

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EONSMOKE, LLC,

Defendant.

RECEIVED

MAY 29 2019

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

Civil Action No. 19-1728

COMPLAINT

1. The Commonwealth of Massachusetts (the “Commonwealth”), by and through Attorney General Maura Healey, brings this action pursuant to G.L. c. 93A § 4. Defendant Eonsmoke, LLC (“Eonsmoke”) has violated the Massachusetts Consumer Protection Act, G.L. c. 93A, and 940 C.M.R. 21.04(4)(a) by engaging in a concerted advertising campaign on social media channels to attract underage consumers to its vaping products, and by selling vaping products to consumers who are not the minimum legal purchase age to purchase tobacco products (also referred to as “underage consumers”, “youth”, “young people”, or “minors”) without any age verification.

2. Vaping products, including electronic cigarettes, create an aerosol by using a battery to heat up liquid that usually contains nicotine, flavorings, and other additives. Users inhale this aerosol into their lungs.

3. Eonsmoke sells some of the sweetest flavors and highest nicotine concentrated e-liquids and pods filled with e-liquids on the market. Eonsmoke sells nicotine e-liquids in dessert

flavors such as “sour gummy,” “gummy bear,” “donut cream,” and “cereal loops.” Eonsmoke also sells “JUUL compatible” refillable “open system” pods and pre-packaged “closed system” pods in more than fifteen sweet fruit flavors such as “sour gummy,” “pink lemonade,” “pineapple crush,” and “peach madness.”

4. Eonsmoke markets these nicotine products with advertising content that both references youth popular culture, including memes, profanity and sexual imagery, and misleads consumers by omitting or minimizing the fact that most of its vaping products contain nicotine. Eonsmoke posts this advertising on the social media platforms young people view most frequently, such as Instagram, Snapchat, and YouTube. Eonsmoke amplifies and extends the reach of its advertising by promoting its vaping products online through hashtags and celebrity influencers who are popular with youth. This advertising plainly appeals to young people and contributes to youth use of vaping products.

5. Until September 2018, Eonsmoke allowed underage consumers in Massachusetts to freely purchase unlimited quantities of vaping products from Eonsmoke through its website. Before September 2018, Eonsmoke did not verify the age of purchasers during online sales transactions of vaping products, including electronic nicotine devices (also referred to as “e-cigarettes”), e-liquids containing nicotine, and nicotine pods, and failed to ensure shipments of vaping products were received by a person of minimum legal sales age in Massachusetts, all in violation of 940 C.M.R. § 21.04(4)(a).

6. Between 2015 and 2018, Eonsmoke completed thousands of sales of vaping products through its website to purchasers in Massachusetts without verifying the purchaser’s age or ensuring legal product shipment. Eonsmoke made numerous illegal sales of vaping

products to purchasers who would have been rejected if Eonsmoke had been using an age verification system in compliance with Massachusetts law.

7. The Commonwealth seeks to hold Eonsmoke accountable for the consequences of its unlawful marketing campaign targeted at underage consumers, failure to age verify purchasers, and sales of nicotine products to minors, and seeks restitution, civil penalties, attorneys' fees, and costs as well as other equitable relief as the court may determine is appropriate.

I. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 212, § 4, G.L. c. 214, § 1 and G.L. c. 93A, § 4.

9. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5 and G.L. c. 93A, § 4.

10. The Attorney General notified the Defendant at least five days prior to the commencement of this action of her intention to file this complaint, pursuant to her obligation under G.L. c. 93A, § 4.

11. Pursuant to G.L. c. 223A, § 3, this court may exercise personal jurisdiction over Eonsmoke as to the claims in this Complaint. These claims arise from, among other things, Eonsmoke transacting business in the Commonwealth and contracting to supply vaping products in this Commonwealth.

II. PARTIES

12. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.

13. The Defendant is Eonsmoke, LLC, a limited liability company with a principal place of business in New Jersey.

III. BACKGROUND

14. E-cigarette use among youth is an urgent public health crisis. E-cigarettes are reversing decades of record declines in the number of young people who use nicotine.

15. Entering the United States marketplace in 2007, e-cigarettes became the most commonly used tobacco product among young people by 2014. E-cigarette use among young people has increased considerably in recent years. Among high school and middle school students nationwide, e-cigarette use has increased dramatically. Increased use of e-cigarettes by young people represents the largest jump in the use of any drug, including alcohol, in over 40 years.

16. The United States Centers for Disease Control and Prevention estimates that as of 2018 more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes. The results of a survey conducted by the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Department of Public Health in 2017 show that more than 40 percent of high school students in Massachusetts report having used an e-cigarette device, with 20 percent reporting that they were current users of e-cigarettes.

17. In December 2018, the United States Surgeon General issued an advisory on e-cigarette use among youth, declaring the growing problem an epidemic.

18. E-cigarettes are leading young people into nicotine use and addiction and placing them at higher risk of transitioning to other substances, including traditional cigarettes.

19. A 2018 report from the National Academies of Sciences, Engineering, and Medicine addressed this issue and concluded that there is “substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”

20. Youth are particularly susceptible to nicotine addiction. Exposure to nicotine among youth is especially dangerous since it has been shown to influence key brain receptors, making youth more susceptible to nicotine addiction. Nicotine is harmful to the developing brains of young people and can alter nerve cell functioning and brain chemistry in ways that can make young brains more susceptible to addiction to other drugs.

