E-cigarettes: Behind the Smokescreen

Prepared for The Public Health Advocacy Institute

Northeastern University School of Law
Class of 2017
Legal Skills in Social Context
Social Justice Program

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Spring 2015
Table of Contents

Executive Summary ........................................................................................................................................... 7

Section One

E-Cigarettes: What They Are and Why They Matter ...................................................................................... 8
  I. How E-Cigarettes Work .......................................................................................................................... 8
  II. E-Cigarettes in Contemporary Society ................................................................................................ 9
      A. Debate in the Public Health Community ......................................................................................... 9
      B. Current FDA Regulations .................................................................................................................. 9
      C. Impacts of Advertisements .............................................................................................................. 10
      D. Vaping Culture ................................................................................................................................. 11

Section Two

E-Cigarette Marketing ..................................................................................................................................... 13
  I. The Role of Tobacco Companies in the E-Cigarette Market ................................................................. 13
  II. E-Cigarette Brand Marketing ............................................................................................................. 14
  III. E-Cigarette Online Marketing ........................................................................................................ 14
  IV. Marketing in Convenience and Vaping Stores .................................................................................... 28

Section Three

Evidence That Claims Are Deceptive or Misleading ...................................................................................... 29
  I. Claims about Health and Safety ......................................................................................................... 29
      A. Chemicals in E-Cigarettes Compared to Conventional Cigarettes .............................................. 29
      B. Effects of Nicotine Exposure .......................................................................................................... 32
      C. Effects of Inhalation of E-Cigarette Vapor .................................................................................... 33
      D. Risk of Formaldehyde Exposure .................................................................................................... 35
      E. Risk of Exploding E-Cigarettes ...................................................................................................... 35
      F. Risks to Bystanders ......................................................................................................................... 36
      G. Natural and Organic Claims ........................................................................................................... 37
  II. Claims that E-Cigarettes Can be Used Anywhere ................................................................................ 40
      A. Regulations within Massachusetts ................................................................................................. 40
      B. Regulations in Other States ............................................................................................................ 41
  III. Claims that E-Cigarettes Can Be Used As a Cessation Device ............................................................ 41
Section Four

Chapter 93A: Massachusetts Consumer Protection Law

I. Introduction to 93A

A. History

II. Executing 93A

A. Demand Letter Requirement
B. Attorney's Fees and Costs

III. Relevant Rules and Regulations in Determining an “Unfair” or “Deceptive” Act

B. Massachusetts Regulation Relating to Advertising (940 C.M.R. § 3.00)

IV. Types of 93A Violations

A. Per Se Violations
B. Negligence as a Violation
C. General Violations: “Unfairness” and “Deception”

Section Five

Sample 93A Demand Letters

I. Mountain Oak Vapors
II. NEwhere
III. Vape Dudes

Conclusion

Appendix A: Documentation of E-Cigarette Marketing
Appendix B: E-Cigarette Marketing In Convenience and Vaping Stores
Appendix C: State Surveys
Terms and Definitions

For the purpose of this manual, we will use the following terms as defined below.¹

93A - Chapter 93A of the Massachusetts General Laws which is Massachusetts’s consumer protection law.

cessation device – A tool used to quit smoking conventional cigarettes, including but not limited to a nicotine patch, nicotine gum.

conventional cigarettes - Traditional combustible tobacco cigarettes that produce smoke.

e-cigarettes - Electronic nicotine delivery devices designed to look and function like conventional cigarettes.

e-liquid - The liquid used in e-cigarettes (also referred to as “e-juice”).

smoke - The byproduct produced when using a conventional cigarette (as opposed to vapor produced by e-cigarettes).

smoking - The act of using conventional cigarettes.

vaper - People who use e-cigarettes (also referred to “users” of e-cigarettes).

vaping - The act of using e-cigarettes.

vapor - The byproduct produced when using an e-cigarette.

¹ Although we use these terms as defined above, some advertisements quoted herein use terms such as “smoke” and “vapor” interchangeably.
Executive Summary

At the request of the Public Health Advocacy Initiative (“PHAI”), Law Office 2 researched the potential application of Massachusetts General Law Chapter 93A (“93A”) to unfair or deceptive advertising practices by electronic cigarette companies (“e-cigarette companies”). 93A is the Massachusetts consumer protection law. Section I of this manual describes the recent emergence of e-cigarettes and their implications for public health. Section II documents e-cigarette online and packaging advertisements with potentially actionable elements we encountered in our field research. Section III explores the bases for why certain advertisements by e-cigarette companies are potentially unfair or deceptive in the context of consumer protection law. We gathered studies and interviewed a public health professor to formulate an evidentiary basis that may support a 93A claim. Section IV explains how 93A works in the context of deceptive e-cigarette marketing. This section establishes a background of 93A, explains the meanings of “unfairness” and “deception” according to relevant rules and regulations as well as judicial interpretations, gives the procedural rules for making a 93A claim, and provides the cognizable types of damages and injuries under 93A. Finally, Section V applies our research in the form of three sample 93A demand letters to companies against whom PHAI likely has the strongest claims. These companies assert that e-cigarettes have unsubstantiated health benefits, can be used anywhere, and are “natural” and “organic.”

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2 Law Office 2 is a group of eleven first-year law students at Northeastern University School of Law (“NUSL”). As part of NUSL’s Legal Skills in Social Context Program, first-year law students complete a social justice component in which they represent and assist a nonprofit community-based or advocacy organization in solving a societal problem involving issues of diversity, the law, and social justice.
Section One

E-Cigarettes: What They Are and Why They Matter

E-cigarettes are electronic nicotine delivery devices designed to look and function like conventional cigarettes. They were first invented in China in 2004, and emerged in the U.S. market in 2006. E-cigarettes, and specifically their advertising, have become a controversial issue in the public health community. On the one hand, e-cigarettes are an alternative to conventional cigarettes and could be a useful smoking cessation tool. However, there is concern that appealing advertising will attract non-smokers and serve as a gateway to conventional cigarette use. This section further explores the implications of e-cigarettes for public health and the importance of responsible advertising.

I. How E-Cigarettes Work

E-cigarettes generally look like conventional cigarettes. However, e-cigarettes contain an e-liquid instead of tobacco, and produce a nicotine vapor rather than tobacco smoke. The body of the device is a tube, usually made of stainless steel, which contains a battery, a heating unit (“atomizer”), a cartridge, and an LED light that lights up when the user inhales. The cartridge contains an e-liquid; the ingredients of this liquid vary by brand and flavor, but the main ingredients are nicotine, water, propylene glycol and glycerol, as well as flavorings. E-liquids contain varying levels of nicotine and are available in a variety of flavors, from tobacco and menthol to fruit and candy. When the user inhales, the
atomizer heats the e-liquid and converts it into the vapor, which the user inhales into her lungs like the smoke of a conventional cigarette.\(^\text{10}\)

**II. E-Cigarettes in Contemporary Society**

**A. Debate in the Public Health Community\(^\text{11}\)**

The recent emergence of e-cigarettes has caused a rift in a once united public health community. Colleagues who have worked together for years in the crusade against conventional cigarette use and advertising now find themselves split into essentially two camps. The issue is whether e-cigarettes will cause less or more people to smoke conventional cigarettes. One camp, the proponents, sees e-cigarettes as a tool that could very well make conventional cigarettes obsolete. The skeptics, on the other hand, worry that e-cigarettes will attract new smokers and keep existing smokers hooked. The concern is that after decades of fighting to restrict tobacco smoking and advertising, e-cigarettes will once again make smoking appealing, popular and accepted. The response of proponents, however, is that the skeptics are not seeing clearly; public health advocates spent so many years trying to make smoking taboo that they automatically reject anything that looks like smoking. The debate is all the more heated because it is, at present, unsolvable. E-cigarettes are so new that there are no definitive answers about the long-term effects of vaping on smoking habits and public health.

**B. Current FDA Regulations**

The debate over the impact of e-cigarettes comes at a time when there is inconsistent, if any, regulation of the new devices. While some states and localities have varying bans on e-cigarettes in public places, there is currently little federal oversight of the production, advertisement and consumption of e-cigarettes.\(^\text{12}\) At present, the only federal e-cigarette regulation of advertisement that does exist actually leads to more irresponsible advertising. The Food and Drug Administration (“FDA”) currently classifies e-cigarettes as tobacco products for advertising purposes.\(^\text{13}\) This means that if e-cigarette companies market a therapeutic benefit of their products (i.e. using it as a smoking cessation tool), the FDA will require in depth clinical

\(^{10}\) Id.

\(^{11}\) For the purpose of the information provided in the following subsection, all material was appropriated from Sabrina Tavernise, *A Hot Debate Over E-Cigarettes as a Path to Tobacco, or From it*, N.Y. TIMES (Feb. 22, 2014), http://www.nytimes.com/2014/02/23/health/a-hot-debate-over-e-cigarettes-as-a-path-to-tobacco-or-from-it.html?_r=0.

\(^{12}\) Id.

trials. Therefore, e-cigarette companies shy away from making any such claims to avoid the costly and time-consuming studies.

The end result is that e-cigarette companies instead use more irresponsible and dubious tactics to market their products such as the appeal of sex, fruity flavors, and rugged individual. These engaging advertisements, unrelated to smoking cessation, could help realize the fear of e-cigarette skeptics that e-cigarettes will attract young people and serve as a gateway to conventional cigarette smoking. Meanwhile, a new regulation scheme allowing e-cigarette manufacturers to make more responsible therapeutic claims could better target current smokers who are trying to quit. The FDA is expected to roll out new, more comprehensive federal e-cigarette regulation at some point in the near future. Such federal oversight could have wide-reaching effects on the safety of e-cigarettes, their efficacy as a smoking cessation device, and the policy concerns of their advertisements. In the absence of such regulations, however, it is important to hold companies accountable for their potentially deceptive advertisements through consumer protection measures such as 93A.

**C. Impacts of Advertisements**

The research regarding the skeptics’ concern that vaping will actually increase smoking, especially among the youth, has been limited. While vaping is increasing dramatically among middle and high school students, the same cannot be said for smoking. A positive correlation between e-cigarette advertising and youth vaping is likely, given similar studies regarding smoking, but so far is not corroborated by studies.

The Center for Disease Control (“CDC”) conducted National Youth Tobacco surveys in 2011, 2012, and 2013, and the data shows a dramatic increase in youth who had used an e-cigarette but had never used a conventional cigarette. More than 263,000 high school and middle school students who have never smoked a conventional cigarette, had used e-cigarettes in 2013. This figure marks a dramatic increase from the 79,000 students who had used an e-

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14 Interview with Dr. Michael Siegel, Professor, Boston University School of Public Health, in Boston, Mass. (Jan. 6, 2015).
15 Id.
16 Id.
17 Id.
18 Tavernise, supra note 11.
20 Id.
cigarette but had not smoked a conventional cigarette in 2011.\textsuperscript{21} Furthermore, of the non-smoking youth who had used an e-cigarette, 43.9 percent had “intentions to smoke conventional cigarettes within the next year, compared with 21.5 percent of those who had never used e-cigarettes.”\textsuperscript{22}

The National Youth Tobacco surveys also found a correlation between students’ exposure to cigarette advertising and students’ intention of smoking cigarettes.\textsuperscript{23} According to this study, the more exposure youth had to cigarette advertising, the more likely they were to intend to smoke cigarettes.\textsuperscript{24} Specifically, the study found that 25.6 percent of students who had been exposed to three or four tobacco advertisements had intentions to smoke.\textsuperscript{25} In comparison, only 13 percent of students who reported not having been exposed to tobacco advertisements had intentions to smoke.\textsuperscript{26} Although there have not yet been similar studies regarding e-cigarettes advertisement, this study suggests that there will likely be a similar correlation. Youth with high exposure to e-cigarette advertisements will likely have higher intentions of vaping than youth with less exposure. This makes it all the more important to have responsible, well-regulated marketing in the e-cigarette industry.

Finally, the fear that vaping will lead to smoking could be overstated. Some in the public health community contend that e-cigarettes do not deliver enough nicotine to create addiction.\textsuperscript{27} Studies also indicate that e-cigarette use translates into nicotine addiction at a much lower rate than smokeless tobacco products.\textsuperscript{28}

**D. Vaping Culture**

Another development surrounding the rise of e-cigarettes is the emergence of a vaping culture. This new culture could potentially have a positive public health effect by providing
vapers with a supportive community of fellow former smokers. However, there is also the risk that long-term vaping could have negative health effects and that a vaping culture might encourage vapers to continue using e-cigarettes as a long-term option.

Several characteristics of vaping culture may benefit individuals trying to quit smoking. The non-disposable devices can be complex and allow for individual choices regarding flavors, apparatuses and accessories. E-cigarette users have many online forums at their disposal to seek out support from fellow vapers. “Vape fests” and other conventions also reinforce a sense of community amongst vapers. Communal support, both online and in person, can be an added benefit of e-cigarettes as a smoking cessation device as opposed to a nicotine patch or gum.

Given the rising popularity of e-cigarettes and the development of a vaping culture, e-cigarette companies wield tremendous influence over consumers. The choices these companies make in advertising, therefore, have major implications for public health. PHAI can help hold these companies accountable in the absence of federal regulation through a 93A claim targeting unfair and deceptive marketing practices.

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Section Two

29 Id.
30 Id.
31 Id.
E-Cigarette Marketing

Law Office 5 performed field research in order to assess whether e-cigarette companies use potentially deceptive marketing strategies. The following is an overview of the e-cigarette industry and the types of companies and advertisements we encountered in our research, followed by a description of our findings.

I. The Role of Tobacco Companies in the E-Cigarette Market

While the tobacco industry tends to be dominated by a relatively small number of large companies, the e-cigarette industry is comprised of a vast number of smaller companies. However, big tobacco companies still have a presence in the e-cigarette market. Some of the biggest tobacco companies sell e-cigarettes under different brand names. The Big Three tobacco companies, Altria Group Inc. (“Altria Group”), Reynolds American Inc. (“Reynolds”), and Lorillard Inc. (“Lorillard”) are, in that order, the top grossing tobacco companies in the United States, and all three manufacture e-cigarettes.32 Lorillard, a company that owns Newport, Kent, True, Maverick, and Old Gold brands of conventional cigarettes,33 acquired blu e-Cigs (“blu”) in 2012.34 During the time that Lorillard owned blu, Lorillard raised blu’s sales to make it the number one e-cigarette brand in the U.S. market. In July 2014, Lorillard and Reynolds agreed to a $27 billion merger, which included Lorillard selling blu e-cigarette brand to Imperial Tobacco Group, the world’s fourth largest tobacco company, for $7.1 billion.36

Reynolds and Altria recently joined the e-cigarette market as well. Reynolds, the company behind the popular Camel brand of cigarettes, manufactures Vuse e-cigarettes.37 In December 2014, Vuse launched four new styles in the Colorado and Utah markets: rich mint, crème, chai and mint. Reynolds’ increasing investments in the Vuse e-cigarette brand.38 Altria Group, the parent company of Phillip Morris, manufactures the relatively new brand of e-
cigarettes, MarkTen.39 The formal company name is “NuMark” and they first released the MarkTen e-cigarette in August, 2013.40 In mid-2014, MarkTen was released across the United States.41

The second most popular e-cigarette brand in the U.S. market is Logic, which is not owned by a conventional cigarette company.42 Other popular brands of e-cigarettes not owned by major conventional cigarette manufacturers are NJOY, Fin and Mistic.43

II. **E-Cigarette Brand Marketing**

As an industry, e-cigarette manufacturers are increasing their marketing efforts. In 2013, blu hired actress and model Jenny McCarthy to endorse the product in advertisements and spent $12.4 million for advertisements for the first quarter of the year.44 In comparison, during the same period in 2012, blu spent only $992,000 on advertising.45 According to the Lorillard vice president of marketing, Matt Coapman, Lorillard intended to spend $30 million on marketing blu e-cigarette products in 2013.46 In contrast, Logic dedicated $5 million to marketing its products in 2013.47 Although Vuse is a relatively new brand, launched in July of 2014, Reynolds has a database of twelve million tobacco customers that they can market Vuse to directly.48

III. **E-Cigarette Online Marketing**

In order to better document and investigate the type of potentially deceptive claims that many e-cigarette companies were making, we conducted a comprehensive online survey. We investigated the websites of fifty-five different e-cigarette companies and examined whether they made any dubious health claims or any other misleading claims about the nature of e-cigarettes.

The following section outlines the results of this investigation and documents any dubious claims that were found. Of the fifty-five websites, roughly twenty-eight made

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40 Id.
41 Esterl, supra note 35.
42 Dan Mangan, *supra* note 37.
43 Esterl, *supra* note 35.
45 Id.
46 Id.
48 Esterl, *supra* note 35.
potentially deceptive claims, twenty-three of which demonstrated strong evidence of deception. For these websites, the particular deceptive language used is described in this section, and screenshots documenting what the advertisements looked like are provided in Appendix A. For the remaining twenty-seven websites, little evidence was found suggesting deceptive claims. To determine whether a company ships to Massachusetts, a Law Office 5 member called the company directly to confirm shipping, or a Massachusetts address was entered manually into the website and if the order was allowed to be completed it was concluded that the company would ship to Massachusetts.

Three major categories of claims emerged in our research, and the description of each company’s claims covers each of these three categories:

1) Health and safety claims about e-cigarette use,
2) Claims that they can be used anywhere, and
3) Claims about their use as a smoking cessation device.

First, sub-section A summarizes the specific types of claims companies made within each of these categories and quantifies how many companies make each type of claim. Next, sub-section B summarizes the claims made by each individual company in more detail.

A. Types of Claims

1. Health and Safety Claims About E-Cigarette Use

Health and safety claims encompass a wide variety of explicit and implicit claims about being healthy or safe in general, or healthier or safer than conventional cigarettes. These include claims about having fewer or no carcinogens, reducing health risks, and containing no harmful chemicals or chemicals found in conventional cigarettes. The brands that have claims about being healthier or safer are Cylapex, DFW Vapor, Eluma, Emerald Lux, Eversmoke, Mountain Oak, Premium, Regal e-Cigs, SmartFixx, South Beach Smoke, Suicide Bunny, and VaporFi.

Some companies, including Bloog, Emerald Lux, and VaporFi, go so far as to say that their products’ chemicals are not only safer than conventional cigarettes, but that their products are chemical free.

Other health and safety claims state that risks of serious health issues are non-existent or will not happen with their e-cigarettes. NEwhere makes this claim.
Organic, natural and FDA approval claims state that their products use “organic” or “natural” e-cigarette juice or that they are approved by the FDA. The brands that make these organic or natural claims are Vape Dudes, Vapor4Life, Virgin Vapor, and Lizard Juice.

Smoke free and bystander safety/health claims declare that their products do not produce second-hand smoke and all other claims that their e-cigarettes are not harmful to bystanders. The brands that make these smoke free and bystander safety claims are: Aquacig, Cylapex, DFW Vapor, Eversmoke, Logic, NEwhere, SmartFixx, South Beach Smoke, Regal e-Cigs, Vapestick, and Vapor4Life.

Odorless or water vapor claims state that the product produces water vapor or vapor that is odorless. The brands that make these vapor claims are Aquacig, Bloog, Clearette, DFW Vapor, Emerald Lux, Eversmoke, Logic, SmartFixx, South Beach Smoke, Xeo, and Victory.

Testimonials that allege health and safety claims appear in the advertisements of Revolver and Vaporin.

2. Claims That E-Cigarettes Can Be Used Anywhere

Aquacig, Cylapex, DFW Vapor, Eversmoke, NEwhere, SmartFixx, Vapor4Life, and Xeo, advertisements contain explicit claims that e-cigarettes can be used anywhere. Disclaimed or limited claims are claims that have a disclaimer or qualifier, or claims that are located in testimonials. The brands that have these limited or disclaimed claims are Eluma, Emerald Lux, Logic, Mountain Oak, Regal e-Cigs, V2 (VMR Products), VaporFi, Revolver, and Zoom. South Beach Smoke has implied claims that e-cigarettes can be used anywhere.

3. Claims About the Use of E-Cigarettes As a Smoking Cessation Device

Some companies make rather explicit claims that e-cigarettes can be used as a cessation product, supported by either testimonials or studies. The brands that do this are Mountain Oak, South Beach Smoke, VaporFi, and Revolver.

Other companies imply that e-cigarettes can be used to decrease nicotine dependency or quit cigarettes. The brands that use implicit claims are DFW Vapor, Eluma, Xeo, Suicide Bunny, and Vapor4Life. Vapor4Life specifically uses testimonials from vapers and their CEO.

B. Summaries of Individual Companies

The following section provides a summary of each individual company’s advertising claims that are potentially deceptive. Companies numbered 1-23 are companies with strong evidence of potentially deceptive claims. Companies numbered 24-28 have weaker evidence of
potentially deceptive claims. Each summary covers all three categories of claims, describing whether the company makes 1) health or safety claims, 2) claims that e-cigarettes can be used anywhere, and 3) cessation claims. See Appendix A for citations and screenshots of the advertisements described in this section. The numbering of the companies in this section is identical to the numbering in Appendix A.

In categorizing claims as either weak or strong, we weighed a variety of factors in order to gauge how potentially deceptive the claims were. If a claim immediately seems implausible and unsupportable, such as a claim that a company’s e-cigarettes are “chemical free,” then the claim is categorized as a strong claim. Conversely, if a claim just seems to be slightly misleading or “mere puffery,” such as a claim alleging that e-cigarettes are odor free, then it is categorized as a weaker claim. A fairly subjective standard was used but it allowed us to hone in on the specific companies that seemed to be making the most outlandish claims that appeared demonstrably deceptive.

Companies with Strong Evidence of Potentially Deceptive Claims

1. **Aquacig**

Aquacig is a California-based company that will ship its products to Massachusetts. Aquacig makes the following health or safety claim: “AquaCig produces a thick, satisfying vapor from water, flavoring and nicotine. Where there’s no smoke, there is no lingering smell in the air or second hand smoke.”\(^{49}\) Aquacig also claims that their e-cigarettes can be smoked anywhere. Under their “Learn” tab they claim you can vape anywhere: “AquaCig is not a tobacco product and does not produce smoke. This means it is not prohibited by law in locations such as bars, restaurants or work[places].”\(^{50}\) Aquacig does not make claims that their products are intended for use as a smoking cessation device.

2. **Bloog**

Bloog is a New Jersey-based company that has retail locations in the United States and will ship its products to Massachusetts. Bloog claims their e-cigarettes produce “water vapor,” that their e-cigarettes do not have any of the chemicals found in conventional cigarettes and that they disclose all of their ingredients.\(^{51}\) Bloog does not make any claims about the locations

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\(^{49}\) See App. A-1-Fig. 1.

\(^{50}\) See App. A-1-Fig. 1.

\(^{51}\) See App. A-2-Fig. 1, 2.
where their products may or may not be used or that their products are intended for use as a smoking cessation device.

