

The compliance of Canada's vaping industry leaders with selected federal health regulations

Introduction

In 2018 the federal government legalized the sale of non-therapeutic nicotine vaping products. The foundational law adopted (the *Tobacco and Vaping Products Act*, TVPA) imposed a number of restrictions on the manufacture, labelling and promotion of these products. In the subsequent three years, additional regulatory restrictions have been imposed on the labelling and promotion of these products, (1) (2) as well as on the amount of nicotine in vaping liquids. (3) The federal government has proposed additional constraints on flavours and additives in vaping liquids, (4) following adoption of restrictions by some provincial governments. (5)

These regulatory restrictions are intended to protect young persons and non-users from being induced into using vaping products and otherwise to protect the health of Canadians. Their effectiveness, however, depends on the extent to which suppliers of vaping products observe the restrictions or modify their business practices.

Health Canada reports have suggested low levels of compliance with their existing regulations.

- Between July and December 2019, Health Canada inspectors visited more than 3,000 specialty vape shops and convenience stores. Four in five (84%) of the specialty vape shops inspected were found to be in violation of federal vaping regulations. (6)
- Between July 2020 and March 2021, Health Canada Inspectors reviewed more than 260 Instagram accounts associated with Canadian vaping establishments. Approximately 50% of the Instagram accounts inspected were found to be selling and promoting vaping products in violation of federal law. (7)

This report summarizes the results of a review focusing on the compliance of those vaping suppliers who hold leadership positions in Canada's vaping industry. The purpose of this study is to contribute to discussions on the implementation of the TVPA and whether current and proposed regulations will be sufficient in supporting the achievement of the purpose of the law. The Report has been amended to reflect information provided by suppliers, as detailed in Appendix B.

Purpose of the *Tobacco and Vaping Products Act* (vaping products) (8)

(a) to protect young persons and non-users of tobacco products from inducements to use vaping products;

(b) to protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;

(c) to protect the health of young persons by restricting access to vaping products;

(d) to prevent the public from being deceived or misled with respect to the health hazards of using vaping products; and

(e) to enhance public awareness of those hazards.

Methods

The directors and spokespersons of trade organizations representing Canada's vaping industry were identified, as were the websites operated by their associated vaping companies. The content of these websites was reviewed to assess compliance with a set of selected federal and provincial regulations governing the way vaping products could be promoted or sold. The review was conducted between August 1 and August 8, 2021.

The selected vaping industry leaders

The businesses and individuals selected are identified as directors or spokespersons for one of three national-level trade associations: the Canadian Vaping Association (9),¹ the Canadian Vaping Industry Trade Association (10) and Rights4Vapers (11). JUUL is no longer a member of any of these organizations, but was also included in recognition of its leadership with respect to market share.

Among these 20 organizations, 15 sell directly to the public and 12 sell to consumers through on-line platforms. This dozen online retail outlets were the main source of information on the brands, flavours and retail promotions, although the public content of the all 20 websites were reviewed.

The individuals, businesses and websites are shown in the Appendix.

The selected compliance measures

The behaviour of these 20 organizations was reviewed against 10 selected measures of regulatory compliance. These measures were chosen because a) assessments of compliance could be done on-line from a remote location; b) the assessment could be readily replicated or verified, and c) complex questions of interpretation or additional testing were not required.

The websites were assessed to establish whether the businesses:

- A. offered to sell vaping liquids that contained more than 20 mg/ml of nicotine
- B. promoted flavours not permitted under federal law
- C. failed to display the mandatory health warning
- D. used testimonials to promote vaping products
- E. accepted orders for delivery to Quebec residents

Directors of Vaping Industry Trade Association

- *DVINE Laboratories*
- *LOGIC (JTI-Macdonald)*
- *La Vape Shop*
- *Valor*
- *VUSE (Imperial Tobacco)*
- *East Coast Vapes*
- *The Vape Store*
- *Globe11*
- *EZ-Vape*
- *Alternatives & Options*
- *SNOW Plus*

Businesses owned by Directors of Canadian Vaping Association.

- *Pacific Smoke*
- *Flavourart*
- *VapeMeet*
- *Dash Vapes*
- *La Vapote Inc*
- *Theravape*
- *Queen City Vapes*

Businesses owned by representative of Rights4Vapers

- *Ecig Flavourium*

Other leading vaping companies

- JUUL

1 Logic Vapes is included in the study, although it closed its operations in Canada at the beginning of August 2021. At the time of this study, it remained identified as a director of the Vaping Industry Trade Association.

- F. accepted orders to deliver flavoured vaping products to Nova Scotia residents
- G. accepted orders to deliver flavoured nicotine vaping products to Prince Edward Island residents
- H. used lifestyle promotions to promote vaping products
- I. had been in operation when the sale of nicotine-containing vaping products was illegal in Canada
- J. had previously been found non-compliant with TVPA regulations by Health Canada.

The regulatory issues not considered

Some important business practices were not considered in this review.

- This survey did not look at the practices of the companies in media other than their main business websites. No review was made of content provided by these companies through Instagram, Facebook, Tok-tok, Twitter, YouTube or other social media accounts, nor in newspapers, radio, television, magazines or other mainstream advertising. Health Canada has indicated that its compliance report on such activities is forthcoming. (7)
- This survey reviewed the sales practices of the companies, but not their manufacturing practices. No attempt was made to assess the ingredients and additives of the products, for example, or whether these complied with federal regulations such as child-resistant containers.
- This survey did not consider the compliance of the retailers with respect to the labelling and packaging of products.
- This survey did not consider the companies' compliance with respect to youth access, with prohibitions on selling to young people, or with respect to young people viewing advertisements.

Summary of Results

The results for each of the ten regulatory issues examined are summarized in **Table 1** below and details on each measure are also provided in additional Tables.

Compliance by measure:

- The highest compliance was with respect to selling vaping liquids with no more than 20 mg/ml of nicotine. No indication of non-compliance was identified in any of the companies for whom this could be assessed (100%)
- Most (75%) of the 20 businesses appeared compliant with requirements for health warning messages and restrictions on testimonial promotions.
- One-half (50%) of all 20 companies seemed compliant with restrictions on lifestyle promotions.
- For the other 6 measures, evidence of non-compliance was found for the majority of the companies for whom this could be assessed.

Compliance by business

Of the 20 companies reviewed:

- Ten were compliant with more than half of the measures relevant to their operation, including six which were compliant with more than three-quarters of such measures and three for which no indication of non-compliance was found.
- Nine were found compliant with half or fewer of measures relevant to their operations, including 6 for whom compliance was found for fewer than one-quarter of measures relevant to their operations.

