

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
- CIVIL DIVISION -**

**OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,**

Plaintiff,

vs.

Case No.:

**CREATIVE VAPE LABS INC,
d/b/a Monster Vape Labs,
a Florida Corporation,**

Defendant.

_____ /

COMPLAINT

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”), by and through the undersigned Assistant Attorneys General, hereby brings this action pursuant to Florida’s Deceptive and Unfair Trade Practice Act, Chapter 501, Part II, Florida Statutes (“FDUTPA”), against Defendant, Creative Vape Labs Inc. d/b/a Monster Vape Labs, a Florida Corporation, (“Monster Vape” or “Defendant”), to obtain temporary and permanent injunctive relief, the imposition of civil penalties, an award of attorney’s fees, and costs, and other legal, statutory, or equitable relief this Honorable Court deems proper, and alleges the following:

INTRODUCTION

1. Monster Vape unfairly promotes the illegal use of addictive nicotine products by creating and marketing such products to those too young to purchase Monster Vape’s nicotine products legally and failing to implement reasonable age-verification procedures, thus enabling the sale and delivery of these products to children.
2. Monster Vape produces, markets, distributes and sells liquid nicotine for use in electronic nicotine dispensing devices, commonly known as e-cigarettes.
3. Although youth smoking rates have plummeted from 28% in 2000 to 7.6% in 2017,¹ the introduction of new electronic nicotine dispensing devices have shifted the types of nicotine products used by young people.²

¹ Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. *Tobacco Product Use Among Middle and High School Students — United States, 2011–2017*. MMWR Morb Mortal Wkly Rep 2018;67:629–633. DOI: <http://dx.doi.org/10.15585/mmwr.mm6722a3>; See also Myers, Matthew L., “New U.S. Survey Shows Youth Cigarette Smoking is at Record Lows, but E-Cigarettes and Cigars Threaten Progress.” June 7, 2018. https://www.tobaccofreekids.org/press-releases/2018_06_07_nyts#:~:text=Key%202017%20survey%20findings%20include,2000%2C%20when%2028%20percent%20smoked.

² Gentzke AS, Creamer M, Cullen KA, et al. *Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018*. MMWR Morb Mortal Wkly Rep 2019;68:157–164. DOI: <http://dx.doi.org/10.15585/mmwr.mm6806e1> (“A considerable increase in e-cigarette use among U.S. youths, coupled with no change in use of other tobacco products during 2017–2018, has erased recent progress in reducing overall tobacco product use among youths. The sustained implementation of comprehensive tobacco control strategies, in coordination with Food and Drug Administration regulation of tobacco products, can prevent and reduce the use of all forms of tobacco products among U.S. youths.”); See also US Department of Health and Human Services. *Surgeon General’s advisory on e-cigarette use among youth*. Washington, DC: US Department of Health and Human Services, Office of the Surgeon General; 2018. <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

4. Since 2014, e-cigarettes have been the most commonly used tobacco product among U.S. middle and high school students.³ The CDC reported that, in 2017, 2.1 million high schoolers and middle schoolers used e-cigarettes and in 2018 that number nearly doubled and has steadily increased since then.⁴ On December 18, 2018, the Secretary of the U.S. Department of Health and Human Services, Alex Azar, stated at a press conference: “We have never seen use of any substance by America's young people rise as rapidly as e-cigarette use is rising.”⁵

5. There are approximately two million middle and high school age children in Florida.⁶

6. Surveys indicate that approximately one in every four Florida high school students reports that they are currently vaping.⁷ Additionally, among all

³ Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. *Tobacco product use among middle and high school students—United States, 2011–2017*. MMWR Morb Mortal Wkly Rep 2018;67:629–33. <https://www.ncbi.nlm.nih.gov/pubmed/29879097>

⁴ Gentzke AS, Creamer M, Cullen KA, et al. *Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018*. MMWR Morb Mortal Wkly Rep 2019;68:157–164. DOI: [http://dx.doi.org/10.15585/mmwr.mm6806e1external icon](http://dx.doi.org/10.15585/mmwr.mm6806e1external%20icon)

⁵ U.S. Department of Health & Human Services. “Surgeon General releases advisory on E-cigarette epidemic among youth.” 18 Dec. 2018. <https://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html> (Accessed 9 January 2020)

⁶ See, Florida Department of Health, Population Atlas. <http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=PopAtlas.PopulationAtlasDASHBOARD&rdRequestForwarding=Form> (Accessed 3 June 2020)

⁷ Florida Youth Tobacco Survey (FYTS), Florida Department of Health, Bureau of Epidemiology, 2019 (A total of 175 public high schools and middle schools in 40 Florida counties participated in the FYTS. There were 10,844 students who participated in the 2019 FYTS; 5,700 at the high school level and 5,144 at the middle school level) (The wording of survey questions asking about electronic vaping has changed over time. From 2011 to 2014, the survey asked students about use of electronic cigarettes. In 2015 and later years, the survey asked about use of electronic vapor products.)

