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| COMPLAINT NUMBER | 19/305 |
| COMPLAINANT | C Baggott & five others |
| ADVERTISER | Imperial Brands |
| ADVERTISEMENT | <i>myblu</i> Vape Device Television |
| DATE OF MEETING | 15 October 2019 |
| OUTCOME | Upheld in part Advertisement to be removed |

Description of Advertisement

The television advertisement for *myblu* Vape Device introduces three different people who use *myblu* Vape Device, each for different reasons: savings, appearance and fitness. The script includes the following: "My Savings - \$60 last week – more than we made on tips... My Appearance – Not bad. Hey, that's not my good side...My Fitness – Keep up bro." The advertisement ends with the line: "My Freedom – *myblu*. Vape with confidence."

The advertisement contains the following disclaimer, which appears in white text across the bottom of the screen, throughout the advertisement: " R18+ This product is for adults over the age of 18. The actors featured in this advertisement represent former smokers who have transitioned to vaping".

Summary of the Complaint

There were six complaints about this advertisement. The Complainants were concerned the advertisement:

- is misleading because it is sending the message that vaping products are healthy, or that vaping doesn't have any negative health impacts. There is increasing evidence linking vaping to health issues and no research to say it's safe.
- did not include any prominent health warnings
- could manipulate young, impressionable people
- shouldn't be advertised to people as a device that helps you to save money, look nicer, and keep fit

Issues Raised:

- Truthful Presentation
- Social Responsibility

Summary of the Advertiser's Response

The Advertiser said the advertisement is not currently being broadcast and it has no plans for further placement of the advertisement. The Advertiser said they wish to defend all the claims raised in the Complaint.

Summary of the Complaints Board Decision

The Complaints Board upheld in part a complaint about a television advertisement for *myblu* Vape Device. The Complaints Board said the advertisement did not observe a high standard of social responsibility because the advertisement implies that vaping is a safe activity and you can “Vape with Confidence”. The Complaints Board said that while the studies referred to by the Advertiser support the view that vaping is less harmful than smoking, they do not support the view that there are no risks at all associated with vaping.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2 (b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

THERAPEUTIC AND HEALTH ADVERTISING CODE

Principle 1: Social Responsibility: Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Principle 2: Truthful Presentation: Advertisements shall be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Relevant Precedent Decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 18/428, which was Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 18/428 concerned four “Get Free” television advertisements for the alt vaping device, which were titled: “Get Fit”, “Get Old”, “Get Young” and “Get Rich”. The Complaints Board noted that under the Therapeutic and Health Advertising Code therapeutic claims can only be made if a product fits the definition of a “medicine” or a “medical device” as defined under the Medicines Act 1981.

A majority of the Complaints Board said all four advertisements were making therapeutic claims which had not been adequately substantiated.

A majority of the Complaints Board said the phrase “Get Free”, along with the accompanying imagery, refers to giving up smoking (which for some people is an addiction) with the help of

alt. This implies alt is a smoking cessation product that has a therapeutic benefit of alleviating smoking addiction.

Complaints Board Discussion

Consumer Takeout

The Complaints Board said the consumer takeout of the advertisement was if you vape instead of smoking you will save money, look good and be fitter.

Does the Therapeutic and Health Advertising Code apply?

A majority of the Complaints Board said the Therapeutic and Health Advertising Code does apply to this advertisement in relation to the reference to fitness, which suggests a person's fitness will improve if they vape instead of smoking. The majority referred to the Therapeutic and Health Advertising Code which "covers all words and visual depictions in all advertising for therapeutic products (medicines and medical devices), natural health products and dietary supplements, health services and methods of treatment. This Code may also apply when therapeutic or health claims are made in advertisements for other products or services not defined in this code."

A minority disagreed. The minority said the Therapeutic and Health Advertising Code does not apply to this advertisement. This is because the reference to fitness does not reach the threshold to be regarded as a therapeutic or health benefit claim.

The Complaints Board agreed the Therapeutic and Health Advertising Code did not apply to the other two implied claims in the advertisement, relating to making savings and improving appearance, as they were not making any therapeutic or health benefit claims.

Does the advertisement observe a high standard of social responsibility?

A majority of the Complaints Board said the advertisement did not observe a high standard of social responsibility. This is because the advertisement implies that vaping is a safe activity and you can "Vape with Confidence". The majority said that while the studies referred to by the Advertiser support the view that vaping is less harmful than smoking, they do not support the view that there are no risks at all associated with vaping.

