

The International Coalition Against Prohibition (TICAP)

responds to:

Electronic Cigarettes Consultation

Introduction

The International Coalition Against Prohibition (TICAP) is a libertarian organisation dedicated to freedom of choice, where informed, consenting adults should be able to make their own choices, free of overbearing law.

Founded in 2008, TICAP consists of regional, national, and international organisations, now bound in solidarity against the damaging prohibitions where adults are treated as children and freedom of choice is brushed aside.

We have members both in Europe and the Americas.

The “vaping”, of electronic cigarettes (e-cigs) has reached over 2 million consumers in the United Kingdom (UK) and is expected to rise as smokers are becoming more aware of their existence.

Vaping is considered by numerous experts now as no more harmful than drinking a cup of coffee.

However, as a responsible organisation TICAP would have no objections to restricting access to e-cigs for under eighteen years olds. Advertising should be conducted in a responsible manner with print, radio and television advertisements broadcast at a time and in a context as are appropriate with a predominantly adult audience generally in mind. Nevertheless as matters stand to date there seems to be very little uptake of these products from school children and non smokers.

We also note that many opposed to e-cigs have a conflict of interests, in that they are funded by pharmaceutical companies who manufacture and market nicotine replacement medicines and drugs whose sales could reasonably be expected to be hurt by smokers deciding to eschew them in favor of using e-cigs.

Draconian laws and regulations on advertising of e-cigs will encourage maintenance of tobacco smoking rates since vaping is a proven way of moving people away from this traditional activity, or at least, greatly reducing the consumption of cigarettes while still offering people the freedom to enjoy harmless or almost harmless relaxing and stimulating effects from nicotine, just as many enjoy such effects from caffeine in their daily lives.

We do not try to claim that zero harm from such use has been proven, no more than we would try to make that claim for consumption of caffeinated coffee or sodas, however we strongly believe that the likelihood of any significant degree of harm is low enough that restrictions and oversight should not be much different, and should most certainly be milder than those applied to alcohol – a far more destructive drug on both the personal and societal levels.

TICAP's specific response to the consultation questions is presented below.

Rule 1: Marketing communications / advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

To our minds, there seems little opportunity for “excessive” consumption of e-cigs. The angles we envisage e-cig marketers will go for include: freedom, health, breaking a habit. It seems the last thing they will go for is toughness and aggression.

Question 2: What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

[TICAP's Reply](#)

The words “socially responsible” cover a multitude of sins, in that, one person’s definition of social responsibility may not coincide with another’s, in addition to which, “socially responsible” is exactly the kind of wording that those of misguided puritanical bent might seize upon in order to throw as many obstacles in the path of e-cig advertising as possible and we suspect that those collating this data are looking for just such an excuse. However, if what you are referring to is products being presented as “sexy”, “cool” or freedom generating then we have no problem with advertisers using such approaches. Sexy, cool and freedom are themes for advertising many products and we do not see the harm in advertising e-cigs in this way. Cars indisputably kill people (even when used as they should be) and yet, these themes are often pitched to make young people feel they need to buy cars.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

Surely the whole point of advertising e-cigs is to differentiate between two forms of nicotine delivery and to promote vaping as an alternative to smoking. To do this effectively, e-cigs must obviously be shown in a positive light.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised.

[TICAP's Reply](#)

None.

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

If there is empirical, peer reviewed evidence to show harm reduction then such claims should be allowed. Your current criteria are too restrictive, hidebound and unhelpful to the promotion of a healthier future. It would be counter-productive and just plain wrong to forbid such informative statements as: *“e-cigs are far less harmful to health than their burning tobacco counterparts while still allowing their users to experience some of the positive attributes of traditional nicotine consumption (i.e., hand-to-mouth titrated, instant delivery of a pleasant and somewhat addictive stimulant similar to caffeine plus the production of visible clouds of vapor/smoke).”*

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

In your context there is solid evidence that they are overwhelmingly safer (better) and similar in the sense that you have something tactile in your hands, and reproduce the effect of inhaling. In short, they are a smoking experience seemingly without many of the potential ill effects of tobacco smoking.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

No we do not agree with the proposal as it may well mean that e-cig manufacturers will have to get their products licensed from the Medicines and Healthcare Products Regulatory Agency (MHRA). This is an expensive and time consuming process and the members of the MHRA, who are pharmaceutically funded, are well known to have a vested interest in supporting the mercantile agenda of the pharmaceutical industry which manufactures nicotine replacement therapy (NRT). As very many e-cig manufacturers are small size companies, the £200,000 plus cost of the licensing and subsequent testing process is prohibitive and may kill the industry, thereby tilting the playing field heavily toward the entire industry being taken over by Big Pharma and Big Tobacco interests.

We suspect that this may well be the hidden agenda behind this consultative process. We believe such a motivation is likely exercising a strong and significant role in this consultative process and will result in decisions quite poorly based on scientific and health interests while aimed at pleasing the aforementioned corporate interests. If we perceive the results of the process to have been significantly impacted in this way we intend to make our opinions on that belief strongly known.

Rule 4: Marketing communications / advertisements must make clear that the product is an electronic cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

That is fine by us but we believe an addendum should be added to the Rule: *"... and the products, including nicotine inhalation products manufactured by pharmaceutical companies, should be required to resemble traditional cigarettes, cigars, and pipes as much as is practical and possible."*

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

No objections to this aspect, although pedantic interpretations should be carefully avoided.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

No. This is in the context that few never-smokers take up vaping. A recent paper produced by Professor Robert West, a trustee of Action on Smoking and Health, (See: http://www.docteurmartinjuneau.com/repository/www.docteurmartinjuneau.com/images/article/PJ_2_TrendsinecigaretteuseinEnglandMar2014.pdf) found the uptake of vaping by never-smokers to be 0.3% of the total number of vapers - ironically the same figure for uptake of never smokers on nicotine replacement therapy (NRT). ***The wording of the Rule as is would provide a loophole that could be twisted to block virtually all advertising by a back door prohibition.***

Adults should be allowed to make their own informed choices and, bearing in mind how harmless e-cigs are, little damage will result. The interpretation of this rule, if included at all and however worded, should be similar to the restrictions expected for caffeinated and alcoholic beverages. However, if you want to substitute "deliberate targeting" for "encourage" your wording is more acceptable.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

[TICAP's Reply](#)

See above in our reply to Question 10.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

Clearly, advertising e-cigs in a way that would link them to illegal drug use would be unacceptable. As for e-cigs/alcohol/gambling, such linkage should be permitted/forbidden equally for all three products listed. I.E., if the Rule is accepted, then alcohol should not be linked with gambling either, and the application of the rule equally applied. In practice, this would mean that if an ad for a casino is allowed to show people drinking, then it should also be allowed to show people vaping.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

[TICAP's Reply](#)

No. Alcohol is a legal product and one of the great advantages of vaping is that it can be consumed indoors without either harming or offending anyone else. This is an issue TICAP feels very strongly about. If vaping itself is next to harmless then it follows that second hand vapour is harmless too.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

[TICAP's Reply](#)

See answer to previous two questions.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

No. There is little risk of an accident when driving even whilst smoking tobacco cigarettes. In this paper only **0.9%** of accidents were attributable to smoking compared to distractions generated by other occupants (**10.9%**) and adjusting audio controls (**11.4%**). With e-cigs you do not even have the minor distraction of lighting up. We are also unclear what other activities/locations are being implied in this rule and why they should be included.

According to a major US study conducted by the University of North Carolina and detailed in the article, "Drivers most at risk from distractions outside car" available at <http://www.drivers.com/article/423> , less than 1% of accidents were attributable to smoking while over 20% (i.e. twenty times that 1%) were attributable to distractions generated by other occupants and adjusting audio controls. Removing the "lighting up" portion of the smoking-attributable fraction would result in vaping while driving likely being a full thirty times (i.e. 3,000%) safer than these other normal, common, and accepted driving distractions.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

[TICAP's Reply](#)

None, the vast majority of adults can exercise discretion.

Rule 9: Marketing communications / Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

Yes. Promotion of the consumption of all stimulants and narcotics, including caffeine and alcohol products, should be aimed to appeal primarily to those over 18s, though of course it is recognized that any form of advertising to adults will spill over to at least some extent in making youth value the advertised products

Products containing nicotine, caffeine, or alcohol should not be advertised in ways or in venues particularly aimed at those under the age of 18. Vaping should be treated in a way similar to caffeine and alcohol in this regard. However it is important that the wording of this rule should be adhered to explicitly, perhaps by emphasising the use of the word “particularly”.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

No. While it is reasonable to require advertisers of age-restricted products to avoid deliberately intimating that underage use is acceptable through the use of actors clearly portraying underage use, we do not believe it is acceptable to forbid actors in the age range of 18 through 25 from working in such ads. Furthermore, TICAP sees the “18 to 25” rule as a back-door way of implying that the legal age for vaping, smoking, and suchlike should eventually be raised to 25, a stance we strongly disagree with.

TICAP believes a better wording for this rule would be as follows:

“People shown in a vaping advertisement who are using e-cigarettes must neither be, nor clearly seem to be, under 18. People under 18 may be shown in an incidental role but must be obviously not using e-cigarettes.”

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s.

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

[TICAP's Reply](#)

Overkill on this will lead to the "forbidden fruit" becoming sweeter as it is associated with rebellion and adult behaviour. The same rules applied to alcohol and gambling should be applied to vaping nicotine products.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

[TICAP's Reply](#)

Yes, but qualified. Alcohol comes to mind again: if a medium is allowed for alcohol advertising then it should most certainly be allowed for e-cigarette advertising. Again, we feel the wording of the regulation is too extreme and geared to reducing the potential sales of e-cigs rather than simply providing reasonable protections. TICAP feels that it is abundantly clear is that there are people who want to place as many obstacles in the path of e-cigs as possible and that the Consultation process was probably significantly influenced by them with such a design in mind.

To be clear regarding Rule 12 and Question 20: Whatever rule is made should be similar to, but significantly less restrictive, than that used for alcohol advertising. After all, alcohol accounts for *many* underage deaths every year (in the US the CDC claims 4,300/year for underage alcohol deaths) while e-cigs account for zero. Alcohol withdrawal can result in death from delirium tremens while nicotine withdrawals results in crankiness at worst. To ignore such reality would be blatantly irresponsible and could possibly even entail future legal repercussions.