Table 1: Summary of findings

	Dash Vapes	East Coast Vapes	Ecig Flavourium	EZ-Vape	Juul	LOGIC	Queen City Vapes	SNOW Plus	The Vape Store	Theravape	VapeMeet	VUSE	Alternatives & Options	DVINE Lab	Flavour Art	Globe 11	La Vape Shop	La Vapote	Pacific Smokes	Valor	Compliance Score
<i>Business type</i>	RO	RO	RO	RO	MWO	MWO	RO	MO	RO	RO	RO	MWO	R	MW	MW	W	R	R	W	W	
ONLINE SALES																					
A. Sells nicotine over 20mg/ml	O	O	O	O	O	O	O	O	O	O	O	O	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	100%
B. Offers prohibited flavours	X	X	X	X	O	O	X	X	X	X	X	O	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	25%
C. Inadequate health warning	X	X	O	X	O	O	O	O	X	X	X	O	N/A	O	X	N/A	N/A	N/A	X	N/A	80%
D. Testimonials on website	X	X	O	O	O	O	O	O	O	X	X	O	O	O	X	O	O	O	O	O	80%
E. Sells to Quebec	X	X	X	X	O	O	X	X	X	X	X	O	O	N/A	N/A	N/A	O	O	N/A	N/A	40%
F. Sells to Nova Scotia	X	X	X	X	X	O	X	O	X	X	X	O	O	N/A	N/A	N/A	O	O	N/A	N/A	40%
G. Sells to PEI	X	X	X	X	X	O	X	X	X	X	X	O	O	N/A	N/A	N/A	O	O	N/A	N/A	33%
H. Lifestyle advertising	X	X	X	X	O	O	X	X	X	X	X	O	O	O	X	O	O	O	O	O	65%
OTHER BUSINESS PRACTICES																					
I. Sold when illegal to sell	X	X	X	X	O	O	X	O	X	X	X	O	X	X	N/A	X	X	X	X	N/A	22%
J. Found non-compliant in 2019	X	X	X	X	N/A	N/A	O	N/A	X	X	X	N/A	O	N/A	N/A	N/A	X	X	N/A	N/A	18%
Compliant with	1.5	1.5	3	2	7	9	4	5	2.5	1.5	2	9	6	3		2	5	5	2	2	
Out of possible	10	10	10	10	9	9	10	9	10	10	10	9	7	4		3	7	7	4	2	
Compliance Score	15%	15%	30%	20%	78%	100%	40%	56%	25%	15%	20%	100%	85%	75%		66%	71%	71%	50%	100%	

Legend:

X	Seemingly non-compliant	R	Operates brick-and-mortar retail outlet
O	Seemingly compliant	O	Offers online sales
X	Compliance depends on interpretation of website as a telecommunication	M	Manufacturer
N/A	Compliance could not be established or not relevant to business type	W	Wholesaler

Detailed Results

A. Do the businesses offer to sell vaping liquids with higher than permitted levels of nicotine?

All businesses appear to be compliant with this restriction.

In June 2021, Health Canada finalized regulations capping the concentration of nicotine permitted in vaping liquids at 20 mg/ml. This restriction came into effect at the retail level on July 23, 2021. (3) (7)

For those companies which offered on-line sales, a spot-check search of 20 or more products was made to identify any offerings of nicotine concentration in excess of 20 mg/ml.

Of the 12 companies which offered on-line retail sales, none appeared to offer to sell vaping products which were promoted as having nicotine concentration in excess of 20 mg/ml. These results are shown in table A1.

Table A1: Advertising the sale of vaping liquids with stated nicotine concentrations in excess of 20 mg/ml.

Associated Business	Corporate Website (R = Retailer store) (O=online retail sales)	Vaping liquids with stated nicotine concentration in excess of 20 mg/ml offered for sale.
Alternatives & Options	alternatives-options-vapourizers-and-e-liquids.business.site (R)	Not determined: no internet retail sales
Dash Vapes	dashvapes.com (R) (O)	None found
DVINE Laboratories	dvinelabs.com	Not determined: no internet retail sales
East Coast Vapes	eastcoastvape.ca (R) (O)	None found
Ecig Flavourium	theecigflavourium.com (R) (O)	None found
EZ-Vape	Ezvape.com (R) (O)	None found
Flavourart	us.flavourart.com	Not determined: no internet retail sales
Globe11	globe11.com	Not determined: no internet retail sales
Juul	Juul.ca (O)	None found
La Vape Shop	lavapeshop.ca (R)	Not determined: no internet retail sales
La Vapote Inc	lavapote.ca (R)	Not determined: no internet retail sales
LOGIC (JTI-Macdonald)	logicvapes.ca (O)	None found
Pacific Smoke	pacificsmoke.com	Not determined: no internet retail sales
Queen City Vapes	queencityvapes.ca (R) (O)	None found
SNOW Plus	ca.snowplustech.com (O)	None found
The Vape Store	thevapestore.ca (R) (O)	None found
Theravape	theravape.net (R) (O)	None found
Valor	valordistributions.com	Not determined: no internet retail sales
VapeMeet	vapemeet.ca (R) (O)	None found
VUSE (Imperial Tobacco)	vuse.com/ca/en/ (O)	None found

B. Do the businesses offer to sell vaping liquids that are marketed as dessert, confectionery, soft-drink or energy drink?

Only three on-line retailers were compliant with restrictions on promoting certain flavours.

Although other governments prohibit the sale of “characterizing” flavours in vaping or tobacco products, Health Canada does not. It focuses instead of regulating the flavouring inputs (additives) and not the outcome (the flavours produced).

Although Health Canada allows the sale of all flavours, it does not allow manufacturers or retailers to communicate that any vaping liquids are flavoured like confectionery, desserts, cannabis, soft drinks or energy drinks. The *Tobacco and Vaping Products Act* states that “No person shall promote a vaping product ... through an indication or illustration... that could cause a person to believe that the product contains [confectionery, dessert, cannabis, soft drinks, energy drink]”. (8)

For example, bubble gum flavoured vaping liquids can be sold, but the consumer cannot be informed that the liquid tastes like bubble gum. Manufacturers and retailers may not employ code names, consumer reviews, illustrations or alternative means of communicating that the e-liquids have a prohibited flavour.

For those companies which offered on-line sales, a review was made of each flavour promoted for sale. Of the 12 companies which offered on-line retail sales, nine (75%) offered vaping liquids whose on-line promotions communicated that they were flavoured as confectionery, dessert, soft drink (interpreted as non-alcohol beverage) or energy drink. None were found to promote cannabis flavour.

- The three companies which did not promote prohibited flavours were the three multinational companies: JUUL, Logic (JTI-Macdonald) and VUSE (BAT-Imperial Tobacco)
- Of the 1,431 flavour-offerings identified in the review, 187 (13%) were for a flavour whose promotion is prohibited.