A minority disagreed. The minority said the advertisement did observe a high standard of social responsibility. This is because the Advertiser provided sufficient evidence to support the view that vaping is less harmful than smoking and therefore encouraging people to vape instead of smoking is socially responsible.

Is the advertisement misleading?

A majority of the Complaints Board said the advertisement was not misleading. This is because the Advertiser had provided sufficient substantiation to support their view that you will save money and improve your appearance and your fitness if you vape instead of smoking.

A minority disagreed. The minority said the Advertiser had not provided sufficient evidence to prove that a person's fitness will improve if they switch from smoking to vaping.

In Summary

The Complaints Board ruled the advertisement was not misleading.

The Complaints Board ruled the advertisement did not observe a high standard of social responsibility, taking into account context, medium, audience and product and was in breach of Principle 1 of the Therapeutic and Health Advertising Code.

Outcome

The Complaints Board ruled the complaint was **Upheld in part**.

Advertisement to be removed.

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. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

APPENDICES

1. Complaints
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

There were six complaints about this advertisement.

COMPLAINT FROM C BAGGOTT

A vaping product was advertised showing 3 scenes where vaping was having a positive effect on peoples lives. The final scene a man was talking about my health and running up some steps telling the person behind him to keep up. Sending the message that people who use their vaping product are healthy, or that vaping doesn't have any negative health impacts. This is untrue and misleading. The safety of e cigarettes/vaping is unproven and questioned by the medical community. There is increasing evidence that vaping solutions contain carcinogens and damage dna so could cause cancer; that vaping in adolescents may be linked to asthma; in mice exposure to e cigarette vapour has been shown to trigger damage and inflammation in the airways; in 4,596 current and ex-smokers in the usa e cigarette use was associated with worse lung health outcomes and not with stopping smoking conventional cigarettes. While probably not as bad for you as smoking is still bad for your lungs and you are still inhaling multiple toxins.

Vaping solutions contain nicotine which is highly addictive, at no point in the advert was this made explicitly clear, the advert did not suggest vaping should only be used as an alternative to conventional cigarettes. Instead it was presenting 3 attractive healthy people enjoying vaping as you might see in a soft drinks advert. In addition the text along the bottom saying this product was only for those aged 18+ was almost too small to read, and it did not include any prominent health warnings.

COMPLAINT FROM A BLISSETT

I believe that the advertisement breaches the therapeutic and health advertising code especially related to advertising a product which gives the impression that vaping and smoking cigarettes are a normal part of someone's healthy lifestyle. It is not. What research is there to suggest that vaping does not affect the lungs of the users. I do not think this product should be advertised on TV as it may trigger a relapse to smoking or manipulate young impressionable people that smoking and vaping are ok

COMPLAINT FROM C MCNEIL

I would like to understand why this product is able to be advertised when cigarette smoking isn't? There is no research outlining that this product is safe to promote, sell and ingest. Where is your sense of moral purpose in promoting this? The therapeutic claims suggested by this product have not been substantiated. The inference in this advert was that consumers would in fact run faster, and be healthier overall. The advert had visual imagery suggesting that should you use this product you would be engaging in a healthy lifestyle choice. This is clearly not the case.

<https://www.livescience.com/topics/vaping>

COMPLAINT FROM R HOLNESS

I don't believe that this product should be advertised to people as a device that helps you to save money, look nicer, and keep fit as in the advert. This is misleading and may make

people take up vaping which has recently been linked to some sort of lung disease/issue. Also, the R18 rating, whilst acceptable, is not in any way policed and so children could view this advert.

COMPLAINT FROM R TODD

Advertising vaping should not be allowed on TV, This is like the promotion of cigarettes in the 1950's to 70's. As health risks are unknown I believe the advertising is a breach of all of the following, until proven otherwise: Principle 1, SOCIAL RESPONSIBILITY, Rule 1 (e) Safety, Rule 1 (h) Health and well-being, PRINCIPLE 2: TRUTHFUL PRESENTATION. Rule 2 (b) Truthful presentation

COMPLAINT FROM V POPE

Advert was for a vaping product. It perceived it to be 'cool' for women and not to impact your fitness (man jogging up stairs) According to The Ministry of Health NZ :- - The best thing smokers can do for their health is to quit smoking for good (so why is vaping promoting itself on TV to encourage people to Stat?) - Vaping products are intended for smokers only (again, why promote to the general Public on a very generic / widely accessed platform?) - The Ministry considers vaping products could disrupt inequities and contribute to Smokefree 2025 (maybe people quit smoking in favour of vaping, but if vaping is actively promoted , then this may only cause knock on issues, especially as there is little known about the LT effect of vaping) - The evidence on vaping products indicates they carry much less risk than smoking cigarettes but are not risk free (not risk free!!)

