

**Complaint to the Advertising Standards Authority
Regarding Promotional Content of British American Tobacco's
Vype Electronic Cigarettes on its Social Media Accounts**

Complainant:

CAMPAIGN FOR TOBACCO-FREE KIDS¹

Respondent:

BRITISH AMERICAN TOBACCO

Submitted online: 13 March 2019

**Submitted online by: Monique Muggli, Campaign for Tobacco-Free Kids,
mmuggli@tobaccofreekids.org**

Please see the Image Library attached as an Appendix to this Complaint, which provides a brief description of the promotional elements of twenty-four example posts from the @govtype handle on Instagram.

Throughout this Complaint, we reference to example posts (e.g., **Image #**) contained in the Appendix.

I. Summary

Social media posts during the last 3 months on BAT's Vype accounts on Instagram, Facebook and Twitter as well as its website breach the Committee of Advertising Practice (CAP) Code (R. 22) and Advertising Guidance on Electronic cigarette advertising prohibitions (the Guidance) prohibiting online advertising for the following reasons:

1. BAT is undertaking a concerted, consistent and systemic approach to its online promotion of its Vype nicotine e-cigarette that is outside what is permitted under the Guidance and is wholly inconsistent with the prohibition of advertising electronic cigarettes in information society services under regulation 43 of the Tobacco and Related Products Regulations 2016.
2. BAT's use of external (non-Vype specific) hashtags and other tags on social media posts are discoverable by any user of a social media platform – including minors and non-nicotine or tobacco users – and are not restricted to those social media users “actively seeking” information about Vype. Therefore, in reference to Rule 22.12 and the Guidance, BAT's social media account should not be viewed by the ASA as analogous to a website, where factual claims are lawful.
3. BAT's use of popular social media hashtags such as “#throwbackthursday” or “#style” is irresponsible marketing under Rule 22.1 in that BAT certainly would understand the purpose and effect of using these terms is to maximize engagement with social media content well beyond those consumers who are interested in finding information about Vype – including children, teenagers, and non-nicotine or tobacco users.
4. BAT has consistently posted on its social media accounts and on its website, material that is: a) likely to appeal particularly to people under 18 years of age and reflects or is

associated with youth culture (Rule 22.9); and b) is promotional and not factual in nature (Rule 22.12) and that material is currently accessible and will remain accessible to anyone that views or follows any of the non-Vype tags used on any of the social media posts.

To ensure compatibility with the law, CAP rules and the Guidance, BAT's social media accounts should not be permitted on social media platforms because, unlike a website, the content is easily discoverable by any internet user and not just those consumers actively seeking Vype information. In the alternative, and additionally, all historical posts that contain any non-Vype specific hashtags, other tags, or any promotional content should be removed from all of BAT's social media accounts, and BAT should be required to ensure that no future posts contain any such tags.

II. Background

Increasingly, tobacco companies like British American Tobacco (BAT) are turning to social media to advertise their products.² According to BAT, its electronic nicotine cigarette Vype is the market leader in the UK in the vapor category.³ BAT currently maintains social media profiles for Vype on Instagram (@govype), Twitter (@govype) and Facebook (Vype UK) and works with the influencer marketing firm Openinfluence.⁴ Given the public health risks related to the early use of electronic cigarettes,⁵ we are concerned that BAT and/or its related entities are marketing the Vype e-cigarette on social media in ways that breach the relevant provisions of Committee of Advertising Practice (CAP) Code (R. 22) and ultimately also breach the legislative prohibitions provided for in the Tobacco and Related Products Regulations 2016.