3. **Clearette**

Clearette is a New York-based company that sells its products in retail locations in Massachusetts. The packaging on the product claims that it emits no odor. Clearette does not make any claims about where this product may be used and Clearette specifically advises that its products are not intended for use as a smoking cessation device.

4. **Cylapex**

Cylapex is a company with factories located in China. Cylapex ships its products to the United States, but it is unclear if Cylapex ships directly to Massachusetts. Cylapex makes claims that, “[i]t won't hurt people you love around you and there won't be smelly clothes, yellow fingers and harmful chemicals. This is because that you're using Cylapex electronic cigarettes.” Furthermore, Cylapex states that their e-cigarettes do not produce second-hand smoke. Cylapex makes claims that their products are able to be used almost anywhere, including bars, pubs, nightclubs, casinos, hotels, airports and more. Cylapex does not make any claims that their products are intended for use as a smoking cessation device.

5. **DFW Vapor**

DFW Vapor is a Texas-based company and will ship its products to Massachusetts. In DFW Vapor’s Frequently Asked Question section (“FAQ”) they have a question, “Who should use electronic cigarettes?” to which the answer is, “Smoker over 18 that is looking to improve health or decrease [their] dependency on nicotine.” DFW Vapor claims that their vapor is “no more harmful to people around you than boiling water or making tea.” Under the FAQ section, in response to the question, “Am I allowed to use my e-cig in non-smoking bars and restaurants?” DFW Vapor answers in the affirmative, and looks to make its users into advocates on their behalf: “Typically, yes. There are currently no laws prohibiting the use of e-cigs in non-smoking establishments. However, if a manager or owner asks you to stop, please be polite and set a good example of e-cig users and stop. If you want, use this moment as a chance to educate

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52 See App. A-3-Fig. 1.
53 See App. A-4-Fig. 1.
54 See App. A-4-Fig. 1.
55 See App. A-4-Fig. 1.
56 See App. A-5-Fig. 2.
57 See App. A-5-Fig. 3.
the person on e-cigs and how they are completely odorless and flame-less, and have no second hand smoke” (emphasis added).\footnote{58 See App. A-5-Fig. 1.} The website states that “[e]lectronic cigarettes have not been approved for smoking cessation. Although many people have claimed to switch to Electronic Cigarette use entirely, we can not make any such claims.”\footnote{59 See App. A-5-Fig. 1, 2.}

6. **Eluma**

Eluma is an online retailer of e-cigarettes that will ship its products to Massachusetts. Eluma makes several health claims about the safety of their products. On the “How It Works” page they write, “The main difference is there's no tobacco so no tar, ash, odor or carcinogens. How are we so sure [there are] no carcinogens? We randomly test our products regularly using a 3rd party laboratory to ensure the highest quality control in this industry. No rogue ingredients will ever make its way into our product.”\footnote{60 See App. A-6-Fig. 1.} On their homepage, Eluma has several advertisements that cycle through and one makes the claim that there are, “NO Laws Against Using Eluma Anywhere!”\footnote{61 See App. A-6-Fig. 2.} Then, per the asterisk, it disclaims, “Chicago & New York City have passed local ordinances that treat e-cigs similar to tobacco cigarettes. Check your local laws prior to use in public places.”\footnote{62 See App. A-6-Fig. 2.} In the FAQ section, under the question “Can ELUMA be used as a smoking cessation option?” they answer, “Although we make no claims that ELUMA can be used to stop smoking, most ELUMA users do stop using tobacco all together. ELUMA has not been tested as a smoking cessation method, but it is clear that using ELUMA can completely substitute your tobacco habit” (emphasis added).\footnote{63 See App. A-7-Fig. 4.}

7. **Emerald Lux**

Emerald Lux is a California-based subsidiary of Zcor, Inc. and will ship its products to Massachusetts. Emerald Lux makes many unfounded claims including that their products only produce vapor, contain “no toxic chemicals,” and will help reduce health risks.\footnote{64 See App. A-7-Fig. 1, 3, 4.} Emerald Lux states that their products are the “cleanest way” to enjoy e-cigarettes and are “about as green as you can get.”\footnote{65 See App. A-7-Fig. 4.} Emerald Lux claims that their e-cigarettes can be used practically anywhere,
while providing a list of approved locations as a generality.\textsuperscript{66} They later disclaim that local laws should be adhered to but only say so for locations that are “uncertain.”\textsuperscript{67} There are currently no claims by Emerald Lux that their products are intended for use as a smoking cessation device.

8. EverSmoke

EverSmoke is an Illinois-based company that will ship its products to Massachusetts. In EverSmokes’s “Why Us” section in response to the question “Is the EverSmoke Electronic Cigarette a better way to smoke?” they make claims that their products “[do] not contain the thousands of carcinogens typically found in tobacco products and can even be safely smoked indoors.”\textsuperscript{68} Furthermore, EverSmoke claims that their products are “free of life threatening carcinogens and offensive second-hand smoke, the EverSmoke electric cigarettes offer a better, smarter environment to both you and the non-smoking community. Simply put, you can now enjoy smoking guilt free, wherever and whenever you want!”\textsuperscript{69} Additionally, in response to the question “Does the EverSmoke Electronic Cigarette produce smoke or tar?” they claim that “EverSmoke does not produce any smoke and only an odorless water vapor mist nearly identical in appearance to tobacco smoke, but disappears in several seconds.”\textsuperscript{70} EverSmoke also has suggestive banners indicating that vaping would be allowed in places such as airports and perhaps on airplanes.\textsuperscript{71} Eversmoke does not make claims that their products are intended for use as smoking cessation devices.

9. Logic

Logic is associated with LOGIC Technology Development LLC. Logic sells their products in retail stores throughout Massachusetts and will ship their products to Massachusetts. Under the website’s FAQ section Logic states, “LOGIC does not produce smoke but rather a water vapor that looks like smoke. It's similar to the fog machines they use at dance clubs and private parties that evaporates into the air in seconds with no smell.”\textsuperscript{72} Logic also claims their products can be used anywhere, within the limits of local laws: “LOGIC has no second hand smoke or odor, which makes it easy to smoke anywhere, anytime. Some public places at this

\textsuperscript{66} See App. A-7-Fig. 2.
\textsuperscript{67} See App. A-7-Fig. 2.
\textsuperscript{68} See App. A-8-Fig. 4.
\textsuperscript{69} See App. A-8-Fig. 3.
\textsuperscript{70} See App. A-8-Fig. 2.
\textsuperscript{71} See App. A-8-Fig. 1, 3.
\textsuperscript{72} See App. A-9-Fig. 2.
time do not allow Electronic Cigarettes and one must abide by their own city and state regulations.” Logic does not market their devices as smoking cessation devices and explicitly states that they in no way intend to do so.

10. Mountain Oak Vapor

Mountain Oak Vapor is an online e-cigarette retailer that is based out of Tennessee. While they do not have any retail locations in Massachusetts, they will ship their products to Massachusetts. On their website, Mountain Oak Vapor claims that “New Studies have been released that show electronic cigarette use to be up to 99.9% healthier for the cell-reproduction rate of a e-cigarette users lungs vs that of traditional cigarettes!” On the FAQ section of their website, Mountain Oak Vapor suggests that e-cigarettes can be smoked “almost” anywhere. Mountain Oak Vapor also has an advertisement that states, “[h]elp someone you love break the tobacco addiction this year by visiting one of our TN locations!”

11. NEwhere

NEwhere is a California-based company that sells their products in Massachusetts retail locations and also offers their products for online sale. NEwhere makes claims such as, “[a] couple of key points that most users consider right away are that E Cigs don’t produce any second hand smoke, ash, or tar... and no tobacco is used in an electronic cigarette therefore the risk of terrible diseases like lung cancer and more are non-existent.” NEwhere claims, “[t]he largest reason why so many people have jumped on the electronic cigarette train so quickly is because smokers have the freedom to enjoy the great taste and feel of their cigarette NEwhere without restrictions, such as offices, theaters, bars, clubs, airports, coffee shops, hospitals, etc.” In a section called “Celebrity E-Cigarette Users” NEwhere talks about the dangers of smoking conventional cigarettes and “highlights celebrities who have kicked the habit and are now living healthier lives” having switched to e-cigarettes instead.

12. Premium

Premium is a Virginia-based corporation that will ship its products to Massachusetts. Under the “How it Works” section on Premium’s website they state that using an e-cigarette

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73 See App. A-9-Fig. 1.
74 See App. A-10-Fig. 1.
75 See App. A-10-Fig. 1.
76 See App. A-10-Fig. 2.
77 See App. A-11-Fig. 1, 2, 5.
78 See App. A-11-Fig. 3, 4.

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“simulates the smoking of a traditional cigarettes sans all the harmful chemical additives found in major tobacco products.” Premium currently makes no claims about where their products may be used or that their products are intended for use as a smoking cessation device.

13. **Regal e-Cigs**

Regal e-Cigs is an online e-cigarette retailer that does not have any retail locations in Massachusetts but will ship their products to Massachusetts. Regal e-Cigs warns that there is no safe use of nicotine, but that e-cigarettes are safer than conventional tobacco.\(^{80}\) In addition, Regal e-Cigs states that their products do not leave second-hand smoke.\(^{81}\) On their homepage, Regal e-Cigs notes that an e-cigarette user can “Smoke Almost Anywhere, Smoke Smarter.”\(^{82}\) However, later in the FAQ section Regal e-Cig explains, “Electronic cigarettes can often be used legally almost anywhere, many times even where traditional smoking is prohibited. Because the electronic cigarette is not lit and smoke is not produced, it is not known to be prohibited from use under most laws and ordinances. We always recommend you check with your local jurisdiction before using an electronic cigarette.”\(^{83}\) Regal e-Cigs does not make any claims that their products are intended as a smoking cessation device.

14. **SmartFixx**

SmartFixx is an online retailer and no information was found on where SmartFixx will ship their products to Massachusetts. On their website, SmartFixx makes multiple claims implying that e-cigarettes are healthier than conventional cigarettes, such as, “Smoke free cigs emit none of the carcinogens of secondhand smoke which contains 4,000 chemical substances! Ours is an electric cigarette (or ecigarette) with replacement nicotine cartridges that emit no smoke at all, from mini electronic cigarettes to electronic cigars,” “the propylene glycol in our electronic smokeless cigarettes, mini electronic cigarettes and cigars creates a water vapor that emulates smoke,” “as for the nicotine in our e-cigarettes, nicotine is not believed to have any toxicological effects,” and the “absence of dangerous chemicals in electronic cigarettes top the list of reasons to use ecigarettes.”\(^{84}\) SmartFixx makes bold claims about using e-cigarettes stating, “[y]ou can ‘smoke’ electronic cigarettes, mini electronic cigarettes and electronic cigars

\(^{79}\) See App. A-12-Fig. 1.
\(^{80}\) See App. A-13-Fig. 2.
\(^{81}\) See App. A-13-Fig. 2.
\(^{82}\) See App. A-13-Fig. 1.
\(^{83}\) See App. A-13-Fig. 2.
\(^{84}\) See App. A-14-Fig. 1, 2.
anywhere because electronic smokeless cigarettes are not tobacco products. Whether it's in a restaurant, hospital or office building, use your smoke free cigs to your heart's content!”

SmartFixx does not make any claims about their products being used as a smoking cessation device.

15. **South Beach Smoke**

South Beach Smoke is an online retailer that will ship their products to Massachusetts. Under the FAQ section, South Beach Smoke (“SBS”) makes claims that it “produces an odorless water vapor.” SBS also claims that their products do “not contain the thousands of harmful carcinogens typically found in tobacco products.” SBS explicitly makes claims about where their products can be used in their FAQ section stating, “[a]s this product is free of both first and second hand smoke, and is by no means a traditional tobacco cigarette, you should be free to smoke South Beach Smoke electronic cigarettes in most areas that don’t typically permit smoking.” SBS claims that although e-cigarettes are not FDA approved as a smoking cessation device, “many people have used it to successfully quit smoking.”

16. **Suicide Bunny**

Suicide Bunny is a Texas-based company, and it is uncertain if they will ship their products to Massachusetts. Suicide Bunny makes no claims about locations where their products may or may not be used. On their homepage Suicide Bunny claims, “E-cigarettes can help even longtime smokers reduce their daily cigarette intake. Quitting cigarettes in favor of e-liquids can help you gradually eliminate your dependence on nicotine, while cutting back on the risk of respiratory illnesses.”

17. **V2 (VMR Products)**

V2 is a Florida-based corporation that sells its products in Massachusetts retail locations and will ship their products to Massachusetts. V2 does not make any claims about the health or safety benefits of using their product. V2 claims e-cigarette users can “smoke virtually anywhere, even in most ‘No Smoking’ areas like bars, restaurants, offices, and airports.”

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85 See App. A-14-Fig. 2.
86 See App. A-15-Fig. 3.
87 See App. A-15-Fig. 1.
88 See App. A-15-Fig. 2.
89 See App. A-15-Fig. 4.
90 See App. A-16-Fig. 1.
91 See App. A-17-Fig. 1, 2, 4.
does not make any claims about their products as intended to be used as a smoking cessation device.

18. Vape Dudes

Vape Dudes is an online retailer that will ship their products to Massachusetts. On their homepage, Vape Dudes states their “Naturals” product line contains “100% USDA Organic flavors.”92 The section marked “Naturals” explicitly states that they use exclusively organic flavors in their “e-juice.”93 In the FAQ section under “Our Liquid” Vape Dudes states that its e-juice contains “Propylene Glycol and Vegetable Glycerin,” is “Diacetyl and artificial color-free” and “contains no sweeteners.”94 Vape Dudes makes reference to the quality of their products being “top-quality” and they make a reference to the popular AMC drama series Breaking Bad about their product being of “Heisenberg-level purity,” which indicates the highest levels of purity.95 There are no claims by Vape Dudes about where their products may or may not be used or that their products are intended for use as a smoking cessation device.

19. Vapestick

Vapestick is a company located in the United Kingdom that will ship their products to the United States. Under the FAQ section, in response to the question, “Is there any danger of passive smoking with VAPESTICK®?,“ Vapestick replies, “No. There are no passive or second-hand smoke dangers when using a VAPESTICK® electronic cigarette. There is no danger to the people around you, even in enclosed spaces such as your car or office.”96 The Vapestick website makes note of the need to check the status of vaping in U.K. locations, but do not specifically mention the U.S. and the U.S.’s respective limits.97 Vapestick does not make any claims that they intend their products be used as a smoking cessation device.

20. Vapor4Life

Vapor4Life is an Illinois corporation that will ship their products to Massachusetts consumers. Vapor4Life claims that their products “produce no smoke or second hand smoke, only water vapor” and claim that propylene glycol (“PG”), vegetable glycol (“VG”), and their

92 See App. A-18-Fig. 3.
93 See App. A-18-Fig. 1, 3.
94 See App. A-18-Fig. 1.
95 See App. A-18-Fig. 4.
96 See App. A-19-Fig. 2.
97 See App. A-19-Fig. 1.
flavoring are “FDA approved” without noting that they are approved for consumption only. 98 Vapor4Life claims that their products “[go] anywhere” which indicates that there is no limit on where their products can be used. 99 They further explicitly state, “[v]aping is allowed in places where cigarette smoking isn’t like cafes, bars, restaurants, and other nonsmoking areas – because you’re not filling the air with smoke. Enjoy Vapor4Life at home, in the car, or even at the office without worrying about bothering your family, friends, or coworkers.” 100 The company’s website uses testimonials, and the CEO’s own personal statements, to claim that Vapor4Life products have helped users to stop smoking traditional tobacco products. 101

21. VaporFi

VaporFi is an online retailer that ships their products to Massachusetts. In response to the question “Are VaporFi electronic cigarettes a better way to smoke?” VaporFi states “VaporFi’s revolutionary smoking alternative allows for a smoking experience sans tobacco, so all the trappings of tobacco are nonexistent. There is no proof authenticating their health value, so you’ve got to use your judgment. Smoke free, tar free, chemical free, and tobacco free; what do you think?” (emphasis added). 102 Under the FAQ section, VaporFi makes a claim that their products can be used “practically anywhere,” whilst using disclaimers after the fact in order to pull back the intensity of such a claim. 103 VaporFi makes some suggestive remarks about their products being a smoking cessation device in their FAQ under “Who is VaporFi for?” VaporFi claims, “many people have successfully used these products in efforts to quit smoking.” 104

22. Virgin Vapor

Virgin Vapor sells their products in Massachusetts retail locations and ships online orders to Massachusetts. When describing their “organic” e-cigarette juice, Virgin Vapor claims, “[a]s users of our own products, we are very particular about what goes into our e-liquid. We believe artificial flavors, artificial colors, artificial sweeteners and other nasty chemicals don't belong in our food, and certainly don't belong in our e-liquid!” 105 Virgin Vapor’s claims about the organic nature of the chemicals and flavorings they use may be potentially dubious and the way they

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98 See App. A-20-Fig. 1, 3.
99 See App. A-20-Fig. 2.
100 See App. A-20-Fig. 2.
101 See App. A-20-Fig. 4, 5.
102 See App. A-21-Fig. 1.
103 See App. A-21-Fig. 2.
104 See App. A-21-Fig. 3.
105 See App. A-22-Fig. 1.
describe the chemicals involved is misleading.\(^{106}\) We did not find any claims or statements that Virgin Vapor did not make any claims about when or where their products could be used or that their products are intended to be a smoking cessation device.

**23. Xeo**

Xeo is a German company that is willing to ship their products internationally. On their homepage, Xeo states that their products have “[o]nly water vapor, no pollution” and that their products produce no smell.\(^ {107}\) Xeo also states that their products can be used wherever the vaper wants, including “in the office, at the airport, or during a meeting.”\(^ {108}\) Xeo claims that their products are a “long-term-alternative” for smokers.\(^ {109}\)

**Companies With Weak Evidence of Potentially Deceptive Claims**

**24. Liquid Juice**

Lizard Juice is a Florida-based company that will ship their products to Massachusetts. Lizard Juice says that PG is FDA approved without noting that they are not approved as inhalants.\(^ {110}\) Lizard Juice did not make claims suggesting that their products can be used anywhere or that their products were intended to be used as a smoking cessation device.

**25. Revolver**

Revolver is an Ohio-based company that ships their products to Massachusetts. The health and safety claims that Revolver makes are limited to testimonials that are found on Revolver’s website where a popular Rock musician states, “[t]he e-cig takes away all the additives that come with a regular cigarette.”\(^ {111}\) Claims of being able to vape anywhere are also attributable to the testimonials on the website and from the same testimony claiming, “they’ve allowed me to get in a quick drag of nicotine in places where it normally wouldn’t be possible, i.e. airplanes, airports...”\(^ {112}\) On their homepage, Revolver shows an advertisement showing a woman breaking a conventional cigarette in half with text that reads, “Kick the Habit. No More

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\(^{106}\) See App. A-22-Fig. 1.  
\(^{107}\) See App. A-23-Fig. 2.  
\(^{108}\) See App. A-23-Fig. 2.  
\(^{109}\) See App. A-23-Fig. 1.  
\(^{110}\) See App. A-24-Fig. 1.  
\(^{111}\) See App. A-25-Fig. 2.  
\(^{112}\) See App. A-25-Fig. 2.
Broken Resolutions” which is an indication that their products can be used as a smoking cessation device.113

26. Vaporin
Vaporin is a Florida-based company that will ship their products to Massachusetts. Vaporin’s website includes a tab for testimonials, some of which claim that the products are safe for use.114 Vaporin did not claim or suggest that their products can be used anywhere nor did Vaporin claim or suggest that their products are intended for use as a smoking cessation device.

27. Victory
Victory is a Michigan-based company that will ship their products to Massachusetts. Victory states that their products release a vapor that is “odorless and safe.”115 This statement not only suggests a health and safety claim, but suggests that because the products only produce “vapor” they can be used anywhere.116 Vapor did not claim or suggest that their products are to be used as a smoking cessation device.

28. Zoom
Zoom is an online retailer. Zoom does not make any claims health or safety claims. Zoom do not many any claims that their products can be used anywhere. In response to the question “Can I enjoy Zoom Anywhere?” Zoom states, “Heck yeah! Just make sure it’s legal in your area.”117 Zoom explicitly states that their products are in no way intended to be used as a smoking cessation device.

Companies with No Evidence of Potentially Deceptive Claims

The following e-cigarette companies do not show evidence of using potentially deceptive claims: 777, Ploom by Pax, Firebrand, Mad Vape, Monster Vape, Cloud 9, MarkTen, Vapor X, Halo, Apollo, Green Smoke, First Vapor, Henley, Joytech, White Cloud, Urus, SMOKTech, Mythos, Nic Quid, Kamry, Innokin, Standard, Uncle Junk’s, Vapage, Play Vapor, Eonsmoke and Vaping Vamps.

113 See App. A-25-Fig. 1.
114 See App. A-26-Fig. 1.
115 See App. A-27-Fig. 2.
116 See App. A-27-Fig. 1, 2.
117 See App. A-28-Fig. 1.
IV. Marketing in Convenience and Vaping Stores

In order to learn more about how e-cigarette companies market their products, members of Law Office 5 visited seven smoke/vaping shops and thirteen convenience stores. These stores were located in a variety of towns and cities in Massachusetts, including Boston, Brighton, Cambridge, Jamaica Plain, Medford, Quincy, Roslindale, Stoneham, Watertown and Woburn. When possible, we spoke to store clerks and customers to learn more about the products and took pictures of advertisements. We generally found that in-store advertisements were much more careful about making false or deceptive claims compared to online advertisements.118

118 See App. B for details about each civic visit.
Section Three

Evidence That Claims Are Deceptive or Misleading

To file a 93A claim, the plaintiff must demonstrate why an advertiser’s claim “deceives” or “misleads.” Scientific studies, public health and news reports, and state and local regulations provide evidence the plaintiff may utilize in substantiating a 93A claim. In the e-cigarette advertisements documented in the previous section, three general categories of potentially deceptive or misleading claims are prevalent: claims about health and safety, claims that e-cigarettes can be used anywhere, and claims that e-cigarettes can be used as a cessation device. The following is an analysis of the validity of each of these claims based on the evidence.

I. Claims about Health and Safety

Years of research show that smoking conventional cigarettes is harmful to an individual’s health.\(^{119}\) Many smokers and non-smokers alike turn to e-cigarettes as a healthier and safer alternative.\(^ {120}\) However, “it is not difficult to be safer than a product which will kill half of its regular users.”\(^ {121}\) While e-cigarettes are arguably healthier and safer than conventional cigarettes, they are not necessarily healthy or safe. E-cigarettes are relatively new products and there is insufficient evidence on the long-term effects of e-cigarette use. Moreover, there are real concerns about potential health and safety risks associated with e-cigarettes.

A. Chemicals in E-Cigarettes Compared to Conventional Cigarettes

Some e-cigarette manufacturers claim that e-cigarettes lack the approximately 4,000 harmful chemicals and cancer-causing substances of conventional cigarettes and are therefore healthier.\(^ {122}\) This is misleading because although e-cigarettes generally contain a lower quantity of harmful chemicals than conventional cigarettes, this comparison does not allege that e-cigarettes are harmless or chemical-free.

