

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

THE PEOPLE OF THE STATE OF  
ILLINOIS,

Plaintiff,

v.

CHICAGO MERCHANDIZE COMPANY, an  
Illinois Corporation; FUMA VAPOR INC., an  
Illinois Corporation; and IONE WIRELESS,  
INC., an Illinois Corporation,

Defendants.

Case No. 2025CH00422

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, by and through KWAME RAOUL, Attorney General of the State of Illinois, brings this action against Defendants, CHICAGO MERCHANDIZE COMPANY, FUMA VAPOR INC., and IONE WIRELESS, INC. for violations of the Preventing Youth Vaping Act, 410 ILCS 86/1 *et seq.*, and the Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”), 815 ILCS 505/1 *et seq.*, and states as follows:

**I. NATURE OF THE ACTION**

1. Defendants are a group of Illinois-based corporations held under common ownership that act together as part of a common enterprise to market and sell “Posh,” a brand of electronic cigarettes (or “e-cigarettes”)<sup>1</sup> that has emerged as one of the most popular and widely sold in the State of Illinois.

---

<sup>1</sup> “Electronic cigarette[s],” is defined under Illinois law as: “(1) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or (3) any solution or substance, whether or not it contains nicotine intended for use in the device [including] any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, any components or parts that can be used to build the product or device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately.” 720 ILCS 675/1(a-9); 720 ILCS 678/2; 410 ILCS 86/5 (2023).

2. Defendants import their e-cigarettes from China. Defendants then market, distribute, offer for sale, and sell these products to retailers and distributors in Illinois and beyond, including through their website, nowposh.com.

3. Due to their ease-of-use, relatively low cost, and fruit and candy-inspired flavor offerings, Posh devices are uniquely alluring to persons under 21 years of age, and, thus, effective tools for creating new nicotine users.

4. In addition to these built-in product attributes, Defendants' marketing strategy—which involves the utilization of colorful and playful imagery, the dissemination of marketing materials and videos via social media, the use of influencers (often attractive young women), and references to and incorporation of video games—further increases the allure of these products for underage users.

5. To date, not a single Posh product has been granted market authorization by the United States Food and Drug Administration (FDA).

6. Even though these products are unauthorized for consumption by federal regulatory authorities, and cannot be legally sold in Illinois, Defendants have openly flouted these restrictions and continue to sell these unlawful products in this State.

7. Defendants have capitalized off and continued to fuel the youth vaping epidemic, which has taken hold in Illinois and beyond, and has plunged a new generation into the depths of nicotine addiction, reversing decades of progress on this important public health issue.

8. By selling and marketing this unauthorized product in a way that appeals to youth, Defendants are violating the law.

**II. PUBLIC INTEREST**

9. Believing this action to be in the public interest of the citizens of the State of Illinois, Plaintiff, the People of the State of Illinois, by and through Kwame Raoul, Attorney General of the State of Illinois, brings this lawsuit pursuant to the Preventing Youth Vaping Act, 410 ILCS 86/15, 25(d), and the Consumer Fraud Act, 815 ILCS 505/7(a).

**III. JURISDICTION AND VENUE**

10. This action is brought for and on behalf of the People of the State of Illinois, by their Attorney General, Kwame Raoul, pursuant to the authority vested in him in section 35(c) of the Preventing Youth Vaping Act, 410 ILCS 86/35(c), and section 7(a) of the Consumer Fraud Act, 815 ILCS 505/7(a).

11. Venue for this action properly lies in Cook County, Illinois pursuant to Section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, as some of the activities complained of herein out of which this action arose occurred in Cook County.

**IV. PARTIES**

12. Plaintiff, the People of the State of Illinois, by Kwame Raoul, the Attorney General of the State of Illinois and the chief legal officer of this State under the Illinois Constitution, Ill. Const. Art. V § 15, is charged with enforcement of the Consumer Fraud Act.

13. Defendant, Chicago Merchandize Company is an Illinois corporation with its principal address at 860 East Devon Avenue, Bensenville, Illinois. It was incorporated on August 21, 2013.

14. Defendant, Fuma Vapor Inc. is an Illinois corporation with its principal address at 1780 Maple Street, Northfield, Illinois. It was incorporated on September 12, 2018.

15. Defendant, Ione Wireless, Inc. is an Illinois corporation with its principal address at 1000 Industrial Drive, Bensenville, Illinois. It was incorporated on February 17, 2017.

16. According to the publicly accessible database maintained by the United States Patent and Trademark Office, Defendant Ione Wireless, Inc. owns the trademarks for numerous popular Posh products.<sup>2</sup>

17. Mohammed Amir Siddique is the President, Secretary, and Director of all three Defendants. Mr. Siddique resides at 221 Hickory Court, Northbrook, Illinois.

18. Defendants acted as part of a common enterprise to carry out the conduct described in this Complaint.

19. For the purposes of this Complaint, any references to the acts and practices of Defendants shall include any acts and practices of Defendants' officers, members, owners, directors, representatives, employees, and/or other agents, including Mr. Siddique.

## V. APPLICABLE STATUTES

20. Section 15 of the Preventing Youth Vaping Act provides, in relevant part:

(a) It is unlawful for a person to do any of the following:

\*\*\*

(4) To adulterate an electronic cigarette for sale in this State. An electronic cigarette is adulterated if:

(C) it is required by 21 U.S.C. 387j(a) to have premarket review and does not have an order in effect under 21 U.S.C. 387j(c)(1)(A)(i) or is in violation of an order under 21 U.S.C. 387j(c)(1)(A).

Electronic cigarettes first sold prior to August 8, 2016 and for which a premarket tobacco product application was submitted to the U.S. Food and Drug Administration by

---

<sup>2</sup> See, e.g., P POSH PLUS BY FUMA, Registration No. 6442197; P POSH PLUS, Registration No. 6778910; P POSH, Registration No. 7189217; P POSH MAX, Registration No. 7189610. See also U.S. Trademark Application Serial No. 98216424 (filed Oct. 10, 2023); U.S. Trademark Application Serial No. 98812609 (filed Oct. 21, 2024).

September 9, 2020 shall not be deemed to be adulterated under subparagraph (C) of paragraph (4) of this subsection.

410 ILCS 86/15

21. Section 25(d) of the Preventing Youth Vaping Act provides:

A manufacturer, distributor, or retailer may not advertise, market, or promote an electronic cigarette in a manner that:

- (1) encourages persons under 21 years of age to use an electronic cigarette;
- (2) is attractive to persons under 21 years of age, including, but not limited to, inclusion of the following:

(A) cartoons;

(B) an image, character, or phrase that is similar to one popularly used to advertise to children; or

(C) a video game, movie, video, or animated television show known to appeal primarily to persons under 21 years of age[.]