In August 2018, the Campaign for Tobacco-Free Kids and eight other leading global public health and U.S. medical institutions submitted a complaint to the U.S. Federal Trade

Commission compiling two-years of research showing how BAT and other tobacco companies engage in deceptive social media marketing of cigarettes reaching consumers in both the United States and around the world.⁶ Our initial, limited research into BAT’s Vype social media accounts show similar techniques are being used by BAT to reach the largest audience possible via unrestricted social media both in the UK and outside the UK for its Vype electronic cigarette.⁷

Social media content submitted in this complaint is limited to approximately the last three months to follow the Non Broadcast Complaint Handling Procedure (para. 8) and is focused on Instagram posts from BAT’s @govype Instagram account. However, content posted on Vype’s Twitter account and Facebook page is nearly identical to its Instagram account and similar to content on its website www.govype.com. In addition to the examples submitted here, there are many more examples of similar posts made prior to January 2019 that we believe also breach the CAP Code, which can be still be seen and accessed on all the social media platforms and will remain on them unless removed. Accordingly, we hope that this complaint serves as a starting point rather than an end point of any potential ASA investigation into BAT’s use of social media to market Vype.

III. Vype’s social media handle @govype should not be considered analogous to the www.govype.com website, where factual product information is lawful, because young consumers can readily find and view Vype content without actively seeking it.

According to the prohibitions set out under rule 22.12. CAP and the Guidance, a social media account might be considered by the ASA to be analogous to a website and therefore lawfully be allowed to make factual, non-promotional claims “if it can only be found by those actively seeking it.”⁸ (Emphasis added) Different from a website, consumers widely view and search

content on Instagram and Twitter via hashtags and other tags. As recognized by BAT's competitor Philip Morris International in a 2016 leaked internal social media guide to promote its new tobacco product IQOS, the importance of hashtags to reach consumers is key to the product's online marketing success, "Hashtags are gateways to being part of online conversations."⁹

Our view is that the very nature of how BAT is using its @govype account cannot be considered analogous to a website because the company's prevalent use of hashtags unrelated to factual product information makes the account readily discoverable by any internet user; not only those actively searching for information about the product on those platforms.¹⁰

A. Extending the reach of @govype through the use of non-factual hashtags unrelated to the product

Over the course of our previously mentioned two-year investigation into social media tobacco marketing, we found that BAT and three other multinational tobacco firms consistently paired common words like #Friday, #music, #party, #friends, and #style with their cigarette marketing campaigns on social media.¹¹ The purpose of including these hashtags is to ensure content is viewed by the widest possible audience on social media – so that social media users viewing content featuring #friends may also see content associated with cigarette social media marketing campaigns.

Similarly, BAT's @govype account repeatedly posts content pairing popular English language hashtags with Vype advertising. Examples include the words or phrases #style (**Images 2,3**); #throwbackthursday (**Images 1, 17**); #fridayfeeling, (**Image 6**) #fridayflavour (**Image 5**), and #behindthescenes (**Image 17**). As an example of the popularity of these terms on Instagram, the phrase #throwbackthursday has over 45 million posts, #fridayfeeling has 2.3 million posts, and #behindthescenes has nearly 7 million posts. Using these common searchable hashtags

allows BAT to extend the reach of its Vype advertising because anyone searching for or following these commonly-used social media phrases can access the Vype content without actively seeking it out.

BAT also extends the reach of its Vype advertising on Instagram by pairing hashtags related to significant cultural or popular current events that are completely unrelated to Vype or its product features including; #Oscars2019 (**Image 12**); #bohemianrhapsody; #baftas; #bestactor; #baftas2019 (**Image 8**); #ValentinesDay (**Image 7**); #BritAward (**Image 13**); #londonfashionweek (**Images 2,3**); #LFW (**Images 1, 2, 3, 14**); #snowUK (**Image 4**) and #snowmagedden (**Image 4**) during a time when the UK was experiencing unusual and newsworthy winter weather.¹² The hashtag #bohemianrhapsody alone used in **Image 8** shows nearly 1.2 million Instagram posts using that hashtag including BAT's Vype content. These recent campaigns paired with a popular event (e.g., Valentine's Day, a snow storm, etc.) are attempts by BAT to make its social posts relevant to current cultural trends and news in the UK and around the world and have nothing to do with information about Vype or any of its related features including its e-liquids.

Celebrity or personality hashtags which are unrelated to Vype products are also being used by BAT. (See Section IV.C) As one example, a post that included images of the pop singer Lily Allen (**Image 25**) also includes the hashtag #LilyAllen, which has nearly 83,000 Instagram posts and will be seen by anyone searching for #LilyAllen on the platform.

