

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.

DURHAM COUNTY 2019 AUG 27 P 2:48

DURHAM CO., C.S.C.

BY JS

STATE OF NORTH CAROLINA, ex rel.
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

THE ELECTRIC TOBACCONIST LLC,

Defendant.

COMPLAINT AND MOTIONS FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

JURY TRIAL DEMANDED

Plaintiff, the State of North Carolina, by and through its Attorney General, Joshua H. Stein, brings this action against Defendant The Electric Tobacconist LLC, pursuant to the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1 *et seq.*, for marketing and selling e-cigarette products designed to appeal to youth to North Carolina consumers. The State seeks to ensure that these tobacco products are not unlawfully marketed and sold to minors. In support of its Complaint, the State alleges as follows:

INTRODUCTION AND SUMMARY

Electric Tobacconist, a for-profit company based in Colorado, sells e-cigarettes that taste like candy but are packed with addictive nicotine. Electric Tobacconist targets children, and does not require appropriate age verification

when selling its dangerous products. Electric Tobacconist's actions have contributed to the epidemic of youth vaping throughout the country, and in North Carolina.

Vapor products are defined under North Carolina law as “any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge.” N.C.G.S. § 14-313(a)(5). When the e-liquid reaches a certain temperature, it converts to an aerosol that a user inhales or “vapes.” Nicotine is a highly addictive element found in combustible cigarettes and other tobacco products. As a result, the State regulates e-liquids and other vapor products that contain nicotine in the same manner as tobacco products.¹

Nicotine is poisonous to the human brain. The developing brains of teenagers and children are particularly vulnerable to nicotine, and have what one study describes as “exquisite sensitivity” to nicotine’s neurotoxic effects. Even small and brief exposures to nicotine can cause lasting neurobehavioral damage in adolescents.² When a young person gets addicted to nicotine, it makes it much more

¹ Vapor products and components of vapor products (e.g., device-compatible cartridges containing e-liquids, and separately bottled e-liquids and juices) fall under the umbrella of “tobacco products” as defined under North Carolina law. See N.C.G.S. § 14-313(a)(4).

² Yael Abreu-Villaça, et al., *Nicotine is a neurotoxin in the adolescent brain: critical periods, patterns of exposure, regional selectivity, and dose thresholds for macromolecular alterations*, 979 *Brain Research* 114-28 (July 25, 2003), <https://www.ncbi.nlm.nih.gov/pubmed/12850578>.

likely that he or she will later become a user of traditional cigarettes or illegal drugs.³

Electric Tobacconist is one actor in this billion-dollar industry, selling and promoting candy- and dessert-flavored e-liquids that are specifically targeted to lure minors to using its products. Among the flavors Electric Tobacconist sells are flavors designed to mimic fudge, bubblegum, butterscotch, candy cane, chocolate, donut, marshmallow, fruity cereal, French toast, cinnamon roll, custard, and “Harry Potter”-themed “Buttered Beer.” In addition, Electric Tobacconist’s products—which contain higher concentrations of nicotine than its competitors’—are some of the most dangerous and addictive on the market.



SAVAGE E-LIQUID

**C. Underwood Nic Salt 30ml
Vape Juice**
Pink Watermelon Candy with
Razzmatazz



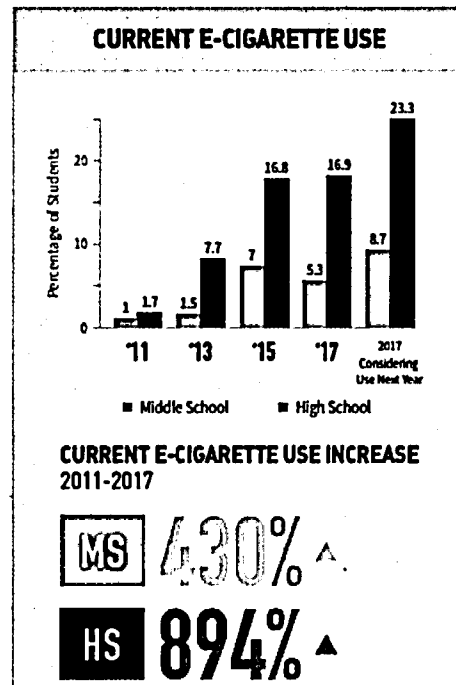
3 for \$32.99

BAD DRIP

**Bad Salt - Don't Care Bear 30ml
Nic Salt Juice**
Peach & pear gummy bears

³ U.S. Department of Health, and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease, Prevention and Health Promotion, Office on Smoking and Health, *E-Cigarette Use Among Youth And Young Adults: A Report of the Surgeon General — Executive Summary* (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf.

