

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

Civil Action No. 24-0747-G

v.

VICA Trading, Inc. d/b/a VapeSourcing

Defendant.

COMPLAINT

The Commonwealth of Massachusetts (the "Commonwealth"), by and through Attorney General Andrea Joy Campbell, brings this action pursuant to G. L. c. 270, § 28, and G. L. c. 93A, § 4. Defendant VICA Trading, Inc. d/b/a VapeSourcing ("VapeSourcing") has violated and continues to violate G. L. c. 270, § 28, and G. L. c. 93A, § 4, by offering for sale, selling, and advertising the sale of flavored tobacco products, including e-cigarettes and associated products such as e-liquids (together, "vape products"), to consumers in the Commonwealth. VapeSourcing has further violated and continues to violate the Consumer Protection Act, G. L. c. 93A, and 940 Code Mass. Regs. 21, *et seq.*, 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, as well as by distributing vape products through the mail after redemption of coupons.

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SUPERIOR COURT - CIVIL
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ACTING CLERK MAGISTRATE

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 Defendant as to the claims in this Complaint. These claims arise from, among other things, the Defendant transacting business in the Commonwealth and contracting to supply flavored tobacco products in the Commonwealth.

PARTIES

4. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Andrea Joy Campbell, who brings this action in the public interest.

5. Defendant VapeSourcing is a California corporation and maintains a place of business at 3045 Edinger Ave., Tustin, CA 92780.

BACKGROUND

6. In December 2018, the Center for Disease Control's Surgeon General released an advisory concerning the e-cigarette epidemic among youth, noting an increase in smoking and nicotine addiction rates that had been on the decline for decades.

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

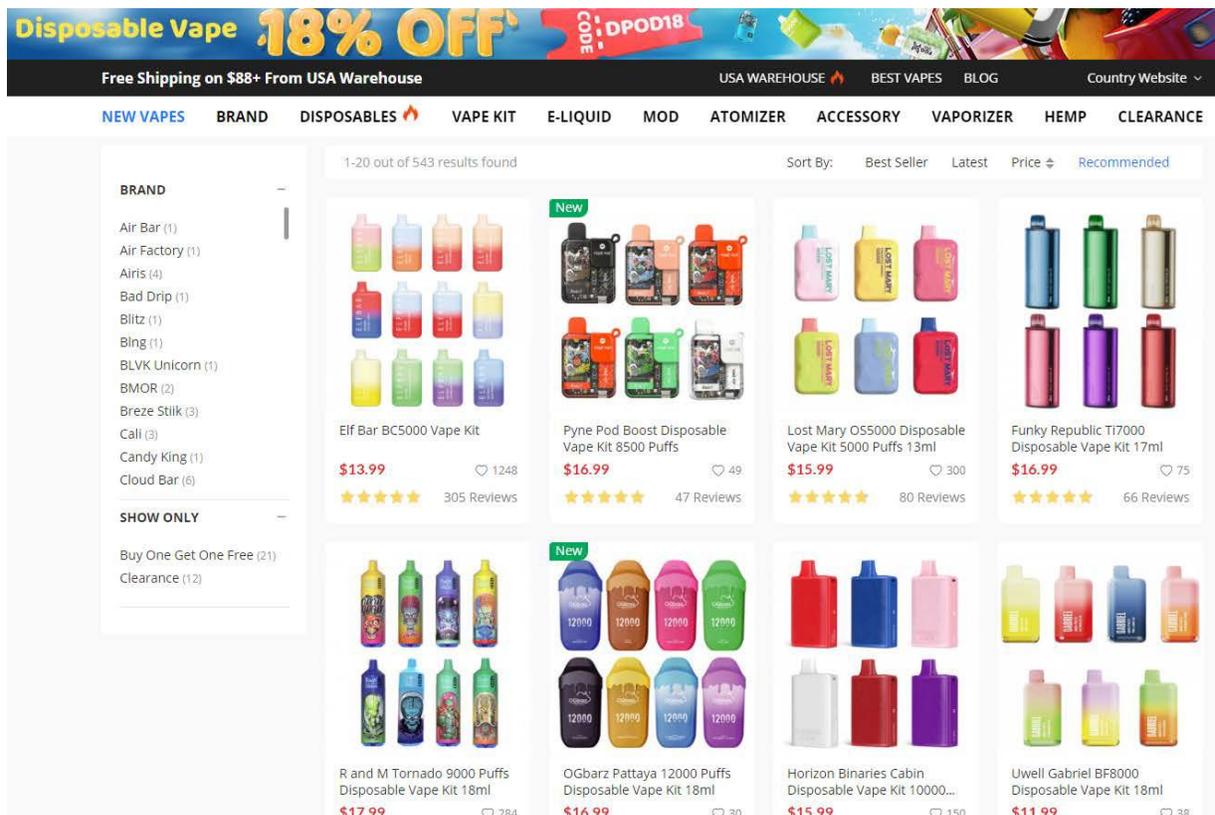
8. Contributing to this vaping epidemic was the introduction of flavored e-cigarettes, which were particularly attractive to youth.

9. In response to the urgent public health crisis created by the introduction and proliferation of e-cigarettes, Massachusetts enacted a flavored tobacco ban, G. L. c. 270, § 28.