Please consider the wider impact that vaping has on the NZ population & the underlying reason for the product (to act as a replacement for smoking) before allowing such promotional adverts to broadcast their product with the very purposes of increasing sale volumes. Is this morally right?

Appendix 2

RESPONSE FROM ADVERTISER, IMPERIAL BRANDS

1. This letter forms part of Imperial Tobacco Brands New Zealand's ("ITNZ") response to Complaint 19/305 received by the Advertising Standards Authority ("Authority") concerning a television commercial prepared by ITNZ that highlights the benefits of vaping with ITNZ's myblu product ("Advertisement").
2. The Advertisement is not currently being broadcast and ITNZ presently has no plans for further placement of the Advertisement. Notwithstanding this, ITNZ wishes to defend all the claims raised in the Complaint.

The Advertisement

3. The Advertisement was prepared for ITNZ specifically in order to promote the benefits of transitioning to vaping with myblu to current smokers over the age of 18.
4. The Advertisement is in three parts and features three different actors:
 - (a) *The Advertisement opens with a shot of a man using a myblu vape device at a train station. A range of shots show the same man working as a barista in a café and collecting tips.*
 - (b) *The Advertisement transitions to a range of shots showing a woman using a myblu vape device and putting on lipstick / getting dressed.*

- (c) *The Advertisement transitions to shots of a man walking through a city while using a myblu vape device and running upstairs.*
5. The Advertisement ends with a depiction of the myblu vape device and liquidpod, the myblu logo, and the words "VAPE WITH CONFIDENCE".
 6. Over the imagery, the following script is read:

My savings. Sixty bucks last week. More than we made in tips. Yes.

My appearance. Not bad. Hey, that's not my good side.

My fitness. Keep up bro.

My freedom. myblu. Vape with confidence.
 7. The first three lines ("My Savings", "My Appearance" and "My Fitness") are read by the three actors in the Advertisement, and the final line is read in voiceover.
 8. Throughout the entire Advertisement, the following text is prominently shown at the bottom of the screen:

R18+ This product is for adults over the age of 18. The actors featured in this advertisement represent former smokers who have transitioned to vaping.

Overview of this response

9. In its letter, the Authority has raised Principle 2, Rule 2(b) of the Advertising Standards Code and Principle 1, Rule 1(b) and Principle 2, Rule 2(a) of the Therapeutic and Health Advertising Code ("THA Code"). For convenience, ITNZ has set out the relevant rules below.
10. Rule 2(b) of the Advertising Standards Code states:

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.

Obvious hyperbole identifiable as such is not considered to be misleading.
11. Rule 1(b) of the THA Code states:

Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised:

 - are safe or that their use cannot cause harm or that they have no side effects or risks.
 - are effective in all cases

- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that;
 - they are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic or health product, device or service not being used.

12. Rule 2(a) of the THA Code states:

Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

13. For the reasons set out in detail below, the Advertisement:

- (a) *is not subject to the Rules in the THA Code; and*
- (b) *does not breach Rule 2(b) of the Advertising Standards Code.*

Ministry of Health position

14. The law governing vaping products is in a state of flux, with the Ministry of Health ("MoH") and the Government both accepting it is not currently fit for purpose.¹

15. On its website, the MoH provides the following guidance:²

The Ministry of Health is considering how best to apply risk-proportionate regulation across all tobacco products including smoked tobacco, smokeless tobacco and vaping products.

Until the SFEA is amended, retailers should continue to trade responsibly and, in particular, not to advertise or sell vaping products to children and young people under 18 years of age.

(emphasis added)

16. The MoH's directive to "trade responsibly" has guided ITNZ's approach to the advertising of vaping generally, including in relation to the Advertisement. In particular:

¹ See for example, a Cabinet Paper from 2016 which notes that "the legal status of e-cigarettes is confusing and the laws are not routinely enforced because of the lack of clarity" and that the MoH has been unable to carry out enforcement actions in relation to e-cigarettes due to "the difficulty of legal definitions and the adequacy of evidence" [here](#).