Further, location hashtags, which are unrelated to the information about the product, such as #Manchester (**Image 14**) or a specific venue (**Images 14, 18, 20**) - in this case Menagerie Restaurant and Bar - allow BAT to extend its advertising even further to those consumers visiting a city and searching Instagram for events occurring in that location. A search of

#Manchester on Instagram shows more than 4.7 million posts. The content also becomes viewable to any user searching Instagram for photos taken at Menagerie Restaurant and Bar, described by SquareMeal as one of Manchester’s “most talked about restaurants.”¹³

B. Extending the reach of @govype on Instagram through social influencers

Example posts from @govype show how the use of social media influencers extends the reach of Vype far beyond that of consumers actively looking for the content. In early 2019, BAT ran a campaign with posts to @govype including co-branding the Vype product with imagery from fashion manufacturer House of Holland (**Images 1, 2, 3, 14, 15, 17**) and London Fashion Week (**Images 1, 2, 3, 14, 17**) – one of the most prominent annual events in the fashion industry. For 2019 London Fashion Week, House of Holland designed Vype devices, co-branded with the House of Holland name, that were promoted on social media. As part of the fashion-based Vype promotion, @govype posted a series of photos that included Lily Allen with a Vype around her neck using DJ equipment co-promoting House of Holland, and “partying” with Vype. The February 21, 2019 post also featured photos of social media influencers using Vype products, with the location of the photos specified as “Menagerie Restaurant and Bar” (**Image 14**). In that series of photos, social media influencer @oliviajade_attwood (1.6 million followers) was tagged on @govype (**Image 18**). Subsequently, the Vype promotion content is now viewable by any of @oliviajade_attwood’s 1.6 million followers (**Image 19**). Similarly, social media influencer @scottyspecial (875K followers) was tagged on @govype (**Image 20**) and therefore the Vype promotion content is now viewable by any of @scottyspecial’s 875K followers (**Image 21**).

The day after, on February 22, 2019, @scottyspecial then posted an image of himself with three different influencers in front of a Vype and House of Holland co-branded board tagging

@govype with, “Thursday night catch up with this lot at the @govype event last night” (**Image 22**). The three influencers tagged in the post are @bradhoward3, @kendallraeknight, and @brown.elle, with 57.9K, 889K, and 1 million followers, respectively. Further, that single post had more than 20,000 likes.

Given @govype’s frequent use of hashtags and other tagging that extend the reach of its marketing on Instagram to those not actively seeking out Vype content, our view is it should not be treated like Vype’s www.govype.com website and not be permitted on social media – so long as it continues to use non-product specific and non-factual hashtags and other tags (and fails to remove all historic posts that use such tags). The very nature of platforms such as Twitter, Instagram and Facebook encourage dissemination of posts beyond a confined account space and are not compatible with the principle that such accounts can be analogous to a website. BAT’s substantial use of a variety of these external non-product-related tags on its social media posts are clearly aimed to maximize the widest dissemination of these @govype posts, which would not be possible on a website. BAT’s use of popular social media hashtags in its Vype social media content also represents irresponsible marketing under Rule 22.1 given the purpose and effect of using these terms is to maximize engagement with the content that goes far beyond consumers looking for the information– including minors and non-nicotine or tobacco users. The only possible way to ensure compatibility with Rules 22.1 and 22.12 and the Guidance would be to remove all historical posts that contain any non-Vype specific hashtags and other tags, and ensure no future posts contain any such tags.

IV. Vype’s social media handle @govype, its Facebook page and website posts content that is promotional in nature and is likely to appeal particularly to people under 18 years of age by reflecting youth culture.

We have found what we believe are clear breaches of Rules 22.9 and 22.12 where posted material is promotional and not factual in nature and/or is likely to appeal particularly to young people. Reviewing the @govype account only for the past three months shows repeated examples of promotional content that the Guidance and past rulings¹⁴ indicate are likely prohibited as being promotional because they contain descriptive language that goes beyond objective factual information and/or significant imagery that does not relate to Vype (See the Appendix for a complete list of examples).

