VAPOR TECHNOLOGY ASSOCIATION

FROM THE TRENCHES: VTA UPDATE

What a Week!

May 4, 2018

E-CIGARETTE SUMMIT - WASHINGTON, D.C.

On Monday, April 30th, 2018, public health experts from around the world gathered in Washington DC for the E-Cigarette Summit. Both the substance and the tone of this year's conference presented a significantly improved view of vapor products. Public health experts and academicians discussed the current state of science as it relates to both the efficacy and safety of vapor products. What was remarkable was a consistent strain about the significance and importance of vapor products in reducing cigarette smoking as well as in supporting general principles of harm reduction. Here are just three of many highlights from the conference:

First, Dr. Nancy Rigotti - Director of Tobacco Research & Treatment Center at Massachusetts General, Professor of Medicine at Harvard Medical School, and one of the principal architects of the National Academy of Science Engineering and Medicine (NASEM) 2018 report on e-cigarettes - stated that while concerned about youth vaping initiation, **the "ecological evidence" of a continuing and rapid decline in youth smoking makes it, "hard to say there is a gateway to smoking."** This is a point that VTA made in its presentation to Commissioner Gottlieb and Director Zeller in January of 2018, and it was refreshing to hear the same explanation come out of the mouth of a United States Public Health leader.

The National Academies of SCIENCES ENGINEERING MEDICINE

Second, Clive Bates, Director of Counterfactual Consulting, offered another clearly-articulated and impassioned perspective on the importance of calming what he has referred to as the "moral panic" about vaping. Mr. Bates highlighted the intellectual and scientific inadequacies behind anyone suggesting that vapor products or their flavors should be banned. In addition, Mr. Bates questioned whether the media and public health groups in the United States have got it all wrong. Rather than promoting and stirring the hysteria related to one particular product, JUUL, he reminded the audience (which included FDA, American Cancer Society, and Campaign for Tobacco Free Kids) to focus on the fact that an independent vapor company has dramatically altered the landscape for combustible cigarettes at the retail level. Mr. Bates asked: "How does the FDA know that JUUL is not driving cigarettes out of schools all together? How does the FDA know that it is not sabotaging a public health success story?"

Third, Director Mitch Zeller of the FDA Center for Tobacco Products laid out FDA's plan and strategy for reducing nicotine dependence and moving smokers to lower risk alternatives. Again recognizing that nicotine is not the culprit, he expressed concern that 60 to 70% of the public have "profound misperceptions of nicotine safety." Of course, Director Zeller also foreshadowed the FDA's additional enforcement actions against companies who are marketing their products in ways that FDA claims violate both the Tobacco Control Act and Federal Trade Commission regulations.

FDA ACTS TO CURB YOUTH MARKETING!

On Tuesday, May 1, 2018, the FDA announced that it and the Federal Trade Commission had jointly issued warning letters to 13 companies covering 8 specific products. The FDA claims these products are misbranded under the Food, Drug and Cosmetic Act, while the FTC claims they violate regulations governing unfair or deceptive marketing. Specifically, they cite the fact that it is the "labeling and/or advertising that cause them to imitate food products, particularly ones that are marketed toward, and/or appealing to, children." As importantly, FDA is taking the position that such marketing may drive children to consume the product which, of course, is neither intended nor safe. Though it has been covered broadly in the media, it is important that you review the FDA's statement and warning letters yourself, which you can do by clicking here.

Those companies will be required to respond to FDA/FTC within 15 days to either (a) explain why FDA/FTC's claims of violation are not a violation; or (b) describe the "corrective actions, including the dates on which you discontinued the violative labeling, advertising, sale, and/or distribution of these tobacco products and your plan for maintaining compliance with the FD&C Act."

WAKE-UP CALL? Not really.

Certainly, for some companies this was a wake-up call. But, it really shouldn't have been any surprise at all. The signs have been everywhere! The FDA's actions and statements this week only highlight the core issue that VTA and many in the industry have been warning about for some time. Numerous industry leaders and legions of consumers have been calling out companies with questionable marketing practices on social media and drawing attention to the negative light that those companies shine on the rest of the industry.

WHERE WE'VE BEEN ON THE MARKETING ISSUE

For its part, VTA has been providing detailed guidance and leadership on the issue of proper marketing for more than one year. **Let's briefly rewind.**

March 3, 2017 - New York City, NY - VAPEVENT NYC
VTA Board Member Chris Howard first presented on the importance of proper marketing and

described the importance of companies adopting best practices for advertising and marketing, including practices that ensure products are NOT being marketed toward youth.

July 9, 2017 - Washington, D.C. - VAPE & THE FDA 2

VTA highlighted the issue at its Annual Conference in Washington, D.C. Mr. Howard made a powerful presentation called "Avoiding Marketing and Selling ENDS Products to Youth," citing the importance of how our industry's opponents are using the issue to attack us and providing specific guidance on appropriate marketing strategies.