Florida children ages 11-17, 16.6% report that they are currently vaping.⁸ Meanwhile, only about 5.9% of adults (18+) in Florida report using e-cigarettes.⁹ Accordingly, children under the age of 18 make up at least thirty-one percent (31 %) of the vaping market in Florida according to these surveys.

7. The disproportionate use of electronic nicotine dispensing devices by Florida children and the unprecedented year-over-year increases in children's use of these products suggest that e-cigarette marketing is finding a receptive audience in Florida's children.

8. It is illegal to sell or deliver nicotine products to any person under the age of 18 or for persons under 18 to even possess nicotine products. Recently, Federal law was changed to prohibit the sale of nicotine products to anyone under 21 (previously, sales were prohibited to those under the age of 18).

9. Despite these protections that restrict the use, possession, and delivery of addictive nicotine products to children, Monster Vape has, *inter alia*, created and sold addictive nicotine products with flavors that appeal to children and employed a marketing scheme that includes tactics and imagery that are attractive to and popular with children.

http://www.floridahealth.gov/statistics-and-data/survey-data/florida-youth-survey/florida-youth-tobacco-survey/_documents/2019-fyts-tables.pdf

⁸ Id.

⁹ Florida Department of Health Florida Behavioral Risk Factor Surveillance System (BRFSS) <http://www.floridahealth.gov/statistics-and-data/survey-data/behavioral-risk-factor-surveillance-system/2018BRFSSReportFinalUpdated.pdf>

10. For example, some of Defendant’s marketing during the relevant period imitates the advertisement of food products that are appealing to and popular with children.

11. As illustrated in Images 1 and 2, Monster Vape’s Jam Monster line of e-liquid resembles the color scheme, design, theme, and flavor profile of a popular product often associated with children’s food, Smucker’s jam bottles.



Image 1.



Image 2.

12. Other addictive nicotine products manufactured, marketed, and sold by Monster Vape imitate Smucker's Uncrustables, a premade peanut butter and jam/jelly sandwich, in theme, packaging, and flavor, a premade peanut butter and jam/jelly sandwich, promoting an addictive product through a campaign that is attractive to those too young to purchase Monster Vape's nicotine products legally.

See Image 3.



Image 3.

13. As set forth in greater detail below, Monster Vape also uses cartoon imagery and other images that are appealing to children in its marketing and employs various promotions in which it gives away products that are popular with young consumers, such as PlayStations and Xbox consoles.

14. Moreover, and most detrimentally, Monster Vape fails to use age-verification procedures to ensure that minors cannot purchase and receive the

addictive nicotine products it sells online. Defendant fulfills online orders of its products without requiring an adult purchaser's signature on delivery and accepts payment through anonymous, untraceable prepaid debit cards.

15. Monster Vape's creation and promotion of addictive and reportedly dangerous products that appeal to children who cannot legally purchase such products, coupled with its failure to ensure that its products do not end up in the hands of minors, constitute unfair business practices within the scope of FDUTPA.

16. Through this action, the Attorney General seeks to enjoin Monster Vape's use of these unfair business practices, which promote and permit the unlawful use of addictive nicotine products by children.

JURISDICTION, VENUE, AND APPLICABLE LAW

17. This action is brought by the Attorney General pursuant to Sections 501.207(1)(b) and 501.207(3), Florida Statutes.

18. The Attorney General conducted an investigation and determined that an enforcement action serves the public interest. This Court has subject-matter and personal jurisdiction pursuant to the provisions of Section 26.012, Florida Statutes and FDUTPA.

19. Venue for this action properly lies in the Ninth Judicial Circuit pursuant to the provisions of Sections 47.011, 47.021, and 47.051, Florida Statutes, as at all times material to this Complaint, Defendant was headquartered in Orange County

and the actions at issue herein accrued in Orange County, Florida, as well as other counties within the State of Florida.

20. At all material times, Defendant engaged in trade or commerce as that term is defined by Section 501.203(8), Florida Statutes.

21. Defendant, at all times material to this Complaint, whether acting alone or in concert with others, solicited “consumers” as that term is defined by Section 501.203(7), Florida Statutes.

22. Further, the statutory violations alleged herein affected or occurred in more than one judicial circuit in the State of Florida.

23. Defendant’s actions material to this Complaint occurred within four (4) years of the filing of this action (referred to herein as “relevant period”).

PLAINTIFF

24. The Attorney General is an enforcing authority of FDUTPA pursuant to Sections 501.207 and 501.2075, Florida Statutes, and is authorized to bring this action and to seek injunctive and other statutory relief.