Examples of such flavour communications are found in **Table B1** and **Figure B** and the results for each business are shown in **Table B2**. A data sheet of inspection results is available upon request.

Figure B: Examples of illustrations used to promote soft-drinks, deserts or confectionery

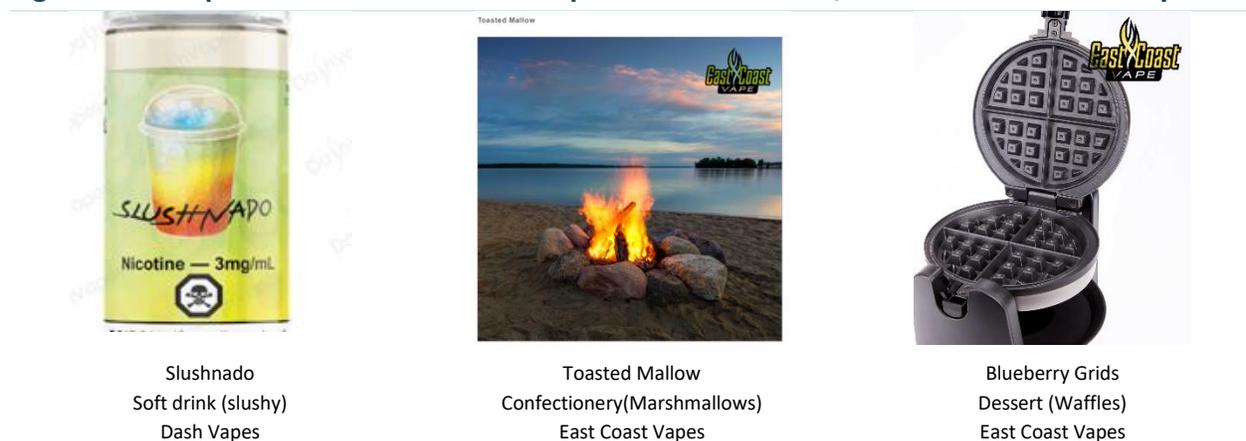


Table B1: Examples of non-compliance with restrictions on communicating certain flavours through text descriptions

Flavour	Flavour names	Flavour descriptors used
Confectionery		
Cotton Candy	Blue Carnival, Pink Fluff, Cotton Fluff	"A sweet blueberry cotton candy drenched in tart grape soda.; Imagine what Pink Fluff tastes like (Make sure you're thinking of a theme park); The delicious reminder of being at a carnival, straight cotton fluff!"
Sour Patch Bubble Gum	Patchy Drips Bubble Stick, Zooka, Fresh Trouble Bubble Trouble,	"Just like I'm eating sour patch kids." This chewy watermelon combo will surely pop your bubble; It's so good you'll be chewing your clouds. The iconic flavour of tuck shop bubble-gum
Licorice Gummy Bears Butterscotch Life Savers	Black Lic Wish, Lakritz Bear Foot, G Berry Scotty Savers of Life	"Sweet Licorice flavor." "...a handful of gummy candy ejuice flavour" "Hands down the absolute best butterscotch flavour you will ever find." "This is the flavour we got from tossing a bunch of bright fruit flavoured rings into our mouths at the same time."
Hard Candy	Lemon Fizz	"The classic lemon boiled sweet; Ever eat watermelon candies that make your mouth water? Watermelon wave pool will make all those memories come flooding back with just one taste."
Dessert		
Apple Pie	Apple 3.14, 3.14 Crust	"Ripe and mild apple with a crust; If you know what 3.14 is than, that is this flavour ;); "
Waffles/Pancakes	Gridiron, Stacks, Blueberry Grids	"Fluffy on the inside and crispy on the edges. This golden-brown masterpiece is gently buttered then finished with Canadian maple and a scoop of fresh cream."
Marshmallow	Mallow, Marsh Cust, Toasted Mallow	"The marshmallow is quite apparent, the custard is more subtle."
Smors	Campfire Crunch	"Get ready to take a bite of a rich graham cracker sandwich with warm marshmallow and smooth chocolate in the center."
Lemon Meringue Pie	Lemon MBP, Lemon Delight	"Great lemon meringue flavor along with the pie crust."
Key Lime Pie	KLP	"Take your time to enjoy this delectable key lime pie ejuice on a thin crust of graham cracker crumbs."
Banana Bread	Banana dread	"...it's all in the loaf."
Donuts	Boston Doh, Dinky's,	"Mini donut goodness, slammed into a bottle."
Cookies	CKY, C is for ...,	"A freshly baked chocolate chip cookie, extra butter, oozing out of the oven!; hot and gooey cookie fresh out of the oven! Filled with white chocolate and macadamia nut."
Fruit Loops	Loops of Fruit	"Delicious Fruit Loops flavored cereal ejuice, without everyone else's premium price tag."
Ice Cream	Ice Creap	"Delicious Van IC with a waffle cone!"
Cake; Birthday Cake	Party Hardy	"Rich and fluffy chocolate cake e-liquid with milk chocolate frosting"; "You can't party hardy without candles!; A Birthday Cake Icing eJuice."
Soft Drink		
Root Beer	Pop's Brew, Root drink, The Root, Da Root	"Developed to satisfy your rooty cravings"; "Good Ol' Pop's brew. You know the type, when you go to an old school dinner and get a hamburger and fries?"
Orange Soda	Orange and So, Orange Sparkle	"A delicious orange bubbly beverage."
Lemonade	Peach Lemon; Lemon Drop Punch	"Indulge yourself on a hot summer day with a refreshing Peach Lemonade."
Cola	Hola Ice, Kapow!., Classic	"... a fizzy cola sure to pop your taste buds"
Grape Soda	Grape and So –	"... a delicious grape beverage"
Energy Drink		
Red Bull	Red Line Ice, Red Bovine, Hyper	"This flavor will take energy drink enthusiasts down memory lane"; "Everyone's Favorite Red Energy Drink."

