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ASA Adjudication on Hubbly Bubbly Ltd

Hubbly Bubbly Ltd

86-90 Paul Street
London
EC2A 4NE

Date:

10 June 2015

Media:

Internet (social networking), Internet (video), Internet (on own site)

Sector:

Leisure

Number of complaints:

1

Complaint Ref:

A15-300973

Background

Summary of Council decision:

Five issues, concerning five ads, were investigated of which five were Upheld, with one point upheld in relation to one ad only.

Ad

Claims on the website www.hubblybubbly.uk.com, content on the Hubbly Bubbly Twitter page and a video posted on the Hubbly Bubbly Youtube channel promoted Hubbly Bubbly electronic

cigarettes (e-cigarettes):

- a. A page on the website that was accessed by clicking on a link labelled "social" listed five "facts" about e-cigarettes. Further text under the heading "FAMOUS E-CIGARETTE FANS" stated "Robert Pattinson does it. So do Alexa Chung and One Direction's Zayn Malik. It seems all kinds of celebrities from both sides of the pond are getting in on the electronic cigarette action; here are some of our favourites. Kate Moss ... Cheryl Cole ... Simon Cowell ... Katherine Heigl ... Johnny Depp ...Leonardo DiCaprio".
- b. A banner image running across the top of the Twitter page showed two young women using e-cigarettes.
- c. A tweet posted by Hubbly Bubbly on March 20 showed an image of two young people using e-cigarettes standing in front of a row of spirit bottles. Text stated "End of a very productive week at HB. Ready to kickoff [sic] the weekend! #TGIF".
- d. Another tweet posted by Hubbly Bubbly on March 11 showed a black-and-white image of a young woman holding an e-cigarette in a bar. Text stated "Hubbly Bubbly - getting you through the midweek slump! #ECIG".
- e. The Youtube video featured scenes including bars, clubs and a music concert. Product shots showing Hubbly Bubbly-branded packaging were interspersed with crowd scenes and individual shots of young people dancing, drinking and using e-cigarettes. The ad made heavy use of cutting techniques and some sequences were repeatedly re-played, shown in slow motion or played backwards in time to the accompanying music.

Issue

The Medicines & Healthcare products Regulatory Authority (MHRA) challenged whether:

1. ads (a) and (b) breached the Code because they did not make clear that the product contained nicotine, and particularly in view of a possible association between the term "hubbly bubbly" and Shisha pipes;
2. ads (a) and (b) were irresponsible, because they were likely to appeal particularly to people under 18 years of age by reflecting youth culture; and
3. ad (b) breached the Code because it showed people who seemed to be under 25 years of age using e-cigarettes.

The ASA challenged whether:

4. ads (c) and (d) also breached the Code because they showed people who seemed to be under 25 using e-cigarettes; and
5. ad (e) was irresponsible and in breach of the Code because it was likely to appeal particularly to people under 18 by reflecting youth culture and showed people using e-cigarettes or playing a significant role that seemed to be under 25.

CAP Code (Edition 12)

Response

After receiving notification of the complaint from the ASA, Hubbly Bubbly Ltd voluntarily removed all of the ads under investigation.

1. Hubbly Bubbly stated that the "social" page of their website (ad (a)) consisted of various blog posts on issues relevant to e-cigarettes, with the post in question listing celebrities reported to use e-cigarettes. As no specific product was promoted, they considered that it was not necessary to include a statement about the nicotine content of their range.

In respect of ad (b), Hubbly Bubbly said this showed two women using products from their nicotine-free range. They considered it would be confusing for consumers to label the image as depicting nicotine-free e-cigarettes, as they did also normally sell products that contained nicotine. They explained that because they currently only had stock of nicotine-containing products, those were the only products listed on their website.

2. Hubbly Bubbly noted that all of the celebrities listed in ad (a) were adults, including several middle-aged men, and considered that their age range was such that they would not appeal to those under the age of 18. In respect of the references to Cheryl Cole and Zayn Malik in particular, they commented that music was enjoyed by people of all ages and that a large number of viewers of the TV programme "The X Factor" were aged between 18 and 49. They did not consider that ad (a) presented any link to youth culture. They also believed that, because the content of ad (a) was general in nature and did not identify any product or product range, it was not in breach of the Code.

They said the two women depicted in ad (b) were adults and were not behaving in an adolescent or juvenile manner. They also pointed out that their Twitter profile stated that visitors needed to be aged 18 or over to follow their feed.

3. and 4. Whilst stating that the people depicted in ads (b), (c) and (d) were all adults in their mid-twenties, Hubbly Bubbly acknowledged that the lighting and make-up used could affect their perceived age and said the ads had now been removed. They stated that their intention was to use fewer models in their future marketing.