21. Nicotine is an addictive substance, and the level of addictiveness varies according to its concentration and the mode of nicotine delivery. Until recently, nicotine delivered by combustion was considered the most addictive form. E-cigarettes, like those sold by Eonsmoke, replicate the effect of combustible cigarette nicotine delivery and are capable of delivering nicotine at much higher concentrations than combustible cigarettes, increasing the risk of addiction for users of these e-cigarettes.

22. Seizures are a known side effect of nicotine toxicity. The United States Food and Drug Administration in April 2019 alerted the public to the danger of seizures caused by e-cigarette use.

23. E-cigarettes contain other chemical substances, in addition to nicotine, that threaten serious harm. The full range of adverse health impacts of e-cigarettes is still unknown, particularly the short- and long-term health consequences for youth. The public health system in Massachusetts is struggling to develop and implement effective e-cigarette cessation methods to meet the needs of young people and their families.

IV. FACTS

24. Unless otherwise stated, all facts alleged relate to the time period from January 1, 2015 to the filing of this complaint.

25. Eonsmoke is a New Jersey company that sells vaping products, including but not limited to electronic nicotine devices, e-liquids containing nicotine, pre-packaged closed system pods containing nicotine, refillable open system pods, and electronic nicotine device accessories. Eonsmoke sells its products online through websites operated by Eonsmoke, and through wholesalers, distributors, and brick and mortar retail locations across the United States and in Massachusetts.

26. The Massachusetts Minimum Legal Sales Age to buy tobacco products is 21 as of December 31, 2018, exempting anyone who turned 18 years of age by December 31, 2018 and could already legally purchase tobacco products. G.L. c. 270, § 6(b), as amended by 2018 Mass. Acts, c. 157, §§ 9, 19. A “tobacco product” is one “containing, made or derived from tobacco or nicotine that is intended for human consumption” and includes “electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization” G.L. c. 270, § 6(a). Accordingly, the vaping products sold by Eonsmoke in Massachusetts are subject to the minimum-age law for sales of “tobacco products.”

27. Between September 25, 2015 and December 31, 2018, the Minimum Legal Sales Age in Massachusetts to buy tobacco products (including vaping products) was 18 years of age, except in municipalities requiring purchasers to be at least 21 years of age. G.L. c. 270, § 6.

28. Eonsmoke sells electronic nicotine devices that heat e-liquids containing nicotine and other ingredients such as propylene glycol, glycerin, and flavorings. As a result of the heat,

the devices turn the liquid into an aerosol containing nicotine and other compounds to be inhaled by the user. “Vaping” is the act of inhaling and exhaling the vapor produced by an e-cigarette or similar device.

29. Eonsmoke sells e-cigarettes, including a popular electronic nicotine device that resembles the electronic nicotine devices manufactured by JUUL Labs, Inc. (“JUUL”), commonly referred to as “JUULs”. This popular device is shaped like a small rectangular USB drive (Eonsmoke’s “device”) and heats e-liquids held in a container called a “pod” to a temperature that causes the e-liquid to turn into an aerosol.

30. Eonsmoke’s device accepts pods that are pre-filled with e-liquid by the manufacturer, called “closed system pods.” Eonsmoke’s device also accepts pods that are open and can be filled with e-liquid by the consumer. Such a system is called an “open system pod.”

31. Eonsmoke advertises its devices as being “JUUL [pod] compatible,” which means that consumers can use pods manufactured by JUUL in Eonsmoke devices.

32. Eonsmoke sells its devices in many colors and finishes. More recently, Eonsmoke introduced a cheaper, disposable version of its device.

33. Eonsmoke sells its own closed system pods that already contain e-liquids at the time of sale and are for use in electronic nicotine devices. Eonsmoke markets its closed system pods as being “JUUL [device] compatible,” advertising that they can be used in electronic nicotine devices manufactured by JUUL.

34. Eonsmoke offers the closed system pods in more than fifteen sweet fruit flavors such as sour gummy, pink lemonade, pineapple crush, and peach madness, with advertised nicotine concentrations up to 7 percent by weight. By contrast, the leading closed system pods on the market advertise 5 percent nicotine by weight.

35. Eonsmoke also sells open system pods that users can fill with any compatible e-liquid. Eonsmoke markets its open system pods as being “JUUL [device] compatible,” advertising that they can be used in electronic nicotine devices manufactured by JUUL.

36. Eonsmoke sells e-liquids containing nicotine that the company also refers to as “e juice” and “vape juice,” typically in 15 milliliter bottles, in flavors that explicitly and intentionally are associated with candy and children’s cereal favors, including sour gummy, gummy bear, donut cream, and cereal loops. Eonsmoke advertises these e-liquids to contain nicotine concentrations of 30 or 60 milligrams per milliliter.

37. Flavored vaping products are popular among youth and they are a reason why many youth initiate vaping nicotine and continue to use vaping products.

