

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,
Plaintiff,

-against-

No. ____-cv-_____

ARTISAN VAPOR FRANCHISE LLC, CENTRAL VAPORS LLC, CRAVINVAPES LLC, E-CIGARETTE EMPIRE LLC, E-CIG CITY 4, E-CIG CITY MISSION VIEJO LLC, THESY, LLC, ELIQUIDSTOP.COM, HEATHER’S HEAVENLY VAPES, LLC, HUMBLE JUICE CO. LLC, INLINE VAPE, LLC, JP VENTURES LLC, OM VAPOR, LLC, VAPOR 4 LIFE HOLDINGS, INC., THE VAPE MALL LLC, UVAPER LLC, VAPING WATCH INC, VAPOR AUTHORITY, INC., VAPORFI, INC., INTERNATIONAL VAPOR GROUP, LLC, VEPPA INTERNATIONAL LLC, VGOD INC, LEAD BY SALES, LLC, and ZAMPLEBOX, LLC,

COMPLAINT

JURY TRIAL DEMANDED

Defendants.

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Plaintiff the City of New York (the “City”), by its counsel Georgia M. Pestana, Acting Corporation Counsel of the City of New York, respectfully alleges, with knowledge of its own actions and on information and belief as to the actions of others, as follows:

NATURE OF THE ACTION

1. Defendants have violated the Administrative Code of the City of New York (“NYC Admin. Code”) and created a public nuisance by selling e-cigarette products to New York City residents under the age of 21. The City seeks injunctive relief to prevent further underage sales of e-cigarette products into New York City, as well as damages to compensate the City for the costs of abating the epidemic of underage e-cigarette use in the City.

E-Cigarettes and the Epidemic of Underage Addiction

2. E-cigarette products (also referred to as electronic cigarettes or vaping products) come in many forms, but all use a heating device to turn a liquid (often called e-liquid) into an aerosol that is then inhaled by the user. Most e-liquids contain nicotine, as well as flavoring and other chemicals.

3. E-cigarettes came into the U.S. marketplace in 2007. Today, youth e-cigarette use has reached epidemic proportions. Among high school students, e-cigarette use increased from 1.5% (220,000 students) in 2011 to 20.8% (3.05 million students) in 2018. Among middle school students, e-cigarette use increased from 0.6% in 2011 (60,000 students) to 4.9% (570,000 students) in 2018.¹

4. In particular, e-cigarette use among high school and middle school students increased dramatically between 2017 and 2018. Nationwide, rates of current e-cigarette use by high school students surged by 78% between 2017 and 2018, and rates of current e-cigarette use by middle school students jumped by 48% between 2017 and 2018.² Reflecting another dramatic jump, preliminary results from a 2019 survey released just last month indicate that 27.5% of high school students are now current e-cigarette users.

5. This alarming upward trajectory in e-cigarette use by high school and middle school students comes after several decades of significant decline in the use of conventional cigarettes by the same population.

¹ Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. *Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018*. MMWR Morb Mortal Wkly Rep 2018;67:1276–1277. DOI: <http://dx.doi.org/10.15585/mmwr.mm6745a5external> icon. Current e-cigarette use was defined as a response greater than “0 days” to the question, “During the past 30 days, on how many days did you use e-cigarettes?”

² U.S. Food & Drug Administration, *2018 NYTS Data: A Startling Rise in Youth E-cigarette Use*, available at <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

6. New York City has been battling the public health crisis caused by tobacco products for many years. Over the last decade, rates of use of traditional cigarettes by both adults and youth in the City have consistently declined. But just like other communities across the country, New York City has been impacted by the epidemic of underage use of e-cigarettes. In 2017, 1 in 6 (17 %) of New York City public high school students reported having used e-cigarettes within the past month.³ That number is likely much higher today in light of the dramatic increase in e-cigarette use nationwide between 2017 and 2018. In 2018, 1 in 15 (7%) of New York City public middle school students reported having used e-cigarettes within the past month.⁴ During the same time period, 9% of 7th graders and 8.4% of 8th graders reported current e-cigarette use.⁵

7. Because e-cigarettes have not been in existence for as long as traditional cigarettes, there has been little scientific study of the long-term health impacts of e-cigarettes. However, the U.S. Surgeon General has declared that “the use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”⁶

8. Specifically, the Surgeon General explained that youth e-cigarette use may (a) “cause an addiction to the nicotine typically contained in e-liquids,” (b) “harm the developing brain—which continues to develop until about age 25,” (c) “impact learning, memory, and

³ NYC Department of Health and Mental Hygiene, *E-cigarettes*, available at <https://www1.nyc.gov/site/doh/health/health-topics/smoking-e-cigarettes.page>.

⁴ NYC Department of Health and Mental Hygiene, *Health Department Sounds the Alarm on E-cigarette Use Among NYC Middle School Students*, available at <https://www1.nyc.gov/site/doh/about/press/pr2019/e-cigarette-use-among-nyc-middle-school-students.page>.

⁵ *Health Department Sounds the Alarm on E-cigarette Use Among NYC Middle School Students*, *supra* n. 4.

⁶ U.S. Department of Health and Human Services, *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* at 5, available at https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf.

attention,” (d) “increase risk for future addiction to other drugs,” (e) “expose both [users] and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs,” and (f) “increase[] the frequency and intensity of cigarette smoking in the future.”⁷

9. The City’s public health agency, the New York City Department of Health and Mental Hygiene (“NYC DOHMH”), has issued warnings consistent with the Surgeon General’s guidance, highlighting the risks that e-cigarettes pose to youth and the fact that one pod (or refill) of e-liquid can contain as much nicotine as a whole pack of cigarettes. NYC DOHMH warns of the hazards of nicotine use by youth and the fact that the aerosol produced by e-cigarettes can contain harmful chemicals and heavy metals, including formaldehyde and benzene, which can cause cancer, and diacetyl, which is linked to lung disease.⁸

10. On September 6, 2019, the Centers for Disease Control and Prevention (“CDC”) issued notice that the CDC, U.S. Food and Drug Administration (“FDA”), state and local health departments and other organizations “are investigating a multistate outbreak of severe pulmonary disease associated with e-cigarette product (devices, liquids, refill pods, and/or cartridges) use,” and reiterated its guidance that “[y]outh and young adults should not use e-cigarette products.”⁹

11. E-cigarettes are far more popular among young people than adults. In

⁷ Surgeon General’s Advisory on E-cigarette Use Among Youth, available at https://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html.

⁸ NYC Department of Health and Mental Hygiene, *Health Bulletin: E-cigarettes*, available at <https://www1.nyc.gov/assets/doh/downloads/pdf/public/dohmhnews120.pdf>.

⁹ CDC, *Outbreak of Lung Illness Associated with Using E-cigarette Products*, available at https://web.archive.org/web/20190909032014/https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.

2017, only 2.8% of adults were current e-cigarette users, compared to 11.7% of high school students during the same time period.¹⁰

12. In addition, e-cigarettes are also more popular among young people than cigarettes. In New York City more than 3 times as many high school students use e-cigarettes than smoke cigarettes.¹¹ Far more New York City middle school students use e-cigarettes than use traditional cigarettes.¹²

13. In 2013, recognizing the growing number of young people using e-cigarettes, New York City prohibited the sale of e-cigarette products to individuals under the age of 21, finding that “[e]stablishing a legal sales age of twenty-one years for electronic cigarettes will reduce electronic cigarette use among youth and prevent the emergence of a new generation that is addicted to nicotine.” New York City Local Law 94 (2013); NYC Admin. Code § 17-706.

14. The City has also taken steps to address the epidemic of underage e-cigarette use. NYC DOHMH has devoted significant staff time and hundreds of thousands of dollars in current and planned spending as part of a multi-pronged response to the youth e-cigarette use epidemic in New York City.

Defendants Feed the Underage Market and Sell E-Cigarettes in Violation of City Law

15. In order to protect the public health and enforce the New York City law against sales of e-cigarette products to individuals under the age of 21, in July and August the City conducted a series of test purchases from internet retailers. Acting under the supervision of

¹⁰ Wang TW, Asman K, Gentzke AS, et al. Tobacco Product Use Among Adults — United States, 2017. *MMWR Morb Mortal Wkly Rep* 2018;67:1225–1232. DOI: <http://dx.doi.org/10.15585/mmwr.mm6744a2external icon>; *Notes from the Field*, *supra* n. 1.

¹¹ *E-cigarettes*, *supra* n. 3.

¹² *Health Department Sounds the Alarm on E-cigarette Use Among NYC Middle School Students*, *supra* n. 4.

investigators from the New York City Sheriff's Office, two City residents over the age of 18 but under the age of 21 purchased e-cigarette products from Defendant internet retailers. Defendants each violated NYC Admin. Code § 17-706(a-1) by selling e-cigarette products to City residents under the age of 21.

16. In addition, Defendants created a public nuisance by selling to underage City residents, failing to use readily available age-verification systems or any other means to prevent the sale of their e-cigarette products to underage City residents, and by marketing their e-cigarette products to youth, including City residents under the age of 21. Defendants target youth in multiple ways, including by offering flavored e-liquids designed to mimic the taste of candy, children's breakfast cereals or sugary beverages, by selling small and inconspicuous devices that are easy for children to conceal from their parents, and by marketing on social media platforms that are popular with teens.