² See <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/vaping-and-smokeless-tobacco>

- (a) *The MoH has accepted that, where advertising of vaping products is conducted in a responsible way, it is acceptable. ITNZ takes its approach to advertising seriously and its intention and goal is always to advertise in a responsible way. For the reasons set out in more detail below, ITNZ considers it has done so effectively in the case of the Advertisement.*
- (b) *In light of the MoH's approach to the advertising of vaping products (and more broadly the regulation of vaping products), in practice the importation, sale and advertising of e-cigarettes and vaping products is widespread in New Zealand. The MoH's approach has been not to take any significant enforcement action against companies selling e-cigarettes and vaping products until the law in this area is clarified. In light of this, ITNZ has adopted a responsible approach (and will continue to do so) until the law is clarified.*

17. The MoH's website also sets out the reasons for this approach:³

In 2011, the Government set a goal for Smokefree 2025. The goal aims to reduce smoking prevalence to minimal levels.

The Ministry of Health considers vaping products have the potential to make a contribution to the Smokefree 2025 goal and could disrupt the significant inequities that are present.

18. ITNZ has also adopted Fontem Venture's⁴ E-Vapour Product Marketing Standards ("Standards"), which demonstrate ITNZ's commitment to advertising its vaping products (including myblu) responsibly. ITNZ has committed to:

only direct our E-Vapour Products advertising /promotional materials and activities at Adults...

target our marketing of our E-Vapour Products to Adult Consumers; and

respect the individual's choice ...

provide clear and accurate information about our E-Vapour Products and their relative risks.

19. "Responsibility & Respect" is one of three key commitments in the Standards (alongside "Adults Only" and "Transparency"). The Standards state the following about "Responsibility":

We believe and are committed to providing effective alternatives to Conventional Tobacco Products and that there is a potentially significant public health benefit if smokers switch to our E-Vapour products. In particular, we will:

- direct our marketing activities towards Adult Consumers; and

³ <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/vaping-and-smokeless-tobacco>

⁴ Fontem Ventures, a subsidiary of Imperial Brands plc, is a leader in vaping technology and owns e-vapour brand blu.

- only portray and promote images of usage of our E-Vapour Products in safe and appropriate environments.

ITNZ's responsible approach to the Advertisement

Applicability of the THA Code to the Advertisement

20. ITNZ's position is that the THA Code does not apply to the Advertisement.
21. The THA Code regulates advertising for therapeutic products (medicines and medical devices), health services and methods of treatment. It may also apply when therapeutic or health claims are made in advertisements for other products or services.
22. The THA Code defines a number of key terms, including:
- (a) *"medicine", which is "any substance or article or active ingredient that is manufactured, imported, sold, or supplied wholly or principally for administering to one or more human beings for a therapeutic purpose";*
 - (b) *"medical devices", which are "devices that have a therapeutic purpose"; and*
 - (c) *"therapeutic purpose", which (among other things) is "preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury" and "influencing, inhibiting, or modifying a physiological process".*
23. Under the THA Code, only medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements.
24. The Advertisement is not subject to the THA Code for the following reasons:
- (a) *myblu is not a medicine: myblu is not a substance, article, or active ingredient manufactured, imported, sold, or supplied for a therapeutic purpose. myblu is an electronic device that heats a liquid turning it into an aerosol (vapour) which the user inhales. It is not used to affect disease, ailment, defect, injury, or physiological process.*
 - (b) *myblu is not a medical device: myblu does not have a therapeutic purpose. The device is not used to affect a disease, ailment, defect, injury, or physiological process. myblu is not a smoking cessation device.*
 - (c) *The Advertisement does not make any therapeutic or health claims about the myblu vaping product: As noted above, the Advertisement specifically states:*

The actors featured in this advertisement represent former smokers who have transitioned to vaping.

(emphasis added)

The Advertisement specifically does not claim that use of the myblu vaping device caused the actors featured in the Advertisement to stop smoking or

to transition from smoking to vaping. The claims that the Advertisement makes (which are addressed in further detail below) are that former smokers who have transitioned to vaping/myblu:

- (i) have made savings (the "My Savings" claim);
- (ii) are no longer affecting their appearance in the way that smoking does (the "My Appearance" claim); and
- (iii) have improved fitness, in terms of lung capacity, than smokers (the "My Fitness" claim).

25. In other words, the claims made by the Advertisement are neither health nor therapeutic claims, but instead (implied) comparative claims between vaping and smoking. As set out in more detail below, these claims are not untrue, misleading, deceptive or confusing, and ITNZ can substantiate them.