Table B2: Examples of non-compliant flavour promotions for each business

Associated Business	Corporate Website (R = Retail site)	Examples of prohibited flavours
Alternatives & Options	alternatives-options-vapourizers-and-e-liquids.business.site (R)	Not determined: no internet sales
Dash Vapes	dashvapes.com (R) (O)	Mango Chill (slushy); Lakritz (licorice); Van IC (vanilla ice cream); Patchy Drips (sour patch candy); Slushnado (slushy); Punch (fruit punch);
DVINE Laboratories	dvinelabs.com	Not determined: no internet sales
East Coast Vapes	eastcoastvape.ca (R) (O)	Apple 3.14 (apple pie); Banana dread (banana bread); Black Lic wish (licorice); Blueberry grids (waffles); Bubble Stick (bubble gum); Chick bone (chicken bone candy); Mountain drink (mountain dew); Red Bovine (Red Bull); Bubble Trouble (bubble-gum)
Ecig Flavourium	theecigflavourium.com (R) (O)	Scotty (butterscotch); Stacks (pancakes); Hyper (Red Bull);
EZ-Vape	Ezvape.com (R) (O)	Hola Ice (cola); VC (vanilla custard); Blue Carnival (candy floss); Blue Slush (slushie);
Flavourart	us.flavourart.com	Not determined: no internet sales
Globe11	globe11.com	Not determined: no internet sales
JUUL	Juul.ca (O)	None found
La Vape Shop	lavapeshop.ca (R)	Not determined: no internet sales
La Vapote Inc	lavapote.ca (R)	Not determined: no internet sales
LOGIC (JTI-Macdonald)	logicvapes.ca (O)	None found
Pacific Smoke	pacificsmoke.com	Not determined: no internet sales
Queen City Vapes	queencityvapes.ca (R) (O)	Powder (mini donuts); Crème (dessert); Sinners (cinnamon bun); C-crisp (coffee crisp chocolate bar); Bub-G (bubble gum)
SNOW Plus	ca.snowplustech.com (O)	The Root (root beer); Orange Sparkle (orange soda); Patchy Drips (sour patch candy); the Captain (cap'n crunch cereal); Pop's brew (root beer); Pink Fluff (cotton candy);
The Vape Store	thevapestore.ca (R) (O)	Colossal Crunch (cap'n crunch cereal); Dinky's (mini donut); Mallow (marshmallow); Patchy Drips (sour patch candy); Muffn Boy (muffins); Zooka (bubble gum)
Theravape	theravape.net (R) (O)	Red Line Ice, Hyper (Red Bull); Crème (dessert); G-berry (gummy bear); JBG (juicy bubble gum); KLP (key lime pie); Chocolate and Mint; Loops of Fruit (froot loops); Savers of Life (Lifesavers)
Valor	valordistributions.com	Not determined: no internet sales
VapeMeet	vapemeet.ca (R) (O)	Stacks (pancakes); Cocoa crumb; Lemon layers (cake); Patchy Drips (sour patch candy); Bear Foot (gummy bear); Cotton Fluff (cotton candy); Red Line Ice, Hyper (Red Bull); Happy Birthday (cake)
VUSE (Imperial Tobacco)	vuse.com/ca/en/ (O)	None found

C. Do the businesses display health warnings that conform with the requirements of Health Canada?

One-half of the businesses were clearly compliant.

Advertisements (including display of product) must be accompanied by one of two health warnings mandated by Health Canada. This requirement is set out under the *Vaping Products Promotion Regulations SOR/2020-143* (2) and the *List of Health Warnings for Vaping Product Advertising* (12). Advertisers (including retailers) have the choice of two warnings

WARNING: *Vaping products contain nicotine, a highly addictive chemical. – Health Canada*

WARNING: *Vaping products release chemicals that may harm your health. – Health Canada*

The regulations establish a minimum size and other requirements for the display of the health warning in advertisements. For example, the warning display area must be at least 20% of the surface area, the warning must be in black and white, it must occupy 60% -70% of the warning display area, be in a sans-serif font, be separated by a border, etc.

Lesser requirements are set out for advertising transmitted by means of telecommunication “that does not allow the display” of health warning messages in conformity with those requirements. In such cases, the warning must be at the beginning of the advertisement and must meet certain requirements for font size and layout.

Health Canada does not issue interpretive guidelines to clarify whether Websites are a form of telecommunication that requires the more onerous (or less onerous) regulations on display of health warning. It would appear that some vaping industry leaders have chosen to meet the higher regulatory standards for warning displays on advertisements, some have chosen to meet the lower standards set for telecommunications and some have chosen not to display health warnings at all.

For all companies, the websites were reviewed with respect to the health warnings displayed on the splash screen and on subsidiary pages. Of the 20 websites reviewed, half were compliant with the regulations, 15% were non-compliant and 35% may or may not have been compliant, depending on how the size of the warnings required under *Vaping Products Promotion Regulations* is interpreted for website telecommunications. If the requirements are interpreted as the companies with the most consistent compliance practices (JUUL, LOGIC, and VUSE) have done, then 50% of the websites were compliant and 50% were not.

- A. Five websites (25% of total) displayed the health warnings and **were compliant** with the standards required by Health Canada for advertising.
- B. Seven websites (35% of total) displayed health warnings that conformed with the standards set by Health Canada for “telecommunication that does not allow for the display” of larger warning.
- C. Eight websites (40%) did not display any health warnings
 - o Five of these websites (25% of total) **were compliant** with the regulations. They were not required to display warnings as they did not display vaping products or vaping product brand elements
 - o Three of these websites (15% of total) displayed vaping products or vaping product brand elements but no warnings.

The results of the review are shown in **Table C1**. Examples of the variety of ways that warnings were displayed are shown in **Figure C**.

Figure C: Examples of compliant and non-compliant health warnings on websites of vaping industry leaders.

