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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:

24 September 2014

Media:

Television

Sector:

Leisure

Number of complaints:

86

Agency:

438 Marketing Ltd

Complaint Ref:

A14-267854

Background

Summary of Council decision:

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

Ad

A TV ad for VIP e-cigarettes featured a woman in a black dress, who spoke to the camera and said, "You know that feeling you get, when something's great? You can touch it, hold it, even see it. Well, now you can taste it." As she spoke she ran her hand over her thigh. The voice-over stated, "Choose the great taste of VIP e-cigarettes and e-liquids. Quality assured since 2009, with a variety of flavours and nicotine strengths from 0 to 24 mg. VIP."

Issue

Eighty-six viewers objected to the ad.

1. Most viewers challenged whether the ad was offensive because they believed it was overtly sexual and irresponsibly sexualised e-cigarette use.
2. Many also challenged whether the ad was suitable for broadcast before 9 pm.
3. One viewer challenged whether the claim "Quality assured since 2009" was misleading and could be substantiated.

BCAP Code

[32.31.23.13.23.94.2](#)

Response

1. Clearcast said that they did not consider that the ad was overtly sexual at all. They acknowledged that there was mild innuendo which was very quickly revealed to relate to the pleasures of vaping and the flavour of the product. They didn't consider that the ad sexualised e-cigarettes, and said that there was no suggestion that the product was a sexy product. They said the clear inference was that the product tasted great. They didn't think the ad was likely to cause serious or widespread offence.

Must Have Ltd t/a VIP Electronic Cigarette (VIP) said that they had taken on board the findings of a previous ASA adjudication and amended their advertising. They said that the ad did not contain explicit or implicit sexual imagery, that it explicitly promoted the product and brand attributes, and that the product was identified immediately.

2. Clearcast believed that the 'ex-kids' restriction which had been applied to the ad was appropriate because only very young viewers should be prevented from viewing what they considered to be mild innuendo; they did not believe that a stronger restriction was necessary. They said there was no sexual imagery within the ad, and thought that any sexual content within the ad was subtle, to the extent that young viewers were unlikely to understand it.

VIP questioned the level of perceived harm, and whether pre-conceived opinions about e-cigarettes had informed complaints about the ad. They said that e-cigarettes were a legally marketable product.

3. Clearcast said the VIP E-Cig was regulated by several government bodies, including the National Measurement Office (NMO) and Trading Standards, and was subject to the Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP), and the Control of Substances Hazardous to Health Regulations 2002 (COSHH). They said products were inspected, tested and analysed for possible

toxicity and dangerous contaminants. They said VIP E-Cig's ingredients were regularly tested by an independent United Kingdom Accreditation Service (UKAS) accredited laboratory to certify purity and consistency. They said VIP was an audited member of the Electronic Cigarette Industry Trade Association (ECITA), the industry trade association responsible for ensuring compliance with all aspects of operations from product to packaging and staff training.

VIP provided the ASA with a range of reports showing product testing and analysis dating back to 2009.

Assessment

1. Not upheld

Nicotine-containing e-cigarettes were not a prohibited category under the BCAP Code, and were therefore permitted to be advertised, providing they were advertised responsibly.

The ASA considered that the woman in the ad spoke in a sensual way, and was depicted touching her leg in a sensual manner. We acknowledged that some viewers would find the ad distasteful, but considered that the sexual references were unlikely to be regarded as explicit or overtly sexual, and were unlikely to cause serious or widespread offence, or to be regarded as irresponsible.

On that point, we investigated the ad under BCAP Code rules 1.2 (Responsible advertising) and 4.2 (Harm and offence), but did not find it in breach.

2. Upheld

We noted that Clearcast had applied an 'ex-kids' restriction which meant the ad could not be shown in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children. We considered that the scheduling restriction applied would likely restrict younger children from seeing the ad. However, we were concerned that the degree of sexuality in the ad, while not overt, was also unsuitable for older children. We therefore concluded that, to minimise the risk of children seeing it, the ad should have been given a 9 pm timing restriction.

On that point, the ad breached BCAP Code rule 32.3 (Scheduling).

3. Not upheld

We understood that there were no specific quality assurance regulations which applied to e-cigarettes, but that they were obliged to conform to the regulations for consumer products. We assessed the range of reports showing product testing and analysis dating back to 2009 and were satisfied that the claim had been substantiated.

On that point, we investigated the ad under BCAP Code rules 3.1 and 3.2 (Misleading advertising), and 3.9 (Substantiation), but did not find it in breach.

Action

The ad must not be broadcast again in its current form before 9 pm.

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