PARTIES

17. Plaintiff the City of New York (the "City") is a municipal corporation organized under the laws of the State of New York.

18. Defendant Artisan Vapor Franchise LLC, d/b/a "Artisan Vapor Company," is a Texas limited liability company headquartered in Irving, TX.

19. Defendant Central Vapors LLC, d/b/a "Central Vapors," is a Texas limited liability company headquartered in McKinney, TX.

20. Defendant CravinVapes LLC, d/b/a "CravinVapes," is an Indiana limited liability company headquartered in Fort Wayne, IN.

21. Defendant E-cigarette Empire LLC, d/b/a "E-cigarette Empire," is a Nevada limited liability company headquartered in Las Vegas, NV.

22. Defendant E-Cig City 4, d/b/a "eCig-City," is a California business

headquartered at 1400 University Ave #107, Riverside, CA 92507. Defendant E-Cig City Mission Viejo LLC, d/b/a “eCig-City,” is a California limited liability company headquartered in Mission Viejo, CA.

23. Defendant TheSY, LLC, d/b/a “Element Vape,” is a California limited liability company headquartered in Los Angeles, CA.

24. Defendant Eliquidstop.com is a California business owned by Nick Minas and Patrick Beltran and headquartered in Los Angeles, CA.

25. Defendant Heather’s Heavenly Vapes, LLC, d/b/a “Heather’s Heavenly Vapes,” is a Georgia limited liability company headquartered in Newnan, GA.

26. Defendant Humble Juice Co. LLC, d/b/a “Humble Juice Co.,” is a California limited liability company headquartered in Thousand Oaks, CA.

27. Defendant Inline Vape, LLC d/b/a “Inline Vape,” is a Michigan limited liability company headquartered in Warren, MI.

28. Defendant JP Ventures LLC, d/b/a “iVape,” is a South Carolina limited liability company headquartered in Longs, SC.

29. Defendant Om Vapor, LLC, d/b/a “Om Vapors,” is a Kentucky limited liability company headquartered in Nicholasville, KY.

30. Defendant Vapor 4 Life Holdings, Inc. d/b/a “Vapor4Life,” is an Illinois corporation headquartered in Northbrook, IL.

31. Defendant The Vape Mall LLC, d/b/a “The Vape Mall,” is a Missouri limited liability company headquartered in Wentzville, MO.

32. Defendant UVaper LLC, d/b/a “Vape NW,” is a Washington limited liability company headquartered in Lynnwood, WA.

33. Defendant Vaping Watch Inc d/b/a “VapingWatch” is a Delaware corporation headquartered in Raleigh, NC.

34. Defendant Vapor Authority, Inc., d/b/a “Vapor Authority,” is a California corporation headquartered in San Diego, CA.

35. Defendant Vaporfi, Inc., d/b/a “VaporFi,” is a Delaware corporation registered to transact business in Florida and headquartered in Miami Lakes, FL. Defendant International Vapor Group, LLC, d/b/a “VaporFi,” is a Delaware limited liability company headquartered in Miami Lakes, FL.

36. Defendant Veppo International LLC, d/b/a “Veppo,” is a Wyoming limited liability company headquartered in Buffalo, WY.

37. Defendant VGOD Inc, d/b/a “VGOD,” is a California corporation headquartered in Torrance, CA.

38. Defendant Lead by Sales, LLC, d/b/a “White Cloud Electronic Cigarettes,” is a Florida limited liability company headquartered in Tarpon Springs, FL.

39. Defendant ZampleBox, LLC, d/b/a “ZampleBox,” is a Washington limited liability company headquartered in Renton, WA.

JURISDICTION AND VENUE

40. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because the City and each of the Defendants are citizens of different States and the value of the injunctive and monetary relief sought from each Defendant exceeds \$75,000.

41. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

42. The Court has personal jurisdiction over Defendants under CPLR § 302

because each Defendant, in person or through an agent, transacts or has transacted business within New York and in this district, or contracts or has contracted to supply goods or services within New York or in this district, or has committed a tortious act within New York or in this district. All Defendants did and continue to do business within New York and this district, made contracts to be performed in whole or in part in New York and this district, and/or performed tortious acts reasonably expected to have consequences in New York and in this district while deriving substantial revenue from interstate or international commerce.

FACTS

I. New York City Has Sought to Abate the Epidemic of Underage E-Cigarette Use Created by the E-Cigarette Industry

43. In 2013, New York City banned the sale of e-cigarettes to individuals under the age of 21. NYC Admin. Code § 17-706(a-1) provides that “[a]ny person operating a place of business wherein electronic cigarettes are sold or offered for sale is prohibited from selling such electronic cigarettes to individuals under twenty-one years of age.” “Electronic cigarette” is defined as “a battery-operated device that heats a liquid, gel, herb, or other substance and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette.” § 17-702(bb).

44. NYC DOHMH has devoted significant staff time and other resources to its multi-pronged response to the e-cigarette use epidemic, especially with respect to youth. This includes hundreds of thousands of dollars in spending on current and planned media campaigns, health education materials, provider outreach, community outreach and events, as well as contracts to execute listening sessions, focus groups and media campaign evaluation, and provision of support to community based organizations working to engage youth. NYC DOHMH staff’s efforts include analysis of surveillance and epidemiological data, development

of legislative and enforcement strategies, and numerous community engagement projects. As just one example, on October 3, 2019, NYC DOHMH launched a new bilingual social media campaign that will run on platforms including Facebook, Instagram, Twitter and YouTube through the end of this year. The campaign uses fast-paced videos to alert young people to the dangers of nicotine addiction and vaping products, including the presence of toxic chemicals, like formaldehyde and benzene, which can cause cancer, or heavy metals, like nickel, tin and lead.

II. Defendants Market and Sell E-cigarettes to City Residents under the Age of 21

45. Defendants are internet sellers of electronic cigarettes as defined in the NYC Admin. Code, including battery operated vaping devices and nicotine-containing flavored e-liquids, refills and cartridges.

46. In violation of New York City law, Defendants allow individuals under the age of 21 to freely access their internet sites and purchase e-cigarette products.

47. There are a number of commercially available third-party online age verification services which utilize databases of government records in order to verify the identity and age of a purchaser before a transaction can be completed. Such services can also easily accommodate jurisdictional distinctions in age restrictions, such as New York City's ban on sales of e-cigarettes to individuals under the age of 21.

48. Yet even those Defendants that purport to use age verification on their websites fail to verify that New York City resident purchasers are over the age of 21.

49. To document the ease with which underage individuals may purchase e-cigarettes from Defendants, during July and August of 2019 the City utilized two individuals over the age of 18 but under the age of 21 (the "Jane Does") to purchase e-cigarette products under the supervision of investigators from the New York City Sheriff's Office. The Jane Does

created an email account and used that account and prepaid Visa gift cards to purchase e-cigarette products from each of the Defendants.

50. The Defendants shipped all of the purchased e-cigarette products to an address controlled by the New York City Sheriff's Office and located in New York City. The products arrived addressed to one of the Jane Does, both of whom were underage individuals. The deliveries were made without any requirement of a signature or to show identification.

51. Given the ease with which these purchases were made, it is clear that individuals under age 21 throughout New York City can easily purchase e-cigarettes from Defendants' internet sites.

III. Defendants Target Young People Through Their Products and Marketing

52. The popularity of e-cigarettes among young people is not an accident. The e-cigarette industry sells products that appeal to young people. E-cigarettes are sold in sweet, child-friendly flavors that mimic the taste of candy, children's breakfast cereals or sugary beverages. These flavors are one of the primary reasons young people try e-cigarettes in the first place. A study by the Food and Drug Administration found that among 12 to 17 year-olds using e-cigarettes, 96% had used a flavored e-cigarette the first time they tried the product. The same study found that 70% of current youth e-cigarette users use the product because "they come in flavors I like."¹³

53. Not only do child-friendly flavors encourage young people to try e-cigarettes, they often lead young people to believe that e-cigarettes are harmless. Flavors also make it more likely young people will keep using the e-cigarette product and become addicted because the flavors mask the harsh taste of nicotine, which would otherwise make e-cigarettes

¹³ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, at 9, available at <https://www.fda.gov/media/121384/download>.

off-putting to young people unaccustomed to the taste of nicotine.

54. It is no secret that flavors make cigarette products more attractive to young people. The tobacco industry for years focused its marketing on young consumers by promoting flavored cigarettes (among other tactics). In 2009, Congress prohibited the sale of flavored cigarettes, other than menthol flavored cigarettes, because “flavors make cigarettes more appealing to youth.”¹⁴

55. The FDA has specifically expressed concern about e-liquids “using popular children’s cartoon or animated characters, or names of products favored by kids like brands of candy or soda.”¹⁵

56. The Federal Trade Commission has similarly expressed concerns about e-cigarette products that are marketed in packaging that resembles packaging of foods and drinks that are popular with children or smell similar to the juices, candies and cookies that the packaging mimics because of the risk that young children will ingest the liquid nicotine.¹⁶

57. The NYC DOHMH Commissioner testified earlier this year that the industry’s use of marketing and flavors targeting youth has increased the percentage of youth that are exposed to nicotine.

