

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PUFF BAR and
COOL CLOUDS DISTRIBUTION, INC.

Defendants.

2084CV01525
Civil Action No. _____

RECEIVED

JUL 15 2020

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

COMPLAINT

The Commonwealth of Massachusetts (the “Commonwealth”), by and through Attorney General Maura Healey, brings this action pursuant to G.L. c. 270, § 28, G.L. c. 93A § 4, and G.L. c. 12, § 10. Defendants Puff Bar and Cool Clouds Distribution, Inc. (together, “Puff Bar”) have violated and continue to violate G.L. c. 270, § 28 and G. L. c. 93A by offering for sale, selling, and advertising the sale of flavored tobacco products, specifically e-cigarettes and associated products such as e-liquids (together, “vape products”), to consumers in the Commonwealth; and have violated and continue to violate the Consumer Protection Act, G. L. c. 93A, and 940 C.M.R. 21.04(4)(a) by 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.

I. JURISDICTION AND VENUE

1. 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.
2. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5 and G.L. c. 93A, § 4.
3. Pursuant to G.L. c. 223A, § 3, this court may exercise personal jurisdiction over the Defendants as to the claims in this Complaint. These claims arise from, among other things, the Defendants transacting business in the Commonwealth and contracting to supply flavored tobacco products in this Commonwealth.

II. PARTIES

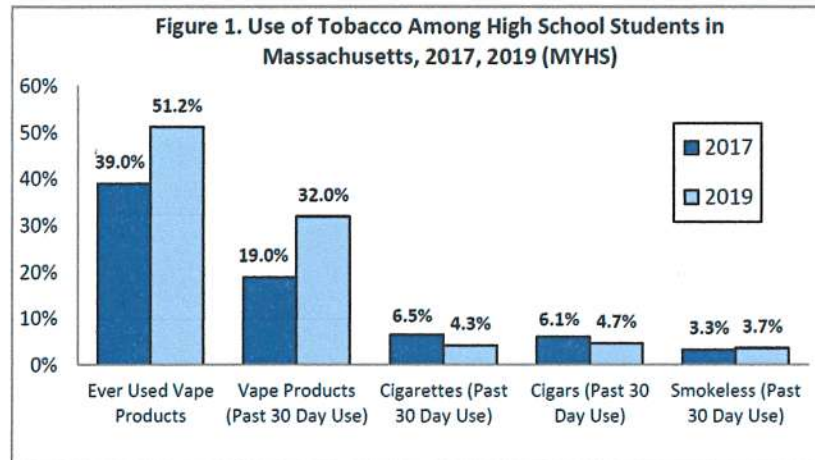
4. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.
5. Defendant Puff Bar is a company doing business at 101 N. Verdugo Road, Unit 11701, Glendale, California, 91206. Puff Bar manufactures and sells Puff Bar disposable e-cigarettes.
6. Defendant Cool Clouds Distribution, Inc. is a company doing business at 316 E. 4th Street Los Angeles, California, 90013. Cool Clouds Distribution, Inc. distributes and sells Puff Bar disposable e-cigarettes.

III. BACKGROUND

7. E-cigarette are causing serious, long-term harm to the respiratory health and cognitive development of young people in Massachusetts. E-cigarettes are reversing decades of record declines in the number of young people who use and are addicted to nicotine and may ultimately increase the number of young people who use traditional, combustible cigarettes.

8. E-cigarettes create an aerosol, commonly referred to as a “vapor,” by using a battery to heat liquid that typically contains nicotine, flavorings, and other additives (“e-liquid”). Users inhale vapor into their lungs. The act of inhaling the vapor from the e-cigarette is called “vaping.”

9. The 2019 Massachusetts Youth Health Survey, conducted by the Department of Public Health, shows that the percentage of high school students in Massachusetts who have used vape products is at an all-time high, at over 50%, with over 30% reporting that they had used vape products in the past month.



Massachusetts Department of Public Health, “Youth Vaping and Cessation Data,” accessed December 12, 2019 at <https://www.mass.gov/files/documents/2019/11/27/youth-vaping-and-cessation-data-11-26-2019.pdf>.

10. E-liquids are often flavored. Countless flavored e-liquids are available for purchase online, including sweet flavors such as cotton candy, sour gummy worm, and fruit loops. Flavored vape products are popular among young consumers, and they are one of the primary reasons why many young people initiate vaping nicotine and continue to use vaping products. The majority of teens who have ever used a tobacco product started with a flavored product. Flavored disposable e-cigarettes are gaining popularity among young people, drawn by their array of flavors and lower cost than other e-cigarette products.

11. Youth are particularly susceptible to nicotine addiction. 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.

12. E-cigarettes are putting young people at higher risk of using other addictive substances, including traditional cigarettes. 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.”

13. The use of e-cigarettes by young people causes them serious harm. Youth addicted to vaping nicotine exhibit many of the serious and debilitating symptoms more commonly associated with other substance use disorders. Nicotine can seriously 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. Nicotine can also alter nerve cell functioning and brain chemistry in ways that make young people susceptible to addiction to other drugs.

14. 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.

15. 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. Currently, there is little or no guidance 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.

16. 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.

17. Accordingly, on November 27, 2019, Massachusetts became the first state in the country to ban the sale of all flavored tobacco products, including e-cigarettes and e-liquids. As of November 27, 2019, it is unlawful for online and retail sellers to sell flavored tobacco products to Massachusetts residents.