The harmful health effects of smoking conventional cigarettes, such as cancers and emphysema, are well known. Some of these harmful health effects are likely rooted in the

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\(^{120}\) Id.

\(^{121}\) Id.

immense amount of harmful chemicals and compounds that users come into contact with as a result of smoking conventional cigarettes. Not only do conventional cigarettes have harmful ingredients, but these ingredients often times combine and change into other harmful compounds through the ignition and inhalation process. A few of the many harmful chemicals founds in conventional cigarettes include: argon, tobacco-specific nitrosamines, hydrogen cyanide, acetaldehyde, acetone, formaldehyde, ammonia and phenol. These compounds have all been found to range in severity to one’s health from irritation to the respiratory tract to increasing tumor productivity. Additionally, acetaldehyde is classified by the International Agency for Research on Cancer as “possibly carcinogenic to humans.” Formaldehyde is classified as “carcinogenic to humans.”

With some e-cigarette manufacturers claiming that their products have no or fewer harmful chemicals than conventional cigarettes, it is important to determine the general ingredients common to e-cigarettes. E-cigarette ingredients vary by brand and flavoring but the major components include nicotine, glycerol, propylene glycol and other natural flavors. Nicotine is a nitrogen-containing chemical made by the tobacco plant. Nicotine exposure is known to cause dizziness, nausea and vomiting. With e-cigarettes, the level of nicotine varies based on the product or cartridge. Glycerol, also known as glycerine, is widely used in pharmaceutical formulations such as eye drops and cough syrups. Glycerol is also found in foods such as cookies and liqueurs, where it serves as a humectant, solvent, thickener, and sweetener, and may help preserve foods. Glycerol is also used for an evaporative fogging agent as an alternative to propylene glycol in some solutions for electronic

123 Id.
124 Id.
126 Id.
128 Id.
130 Id.
132 Id.
133 Miles, supra note 126.
134 Id.
cigarettes. Glycerol and glycerol vapor are known upper airway irritants. The long-term effects of inhaling glycerol vapor are currently unknown. Propylene glycol is used as a solvent in many pharmaceuticals and as a moisturizer in some cosmetics and tobacco products, as well as in natural flavorings. Clearly, while this list of chemicals is e-cigarettes is shorter than the chemicals in conventional cigarettes, e-cigarettes are by no means chemical-free, and these chemicals cannot be definitively called harmless.

Scientific research also shows the presence of some of the harmful conventional cigarette chemicals in e-cigarettes and e-cigarette vapor. Some studies of e-cigarette components reveal concentrations of formaldehyde and acetaldehyde in e-cigarette cartridges and vapor, as well as dangerous ultrafine particles. A study conducted by Goniewicz, et al. notes that “[e]xposure to carbonyl compounds found in the [vapor] (acetaldehyde, formaldehyde and acrolein) might cause mouth and throat irritation.” One study found potentially comparable levels of formaldehyde exposure when comparing e-cigarettes to conventional cigarettes. However, researchers have only found high levels of formaldehydes when the e-cigarettes tested are used at their highest voltage. E-cigarette vapor from some of the e-cigarettes tested in Goniewicz contained traces of carcinogenic nitrosamines, as well as cadmium, nickel and lead, which are all toxic metals. Like conventional cigarettes, when the e-liquid heats, chemical reactions may occur with the potential to form new chemical compounds.

Overall, the concentration of harmful chemicals in conventional cigarette smoke is higher than that found in its e-cigarette vapor counterpart. One estimate states that the “levels of selected toxic compounds found in the smoke from a conventional cigarette were 9-450-fold higher than levels in the vapor of an e-cigarette.” Although e-cigarette vapor has potentially toxic chemicals, e-cigarette vapor is likely less harmful than smoke from conventional

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135 Id.
136 Id. Callahan-Lyon, supra note 128.
137 Id.
138 Id. Miles, supra note 126.
139 Id. Goniewicz et al., supra note 124; Furber, supra note 116.
140 Id. Goniewicz et al., supra note 124.
141 Id.
143 Id. Goniewicz et al., supra note 124.
144 Id.
145 Id.
cigarettes.\textsuperscript{146} However, due to the wide array of e-cigarette manufacturers and a lack of generalizable, statistically significant studies, it is difficult to conclusively determine this is the case. Either way, e-cigarettes can hardly be considered harmless.\textsuperscript{147}

\section*{B. Effects of Nicotine Exposure}

Although e-cigarettes lack many of the harmful chemicals of conventional cigarettes, most e-cigarettes do contain nicotine, which has harmful health effects of its own. Therefore, exposure to nicotine is another reason it is deceptive, even false, to claim that e-cigarettes are healthy or pose no health risks.

Nicotine is highly addictive, and people who are exposed to it experience increased heart rate and blood pressure.\textsuperscript{148} While nicotine may not necessarily be dangerous to healthy adults in moderate amounts, it can negatively affect teenagers by slowing their brain development.\textsuperscript{149} In addition, nicotine can be unsafe to pregnant women, because it hurts a fetus’s uptake of oxygen and can slow its development.\textsuperscript{150}

One caveat is that the exact amount of nicotine being inhaled by vapers is unknown.\textsuperscript{151} E-cigarette devices heat a liquid form of nicotine, and are a relatively new method of nicotine delivery. In today’s nascent phase of e-cigarette technology, the devices have not been able to deliver a regular level of nicotine.\textsuperscript{152} Because of inconsistency in delivered nicotine quantities to users, consumers cannot trust any product’s stated levels of nicotine. The amount of nicotine actually delivered is often lower than the stated level.\textsuperscript{153} Because of the negative health effects of nicotine, these inconsistent levels of nicotine can actually serve as a health benefit of e-cigarette use in comparison to tobacco use.\textsuperscript{154}

\begin{flushright}
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\end{flushright}
C. Effects of Inhalation of E-Cigarette Vapor

1. Effects of Propylene Glycol

While nicotine exposure is a risk associated with both conventional and e-cigarettes, inhalation of propylene glycol is of special concern with regards to e-cigarettes. Claims that e-cigarettes contain FDA-approved ingredients, or that propylene glycol is safe because it is FDA-approved, are misleading and deceptive. Propylene glycol, a key ingredient in e-liquid, has been deemed “generally” safe for consumption by the FDA, but not specifically for inhalation. Propylene glycol is traditionally used as a food preservative, and the inhalation of propylene glycol as a phenomenon only occurred with the rise of e-cigarettes. As a result, the risks associated with long-term inhalation of this product are unknown. Therefore, it is irresponsible and dangerous to claim or lead consumers to believe that there are no health risks associated with the inhalation of this substance. Moreover, there is some evidence that it may increase a person’s risk of asthma and can cause respiratory irritation.

2. Presence of Metals

Another element of e-cigarettes that make health and safety claims dubious is the presence of metals in e-cigarette vapor. In fact, sodium, iron, aluminum and nickel are in e-cigarette vapor at higher levels than conventional cigarette smoke. E-cigarettes also include copper, lead, chromium, magnesium and manganese at the same levels as conventional cigarette smoke. This is important to note, because nickel and chromium are carcinogenic and lead is a suspected carcinogen.

3. Effects on Immune System

Potentially another reason health claims are misleading is that exposure to e-cigarette vapor may adversely affect the immune system. A recent study exposed mice to e-cigarette vapor

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156 Interview with Dr. Siegel, supra note 149.
159 Id.
160 Id.
161 Id.
162 Id.
vapor.\textsuperscript{163} One of the brands the study used was NJOY.\textsuperscript{164} After two weeks of exposure, the mice’s nicotine levels in their blood were comparable to humans who use e-cigarettes.\textsuperscript{165} Researchers also exposed some of those mice to influenza viruses and found that those mice were more likely to have virus related illness, and were also more likely to die from the virus, than mice that were not exposed to e-cigarette vapor.\textsuperscript{166} While it is unclear how these findings translate to humans, it could nonetheless be cause for concern that vapers’ immune systems are at risk.

4. Additional Symptoms

Finally, there are a number of other additional symptoms reported by people who have inhaled e-cigarette vapor that contradict claims that e-cigarettes are safe and healthy. The FDA has received reports from consumers, health professionals and members of the public to report adverse events relating to e-cigarettes.\textsuperscript{167} The FDA defines an adverse event as “an undesirable side effect or unexpected health or product quality problem that an individual believes was caused by the use of a tobacco product.”\textsuperscript{168} The FDA has received adverse event reports involving e-cigarettes for pneumonia, congestive heart failure, disorientation, seizure, hypotension and other health problems.\textsuperscript{169} Although the FDA cannot verify whether those adverse events were in fact caused by e-cigarettes, the following studies also suggest that there may be side effects to using or being exposed to e-cigarettes.

When it comes to acute exposure to e-cigarette emissions, studies show the following physiologic effects: “mouth and throat irritation and dry cough at initial use, though complaints decreased with continuing use;” “no change in heart rate, carbon monoxide level, or plasma nicotine level;” “decrease in fractional exhaled nitric oxide and increase in respiratory impedance and respiratory flow resistance similar to cigarette use;” “no change in complete blood count indices;” “no change in lung function;” “no change in cardiac function as measured with an echocardiogram;” and “no increase in inflammatory markers.”\textsuperscript{170}

\begin{footnotesize}
\begin{enumerate}
  \item \textsuperscript{163} Thomas E. Sussan et al., \textit{Exposure to Electronic Cigarettes Impairs Pulmonary Anti-Bacterial and Anti-Viral Defenses in a Mouse Model}, PLOS (Feb. 4, 2015), http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0116861.
  \item \textsuperscript{164} Id.
  \item \textsuperscript{165} Id.
  \item \textsuperscript{166} Id.
  \item \textsuperscript{167} Electronic Cigarettes (e-Cigarettes), supra note 148.
  \item \textsuperscript{168} Id.
  \item \textsuperscript{169} Id.
  \item \textsuperscript{170} Callahan-Lyon, \textit{supra} note 128.
\end{enumerate}
\end{footnotesize}
All of these physiologic effects reveal a mixed assessment of the healthiness of e-cigarettes. Certainly smoking e-cigarettes is worse than smoking nothing at all, but the limited statistically significant studies create difficulty in accurately assessing the extent to which e-cigarettes are healthier than conventional cigarettes.\footnote{Furber, supra note 116.}

**D. Risk of Formaldehyde Exposure**

As mentioned above, studies have revealed that vapers can be exposed to formaldehyde. This is a particularly troubling health risk because formaldehyde is a known carcinogen. Vapers may not be aware of this risk because formaldehyde it is not an ingredient in e-liquid. Although e-liquid itself does not contain formaldehyde or any carcinogens, when the atomizer heats the e-liquid and converts it into vapor, the heating process can create carcinogens such as formaldehyde.\footnote{Stein, supra note 139.} If the temperature is appropriate, this reaction does not occur. However, if the temperature is too high, overheating leads to the creation of this dangerous chemical.\footnote{Laura Geggel, Deadly Explosions Added to List of E-Cigarette Dangers, LIVESCIENCE (Aug. 12, 2014, 9:41 AM ET), http://www.livescience.com/47309-electronic-cigarettes-explosion-dangers.html.} Some companies regulate the temperature of their devices better than others, so the risk of formaldehyde exposure varies from company to company.\footnote{Stein, supra note 139.} However, the lack of uniform regulation in the e-cigarette industry means that a vaper cannot be sure that the e-cigarette she uses will not produce any formaldehyde.

**E. Risk of Exploding E-Cigarettes**

The lack of quality control in the e-cigarettes market has also led to incidents of exploding batteries causing bodily injury.\footnote{Id.} The use of the wrong type of e-cigarette charger can result in potentially deadly explosions.\footnote{Id.} In August of 2014, a sixty-two-year-old man living in England was killed after his e-cigarette exploded when he attempted to charge the device with an incompatible charger.\footnote{Id.} Additionally, there have also been reports of e-cigarettes with faulty batteries exploding.\footnote{CBS News Staff, Electronic Cigarette Explodes in a Man’s Mouth, Causes Serious Injuries, CBS NEWS (Feb 16, 2012, 10:57 AM) http://www.cbsnews.com/news/electronic-cigarette-explodes-in-mans-mouth-causes-serious-injuries/.} In February 2012, as a Florida man was smoking an e-
cigarette, the device blew up in mouth, burning his face and knocking out several of his teeth.\textsuperscript{179} Although the risk of this happening may not be high, the magnitude of the potential injury is severe, and demonstrates that it is deceptive to claim that e-cigarettes are safe.

\textbf{F. Risks to Bystanders}

Many e-cigarette companies make claims about their products not being harmful to bystanders. Because the use of e-cigarettes is relatively new, there is a lack of scientific evidence on the long-term health impact of exposure to e-cigarette vapor in general, much less second-hand exposure. Bystanders could be exposed to less of the e-cigarette vapor than the user, however that does not mean that the vapor is safe for second-hand exposure. Bystanders who breathe second-hand e-cigarette vapor are exposed to the same potentially dangerous substances such as nicotine, propylene glycol, metals and formaldehyde described above.

In addition to the vapor produced by e-cigarettes, the liquid in e-cigarette cartridges can also be harmful to non-users. This is especially risky for young children who may have access to the e-cigarettes of adults in their households, and could ingest the e-liquid. The CDC reports that between 2010 and 2014, poison centers in the U.S. received increasing numbers of calls about e-cigarette exposures, mostly among young people.\textsuperscript{180} Although reports to poison centers about ingestion were less frequent than calls about inhalation, eye exposure or skin exposure, ingestion of e-liquid is a major concern.\textsuperscript{181} Poison centers outside the U.S. have seen a similar trend of rising reports of liquid nicotine ingestion among young children.\textsuperscript{182} The high levels of nicotine in this liquid can cause “acute nicotine toxicity” or nicotine poisoning.\textsuperscript{183} While nicotine poisoning is rare with the ingestion of conventional cigarettes or tobacco, due to spontaneous vomiting which occurs, ingestion of e-liquid poses a higher risk of poisoning.\textsuperscript{184} The refill cartridges may contain high amounts of nicotine, while the flavors and bright packaging make them appealing to young children.\textsuperscript{185} In the US, the death of one toddler in 2014 is believed to

\textsuperscript{179} Id.
\textsuperscript{180} Kevin Chatham-Stephens, MD et al., \textit{Notes from the Field: Calls to Poison Centers for Exposures to Electronic Cigarettes — United States, September 2010–February 2014}, CDC (Apr. 4, 2014), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6313a4.htm?s_cid=mm6313a4_w.
\textsuperscript{181} Id.
\textsuperscript{183} Chatham-Stephens et al., \textit{supra} note 177.
\textsuperscript{184} Callahan-Lyon, \textit{supra} note 128.
\textsuperscript{185} Id.
be the result of nicotine poisoning from swallowing liquid nicotine from an e-cigarette cartridge. A similar death occurred in Israel in 2013.

In addition to ingestion, injection of liquid nicotine is also potentially deadly. According to the CDC, poison centers reported one case of suicide by intravenous injection of liquid nicotine. Further reports support findings of suicide by ingesting and injecting liquid nicotine from e-cigarette cartridges. Overall, the risks of second-hand vapor inhalation, as well as poisoning by ingesting or injecting e-liquid, demonstrate that it is deceptive and misleading to claim that e-cigarettes are not harmful to bystanders.

G. Natural and Organic Claims

Other potentially deceptive claims relate to e-cigarette ingredients being natural and organic. These claims could lead consumers to believe that the ingredients in e-cigarettes meet FDA and Massachusetts definitions of “organic” and “natural,” and that these terms imply that e-cigarettes are healthy. This is problematic because even if some companies’ e-cigarette ingredients meet state and federal law regarding the use of these terms, they still have numerous adverse health effects, as described above. Moreover, FDA and Massachusetts regulations of these terms apply to food products, whereas e-liquid in inhaled as vapor rather than ingested as food. Therefore, the use of these terms in e-cigarette advertising can falsely lead consumers to believe e-liquid has FDA or state approval for inhalation. Finally, the guidelines set for labeling food as natural or organic highly regulate the quality of ingredients, and e-cigarette flavoring ingredients may violate these mandates, depending on the company.

1. Federal and Massachusetts Law Regarding the Labeling of Food Products as “Natural”

Natural is not defined in the federal Food, Drug and Cosmetic Act. At present, the FDA does not regulate the use of the word “natural” except with regards to added color,

188 Chatham-Stephens et al., *supra* note 177.  
synthetic substances, and flavors.\textsuperscript{191} In these uses, “natural” means that nothing artificial or synthetic (including color) has been added to a food that would not normally be expected in the food.\textsuperscript{192} However, the FDA fails to define “artificial” or “synthetic.”\textsuperscript{193} The FDA also applies this standard in a fairly subjective manner, deciding what products fit the moniker of natural on a case-by-case basis.\textsuperscript{194} The USDA provides a slightly more comprehensive guideline, defining a product as natural only if the product “does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative, or any other artificial or synthetic ingredient.”\textsuperscript{195} Additionally, the product and its ingredients can only be minimally processed.\textsuperscript{196} As a result of the lack of concrete definitions provided by these regulatory organizations, there is still confusion amongst the public and food industry as to what natural really means and when its use could be construed as deceptive.

In Massachusetts, “natural” has been defined similarly to USDA and FDA criteria. Massachusetts’s regulations go further to differentiate what artificial flavoring is as opposed to a natural flavoring.\textsuperscript{197} In general, the term “artificial” flavor or flavoring means “any substance, the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.”\textsuperscript{198} In contrast, the “natural” flavor or flavoring means, “the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymlysis, which contains the flavoring constituents derived from a spice, fruit, or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional.”\textsuperscript{199} Overall, if an e-cigarette company can demonstrate that its e-liquid, including the flavoring and coloring, is derived from some type of plant or animal product rather than an

\begin{footnotesize}
\begin{enumerate}
\item[191] Id.
\item[192] Id.
\item[194] Id.
\item[195] Id.
\item[196] Id.
\end{enumerate}
\end{footnotesize}
artificial substance, its “natural” claims would be consistent with federal and state regulation. Some companies do claim to use vegetable glycerol in place of propylene glycerol, so it is possible these companies meet the legal definition of natural for some of their e-liquid ingredients. However, the claim could still be deceptive because e-liquid is inhaled rather than ingested as a food, and consumers could connote “natural” with “healthy,” which is not always true. Moreover, even if one ingredient such as the flavoring is natural, the rest of the e-liquid may not be.

2. Federal Law Regarding the Labeling of Food Products as “Organic”

While there is little to no federal regulation of the term “natural,” products must meet comprehensive criteria to receive the U.S. Department of Agriculture (“USDA”) “organic” seal. In Massachusetts, organic has been defined similarly to USDA and FDA criteria. According to the USDA National Organic program, “[o]rganic food is produced without using most conventional pesticides; fertilizers made with synthetic ingredients or sewage sludge; bioengineering; or ionizing radiation.” Also, the term “organic” may only be used on labels and in labeling of raw or processed agricultural products, including ingredients that have been produced and handled in accordance with USDA regulations. The term “organic” may not be used in a product name to modify a non-organic ingredient in the product. Additionally, a product must not contain sulfites, nitrates, or nitrites added during the production or handling process, with an exception for wine, to be labeled organic.

In order to assess whether the ingredients of a company’s e-liquid meet these requirements to comply with federal requirements for the label “organic,” the exact ingredients and production methods of the e-liquid would be necessary. Moreover, even if the ingredients met these requirements, these regulations specifically apply to food products rather than a liquid, which is produced for inhalation. Finally, like the term “natural,” the claim could still be deceptive because consumers could believe “organic” means “healthy,” which is not necessarily true.

202 Id.
203 Id.
204 Id.
II. Claims that E-Cigarettes Can be Used Anywhere

Many e-cigarette companies boldly make claims that e-cigarettes can be used anywhere. In fact, this statement is disproved based on multiple statutes, executive orders and regulations that prohibit the use of e-cigarettes in certain locations. Some states and local governments have banned the use of e-cigarettes in venues that are protected under smoke-free laws, such as New Jersey and South Hadley, Massachusetts. See Appendix C for a list of the states that have restrictions on e-cigarette and detailed information about the types and scope of regulation.

The use of e-cigarettes is generally banned on national public transportation as well. The Department of Transportation (“DOT”) has not officially extended regulations that ban smoking on airplanes, however the DOT’s official policy states that the use of e-cigarettes is already banned on U.S. flights. To avoid any confusion over the policy, major airline companies such as JetBlue, United Airlines, U.S. Airways, American Airlines, Delta and Southwest have stated that the use of e-cigarettes on their flights is prohibited as a matter of company policy. Furthermore, Amtrak has a complete no-smoking policy, which is specifically extended to the use of e-cigarettes.

A. Regulations within Massachusetts

Currently, there are no statewide regulations or statutes that prohibit the use of e-cigarette in Massachusetts. However, 63 towns in Massachusetts banned the use of e-cigarettes in at least one type of public facility, as of October 1, 2014. Boston, for example, prohibits the use of e-cigarettes in non-hospitality workplaces, restaurants, and bars. Boston’s ban on e-cigarette use in

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205 See App. C for a more detailed analysis of state laws, regulations, executive orders regarding e-cigarettes.
209 See App. C for further description of e-cigarette regulations throughout Massachusetts.
these locations conflicts with the e-cigarette companies’ claims that e-cigarettes can be used anywhere.210

B. Regulations in Other States

As of mid-November 2014, eighteen states, including Massachusetts, had passed state or notable local laws that regulated e-cigarettes.211 Of that group, fourteen states have prohibited the use of e-cigarettes in at least one public location. New Jersey passed an amendment to their smoke-free workplace law in 2010 in order to explicitly include e-cigarettes.212 Oklahoma, on the other hand, only banned the use of e-cigarettes on state owned or leased property in 2013.213 Therefore, an e-cigarette user would not be able to vape in when she travels to other states, which contradicts companies’ claims that e-cigarettes can be used anywhere.

III. Claims that E-Cigarettes Can Be Used As a Cessation Device

Because of the current FDA regulations discussed in Section I, e-cigarette companies generally do not make claims that their products can be used as a cessation device to quit smoking. Therefore, we did not encounter many explicit cessation claims. As explained in Section I, any claims about the efficiency of e-cigarettes as a smoking cessation tool, whether explicit or implicit, are impossible to prove. It is too early to know for sure, and experts on both sides of the debate still have not come to a conclusion about the effectiveness or lack thereof of e-cigarettes as a means for cessation of tobacco.

210 Id.
211 See App. C for further description of e-cigarette regulations in states other than Massachusetts.
Section Four

Chapter 93A: Massachusetts Consumer Protection Law

I. Introduction to 93A

Massachusetts General Law Chapter 93A (“93A”) is a powerful consumer protection law designed to combat deceptive business practices. This makes 93A an ideal tool for the Public Health Advocacy Institute (“PHAI”) to target deceptive marketing in the e-cigarette industry. Companies are liable under 93A even when the deceptive act was committed innocently.214 Additionally, the statute allows plaintiffs to recover multiple damages above any actual damages.215 A successful 93A claim requires a working knowledge of the law’s history and procedural requirements. Because PHAI requested research into “unfair” or “deceptive” marketing in the e-cigarette industry, this section of the manual elaborates how Massachusetts courts have treated these terms of art.