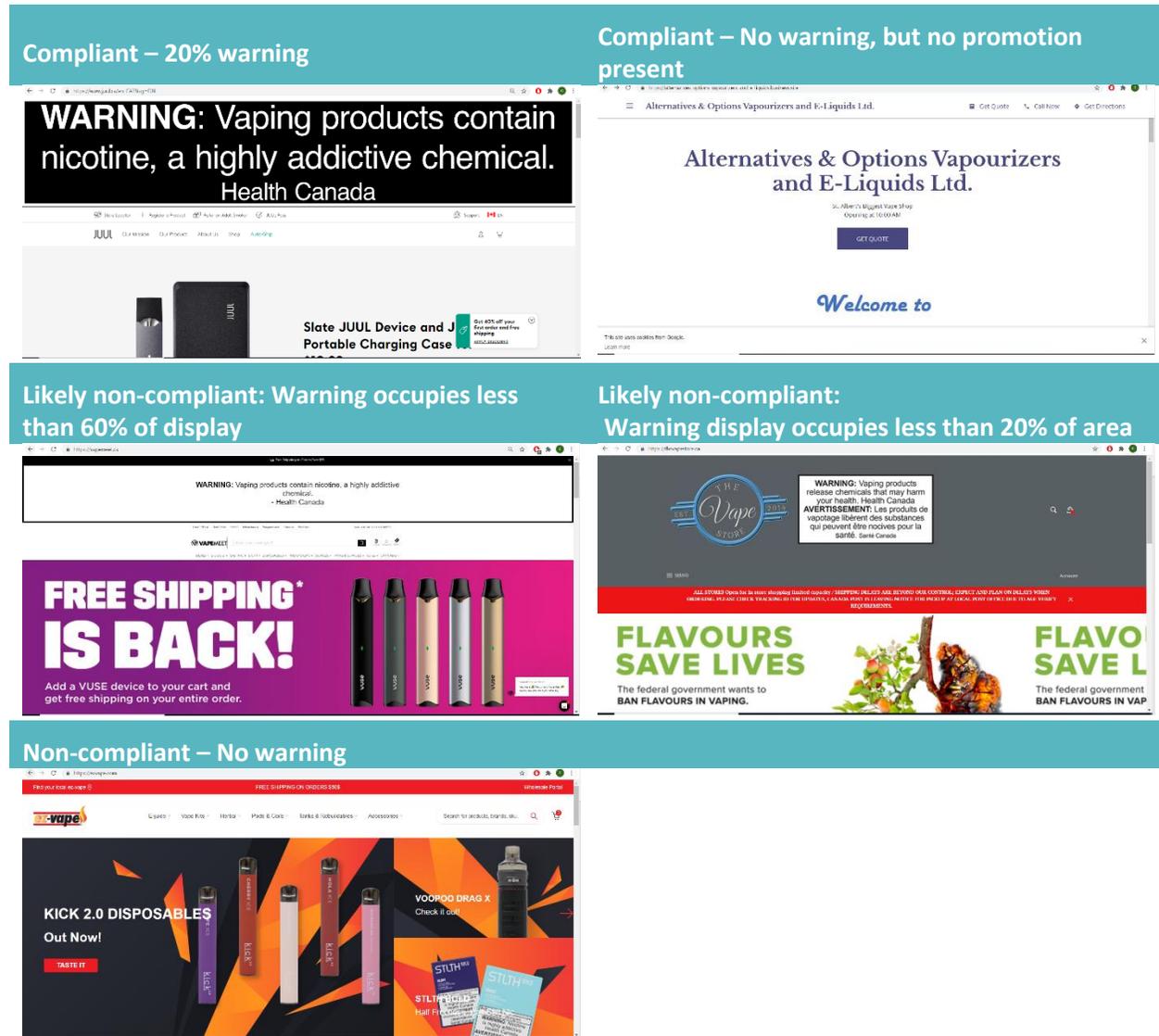


Table C1: Compliance with Requirements for Health Warnings

Associated Business	Corporate Website (R = Retailer)	Health warning present	Health warning meets minimum size
Alternatives & Options	alternatives-options-vapourizers-and-e-liquids.business.site (R)	N/A (Warnings not required, as products and brand elements are not displayed)	
Dash Vapes	dashvapes.com (R)	Yes	No
DVINE Laboratories	dvinelabs.com	Yes	Yes
East Coast Vapes	eastcoastvape.ca (R)	Yes	No
Ecig Flavourium	theecigflavourium.com	Yes	Yes
EZ-Vape	Ezvape.com	No (products and brand elements are displayed)	
Flavourart	us.flavourart.com	No	
Globe11	globe11.com	N/A (Warning not required, as products and brand elements are not displayed)	
Juul	Juul.ca	Yes	Yes
La Vape Shop	lavapeshop.ca	No (Warnings not required, as products and brand elements are not displayed)	
La Vapote Inc	lavapote.ca	No (Warnings not required, as products and brand elements are not displayed)	
LOGIC (JTI-Macdonald)	logicvapes.ca	Yes	Yes
Pacific Smoke	pacificsmoke.com	No (brand elements are displayed)	
Queen City Vapes	queencityvapes.ca	Yes	Yes
SNOW Plus	ca.snowplustech.com [®]	Yes	Yes
The Vape Store	thevapestore.ca [®]	Yes	No
Theravape	theravape.net (R)	Yes	No
Valor	valordistributions.com	N/A (Warning not required, as products and brand elements are not displayed)	
VapeMeet	vapemeet.ca (R)	Yes	Yes
VUSE (Imperial Tobacco)	vuse.com/ca/en/ (R)	Yes	Yes

D. Do the companies promote vaping products using testimonials?

One-quarter of the websites use testimonial advertising.

The *Tobacco and Vaping Products Act* prohibits the use of testimonials or endorsements in the promotion of vaping products. The law defines any depiction of a person, character or animal (real or fictional) as a testimonial for or endorsement of the products. (8)

30.21 (1) No person shall promote a vaping product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.

(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.

For all companies, the websites were reviewed to establish the presence of testimonial advertising. Of the 20 websites reviewed, Seven displayed testimonial statements. Of these, two were not related to the promotion of vaping products. Four websites (20% of total) appeared to be non-compliant with respect to this section of the TVPA.

The results are shown in **Table D1**.

E-F-G. Do the companies offer to sell products to provinces where such sales are not permitted?

Most (75%) out-of-province sellers appeared willing to disregard provincial regulations.

Some provinces have imposed restrictions on internet sales or on the sales of certain vaping products:

- Quebec bans internet sales. (13)
- Nova Scotia and Prince Edward Island ban the sale of flavoured vaping products. (14) (15)
- Nova Scotia requires that manufacturers, wholesalers and retail vendors of vaping products be licensed. Those without a license are prohibited from importing products into the province. (16)

For those 12 companies which offered on-line sales, a review was made of the apparent willingness of the company to send vaping products to residents in provinces where such sales would not be permitted. To assess willingness to sell to residents of Nova Scotia, Prince Edward Island or Quebec:

- the shipping policy of the business was reviewed. Indications of willingness to sell to that jurisdiction included statements of the eligible age to order products in that province, a reference to tax rates in that province, estimated shipping times to that province, etc. .
- In the cases where the shipping policy was not clear, an on-line order was completed up to the point of payment being required. This generally involved a calculation of the shipping charges to the affected provinces.

Nine of the 12 on-line retailers were willing to ship products to Quebec, to Nova Scotia and to Prince Edward Island. The two companies which were not willing to sell to those three provinces were those managed by tobacco companies: Logic (JTI-Macdonald) and VUSE (BAT-Imperial Tobacco). The three retailers which did not offer on-line sales would be considered compliant with this measure. The results are shown in **Table EFG1**.