To highlight one example, **Image 4** uses the weather-related hashtags #snowUK and #snowmaggeden (which has 360K posts on Instagram) to promote its mint flavored e-liquid. BAT pairs the hashtag and image of the product with the text, “The weather is getting as cold as our crisp e-liquid” and uses imagery of ice and snow. The claims “crisp” and “cold” do not provide factual information about the flavor mint; but certainly do provide promotional information where “crisp” winter weather implies “cold” weather unrelated to Vype or mint flavor (these products are not cold) and “crisp” might also signal a fresh or invigorating experience (which is promotional and subjective)¹⁵ – all which go beyond a factual description of the product.

Another example is **Image 5**, which is an example of a post that uses stylized short videos of bright colorful moving images unrelated to the products. **Image 24** is an example of a stylized video of fruit to promote the e-liquid flavor wild berry and **Image 16** is a screen capture of an instastory showing prominent imagery of models, cosmetics and clothing with background

music, and a highly stylized video of a young person using a Vype - - again going beyond a factual description of the product or its features.

A. Use of the fashion industry to promote Vype on social media

A BAT social media post for the House of Holland/London Fashion Week promotion previously described in Section III.B, features a stylized edited video of designer Henry Holland describing the limited edition Vype/House of Holland promotion (**Image 15**). A similar video is posted on the Govype website.¹⁶ As part of its London Fashion Week official designer profile, the audience for House of Holland is described as a “girl” that is cool, confident and savvy;¹⁷ a consumer base seemingly appealing to youth culture. The House of Holland website blog also features two photoshoots that specifically feature teenage fashion shoots (**Image 23**) demonstrating that this is a youth-orientated fashion brand. Further, imagery and hashtags related to House of Holland in no way factually describe Vype, but are clearly aimed at promoting the product’s appeal to consumers and potentially to underage consumers. In the post featuring Henry Holland (**Image 15**), Vype is described with stylized text attributed to Mr. Holland as “Stylish, Handy & Useful.” These terms seem to be testimonial with promotional claims and not based on any objective facts: being stylish, handy and useful is the opinion of one person.

B. Use of film industry awards to promote Vype on social media

On February 10, 2019, BAT’s @govype Instagram account used the hashtag #productoftheyear¹⁸ to seemingly equate itself with completely unrelated content congratulating winners from the 2019 British Academy of Film and Television Arts Awards (BAFTAs) including Rami Malek for winning Leading Actor in the film Bohemian Rhapsody (**Image 8**), Roma for Best Film (**Image 9**), Alfonso Cuaron for Director of Roma (**Image 10**), and Oliva Colman for Leading Actress in The Favorite (**Image 11**). Film industry award hashtags were also

posted by BAT at @govype on January 22, 2019 relating to the Oscars (#oscars2019 and #oscarsnoms) using unrelated and non-factual product imagery of shining stars invoking imagery related to Hollywood stars and the Oscars (**Image 12**). None of these images describe the product Vype and @govype's use of the hashtag #productoftheyear in a posts about BATFA or Oscar winners does not seem to go far enough in informing consumers that Vype won a consumer survey award. This campaign also tagged all the award winners by name via a hashtag (e.g., #ramimalek), which again broadens the discoverability of @govype to anyone searching Instagram for content related to the actor and is unrelated to the product or any of its features. A search of #ramimalek on Instagram shows 475K posts.

C. Use of celebrity endorsements to promote Vype on social media

Though not comprehensively prohibited by the CAP code, the use of celebrity endorsers to market electronic cigarettes has been widely documented.^{19 20} Posted content dated February 20, 2019 from @govype includes well wishes from Vype to pop singer Lily Allen on her nomination as Best British Female Solo Artist at the 2019 British Awards (“wishing our friend @lilyallen” the very best at tonight’s #BritAward...”) (**Image 13**). The post does not describe or provide any factual information about Vype; it only co-promotes the e-cigarette with Lily Allen. Lily Allen has more than 6 million followers on social media platforms like Instagram and Twitter. The use of her image suggests that Vype is popular and/or used among celebrities and those viewed as aspirational by young audiences. Regarding the reach of Vype’s promotion to the non-Vype seeking internet public, because Lily Allen is tagged by @govype in her photos, any fan or follower of Lily Allen looking at her tagged photos on Instagram could be exposed to Vype’s social media post.

