

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION**

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

Plaintiff,

v.

CASE NO.:

**LIZARD JUICE, L.L.C.,
A Foreign Limited Liability Company,**

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, Lizard Juice, L.L.C., a Delaware limited liability company authorized to transact business in Florida, (“Lizard Juice” 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. Lizard Juice unfairly promotes the illegal use of addictive nicotine products by creating and marketing such products to those too young to purchase them legally and makes deceptive claims regarding the safety of vaping and its effectiveness as a smoking cessation tool.
2. Lizard Juice 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. In Florida, surveys indicate that approximately one in every four 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 3 June 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, such as Defendant's brand of flavored liquid nicotine, to any person under the age of 18 or for persons under 18 to even possess these 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 prohibitions that restrict the use, possession, and delivery of addictive nicotine products to children, Lizard Juice has, *inter alia*, created and sold addictive nicotine products with flavors that appeal to children and employed a

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>

marketing scheme that includes tactics and imagery that are attractive to and popular with children.

10. For example, some of Defendant’s marketing during the relevant period contains images and slogans of products marketed to children, such as Lucky Charms and Trix cereal.¹⁰



Image 1

11. Lizard Juice’s online advertising also features images of candy and other products which are popular with and appeal to children. Advertisements such

¹⁰ Both images shown were captured from Defendant’s website, www.lizardjuice.com. The left post features an image resembling children’s breakfast cereal Lucky Charms and a product label resembling the Monopoly board game mascot. The flavored liquid nicotine product shown in the right image is manufactured by Defendant under the name “Silly Rabbit” which imitates the slogan used to sell Trix breakfast cereal and features a depiction of a bowl of fruity cereal.

as the example in Image 2 below promote an addictive product in a way that is attractive to those too young to purchase Lizard Juice's nicotine products legally.



Image 2

12. Lizard Juice does not require appropriate age verification for its online sales. Defendant relies on a one-time age verification via public records or submission of a photograph of the purchaser holding their identification, but Defendant does not verify that its products are actually delivered to an adult purchaser. Defendant's lax age verification procedure, coupled with the use of marketing aimed at children, constitute unfair practices under FDUTPA.

13. Additionally, Lizard Juice makes deceptive claims regarding the health impact of vaping flavored liquid nicotine and the effectiveness of vaping as a smoking cessation tool. Despite that Defendant cannot substantiate its claims that vaping is either safe or an effective means of quitting smoking, Defendant's advertising presents vaping not just as safer than smoking combustible tobacco but

as a safe activity. Vaping is a fundamentally unhealthy activity that is toxic to the brain and damaging to the lungs. Posts such as the examples below from Lizard Juice’s Instagram account deceive consumers with false claims like Defendant’s products are a “short cut to a healthy lifestyle.”



Image 3



Image 4

14. Lizard Juice’s claims are deceptive trade practices under FDUTPA.

JURISDICTION, VENUE, AND APPLICABLE LAW

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

16. The Attorney General conducted an investigation and determined that an enforcement action serves the public interest.

17. This Court has subject-matter and personal jurisdiction pursuant to the provisions of Section 26.012, Florida Statutes and FDUTPA.

18. Venue for this action properly lies in the Sixth Judicial Circuit pursuant to the provisions of Sections 47.011, 47.021, and 47.051, Florida Statutes, as at all time material to this complaint, Defendant was headquartered in Pinellas County and the actions at issue herein accrued in Pinellas County, Florida, as well as other counties within the State of Florida.

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

20. 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.

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

22. 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

23. 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

24. Lizard Juice, L.L.C., is a Foreign Limited Liability Company with its principal place of business located at 8565 Somerset Drive, Unit A, Largo, FL 33773.

25. Lizard Juice has been a corporation registered with the State of Florida since at least 2012.

BACKGROUND

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

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

28. 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).

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

30. 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.

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

32. Some of the products Lizard Juice sells are formulated with nicotine salts, mixed with a solution of propylene glycol and glycerin.

33. Lizard Juice uses a propylene glycol and glycerin mixture as a base for its nicotine products.

34. E-cigarette aerosol – aka vapor – is not harmless water vapor as many mistakenly believe.¹¹ Use of e-cigarettes by both children and adults poses health risks stemming from toxins in the vapor such as carcinogenic volatile organic compounds,¹² heavy metals introduced by e-cigarette heating coils,¹³ novel compounds formed by mixing flavorants and solvent compounds,¹⁴ and nicotine itself.