58. Defendants’ websites nevertheless all market and sell e-liquids with

¹⁴ Enforcement of General Tobacco Standard Special Rule for Cigarettes, 74 Fed. Reg. 48974 (Sept. 25, 2009) (citing 21 U.S.C. § 387g).

¹⁵ Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes (Nov. 15, 2018), available at <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>.

¹⁶ FTC, FDA Take Action Against Companies Marketing E-liquids That Resemble Children’s Juice Boxes, Candies, and Cookies, available at <https://www.ftc.gov/news-events/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids>.

flavors designed to mimic fruit, candy, beverages and/or cereals popular with children.

59. In addition to the appeal of child-friendly flavors, e-cigarette devices appeal to young people because they are designed to be sleek and high-tech. The devices come in various colors and are often sold in packaging that is vibrant and colorful. They are also small and inconspicuous, such that they can be easily hidden from parents and educators.

60. Defendants supplement the content on their websites with content on social-media platforms that likewise appeals to and targets young people, including depicting e-liquids alongside the candies or children's cereals that the e-liquids allegedly taste like, images and videos of vape tricks, and featuring images of young people, who appear to be high school age, vaping.

61. Teenagers disproportionately use social media compared to adults. For example, Pew Research Center found that 72% of teenagers use Instagram¹⁷, more than double the 35% of adults who do so.¹⁸

62. Defendants all maintain social media presences on one or more social media platforms: Facebook, Instagram, Twitter, Pinterest and YouTube.

63. Individuals under the age of 21 can freely visit Defendants' social media sites. Defendants could restrict access to Defendants' social-media posts by using an "age gate" feature that confines access to users over the age of 21—a feature offered by Instagram, Facebook, and YouTube. Defendants have not done so.

¹⁷ Pew Research Center, *Teens, Social Media & Technology 2018* (May 31, 2018), available at <http://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/>.

¹⁸ Pew Research Center, *Social Media Use in 2018* (Mar. 1, 2018), available at <http://www.pewinternet.org/2018/03/01/social-media-use-in-2018/>.

Defendant-Specific Allegations

A. Artisan Vapor Company

64. Artisan Vapor Company offers electronic cigarettes for sale on its internet site, <https://www.artisanvaporcompany.com>. In order to access the website, the user only has to click a button affirming that he or she is over 18 years old. In August of 2019 one of the Jane Does purchased a SMOK Priv N19 Starter Kit and a nicotine-containing mango-flavored e-liquid from Artisan Vapor Company's site. To purchase these products, she was prompted to enter her date of birth, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed.

65. Artisan Vapor Company's conduct is particularly egregious given that it previously received a warning letter from the FDA regarding its illegal sales of e-cigarettes to minors.¹⁹ Despite having received the FDA warning in 2018, it sold e-cigarettes for shipment into New York City to an underage purchaser in August of 2019.

66. Not only does Artisan Vapor Company fail to verify the age of purchasers, it intentionally solicits new vapers, including young people, with misinformation. Artisan Vapor Company's website claims that:

Whether you are a beginner, intermediate or professional level vaper, once you get a hang of vaping – it becomes impossible to not vape. The reasons are simple; the flavors are addictive, vaping competitions are so cool and vaping poses no harm to your health. When compared to tobacco cigarettes, vaping provides an amazing alternative to it. It does not have the cancer-causing agent called tar, cannot affect your lungs in any way, and does not have any side effects like 'passive smoking'. In simpler words, vaping is absolutely safe and healthy for you.²⁰

¹⁹ FDA, *Warning Letters and Civil Money Penalties Issued to Retailers for Selling JUUL and Other E-Cigarettes to Minors*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/warning-letters-and-civil-money-penalties-issued-retailers-selling-juul-and-other-e-cigarettes>.

²⁰ <https://www.artisanvaporcompany.com/store-locator/>.

67. Artisan Vapor Company sells e-liquids in fruit and candy flavors designed to mimic flavors that appeal to children. For example, Artisan Vapor Company sells a line of “Lemon Twist” flavors such as Pink Punch Lemonade and Wild Watermelon Lemonade. As the images below demonstrate, the packaging for these e-liquids is designed to make the product appear like candy.



PEACH BLOSSOM LEMONADE
E-LIQUID BY LEMON TWIST

\$32.99



PINK PUNCH LEMONADE
E-LIQUID BY LEMON TWIST

\$32.99



WILD WATERMELON
LEMONADE E-LIQUID BY LEMON
TWIST
\$32.99

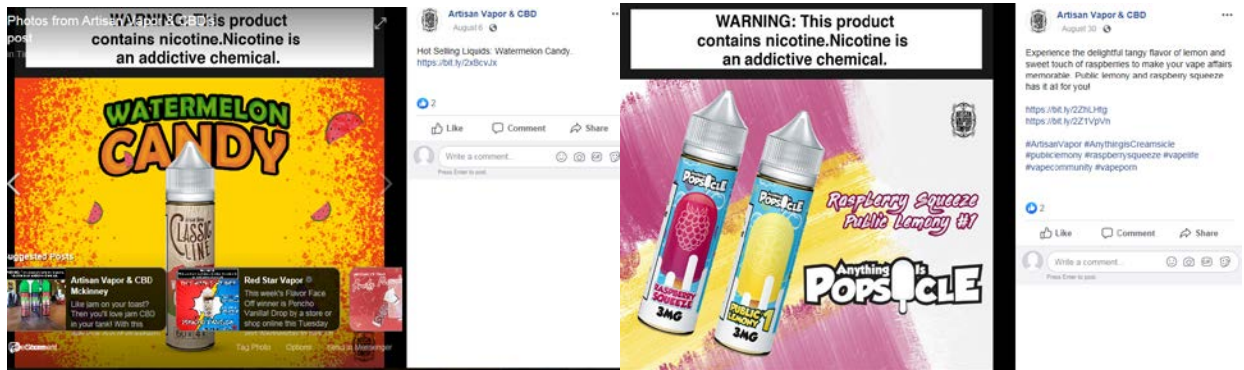
68. It also offers an e-liquid flavor described as “Juice Roll-Upz,” which is clearly designed to mimic Fruit Roll Ups, a popular children’s fruit snack:



Juice Roll-Upz (1)

69. Artisan Vapor Company also maintains social media presences on Facebook, Twitter, Instagram and Pinterest. Artisan Vapor Company does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

70. Artisan Vapor Company utilizes its social media presence to market its child-friendly flavors and products. For example, its Facebook includes the following posts advertising popsicle themed e-liquids and Watermelon Candy e-liquids:



B. Central Vapors

71. Central Vapors offers electronic cigarettes for sale on its internet site, www.centralvapors.com. No age-verification or even age confirmation is required in order to access the website. In July of 2019 one of the Jane Does purchased an eGO-t Starter Kit and a nicotine-containing “Razzleberry Pop”-flavored e-liquid from Central Vapors’ site. After placing the order, she received an email prompting her to complete an age verification process on Central Vapors’ website. After she did so, despite the fact that she was under 21 years of age, the order immediately shipped to New York City.

72. Central Vapors sells e-liquids in candy, cereal, dessert, fruit, and soda flavors designed to appeal to children. For example, Central Vapors sells a Dr. Peppercorn e-liquid designed to mimic Dr. Pepper soda and a Dew Drop Mountain e-liquid designed to mimic Mountain Dew soda. It also sells, for example, candy flavored e-liquids such as Candy Cane, Cotton Candy, Gummy Bear and Bubble Gum.

73. Central Vapors also sells e-liquids in cereal flavors such as Loopy Fruits

and Freddy's Pebbles, designed to mimic two cereals that are popular with children – Fruit Loops and Fruity Pebbles. Central Vapor makes this intent clear in the image below from its website, which pictures a bowl of cereal that looks like Fruit Loops cereal.



74. Central Vapors also maintains social media presences on Facebook, Twitter, YouTube and Pinterest. Central Vapors does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

75. Central Vapors utilizes its social media presence to market its child-friendly flavors and products. For example, in the below Facebook post Central Vapors advertises its candy flavored e-liquids.



C. CravinVapes

76. CravinVapes offers electronic cigarettes for sale on its internet site, <https://cravinvapes.com>. In August of 2019 one of the Jane Does purchased a nicotine-containing “Blueberry Bubblegum” flavored e-liquid from CravinVape’s site. To access the site

and purchase the product, it was only necessary that the purchaser click a button affirming that he or she was of legal age.

77. CravinVapes' conduct is particularly egregious given that it previously received a civil money penalty complaint from the FDA regarding its illegal sales of e-cigarettes to minors.²¹ Despite having received the FDA complaint in 2018, it sold e-cigarettes for shipment into New York City to an underage purchaser in August of 2019.

78. CravinVapes sells e-liquids with fruit and candy flavors designed to appeal to children. For example, CravinVapes featured its "Orange Cream Popsicle" e-liquid flavor – a flavor plainly targeted at young people - as the September flavor of the month as illustrated below.



79. It also sells several e-liquid flavors that mimic children's snacks and cereals such as "Sweet Teddies," designed to mimic Teddy Graham crackers, and "Fruity Loops," designed to mimic Fruit Loops cereal.