December 7, 2017 - Rosemont, IL - VAPOR GAME PLAN

At its annual meeting for state legislative and state vapor association development, VTA rolled out the **VTA Marketing Standards for Membership**. VTA's Marketing Standards were carefully designed to provide specific guideposts for responsible industry players to follow. Of the multiple standards that VTA announced, one in particular stands out because it precisely anticipated the approach that FDA/FTC has now taken.

VTA Marketing Standard 3:
No Improper Use of Trademarks or Trade Dress
"VTA Members should have a zero tolerance policy for Vapor Products that use in commerce names, imagery or designs that intentionally **mimic, play upon, invoke or otherwise infringe upon existing trademarks, trade names or trade dress, *particularly if they are associated with products that are or were primarily marketed to Minors***."

Compare this language to that used by FDA in the warning letters issued this week.


VTA
VAPOR TECHNOLOGY ASSOCIATION

MARKETING STANDARDS FOR MEMBERSHIP

The Vapor Technology Association (VTA) is a leading national trade association in the electronic cigarette and vapor product industry. VTA represents the manufacturers, wholesalers, distributors, vape shop owners, small business owners and entrepreneurs who have developed innovative and quality vapor products, providing adult consumers with a safer alternative to traditional combustible products. VTA and its members are leaders in the vapor community, promoting small businesses and job growth, responsible public policies and regulations, and a high standard of safety within the industry.

To continue to promote high standards, VTA's Board of Directors has developed and adopted these *Marketing Standards for Membership*.

Released January 2018

January 17, 2018 - National Newsletter - VTA Announces Marketing Standards

VTA announced and published its final version of the VTA Marketing Standards for Membership.

January 19, 2018 - Silver Spring, MD - VTA Meeting with FDA Commissioner Gottlieb

During its meeting with FDA Commissioner Scott Gottlieb and CTP Director Mitch Zeller, VTA presented the VTA Marketing Standards for Membership and emphasized to FDA that it needed to focus its actions on the marketing of e-liquids, not on flavors.

April 5, 2018 - National Webinar - DEEM THOSE LABELS!

Mr. Howard presented a widely attended educational webinar on FDA regulations that relate to the new labeling and packaging requirements, providing specific guidance on compliance. Mr. Howard also took the opportunity to emphasize how said requirements impact advertising and again warned about the importance of avoiding marketing to youth.

FROM THE TRENCHES **May 4, 2018**

HOW WE ARE LEADING THE INDUSTRY

The industry can and should expect that more warning letters covering even more products will be issued to more companies. FDA has clearly indicated that this was only the first round. What this means for your company depends on the products that you are selling and/or marketing.

VTA is again calling upon all of its member companies to adopt the **VTA Marketing Standards for Membership** and to ensure that their marketing and selling practices are conducted in accordance with those practices. These standards should be adopted by all companies within the distribution chain as we all have a responsibility to ensure that from manufacture to distribution to retail, we are not putting a target on our backs and undermining the enormous work that we are doing to convince regulators that this industry can and will act in a responsible manner.

May 16, 2018 - National Discussion on FDA Marketing Actions & VTA Standards

To that end, VTA is convening a national discussion and calling all companies to participate in a national webinar on May 16, 2018, when we will:

- Review FDA's actions and the claims they are asserting,
- Offer strategies for dealing with product removals (whether you are a retailer, wholesaler or manufacturer),
- Examine the VTA Marketing Standards for Membership and what your company can do to address this core concern, and
- Offer more detailed answers to the specific questions posed during our last Deem Those Labels! Webinar, including more detailed guidance on small packaging compliance.

We encourage you to sign up today by clicking here or on the image above. We also encourage you to send this email to anyone and everyone in the industry that you know. Because this discussion is too important, we are not limiting it to VTA members, but are offering our thoughts to the entire industry.

May 22, 2018 - VTA Southern California Flavor Strategy Meeting

Any company interested in joining our industry-wide defense of flavors should attend our upcoming meeting in Southern California on May 22, 2018. Not only will we discuss the strategy that we are implementing for responding to the FDA's flavor ANPRM, but we also will share what you can do participate in VTA's Fight to Save Flavors. Please e-mail us at SaveFlavors@vaportechnology.org if you are interested. More details on the meeting will follow but you can also review more of our strategy by checking out our article in this month's **Vaping Advocate**.

June 26-27, 2018 - VAPE & THE FDA 3

VTA's National Conference this year will be held on June 26-27, 2018, in Washington, D.C. This is a must-attend national conference. On Day 1, you will hear professional presentations that will cover all of the critical topics confronting our industry including marketing, flavors, battery safety, standards, state association strategies and much much more. On Day 2, we will take everyone to Capitol Hill to meet with their members of congress.

Mark your calendars and buckle up. It is going to be a busy couple months.

Thank you!

Tony Abboud
Executive Director
Vapor Technology Association

Don’t forget to follow us on Facebook and Twitter @VaporTechAssoc!