLORS" and a voice-over that said, "Five Colors. What's your flavour?. The ad showed a number of young adults jumping in the air while fruits, including strawberries, apples and grapes, appeared and exploded in the background. On-screen text visible throughout the ad stated "5colors.co.uk 0844 XXX XXXX". In the final scenes a voice-over said, "It's time to come in from the cold. Five Colors."

The ad was cleared by Clearcast with an 'ex-kids' restriction.

Issue

1. Five viewers challenged whether the ad was misleading, because it encouraged viewers to visit the website, but did not make clear the characteristics of the product.

2. Three viewers challenged whether the ad was irresponsible and harmful, because it promoted a product that they believed could encourage people, and particularly young adults and children, to take up smoking.

3. Two viewers challenged whether the ad was misleading, because it did not make clear that the product was unsuitable for under 18-year-olds.

BCAP Code

1.2 10.3 3.1 3.2 4.1 4.4 5.3

Response

Follow Us

For ASA news, including our weekly rulings, press releases, research and reports.

Follow Us

How to comply with the rules

For advice and training on the Advertising Codes please visit the CAP website.

Visit CAP

Make a complaint

Find out what types of ads we deal with and how to make a complaint.

Make a complaint

Press Zone

This section is for journalists only. Here you will be able to access embargoed material, breaking news and briefing papers as well as profile details for the ASA press office.

Press Zone home

Sign up

Sign up for our rulings alerts and newsletters.

Sign up

Already registered?

Log in

http://www.asa.org.uk/Rulings/Adjudications/2013/9/Sorse-Distribution-Ltd/SHP_ADJ_219212.aspx[11/12/2013 10:47:23 AM]

1. Sorse Distribution Ltd t/a 5 Colors (5 Colors) said the advertised product was a disposable fruit-flavoured e-cigarette which did not contain nicotine. They understood that the requirements of BCAP Code rule 10.4 meant that they could not include images of the product or depictions of its use because of similarities between the look and use of e-cigarettes and tobacco cigarettes. As a result they had worked closely with Clearcast on a number of ideas for the ad and the final version adopted, of necessity, a very abstract approach. They considered the take-away message of the ad was the existence, and availability, of the product. Because the ad did not include any specific information about the attributes of the product, they considered viewers would not have mistaken the ad to be for another type of good or service.

Clearcast said they understood that BCAP Code rule 10.4 prohibited advertisers from including imagery of, or references to, smoking and therefore, in order to meet the requirements of that Code rule, the nature of the ad was purposefully vague. They highlighted that the ad did not include references to smoking or any imagery which could be misconstrued as being linked to tobacco products. They endorsed 5 Colors' comments in relation to the take-away message of the ad. Clearcast said that during the ad approval process, they had advised 5 Colors to remove the statement "Go to [website]" and instead to simply state the website URL in order to avoid including a direct call to action.

2. 5 Colors said that, having concentrated on the existence and availability of the product rather than its attributes or how to obtain it, the references to the website were a secondary, indirect reference which in their view would not in itself encourage people to take up smoking.

Clearcast said that, even if viewers were prompted by the ad to visit the website, the product did not contain nicotine and was designed to be an alternative to smoking. They considered it could be argued that the product could actually help prevent consumers from smoking tobacco cigarettes.

3. 5 Colors said that, because the ad did not feature the product or make clear its attributes, or include any clear call to action, they considered it was not relevant to, or in keeping with, the purpose of the ad to include information about restrictions on age. They said, however, that their website did make clear that they had chosen not to supply the product to those under the age of 18. They noted the ex-kids restriction imposed by Clearcast prevented the ad from being broadcast around programmes of particular appeal to children.

Clearcast noted 5 Colors' decision not to supply or market their product to those under the age of 18, but considered that because that was not a legal requirement it was unnecessary to include such information in the ad. They considered that because the ad concentrated only on the availability of the product, any further information would complicate the matter. Furthermore, they said that all the actors featured in the ad were chosen to look over 25 in order not to appeal directly to younger viewers, and they had applied an ex-kids restriction to the ad because they considered the product would not be suitable for those under 16 years of age.

Assessment

1. Upheld

The ASA noted the ad featured a number of young adults dressed in colourful clothing jumping in the air whilst fruits appeared and exploded in the background, accompanied by a dance track and a voice-over which stated "What's your flavour?" and "It's time to come in from the cold". We noted, however, that it did not identify the type of product being promoted and considered that was material information which was necessary for viewers if they wished to find out more. We therefore considered that inquisitive viewers could be attracted by the content of the ad and were likely to have visited the website listed during the ad, thus resulting in an action that many would not otherwise have taken if they had been aware of the nature of the product being advertised.

We noted Clearcast had understood that references to the type of product (e-cigarettes) were prohibited by the BCAP Code and that it was for that reason they omitted that information from the ad. However, we understood that the BCAP Code rule only required that ads for non-tobacco products such as e-cigarettes (whether or not they contained nicotine) did not reference or promote smoking or tobacco and did not include a "design, colour, imagery, logo style or the like that might be associated in the audience's mind with a tobacco product". We considered the rule did not prevent an ad containing verbal or text reference to an 'e-cig', 'e-cigarette', or 'vaporiser', providing that it did not also create a link between the product and smoking or tobacco products. We considered it important that ads such as this made clear the nature of the product being advertised and stated whether or not it contained nicotine. We judged that to be material information the consumer needed to know in order to avoid the likelihood of being misled. Because the ad did not make clear the nature of the product being advertised, and that it did not contain nicotine, we concluded the ad was misleading.

On this point, the ad breached BCAP Code rules 3.1 and 3.2 (Misleading advertising).

2. Not upheld

We noted the ad featured bright colours and upbeat music, but considered it was unlikely to be of particular appeal to children, and, furthermore, noted that Clearcast had given the ad an 'ex-kids' restriction, which meant that it would not be broadcast around programmes of particular appeal to children. Notwithstanding that, as previously referenced we considered inquisitive consumers, including young adults and older children, would be encouraged to visit 5 Colors' website to find out more about the product being advertised. However, the product did not contain nicotine and the ad did not include any reference to nicotine or tobacco products. We concluded it did not encourage people of any age, including young adults and children, to start smoking tobacco cigarettes.

On this point, we investigated the ad under BCAP Code rules 1.2 (Social responsibility), 4.1, and 4.4 (Harm and offence), 5.3 (Children), and 10.3 (Tobacco), but did not find it in breach.

3. Upheld

We noted that 5 Colors had chosen not to supply their product to those under the age of 18. However, for the reasons referenced above, we considered it likely that young adults might be encouraged by the ad to visit the 5 Colors website and thus make a decision in relation to the product on the basis of the ad only to find, on viewing the website, that only those over 18 could purchase the product. We therefore concluded the ad should have included information to make clear that the product was not available to those under 18.

On this point, the ad breached BCAP Code rules 3.1 and 3.2 (Misleading advertising).

Action

The ad must not appear again in its current form. We told 5 Colors to ensure their future advertising clearly identified that their product was an e-cigarette, that it did not contain nicotine, and that it was not available to those under the age of 18.

Copyright © 2013 ASA



Accessibility	Privacy policy	Advertising Standards Authority Ltd, Mid City Place, 71 High Holborn, London WC1V 6QT
Sitemap	Cookies Policy	<ul style="list-style-type: none">Contact us
Cymru	Twitter Policy	<ul style="list-style-type: none">Directions and map
Transparency		