DEFENDANT

25. Creative Vape Labs Inc., d/b/a Monster Vape Labs, is a Florida Profit Corporation with its principal place of business located at 1041 Crews Commerce Dr., Ste. 100, Orlando, FL 32837.

26. Defendant represents, on its LinkedIn and Facebook pages, that it was founded in 2014.

27. Defendant manufactures, markets, and sells nicotine products as that term is defined in Section 877.112(1)(b), Florida Statutes.

BACKGROUND

28. Nicotine use by minors is prohibited under Florida and Federal law.

29. Nicotine is a highly addictive drug derived primarily from the tobacco plant.

30. Nicotine is a neurotoxin and poisonous to the human brain and, as noted by one court, “Nicotine is among the most addictive substances used by humans.” *Nicopure Labs, LLC v. Food & Drug Admin.*, 944 F.3d 267, 270 (D.C. Cir. 2019).

31. E-cigarettes deliver nicotine in highly efficient ways to the user’s airway, bloodstream, and brain.

32. The active ingredient contained in many e-cigarette products is known as “nicotine salt,” which is a combination of nicotine liquid with organic acid, forming a solution.

33. Nicotine salts are absorbed by the body faster than freebase forms of nicotine and pose an even greater risk of addiction and injury.

34. Some of Monster Vape’s products are formulated with nicotine salts, mixed with a solution of propylene glycol and glycerin.

35. Monster Vape uses a propylene glycol and glycerin mixture as a base for its nicotine products.

36. E-cigarette aerosol – aka vapor – is not harmless water vapor as many mistakenly believe.¹⁰ Use of e-cigarettes by both children and adults poses health risks stemming from toxins in the vapor such as carcinogenic volatile organic compounds,¹¹ heavy metals introduced by e-cigarette heating coils,¹² novel compounds formed by mixing flavorants and solvent compounds,¹³ and nicotine itself.

37. Nicotine can result in the rapid onset of both physiological and psychological dependence and various physical and behavioral side effects, as outlined below.

38. Nicotine can cause an increase in blood pressure, heart rate, flow of blood to the heart and a narrowing and hardening of the arteries, which may lead to

¹⁰ Centers for Disease Control and Prevention (CDC). “Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults.” CDC Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion. 3 Jan 2020.

https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html (Accessed 9 January 2019).

¹¹ Rubinstein, M; Delucchi, K; Benowitz, N, and Ramo, E. *Adolescent Exposure to Toxic Volatile Organic Chemicals From E-Cigarettes*. Pediatrics, March 2018:

<https://pediatrics.aappublications.org/content/141/4/e20173557>

¹² Olmedo, P.; et al. *Metal Concentrations in e-Cigarette Liquid and Aerosol Samples: The Contribution of Metallic Coils*. Environmental Health Perspectives, Vol 126, No. 2:

<https://ehp.niehs.nih.gov/doi/10.1289/EHP2175>

¹³ Erythropel, H; et al. *Formation of flavorant-propylene Glycol Adducts with Novel Toxicological Properties in Chemically Unstable E-Cigarette Liquids*. Nicotine and Tobacco Research, 2019 1248-1258: <https://academic.oup.com/ntr/article-abstract/21/9/1248/5134068/>

a heart attack.¹⁴ Moreover, heavy use of nicotine can lead to nausea, vomiting, seizures, and bradyarrhythmia. In fact, in April 2019, the FDA announced an emerging public safety concern about nicotine-related seizures resulting from e-cigarette use mostly in youths and young adults.¹⁵

39. Teenagers’ brains 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.¹⁶

40. Furthermore, there is limited evidence as to the safety of inhaling propylene glycol and glycerin, especially over the long-term.

41. Additionally, studies suggest that vaping frequently leads to traditional cigarette use among teenagers, even among those who never intended to try combustible cigarettes.¹⁷ Despite the fact that it is illegal for minors to buy, receive,

¹⁴ See American Heart Association, “How Smoking and Nicotine Damage Your Body” <https://www.heart.org/en/healthy-living/healthy-lifestyle/quit-smoking-tobacco/how-smoking-and-nicotine-damage-your-body>. (Accessed 3 June 2020).

¹⁵ U.S. Food and Drug Administration, Center for Tobacco Products, Some E--cigarette Users Are Having Seizures, Most Reports Involving Youth and Young Adults (April. 10, 2019), <https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involving-youth-and-young-adults>

¹⁶ 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>.