410 ILCS 86/25(d)

22. Section 35(c) of the Preventing Youth Vaping Act provides:

The Attorney General may enforce violations of Section 15 or 25 of this Act as an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

410 ILCS 86/35(c)

23. Section 2 of the Consumer Fraud Act provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon that concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal

Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.

815 ILCS 505/2

**VI. STATUTORY DEFINITIONS**

24. Section 5 of the Preventing Youth Vaping Act defines the following key terms:

“Consumer” means an individual who acquires or seeks to acquire electronic cigarettes for personal use.

“Distributor” means a person who sells, offers for sale, or transfers any tobacco, electronic cigarette, or tobacco product for resale and not for use or consumption. “Distributor” includes a distributor as defined in Section 1 of the Cigarette Tax Act, Section 1 of the Cigarette Use Tax Act, and Section 10-5 of the Tobacco Products Tax Act of 1995.

\*\*\*

“Manufacturer” means any person, wherever resident or located, who manufactures and sells tobacco products. “Manufacturer” does not include a person who makes, manufactures, or fabricates tobacco products as a part of a correctional industries program for sale to persons incarcerated in penal institutions or resident patients of a State-operated mental health facility.

“Person” means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for-profit or not-for-profit activities.

“Retailer” means a person who engages in this State in the sale of or offers for sale electronic cigarettes for use or consumption and not for resale in any form. “Retailer” includes a retailer as defined in Section 1 of the Cigarette Tax Act and Section 10-5 of the Tobacco Products Tax Act of 1995.

410 ILCS 86/5.

25. Subsection 1(f) of the Consumer Fraud Act defines “trade” and “commerce” as follows:

The terms ‘trade’ and ‘commerce’ mean the advertising, offering for sale, sale, or distribution of any service and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value

wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

815 ILCS 505/1(f).

26. As Defendants are “person[s]” as well as “distributor[s]” and/or “manufacturer[s]” of electronic cigarettes, as those terms are defined in the Preventing Youth Vaping Act, 410 ILCS 86/5, they are subject to the statute’s enforcement powers.

27. Defendants are also subject to the enforcement powers of the Consumer Fraud Act, as, at all times relevant to the Complaint, they engaged in trade and commerce in the State of Illinois by advertising, offering for sale, and selling Posh products in this State.

## VII. BACKGROUND

### *A. Tobacco Use and the Targeting of Youth*

28. In what is considered one of the most successful public health initiatives in history, aggressive tobacco control efforts in the latter half of the twentieth century resulted in major declines in smoking, as the percentage of Americans who smoke dropped from 42% in 1964 to 18% in 2012.<sup>3</sup>

29. Knowing that around 90% of adult smokers developed the habit in their teens,<sup>4</sup> many of these enforcement efforts focused specifically on the issue of advertising to youth, with

---

<sup>3</sup> OFFICE OF THE SURGEON GENERAL (“OSG”), U.S. DEP’T OF HEALTH & HUMAN SERVS. (“HHS”), THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL, Executive Summary 1-2 (2014), <https://www.hhs.gov/sites/default/files/consequences-smoking-exec-summary.pdf> (last visited Nov. 20, 2024).

<sup>4</sup> U.S. Food & Drug Admin. (“FDA”), *Youth and Tobacco*, FDA.GOV, <https://www.fda.gov/tobacco-products/public-health-education/youth-and-tobacco> (last visited Nov. 20, 2024).

significant results: the percentage of high school teenagers who reported currently smoking combustible cigarettes dropped from 36.4% in 1997<sup>5</sup> to just 5% in 2017.<sup>6</sup>

30. The emergence of electronic cigarettes, or “e-cigarettes,” completely derailed this accomplishment.

***B. What are e-cigarettes?***

31. E-cigarettes commonly have three main components: 1) a battery, 2) a heating element, and 3) a place to hold a liquid.<sup>7</sup> E-cigarettes come in a variety of shapes and sizes and the different designs that evolved over time are sometimes categorized by “generation.”

32. Traditionally, e-cigarettes work by heating a liquid (or “e-juice”) to produce an aerosol that is then puffed or inhaled by the user from the device.<sup>8</sup> Using an e-cigarette is sometimes referred to as “vaping.”

33. The liquid used with electronic cigarettes commonly contains nicotine, flavorings, and other chemicals which help create the aerosol when heated.<sup>9</sup> E-cigarettes are manufactured in tobacco, mint, menthol and a variety of other flavors, including a plethora of candy, dessert, and fruit flavors.

---

<sup>5</sup> Ctrs. for Disease Control & Prevention (“CDC”), HHS, *Trends in Cigarette Smoking Among High School Students—U.S., 1991-2001*, CDC.GOV, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5119a1.htm> (last visited Nov. 20, 2024).

<sup>6</sup> Teresa W. Wang et al., *Tobacco Product Use Among Adults — United States, 2017*, 67 MORBIDITY AND MORTALITY WEEKLY REPORT 1225–32 (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6744a2-H.pdf> (last visited Nov. 20, 2024).

<sup>7</sup> CDC, *About E-Cigarettes (Vapes)*, CDC.GOV, [https://www.cdc.gov/tobacco/e-cigarettes/about.html?CDC\\_AAref\\_Val=https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/about-e-cigarettes.html](https://www.cdc.gov/tobacco/e-cigarettes/about.html?CDC_AAref_Val=https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html) (last visited Nov. 20, 2024).

<sup>8</sup> *Id.*; Consumer Advocates for Smoke Free Alternatives Assoc., *Vaping & Electronic Cigarettes: What is Vaping?* CASSA.ORG, <https://casaa.org/education/vaping/> (last visited Nov. 20, 2024).

<sup>9</sup> *Supra*, note 7.



34. For the most part, e-cigarettes were first introduced into the U.S. market between the mid-2000's and early 2010's.<sup>10</sup>

35. These products quickly became popular among high schoolers and by 2014, the most popular tobacco product among youth was no longer combustible cigarettes, but e-cigarettes.

### ***C. The FDA's Deeming Rule***

36. In 2016, the FDA issued its "Deeming Rule," exercising authority under the federal Tobacco Control Act to declare e-cigarettes "tobacco products" requiring marketing authorization by the FDA.

37. Under federal law, no new tobacco product—including e-cigarettes containing synthetic nicotine or nicotine derived from tobacco—is lawful for sale in the United States without first having received pre-market authorization by the FDA. *See* 21 U.S.C. § 387j. Pursuant to its authority under the Deeming Rule, FDA now requires all e-cigarette manufacturers and importers to seek marketing authorization for their products by submitting a premarket tobacco product application or PMTA.

38. Many e-cigarette manufacturers have complied with this regulatory process, submitting detailed scientific and other product information to the FDA and receiving marketing authorization under the Tobacco Control Act. But many, many more e-cigarette manufacturers have not.