38. Eonsmoke operates an account, “eonsmoke,” on the Instagram social networking application. The following images are screenshots of Instagram posts by the “eonsmoke” Instagram account promoting Eonsmoke’s e-liquid products flavored like cereal loops and sour gummy worms.





39. Eonsmoke uses an e-liquid and closed system pod formula that is nicotine salt-based. For decades, tobacco companies and early vape products manufacturers used free based nicotine in their products. Salt-based nicotine formulas, popularized by JUUL, revolutionized vaping products on the commercial market. Salt-based nicotine reduces the harshness induced by higher nicotine levels, enabling a “smoother” nicotine user experience vaping higher nicotine concentrations. Salt-based nicotine also is a more effective way to deliver nicotine to the user. Non-smokers, including youth, find salt-based nicotine formulas to be more appealing than traditional free based nicotine formulas because they are more palatable.

40. Eonsmoke e-liquids and closed system pods containing nicotine also contain other chemicals and compounds.

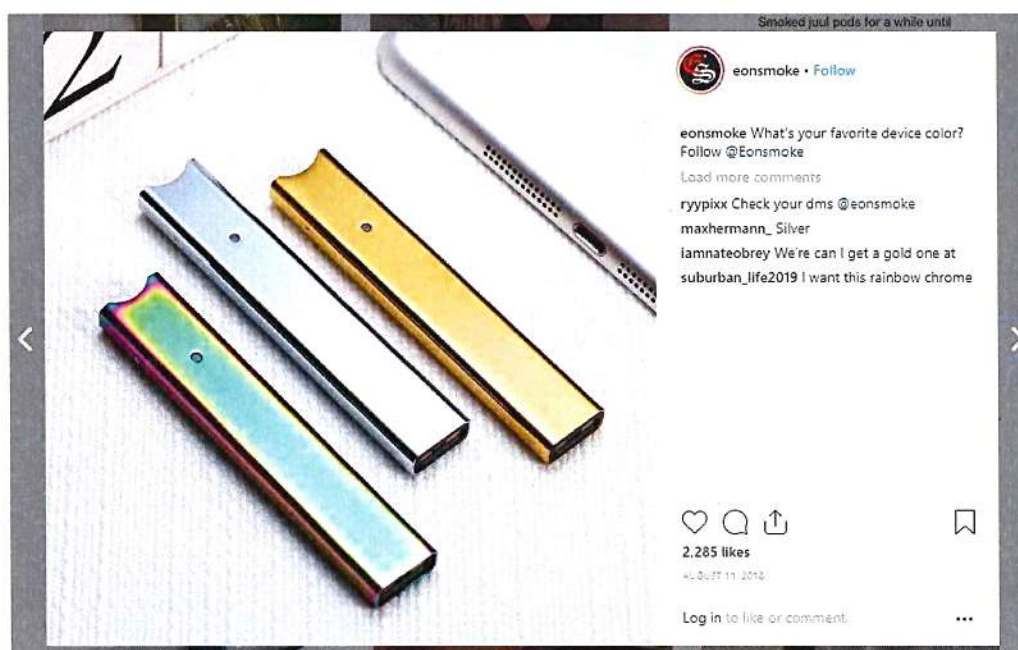
41. Eonsmoke prices its vaping products below competitors and advertises them as cheaper and more affordable to consumers.

42. Eonsmoke also sells accessories to its vaping products, including but not limited to “skins” to decorate and personalize the outside of electronic nicotine devices, necklaces and bracelets.

A. Eonsmoke's Vaping Products Are Designed to Appeal to Youth

43. Eonsmoke's electronic nicotine device shaped like a USB drive is sleek, customizable with "skins," colors, finishes, and accessories, and compatible with both open and closed pod systems, including vaping products made by JUUL.

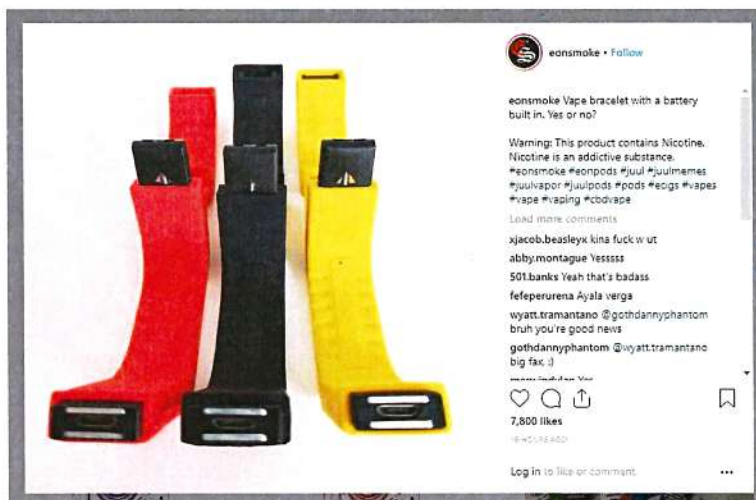
44. The following image is a screenshot of an Instagram post by the "eonsmoke" Instagram account promoting Eonsmoke's devices in various metallic finishes, posted on August 11, 2018, with the text "What's your favorite device color? Follow @Eonsmoke." The post attracted over 2,200 "likes."