¹⁷ *Trajectories of E-Cigarette and Conventional Cigarette Use Among Youth*, Krysten W. Bold, Grace Kong, Deepa R. Camenga, Patricia Simon, Dana A. Cavallo, Meghan E. Morean and Suchitra Krishnan-Sarin *Pediatrics* January 2018, 141 (1) e20171832; DOI: <https://doi.org/10.1542/peds.2017-1832>; See also Miech R, Patrick ME, O'Malley PM, et al. *E-*

or possess nicotine products, use of electronic cigarettes has surged year-over-year across the United States among youth¹⁸—a development that raises significant public health concerns about the creation of a new generation of nicotine dependency.¹⁹

42. About 4.9 million middle and high school students were current users of a tobacco product in 2018, meaning that they used such products within the past 30 days.²⁰ This represents an increase of 1.3 million users just since 2017.²¹ A surge in e-cigarette use explains this dramatic increase: There were 1.5 million more youth e-cigarette users in 2018 than 2017, accounting for more than the full increase in

cigarette use as a predictor of cigarette smoking: results from a 1-year follow-up of a national sample of 12th grade students. Tobacco Control 2017;26:e106-e111.

<https://www.ncbi.nlm.nih.gov/pubmed/28167683>

¹⁸ Cullen, Karen A., Gentzke, Andrea S., Sawdey, Michael D., *e-Cigarette Use Among Youth in the United States, 2019*, Journal of the American Medical Association (“JAMA”), 2019;322(21):2095-2103. doi:10.1001/jama.2019.18387,

<https://jamanetwork.com/journals/jama/article-abstract/2755265?appId=scweb> (the prevalence of self-reported current e-cigarette use was 27.5% among high school students and 10.5% among middle school students, up from 20.8% and 4.9% among high school and middle school students, respectively, in 2018); *See also* Jamal A, Gentzke A, Hu SS, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2016. MMWR Morb Mortal Wkly Rep 2017;66:597–603. DOI: <http://dx.doi.org/10.15585/mmwr.mm6623a1>

¹⁹ Grana RA, *Electronic cigarettes: a new nicotine gateway?* J Adolesc Health 2013;52:135–6. DOI: <https://doi.org/10.1016/j.jadohealth.2012.11.007> ; *See also* Legacy Foundation for Health. *Vaporized: E-cigarettes, advertising, and youth.* Washington, DC: Legacy Foundation for Health, 2014; *Cf. Progress Erased: Youth Tobacco Use Increased During 2017-2018* <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html> (According to the Centers for Disease Control and Prevention (“CDC”) Director Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing youth tobacco use. It’s putting a new generation at risk for nicotine addiction.”) <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

²⁰ Id.

²¹ Id.

youth tobacco usage and erasing past progress in reducing youth tobacco product use.²²

43. Teens may be more sensitive to nicotine and feel dependent on nicotine sooner compared to adults.²³ Adolescent nicotine exposure, increasingly occurring as a result of e-cigarette use, may induce epigenetic changes that sensitize the brain to other drugs and prime it for future substance abuse.²⁴ In addition to the health risks posed to children, nicotine dependence comes with potential significant social and financial burdens for both kids and adults. For example, nicotine dependency can limit job prospects as demonstrated in the recent announcement by U-Haul International that it would “decline job applicants who are nicotine users” in twenty-one states, including in Florida.²⁵

44. Child-friendly flavors are enticing to underage users. Studies involving cigarettes and other tobacco products have shown that the addition of sweet flavors increases the appeal of these products, especially to youth.²⁶ One of the most

²² *Id.*

²³ U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*, 2016 at p. 99. https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf

²⁴ Menglu Y., et al., *Nicotine and the adolescent brain*, 593 *Journal of Physiology* 3397-3412 (2015), <https://physoc.onlinelibrary.wiley.com/doi/full/10.1113/JP270492>

²⁵ U-Haul International announced this policy on its website: <https://www.uhaul.com/Articles/About/19926/U-Haul-To-Implement-Nicotine-Free-Hiring-Policy-For-Healthier-Workforce/> (Accessed January 9, 2020)

²⁶ Villanti, A.C., A.L. Johnson, B.K. Ambrose, et al., “*Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013–2014)*,” *American Journal of Preventive Medicine*, 53(2):139–151, 2017. (Reporting flavor was a primary reason for using a given tobacco product, particularly among youth.)

commonly cited reasons among scientific studies that youth and young adults report using tobacco products is flavorings.²⁷ According to the American Medical Association, 81% of current youth tobacco product users reported that the first tobacco product they used was flavored.²⁸

45. Federal agencies have made statements concerning the use of flavors in tobacco and vaping products. The FDA has explained that “[r]esearchers noted that some teens are more likely to use e-cigarettes prior to combustible tobacco products for several reasons including the availability of e-cigarettes in flavors attractive to youth.”²⁹ Accordingly, FDA recognizes that flavored e-liquids are especially attractive to youth and young adults.³⁰

46. Similarly, the use of cartoons in advertising has been shown to be highly effective at reaching children. Cartoon-based marketing exposure – as

²⁷ Ambrose BK, Day HR, Rostron B, Conway KP, Borek N, Hyland A, Villanti AC. *Flavored tobacco product use among U.S. youth aged 12–17 years, 2013–2014*. JAMA 2015;314(17):1871–3. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6467270/>

²⁸ *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)*. Villanti AC, et al., A. Am J Prev Med. 2017 Aug; 53(2):139-151.

