



Physicians *for a* Smoke-Free Canada

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February 24, 2022

Krista Locke
Director General
Consumer Products and Controlled Substances Directorate
Regulatory, Operations and Enforcement Branch
Health Canada

Dear Ms. Locke:

Please accept this letter as an official complaint about a new set of infractions of the Tobacco and Vaping Products Act on the part of Imperial Tobacco.

Last Monday, Imperial Tobacco Canada (ITCO) launched a "Clear the Smoke Campaign".¹ I have observed the campaign executed on a website,² on out-of-home signage,³ in newspaper ads⁴ and via social media,⁵ although it may also be published in other media.

The advertising copy in this campaign is made up of direct quotes from researchers, governments and public health agencies. It contains multiple statements which convey that vaping products should be considered to be a benefit for smokers. "*Switching from tobacco cigarettes to vaping will reduce your exposure to many toxic and cancer causing chemicals.*" "*Vaping products and e-cigarettes deliver nicotine in a less harmful way than smoking cigarettes.*" "*Vaping is less harmful than smoking.*" Health Canada is cited, as are other Canadian and international organizations and individuals.

In assessing the legality of this advertising initiative and the need for enforcement action, I urge you to take the following into consideration:

1. This campaign meets the definition of a promotion for vaping products in the TVPA.

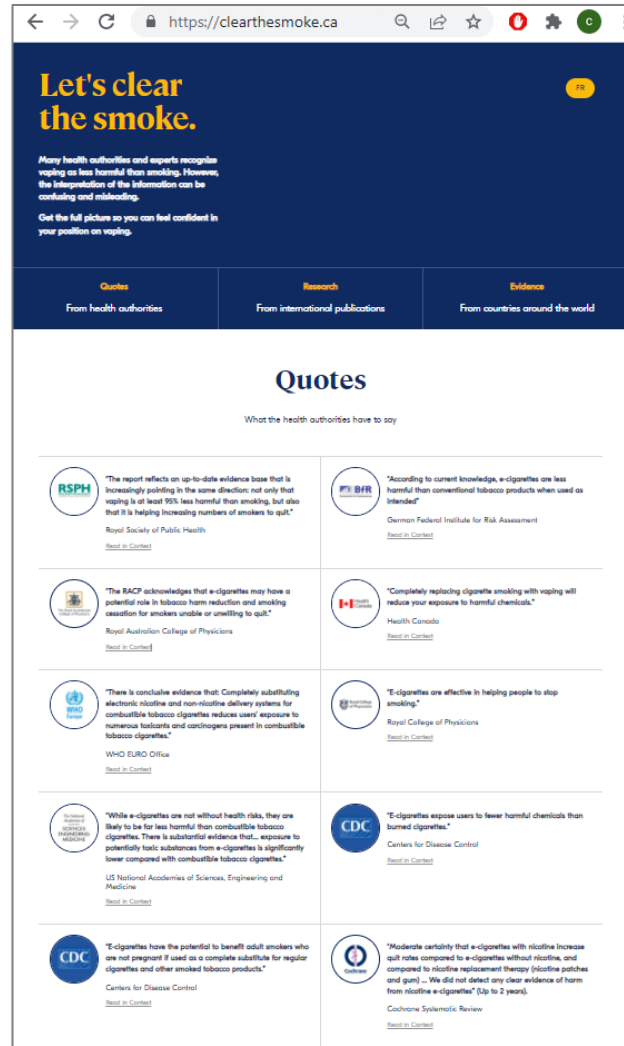
Although Imperial's campaign does not display trademarks or other brand elements used in selling its VUSE brand vaping devices and liquids, there is little doubt that *Clear the Smoke* meets the definition of a promotion under the federal *Tobacco and Vaping Products Act* (TVPA): "*a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service.*" (s. 18 (1))

In its press release Imperial Tobacco acknowledges its intention to influence and shape attitudes: "the goal of educating Canadian on the facts about vapour products and the role these products can play in reducing the risks compared to cigarettes." The website is similarly clear in its intent to shape attitudes: "*Get the picture so you can feel confident in your position on vaping.*"