An example of a venue they should be treated the same would be in relations to sports promotions, sponsorships, and advertising. If vaping is to be forbidden, then, to be consistent and legal, alcoholic and perhaps even caffeinated beverages need to be treated the same way.

Rule 13: [Amendment to existing BCAP rule]

32.2 These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18: [...]electronic cigarettes

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

[TICAP's Reply](#)

Yes, but with discretion. If the programme does not explicitly aim to appeal to the younger audience, we cannot see the problem. The “adjacent to” restriction should be dropped or refined so as to not be abused. E.g. it could read, “advertised in or within a quarter-hour of programmes...” Again, a model equivalent to or even less restrictive than that used for alcohol and possibly caffeinated beverages should be followed.

Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.

[TICAP's Reply](#)

Yes, but again, only on similar terms to the way in which alcohol advertising is cleared. We repeat, there is no intelligent reason why terms regulating to e-cigs should be any more stringent or awkward than those regulating alcohol, although, as previously noted, there are intelligent reasons for making them less restrictive.

11.1 E-cigarettes which do not contain nicotine

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

[TICAP's Reply](#)

If it is clearly stated in the advert that the product contains no nicotine then less restrictions should apply. We do not ban the advertising of soda because it “looks the same” as advertising for alcohol.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

[TICAP's Reply](#)

No. As we have said above less rules should apply.

11.2 E-cigarettes which are licensed as medicines

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

[TICAP's Reply](#)

None. E-cigs can be used as an alternative to smoking and many do use them to cut down or even to quit smoking.

11.3 Definition of an e-cigarette

That definition is as follows:

Electronic cigarette’ means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption of [nicotine-containing] vapour via a

mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges.

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

[TICAP's Reply](#)

TICAP believes the definition should be reworded as follows:

“Electronic cigarette’ means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption via inhalation of nicotine via a mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges.”

Attempts to “slip through a loophole” based upon the general visibility of the inhaled vapor should not be accepted and would clearly be designed to allow for separate and financially beneficial treatment of Big Pharma nicotine inhaler products. While Big Pharma lobbyists may prefer the original wording, any rule makers honestly concerned about health will support a change to the suggested new wording.

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11.4 Further comments

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.

[TICAP's Reply](#)

See Reply to Question 28.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP’s consideration of this issue?

[TICAP's Reply](#)

If we can combine the last two questions, very simply TICAP feels that advertising rules should be light in touch and based on widening the appeal of e-cigs to cigarette smokers as much as can be considered reasonable. Whatever rules are implemented out of concerns for underage use, they should be reality-based in terms of the relative harms done to underage consumers by alcohol and caffeine and the restrictions on alcohol and caffeine marketing.

Overall, TICAP feels that even those very few who are never smokers who vape will be doing no significant harm to themselves. Vaping should be as socially acceptable as it is safe, that is, the rough equivalent of drinking a cup of coffee.

The world is watching, we hope good sense prevails.

for the Board of Directors, TICAP

Consultation on the marketing of e-cigarettes

CAP and BCAP proposals for new rules

Closing date 28/04/2014

Overview of the Proposed Rules

Rule 1 Marketing communications/advertisements for e-cigarettes must be socially responsible

Rule 2 Marketing communications/advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Rule 3: Marketing communication/advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Rule 4: Marketing communications/advertisements must make clear that the product is an e-cigarette.

Rule 5: Marketing communications/advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Prohibited approaches

Rule 6: Marketing communications/ advertisements must not encourage non-smokers or non-nicotine-user to use e-cigarettes

Rule 7: Marketing communications/advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Rule 8: Marketing communications/advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Protection of children and young persons: general

Rule 9: Marketing communications/advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Rule 11: Marketing communications/advertisements must state that products are not suitable for under-18s.

Protection of children and young persons: targeting (CAP Code only)

Rule 12: Marketing communications/advertisements must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Protection of children and young persons: scheduling (BCAP Code only)

Rule 13: [Amendment to existing BCAP rule]

BCAP proposes adding a scheduling restriction to its Code to reduce the chance of e-cigarette advertisements being seen by children. In practice it proposed to do this by adding e-cigarettes to the list of products and service set out in rule 32.2.

Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

General comments

The chapters in the CAP and BCAP Codes referring to the rules of advertising e-cigarettes should include in the introduction section a definition for electronic cigarettes. This should make clear that products with similar characteristics that are licensed as medicines are not covered by these rules, and that for such products, medicines advertising regulations apply. Our suggestions for rule amendments have been made on the assumption that these rules do not apply to e-cigarettes that are licensed as medicines.

The use of an electronic cigarette should not be described as smoking.

Advertising for e-cigarettes should be directed at current nicotine users and should not be linked to locations where “vaping” is prohibited.

Rule 2 should be extended to prohibit the depiction of people using e-cigarettes (in hand or mouth) as this could, intentionally or otherwise, portray smoking in a positive light. Furthermore, it should be noted that advertising should not be shown to be glamorous.

We believe that there are a number of rules where further clarity is required and the inclusion of guidance notes with examples taken, when possible, from recent adjudications would be extremely beneficial for those trying to implement these rules in future advertising.

“Safer” claims should be regarded as health claims and therefore will be prohibited for e-cigarettes unless the product is licensed for those purposes by the MHRA. It is notable that in the therapeutic indication of medicinal NRT products in the UK there is a reference to them being licensed for use “as a safer alternative to smoking”.

Guidance on suitability of comparative advertising claims is needed.

In response to the invitation to propose additional rules, PAGB suggests that marketing communications involving sampling, and celebrity and healthcare professional endorsements are prohibited for all electronic cigarettes.

We suggest that these rules should be reviewed on implementation of the new Tobacco Products Directive in 2016 or should new technology develop that is significantly different from the devices that are currently available.

General Rules

Rule 1 Marketing communications/advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with this wording.

NB to members:

PAGB has considered counselling on the inclusion of wording within the rule to prohibit encouraging “excessive use”. Based on the pharmacodynamic properties of nicotine, for these products it isn’t possible, in any meaningful way, to define “excessive use”, as the effects of an increased dose are not as easily identifiable as in the case of alcohol. We have therefore decided that as this is not possible to define we will not request its inclusion.

Question 2: What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

The use of an e-cigarette should not be described as smoking in adverts as it is not smoking. This can be replaced by “vaping”, “using an e-cigarette” or similar.

Rule 2 Marketing communications/advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We believe that this rule should be more restrictive. We do not consider showing the e-cigarettes being used to be appropriate as it may indirectly portray smoking in a positive light and thereby promote the use of tobacco products. We have included a suggestion for an amended wording.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown provided that the marketing communications / advertisements is obviously directly targeted to smokers and/or vapers only, does not depict a person using an e-cigarette (ie in hand and/or applied to the mouth) and the product is not shown in a positive light that may be appealing to non-smokers.

We believe that BCAP Code Rule 10.4 would have to be amended to permit the advertising of e-cigarettes on broadcast media.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?

See in response to question 3 and the proposed additional wording to be included for rule 2.

Rule 3: Marketing communication/advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

NB definition of “health claim” here: Any claim that states, suggests or implies that a relationship exists between an e-cigarette or one of its constituents and health.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Yes. It is not appropriate to make health claims for nicotine containing products that do not have a marketing authorisation from the MHRA. Claims such as “healthy alternative to tobacco containing cigarettes” and “e-cigarettes are safer than tobacco containing cigarettes” would be prohibited by this rule.

“Safer” claims should be regarded as health claims and therefore will be prohibited for e-cigarettes unless the product is licensed for those purposes by the MHRA. It is notable that in the therapeutic indication of medicinal NRT products in the UK there is a reference to them being licensed for use “as a safer alternative to smoking”.

E-cigarettes should not be presented as aids to smoking cessation, with craving relief claims, or with any claims relating to health. Quitting or being safer option to smoking and linking to NHS campaign should not be allowed.

E-cigarettes advertising should not seek associations with charities or bodies who are closely associated with smoking cessation or health.

Furthermore, there should be no comparison with any licensed products.

Guidance on the extent of permitted comparisons with tobacco products, e-cigarettes licensed as medicines or NRT and non-licensed e-cigarettes is required either to be included in the code or a guidance note.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Agree with the definition of “health claim”.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

Agree that medicinal claims should be prohibited for unlicensed e-cigarettes. Please refer to our response to question 5.

Rule 4: Marketing communications/advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Agree with the wording of this rule. E-cigarette advertising needs to clearly and prominently identify that the product is an e-cigarette to prevent consumers being misled.

Rule 5: Marketing communications/advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Agree. It is important that consumers know whether an e-cigarette contains nicotine.

Prohibited approaches

Rule 6: Marketing communications/ advertisements must not encourage non-smokers or non-nicotine-user to use e-cigarettes

Question 10: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the wording of this rule but we think that this needs to be expanded to include rules prohibiting the glamorisation of vaping.

We suggest that there should be no normalisation or glamorisation of the use of e-cigarettes as that may encourage use by non-smokers. We think that the rules here should closely reflect the following BCAP Code Rules relating to alcohol; 19.3, 19.4, 19.5, 19.6, 19.7, 19.8, 19.9, and 19.13.

Whilst there is a specific rule for the protection of children we believe that the endorsement of e-cigarettes by celebrities (19.15.2) or health professionals should be prohibited for adults as well.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We consider this rule to be proportionate. All marketing should be explicitly addressed only to existing nicotine users.

Rule 7: Marketing communications/advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Agree (illicit drugs).

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Agree (alcohol). PAGB agrees that there may be responsible advertising executions which feature e-cigarettes in an environment in which alcohol is being consumed. Please note our response regarding the portrayal of the use of e-cigarette in advertising.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

Agree (gambling). PAGB agrees that there may be responsible advertising executions which feature e-cigarettes in a gambling environment. Please note our response regarding the portrayal of the use of e-cigarette in advertising.