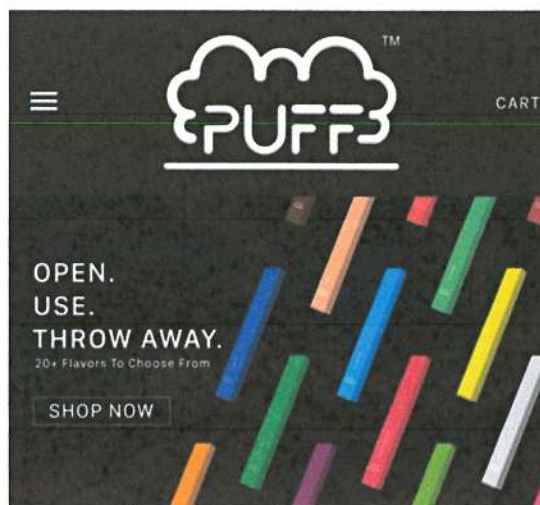
IV. FACTS

A. Puff Bar



18. Puff Bar maintains a website accessible to Massachusetts residents, located at www.puffbar.com. Puff Bar sells disposable e-cigarettes it refers to as “vape pens.” Puff Bar

currently sells disposable e-cigarettes in over 20 flavors. The following is a screenshot of Puff Bar's website depicting the disposable flavored e-cigarettes the company sells.



19. The following images are screenshots of Puff Bar's website advertising the sale of flavored tobacco products such as "O.M.G." described as "a triple medley of Orange, Guava, and Mango," and "Blue Razz" described as like "candy" "making vaping feel like a blue and red raspberry."



O.M.G. Puff Bar is a triple medley of Orange, Guava, and Mango for a sweet, citrusy, and tart flavor, unlike anything you've experienced in a disposable vape pen.



As far as candy goes, blue raspberry is one of the most iconic choices out there. It's, therefore, no surprise that Puff Bar offers this as one of its highly popular flavors. A perfect medley of sweet and sour flavor, Blue Razz makes vaping feel like a blue and red raspberry.

20. On or after November 27, 2019, Puff Bar sold, distributed, caused to be sold and distributed, and offered for sale “flavored tobacco products,” as defined by G.L. c. 270, § 28, to residents of Massachusetts by means of its website, located at www.puffbar.com.

21. Puff Bar continues to sell, distribute, cause to be sold or distributed, and offer for sale flavored tobacco products to residents of Massachusetts by means of its website, located at www.puffbar.com.

22. Puff Bar has sold and continues to sell “electronic smoking devices,” as defined in 940 C.M.R. 21.03, to residents of Massachusetts by means of its website, located at www.puffbar.com, without using 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.

V. CAUSES OF ACTION

COUNT ONE

Violations of G.L. c. 270, § 28

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

24. An Act Modernizing Tobacco Regulations, G.L. c. 270, § 28, states in part, “No person, retailer, or manufacturer shall sell, distribute, cause to be sold or distributed, offer for sale, or market or advertise any flavored tobacco product or tobacco product flavor enhancer in any retail establishment, online, or through any other means to any consumer in the commonwealth.”

25. G.L. c. 270, § 28 went into effect on November 27, 2019.

26. Each Defendant is a “person” or “manufacturer” as defined by G.L. c. 270, § 28(a).

27. Defendants have offered for sale, marketed, advertised, and sold flavored tobacco products to Massachusetts consumers in violation of G.L. c. 270, § 28(a).

28. Defendants continue to offer for sale, market, advertise, and sell flavored tobacco products to Massachusetts consumers in violation of G.L. c. 270, § 28(a).

COUNT TWO

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

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

30. 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.”

31. Each Defendant is a “person” as defined by G.L. c. 93A, § 1.

32. Defendants are 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.”

33. 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.*

34. Each Defendant is a 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.

35. Defendants sold and continue to sell smokeless tobacco products or electronic smoking devices to individuals in Massachusetts for personal consumption through the company’s website.

36. 940 C.M.R. 21.04(4)(a) requires that retailers who make mail-order and internet sales that are subject to age verification make “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.”

37. Defendants have willfully, knowingly, repeatedly, and systematically violated the Consumer Protection Act, G. L. c. 93A, and 940 C.M.R. 21.04(4)(a) by 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.

38. Defendants have willfully, knowingly, repeatedly, and systematically violated the Consumer Protection Act, G. L. c. 93A by unlawfully selling and delivering flavored tobacco products to consumers in the Commonwealth in violation of G.L. c. 270, § 28.

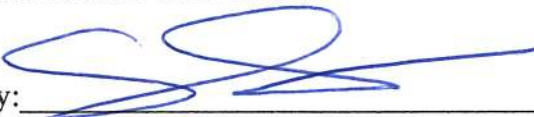
VI. PRAYER FOR RELIEF

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

- 39. Award restitution to consumers injured by the Defendants' violations of law;
- 40. Award civil penalties of \$5,000 for each violation of G.L. c. 93A;
- 41. Award attorneys' fees, costs and other relief available under G.L. c. 93A;
- 42. Enter injunctive relief preventing Defendants from continuing to engage in the violations of law set forth herein; and
- 43. Grant such other relief as permitted by law and the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL

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