Both the U.S. Surgeon General and the former Food and Drug Administration (FDA) Commissioner have described underage use of e-cigarettes as an “epidemic.”⁴ Statistics confirm these warnings from public health advocates. In 2011, just 1.7% of North Carolina high school students reported using e-cigarette products; by 2017, 16.9% of high school students and 5.3% of middle school students reported using e-cigarette products within the last 30 days, making e-



cigarettes by far the most commonly used tobacco product among youth.⁵ According to the National Youth Tobacco Survey, more than 3.6 million middle and high school students were current e-cigarette users in 2018, an increase of more than 1.5

⁴ U.S. Department of Health and Human Services, Public Health Service, Surgeon General’s Advisory on E-cigarette Use Among Youth (Dec. 18, 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>; see also U.S. Food and Drug Administration, FDA News Release: *FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufactures for their roles perpetuating youth access* (Sept. 12, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm>.

⁵ NC DHHS, Division of Public Health, Tobacco Prevention and Control Branch, *North Carolina Youth Tobacco Survey Middle & High School Fact Sheet*, available at <https://www.tobaccopreventionandcontrol.ncdhhs.gov/data/yts/docs/2017-YTS-FactSheet-FINAL.pdf>.

million students since 2017.⁶ The reason for such a dramatic spike in underage use of nicotine is plain: a 2019 study showed that use of e-cigarettes among young people results in higher nicotine dependence levels than nicotine dependence related to combustible cigarette use. While e-cigarette manufacturers and retailers claim that e-cigarettes are a safer alternative to combustible cigarettes, among young adults, use of e-cigarettes carries a greater risk of addiction than from combustible cigarettes.⁷

The spike in underage use of e-cigarettes is the predictable result of the youth-oriented marketing and product design engaged in by Electric Tobacconist, and exacerbated by its egregious disregard for age-verification procedures required by law to ensure that these harmful and highly addictive products are not sold to minors.

The State brings this action to stop these unlawful practices and protect North Carolina youth from the devastating effects of nicotine addiction resulting from Electric Tobacconist's business conduct. The State seeks to enjoin Electric Tobacconist from selling or marketing its products—which are specifically designed to lure minors—in North Carolina, and hold it accountable for its unlawful acts in the form of civil penalties, costs, and reasonable attorneys' fees.

⁶ U.S. FDA: Youth Tobacco Use: Results from 2018 National Youth Tobacco Survey (Nov. 15, 2018), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>.

⁷ Mateusz Jankowski et al., *E-Cigarettes Are More Addictive Than Traditional Cigarettes—A Study in Highly Educated Young People*, 16 Intl. J. of Envir. Research and Pub. Health 2279 (2019).

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the State of North Carolina (“the State”), acting on relation of its Attorney General, Joshua H. Stein, brings this action pursuant to Chapters 75 and 114 of the North Carolina General Statutes. The Attorney General is charged, among other things, with enforcing North Carolina’s Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1 *et seq.*, on behalf of the State.

2. Defendant Electric Tobacconist LLC is a foreign corporation with its principal place of business in Boulder, Colorado. Electric Tobacconist is an online retailer of various brands of vapor products.

3. At all relevant times, Electric Tobacconist has been engaged in trade or commerce in the State of North Carolina and subject to North Carolina’s Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1 *et seq.*

4. This Court has personal jurisdiction over Electric Tobacconist. *See Affidavit of William G. Lindsey, State v. Eonsmoke LLC*, ¶¶ 4, 10, Ex. 6.

5. The Attorney General’s Office served a Civil Investigative Demand on Electric Tobacconist on or about June 21, 2019, pursuant to N.C.G.S. §§ 75-9 *et seq.* In response, Electric Tobacconist produced certain records and documents to the Attorney General’s Office.