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

¹¹ 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).

¹² Rubinstein M, et al., Pediatrics, March 2018: *Adolescent Exposure to Toxic Volatile Organic Chemicals From E-Cigarettes*. <https://pediatrics.aappublications.org/content/141/4/e20173557>

¹³ Olmedo P, et al., Environmental Health Perspectives, Vol 126, No. 2: *Metal Concentrations in e-Cigarette Liquid and Aerosol Samples: The Contribution of Metallic Coils*. <https://ehp.niehs.nih.gov/doi/10.1289/EHP2175>

¹⁴ Erythropel H, et al., Nicotine and Tobacco Research, 2019 1248-1258: *Formation of flavorant-propylene Glycol Adducts with Novel Toxicological Properties in Chemically Unstable E-Cigarette Liquids*. <https://academic.oup.com/ntr/article-abstract/21/9/1248/5134068/>

36. 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 a heart attack.¹⁵ 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.¹⁶

37. 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.¹⁷

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

39. Additionally, studies suggest that vaping frequently leads to traditional cigarette use among teenagers, even among those who never intended to try

¹⁵ 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).

¹⁶ 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>

¹⁷ Abreu-Villaça Y; 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>.

combustible cigarettes.¹⁸ Despite the fact that it is illegal for minors to buy, receive, or possess nicotine products, use of electronic cigarettes has surged year-over-year across the United States among youth¹⁹—a development that raises significant public health concerns about the creation of a new generation of nicotine dependency.²⁰

40. 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.²¹ This represents an increase of 1.3 million users just since 2017.²² A surge

¹⁸ *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-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>

¹⁹ 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>

²⁰ 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>.

²¹ Id.

²² Id.

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 youth tobacco usage and erasing past progress in reducing youth tobacco product use.²³

41. Teens may be more sensitive to nicotine and feel dependent on nicotine sooner compared to adults.²⁴ 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.²⁵ 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.²⁶

42. Child-friendly flavors are enticing to underage users. Studies involving cigarettes and other tobacco products have shown that the addition of sweet flavors

²³ Id.

²⁴ 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

²⁵ 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>

²⁶ 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)

increases the appeal of these products, especially to youth.²⁷ One of the most commonly cited reasons among scientific studies that youth and young adults report using tobacco products is flavorings.²⁸ According to the American Medical Association, 81% of current youth tobacco product users reported that the first tobacco product they used was flavored.²⁹

43. 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.”³⁰ Accordingly, FDA recognizes that flavored e-liquids are especially attractive to youth and young adults.³¹

²⁷ 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.)

²⁸ 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/>

²⁹ Villanti AC, et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)*. *A. Am J Prev Med*. 2017 Aug; 53(2):139-151.

³⁰ 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.

³¹ *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>

44. Additionally, perception of harm (i.e., beliefs about the health risks of nicotine products) can influence e-cigarette use. Research suggests that adolescents who perceive lower harms from using tobacco products are more likely to initiate use.³² Further, findings from studies assessing participants' (including youth, young adults, and adults) perceptions of the harm flavored tobacco product use causes show that each age group perceived *flavored* tobacco products as less harmful than *unflavored* products.³³

45. Finally, e-cigarettes are not approved by the FDA for use as a smoking cessation tool and may not be suitable for that purpose. E-cigarette use, like combustible tobacco use, is associated with respiratory diseases such as emphysema, chronic bronchitis and chronic obstructive pulmonary disease.³⁴ The most common pattern of e-cigarette use is dual use along with combustible tobacco, and in this scenario the risk of developing respiratory disease is greater than using either

³² Song, A.V., H.E. Morrell, J.L. Cornell, et al., "Perceptions of Smoking-Related Risks and Benefits as Predictors of Adolescent Smoking Initiation," *American Journal of Public Health*, 99(3):487–492, 2009. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661432/>

³³ Huang, L.-L., H.M. Baker, C. Meernik, et al., "Impact of Non-menthol Flavours in Tobacco Products on Perceptions and Use Among Youth, Young Adults and Adults: A Systematic Review," *Tobacco Control*, 26(6):709–719, 2017.