39. As part of this process, FDA announced that manufacturers of non-tobacco nicotine products had to submit premarket applications by May 2022.<sup>11</sup> FDA now maintains a web page

---

<sup>10</sup> HHS, E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL, Chapter 1, 10 (2016), [https://www.ncbi.nlm.nih.gov/books/NBK538680/pdf/Bookshelf\\_NBK538680.pdf](https://www.ncbi.nlm.nih.gov/books/NBK538680/pdf/Bookshelf_NBK538680.pdf) (last visited Nov. 20, 2024).

<sup>11</sup> FDA, *Requirements for Products Made with Non-Tobacco Nicotine Take Effect April 14*, FDA.GOV (Apr. 13, 2022), <https://www.fda.gov/tobacco-products/ctp-newsroom/requirements-products-made-non-tobacco-nicotine-take-effect-april-14> (last visited Nov. 20, 2024).

listing all e-cigarette products that have applied for and received such marketing authorization.<sup>12</sup>

As the agency explains, and has repeatedly stated, “these [listed products] are *the only* e-cigarette products that currently may be lawfully marketed and sold in the United States, and those manufacturing, importing, selling, or distributing e-cigarettes without the required premarket authorization risk enforcement.” (emphasis added).<sup>13</sup>

40. Not a single Posh product appears on the FDA’s list of authorized e-cigarette products.

#### ***D. Disposable Vapes***

41. Defendants exclusively sell one type of e-cigarette: disposables vapes.

42. In contrast to e-cigarettes that users can reuse and refill with new e-liquid when their reservoirs run dry, disposable vapes are designed to be used once and then thrown away.<sup>14</sup>

43. Disposable vapes are typically flavored, meaning the nicotine-containing e-liquid that is vaporized and inhaled by the user comes in a variety of non-tobacco “flavors”—often candy, fruit, or dessert-themed—that make the products more appealing to users that might not be enticed by a more traditional tobacco flavor.

---

<sup>12</sup> FDA, *Searchable Tobacco Products Database*, Category: “E-Cigarette,” Submission Type-Marketing Authority: “PMTA-Marketing Granted Order.” ACCESSDATA.FDA.GOV, <https://www.accessdata.fda.gov/scripts/searchtobacco/> (last visited Nov. 21, 2024).

<sup>13</sup> FDA, *FDA Authorizes Marketing of Vuse Alto Tobacco-Flavored E-Cigarette Pods and Accompanying Power Unit*, FDA.GOV (July 18, 2024), <https://www.fda.gov/tobacco-products/ctp-newsroom/fda-authorizes-marketing-vuse-alto-tobacco-flavored-e-cigarette-pods-and-accompanying-power-unit> (last visited Nov. 24, 2024).

<sup>14</sup> The single use nature of disposable vapes, and the fact that they are almost impossible to recycle due to their battery-powered components, generate significant environmental externalities. *See, e.g.*, Jaime Ducharme, *The Overlooked Environmental Impact of Vaping*, TIME MAGAZINE (July 1, 2023), <https://time.com/6293772/disposable-vapes-plastic-waste/> (last visited Nov. 20, 2024); Matthew Perone, *Communities can’t recycle or trash disposable e-cigarettes. So what happens to them?* ASSOCIATED PRESS (Oct. 19, 2023), <https://apnews.com/article/vaping-ecigarettes-waste-environment-disposable-pollution-3d19dce9693ce78dd244729f524df02a> (last visited Nov. 20, 2024).

44. The e-liquids found in disposable vapes typically contain much higher concentrations of nicotine than those found in traditional, combustible cigarettes.<sup>15</sup>

45. According to data from the CDC Foundation, sales of disposable vapes in the United States increased by more than 60% in recent years, from 11.2 million units sold in 2020 to 18 million in 2023.<sup>16</sup>

46. Researchers have cautioned that these “cheap, high-capacity disposable e-cigarettes may be an appealing entry point for non-tobacco users, experimenters and light users.”<sup>17</sup>

47. The evidence appears to bear these researchers’ warnings out. These products are wildly popular with youth, and the number of unique disposable vapes on the market has skyrocketed in recent years, increasing by 1500% from early 2020 to June 2023.<sup>18</sup>

48. Nationwide, 1.63 million students—including over 400,000 *middle school students*—currently use e-cigarettes.<sup>19</sup> Within that population, 87.6% use flavored e-cigarettes.<sup>20</sup>

49. Survey data further suggests that 55.6% of youth users prefer disposables over other types of e-cigarettes.<sup>21</sup>

---

<sup>15</sup> Fatma Romeh M Ali, et al., *Trends in US E-cigarette Sales and Prices by Nicotine Strength, Overall and by Product and Flavor Type, 2017–2022*, 25 NICOTINE & TOBACCO RESEARCH 1052 (May, 2023), <https://doi.org/10.1093/ntr/ntac284> (last visited Nov. 20, 2024).

<sup>16</sup> Louise Matsakis, *The US is Being Flooded by Chinese Vapes*, WIRED (June 2, 2024), <https://www.wired.com/story/the-us-is-being-flooded-by-chinese-vapes/> (last visited Nov. 20, 2024).

<sup>17</sup> Megan C. Diaz, et al., *Bigger, stronger and cheaper: growth in e-cigarette market driven by disposable devices with more e-liquid, higher nicotine concentration and declining prices*, TOBACCO CONTROL (Aug. 3, 2023), <https://pubmed.ncbi.nlm.nih.gov/37536928/>.

early/2023/08/02/tc-2023-058033 (last visited Nov. 20, 2024); see also Xu Wang, et al., *Trends in Nicotine Strength in Electronic Cigarettes Sold in the United States by Flavor, Product Type, and Manufacturer, 2017–2022*, NICOTINE & TOBACCO RESEARCH (July 7, 2023), <https://pubmed.ncbi.nlm.nih.gov/36929029/> (last visited Nov. 20, 2024) (“High nicotine strength in flavored e-cigarette products may pose an increased risk for youth initiation and subsequent nicotine addiction.”).

<sup>18</sup> Matthew Perrone, *Thousands of Unauthorized Vapes are Pouring into the US Despite the FDA Crackdown on Fruity Flavors*, ASSOCIATED PRESS (June 26, 2023), <https://apnews.com/article/fda-vapes-vaping-elf-bar-juul-80b2680a874d89b8d651c5e909e39e8f> (last visited Nov. 20, 2024).

<sup>19</sup> CDC, *E-Cigarette Use Among Youth*, CDC.GOV (Oct. 17, 2024), <https://www.cdc.gov/tobacco/e-cigarettes/youth.html> (last visited Nov. 20, 2024).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

50. The vast majority of disposable vapes sold in the United States today, including Posh devices, are manufactured in China, a country whose e-cigarette export industry is now valued at \$28 billion.<sup>22</sup> Accordingly, U.S. regulatory authorities have little knowledge as to how these devices are actually made and whether they are ultimately safe for human consumption.