General themes arising from the Advertisement

26. In order to respond to the various points raised in the Complaint, ITNZ has identified a number of themes and grouped its responses to those issues under the headings below.

Theme 1: Claim that advertising vaping should not be allowed when smoking is not allowed to be advertised

27. The MoH enforces the SFE Act, which contains certain restrictions on the advertising of products manufactured from tobacco. As noted above, ITNZ has been conscious of the MoH's publicly-stated position on its approach to the enforcement of the SFE Act in relation to vaping products and ITNZ has followed the MoH's guidance by adopting a responsible approach to advertising vaping products.
28. Further and in any event, ITNZ respectfully submits that Theme 1 should not be considered by the Complaints Board. The question of whether advertising of vaping should be allowed is a matter of policy and law to be considered by the Government and the MoH, not the Complaints Board.

Theme 2: Claim that there is a lack of substantiation

29. The Complaint raises two issues in relation to substantiation, which we have addressed in turn.

Theme 2(a): Lack of evidence supporting the claims made in the Advertisement, particularly in relation to the safety, risks, and health effects of using myblu

30. ITNZ reiterates that the claims made in the Advertisement are not health claims. The claims are implied comparative claims, showing the effects of those who have transitioned from smoking to vaping.
31. In any event, ITNZ can substantiate the following claims raised in the Complaint:
- (a) *vaping/myblu is safe to promote, sell and ingest as:*

- (i) myblu products undergo rigorous scientific testing and adhere to strict manufacturing standards;
- (ii) research shows exclusive use of myblu products reduces smokers' exposure to harmful chemicals in the blood and urine. and/or vaping can be part of a healthy lifestyle;
- (b) *vaping/myblu is better for lung capacity than smoking myblu as research shows:*
- (i) smokers switching to myblu brings cardiovascular and pulmonary function benefits;
- (ii) there are no negative respiratory outcomes following short-term use of myblu; and
- (iii) lung tissue remains intact after exposure to myblu aerosols and is comparable to exposure to air.
- (c) *vaping/myblu carries less risk than smoking cigarettes as research shows the aerosols contain fewer harmful chemicals, exclusive use of vaping/,myblu reduces smokers' exposure to harmful chemicals in the blood and urine, and vaping aerosols are less toxic than cigarette smoke.*
32. As a preliminary point, it is well-known that combusted/burnt tobacco is the primary cause of smoking related diseases. myblu delivers does not burn tobacco, and it produces no side-stream tobacco emissions.
33. For ease of reference, we have set out the relevant substantiation materials in the table below. Not all of these representations appear (either at all or in the form presented below) in the Advertisement. However, we thought that it would be helpful for us to set them out in detail, so that the Authority has a full picture of the substantiation materials that ITNZ has relied on in considering the claims it is able to make in relation to vaping and/or myblu.

| Representations | Proof points/reference |
|---|--|
| <ul style="list-style-type: none"> Research shows that myblu aerosol comprises over 95% less harmful and potentially harmful chemicals than a typical tobacco cigarette myblu delivers nicotine with far fewer harmful chemicals than cigarette smoke in the laboratory Harmful and potentially harmful chemicals are absent or substantially reduced compared to cigarette smoke | <p>[1] Tayyarah, R.; Long, G.A. Regulatory Toxicology and Pharmacology 2014, 70, 704-710.</p> <p>[2] § http://www.fontemscience.com/wp-content/uploads/2018/06/2018-04-18-aerosol-chemistry-thr-summit-2018-poster_final.pdf</p> |
| <ul style="list-style-type: none"> Research shows that myblu vapour is over 95% less toxic than a typical tobacco cigarette Lab based toxicity studies show myblu vapour is significantly less toxic to cells than cigarette smoke myblu aerosol has reduced mutagenicity, cytotoxicity and genotoxicity compared cigarette smoke - when tested in the laboratory, myblu aerosol demonstrates reduced damage to cells and a reduction in the number of cells dying compared to cigarette smoke. At concentrations 14x higher than cigarette smoke, myblu does not elicit cell death, oxidative stress (a process which in humans is linked to various diseases) | <p>[1] Misra, M. et al. International journal of environmental research and public health 2014, 11, 11325-11347</p> <p>[2] § http://www.fontemscience.com/wp-content/uploads/2018/03/the-use-of-human-3d-reconstructed-sot-2018-final1.pdf</p> |

