



May 1, 2018

VIA UPS and Electronic Mail

Ultimate Vape Deals
7600 Chevy Chase Drive
Building 2, Suite 300
Austin, TX 78752
ultimatevapedeals@gmail.com
sales@ultimatevapedeals.com
info@ultimatevapedeals.com

WARNING LETTER

Dear Ultimate Vape Deals:

This is to advise you that the Center for Tobacco Products of the U.S. Food and Drug Administration (FDA) and the U.S. Federal Trade Commission recently reviewed the website <https://www.ultimatevapedeals.com> from which you take orders of Vape Heads Sour Smurf Sauce e-liquid products. FDA has determined that the e-liquid products listed there are offered for sale or distribution to customers in the United States. Under section 201(rr) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. § 321(rr)), as amended by the Family Smoking Prevention and Tobacco Control Act, these products are tobacco products because they are made or derived from tobacco and intended for human consumption. Certain tobacco products, including e-liquid, are subject to FDA jurisdiction under section 901(b) of the FD&C Act (21 U.S.C. § 387a(b)). In addition, the FTC has reviewed your marketing for Vape Heads Sour Smurf Sauce e-liquid under Section 5 of the FTC Act, 15 U.S.C. § 45(a).

FD&C Act Violations

1. False or Misleading Violation

FDA has determined that your Vape Heads Sour Smurf Sauce e-liquid is misbranded under section 903(a)(1) of the FD&C Act (21 U.S.C. § 387c(a)(1)) and/or section 903(a)(7)(A) of the FD&C Act (21 U.S.C. § 387c(a)(7)(A)) because its labeling and/or advertising is false or misleading.

FDA's investigation of the website <https://www.ultimatevapedeals.com> revealed that it sells or distributes Vape Heads Sour Smurf Sauce with labeling and/or advertising that causes it to imitate food products, particularly ones that are marketed toward, and/or appealing to, children (see Exhibit A). Specifically, the labeling and/or advertising of the product looks nearly identical to WarHeads Extreme Sour Hard Candy and WarHeads Super Sour Double Drops Liquid Candy, which are food products that are marketed toward, and/or appealing to, children (see Exhibit B). For example, the labeling and/or advertising of Vape Heads Sour Smurf Sauce e-liquid prominently displays a cartoon of a man's head with a cloud emitting from it, which is nearly identical to the Wally Warhead cartoon used by WarHeads brand candies. The use of this cartoon further enhances its appeal to children and increases the likelihood that children will

ingest the product as a food. Additionally, the labeling and advertising prominently displays the name “Vapeheads,” which is substantially similar to “WarHeads,” and uses a color scheme that is nearly identical to the candy in Exhibit B. The labeling and/or advertising for Vape Heads Sour Smurf Sauce e-liquid also includes the terms “Sweet & Sour” and “Smurf Sauce.” Further, Vape Heads Sour Smurf Sauce e-liquid has a strong scent like sour candy. This labeling and/or advertising causes the product to imitate food products, particularly ones that are marketed toward, and/or appealing to, children and is therefore misleading.



Exhibit A



Exhibit B



Children are at particular risk for ingesting e-liquid products with labeling and/or advertising that causes the product to imitate a food or beverage, particularly a food or beverage that is typically marketed toward, and/or appealing to, children, and that causes the product to appear appropriate and more appealing to ingest as a food or beverage. Moreover, children are at particular risk because exposure to the nicotine in the e-liquid product, even in relatively small amounts, could result in acute toxicity. Child poisonings due to ingestion of liquid nicotine have recently increased substantially. Severe harms can occur in small children from ingestion of liquid nicotine, including death from cardiac arrest, as well as seizure, coma, and respiratory arrest.

Given that the labeling and/or advertising on Vape Heads Sour Smurf Sauce e-liquid describes its nicotine content as 6mg/mL, with a total volume of 120mL, an accidental ingestion of about half a teaspoon would reach the lower end of the fatal dose range for an average two-year-old. Additionally, an accidental ingestion of approximately 2% of a teaspoon would reach the lower end of the non-fatal acute toxicity range for an average two-year-old.

The FD&C Act provides, in part, that a tobacco product shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular (section 903(a)(1)), or (2) if the tobacco

product is distributed or offered for sale in any State and its advertising is false or misleading in any particular (section 903(a)(7)(A)). The labeling and/or advertising for Vape Heads Sour Smurf Sauce e-liquid is misleading because it causes the product to imitate food products, particularly ones that are marketed toward, and/or appealing to, children. Therefore, the product is misbranded under section 903(a)(1) and/or 903(a)(7)(A) of the FD&C Act.

2. Sales to Minors Violation

Additionally, FDA has determined that your Vape Heads Sour Smurf Sauce e-liquid is misbranded under section 903(a)(7)(B) of the FD&C Act (21 U.S.C. § 387c(a)(7)(B)) because you sold this product to a person younger than 18 years of age.

