



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph (02) 6173 1500 | Fax (02) 6262 9833
www.adstandards.com.au

ACN 084 452 666

Advertising Standards Bureau Submission

Inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia

July 2017

Contents

1. Executive Summary.....	3
2. Introduction	4
3. Self-regulation and education.....	4
4. Sanctions and penalties	5
5. Complaints handling	5
6. Conclusion.....	5
Assessment of Bureau process against Commonwealth Ombudsman Better Practice Guide to Complaint Handling	6
The advertising self-regulation system	9
1 Role of the Bureau	9
2 Role of the Bureau Corporate Board	10
3 Role of the Standards Board	10
4 Role of the Claims Board.....	11
5 Role of Independent Reviewer of Standards Board determinations.....	12
6 Principles underpinning the self-regulation complaints system	13
7 Upheld rates.....	17
8 Compliance with Standards Board determinations	17
9 Enforcement of Standards Board determinations.....	18
E-cigarette Cases considered by the Advertising Standards Board	19

1. Executive Summary

- 1.1 The Standing Committee on Health, Aged Care and Sport will inquire into and report on the use and marketing of electronic cigarettes (E-cigarettes) and personal vaporisers in Australia.
- 1.2 The Advertising Standards Bureau (Bureau) is the central authority for receiving complaints about advertising across all forms of media in all areas of Australia and in relation to the advertising of any products. The category of E-Cigarettes and vaporisers are included in the service that the Bureau provides to the Australian community in managing complaints about advertising.
- 1.3 The Bureau leverages off extensive experience in advertising complaint management to provide a robust and effective advertising complaints management process for the advertising of E-cigarettes and vaporisers that provides confidence for consumers.
- 1.4 The Bureau provides a model for a centralised advertising complaints management process that meets international best practice standards for advertising self-regulation, and has resolved numerous complaints in relation to the advertising of E-cigarettes and vaporisers.
- 1.5 The complaint resolution process managed by the Bureau is an effective and efficient way to respond to consumers' concerns about the advertising of E-cigarettes and personal vaporisers.
- 1.6 The Bureau complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- 1.7 When required, the Bureau is supported in enforcing compliance with Standards Board determinations by the media and media industry associations. This system has demonstrated its effectiveness during the past 20 years - with a record of nearly 100 per cent (currently 97%) compliance by industry with Standards Board determinations.
- 1.8 Maintaining E-cigarette and personal vaporisers advertising within the existing advertising self-regulatory complaint adjudication process managed by the Bureau provides an important level of certainty for consumers and delivers on the objective of a single body to receive and manage complaints, for all forms of advertising.
- 1.9 The Bureau has dealt with numerous complaints about E-cigarettes. Most of the complaints have been upheld on grounds that the advertisement breached prevailing community standards on health and safety. Community concerns have been raised about the fact that these products glamorise smoking or are strongly suggestive of smoking. When complaints are upheld the advertisement is discontinued or modified. Most complaints were received in during the years 2012 – 2013 and the most recent complaint for advertising this type of product was in 2015.
- 1.10 The case reports demonstrate successful resolution of community concerns about the advertising of E-cigarettes via a system that is proven to work well.

2. Introduction

- 2.1 The Advertising Standards Bureau (Bureau) appreciates the opportunity to provide comments to the Inquiry. Specifically the Bureau is concerned about the advertising or marketing of E-Cigarettes and personal vaporisers in the context of consumer complaints about advertising and marketing content. We do not have detailed comments on other areas of the consultation, although we note our support for a more self-regulatory when dealing with advertising complaints generally.
- 2.2 The Bureau is responsible for the administration of the complaint resolution component of the advertising self-regulation system in Australia. The Bureau supports the work of the Advertising Standards Board (Standards Board) and Advertising Claims Board (Claims Board), the bodies established to consider public and competitor complaints respectively about advertising and marketing communications against provisions set out in the relevant advertising codes. A brief description of the current advertising self-regulation system and the role of the Bureau is provided for reference at **Appendix 3** to this submission.
- 2.3 The Bureau's independent, well-recognised and proven complaint resolution process offers a practical and cost-effective solution to the handling of advertising issues and complaints in relation to E-cigarettes and personal vaporisers.
- 2.4 Since 2012 the Standards Board has considered and published case reports in relation to four cases concerning E-Cigarettes and personal vaporisers. Of these cases, the Board upheld complaints about three and dismissed complaints about one advertisement.
- 2.5 Community concern has rested in the area of advertising material being contrary to prevailing community standards on health and safety. Mostly the issues raised have been around glamourizing smoking.
- 2.6 Full copies of a sample of the relevant cases are provided at Appendix 1.

3. Self-regulation and education

- 3.1 The Bureau is supportive of a more self-regulatory in relation to advertising regulation generally.
- 3.2 The Bureau also supports the introduction of education programs for advertisers of E-cigarettes and vaporisers to support compliance. The Bureau already works closely with other industry associations to support education of advertisers about the complaint resolution process, covering trends in complaint decisions and advertisers' obligations under the self-regulatory system. The Bureau collaborates with the Communications Council, the OMA and the AANA to provide regular education and training to Communications Council members across the country.

4. Sanctions and penalties

- 4.1 We do not have specific comments on the discussion around sanctions and penalties. However we note that, in the management of the advertising self-regulation complaint resolution process, the Bureau already has processes in place for referral of non-compliance (or serious matters warranting immediate referral prior to Standards Board consideration) to relevant government bodies. The Bureau has only had to seek the support of government bodies in very rare instances.
- 4.2 As an example, the Bureau has recently worked with the Queensland Government to find an enforcement solution for one rogue advertiser displaying marketing material on vans and representing an anomaly in an otherwise very effective complaint resolution process with a compliance rate of nearly 100%. As a result of this collaboration, the Queensland Parliament enacted legislation that provides a legislative backstop in specified circumstances and on referral of the matter from the Bureau, to provide a disincentive for advertiser non-compliance. The Bureau fully supports the legislation on the basis that the Queensland Government will only intervene on a referral from the Bureau and the decision as to the appropriateness of the advertising content remains within the jurisdiction of the Standards Board. The Bureau can provide further information on the legislative backstop approach if required.

