

<b>COMPLAINT NUMBER</b>	19/342
<b>COMPLAINANT</b>	M Gee
<b>ADVERTISER</b>	NZ Smokefree Tomorrow
<b>ADVERTISEMENT</b>	NZ Smokefree Tomorrow Radio
<b>DATE OF MEETING</b>	15 October 2019
<b>OUTCOME</b>	Not Upheld No further action required

### **Description of Advertisement**

The script for the radio advertisement for White Fox nicotine pouches says:

“There are many things we can’t say on the radio about White Fox nicotine pouches, like that White Fox nicotine pouches are a great ..... (*the actor’s voice is distorted here, and the words being spoken are indecipherable*). But what we can say is that White Fox nicotine pouches are ideal for settings where smoking is not acceptable. Put one under your lip and try it for yourself. All of the Buzz, None of the Bad. White Fox nicotine pouches. Available at all good stores. R.18”

### **Summary of the Complaint**

The Complainant was concerned the advertisement is directed towards younger people and is misleading, especially the phrase ‘None of the Bad’ because nicotine is harmful and addictive.

### **Issues Raised:**

- Social Responsibility
- Truthful Presentation
- Health and Well-being
- Children and Young People’s Code
- Safety and Effectiveness

### **Summary of the Advertiser’s Response**

The Advertiser said:

- the ad is not misleading or targeted at children.
- Nicotine is not harmful at all and is the same risk profile as caffeine.
- Yes, it is addictive but so is sugar and alcohol.
- The ad is trying to help people quit smoking.

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a radio advertisement for White Fox nicotine pouches. The Complaints Board said the use of the phrase “All of the Buzz, None of the Bad” did not meet the threshold to undermine the health and well-being of individuals or to be considered misleading.

## Relevant ASA Codes of Practice

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

### ADVERTISING STANDARDS CODE

**Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

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

**Rule 1(h): Health and Well-being:** Advertisements must not undermine the health and well-being of individuals

**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.

### CHILDREN AND YOUNG PEOPLE'S ADVERTISING CODE

**Principle 1 – Social Responsibility** - Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

**Principle 2: Truthful Presentation** - Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

### 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.

**Rule 1 (b) Safety and effectiveness** - 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.

**Rule 2 (a) Truthful presentation** - 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).

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/248 and 19/267, both of which were Upheld.

The full versions of these decisions 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.

**Decision 19/267** concerned a television advertisement for White Fox nicotine pouches which screened at a café in an indoor sports centre. A majority of the Complaints Board said the advertisement was not socially responsible. This is because the location of the advertisement was inappropriate, as 50% of the audience at the venue was under the age of 18.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the consumer takeout of the advertisement was here’s a nicotine product you can take if you’re somewhere where you can’t smoke. It provides a pleasurable sensation or “buzz” without having the ‘bad’ features associated with smoking cigarettes. These ‘bad’ features might include the fact that smoking is socially unacceptable in some places, not just negative health effects.

The Complaints Board noted that by saying “There are many things we can’t say on the radio about White Fox nicotine pouches...” the Advertiser is alluding to the restrictions about what advertisers can and can’t say about products that can be used to assist with smoking cessation. 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.

#### *Does the Therapeutic and Health Advertising Code apply?*

The Complaints Board said the Therapeutic and Health Advertising Code does not apply to this complaint. This is because the advertisement is not making a claim that the product assists smoking cessation, and in the context of this advertisement the phrase “All of the Buzz, None of the Bad” does not reach the threshold to be considered a therapeutic claim.

*Does the Children and Young People's Advertising Code apply?*

The Complaints Board said the Children and Young People's Advertising Code does not apply to this complaint. This is because the advertisement is not targeted at children or young people, taking into account product, presentation and expected average audience. Nicotine pouches are not principally or generally appealing to children or young people, there was nothing about the presentation of the advertisement that would particularly appeal to children or young people and the expected average audience for MAI radio station does not include a significant proportion of children or young people.

*Does the advertisement undermine the health and well-being of individuals or is it misleading?*

A majority of the Complaints Board said the advertisement does not meet the threshold to undermine the health and well-being of individuals or to be considered misleading.

This is because the advertisement is not making any therapeutic claims as such, rather it is presenting the view that nicotine pouches are not harmful and do not have the negative features associated with inhalation and smoking tobacco or the negative social stigma associated with smoking.

The majority noted that while nicotine is addictive, nicotine pouches are a legal product for sale in New Zealand and the Advertiser is able to advertise the product responsibly.

A minority disagreed. The minority said the potential harm caused by nicotine pouches may depend on such things as the frequency of use and the nature of the specific ingredients. The minority said the Advertiser had not provided sufficient substantiation to support the phrase "None of the bad", which implies that there is nothing harmful about using White Fox nicotine pouches.

*Is the advertisement socially responsible?*

A majority of the Complaints Board said the advertisement was socially responsible because it did not reach the threshold to be considered misleading or to undermine the health and well-being of individuals.

A minority disagreed. The minority said the advertisement was not socially responsible because it was misleading and could undermine the health and well-being of individuals.

In accordance with the majority, the Complaints Board ruled the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1, Principle 2, Rule 1(h) or Rule 2(b) of the Advertising Standards Code.

**Outcome**

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

No further action required.

**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.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Response from Media
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### Appendix 1

#### COMPLAINT FROM M GEE

The advertisement bases itself on what it's "not allowed to say" but makes clear implications on the "safety" or lack of harm of its product, this is extremely misleading and the ad is clearly directed towards younger people. There is a line at the end that i can't directly quote but something like "all of the fun with none of the harm" which is again extremely misleading. Nicotine is a harmful and extremely addictive substance. I am shocked they are allowed to advertise this product let alone get away with misleading claims.

### Appendix 2

#### RESPONSE FROM ADVERTISER, NZ SMOKEFREE TOMORROW

It is not illegal to base the advertisement on what it's not allowed to say.

The ad doesn't target young people.

It was not all the fun with none of the harm. This is misleading and fake news. It is 'all the buzz, none of the bad'.

Nicotine is not harmful at all and is the same risk profile as caffeine. Yes, it is addictive but so is sugar and alcohol. No legal issues here.

We are not making any therapeutic or misleading claims, in fact, the complaint is misleading and slanderous/fake news.

We are trying to help people quit and unlike vaping, our product has the research and has been stated by professionals as 98% less harmful although we do not make this claim whilst advertising.

### Appendix 3

#### RESPONSE FROM MEDIA, MEDIAWORKS

Thanks for the opportunity to respond to this complaint.

Our client, White Fox, is a smokefree product, catering to an R18 audience. This is clearly identified in the commercial.

We consider there's nothing misleading in this commercial. We state a fact - 'there are many things we can't say on the radio about White Fox'. That's demonstrated through a clear use of hyperbole.

The commercial also clearly states that 'White Fox pouches are ideal for settings where smoking is not acceptable'. It's talking to an R18 audience and presenting an alternative to smoking.

"All of the fun and none of the harm" is not the advertising position, and this is certainly not the wording used. It is in fact "All of the buzz, none of the bad". An adult audience clearly understands the 'buzz' you'd get from smoking alternatives, and would further understand that by not inhaling smoke or vapour you'd get none of the 'bad' in your lungs.