6. The Court has subject matter jurisdiction over this dispute and venue is proper in Durham County pursuant to the Attorney General’s selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

I. Electric Tobacconist Uses Kid-Friendly Flavors to Make Dangerous Nicotine Products Appealing to Minors.

7. It has long been recognized that flavors create an on-ramp for youth and non-smokers to begin using tobacco products. Utilizing kid-friendly flavors to make tobacco flavors more palatable to youth is a strategy first employed by the tobacco industry. An internal Lorillard memorandum, which became public as a result of the Master Settlement Agreement, demonstrated that, because younger consumers were “attracted to products with ‘less tobacco taste,’” company officials suggested using “data from the company which produced ‘Life Savers’ as a basis for determining which flavors enjoy the widest appeal” among youth.⁸

8. Just like the tobacco industry of old, Electric Tobacconist has disregarded the dangers associated with underage nicotine use in the name of profit. Electric Tobacconist’s business strategy is premised on selling candy- and dessert-flavored e-liquids designed to attract children, including flavors that replicate popular children’s foods like bubblegum, marshmallow, custard, cinnamon roll, maple syrup, milkshake, French toast, taffy, fruity cereal, fudge, butterscotch, candy cane, chocolate, peanut butter, and “Harry Potter”-themed “Buttered Beer.” In fact, the first three “Flavor Groups” featured on the Electric Tobacconist’s website are “Breakfast,” “Candy & Treats,” and “Dessert & Cream.”

⁸ Letter from S.T. Jones to File at 2 (June 8, 1979), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=mjxf0129>.

TOBACCONIST DEPARTMENTS REFILLS & PODS BRANDS HELP DESK

Free & Fast Shipping on orders over \$20

Home > Vape Juice > Candy

CANDY & TREATS

YOUR SELECTION

Type: Juice

Flavor Group: Candy & Treats

WHICH CANDY & TREATS

SPECIALIST TYPES	FLAVOR GROUP	POPULAR FLAVORS	COMPOSITION
Nicotine Salts Juice	Breakfast	Blueberry	50/50 Juice
Nicotine Free Juice	Candy & Treats	Coffee	PG Juice
Sub Ohm Juice	Desert & Cream	Mango	VG Juice
Suorin Air Juice	Drinks	Menthol	SIZE
Suorin Drop Juice	Fruit	Strawberry	10-15ml
	Menthol	Tobacco	25-100ml
	Nuts, Herbs & Spices	Watermelon	120ml+
	Tobacco		

OFFER

3 for \$13

3 for \$18

Shop All Vape Juice

Sort by Top Sellers

70% PG

9. Electric Tobacconist intentionally obscures the nicotine concentrations of its products on its packaging. While most e-liquid manufacturers describe nicotine concentration in their products as a percentage, Electric Tobacconist

presents the nicotine concentration in its products as total volume: 3 mg or 6 mg. Electric Tobacconist's packaging contains no information about what those volumes mean or how they compare to other nicotine products. Instead, Electric Tobacconist's product descriptions merely boast the products' likeness to popular children's snacks.

10. Many of Electric Tobacconist's products contain 10% nicotine concentration, meaning they are substantially more dangerous and addictive than the leading e-liquids on the market, which advertise, at most, a 5% nicotine concentration. Most tobacco- and menthol-flavored e-liquids on the market advertise even lower concentrations of nicotine—between 1% and 3%. Electric Tobacconist's kid-friendly flavors that are geared toward hooking minors are more addictive and stronger than other e-liquids on the market that are more attractive to adult, habitual smokers.

11. Electric Tobacconist also creates an on-ramp for products specifically designed to hook children on the habit of vaping. Not only does Electric Tobacconist sell products with high concentrations of nicotine, Electric Tobacconist also sells products that have 0% nicotine. While these products do not deliver nicotine to users, they are designed to introduce new users to the habit of vaping and create an on-ramp for new users to slowly increase nicotine intake as they grow more accustomed to the delivery system. And when these e-liquids that contain no nicotine are sold in kid-friendly flavors, they attract children who begin to develop a habit of vaping.

12. The stakes could not be higher for our children. One in four North Carolina high school or middle school students who use e-cigarettes say they use the products because of the flavors,⁹ and 81% of 12-17 year olds who use e-cigarettes began with a flavored version.¹⁰

13. Moreover, many underage users are not even aware that e-cigarettes contain nicotine. One 2018 study found that 11.5% of 8th-12th graders who use e-cigarettes believe they are inhaling flavored water vapor. A separate 2018 study reported that 63% of users aged 15-24 of popular e-cigarette brand JUUL did not know that all JUUL products, including the fruit- and dessert-flavored cartridges, contained nicotine.¹¹

14. This lack of awareness and perception by kids is not surprising—and not their fault. The companies, like Electric Tobacconist, selling e-liquids in flavors replicating rice pudding and blueberry crumble are specifically and unlawfully targeting children and deceiving them about the highly addictive nature of nicotine e-liquid.