²⁹ Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products (“*Deeming Rule*”), 81 FR 28973-01 at 28985.

³⁰ *Id.* at 29014; *see also*, FDA, FDA, FTC take action against companies misleading kids with e-liquids that resemble children’s juice boxes, candies and cookies (May 1, 2018) (reporting that the federal government recently issued warnings to manufacturers that have been marketing e-liquids to resemble kid-friendly products such as juice boxes, candy, and whipped cream, and noting that one product “not only resembles a Unicorn Pop lollipop but is shipped with one”) <https://www.fda.gov/news-events/press-announcements/fda-ftc-take-action-against-companies-misleading-kids-e-liquids-resemble-childrens-juice-boxes>

measured by recognition of e-liquid package images – was associated with susceptibility to use e-cigarettes, which is consistent with previous research on the use of cartoons to promote combustible cigarettes.³¹

47. Very young children see, understand, and remember advertising, and particularly advertising that features cartoon logos. For example, one study determined that approximately 30% of 3-year-old children correctly matched a picture of the cartoon logo for camel cigarettes, Old Joe Camel, with a picture of a cigarette, this association rate increased to 91.3% for 6-year-old children.³²

48. Products, such as video games, which have a significant following among younger individuals are recognized as an attractive marketing tool by tobacco companies.³³

49. E-cigarette marketing using products with significant youth appeal encourages young people to illegally use nicotine products, thus exposing them to the harmful effects of nicotine outlined above.

³¹ Kirkpatrick, M; Boley Cruz, T; Unger, J; Herrera, J; Schiff, S; Allem, J, *Cartoon-based e-cigarette marketing: Associations with susceptibility to use and perceived expectations of use*. Drug and Alcohol Dependence, Volume 201, 1 August 2019, Pages 109-114.

<https://doi.org/10.1016/j.drugalcdep.2019.04.018>

³² Fisher, P; Schartz M; Richards, J. *Brand Logo Recognition by Children Aged 3 to 6 Years*. JAMA. 1991;266(22):3145-3148. doi:10.1001/jama.1991.03470220061027.

<https://jamanetwork.com/journals/jama/article-abstract/393811>

³³ McDaniel, P; Forsyth, S. *Exploiting the “video game craze”: A case study of the tobacco industry’s use of video games as a marketing tool*. PLOS, July 25, 2019.

<https://doi.org/10.1371/journal.pone.0220407>

50. Defendant's actions have encouraged and allow Florida youth to use nicotine, which is harmful to their health and risks significant injury.

DEFENDANT'S ACTS AND PRACTICES

51. Monster Vape's kid-friendly flavors coupled with its marketing practices, such as the use of cartoons and depictions and giveaways of products popular with children, and Defendant's failure to implement reasonable and effective age verification procedures for online sales constitute unfair trade practices within the scope of FDUTPA.

Monster Vape's Unfair Creation and Promotion of Addictive Nicotine Products That Appeal to Children Too Young to Legally Purchase Such Products

52. Monster Vape advertises through online marketing channels that are accessible to and often used by children, such as Instagram.³⁴

53. Monster Vape also markets and sells its products direct to consumers through its website, www.monstervapelabs.com.

54. With respect to its advertising, Monster Vape, during the relevant period, used and continues to use a cartoon mascot to market several lines of the flavored liquid nicotine it manufactures and distributes. The cartoon mascot, illustrated in Image 4, is affixed to many of its product labels and the image splashed

³⁴In or about January 2020, age restrictions were added to Defendant's Instagram page; however, historically Defendant's page was accessible to all Instagram users.

across its webpage and social media. As set forth *supra*, research indicates that cartoons are highly recognizable and appealing to minors.



Image 4.

55. Monster Vape’s product lines, Jam Monster, Fruit Monster, Ice Monster, and PB & Jam Monster, all use the cartoon monster in their logos, packaging, and advertisements. (See Images 5, 6, 7 and 8).



Image 5.



Image 6.