5. Complaints handling

- 5.1 The Bureau regularly assesses its own complaint handling practices against a number of measures including:
- The European Advertising Standards Association (EASA) Advertising Self-Regulatory Charter and Best Practice recommendations – which set out the relevant international standards for complaint resolution processes for systems of advertising self-regulation.
 - ASIC Regulatory Guide 139 - approval and oversight of external dispute resolution schemes;
 - The ACCC *Guidelines for developing effective voluntary industry codes of conduct*; and
 - The Commonwealth Government's *Benchmarks for industry-based customer dispute resolution*.
- 5.2 For completeness, we provide at **Appendix 2** our assessment of the Bureau's current complaint management processes against the best practice principles set out in the Better Practice Guide. A more detailed discussion of the principles underpinning the self-regulation complaints system is provided at **Appendix 3** for reference.

6. Conclusion

- 6.1 The Advertising Standards Bureau provides a proven system for the management of consumer complaints about the advertising of E-cigarettes and vaporisers.
- 6.2 Should the Inquiry wish to consult with the Bureau about any aspect of this submission we would be pleased to do so.

Appendix 2

Assessment of Bureau process against Commonwealth Ombudsman Better Practice Guide to Complaint Handling

The Commonwealth Ombudsman's Better Practice Guide to Complaints Handling describes five elements of effective complaint handling:

Culture: *Agencies must value complaints as a means of strengthening their administration and improving their relations with the public*

- Unlike the internal complaint handling processes which the Commonwealth Ombudsman's Guide is intended for, the Bureau is in the business of complaint resolution – this is our key role and primary purpose.
- The Bureau invests in regular research and promotional activities to measure and improve public awareness of the complaints process.
- The Bureau has invested in complaint management systems to support an efficient, accessible and effective complaint process.
- Community complaints are welcomed as the Bureau exists to give voice to consumer values and guide advertisers in maintaining decent, honest advertising aligning with prevailing community values.

Principles: *An effective complaint handling system must be modelled on the principles of fairness, accessibility, responsiveness, efficiency and integration*

Fairness:

- The complaint process is based on the principles of procedural fairness for complainants and advertisers alike. The complaint adjudication process steps are clearly set out and available on the Bureau's website.
- The process is transparent, with all important information – the complainant(s) concerns, the advertiser's statement and the Board's determination - included in the final case report that is published online.

Accessibility:

- The Bureau's complaint process is accessible as a free service to all members of the public.
- Complaints may be made via an online complaint form, by post or facsimile.
- The Bureau will accept complaints over the phone from those people who have no capacity to communicate electronically or in writing.

Responsiveness:

- A single written complaint is sufficient to initiate the complaint process.
- The Standards Board meets at least twice per month, which contributes to timely turnaround of complaints. Extraordinary meetings can be scheduled within 72 hours.

- The Bureau is committed to continuous improvement, taking into account input from the public and the industry, past Government Inquiries, and having regard to international best practices relating to advertising self-regulation. Since 2005, the Bureau has undergone substantial remodelling, including a range of initiatives to improve the transparency and accountability of its complaint handling service.

Efficiency:

- Ongoing improvements in our case management system have allowed us to maintain prompt turnaround of complaints and to more accurately report on timeliness. During 2016 the average case time was 39.1 calendar days from initial receipt of first complaint to publication of the final case report.
- The focus on continuous improvement has increased the efficiency of communication with all parties to complaints and improved the way advertiser's respond to complaints.

Integration:

- N/A – advertising complaint handling and adjudication is our core business.

People: *Complaint handling staff must be skilled and professional*

- As at 30 June 2017, the Bureau has an average staff tenure of 6.5 years. Complaint management staff are skilled and experienced in our core business.
- The small size of the workforce allows all staff to be familiar with the complaints handling/case management processes.
- Staff are provided with extensive training, both on-the-job and external. Strong emphasis is placed on knowledge and skills about the application of principles of natural justice/procedural fairness in the complaint adjudication process.
- Twice yearly, all Bureau staff and the Standards Board convene for training and development purposes.

Process: *The seven stages of complaint handling – acknowledgement, assessment, planning, investigation, response, review, and consideration of systemic issues – should be clearly outlined*

- The complaint process steps are clearly set out and available to all on the Bureau website, along with information about how the Standards Board makes its determination and the review process.
- All complaints are acknowledged and each complaint is assessed against the advertiser codes. Complaints about matters outside the Standards Board's charter are referred to the appropriate body.
- Complaints are determined by the independent, impartial Standards Board. Decisions are notified to all parties and published on the Bureau website.
- The process includes ongoing capture of complainant/advertiser feedback. The outcomes of ongoing surveys are considered by the Bureau's corporate governance board.

Analysis: *Information about complaints should be examined as part of a continuous process of organisational review and improvement*

- As a pure complaint adjudication body, the Bureau is committed to continuous improvement, taking into account input from the public and the industry and having regard to international best practice on advertising self-regulation.
- Regular research is undertaken into community standards to test Standards Board decisions against views of the community. Research also includes public awareness to assess the visibility of the Bureau and the Standards Board in the community
- Advertiser and complainant surveys are conducted to obtain user feedback about the complaint adjudication system.

The advertising self-regulation system

Australia's system of advertising self-regulation is recognised as world class. The current system was established by the AANA in 1998. It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.

Self-regulation of the advertising industry has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. These rules are expressed in a number of advertising codes and industry initiatives. The rules are based on the belief that advertisements should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society as a whole and with due respect to the rules of fair competition. Self-regulation of advertising is not designed to set community standards, but rather to reflect community standards.

The system is funded by advertisers agreeing to a levy being applied to their media expenditures and is well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.

High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:

- through the existence and development of appropriate codes and initiatives relating to advertising standards;
- the voluntary compliance of advertisers;
- the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and
- the operation of the complaint resolution process.

The system meets world best practice in self-regulation and operates, at no cost to the consumer, on the principles of accessibility, transparency, responsiveness and robust decision making.

1 Role of the Bureau

The Bureau administers the complaint resolution component of the advertising self-regulation system. The work of the Bureau is not underpinned by any Government legislation.

The Bureau's purpose is that the community, industry and government have confidence in, and respect the advertising self-regulatory system and are assured that the general standards of advertising are in line with community values.

The Bureau aims to administer a well-respected, effective and independent advertising complaints resolution service that regulates advertising standards in Australia, adjudicating both public and competitor complaints, and to ensure compliance with relevant codes.

