

*****These rules come into effect on 10 November 2014*****

Electronic Cigarettes (BCAP Code Section 33)

Background

For the purposes of this section “electronic cigarette” means a product that is intended for inhalation of vapour via a mouth piece, or any component of that product, including but not limited to cartridges, tanks or e-liquids. The rules in this section apply to marketing communications for, and which refer to, electronic cigarettes and related products, including but not limited to e-shisha and e-hookah products, whether or not they contain nicotine.

The e-cigarette market continues to innovate rapidly and new products may emerge which may not be caught precisely by the above definition. The ASA may apply these rules in circumstances where it considers that an advertised product is sufficiently similar to warrant the protection provided by this section.

The majority of e-cigarettes are currently sold as consumer goods, however marketers may seek a medicines licence for their product from the Medicines and Healthcare Products Regulatory Agency (MHRA). The rules in this section also apply to marketing communications for electronic cigarettes which are authorised by the MHRA. For products authorised as medicines, the rules in section 11 (Medicines, medical devices, treatments and health) also apply.

Depending on the formulation of their product and the means by which it is supplied, marketers may have obligations relating to their advertising under chemical classification, labelling and packaging legislation. Marketers are advised to take legal advice to ensure compliance with the relevant law.

The Tobacco Products Directive

Directive 2014/40/EU (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 and repealing Directive 2001/37/EC) is now in force but has not yet been given effect in UK law. The UK Government is required to transpose its provisions by 20 May 2016, with a further transitional period for non-compliant e-cigarette products until 20 November 2016. Those provisions include restrictions on advertising. The rules in this section do not pre-empt the requirements of the Directive but serve as an interim measure. When more is known about the application of the Directive in the UK, BCAP will clarify what role its Code will have after the new law has been given effect.

Rules

33.1 Advertisements for e-cigarettes must be socially responsible.

33.2 Advertisements must contain nothing which promotes any design, imagery or logo style that might reasonably be associated in the audience’s mind with a tobacco brand.

33.3 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.

33.4 Advertisements must make clear that the product is an e-cigarette and not a tobacco product.

33.5 Advertisements must not contain health or medicinal claims unless the product is authorised for those purposes by the MHRA. E-cigarettes may be presented as an alternative to tobacco but marketers must do nothing to undermine the message that quitting tobacco use is the best option for health.

33.6 Advertisements must not use health professionals to endorse electronic cigarettes.

33.7 Advertisements must state clearly if the product contains nicotine. They may include factual information about other product ingredients.

33.8 Advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.

33.9 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.

33.10 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.

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

Additional amendment to existing rule 32.2(.7)]:

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:

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32.2.7 electronic cigarettes