

<b>COMPLAINT NUMBER</b>	17/349
<b>COMPLAINANT</b>	J. Stanfield
<b>ADVERTISER</b>	Shosha
<b>ADVERTISEMENT</b>	Shosha, Flyer
<b>DATE OF MEETING</b>	25 October 2017
<b>OUTCOME</b>	Not Upheld

## SUMMARY

The flyer advertisement for Shosha was delivered to letterboxes. The front cover of the folded flyer showed images of the Wellington retail stores, included two 18+ notices and said, in part “we have stores across New Zealand or you can shop online...” The reverse cover included a list of their locations nationwide and said they specialise in “vaping devices, E-Cig, Cartomisers... E-Liquid, E-Liquid Vaporisers, Grinders... Scales... and much much more!” In fine print it said “Available for sale to 18+ years only.” The inside of the flyer displayed images of the range of products.

The Complainant was concerned the promotion of restricted products in a mailbox flyer created a level of acceptance of behaviour that could lead to drug use.

The Advertiser said they had taken a considered approach to the creation of the advertisement, including noting the products were R18 and the front of the flyer only referred to the locations of the stores, not the products.

The Complaints Board noted a level of risk relating to the medium used to distribute the advertisement but noted the Advertiser had taken steps to mitigate this. The Complaints Board was of the view the flyer was unlikely to encourage people and young people specifically, to take drugs or encourage illegal behaviour and had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

The Complaints Board ruled the complaint was the complaint was Not Upheld.

### **[No further action required]**

Please note this headnote does not form part of the Decision.

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## COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 of the Code of Ethics which required it to consider whether the advertisement had been prepared with a due sense of social responsibility, including its content and the means of its distribution.

**The Complaints Board ruled the complaint was Not Upheld.**

### **The Complaint**

The Complainant, J. Stansfield was concerned the distribution of a flyer containing 18+ products into letterboxes meant it could be exposed to children and would act to normalise them. The Complainant said, in part: “the pamphlets detailing this type of product should not be put into letterboxes because by doing this there is an implied level of acceptability of the products being so advertised. My concern is that even though these products are under 18+ restriction, youth under this age are being exposed to this information through junk mail... and feel this presentation to be highly likely to increase the general level of acceptance of behaviours that could lead to drug use.”

### **The Advertiser’s Response**

The Advertiser, Shosha, responded to the complaint. It said, in part: “the advertisement, apart from the advertising the product, has no images or suggestions that would induce the reader into unsolicited drug use, quite, the opposite. All its statements are factual and have no embellishment designed to promote or illicit drug use. Naturally a parallel has to be drawn to the advertising of alcohol and as to its advertising methods, perhaps leading to the abuse of alcohol in an illegal manner.”

The Advertiser also said, in part: “we have gone to great lengths to naturally ensure all the products represented are legal etc and we have made a concentrated and orchestrated attempt to not expose any casual observer... to any internal content (i.e. the product) thus the viewer has to make a deliberate choice as to view the interior etc., and NO product is viewable on the 'outside' of the flyer... the 2 covers which is designed to be as 'clean' as possible and carry nothing more than maps and shop images etc. (and warnings) We have made 8 solid R18 warnings and the aforementioned equates to a solid demonstration that Shosha is NOT in contravention.”

The Advertiser also drew a comparison with the advertising of alcohol and made the point that vaping products while “not 'ideal' for humans (but still very much legal. Like Pinot Gris or Pastrami) it is hugely less impactful than tobacco smoking.”

### **Complaints Board Discussion**

The Complaints Board noted the Complainant’s concerns relating to the promotion of restricted products in a mailbox flyer and their view it created a level of acceptance of behaviours that could lead to drug use.

The Complaints Board considered the advertisement and noted when folded, the outside of the flyer contained no images of the products being promoted. It took into account the advertisement contained several age restriction notices and the products were legal and able to be advertised.

The Complaints Board noted a level of risk relating to the medium used to distribute the advertisement because the flyer was delivered indiscriminately to people’s letterboxes. However, it said the Advertiser had taken steps to mitigate the risk by focusing the outward facing pages of the flyer on the locations of the stores and clearly notifying the associated age restriction in purchasing the products. The Complaints Board was of the view the advertisement would not particularly appeal to children or young people and the images of the products contained inside the flyer were unlikely to encourage people and young people specifically, to take drugs or to encourage illegal behaviour.

The Complaints Board said the advertisement had been prepared with a due sense social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

**Decision:** Complaint **Not Upheld**

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**DESCRIPTION OF ADVERTISEMENT**

The flyer advertisement for Shosha was delivered to letterboxes. The front cover of the folded flyer showed images of the Wellington retail stores, included two 18+ notices and said, in part "we have stores across New Zealand or you can shop online..." The reverse cover included a list of their locations nationwide and said they specialise in "vaping devices, E-Cig, Cartomisers... E-Liquid, E-Liquid Vaporisers, Grinders... Scales... and much much more!" In fine print it said "Available for sale to 18+ years only." The inside of the flyer displayed images of the types of products listed.