45. Eonsmoke's electronic nicotine device shaped like a USB drive is easily concealed and can be used covertly.

46. Eonsmoke advertises bracelets that look like popular fitness tracking bands, which enable users to hide their device in plain view as a fashion or health accessory.

47. The following image is a screenshot of an Instagram post by the “eonsmoke” Instagram account on March 28, 2019, promoting device accessories resembling popular fitness tracking bands. The post attracted nearly 8,000 “likes” in sixteen hours.



48. The device can be used to perform vaping smoke tricks, popularized by Eonsmoke advertisements, celebrity influencers, social media users, and hashtags.

49. The device delivers a high concentration of nicotine to the user quickly in an aerosol flavored like sweet fruits, candy, cereal, or desserts.

50. The device’s shape, concealability, customizable appearance, vapor clouds, and quick sweet nicotine delivery system appeal to youth.

B. Eonsmoke’s Marketing of its Vaping Products Targets Youth

51. Eonsmoke advertises its vaping products through social media platforms such as Instagram, Snapchat, and YouTube that are the social media platforms most visited, monitored, and used by youth.

52. Nearly all teenagers in the United States have access to a smart phone and, through it, access to the internet. YouTube, Instagram and Snapchat are the most popular online platforms among teens.

53. Eonsmoke uses these social media platforms to promote its vaping products and generate brand recognition and interest to drive sales.

54. YouTube is an Internet platform on which users can create accounts or “channels,” and publish and view videos. Users can also “subscribe” to channels to view their content.

55. Eonsmoke created and uses a YouTube channel, “Eonsmoke Pods & Salt Nic Vape Juices,” on which it posts videos advertising its vaping products. Eonsmoke’s channel is subscribed to by over 2,000 YouTube accounts. Users do not need to subscribe to Eonsmoke’s YouTube channel to view its content.

56. Snapchat is a social media platform on which users can create accounts and send and receive messages, including photos and videos. These messages are viewable for a limited time period and “disappear” after the time period expires. Snapchat is commonly used by youth to exchange messages; it is one of the most popular messaging applications used by youth. Companies use Snapchat to reach this young audience with their advertising content.

57. Instagram is a social media platform on which users can create accounts, publish photos and text (referred to as “posts”), and interact with other users by viewing, “liking,” or commenting on their posts.

58. The following image is a screenshot of an Instagram post by the “eonsmoke” Instagram account on February 3, 2018 promoting its “gummy worms” product; the text reads

“The official vaping brand of Snapchat :) #snapchat #eonsmoke #eonpods #juul #juulgang #phix #phixvapor.”



59. Eonsmoke operates an Instagram account under the name “eonsmoke.” As of April 16, 2019, the “eonsmoke” Instagram account has 128,000 “followers” that have signed up to view its content.

60. Eonsmoke publishes advertising content online using the “eonsmoke” Instagram account. Eonsmoke’s posts appear in the stream of content on its followers’ account pages, known as “feeds.”

61. When a user logs into their account on Instagram, they see a stream of posts by accounts and hashtags that they are following in their feed.

62. If an Instagram account user clicks on or looks at an Instagram post, the Instagram platform counts the action as a “view.” The Instagram platform aggregates the total number of views of a post.

63. An Instagram account user can click on a button to “like” a post. The Instagram platform aggregates the total number of “likes” of a post.

64. The number of views and likes of a post are measures of a post’s popularity.

65. Eonsmoke’s posts typically include “hashtags.” Hashtags are a word or phrase preceded by a hash sign “#” that are used on social media websites and applications, especially Instagram and Twitter, to identify a specific topic of interest. Posts on social media platforms like Instagram can be categorized and searched using hashtags.

66. If an Eonsmoke post includes a hashtag, that post becomes viewable by all followers of that hashtag and anyone who searches for that hashtag.

67. Eonsmoke created and uses hashtags to advertise its vaping products, including “#eonsmoke” and “#eonpods.”

68. Eonsmoke’s Instagram posts typically include photos or videos, hashtags created by Eonsmoke, and other hashtags.

i. Eonsmoke Designs its Social Media Posts to Appeal to Youth

69. In its advertisements on Instagram, Eonsmoke promotes its brand of vaping products as cool, sexy, a social necessity, sweet like candy, and better and cheaper than vaping products made by the brand JUUL.

70. The following image is a screenshot of an Instagram post by the “eonsmoke” Instagram account on May 1, 2018. The text - next to a photo of an Eonsmoke device and a bag of M&M candies - reads “Can you name a better combo?”.