2. ITCO's Clear the Smoke campaign uses testimonials and endorsements, which is explicitly prohibited under the TVPA.

S. 30.21(1) of the TVPA reads: *“No person shall promote a vaping product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.”*

The **Clear the Smoke** campaign consists entirely of testimonials and implicit endorsements. The web-site provides quotes from Action on Smoking and Health, American Association of Public Health Physicians, American Heart Association, British Heart Foundation, British lung Association, British Medical Association, Campaign for Tobacco-Free Kids, Canadian Heart and Stroke Foundation, Cancer Research UK, Cancer Society of New Zealand, Centers for Disease Control, Cochrane Systematic Review, German Federal Institute for Risk Assessment, Health Canada, International Agency for Research on Cancer, National Health Service Scotland, New Zealand Ministry of Health, Public Health England, Royal Australian College of Physicians, Royal College of General Practitioners, Royal College of Physicians, Royal Society of Public Health, Stroke Association UK, U.S. National Academies of Science, Engineering and Medicine, US FDA, WHO Euro Office, World Health Organization, Yorkshire Cancer Research, and others.



3. ITCO's Clear the Smoke campaign creates erroneous impressions about the health impacts of vaping products, an action which is explicitly prohibited under the TVPA

Section 30.42 (1) of the TVPA reads: *“No person shall promote a vaping product, including by means of the packaging, (a) in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions...”*

The Clear the Smoke campaign contains false, misleading and deceptive statements with respect to vaping products. In addition to some statements that are not factually based (eg “Vaping is at least 95% less harmful than smoking”), the selection of quotes creates an erroneous impression that vaping products are not very harmful.

4. ITCO's Clear the Smoke campaign could cause a person to believe that health benefits may be derived from the use of vaping products, an action which is explicitly prohibited under the TVPA

Section 30.43 (1) of the TVPA reads: "... no person shall promote a vaping product, including by means of the packaging, in a manner that could cause a person to believe that health benefits may be derived from the use of the product or from its emissions."

The Clear the Smoke campaign contains overt suggestions of benefits from using vaping products: *"E-cigarettes have the potential to benefit adult smokers who are not pregnant if used as a complete substitute for regular cigarettes and other smoked tobacco products." "E-cigarettes could benefit public health if they help significantly reduce the number of people who use combustible cigarettes and die of tobacco-related disease." "There are clear potential benefits to their use in reducing the substantial harms associated with smoking"*

5. ITCO's Clear the Smoke campaign suggests that vaping is safer than smoking, an action which is explicitly prohibited under the TVPA

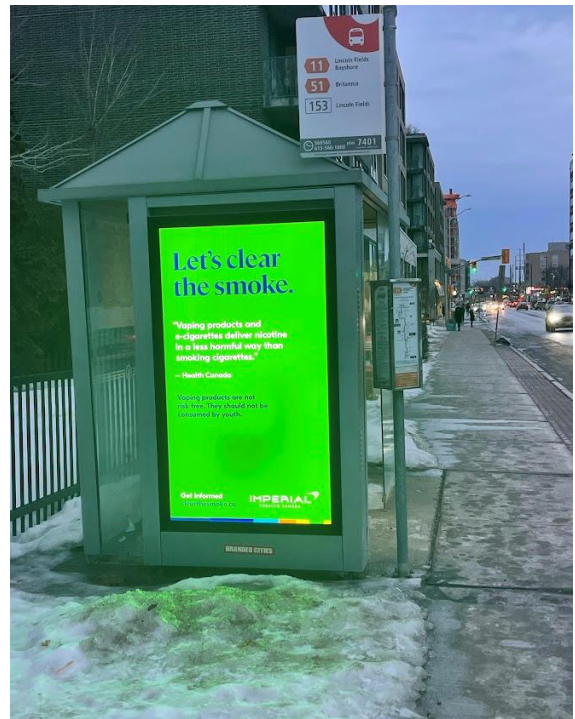
Section 30.43 (2) of the TVPA reads: "... no person shall promote a vaping product, including by means of the packaging, by comparing the health effects arising from the use of the product or from its emissions with those arising from the use of a tobacco product or from its emissions."

