



U.S. Department of Justice

Civil Division

Washington D.C. 20530

June 13, 2013

VIA E-MAIL and U.S. Mail

Paul Cicelski
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Re: Electronic Cigarettes and the Federal Cigarette Labeling and Advertising Act

Dear Mr. Cicelski,

I am writing in response to your inquiry about the applicability of the Federal Cigarette Labeling and Advertising Act to advertisements for electronic cigarettes.

The Department of Justice may not provide legal advice or opinions to private parties. Where possible, we may indicate the present enforcement intention of the Consumer Protection Branch of the Civil Division. Any such statements, however, do not prohibit or restrict the Branch or the Department from taking any action we subsequently determine is required by law or is in the public interest.

In 1965, Congress passed the Cigarette Labeling and Advertising Act, and in 1986, the Comprehensive Smokeless Tobacco Health Education Act, in order to restrict the advertising of cigarettes, little cigars, and smokeless tobacco on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission. The advertising prohibition set forth in these statutes applies solely to cigarettes, little cigars, and smokeless tobacco products. *See* 15 U.S.C. §§ 1335, 4402(c). Under 15 U.S.C. § 1332(1), a "cigarette" is defined as:

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

Electronic cigarettes, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor and other chemicals. They turn nicotine, which is highly addictive, and other chemicals into a vapor that is inhaled by the user. These products are often manufactured to look like conventional cigarettes, cigars, or pipes.

See <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm>.

Unlike traditional cigarettes, electronic cigarettes do not consist of a "roll of tobacco" and therefore do not appear to fall within the definition of "cigarette" as it is currently defined in the Cigarette Labeling and Advertising Act. Advertisements for electronic cigarettes do remain subject, however, to the general regulatory authority of the Federal Trade Commission. See <http://ftcbeat.com/2011/01/20/how-to-sell-e-cigarettes-and-avoid-an-ftc-investigation/>

This letter represents only the views of the Consumer Protection Branch, Department of Justice, and does not represent the views of any other governmental office, agency or department. I hope this information is helpful to you.

Sincerely,



Michael S. Blume
Director
Consumer Protection Branch