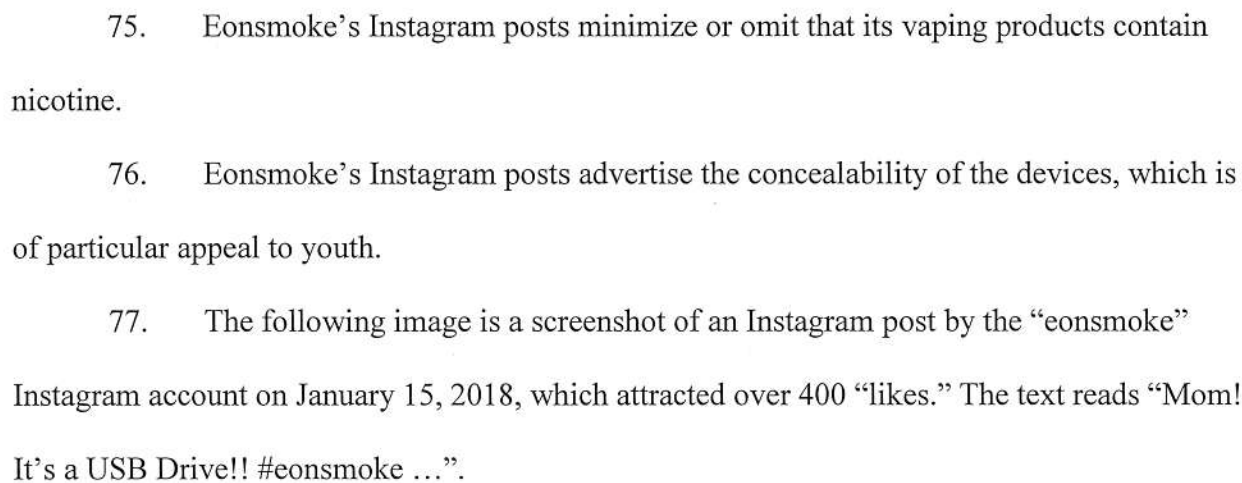


71. Eonsmoke advertises its vaping products as “JUUL compatible” prominently on the product packaging and in most of its advertisements. Eonsmoke specifically promotes its vaping products as having higher nicotine concentrations, having more flavors, and being cheaper than JUUL vaping products.

72. Eonsmoke’s advertising campaign comparing its products to those sold by JUUL takes advantage of JUUL’s popularity to sell its vaping products to JUUL users.

73. Eonsmoke’s Instagram posts mix vaping product promotions with references to youth popular culture, memes, profanity and sexual imagery.

74. The following image is a screenshot of an Instagram post by the “eonsmoke” Instagram account on February 25, 2018 featuring a Simpsons character – a child named Ralph Wiggum – which attracted over 1,200 “likes.”



ii. Eonsmoke Constructs its Social Media Posts to Attract More Youth

78. Eonsmoke amplifies its advertising content on Instagram and other social media platforms through the use of hashtags.

79. “Hashtag marketing” is a widely used form of marketing employing hashtags on social media platforms to increase brand awareness, increase consumer engagement and generate new leads and sales opportunities. Eonsmoke strategically uses trending and popular hashtags to reach new customers with its product promotions.

80. Employing hashtag marketing tactics, Eonsmoke frequently tags its Instagram posts with trending hashtags such as “#juulnation,” “#juulgang,” “juulmemes,” and “#vapetricks.” As explained below, these hashtags employed by Eonsmoke are popular with youth and followed by many underage individuals. By tagging its posts with these hashtags, Eonsmoke knows or should that it will reach a youth audience, by placing its advertising into the stream of posts on the pages of the followers of those hashtags, many of whom are underage.

81. The hashtags #juulnation, #juulgang, and #juulmemes are especially popular among young people. Thousands of posts using these hashtags promote the use of vaping products by youth, including posts featuring young people using vaping products and doing vaping tricks, cartoon imagery featuring SpongeBob or the Simpsons, popular culture memes, references to the covert use of vaping products and underage vaping, and sexual imagery. These posts also often minimize or omit the fact that vaping products contain nicotine.

82. The hashtag #vapetricks has over 4.5 million posts, mostly of people performing tricks using vaping products, including some people who appear to be underage. These posts promote the use of vaping products by youth by describing these products as being cool, sexy, and fun, and minimizing or omitting that vaping products contain nicotine.

83. Based on the content of the posts tagging the hashtags #juulnation, #juulgang, #juulmemes, and #vapetricks, these hashtags are popular with youth and followed by many underage individuals.

84. Eonsmoke amplifies its own advertising by using these hashtags to place its product promotions alongside the content of these popular hashtags in Instagram feeds and searches.

85. Eonsmoke knows, or should know, that using these hashtags will cause its advertising to be seen by young people.

86. By using hashtag marketing, Eonsmoke reaches more youth with its advertising and strengthens the force of its messaging by placing its advertising content into the stream of other posts that depict vaping products as being cool, sexy, fun, and minimize or omit that vaping products contain nicotine.

iii. Eonsmoke Uses Celebrity Influencers to Promote its Products to their Youth Followers

87. A celebrity influencer is a person with a significant number of online followers who regularly posts content to internet sites such as Instagram, SnapChat, Twitter, YouTube, and blogs to promote their own online persona and often to drive their “followers” to purchase products.

88. Eonsmoke uses celebrity influencers to promote its vaping products, and to get their followers to purchase its vaping products and think favorably about its brand. Some of these celebrity influencers are paid by Eonsmoke to advertise or endorse their vaping products.

89. Eonsmoke chooses celebrity influencers with large numbers of youth followers, especially young males, to promote its vaping products online.

90. Eonsmoke knows, or should know, that using these celebrity influencers will cause its product promotions to reach, and appeal to young people.

91. Instagram and YouTube posts by Eonsmoke featuring celebrity influencers such as “Donny Smokes,” Stevie Emerson, Mia Khalifa, and others drive thousands of “views” and “likes” of Eonsmoke advertising content and encourage purchases of vaping products by youth.

