



## Case Report

1	Case Number	0094/13
2	Advertiser	Brand Developers
3	Product	Retail
4	Type of Advertisement / media	TV
5	Date of Determination	10/04/2013
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

2.6 - Health and Safety Depiction of smoking/drinking/gambling

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows statistics relating to the financial and health costs of smoking. It then goes on to demonstrate the benefits of switching to an electronic cigarette - Clever Smoke. We see scenes showing people smoking both real and electronic cigarettes.

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*We live in a time when we are trying to discourage smoking and this advert even shows a mother smoking this device with a child climbing up on her.*

*When I was a child we could buy packets of lollies called fags and now even they have had a name change to discourage children from smoking.*

*What is going on, this advert needs to be banned!!!*

*I am a reformed smoker and I am disgusted with this advertisement.*

### THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Thank you for the opportunity to respond to this complaint. While we congratulate the complainant on being, and staying, a reformed smoker, we are disappointed to learn that he views this advertisement in a negative light. As a small point of correction, the complainant has referred to the product as NEVER SMOKE, whereas the name is CLEVER SMOKE, and we believe NEVER and CLEVER imply vastly different impressions, with CLEVER being the smart, positive title.*

*Our intent and purpose of “Clever Smoke” is to assist people in their efforts to give up nicotine cigarettes. We don’t know how, when, or why the complainant stopped smoking, but for most people this habit is a double-pronged addiction. Firstly there is the addiction to the drug nicotine itself; secondly, there is the addictive physical habit of holding something in one’s hand or mouth.*

*The Clever Smoke is an electronic cigarette-like device that assists the individual by helping satisfy the physical desires of habit, while the body and mind can focus on kicking the nicotine drug habit.*

*As a responsible advertiser we took all due diligence when looking at importing this product and gained advice from our regulatory consultants who informed us this was outside their area of expertise as it is not a Therapeutic device and legal advice from our Lawyers which we used when producing our TV advert that was approved by CAD.*

*We also had all of the documents on the safety and proof that there was no nicotine etc. provided from the supplier.*

*The complainant has mentioned that you ‘actually exhale a smoke substance’ which is untrue as it is harmless vapours which can be proved through the studies.*

*He also goes on to say that ‘We live in a time when we are trying to discourage smoking’ which is exactly what Cleversmoke does. The commercial is not talking to non-smokers. It is only encouraging smokers to change to a healthier version, which could cause them to get rid of their nicotine addiction in order to quit smoking completely.*

*The complete “cold turkey” approach is simply too drastic for many to try, or even contemplate. The aim of the Clever Smoke is to help alleviate the stress, trauma and withdrawal symptoms, by meeting the needs of the physical habit in a harmless but positive way. Once the nicotine drug addiction is under control the smoker can then consider weaning off the physical habit.*

*The other emphasis within the advertisement is on the money one can save through using the Clever Smoke, pointing out the 100s of dollars that one spends every month on tobacco. Thus we believe that the dual message – save your life AND save your money - is clear and clever. There is no encouragement visually or verbally, actual or by inference, to START smoking. There is no so called “cool” habit to emulate.*

*The kit supplied includes 25 cartridges with 5 different flavours, all with a zero amount of nicotine. Under current legislation there is no way Clever Smoke could be deemed a tobacco product, or a product designed to smoke, hold or otherwise have control over an ignited tobacco product.*

*In considering this response we see the Code of Ethics 2/6 as the only one to have relevance, and nowhere does the advertisement depict material contrary to Community Standards on health or safety. Thus, although we respect the complainant's opinion, we do not feel there are grounds to uphold his complaint against the advertisement.*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement shows people smoking a cigarette style product which could encourage children to copy the behaviour.

The Board viewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the advertisement features people smoking an electronic cigarette whilst a voiceover highlights the dangers associated with smoking real cigarettes and promotes the Clever Smoke product as a safer alternative.

The Board noted that it had recently upheld a complaint about a similar product (0092/13) where it found that the depiction of people smoking a fake cigarette suggested that smoking was cool and glamorous.

Consistent with its previous determination the Board noted that the product itself is not a tobacco based product and that it is not the Board's role to comment on the legislation around tobacco advertising and legislative requirements. The Board also noted that upon reviewing the advertisement, it is not within the remit of the Board to consider the suitability of the product but only the way that it is advertised and the depiction of smoking within the advertisement.

The Board noted that the video footage shows people using the product at work, in a bar and whilst with their children. The Board noted that the reactions of the people using the product are of enjoyment and considered that to depict people enjoying smoking, albeit fake cigarettes, is a depiction which is suggestive of smoking being pleasurable and this glamourises smoking. The Board noted that the Clever Smoke product does closely resemble a cigarette and considered that the advertisement is strongly suggestive of smoking a real cigarette whilst in a public place and whilst surrounded by children.

Consistent with previous decisions (0140/12, 0410/12) the Board considered that glamourising smoking is contrary to prevailing community standards on health and safety.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement breached Section 2.6 of the Code, the Board upheld the complaint.

#### **ADVERTISER RESPONSE TO DETERMINATION**

Although we are disappointed that the complaint has been upheld as we believe the board understands that we are giving a strong non-smoking message to discourage nicotine addiction and abuse we understand why you have come to your decision.

The advert in question has not been to air since the 17<sup>h</sup> March and we are currently editing the new advert after discussions with yourself and also our lawyers.