Rule 8: Marketing communications/advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

There is a lot of uncertainty about where it is acceptable to “vape”. The wording for this will need to be vague as there is an inconsistent approach across the UK to where it is or is not acceptable to vape. Different countries or regions within the UK may have different rules eg Wales and Scotland have both made suggestions that e-cigarettes would be banned in eg public places, council buildings, hospitals.

*Suggested wording of Rule 8: Marketing communications/advertisements must not link e-cigarettes with activities or locations in which using them would be **prohibited**, unsafe or unwise; such as driving.*

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

None that we are aware of.

Protection of children and young persons: general

Rule 9: Marketing communications/advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Agree if “shown using e-cigarettes or” is removed to be consistent with our previous comments.

Rule 9: Marketing communications/advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal to people under 18. People playing a significant role in promoting e-cigarettes should not be shown behaving in an adolescent or juvenile manner.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Agree with the principle but we do not consider that showing people using e-cigarettes is appropriate.

Suggested rewording of Rule 10: People playing a significant role in promoting e-cigarettes must neither be, nor seem to be, under 25. People under 25 may only be shown in an incidental role.

Rule 11: Marketing communications/advertisements must state that products are not suitable for under-18s.

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

We agree with this rule to be applied only to unlicensed e-cigarettes. Given the current lack of awareness of the restrictions this would be beneficial, however the rule would need to be reviewed in future if it is found it encourages use by under 18s.

Please see our response to questions 25 and 26 that state that these e-cigarettes rules should not apply to e-cigarettes that are licensed as medicines.

Currently, there are licensed nicotine replacement products that can be used by children over 12 years of age. It is possible that e-cigarettes licensed as medicines would similarly be licensed for use by children less than 18 years of age. Inclusion of the suggested statement may deter adolescents from using stop smoking aids such as e-cigarettes which have a marketing authorisation from the MHRA, therefore it is important that this rule does not apply to these products.

Protection of children and young persons: targeting (CAP Code only)

Rule 12: *Marketing communications/advertisements must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.*

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

We agree with the principle but consider that this is an opportunity to further restrict advertising to reduce the risk of advertising to children. Where it is difficult to establish the audience's age or where there is a significant risk of advertising reaching beyond the intended audience, eg. digital media, further restrictions on advertising should apply.

E-cigarette websites should also ask for age verification from consumers before allowing access to website content.

Protection of children and young persons: scheduling (BCAP Code only)

Rule 13: *[Amendment to existing BCAP rule]*

BCAP proposes adding a scheduling restriction to its Code to reduce the chance of e-cigarette advertisements being seen by children. In practice it proposed to do this by adding e-cigarettes to the list of products and service set out in rule 32.2.

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

Agree

Rule 14: *Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.*

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.

Agree

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

The new rules should apply to e-cigarettes that do not contain nicotine.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

No additional rules are required, the proposed rules are adequate.

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

These restrictions should not apply to e-cigarettes licensed as medicines. These products will have to comply with the rules and regulations applied to medicines and should comply with restrictions on medicines ie CAP Section 8, BCAP Section 11.

“Electronic cigarette’ means a product, or any component thereof, including cartridges and the device without cartridge, that can used for consumption of [nicotine-containing] vapour via mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges.”

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

We agree with the definition for unlicensed e-cigarettes. This definition should be included at the front of the e-cigarettes section. It should also be made clear that this definition doesn’t refer to any product with these characteristics licensed as medicines.

Further comments

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.

Marketing communications involving sampling of all e-cigarettes, nicotine-containing and non-nicotine-containing, should be prohibited. Such activities may encourage non-nicotine users to try these products which would promote an unhealthy lifestyle.

We have included suggestions regarding celebrity and healthcare professional endorsements in our answers.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP’s consideration of this issue?

As per the latest EU Tobacco Directive all e-cigarettes not licensed as medicines should have a maximum nicotine concentration level of no more than 20mg/ml, therefore we advise e-cigarettes with a level above this concentration should not be advertised.

Dear CAP and BCAP,

The Smoke Free Workstream that is chaired by the Public Health Team within Thurrock Council wish to endorse the ASH response to this consultation on behalf of our organisation. Please see that attached Word document for reference.

Kind regards

UNCLASSIFIED

Public Health Manager | Adults, Health & Commissioning

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CAP and BCAP Consultation on the Marketing of E-Cigarettes

April 2014

This response to the CAP and BCAP consultation document is submitted on behalf of the University of Edinburgh Tobacco Control Research Group (TCRG). The TCRG is a research group which includes members from the three Colleges at Edinburgh University. Its mission is to promote research in tobacco control in order to develop understanding of the determinants of smoking uptake and cessation and contribute to effective policy and practice.

The TCRG has undertaken research on issues around e-cigarettes including newspaper coverage on e-cigarettes and smokers' views and experiences of e-cigarettes. While recognising that e-cigarettes have the potential to reduce smoking related harm in the UK, the TCRG is concerned about their potential to act as a gateway product for nicotine use in young people, and the risks of marketing the products in ways that might re-normalise smoking and the use of tobacco products. We therefore welcome this consultation on the marketing of e-cigarettes, in particular its intention to protect young people.

General Principles

We agree with the general principles set out by ASH (London) in their submission to this consultation ie that the revised set of rules adopted by CAP and BCAP following this consultation should be consistent with the following principles:

1. Electronic cigarettes should not be advertised or promoted in ways that could reasonably be expected to promote smoking of tobacco products.
2. As far as possible, electronic cigarettes should be advertised as an alternative to smoking cigarettes or other tobacco products.
3. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to non-tobacco users.
4. Electronic cigarettes should not be advertised in ways or through channels that could reasonably be expected to make them appealing to children and young people
5. Where e-cigarette products do have a medicines licence, they should be advertised and marketed in a way that is appropriate for medical and healthcare products, which may include specific claims of health benefits (e.g. that they may help in quitting smoking), where these are well supported by scientific evidence.

Responses to Consultation Questions

Rule 1: *Marketing communications/advertisements for e-cigarettes must be socially responsible.*

Question 1: *Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?*

Question 2: *What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?*

We agree that e-cigarette advertising and promotion should be socially responsible. However, we think that this rule should be worded so that it more explicit about what is meant by being socially responsible. These would include:

1. Explicitly stating that e-cigarettes are an alternative to tobacco and are therefore not suitable for people who do not currently consume tobacco products.
2. Prohibiting wording, images or behaviour that suggest that using e-cigarettes has positive qualities that consumers may mistakenly perceive to exist, as a consequence of the product's addictive nature. An example would be using the word "satisfying", as any "satisfaction" for users is likely to come mostly from relieving nicotine withdrawal symptoms.

Rule 2: *Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.*

Question 3: *Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.*

Question 4: *Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?*

We think that the proposed rule needs to be strengthened. We would like to see the rule include the prohibition of any design, colour, imagery, logos or styles that could imply an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is keeping with the CAP code for tobacco products which is set out in 10.3 and 10.4. Several e-cigarette brands are or will be produced and promoted by tobacco companies. It is therefore important that advertising for any e-cigarette brand cannot be used as a covert means of promoting the brand identity of tobacco products or smoking tobacco products.

Rule 3: *Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.*

Question 5: *Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.*

Question 6: *Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.*

Question 7: *Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.*

We agree with the proposed wording of this rule, except that we would recommend that it should be a requirement (not an option) to present e-cigarettes as an alternative to tobacco.

This is consistent with the general principles set out previously that all e-cigarette marketing should be targeted at existing tobacco users and not at recruiting new users of nicotine.

Rule 4: *Marketing communications / advertisements must make clear that the product is an e-cigarette.*

Question 8: *Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.*

We agree with the inclusion this rule but think that the wording should go further and include the use of any descriptor (eg smoked, smoking) that could create confusion with tobacco cigarettes.

Rule 5: *Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.*

Question 9: *Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.*

We agree with the inclusion and wording of this rule which includes nicotine and non-nicotine containing products.

Rule 6: *Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.*

Question 10: *Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.*

Question 11: *Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.*

We agree with the inclusion and wording of this rule but would like it to be strengthened to exclude any types of encouragement of non-nicotine users to use e-cigarettes whether this is explicit or implicit.

Rule 7: *Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.*

Question 12: *Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.*

Question 13: *Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.*

Question 14: *Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.*

We agree with the inclusion and wording of this rule.

Rule 8: *Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.*

Question 15: *Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.*

Question 16: *Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?*

We agree with the inclusion and wording of this rule.

Rule 9: *Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.*

Question 17: *Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.*

We agree with the inclusion and wording of this rule. Our support for this rule reflects our concerns about the potential use of e-cigarettes among young people and the re-normalising of tobacco smoking among this age group through images, messages and behaviour portrayed in advertising that might be likely to appeal particularly to under 18 year olds.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: *Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.*

We agree with the inclusion and wording of this rule. Given our concerns about the potential impact of e-cigarettes marketing on under 18 year olds, we agree that conforming with the rules on the use of age 25 in alcohol marketing is appropriate and proportionate.

Rule 11: *Marketing communications / advertisements must state that products are not suitable for under-18s*

Question 19: *Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.*

We agree that the evidence on the likely impact of including such a statement on advertisement and promotions of e-cigarettes is unclear. Indeed there is a risk that by including this statement, this may be interpreted as making such marketing not appealing to under-18 and, in itself, satisfying promoter obligation to produce advertisements and promotions that do not appeal to under-18 year olds. On balance we therefore think that this statement should not be included and strict rules should be implemented to protect under-18 year olds from this marketing.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule. However, we do not think that it goes far enough to protect under-18s. We are concerned that this would not cover media which have large audiences and/or exposure among under-18s but where this does not reach 25% of the audience, e.g. some of the most popular TV programmes. We therefore suggest that an additional threshold be added where the number of under-18s exposed to the marketing is also included.

Rule 13: *[Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]*

Question 21: *Do you agree with e-cigarettes being included in this list of scheduling restrictions?*

We agree with the inclusion of e-cigarettes in this list.

Rule 14: *Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.*

Question 22: *Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?*

E-cigarettes are a relatively new product and the product and market is highly dynamic and evolving. So is the marketing of, and marketing budgets for e-cigarettes. We therefore agree that all e-cigarette advertisements should be centrally cleared before publication/transmission.

