

## Case Report

1. Case Number :	0069-23
2. Advertiser :	Vape Generation
3. Product :	Other
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	10-May-2023
6. DETERMINATION :	Upheld - Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement consists of eleven posts from the @vapegeneration\_au account.

Post 1: This post from 24 February 2023 features an image of the Big Bold Creamy Banana Milk packaging, with two bananas, and a blue background. The caption states, "Whose ready for the Wkend??!! Best Banana Milk right here!!! @big\_bold\_x [heart emoji] you've got till 6pm to come and get it!!" and includes address and online ordering information. The hashtags include, "#vapelifa", "#vapedaily", "#ejuce", and "vapefam".



Post 2: This post from 9 March 2023 features an image of the Big Bold Fruity Blackcurrant product with images of blackcurrants, ice cubes and mint leaves". The caption states, "New Juice Drop!!! BIG BOLD Blackcurrant with a free ice shot!!" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 3: This post from 21 February 2023 features an image of the Big Bold Fruity Mint Candy product and packaging. The caption states, "Calling all Mint lovers! New Juice Drop!!! BIG BOLD Mint Candy" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 4: This post from 20 February 2023 features an image of four products and the text "Big Bold summer edition 100ml shortfills out now!" on a tropical print background. The caption states, "New Juice Drop!!! BIG BOLD!!!!!!!" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 5: This post from 6 January 2023 features an image of the Big Drip Bubblegum Candy product with images of pink candy on a colourful backdrop. The caption for the post says, "Let's talk flavoursome profiles [heart eyes emoji] Big Drip Bubblegum Candy [drooling emoji] A mouthwatering combination of Candy with sweet Bubblegum and a hint of spearmint makes this flavour a tasty treat!" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 6: This post from 13 January 2023 features an image of the Big Drip Watermelon Chill product on a bright background with watermelon slices and ice cubes. The caption for the post states, "Let's talk flavoursome profiles [heart eyes emoji] Big Drip Watermelon Chill [drooling emoji] juicy chunks of sweet red watermelon infused with ice!" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 7: This post from 31 January 2023 features an image of the ice cream cake with an image of a cake with a fork and a cake with icing and sprinkles. The caption for the post states, "Restock Alert! We have the entire Doozy Temptations range back in stock!!! Don't miss out get your now!" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 8: This post from 25 January 2023 features an image of the Doozy Temptations Strawberry milk products with a strawberry milkshake and strawberries. The caption for the post states, "Last day to pick up something crazy delicious before we close tomorrow for the public holiday [sunglasses emoji]" and includes address and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuce", "vapefam", and "vapergram".



Post 9: This post from 3 February 2023 features an image of the Crusher Mango Ice product with mangos and ice. The caption states, "It's Friday! yay! Come down and get something special for the weekend!!" and includes opening times and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuice", "vapefam", and "vapergram".



Post 10: This post from 10 January 2023 features an image of the Drifter Passionfruit product with passionfruit and a bright background. The caption states, "An ice cold authentic Passionfruit [heart emoji] vape Drifter!!" and includes opening times and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuice", "vapefam", and "vapergram".



Post 11: This post from 18 January 2023 features an image of the Seriously Slushy Lemon Lime product with a slushy in a plastic cup and lemon and lime slices. The caption states, "When you know....You know! Seriously Slushy [heart eyes emoji] a refreshing citrus combination of zesty lemons a cube of ice and a splash of lime with a deliciously sweet edge [heart emoji]" and includes opening times and online ordering information. The hashtags include, "#vapelyfe", "#vapedaily", "#ejuice", "vapefam", and "vapergram".



## THE COMPLAINT

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

*We are concerned about the Vape Generation Instagram advertisements because 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.*

*Northern Sydney Local Health District (NSLHD) has an active interest in measures to prevent or reduce short and long term harms associated with vaping among young people.*

*NSLHD wishes to submit a complaint to the Ad Standards Community Panel regarding product advertising by Vape Generation Instagram account page @vapegeneration\_au.*

*The complaint relates to the 11 Instagram posts made between January 6th and 9th March 2023 posted by Vape Generation. These posts are currently active and the theme of advertising appears to go back to earlier posts on the Instagram page.*

*We believe the advertisement posted on Vape Generation's Instagram account breaches section 2.6 of the Australian Association of National Advertisers (AANA) Code of Ethics whereby:  
'advertising shall not depict material contrary to prevailing community standards on health and safety'.*

*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 such products that are likely to appeal directly to minors would be contrary to prevailing community standards on health and safety.*

*With reference to the Instagram post (Appendix A), we submit that the:*

- images alone do not provide enough information to demonstrate that the product advertised is an ecigarette/vape which may confuse/mislead minors.*
- advertising uses images such as fruits, candy, cakes and sugary drinks which appeal specifically to young people.*
- product advertisement uses colourful designs and fonts commonly used for other products targeted to young audiences.*
- language used in all product description posts does not sufficiently outline the purpose of the products being advertised.*