Currently, the Bureau administers the following codes of practice relating to advertising and

marketing communications in Australia:

- Australian Association of National Advertisers (AANA) Code of Ethics;
- AANA Code for Advertising and Marketing Communications to Children;
- AANA Food and Beverages Advertising and Marketing Communication Code;
- AANA Environmental Claims in Advertising and Marketing Code;
- AANA Wagering Advertising and Marketing Communication Code;
- Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising;
- Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry; and
- Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

These codes apply to all advertising and marketing communications across all media. The Bureau also works with the Alcohol Beverages Advertising Code (ABAC) management scheme, and accepts, and forwards to the ABAC chief adjudicator, all complaints about alcohol advertisements.

The Bureau is secretariat for the Standards Board and the Advertising Claims Board (Claims Board), the bodies appointed to adjudicate public and competitor complaints and to ensure compliance with the relevant codes and industry initiatives. The two boards have separate and distinct roles considering public and competitor complaints about advertising against the advertising codes they administer. Members of the Standards Board are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Claims Board are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.

2 Role of the Bureau Corporate Board

The Bureau is a limited company headed by a Board of Directors (Corporate Board). Under the Constitution of the Bureau, there must be between three and six directors of the Bureau.

The Corporate Board is responsible for management of the business of the Bureau consistent with the Bureau's objectives and, with the Chief Executive Officer, is also responsible for the corporate governance of the Bureau. The Corporate Board deals with strategic, financial and operational concerns, and works to improve the operation of the Bureau so that it is the foremost complaints resolution body for advertising in Australia.

The Corporate Board has the integrity of the advertising self-regulation system at heart and it insists that the work of the Corporate Board and of the Standards Board be absolutely separate.

3 Role of the Standards Board

The Standards Board is the independent body established to determine public complaints about

advertising and marketing communications against the principles set out in the relevant codes. The Standards Board makes determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety.

The Standards Board comprises 20 members of the community and reflects a diverse knowledge and experience base. The Standards Board is gender balanced and members come from a broad range of age groups and backgrounds. It is independent, dedicated and diverse and as representative of the diversity of Australian society as any such group can be.

Individual Standards Board members do not represent any particular interest group (industry or consumer) and are individually and collectively clearly independent of the industry. On the rare occasion an individual member has a connection with a party concerned in a particular determination, that Standards Board member absents herself or himself from the meeting.

The Standards Board discharges its responsibilities with fairness, impartiality and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.

Membership of the Standards Board is on a fixed term basis. New appointments are staggered to avoid desensitisation and to ensure the Board retains a mix of corporate knowledge and at the same time introducing people with different experiences, views and skills. Profiles of current Standards Board members are available to all on the Bureau website (www.adstandards.com.au).

Standards Board appointments are made following a publicly advertised application and interview process. People sought for appointment to the Standards Board ideally have an interest in, and views on, advertising and have been exposed to a broad range of community activities and interests.

Standards Board Members participate in twice yearly training days to reinforce codes and initiatives and highlight issues impacting on community standards in advertising.

4 Role of the Claims Board

The Claims Board provides a separate competitive complaint resolution service and is designed to determine complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis.

The Claims Board is a system of alternative dispute resolution aimed at addressing and resolving challenges to advertising that might otherwise lead to expensive and time consuming litigation.

The Claims Board considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about: the legality of an advertisement; misleading or deceptive advertisements; and advertisements that contain misrepresentations likely to harm a business.

Complaints received by the Claims Board are considered by a panel of legal advisors with experience and expertise in advertising and/or trade practices law.

5 Role of Independent Reviewer of Standards Board determinations

As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, the Bureau introduced a review process for Standards Board determinations in April 2008.

The independent review process provides the community and advertisers a channel through which they can appeal decisions made by the Standards Board in prescribed circumstances. The review process is available to the advertiser and the person(s) who originally made a complaint.

In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Standards Board, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Standards Board's original determination should be confirmed or be reviewed. It would be inappropriate to set up one person as a decision maker in place of a 20 member board that makes determinations on the basis of community standards.

There are three grounds for review:

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided;
- Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the codes or initiatives, or clearly made against the weight of evidence); and/or
- Where there was a substantial flaw in the process by which the determination was made.

The Independent Reviewer will first consider whether the application for review sets out a prima facie case for review and will decide to accept or not accept the request. If the request is accepted, the Independent Reviewer will undertake appropriate investigation and will make a recommendation to the Standards Board, stating whether the Standards Board's original determination should be reviewed or confirmed.

During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The Bureau publishes the initial determination until the outcome of the review is known at which point the revised determination with Independent Reviewer recommendation is published.

Information about the review process is available on the Bureau website. The advertiser and original complainant(s) are also informed about the process when notified of the complaint determination.

6 Principles underpinning the self-regulation complaints system

(a) Accessibility of complaint process

The complaint process is accessible to all members of the public. Complaints may be made via an online complaint form, by post or facsimile. A single written complaint is sufficient to initiate the complaint process.

The complaint process is a free service and provides fairness for complainants and advertisers. Process steps are clearly set out and available to all on the Bureau website, along with information about how the Standards Board makes its determinations. Members of the public without access to the internet are able to contact the Bureau and request information about the complaint process.

Ensuring consumers know where to complain about advertising is an important issue for the Bureau. The Bureau considers that the increase in complaint numbers over recent years is partly attributable to the success of the Bureau awareness campaign, “People like you”, launched on television in early March 2014. In addition to raising awareness of the role and composition of the Advertising Standards Board, the awareness campaign highlighted how easy it is to lodge a complaint online. This campaign was extended to social media through 2016-17.

In community research commissioned by the Bureau during 2015, when participants were provided with a list of organisations which they could contact if they wanted to make a complaint about advertising, 42% of respondents indicated that they would contact the ‘*Advertising Standards Board*’ while one third (36%) proposed that they would contact the ‘*Advertising Standards Bureau*’. In previous research, participants in 2009, 2010 and 2012 were also asked to nominate an organisation. Overall, 62% of the general public in the 2012 community perceptions study were aware that they could complain to the Bureau if they had a complaint about paid advertising. This result remained stable since the 2010 sexuality research (63%) and 2009 violence research (67%). The result was also significantly higher than the level of unprompted awareness in the 2006 community awareness research (10%), which drove the development of an earlier awareness raising campaign commencing in 2008 with television, radio and print advertisements.