The Clear the Smoke campaign contains overt comparisons of the health effects arising from the use of vaping products in comparison with smoking tobacco products. These include: *"while not risk-free vaping is far less harmful than smoking." "the evidence so far suggests that e-cigarettes are far less harmful than smoking." "e-cigarettes and smokeless tobacco products are less harmful than tobacco smoking." "It has been estimated that e-cigarettes are 95% less harmful than ordinary cigarette" "Vaping is less harmful than smoking"*

6. ITCO's Clear the Smoke campaign is designed to be visible by young people, an action which is explicitly prohibited under federal regulations.

Section 2 of the Vaping Products Promotion Regulations reads: "For the purposes of section 30.701 of the Act, a vaping product or a vaping product-related brand element must not be promoted by means of advertising done in a manner that allows the advertising to be seen or heard by young persons." (S. 30.701 of the Act reads: "No person shall promote a vaping product or a vaping product-related brand element by means of advertising done in a manner that is contrary to the regulations.")

The Clear the Smoke campaign has been executed in daily newspapers and on street signs. These advertisements are done in a manner which clearly allows them to be seen by young persons.



Wellington Street, Ottawa, February 18, 2022

7. This campaign is a deliberate and provocative defiance of federal law.

ITCO and other vaping product manufacturers participated in the parliamentary review of Bill S-5, and in the subsequent development of regulations under the act. They are fully aware that the law included the ability for government to provide exceptions to the prohibitions in section 30.43 and to allow the use of relative risk statements or cessation-related statements in vapour product promotions. Although Health Canada initiated a process in 2018 to allow the companies to make 7 relative risk statements⁶, this regulatory initiative was never completed and is no longer on the departments Forward Regulatory Plan.⁷ In this current campaign ITCO is assuming a right that it has been thoughtfully denied by Parliament and by the Governor in Council.

8. This is not the first non-compliant promotional campaign by this company and is an escalation of unlawful promotions.

Your offices have previously intervened to persuade ITCO to follow the law. Such occasions include the televised promotions for ePen3 in 2018 and has closed down a pop-up shop in Toronto. Two years ago Imperial Tobacco launched a Facts Not Fear campaign which contained fewer testimonial statements but similarly aimed to encourage the public to see vaping products in a favourable light. Despite reports that your offices were investigating this campaign,⁸ we are not aware of any enforcement action taken.

I urge you to give this infraction the priority it deserves, and request that you make public the results of your investigation. If the law is not strong enough to prevent these advertisements, law-makers and the public should be allowed to learn of the challenges faced by enforcement officials in offering the protection which Parliament intended.

Sincerely yours,



Cynthia Callard
Executive Director

- 1 Imperial Tobacco Canada Ltd. News Release. Vaping: Let's Clear the Smoke
<https://www.newswire.ca/news-releases/vaping-let-s-clear-the-smoke-877305660.html>
- 2 <https://clearthesmoke.ca/>
- 3 Bus shelter advertisements observed in Ottawa on Metcalfe Street and on Wellington Street between Kirkwood and Island Park Drive.
- 4 National Post, February 19, p. A12.
- 5 Twitter @ITCANews,
- 6 Canada. Notice to the World Trade Organization. G/TBT/N/CAN/513/Add.2
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBTN17/CAN513A2.p.pdf&Open=True>
- 7 Health Canada. Forward Regulatory Plan: 2021-2023
- 8 CBC. Health Canada, Quebec investigating Imperial Tobacco vaping ad campaign. Feb 6, 2020
<https://www.cbc.ca/news/health/health-canada-investigating-vaping-ad-imperial-tobacco-1.5454578>