

ASA Adjudication on Must Have Ltd

Must Have Ltd t/a VIP Electronic Cigarette

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

Date:

26 February 2014

Media:

Television, Internet (video)

Sector:

Leisure

Number of complaints:

1156

Agency:

438 Marketing Ltd

Complaint Ref:

A13-249268

Background

Summary of Council decision:

Seven issues were investigated of which two were Upheld and five were Not upheld.

Ad

Two TV ads, which also appeared on the advertiser's YouTube channel, for VIP Electronic Cigarettes:

a. The first TV ad showed a woman speaking directly to the camera, she stated, "I want you to get it out I want to see it Feel it hold it Put it in my mouth I want to see how great it tastes." On-screen text stated "www.vipecig.co.uk Contains Nicotine". A symbol also appeared that indicated the product was not suitable for those aged under 18 years. Further on-screen text stated "THE GREAT TASTE OF VIP" and "VIP E-cigarettes & E-liquids". An accompanying female voice-over stated, "If you're gonna Vape, Vape with VIP."

The ad was cleared by Clearcast with a post-21:00 restriction.

b. The same ad appeared on the advertiser's YouTube channel.

c. The second TV ad showed a man speaking directly to the camera, he stated, "Do you want to see it? I can get it out if you'd like. You can feel it hold it Put it in your mouth And see how great it tastes." On-screen text stated "www.vipecig.co.uk Contains Nicotine". A symbol also appeared that indicated the product was not suitable for those aged under 18. Further on-screen text stated "THE GREAT TASTE OF VIP" and "VIP E-cigarettes & E-liquids". An accompanying female voice-over stated "If you're gonna Vape, Vape with VIP".

The ad was cleared by Clearcast with a post-21:00 restriction.

d. The same ad appeared on the advertiser's YouTube channel.

Issue

The ASA received 1,156 complaints.

A number of complainants challenged whether the ads were offensive, because:

1. they were overly sexual in nature;
2. they understood the term "vape", used in a sexual context, to be wordplay on the term 'rape'; and
3. they were sexist, degrading and exploited women.

A number of complainants challenged whether the ads:

4. were irresponsible, because they sexualised and glamorised e-cigarettes and smoking; and
5. irresponsibly promoted a smoking-related product, for which the health effects were yet to be established, to young viewers.
6. A number of complainants challenged whether ads (a) and (c) were appropriately scheduled, because they could be viewed by children.

7. One complainant challenged whether ad (a) was irresponsible, because it failed to carry an appropriate health warning associated with nicotine products.

CAP Code (Edition 12)

1.34.1

BCAP Code

32.11.24.14.24.4

Response

1. 438 Marketing Ltd, responding on behalf of Must Have Ltd t/a VIP Electronic Cigarettes, did not believe the ads were overly sexual. They pointed out that the actors were fully clothed and were not located in a bedroom or boudoir. They said they made use of a double entendre: it portrayed a 'sexual situation' only to reveal that the scene was not what viewers expected. They acknowledged that the ads were suggestive, but said they were intended for adults aged 25 and over.

Clearcast did not believe the TV ads were overly sexual in nature. They said the sexual content was implied and subtle, not explicit. They said nothing sexually graphic was seen or heard in the ads. They also said the suggestiveness in the ad was revealed to be a reference to an e-cigarette and believed that, when considered in its entirety, the ad made clear that that dialogue related to the advertised product. They pointed out that a timing restriction of post 21:00 was applied to help prevent harm or offence.

YouTube said it was the advertiser's responsibility to ensure that any ad complied with the CAP Code and was targeted appropriately. Notwithstanding that, they said that the ads violated their Community Guidelines and had been removed. However, they did not provide specific details of the violation.

2. VIP Electronic Cigarettes understood the term referred to the action of inhaling vapor from e-cigarettes. They pointed out that the statement "If you're gonna vape, vape with VIP" was used in the ads to target e-cigarette vapers and tobacco cigarette smokers, who were considering switching to e-cigarettes.

Clearcast believed the presentation of the TV ads made clear that they related to the use of e-cigarettes and did not equate to wordplay on the word rape.

3. VIP Electronic Cigarettes said they created both male and female versions of the commercial. They said they created a male version of the ad to prevent accusations of sexism against women.

Clearcast did not believe the TV ads degraded or exploited women, nor did they believe the ads were sexist. They said it was not clear from either ad whether the actor was addressing the opposite sex. They said the female actor delivered her lines with confidence and control and was

not shown to be submissive. They said the male actor's lines were suggestive, but were not demeaning or sexist.

4. VIP Electronic Cigarettes believed the ads did not sexualise or glamorise e-cigarettes or smoking. They pointed out that the commercials did not show the product being used and did not show an image of the advertised product.

Clearcast believed the TV ads did not glamorise or sexualise the advertised product. They said the ads focused on the taste and superior flavour of the product and did not directly link the product with either character; pointing out that neither character was shown with the product.

5. & 6. VIP Electronic Cigarettes said the ads were cleared with a post 21:00 timing restriction and were allocated a media schedule that targeted adults between the ages of 25 and 54. They believed those measures were appropriate to ensure the ads were not seen by children and young viewers.

Clearcast said the TV ads were given a post-21:00 timing restriction to prevent young viewers viewing the ads. They also pointed out that the ads made clear that the product was unsuitable for those aged under 18.