In the 12 months prior to the 2015 research, the majority (90%) of participants had not made a formal complaint about advertising standards. The main reason for not making a complaint was that they were not concerned about any advertising they had seen or heard.

(b) Transparency of complaint process and decision making

The Bureau is committed to a high standard of transparency with regards to Standards Board determinations.

A single written complaint is sufficient to initiate a formal investigation by the Bureau. An anonymous complaint is not sufficient to initiate a formal complaint, but it can be included as part of a complaint that has already been raised or is subsequently raised.

Complaints are promptly assessed as to their appropriateness for submission to the Standards Board for determination. The Bureau, as secretariat for the Standards Board, responds to all complainants, informing them of the status of their complaint and keeps complainants and advertisers informed of

the progress of complaints throughout the process via written correspondence.

In 2010, the Bureau initiated the development of a series of “Determination Summaries”, aimed at providing a general overview of Standards Board determinations on complaints about particular issues covered by the codes. The Determination Summaries are available from the Bureau website and cover topics including *Discrimination and vilification in advertising*, *Use of sexual appeal in an exploitative and degrading manner* and *Portrayal of gender in advertising*.

The summaries are not “how to” guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the codes that have been the subject of complaints in the past.

All case reports are also made publicly available on the Bureau website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Standards Board’s determination, along with a summary of the reasons for its decision.

(c) Robust decision making

The Standards Board has the complex and sometimes difficult task of making determinations in relation to a wide range of issues covered by the various codes and initiatives it administers.

To assist the Standards Board in its deliberations, the Bureau conducts two training days each year in which issues of topical or general importance and determination precedent are discussed. This often includes presentations from other organisations or experts on matters of current interest. For example, the Outdoor Media Association presented to the Standards Board on *Understanding who sees outdoor advertising and how*. An update was also provided at the training day from ABAC representatives on recent issues in alcohol advertising.

All community standards research which the Bureau regularly undertakes on behalf of the Standards Board is discussed at training days both during the draft stage and subsequently during a formal presentation of the final research report. The Bureau also involves the Standards Board in the development of the Determination Summaries which provide precedent information regarding previous Standards Board determinations on particular issues.

All case reports following Standards Board determinations are published on the Bureau website. Since these documents are available to the entire community, the Bureau ensures that determinations in case reports are articulated clearly, logically and concisely.

The Standards Board is extremely careful to follow appropriate process in making its determinations. The introduction of the Independent Reviewer process in 2008, which allows for a request for review on the basis of a flaw in the determination or a flaw in the process the Standards Board followed, increases the Standards Board’s resolve to ensure sound decision making.

(d) Responsiveness of complaints handling

The Bureau's complaint handling system is efficient. Ongoing improvements to our case management system have allowed us to maintain prompt turnaround of complaints and to more accurately report on timeliness. In 2016, 73% of cases were completed within 42 calendar days (covering the period from receipt of complaint until resolution and publication of the final case report), with considerably shorter timeframes for advertisements that receive a large number of complaints or that are likely to breach the code. The average case time during 2015 was 39.1 calendar days from initial complaint receipt to final publication. ASB dealt with a record number of cases (595) in 2016.

Since early 2009 the Standards Board has met at least twice per month, which contributes to the timely turnaround of complaints. It is also possible to provide a 24 to 48 hour turn around for cases where it is likely that the advertisement will breach the Code or if there is immediate and significant community concern. In the latter case, however, most advertisers would remove the advertisement voluntarily – an example of this is a Target advertisement which depicted an act considered by many in the community to be dangerous. Upon receipt of Bureau notification of complaints, Target immediately withdrew the advertisement, prior to the Standards Board determination (in which the complaints were upheld). This self-regulatory action on the part of the advertiser is an example of the self-regulation system working as it should.

Neither the Standards Board nor the Bureau considers the receipt of complaints a problem. Complaints provide a good test of the self-regulatory system and of the alignment of the codes to community opinion. We do not aim for, or expect to experience a situation where the community does not complain about advertising at all. No system of regulation is failsafe and the role of the complaints process is to act as a safeguard to ensure participants continue to comply with the codes, having regard to changing community standards.

(e) No cost to the community

The system is funded by industry – it receives no government funding. Responsible advertisers assist in maintaining the self-regulation system's viability and support its administration by agreeing to a levy being applied to their advertising spend. The levy is paid to and administered by the Australian Advertising Standards Council (AASC). The AASC holds the industry funds in an account which is drawn down to pay the costs of managing the Standards Board and the self-regulatory system. Financial management of the funds is outsourced to a chartered accounting firm and the Annual Financial Statements of the Bureau and the AASC are audited by independent auditors.

(f) Continuous improvement

The Bureau is committed to continuous improvement, taking into account input from the public and the industry, and having regard to international best practices relating to advertising self-regulation.

Since 2005, the Bureau has undergone substantial remodeling, including a range of initiatives to improve the transparency and accountability of its complaint handling service. These initiatives include the following:

- Complaint processing
 - A new case management system was implemented in 2010 and further enhanced in 2012 and again in 2016 resulting in improvements in the efficiency and timeliness of complaint processing.
- Public awareness
 - Major public awareness campaigns were conducted in 2008 and continued in 2011 and 2014.
 - Ongoing community standards research has included testing of community awareness about the Bureau and advertising self-regulation.
 - A new website was launched in 2015, with improvements to the presentation of information about the complaint process and role of the Bureau and determination search functionality. The launch of a blog in 2012 and an official Twitter account in 2014 has assisted in improving our community engagement.
- Community standards research
 - Research to determine the level of unprompted awareness of the Bureau (2006).
 - World-first research testing the Standards Board's decisions against the views of the community (2007).
 - Community perceptions of violence in advertising (2009).
 - Discrimination and vilification in advertising, at the request of the Standards Board, to better inform them about issues in this area (2009).
 - Community perceptions of sex, sexuality and nudity in advertising (2010).
 - Community perceptions to assess current community attitudes and seek information about possible shifts in community standards and the Board's alignment with those standards (2012).
 - Exploitative and degrading advertising (2013).
 - Advertising directed primarily to children (2015).
 - Community Standards plus 10 year longitudinal study of changes in community views (2017, soon to be released)
 - Full research reports are available from the Bureau website.
 - Research conducted provides the Standards Board with valuable feedback and Standards Board members have taken the results of such research into account in their consideration of complaints under the codes.
- Maintaining an independent and effective Standards Board
 - Since 2005, a number of changes have been made to the structure and procedural arrangements of the Standards Board, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that the Standards Board has a mix of experienced and new members.
 - The frequency of meetings has increased, with the Standards Board now meeting twice a month to consider complaints and also between scheduled meetings, usually by teleconference, if the Bureau considers that a case should be considered as a matter of urgency.
- Introduction of an Independent Review process
 - An Independent Review process was introduced in April 2008 as part of the Bureau's efforts to meet international best practice. The process enables original complainants and

advertisers to appeal determinations made by the Standards Board.