Additional Questions

Question 23: *To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?*

Question 24: *Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?*

Electronic cigarettes that do not contain nicotine, and the marketing of these, could cause confusion if they were not subject to the same advertising rules as nicotine containing products. All e-cigarettes, irrespective of their nicotine content should be subject to the same rules.

Question 25: *To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?*

The same rules should apply to all e-cigarettes whether they are licensed as medicines or not, except that licensed products should also be able to include specific health claims in advertisements where these claims are clearly supported by scientific evidence.

Question 26: *Do you agree with the proposed definition of e-cigarette? If not, please explain why.*

We agree with the proposed definition of e-cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: *Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?*

Question 28: *Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?*

Please see the general statement of principles set out at the beginning of this consultation response.

There is currently no reference to the use of social media in the proposed rules. Social media have been widely used to advertise and promote e-cigarettes and their use, and this is likely to continue. Social media are, of course, particularly attractive to adolescents. We think that this important medium needs to be considered by CAP and addressed where possible and appropriate in the proposed rules.

CAP and BCAP Consultation on the Marketing of E-Cigarettes

Response from Tobacco Free Futures

Tobacco Free Futures (TFF) is a Social Enterprise dedicated to making smoking history for children. We support CAP and BCAP in considering proposals to introduce new rules for the advertising of electronic cigarettes (e-cigarettes) and welcome the opportunity to respond to the consultation.

We support the role that e-cigarettes can play in helping current smokers to quit. Evidence suggests that the vast majority of people using e-cigarettes are smokers and ex-smokers using them as an alternative to smoking, either in cutting down or in quit attempts.

Notwithstanding this, we share the Committees' concern that current advertising for e-cigarettes does not make it clear they should only be used as an alternative to tobacco or existing nicotine replacement products for existing or ex-smokers. We also share a concern that advertising of e-cigarettes is undermining the broad tobacco prohibitions in the BCAP code and attempting to "re-normalise" smoking after many years of effective denormalisation.

There is emerging quantitative and qualitative evidence that young people are also using e-cigarettes. National research data including the most recent 2014 ASH YouGov survey suggests this remains largely confined to existing young smokers.

In the North West in 2013, a survey of 18,000 young people aged 14 to 17 asked if they had ever accessed e-cigarettes¹. A high number had, including 5% of the large majority who had never smoked. While the overall % of young non-smokers accessing e-cigarettes was low at 5%, in terms of numbers responding to the survey, more young "never-smokers" accessed e-cigarettes than any other category, including ex-smokers, children who had tried smoking but didn't like it, children who classed themselves as "social smokers", children who smoked regularly but lightly (5 a day or less). More research is needed to understand how young people are accessing and using e-cigarettes.

As a general principle therefore, TFF would urge that the approach to advertising of e-cigarettes should consider the potential for the product to act as a gateway to smoking for young people in particular.

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible

Question 1: Do you agree with the inclusion/wording of this rule?

Question 2: What specific advertising approaches that are not covered by the following rules do you consider might be identified as problematic within the wording of this rule?

TFF agree with the principle that e-cigarette advertising and promotion should be socially responsible. There should be no suggestion that consumption of e-cigarettes has any

positive benefits except very specifically to those smokers who use e-cigarettes to support their attempts to use less or no regular cigarettes.

Rule 2: Marketing communications/advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

We agree with the proposed rule as a starting point but believe it needs to be strengthened. We would recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products. See below for suggested additional wording to rule 2 in bold and italics.

"Marketing communications / advertisements must contain nothing ***which promotes any design, colour, imagery, logo style that might be associated in the audiences' mind with a tobacco product. They must also contain nothing*** which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown, **but they must not be shown in ways that promote smoking or tobacco products.**"

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

We believe that e-cigarettes should only be presented as an alternative to tobacco for current users of tobacco. We believe that no health claims are acceptable unless the product is licensed by the MHRA and specific claims associated with the license may be made.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion of this rule.

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule, including the words in square brackets. If it does contain nicotine, we believe that the communication/advertisement should be clear of the highly addictive nature of nicotine

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We consider that e-cigarettes should only be marketed to current smokers of regular cigarettes as an alternative to help them quit or cut down on their consumption of smoked cigarettes. There should be no explicit or implicit suggestion in any marketing communications/advertisements that products could be used in any other way.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

We agree with the proposal to ensure that e-cigarettes are not linked to gambling, alcohol or illicit drugs. Children often see the latter activities as glamorous, any promotion which suggests linkages to such attractive pursuits to children risk the e-cigarettes benefiting from the halo effect.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

We agree that e-cigarette marketing communications and advertisements should not be linked with activities or locations in which using them would be unsafe or unwise such as driving.

We believe e-cigarette use also should not be shown in the presence of people who could reasonably be considered to be under 18.

We also believe that CAP and BCAP should provide guidance to ensure that marketing communications do not imply that e-cigarette use is permitted in all enclosed public spaces when such rules vary between premises. We note that the ASA has already ruled against advertisements which have promoted messages that mislead people on the use of e-cigarettes in enclosed public spacesⁱⁱⁱ. However it is a subject often referred to in e-cigarette marketing communications.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We strongly agree with this rule. This should apply whether or not the products contain nicotine.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with this rule as it avoids ambiguity and scope for abuse

Rule 11: Marketing communications / advertisements must state that products are no suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Placing an "18+ message" on products may not always produce the desired effect on children and young people. We would prefer a revised set of rules, on the principles set out above, which inter alia require that e-cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the principle that e-cigarettes should not be directed at people under 18 given both the risk of addiction to nicotine and the fact that it will shortly be illegal to sell e-cigarettes to under 18s.

The rule does not go far enough in protecting under 18s from exposure to marketing communications for e-cigarettes. Popular films aimed at adults which receive a youth rating from the British Board of Film Classification may still attract a large audience of under 18s even if this represents a small proportion of the total audience. For example, Skyfall as an adult orientated film and rated 12R was allowed to show alcohol advertisements. While the viewership of under 18s was only 12%, the film reached almost one fifth of the total UK populationⁱⁱⁱ. A 10% threshold would better protect children and young people and help direct marketing communications to audiences that are overwhelming over 10 and reduce children and young people's exposure to e-cigarette promotions.

We also feel it is particularly important to consider role of social media in advertising of these products given its particular appeal to children and young people and their engagement with it.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree with the inclusion e-cigarettes in this list. However we note that these scheduling restrictions are likely to be insufficient to reduce children's exposure to e-cigarette advertisements. For example, sporting events are likely to draw a wide audience including a large audience of under 18s. This issue was highlighted by Ofcom as a potential reason for why children had viewed more alcohol advertisements in 2011 compared with 2007^{iv}. We would therefore like to see proposals to restrict the scheduling further to prevent children being exposed to e-cigarette advertisements.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

We agree that all e-cigarette advertisements should be centrally cleared prior to publication/transmission.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. We are concerned they may also appeal to children and some are clearly designed to do so. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to our comments on Rule 5 above.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

The same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of e- cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

We are concerned that e-cigarettes should not be allowed to be marketed on the basis of their flavour(s). Recent qualitative research by Liverpool John Moores University and the Health Equalities Group highlighted the appeal of different flavours, as well as colours of e-cigarettes to young people^v. We therefore believe that a further rule should be developed to prohibit marketing communications and advertising on the basis of flavour.

We hope that CAP and BCAP provide sufficient flexibility to ensure its rules can be updated quickly if further evidence shows that changes to its rules are needed to protect public health.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

No

ⁱ Trading Standards North West, Young Persons Alcohol and Tobacco Report
http://tobaccofreefutures.org/wp-content/uploads/2014/04/8353_TSNW-Young-Persons-Alcohol-Tobacco-Report_130605_V3.pdf

ⁱⁱ Advertising Standards Authority (2012) ASA Adjudication on Desert Point Ltd.
<http://www.asa.org.uk/Rulings/Adjudications/2012/10/Desert-Point-Ltd>

ⁱⁱⁱ Cinema Advertising Association, Predicted and actual under-18 audience percentages for films released in 2012 http://www.cinemaadvertisingassociation.co.uk/caa_alcohol.pdf

^{iv} Ofcom (2013) Children and young people's exposure to alcohol advertising 2007-2011
<http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/alcohol-advertising/>

^v John Moores University Centre for Public Health
"Most people I know have got one": Young people's perceptions and experiences of electronic cigarettes. <http://www.cph.org.uk/wp-content/uploads/2014/03/Ecig-focus-groups-final-report.pdf>



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25th April 2014

Dear Sir or Madam,

RE: Totally Wicked's Response to the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice's (BCAP) Consultation on the Marketing of E-cigarettes

Totally Wicked welcomes the opportunity to respond to the above named consultation.

Totally Wicked is an electronic cigarette manufacturing business based in Lancashire. The company, which was formed in 2008 now employs over 100 people locally and has established businesses in both Germany and the United States. Significantly, unlike most companies in this sector, Totally Wicked manufacture in the UK and export globally. This includes the manufacture of our own fluid ranges which use only UK sourced ingredients and our own product development team which includes a dedicated manufacturing and assembly business in Lancashire. Since 2008 Totally Wicked has been responsible for creating over 500 jobs in eight EU Member States.

The guiding principle of our business is to put our customers' needs first. We therefore wish for our sector to be robustly and proportionately regulated. We have always gone above and beyond what has been required under the current regulatory regime. Recently, we publicly welcomed the Government's announcement to ban sales of electronic cigarettes to those under 18 years of age, something we ourselves have been doing for the past six years.

For Totally Wicked the core theme underpinning any future regulatory regime for the advertising and marketing of electronic cigarettes is as follows. The marketing of electronic cigarettes should be primarily aimed at former smokers and existing users of nicotine containing products. In addition, such marketing must accept responsibility for not explicitly or indirectly targeting those under the age of 18. Totally Wicked believe these should be the guiding principles for CAP and BCAP as they frame how the advertising and marketing of electronic cigarettes is defined and enabled.

Within this context Totally Wicked believe a responsible advertising and marketing regulatory regime can be drawn up that allows for the promotion of electronic cigarettes as a viable alternative to conventional tobacco products, that allow users to continue their nicotine use without any of the harm associated with tobacco.

I would be happy to meet with representatives of CAP and BCAP to discuss our response in more detail.

