

BCAP note of clarification on e-cigarettes health claims consultation

In September 2017, CAP and BCAP [consulted](#) on whether to remove the ban on health claims in e-cigarettes advertising from the Advertising Codes. In so doing, BCAP noted that unlicensed, nicotine-containing e-cigarettes cannot be advertised in broadcast media. This means that, other than medicinally licensed products, only separately-branded, specifically non-nicotine products (in other words those which are, for example, designed not to accept nicotine refills, as outlined on page 5 of CAP's [2016 consultation evaluation](#)) can be advertised on TV and radio.

BCAP was not aware of the existence of non-nicotine products designed so as not to accept nicotine refills at the time of consultation, and that has not changed. Given that the success of the e-cigarette market to date has been built largely on products that contain nicotine and / or can be refilled with nicotine e-liquids (in a variety of strengths) it may be the case that such a product will simply not be brought to market.

BCAP noted therefore that the proposal to remove the ban on health claims for e-cigarette products might well be very limited in its application, but stated its wish to make the change nevertheless, in the interests of consistency with CAP's regime and in order to reflect the best available evidence.

BCAP is concerned, however, that the consultation question might have given rise to confusion among some readers, by proposing the removal of the prohibition on health claims from unlicensed nicotine-containing e-cigarettes only. The question was formulated with real products in mind: the products currently on the market that might bear a health claim were the prohibition to be removed. Those products may only lawfully be promoted in certain non-broadcast media (see section 4, Policy and legal context, in the consultation linked to above), which were also addressed by the consultation, but unlicensed nicotine-containing e-cigarettes may not be advertised in broadcast media. In broadcast media, only a non-nicotine containing e-cigarette or a medicinally licensed nicotine-containing e-cigarettes could bear a health claim, were BCAP's proposal to be carried.

The following question more properly reflects the situation in broadcast media:

Do you agree with BCAP's proposal to remove the prohibition on health claims in advertisements for unlicensed e-cigarettes in cases where advertisements for such e-cigarettes are not otherwise prohibited? If not please explain why. Please also provide any relevant evidence not already taken into account by CAP and BCAP in making this proposal.

BCAP reiterates that the only unlicensed e-cigarette products that may be advertised in broadcast media are separately-branded, specifically non-nicotine products, in other words those which are, for example, designed not to accept nicotine refills. Health claims in TV and radio advertisements for unlicensed non-nicotine containing e-cigarettes would not be prohibited, provided the advertisement complied with all

other applicable rules, but all TV and radio advertisements for nicotine-containing e-cigarettes would continue to be prohibited.

Invitation to comment on the proposal

BCAP intends to allow a short period in which respondents may indicate if this clarification changes their view of the proposal. If you would like to inform BCAP of a change of view regarding the proposal to remove the prohibition on health claims following this clarification, please write to e-cigarettes@cap.org.uk by **5pm 18 June 2018**. Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

If you are unable to respond by email you may submit your response by fax to +44(0)20 7404 3404 or post to:

Regulatory Policy Team
Committee of Advertising Practice
Mid City Place,
71 High Holborn
London WC1V 6QT

Confidentiality

CAP and BCAP consider that everyone who is interested in the consultation should see the consultation responses. In their evaluation document, CAP and BCAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed.

If you reply by email or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

The WHO Framework Convention on Tobacco Control

Consistent with the guidance given in relation to implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control, consultation respondents who are tobacco companies, their partners or subsidiaries should indicate that clearly in their response. In their evaluation documents CAP and BCAP will indicate where a response has originated from such an organisation.