92. Donny Karle is the Internet celebrity known as “Donny Smokes.” He posts paid reviews of vaping products in videos under the online name “DonnySmokes.” Karle posts and promotes these reviews on YouTube and other websites.

93. Donny Karle targets youth with his DonnySmokes videos, including videos titled “How to HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT” and other videos providing tips to young people about how to hide electronic nicotine devices from parents.

94. Eonsmoke paid Donny Karle to review its vaping products under the online name “DonnySmokes.” Eonsmoke then posted and promoted these video reviews on social media platforms such as Instagram and YouTube.

95. One such review of Eonsmoke vaping products by Donny Karle posted by Eonsmoke on YouTube on March 23, 2018 garnered 150,858 views; Eonsmoke paired this review with a coupon code to get 20 percent off “[JUUL] compatible pods.”

96. Eonsmoke used Donny Karle’s celebrity to reach a broader audience, including many underage individuals who follow DonnySmokes online, with its advertising and drive sales of Eonsmoke vaping products.

97. Steven Emerson (“Emerson”) is an internet celebrity with over 42,000 Instagram followers of his “stevieemerson” account and over 125,000 subscribers to his YouTube channel.

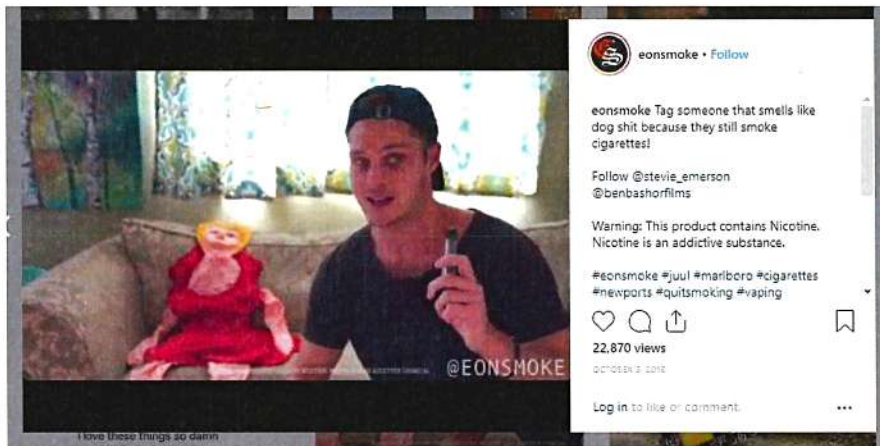
98. Emerson became famous for his YouTube videos featuring the JUUL vaping device, including a video called “JUUL Life” posted in August 2018 with over 911,000 views and a four-part series titled “Dude, Where’s My JUUL,” the first part of which was posted in July 2018 and has since been viewed over 5.3 million times.

99. These videos created by and starring Emerson promote the use of vaping products with sexualized, profane, and sophomoric humor targeting youth. They also repeatedly refer to nicotine vapor as “water vapor” and joke about the dangers of vaping and addiction.

100. After creating these videos, Emerson starred in over thirty video advertisements for Eonsmoke that Eonsmoke posted on Instagram and YouTube and used to promote its vaping products beginning in the fall of 2018. Eonsmoke posted this advertising content on social media, tagging Emerson to reach his followers, including many underage individuals.

101. Eonsmoke’s advertisements featuring Emerson employ sexualized, profane, and sophomoric humor to promote its products, appealing particularly to young males. Emerson also repeatedly tells viewers that Eonsmoke vaping products are compatible with JUUL devices and have “more buzz,” “more nicotine,” and “more flavor,” and are cheaper than JUUL products. These advertisements were viewed by tens of thousands of people.

102. The following image is a screenshot of an Instagram post by the “eonsmoke” Instagram account on October 5, 2018, featuring Emerson, which attracted 22,870 views.



103. Eonsmoke posts advertising content on Instagram featuring Mia Khalifa, a young social media celebrity famous for sexually explicit internet posts, posing suggestively with Eonsmoke’s vaping products. These posts tag Khalifa’s Instagram account, which has 14.8 million followers. Tagging Khalifa’s Instagram account allows Eonsmoke to promote its advertisements to her millions of followers, including many young people.

C. Eonsmoke’s Online Sales of Vaping Products to Youth

104. Eonsmoke operates websites that sell its vaping products directly to consumers, including www.eonsmoke.com.

105. In Massachusetts, online retailers selling tobacco products (including vaping products) must verify that the purchaser is at least the “minimum legal sales age” to purchase a vaping product, as established by state or local law. The seller must conduct this age verification through a commercially available database that is regularly used by government and business for the purpose of age verification. 940 C.M.R. 21.04(4)(a).

106. Retailers selling vaping products online are also required to use a method of mailing, shipping, or delivery that requires the signature of a person who is of the “minimum legal sales age” to purchase vaping products before the shipping package is released. 940 C.M.R. 21.04(4)(a).

107. Between 2015 and August 2018, Eonsmoke had no age verification program in place for online sales. During this period, Eonsmoke completed thousands of transactions for the sale of vaping products through its website to Massachusetts consumers without verifying the consumer’s age or ensuring legal product delivery.