*Overall, we submit that if children or minors were exposed to the Vape Generation Instagram account and the 11 posts in question, it would be likely to contribute to the illegal sale and unsafe consumption of an e-cigarette product, due to the combination of the language, captions, images and colours.*

*NSLHD Health Promotion believes that the product advertisement is in breach of the Australian Association of National Advertisers (AANA) Code of Ethics and encourages the adjudication panel to support a removal of the Instagram posts on the Vape Generation Instagram account @vapegeneration\_au*

## **THE ADVERTISER'S RESPONSE**

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

*Following a complaint that was received regarding our Instagram Account, we would like to formally submit our case as follows:*

- 1. Under our company description on the Instagram account – it clearly states "18+ only".*
- 2. We are a dedicated vape shop specialising in international e-liquids and hardware, which is also stated under the company description.*
- 3. We have the appropriate age gateways in place to ensure minors cannot access content.*

4. *We are a Perth based business, we are not physically located in NSW*
5. *We do not sell any products with nicotine, as this would be illegal*
6. *We are strongly against the black market that has been created by the government due to the prescription model that was put in place for adults to access nicotine vaping products.*

*Also, in direct reply to the complaints made please note the following:*

*“images alone do not provide enough information to demonstrate that the product advertised is an ecigarette/vape which may confuse/mislead minors”*

*Firstly, minors do not have access to the content on our page. Secondly, we are a specialist vape shop only selling vape products. Thirdly, each image in this complaint relates to a 0mg bottle of E- Liquid. Each image shows 0mg (i.e. no nicotine is contained in this product). Adults that vape these products know exactly what they are looking at. How would any of this confuse/mislead minors when they do not have access to the content?? And why would we get into more detail about the products for the benefit of minors when it is completely illegal to sell any of these products to under 18's??*

*“advertising uses images such as fruits, candy, cakes and sugary drinks which appeal specifically to young people.”*

*We completely disagree with this comment, none of the products we advertise appeal specifically to young people. To reinforce our previous comments, young people do not have access to the content on our page. Secondly, in our direct experience, adult smokers who are looking to give up smoking traditional cigarettes are more likely to choose these flavours to help them quit!!*

*“product advertisement uses colourful designs and fonts commonly used for other products targeted to young audiences”*

*This comment is not specific enough, and therefore we think it is not relevant. What other products are they referring to?? Using colour in advertisements does not mean you are targeting young audiences.*

*“language used in all product description posts does not sufficiently outline the purpose of the products being advertised”*

*To reiterate our previous comments, we clearly state on our page that we are a specialist shop, our audience and customers are vapers. Many other businesses in our position talk about these products in the same way. Please state where in the regulations, this applies to 0mg (zero nicotine) e- liquids.*

*Lastly we would like to confirm that we are committed in our business to help adult smokers give up smoking traditional cigarettes via vaping. We do not encourage or*

*sell to minors. Sensible regulation of vaping in Australia will lead to reduced smoking rates in Adults, and reduced harm to health.*

## **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 concerns that the Instagram posts 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 posts could mislead children about the type of product being advertised.

The Panel noted that concerns relating to truth and accuracy of advertising does not fall within the provisions of the Code.

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

The Panel noted that the Instagram account is age gated and required users to have an Instagram account and have stated they are over 18 in order to view content. The Panel noted that users could not view content without an account.

The Panel noted that the Instagram posts included bright colours and images of foods. The Panel considered that the imagery would be appealing to adults, however considered that it would equally attract the attention of children and teenagers. The Panel noted that the flavours being promoted are attractive to younger people, with some flavours in particular (ice-cream cake, bubblegum, strawberry milk) likely to be considered by most members of the community to be primarily appealing to children and teenagers.

Overall, the Panel considered that the imagery in the series of posts would be highly attractive to children.

The Panel also noted that the posts included hashtags such as, “vapefam”, “vapelyfe”, “vapedaily”, and “vapecommunity”. The Panel considered that most members of the community would understand that vaping is not recommended for children due to potential negative health effects. The Panel considered that having messaging in advertising that would attract the attention of children, that suggested that vaping products are safe or beneficial for health, should be done daily and enable young users to be part of a family or community, would be contrary to community expectations for advertising this type of product.

Overall, the Panel considered that in the context of a social media post promoting a product considered by most in the community to be unhealthy or potentially unhealthy, using unverified age gating, using imagery that is highly attractive to children, and including messaging which suggests that vaping products are safe and should be used frequently, would amount to a depiction which would be against prevailing community standards on health and safety.

### **Section 2.6 conclusion**

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

### **Conclusion**

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

### **THE ADVERTISER’S RESPONSE TO DETERMINATION**

It seems to me that no matter how I respond, we will just be met with the same one-sided views, which of course we disagree with and outlined fully in our initial response. Our social pages are for 18+ only, and have the appropriate age gateways in place. While we strongly disagree with the determination, the posts have been removed.