A. History

Over time, 93A has evolved into an increasingly effective tool for Massachusetts consumers. Enacted in 1967 as a state accompaniment to the Federal Trade Commission Act (“FTCA”), its purpose was to encourage “proper disclosure of information and a more equitable balance in the relationship of consumers to persons conducting business activities” within Massachusetts.216 Originally, only the state could bring cases under 93A, but the Massachusetts Attorney General had inadequate resources to enforce the statute properly.217 As a result, a 1969 amendment created a private right of action, which allowed for broader enforcement of the statute.218 Another amendment in 1972 allowed businesses to sue other businesses as well.219

Other changes by the Massachusetts legislature have led to a broader interpretation of 93A, especially with respect to the rights of individual consumers. The legislature gave the Attorney General more power to enforce 93A through a 1983 statutory amendment that

218 Id.
219 Id.
expanded the reach of 93A by giving plaintiffs “the ability to sue to the limits of Massachusetts’s long-arm jurisdiction.”\textsuperscript{220} Because of the amendment, plaintiffs can now make a claim under 93A against any defendant whose contacts with Massachusetts meet the minimum requirements for the state to have personal jurisdiction. Additionally, the legislature expanded compensable injuries to allow claims for “any form of injury” to individual consumers.\textsuperscript{221} Previously, plaintiffs could only receive compensation for injuries related to money or property.\textsuperscript{222}

II.  \textbf{Executing 93A}

The Massachusetts legislature has authorized three types of plaintiffs to bring lawsuits under 93A: individual consumers, businesses, and public officials, such as the Massachusetts Attorney General.\textsuperscript{223} Because PHAI is seeking an individual consumer of e-cigarettes as the potential plaintiff for filing a complaint against a defendant e-cigarette company, only the rules for individual consumers are relevant to this analysis. The individual consumer standard is found in 93A Section 9 (“Section 9”), which provides the procedural requirements for filing a 93A complaint.\textsuperscript{224} The subsections below detail the demand letter requirement, which requires legal knowledge of cognizable injuries under 93A, rules for legal damages and equitable relief, and also the rules regarding recovering attorney’s fees.

A.  \textbf{Demand Letter Requirement}

Once a decision that a potential claim exists under Section 9, the plaintiff must draft a written demand for relief (“demand letter”) that is delivered to the alleged offending party.\textsuperscript{225} The demand letter must be sent at least thirty days prior to filing the claim in court.\textsuperscript{226} This thirty-day period puts the business on notice of the potential claim and gives them time to respond to the consumer’s allegations.\textsuperscript{227} It also encourages the parties to negotiate and settle the claim outside of the courtroom.\textsuperscript{228 229}

\begin{thebibliography}{99}
\bibitem{220} Id. at 1–7.
\bibitem{221} Id. at 1–7.; see also \textit{Leardi v. Brown}, 394 Mass. 151, 158-60 (1985).
\bibitem{222} Golann, \textit{supra} note 217.
\bibitem{223} Golann, \textit{supra} note 214.
\bibitem{224} \textit{Slaney v. Westwood Auto, Inc.}, 366 Mass. 688, 694 (1975); Golann, \textit{supra} note 214.
\bibitem{226} Id.
\bibitem{228} \textit{Slaney}, 366 Mass. at 704.
\bibitem{229} A demand letter is not necessary if the Section 9 claim is asserted in a counterclaim or crossclaim. Mass. Ann. Laws. ch. 93A, § 9(3) (LexisNexis 2014).
\end{thebibliography}
In addition to the thirty-day period, the demand letter has a number of other requirements. First, the letter must identify the claimant and reasonably describe the unfair or deceptive practices relied upon, as well as describe all injuries suffered. Second, the letter must be mailed or delivered to each prospective respondent. Third, the letter must provide notice to each prospective respondent explicitly or implicitly that a claim under Section 9 is being asserted. To fulfill this final requirement, the letter must expressly refer to at least 93A, the Consumer Protection Act, a violation of the claimant’s rights as a consumer, that the defendant acted in an unfair or deceptive manner, that the claimant anticipates a settlement offer within 30 days, or that, if relief is not provided, the claimant will pursue multiple damages and attorney fees.

In order to write a strong 93A demand letter, the plaintiff must have a clear understanding of what qualifies as an injury, the types of damages available, and what constitutes an “unfair” or “deceptive” practice. The following sub-sections explain injuries and damages. Unfair and deceptive practices, the key to a 93A complaint, receive deeper analysis in the next section.

1. Types of Injuries

An injury under 93A is an "invasion of a legally protected interest of another," and can include emotional distress in addition to more conventionally cognizable injuries, such as loss of money or property. The regulatory guidelines state that any act or practice that “[f]ails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety or welfare promulgated by the Commonwealth or any political subdivision thereof” is intended to provide consumer protection is also an unfair or deceptive act or practice in violation of 93A. An injury resulting from such a practice is cognizable under 93A.

There must also be a causal connection between the deceptive practice and the injury. Causation can exist in cases of false advertising if the deceptiveness of the advertisement could

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233 Although not required, the demand letter should be sent by certified mail, with a return receipt requested. Melinda Milberg, Chapter 93A: Rights and Remedies 5-12 (Hon. Margot Botsford ed., 3rd ed. 2014).
cause a reasonable consumer to “act differently from the way he [or she] otherwise would have acted.”\textsuperscript{238} Therefore, in order to sustain a 93A claim, the false claim or misrepresentation of the e-cigarette advertisement would have to cause a reasonable person to alter her behavior, such as purchasing a specific e-cigarette brand.

\textbf{2. Actual or Nominal Damages}

A Section 9 plaintiff with a successful 93A complaint can either collect nominal damages of $25 or actual damages, whichever is greater.\textsuperscript{239} Upon receipt of the demand letter, respondent will have an opportunity to reduce damages by properly responding to the plaintiff’s demand letter. The respondent must offer a settlement that is reasonable, in good faith and timely.\textsuperscript{240}

Actual damages can be “compensatory” or “consequential.”\textsuperscript{241} Compensatory damages, also called “general” or “direct,” flow from the wrongful act itself.\textsuperscript{242} Consequential damages, also called “indirect damages,” are indirect results of the act and do not come directly from the wrongful act.\textsuperscript{243} 244 Additionally, if the plaintiff suffered actual damages, she could potentially recover double or triple damages.\textsuperscript{245}

There are two possible methods of qualifying for multiple damages. The first is if the unfair or deceptive practice in the complaint was a “willful or knowing” violation of 93A.\textsuperscript{246} The terms “willful” and “knowing” have separate meanings in relation to 93A. To qualify for the first method of multiple damages, the plaintiff must show that defendant’s violation of 93A falls within the definition of one of these two terms. “Knowing” involves actual intent.\textsuperscript{247} “Willfulness,” meanwhile, includes recklessness, which is a lesser state of understanding than “knowing.”\textsuperscript{248} Recklessness, which does not include negligence, occurs when “defendant acts with reckless disregard as to whether or not the underlying conduct was unfair or deceptive or

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\textsuperscript{240} Jessica Parker-Battle et al., Chapter 93A: Rights and Remedies 4-21 (Hon. Margot Botsford ed., 3rd ed. 2014).
\textsuperscript{242} Id.
\textsuperscript{246} Id.
\end{flushleft}
would cause unfair or deceptive results.”

Claims for multiple damages based on either “willful” or “knowing” violations must include evidence to demonstrate the state-of-mind of the defendant.

The second method for qualifying for multiple damages is if the defendant’s response to the demand letter makes a settlement offer that in unreasonable or in bad faith. A determination of whether an offer is unreasonable or in bad faith is a matter of law. The standard to determine if an offer is in bad faith can either be an objective or subjective test. Under the objective analysis, an offer is made in bad faith if the respondent offers “much less than a case is worth in a situation where liability is clear or highly likely.” Even if a respondent is not acting in bad faith under the objective standard, they may have been motivated by subjective bad faith and therefore can be held to the subjective standard. Under this method, the act does not need to be a “willing” or “knowing” violation of 93A; if the respondent’s “refusal to grant relief upon demand was made in bad faith, the plaintiff can recover double or triple damages.

A potential barrier to multiple damages in an e-cigarette case, specifically concerning online advertising and selling, is that “multiple damages are not available for unfair or deceptive acts or practices in connection with ‘any security or any contract of sale of a commodity for future delivery.’” However, litigation against e-cigarette companies for unfair or deceptive advertising practices would likely not be deemed a security or contract of sale for future delivery. Finally, any actual damages cannot be “duplicative” or “cumulative” of damages awarded in other claims for the same matter.

3. Equitable Relief

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249 Jessica Parker-Battle et al., Chapter 93A: Rights and Remedies 4-21 (Hon. Margot Botsford ed., 3rd ed. 2014); see also Computer Sys. Eng’g, Inc., 571 F. Supp. at 1374.
253 Id.
93A also grants "full authority to the courts to use their traditional equity power to fashion decrees to remedy the wrong complained of and to make the decree effective."\(^{259}\) This means that litigants are not limited to monetary relief, but can also seek other remedies such as injunctive relief. In a potential complaint against an e-cigarette company, a plaintiff could seek equitable relief to require a company to cease its false or deceptive advertising practices and likely also demand monetary damages for the individual plaintiff.

**B. Attorney’s Fees and Costs**

A prevailing Section 9 plaintiff can also recover attorney’s fees and costs.\(^{260}\) However, there are limitations on the payment of these fees. Unlike actual damages, attorney’s fees and costs cannot be multiplied.\(^{261}\) Additionally, if the respondent’s response to the demand letter is timely and offers a reasonable settlement in good faith, plaintiff’s attorney’s fees and costs may be waived, even if the respondent’s violation was willful or knowing.\(^{262}\)

**III. Relevant Rules and Regulations in Determining an “Unfair” or “Deceptive” Act**

The heart of a 93A demand letter is the unfair or deceptive act or practice. Section 2 of Chapter 93A ("Section 2") explains what qualifies as an “unfair” or “deceptive” act under the statute, however it does not give concrete definitions of those terms.\(^{263}\) Rather, Section 2 points to two other sources for guidance. First, Section 2(b) instructs the courts to follow the guidance of Section 5(a)(1) of the Federal Trade Commission Act ("FTCA").\(^{264}\) Second, Section 2(c) empowers the Massachusetts Attorney General to create rules and regulations to provide further interpretation of “unfairness” as “deceptiveness” for enforcing 93A complaints, so long as the rules and regulations do not contradict the FTCA or federal courts’ interpretations of the FTCA.\(^{265}\) The Massachusetts Attorney General accordingly adopted a broad set of consumer protection regulations.\(^{266}\) These regulations have the “force of law” and are used to determine

\(^{266}\) See 940 Mass. Code Regs. 3.01-19 (LexisNexis 2014).
whether practices are “unfair” under 93A. These regulations cover the sale and distribution of cigarettes and smokeless tobacco products.\textsuperscript{267}


The FTC has implemented 15 U.S.C.S. § 45, which prohibits unfair acts or practices towards consumers. A practice is unfair under this regulation if the “act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”\textsuperscript{268} To determine whether an act or practice is unfair, the Commission may look to public policy as evidence, but public policy may not “serve as a primary basis for such determination.”\textsuperscript{269}

Advertisements or claims “having the potential to deceive consumers may be prohibited” under 15 U.S.C.S. § 45, not only those claims or specific advertisements proven to be deceptive to consumers.\textsuperscript{270} The law is made for “the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions,” and therefore advertisements that have the capacity to deceive the general public may be prohibited under 15 U.S.C.S. § 45.\textsuperscript{271}

\textbf{B. Massachusetts Regulation Relating to Advertising (940 C.M.R. § 3.00)}

The Massachusetts advertising regulation, 940 C.M.R., defines general terms relating to advertising, including what a clear disclosure and a deceptive warranty are.\textsuperscript{272} In terms of false advertising, the regulation makes clear that “[n]o statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another” (emphasis

\begin{footnotes}
\item[269] Id.
\item[270] Gulf Oil Corp. v. Federal Trade Com., 150 F.2d 106, 109 (5th Cir. 1945).
\item[271] Gulf Oil Corp., 150 F.2d at 109 (5th Cir. 1945) citing (Florence Mfg. Co. v. J. C. Dowd, 178 F. 73, 75 (2nd Cir. N.Y. 1910)).
\item[272] 940 Mass. Code Regs. 3.01 (LexisNexis 2014).
\end{footnotes}
IV. Types of 93A Violations

The fact that 93A’s protections are tied to these other statutes and regulations is part of why the statute is so effective. It is important to understand the interplay between all of these different laws. In some cases, violation of a law is per se violation of 93A. In other cases, negligence can also constitute a 93A violation. However, violation of 93A Section 2 is still possible without violating any other laws and without negligence, as long as the act constitutes an unfair or deceptive practice.

A. Per Se Violations

A number of state statutes make a violation of their provisions per se violations of 93A. Additionally, 940 C.M.R. states that a practice violates 93A if “it fails to comply with existing [state or local] statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare…intended to provide the consumers of this Commonwealth protection.” The regulation further states that “an activity is unfair or deceptive if it violates the FTCA, the Federal Consumer Protection Act, or other Federal consumer protection statutes within the purview of Section 2 of 93A.”

B. Negligence as a Violation

Although there are some per se 93A violations, a defendant can also be liable for negligence. In other words, the legality or illegality of an action does not necessarily dictate the outcome of a 93A claim. Massachusetts courts have held a party’s negligence as a basis for liability in only a few cases, and it was because the negligence was also unfair or based on

274 Id.
278 Am. Tel. & Tel. Co. v. IMR Capital Corp., 888 F. Supp. 221, 256 (D. Mass. 1995) (holding in part that “a claim under Chapter 93A need not be premised on a violation of an independent common law or statutory duty, so long as the complained of conduct is ‘within at least the penumbra of some common-law, statutory or other established concept of unfairness…[or] is immoral, unethical, oppressive, or unscrupulous’”) (Mass. Farm Bureau Fed’n, Inc. v. Blue Cross of Mass., Inc., 403 Mass. 722, 729 (Mass. 1989).
breach of warranty. However, negligence alone is not necessarily sufficient to create liability under 93A. Ultimately, a 93A claim may fail for insufficient evidence or missing elements.

C. General Violations: “Unfairness” and “Deception”

Regardless of whether the defendant violated any other laws or acted negligently, a plaintiff can bring a successful 93A by showing an act of unfairness or deception. Because 93A provides no “static definition,” courts have developed some guidelines for judicial interpretation, within the bounds of the FTCA and 940 C.M.R. Still, the category of acts that may be construed as unfair or deceptive remains very broad.

Although unfairness and deception are often combined together, the terms are treated differently according to their respective definitions and interpretations. However, taken together, “(i)t shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty,” including both express and implied. In such a scenario, the Massachusetts Attorney General has authority to “regulate the sale of products that are unsafe and defective in a way the purchase cannot foresee.”

1. “Unfairness”

Massachusetts employs a set of factors in determining whether a business practice is unfair to consumers. The test under Massachusetts law determines if a practice is unfair by whether it is within any recognized conception of unfairness, is immoral, unethical, oppressive, unscrupulous, or would cause substantial injury to consumers, or other businessmen.

However, in determining unfairness, Massachusetts courts can rely on an FTC statement outlining a three-part test: “(1) the injury must be substantial, and it must be outweighed by any countervailing benefits to consumers or competition that the practice produces; (2) it must be an


280 Poly v. Movlan, 423 Mass. 141, 151 (1996) (holding “although the defendant (a lawyer) was negligent, he did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation”); Meyer v. Wagner, 429 Mass. 410, 424 (1999) (holding in part that “an unfair or deceptive act requires more than a finding of negligence”).

281 See Patricia Kennedy & Co. v. Zam-Cul Enterprises, Inc., 830 F. Supp. 53, 60 (D. Mass. 1993) (asserting that “a party does not need to allege a separate independent tort such as fraud or misappropriation under Chapter 93A, because ‘a claim under Chapter 93A rises or falls on its own merit’”).

282 Aspinall, 442 Mass. at 394.

283 See Mass. Ann. Laws ch. 93A, § 9(3) (LexisNexis 2014). (giving more in depth information concerning the open-ended definition of unfair or deceptive).

284 940 C.M.R. § 3.08(2) (2014).


286 PMP Assocs., Inc. v. Globe Newspaper Co., 366 Mass. 593 (1975) (holding that refusal of Boston Globe to sell advertisement space to plaintiff who ran escort service did not constitute an unfair trade practice).

287 Id.
injury that consumers themselves could not have reasonably avoided – meaning that the consumer did not just know the physical steps to be taken but the necessity of actually taking the steps; and (3) the practices threaten to undermine an essential precondition to a free and informed consumer transaction and a well functioning market.”

There is also a federal test for determining whether a practice that “is neither in violation of antitrust laws nor deceptive is nonetheless unfair”: (1) it violates some common law, statutory or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; or (3) whether it causes substantial injury to consumers (or competitors or other businessmen). The FTC has also held that a small injury may qualify as substantial for such a claim.

2. “Deception”

An act or practice is deceptive if it has “a tendency to deceive,” which can be determined through the Massachusetts Attorney General’s regulations. However, if a person is shown to have acted “with an earnestly held interpretation of a document or the law,” they have not engaged in deception. 93A Section 9 speaks specifically to misrepresentation. Additionally, the 904 C.M.R. covers false advertising, misrepresentations about “easy credit,” employment agencies and business schemes, pricing and refunds, subscriptions and mail orders, and the use of the word “new” for a used product.

290 Orkin Exterminating Co. v.FTC, 849 F.2d 1365 (11th Cir. 1988).
293 See 940 C.M.R. § 3.0.
Section Five

Sample 93A Demand Letters

After examining the evidence of potentially deceptive or misleading claims being made by e-cigarette companies, we determined that our strongest 93A claims were against Mountain Oak Vapors, NEwhere, and Vape Dudes. We selected these three companies based on the high likelihood that the claims they purport are deceptive and misleading. As we conducted our research, these three companies immediately jumped out as potential recipients of our demand letters, as all three were making claims that seemed both implausible and unsupportable.

Without having any studies or sources to support their claim, Mountain Oak Vapors contends that their product is, “up to 99.9% healthier for the cell-reproduction rate of a[n] e-cigarette user[’]s lungs vs[ersu]s that of traditional cigarettes!” Because Mountain Oak Vapors does not reference or cite to any specific scientific data to support their statement, it seems incredibly unlikely such data even exists. Most scientific studies show conflicting data about the health benefits of e-cigarettes in general, so it is simply not plausible that such a study exists. Based on these factors, Mountain Oak Vapors is one of our strongest 93A candidates.

We selected NEwhere because their website makes two equally dubious claims. First, NEwhere contends that their product can be smoked anywhere, including venues such as airports, offices, and bars. This claim is demonstrably false, as many cities and states have banned the use of e-cigarettes in the workplace and the Department of Transportation has banned their use on flights. Second, NEwhere contends, “…the risk of terrible diseases like lung cancer and more are non-existent.” There are no current studies that support this sentiment and the idea that there is a “non-existent” risk of disease when using e-cigarettes is not based on credible scientific data.

While our claims against Mountain Oak Vapors and NEwhere seem quite strong, we are less confident in our ability to bring a successful claim against Vape Dudes. Due to the amorphous nature of what constitutes a natural or organic product, we have some reservations about proving that Vape Dudes’s claims that their eJuice is natural, organic, and pure are false or misleading. Vape Dudes does not disclose the ingredients of their eJuice because they contend it proprietary information, which makes it incredibly difficult to show whether their products do in fact meet the organic and natural criteria. Moreover, even if we could prove that Vape Dudes’s
organic and natural claims are false, these terms apply only to food. Consequently, in light of these factors, we believe that out of these three companies, Vape Dues is the most likely to be unsuccessful.

I. Mountain Oak Vapors

March 9, 2015

Steve and Brandy Nair
Owners
Mountain Oak Vapors of Knoxville
150 Lovell Road
Knoxville, TN 37934

Dear Mr. and Mrs. Steve Nair:

I write to set forth a claim for unfair and deceptive trade practices pursuant to Massachusetts General Laws Chapter 93A, the Consumer Protection Act, and to request that you enter into negotiations to settle the claim. The claim is asserted by Valerie Smith.

Ms. Smith was a smoker of conventional cigarettes and became concerned about effects that smoking conventional cigarettes was having on her health. In searching for an alternative, Ms. Smith decided to consider electronic cigarettes and proceeded to visit the Mountain Oak Vapors webpage, on the suggestion of a close friend.

On or about January 8, 2015, the following unfair or deceptive act or practice occurred: On January 8, 2015, Ms. Smith went to Mountain Oak Vapors’s official website, http://www.mountainoakvapors.com. Ms. Smith purchased a quantity of one “Full Virginia Flake RY4” e-liquid for a price of $8.99, plus shipping costs, due to the marketing representations made on the webpage. In purchasing the e-liquid, Ms. Smith relied on two assertions made on the webpage.

First, Ms. Smith was influenced by the description of the e-liquid on its main page:

“Full Virginia Flake RY4™ is one of the best[-]selling tobacco flavors offered at Mountain Oak Vapors. Starting with sweet caramel & smooth vanilla this e-liquid finished with a full[-]fledged naturally extracted tobacco flavor from the very finest in [A]merican tobacco ingredients. Let this E-Liquid's subtle and authentic flavors satisfy your urge!”
Second, on the Frequently Asked Questions ("F.A.Q.") tab of the Mountain Oak Vapors webpage, Ms. Smith read:

"*New Studies have been released that show electronic cigarette use to be up to 99.9% healthier for the cell-reproduction rate of a[n] e-cigarette user[*]'s lungs vs[ersus] those of traditional cigarettes!*"

Upon reading the enticing description of the product, and the purported benefits with respect to lung cell-reproduction rate, Ms. Smith was persuaded to purchase the e-liquid.

On January 8, 2015, Ms. Smith completed a transaction on the webpage for the one bottle of e-liquid to ship to her home in Massachusetts at a cost of $11.02 ($8.99, plus an additional $2.03 for USPS First-Class mail, which was the cheapest shipping option offered by Mountain Oak Vapors). Mountain Oak Vapors knowingly ships their products to Massachusetts.

Although there is no tobacco in electronic cigarettes, the claim that smoking electronic cigarettes is “up to 99.9% healthier for the cell-reproduction rate of a[n] e-cigarette user[*]'s lungs vs[ersus] those of traditional cigarettes!” is misleading. First, scientific research shows conflicting data about the benefits of smoking electronic cigarettes over conventional cigarettes. Second, Mountain Oak Vapors fail to provide a link or reference to the “studies” that makes this “99.9%” claim. Third, even if there one particular study exists, Mountain Oak Vapors purports that multiple studies support this statistic. A thorough examination of scientific research in the field failed to yield any substantiation for this claim or the referenced studies. Ms. Smith would not have purchased the “Full Virginia Flake RY4” e-liquid if he had known that there were no such studies.