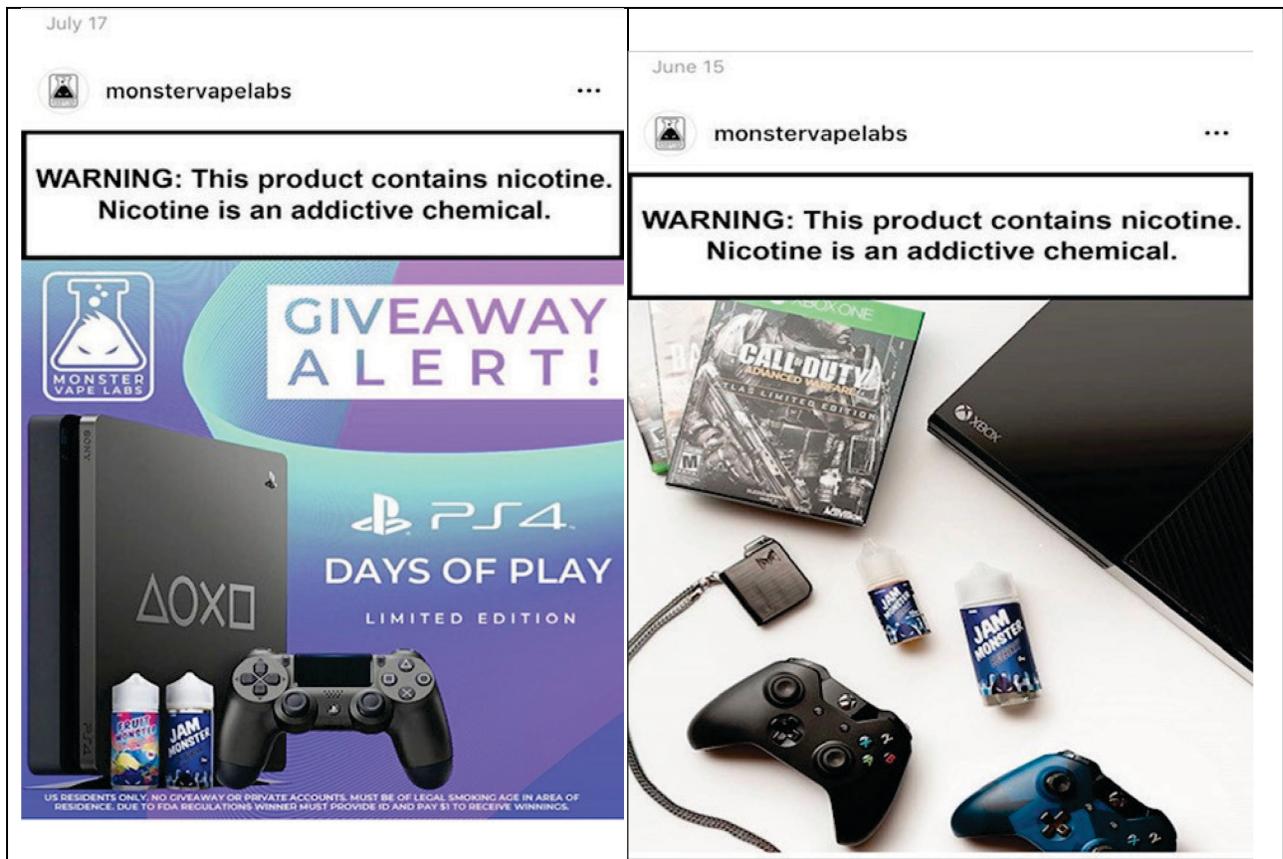


Image 7.



Image 8.

56. In addition to the kid-friendly flavors Monster Vape creates and sells, described *supra*, Monster Vape used various promotions during the relevant period to market its addictive nicotine products, giving away PlayStation, Xbox consoles, and other products that are popular with young consumers. The following examples appeared on Defendant's Instagram account:



Composite Image 9

57. Additionally, in some instances, Defendant advertises and markets its addictive nicotine products by placing their products next to skateboards, and apparel products often associated with the skateboarding subculture. This subculture is popular with children.³⁵ The images below are from Defendant’s Instagram account.

³⁵ One study notes that approximately 23% of U.S. teens ride skateboards. Bradley, G. *Skate Parks as a Context for Adolescent Development*. *Journal of Adolescent Research*, 25(2) 288-323, 2010. DOI: <https://doi.org/10.1177/0743558409357236>.

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monstervapelabs
Orlando, Florida

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Orlando, Florida



Composite Image 10

58. Defendant makes its product appealing to children, using cartoons, youth-oriented product pairings, and kid-friendly flavors, contravening Florida’s policy of protecting children from nicotine use.

59. Children are unable to reasonably avoid the impacts of Defendant’s advertisements because they often do not possess the capacity to make a reasoned decision regarding whether to begin vaping in light of the risks and uncertainties involved, and children may be more susceptible to advertisements due to their immaturity and their nascent reasoning abilities.

60. Moreover, many children are often misinformed regarding the constituent components in vaping products, which further prevents them from appreciating the risks associated with vaping.

61. Accordingly, Florida has adopted a strong and express public policy that protects these children from the harmful effects and significant injuries caused by nicotine use via vaping products.