- There are currently two Independent Reviewers, Professor Robin Creyke, appointed in June 2015 and Ms Victoria Rubensohn AM, appointed in August 2011.
- Introduction of consistently dismissed category
 - A “consistently dismissed” category was introduced in 2010, responding to concerns that resources be devoted to cases that are most likely to be upheld. This initiative has resulted in streamlining of this type of complaint.

The Bureau will continue to work with the advertising industry, associated national and international bodies and the community to maintain a healthy system of advertising self-regulation.

(g) Keeping up to date with international advertising standards

The Bureau is a member of the European Advertising Standards Alliance (EASA) which is the key organisation regarding advertising self-regulation issues in Europe and beyond. EASA promotes responsible advertising and high ethical standards in commercial communication and assists members and others via initiatives such as the EASA Advertising Self-Regulatory Charter and Best Practice recommendations. Membership of EASA allows the Bureau to measure its performance and operations against international standards and ensures that we have access to an appropriate best practice model for advertising complaint resolution.

In line with the EASA work and in Bureau Chief Executive Officer, Fiona Jolly’s role as Vice Chair of the International Council on Advertising Self-Regulation, the Bureau has worked to promote advertising self-regulation in the Asia/Pacific region. In November 2012, the Bureau played the lead role in organising and conducting a Dialogue on Advertising Standards-Principles and Practice held in Hanoi for APEC economies. Since that time the Bureau has also provided high level assistance in organising APEC events in Beijing China (2014), Lima Peru (2016) and is currently providing assistance for the August 2017 event in Ho Chi Min City Vietnam.

7 Upheld rates

Compared to the total number of advertisements considered by the Board in 2016, the number of advertisements found to breach the codes equated to an upheld rate of 13.3 per cent. This compares to 5 per cent in 2006. This is due to the continuous improvement initiatives referred to above, and in particular the appointment of new and more diverse Standards Board members and a greater awareness within the Standards Board of community standards, particularly about issues relating to sex, sexuality and nudity.

There is no right or wrong number for an upheld rate. There will always be circumstances in which people make valid complaints about an advertisement, but whose complaint is not in line with the broader community. There is a wide range of community views on particular issues and Bureau research shows that the Standards Board is generally in line with community views.

8 Compliance with Standards Board determinations

The Bureau has a record of nearly 100 per cent compliance by industry with decisions of the Standards Board. The Bureau’s ability to achieve compliance across Federal, State and Territory

jurisdictions, regardless of the size of the advertiser, is something that legislation and government administration is very unlikely to rival.

9 Enforcement of Standards Board determinations

Regardless of an advertiser's reaction to a Standards Board determination, in the majority of cases where Code breaches are found, advertisers quickly ensure that their advertisement is removed or modified. Very few advertisers require more encouragement to comply. However, if necessary the Bureau has developed a range of enforcement actions to ensure compliance with Standards Board decisions.

Firstly, if a complaint indicates that an advertisement may breach government regulations or has broken the law, the Bureau can refer the case report to an appropriate government agency or industry body that has the authority to withdraw the advertisement. This can be done without a case going to the Standards Board for consideration.

Other actions can include:

- An advertiser's failure to respond will always be included in the final case report which is made public on the Bureau's website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.
- In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Standards Board meeting, and the Bureau Chief Executive Officer will respond to all media requests with a full account of the particulars of the case, including the timeliness of the advertiser's compliance.
- Should an advertiser fail to respond to the Bureau's request to remove or modify advertising, the Bureau will liaise with industry and media bodies such as FreeTV and the Outdoor Media Association, which will either negotiate with the advertiser directly for the removal of the advertisement or in specific cases, take action to remove the advertisement.
- Under appropriate circumstances, the Bureau will refer an advertiser to a government agency such as: the Commonwealth Department of Communications and the Arts; the Australian Communications and Media Authority; the Attorney-General's Department; or to State Police Departments to request that these agencies assist in taking action against the advertiser. In some cases, local councils may also have relevant authority to assist with the removal of an advertisement, although this authority varies greatly between jurisdictions. Although Government agencies can be of assistance should the Bureau be unable to facilitate removal of an advertisement, it is apparent that they do not have relevant powers or funding to achieve enforcement outcomes or, in some cases, are unable to act quickly or on the basis of community concerns.

Attachment A

E-cigarette Cases considered by the Advertising Standards Board



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph: (02) 6173 1500 | Fax: (02) 6262 9833
www.adstandards.com.au

Case Report

1	Case Number	0092/13
2	Advertiser	Sure Deal
3	Product	Other
4	Type of Advertisement / media	Internet
5	Date of Determination	27/03/2013
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety Depiction of smoking/drinking/gambling

DESCRIPTION OF THE ADVERTISEMENT

Advertisement for fruit flavoured vapour (tobacco and nicotine free) e-Shisha Pipes featuring claims that it is a safe way to smoke as there are no toxins or tar. There is a video which shows people smoking the product.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

Advertisement can be viewed and the product can be ordered by children. False claims that the product isn't harmful, but making smoking seem like a fun activity to share with friends.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Original complaint section -

1. Advertisement can be viewed and the product can be ordered by children -

The advertisement is not aimed at, nor marketed to children. SUREdeal is an online group buying site that offers deals to our members on behalf of third-parties. As per our terms (3.1), you are required to be 18 years of age (and will also need to have a credit card) to purchase any deal from SUREdeal - <http://www.suredeal.com.au/terms>

Customers are required to create an account with SUREdeal before making a purchase - <http://www.suredeal.com.au/sign-in> and they must agree to the terms and conditions at this time.

According to the Code for Advertising and Marketing Communications to Children:

“Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product

Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children’s Food or Beverage Product”

However, no children are featured in the advertisement, nor are the themes, visuals and language directly primarily to children for this product, or any other advertised on SUREdeal.com.au.