**COMPLAINT FROM J STANSFIELD**

I am forwarding to you a sales Pamphlet that was delivered to my letterbox along with other junk mail on or around 13<sup>th</sup> September.

I am of the opinion that the pamphlets detailing this type of product should not be put into letterboxes because by doing this there is an implied level of acceptability of the products being so advertised. My concern is that even though these products are under 18+ restriction, youth under this age are being exposed to this information through junk mail.

In my opinion this actively is contravening No. 4 in the Advertising Code of Ethics – "All advertisements should be prepared with a due sense of social responsibility to consumers and society."

I was a teacher during all of my working life, and still have strong sense of social and moral responsibility towards others, and feel this presentation to be highly likely to increase the general level of acceptance of behaviours that could lead to drug use.

**CODES OF PRACTICE****CODE OF ETHICS**

**Basic Principle 4:** All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**RESPONSE FROM ADVERTISER, SHOSA**

Without repeating the authors complete letter, and their moral stance being taken as accepted (and certainly we respect their right as per all the complaints you receive to complain) them having umbrage with the flyer must be addressed around the single point of issue they have raised under the Advertising code of ethics, as their perception of it contravening 'No 4', being "...All advertisements should be prepared with a due sense of social responsibility..." etc

Our viewpoint is a simple one as far as the advertisement in question is concerned. It is prepared with a sense of social responsibility.

This complaint has arisen with the author having an issue, I believe, with the product being advertised, thus subsequently the add in itself is irrelevant, thus it is the greater issue they have raised and has 'employed the act' in an attempt to address their issue with a greater problem (as they perceive it).

This is not what No .4' deals with, ...again..." all advertisements should be prepared-- etc'

The advertisement, apart from the advertising the product, has no images or suggestions that would induce the reader into unsolicited drug use, quiet, the opposite. All its statements are factual and have no embellishment designed to promote or illicit drug use.

Naturally a parallel has to be drawn to the advertising of alcohol and as to its advertising methods, perhaps leading to the abuse of alcohol in an illegal manner.

This is why the topic of vaping etc is being debated at a Governmental level, but until any regulations are (or are not) imposed, we are abiding by all current laws in our advertising and in our opinion, it is a very dangerous precedent for a single citizen 'moral compass' to be allowed effectively potentially prevent freedom of free trade if this flyer and/or its contents were to be 'gagged'.

Again, we have gone to great lengths to naturally ensure all the product represented are legal etc and we have made a concentrated and orchestrated attempt to not expose any casual observer to be exposed to any internal content (i.e. the product) thus the viewer has to make a deliberate choice as to view the interior etc., and NO product is viewable on the 'outside' of the flyer. (please see the scan attached, please note the white 'C', this indicates the 2 covers which is designed to be as 'clean' as possible and carry nothing more than maps and shop images etc. (and warnings) We have made 8 solid R18 warnings and the aforementioned equates to a solid demonstration that Shosha is NOT in contravention of 'No 4 "i.e. that we ARE designing this with a true sense of social responsibly.

I certainly appreciate the writers view, but as an alternative viewpoint to this brochure, she may wish to look at the positive elements of the flyer and the company's main product being shown, being vaping devices etc., although in itself perhaps not 'ideal' for humans (but still very much legal. Like Pinot Gris or Pastrami) it is hugely less impactful than tobacco smoking, something that I take a very strong moral viewpoint on, so if anything moves towards tobacco consumptions eradication, I would certainly choose to promote it as we have done.

Contact person for advertising complaints	Himanshu Mittal
Name and contact at creative agency	
Name and contact at media agency	Mike Revill. Axiom Media
A basic, neutral description of the advertisement	6 pp DLE mailbox flyer showing store locations, contact details and internally, a description of the product sold in our shops.
Date advertisement began	12/09/17
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website	Letterboxes only, Rural and Urban, 7 locations, 542 000 units
Is the advertisement still accessible – where and until when?	Outside of potential retention in homes, no.

A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Scan attached (double sided)
Who is the product / brand target audience? Please provide a copy of the media schedule.	This was a non demographic, non targeted drop i.e essentially suburbs deleted on an approximate radius from store location.
Pre-vetting Approval number if applicable	n/a
Clear substantiation on claims that are challenged by the complainant. Please see the Guidance Note.	These claims we feel are not substantiated.
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	Correspondence attached.
<b>For Broadcast advertisements:</b>	
A copy of the script	
CAB key number and rating	