²¹ FDA, *Warning Letters and Civil Money Penalties Issued to Retailers for Selling JUUL and Other E-Cigarettes to Minors*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/warning-letters-and-civil-money-penalties-issued-retailers-selling-juul-and-other-e-cigarettes>.

The screenshot displays two product listings on a website. The first listing is for 'FRUITY LOOPS 30ML'. It features a close-up image of colorful, ring-shaped cereal pieces. The product description states: 'Fruity Loops was fashioned after the famous breakfast cereal and it's a perfect start to anyone's day!'. The price is shown as \$7.79, with a crossed-out \$12.99. Below the price are buttons for 'Add to Wishlist' and 'Add to Compare'. The second listing is for 'SWEET TEDDIES 30ML'. It features an image of a box of 'Sweet Teddies' graham crackers and a teddy bear. The product description states: 'Try this "snack-in-a-vape" flavor of bite sized graham crackers! Sweet and cinnamon all-in-one!'. The price is shown as \$7.79, with a crossed-out \$12.99. Below the price are buttons for 'Add to Wishlist' and 'Add to Compare'. At the bottom of the listings is a 'Nicotine Strength' dropdown menu with the text 'Choose an Option...'. The CravinVapes logo and 'MADE IN U.S.A. ELIQUID' are visible in the top left of each product image.

80. CravinVapes maintains social media presences on Facebook and Twitter. CravinVapes does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

81. CravinVapes utilizes its social media presence to market its child-friendly flavors and products. For example, the following Instagram post advertises popsicle themed e-liquids:



D. E-cigarette Empire

82. E-cigarette Empire offers electronic cigarettes for sale on its internet site, www.ecigaretteempire.com. In order to access the website, a person need only click a button affirming that the user is of legal smoking age in his or her state. In July of 2019 one of the Jane Does purchased a Smok Nord Starter Kit and a “Cookie Butter” flavored nicotine-containing e-liquid from E-cigarette Empire’s site. The E-cigarette Empire site purported to use age verification provided by AgeChecker.net, but when Jane Doe submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed for shipment into New York City.

83. E-cigarette Empire sells e-liquids in candy, cereal, beverage and fruit flavors designed to appeal to children. For example, E-cigarette Empire sells an Apple Peach Sour flavored e-liquid, which is designed to mimic the sour candies that are popular among children.



APPLE PEACH SOUR RINGS BY FINEST SWEET AND SOUR 100ML

★★★★★ 18 reviews | Ask a question

\$9.95

NICOTINE

0MG

3MG

6MG

QTY

-

1

+

ADD TO CART

84. E-cigarette Empire also maintains social media presences on Facebook, Twitter, and YouTube. E-cigarette Empire does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

85. E-cigarette Empire also utilizes its social media presence to market its child-friendly flavors and products. For example, the following Facebook post advertises a Fruit Twist e-liquid flavor packaged to make the product appear like candy.



E. eCig-City

86. eCig-City offers electronic cigarettes for sale on its internet site,

<https://ecig-city.com>. In order to access the website, a person need only click a button affirming that the user is of legal age in his or her state. In August of 2019 one of the Jane Does purchased a SMOK Novo 2 Kit from eCig-City's site. The eCig-City site purported to use age verification provided by AgeChecker.net, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed for shipment into New York City.

87. eCig-City sells e-liquids in candy, dessert and fruit flavors that are designed to appeal to children. For example it sells a Bubble Trouble flavored e-liquid that it describes as the "iconic flavor of candy shop bubble gum," and a Swedish flavor that mimics the flavor of Swedish Fish candies.

88. eCig-City also maintains social media presences on Facebook, Instagram, and YouTube. eCig-City does not restrict access to its social media to individuals over 21, and markets its products on those platforms. For example, eCig-City's Facebook page advertises the sale of fidget spinners, a toy that has recently become hugely popular with children. A screenshot of the Facebook post is provided below.



F. Element Vape

89. Element Vape offers electronic cigarettes for sale on its internet site, www.elementvape.com. In order to access the website, a person need only click a button affirming that the user is of legal smoking age in his or her state. In August of 2019 one of the Jane Does purchased a Kanger Gem Pod System and nicotine-containing pineapple and strawberry-flavored e-liquids from Element Vape's site. The Element Vape site purported to use age verification provided by Veratad, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed for shipment into New York City.

90. Element Vape sells e-liquids in hundreds of candy, dessert, fruit, cereal and other sweet flavors. For example, Element Vape sells 15 different bubblegum flavored e-liquids.

91. Element Vape maintains social media presences on Facebook, Twitter, Instagram and Pinterest. Element Vape does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

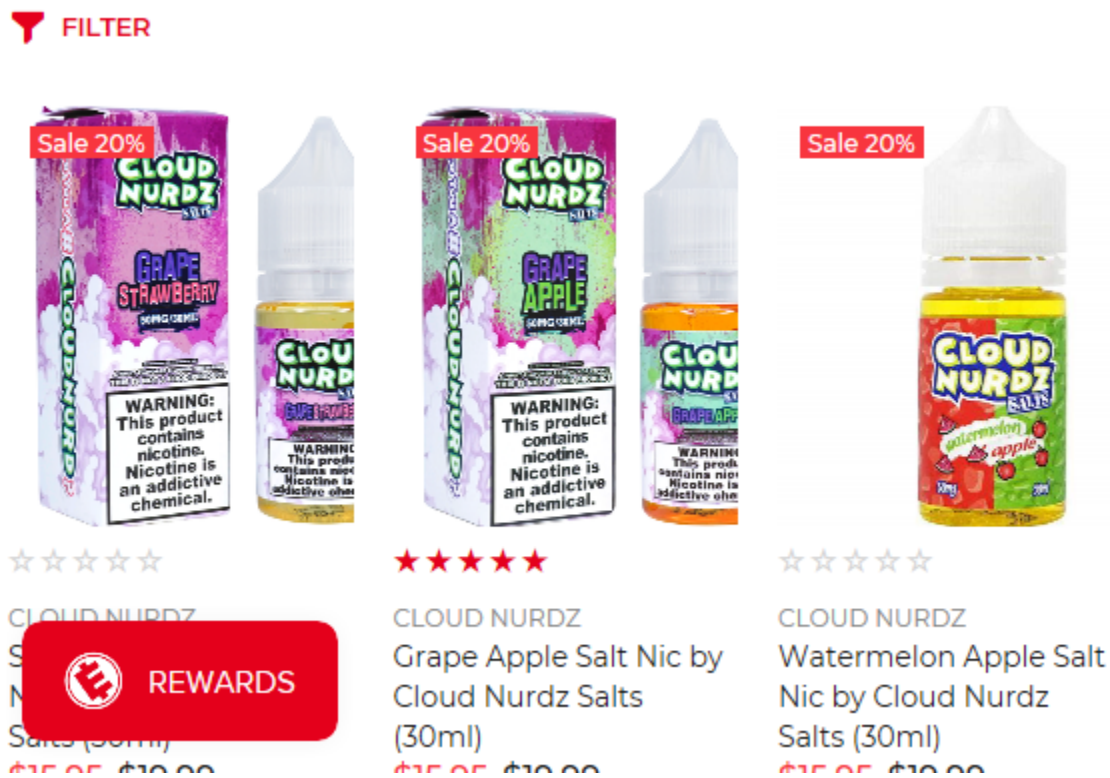
G. Eliquidstop

92. Eliquidstop offers electronic cigarettes for sale on its internet site, www.eliquidstop.com. In July of 2019, one of the Jane Does purchased a Suorin Air V2 Portable Device Kit from Eliquidstop's site. To access the site and purchase the product, it was only necessary that the purchaser click a button affirming that he or she was of legal age.

93. Eliquidstop's conduct is particularly egregious given that it has already been reported to the Better Business Bureau ("BBB") for its underage e-cigarette sales. Despite having received and responded to a BBB complaint in January of 2019 about its online sales of

vaping products to a 14-year-old child,²² it sold e-cigarettes to an underage purchaser in July of 2019 for shipment into New York City.

94. Eliquidstop markets and sells e-liquids with flavors designed to mimic food products that appeal to children. For example, it offers an entire line of “Cloud Nurdz” e-liquids – plainly intended to mimic the children’s “Nerds” candy – in flavors such as Strawberry Grape, Grape Apple, and Watermelon Apple as portrayed in the image below.



95. Eliquidstop also sells flavors with juvenile names such as “Unicorn Treats” that are plainly targeted at young people.

²²Available at <https://www.bbb.org/us/ca/glendale/profile/smoking-products/eliquidstop-1216-903936/complaints>.