Ms. Smith does not have a scientific background and trusted that the claim regarding cell reproduction was factual. It is unclear how any activity or substance can be 99.9% healthier for cell reproduction rate. There are biological phenomena and interactions that can stimulate or inhibit cell reproduction rates, but not create an environment that is 99.9% healthier for cell reproduction rate. Mountain Oak Vapors offers no explanation of a correlation between cell reproduction rate and lung health. The language used in this claim would confuse any reasonable purchaser who read the webpage and relied on the information provided therein. As a result of the misleading representations on the Mountain Oak Vapors’s webpage, Ms. Smith suffered a monetary loss totaling $11.02.

Pursuant to Massachusetts General Law Chapter 93A, any unfair or deceptive act or practice in the conduct of trade or commerce is unlawful. Chapter 93A instructs courts to look to the guidance of Section 5 of the Federal Trade Commission Act to define the confines of an unfair or deceptive sale practice. Section 5 of the Federal Trade Commission Act, 15 U.S.C.S. § 45, deems a practice unfair if the act or practice causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Marketing electronic cigarettes as “up to 99.9% healthier for the cell-reproduction rate of a[n] e-cigarette user[*]'s lungs vs[ersus] those of
traditional cigarettes!” falls within the meaning of the 15 U.S.C.S. § 45 as causing unavoidable, substantial injury. The Code of Massachusetts Regulations, Title 940, Section 3 asserts that no statement shall be used in any advertisement which creates a false impression of grade or quality of a product, or may otherwise misrepresent the product in a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Mountain Oak Vapors’s claim constitutes an unfair and deceptive sales practices, in contravention of Massachusetts General Law Chapter 93A, Section 2. Pursuant to the regulations promulgated in the Code of Massachusetts Regulations Title 940, Section 2 if “[i]t fails to comply with existing statutes, rules, regulations, or laws, meant for the protection of the public’s health, safety or welfare…” that is intended to provide consumer protection, then it is an unfair or deceptive act or practice. Any injury resulting from such a practice is cognizable under Chapter 93A.

This letter serves as our request that your company remove the language stating, “*New Studies have been released that show electronic cigarette use to be up to 99.9% healthier for the cell-reproduction rate of a[n] e-cigarette users lung[’]s v[ersu]s that of traditional cigarettes!*” on your webpage, or at a minimum provide a link to the study or reasonable clarification.

Accordingly, demand is hereby made that Ms. Smith be compensated for injuries in the amount of eleven dollars and two cents ($11.02). Under the provisions of Section 9 of Chapter 93A, I am providing you with the opportunity to make a written offer of settlement of this claim within thirty (30) days. If you fail to make a reasonable written tender of settlement within thirty (30) days of the mailing or delivery of this demand for relief, we shall bring a lawsuit in which we shall seek multiple damages, costs, reimbursement of attorneys’ fees for unfair and deceptive trade practices and an injunction prohibiting these and similar representations in marketing of such products to Massachusetts residents.

We ask that you respond within thirty (30) days from the date of this letter with a good faith settlement proposal. This demand for relief is sent by certified mail with return receipt requested. Please forward promptly to your legal representative.

Best,
Valerie Smith
By her attorney

Certified Mail
Return Receipt Requested
II. NEwhere

March 9, 2015

Ali Esmaili
Chief Executive Officer
NEwhere, Inc.
19801 Nordhoff Place #107
Chatsworth, CA 91311

Dear Ali Esmaili:

I write to set forth a claim for unfair and deceptive trade practices pursuant to Massachusetts General Laws Chapter 93A, the Consumer Protection Act, and to request that you enter into negotiations to settle the claim. The claim is asserted by Valerie Smith.

On or about January 8, 2015, the following unfair or deceptive act or practice occurred: On January 8, 2015, Ms. Smith went to NEwhere’s official website, newhere.com. This website persuaded Ms. Smith to purchase NEwhere’s “Elite 1.0 Vaporizer Kit,” because of its false marketing representations that electronic cigarettes could be used anywhere, and that electronic cigarettes posed no risk of lung cancer or other similar diseases.

Ms. Smith, using the “Store Locator” section of the website, found that Spencer Gifts at the South Shore Plaza in Braintree, Massachusetts sells NEwhere products, and proceeded to purchase the NEwhere “Elite 1.0 Vaporizer Kit” from this retail store. She made the purchase on January 9, 2015. The kit cost $29.99 and contained the essential components of an electronic cigarette, including the battery, charger, and cartridge containing a nicotine solution.

The first reason Ms. Smith decided to purchase the NEwhere electronic cigarette is because the advertising on the website misled her to believe that she could use the product anywhere, including her office. Ms. Smith smokes conventional cigarettes and normally has to leave her office to take cigarette breaks. She wanted to spend more time in the office to be more productive at work, so she purchased the NEwhere kit. The name “NEwhere” implies that NEwhere products can be used anywhere. Moreover, Ms. Smith read on newhere.com that:

“The largest reason why so many people have jumped on the electronic cigarette train so quickly is because smokers have the freedom to enjoy the great taste and feel of their cigarette NEwhere without restrictions, such as offices, theaters, bars, clubs, airports, coffee shops, hospitals, etc.”
On January 10, 2015, Ms. Smith tried to smoke her NEwhere electronic cigarette at her office, located in Boston, Massachusetts. Her manager informed her that electronic cigarettes are banned in her workplace. It is illegal in Boston, Massachusetts to use NEwhere electronic cigarettes in any workplace, including all restaurants and bars, among many other places. The Boston Public Health Commission banned the use of electronic cigarettes in the workplace in 2011, including all workspaces, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, patios, decks, yards, and loading docks. Further, the U.S. Department of Transportation (“DOT”) prohibits the use of e-cigarettes on all U.S. air carrier and foreign air carrier flights. In addition to the DOT ban, all major U.S. airline carriers have instituted their own bans on the use of electronic cigarettes on their airplanes.

The second reason Ms. Smith decided to purchase the NEwhere electronic cigarette is because the advertising on the website misled her to believe that electronic cigarettes would not increase her risk of lung cancer. This was appealing to her because she is worried about developing lung cancer from her using conventional cigarettes. Specifically, newhere.com stated that,

“…No tobacco is used in an electronic cigarette therefore the risk of terrible diseases like lung cancer and more are non-existent.”

Although there is no tobacco in electronic cigarettes, it is false and misleading to claim that the risk of developing diseases, like lung cancer, is “non-existent.” First, scientists do not yet know the long-term effects of inhaling propylene glycol, a main ingredient in electronic cigarettes. Therefore, there is insufficient evidence to conclusively state that there is or is not a direct link between electronic cigarette use and cancer. Additionally, electronic cigarettes can produce formaldehyde, a known carcinogen. While the ingredients in the electronic cigarette liquid (propylene glycol, nicotine, glycerin, and varying ingredients for flavoring) are not known carcinogens, when the liquid is overheated it has the potential to produce formaldehyde, which users inhale as part of the electronic cigarette vapor.

Ms. Smith had never purchased or used electronic cigarettes before her January 9, 2015 purchase of NEwhere’s “Elite 1.0 Vaporizer Kit.” She purchased the kit specifically because of the website’s claims that she could use it anywhere without increasing her risk of lung cancer. She would not have purchased the kit if she had known that electronic cigarettes are banned in many public places, including her office, and that they can produce the carcinogen formaldehyde.

Pursuant to Massachusetts General Law Chapter 93A, any unfair or deceptive act or practice in the conduct of trade or commerce is unlawful. Chapter 93A instructs courts to look to the guidance of Section 5 of the Federal Trade Commission Act to define the confines of an unfair or deceptive sale practice. Section 5 of the Federal Trade Commission Act (15 U.S.C.S. § 45) deems a practice unfair if the act or practice causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Marketing e-cigarettes as available to use anywhere and posing no risk of lung cancer falls within the meaning of the 15 U.S.C.S. § 45 as causing unavoidable, substantial injury. The Code of Massachusetts Regulations, Title 940, Section 3 asserts that no statement shall be used in any advertisement which creates a false
impression of grade or quality of a product, or may otherwise misrepresent the product in a
manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be
switched from the advertised product to another.

NEwhere’s claims that electronic cigarettes can be used anywhere and that they pose no risk of
lung cancer constitutes an unfair and deceptive sales practice, in contravention of Massachusetts
General Law Chapter 93A, Section 2. Pursuant to the regulations promulgated in the Code of
Massachusetts Regulations Title 940, Section 2 if “[i]t fails to comply with existing statutes,
rules, regulations, or laws, meant for the protection of the public’s health, safety or welfare…”
that is intended to provide consumer protection, then it is an unfair or deceptive act or
practice. Any injury resulting from such a practice is cognizable under Chapter 93A.

As stated in on the company’s webpage, NEwhere claims:

“The largest reason why so many people have jumped on the electronic cigarette
train so quickly is because smokers have the freedom to enjoy the great taste and
feel of their cigarette NEwhere without restrictions, such as offices, theaters, bars,
clubs, airports, coffee shops, hospitals, etc.”

and

“…No tobacco is used in an electronic cigarette therefore the risk of terrible
diseases like lung cancer and more are non-existent.”

This letter serves as our request that your company remove these statements on your webpage, or
at a minimum clarify and explain where the use of electronic cigarettes is banned, the possible
presence of formaldehyde in electronic cigarette vapor, and the limitations of current scientific
knowledge on the link between electronic cigarette use and cancer.

Accordingly, demand is hereby made that Valerie Smith be compensated for injuries in the
amount of $29.99. Under the provisions of Section 9 of Chapter 93A, I am providing you with
the opportunity to make a written offer of settlement of this claim within thirty (30)
days. Should you fail to make a reasonable written tender of settlement within thirty (30) days of
the mailing or delivery of this demand for relief, we shall bring a lawsuit in which we shall seek
multiple damages, costs, reimbursement of attorneys’ fees for unfair and deceptive trade
practices and an injunction prohibiting these and similar representations in marketing of such
products to Massachusetts residents.

We ask that you respond within thirty (30) days from the date of this letter with a good faith
settlement proposal. This demand for relief is sent by certified mail with return receipt
requested. Please forward promptly to your legal representative.

Best,

Valerie Smith
By her attorney
Certified Mail
Return Receipt Requested
To Whom It May Concern:

I write to set forth a claim for unfair and deceptive trade practices pursuant to Massachusetts General Laws Chapter 93A, the Consumer Protection Act, and to request that you enter into negotiations to settle the claim. The claim is asserted by Valerie Smith.

On or about January 8, 2015, the following unfair or deceptive act(s) or practice(s) occurred: On January 8, 2015, Ms. Smith went to Vape Dudes’s official website, vapedudes.com. This website persuaded Ms. Smith to purchase Vape Dudes’s “Baffleberry” flavor from the VapeDudes Naturals line of electronic cigarette liquid (“eJuice”) because of its false marketing representations that the eJuice was natural, organic, and pure. She also purchased the “KangerTech EVOD Starter Kit,” an electronic cigarette, battery, replacement coil, USB charging cable, and a tank for the eJuice. The Baffleberry eJuice cost $8.99 and the starter kit cost $34.99. Her total order was $43.98 plus shipping and handling.

Ms. Smith has never smoked conventional tobacco cigarettes because she is aware of the harmful health effects such as lung cancer associated with tobacco cigarettes. She strives to be healthy about the products she puts in her body. Ms. Smith is a vegetarian and endeavors to consume only locally grown, organic food. With the rising popularity of electronic cigarettes, she became curious about using electronic cigarettes because they are tobacco-free, but was still dubious due to her strict lifestyle choices regarding organic products. However, she was persuaded to purchase an electronic cigarette starter kit and eJuice specifically because Vape Dudes advertised products conforming with her preferences for organic products.

First, Ms. Smith was influenced by the Vape Dudes homepage which states that the Vape Dudes “Natural” line of eJuice is made with “100% USDA Organic Flavors.” Secondly, in the “About Vape Dudes” section of the website, Vape Dudes claims that:

“All the magic happens in our air-purified, elements-controlled clean room, making sure our product is top-quality with Heisenberg-level purity. Our team spends its time making sure that every step of the eJuice manufacturing process is
given great consideration… We have very steep standards not only for our eJuice, but also in our taste for offering the best vaping hardware in the world.”

Third, the description of the Baffleberry-flavored eJuice states that, “VapeDudes Naturals are created using organic flavors exclusively. Naturals offer a unique vaping experience not found in most eJuices.”

Upon reading the enticing description of the product, specifically the claims that the eJuice was natural, and organic, and pure, Ms. Smith was persuaded to make the purchase of the eJuice and starter kit. On January 8, 2015, Ms. Smith completed a transaction on the webpage for the one bottle of eJuice and one starter kit to ship to her home in Massachusetts at a cost of $34.99 plus shipping and handling. Vape Dudes knowingly ships their products to Massachusetts.

Claims that the liquid in electronic cigarettes is “natural” and “organic” are deceptive and misleading. These claims would lead a reasonable consumer to believe that all of the ingredients in the eJuice meet U.S. Food and Drug Administration (“FDA”) and Massachusetts definitions of “natural” and “organic,” and are therefore approved for use by consumers. However, it is unclear and doubtful that all of Vape Dudes’s ingredients meet these definitions.

At present, the FDA defines “natural” with regard to added color, synthetic substances, and flavors in foods. In these uses, “natural” means that nothing artificial or synthetic (including color) has been added to a food that would not normally be expected in the food. Massachusetts Code of Regulations Title 105 Section 520.122 defines “natural” more specifically to mean anything that is derived from a spice, fruit or fruit juice, vegetable or vegetable juice, and other plants, dairy or animal products. Vape Dudes does not disclose the ingredients of its colorings, flavorings, or other eJuice contents on its website. On March 4, 2015, Ms. Smith called Vape Dudes at 1(888) 963-9443 and left a voice message inquiring as to the exact ingredients of the eJuice to confirm that it is in fact natural. Vape Dudes returned her call the same day and informed her in another voice message that they do not disclose the ingredients of their eJuice because it is proprietary. It is therefore impossible for consumers such as Ms. Smith to confirm whether the colorings and flavorings in Vape Dude’s eJuice are in fact “natural.” Moreover, even if the colorings and flavorings do meet these criteria, it is unclear whether the remaining components of the eJuice are also natural. Finally, federal and state regulations of the term “natural” only apply to food, so it is misleading to apply this term to a product that is inhaled in the form of vapor rather than consumed as a food.

According to the USDA National Organic program, the term “organic” applies only to food, and refers to any food produced without using most conventional pesticides; fertilizers made with synthetic ingredients or sewage sludge; bioengineering; or ionizing radiation. Also, the term “organic,” may only be used on labels and in labeling of raw or processed agricultural products, including ingredients that have been produced and handled in accordance with USDA regulations. The term “organic” may not be used in a product name to modify a non-organic ingredient in the product. Additionally, a product must not contain sulfites, nitrates, or nitrites added during the production or handling process, with an exception for wine, to be labeled organic. Vape Dudes does not disclose the ingredients of its eJuice ingredients on its website. On March 4, 2015, Ms. Smith called Vape Dudes at 1(888) 963-9443 and left a voice message
inquiring as to the exact ingredients of the eJuice to confirm that it is in fact organic. Vape Dudes returned her call the same day and informed her in another voice message that they do not disclose the ingredients of their eJuice because it is proprietary. It is therefore impossible for consumers such as Ms. Smith to confirm whether the ingredients in Vape Dude’s eJuice are in fact organic. Finally, federal regulations of the term “organic” only apply to food, so it is misleading to apply this term to a product that is inhaled in the form of vapor rather than consumed as a food.

Pursuant to Massachusetts General Law Chapter 93A, any unfair or deceptive act or practice in the conduct of trade or commerce is unlawful. Chapter 93A instructs courts to look to the guidance of Section 5 of the Federal Trade Commission Act to define the confines of an unfair or deceptive sale practice. Section 5 of the Federal Trade Commission Act (15 U.S.C.S. § 45) deems a practice unfair if the act or practice causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Marketing e-cigarettes as natural and organic falls within the meaning of the 15 U.S.C.S. § 45 as causing unavoidable, substantial injury. The Code of Massachusetts Regulations, Title 940, Section 3 asserts that no statement shall be used in any advertisement which creates a false impression of grade or quality of a product, or may otherwise misrepresent the product in a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Vape Dudes’s claims that their electronic cigarettes are natural and organic constitutes unfair and deceptive sales practice, in contravention of Massachusetts General Law Chapter 93A, § 2. Pursuant to the regulations promulgated in the Code of Massachusetts Regulations Title 940, Section 2 if “[i]t fails to comply with existing statutes, rules, regulations, or laws, meant for the protection of the public’s health, safety or welfare…” that is intended to provide consumer protection, then it is an unfair or deceptive act or practice. Any injury resulting from such a practice is cognizable under Chapter 93A.

This letter serves as our request that your company remove these statements on its webpage, or at a minimum clarify and explain how the ingredients of its eJuice qualify as natural and organic.

Accordingly, demand is hereby made that Valerie Smith be compensated for injuries in the amount of $43.98 plus shipping and handling. Under the provisions of Section 9 of Chapter 93A, I am providing you with the opportunity to make a written offer of settlement of this claim within thirty (30) days. Should you fail to make a reasonable written tender of settlement within thirty (30) days of the mailing or delivery of this demand for relief, we shall bring a lawsuit in which we shall seek multiple damages, costs, reimbursement of attorneys’ fees for unfair and deceptive trade practices and an injunction prohibiting these and similar representations in marketing of such products to Massachusetts residents.

We ask that you respond within thirty (30) days from the date of this letter with a good faith settlement proposal. This demand for relief is sent by certified mail with return receipt requested. Please forward promptly to your legal representative.
Best,

Valerie Smith
By her attorney
Certified Mail
Return Receipt Requested
Conclusion

E-cigarette companies have made claims about their product’s health benefits, organic or natural ingredients, and a consumer’s ability to smoke anywhere. Because long-term health effects of e-cigarette use are not yet known, the substantiability of such claims is shrouded in smoke. Organic or natural claims may be tough to litigate against because of companies’ proprietary rights to their ingredients. Additionally, companies can exaggerate or “puff” facts about their products to entice demand; although, advertisers are limited to claims that no reasonable person would take seriously. 295

Despite this circumstantial and legal wiggle-room, e-cigarette companies have likely made unsubstantiated claims going beyond puffery that may be actionable as deceptive or unfair practices. The Massachusetts Code of Regulations dictates that the law views a deceptive first contact as a violation, regardless of any disclaimers attached to the contact. 296

This manual contains materials that may implicate unfair or deceptive practices already occurring in the e-cigarette industry. 297 E-cigarette advertising will continue to develop new messaging, and may employ new claims that deceive or mislead a reasonable consumer. This manual attempts to capture the procedural and substantive law that make up Massachusetts consumer protection law to help any future litigants who find new unfair or deceptive claims advertised by e-cigarette companies.298 Below, the manual provides sample demand letters for parties injured by three e-cigarette companies’ deceptive or misleading advertisements. The demand letters address e-cigarette advertisements documented in this manual that are likely unsubstantiated and may mislead or deceive a reasonable consumer.

295 Speakers of Sport, Inc. v. Proserv, Inc., 178 F.3d 862, 866 (7th Cir. 1999).
296 16 C.F.R. §§ 255.0(a), (b) (2015).
297 See supra Section Three.
298 See supra Section Four.
Appendix A:  
Documentation of E-Cigarette Marketing

1. Aquacig

**Benefits of AquaCig**

AquaCig is designed to deliver nicotine in the most healthy and enjoyable way possible. Here are some of the benefits.

**No Tar or Carcinogens** – AquaCig does not contain tar or the thousands of carcinogens, including carbon monoxide, that are inhaled when smoking regular tobacco cigarettes.

**No bad smells** – With AquaCig you don’t have to worry about smelling like an ashtray. No more lingering taste of tobacco in your mouth, or tobacco smell all over your hands and clothes.

**No smoke, only vapor** – AquaCig produces a thick, satisfying vapor from water, flavoring and nicotine. Where there’s no smoke, there is no lingering smell in the air or second hand smoke.

**Use it almost anywhere** – AquaCig is not a tobacco product and does not produce smoke. This means it is not prohibited by law in locations such as bars, restaurants or workplaces.

**Cheaper than smoking** – AquaCig is highly cost-effective and will save you money every day. Our low prices and flat-rate US shipping will save more than 50%.

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2. Bloog

NO FIRE, NO FLAME

Bloog’s innovative vapor releasing design is completely fire and ash free. The Bloog battery simply heats a water-based solution inside the cartomizer containing natural flavoring and nicotine, which produces the vapor that you inhale and exhale. No fire means no burning and no smoke. Ever. Bloog replicates the cigarette smoking experience without the numerous harmful, and potentially lethal chemicals proven to be found in cigarettes and cigarette smoke. No more lighters, no more air freshener.

CARTOMIZERS

The cartomizers are the single-serving, disposable component of the Bloog’s two-piece mechanism. Each cartomizer contains a liquid solution that produces vapor upon inhalation and lasts for approximately the same amount of time as a pack of 20 cigarettes, depending on the user.

While cigarettes contain over 4,000 different chemical compounds which are released when lit, a Bloog cartomizer contains only 4 elements: water, flavoring, the organic compound - propylene glycol (see FAQ’s), and nicotine. Bloog cartomizers come in 14 unique flavors, including various tobacco, dessert, and fruit blends. Every flavor is available in 6 different nicotine levels (zero, extra low, low, medium, high, and extra high), which allows our users to monitor their nicotine intake over time. A cartomizer should be replaced when the distinct flavor no longer be tasted.

BATTs, NOT BUTTS

All of our battery models operate the same way - when attached to a cartomizer, the battery will heat the solution inside the cartomizer turning it into water vapor. The batteries are all pressure-activated and only turn on when you’re puffing. When the LED on the tip of your battery lights up, you’ll know your battery is being activated.

Our safe, non-toxic batteries can be recharged using a number of different chargers, including our USB Charger, Wall Adapter, and Portable Charger. The battery’s ability to recharge means you can save your money in the long haul, and the environment too - no more butts.

What is a COA?

A Certificate of Analysis, or COA, is issued for each batch of liquids produced. Information on a typical COA includes, its grade, the batch number, the date of release, and the liquid’s expiration date. The Certificates will be dated and signed by authorized personnel and show the manufacturer information.

The key piece of information on the Certificate of Analysis is the list of ingredients. The e-cigarette industry has come under fire in recent months. The media has blasted the industry for not disclosing, (in many cases because of lack of knowledge), what is in e-liquids. Bloog is the first e-cigarette brand that has credible COA’s from the most reliable source. This means you will always exactly what you are vaping when you vape Bloog Viquid™.

What is a Stability Test?