FDA's investigation of <https://www.ultimatevapedeals.com> revealed that you sold an e-liquid product to a minor. Specifically, during our investigation of <https://www.ultimatevapedeals.com>, a person younger than 18 years of age purchased Vape Heads Sour Smurf Sauce e-liquid from your website. No retailer may sell covered tobacco products, including e-liquid, cigar, pipe tobacco, waterpipe tobacco, and dissolvable tobacco products, as well as electronic nicotine delivery system (ENDS) products that contain any tobacco derivative, to a person younger than 18 years of age under 21 C.F.R. § 1140.14(b). Under 21 C.F.R. § 1140.3, a "covered tobacco product" is defined as any tobacco product deemed to be subject to chapter IX of the FD&C Act by 21 C.F.R. § 1100.2, excluding components or parts not made or derived from tobacco. Before 21 C.F.R. § 1100.2 became effective, only cigarettes, smokeless tobacco, roll-your-own tobacco, and cigarette tobacco were subject to chapter IX of the FD&C Act. 21 C.F.R. § 1100.2 deems all other tobacco products, except accessories of such tobacco products, subject to chapter IX and its implementing regulations. The product cited in this violation is a "covered tobacco product." Under section 903(a)(7)(B) of the FD&C Act (21 U.S.C. § 387c(a)(7)(B)), tobacco products are misbranded if sold or distributed in violation of regulations prescribed under section 906(d) of the FD&C Act, including those within 21 C.F.R. Part 1140. Because this product is sold or distributed to persons younger than 18 years of age in violation of 21 C.F.R. § 1140.14(b), this product is misbranded under section 903(a)(7)(B) of the FD&C Act (21 U.S.C. § 387c(a)(7)(B)).

The FD&C Act violations discussed in this letter do not necessarily constitute an exhaustive list. You should immediately correct the violations that are referenced above, as well as violations that are the same as or similar to those stated above, and take any necessary actions to bring your tobacco products into compliance with the FD&C Act.

It is your responsibility to ensure that your tobacco products and all related labeling and/or advertising on this website, on any other websites (including e-commerce, social networking, or search engine websites), and in any other media in which you advertise, and in any retail establishments comply with each applicable provision of the FD&C Act and FDA's implementing regulations. Failure to ensure full compliance with the FD&C Act may result in FDA initiating further action without notice, including, but not limited to, civil money penalties, no-tobacco-sale orders, criminal prosecution, seizure, and/or injunction. Please note that any adulterated and misbranded tobacco products offered for import into the United States are subject to detention and refusal of admission.

Unfair or Deceptive Marketing

In addition, the Federal Trade Commission has reviewed the online marketing of Vape Heads Sour Smurf Sauce e-liquid. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. This prohibition includes practices that present unwarranted health or safety risks. Commission Policy Statement on Unfairness, 104 F.T.C. 1070, 1071 (1984) (*appended to Int'l Harvester Co.*, 104 F.T.C. 949 (1984)), available at <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>. Preventing practices that present unwarranted health and safety risks, particularly to children, is one of the Commission's highest priorities. FTC Strategic Plan for 2018-2022, at 6; *Philip Morris, Inc.*, 82 F.T.C. 16 (1973).

As noted above, Vape Heads Sour Smurf Sauce e-liquid is marketed in packaging that resembles WarHeads Extreme Sour Hard Candy and WarHeads Super Sour Double Drops Liquid Candy, including the use of a cartoon mascot of a boy that appears nearly identical to that used in the advertising and packaging for WarHeads candies. WarHeads candies are especially popular with children and its advertising and marketing on Facebook and other social media platforms is targeted to children. Vape Heads e-liquid has a scent very similar to WarHeads candies and the odor is detectible without opening the packaging. The general appearance and consistency of Vape Heads e-liquid is similar to that for the WarHeads liquid candy. Given the significant number of serious child poisonings due to the ingestion of liquid nicotine, packaging Vape Heads Sour Smurf Sauce e-liquid in a manner that is likely to be particularly appealing to young children could present an unwarranted risk to health and safety.

The FTC strongly urges you to review your marketing, including packaging, for Vape Heads Sour Smurf Sauce e-liquid and similarly marketed products and to take swift and appropriate steps to protect consumers, especially young children.

Conclusion and Requested Actions

With regard to the FD&C Act violations described in this letter, please submit a written response to this letter within 15 working days from the date of receipt describing your corrective actions, including the dates on which you discontinued the violative labeling, advertising, sale, and/or distribution of these tobacco products and your plan for maintaining compliance with the FD&C Act. If you do not believe that your products are in violation of the FD&C Act, include your reasoning and any supporting information for our consideration. You can find the FD&C Act through links on FDA's homepage at <http://www.fda.gov>.

Please note your reference number, RW1800865, in your response and direct your response to the following address:

DPAL-WL Response, Office of Compliance and Enforcement
FDA Center for Tobacco Products
c/o Document Control Center
Building 71, Room G335
10903 New Hampshire Avenue
Silver Spring, MD 20993-0002


If you have any questions, please contact Ele Ibarra-Pratt at (301) 796-9235 or via email at CTPCCompliance@fda.hhs.gov.

With regard to the FTC-related issues described in this letter, please notify Rosemary Rosso of the FTC via electronic mail at rosso@ftc.gov within 15 days of receipt of this letter of the specific actions you have taken to address the FTC's concerns.

Sincerely,



Ann Simoneau, J.D.
Director
Office of Compliance and Enforcement
Center for Tobacco Products



Mary K. Engle
Associate Director
Division of Advertising Practices
Federal Trade Commission

VIA UPS and Electronic Mail

cc:

Ultimate Vape Deals
1499 Pomona Road
Corona, CA 92882
pw-4d775ac8bddfaf8fd1b67fb84e1dd276@privacyguardian.org

NameSilo, LLC
abuse@namesilo.com

Shopify, Inc.
abuse@shopify.com