| | |
|--|--|
| <ul style="list-style-type: none"> • or trigger release of markers linked to inflammation. • Lung tissue remains intact after exposure to myblu aerosols and is comparable to exposure to air | |
| <ul style="list-style-type: none"> • Research shows that smokers who completely substitute cigarettes with myblu experience dramatic reductions in exposure to harmful chemicals that are thought to contribute to tobacco-related diseases. Levels measured were almost indistinguishable from smokers who had stopped smoking altogether. • Following exclusive use of e-cigarettes, 8/9 urinary biomarkers for HPHCs (harmful or potentially harmful compounds) were almost indistinguishable from reductions in smokers who stopped altogether during the same time. (The obvious exception was nicotine) • Biomarkers of exposure to harmful chemicals detected in blood or urine of smokers who switch to myblu are significantly lower and similar to those who completely abstain from cigarettes | <p>[1] O'Connell, G et al. Toxicol Mech Methods, 2016</p> <p>[2] § http://www.fontemscience.com/wp-content/uploads/2017/05/fontem2research-1.pdf</p> |
| <ul style="list-style-type: none"> • Research shows that smokers switching to myblu brings cardiovascular and pulmonary function benefits • Replacing smoking or reducing the number of cigarettes smoked with myblu does not lead to higher blood pressure values • There are no negative respiratory outcomes following short-term use of myblu | <p>[1] D'Ruiz, C.D et al. Regulatory Toxicology and Pharmacology, 2017.</p> <p>[2] § http://www.fontemscience.com/wp-content/uploads/2017/05/2016-08-23-TSRC-2016-poster_GOC-002-1.pdf</p> |
| <ul style="list-style-type: none"> • myblu products undergo rigorous scientific testing and adhere to strict manufacturing standards. • In collaboration with experts in the field of inhalation toxicology, Fontem Ventures conducts rigorous e-vapour aerosol chemistry and physics assessments of its vaping products and continuously research the latest technologies and scientific testing tools to improve its methods • As part of its product assessment stage, Fontem Ventures analyse raw ingredients and materials to ensure they adhere to comprehensive principles of design and quality, as well as strict manufacturing standards | |
| <ul style="list-style-type: none"> • Research shows that exhaled myblu aerosol does not negatively impact indoor air quality • When someone vapes myblu indoors over a period of time there is no breach of established indoor air quality guidelines • Levels of airborne chemicals (like formaldehyde and acetaldehyde) are significantly lower following use of e-cigarettes compared to reported emissions from a burning scented candle • Vaping products do not burn tobacco, and do not create any of the side-stream or so-called 'second-hand smoke' produced by conventional tobacco products • Exhaled myblu "particles" are liquid droplets that evaporate within seconds • myblu is not a source of "third-hand" exposure to nicotine via indoor surfaces | <p>[1] O'Connell, G et al. Int J Environ Res Public Health, 2015</p> <p>[2] Martuzevicius D, et al. Nicotine & Tobacco Research 2018</p> <p>[3] § http://www.fontemscience.com/wp-content/uploads/2017/05/2017-02-08-SRNT-poster_FINAL.pdf</p> <p>[4] § http://www.fontemscience.com/wp-content/uploads/2017/10/2017_09_29-coresta-poster-indoor-air-quality-and-surface-deposition-with-blu-final-version.pdf</p> |

34. Given the credibility and breadth of the sources referred to above, ITNZ considers that it has sufficient support for all the claims made in the Advertisement, whether they are direct claims or implied, in accordance with Advertising Standards Code.

35. ITNZ's approach to the Advertisement also reflects the Standards, by way of which ITNZ commits to:

... only expressly or implicitly make statements about the quality, performance or functional attributes of our E-Vapour Products in our advertising, promotional and marketing activities when such statements can be supported by robust scientific evidence and technical or consumer research, as appropriate.

36. Finally, ITNZ also submits that a number of the alleged claims raised in the Complaint are not made in the Advertisement, either directly or as implied claims. ITNZ does not consider that a reasonable consumer would consider the Advertisement to claim or give the impression that:
- (a) *vaping/myblu can be part of a healthy lifestyle. The Advertisement does not make any health claims (either express or implied), as detailed above. However, vaping/myblu is less harmful than smoking and, as detailed above, ITNZ is able to substantiate this; and*
 - (b) *vaping/myblu users can run faster/better/longer than smokers. Rather, a reasonable consumer would consider the Advertisement to claim that myblu users have improved lung capacity when compared to smokers (as evidenced by the actor taking the stairs). ITNZ can substantiate this claim, as detailed above.*
37. ITNZ relies on the following to support the claims made in the Advertisement about savings:
- (a) *An example of a smoker who consumes 3 packs of 20 cigarettes a week (at an average of \$26 per pack) would have spent \$78 in a week. Switching to myblu, 3 pods* would cost \$28.48 - a saving in that example of \$50. *1 pod is approximately 200 puffs (when tested on a vaping machine), and one factory made cigarette is approximately 10 puffs. Savings will be variable for the consumer based on their individual consumption behaviour.*
38. ITNZ submits that these particular claims can be substantiated in accordance with the Advertising Standards Code.