2. False claims that the product isn't harmful, but making smoking seem like a fun activity to share with friends-

The e-Shisha is designed to help reinvent “smoking” to be healthier (which it is) and more socially acceptable in this form than by smoking the harmful alternative - tobacco cigarettes. While quitting smoking is (of course) the best course of action to take to an addiction, many believe products such as these to offer a safer and more socially acceptable alternative for those who have tried and failed to quit numerous times. Choosing the non-harmful alternative is advertised to be the better option.

The product is a Tobacco-Free, Nicotine-Free, Fruit Flavoured Vapor E-Shisha Pipe, with zero tar, and toxins which make it a great alternative to regular smoking. This is how the product has been advertised, as well as focusing on the negatives of smoking tobacco cigarettes such as the harmful and undesirable side-effects.

Nowhere in Section 2 of the Advertiser Code of Ethics (Code for Advertising and Marketing Communications to Children or Food and Beverages Marketing and Communications Code) in the links provided on the complaint notification, does it make reference to advertising non-harmful alternatives to smoking cigarettes, nor does this advertisement appear to breach the AANA Advertiser Code of Ethics.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement shows people smoking a cigarette style product which could encourage children to copy the behaviour and to smoke tobacco products and makes claims about the product not being harmful.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code.

Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the advertisement features text describing the product (the E-shisha), how it works, the benefits of the product and the deal itself. Included as part of the deal as it appears on the internet page, is a video, including scenes of people being interviewed about the product and showing them smoking.

The Board noted that the product itself is not a tobacco based product and that it is not the Board’s role to comment on the legislation around tobacco advertising and legislative requirements. The Board also noted that upon reviewing the advertisement, it is not within the remit of the Board to consider the suitability of the product but only the way that it is advertised and the depiction of smoking within the advertisement.

The Board noted that the video footage shows people being using the product and being asked for their opinion. The Board considered that the opinions of the people are all positive and that the users appear to be enjoying and savouring the flavours and ease of use of the E-shisha. The Board considered that the advertisement is depicting people replacing tobacco cigarettes with a non-tobacco product but does so in a manner that makes smoking appear trendy and desirable.

The Board noted that the text included as part of the advertisement describes the deal being offered and also the functionality of the E-Shisha pipe. The Board noted that in particular the text mentions “set a new trend for non-smokers who don’t want to be left out of the smoking area.” The Board considered that this type of statement reinforces the idea that smoking is considered a ‘cool’ or ‘fashionable’ thing to do and that people who do not join with the smoking crowd, may be socially disadvantaged.

The Board considered that this is, in the Board’s view, a depiction that glamourises smoking and that glamourising smoking is contrary to prevailing community standards on health and safety.

Consistent with previous decisions (0140/12 – Nena and Pasadena and 0410/12 – De Rucci Bedding) the Board considered that the advertisement glamorises smoking and that a depiction of smoking in this manner is clearly contrary to community standards on health and safety regarding smoking and that the advertisement did breach of Section 2.6 of the Code.

Finding that the advertisement breached Section 2.6 of the Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

We have removed this advertisement.



Case Report

1	Case Number	0094/13
2	Advertiser	Brand Developers
3	Product	Retail
4	Type of Advertisement / media	TV
5	Date of Determination	10/04/2013
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety Depiction of smoking/drinking/gambling

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows statistics relating to the financial and health costs of smoking. It then goes on to demonstrate the benefits of switching to an electronic cigarette - Clever Smoke. We see scenes showing people smoking both real and electronic cigarettes.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

We live in a time when we are trying to discourage smoking and this advert even shows a mother smoking this device with a child climbing up on her.

When I was a child we could buy packets of lollies called fags and now even they have had a name change to discourage children from smoking.

What is going on, this advert needs to be banned!!!

I am a reformed smoker and I am disgusted with this advertisement.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Thank you for the opportunity to respond to this complaint. While we congratulate the complainant on being, and staying, a reformed smoker, we are disappointed to learn that he views this advertisement in a negative light. As a small point of correction, the complainant has referred to the product as NEVER SMOKE, whereas the name is CLEVER SMOKE, and we believe NEVER and CLEVER imply vastly different impressions, with CLEVER being the smart, positive title.

Our intent and purpose of “Clever Smoke” is to assist people in their efforts to give up nicotine cigarettes. We don’t know how, when, or why the complainant stopped smoking, but for most people this habit is a double-pronged addiction. Firstly there is the addiction to the drug nicotine itself; secondly, there is the addictive physical habit of holding something in one’s hand or mouth.

The Clever Smoke is an electronic cigarette-like device that assists the individual by helping satisfy the physical desires of habit, while the body and mind can focus on kicking the nicotine drug habit.

As a responsible advertiser we took all due diligence when looking at importing this product and gained advice from our regulatory consultants who informed us this was outside their area of expertise as it is not a Therapeutic device and legal advice from our Lawyers which we used when producing our TV advert that was approved by CAD.

We also had all of the documents on the safety and proof that there was no nicotine etc. provided from the supplier.

The complainant has mentioned that you ‘actually exhale a smoke substance’ which is untrue as it is harmless vapours which can be proved through the studies.

He also goes on to say that ‘We live in a time when we are trying to discourage smoking’ which is exactly what Cleversmoke does. The commercial is not talking to non-smokers. It is only encouraging smokers to change to a healthier version, which could cause them to get rid of their nicotine addiction in order to quit smoking completely.

The complete “cold turkey” approach is simply too drastic for many to try, or even contemplate. The aim of the Clever Smoke is to help alleviate the stress, trauma and withdrawal symptoms, by meeting the needs of the physical habit in a harmless but positive way. Once the nicotine drug addiction is under control the smoker can then consider weaning off the physical habit.

The other emphasis within the advertisement is on the money one can save through using the Clever Smoke, pointing out the 100s of dollars that one spends every month on tobacco. Thus we believe that the dual message – save your life AND save your money - is clear and clever. There is no encouragement visually or verbally, actual or by inference, to START smoking. There is no so called “cool” habit to emulate.

The kit supplied includes 25 cartridges with 5 different flavours, all with a zero amount of nicotine. Under current legislation there is no way Clever Smoke could be deemed a tobacco product, or a product designed to smoke, hold or otherwise have control over an ignited tobacco product.