108. Prior to September 2018, Eonsmoke enabled numerous illegal transactions for the sale of vaping products to consumers whose purchases would have been rejected if Eonsmoke had been using an age verification system in compliance with Massachusetts law.

109. As a result of a Cease and Desist letter sent to Eonsmoke by the Massachusetts Attorney General’s Office, Eonsmoke ceased making online retail sales of vaping products in Massachusetts in September 2018. Eonsmoke continues, however, to market its products in Massachusetts, including through retail locations in the state.

D. Eonsmoke’s Vaping Products Cause Youth Significant Harm

110. Eonsmoke’s social media advertising uses themes known to appeal to youth. These themes include friendship, sex, and social status. Eonsmoke’s advertising uses images that associate Eonsmoke’s vaping products with being cool and having fun. These are the same marketing strategies that were successfully employed by cigarette companies for decades.

111. Youth are frequently unaware that these vaping products contain nicotine and other ingredients that are harmful to their health. As a result of the marketing strategies of

companies like Eonsmoke that minimize or omit the fact that vaping products contain nicotine, youth frequently believe they are inhaling just flavored water vapor.

112. Massachusetts youth are exposed to e-cigarette marketing at growing rates. According to the United States Center for Disease Control and Prevention, as of 2016, e-cigarette advertising had reached almost 80 percent of young people in the United States, up almost ten percentage points from two years prior.

113. Exposure to e-cigarette advertising, particularly advertising that is especially appealing to youth, increases the likelihood that youth will use e-cigarettes and therefore contributes to youth use of e-cigarettes.

114. Executive function and neurocognitive processes in the brain are not fully developed in early adolescence. As a result, young people are more likely to experiment with substances like e-cigarettes.

115. The use of e-cigarettes by youth causes them serious harm. Nicotine is particularly dangerous for young people because it can interfere with adolescent brain development. Adolescent exposure to nicotine is associated with increased risk of mood and attention problems, as well as issues with learning and memory.

116. Eonsmoke markets and sells e-cigarette products with the highest nicotine concentrations on the Massachusetts commercial market. E-cigarettes with higher concentrations of nicotine risk higher rates of addiction.

117. Young people are physiologically more vulnerable to addiction than adults. It is estimated that tens of thousands of young people in Massachusetts are currently addicted to nicotine from e-cigarette use.

118. There are no physician guidelines for treating youth nicotine addiction from e-cigarette use and there are no treatment facilities or programs solely focused on youth nicotine addiction treatment in Massachusetts.

119. While withdrawing from nicotine, young people report increased anxiety and physical symptoms such as uncontrollable shaking. Young people – and their families – experience a sense of helplessness and powerlessness in pursuing treatment options.

120. Youth who become addicted to nicotine from e-cigarette use are also harmed in other ways, including by spending down savings accounts to pay for devices and e-liquids and altering school and social schedules in order to use e-cigarette devices.

121. The use of e-cigarettes may also lead youth to use or become addicted to other substances that they never would have used, including traditional cigarettes.

122. The range of negative health effects from heated and aerosolized chemicals in e-cigarettes is largely unknown.

123. E-cigarettes cause further harm to our communities and Massachusetts. Teachers and school administrators are increasingly struggling to manage students who use e-cigarettes in class or elsewhere in school, expending valuable and limited learning time. The Commonwealth will bear the costs of developing appropriate treatments and prevention measures as well as the public health costs of a new generation of young people addicted to nicotine.

V. CAUSES OF ACTION

COUNT ONE

Violation of G.L. c. 93A and 940 C.M.R. 21.00 *et seq.* Selling and Shipping Vaping Products Without Age Verification

124. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

125. The Consumer Protection Act, G.L. c. 93A, §2(a) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

126. Eonsmoke is a “person” as defined by G.L. c. 93A, § 1, which includes “natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.”

127. Eonsmoke is engaged in “trade” or “commerce” as defined by G.L. c. 93A, § 1, which includes “the advertising, the offering for sale...of any services and any property...directly or indirectly affecting the people of this commonwealth.”

128. Pursuant to her authority under G.L. c. 93A, § 2(c), the Attorney General has promulgated regulations defining specific unfair or deceptive acts and practices relating to manufacturers and retailers of cigarettes, smokeless tobacco products, and electronic smoking devices. See 940 C.M.R. 21.00 *et. seq.*

129. The explicit purpose of 940 C.M.R. 21.00 is to eliminate deception and unfairness in the way cigarettes, smokeless tobacco products, and electronic smoking devices are marketed, sold, and distributed in Massachusetts in order to minimize cigarette smoking, and the use of smokeless tobacco and electronic smoking devices, by young people.

130. Through 940 CMR 21.00, the Attorney General imposes specific requirements and restrictions on the sale and distribution of cigarettes, smokeless tobacco products, and electronic smoking devices in Massachusetts in order to prevent access to such products by underage consumers and accidental injury to children as a result of ingestion of or contact with liquid nicotine.

131. The Attorney General's regulations contained in 940 C.M.R 21.00 *et. seq.* are not intended to address all activities prohibited by M.G.L. c. 93A, § 2(a), and they do not legitimize acts or practices not specifically prohibited by 940 CMR 21.00.