51. The vast majority of disposable vapes are also presumptively illegal, as they have not been approved for sale by the FDA. The presumed illegality of these products, however, has done little to forestall the explosive growth of the disposable vape industry, which continues to expand at a rapid pace.

### **VIII. DEFENDANTS' UNLAWFUL PRACTICES**

#### *A. Posh products are “adulterated” under Illinois law and their sale is therefore in violation of Section 15(a)(4)(C) of the Preventing Youth Vaping Act*

52. Defendants are responsible for marketing and selling the Posh brand of e-cigarettes which, in recent years, has emerged as one of the bestselling disposable vape brands in the State of Illinois.

53. Posh products come in several different models. Models currently being sold include the Posh Plus 1500, Posh Plus XL, Posh Plus 3000, Posh Pro 5500, Posh Xtron 10000, Posh Plus 2.0 20000, and the recently launched Posh Pro Max.

54. Each model comes in numerous flavors. The Posh Plus 1500, for example, comes in twenty-five flavors including: “Cherry Lemon Ice,” “Orange Peach Pineapple Ice,” “Gummy Bear Ice” and “Grape Soda.”<sup>23</sup>

55. All Posh models are considered “new tobacco products” under federal law, as none were commercially marketed in the United States prior to 2007. *See* 21 U.S.C. § 387j(a)(1).

---

<sup>22</sup> *Supra*, note 16.

<sup>23</sup> NOWPOSH.COM, *Posh Plus 1500 Puffs*, <https://nowposh.com/posh-plus-1500-puffs/> (last visited Oct. 2024).

56. As a seller of “new tobacco products,” Defendants are required to obtain a marketing order under 21 U.S.C. § 387j(c)(1)(A)(i-ii) before introducing their products into interstate commerce.

57. There is no indication that Defendants have obtained such marketing orders for any of their products.

58. As explained above, *supra* paras. 39-40, the FDA maintains a publicly available list of all “new tobacco products” that have obtained such marketing authorization orders.

59. Not a single Posh product is on that list.

60. In fact, one Defendant, Fuma Vapor Inc., was issued a marketing *denial* order on September 10, 2021.<sup>24</sup>

61. By selling e-cigarette products that lack a marketing authorization order from the FDA, Defendants are violating Illinois state law, specifically section 15(a)(4)(C) of the Preventing Youth Vaping Act, under which it is unlawful to “adulterate an electronic cigarette for sale” in Illinois. 410 ILCS 86/15(a)(4)(C).

62. An e-cigarette is considered “adulterated” under this provision if it “is required by 21 U.S.C. 387j(a) to have premarket review and does not have an order in effect under 21 U.S.C. 387j(c)(1)(A)(i) or is in violation of an order under 21 U.S.C. 387j(c)(1)(A).” 410 ILCS 86/15(a)(4)(C).

63. As all Posh products are required to have premarket review by virtue of their status as “new tobacco products,” and none have a marketing authorization order in effect, they are adulterated under Illinois law and cannot be legally sold in this State.

---

<sup>24</sup> See FDA, *Tobacco Products Marketing Orders, Marketing Denial Orders (MDO)*, FDA.GOV, <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders#Marketing%20Denial> (last visited Nov. 20, 2024).

64. The only exception found in the Preventing Youth Vaping Act is for e-cigarettes that were “first sold prior to August 8, 2016” and for which there is a pending PMTA that was submitted to the FDA by September 9, 2020. If an e-cigarette product meets these criteria, it will not be considered “adulterated” under Illinois law. 410 ILCS 86/15(a)(4).

65. Defendants introduced many and/or all of their Posh products after August 8, 2016. In addition, no Posh product appears on the publicly-available list of products for which PMTAs were submitted to FDA by September 9, 2020.<sup>25</sup> Accordingly, these products do not fall within the exception to the “adulterated” definition.

66. Defendants have sold their disposable vapes in mass in Illinois in flagrant violation of Section 15(a)(4)(C) of the Preventing Youth Vaping Act.

***B. In violation of Section 25(d)(1) of the Preventing Youth Vaping Act, Defendants advertise, market, and promote e-cigarettes in a manner that encourages persons under 21 years of age to use their products***

***i. Product Design***

67. Defendants’ products, which are available in a plethora of youth-friendly flavors and colorful designs, are specifically designed to appeal to young users who lack experience with traditional cigarettes.

68. Early iterations of Posh closely emulated the look of the Juul device, the first blockbuster e-cigarette that many blame for catalyzing the youth vaping epidemic.<sup>26</sup>

69. In 2018, as regulatory pressure increased on Juul—which at the time held more than 70% of the e-cigarette market share in the United States—Juul announced that it would no

---

<sup>25</sup> See FDA, *Deemed New Tobacco Product Applications List, Deemed New Tobacco Products with Timely Applications*, FDA.GOV, <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/deemed-new-tobacco-product-applications-lists#list%20of%20deemed> (last visited Dec. 13, 2024).

<sup>26</sup> See generally, Jaime Ducharme, *How Juul Hooked Kids and Ignited A Public Health Crisis*, TIME MAGAZINE (Sept. 19, 2019), <https://time.com/5680988/juul-vaping-health-crisis/> (last visited Nov. 20, 2024).

longer sell most of its flavored e-cigarette pods in stores.<sup>27</sup> In 2019, it similarly ceased online sales of its most popular flavored pods.<sup>28</sup>