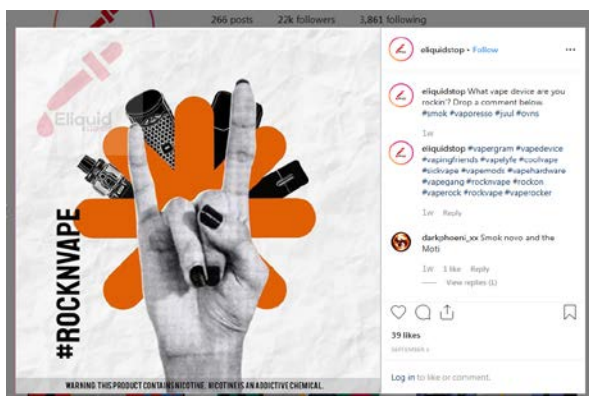
★ HUMBLE JUICE CO. ★★★★★
id Unicorn Treats By Humble Juice Co.
E-Liquid (120ml)
~~\$24.95~~ \$17.95

96. Eliquidstop maintains social media presences on Facebook, Instagram and Twitter. Eliquidstop does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

97. Eliquidstop also utilizes its social media presence to market to young people. For example, Eliquidstop posted the following advertisement on Facebook featuring young people who appear to be high school age.



98. Similarly, Eliiquidstop posted the following image on Instagram asking followers what “vape device are you rockin’?”:



H. Heather’s Heavenly Vapes

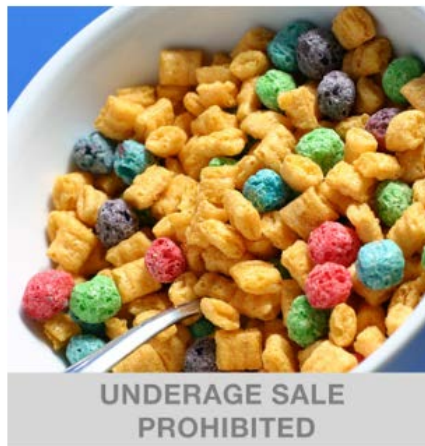
99. Heather’s Heavenly Vapes offers electronic cigarettes for sale on its internet site, <https://www.heathersheavenlyvapes.com>. No age-verification or even age confirmation is required in order to access the website. In August of 2019 one of the Jane Does purchased a Slik Pod System from Heather’s Heavenly Vapes’ site. To purchase the product, it was only necessary that the purchaser click a button affirming that he or she was over age 21.

100. Heather's Heavenly Vapes sells e-liquids in hundreds of candy, dessert, fruit, cereal and other sweet flavors that are designed to mimic children's foods. For example, as depicted below, Heather's Heavenly Vapes sells e-liquids in Crunch Punch flavor, designed to mimic Captain Crunch cereal, Fireball flavor, designed to mimic Atomic Fireball candies, Hula Fruit flavor, designed to mimic Fruit Loops cereal, and Trick or Treat flavor, designed to mimic Candy Corn.

TRICK OR TREAT



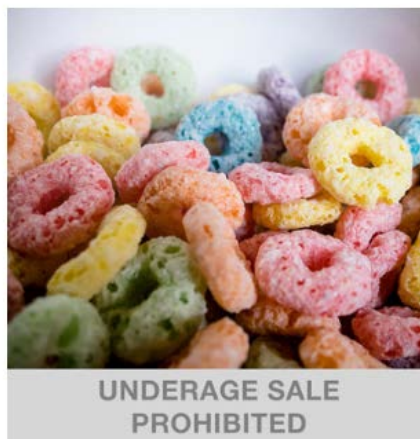
CRUNCH PUNCH



FIREBALL



HULA FRUIT



101. Notwithstanding the "Underage Sale Prohibited" disclaimer in these

images, Jane Doe was easily able to make an underage purchase for shipment into New York City from Heather's Heavenly Vapes.

102. Heather's Heavenly Vapes maintains social media presences on Facebook, Twitter, Instagram, YouTube and Pinterest. Heather's Heavenly Vapes does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

103. Heather's Heavenly Vapes utilizes its social media presence to market its products to young people. For example, its Instagram features several images and videos of "vape tricks" such as blowing vapor out of the nose, that attract and appeal to young people.

I. Humble Juice Co.

104. Humble Juice Co. offers electronic cigarettes for sale on its internet site, <https://www.humblejuiceco.com>. In August of 2019 one of the Jane Does purchased a Geek Vape Aegis Solo Kit and a nicotine-containing fruit-flavored e-liquid from Humble Juice Co.'s site. To access the site and purchase these products, it was only necessary that the purchaser enter a birth date that would indicate he or she was over the age of 21 upon entering the website.

105. Humble Juice Co.'s conduct is particularly egregious given that it received a joint warning letter from the FDA and the FTC regarding its failure to include required nicotine warnings in its social media posts.²³ Despite having received the FDA/FTC warning letter in June 2019, it sold e-cigarettes for shipment into New York City to an underage purchaser in August of 2019.

106. Humble Juice Co. sells e-liquids in candy and fruit flavors designed to appeal to children. For example, it sells Fruit Punch Gummy and Cereal & Milk flavors.

107. Humble Juice Co. maintains social media presences on Facebook, Twitter,

²³ FDA Warning Letter, Humble Juice Co. LLC, available at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/humble-juice-co-llc-111111-06072019>.

and Instagram. Humble Juice Co. does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

108. Humble Juice Co. posts content on social media that is designed to appeal to young people. For example, Humble Juice Co.'s Instagram page includes several images and videos of "vape tricks" that attract and appeal to young people.



J. Inline Vape

109. Inline Vape offers electronic cigarettes for sale on its internet site, <http://www.inlinevape.com>. In August of 2019 one of the Jane Does purchased a Boulder - The Rock Electronic Cigarette and a nicotine-containing “Apple Jacks” flavored e-liquid from Inline Vape’s site. To access the site, she was prompted to enter her date of birth, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, she was able to use the site and complete the purchase for shipment into New York City.

110. Inline Vape’s conduct is particularly egregious given that it previously received a warning letter from the FDA regarding its illegal sales of e-cigarettes to minors.²⁴ Despite having received the FDA warning in 2018, it sold e-cigarettes for shipment into New York City to an underage purchaser in August of 2019.

111. Inline Vape markets and sells e-liquids in sweet, dessert flavors designed to mimic flavors that appeal to children. For example, Inline Vape sells Apple Jacks flavored e-liquids, plainly designed to mimic Apple Jacks, a popular children’s cereal.

²⁴ FDA, *Warning Letters and Civil Money Penalties Issued to Retailers for Selling JUUL and Other E-Cigarettes to Minors*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/warning-letters-and-civil-money-penalties-issued-retailers-selling-juul-and-other-e-cigarettes>.



112. Inline Vape maintains a social media presence on Facebook. Inline Vape does not restrict access to its social media to individuals over 21, and markets its products on Facebook.

K. iVape

113. iVape offers electronic cigarettes for sale on its internet site, <http://ivape.net>. In August of 2019 one of the Jane Does purchased an EVOD-V device and a nicotine-containing blueberry-flavored e-liquid from iVape's site. To access the site, there was no requirement that a purchaser provide any information about his or her age, and she was easily able to complete the purchase despite being under 21 years of age.

114. iVape's conduct is particularly egregious given that it previously received a warning letter from the FDA regarding its illegal sales of e-cigarettes to minors.²⁵ Despite having received the FDA warning in 2018, it sold e-cigarettes for shipment into New York City

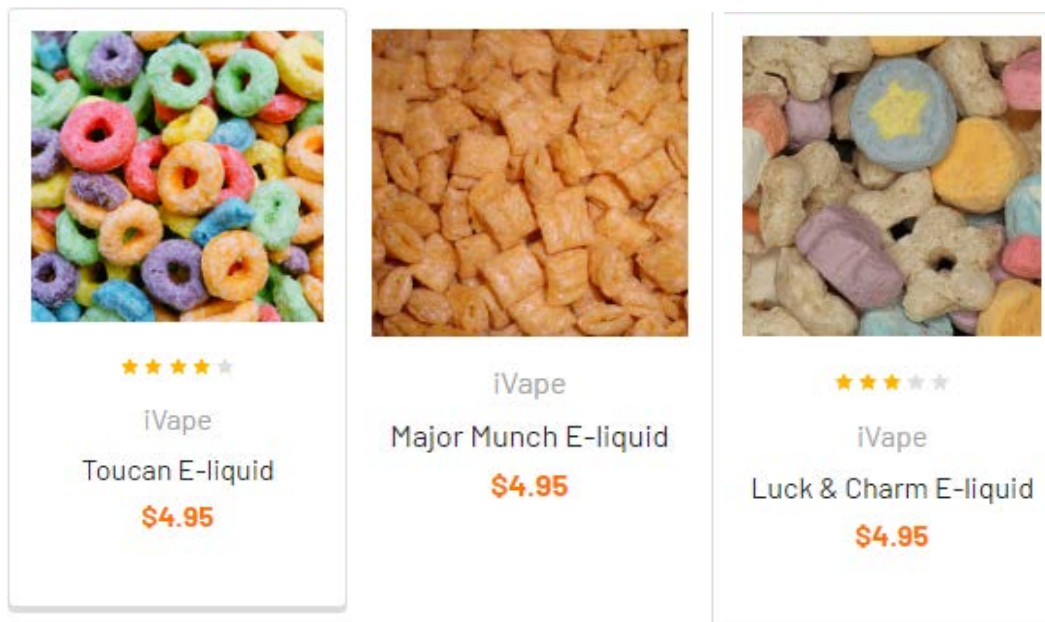
²⁵ FDA, *Warning Letters and Civil Money Penalties Issued to Retailers for Selling JUUL and Other E-Cigarettes to Minors*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/warning-letters-and-civil-money-penalties-issued-retailers-selling-juul-and-other-e-cigarettes>.

to an underage purchaser in August of 2019.