62. Section 877.112(2), Florida Statutes, provides: “It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.” Further, Section 877.112(6), Florida Statutes, provides: “It is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device.” Section 877.112, Florida Statutes, also prohibits minors from possessing nicotine products or the sale or gifting of such products to minors, and Section 386.212, Florida Statutes, prohibiting vaping in or within 1,000 feet of a school.

63. The flavored liquid nicotine Defendant sells are considered nicotine products or nicotine dispensing devices covered by the law.

64. These statutes reinforce the fact that there is no countervailing benefit to consumers or competition from advertising these products in a way that appeals to children.

65. Moreover, Defendant's child-friendly products and marketing, is immoral, oppressive, unscrupulous, and inflicts substantial injury upon children that they cannot reasonably avoid. This is particularly the case for Defendant's products, which are formulated with nicotine salts that are absorbed by the body faster than freebase forms of nicotine and pose an even greater risk of addiction and injury.

66. Monster Vape's use of sweet, fruity flavors that imitate food products appealing to children such as peanut butter and jam, along with packaging that does the same, coupled with its monster cartoon, and advertising their product alongside common, youth-oriented products such as videogames or skateboarding accessories that further appeal to kids, encourage children to vape and risks their suffering the harm and significant injury associated with nicotine use and addiction.

67. Monster Vape knew or should have known that these practices unfairly encourage young people to illegally vape.

Monster Vape's Unfair Practices Permit Minors to Illegally Purchase and Receive Addictive Nicotine Products

68. Florida has adopted a strong public policy that protects children from the harmful effects and significant injuries caused by nicotine use via vaping products. As a part of this public policy, Florida law requires sellers of nicotine products to protect minors by restricting the sale of such products.

69. It is illegal to deliver liquid nicotine to minors in Florida: "[i]n order to prevent persons under 18 years of age from purchasing or receiving nicotine

products or nicotine dispensing devices, the sale or delivery of such products or devices is prohibited, except: When under the direct control, or line of sight where effective control may be reasonably maintained, of the retailer of nicotine products or nicotine dispensing devices or such retailer’s agent or employee.” Section 877.112(12)(a)(1), Florida Statutes.

70. Monster Vape fails to employ an age-verification procedure in which it reasonably maintains direct control of the sale and delivery of its addictive nicotine products.

71. Given Defendant’s lack of adequate age-restricted controls, it is possible for a minor to order online and receive delivery of Defendant’s nicotine products using only a picture of an adult’s driver’s license and a prepaid payment card that requires no personal information to obtain or use.

72. Monster Vape does not require that an adult receive the nicotine product. Procedures to ensure e-cigarette and vaping product sellers reasonably maintain direct control of the sale and delivery of such products are readily available.

73. For example, the United States Postal Service provides an “Adult Signature Required” delivery option for only \$6.65. This service requires the signature of an adult—someone 21 years of age or older—at the recipient’s address³⁶ For only 25¢ more, the postal service offers an “Adult Signature Restricted

³⁶ See <https://www.usps.com/ship/insurance-extra-services.htm>

Delivery” option. With this service, the item is delivered only after the addressee or their authorized agent verifies their identity, shows that they’re 21 years of age or older, and signs for it.

74. Requiring an adult signature on delivery would assist in preventing the delivery of nicotine products to minors.

75. Defendant’s failure to adequately restrict the sale and delivery of its addictive nicotine products flouts Florida’s public policy of prohibiting the sale and delivery of nicotine to minors, exposes children to a risk of substantial injury caused by nicotine use, poses no countervailing benefit to children or competition, and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

76. Moreover, Monster Vape’s failure to take sufficient and appropriate measures to prevent children from purchasing and receiving addictive nicotine products, particularly in light of its youth-oriented marketing practices, demonstrates that Defendant knew or should have known that it is enabling the sale and delivery of illicit and addictive products to children and the potential that such practices will result in increasing the number of children that will become addicted to nicotine.

FDUTPA VIOLATIONS
FDUTPA

77. FDUTPA provides, *inter alia*, that “...unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Section 501.204(1), Florida Statutes.

78. Additionally, violations of “... any law, [or] statute, ... which proscribes ... deceptive ... acts or practices” constitute FDUTPA violations. Section 501.203(3), Florida Statutes.

79. When construing whether acts or practices violate FDUTPA, it is the intent of the Legislature that “due consideration and great weight shall be given to the interpretations [by] the Federal Trade Commission and the federal courts relating to the ... Federal Trade Commission Act.” Section 501.204(2), Florida Statutes.

80. Additionally, all FDUTPA provisions are to be “construed liberally” to promote the protection of the “consuming public and legitimate business enterprises from those who engage in ... deceptive, or unfair acts or practices in the conduct of any trade or commerce” and “to make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.” Section 501.202, Florida Statutes.