In considering this response we see the Code of Ethics 2/6 as the only one to have relevance, and nowhere does the advertisement depict material contrary to Community Standards on health or safety. Thus, although we respect the complainant's opinion, we do not feel there are grounds to uphold his complaint against the advertisement.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement shows people smoking a cigarette style product which could encourage children to copy the behaviour.

The Board viewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the advertisement features people smoking an electronic cigarette whilst a voiceover highlights the dangers associated with smoking real cigarettes and promotes the Clever Smoke product as a safer alternative.

The Board noted that it had recently upheld a complaint about a similar product (0092/13) where it found that the depiction of people smoking a fake cigarette suggested that smoking was cool and glamorous.

Consistent with its previous determination the Board noted that the product itself is not a tobacco based product and that it is not the Board's role to comment on the legislation around tobacco advertising and legislative requirements. The Board also noted that upon reviewing the advertisement, it is not within the remit of the Board to consider the suitability of the product but only the way that it is advertised and the depiction of smoking within the advertisement.

The Board noted that the video footage shows people using the product at work, in a bar and whilst with their children. The Board noted that the reactions of the people using the product are of enjoyment and considered that to depict people enjoying smoking, albeit fake cigarettes, is a depiction which is suggestive of smoking being pleasurable and this glamourises smoking. The Board noted that the Clever Smoke product does closely resemble a cigarette and considered that the advertisement is strongly suggestive of smoking a real cigarette whilst in a public place and whilst surrounded by children.

Consistent with previous decisions (0140/12, 0410/12) the Board considered that glamourising smoking is contrary to prevailing community standards on health and safety.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement breached Section 2.6 of the Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

Although we are disappointed that the complaint has been upheld as we believe the board understands that we are giving a strong non-smoking message to discourage nicotine addiction and abuse we understand why you have come to your decision.

The advert in question has not been to air since the 17th March and we are currently editing the new advert after discussions with yourself and also our lawyers.



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph: (02) 6173 1500 | Fax: (02) 6262 9833
www.adstandards.com.au

Case Report

1	Case Number	0315/13
2	Advertiser	Logic Ecigs
3	Product	Other
4	Type of Advertisement / media	Radio
5	Date of Determination	11/09/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Depiction of smoking/drinking/gambling
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

An advertisement for Logic electronic cigarettes encouraging people to use the E-cigarette rather than smoke. The voiceovers highlight some positive aspects of smoking e-cigarettes rather than normal tobacco cigarettes (no nicotine, tobacco or ash).

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I object to the advertisement because it glamorises smoking and is contrary to prevailing community standards on health and safety, in breach of section 2 of the Advertiser Code of Ethics.

By saying "it looks tastes and feels like a real cigarette", the ad suggests that smoking is a pleasurable activity and therefore is glamorising smoking.

As the Bureau has already upheld complaints on two similar e-cigarette advertisements, I would expect the Bureau to take a similar view of this ad.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We are advertising electronic cigarettes with no nicotine and no tobacco. It is not "smoking" On the contrary ecigs emit no smoke. They emit a vapour or steam that does not effect anyone around them. So to say we glamourise smoking is the opposite to what we intend on the ad. We in fact want to switch smokers from "smoking" to "vaping". A much healthier and smarter way to give smokers the feeling of cigarettes without actually having one. By switching to ecigs we believe we are improving Community Standards on Health and Safety. At no stage do we suggest that smoking is a pleasurable activity. On the contrary, we try to make it as unpleasant as possible without offending too many smokers! We are able to provide literature on this topic should you require it.

For Ms Craven to misquote the advertisement is, in my opinion, even worse than her regular complaints to your Bureau, wasting everyone's time.

To only quote part of the sentence is tantamount to dishonesty. The ad reads ..."it looks, feels and tastes like the real thing...BUT IT IS NOT! We even say "smokers ...are switching to the Logic electronic cigarette..." That is the very intention of the advert. Not to encourage people to smoke as Ms Craven suggests.

Furthermore I find it very interesting that Ms Craven is so familiar with the Code and is aware of the Bureau upholding complaints on two similar ecigarette advertisements You should take further relief from the fact that Logic only manufactures in two flavours - menthol and tobacco. Unlike some ecig companies that produce flavours which are enticing to the younger under age potential smokers eg lemonade or coffee or chocolate flavours In our opinion we are not contravening any guidelines. In fact we are encouraging a healthier habit that will reduce medical bills, clean the environment (as no butts) and no second hand smoke so removing another unpleasant aspect of "smoking"

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement glamourises smoking which is against prevailing community standards.

The Board reviewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted this radio advertisement features a male and a female voiceover describing the Logic E-cigarette.

The Board noted that it had recently upheld a complaint about a similar product (0092/13) where it found that the depiction of people smoking a fake cigarette suggested that smoking was cool and glamorous.

Consistent with its previous determinations the Board noted that the product itself is not a

tobacco product and, therefore, that it is legal to advertise the product in Australia and that any depiction of smoking in the advertisement is not of the smoking of a tobacco product. The Board noted that it is within the remit of the Board to consider the manner in which the product is advertised and the depiction or suggestion of smoking within the advertisement for consistency with the Advertiser Code of Ethics.

The Board noted that in this radio advertisement the information provided is factual and highlights the less attractive aspects of smoking. The Board noted that the e-cigarette is likened to the “real thing” but considered that in the context of the negative aspects of smoking real cigarettes that are highlighted in this advertisement this descriptor does not glamourise or encourage smoking cigarettes.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on smoking tobacco products.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Further finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaint.



Case Report

1	Case Number	0072/15
2	Advertiser	Vaporfresh
3	Product	Other
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/03/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens on a man smoking a Vaporfresh e-cigarette at a bar. As he blows smoke he is joined by a man and a woman who both admire his e-cigarette. A male voiceover talks about how cheap the product is compared to a carton [of cigarettes] and the different flavours available. The final text on screen reads, "Saves you money by Vaping. Vaporfresh. All the smoking pleasure without any smoke. vaporfresh.com.au".

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

This advertisement actually suggests the product provides the 'pleasure of smoking without the actual smoke' or similar... the problem is the with the suggestion about smoking pleasure, which encourages consumers along the lines that smoking is a pleasurable experience, which is something our advertising laws currently disallow to protect the community, especially youngsters from taking up the habit; considering the research on the inhalation of the chemicals that confer the flavours and other chemicals in cigarettes is unclear about any long-term effects, it seems a health contradiction that such encouragement is allowed without the backup of research.