⁹ NCDHHS, *supra* note 5.

¹⁰ See American Academy of Pediatrics et al., Campaign for Tobacco-Free Kids, *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars* (Mar. 15, 2017), https://www.tobaccofreekids.org/microsites/flavortrap/full_report.pdf.

¹¹ N.C. Department of Health and Human Services, Press Release: *Growing Number of North Carolina Teens at Risk of Addiction to Nicotine, Study Finds* (Apr. 11, 2019), <https://www.ncdhhs.gov/news/press-releases/growing-number-north-carolina-teens-risk-addiction-nicotine-study-finds>.

II. Electric Tobacconist Failed to Utilize Adequate Age Verification to Ensure Minors Were Not Purchasing Its Products Online.

15. In June 2013, the North Carolina General Assembly amended N.C.G.S. § 14, “Article 39. Protection of Minors” to broaden the definition of tobacco products to include vapor products and components of vapor products.¹² This expanded prohibitions on the distribution of tobacco products to persons under 18 to e-cigarettes and e-cigarette components such as device-compatible cartridges containing e-liquids, and separately bottled e-liquids and juices.

16. The amended statute also added a provision governing online sales or “other remote sales methods” of vapor products, since the previous iteration of the statute seemingly contemplated only brick-and-mortar retailers in outlining prohibitions designed to protect minors from tobacco sales. N.C.G.S. § 14-313(b2).

17. The new subsection, titled “Internet distribution of tobacco products,” requires that any retailer selling tobacco products online “shall perform an age verification through an independent, third-party age-verification service that compares information available from public records to the personal information entered by the individual during the ordering process to establish that the individual ordering the tobacco product is 18 years of age or older.” *Id.*

18. This provision became effective on August 1, 2013. *See* S.L. 2013-165, § 1. Therefore, any internet-based transaction that took place on or after August 1,

¹² *See* S.L. 2013-165, § 1.
<https://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2013-165.html>

2013 by a retailer that resulted in the distribution of a vapor product to any North Carolina consumer was unlawful unless an independent, third-party age-verification service was engaged to establish that the purchaser was at least 18 years of age.

19. Although North Carolina has required any company selling e-cigarette devices or components, including e-liquids, through the Internet to perform age verification via an independent, third-party age-verification service since 2013, Electric Tobacconist did not contract with an independent third-party age-verification service to perform age verification prior to filling online orders to North Carolina consumers until December 2016. Thus, every transaction between Electric Tobacconist and any North Carolina customer between 2013 and December 2016 has been in violation of N.C. Gen. Stat. § 14-313(b2) and § 75-1.1. To the extent Electric Tobacconist engaged an independent third party to conduct age verification in 2016, the process utilized by Electric Tobacconist and/or its vendor is insufficient. Upon information and belief, many of these transactions allowed individuals under age 18 to purchase e-cigarette products directly from Electric Tobacconist.

III. Electric Tobacconist Uses Deceptive and Unfair Marketing Strategies to Attract Underage Consumers.

20. Electric Tobacconist actively markets its products to minors, both on its own websites and on social media. Electric Tobacconist's practices are substantially injurious to underage consumers and offend the established public policy of youth tobacco prevention, and thus violate N.C.G.S. § 75-1.1. *See Marshall v. Miller*, 32 N.C. 539, 548, 276 S.E.2d 397, 403 (1981).

21. Researchers at Yale School of Medicine surveyed teenagers to understand what they found “cool about e-cigarettes.” The top two responses were (1) appealing flavors, and (2) performing vapor tricks, “such as blowing smoke rings or creating funnels of smoke that look like tornadoes.”¹³

22. Similar to the tobacco industry’s now-banned marketing practices designed to appeal to youth (such as using cartoon characters, celebrity endorsements, and targeted product placement), Electric Tobacconist uses candy-like flavors, popular children’s characters, cartoons, bright colors, and youth-friendly product names to promote its products to minors.

23. Electric Tobacconist sells and has sold e-cigarette products in flavors designed to look and/or taste like fudge, bubblegum, candy cane, donut, marshmallow, fruity cereal, French toast, milkshake, custard, and “Harry Potter”-themed “Buttered Beer.” Electric Tobacconist markets these products,



Account Suspended

Buen Humor Memes Chistosisimos Laugh >

They make me feel like I'm doing something wrong, when I'm doing...