A documented, ongoing program that monitors the stability characteristics of the e-liquid. The results confirm the appropriate storage conditions and expiration dates for the e-liquid. The samples are stored and tested in the same containers that are sold to the consumers. At least one batch per year should be added annually to the stability monitoring program and tested to confirm the stability. By undergoing the stability tests, you are assured that Bloog Viquid™ will always be the same purity, consistency, and flavor that you expect.

Figure 1

Figure 2

3. Clearette

Figure 1

4. Cylapex

Quality is our priority. We pledge to make extraordinary efforts to make sure that every customer can get unprecedented quality and safe e-cigarettes. We fully know that the success of any business is contingent on the abilities to meet and exceed customers' expectations. We are constantly improving and working harder for you, our customers!

We have the mission of protecting people and keeping them safe, in addition to offering electronic cigarettes that are long lasting, with no tar, no smoke, no odor, no carcinogens, no smell and no second-hand smoke. Cylapex electronic cigarettes are also good for the environment.

You can smoke almost everywhere, bars, pubs, night clubs, restaurants, casinos, hotels, airports and more. It won't hurt people you love around you and there won't be smelly clothes, yellow fingers and harmful chemicals. This is because that you're using Cylapex electronic cigarettes.

The various kinds of flavors and exceptionally high vapor volumes make Cylapex electronic cigarettes the ideal ways to upgrade your smoking experience. Cylapex electronic cigarettes look and feel even better than the cigarettes that you're used to use and they leave you smelling fresh and completely satisfied with your experience like no other e-cigarettes in the markets. The next generation of cigarette is here. If you're looking for the ultimate smoking sensation, it's time to try a Cylapex electronic cigarette.

Figure 1

302 Photograph taken at “Cleveland Circle Convenience” 358 Chestnut Hill Ave, Boston, MA, 02135 on January 6, 2015.
5. DFW Vapor

![Figure 1]

**Is there an odor when using the electronic cigarette?**

There may be an essence. The odors produced are typically pleasant (This is subjective and depends on YOUR personal taste). If you are using watermelon flavor, you may smell watermelon.

**Am I allowed to use my e-cig in non-smoking bars and restaurants?**

Typically, yes. There are currently no laws prohibiting the use of e-cigs in non-smoking establishments. However, if a manager or owner asks you to stop, please be polite and set a good example of e-cig users and stop. If you want, use this moment as a chance to educate the person on e-cigs and how they are completely odorless and flame-less, and have no second hand smoke.

![Figure 2]

**Are Electronic Cigarettes safe?**

Many people find that the Electronic Cigarette is a great alternative to tobacco smoking. The nicotine juice that is vaporized has no products of combustion, just nicotine and the other ingredients mentioned. The vapor that is produced from the electronic cigarette mainly contain water, propylene glycol, nicotine, and sometimes flavoring. Electronic cigarettes are not FDA approved.

**Who should use electronic cigarettes?**

Smoker over 18 that is looking to improve health or decrease there dependency on nicotine.

**Can I use the Electronic Cigarette for smoking cessation?**

Electronic cigarettes have not been approved for smoking cessation. Although many people have claimed to switch to Electronic Cigarette use entirely, we can not make any such claims.

---


305 *Id.*
6. Eluma

How It Works

Simply put, Eluma is an electronic vaporizing device. What does it vaporize? A liquid that contains nicotine or no nicotine if you prefer. When the liquid is vaporized it creates a smoke like vapor. This vapor is then inhaled similar to smoke from a cigarette. The main difference is there’s no tobacco so no tar, ash, odor or carcinogens. How are we so sure there’s no carcinogens? We randomly test our products regularly using a 3rd party laboratory to ensure the highest quality control in this industry. No rogue ingredients will ever make its way into our product.

So how does it work? Part of Eluma is a battery that requires charging. It’s screwed into the charger that comes with your kit. Once charged, Eluma will last you for hours of vaporizing pleasure. The other part is the Eluma Caromizer or atomized cartridge which holds the liquid. Eluma Caromizers are designed to hold the most liquid possible to ensure long lasting use without the need to frequently change. A single Eluma Caromizer will last the equivalent of a pack of cigarettes. That’s 20 cigarettes!!! When the Caromizer is empty, little or no vapor will be produced. Simply unscrew the old Caromizer and replace with a new one. Eluma Caromizers are designed to be hassle free.

Check out Katherine Heigl and David Letterman puffing and discussing an electronic cigarette (a.k.a. Eluma) on The Late Show recently.

Check out our FAQ’s for more “frequently asked questions” about Eluma.

The Do’s & Don’ts have been moved to the FAQ page.

Figure 1.307

Take the Eluma Challenge Today!

Figure 2.308

Testimonials

The testimonials you see below have been copied verbatim from actual emails received from REAL ElumaGigs.com customers! Feel free to send your testimonial to CustomerService@ElumaGigs.com and maybe we’ll post it!

Barbara from South Daytona, FL
I love your product!

Donald from Merrill, WI
I have comparred 2 other e-cigs, eluma to me is best.

Elizabeth from Delafield, WI
I usually do not comment on anything but with your product I do not smoke anymore. I was a dye-hard smoker with every intention to go to my grave with a cigarette in my hand. I have smoked since I was 13 yrs. old. When I received my first shipment from you I started to use it and I haven’t had a cigarette since. I am 59 yrs old now and I started using your product mid Sept. Thank You SOOOOO much.

Figure 3.309

Can ELUMA be used to as a smoking cessation option?

Although we make no claims that ELUMA can be used to stop smoking, most ELUMA users do stop using tobacco all together. ELUMA has not been tested as a smoking cessation method, but it is clear that using ELUMA can completely substitute your tobacco habit. ELUMA is also available in non-nicotine for those smokers who want to completely remove their nicotine intake while still allowing them to satisfy their desire to smoke.

7. Emerald Lux

Does Emerald Lux™ produce smoke?

No, it produces vapor, which looks like smoke, but isn’t.

Back to top

How does Emerald Lux™ work?

The battery is attached to an atomizer, which is attached to the cartridge. When you inhale, the battery is activated and the cartridge releases the vapor.

Back to top

Is it true that I can smoke Emerald Lux™ anywhere?

Because an electronic cigarette does not burn tobacco and create smoke, you are allowed to smoke at bars, restaurants, café’s, parks, and many other locations! It does not create a nuisance nor smoke, and the vapor vanishes much quicker than smoke, however, we still recommend you check your local laws/location before smoking in uncertain locations.

Figure 1 311

Figure 2 312

As Green As You Can Get

Atomization technology, renewable flameless cartridges and rechargeable batteries make the Emerald Lux electronic cigarette system the safest and cleanest way to enjoy e-cigarettes without any of the guilt or environmental impact that many smokers associate with burning tobacco products. The environment is vital for everyone on our planet and we all need to do our part to safeguard it against the many hazards that traditional cigarettes cause – ranging from wildfire deforestation to second-hand smoke and other forms of pollution. Going green really is important and Emerald Lux is about as green as you can get!

8. Eversmoke

Does the EverSmoke Electronic Cigarette produce smoke or tar?

No, EverSmoke does not produce any smoke and only an odorless water vapor mist nearly identical in appearance to tobacco smoke, but disappears in several seconds.

---

314 Id.
Can I truly smoke anywhere with the EverSmoke Electronic Cigarette?

Unlike tobacco cigarettes, electronic cigarettes do not produce smoke, and therefore you should typically be permitted to smoke in areas that have non-smoking ordinances and laws. Smoking used to be socially acceptable, but now it’s frowned upon and even illegal in most public places. That’s why EverSmoke electronic cigarettes are such a great alternative.

Figure 3 317

Is the EverSmoke Electronic Cigarette a better way to smoke?

Most experts agree that it definitely is a smarter option. Choosing to switch to EverSmoke’s electronic cigarettes allows you an alternative way to still enjoy smoking without the flame, smoke, ash, tobacco, tar, carbon monoxide, or horrible and offensive smell found in traditional cigarettes. Since the EverSmoke electronic cigarette is free of tobacco, it does not contain the thousands of harmful carcinogens typically found in tobacco products and can even be safely smoked indoors. Free of life threatening carcinogens and offensive second-hand smoke, many experts and customers agree that EverSmoke electric cigarettes offer a better, smarter environment to both you and the non-smoking community. Simply put, you can now enjoy smoking guilt free, wherever and whenever you want!

Figure 4 318

9. Logic

WHERE CAN I SMOKET LOGIC?

LOGIC has no second hand smoke or odor, which makes it easy to smoke anywhere, anytime. Some public places at this time do not allow Electronic Cigarettes and one must abide by their own city and state regulations.

Back to top

Figure 1 319

DOES LOGIC PRODUCE SMOKE?

LOGIC does not produce smoke but rather a water vapor that looks like smoke. It’s similar to the fog machines they use at dance clubs and private parties that evaporates into the air in seconds with no smell.

Back to top

Figure 2 320

317 Id.
318 Id.
320 Id.
10. Mountain Oak Vapor

Electronic Cigarettes offer a smoker an alternative “smokeless” solution to traditional tobacco products. These are not tobacco cessation products. However, some benefits include: No nasty smells, no dirty ashes, and the ability to “vape” almost anywhere. These are a smokeless product in that they produce vapor, not smoke. There is no combustion in electronic cigarettes as is present with traditional analogs. We recommend doing some of your own research and forming your own conclusions on these products. As a company we try to be as transparent as possible with our customers, if you have any questions, please don’t hesitate to contact us at support@mountainoakvapors.com

<table>
<thead>
<tr>
<th>General Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is your product made in the USA?</td>
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<tr>
<td>What is vapor, and how is it produced?</td>
</tr>
<tr>
<td>Is vapor smoke?</td>
</tr>
<tr>
<td>&quot;New Studies have been released that show electronic cigarette use to be up to 99.9% healthier for the cell-reproduction rate of an e-cigarette users lungs vs that of traditional cigarettes&quot;</td>
</tr>
<tr>
<td>What is the difference between &quot;USP Grade&quot; and &quot;USP Certified&quot; when it comes to Vegetable Glycerin and Propylene Glycol</td>
</tr>
</tbody>
</table>

Figure 1

Figure 2

---

322 Id.
Celebrities are Smoking NEWHERE Everywhere!

It's official! The electronic cigarette is the hottest, most innovative invention to hit the market in quite some time. It's taken the world by storm and introduced great people from every walk of life to a whole new generation of smoking. The largest reason why so many people have jumped on the electronic cigarette train so quickly is because smokers have the freedom to enjoy the great taste and feel of their cigarette NEWHERE without restrictions, such as offices, theaters, bars, clubs, airports, coffee shops, hospitals, etc. Health conscience smokers who have been looking for an alternative to tobacco cigarettes now don’t have to worry about contracting a horrific illness, harming their loved ones with second hand smoke, the horrible smell on their clothes or breath, the growing costs and taxing of tobacco cigarettes. Studies show that every day in the media more and more celebrities are endorsing their move towards electronic cigarettes. This is likely due to the fact that E Cigs contain a small microchip and heating mechanism that produces an odorless vapor mist that tastes like the great rich taste of the smokers choice but does not carry the same gross smell or stain the users teeth. In the recent news, photographs and videos of many celebrities enjoying their E Cigs were released including, actress Katherine Heigl, Hilarie Duff, Lindsay Lohan, Johnny Depp, Kate Moss, Britney Spears, Leonardo DiCaprio and many more.

Our experts here at NEWHERE hope that browsing our site can bring clarity to any questions or confusion regarding the advantages of the electronic cigarettes over tobacco cigarettes. A couple key points that most users consider right away are that E Cigs don’t produce any second hand smoke, ash, or tar...and no tobacco is used in an electronic cigarette therefore the risk of terrible diseases like lung cancer and more are nonexistent.

According to the FDA there are over 7,000 chemical substances in the regular cigarette, 93 of which the FDA publicly reports as “Harmful and Potentially Harmful Constituents”. Nicotine is one of the least harmful ingredients of the 7,000 . Electronic cigarettes main ingredients are only nicotine, propylene glycol, and water. They do not contain any of the 93 Ingredients that the FDA has identified as harmful in regular tobacco cigarettes. Electronic cigarettes are definitely a new revolution for the world of smokers and non-smokers. They are proven to be a healthier alternative because the nicotine levels can be managed and monitored. Ultimately they will save you thousands of dollars over time. The biggest benefit was best said by Nick from Manhattan Beach, “It can help some one quit smoking if they want to...the cigarette feels realistic, it smokes like the real thing and tastes amazing...and since I started smoking NEWHERE E Cigs I’m down from one pack a day to one pack every week and a half! If you ask me, Yes! Electronic cigarettes are definitely taking things to the next level in every way.”

Celebrity E-Cigarette Users

This entry was posted on January 25, 2014 by NEWHERE.

Celebrity E-Cigarette Users
The online payment/credit card processing website eMerchantBroker recently unveiled a new InfoGraphic highlighting .

Celebrity E-Cigarette Users
This creative and beautiful Info graphic highlights Hollywood stars and celebrities that are current tobacco cigarette smokers and have not yet been able to kick the habit.

In an attempt to remind us all of the detrimental effects of tobacco use the graphics then gives us a grim reminder of celebrities who lost their battle to illnesses due to tobacco smoking. To offset this unfortunate but grim reality it then highlights the celebrities that successfully kicked the habit and are now living healthier lives.

Celebrity E-Cigarette Users

Last but not least the info graphic sheds light on all current that are well on their way to completely tobacco free lives. These celebrity e-cigarette users include but are at no means limited to Charlie Sheen, Leonardo DiCaprioCatherine Heigl, Jenny McCarthy and .

Celebrity E-Cigarette Users
Take a look for yourself at the info graphic below and discover what are on their way to www.NEWHERE.com success! To learn more about these great devices visit and discover a world of unique e-cigarette flavors!

Figure 1

Figure 2

HOLLYWOOD may be all about looks and glamour, but some stars don’t seem to care about the aging effects of cigarettes and the health implications they have. Many celebrities enjoy to light up even though smoking related diseases cause 440,000 deaths in America each year.

In order to help cut down on tobacco usage, many people including celebrities have turned to electronic cigarettes to help kick the habit. Sales of electronic cigarettes, labeled as a ‘healthy’ alternative to smoking, have risen tenfold in the last year, as celebrities help make puffing away ‘cool’ again.
12. **Premium**

**HOW IT WORKS**

What is an electronic cigarette?

An electronic cigarette is a two part device that simulates the smoking of a traditional cigarette sans all the harmful chemical additives found in major tobacco products.
- The cartomizer is composed of a cartridge containing liquid ingredients required to create a full vapor (water, nicotine, propylene glycol, and flavoring) and a heating element that heats up when attached to a battery that steams the products to create the vapor being inhaled.
- The cigarette batteries are lithium-ion units that are activated by an air pressure sensor that is triggered when the user “takes a drag”. The battery turns on and supplies power to the heating element located in the cartomizer.

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327 Id.
13. Regal e-Cigs

Regal e-Cigs provide an enhanced smoking sensation unlike anything you have ever experienced. Now you can have it all: Taste, quality and the freedom to smoke. Our innovative design consists of a cartomizer (a flavored cartridge) and a long lasting battery which heats the cartomizer to produce a full-flavored vapor. Simply twist the cartomizer and battery together and inhale. It's that easy.

Find the starter kit that's right for you with the help of our comparison chart or discover the advantages of e-cigarettes over regular cigarettes.

Why do people switch to electronic cigarettes?

For similar reasons to why people smoke traditional cigarettes, smoking electronic cigarettes provides a similar sensation. They provide delight and relaxation not to mention the social benefits from smoking with friends and colleagues. As well, electronic cigarettes are much more convenient, have no risk of fire, leave no second-hand smoke and can be used on the go without waste. Lastly, the electronic cigarette alternative is much more cost effective as they cost approximately half that of traditional cigarettes.

Can I smoke anywhere?

It depends on the jurisdiction. Electronic cigarettes can often be used legally almost anywhere, many times even where traditional smoking is prohibited. Because the electronic cigarette is not lit and smoke is not produced, it is not known to be prohibited from use under most laws and ordinances. We always recommend you check with your local jurisdiction before using an electronic cigarette.

Can anyone use the electronic cigarette?

No, the electronic cigarette is intended for use only by adults of legal age and is not intended to be used by women who are pregnant or nursing and by those sensitive to nicotine.

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14. SmartFixx

DO ELECTRONIC CIGARETTES CONTAIN FEWER CHEMICALS THAN REGULAR CIGARETTES?

Electronic cigarettes contain none of the chemicals in regular cigarettes. Electronic smokeless cigarettes provide the same sensation of smoking without the side effects. Smoke free e-cigs emit none of the carcinogens of secondhand smoke which contains 4,000 chemical substances! Ours is an electric cigarette (or e-cigarette) with replacement nicotine cartridges that emit no smoke at all, from mini electronic cigarettes to electronic cigars.

Smart Fixx electronic cigarettes and electronic cigars contain rechargeable lithium batteries as well as replaceable nicotine cartridges filled with:

- Water
- Propylene glycol
- Scent that emulates tobacco flavor

The propylene glycol in our electronic smokeless cigarettes, mini electronic cigarettes and cigars creates a water vapor that emulates smoke. We use this in our electric cigarettes. As for the nicotine in our e-cigarettes, nicotine is not believed to have any toxicological effects.

Absence of dangerous chemicals in electronic cigarettes top the list of reasons to use ecigarettes, but what’s the point of electronic smokeless cigarettes if they don’t satisfy your cravings? Our electronic cigarettes, mini electronic cigarettes and electronic cigars look, taste and feel like the real thing, with nicotine cartridiges that give you the Smart Fixx you need.

You can “smoke” electronic cigarettes, mini electronic cigarettes and electronic cigars anywhere because electronic smokeless cigarettes are not tobacco products. Whether it’s in a restaurant, hospital or office building, use your smoke free e-cig to your heart’s content!

Figure 1

15. South Beach Smoke

Why is South Beach Smoke better than the rest?
The South Beach Smoke e-cigarette is a revolutionary, innovative electric cigarette smoking device which offers the smoking community a better smoking alternative to the traditional tobacco cigarettes. Using advanced technology, the South Beach Smoke e-cig’s revolutionary smoking alternative allows for a smoking experience without the flame, ash, tobacco, tar, carbon monoxide, or horrible and offensive smell found in traditional cigarettes. As the South Beach Smoke electronic cigarette is free of tobacco, this electric cigarette machine does not contain the thousands of harmful carcinogens typically found in tobacco products. With no offensive second-hand smoke, the South Beach Smoke electric cigarettes offer a safer, better environment to both you and the non-smoking community. Simply put, there is no longer a need for anyone to breathe the unwanted, dangerous second-hand smoke produced by traditional tobacco cigarettes.

Figure 1

---

332 Id.
Can I smoke anywhere with the South Beach Smoke Electronic Cigarette?
As this product is free of both first and second hand smoke, and is by no means a traditional tobacco cigarette, you should be free to smoke South Beach Smoke electric cigarettes in most areas that don't typically permit smoking.

Figure 2

Does the South Beach Smoke Electronic Cigarette produce smoke or tar?
No, South Beach Smoke produces an odorless water vapor which looks like smoke but disappears in several seconds.

Figure 3

Who is South Beach Smoke for?
South Beach Smoke is for smokers 18 years of age or older & 19 or older. If you live in Alabama, Alaska, New Jersey, Utah & New York. Please check the legal smoking age in your state as it may apply to electronic cigarettes. South Beach Smoke is an alternative to traditional cigarettes. While many people have successfully used it to quit smoking, electronic cigarettes have not yet been approved by the FDA as a quit smoking device. As a result, federal law prohibits us from marketing it as a quit smoking device & it should not be used as a quit smoking device. Please consult your doctor before use.

Figure 4

16. Suicide Bunny

PAPER TO VAPOR
COMMITTING TO QUITTING
E-cigarettes can help even longtime smokers reduce their daily cigarette intake. Quitting cigarettes in favor of e-liquids can help you gradually eliminate your dependence on nicotine, while cutting back on the risk of respiratory illnesses.

COMMIT TO QUIT TODAY

Figure 1

17. V2 (VMR Products)

Who can use a V2 Cig?
V2 Cigs are intended for use by smokers of legal smoking age. V2 Cigs should not be used by children, pregnant or breast-feeding women, people with heart conditions, high blood pressure, diabetes or people taking medication for asthma or depression. This product is not sold for therapeutic use.

Can I use my e-cigarettes in places where smoking is banned?
You can use electronic cigarettes in most places where cigarettes are banned. This differs by state, county and retail property. Electronic cigarettes don’t give off smoke and don’t burn. But they are at the center of a social and legal debate over whether it’s OK to “fight up” in places where regular cigarettes are banned. Despite big differences between cigarettes and their electronic cousins, several states, workplaces and localities across the country have explicitly included e-cigs in smoking bans. A lot of people are still unfamiliar with electronic cigarettes and the best way to get the word out is by educating others about it.

Can I fly with my e-cigarette?
You can travel on a plane with your electronic cigarette, but just like tobacco cigarettes, you may not use your electronic cigarette aboard any US commercial airline, whether on the tarmac or during the flight. Charter and international carriers operate under a different set of rules and may allow the use of e-cigarettes.

How do I use my V2 Cig?
It is recommended that you read your User’s Manual fully before use. Your V2 Cigs rechargeable electronic cigarette batteries must be fully charged 2-4 hours before use with the charger included in your kit. If purchasing your battery separately, you will need to purchase a charger with it. Once charged, remove the Stay Fresh case from the ends of a flavor cartridge and screw onto the battery. V2 Disposable e-cigs are ready for...

Where do you ship?
We ship our products within the US and all across the world and have successfully delivered our products to over 130 countries. We ship 5-days per week (Monday-Friday), excluding major US holidays. For full details on our shipping options, please visit our Shipping Options page.

Can e-cigarettes help me stop smoking?
E-Cigarettes have not been approved by the FDA as a smoking cessation product. Many of our customers have reported being able to switch to V2 Cigs with losing the pleasure they get from smoking.

Are electronic cigarettes safe?
V2 Cigs takes quality very seriously. That is why we are the only e-cig company to test every batch of e-liquid and share the test results with our customers. We also publish our ingredient list online for you to see. Over 2 million people have successfully used e-cigarettes all over the world and their main ingredient has been tested since the 1950’s.

What are the symptoms of using e-cigarettes?
When you make the switch to e-cigarettes you might experience a few symptoms associated with your body ridding itself of thousands of chemicals found in tobacco cigarette smoke. Some of the common symptoms experienced are coughing, congestion, phlegm, spumum and throat clearing. For a detailed list of symptoms refer to our blog “Symptoms you might experience when you start using electronic cigarettes”.

Figure 1

Figure 2


Id.
With V2® electronic cigarettes you are not only helping yourself, but also the environment. V2 electronic cigs are smoke free, ash free and create no fire risk. Tobacco cigarettes also place a major burden on the environment with the accumulation of cigarette butts in landfills. You can enjoy your V2 guilt-free, and rest assured you are protecting the environment.