Lily Allen is a pop singer and celebrity with a youth orientated style and a young target demographic, appearing at pop music awards and has a high social media presence. There are multiple endorsement posts using Lily Allen on the Vype social media accounts, including **Image 25** on @govype, which tagged @lillyallen, included the use of the hashtag #LillyAllen and was presented at BAT's Capital Markets Day on March 14, 2019 in a presentation referencing building their brands through "responsible social media engagement."²¹

V. Conclusion

Given the time-limited evidence compiled here showing the extensive reach of promotional content on BAT's @govype Instagram account (also appearing on its Twitter handle and Facebook page) and the nature of discoverability of the Instagram account to consumers not actively seeking Vype information, @govype should not be permitted on social media channels and particularly Instagram. It is clear that BAT is undertaking a concerted, consistent and systemic approach to its online advertising that is outside what is permitted under the Guidance and is wholly inconsistent with the prohibition of advertising electronic cigarettes in information society services under regulation 43 of the Tobacco and Related Products Regulations 2016. In the alternative, and additionally, all promotional content originating from @govype on Instagram and Twitter and from the VypeUK Facebook page and the Govype website should be removed – specifically any posts that use hashtags that are not factual and are unrelated to the product.

¹ The Campaign for Tobacco-Free Kids is a leading force in the fight to reduce tobacco use and its deadly toll on consumers in the United States and around the world. In the United States, the organization advocates at the national, state and local levels for the proven policies that reduce tobacco use and save lives. Globally, the Campaign for Tobacco-Free Kids supports governments and non-governmental organizations in promoting and implementing policies called for in the World Health Organization Framework Convention on Tobacco Control. The Campaign for Tobacco-Free Kids is a partner in the Bloomberg Initiative to Reduce Tobacco Use, which focuses on low- and middle-income countries where more than 80 percent of tobacco-related deaths will occur in the coming decades. Headquartered in Washington DC, the Campaign for Tobacco-Free Kids is a 501(c)(3) non-profit organization that accepts no government or tobacco industry funding.

² Sheila Kaplan. Big Tobacco's Global Reach on Social Media. New York Times. August 24, 2018. Available at: <https://www.nytimes.com/2018/08/24/health/tobacco-social-media-smoking.html>. (Accessed March 14, 2019)

³ British American Tobacco 2017 Annual Report. Available at: https://www.bat.com/ar/2017/assets/pdf/BAT_Annual_Report_and_Form_20-F_2017.pdf. (Accessed March 14, 2019)

⁴ Client. Consumer Electronics. Available at: <https://openinfluence.com/team/>. (Accessed March 14, 2019)

⁵ E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General, 2016. The report concludes the use of products containing nicotine poses dangers to youth, pregnant women and fetuses and that nicotine exposure during adolescence can cause addiction and can harm the developing adolescent brain, page 5.

⁶ Before the United States Federal Trade Commission. Request for investigating and enforcement action to stop deceptive advertising online. August 24, 2018. Available at: https://www.tobaccofreekids.org/assets/content/press_office/2018/2018_08_ftc_petition.pdf. (Accessed March 14, 2019)

⁷ According to social listening data from Keyhole, from March 13, 2018 through March 13, 2019, the hashtag #vype was used in more than 3,000 posts on Twitter and Instagram and posts containing #vype have been viewed by more than 3.4 million people over 5.4 million times on Twitter and Instagram in the past year alone.