Electric Tobacconist Vape Memes

¹³ “Vaping Tricks Increase Teens’ Attraction to E-Cigarettes,” Partnership for Drug-Free Kids, May 7, 2015, <https://drugfree.org/learn/drug-and-alcohol-news/vaping-tricks-increase-teens-attraction-e-cigarettes/>.

typically through its social media pages or paid advertisements, by (a) selling products that look like actual candy popular among children, and (b) using images of cartoon characters.

24. Electric Tobacconist also uses marketing channels that are most popular among teenagers, and are less popular among adults. Young people are more likely to use social media platforms such as Instagram and Snapchat than adults, yet most of Electric Tobacconists' marketing activities take place on those platforms rather than in adult-oriented media. Electric Tobacconist's use of these youth-oriented social media channels directly, and particularly using memes featuring characters from children's shows and movies, promotes these child-friendly products to underage consumers.



I Cant Even Funny Cute The Funny Hi >



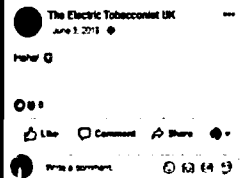
Vape Shop Online | Electric...

The Imperial March Episode VII Darth Vader >

Star Wars- The Imperial March - Darth Vader's Theme (Memox Electro House...

Electric Tobacconist
Vape Memes

See more v



25. Unfortunately, these marketing practices are effective. A 2016 study showed that 78% of middle and high school students were exposed to e-cigarette advertisements from at least one source, such as product websites or social media. “Exposure to these advertisements increase[d] intention to use e-cigarettes among adolescent nonusers” and was “associated with current e-cigarette use, with increasing exposure being associated with increased odds of use.”¹⁴

26. On information and belief, Electric Tobacconist does not use age-gating procedures to prevent underage consumers from following their social media pages or accessing their websites. By not using age-gating procedures and using marketing channels that are predominately popular with young people, Electric Tobacconist purposely exposes minors to its e-cigarette marketing.

¹⁴ Jenssen & Walley, *supra* note 12.

CLAIM FOR RELIEF

Violations of the Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-1.1

1. The allegations contained in paragraphs 1-25 are incorporated by reference as if they were set out at length herein.
2. Electric Tobacconist, in the course of marketing its e-cigarette devices and e-liquid products, engaged in unfair or deceptive trade practices affecting North Carolina consumers that are prohibited by N.C.G.S. § 75-1.1. Electric Tobacconist's unfair or deceptive omissions, acts, and practices include, but are not limited to, knowingly marketing, selling, and delivering addictive nicotine-based products to minors, including by:
 - a. Designing its products, including its kid-friendly flavors and appearance, to appeal to youthful audiences, knowing that that would include many minors;
 - b. Pursuing marketing strategies and campaigns that it knew would attract minors;
 - c. Failing to provide age-verification techniques for internet sales required by North Carolina law, thereby allowing many underage users to easily obtain its products.

JURY DEMAND

3. The State demands trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, for the reasons outlined above, the State requests that the

Court:

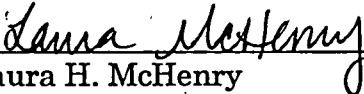
1. Issue a temporary restraining order enjoining Electric Tobacconist, its officers, directors, employees, and agents, and all those acting in concert with them, from offering, selling, delivering or in any manner providing e-cigarette products within this State;
2. Preliminarily and permanently enjoin Electric Tobacconist, its officers, directors, employees, and agents, and all those acting in concert with them, as appropriate;
3. Award civil penalties to the State from Electric Tobacconist pursuant to N.C.G.S. § 75-15.2;
4. Disgorge Electric Tobacconist's profits from its unfair or deceptive acts and practices to the State;
5. Award the State its costs, including a reasonable attorneys' fee, incurred by the investigation and litigation of this matter pursuant to N.C.G.S. § 75-16.1; and
6. Any and all further legal and equitable relief as the Court deems the State is entitled to receive.

This the 27th day of August, 2019.

JOSHUA H. STEIN
Attorney General

W. Swain Wood
General Counsel

Kevin Anderson
Senior Deputy Attorney General
Director, Consumer Protection Division



Laura H. McHenry
Assistant Attorney General
N.C. State Bar No. 45005
lmchenry@ncdoj.gov

Daniel Wilkes
Assistant Attorney General
N.C. State Bar No. 46500
dwilkes@ncdoj.gov

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Phone: (919) 716-6000
Facsimile: (919) 716-605