7. VIP Electronic Cigarettes believed the ad did not fail to carry an appropriate health warning associated with nicotine products. They pointed out that the ad made clear that the advertised product contained nicotine.

Clearcast said they were not aware that the product required a health warning. They also pointed out that the ad made clear that the advertised product contained nicotine and therefore made clear the nature of the product.

Assessment

1. & 6. Upheld in relation to ads (a) and (c)

The ASA acknowledged the complainants' concerns that the presentation of the ads included implied references to oral sex. We noted the ads contained no explicit sexual imagery and concluded by revealing that the commentary related to an e-cigarette.

However, we considered the sexually provocative presentation of the male and female characters in conjunction with a graphic description of oral sex was likely to cause serious and widespread offence to viewers who viewed ads (a) and (c) during normal evening viewing. We acknowledged the post-21:00 timing restriction would reduce the risk of younger children seeing ads (a) and (c), but because of the references to oral sex, we considered a post-21:00 timing restriction was not sufficient to avoid offending viewers and that a post-23:00 timing restriction should have been applied. On that basis, we concluded that ads (a) and (c) breached the Code.

To view ads (b) and (d), consumers needed to locate the ads on the advertiser's YouTube channel. In that context, we considered ads (b) and (d) were not likely to cause serious and

widespread offence to those viewers. We therefore concluded that ads (b) and (d) did not breach the Code on point 1.

On point 1, ads (a) and (c) breached BCAP Code rules 4.2 (Harm and Offence) and 32.1 (Scheduling). We investigated ads (b) and (d) under CAP Code (Edition 12) rule 4.1 (Harm and Offence) but did not find them to be in breach.

On point 6., ads (a) and (c) breached BCAP Code rule 32.3 (Scheduling).

2. Not upheld

We considered the presentation of the ads made clear that the term "vape" related to the use of e-cigarettes and did not equate to wordplay on the word rape. We therefore considered the use of the term "vape" was unlikely to cause serious or widespread offence.

On this point, we investigated ads (a) and (c) under BCAP Code rules 4.1 and 4.2 (Harm and Offence) and ads (b) and (d) under CAP Code (Edition 12) rules 4.1 (Harm and Offence) but did not find them in breach.

3. Not upheld

We considered the woman, in ads (a) and (b), was not depicted as a sexual object, nor did it suggest that the woman was in distress. We considered the comments of the man, in ads (c) and (d), were suggestive in tone, but were not demeaning or sexist. We also considered ads (c) and (d) did not make clear to whom the character's comments were addressed. In that context, we considered the ads were not likely to be viewed as sexist, degrading or exploiting women. We therefore concluded that the ads were unlikely to cause serious or widespread offence on this point.

On this point, we investigated ads (a) and (c) under BCAP Code rules 4.1 and 4.2 (Harm and Offence) and ads (b) and (d) under CAP Code (Edition 12) rules 4.1 (Harm and Offence), but did not find them in breach.

4. Not upheld

We noted that nicotine-containing e-cigarettes could be sold legally in the UK, were not a prohibited category under the CAP and BCAP Codes, and were therefore permitted to be advertised, within the confines of the Advertising Codes. We therefore considered the advertising of those products would not automatically be found to be harmful providing they were advertised in a responsible manner.

Whilst the ads were sexual in tone, we considered the ads did not glamorise the nicotine product nor did they encourage excessive or inappropriate use. Also, the ads did not include any reference to smoking. We therefore considered the content of the ads did not encourage smoking or the harmful use of a nicotine product. We therefore concluded that the ads were not socially irresponsible.

On this point, we investigated ads (a) and (c) under BCAP Code rule 1.2 (Social responsibility) and ads (b) and (d) under CAP Code (Edition 12) rules 1.3 (Social responsibility) but did not find them in breach.

5. Not upheld

As noted previously, e-cigarettes could be advertised in compliance with the Advertising Codes provided they were advertised in a responsible manner.

Notwithstanding our concerns about the sufficiency of the timing restriction that had been applied to ads (a) and (c), we considered the original post-21:00 timing restriction would reduce the risk of younger children seeing those ads. We noted that, in order to view ads (b) and (d), consumers would need to search for them on YouTube. We therefore considered ads (b) and (d) were unlikely to be viewed children. In addition, we considered the presentation of the ads did not include content of particular appeal to children.

Because the ads did not include content of particular appeal to children and because the original placement of the ads reduced the risk of children seeing the ads, we concluded that the ads did not irresponsibly promote the advertised product to young viewers and therefore did not breach the Code on this point.

On this point, we investigated ads (a) and (c) under BCAP Code rule 1.2 (Social responsibility) and ads (b) and (d) under CAP Code (Edition 12) rule 1.3 (Social responsibility) but did not find them in breach.

7. Not upheld

We understood there was no requirement for the advertised product to carry a health warning. Notwithstanding that, we considered it important that ads for e-cigarettes stated whether or not the advertised product 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 made clear that the advertised product contained nicotine, we concluded the ad was not misleading on this point.

On this point, we investigated ad (a) under BCAP Code rule 1.2 (Social responsibility) but did not find it to be in breach.

Action

Ads (a) and (c) must not be broadcast again before 23:00. We told VIP Electronic Cigarettes to ensure ads were not likely to cause serious or widespread offence in future and to ensure that they were appropriately scheduled. No further action necessary in respect of ads (b) and (d).