<https://www.ncbi.nlm.nih.gov/pubmed/27872344>; see also, Kowitt, S.D., C. Meernik, H.M. Baker, et al., "Perceptions and Experiences With Flavored Non-Menthol Tobacco Products: A Systematic Review of Qualitative Studies," *International Journal of Environmental Research and Public Health*, 14(4):338, 2017. <https://www.ncbi.nlm.nih.gov/pubmed/28333107>.

³⁴ Bhatta, D. and Glantz, S., *Association of E-Cigarette Use With Respiratory Disease Among Adults: A Longitudinal Analysis*, *American Journal of Preventive Medicine*, DOI: <https://doi.org/10.1016/j.amepre.2019.07.028>. [https://www.ajpmonline.org/article/S0749-3797\(19\)30391-5/fulltext](https://www.ajpmonline.org/article/S0749-3797(19)30391-5/fulltext)

product alone.³⁵ Needless to say, e-cigarettes are not an effective smoking cessation tool if the most likely outcome is dual use with combustible tobacco and a concomitant increase in developing lung disease.

DEFENDANT’S ACTS AND PRACTICES

46. Defendant’s use of advertising that imitates popular children’s products coupled with flavors which appeal to children is an unfair trade practice within the scope of FDUTPA. Also, Defendant’s false claims regarding the safety of vaping and its efficacy as a smoking cessation tool are deceptive trade practices.

Lizard Juice’s Unfair Creation and Promotion of Addictive Nicotine Products That Appeal to Children Too Young to Legally Purchase Such Products

47. Lizard Juice advertises through online marketing channels that are accessible to and often used by children and young adults such as Instagram. Lizard Juice also markets and sells products through its website, www.lizardjuice.com.

48. In addition to using images that resemble products such as children’s breakfast cereal, Lizard Juice markets lines of flavored nicotine liquid using other products including, but not limited to, candies that are marketed to children. The below examples appear on Defendant’s website. The product shown on the left imitates the name and flavor profile of the candy Sweetarts and features an image of

³⁵ Id.

a fruit snack style candy. The product advertisement on the right uses an image of gummy bears - another popular children's candy.



Image 4

49. Defendant's use of candy and dessert flavors particularly, when coupled with images resembling products that are extensively marketed to children, contravenes Florida's policy of protecting children from nicotine use and causes a substantial risk of injury to underaged consumers by fostering addiction.

50. 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 may be more susceptible to advertisements due to immaturity and their nascent reasoning abilities.

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

52. Accordingly, Florida has adopted a strong and express public policy that protects these children from the risk of nicotine use via vaping products.

53. 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.

54. The flavored liquid nicotine Defendant sells are considered nicotine products or nicotine dispensing devices covered by these laws.

55. Defendant’s marketing practices contravene Florida public policy because they encourage underage vaping.

56. 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.

57. Moreover, Defendant's child-friendly products and marketing is immoral, oppressive, unscrupulous, and creates a risk of substantial injury to children.

58. Lizard Juice knew or should have known that its practices unfairly encourage young people to illegally vape.

Lizard Juice's claims about the safety of vaping and its effectiveness as a smoking cessation tool are deceptive

59. Defendant's youth-oriented marketing is especially egregious because it is coupled with unsubstantiated claims regarding the safety of vaping. As set forth *supra*, adolescents who perceive vaping as safe or part of a healthy lifestyle are more likely to use vaping products.

60. In some instances, Lizard Juice has posted false and misleading claims about the safety of vaping to its social media accounts. For instance, Image 5 below presents the unfounded claim that secondhand vapor, which may contain carcinogens, heavy metals, and novel compounds whose health effects have not been established, presents no risk of exposing bystanders to toxicants. Similarly, Image 6 below presents an article about the dangers of prenatal nicotine exposure in a manner that suggests that there might be a health benefit to vaping while pregnant, or at least suggests that there is some uncertainty on the subject, although there is not.



Image 5



Image 6

61. Defendant perpetuates the false claim that e-cigarette aerosol is water vapor. A Lizard Juice employee, James Walbridge, appears in a YouTube video posted to Defendant’s YouTube Channel in which he ridicules a woman who allegedly died from lung injuries possibly associated with vaping and makes the spurious claim that e-cigarette vapor is water vapor.³⁶ Defendant repeats the claim

³⁶ *Weekly WTF* – “Lady dies from E-Juice in her Lungs” at 1:20-1:30. <https://www.youtube.com/watch?v=PAryc2tco7o> (Accessed 9 January 2020). Defendant’s claim

that e-cigarette aerosol is water vapor elsewhere, such as in a blog post aimed at convincing consumers that no second-hand nicotine is found with e-cigarettes,³⁷ which is also false.³⁸

62. Defendant also attempts to paint its products as all natural in order to create an impression of safety. However, propylene glycol, one of the main constituents of Defendant's nicotine liquids, is a man-made product generally synthesized from petroleum or vegetable glycerin and many of Defendant's nicotine liquids contain artificial flavors.