Yours faithfully

Fraser Cropper
Managing Director, Totally Wicked Ltd

Consultation Response

Rule 1: *Marketing communications / advertisements for e-cigarettes must be socially responsible.*

It is a general rule in the CAP and BCAP Codes that advertisements must be socially responsible. The Committees see fit to repeat the rule in certain Code sections so that it can provide more detail in recognition of specific concerns or risks for the sector in question. For example the corresponding rule in the Alcohol sections of the Codes explicitly requires marketers not to encourage styles of drinking that are unwise or immoderate, or the exploitation of the young and vulnerable. CAP and BCAP have considered whether the rule might, for example, prevent "excessive" use, though they question whether excessive use can be defined in a useful way for this product. Likewise they question whether there is a need to prohibit advertising treatments which, for example, link e-cigarettes with toughness or aggression. CAP and BCAP welcome comments and evidence from respondents that can inform their view on any specific approaches that might be prohibited within the wording of this rule.

Question 1: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked generally agrees with the inclusion and wording of this rule. However, Totally Wicked believe that it is 'socially responsible', and legitimate, to openly market electronic cigarettes as a less harmful method of nicotine consumption than combustible tobacco products for current tobacco smokers seeking an alternative to recreational tobacco products. Accordingly, it would be 'socially responsible' to be able to positively discriminate in favour of electronic cigarettes as opposed to harmful products such as conventional cigarettes. Indeed, Totally Wicked believes it would be socially irresponsible for advertising standards/regulations to prevent this explicit discrimination in favour of electronic cigarettes from being made.

Question 2: What specific advertising approaches, if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

Totally Wicked believes that advertising that shows electronic cigarettes being used should be considered legitimate and socially responsible if it is primarily aimed at former smokers and existing users of nicotine containing products. However, such advertising should not be able to be confused with conventional cigarette usage. Totally Wicked is concerned that such confusion could arise in adverts promoting those electronic cigarettes that are designed to mimic closely and look like conventional cigarettes. A simple solution would be to prohibit all electronic cigarette advertising. This however is too simplistic an approach and would be unacceptable to Totally Wicked. A blanket ban would prevent the legitimate advertising of a safer alternative to conventional tobacco products and would deny existing smokers and former smokers the opportunity to make an informed decision about potentially making the switch to a safer alternative. Totally Wicked also consider it disproportionate to ban the advertising of products that look nothing like a conventional cigarette and which are used by 72 per cent¹ of electronic cigarette users.

Rule 2: *Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.*

¹ <http://www.uel.ac.uk/psychology/staff/lynnedawkins/>

CAP and BCAP acknowledge that there is significant concern about the potential indirect promotion of tobacco products via advertising for e-cigarettes. However, they are mindful that the similarity of e-cigarettes to tobacco products is their chief appeal to those seeking a tobacco alternative and that new rules cannot unreasonably restrict marketers from showing their product.

At the time of writing, the rules in the BCAP Code and ASA adjudications are between them operating to restrict visuals of e-cigarettes being shown on television; BCAP currently considers this to be a disproportionate restriction. Both CAP and BCAP propose that this new rule would not be breached by visuals of products, including in use, provided that it was clear from the ad as a whole that the product shown was an e-cigarette and not a tobacco cigarette. This rule should therefore be read in conjunction with Rule 4. BCAP, in particular, is keen to hear from respondents who consider that the BCAP Code may need to specify additional protections in recognition of the greater reach and intrusiveness of broadcast advertising.

Question 3: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agree with the inclusion and wording of this rule as it assumes correctly that electronic cigarettes are not classified as tobacco products. However, Totally Wicked is concerned that some opponents of electronic cigarettes, believe that any use of electronic cigarettes and any positive discrimination that is allowed indirectly 'promotes' the use of tobacco products. This is incorrect and research by Action on Smoking and Health² and the American Cancer Society³ has proven this. Tobacco cigarettes are the gateway to tobacco smoking, not electronic cigarettes. Such positive discrimination is essential so as not to deny existing smokers and former smokers the opportunity to make an informed decision about potentially making the switch to a less harmful alternative.

Totally Wicked agree that those electronic cigarettes that are designed to mimic closely and look like conventional cigarettes have the potential to be misconstrued, however products that look nothing like a conventional cigarette and which are used by 72 per cent⁴ of electronic cigarette users must be able to be shown and shown in use.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's goal of preventing the indirect promotion of tobacco products while still permitting e-cigarettes to be advertised?

Totally Wicked supports all efforts to prevent the indirect promotion of tobacco products whilst still permitting electronic cigarettes to be advertised. Totally Wicked believe it could be possible to develop a series of agreed mandated disclaimers or caveats that would be used on all marketing and media material, similar to the 'Drink Aware' campaign associated with the advertising of alcohol. The wording of such a disclaimer could include statements on the content and addictiveness of nicotine and that they are not sold to those under the age of 18.

Rule 3: *Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.*

² ASH surveyed 12,597 adults in 2010 – the questions focused on e-cigarette use and awareness in Great Britain. The preliminary survey was followed up by an additional study of adult smokers and non-smokers in February 2012 and more recently in 2013. ASH also surveyed children and young people aged 11 to 18 in March 2013.

³ [http://www.jahonline.org/article/S1054-139X\(12\)00409-0/fulltext](http://www.jahonline.org/article/S1054-139X(12)00409-0/fulltext)

⁴ <http://www.uel.ac.uk/psychology/staff/lynnedawkins/>

For the purposes of this rule CAP and BCAP consider that a "health claim" is any claim that states, suggests or implies that a relationship exists between an e-cigarette or one of its constituents and health. It has adapted this definition from the one provided in Regulation (EC) No 1924/2006 on nutrition and health claims made on foods. The Regulation can be found here. CAP and BCAP consider this an appropriate general definition for use in this context.

Under current UK legislation, any product that makes a medicinal claim must be appropriately authorised as a medicine or medical device. Any claim that a product can be used to cut down or quit smoking or to provide a form of nicotine replacement therapy is likely to be seen as medicinal by the MHRA and the ASA. A claim that an e-cigarette is an alternative to tobacco is not a medicinal claim and may be made.

The Committees have yet to decide whether these rules should apply to e-cigarettes licensed as medicines and welcomes respondents' views on that subject in section 11.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked does not agree with the proposal to prohibit health claims for electronic cigarettes. Electronic cigarettes deliver a potential health benefit. Not from anything contained within the electronic cigarette, but by the fact that the user is either no longer smoking or fewer combusted tobacco products.

Totally Wicked wish to make it quite clear that electronic cigarettes are not a medicinal product, they are not a more effective form of nicotine replacement therapy; they are a viable alternative to conventional tobacco products that allow their users to continue their nicotine use without any of the harm associated with tobacco. Marketing should legitimately be able to make claims that electronic cigarettes can be used to support 'quitting' or 'stopping' and still be considered with justification as recreational alternatives to tobacco. This is how over 2.1 million consumers in the UK⁵ use them and refer to their experiences. That said, Totally Wicked believe that there should be no claim made in advertising, or elsewhere, that a recreational electronic cigarette supports a legitimate and approved programme nicotine dependency withdrawal. Any electronic cigarette manufacturer wishing to make such a claim should apply to have their products regulated under the medicinal regulatory regime authorised by the Department of Health.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked does not agree with the proposed definition of health claims for the purpose of this rule for the reasons set out in the answer to question six.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked does not agree with the proposal to prohibit medicinal claims for the reasons set out in the answer to question six.

Rule 4: *Marketing communications / advertisements must make clear that the product is an e-cigarette.*

⁵ <http://www.nottingham.ac.uk/ukctas/news/news-items/article130414.aspx>

In 2013 the ASA Council considered a number of complaints about e-cigarette advertising and adjudicated that, because of the novel nature of the product, ads for them should make clear what was being advertised. CAP and BCAP endorse that view and also seek with this rule to further answer concerns about the indirect promotion of tobacco use by providing clarity about what is being advertised.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the inclusion and wording of this rule.

Rule 5: *Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.*

In 2013 the ASA Council adjudicated that whether or not an advertised e-cigarette contained nicotine was material information which a consumer would need to avoid being misled regarding the nature of the product. CAP and BCAP endorse that view but wish to make clear that this is not intended to limit advertisers from describing other product ingredients.

CAP and BCAP have yet to decide whether some or all of these rules should apply to advertisements for e-cigarettes that do not contain nicotine. Responses on that point should be made in section 11.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the inclusion and wording of this rule.

Rule 6: *Marketing communications / advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.*

Although e-cigarettes are available as a consumer good, many stakeholders and the general public regard their primary purpose as being an alternative to tobacco smoking. CAP and BCAP understand that there is presently little evidence for their use in never-smokers, but accept that this may change. The Committees are concerned that advertising should not be a medium by which people are encouraged to begin or re-establish the use of nicotine. Respondents should note that the rule does not require every marketing communication to target tobacco smokers / e-cigarette users explicitly, only that they must not explicitly encourage those who do not currently use nicotine to start.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the inclusion and wording of this rule as it is consistent with their fundamental belief that the marketing of electronic cigarettes should be primarily aimed at former smokers and existing users of nicotine containing products.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

Totally Wicked consider this rule proportionate if the product being advertised contains nicotine, it is irrelevant if it does not. The wider question that needs consideration is whether the simple action of inhaling a non-nicotine containing vapour is such that it generates potential for subsequent migration to nicotine containing electronic cigarettes. The same applies to the product. A product sold without fluid can be sold as a 'personal vapourizer' without need to associate to tobacco or indeed, electronic cigarette legislation. It becomes a regulated NCP when nicotine containing fluid is applied for use, if the fluid contains no nicotine; there is no need for regulations to apply.

Rule 7: *Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.*

CAP and BCAP consider that there is an obvious benefit in prohibiting links with illicit drugs. The Committees also wish to consider preventing irresponsible creative treatments involving alcohol and gambling; the two other sectors that most provoke societal concern. However, they are mindful that the Alcohol and Gambling rules already provide protections in this regard. Additionally they consider that there may be responsible advertising executions which feature an e-cigarette being used in an environment in which alcohol is being consumed or gambling conducted. CAP and BCAP welcome respondents' views.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the proposal to prohibit linking electronic cigarettes with illicit drugs.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why and provide any evidence you consider relevant.