81. In order for a practice to be unfair, the injury or risk of injury it causes must be (1) substantial, (2) without offsetting benefits, and (3) one that consumers cannot reasonably avoid.

COUNT I

Unfair Trade Practices in Violation of 501.204, Florida Statutes

82. Plaintiff adopts, incorporates, and re-alleges the preceding paragraphs as if fully set forth herein.

83. Defendant, in the course of advertising, soliciting, providing, offering, or distributing its products, engaged in unfair trade practices affecting Florida consumers and consumers across the country that are prohibited by Section 501.204, Florida Statutes.

84. Monster Vape's unfair practices include, but are not limited to, willfully advertising, soliciting, providing, offering, or distributing its addictive nicotine products, including by:

- a. Pursuing product development and marketing strategies of its addictive nicotine products that it knows or should have known would appeal to children who cannot legally purchase such products; and
- b. Failing to implement an age-verification procedure in which it reasonably maintains direct control of the sale and delivery of its addictive nicotine products to prevent the sale or delivery of such products to minors.

85. Defendant's marketing practices and age-verification procedures for online sales and delivery offend public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

86. Defendant's marketing practices and age verification procedures for online sales and delivery encourage and permit millions of Florida children to illegally use nicotine products which risks substantial injury to consumers by increasing nicotine use and threatens their health and safety with known, harmful physical and psychological side effects.

87. The harm caused by Defendant's marketing practices and age verification procedures for online sales and delivery is not outweighed by countervailing benefits to consumers or competition. The cost of the remedy is low and will help protect against nicotine use by minors.

88. Defendant's marketing practices and age verification procedures are unfair because the injury is not one that a consumer can reasonably avoid.

89. As set forth *supra*, children are particularly susceptible to marketing and many mistakenly believe e-cigarette use is harmless. Defendant's marketing reinforces this misconception by imitating children's products.

90. Consumers have a reasonable expectation that any company selling a product online that is prohibited from being delivered to a minor, would establish sufficient procedures to ensure that such products are only delivered to an adult. It

is unfair for Defendant to deliver nicotine products without ensuring that the person accepting delivery of the nicotine product is an adult.

91. Young consumers have a reasonable expectation that any product that is marketed toward them will be designed and marketed with consideration for their particular vulnerabilities, including the effects of the product on their physical, neurological, and behavioral development and their particular susceptibility to nicotine addiction.

92. The Defendant's use and establishment of an advertising and marketing scheme that is appealing to youth and fails to take reasonable steps to ensure that young people could not illegally purchase and receive Monster Vape's addictive and harmful products is unfair.

93. Defendant's practice of delivering nicotine products without verifying the age of the recipient violates Section 877.112(12), Florida Statutes, which states in pertinent part: "[I]n order to prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, the sale or delivery of such products or devices is prohibited ... except ... when under the direct control, or line of sight where effective control may be reasonably maintained, of the retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee;" and prescribes criminal penalties.

94. Defendant failed to implement procedures to verify the age of the recipients of its addictive and dangerous nicotine products. Accordingly, Defendant violated Section 877.112(12), Florida Statutes by not exercising direct control of the delivery of its addictive and dangerous nicotine products.

95. Unless Monster Vape is permanently enjoined from engaging further in the acts and practices complained of herein, Monster Vape's continued activities will result in irreparable injury to the public for which there is no adequate remedy at law.

96. Defendant's practices complained of herein are unfair and constitute violations of Section 501.204 of FDUTPA; therefore, Defendant is liable for injunctive, other equitable, legal, or statutory relief.

97. Defendant is also liable for civil penalties, as prescribed by Sections 501.2075 and 501.2077, Florida Statutes for each unfair act or practice it willfully engaged in, as set forth above, found to be in violation of FDUTPA.

98. Finally, Defendant is also subject to attorney's fees and costs pursuant to Section 501.2075, Florida Statutes.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General requests that this Honorable Court:

A. ENTER judgment in favor of Plaintiff and against the Defendant for the FDUTPA violations as alleged herein;

B. Temporarily and permanently enjoin Defendant from featuring cartoons in any advertisement, or featuring images resembling products that are marketed to children, or from engaging in any marketing strategy or campaign which appeals to children, including but not limited to using advertising which imitates the appearance, theme, flavor profile, or slogan of a product which is marketed to children;

C. Temporarily and permanently enjoin Defendant from offering or selling nicotine products through the internet without effective age verification procedures which include, but are not limited to, refusing to accept prepaid payment cards and requiring an adult signature on delivery.

D. Award civil penalties, attorney's fees, and costs against Defendant pursuant to Section 501.2075, Florida Statutes, or as otherwise authorized by law;

E. Grant such other legal or equitable relief as this Honorable Court deems just and proper.

Dated June 4, 2020.

Respectfully Submitted,

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