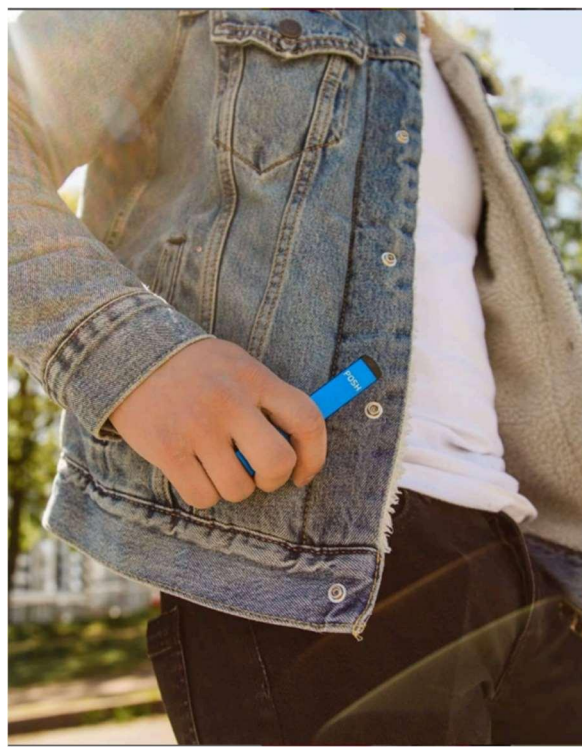
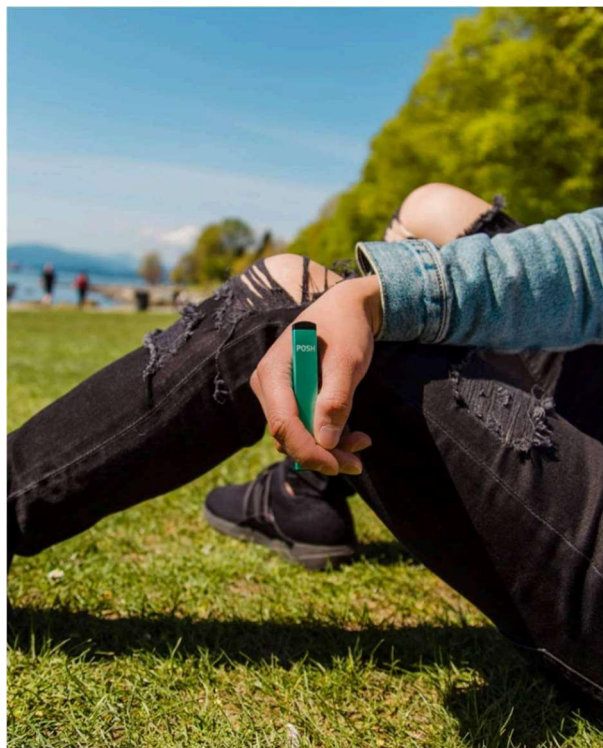
70. Juul’s retreat from selling flavors created a vacuum that companies like Defendants quickly sought to capitalize on.

71. Beginning in the summer of 2019, Defendants began to promote a disposable e-cigarette product that looked strikingly similar to a Juul and came in many flavor options.

*Image of a Juul device:*

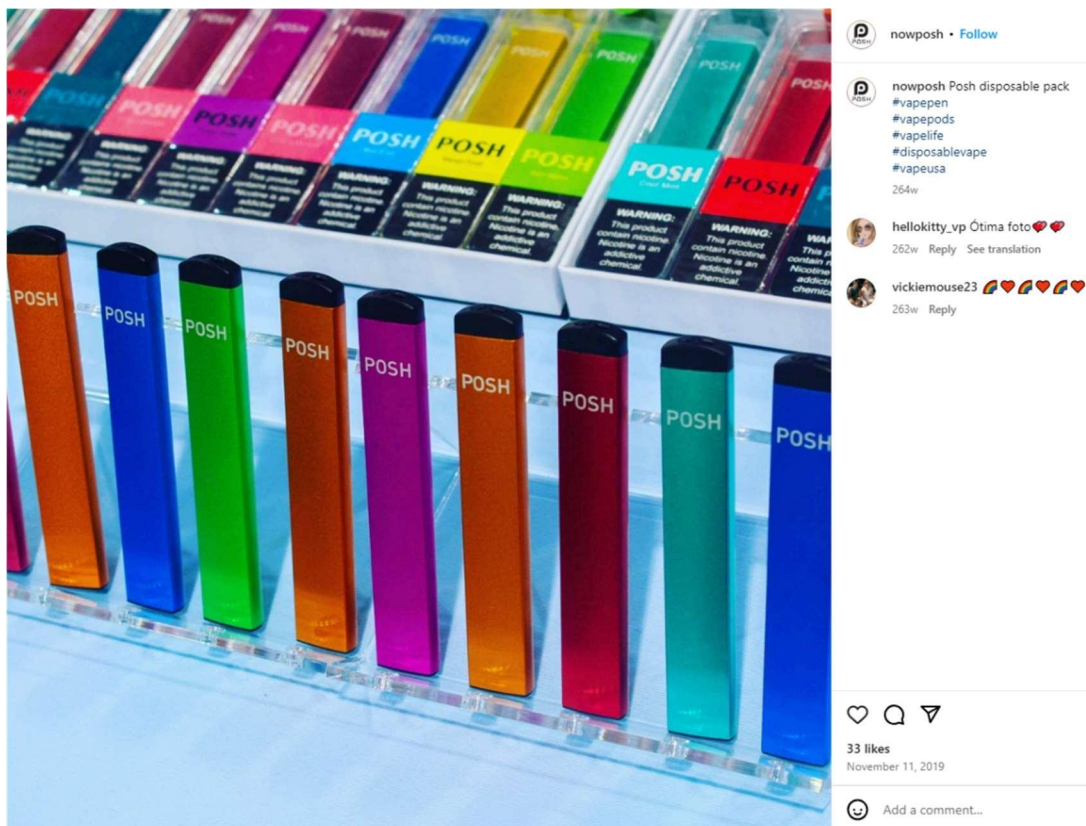


*Images from Defendants’ Instagram Promoting Juul-like product:*



<sup>27</sup> Sheila Kaplan and Jan Hoffman, *Juul Suspends Selling Most E-Cigarette Flavors in Stores*, N.Y. TIMES (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/health/juul-ecigarettes-vaping-teenagers.html> (last accessed Nov. 20, 2024).

<sup>28</sup> Press Release, Juul Labs, *Juul Labs Stops the Sale of Mint Juul Pods in the United States* (Nov. 7, 2019), <https://www.juullabs.com/juul-labs-stops-the-sale-of-mint-juulpods-in-the-united-states/> (last visited Nov. 20, 2024).



72. Defendants then moved on to develop and sell a host of other youth-appealing, flavored disposable vapes.

73. It is well established that the availability of flavors plays an important role in initiating youth usage of tobacco products.<sup>29</sup>

74. Defendants' currently available products come in a wide range of fruit, dessert, and candy flavors that tap into youth preferences.

75. The Posh Xtron, for example, comes in 25 flavors, including "Blue Razz Cotton Cloudz," which is described on nowposh.com as a "tangy taste of blue raspberry with the light,

<sup>29</sup> See, e.g., Robyn Landry, et al., *The Role of Flavors in Vaping Initiation and Satisfaction Among U.S. Adults*, 99 ADDICTION BEHAVIOR (December, 2019), <https://pubmed.ncbi.nlm.nih.gov/31437770/> (last visited Nov. 20, 2024); Bridget K. Ambrose, et al., *Research Letter: Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, JAMANETWORK.COM (Nov. 3, 2015), <https://jamanetwork.com/journals/jama/fullarticle/2464690> (last visited Nov. 20, 2024).



airy sweetness of cotton candy...[p]erfect for those who crave a playful and indulgent vaping experience that brings back memories of fun-filled days at the fair.” Other Xtron flavor options include “Blue Slurpee,” “Lemon Cola,” and “Mango Dragon Fruit Lemonade.”

76. Among the dozens of flavors offered by Defendants in various other Posh models are: “Ice Cream Cone,” “Jelly Berry,” “Cherry Cola Ice,” “Berry Blast,” “Blue Raspberry Ice,” “Rainbow,” “Strawnana,” “Cherry Lemon Ice,” “Watermelon,” and “Tropical Summer.”