Table D1: Display of testimonials or endorsements for vaping products

Associated Business	Corporate Website (R = Retailer store) (O=online retail sales)	Testimonials on Website	Example of testimonial
Alternatives & Options	alternatives-options-vapourizers-and-e-liquids.business.site (R)	Yes, but promoting the store, not products	“Excellent selection. Very informative and great customer service”
Dash Vapes	dashvapes.com (R) (O)	Yes	“I use this with the Smok Nord with a 0.8 MTL coil - I get a great clean crisp mint flavour and the coils don't burn out quickly. I've had great luck with this juice and my Nord setup.” Website links to videos (Dashvapes TV), which also include testimonial videos.
DVINE Laboratories	dvinelabs.com	Yes, but promoting the business not product	“Working with DVINE has been a breeze from day one”
East Coast Vapes	eastcoastvape.ca (R) (O)	Yes	Videos highlighted on website which provide personal testimonials on products.
Ecig Flavourium	theecigflavourium.com (R) (O)	No	
EZ-Vape	Ezvape.com (R) (O)	No	
Flavourart	us.flavourart.com	Yes	Promotional videos linked to website.
Globe11	globe11.com	No	
JUUL	Juul.ca (O)	No	
La Vape Shop	lavapeshop.ca (R)	No	
La Vapote Inc	lavapote.ca (R)	No	
LOGIC (JTI-Macdonald)	logicvapes.ca (O)	No	
Pacific Smoke	pacificsmoke.com	No	
Queen City Vapes	queencityvapes.ca (R) (O)	No	
SNOW Plus	ca.snowplustech.com (O)	No	
The Vape Store	thevapestore.ca (R) (O)	No	
Theravape	theravape.net (R) (O)	Yes	“Name says it all, this juice is to die for. If I could rate 10 stars I would. Flavor is banging and cloud production is too.”
Valor	valordistributions.com	No	
VapeMeet	vapemeet.ca (R) (O)	Yes	“All time favorite!!! Smooth gentle taste, allows for a long lasting use of coil so you do not have to change it every few days. I have used other products from several shops closer to my location, sadly none come close to the value and quality as well as the delicious flavor of sour ghost.”
VUSE (Imperial Tobacco)	vuse.com/ca/en/ (O)	No	

Table EFG1: Willingness of on-line retailers to sell to Quebec, and to sell flavoured products to Nova Scotia and Prince Edward Island.

Associated Business	Corporate Website (R = Retail site)	Shipping policy includes restrictions	Accepts orders from Quebec	Accept orders from Nova Scotia	Accepts orders for from Prince Edward Island
Alternatives & Options	alternatives-options- vapourizers-and-e- liquids.business.site (R)	N/A	Does not sell from internet		
Dash Vapes	dashvapes.com (R) (O)	No	Yes	Yes	Yes
DVINE Laboratories	dvinelabs.com	N/A	Does not retail		
East Coast Vapes	eastcoastvape.ca (R) (O)	No	Yes	Yes	Yes
Ecig Flavourium	theecigflavourium.com (R) (O)	No	Yes	Yes	Yes
EZ-Vape	Ezvape.com (R) (O)	No policy	Yes	Yes	Yes
Flavourart	us.flavourart.com	N/A	Does not retail		
Globe11	globe11.com	N/A	Does not retail		
JUUL	Juul.ca (O)	YES	NO	Yes	Yes
La Vape Shop	lavapeshop.ca (R)	N/A	Does not sell from internet		
La Vapote Inc	lavapote.ca (R)	N/A	Does not sell from internet		
LOGIC (JTI-Macdonald)	logicvapes.ca (O)	Yes	No	No	No
Pacific Smoke	pacificsmoke.com	N/A	Does not retail		
Queen City Vapes	queencityvapes.ca (R) (O)	No	Yes	Yes	Yes
SNOW Plus	ca.snowplustech.com (O)	Yes (at checkout)	Yes	No	Yes
The Vape Store	thevapestore.ca (R) (O)	No policy	Yes	Yes	Yes
Theravape	theravape.net (R) (O)	No	Yes	Yes	Yes
Valor	valordistributions.com	N/A	Does not retail		
VapeMeet	vapemeet.ca (R) (O)	No	Yes	Yes	Yes
VUSE (Imperial Tobacco)	vuse.com/ca/en/ (O)	Yes	No	No	Yes (but sells only nicotine-free flavours to PEI)

H. Do the companies use lifestyle promotions

Most (83%) of the on-line retailers include lifestyle elements in their promotions.

The *Tobacco and Vaping Products Act* prohibits the use of lifestyle advertising to promote vaping products (including devices or liquids). (8) Health Canada does not provide guidance on what constitutes “lifestyle advertising”, but identifies that the “promotion of branded merchandise is also banned by this promotion to ensure that it does not serve as a proxy for the promotion of vaping products to youth.” (17)

30.2 No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of lifestyle advertising.

...

[Lifestyle advertising] means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

For each of the companies, the website was reviewed for the presence of text or images which communicated glamour, recreation, excitement, vitality, risk or daring and for the promotion of branded merchandise. Ten (50%) of these websites contained lifestyle advertising.

- The most frequent form of lifestyle advertisement was including it in the flavour name. Examples included XOXO (romance), TABU (daring), Summer Bliss (recreation); Royal Blood (glamour); RMIX (recreation); Power (vitality).
- Other advertising techniques included lifestyle images in the description of the flavour, such as “a beach vacation in a bottle” (recreation) and “Having something forbidden is exciting” (daring).
- Imagery, such as a picture of a beach or campfire (recreation)
- One company offered branded merchandise. The results are shown in **Table H1**.

Table H1: Inclusion of lifestyle imagery in websites.

Associated Business	Corporate Website (R = Retailer)	Lifestyle promotions identified	Examples of lifestyle promotions on corporate website
Alternatives & Options	alternatives-options-vapourizers-and-e-liquids.business.site (R)	No	
Dash Vapes	dashvapes.com (R) (O)	Yes	Brand/flavour names: FOMO; XOXO; VICE; TRVP; LYFE; BLVK; RMIX; TABU Celebrity figures Images of movie stars vaping.
DVINE Laboratories	divinelabs.com	No	None
East Coast Vapes	eastcoastvape.ca (R) (O)	Yes	Brand/flavour names: Bavarian; Death; Hoop Dreams; Old Captain; Red Wedding; Ship Wrecked; Swedish; Paradise; Nirvana Advertising copy: Need a fruity vape after a long beach day? Imagery Picture of a tropical beach to promote flavour “Beach Smooth”
Ecig Flavourium	theecigflavourium.com (R) (O)	Yes	Brand/flavour names: Berserk, Bizarre, Bravo, Forbidden, Foxtrot, Freedom, Summer Bliss, V Victory Advertising copy: Having something forbidden is exciting, don't you agree?

