

COMPLAINT NUMBER	19/371
COMPLAINANT	A Sutton
ADVERTISER	Cosmic NZ
ADVERTISEMENT	Cosmic Radio
DATE OF MEETING	12 November 2019
OUTCOME	Not Upheld No further action required

Description of Advertisement

The radio advertisement for Cosmic says: "...Cosmic is having a vape sale for September only, our best-selling pod vape device the Myohm Air is half price at only \$15. Pods are the future of vaping. Incredibly simple to use. Light, discreet and super sleek. All cosmic vape products are for adults only..."

Summary of the Complaint

The Complainant was concerned vaping products should not be advertised on radio at times when children are listening.

Issues Raised:

- Social Responsibility
- Decency and Offensiveness
- Health and well-being

Summary of the Advertiser's Response

The Advertiser said they specifically requested a media placement that would be effective in reaching an 18+ audience and Cosmic does not sell any electronic cigarette item to anyone under the age of 18.

Summary of the Media's Response

The Media, NZME, said the advertisement was not targeting young people. Vaping is legal and can be advertised, though not without limits.

NZME said they have recently introduced time band exclusions for vaping advertising during school drop off and pick up times.

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a radio advertisement for Cosmic for a sale of vaping products. The Board said the advertisement was essentially a "price and product" advertisement and was not targeting children or young people.

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

Rule 1 (c) Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

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

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout of the advertisement was there is a sale on vaping products at Cosmic.

The Complaints Board said the advertisement was not targeting children or young people and the execution of the advertisement did not have particular appeal to children or young people.

The Complaints Board noted the Media, NZME has recently introduced time band exclusions for vaping advertising during school drop off and pick up times.

Does the advertisement contain anything that is likely to cause harm or serious or widespread offence?

The Complaints Board agreed the advertisement did not contain anything that is likely to cause harm or serious or widespread offence. The Board said the advertisement was essentially a “price and product” advertisement.

Do the advertisements undermine the health and well-being of individuals?

The Complaints Board agreed the advertisements did not contain anything that might undermine the health and well-being of individuals. The Board noted it is presently legal to advertise electronic cigarettes in New Zealand.

Have the advertisements been prepared and placed with a due sense of social responsibility?

The Complaints Board agreed the advertisements had been prepared and placed with a due sense of social responsibility. This is because the advertisement did not contain anything that is likely to cause harm or serious or widespread offence or undermine the health and well-being of individuals.

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1, Rule 1(c) or Rule 1(h) 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. 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 A SUTTON

Vaping products were advertised on both radio stations at the same time, i believe these are being r18 products should not be advertised during a time when generally kids can listen to the advertisements, same as alochol and cigarettes.

Apologies i changed station so fast as i don't want my kids listening to advertising of vape products and how "good" they are i don't know what brand they were. But it was both stations around the same time.

Appendix 2

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 ran between september 1-30th and intended 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 is 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 relating the saturation of radio advertising to promote 'electronic cigarettes': "vaping products were advertised on both radio stations at the same time, "the advertiser's response: on the date of the complaint, cosmic ran an advertisement on zm to inform their customers of a sale on vape devices during the month of september. However, the complainant refers to an advertisement on more fm, a station cosmic was not advertising on. It is certain that one, if not both "vaping" advertisements the complainant is referring to were not published by cosmic.

2. Complaint pertaining to the dissemination of a cosmic ad to an age-appropriate audience: "i believe these are being r18 products should not be advertised during a time when generally kids can listen to the advertisements, same as alochol and cigarettes."

The advertiser's response: when we set up the cosmic campaign, we were targeting the adult population (18+). We believe that was accurate, and in this case the complainant is an 18+ adult who listens to zm and more fm. We are aware the placement of the advert is accessible to all, therefore have insured the advertisements strictly follow the asa codes of practice. The advertisement in question states, "all cosmic vaping products are for adults only."

Appendix 3

RESPONSE FROM MEDIA, NZME

We are writing on behalf of NZME (the broadcaster) in response to the above complaint regarding advertising of Cosmic products on radio.

The ASA identified Principle 1, Rule 1(c), and Rule 1(h) of the Advertising Standards Code:

Rule 1 (c) Decency and Offensiveness

Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

Rule 1 (h) Health and well-being

Advertisements must not undermine the health and well-being of individuals.

In complaint 18/044, the Complaints Board considered a vaping advertisement which was placed on the back of a bus. While, like the complaint above, there was a concern about exposure of the advertisement to children, the Complaints Board agreed the advertisement did not have particular appeal to children, nor did it show or glamorise smoking.

We consider the same to be true in this case. The advertisement was not targeted young people; nor did it encourage anyone use vaping liquid which contains nicotine (as not all vaping liquids contain nicotine). Vaping is legal and can be advertised (though not without limits), including as a recreational activity.

The advertisement is clearly stated that vaping products were for “for adults only”; additionally, only the vape device (the “pod”) was advertised, not vaping liquid. We do not consider that there was any particular part of the advertisement that would appeal to children.

On that basis, we do not consider that Rule 1(c) or 1(h) was breached.

We have, however, reiterated to our teams that no vaping ads are to be played during breakfast and drive time slots on this station.