132. 940 CMR 21.00 applies to any person who manufactures, packages, imports for sale, distributes, or sells within Massachusetts cigarettes, smokeless tobacco products, or electronic smoking devices as defined in 940 CMR 21.00.

133. "Retailer" is defined as "any person who sells cigarettes, smokeless tobacco products, or electronic smoking devices to individuals in Massachusetts for personal consumption, or who operates a facility located within Massachusetts where vending machines are located." 940 C.M.R. 21.01.

134. "Electronic Smoking Device" is defined as "any product that can deliver nicotine to the user through inhalation of vapor. Electronic Smoking Device includes any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately, and does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose." 940 C.M.R. 21.01.

135. From September 25, 2015 to September 2018, Eonsmoke sold products that deliver nicotine to users through inhaled vapor, as well as liquids and pods containing liquids for use in such devices, to individuals in Massachusetts for personal consumption through its websites, including www.eonsmoke.com.

136. Eonsmoke is a "retailer" that sells "electronic smoking devices," as defined by 940 C.M.R 21.01.

137. 940 C.M.R. 21.04(4)(a) states that for mail-order and internet sales that are subject to age verification, such as the sale of vapor products on www.eonsmoke.com, the age verification “shall consist of, at a minimum: 1. verification that the purchaser is of the Minimum Legal Sales Age through a commercially available database, or aggregate of databases, that is regularly used by government and business for the purpose of age and identity verification; and 2. use of a method of mailing, shipping, or delivery that requires signature of a person who is of the Minimum Legal Sales Age before the shipping package is released.”

138. The Massachusetts Minimum Legal Sales Age to buy vaping products is 21 as of December 31, 2018, exempting anyone who turned 18 years of age by December 31, 2018 and could already legally purchase tobacco products. 2018 Mass. Acts, c. 157.

139. Between September 25, 2015 and December 31, 2018, the Minimum Legal Sales Age in Massachusetts to buy vaping products was 18 years of age, except in municipalities requiring purchasers to be at least 21 years of age. G.L. c. 270, § 6.

140. Between September 25, 2015 and September 2018, Eonsmoke has willfully, knowingly, repeatedly, and systematically violated the Consumer Protection Act, G. L. c. 93A, and 940 C.M.R. 21.04(4)(a) by:

- a. Failing to verify that the purchasers of vaping products in thousands of transactions through its website(s) are of the Minimum Legal Sales Age through a commercially available database, or aggregate of databases, that is regularly used by government and business for the purpose of age and identity verification;

- b. Failing to use a method of mailing, shipping, or delivery that requires signature of a person who is of the Minimum Legal Sales Age before the shipping package is released; and

COUNT TWO
Violation of G.L. c. 93A
Targeting Sales of Vaping Products to Youth

141. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

142. The Consumer Protection Act, G. L. c. 93A, prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

143. Between 2015 and the present, Eonsmoke has willfully, knowingly, and repeatedly violated the Consumer Protection Act, G.L. c. 93A, and 940 C.M.R. 21.04(4)(a) by engaging in a combination of the following practices:

- a. Marketing and selling vaping products that are particularly attractive to youth, who cannot lawfully purchase such products, including but not limited to the following products:
 - i. electronic nicotine devices that are shaped like USB drives and are small, concealable, and customizable;
 - ii. dessert and candy flavored e-liquids and pods;
 - iii. e-liquids and closed system pods containing the highest nicotine concentrations available at retail; and
 - iv. vaping accessories that conceal and glamorize electronic nicotine devices;

- b. Marketing its vaping products to youth, including but not limited to the following:
 - i. Engaging on social media platforms frequently used by young people to promote its vaping products through advertising content that references youth popular culture, includes memes, profanity, and sexual imagery, and minimizes or omits the fact that Eonsmoke's vaping products contain nicotine; and
 - ii. Using celebrity influencers and hashtags to target youth with advertising;
- c. Misleading advertising about the nicotine concentration of Eonsmoke's vaping products, including omission that certain vaping products contain nicotine;
- d. Contributing to youth use of Eonsmoke's vaping products, which causes youth to suffer significant harm, including negative health effects associated with the use of nicotine; and
- e. Causing other harm to communities, the Commonwealth, and the public health.

VI. PRAYER FOR RELIEF

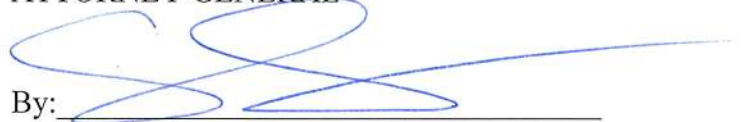
WHEREFORE, the Commonwealth requests that this Court enter judgment and grant the following relief after trial on the merits:

- 1. Award restitution to consumers injured by Eonsmoke's unfair or deceptive acts or practices;
- 2. Award civil penalties of \$5,000 for each violation of G.L. c. 93A;

3. Award attorneys' fees, costs and other relief available under G.L. c. 93A;
4. Enter injunctive relief preventing Eonsmoke from continuing to engage in the unfair and deceptive practices set forth herein; and
5. Grant such other relief as permitted by law and the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
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