

Regulators coordinate to protect kids from controversial products



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Controversy has its limits. Even regarding our nation's most controversial products, there probably isn't much controversy over sales to children.

The government's recent actions against some marketers of "e-liquids" for e-cigarettes, whose packaging pretty clearly enticed kids, was an echo of efforts in states that have legalized cannabis products.

All these products are controversial in that some people oppose them, even as others want them. Products of these types are lawful, but governments regulate them by imposing packaging, labeling, and advertising requirements, among other measures.

And while there might be some level of controversy about government attempts to discourage adult smoking (smokers say "get outta my face; I want the freedom to make my own decisions") few if any Americans would be comfortable with drawing kids into the habit.

Well, it appears that at least some marketers were specifically trying to do just that. Marketers of liquids used in e-cigarettes didn't only try to make them attractive to kids by using sweet flavors similar to those used in candies, didn't only give their products cutesy names, didn't only use cartoon images and logos, and didn't only package the products in aseptic containers the kids know as juice boxes. They did all those things at once.

Both the Food and Drug Administration (FDA), which regulates the products and their labeling, and the Federal Trade Commission (FTC), which regulates their advertising, sent warning letters to a range of companies marketing such products. On May 1, the regulators issued warning letters to 13 companies, and on May 10 issued four more. The letters don't have enforcement teeth as such, but they threaten more serious actions if the companies don't change their practices and respond satisfactorily within 15 business days.

FDA was given power to regulate tobacco products in a range of ways by a 2009 law. FDA considers these e-liquid products to be misbranded under the law because the products' labeling is false or misleading in that they imitate food products, says one of the letters, especially food products that "are marketed toward, and/or appealing to, children."

FTC enforces Section 5 of the Federal Trade Commission Act which prohibits unfair or deceptive marketing practices. It notified the companies that it considers their online marketing to present "unwarranted health or safety risks," which the agency considers unfair or deceptive.

Kids are at higher risk for ingesting these products when their labeling or advertising makes them appealing to children. Ingestion of even small amounts of e-liquid can result in "acute toxicity," say the agencies, and poisonings from ingestion of the stuff have gone up lately. The agencies say that the packages contain high enough quantities that small children need only ingest a small percentage of their contents to

receive a dangerous, potentially fatal dose.

The e-liquid products that were the subject of the warning letters are packaged, for example, in aseptic-style juice boxes, in rectangular boxes, or in squeeze bottles. What's more, they are decorated with graphics resembling candies and juices, sometimes even with product names incorporating the words 'candy' or 'juice.' Some products have easily perceptible fruit-like scents before the box is opened. FTC noted examples such as "One Mad Hit Juice Box," which resembles children's apple juice boxes, such as Tree Top-brand juice boxes; 'Vape Heads Sour Smurf Sauce,' which resembles War Heads candy; and 'V'Nilla Cookies and Milk,' which resembles Nilla Wafer and Golden Oreo cookies."

FDA commissioner Dr. Scott Gottlieb wrote that the products' marketing is "alarming." "It is easy to see how a child could confuse these e-liquid products for something they believe they've consumed before—like a juice box," he wrote.

A similar set of issues has already broken out in jurisdictions that are feeling their way through legalization of cannabis products. Remember, what's being legalized there isn't only cannabis in smokable form, it also includes edibles, concentrates, and topicals.

Of course, cannabis itself has, even when marketed illicitly, long been the subject of creative, fanciful, even zany brand and varietal names. When the product form is edibles and those edibles are candies and other snack foods, lawmakers soon recognized the problem of youth appeal.

In Colorado, where sale for recreational use was made legal beginning in 2014, lawmakers changed their law late last year to outlaw packages that appeal to kids. As a result, a section of the state's regulations now explicitly prohibits packaging of retail marijuana products of various kinds at retail establishments designed to appeal to children. It outlaws containers with features that target "individuals under the age of 21, including but not limited to, cartoon characters or similar images."

In California, too, a proposed new law would ban edibles that are shaped like specific candies.

Obviously, the emergence of alternative forms of smoking, such as e-cigarettes, as well as the spread of medical and recreational cannabis legalization, were always expected to present public policy challenges.

Don't be fooled by the surprising lack of loud protests at the spread of legalized cannabis: There's still a large segment of society that disapproves of cannabis use, and of tobacco and e-cigarettes. Thus the nation is somewhat divided into pro and con. But when proprietors of tobacco, e-cigarette or cannabis products employ packaging, labeling, and advertising that seems to be designed to make children into users, there's likely to be wider agreement that such efforts should be stopped. **PW**

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