

<b>COMPLAINT NUMBER</b>	18/044
<b>COMPLAINANT</b>	K Forde
<b>ADVERTISER</b>	Cosmic
<b>ADVERTISEMENT</b>	Cosmic, Out of Home - Bus
<b>DATE OF MEETING</b>	13 March 2018
<b>OUTCOME</b>	Not Upheld

## **SUMMARY**

The advertisement for Cosmic E-cigarettes, which appeared on the rear of a bus, showed a range of bottles with various flavours of the vaping product. It had the words “Best Prices Best Service” and the Cosmic name and address.

The Complainant said the advertisement for E-cigarettes should not be shown on the rear of a bus as children could be exposed to the dangers of smoking.

The Complaints Board confirmed E-cigarettes were currently a legal product and the Advertiser had the right to promote it responsibly.

The Complaints Board acknowledged the Complainant’s concern that children would be exposed to the advertisement on the rear of a bus. However, the Complaints Board agreed the advertisement did not have particular appeal to children, nor did it show or glamorise smoking.

The Complaints Board said the advertisement did not reach the threshold to cause serious or widespread offence to most people taking into account the context, medium, likely audience and product. The Complaints Board ruled the advertisement was not in breach of Rules 4 or 5 of the Code of Ethics and had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4.

The Complaints Board ruled the complaint was Not Upheld.

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

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

---

## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 4 and 5 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement contained anything clearly offended against generally prevailing community standards or was likely to cause serious or widespread offence taking into account the context, medium, audience and product and if it had been prepared with a due sense of social responsibility to consumers and to society.

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

The Complainant said the advertisement for E-cigarettes should not be shown on the rear of a bus as children could be exposed to the dangers of smoking.

**The Advertiser's Response**

The Advertiser said its advertisement was to promote awareness of electronic cigarettes, only available to the 18+ consumer market. The Advertiser noted the product was legal to advertise and it was careful to adhere to the Advertising Standards Authority Codes of Practice such as not making therapeutic claims in its advertising.

**The Complaints Board Discussion**

The Complaints Board noted the Complainant had a genuine concern about the product being advertised in an unrestricted environment. It confirmed E-cigarettes were a legal product and the Advertiser had the right to promote its product within the constraints of the R18 age restriction outlined by the Ministry of Health policy and the relevant Advertising Standards Authority Codes of Practice.

The Complaints Board discussed whether the advertisement on the bus had been placed with the appropriate consideration for its likely audience. While acknowledging the Complainant's concern that children could see the advertisement as the bus passed by or if they were in a car behind the bus, the Complaints Board agreed the advertisement itself did not have particular appeal to children, nor did it show or glamorise smoking.

The Complaints Board said the advertisement showed a range of bottles with various flavours of the vaping product and the Advertiser's logo and address. The Complaints Board noted the purpose of the product was unlikely to be familiar to a younger audience and it was only available for purchase at the Cosmic premises or through its website and would require the consumer to be 18 years or older.

The Complaints Board said the advertisement content and placement did not reach the threshold to cause serious or widespread offence to most people taking into account the context, medium, likely audience and product.

The Complaints Board ruled the advertisement was not in breach of Rules 4 or 5 of the Code of Ethics and had been prepared with a due sense of 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.

**DESCRIPTION OF ADVERTISEMENT**

The poster advertisement for Cosmic E-cigarettes, which appeared on the rear of a bus, showed a range of colourful bottles with various flavours of the vaping product. The wording of the advertisement said "Best Prices, Best Service – Cosmic January Sale Now On."

**COMPLAINT FROM K. FORDE**

A Richies bus in Dunedin is advertising E-Cigarettes on the rear of the vehicle. The shop advertises is Cosmic Corner.

Yes we do not believe this product should be advertised. Our kids asked what it was? Isn't smoking bad? Why do they have flavours etc

## CODE OF ETHICS

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

**Rule 4: Decency** - Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

**Rule 5: Offensiveness** - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

## RESPONSE FROM ADVERTISER – COSMIC

COSMIC is committed to advertising with industry best practice and in keeping with ASA guidelines. Please consider our response and the response of our media agent below.

The ad itself intends to promote awareness of electronic cigarettes being sold at COSMIC. COSMIC does not sell any electronic cigarette item to anyone under the age of 18. It would be ethically untenable, and pointless to advertise to an audience that cannot purchase the product.

We would like to highlight that COSMIC places and books media through **The Media Dept Ltd. The Media Dept** are an experienced media agency – that carefully selects the most relevant media placement options for each communication piece in the market. We specifically requested a media placement that would be effective in reaching an 18+ audience.

### 1. Complaint pertaining to dissemination of COSMIC ad to an age appropriate audience:

*“Our kids asked what it was?”*

#### The advertiser’s response:

When we set up the Cosmic campaign, we were targeting the adult population (18+) in Dunedin.

We believe that was accurate, and in this case the complainant is a 18+ consumer.

We are aware the location of the advert is accessible to all, therefore have insured the advertisements strictly follow the ASA Codes of Practice.

### 2. Complaint relating the connection between ‘Electronic Cigarettes’ and ‘tobacco smoking’:

*“Isn’t smoking bad? Why do they have flavours etc”*

#### The advertiser’s response:

It is currently legal to advertise electronic cigarettes in New Zealand, providing no therapeutic claims are made (e.g. a tagline which says this device will help you quit smoking). We strictly adhere to the R18 policy outlined by the Ministry of Health in regards to

selling these products, and specified that the online campaign was only to be targeted at the over 18 market.

For comparison, the UK has recently amended their regulations around electronic cigarettes under an EU initiative called the TPD (Tobacco Products Directive), and while it is classed under this umbrella, the regulations between tobacco and electronic cigarettes vary greatly. For example, electronic cigarette advertising in the UK is allowed under the following circumstances:

- Blogs, in tweets, independently compiled, non-paid-for reviews
- At the cinema
- Posters on buses which are not travelling outside the UK
- Leaflets and hard copy mail

Doctors in the UK can prescribe electronic cigarettes under the National Health Service for patients wishing to quit smoking, and ASH (Action on Smoking and Health) endorse a fact-based approach to vaping as harm reduction.

Cosmic does not encourage or promote vaping as a 'safe' alternative to smoking. However, we do see it as a valuable harm reduction option for current adult smokers looking to quit. Approximately 5000 people die each year in New Zealand due to smoking-related illness, and the related healthcare costs are huge. Current nicotine replacement therapies provide less than a 10% success rates for long-term quitting, which means Smoke-free 2025 is an unachievable target, *unless vaping is an available option* .

Auckland University is currently investigating how switching to e-cigarettes can affect health outcomes for smokers wishing to quit.

<https://nihi.auckland.ac.nz/page/front-page/more-evidence-electronic-cigarettes-help-smokers-quit>

Vaping is the most successful nicotine replacement therapy breakthrough so far, and is responsible for millions of people finally being able to quit smoking tobacco permanently. To classify it as being equivalent to smoking demonstrates a lack of awareness around the issues of tobacco addiction and the technology of vaping. We would recommend K Forde visit the Auckland University link supplied above for some more insight into this complex issue and believe they would be persuaded to reconsider their stance.

#### **APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.