Vaporfresh's tagline at the end of the advertisement is- 'all the pleasure of smoking, without the smoke.' This implies that smoking is 'pleasurable', a dangerous and misleading notion that could encourage people to start smoking. Normalizing making smoking 'pleasurable',

whilst showing healthy, young people enjoying their e-cigarette, could convince previous non-smokers and ex-smokers to believe they are missing out on some pleasure. Very, very bad!

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

REASON FOR CONCERN: As to brain washing young minds, that it is ok to use without lethal consequences I thought they, "e cigarettes" were as bad as cigarettes. I'm to be proven wrong but I dislike the thought that tobacco companies can get around laws by technicality if it is a tobacco company doing it.

RESPONSE: Promoting a new product that does not contain nicotine, is made from water mixed with vegetable glycerine and flavouring is not an attempt to brain wash anyone, people have a choice to what they do. Had the complainant applied a small amount of research he/she would have found that the e-cigarettes advertised do not contain nicotine nor over 4,000 chemicals 43 of which are known cancer causing compounds as well as 400 other toxins like cigarettes do. We are not a cigarette company trying to get around laws, the products sold are 100% legal in the States the product is marketed in. Vaporfresh does not claim to be a smoking reduction product however there are many testimonials that the product has assisted them to stop smoking cigarettes altogether.

REASON FOR CONCERN: This advertisement actually suggests the product provides the 'pleasure of smoking without the actual smoke' or similar... the problem is the with the suggestion about smoking pleasure, which encourages consumers along the lines that smoking is a pleasurable experience, which is something our advertising laws currently disallow to protect the community, especially youngsters from taking up the habit; considering the research on the inhalation of the chemicals that confer the flavours and other chemicals in cigarettes is unclear about any long-term effects, it seems a health contradiction that such encouragement is allowed without the backup of research.

RESPONSE: The statement "all the smoking pleasure without any smoke" is in fact referring to the apparent pleasure smokers get otherwise they wouldn't smoke and this alternative is without the smoke as it's a vapour and as highlighted by the complainant is a suggestion nothing more.

Should our commercial breach the advertising laws we would not have received a CAD rating for the advert, the laws were checked and found that there are 2 States that the product cannot be advertised within, hence it appears to be simply an assumption by the complainant that we have breached any advertising laws.

Another assumption made by the complainant is the product contains chemicals; however water, vegetable glycerine and flavouring are all ingredients used for cooking and are ingested into the body similar to vaping.

REASON FOR CONCERN: It was advertising smoking!!!!!!!!!! And of course depicting young people. I nearly fell off my chair

RESPONSE: The commercial was not advertising smoking, the product is an e-cigarette that contains no nicotine, tar or anything like a smoke.

In regards to young people the cast members are: Lead male 31 years old, Mate 28 years old and female 28 years old.

REASON FOR CONCERN: My complaint is in regards to the way it is portrayed as being a healthier alternative to smoking, whilst still promoting smoke culture as a pleasurable hobby. The add claims that one cigarette is like smoking an entire Carton of cigarettes for the price of a pack. I understand that the e cigarette is completely legal to advertise, however encouraging people to get 10 fold smoke for their buck is negligent because it gives the viewer the impression that it's normal to consume that quantity. Please review the ad and let me know what you think.

RESPONSE: The commercial does not portray the e-cigarette to be a healthier alternative. The ad does not portray that an e-cigarette is like smoking an entire carton it portrays the cost of an e-cigarette is around the cost of a packet of cigarettes but will last as long as a carton.

REASON FOR CONCERN: Vapefresh's tagline at the end of the advertisement is- 'all the pleasure of smoking, without the smoke.' This implies that smoking is 'pleasurable', a dangerous and misleading notion that could encourage people to start smoking. Normalizing making smoking 'pleasurable', whilst showing healthy, young people enjoying their e-cigarette, could convince previous non-smokers and ex-smokers to believe they are missing out on some pleasure. Very, very bad!

RESPONSE: The tagline “all the smoking pleasure without any smoke” refers to the pleasure smokers apparently get otherwise they wouldn't smoke, a vegetarian would not find eating a lamb steak pleasurable and if they saw the Australia day ads promoting the pleasure of having lamb I'm sure it's not going to make them think they should try it.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement depicts smoking as pleasurable and although for an e-cigarette and not tobacco cigarettes the overall message is against Prevailing Community Standards on health and safety.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that this advertisement features a man demonstrating the Vaporfresh e-cigarette.

The Board noted that the voiceover describes Vaporfresh as the “same pleasure of a carton” and we see what appears to be a carton of cigarettes in plain packaging on screen. The Board noted the on-screen text at the end of the advertisement says, “all the smoking pleasure without any smoke”.

The Board noted it had previously upheld similar complaints in case 0092/13 and in case 00914/13 where:

“...the Board noted that the reactions of the people using the product are of enjoyment and considered that to depict people enjoying smoking, albeit fake cigarettes, is a depiction which is suggestive of smoking being pleasurable and this glamourises smoking. The Board noted that the Clever Smoke product does closely resemble a cigarette and considered that the advertisement is strongly suggestive of smoking a real cigarette whilst in a public place and whilst surrounded by children.

Consistent with previous decisions (0140/12, 0410/12) the Board considered that glamourising smoking is contrary to prevailing community standards on health and safety.”

In the current advertisement the Board noted the opening scene shows a man clearly enjoying using his e-cigarette in the same manner one would smoke an ordinary cigarette. A minority of the Board considered that the advertisement is aimed at current smokers and is offering them a healthier alternative and is not glamourising smoking cigarettes.

The majority of the Board however considered that the depiction of a man enjoying smoking, albeit an e-cigarette, with an accompanying voiceover which describes smoking as a pleasure is contrary to current community awareness campaigns which seek to highlight the dangers of smoking. Consistent with its previous determinations in cases 0092/13 and 0094/13 the Board considered that the advertisement did depict smoking as a pleasurable experience and considered that this glamourises smoking and is a depiction of material that is against Prevailing Community Standards on health and safety.

The Board determined that the advertisement did breach Section 2.6 of the Code.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser has not responded to the Board's determination.

Free TV have confirmed that the CAD number for this advertisement has been withdrawn and the advertisement will no longer air on free to air television.