5. Hubbly Bubbly stated that ad (e) had been shot in entertainment venues frequented by adults who fell into their target demographic of 21- to 35-year-olds. They said the ad featured only people aged over 18 and anybody shown using their e-cigarettes was above the age of 25. They considered that the ad showed people enjoying themselves, but not acting in a juvenile way. They also stated that the ad had been published on Youtube in 2013, before rules specific to the advertising of e-cigarettes had been introduced into the CAP Code, and was clearly tagged to appear in user searches for e-cigarettes. They felt that it would be most likely to be viewed and appreciated by adult smokers actively searching for videos about e-cigarettes.

Youtube commented that ad (e) was not in violation of their Community Guidelines, which applied to user-uploaded video content on their website.

Assessment

1. Upheld in relation to ad (b) only

The CAP Code stated that marketing communications must state clearly if an advertised product contained nicotine. The ASA understood that Hubbly Bubbly sold both nicotine-containing and nicotine-free e-cigarettes.

The claims under the heading "FAMOUS E-CIGARETTE FANS" (ad (a)) appeared on the "social" page of the Hubbly Bubbly website, next to a section of text promoting Hubbly Bubbly's newest product range that included the statement "Each of these e-cigarettes ... contains 10mg of nicotine". Consumers navigating to the "products" page of the website, which was reached via a link at the top of the page, were presented with product information that included a statement that the products contained nicotine. We considered that the content under the heading "FAMOUS E-CIGARETTE FANS" was general in nature and did not identify any product or product range. We also considered that that content was presented within a wider context that made clear the nicotine-containing status of one of Hubbly Bubbly's product ranges. Therefore, in view of both its non product-specific content and its context, we were satisfied that ad (a) complied with the Code in this respect.

Ad (b) showed e-cigarettes in use. Although we understood that the specific products featured did not contain nicotine, we considered that, because the image appeared as a banner on the advertiser's Twitter page, it served to promote the whole range of products available from Hubbly Bubbly. Because some Hubbly Bubbly products contained nicotine, we considered that that information should be clearly presented to consumers either within the image or as part of the surrounding messaging on the page. In the absence of any such statement, we concluded that ad (b) breached the Code.

On that point, ad (b) breached CAP Code (Edition 12) rule 22.7 (Electronic cigarettes). We investigated ad (a) under the same Code rule, but did not find it in breach.

2. Upheld

Ad (a) listed a number of celebrities who were said to be fans of e-cigarettes. Although we acknowledged that several of the celebrities would appeal to general audiences including children and young people, we were concerned that Zayn Malik and Cheryl Fernandez-Versini were likely to appeal particularly to those aged under 18. We considered that their inclusion in the marketing communication created an association with youth culture that was irresponsible in the context of marketing that, though general in content, was for an e-cigarette brand.

The two women shown in ad (b) were young in appearance and had been photographed against a brick wall background. They were shown wearing a denim shirt and denim dungarees respectively; both wore heavy eye make-up and one had a partially shaved hairstyle and a tattoo. We considered that the image as a whole was reminiscent of young urban fashion and were concerned that, particularly because of the apparent age of the models shown, it would be likely to appeal particularly to under 18s. We therefore concluded that it breached the Code.

On that point, ads (a) and (b) breached CAP Code (Edition 12) rules 22.1 and 22.9 (Electronic cigarettes).

3. & 4. Upheld

The Code stipulated that people shown using e-cigarettes or playing a significant role in a marketing communication for e-cigarettes and related products must neither be, nor seem to be, under the age of 25. Although we were satisfied that the man shown in ad (c) did fulfil that requirement, we considered that the women featured in all three ads – all of whom were using e-cigarettes – did not appear to be 25 or older. We therefore concluded that the ads breached the Code.

On that point, ads (b), (c) and (d) breached CAP Code (Edition 12) rule 22.10 (Electronic cigarettes).

5. Upheld

We noted that ad (e) had been published before the introduction into the Code of rules specific to the advertising of e-cigarettes in November 2014. However, the ad was still in place in April 2015 and therefore needed to comply with the category-specific rules which had since been implemented.

We considered that the combination of the music, the venues in which filming had taken place, the staccato cutting style and the other techniques used rendered the video reminiscent of a rave scene. We also viewed many of the people shown using e-cigarettes or otherwise playing a significant role (such as those on whom the camera focused whilst they were dancing) as seeming to be under the age of 25, which was in breach of the Code. We considered that the overall impression of the ad was of a cool and trendy scene in which e-cigarettes featured prominently, and that, as with ad (b) above, the combination of this with the apparent youth of many of the people shown served to associate the ad with youth culture and render it likely to appeal particularly to those aged under 18. We therefore concluded that the ad breached the Code.

On that point, ad (e) breached CAP Code (Edition 12) rules 22.1, 22.9 and 22.10 (Electronic cigarettes).

Action

The ads must not appear again in their current form. We welcomed Hubbly Bubbly Ltd's willingness to withdraw or amend their advertising and reminded them to ensure that their ads did not appeal particularly to people under 18 years of age and did not show or feature, in a significant role, people who were or who seemed to be, under 25 years of age. We also told them to ensure that their marketing communications which identified, directly or indirectly, specific products or product ranges contained a clear indication that some or all of those products contained nicotine, where that was the case.

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