Associated Business	Corporate Website (R = Retailer)	Lifestyle promotions identified	Examples of lifestyle promotions on corporate website
			What happened to the good ol' days? When you knew your neighbors by their first name Our liquid will make you bring you back to that special time where things were simpler.
EZ-Vape	Ezvape.com (R) (O)	Yes	Brand/flavour names: Miami Vice; Dreamland; Staten Island; Countess Advertising copy: You know the type, when you go to an old school dinner and get a hamburger and fries? Imagine what Pink Fluff tastes like (Make sure you're thinking of a theme park).
Flavourart	us.flavourart.com	Yes	Branded merchandise: Promotional clothing sold (FANA.TIC) and contest to recognize individual actions.
Globe11	globe11.com	No	
Juul	Juul.ca (O)	No	
La Vape Shop	lavapeshop.ca (R)	No	
La Vapote Inc	lavapote.ca (R)	No	
LOGIC (JTI-Macdonald)	logicvapes.ca (O)	No	
Pacific Smoke	pacificsmoke.com	No	
Queen City Vapes	queencityvapes.ca (R) (O)	Yes	Brand/flavour names: Preppy; Blue Blood; Power; Summit; Skipper; Patrie; Razzle-Dazzle; Sonic Boom;
SNOW Plus	ca.snowplustech.com (O)	Yes	Brand/flavour names: This berry infusion will blast you right into late-summer fields.
The Vape Store	thevapestore.ca (R) (O)	Yes	Brand/flavour names: Ambition; Bad Blood; Cash Man; EZ Duz it; Hustler; Lady Luck; Royal Blood; Strength
Theravape	theravape.net (R) (O)	Yes	Brand/flavour names: Blue Paradise; Savage, Rampage, Glitz; Rei; Asuka; Nebula, Aurora; Supernova; Advertising copy: A beach vacation in a bottle!
Valor	valordistributions.com	No	None
VapeMeet	vapemeet.ca (R) (O)	Yes	Brand/flavour names: High Rise; Corsair; Galleon; Rumrunner; Tradewinds; Freedom; Jolly; Pillow Talk; Advertising copy: The delicious reminder of being at a carnival
VUSE (Imperial Tobacco)	vuse.com/ca/en/ (O)	No	None

I. Did the companies sell nicotine vaping products before doing so was legal in Canada?

Most (70%+) did.

The *Federal Tobacco and Vaping Products Act* came into force on May 23, 2018. Prior to that time, the *Food and Drugs Act* forbid the sale of vaping products containing nicotine in Canada unless they had been approved. (18) No such approvals were in place prior (or subsequent to) 2018.

To assess whether the 20 companies had engaged in the sale of nicotine vaping products prior to May 2018, a web-search was conducted of news stories, municipal licenses, websites and social media. Evidence was found that 14 individuals and companies were operating as vaping product suppliers prior to May 2018.

The results are shown in **Table I1**.

J. Were the companies previously found to be non-compliant with federal regulations on vaping products.

Most brick-and-mortar retailers (82%) were.

Health Canada has made public the results of inspections of brick-and-mortar stores, which was conducted between July and December 2019. (6)

For the 11 companies which operate stores, the name of each business was checked against the results for these inspections. Of these 11 businesses, Health Canada had determined that 9 were non-compliant with one or more provisions of the Tobacco and Vaping Products Act in that period. This is consistent with the overall 84% non-compliance rate found at specialty vaping establishments (6)

The results are shown in **Table J1**.

Table I1: Engagement in nicotine vaping sales prior to May 2018.

Business Name	Owner/Representative	Evidence of sales prior to May 2018	
Evidence that company sold nicotine vaping products prior to May 2018			
Alternatives & Options	Thomas Kirsop	Yes	Thomas Kirsop has been CEO of Alternatives & Options Vapourizers and E-Liquids since October 2015. (19)r
Dash Vapes	Shai Beckman	Yes	Shai Beckman has owned Dash Vapes since at least 2015. (20)
DVINE Laboratories	Mike Meathrel	Yes	Mike Meathrel and his firm DVINE were manufacturing vaping liquids before 2014. (21)
East Coast Vapes	Rianne Pineda	Yes	Health Canada asked Rianne Pineda and East Coast Vapes to stop selling nicotine vaping products in 2014. (22)
Ecig Flavourium	Maria Papaioannoy–Duic	Yes	Maria Papaioannoy-Duic opened Ecig Flavourium in 2013. (23)
EZ-Vape	Chuck Spillette and Steven Shields	Yes	EZ Vape opened its first branch in B.C. in 2014. (24)
Globe11	Loïc Frohn-Villeneuve	Yes	Globe 11 (which distributes only vaping products) was established in 2014 (26)
La Vape Shop	Theodore Papadopoulos	Yes	LVS Vape Shop Franchising was incorporated in 2016. (27)
La Vapote Inc	John Xydous	Yes	John Xydous has been president of La Vapote since 2015. (28)
Pacific Smoke	Sam Tam	Yes	Sam Tam has been director of Pacific Smoke since 2013. (29)r
Queen City Vapes	Mike Smider	Yes	Mike Smider opened Queen City Vapes in 2013. (30)r
The Vape Store	Shaun McQueen	Yes	Shaun McQueen launched the Vape Store in 2014. (31)
Theravape	Eden Sorrel	Yes	Eden Sorrel has been selling nicotine vaping products through Theravape since at least 2014. (32)
VapeMeet	Charles Pisano	Yes	Vapemeet was founded in 2013. (33)
No evidence found that company sold nicotine vaping products prior to May 2018			
Flavourart	Shaun Casey	No	Mr. Casey acknowledges that he operated in Canada before the sale of nicotine vaping products was legalized, but no evidence was found that the products he sold contained nicotine.(25)
JUUL	Caroline Evans	No	Juul launched in Canada in August 2018 (34)
LOGIC (JTI-Macdonald)	Caroline Evans	No	Japan Tobacco/JTI Canada Tech launches Logic Compact in Canada in February 2019. (35)
SNOW Plus	Brad Jemmett	No	Snowplus Tech entered the Canadian market in 2020. (36)
Valor	Shawn Quinney	No	Information on Valor Distributions prior to 2019 not found
VUSE (Imperial Tobacco)	Eric Gagnon	No	Imperial Tobacco started marketing products in Canada in summer 2018. (37)