115. iVape's lack of any age-verification is not surprising given that it uses images of young women, who appear to be under 21, vaping on its website's landing page.



116. iVape sells e-liquids in candy, cereal and fruit flavors designed to appeal to children. For example, as these images demonstrate, it sells e-liquids in Luck & Charm flavor, designed to mimic Lucky Charms cereal, Major Munch flavor, designed to mimic Captain Crunch cereal, and Toucan flavor designed to mimic Fruit Loops.



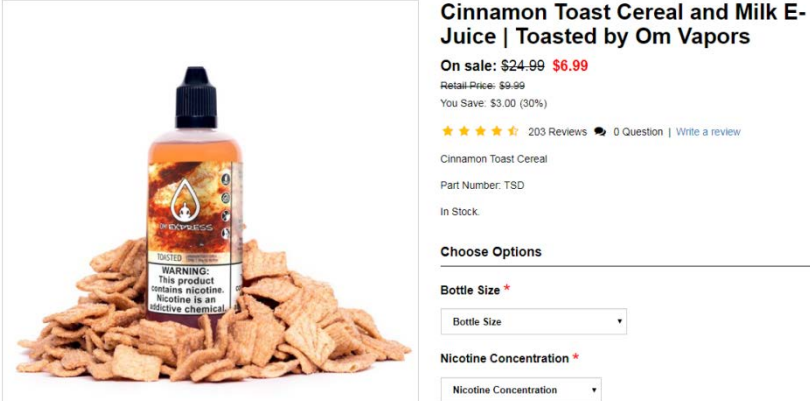
117. iVape maintains a social media presence on Facebook. iVape does not restrict access to its Facebook page to individuals over 21, and markets its products on Facebook.

L. Om Vapors

118. Om Vapors offers electronic cigarettes for sale on its internet site, www.omvapors.com. In order to access the website, a person need only click a button affirming that the user is over the age of 18. In August of 2019 one of the Jane Does purchased a Suorin Air V2 Vape Starter Kit and a nicotine-containing “Milk and Honey”-flavored e-liquid from Om Vapors’ site. The Om Vapors site purported to use age verification provided by AgeChecker.net, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed for shipment into New York City.

119. Om Vapors sells e-liquids in cereal, dessert, ice cream and fruit flavors designed to appeal to children. For example, Om Vapors sells cereal flavors such as “Cinnamon Toast Cereal and Milk” and “Divine Pebbles” that are clearly designed to mimic Cinnamon Toast Crunch and Fruity Pebbles, two cereal brands that are popular with children.

HOME > E-JUICE ONLINE STORE > E-LIQUID BRANDS > OM EXPRESS BY OM VAPORS > CINNAMON TOAST CEREAL AND MILK E-JUICE | TOASTED BY OM VAP



Cinnamon Toast Cereal and Milk E-Juice | Toasted by Om Vapors

On sale: ~~\$24.99~~ **\$6.99**
Retail Price: \$9.99
You Save: \$3.00 (30%)

★★★★☆ 203 Reviews 0 Question | Write a review

Cinnamon Toast Cereal
Part Number: TSD
In Stock

Choose Options

Bottle Size *
Bottle Size ▾

Nicotine Concentration *
Nicotine Concentration ▾



120. Om Vapors maintains social media presences on Facebook, Twitter, Instagram, YouTube and Pinterest. Om Vapors does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

121. Om Vapors' Twitter page even features a picture of two young women, who appear to be under 21, vaping.



M. Vapor4Life

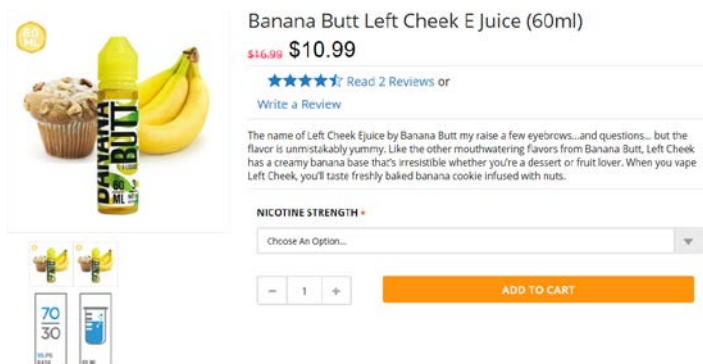
122. Vapor4Life offers electronic cigarettes for sale on its internet site, <https://www.vapor4life.com>. In order to access the website, a person need only click a button affirming that the user is of legal smoking age in his or her state. In July of 2019, one of the Jane

Does purchased a Suorin Air Vape Starter Kit and a peach-flavored nicotine-containing e-liquid from Vapor4Life’s site. To purchase these products, she was required to upload a copy of her photo identification. She submitted her actual photo identification, clearly stating that she was under 21 years of age, and the order promptly processed for shipment into New York City.

123. Many of the flavored nicotine-containing e-liquids available for sale on Vapor4Life’s website are modeled after popular children’s products or foods and candies that appeal specifically to young people. For example Vapor4Life sells a series of “Candy King” e-liquid flavors, each of which features brightly colored packaging that is modeled after a different children’s candy product, including “Worms,” “Swedish Fish,” and “Strawberry Watermelon Bubblegum.”

124. Vapor4Life advertises these flavors as tasting like specific candies that are popular with children. It describes the “Swedish Fish” flavor as tasting “just like the beloved gummy Swedish candies” and the “Worms” flavor as “like picking out colorful gummy worms from a brand new bag and eating them by the handful.”

125. Vapor4Life also markets flavors with juvenile names such as “Banana Butt Left Cheek” and “Fried Cream Cake” that are plainly targeted at young people.



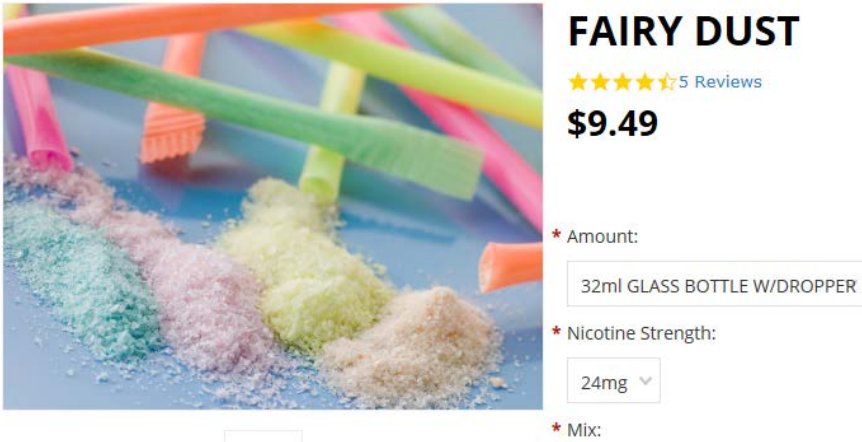
N. The Vape Mall

126. The Vape Mall offers electronic cigarettes for sale on its internet site, <https://thevapemall.com>. No age-verification or even age confirmation is required in order to access the website. In August of 2019 one of the Jane Does purchased a Joyetech Batpack Tank Kit and a nicotine-containing “Fruit Stick Gum”-flavored e-liquid from The Vape Mall’s site. The Vape Mall site purported to use age verification provided by AgeChecker.net, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed for shipment into New York City.

127. The Vape Mall’s conduct is particularly egregious given that it previously received a warning letter from the FDA regarding its illegal sales of e-cigarettes to minors.²⁶ Despite having received the FDA warning in 2018, it sold e-cigarettes into New York City to an underage purchaser in August of 2019.

128. The Vape Mall markets and sells e-liquids in candy and dessert flavors designed to mimic flavors that appeal to children. For example, the Vape Mall sells Fairy Dust flavored e-liquid, which as pictured below is designed to mimic candy straws that are popular with children.

²⁶ FDA, *Warning Letters and Civil Money Penalties Issued to Retailers for Selling JUUL and Other E-Cigarettes to Minors*, available at <https://www.fda.gov/tobacco-products/ctp-newsroom/warning-letters-and-civil-money-penalties-issued-retailers-selling-juul-and-other-e-cigarettes>.



129. The Vape Mall maintains a social media presence on Facebook, Instagram, Twitter and Pinterest. The Vape Mall does not restrict access to its social media to individuals over 21, and markets its products on these platforms.

130. The Vape Mall utilizes its social media presence to market its child-friendly flavors and products. For example, the following Facebook post advertises Candy Corn flavored e-liquids for the fall:



O. Vape NW

131. Vape NW offers electronic cigarettes for sale on its internet site, <https://vapenw.com>. In August of 2019 one of the Jane Does purchased for shipment into New York City a Moti Vape Pod Kit and a nicotine-containing “Brain Freeze”-flavored e-liquid from Vape NW’s site. To access the site and purchase the products, it was only necessary that the purchaser click a button affirming that he or she is of legal age.

132. Vape NW markets and sells e-liquids in sweet, dessert flavors designed to mimic flavors that appeal to children. For example, Vape NW sells e-liquids in a PB & Jam Monster flavor, which is plainly designed to mimic peanut butter and jelly sandwiches, and Strawberry Milk flavor.