Totally Wicked does not consider that alcohol should be included in this rule. Alcohol is a legal product subject to its own advertising and marketing constraints. Within these constraints, Totally Wicked believe that the use or portrayal of an electronic cigarette is entirely legitimate and reflects the real world social environment in which electronic cigarettes will be used and creates no false relationship.

Question 14: Do you consider that gambling should be included in this rule? Please explain why and provide any evidence you consider relevant.

Totally Wicked does not consider that gambling should not be included in this rule. Gambling is a legal activity subject to its own advertising and marketing constraints. Within these constraints, Totally Wicked believe that the use or portrayal of an electronic cigarette is entirely legitimate and reflects the real world social environment in which electronic cigarettes will be used and creates no false relationship.

Rule 8: *Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.*

CAP and BCAP are proposing this rule as a precautionary measure; but, other than driving, they have not yet identified any activities and locations where e-cigarette use might be so demonstrably problematic in all instances that it can be included in the rule. The Committees welcome respondents' views and evidence on any other such activities or locations which they consider might usefully be specified within this rule.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agree with the inclusion and wording of this rule. Like CAP and BCAP, other than driving, Totally Wicked can think of no other activities or locations where electronic cigarette use might be so demonstrably problematic in all instances that it can be included in the rule.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

Like CAP and BCAP, other than driving, Totally Wicked can think of no other situations in which they consider that electronic cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited.

Rule 9: *Marketing communications / Advertisements must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.*

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the inclusion and wording of this rule.

Rule 10: *People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.*

This minimum age limit on people featured in a significant role has been chosen because by the age of 25 people clearly look and sound more adult than adolescent. It mirrors the minimum age limit in other Code sections. CAP and BCAP consider that this approach provides that children and young people do not identify, by age, with those playing a significant role or featured using e-cigarettes. It also gives more certainty to the advertising industry when creating advertisements and to the ASA Council when deciding if an advertisement has breached the Codes.

Question 18: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the inclusion and wording of this rule. Similar to the regulations governing the advertising and marketing of alcohol, Totally Wicked believes such a rule would prevent ambiguity.

Rule 11: *Marketing communications / advertisements must state that products are not suitable for under-18s.*

At the time of writing the UK Government is progressing legislation to prevent sales of e-cigarettes to under-18s. Currently it is common for advertisers to restrict the sale of their products to over-18s and / or to include a statement to that effect in their advertising. CAP and BCAP's preliminary work suggests that there would be widespread support amongst industry for the inclusion of this rule.

However, the BCAP and CAP Codes do not typically require warning messages to be included in ads. A rare example is the requirement in CAP Code rule 11.7 and BCAP Code rule 9.9 that ads for specific energy-related products must include the product's energy efficiency class. Usually when compulsory messages appear in ads, it is because other regulators, such as the Financial Conduct Authority (FCA), require them.

While CAP and BCAP welcome efforts that may further the objective of discouraging children and young persons from purchasing e-cigarettes the Committees have previously had cause to question the overall value of warning messages.

During their joint gambling consultation in 2006 CAP and BCAP referred to international research on the effects of warnings in advertisements, practices in other jurisdictions and advice from problem gambling organisations, faith groups and gambling industry trade associations. Because there was little empirical literature on gambling advertising, the Committees referred to research on the effectiveness of different forms of warnings and messages in other public policy sectors. Clearly, the characteristics of the sector and the message or warning must be borne in mind.

Research tends to evaluate the effectiveness of warnings or messages in terms of a measurable reduction in the prevalence or quantity of the behaviour of concern or in terms of improved awareness and understanding of risk. CAP and BCAP did not identify any clear evidence that messages or warnings were effective in preventing or reducing gambling among under-18s and vulnerable adults, or that they were effective in reminding the public of the risks.

Some research suggests they have a small positive effect. For example, research on warnings in TV alcohol advertisements in the U.S.A. showed a cumulatively decreasing confidence in perceived product benefits but no impact on viewers' perception of the risks and benefits associated with alcohol. Research on health warnings in the tobacco sector in Canada showed a small impact on the quantity smoked but at a low level of confidence and no effect on smoking prevalence.

Other research shows that messages have no effect or that such warnings were viewed with cynicism. Research in the alcohol sector showed that, because they were already well-known to consumers above and below the legal drinking age, hazards described in warnings taught consumers that reading warnings was a waste of time instead of raising awareness

Lastly, some research shows that messages or warnings can have the opposite effect to the one intended, through a "boomerang effect". That effect was found in relation to drugs, tobacco, alcohol, film content and high-fat foods. Products such as gambling can appeal to under 18s and vulnerable adults because they involve impulsiveness, rebellion, risk-taking or a challenge. One theory is that warning messages can cause a "boomerang effect" by reinforcing those perceived qualities and heightening the audience's desire to use the product, leading to "reactive behaviour". Young people and particularly young men were most likely to react. In the context of alcohol, heavy drinkers also reacted strongly.

Furthermore, those were the groups that were most aware of the warnings. CAP and BCAP invite respondents to consider whether e-cigarettes present the same issues.

Proponents often argue that, for consumers, messages or warnings "probably won't help but they can't hurt". But in light of the available evidence, CAP and BCAP consider it is good policy-making practice to take into account the risk that messages or warnings can have no effect on consumers and create warning fatigue or can have a

result that is opposite to the one intended. Furthermore, under better regulation principles, CAP and BCAP must consider the impact of proposed regulation on industry, in particular to ensure fair competition. The inclusion of messages or warnings in advertisements can produce an extra financial cost for advertisers, especially for radio where mandatory messages necessitate extra airtime (media space)

CAP and BCAP share the public policy concerns behind the consideration of warnings or messages in advertising. The Committees have designed the general principles, content, and scheduling and placement of advertisements provisions in the proposed e-cigarette advertising rules to ensure that e-cigarette advertising is socially responsible. They therefore question the need for a rule that requires an 18+ message. The committees welcome respondents' views in this area particularly.

Question 19: Do you consider that a rule is necessary which requires that ads state that products are not suitable for under-18s? Please provide any evidence which may you consider may assist CAP and BCAP's consideration of this rule.

Totally Wicked considers that all marketing of electronic cigarettes should make it clear that electronic cigarettes are not to be sold to those under the age of 18. As a company Totally Wicked has implemented such a policy since 2008 when the company came into existence. Totally Wicked has also campaigned for such an age restriction to be enshrined in law. Recently Totally Wicked publicly welcomed the decisions of the Department of Health and the Welsh Assembly to introduce such age restrictions on the sale of electronic cigarettes throughout England and Wales. Totally Wicked continues to campaign for the introduction of similar age restrictions in Scotland and Northern Ireland.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

For other sectors that present societal concerns around the protection of children and young persons, such as alcohol and gambling, CAP applies a rule which requires non-broadcast marketing communications not to appear in media which has an audience of under-18s of more than 25%. CAP proposes to replicate this principle in its e-cigarette rules.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Totally Wicked agrees with the ruling and wording of this rule.

Rule 13: [Amendment to existing BCAP rule]

In addition to the above rules BCAP proposes adding a scheduling restriction to its Code to reduce the chance of e-cigarette advertisements being seen by children. In practice it proposes to do this by adding e-cigarettes to the list of products and services set out in rule 32.2. The full Scheduling section of the Code can be found [here](#) and the BCAP Advertising Guidance Note on Audience Indexing can be found [here](#). The specific rule and proposed amendment are set out below:

Proposed amendment

32.2 These may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18:

32.2.1 alcoholic drinks containing 1.2% alcohol or more by volume (see rule 32.4.7)

32.2.2 gambling except lotteries, football pools, equal-chance gaming (under a prize gaming permit or at a licensed family entertainment centre), prize gaming (at a non-licensed family entertainment centre or at a travelling fair) or Category D gaming machines (see rule 32.4)

32.2.3 betting tipsters

32.2.4 slimming products, treatments or establishments (an exception is made for advertisements for calorie-reduced or energy-reduced foods and drinks, if they are not presented as part of a slimming regime and provided the advertisements do not use the theme of slimming or weight control)

32.2.5 religious matter subject to the rules on Religious Advertising in Section 15: Faith, Religion and Equivalent Systems of Belief

32.2.6 live premium-rate services, unless those services have received prior permission from PhonePay Plus to target people under 18.

32.2.7 electronic cigarettes

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

Totally Wicked agrees with electronic cigarettes being included in this list of scheduling restrictions.

Rule 14: Radio Central Copy Clearance – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

10.1 The Radio Advertising Clearance Centre (RACC)

The RACC was set up by the commercial radio industry to ensure, before they are broadcast, that radio advertisements comply with the BCAP Code. The RACC is administered by the RadioCentre, whose members consist of the majority of UK Commercial Radio stations who fund the organisation. The RadioCentre aims to maintain and build a strong and successful commercial radio industry.

10.2 Mandatory pre-clearance

The BCAP Code requires certain categories of radio advertisements to be centrally cleared by the RACC. Those categories of radio advertisements have in common a clear potential to mislead, offend or harm, for example alcohol. BCAP proposes that all radio advertisements for e-cigarettes must be centrally cleared by the RACC. This proposal ensures that such advertisements receive the necessarily high level of pre-broadcast scrutiny to ensure they are appropriately scheduled and do not cause harm.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared? If you disagree, please explain why.

Totally Wicked agrees that all advertisements for electronic cigarettes must be centrally cleared by the RACC.

Additional Questions

11.1 E-cigarettes which do not contain nicotine

Although some e-cigarettes do not contain nicotine, CAP and BCAP consider that their advertising may still present the same or similar issues as nicotine-containing e-cigarettes.

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

Totally Wicked considers that the new rules for the advertising of electronic cigarettes should also apply to those electronic cigarettes that do not contain nicotine. Totally Wicked sell electronic cigarettes and e-liquid products that contain nicotine and products that do not contain nicotine. Totally Wicked applies the same rules to both product sets e.g. not selling them to those under the age of 18. The same approach should be taken to the advertising and marketing of electronic cigarettes.

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine? Please provide any relevant evidence in support of your response.

