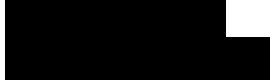




February 4, 2016

VIA OVERNIGHT MAIL AND EMAIL

Utah Attorney General Sean D. Reyes
Daniel O'Bannon, Director of Division of Consumer Protection
160 East 300 South
Salt Lake City, Utah 84111



Re: Violations of Settlement Agreement *In the matter of Vapex LLC, et al.*
DCP Case No. 82403

Dear Attorney General Reyes and Mr. O'Bannon:

As you may recall, in October 2014 the Utah Division of Consumer Protection entered into a settlement agreement with Vapex LLC (dba Alphafill, TryVapex.com, and VapexStore.com), Alpha Vending LLC, Scott Barth, Mario Zamora, and Kourtney Salavatori (DCP Case No. 82403). Pursuant to that Settlement Agreement, defendants are required to, among other things:

- Remove the unsubstantiated advertising claim that e-cigarettes “*can be smoked anywhere*” (see Settlement Agreement, ¶ 6(c));
- Remove the unsubstantiated advertising claim that e-cigarettes are a “*healthy alternative*” to traditional cigarettes (see Settlement Agreement, ¶ 6(c));
- Stop making any false and misleading statements in any promotions with respect to the retail value of the price of e-cigarettes (see Settlement Agreement, ¶ 6(d));
- Stop making any false, misleading, or hidden statements in any promotions with respect to the term “Free,” and make any terms and conditions of their offer clear and conspicuous so as to leave no reasonable probability that the terms of the offer might be unknown or misunderstood by consumers (see Settlement Agreement, ¶ 6(d));
- Appropriately disclose all terms and conditions related to their auto-ship policy within close proximity of their advertisements (see Settlement Agreement, ¶ 6(f)).

Truth in Advertising, Inc. (TINA.org) has found evidence to indicate that Scott Barth and Kourtney Salvatori, and the company O2PUR LLC may be in violation of the above Settlement Agreement.¹

Specifically, O2PUR markets its products on its website, television commercial, radio advertisements, and YouTube channel as follows:²

- **Smoked anywhere:** O2PUR’s ads claim, for example, that “the advanced O2pur design creates a pleasant vapor... This allows individuals to enjoy the nicotine they love whenever and wherever they are,” in violation of Paragraph 6(c) of the Settlement Agreement;³
- **Healthy alternative:** O2PUR’s marketing materials feature individuals who claim their health has improved since switching to e-cigarettes, in violation of Paragraph 6(c) of the Settlement Agreement;⁴
- **Financial savings:** O2PUR’s marketing materials claim that “the financial advantages over cigarettes are considerable as well. It is estimated that the average smoker can save hundreds of dollars a month with O2PUR,” in violation of Paragraph 6(d) of the Settlement Agreement.⁵

¹ Kourtney Salvatori is listed as “Registered Agent” for O2PUR on the Utah Secretary of State’s website (see <https://secure.utah.gov/bes/details.html?entity=9292937-0160>), and Scott Barth prominently states on his LinkedIn page that he is the Chief Operating Officer of O2PUR (see <https://www.linkedin.com/in/scott-barth-a1422311>).

² As of February 4, 2016, O2PUR’s website was not operational.

³ See O2PUR’s radio ads, <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2purRadioAd1.mp3> and <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2purRadioAd2.mp3>.

⁴ O2PUR’s “The Benefits” Video, available at <https://www.truthinadvertising.org/wp-content/uploads/2016/02/The-Benefits.mp4> and at <https://www.youtube.com/watch?v=AM2SOrySS> 4.

⁵ O2PUR’s radio ads, <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2purRadioAd1.mp3> and <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2purRadioAd2.mp3>; See also O2PUR’s “The Savings” Video, available at <https://www.truthinadvertising.org/wp-content/uploads/2016/02/The-Savings.mp4> and at <https://www.youtube.com/watch?v=F5RpGT3Rbqc>.

- **Free:** O2PUR touts a “FREE” starter kit in its ads that is not actually free, in violation of Paragraph 6(d) of the Settlement Agreement.⁶ Consumers have to purchase “2 Replacement Atomizers” costing a total of \$14.99, plus \$4.95 in shipping in handling, in order to obtain the allegedly “free” kit, but consumers are not made aware of this fact until they get to the order page on the company’s website.⁷
- **Negative option offer:** Consumers have complained to the Better Business Bureau (and possibly elsewhere) that, after signing up for the free kit, their credit cards were charged without their consent for subsequent shipments of product they did not want, suggesting the company may be enrolling them in a negative option/auto ship offer without appropriately disclosing all the terms and conditions related to the offer, in violation of Paragraph 6(f) of the Settlement Agreement.⁸

If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.
lsmith@truthinadvertising.org

⁶ See O2PUR’s television commercial, available at <https://www.truthinadvertising.org/wp-content/uploads/2016/02/ISPOTo2pur.mp4>, <http://www.ispot.tv/ad/AwgE/o2pur-free-kit>, and <https://www.youtube.com/watch?v=2R85htCw7bI>.

See also O2PUR’s radio ads, <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2purRadioAd1.mp3> and <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2purRadioAd2.mp3>.

⁷ See O2PUR Checkout Payment page, a copy of which is available at <https://www.truthinadvertising.org/wp-content/uploads/2016/02/O2PurCheckout-Payment.png>.

⁸ Complaints about O2PUR to BBB, available at <http://www.bbb.org/utah/business-reviews/water-bottled-and-bulk/o2pur-in-holladay-ut-90012827/complaints#breakdown>.



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Cc: Scott Barth
Kourtney Salvatori