10. On November 27, 2019, Massachusetts became the first state in the country to ban the sale of all flavored tobacco products, including vape products, making it unlawful for online and retail sellers to sell flavored tobacco products to Massachusetts residents.

FACTS

11. VapeSourcing maintains a website accessible to Massachusetts residents, located at www.vapesourcing.com. The following image is a screenshot of VapeSourcing’s website advertising the sale of flavored tobacco products, including but not limited to disposable flavored vape kits.



12. On August 1, 2023, VapeSourcing 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.

13. On August 16, 2023, the Commonwealth sent a cease-and-desist letter to VapeSourcing, informing VapeSourcing of its violative conduct.

14. The cease-and-desist letter was successfully delivered to VapeSourcing, but the Commonwealth received no response from VapeSourcing.

15. Prior to the delivery of the cease-and-desist letter, VapeSourcing's website listed a shipping policy on its "shipping and tracking" page; however, Massachusetts was not listed as a state in which flavored tobacco product sales were banned. Shortly after delivery of the cease-and-desist letter, VapeSourcing's website was updated to include Massachusetts as a state that banned all flavored tobacco products.

16. Even after the website update and the Commonwealth's cease-and-desist letter, VapeSourcing 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, despite statements on its website that all flavored tobacco product sales have been banned in Massachusetts.

17. VapeSourcing sends coupons directly to e-mail addresses of Massachusetts residents after said residents complete a purchase of flavored tobacco product on its website. The coupons contain offers of discounts on flavored tobacco products.

18. VapeSourcing sends promotional e-mails about sales on its website directly to e-mail addresses of Massachusetts residents after said residents complete a purchase of a flavored tobacco product on VapeSourcing's website. The promotional e-mails contain offers of discounts on flavored tobacco products.

19. VapeSourcing ships flavored tobacco products to Massachusetts residents after a purchase is completed on its website using a coupon offer.

20. VapeSourcing ships tobacco products to Massachusetts residents 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.

CAUSES OF ACTION

COUNT ONE

Violations of G. L. c. 270, § 28

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

22. 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 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 No person, retailer or manufacturer shall market or advertise a proposed sale or distribution that is prohibited herein.”

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

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

25. VapeSourcing has offered for sale, marketed, advertised, and sold flavored tobacco products to Massachusetts consumers in violation of G. L. c. 270, § 28(b).

26. VapeSourcing continues to offer for sale, market, advertise, and sell flavored tobacco products to Massachusetts consumers in violation of G. L. c. 270, § 28(b).

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

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

28. 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.”

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

30. VapeSourcing 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.”

31. 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.*

32. VapeSourcing is a “retailer” as defined by 940 C.M.R. 21.03.

33. 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.”

34. VapeSourcing manufactures, packages, imports for sale, distributes, or sells within Massachusetts cigarettes, smokeless tobacco products, or electronic smoking devices as defined in 940 C.M.R. 21.00 *et seq.*

35. VapeSourcing sold and continues to sell smokeless tobacco products or electronic smoking devices to individuals in Massachusetts for personal consumption through its website.

36. VapeSourcing 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 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.

37. VapeSourcing has 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.

COUNT THREE

Violations of G. L. c. 93A and 940 C.M.R. 21.00 *et seq.* Offering Redemption of Coupons for Purchase of Electronic Smoking Devices

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

2. 940 C.M.R. 21.04(1)(c) prohibits “distributing cigarettes, smokeless tobacco products, or electronic smoking devices through the mail, including redemption of coupons, credits and proofs-of-purchase” as an unfair and deceptive practice.

3. VapeSourcing offered for sale, marketed, and advertised “electronic smoking devices,” as defined by 940 C.M.R. 21.03, to residents of Massachusetts, *inter alia*, by offering the redemption of coupons for products on its website.

4. VapeSourcing distributed and continues to distribute flavored tobacco products and “electronic smoking devices” through the mail to Massachusetts residents, who redeem coupons offered by VapeSourcing before completing their purchase on its website.

5. VapeSourcing has willfully, knowingly, repeatedly, and systematically violated the Consumer Protection Act, G. L. c. 93A, and 940 C.M.R. 21.04(1)(c) by distributing electronic smoking devices through the mail, including through redemption of coupons.

6. VapeSourcing has willfully, knowingly, repeatedly, and systematically violated the Consumer Protection Act, G. L. c. 93A, by unlawfully offering discounts and coupons to Massachusetts residents and distributing electronic smoking devices through the mail, after Massachusetts residents redeem said coupons and apply said discounts.

PRAYER FOR RELIEF

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

1. Award statutory penalties for each violation of G. L. c. 270, § 28;
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 the Defendant from continuing to engage in the violations of law set forth herein; and
5. Grant such other relief as permitted by law and as the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

By:


Alda Chan (BBO #705204)
Matthew Lashof-Sullivan (BBO #695922)
Assistant Attorneys General
Sean Attwood (BBO #706930)
Special Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place

Boston, MA 02108
(617) 963-2525
alda.chan@mass.gov
matthew.lashof-sullivan@mass.gov
sean.p.attwood@mass.gov

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