V2® is the world’s first social cigarette. With no offensive odors, you no longer need to worry about offending your non-smoking friends. No longer will you need to step outside in inclement weather or struggle through non-smoking events. With V2, you can smoke virtually anywhere, even in most ‘No Smoking’ areas like bars, restaurants, offices, and airports. The V2 e-cig won’t leave your home and car smelling like an ashtray. If you are a smoker, you owe it to yourself and those you care about to try V2. With our 30-day money back guarantee you have nothing to lose. If you are not satisfied, simply return your starter kit for a full refund. No questions asked!

![Figure 3](image340)

<table>
<thead>
<tr>
<th>V2 CIGS</th>
<th>TOBACCO CIGARETTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔️ No Smoke</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ No Tar</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ No Ash</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ No bad breath</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ No odors or staining</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ No 2nd hand smoke</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ No Carbon Monoxide</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ Free from most smoking bans</td>
<td>❌</td>
</tr>
<tr>
<td>✔️ The Nicotine you crave</td>
<td>✔️</td>
</tr>
</tbody>
</table>

$7.95  

Cost per 5 pack**  

$35.15  

![Figure 4](image341)

---


341 Id.
18. **Vape Dudes**

**Our Liquid:**
Vape Dudes uses only 100% USA-sourced ingredients. The Propylene Glycol (PG) and Vegetable Glycerin (VG) we use is USP Kosher grade. The nicotine used is pharmaceutical grade and USA-sourced. Our liquid is Diacetyl and artificial color-free and we do not add sweeteners. However, sweeteners can be added upon requested.

**Gourmet Line:**
The Gourmet line contains natural and artificial flavoring.

**Naturals Line:**
Storage and Shelf life: Liquid should be stored in a cool, dark place. Do not leave liquid in your vehicle during warm or hot weather, or in direct sunlight. Nicotine will oxidize and the juice will come darker, it can also alter the flavor.

---

**Figure 1**

![Vape Dudes Naturals](image1)

**Figure 2**

![Vape Dudes Naturals](image2)

**Figure 3**

***VapeDudes Naturals are created using organic flavors exclusively. Naturals offer a unique vaping experience not found in most eJuices. You may notice a slightly stronger throat hit with these flavors.***

---

About Vape Dudes

Vape Dudes is exactly what it sounds like: a group of dudes and dudettes that eats, sleeps and breathes (especially breathes) all things vape. Our goal is to make the best eJuice we possibly can. Every bottle of Vape Dudes eJuice is carefully hand-crafted to the taste of each individual customer, with options available for all preferences. All the magic happens in our air-purified, elements-controlled clean room, making sure our product is top-quality with Heisenberg-level purity. Our team spends its time making sure that every step of the eJuice manufacturing process is given great consideration, assisted by tunes, good times and laughs. We have very steep standards not only for our eJuice, but also in our taste for offering the best vaping hardware in the world.

Vape Dudes is as real as our eJuice, and being a Vape Dude or Vape Dudes customer guarantees use of only the finest ingredients, finest preparation process and highest product quality. Down to earth and all about our craft, Vape Dudes has become a name synonymous with the best the vaping world has to offer.

Figure 4

19. Vapestick

Is It True that Electronic Cigarettes Are Legal in Public?

During the early days of electronic cigarettes in Europe, a common marketing ‘tactic’ among distributors was to say you could use them anywhere. Changing conditions have led many companies to abandon that line of reasoning as a standalone marketing strategy. However, the question remains – is it true that electronic cigarettes are legal in public?

The answer to that question, at least in the UK, is both ‘yes’ and ‘no’. There are a number of things to consider in this regard:

- UK smoking ban
- definition of public places
- individual property rights.

We will look at all three in order to gain a better understanding of public vaping.

Figure 1

Is there any danger of passive smoking with a VAPESTICK®?

No. There are no passive or second-hand smoke dangers when using a VAPESTICK® electronic cigarette. There is no danger to the people around you, even in enclosed spaces such as your car or office.

Figure 2

---

347 Id.
20. Vapor4Life

- Cleaner than traditional cigarettes. E-cigarettes don’t produce smoke because they don’t burn anything. No unpleasant “smoking” fumes are left behind. Life without tar, bad odors, and dirty ashtrays opens up a whole new world that feels better for you and others around you. Plus, using an e-cigarette won’t stain your fingers and teeth.

- Made right. Details matter. Our lithium ion batteries are tested for quality – a step most manufacturers don’t bother with. Steve and the Vapor4Life team test every product in-house before it goes into production, so you know you’re getting a premium product with the longest-lasting batteries, unmatched design, and refills and accessories we approve 100%.

Figure 1

- Goes anywhere. Vaping is allowed in places where cigarette smoking isn’t like cafes, bars, restaurants, and other nonsmoking areas – because you’re not filling the air with smoke. Enjoy Vapor4Life at home, in the car, or even at the office without worrying about bothering your family, friends, or coworkers.

- A feeling you’re used to, minus the guilt. Vaping can feel a lot like smoking, right down to blowing vape rings, getting that throat hit you’re used to, and even tobacco taste. (Plus, we’ve got more than 150 flavors to choose from, so you can go for a coffee flavor, a refreshing beverage, or a taste of something fruity or sweet if you want a little variety.) A vape break is a chance to get away and enjoy yourself.

Figure 2

---

Differences Between Vaping and Smoking

- Analogos contain tobacco leaf, while e-cigs do not.
- E-cigs are battery-powered, while analogs are combustion-powered.
- Many e-cigs are reusable.
- Analogos produce smoke, while e-cigs produce vapor.
- Smoking is smelly, and its odor lingers on clothing, fingers, hair, skin, and in air long after the cigarette is done. Vaping does not produce odors.
- Smoking produces second-hand smoke, while vaping does not.
- Smoking is banned in many restaurants, nightclubs, bars, sports arenas, offices, movie theatres, public transportation, and many other public places. Vaping is allowed in some places that real cigarettes are not.
- Analogos cost much more than e-cigs, about 50-70% more in fact.
- Analogos stain fingers, teeth, and walls, while e-cigs do not.
- Analogos only come in so many flavors, typically only tobacco-flavored or menthol-flavored. E-cigs come in hundreds of different flavors, including fruits, desserts, coffees, and cocktails.

What’s the difference between eigs and regular cigarettes?

Smoking is to traditional tobacco cigarettes, as vaping is to e-cigs. When you use a cigarette, you’re smoking. When you use an electronic cigarette, you’re vaping.

- HEALTH: E-cigs are less harmful than cigarettes because there is no tobacco, cigarettes cause cancer, and other diseases
- SMOKE: E-cigs produce no smoke or second hand smoke, only water vapor
- SMELL: E-cigs do not burn, and have a very light scent, cigarette smoke lingers and stains hair, fingers, teeth, clothing, walls, furniture
- COMPONENTS: E-cigs contain 4 ingredients (PG, VG, flavoring, optional nicotine), all FDA approved except nicotine, cigarettes contain 7000+ chemicals (including ammonia, arsenic, carbon monoxide, formaldehyde, lead tar)
- FLAVORING: E-cigs come in a variety of flavors, helping smokers customize their experience, cigarettes are either tobacco or menthol flavored
- NICOTINE: E-cigs come in different nicotine levels including none at all, cigarettes all have nicotine
- COST: E-cigs are 50-70% cheaper than cigarettes
- ENVIRONMENT: Many e-cigs are rechargeable and can be recycled, cigarette butts are toxic and the #1 pollutant

Who is Vapor4Life?

E Cigs can change your life. How do we know that? Because it has changed ours.

Vapor4Life founder Steve “Smilin” Milin, was a lifelong chain smoker. He is the first to tell you that smoking was killing him. Steve changed his life by turning to e-cigarettes and the impact on his health and his outlook on life was dramatic. But while a pure cloud of vapor was a welcome change over filthy smoke—but the electronic cigarettes on the market were overly complicated and inconvenient to use.

Steve saw the uninspired options on the market as an opportunity to reinvent vaping with an innovative e-cig that would make vaping more convenient, more accessible, and more enjoyable than ever. The Original Vapor King, an e-cig made by vapers, for vapers, was an instant hit.

Steve’s love of vaping drives Vapor4Life to build a family of products that give customers the variety they deserve and the quality they expect in an e-cig. We’ve put in the time thoroughly testing battery prototypes and configurations to develop the most advanced personal vaporizer yet, the Wow Vapor Zeus. With the most color options, longest battery life and thickest vape available, the Wow Vapor Zeus has changed the way we vape every day.

But it’s more than batteries that have changed how we vape. We’ve assembled the largest selection of cart and e-liquid flavors on the market to appeal to any palate. As a former smoker, Steve knows the importance of e-cig flavor, so we make it our mission to give vapers the options to fit any preference, so you get the familiar flavor of your favorite tobacco product—or maybe something new. Vapor4Life is a company of vaping enthusiasts. For us, it’s about getting together, sitting back, and taking a vape break. It’s about clean vapor, not harsh smoke. It’s about spending less and feeling better. It’s something we believe in. That’s why we’re fully committed to giving our vaping family the best e-cigarette experience around.

Our customer service team is on hand to answer any questions you have about ordering, e-cigs, flavors, everything. We love all things vapor and hearing from fellow vapers.
Vapor4Life is a company of vaping enthusiasts. For us, it's about getting together, sitting back, and taking a vape break. It's about clean vapor, not harsh smoke. It's about spending less and feeling better. It's something we believe in. That's why we're fully committed to giving our vaping family the best e-cigarette experience around.

Our customer service team is on hand to answer any questions you have about ordering, e-cigs, flavors, everything. We love all things vapor and hearing from fellow vapers.

A letter from our founder Smilin' Steve Milin

Vapor4Life has been a labor of love ever since I first tried vaping in 2008. My passion for perfection drives me—I know if my e-cigs make me smile, they will make you smile, too.

I was a smoker since my early teens. I had trouble breathing, my clothing stunk, and I was harming my family and myself. After trying medications, hypnosis, acupuncture, psychology, and psychiatry, I discovered vaping. I knew that this was the smoking alternative for me.

I searched everywhere to find the absolute best products, but nothing really cut it. That's when I decided to make my own. That Original Vapor King was nirvana! When I wanted a drag, I got it. When I wanted a pacifier, I got it. When I wanted to blow vapor rings, I took three big drags and voila—vapor ring heaven! The Wow Vapor Titan, the Wow Vapor Zeus and the incredible Wow Vapor Royale, Regale and Rigolo e-cigs, followed the Original Vapor King.

At Vapor4Life, we understand that if we have the absolute best merchandise on the market and back it up with exceptional customer service, people who are serious about vaping will join us on this incredible journey. It's easy to claim "highest quality," but difficult to deliver. Ask around and I guarantee you that the people who truly care about vaping will sing the praises of Vapor4Life.

Thank you being a part of our vaping family. We hope Vapor4Life will make you smile every day!

Sincerely,

Steve "Smilin" Milin

21. VaporFi

**Figure 1**

<table>
<thead>
<tr>
<th>Who is VaporFi?</th>
<th>Does vapor e-cigarette products produce smoke or tar?</th>
<th>Why is VaporFi better than the rest?</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the Vapor difference?</td>
<td>Can I smoke anywhere with VaporFi electronic cigarettes?</td>
<td>Are vapor electronic cigarettes a better way to smoke?</td>
</tr>
</tbody>
</table>

**Figure 5**


general questions
who is vaperfi for?
what is the vaperfi difference?
do vaperfi e-cigarette products produce smoke or tar?
why is vaperfi better than the rest?

Can I smoke anywhere with vaperfi electronic cigarettes?
Practically, but it really depends on where you are. Most vapers find they have far greater freedom with electronic cigarettes, and very few places have any interest in stopping smokers from enjoying their e-cigs if they aren’t offending anyone. Because they produce no first or second hand smoke, and they are not at all traditional cigarettes, you’ll be able to vape in most places prohibited to smokers.

Are vaperfi electronic cigarettes a better way to smoke?
I’m new to this, what do I need to get started?
what is an electronic cigarette?
what is resistance/ohm?
what is the average lifespan of an ecig battery or atomizer?
how do I care for my electronic cigarette?

who is vaperfi for?

VaporFi e-cigarette products have been designed for smokers who are 16 years of age or older. If you live in states such as New York, Alabama, New Jersey, Utah and Alaska you must be 19 years and over. However, it is wise to check the legal smoking age in your state as it applies to electronic cigarettes. VaporFi offers innovative, dynamic alternatives to traditional cigarettes. Though many people have successfully used these products in efforts to quit smoking, electronic cigarettes have not yet been approved by the FDA as devices designated for smoking cessation. As a result, we are prohibited by federal law from marketing our products as smoking cessation devices & they should not be used as such. It’s also advised that you consult your doctor before use.

Figure 2

Figure 3
22. Virgin Vapor

Why organic?

Because we’re California folk, we believe everything is better when it’s organic! At Virgin Vapor we use only third party certified organic flavorings. Our e-liquids do not contain any artificial flavorings, artificial colors, artificial sweeteners or any other additives. They are also vegan, GMO-free and contain no sugar or gluten.

While many of our customers come to us for the benefits of going organic, they often don’t realize until they taste our e-liquids that organic also just tastes better. If you’re used to fake tasting flavors with a chemical aftertaste, you are in for a treat. Virgin Vapor flavors taste just like nature intended!

What are your ingredients?

As users of our own products, we are very particular about what goes into our e-liquid. We believe artificial flavors, artificial colors, artificial sweeteners and other nasty chemicals don’t belong in our food, and certainly don’t belong in our e-liquid! We disclose every ingredient on each product page so you know exactly what you are vaping.

Our ingredients are simple:

- pharmaceutical grade Kosher nicotine
- organic pharmaceutical grade vegetable glycerin
- pure, distilled water
- certified organic flavors

Some of our organic flavors come in an organic ethyl alcohol base. If you would prefer an alcohol free e-liquid, please order from our Absolute line. On request, we also offer a propylene glycol/vegetable glycerin mix. Our nicotine is 100% USA made from handpicked tobacco leaves grown in North Carolina.

Our e-liquids have tested free of diethylene glycol (DEG) as well as the heavy metals mercury, lead, chromium and cadmium and we adhere to AEMSA’s strict protocols with regular laboratory testing for diethyl and pentane. To top it all off, we package in glass, not plastic, to prevent chemicals such as BPA leaching into your e-liquid.

While all of these things cost us a bit extra, we simply do not skimp when it comes to quality. We promise, you will taste the difference!

What quality controls do you have in place?

Our e-liquids are manufactured in the USA in a dedicated e-liquid laboratory at our commercially zoned facility. We employ a chemist full time in our laboratory to oversee all aspects of product creation, testing and quality control.

We are proud members of AEMSA, the American E-liquid Manufacturing Standards Association, and adhere to their high standards for product quality, safety protocols, regular laboratory testing and good product stewardship. We are completely dedicated to providing the highest quality e-liquids that meet the most rigorous industry standards and are currently undergoing the process of formal certification by AEMSA.

Our facility has been physically inspected by both OSHA and our local Environmental Health Department and our protocols, safe handling procedures, mixing logs, proper use of safety equipment, proper labeling and disposal of hazardous materials were all reviewed during these on-site inspections.

Figure 1

---

23. Xeo

![Xeo Starter Kits](image1.png)

**Figure 1**

**XEO™ Starter Kits**

Are you searching for a real long-term alternative?

- XEO™ Starter Kits are high-tech lifestyle products which were developed to enable smokers a clean alternative to tobacco cigarettes.
- No tar, no tobacco, no ash and no smell.
- Every Starter Kit will be delivered with E-Cigarette, and Charger.

€24.90

![Why Xeo?](image2.png)

**Figure 2**

**ADVANTAGES OVER CIGARETTES**

- No tar, no tobacco, no ash, no smell
- Only water vapor, no pollution
- Smoke wherever you want: in the office, at the airport, or during a meeting
- Up to 79% cheaper than traditional cigarettes
- More social acceptance than traditional cigarettes

24. Lizard Juice

![Lizard Juice](image3.png)

**How do e-cigs work?**

E-cigs contain a liquid, called e-liquid or e-juice, which is either propylene glycol or vegetable glycerin, or a mix of the two. Propylene glycol is recognized as safe by the U.S. Food and Drug Administration. It is used in food, tobacco, pharmaceutical, and beauty products.

Flavorings and nicotine are also components of this e-liquid. A heating element, or atomizer, contained in the device vaporizes the e-liquid. A battery powers the atomizer. The battery is screwed onto the cartridge which contains the e-liquid. The e-liquid is contained in a tank tip, or in some models, a cartridge with a wick. The cartridge of some models contains a fibrous filler material which absorbs the e-liquid.

The user fills the cartridge or tank with the e-liquid of their choice. Varying levels of nicotine concentrations are available – usually in zero, 6 mg, 8 mg, 12 mg, 18 mg, and 24 mg solution. Most moderate smokers can use a 12 mg or 18 mg solution to satisfy their nicotine craving, and cut back from there. A 24 mg solution is considered very strong. Only a very few users would use such a high level of nicotine concentration.

---

358 Id.
25. **Revolver**

![Figure 1](http://revolvercig.com)

The e-cig takes away all the additives that come with a regular cigarette. In that sense, they’re a healthier alternative. Also, they’ve allowed me to get in a quick drag of nicotine in places where it normally wouldn’t be possible, in airplanes, airports, restaurants, etc.

![Figure 2](http://revolvercig.com)

---

361 Id.
26. **Vaporin**

**Testimonials**

Dear Vaporin,

Thank you so much for the opportunity to enjoy the Presidential Starter Kit.

I am excited to tell you that the product has such wonderful rich flavor all while being extremely gentle on my throat.

The cost of the liquids is far less than the E-Cigs I had been using and it will save me hundreds of dollars per year.

The fact that the liquid is manufactured in the USA is extremely important to me for the creation of employment and the assuredness of a product that is safe to use and does not change day to day.

I appreciate doing business with you and hope to continue for years to come.

Keep up the good work.

Patrick

Pat Brown

Indiana.

Figure 1

27. **Victory**

![Victory Electronic Cigarettes](image)

**What is an E-Cigarette?**

An electronic cigarette uses state-of-the-art micro-electronic technology to provide smokers with a real "smoking" experience without health related issues associated with traditional cigarettes. There is no fire, flame, tobacco, tar, carbon monoxide, ash, stub or smell as in traditional tobacco. E-cigarettes provide smokers with the freedom to enjoy smoking virtually anywhere without the health concerns of traditional cigarettes. The smoker gains the physical benefit from the nicotine, but also the psychological benefit from the ingrained hand to mouth behavior, one reason why e-cigarettes are so much more effective as cessation devices vs. patches, gums or other products.

The e-cigarette body is made up of 4 parts: a nicotine cartridge, an atomization chamber, a smart chip with a lithium battery, and an inhaler tip. When you inhale the led tip glows and when you exhale there is a smoke-like vapor. The psychological experience of an e-cigarette is just like smoking, however, the glow is just a diode and the vapor is odorless and safe. Importantly, the taste, particularly with a Victory, is the same smooth tobacco flavor that smokers enjoy.

Figure 2

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28. **Zoom**

**IS ZOOM REALLY SMOKELESS?**
Yes. ZOOM E-Cigs produce a fast-vanishing vapor, not smoke. So ZOOM is also free of stinky smells and dirty looks.

**CAN I ENJOY ZOOM ANYWHERE?**
 Heck yeah! Just make sure it’s legal in your area. There’s no fire or smoke like there is with traditional cigarettes. However, ZOOM was designed to look and feel just like your old cigarettes, so be a good citizen and check with people before enjoying one.

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Appendix B:

E-Cigarette Marketing In Convenience and Vaping Stores

I. Stores in Boston, MA

7-Eleven (Kenmore Square location).
Visited: January 6, 2015, Address: 11 Kenmore Square, Boston, MA 02215
This store sold e-cigarettes, such as the brand NJOY. There was an advertisement on the window of the store, visible from the outside, for NJOY with pictures of the packaging and the words “easy pull for perfect vapor.”

7-Eleven (Mission Hill location)
Visited: January 6, 2015, Address: 722 Huntington Ave, Boston, MA 02115
E-cigarettes were all behind the cash register and were mostly major brands (blu, Njoy, Vuse, and Vaporin). As for advertisements, there were several advertisements for Njoy and Vuse on the outside facing windows. Notably, the cash register displayed “NO CIG - NO ID” when I purchased a blu disposable e-cigarette. The neighborhood is urban and mostly inhabited by college students. The store also serves the Longwood Medical Area.

Boston Smoke Shop (Newbury Street location)
Visited: January 5, 2015, Address: 334 Newbury Street, Boston, MA 02115
There was not a lot of advertising on the outside of this store. On the inside, there were a lot of warning signs on the wall about selling to minors and there was a sign that listed a hotline to call to report a person who sells to minors.

There were a lot of pipes, hookahs, e-cigarettes and e-liquid in this store. The e-cigarettes that they sold mostly were re-useable instead of disposable, and the tanks were manufactured by Kangertech. The store clerk said that the reusable e-cigarettes last longer and are more customizable so they are usually used by people for more social reasons. He said that the disposable e-cigarettes were usually just used for the nicotine fix and that they only lasted for about 400 puffs. The store carried about four different brands of flavoring and Boston Smoke Shop itself has a brand of flavor.

Users are able to change the amounts of nicotine in the e-cigarettes purchased at this location, and are able to smoke e-cigarettes that do not have nicotine and instead just has flavor. The store clerk stated that he used e-cigarettes with no nicotine in it, and never smoked before working at the store. He said that the only ingredients in the no nicotine e-cigarette products were natural flavoring and a combination of PG/VG, which he told us were sugar derivatives. Furthermore, he seemed convinced that the refillable/reusable e-cigs worked to wean people off of nicotine because the flavors have different levels of nicotine in them.
The store clerk did not offer to let us smoke at this store. The store clerk did say that in Boston people are not allowed to smoke indoors, unless it was a private setting, and had signs up to that effect. One customer came into the store while we were there, however we were not able to talk to them. Because of its location, this shop targets an upper middle class demographic. The store clerk told us that the online prices were cheaper and that they marked up the prices in the store because of the location. There was no specific demographic targeting at this location.

We are very curious about whether the PG/VG in the non-nicotine refill liquid has any health effects or if there have been any studies on either or both substances. There was not much in the way of a warning about the refills and the refills without nicotine might work off the assumption of consumers that nicotine requires a warning and anything without nicotine is safe to use. We think this might be something to think about with respect to deceptive advertising if we can find any research to suggest that PG/VG could be harmful.

**Boston Smoke Shop (Boylston Street location)**
Visited: January 5, 2015, Address: 40 Boylston Street, Boston, MA 02116

Like the Newbury Street location, there was not a lot of advertising on the outside of this store. There were no customers in the store when we first entered, and one came into the store while we were leaving however we did not have the opportunity to talk to them.

This location sold re-useable e-cigarettes such as products manufactured by Vuse solo and MarkTen, which is a Marlboro brand, and disposable e-cigarettes such as blu and Logic products. There was no obvious demographic targeting at this location.

