

## Case Report

1. Case Number :	0277-22
2. Advertiser :	Sydney Vape Co
3. Product :	Other
4. Type of Advertisement/Media :	Internet
5. Date of Determination	7-Dec-2022
6. DETERMINATION :	Dismissed

### ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This website includes:

- Images of the products in front of its packaging with a smoky colourful background.
- The text, "PREMIUM AUSTRALIAN E-LIQUIDS, MADE AND BOTTLED IN SYDNEY 16 premium e-liquid flavours, perfect for the flavour-chasing vaper to enjoy. Made and bottled in Sydney, our vape flavours are pre-steeped and use the highest quality ingredients for an amazing taste."
- An image of each of the offered products with images of food and drinks representing each flavour with a description of each.

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*We are concerned about the advertisements because if a child or minor was exposed to the website in question, it may lead to the purchase of an e-cigarette product due to the combination of the captions, images, colours and absence of adequate identification measures to ensure that the purchaser is 18+ years of age.*

*Given that it is illegal to sell an e-cigarette or e-cigarette accessory to a person who is under the age of 18 years under the NSW Public Health (Tobacco) Act 2008 No 94, we submit that any advertisements of these products that are likely to appeal directly to minors would be contrary to prevailing community standards on health and safety.*

*With reference to the above images we submit that the:*

- *image captions do not provide enough information to show that the products advertised are eliquids, which may lead to confusion for minors;*

- images use bright colours and animal names (Monkey) that may appeal to minors, and contain foods that are popular with children, such as biscuits, desserts and milkshakes.;
- captions associated with the images directly reference “chocolate biscuits”, chocolate, flavoured milk and “dessert”, which are foods/drinks that may appeal to minors;
- packaging label titled “Monkey Business” is a popular phrase describing mischievous behaviour, and is likely to attract the attention of children.

Overall, we submit that if a child or minor was exposed to the website in question, it may lead to the purchase of an e-cigarette product due to the combination of the captions, images, colours and absence of adequate identification measures to ensure that the purchaser is 18+ years of age.

## **THE ADVERTISER’S RESPONSE**

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

### **COMPLAINT:**

*We are concerned about the advertisements because if a child or minor was exposed to the website in question, it may lead to the purchase of an e-cigarette product due to the combination of the captions, images, colours and absence of adequate identification measures to ensure that the purchaser is 18+ years of age.*

*Given that it is illegal to sell an e-cigarette or e-cigarette accessory to a person who is under the age of 18 years under the NSW Public Health (Tobacco) Act 2008 No 94, we submit that any advertisements of these products that are likely to appeal directly to minors would be contrary to prevailing community standards on health and safety.*

*With reference to the above images we submit that the:*

*image captions do not provide enough information to show that the products advertised are e-liquids, which may lead to confusion for minors;*

### **RESPONSE:**

*Our company is literally called Sydney Vape Co and the mention of E-liquids is clearly stated on our homepage, we haven’t included the word e-liquid in some of our product names and descriptions as it should be quite evident based off the site you are on and the age gate you agreed to upon entry to the site. We don’t see the need to spoon feed this information to the site users as the site is intended for adults.*

### **COMPLAINT:**

*Images use bright colours and animal names (Monkey) that may appeal to minors, and contain foods that are popular with children, such as biscuits, desserts and milkshakes.;*

### **RESPONSE:**

*Considering all the products on our site are intended for adults, only sold to adults and behind an age gate before entering and a payment solution that does not allow under 18s to have an account, the usage of colours is to easily distinguish between our*

*different flavours as user experience is important to us. As an adult, I personally enjoy bright colours and all of the above foods and it is a reflection of my colourful self on to my brand. The imagery usage on each of our flavours is to make it as obvious as possible visually what the flavours contain. It is not intended to appeal to children, it is visually designed in a way to easily distinguish between our multiple flavours with ease when navigating our website.*

**COMPLAINT:**

*Captions associated with the images directly reference “chocolate biscuits”, chocolate, flavoured milk and “dessert”, which are foods/drinks that may appeal to minors;*