77. Defendants also utilize colorful and attractive imagery in advertising the wide range of flavor options for their products.

78. Take, for example, the “Posh Plus,” the most basic Posh product on the market, which comes in over twenty different flavor options. The images below were taken from the section of nowposh.com promoting the Posh Plus 1500:



**Posh Plus 1500 Orange Peach  
Pineapple Ice - 10x1 -  
45ML/Box**

[Login to see price](#)



**Posh Plus 1500 Mango  
Strawberry Ice - 10x1 -  
45ML/Box**

[Login to see price](#)



**Posh Plus 1500 Grape Soda-  
10x1 - 45ML/Box**

[Login to see price](#)

79. In addition to the wide range of flavor options, youth users are also attracted to Defendants' products because of their engineered simplicity.

80. Indeed, Defendants actively promote how the "user-friendly" attributes of their products make them "perfect for beginners."

81. On the FAQ portion of their website, nowposh.com, Defendants state that the "user-friendly design" of their product offerings, and their "pre-charged setup" make their devices "incredibly easy for newcomers to enjoy."

82. As promised by Defendants, these devices are incredibly easy to use: the consumer need only open the box and start puffing.

83. The Posh Plus contains a pre-charged battery that is designed to last for the entire lifespan of the product, so users need not worry about charger cables or any additional components.

84. While the wide range of flavor options and the built-in simplicity help draw in young consumers, it is these products' high nicotine content and their relatively low price that keep these consumers coming back for more.

85. A Posh Plus, for example, which typically costs substantially less than a pack of combustible cigarettes, is designed to be puffed some 1500 times before the user exhausts the device's supply of e-juice and throws it away.

86. Each Posh Plus device (excluding the "zero nicotine" iterations), is preloaded with 45 mg of nicotine, roughly double the amount of nicotine found in an entire pack of traditional, combustible cigarettes.<sup>30</sup>

---

<sup>30</sup> Sarah Marsh, *How much nicotine is in a cigarette compared to a vape?* THE GUARDIAN (June 23, 2023), <https://www.theguardian.com/society/2023/jun/23/how-much-nicotine-is-in-a-cigarette-compared-to-a-vape> (last visited Nov. 20, 2024) (explaining that a typical pack of cigarettes contains up to 24 mg of nicotine).

87. Collectively, these product attributes—flavor options, ease of use, high nicotine content—make the Posh Plus, and more sophisticated Posh devices, uniquely alluring to young users.

88. By emphasizing these product attributes in their marketing and advertising, Defendants encourage persons under 21 years of age to use electronic cigarettes, in violation of section 25(d)(1) of the Preventing Youth Vaping Act. 410 ILCS 86/25(d)(1).

*ii. Social Media Marketing*

89. In addition to its website, nowposh.com, Defendants also rely on social media marketing to advertise Posh products, including via YouTube, X, Instagram, and Facebook.

90. Defendants are particularly active on Instagram, a social media platform that, according to a recent study from Pew Research, nearly half of U.S. teenagers ages 13-17 use at least once a day.<sup>31</sup>

91. Defendants' main website, nowposh.com, includes a simple age verification pop-up when users visit the site which directly links to the Posh Instagram account. The pop-up includes three prompts: "I am over 21," "Exit," or "Instagram."

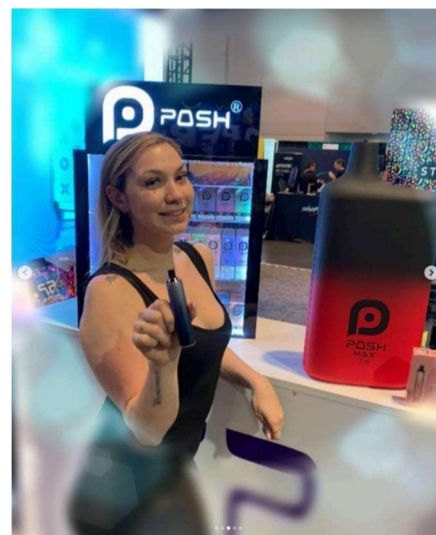
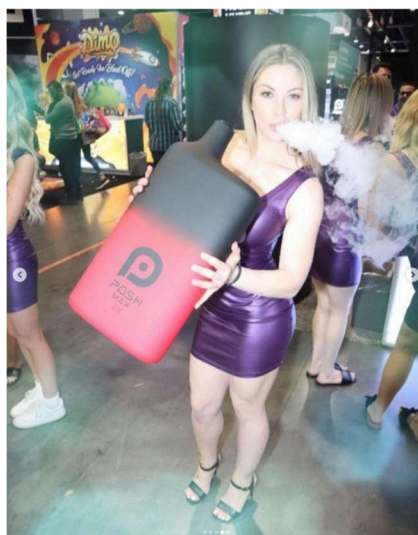


<sup>31</sup> See Mike Isaac and Natasha Singer, *Instagram, Facing Pressure Over Child Safety Online, Unveils Sweeping Changes*, N.Y. TIMES (Sept. 17, 2024), <https://www.nytimes.com/2024/09/17/technology/instagram-teens-safety-privacy-changes.html> (last visited Nov. 20, 2024).

92. This third option encourages individuals who are interested in the product but have not yet identified themselves as being over 21 to reroute themselves directly to Posh’s Instagram page.

93. Visitors to Defendants’ official Instagram account, @nowposh, are bombarded by bright, colorful promotional content.

94. In addition to countless posts highlighting specific Posh devices, the account also includes videos and photos of influencers and others (typically young, attractive women) excitedly using or promoting Defendants’ products.



95. The Posh Instagram feed also includes numerous advertisements containing youthful images of models using Posh products:



96. Defendants also include numerous and varied hashtags on their Instagram posts, encouraging the broader dissemination of their social media content. Defendants use non-Posh and non-vaping specific hashtags, for example “#TrendingNow,” “#ComingSoon,” “#fruity,” “#HappyHolidays,” and “#TrickOrTreat,” to comingle advertising with images related to these terms.

97. Defendants even promoted their Prom Noir disposable vape model using the hashtag “#prom,” which would comingle these ads with other content that would commonly use this hashtag, namely posts related to high school prom.

98. Though Defendants include a notice at the top of their Instagram page that reads: “Must be 21+ to follow!”, the account content is public and thus viewable by any Instagram user.

99. Defendants' social media activity encourages persons under 21 years of age to use electronic cigarettes, in violation of section 25(d)(1) of the Preventing Youth Vaping Act. 410 ILCS 86/25(d)(1).