133. Vape NW maintains a social media presence on Facebook, Instagram, Twitter and YouTube. Vape NW does not restrict access to its social media to individuals over 21, and markets its products on these platforms.

134. Vape NW utilizes its social media presence to market its child-friendly flavors and products. For example, the following Facebook post advertises its e-liquid flavor designed to mimic peanut butter and jelly sandwiches:



P. Vaping Watch

135. Vaping Watch offers electronic cigarettes for sale on its internet site, <https://vaping.watch>. In August of 2019 one of the Jane Does purchased for shipment into New York City a nicotine-containing cinnamon funnel cake-flavored e-liquid from Vaping Watch's site. To access the site and purchase these products, it was only necessary that the purchaser click a button affirming that he or she is over age 18.

136. Vaping Watch markets and sells e-liquids in sweet, dessert flavors designed to mimic flavors that appeal to children. For example, Vaping Watch sells e-liquids in Maple Doughnut and Strawberry Cake Pop.

137. Vaping Watch maintains social media presences on Facebook, Twitter, Instagram and Pinterest. Vaping Watch does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

Q. Vapor Authority

138. Vapor Authority offers electronic cigarettes for sale on its internet site, www.vaporauthority.com. In order to access the website, a person need only click a button affirming that the user is of legal smoking age in his or her state. In August of 2019 one of the

Jane Does purchased a SMOK Priv N19 Starter Kit and a nicotine-containing watermelon bubblegum-flavored e-liquid from Vapor Authority's site. To purchase these products, she was prompted to enter her date of birth, but when she submitted her actual date of birth, clearly demonstrating that she was under 21 years of age, the order immediately processed for shipment into New York City.

139. Vapor Authority markets and sells e-liquids in candy, cereal and dessert flavors designed to mimic flavors that appeal to children. For example, Vapor Authority sells 32 different gummy candy e-liquid flavors and 19 different e-liquid flavors that it describes as bubblegum flavors.

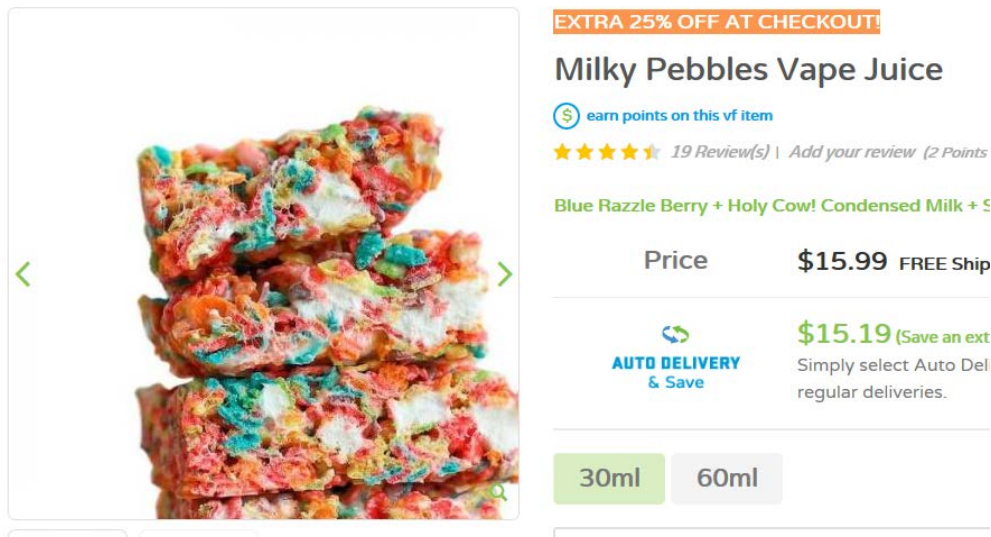
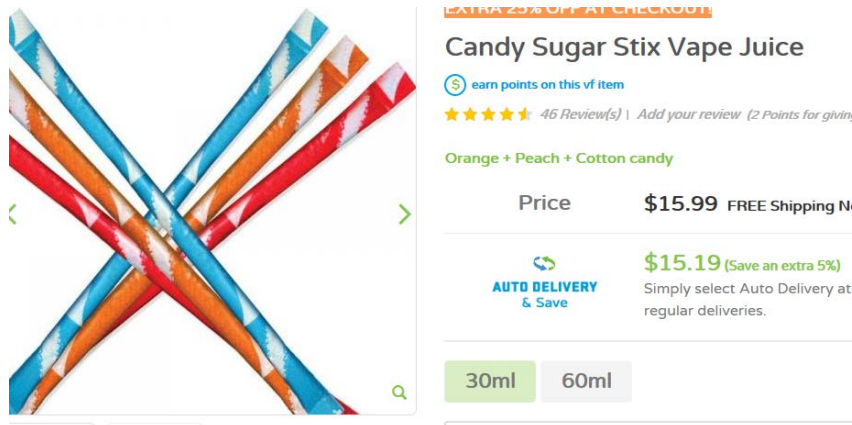
140. Vapor Authority maintains social media presences on Facebook, Twitter, and Instagram. Vapor Authority does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

R. Vaporfi

141. Vaporfi offers electronic cigarettes for sale on its internet site, www.vaporfi.com. In order to access the website, a person need only click a button affirming that the user is of legal smoking age in his or her state. In August of 2019 one of the Jane Does purchased a Smok Novo Vape Pod Starter Kit and a nicotine-containing "Sweet Sangria"-flavored e-liquid from Vaporfi's site. To purchase these products, she was required to upload a copy of her photo identification. She submitted her actual photo identification, clearly stating that she was under 21 years of age, and the order promptly processed for shipment into New York City.

142. Vaporfi markets and sells e-liquids with flavors designed to mimic flavors that appeal to children. For example Vaporfi sells candy, cereal and dessert flavored e-liquids

such as Candy Sugar Stix, designed to mimic Pixie Sticks candies that are popular with children, and Milky Pebbles, designed to mimic Fruity Pebbles cereals and marketed using images of the cereal as a marshmallow cereal treat:



143. Vaporfi maintains social media presences on Facebook, Twitter, Instagram and YouTube. Vaporfi does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

S. Veppo

144. Veppo offers electronic cigarettes for sale on its internet site, <https://veppocig.com/>. In July of 2019, one of the Jane Does purchased for shipment into New

York City a Suorin Air Pod Vaporizer and a nicotine-containing e-liquid from Veppo's site. To access the site and purchase these products, it was only necessary that the purchaser click a button affirming that he or she is of legal age.

145. Veppo's conduct is particularly egregious given that it has already been sued by the City of Chicago for its underage e-cigarette sales. Despite having been named in a lawsuit brought by Chicago in February of 2019, it sold e-cigarettes into New York City to an underage purchaser in July of 2019.

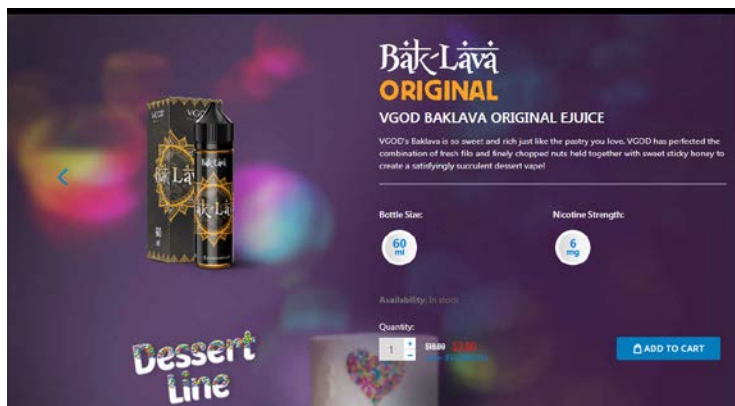
146. Veppo offers a wide array of flavored e-liquids, many of which it markets by picturing them alongside desserts or other sweet, child-friendly treats. The following screenshots are illustrative.

The image displays two product listings from the Veppo website. The top listing is for 'BANANA FLAVOR E-LIQUID NICOTINE - 10ML'. It features a 10ml bottle of e-liquid next to a banana cake with a cherry on top and sliced bananas. The product has a 5-star rating, a price of \$14.99, and a discounted price of \$8.99. A teal 'VIEW PRODUCT' button is located below the product information. The bottom listing is for 'BUTTERSCOTCH FLAVOR E-LIQUID NICOTINE - 10ML, 11MG'. It features a 10ml bottle of e-liquid next to several round butterscotch candies. This product also has a 5-star rating, a price of \$14.99, and a discounted price of \$8.99.