Theme 3: Claim that vaping is detrimental to health

39. The Complaint raises two issues in relation to the alleged health effects of vaping, which ITNZ addresses in turn.

Theme 3(a): The Advertisement is untrue and misleading as it sends the message that people who use myblu are healthy / safe or vaping has no negative health impacts

40. The Advertisement:
- (a) *does not claim (either expressly or impliedly) that there are no negative health effects of vaping. ITNZ does not consider that this is the impression a reasonable consumer would have after viewing the Advertisement; and*
 - (b) *does not make any health claims. Instead, the Advertisement simply makes a comparative claim between smoking and vaping in relation to*

savings, appearance, and fitness. All of these claims can be substantiated, as detailed above.

41. The Advertisement makes claims in relation to savings, appearance and fitness. These claims can be substantiated and are neither untrue nor misleading.

Theme 3(b): Safety of e cigarettes / vaping is unproven and questioned by the medical community

42. ITNZ takes the safety of its products seriously. Prior to showing the Advertisement, the myblu vaping product underwent rigorous scientific testing adheres to strict manufacturing standards. In particular:

- (a) *in collaboration with experts in the field of inhalation toxicology, Fontem Ventures conducts rigorous e-vapour aerosol chemistry and physics assessments of its vaping products and continuously research the latest technologies and scientific testing tools to improve its methods; and*
- (b) *as part of the product assessment stage, Fontem Ventures analyse raw ingredients and materials to ensure they adhere to comprehensive principles of design and quality, as well as strict manufacturing standards.*

43. Further, and as noted above, research shows that myblu aerosols contain fewer harmful chemicals, exclusive use of vaping/myblu reduces smokers' exposure to harmful chemicals in the blood and urine, and myblu aerosols are less toxic than cigarette smoke.

44. Additionally, ITNZ has conducted safety studies on earlier generation of Fontem Ventures' vaping products that show:

- (a) *early generation e-vapour products have a very good short-term safety profile;⁵ and*
- (b) *early generation e-vapour products have a very good long-term safety profile (up to 2 years).⁶*

Theme 4: Claim that the impact of nicotine is not clear in the Advertisement

45. It is common knowledge that vaping products contain nicotine. This is confirmed by the disclaimer that the product is restricted to those over 18 years old. Further, when a customer seeks to purchase the myblu vaping product, the packaging includes a prominent warning that it contains nicotine and that nicotine is an addictive substance, as shown below:

46. In light of these factors, ITNZ considers that it is not necessary to include a specific claim in the Advertisement that the product contains nicotine.

⁵ Walele, T., G. et al. (2016). Part A. Regulatory Toxicology and Pharmacology 74: 187-192. [2]

Walele, T., G. et al. (2016). Part B. Regulatory Toxicology and Pharmacology 74: 193-199.

⁶ Walele, T., et al.. Regulatory Toxicology and Pharmacology, 2018. 92: p. 226-238.

Theme 5: Claim that the Advertisement appeals to an audience beyond smokers

47. The Complaint raises two issues in relation to audience, which ITNZ has addressed in turn.

Theme 5(a): Advertisement accessible and appealing to those under 18/children

48. The Advertisement is designed to appeal to those over 18 years old:
- (a) *The Advertisement includes an age disclaimer (which states "R18+ This product is for adults over the age of 18"), which is prominently displayed along the bottom of the Advertisement throughout its entirety.*
 - (b) *The Advertisement was purposefully only shown on broadcast television from 8:30pm to 12am, which reduces the likelihood that children would see it.*
 - (c) *The Advertisement was not designed to appeal to children. The Advertisement does not include bright colours, all the actors were noticeably over the age of 18, and the actors are engaged in everyday adult activities (eg working, getting ready for a night out).*