***C. In violation of Section 25(d)(2) of the Preventing Youth Vaping Act, Defendants market their devices in a way that is attractive to persons under 21 years of age***

100. Several of Defendants' products tap into the popularity of video games and "gamer culture."

101. This is especially true with two specific Posh models: the Posh Xtron and the Posh Pro Max.

102. Both of these devices are so-called "smart vapes," meaning they include built-in, interactive LED displays that indicate to the user things like battery level and e-liquid quantity in real time.

103. Like the Posh Plus discussed above, these devices are disposable and are intended to be thrown away once the user exhausts the device's reservoir of e-liquid. Unlike the Posh Plus, however, the batteries in these "smart vapes" are rechargeable. They also hold significantly larger reservoirs of e-liquid.

104. The Posh Xtron can be puffed 10,000 times before running out of e-juice, and the Posh Pro Max can be puffed 30,000 times.

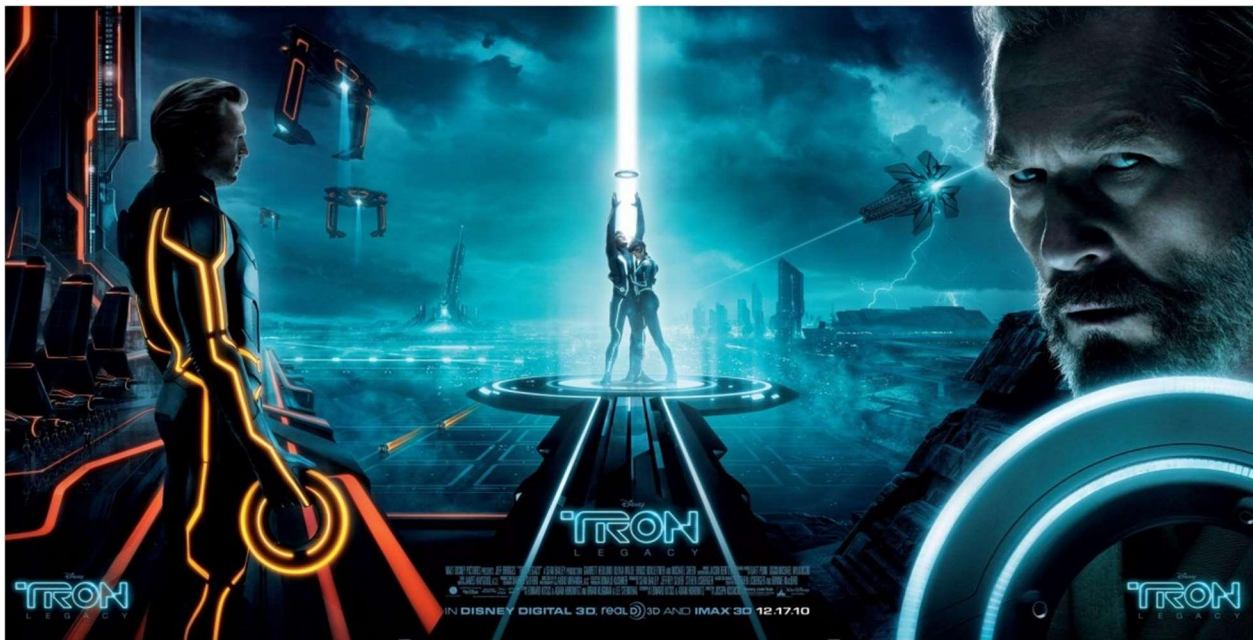
*i. Xtron*

105. The marketing materials for the Posh Xtron utilize futuristic, video game-like imagery that, along with the product's name and font, reference Disney's *Tron* franchise.

106. The original *Tron* film, released in 1982, became a cult classic and was hailed by film critics upon its release as “the full-fledged screen embodiment of a video game.”<sup>32</sup>

107. In 2010, Disney re-introduced *Tron* to a new generation of viewers, reviving the franchise with the release of a sequel *Tron: Legacy*, which tapped into the same futuristic, video game aesthetic from the original film.

108. The following image is a promotional poster from the 2010 release of *Tron Legacy*:



109. Both the 1982 film, and the 2010 sequel, were rated “PG” by the Motion Picture Association of America.

110. On the coattails of *Tron: Legacy*, Disney launched a host of other *Tron*-related projects.

---

<sup>32</sup> Janet Maslin, *Disney 'Tron,'* N.Y. TIMES (July 9, 1982), <https://www.nytimes.com/1982/07/09/movies/disney-tron.html> (last visited Nov. 20, 2024).

111. *Tron: Uprising*, an animated television series, ran from 2012-2013 on Disney XD, a Disney-owned basic cable channel that “showcas[es] a compelling mix of gaming and animated programming for kids age 6-11”<sup>33</sup> and is currently streaming on Disney+.

112. The below still images come from that animated kids series:



113. Disney has also developed several *Tron* video games including *Tron: Evolution*, released in 2010 and *Tron: Identity*, released in 2023. Both games employ the same angular, dark, minimalist, blue neon aesthetic that is the hallmark of the *Tron* franchise, and both are rated “T”

---

<sup>33</sup> Walt Disney Television, *About Us*, DGE PRESS.COM (Jan 21, 2021), <https://web.archive.org/web/20210121050804/https://www.dgepress.com/waltdisneytelevision/about-us/disney-channels/> (last visited Nov. 20, 2024).



(or “Teen”) by the Entertainment Software Rating Board, meaning they are “generally suitable for ages 13 and up.”<sup>34</sup>

114. Additionally, in 2023, a *Tron*-themed ride opened in the Magic Kingdom at Walt Disney World in Orlando, Florida<sup>35</sup> and in 2025, Disney is planning on releasing a third *Tron* film, *Tron: Ares*, and yet another *Tron* video game, *Tron: Catalyst*.

115. In sum, *Tron* has proven to be a durable brand in Disney’s intellectual property portfolio, and the *Tron* aesthetic is instantly recognizable to Disney fans.

116. Promotional materials for Defendants’ Xtron brand imitate the aesthetic from Disney’s *Tron*.



117. Further, the futuristic font utilized by Defendants to promote the Xtron device on social media is virtually identical to the recognizable font used by the *Tron* franchise, including in *Tron: Uprising*.

<sup>34</sup> ENTERTAINMENT SOFTWARE RATING BOARD, *Ratings Guide*, <https://www.esrb.org/ratings-guide/> (last visited Nov. 20, 2024).

<sup>35</sup> WALT DISNEY WORLD, *Tron Lightcycle/Run*, <https://disneyworld.disney.go.com/attractions/magic-kingdom/tron-lightcycle-run/> (last visited Nov. 20, 2024).



118. In addition to reproducing the general “look,” font, and color palette from *Tron*, Defendants also incorporate specific imagery from the Disney franchise.

119. For example, the *Tron* franchise includes hovering spaceship-like vehicles called “recognizers.”<sup>36</sup> These vehicles appear in the animated series, *Tron: Uprising* as well as the 2010 film *Tron: Legacy*:



<sup>36</sup> TRON WIKI, <https://tron.fandom.com/wiki/Recognizer> (last visited Nov. 20, 2024).