Totally Wicked accept that nicotine is an addictive substance, it should therefore be possible to positively discriminate in favour of electronic cigarettes that do not contain nicotine as opposed to those that do. Indeed, Totally Wicked believes it would be irresponsible for advertising standards/regulations to prevent this explicit discrimination in favour of non-nicotine containing electronic cigarettes or e-liquid from being made.

11.2 E-cigarettes which are licensed as medicines

Advertisers may obtain a licence for their product from the MHRA. This would permit them to make smoking cessation claims and marketing for such products would be subject to the rules in section 12 (Medicines, medical devices, health-related products and beauty products) of the Code.

Question 25: To what extent, if any, do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

Totally Wicked believes that medicinal products are an entirely different product to the electronic cigarettes that are sold as a viable alternative to conventional tobacco products. It is made clear in the consultation document that medicinal products are covered by a separate code. Totally Wicked do not see any need to blur this distinction. In the context of electronic cigarettes sold as viable alternatives to conventional tobacco products, it is appropriate for and proportionate to apply the sector-specific rules proposed in this consultation (subject to Totally Wicked's proposed amendments), whilst leaving medicinal products under their own code.

11.3 Definition of electronic cigarette

Notwithstanding the need to decide to what extent these rules will apply to e-cigarettes that do not contain nicotine, for the purposes of these rules CAP and BCAP propose to use the definition of e-cigarette provided in the Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products.

That definition is as follows:

"Electronic cigarette' means a product, or any component thereof, including cartridges and the device without cartridge, that can be used for consumption of [nicotine-containing] vapour via a mouth piece. Electronic cigarettes can be disposable, refillable by means of a refill container or rechargeable with single use cartridges."

Question 26: Do you agree with the proposed definition of e-cigarette? If not please explain why.

Totally Wicked does not agree with the proposed definition of electronic cigarettes as it does not take into account the complexity and range of products currently available. It also does not make any reference to non-nicotine containing products, nor does it make reference to e-liquids which are sold separately. A better definition would be:

"Electronic cigarette' means a product, or any component thereof which may be sold separately, including cartridges, devices without cartridge and liquid refills, that is intended for the inhalation of vapour which may or may not contain nicotine, via a mouth piece. Electronic cigarettes can be disposable and/or rechargeable, pre-filled with liquid, or refillable by means of a liquid refill."

11.4 Further comments

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes? Please provide as much detail as possible and any evidence you consider supports the relevant restrictions.

Totally Wicked believe that the proposed regulatory regime set out in this consultation for the marketing and advertising of electronic cigarettes is robust and proportionate (subject to Totally Wicked's proposed amendments). There are however many individuals and organisations working in the medical and health charity sectors and in the media that regularly communicate with the general public on the topic of electronic cigarettes. These should be understood as marketing communications. However, these individuals and organisations are not subject to the same robust regulation that the manufacturers of electronic cigarettes are. Many of the statements they make are misleading and would certainly not meet the high standards required by electronic cigarette manufacturers. There is also little or no recourse for the electronic cigarette manufacturers harmed by such misleading statements.

Totally Wicked would therefore like to see CAP and BCAP develop a code of practice for charities and other organisations, including the media, that make public statements on the topic of electronic cigarettes so that a level playing field may exist.

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

At present 2.1 million people in the UK use electronic cigarettes as a viable alternative to the smoking of tobacco cigarettes.

Electronic cigarettes represent a market-based, user-driven public health insurgency. No public money has been spent, yet smokers are switching, and cutting down through using electronic cigarettes. This should be a cause for celebration not concern.

Totally Wicked believes that responsible advertising has a significant role to play in informing people about a viable alternative to conventional tobacco products. It is vitally important that as CAP and BCAP develop their rules for the advertising of electronic cigarettes that they continue to be guided by scientific evidence and produce rules that are robust but also proportionate.

Consultation on the marketing of e-cigarettes CAP / BCAP proposals for new rules

Response of The Trading Standards Institute

April 2014

About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our broad church of Members are represented at the highest level of government, both nationally and internationally. TSI campaigns on behalf of the profession to obtain a better deal for both consumers and businesses.

Local authority trading standards services have for some years promoted public health through, for example, tobacco control activities (thus reducing smoking prevalence); food standards and labelling (tackling nutrition); and reducing the illegal supply of age restricted products such as alcohol to young people. This role gained in importance recently when, as part of its health reforms, the government repositioned public health back into English local government.

We are also taking on greater responsibilities as the result of the government's announcement in October 2010 that trading standards is one of the two central pillars of the new consumer landscape (the other being Citizens Advice).

The TSI Consumer Codes Approval Scheme, established at the request of the government to take over from the OFT scheme, went live in April 2013 and was formally launched in June 2013.

TSI is a member of the Department for Business Innovation and Skills Consumer Protection Partnership which was set up by the government to bring about better coordination,

intelligence sharing and identification of future consumer issues within the consumer protection arena.

We have taken over responsibility for business advice and education.

TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has canvassed the views of its Members and Advisers. The response has been composed by TSI Joint Lead Officer for Health, Jane MacGregor. If you require clarification on any of the points raised in the response or wish to discuss it further, please do not hesitate to contact Jane.

TSI does not regard this response to be confidential and is happy for it to be published.

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Consultation on the marketing of e-cigarettes – CAP / BCAP proposals for new rules

Trading Standards Institute response – April 2014

Introduction

The Trading Standards Institute welcomes the opportunity to comment on the proposals for the advertising of e-cigarettes. This is a developing market in terms of product design and availability, and one with which trading standards has been associated for several years in terms of the provision of advice and guidance regarding product safety compliance. We are particularly pleased to note the specific emphasis on the protection of children and young persons. Trading standards professionals have responsibility for a range of legislation aimed at the protection of young people, including age restricted sales legislation for tobacco, alcohol, fireworks, etc and the control of advertising and display of tobacco products.

TSI wishes to submit the following comments in response to the consultation.

Rule 1: Marketing communications / advertisements for e-cigarettes must be socially responsible.

Question 1: Do you agree with the inclusion and wording of this rule? If not, please explain why and provide any suggestions you may have for improvement?

Question 2: What specific advertising approaches if any, that are not covered by the following rules do you consider might be identified as problematic within the wording of the rule?

TSI agrees with the principle that electronic cigarette advertising and promotion should be socially responsible. However, this is a wide and potentially subjective judgement and so it is our view that it would be beneficial to provide examples of what constitutes “socially responsible “.

For example:–

(1) Reference to the fact that electronic cigarettes are not suitable for use by people **who do not** currently consume tobacco products; they are an alternative to existing tobacco use, **NOT** a starting point.

(2) Any reference to positive qualities derived from the use of the product **should be prohibited**. For example, use of the phrases “real smoking satisfying”, “like smoking, only better”.

(3) Advertising must contain reference to the need to follow instructions given with the product in terms of the use and storage of electronic cigarettes, refill containers, chargers and other nicotine-containing products. Reference should also be made to the need to keep these products out of reach of children and pets.

Revise rule 1 to read:–

Rule 1: Marketing communications / advertisements for electronic cigarettes and other nicotine containing products must be socially responsible.

Rule 2: Marketing communications / advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP’s role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

TSI believes that this requires to be strengthened to ensure that the requirements of the Tobacco Brandsharing Regulations are complied with. There is, we believe, the potential for the advertising of e-cigarette products to promote existing tobacco products by virtue of the use of certain design, colour, imagery, logos or styles that

create an association with, or confusion with, an existing tobacco product. Furthermore, anything that promotes smoking-like behaviour must be prohibited.

Revise Rule 2 to read:–

Rule 2: Marketing communications / advertisements must not contain anything which promotes any design, colour, imagery, logo, style that might be associated in the audience's mind with a tobacco product. They must also not contain anything which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. Cigarette-like products must not be shown in ways that could reasonably be expected to promote smoking or tobacco products."

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

TSI agrees with these proposals. However, the presentation of e-cigarettes as an alternative to tobacco must be made in such a way that it is clear that **it is an alternative** and thus it is clear that the advertisements are not directed at current non tobacco users. This supports the points made in relation to Rule 1 "socially responsible".

Revise Rule 3 to read:–

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. Electronic cigarettes and other nicotine containing products should be presented as an alternative to tobacco and not presented in any way that encourages current non tobacco users.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

TSI acknowledges that the definition of e-cigarette is problematic. The use of the term is widespread and encompasses a range of products. We believe that the use of the term “cigarette” encourages the belief that the product is smoked, which it is not. Any descriptor that suggests a link to a traditional cigarette use is therefore to be avoided. There is a growing use of the term “vapouriser” for such products where the product is “vaped”. To describe the products in this way may be preferable and thus avoid any confusion with cigarettes.

Revise rule 4 to read:–

Rule 4: “Marketing communications / advertisements for electronic cigarettes should describe them as vapourisers and not as e-cigarette, electronic cigarette, or any other descriptor that might reasonably be expected to create confusion with cigarettes.”

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

TSI agrees with this wording and its inclusion.

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e- cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

TSI agrees with the inclusion of this rule. It supports the point made under Rule 1 and Rule 3. We believe, however, that it could be further strengthened.

Revise Rule 6 to read:–

Rule 6: Marketing communications / advertisements must not target either explicitly or implicitly non-smokers or non-nicotine users to use electronic cigarettes or other nicotine containing products.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

TSI agrees with the inclusion of this rule but would, however, revise it.

Revise Rule 7 to read:–

Rule 7: Marketing communications / advertisements must not link electronic cigarettes or other nicotine containing products with gambling, alcohol or illicit drugs.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

TSI agrees with the inclusion of this rule, but we would also point out that the use of such products in enclosed places is prohibited by many organisations.

Revise Rule 8 to read:–

Rule 8: Marketing communications / advertisements must not link electronic cigarettes or other nicotine containing products with activities in which using them would be unsafe or unwise such as driving or in locations where their use is prohibited.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

TSI supports the inclusion and wording of this rule.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

TSI supports the proposed age restriction of 18 years on sales of electronic cigarettes and any advertising rules must be consistent with this. This aligns with the use of the age of 25 in alcohol advertising. We believe that it is appropriate to treat the advertising of these products in the same manner for the sake of consistency.