63. Defendant admits Propylene Glycol is synthetic when it is attacking competitors, such as in its blog post deriding liquid nicotine which claims to be organic.³⁹ The examples in Image 7 below from Defendants Instagram illustrate Lizard Juice's deceptive claims that its products are all natural and do not contain chemicals.

that no nicotine is found in second-hand e-cigarette aerosol is also false. See Thornburg, J.; Malloy, Q.; Cho, S.; Studabaker, W.; Lee, Y.O., "[Exhaled electronic cigarette emissions: what's your secondhand exposure?](#)," *RTI Press Research Brief*: 1-4, March 2015.

³⁷ See <https://www.lizardjuice.com/blog/top-10-e-cigarette-myths-debunked/>.

³⁸ See Thornburg, J.; Malloy, Q.; Cho, S.; Studabaker, W.; Lee, Y.O., *Exhaled electronic cigarette emissions: what's your secondhand exposure?*, RTI Press Research Brief: 1-4, March 2015, <https://doi.org/10.3768/rtipress.2015.rb.0008.1503>.

³⁹ See <https://www.lizardjuice.com/blog/organic-e-liquid-real-scam/>.

July 25, 2018

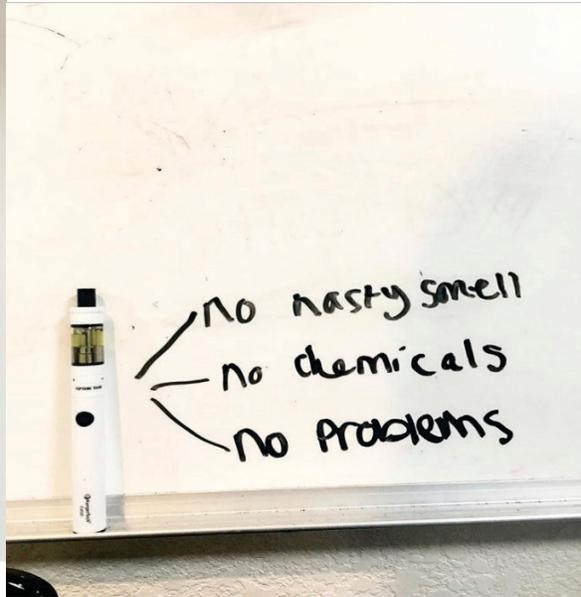


lizardjuice



71 likes

lizardjuice Clean Juice, Fresh Vape



35 likes

lizardjuice Quit smoking. Start vaping.

Composite Image 7

64. Also, Defendant's claims that vaping is an effective method of quitting smoking are deceptive. As set forth *supra*, vaping is not a federally approved smoking cessation strategy and in some known instances has led to dual use which is more harmful health than either smoking or vaping individually. However, this has not stopped Defendant from aggressively marketing its products as smoking cessation tools that will save your life. The below examples in Images 8 and 9 below are from Defendant's Facebook page and Instagram, respectively.

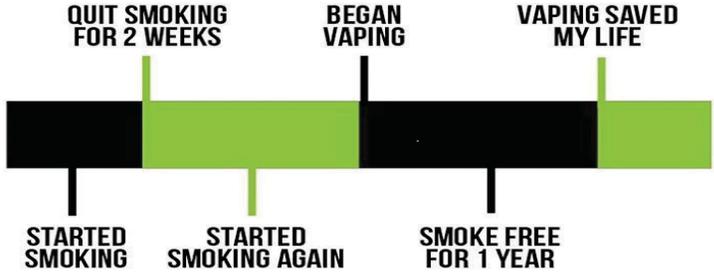
“Vaping has easily been one of the greatest decisions I have ever made!”



Image 8

 lizardjuice ...