120. Images of these orange “recognizers” appear in promotional material for the Posh

Xtron:



121. By incorporating elements of the recognizable *Tron* brand into their marketing materials for the Xtron, Defendants are making their products attractive to the same demographic that the multimedia Disney franchise appeals to: children and teenagers.

122. The marketing strategy for Defendants' Xtron violates section 25(d)(2) of the Preventing Youth Vaping Act, which prohibits manufacturers, distributors, or retailers from promoting their e-cigarettes in a manner that is "attractive to persons under 21 years of age, including, but not limited to, inclusion of...a video game, movie, or animated television show known to appeal primarily to persons under 21 years of age."

*ii. Posh Pro Max*

123. The Posh Pro Max is the most recently released Posh device, and the most sophisticated "smart vape" in Defendants' catalog. It has Bluetooth connectivity and a large, interactive touch screen.



124. Once users pair their Posh Pro Max to their smartphones, they can use it to listen to music, receive notifications, and even make calls. The device also includes several built-in video games including "2048," "whack-a-mole," and a game called "Raiden 1944."<sup>37</sup>

---

<sup>37</sup> Aamir Fattani (@aaamirfattani), TIKTOK (Aug. 25, 2024), <https://www.tiktok.com/@aaamirfattani/video/7407021900167351598>

125. In marketing materials for the Posh Pro Max, Defendants tout the device's range of functions, including its built-in capacity to run video games:



126. The Posh Pro Max was openly advertised on nowposh.com starting around September 2024 until at least early November 2024.

127. At the time of filing this complaint, the product still appears to be widely available in the marketplace.

128. The fact that the Posh Pro Max replicates many of the functions of a smartphone—users can make and receive calls, text friends, play video games, etc.—makes these devices more appealing to persons under the age of 21, a tech savvy demographic that, on average, spends a substantial portion of its time on digital devices.<sup>38</sup>

129. Indeed, while sophisticated smart vapes like the Posh Pro Max are relatively new to the market, researchers are already expressing fears that such devices are particularly attractive to youth as they “prey on three potential addictions: nicotine dependence, gaming disorder, and

<sup>38</sup> See generally, Pew Research Center, *Parenting Children in the Age of Screens*, PEWRESEARCH.ORG (July 28, 2020), <https://www.pewresearch.org/internet/2020/07/28/parenting-children-in-the-age-of-screens/> (last visited Nov. 20, 2024).

screen time obsession.”<sup>39</sup> “[C]oupling nicotine to existing youth behaviors, such as video gaming and screen time use, could broaden the smart electronic cigarette market to include youth with no prior interest in nicotine products, while also reinforcing nicotine addiction among current users.”<sup>40</sup>

130. Underage users may also be attracted to the Posh Pro Max because of its capacity to deceive parents and other adults—the device so resembles a smartphone that an unsuspecting adult or parent might mistake the device for a phone and be surprised to learn that it is actually just a sophisticated disposable vape.

131. The Posh Pro Max violates section 25(d)(2), which expressly prohibits manufacturers, distributors, or retailers from promoting their e-cigarettes in a manner that is “attractive to persons under 21 years of age.” 410 ILCS 86/25(d)(2).

## **IX. VIOLATIONS**

132. Plaintiff incorporates Paragraphs 1 through 131 herein as if set forth in their entirety.

133. While engaged in trade or commerce, Defendants committed the following unlawful acts or practices in violation of the Consumer Fraud Act, 815 ILCS 505/2:

- A. Adulterating an electronic cigarette for sale in this State, in violation of Section 15(a)(4)(C) of the Preventing Youth Vaping Act, 410 ILCS 86/15(a)(4)(C), as alleged in Paragraphs 52 through 66;
- B. Advertising, marketing, and promoting e-cigarettes in a manner that encourages persons under 21 years of age to use e-cigarettes, in violation of Section 25(d)(1)

---

<sup>39</sup> Iqbal Pittalwala, *Digital games on vaping device could lure more youth to nicotine addiction*, UC RIVERSIDE NEWS (July 22, 2024), <https://news.ucr.edu/articles/2024/07/22/digital-games-vaping-devices-could-lure-more-youth-nicotine-addiction> (last visited Nov. 20, 2024).

<sup>40</sup> *Id.*

of the Preventing Youth Vaping Act, 410 ILCS 86/25(d)(1), as alleged in Paragraphs 67 through 99;

- C. Advertising, marketing, and promoting e-cigarettes in a manner that makes them attractive to persons under 21 years of age, in violation of Section 25(d)(2) of the Preventing Youth Vaping Act, 410 ILCS 86/25(d)(2), as alleged in Paragraphs 100 through 131.

134. The Attorney General has the authority to prosecute the above violations pursuant to section 35(c) of the Preventing Youth Vaping Act, 410 ILCS 86/35(c), which establishes such violations as unlawful practices under the Consumer Fraud Act.

#### **X. PRAYER FOR RELIEF**


Wherefore, the State prays for the following relief:

- A. Finding that Defendants violated Sections 15 and 25 of the Preventing Youth Vaping Act, 410 ILCS 86/15, 25, by engaging in unlawful acts and practices including, but not limited to, the unlawful acts and practices alleged herein;
- B. Finding that, pursuant to Section 35 of the Preventing Youth Vaping Act, 410 ILCS 86/35, Defendants also violated Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2;
- C. Preliminarily and permanently enjoining Defendants from engaging in the unlawful acts and practices described herein;
- D. Ordering Defendants to pay a civil penalty of \$50,000 per deceptive or unfair act or practice, and an additional amount of \$50,000 for each act or practice found to have been committed with the intent to defraud, as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

- E. Disgoring all revenues, profits, and gains achieved in whole or in part through the deceptive and unfair acts or practices complained of herein;
- F. Requiring Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and
- G. Providing such other and further relief as justice and equity may require.

PEOPLE OF THE STATE OF ILLINOIS  
KWAME RAOUL  
ATTORNEY GENERAL OF ILLINOIS

BY:

  
GREG GRZESKIEWICZ, Bureau Chief  
Consumer Fraud Bureau

KWAME RAOUL  
Illinois Attorney General

SUSAN ELLIS  
Consumer Protection Division, Chief

GREG GRZESKIEWICZ  
Consumer Fraud Bureau, Chief

ANDREA LAW  
Deputy Bureau Chief  
Health Care Bureau  
*andrea.law@ilag.gov*

JEREMY LEVINE-DRIZIN  
Assistant Attorney General  
Consumer Fraud Bureau  
115 S La Salle  
Chicago, Illinois 60603  
(773) 550-8807  
*jeremy.levinedrizin@ilag.gov*

**Attorney No. 99000**