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s.

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

TSI supports this rule.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

TSI agrees with the inclusion and wording of this rule.

We suggest that it could be made more explicit by adding 'or location' after 'context'.

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being “advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18”]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

TSI agrees with the inclusion of electronic cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP’s policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

TSI agrees with this rule.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

TSI believes that to try and differentiate between products that do and those that do not contain nicotine has great potential to cause confusion; so we recommend that the same set of rules are applied to both types of product.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

We would recommend to CAP and to the MHRA that the same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except

that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence.

For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

TSI acknowledges that the definition is a difficult issue given that the market is evolving so rapidly. However, at this point in time the proposed definition of electronic cigarettes is taken directly from the wording of the EU Tobacco Products Directive with the addition of non-nicotine containing products and thus, in our view, presents the best option.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

TSI recommends that these rules need to be regularly revised in the light of emerging evidence and any changes to legislation controlling the supply and use of these products.

Trading Standards Institute – April 2014



CAP and BCAP Consultation on the Marketing of E-Cigarettes Response from Trading Standards North West

Trading Standards North West (TSNW) is a partnership of Trading Standards Services in 23 Local Authorities, working to create a fair, safe and healthy environment for over 7 million consumers across the North West of England.

We share the Committees concern that current advertising for e-cigarettes does not make it clear they should only be used as an alternative to tobacco or existing nicotine replacement products for existing or ex smokers. We also share the concern that advertising of e-cigarettes is undermining the broad tobacco prohibitions in the BCAP code and attempting to “re-normalise” smoking after many years of effective denormalisation

There is emerging quantitative and qualitative evidence that young people including those who have never smoked, are taking up the product. In the North West, a 2013 survey of 18,000 young people aged 14 to 17 asked if they had ever accessed e-cigarettes. A high number had, including 5% of the large majority who had never smoked. In terms of numbers responding to the survey, more young “never-smokers” accessed e-cigarettes than ex-smokers, children who had tried smoking but didn’t like it, children who classed themselves as “social smokers”, children who smoked regularly but lightly (5 a day or less)

As a general principle therefore, TSNW would urge that the approach to advertising of e-cigarettes should consider the potential for the product to act as a gateway to smoking for young people in particular

Rule 1: Marketing communications/advertisements for e-cigarettes must be socially responsible

Question 1: Do you agree with the inclusion/wording of this rule?

Question 2: What specific advertising approaches that are not covered by the following rules do you consider might be identified as problematic within the wording of this rule?

TSNW agree with the principle that e-cigarette advertising and promotion should be socially responsible. There should be no suggestion that consumption of e-cigarettes has any positive benefits except very specifically to those smokers who use e-cigarettes to support their attempts to use less or no regular cigarettes

TSNW would also recommend that in order to be socially responsible, advertisements should recognise that nicotine is a poison and therefore should be

carefully used and stored so as to protect, in particular those who would be most vulnerable to its dangers

Rule 2: Marketing communications/advertisements must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

Question 3: Do you agree with inclusion and wording of this rule? If not please explain why and provide any suggestions you may have for improvement.

Question 4: Do you have any comments or evidence which can help to inform CAP and BCAP's role of preventing the indirect promotion of tobacco products while still permitting electronic cigarettes to be advertised?

We agree with the proposed rule as a starting point but believe it needs to be strengthened. We would recommend the inclusion of a general prohibition on any design, colour, imagery, logos or styles that could create an association with or confusion with any existing tobacco product, or any promotion of smoking-like behaviour. This is in line with the CAP code for tobacco products as set out in 10.3 and 10.4. The need for such a prohibition is clear, since some electronic cigarette brands are or will be produced and promoted by tobacco manufacturers, and it is important that advertising for such brands cannot be used as a covert means of promoting the brand identity of tobacco products. See below for suggested additional wording to rule 2 in bold and italics.

"Marketing communications / advertisements must contain nothing ***which promotes any design, colour, imagery, logo style that might be associated in the audiences' mind with a tobacco product. They must also contain nothing*** which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products from being shown, ***but they must not be shown in ways that promote smoking or tobacco products.***"

Rule 3: Marketing communications / advertisements must not contain health or medicinal claims [unless the product is licensed for those purposes by the MHRA]. E-cigarettes may however be presented as an alternative to tobacco.

Question 5: Do you agree with the proposal to prohibit health claims for e-cigarettes? If not, please explain why and provide any suggestions you may have for improvement.

Question 6: Do you agree with the proposed definition of health claims for the purposes of this rule? If not, please explain why and provide any suggestions you may have for improvement.

Question 7: Do you agree with the proposal to prohibit medicinal claims? If not, please explain why and provide any suggestions you may have for improvement.

We believe that e-cigarettes should only be presented as an alternative to tobacco for current users of tobacco. We believe that no health claims are acceptable unless the product is licensed by the MHRA and specific claims associated with the license may be made.

Rule 4: Marketing communications / advertisements must make clear that the product is an e-cigarette.

Question 8: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion of this rule

Rule 5: Marketing communications / advertisements must state clearly if the product contains nicotine [or if it does not]. They may include factual information about other product ingredients.

Question 9: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule, including the words in square brackets. If it does contain nicotine, we believe that the communication/advertisement should be clear of the highly addictive and poisonous nature of nicotine

Rule 6: Marketing communications / advertisements must not encourage non-smokers or non-nicotine users to use e-cigarettes.

Question 10: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 11: Do you consider that this rule is proportionate? If you consider that advertising of e-cigarettes expressly to non-users of nicotine is acceptable or if you would prefer a rule which required all marketing to be explicitly addressed only to existing nicotine users please provide your comments and any evidence.

We consider that e-cigarettes should only be marketed to current smokers of regular cigarettes as an alternative to smoked cigarettes. There should be no explicit or implicit suggestion in any marketing communications/advertisements that products could be used in any other way.

Rule 7: Marketing communications / advertisements must not link e-cigarettes with gambling, alcohol or illicit drugs.

Question 12: Do you agree with the proposal to prohibit linking e-cigarettes with illicit drugs? If not please explain why and provide any suggestions you may have for improvement.

Question 13: Do you consider that alcohol should be included in this rule? Please explain why, and provide any evidence you consider relevant.

Question 14: Do you consider that gambling should be included in this rule? Please explain why, and provide any evidence you consider relevant.

We agree with the proposal to ensure that e-cigarettes are not linked to gambling, alcohol or illicit drugs. Children often see the latter activities as glamorous, any promotion which suggests linkages to such attractive pursuits to children risk the e-cigarettes benefiting from the halo effect.

Rule 8: Marketing communications / advertisements must not link e-cigarettes with activities or locations in which using them would be unsafe or unwise; such as driving.

Question 15: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

Question 16: Are there any other situations, other than driving, in which you consider that e-cigarette use is so demonstrably harmful that their depiction in advertising should be prohibited?

We agree with the inclusion and wording of this rule.

Rule 9: Marketing communications / advertisements must not be likely to appeal particularly to young people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes

or playing a significant role should not be shown behaving in an adolescent or juvenile manner.

Question 17: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We strongly agree with this rule.

Rule 10: People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.

Question 18: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with this rule

Rule 11: Marketing communications / advertisements must state that products are not suitable for under-18s

Question 19: Do you consider that a rule is necessary which requires that ads that products are not suitable for under-18s? Please provide any evidence which you consider may assist CAP and BCAP's consideration of this rule.

Placing an "18+ message" on products may not always produce the desired effect on children and young people. We would prefer a revised set of rules, on the principles set out above, which inter alia require that e-cigarettes are never advertised or promoted in a way that could appeal to young people and non-tobacco users.

Rule 12: Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.

Question 20: Do you agree with inclusion and wording of this rule? If not, please explain why and provide any suggestions you have for improvement.

We agree with the inclusion and wording of this rule and feel it is particularly important to consider role of social media in advertising of these products given its particular appeal to children and young people

Rule 13: [Amendment to existing BCAP rules to include e-cigarettes in the list of products and services in existing rule 32.2, to prevent e-cigarettes from being "advertised in or adjacent to programmes directed at or likely to appeal particularly to audiences below the age of 18"]

Question 21: Do you agree with e-cigarettes being included in this list of scheduling restrictions?

We agree with the inclusion of e-cigarettes in this list.

Rule 14: Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.

Question 22: Given BCAP's policy consideration, do you agree that all advertisements for e-cigarettes must be centrally cleared?

We agree that all e-cigarette advertisements should be centrally cleared prior to publication/transmission.

Additional Questions

Question 23: To what extent, if any, do you consider that new rules should apply to e-cigarettes that do not contain nicotine?

Question 24: Do you consider that any additional rules should be considered specifically in relation to the advertising of e-cigarettes that do not contain nicotine?

Electronic cigarettes not containing nicotine clearly have the potential to cause confusion if subject to a different set of advertising rules from nicotine-containing products. However, they may well perform a useful function for former tobacco users who have progressed to seeking to give up nicotine use altogether. Therefore, they should be subject to the same rules as other electronic cigarettes, subject to our comments on Rule 5 above.

Question 25: To what extent if any do you consider that the above rules for e-cigarettes should apply to those which are licensed as medicines?

The same rules should apply to electronic cigarettes that are licensed as medicines as to those that are not, except that licensed products should be able to include specific health claims in advertisements where they are well supported by scientific evidence. For example, licensed products should be able to advertise as products licensed as aids to cutting down and stopping smoking. This approach has the significant advantage of ensuring the simplest transition to the rules that will be required when the EU Tobacco Products Directive comes into effect.

Question 26: Do you agree with the proposed definition of e-cigarette? If not, please explain why.

We agree with the proposed definition of e- cigarettes, as it is taken directly from the wording of the EU Tobacco Products Directive, with the addition of non-nicotine containing products.

Question 27: Are there any other rules which you believe CAP and BCAP should consider implementing in relation to the advertising of e-cigarettes?

No

Question 28: Are there any other comments you wish to make in relation to the advertising of e-cigarettes and BCAP's consideration of this issue?

As there is no current definitive evidence of the safety or otherwise of e-cigarettes, TSNW would recommend that CAP and BCAP should be prepared to amend or withdraw guidance when information does become available.