49. Further, the Standards, as adopted by ITNZ, provide that advertising and promotional marketing activities (such as the Advertisement) should only be directed to persons over the age of 18 and that efforts to prevent both youth access and initiation to vaping products are strongly supported. In particular, the Standards provide:

- (a) *advertising will not use images, features or tropes that appeal primarily to youth culture or reflect or be associated with youth culture;*
- (b) *any person using a vaping product or playing a significant role in our advertising must be and appear to be at least twenty-five years old; and*
- (c) *advertising of branded vaping products will only be placed during those hours when the programming is directed at adults (so as to minimize exposure to youth).*

Theme 5(b): Advertisement appealing to non-smokers

50. A core feature of the Advertisement is that it has been designed to appeal to and focusses on current smokers. This is because:
- (a) *it represents former smokers that have switched to vaping, as described in the disclaimer shown throughout (ie "The actors featured in this advertisement represent former smokers who have transitioned to vaping"); and*
 - (b) *all the claims made in the Advertisement (ie "My Savings", "My Fitness", and "My Appearance") are comparative claims between vaping and smoking.*
51. The Advertisement has been specifically designed to compare smoking with vaping. It was not designed to encourage non-smokers to take up vaping. ITNZ took

particular care when preparing the claims in the Advertisement (ie "My Savings", "My Fitness", and "My Appearance") to ensure that they focussed on the differences between smoking and vaping. In doing so, and to avoid any appeal to non-smokers, ITNZ made sure that all the claims in the Advertisement turned on the myblu user transitioning from smoking to vaping.

Conclusion

52. In light of the above, ITNZ requests that the Complaints Board determine that:
- (a) *Rules 1(b) and 2(a) of the THA Code are not applicable;*
 - (b) *Rule 2(b) of the Advertising Standards Code has not been breached; and*
 - (c) *Complaint 19/305 is not upheld.*
53. ITNZ would welcome the opportunity to respond to any further comments or queries that the Complaints Board may have.

| | |
|---|--|
| Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website) | TVNZ as the broadcast medium, including "on demand". 15 sec and 6 sec versions of the advertisement also on digital advertising platforms. A copy of the advertisement is also available on YouTube. |
| Is the advertisement still accessible – where and until when? | No further broadcast currently scheduled. See link below for the only other available public viewing. |
| A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version. | https://www.youtube.com/watch?v=doet-i75qE |
| Who is the product / brand target audience? | Current smokers over 18 years old. |
| Clear substantiation on claims that are challenged by the complainant. | See attached cover letter. |
| 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. | |
| For Broadcast advertisements: | |

| | |
|---|---|
| A copy of the script | See attached cover letter. |
| A copy of the media schedule and spot list (Please remove all financial information) | See Appendix. |
| CAB key number and rating | CAB Number 90721018 Key Number: TRF2356HE30 Class: S830 |
| For Digital advertisements: | |
| What platform tools have you used to target your audience? | YouTube, and 15 sec and 6 sec versions of the advertisement in digital media platforms. |

Appendix 3

RESPONSE FROM COMMERCIAL APPROVAL BUREAU

We have been asked to respond to this complaint under the following codes: Advertising Standards Code - Principle 2, Rule 2(b); Therapeutic and Health Advertising Code - Principle 1, Principle 2.

CAB approved this Imperial Brands Myblu commercial on 21/07/19.

Complainants have presented a number of points against which these standards will be tested, including:

- The perception that is 'cool for women' (V. Pope);
- Health risks are unknown until proved otherwise (R. Todd);
- Why is this product allowed to be promoted while smoking isn't? (C. McNeil);
- May provoke people into smoking cigarettes (A. Bissett).

Some of these points are manifestly more germane than others.

This commercial meets a series of standards both preceding and including the Advertising Standards Code:

1. The commercial complies with New Zealand law: it is legal to advertise this product;
2. The commercial meets with standards developed between CAB and TVNZ to monitor, regulate and amend products specifically within the vaping category;
3. The commercial meets all existing standards set by the Advertising Standards Code, as informed by the letter and spirit of the Code and the existing corpus of decisions in the vaping category.

CAB will defer to the advertiser for strict details but wishes to ad that the 'S830' classification strictly places this commercial within adult viewing hours, and no complainant has viewed the commercial during programmes outside the definition of adult viewing. Indeed, none of the complainants mentions the presence of children while viewing the ad.

As a new product category, vaping presents a new paradigm against which existing standards will be tested. CAB always considers the precedents set by Board decisions and the specificity with which they are communicated.