⁸ CAP. Electronic cigarette advertising prohibitions. Advertising Guidance (Non-broadcast and broadcast). Available at: <https://www.asa.org.uk/resource/electronic-cigarette-advertising-prohibition.html>. (Accessed March 14, 2019)

⁹ Reuters. P Bansal, T Lasseter, D Wilson, T Wilson, A Miyazaki, A Kalra. December 21, 2017. The Philip Morris Files. How Philip Morris is selling regulators on its hot new smoking device. See Page 37, IQOS Brand Voice Guidelines. Available at: www.documentcloud.org/documents/4331963-IQOS-Brand-Voice-Guidelines.html. (Accessed March 14, 2019)

¹⁰ Note that even if @govype attempted to place an age gate on its account (which it does not), our understanding is that the age restriction function is based on self-reported age by Instagram users and is not independently verified by Instagram or any other entity. Although the complainants are particularly concerned about children and teenagers accessing the Vype content, implementing an age gate would not stop consumers over 18 years of age from finding and being exposed to the advertising, which in itself is not in line with the rule 22.12. CAP and the relevant guidance. Last, anyone of any age can go to Instagram to search for information without having an Instagram account.

¹¹ Before the United States Federal Trade Commission. Request for investigating and enforcement action to stop deceptive advertising online. August 24, 2018. See page 32 and Appendix 1 for list of common English words paired with global cigarette marketing campaign hashtags. Available at:

https://www.tobaccofreekids.org/assets/content/press_office/2018/2018_08_ftc_petition.pdf. (Accessed March 14, 2019)

¹² <https://www.standard.co.uk/news/uk/heathrow-brought-to-a-standstill-as-heavy-snow-and-ice-sweeps-the-uk-a4054846.html>; <https://abcnews.go.com/International/wireStory/motorists-stranded-heavy-snow-blankets-britain-60774674> (Accessed March 14, 2019)

¹³ Square Meal. Available at: https://www.squaremeal.co.uk/restaurants/menagerie_12181. (Accessed March 14, 2019)

¹⁴ ASA Ruling on Nicoventures Trading Ltd t/a Vype. 17 October 2018 (findings several terms or phrases including “juicy” and “trust” to be promotional in nature and prohibited under Rule 22.12.) Available at: <https://www.asa.org.uk/rulings/nicoventures-trading-ltd-a18-443559.html>; and ASA Ruling on Nicoventures Trading Ltd t/a Vype. 21 June 2017 (finding a “highly stylized” video “with modern electronic music in the background, with synchronised hand movements and bursts of colour” to be promotional in nature and prohibited under Rule 22.12). Available at: <https://www.asa.org.uk/rulings/nicoventures-trading-ltd-a17-383588.html>. (Accessed March 14, 2019)

¹⁵ See Merriam-Webster definition of crisp to include: briskly cold *crisp* winter weather *also* : [FRESH, INVIGORATING](https://www.merriam-webster.com/dictionary/crisp) *crisp* autumn air a *crisp* white wine. Available at: <https://www.merriam-webster.com/dictionary/crisp>. (Accessed March 14, 2019)

¹⁶ <https://www.govype.com/uk/blog/henry-holland-talks-vaping-fashion-and-the-making-of-vype-x-house-of-holland/> (Accessed 15 March 2019)

¹⁷ London Fashion Week home page. Available at: https://www.londonfashionweek.co.uk/designers_profile.aspx?DesignerID=140 (Accessed March 14, 2019)

¹⁸ On January 28, 2019 BAT posted content on @govype related to a consumer survey conducted by KANTAR TNS, stating that Vype was voted a 2019 ‘product of the year’ in the UK for an e-cigarette category by survey respondents.

¹⁹ Stanford University. Research into the impact of Tobacco Advertising. Available at: http://tobacco.stanford.edu/tobacco_main/images/ecigs.php?token2=fm_ecigs_st529.php&token1=fm_ecigs_img22858.php&theme_file=fm_ecigs_mt038.php&theme_name=Celebrity%20Vapor&subtheme_name=Celebrity%20Endorsers. (Accessed March 14, 2019)

²⁰ Electronic Cigarette Marketing: Current Research and Policy. Commissioned by Cancer Research UK. October 2016. Available at: https://www.cancerresearchuk.org/sites/default/files/electronic_cigarette_marketing_report_final.pdf. (Accessed March 14, 2019)

²¹ British American Tobacco . Capital Markets Day. March 14, 2019. STEP-CHANGING NEW CATEGORIES PAUL LAGEWEG | DIRECTOR NEW CATEGORIES. Pages 39, 55. Available at: <https://www.bat.com/investorpresentations>. (Accessed March 14, 2019)