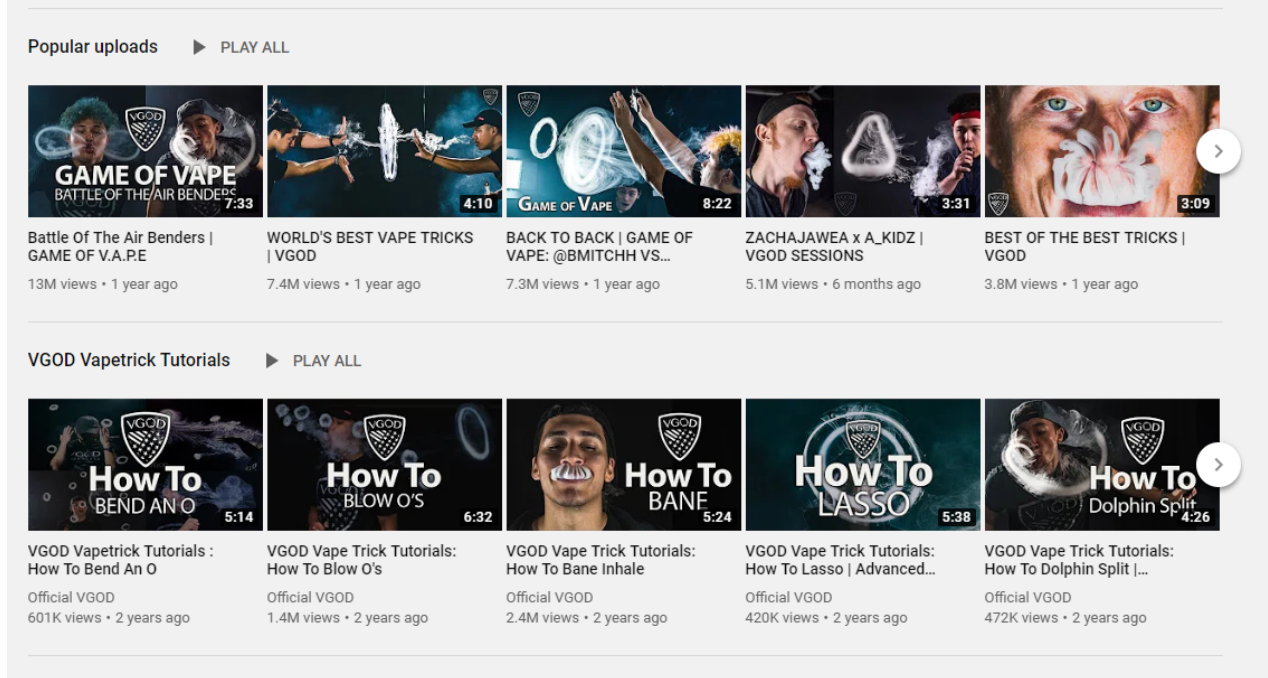
T. VGOD

147. VGOD offers electronic cigarettes for sale on its internet site, <https://officialvgod.com/>. In order to access the website, a person need only click a button affirming that the user is of legal smoking age in his or her state. In August of 2019 one of the Jane Does purchased a STIG Disposable Pods 3-pack in SaltNic Mighty Mint flavor from VGOD's site. To purchase the product, she was required to upload a copy of her photo identification. She submitted her actual photo identification, clearly stating that she was under 21 years of age, and the order promptly processed for shipment into New York City.

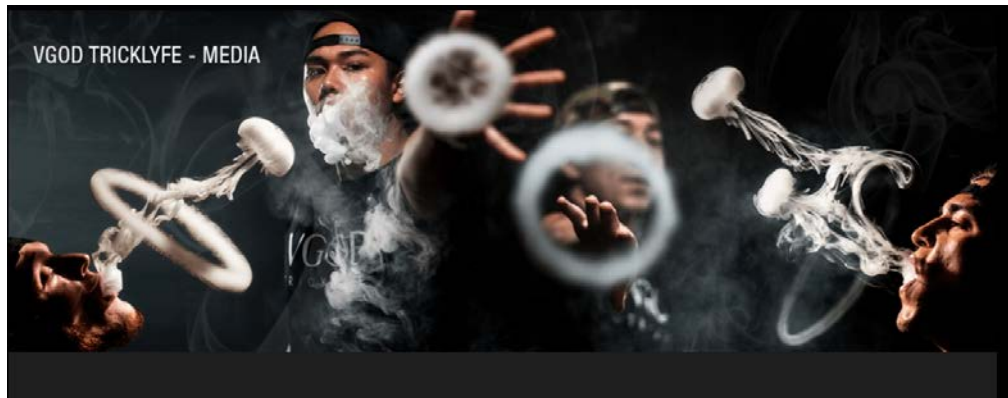
148. VGOD sells flavored e-liquids in sweet, child-friendly fruit and dessert flavors. The following screenshot is illustrative.



149. VGOD also maintains a social media presence on Facebook, YouTube, Instagram and Twitter, posting videos, memes and images targeting young people. For example, its YouTube page features numerous “how to” videos for various vape tricks:



150. VGOD's website includes numerous images of users performing similar vape tricks:



151. VGOD also advertises its presence on Discord, a semi-anonymous chat site popular with teenagers in the gaming community:



U. White Cloud

152. White Cloud offers electronic cigarettes for sale on its internet site, www.whitecloudelectroniccigarettes.com. No age-verification or even age confirmation is required in order to access the website. In July of 2019, one of the Jane Does purchased a Cirrus Omni Starter Kit from White Cloud's site. White Cloud then requested a copy of her photo identification via email. She submitted her actual photo identification, clearly stating that she was under 21 years of age, and the order immediately shipped to New York City.

153. White Cloud also maintains social media presences on Facebook, Twitter, Instagram, and YouTube. White Cloud appears to restrict access to its Facebook page to individuals over 21, however, it does not restrict access to its other social media, and markets its products on those platforms.

V. Zamplebox.com

154. ZampleBox offers electronic cigarettes for sale on its internet site, <https://www.zamplebox.com>. No age-verification or even age confirmation is required in order

to access the website. In July of 2019, one of the Jane Does purchased for shipment into New York City an ABAY Starter Kit and a nicotine-containing “Mango Rush” flavored e-liquid from ZampleBox’s site. To purchase these products, it was only necessary that the purchaser click a button affirming that he or she was over age 18.

155. ZampleBox sells vape juice in flavors with names such as “Whipped Salted Caramel” and “Berry Slush.” As depicted in the image from its website, ZampleBox advertises categories of e-liquid flavors with images of licorice, gummy candy, fruity cereals, cotton candy, and candy apples, among other things – all flavors that are targeted at young people.



156. ZampleBox maintains social media presences on Facebook, Twitter, and Instagram. ZampleBox does not restrict access to its social media to individuals over 21, and markets its products on those platforms.

FIRST CLAIM FOR RELIEF

Violation of the NYC Admin. Code § 17-706(a-1)

157. Plaintiff realleges paragraphs 1-156 above as if fully set forth herein.

158. The NYC Admin. Code prohibits sales of electronic cigarettes, defined as “battery-operated device[s] that heat[] a liquid, gel, herb, or other substance and deliver[] vapor

for inhalation,” and “includ[ing] any refill, cartridge, and any other component of an electronic cigarette,” to individuals under 21 years of age. NYC Admin. Code §§ 17-706(a-1), 17-702(bb).

159. Defendants violated NYC Admin. Code § 17-706(a-1) by selling electronic cigarettes, as defined in NYC Admin. Code § 17-702(bb), to New York City residents under 21 years of age.

160. Defendants either failed entirely to use age-verification systems for their internet sales, or failed to use age-verification systems properly to verify that New York City resident purchasers are over the age of 21.

161. NYC Admin. Code § 17-710(d) provides that “[w]henver any person has engaged in any acts or practices which constitute a violation of any provision of this subchapter or of any rule promulgated thereunder, the city may make application to a court of competent jurisdiction for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order or other order enjoining such acts or practices.”

162. The City is therefore entitled to injunctive relief as described below.

SECOND CLAIM FOR RELIEF

Public Nuisance

163. Plaintiff realleges paragraphs 1-162 above as if fully set forth herein.

164. The number of New York City high school and middle school students using e-cigarettes has reached epidemic levels and constitutes a serious public health crisis that endangers the health of thousands of young people residing in the City.

165. Defendants’ sales of e-cigarettes to individuals under the age of 21 in violation of NYC Admin. Code § 17-706, failure to use age-verification systems properly to prevent underage sales, sales of flavored e-cigarette products that are designed to appeal to young people, and marketing of their e-cigarette products has caused, created or contributed to

the epidemic levels of New York City high school and middle school students using e-cigarettes.

166. Defendants' conduct in selling and marketing e-cigarettes to individuals under the age of 21 substantially interferes with public rights and damages the public.

167. Defendants' conduct constitutes a public nuisance that injures the health of New York City residents.

WHEREFORE, New York City respectfully prays that the Court grant judgment against Defendants as follows:

- a. On the First Claim for Relief, Declaring that Defendants have violated the NYC Admin. Code;
- b. On the First and Second Claims for Relief, Enjoining Defendants from selling e-cigarettes to New York City residents under the age of 21;
- c. On the First and Second Claims for Relief, Enjoining Defendants from selling e-cigarettes to New York City residents without employing adequate age-verification systems;
- d. On the Second Claim for Relief, Enjoining Defendants from marketing e-cigarettes to New York City residents under the age of 21;
- e. On the Second Claim for Relief, Awarding the City damages for the costs of abating the public health crisis of underage e-cigarette use within the City;
- f. Awarding the City pre- and post-judgment interest, to the extent allowable;
- g. Awarding such other and further relief as the Court may deem appropriate.

October 8, 2019

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