**RESPONSE:**

*All of the above references are things adults can enjoy too and are not exclusive to children. They are literally our flavour profiles; we need to inform the reader what the flavour profiles are and these are the closest references to the flavour profile.*

*Removing such references would obscure what the flavours contain and confuse our customers to what the flavours taste like.*

**COMPLAINT:**

*Packaging label titled “Monkey Business” is a popular phrase describing mischievous behaviour, and is likely to attract the attention of children.*

**RESPONSE:**

*It as an adult product, targeted at adults, a cheeky reference such as the above is intended for adults. Our products are only sold in 18+ vape stores where the product can't be on display and our website has an age gate and a payment portal that prevents under 18's from purchasing our products. I'm not sure how it is meant to appeal to an audience who can't easily access the product?*

**COMPLAINT:**

*Overall, we submit that if a child or minor was exposed to the website in question, it may lead to the purchase of an e-cigarette product due to the combination of the captions, images, colours and absence of adequate identification measures to ensure that the purchaser is 18+ years of age.*

**RESPONSE:**

*We take sale to minors quite seriously and have put in place multiple measures to ensure our products are only sold to those who are over the age of 18. Please see each of the attached images which have the below mentioned points boxed in red.*

*Firstly, our website has a mandatory age gate upon entering it where the user needs to click Yes or No to whether they are 18 or not. If they click no they are taken to <https://www.google.com>*

*The header section of every single page on our website contains a message that the product is not for sale to under 18s.*

*All our product pages contain a similar message about not selling the product to anyone under the age of 18 below the description.*

*Our terms and conditions page outline that we do not sell our products to minors.*

*Lastly and most importantly, we only accept a single payment method on our website.*

*That payment method is Paypal and we only accept payments from verified Paypal*

*accounts. In order to verify your account with Paypal you need to be over the age of 18 and have provided your Photo ID to Paypal for their verification team to verify. This is the largest preventative barrier we have on our website to ensure even if someone under the age of 18 made it all the way to checkout, they would not be able to proceed as they legally cannot obtain a verified Paypal account until they are 18 years of age. This is a measure we took when we setup our website knowing it would lead to less sales due to the restrictive nature of only a single payment option, but chose to, to ensure our products are not sold to minors.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the website included material which would be against prevailing community standards on health and safety.

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

### **Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.**

The Panel noted the complainant's concern that the website could mislead children about the type of product being advertised, which might lead to children buying the restricted product.

The Panel noted, however, that concerns relating to truth and accuracy of advertising and the legality of products being able to be purchased by young people do not fall within the provisions of the Code.

The Panel noted the complainant's concern that the website included imagery which would be attractive to children. The Panel considered that advertising vaping or cigarette products in a manner which is highly attractive to children, or which appeared to be targeting children, would be considered by most members of the community to be against prevailing standards on health and safety.

The Panel noted the advertiser's response that the website had age gating which requests that users confirm they are over 18, and that there were references to the product only being available to people over 18 on every page of the website.

The Panel noted that the website included images of the products and product packaging. The Panel considered that whilst some of the product names and flavours may be appealing to children, it is reasonable for advertisers to include pictures of their products available for purchase on their website and doing so would not be considered to be targeting children.

The Panel noted that some of the product listings had additional illustrations representing each flavour. The Panel considered that the illustrations were there to represent the different flavours, and while these may be attractive to young people, it would be equally attractive to adults.

Overall, the Panel considered that although some of the product descriptions and illustrations may be attractive to children, in the context of advertising on an age-gated website, the use of images that would not be highly attractive to children, such as ice and coffee, and the prominent featuring of product packaging, the overall advertisement was not targeted to children and was therefore not contrary to prevailing community standards on health and safety.

### **Section 2.6 conclusion**

The Panel considered that the advertisement did not contain material contrary to Prevailing Community Standards on health and safety and determined that it did not breach Section 2.6 of the Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.