Table J1: Results from Health Canada’s enforcement and compliance reports

Business	Location	Issues identified in 2019 inspection
No compliance or enforcement issues identified by Health Canada in 2019		
Alternatives & Options		
Queen City Vapes		
Compliance or enforcement issues identified by Health Canada in 2019		
Dash Vapes	Pickering, Ontario Peterborough, Ontario Richmond Hill, Ontario Markham, Ontario Toronto, Ontario Vaughan, Ontario Mississauga, Ontario	<ul style="list-style-type: none"> • Promotion of prohibited flavours • Testimonials or endorsements
East Coast Vapes	Moncton, New Brunswick Saint John, New Brunswick	<ul style="list-style-type: none"> • Promotion of prohibited flavours
Ecig Flavourium	Toronto, Ontario Bowmanville, Ontario Port Hope, Ontario	<ul style="list-style-type: none"> • Prohibited Flavours • Testimonials or endorsements
EZ-Vape	Vancouver, British Columbia North Vancouver, British Columbia Vernon, British Columbia Edmonton, Alberta Port Coquitlam, British Columbia Coquitlam, British Columbia Surrey, British Columbia	<ul style="list-style-type: none"> • Did not meet the toxic classification labelling requirements • Prohibited Nicotine Content • Testimonials or endorsements • Promotion of prohibited flavours • Did not meet the child resistance container packaging requirements • Tobacco product-related brand element
La Vape Shop	Saint Sauveur, Québec Candiac, Québec Saint-Jérôme, Québec Montréal, Québec Longueuil, Québec Kingston, Ontario L’Interlude, Québec Joliette, Québec Pembroke, Ontario Saint-Hyacinthe, Quebec	<ul style="list-style-type: none"> • Promotion of prohibited flavours • Testimonials or endorsement
La Vapote Inc	Montreal, Quebec Chateauguay, Quebec	<ul style="list-style-type: none"> • Testimonials or endorsements • Promotion of prohibited flavours
The Vape Store	Oshawa, Ontario Lindsay, Ontario Whitby, Ontario	<ul style="list-style-type: none"> • Prohibited Flavours • Testimonials or endorsements
Theravape	Winnipeg, Manitoba	<ul style="list-style-type: none"> • Prohibited Flavours
VapeMeet	Mississauga, Ontario Niagara Falls, Ontario	<ul style="list-style-type: none"> • Prohibited Flavours • Testimonials or endorsements

Appendix A

Vaping Industry Leaders

Table 1A. Vaping Industry Trade Association Directors (10)

Corporation	Type of business	Corporate Website	On-line retailer
DVINE Laboratories	Manufacturer (M)	dvinelabs.com	No
LOGIC (JTI-Macdonald)	Manufacturer, Wholesaler, DTC Retailer	logicvapes.ca	Yes
La Vape Shop	Retailer	ww.lavapeshop.ca	No
Valor	Wholesaler	valordistributions.com	No
VUSE (Imperial Tobacco)	Manufacturer, Wholesaler DTC Retailer	vuse.com/ca/en/	Yes
East Coast Vapes	Manufacturer, Retailer	eastcoastvape.ca	Yes
The Vape Store	Retailer	thevapestore.ca	Yes
Globe11	Wholesaler	globe11.com	No
EZ-Vape	Manufacturer, DTC Retailer	ezvape.com	Yes
Alternatives & Options	Retailer	alternatives-options-vapourizers-and-e-liquids.business.site	No
SNOW Plus	Manufacturer, Wholesaler, DTC Retailer	ca.snowplustech.com	Yes

Table 1B. Canadian Vaping Association Directors (9)

Individual	Corporation	Type of business	Corporate Website	On-line retailer
Darryl Tempest	n/a (staff)			
Samuel Tam	Pacific Smoke	Wholesaler	pacificsmoke.com	No
Shaun Casey	Flavourart	Manufacturer	us.flavourart.com	No
Charles Pisano	VapeMeet	Manufacturer, Retailer	vapemeet.ca	Yes
Shai Beckman	Dash Vapes	Retailer	dashvapes.com	Yes
John Xydous	La Vapote Inc	Retailer	lavapote.ca	No
Eden Sorrell	Theravape	Manufacturer, Retailer	theravape.net	Yes
Mike Smider	Queen City Vapes	Retailer	queencityvapes.ca	Yes

Table 1C. Rights 4 Vapers, Spokespeople (11)

Individual	Corporation	Type of business	Corporate Website	On-line retailer
Maria Papaioannoy	Ecig Flavourium	Retailer	theecigflavourium.com	Yes

Table 1D. Other leading firms

Corporation	Type of business	Corporate Website	On-line retailer
JUUL	Manufacturer, DTC Retailer	https://www.juul.ca/en-CA	Yes

Appendix B: Updates

Subsequent to releasing this report, PSC received letters from legal representatives of FlavourArt and DashVapes.

1) August 21, 2021. FlavourArt (38)

On behalf of FlavourArt, Mr. Sharma of the Woodbridge lawfirm Sharma Lawyers wrote: *“FlavourArt did not and does not actually manufacture or sell vaping products”*. For this reason, they contest our report that the sale of branded merchandise, the use of testimonial advertising and the absence of a health warning were contrary to the provisions of the *Tobacco and Vaping Products Act (TVPA)*.

The TVPA defines a vaping product as follows (emphasis added): (8)

vaping product means

- (a) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;
- (b) a device that is designated to be a vaping product by the regulations;
- (c) a part that may be used with those devices; and
- (d) a substance or mixture of substances, whether (d) or not it contains nicotine, that is intended for use with those devices to produce emissions.

We disagree with their interpretation that FlavourArt’s products are not vaping products. In our opinion, they are sold as “substances ... intended for use with those devices to produce emissions”.

FlavourArt’s representative also raised concern with our conclusion that FlavourArt had sold vaping products when the sale of nicotine liquids was illegal, noting that *“Prior to the enactment of Bill S-5 in 2018, federal law was silent as to vaping products”*. On this point we agree that prior to May 2018 there was no prohibition on selling vaping products provided that they did not contain nicotine or other illegal substances (e.g. cannabis). We have no evidence that FlavourArt was selling nicotine-based liquids in Canada at that time, and have accordingly adjusted the report to show that no such evidence was found. We apologize to Mr. Casey for any suggestion that his business operations before 2018 included the sale of nicotine-containing product.

2) August 23, 2021. Dashvapes (39)

On behalf of Dashvapes, Mr. Zemel of the Zemel van Kampen law firm based in Toronto wrote to object to our conclusions, saying that *At all material times, Dashvapes has been in full compliance with the Act and its regulatory requirements.”*

Dashvapes contests our conclusion that prior to May 23, 2018 the sale of (nicotine-containing) vaping products was illegal. “In fact, prior to that date, there were no prohibitions on selling vaping products in Canada. It also disagrees with with our conclusions that the flavours listed in the report (Mango Chill, Lakritz, Van IC, Patchy Drips, Slushnado and Punch) are prohibited flavours (confectionery, soft drinks, desert), that it displays testimonials or endorsements in the promotion of its products or that it has violated the provincial laws respecting vaping products in Quebec, Nova Scotia and Prince Edward Island.

We carefully reviewed these concerns and the evidence that we had gathered from their website and other sources, but have not changed our opinion or conclusions.

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