VAPING IS NOW PART OF THE QUIT SMOKING TIMELINE



The diagram is a horizontal timeline with alternating black and green segments. From left to right: a black segment labeled "STARTED SMOKING", a green segment labeled "QUIT SMOKING FOR 2 WEEKS", a black segment labeled "STARTED SMOKING AGAIN", a green segment labeled "BEGAN VAPING", a black segment labeled "SMOKE FREE FOR 1 YEAR", and a final green segment labeled "VAPING SAVED MY LIFE".

LIZARD JUICE

♡ 💬 📌

66 likes

lizardjuice Vaping is now part of the QUIT SMOKING timeline! Like this post if you quit smoking by switching to vaping. ... more

Image 9

65. Defendant’s portrayal of vaping as a method of quitting smoking is likely to mislead reasonable consumers by overstating the benefits of vaping by, for instance, suggesting that it can save consumers’ lives. Defendant also misleads reasonable consumers by downplaying the health risks of dual use or vaping alone by, for instance, suggesting it is healthy or part of the “gym lifestyle.”

66. Vaping is not a proven healthy activity nor is attempting to replace smoking with vaping a proven strategy for beating addiction. At best, people who switch from smoking to vaping are still saddled with an addiction which may damage their brains and their lungs. Consumers deceived by Defendant’s misrepresentations may begin to vape or continue to vape believing that it poses a negligible health risk and will ultimately suffer health consequences which may not have manifested had consumers entirely eliminated their use of nicotine.

FDUTPA VIOLATIONS

FDUTPA

67. 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), Fla. Stat.

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

69. 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), Fla. Stat.

70. 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, Fla. Stat.

71. 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.

72. Statements are deceptive if they are likely to mislead consumers acting reasonable in the circumstances to the consumer’s detriment.

COUNT I

Unfair and Deceptive Trade Practices in Violation of 501.204, Florida Statutes

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

74. Lizard Juice, in the course of advertising, soliciting, providing, offering, or distributing its products engaged in unfair or deceptive trade practices affecting Florida consumers and consumers across the county that are prohibited by Section 501.204, Florida Statutes.

75. Lizard Juice's unfair or deceptive omissions, acts, and 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 that it knows or should have known would appeal to children who cannot legally purchase such products;
 - b. Failing to implement an age-verification procedure in which it reasonably maintains direct control of the delivery of its addictive nicotine products to prevent the delivery of such products to minors;
- and,

- c. Making false or unsubstantiated claims regarding the health impacts of vaping and the effectiveness of vaping as a smoking cessation tool.

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

77. 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.

78. 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.

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

80. Consumers acting reasonably in the circumstances would be misled to their detriment by Defendant's claims regarding the safety of vaping and its efficacy as a smoking cessation tool.

81. As set forth *supra*, children are particularly susceptible to marketing and many mistakenly believe e-cigarette use is harmless.

82. 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.

83. 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.

84. Accordingly, these practices by the Defendant are unfair and constitute violations of Section 501.204 of FDUTPA; therefore, Defendant is liable for injunctive and other equitable, legal, or statutory relief.

85. 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.

86. 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.

87. 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.

88. It is unfair to establish an advertising and marketing scheme that is appealing to youth and fail to take reasonable steps to ensure that young people could not illegally purchase and receive Lizard Juice's addictive and harmful products.

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

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

91. 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.

92. 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 in any advertisement images resembling products that are typically marketed to children, or from engaging in any marketing strategy or campaign which appeals to children, including but not limited to using advertising which mimics the appearance, flavor profile, or slogan of a product which is typically marketed to children;

C. Temporarily and permanently enjoin Defendant from making any claim regarding the health effects of vaping or representing vaping as a smoking cessation tool;

D. 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.

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

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

Dated June 4, 2020.

Respectfully Submitted,

ASHLEY MOODY
Attorney General of the State of Florida

/s/ Patrick Crotty

Patrick Crotty
Florida Bar # 108541
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
3507 E. Frontage Road, Suite 325
Tampa, FL 33607
Phone: 813-287-7950
Fax: 813-281-5515
Patrick.Crotty@myfloridalegal.com

Anthony S. Bradlow
Florida Bar # 104904
Assistant Attorney General
Office of the Florida Attorney General
Consumer Protection Division
3507 E. Frontage Road, Suite 325

Tampa, FL 33607
Tel: 813-287-7950
Fax: 813-281-5515
Anthony.Bradlow@myfloridalegal.com