**Eastside Market & Wine Shop**
Visited: January 9, 2015, Address: 474 East 8th Street, South Boston, MA 02127

This was a convenience store that mostly sells alcohol and snacks. They did have a couple of brands of e-cigarettes, such as blu. There was only one advertisement, which was for blu and only stated the brand, the words “electronic cigarettes”, showed what a rechargeable kit included and pictures of the product. The clerks did not make any claims about e-cigarettes or provide any information about them.

**Sugar Daddy’s Smoke Shop**
Visited: January 6, 2015, Address: 472 Commonwealth Avenue, Boston, MA 02215

Sugar Daddy’s sold e-cigarettes and had multiple advertisements around the store for products. The brands that were advertised were Da Vinci, Logic, Ploom and Criss-Cross. The Da Vinci advertisement was on the window of the store and stated that it was the “most advanced pocket vaporizer” with a diagram of the product. At the bottom of the advertisement are the words “Sold Here.” The Logic advertisement shows a picture of an e-cigarette next to a picture of two packs of conventional cigarettes (with the words “2 packs” on top of the image) and an equal sign in the middle, clearly implying that one e-cigarette is equal to two packs of conventional cigarettes. Based on the fact that the words “only $9.95 + sales tax” appear on the
advertisement, we assume that the intention of the ad was to tell the customer that two packs of conventional cigarettes cost as much as one e-cigarette. The Ploom advertisement states that there is “real tobacco” and says the words “rich vapor enjoy.”

II. Stores in Brighton, MA

Cleveland Circle Convenience
Visited: January 6, 2015, Address: 358 Chestnut Hill Ave, Boston, MA, 02135
This store did sell e-cigarettes, such as Blu and Logic. We did not see any advertisements inside or outside of the store. The packaging of the Logic e-cigarette sold in the store warns that the product should not be used by non-smokers or pregnant women, and has attendant risks of heart disease. The packaging makes no claims to be a smoking cessation device, smoking alternative, etc. The front of the Logic packaging is a Logic logo and black and gold background colors. There were no other designs. Logic had no images at all other than the brand name on the package. There were no images or concepts targeted towards youth. Additionally, the Logic packaging made no therapeutic claims.

III. Stores in Cambridge, MA

7-Eleven (Inman Square location)
Visited: January 5, 2015, Address: 11 Prospect Street, Cambridge, MA 02139
The store did sell e-cigarettes, specifically Logic and Vuse brand products. There were no e-cigarette advertisements on the outside or the inside of the store, even next to the e-cigarette products themselves. The e-cigarettes just had their regular labels on the product and we did not see any claims about the product in the store.

C’est Bon Market and Liquors (Atrium Shopping Center location)
Visited: January 6, 2015, Address: 1432 Massachusetts Ave, Cambridge, MA 02138
This store sells Harvard and Boston memorabilia, alcohol, lottery tickets, snacks, cigarettes, cigars and e-cigarettes. The cashier smoked conventional cigarettes and that he has tried to quit and nothing worked. There were no e-cigarette advertisements outside of the store. There were signs inside the store, which prohibited smoking and sale to minors. This store sold e-cigarettes, primarily blu refillable e-cigarettes, and Logic and MarkTen disposable e-cigarettes. Logic’s marketing claims “No Second Hand Smoke.” Specifically, Logic claims their products do not emit carbon monoxide, smell, or second hand smoke. Logic also claims 2.4% nicotine by volume and does not hint that the figure is an approximation.
Crimson Corner (Harvard Square location)
Visited: January 6, 2015, Address: 1394 Massachusetts Ave, Cambridge, MA 02138

This small store sold both refillable and disposable e-cigarettes, such as Metro, Vaporin and Metro. Vaporin is sold in a light up neon green box displaying all the flavors, which we think has a “gumball machine attraction” (i.e. attractive with color and presentation). Also, Vaporin advertises on a large mat place at counter. Metro reusable is sold in a tin similar to a mint tin or candy case. Metro disposable e-cigarette products do not place any “approximate” hint near the percent of nicotine by volume. Furthermore, Metro claims that the device uses water vapor.

Tedeschi (Broadway Street location)
Visited: January 5, 2015, Address: 321 Broadway Street, Cambridge, MA 02139

This is a very small convenience store. There were no visible advertisements for e-cigarettes in this store. We could not see any e-cigarette products and when we asked the store clerk if they sold e-cigarettes and he said no, however there might have been a slight language barrier.

IV. Stores in Jamaica Plain, MA

Chauncy Bro Smoke Shop
Visited: January 6, 2015, Address: 3090 Washington Street, Jamaica Plain, MA 02130

There was an advertisement for Criss-Cross vapor products on the door of the store, which was about the size of a piece of paper. The tagline of the advertisement was “kiss your ash goodbye.” Inside the store, there was only one advertisement for blu products.

When we talked to the store clerk, he said that they only had some blu e-cigarettes left. He was not in a talkative mood and there were other customers so we did not have a chance to speak to him. This store sold mostly tobacco, hookah and cannabis products.

V. Stores in Medford, MA

My Safer Vapor
Visited: Several times over the week of January 5, 2015, Address: 73 Kenmere Road, Medford, MA 01255

There was no advertising on the outside of the store and we were unable to gain access to the store. We called multiple times and were unable to get in contact with anyone and they do not have a website maintained.
VI. Stores in Quincy, MA

7-Eleven
Visited: January 6, 2015, Address: 678 Adams Street, Quincy, MA 02169
This location sold blu, Vuse and MarkTen e-cigarette products, all of which had substantial health warnings. The cashier did not know a lot of information about e-cigarettes but did note that blu was the most commonly purchased brand. While there were other customers in the store, none were looking at or buying e-cigarette products.
We noticed that while the tobacco advertisements were generally obscured from view by objects such as the hot dog machine near the cash register, the e-cigarette products were placed more visibly. In addition, there were signs displaying that a person could not buy tobacco products unless they were over eighteen years old.

Tedeschi (Quincy location)
Visited: January 6, 2015, Address: 650 Adams Street, Quincy, MA 02169
The store sold a variety of tobacco products, such as cigarettes, cigars and chewing tobacco, as well as e-cigarettes. The brands sold were blu, Vuse and MarkTen and there were no visible advertisements for e-cigarettes at this store.

VII. Stores in Roslindale, MA

Alfa Auto Fuel
Visited: January 6, 2015, Address: 4139 Washington Street, Roslindale, MA 02131
In this location, Zoom and blu e-cigarettes were sold behind the register. There was an advertisement on the side of the counter for Vaporin e-cigarettes. The advertisement claimed that Vaporin was the “most trusted name in the industry” and urged readers to “make the switch” and to “stop smoking, start Vaporin!” The cashier was not willing to talk to us at this location.

Tedeschi
Visited: January 6, 2015, Address: 4192 Washington Street, Roslindale, MA 02131
The e-cigarettes were behind the cash register. The brands were blu, Njoy and Logic. There was an advertisement on the counter for Vuse, however the advertisement did not make any claims about the products. The Vuse advertisement we saw simply stated the product name, said that it was a digital vaporizer and showed a picture of the product. There was a language barrier with the cashier and so we could not communicate with him.
VIII. Stores in Stoneham, MA

Stop N Save
Visited: January 6, 2015, Address: 140 Franklin Street, Stoneham, MA 02180
This independently owned small convenience store sold e-cigarettes and had a large advertisement for Criss-Cross in the window. The advertisement said the words “vapor products” and showed thirty different boxes of Criss-Cross products, each representing a different flavor. The bottom of the advertisement is full of drawings of different types of fruit and is brightly colored.

IX. Stores in Watertown, MA

New England Vaping Company (Watertown center location)
Visited: January 6, 2015, Address: 100 Main Street, Watertown, MA 02472
This store was operated by two people, one who was an ex-smoker (male) and one who used to smoke hookah recreationally (female). The male clerk said that they were allowed to smoke in the store in Watertown. We could not figure out if that was based on Watertown local rules or because they had been given special permission.

The female clerk said that the male clerk smokes e-cigarettes very often in the store, in the car and at home, and that she has never had any health problems. Both specifically said that they were not allowed to claim that there were health benefits or that e-cigarettes were better than conventional cigarettes, but the male said that he personally believes that they are better for people.

This store is a part of the American E-liquid Manufacturing Standards Association (“AEMSA”). The AEMSA is a proponent of self-regulation within the e-liquid industry and this store will only buy from e-liquid companies that test the flavors they put in the products. Flavoring is approved for consumption but not technically for inhalation so this store will only buy from companies that do extra testing.

There were pamphlets in the store to help people quit smoking conventional cigarettes. There was only one noteworthy advertisement in the store, which was for Mythos and featured drawings of Greek gods with no health or marketing claims. Otherwise, the store appearance was clean and trendy. There were no visible advertisements from the outside of the store.

The male smoked the entire time we were there continuously (about ten long drags) and the members of our Law Office who visited the location had strong headaches after leaving the small store.
X. Stores in Woburn, MA

Vapor Station
Visited: January 6, 2015, Address: 13 Montvale, Woburn, MA 01801
The store has billboards and placards advertising the store as well as neon signs and stencil-styled art on the street window. The store offered us free samples, which is legal in Woburn. There were disposable and refillable e-cigarettes, such as Kanger, Vamo and Leo Pro Series. The store also sold first starter e-cigarette brands like blu and Logic. The owner was very careful not to say any health claims but he did mention that e-cigarettes helped him quit smoking conventional cigarettes and that he had been “smoke free” for one year. He mentioned that e-cigarettes could be “dialed up” in order to increase the nicotine content based on an individual’s wants and taste.

XI. Other Mediums of Advertisement Encountered

Green and Yellow Cab Company
Viewed: January 16, 2015, Location: Museum of Fine Arts; Davis Square
All of the Green and Yellow Cabs had Logic advertisements on top of the car. The advertisement showed the brand name in large letters, with a picture of an e-cigarette and the words “premium electronic cigarettes” and “the most trusted brand.”
Appendix C:

State Surveys

The information in this Appendix is up to date as of November 17, 2014.

Massachusetts

There are currently no statewide regulations or bans on the sale of e-cigarettes, even to minors, in Massachusetts. There was a bill introduced into the State House last session that would ban the sale of e-cigarettes to minors, ban the use of e-cigarettes in places where the smoke-free workplace law is in effect, and ban manufacturers and retailers from giving away free samples of e-cigarette products, called H.R. 3726, formerly H.R. 3639. The Committee on Public Health approved it on October 30, 2013 and the Committee on Health Care Financing approved it on July 28, 2014 with a recommendation that the bill pass. It was in the Committee on Ways and Means at the end of the session.\(^{366}\) However, since the bill was not passed during that session, the bill is no longer in committee.

At the local level, a number of towns, like South Hadley, extended Massachusetts’s Smoke-Free Workplace Law to include e-cigarettes\(^{367}\) In 2011, the Boston Public Health Commission banned the use of e-cigarettes in workplaces in Boston, and also prohibited the sale of e-cigarettes to minors in the city\(^{368}\) Currently, sixty-three towns in Massachusetts prohibit the use of e-cigarettes in workplaces in some capacity.\(^{369}\)

While some towns have prohibited the use of e-cigarettes in certain locations, others have focused on establishing a minimum age that a person had to be in order to buy or possess an e-cigarette. In 2013, Canton, MA contemplated a ban on e-cigarettes in the town, however in the


end decided not to.\textsuperscript{370} Instead, Canton raised the age for buying tobacco products from eighteen to twenty-one years old.\textsuperscript{371} South Hadley banned the sale to minors under eighteen years old and also requires stores selling e-cigarettes to apply for and obtain a Nicotine Delivery Product permit.\textsuperscript{372} In fact, as of 2013, seventy-eight towns in Massachusetts banned the sale of e-cigarettes to minors.\textsuperscript{373}

To help towns regulate address the prevalence of e-cigarettes, the Cape Code Tobacco Control Program created model regulations.\textsuperscript{374} This model served as the basis for Brewster’s ban on the sale to e-cigarettes to minors in September 2012.\textsuperscript{375}

List of Towns in Massachusetts that ban the use of e-cigarettes in certain venues: \textsuperscript{376}

\begin{itemize}
  \item Towns that ban the use of e-cigarettes in restaurants and bars:
    \begin{itemize}
      \item Dover
    \end{itemize}
  \item Towns that ban the use of e-cigarettes in smoke-free venues (non-hospitality workplaces, restaurants, bars):
    \begin{itemize}
      \item Boston, Bourne, Dedham, Needham, Shelburne
    \end{itemize}
  \item Towns that ban the use of e-cigarettes in all of the above, and gambling facilities:
    \begin{itemize}
      \item Acton, Adams, Amherst, Arlington, Athol, Auburn, Barre, Bolton, Buckland, Burlington, Deerfield, Dighton, Dracut, Easthampton, Fitchburg, Foxboro, Franklin, Gardner, Gill, Grafton, Great Barrington, Greenfield, Hatfield (although e-cigarette use is allowed in smoking bars and hotels/motels), Haverhill, Hudson, Lee, Leicester, Lenox, Lynn, Marblehead, Medway, Montague, New Bedford, Newton, North Attleboro, Northampton, Orleans, Oxford, Pittsfield, Salem, Saugus, Sharon, Somerset, South Hadley, Stockbridge, Sunderland, Sutton,
    \end{itemize}
\end{itemize}

\textsuperscript{371} Id.
\textsuperscript{373} Brunner, \textit{supra} note 362.
\textsuperscript{375} Id.
Swampscott, Taunton, Townsend, Wendell, Westminster, Westport, Westwood, Weymouth, Whatley, Winchester

**Arizona**

There is a ban on the sale of e-cigarettes to minors in Arizona.\textsuperscript{377} This statute, enacted on July 1, 2014 bans the sale of “vaping” products to minors, including e-hookah and all types of e-cigarettes, even if they do not contain tobacco.\textsuperscript{378} Coconino County has banned e-cigarette use in workplaces and restaurants.\textsuperscript{379} Tempe, AZ has banned e-cigarette use in workplaces, restaurants and bars.\textsuperscript{380}

**Arkansas**

On April 11, 2013, the Arkansas General Assembly approved Act 1099, a bill originating in the state senate, which forbid using e-cigarettes on public school property.\textsuperscript{381} Act 1099 forbids the use of e-cigarettes as well as smoking or use of tobacco products “in or on real property owned or leased by a public school district, including a public charter school.”\textsuperscript{382} A copy of the statute is required “at every entrance to each building owned or leased by a public school district and every school bus used to transport public school students.”\textsuperscript{383}

On April 22, 2013, the Arkansas General Assembly approved Act 1451.\textsuperscript{384} Act 1451 makes it illegal for “a person or business to give, barter, or sell” an e-cigarette or e-cigarette product to minors.\textsuperscript{385} Act 1451 forbids minors from using, possessing, purchasing, or attempting to purchase an e-cigarette or e-cigarette product.\textsuperscript{386} Act 1451 also forbids e-cigarette manufacturers from distributing free samples or coupons for a free sample of an e-cigarette or e-cigarette product to a minor, or on school property, within 500 feet of school property or within

\textsuperscript{378} Id.
\textsuperscript{381} Ark. Code Ann. §6-21-609 (West 2013).
\textsuperscript{382} Id.
\textsuperscript{383} Id.
\textsuperscript{385} Id.
\textsuperscript{386} Id.
500 feet of any “other facility being used primarily by minors for recreational, educational, or other purposes.” Act 1451 also bans the sale or distribution of e-cigarette or e-cigarette products in a “self-service display or vending machine that is accessible to minors.”

**Colorado**

Per Colo. Rev. Stat. § 18-13-121, Colorado has banned the sale of e-cigarettes to anyone eighteen years of age or younger. Fort Collins and Lakewood banned e-cigarettes in all enclosed workspaces including bars and restaurants. There are restrictive bans in place in Edgewater and Durango and proposed bans in Golden, Louisville, and Commerce City.

**Delaware**

Delaware classifies e-cigarettes as a tobacco substitute and treats them the same as conventional tobacco products. Because of this definition, Delaware bans the sale of e-cigarettes to minors, in the same way as conventional cigarettes, in §1116. Currently there is no statewide or notable local ban on the use of e-cigarettes in a public place.

**Florida**

The Florida statute § 877.112 statute extends prohibitions related to tobacco products for persons under the age of eighteen, to prohibit the sale, gifting, possession, or use of nicotine dispensing devices, which include electronic cigarettes (e-cigarettes), to and by persons under the age of eighteen. The statute defines the term "nicotine dispensing devices" to mean any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine from the product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product and any replacement nicotine.

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387 Id.
388 Id.
cartridge for the device or product. Furthermore, some counties specifically enacted local rules above SB 224, such as Alachua County, Clay County, Marion County, and Indian River County.

Hawaii

Hawaii has banned the sale of electronic smoking devices (“ESDs”) cigarettes, tobacco products, and herbal cigarette to persons under the age of eighteen. Hawaii also bans the use of ESDs wherever cigarettes are prohibited, which is any enclosed or partially enclosed area.

Illinois

The Smoke Free Illinois Act of 2008, which prohibits smoking anywhere inside, only applies to conventional cigarettes. As a result, e-cigarette use is permitted in the majority of indoors venues, such as bars and restaurants. Some cities have enacted regulations to severely limit E-cigarette use, notably, Chicago, Evanston, Wilmette, and Arlington Heights.

The City of Chicago approved an ordinance to regulate e-cigarettes the same as conventional cigarettes and other tobacco products, which included a prohibition on sale of e-cigarettes to minors that became effective on January 2015. This determination also means that e-cigarettes are now banned from being smoked in all indoor public places or within fifteen feet of building entrances. In addition, Chicago has enacted a ban that includes 580 public parks, some of which host extremely large music festivals such as Lollapalooza, which is held every year in Chicago's Grant Park and brings in over 250,000 attendees.

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395 Id.
Additionally, HB 5689, passed in August 2014 and became effective on January 1st, 2015, requires electronic cigarette cartridges and liquids to be sold in special packaging that warns of the danger they are to children.404

**Kansas**

Kansas has legislation that bans the sale of e-cigarettes to minors under eighteen years old.405 This law, which governs the sale regulation of cigarettes and tobacco products, was amended to include e-cigarettes.406 Furthermore, tobacco products, including e-cigarettes, are banned on Department of Corrections property and grounds (for both employees and inmates).407 Overland Park, a city in Kansas, does not allow the use of e-cigarettes in public places.408

**Maryland**

Maryland has a statewide ban on sale of e-cigarettes to minors.409 In addition, the Maryland Area Regional Commuter (“MARC”) rail bans the use of e-cigarettes on its trains.410 At the local level, Anne Arundel and Harford Counties have restrictions on the use of e-cigarettes in public locations.411

**New Hampshire**

New Hampshire prohibits the sale of e-cigarettes to minors.412 New Hampshire also has restrictions on the distribution of free samples and a restriction on using e-cigarettes on public educational facility property. There are exceptions to the regulation, and vaping is allowed in resorts, hotels, fraternities, private rooms, nursing home, social hall, and cigar bars.413

406 Id.
408 Id.
New Jersey


North Dakota

North Dakota is one of three states to completely ban public use of e-cigarettes through legislation.\footnote{Robin Huebner, ND Earns Praise for Banning E-cigarettes Indoors, PRAIRIE BUS. (Dec. 15, 2014, 8:37 AM), http://www.prairiebizmag.com/event/article/id/22024/.} In 2013, North Dakota enacted § 23-12-10 into the state’s Century Code, which included a ban on e-cigarette smoking in all public places throughout the state.\footnote{N.D. Cent. Code § 23-12-10 (West 2013).} This law adds e-cigarettes to the list of tobacco products that are prohibited in public areas.\footnote{N.D. Cent. Code § 23-12-09 (West 2013).} Public areas include bars, businesses, enclosed areas, entrances, health-care facilities, places of employment, publicly owned buildings, restaurants, shopping malls, and sports arenas.\footnote{Id.}

In addition to the state regulations, many towns and counties in North Dakota have enacted ordinances preventing the sale of e-cigarettes to minors and strictly enforcing the ban. In the city of Bismarck, they have banned the sale of e-cigarettes to any person under eighteen and a violation may result in a $500 fine.\footnote{LeAnn Eckroth, Bismarck Bans E-Cigarette Sales to Minors, THE BISMARCK TRIBUNE, Feb. 11, 2014, http://bismarcktribune.com/news/local/govt-and-politics/bismarck-bans-e-cigarette-sales-to-minors/article_cc176c66-938a-11e3-b224-0019bb2963f4.html.} Williston City has also prohibited the sale of e-cigarettes to minors in a similar fashion.\footnote{Eric Killelea, City Looks at E-Cigarettes, WILLISTON HERALD, Jan. 16, 2014, http://www.willistonherald.com/news/city-looks-at-e-cigarettes/article_35168482-7ec7-11e3-b508-0019bb2963f4.html.}
Oklahoma

Oklahoma banned the sale of e-cigarettes to minors.\(^{422}\) Additionally, a distributor may not give out samples within 300 feet of a playground, school or any other place primarily being used by children under eighteen, and must demand ID, even for samples.\(^{423}\) E-cigarette use is prohibited on state owned or leased property, including land, vehicles, and buildings.\(^{424}\)

Oregon

In 2012, Governor Kitzhaber signed the Tobacco-Free Campus Executive Order, which banned the use of all tobacco products, including e-cigarettes, in all state agency buildings and on all their grounds.\(^{425}\) However, all other private workplaces in Oregon are not currently covered under the Smokefree Workplace Law and people can still use e-cigarettes in the absence of company policy prohibiting it.\(^{426}\)

With the exception of the governor’s executive order, most of the regulation of e-cigarettes is on the town and city level.\(^{427}\) Benton County banned e-cigarette use in bars, restaurants and enclosed workplaces.\(^{428}\) They also banned the sale of e-cigarettes to anyone under eighteen.\(^{429}\) Corvallis County also has an identical regulation scheme.\(^{430}\) The City of Hillsboro banned e-cigarette use in all of their public parks, amidst concerns of the safety of the vapor they release.\(^{431}\)

\(^{423}\) Id.
\(^{426}\) Id.
\(^{427}\) Id.
\(^{429}\) Id.
\(^{430}\) Id.
South Dakota

South Dakota Codified Laws § 34-46-20, defines “vapor products” and says that tobacco products include vapor products, and adds to the list of products prohibited for minors under the age of eighteen.432

Utah

Utah enacted Utah Code Ann. § 76-10-105, making possession, purchase, attempted purchase, or accepting an electronic cigarette a misdemeanor criminal act for minors under the age of nineteen.433

Vermont

Vermont defines e-cigarettes as tobacco substitutes, and therefore bans the sale, purchase, possession, and furnishing of e-cigarettes to a minor under the age of eighteen years old.434 Furthermore, Vermont requires liquid nicotine to be sold in a childproof container.435 There is also state-wide legislation that bans the use of tobacco substitutes at child-care facilities or on public school grounds effective January 1, 2015.436

436 2014 Vt. Legis. Serv. 135 (West).