

CORRECTED VERSION



July 17, 2014

VIA EMAIL AND OVERNIGHT MAIL

Utah Attorney General Sean D. Reyes
Division of Consumer Protection
160 East 300 South
Salt Lake City, Utah 84111
[REDACTED]

CC: FTC Director Jessica Rich and FTC Associate Director for Advertising Practices

Re: Deceptive Advertising by Suspected Vapex Websites

Dear Attorney General Reyes:

The e-cigarette market is dramatically increasing in the U.S. with sales expected to reach \$2 billion in 2014. Online sites selling electronic cigarettes are proliferating at a rapid rate. For consumers who are curious about this type of new vaping product, several websites with ties to one company, Vapex, make an appealing offer. Try the electronic cigarette product at no cost, various online sites tell consumers. Just fill out the form and within days you can receive a risk-free starter kit.

However, several consumers contacted Truth In Advertising, Inc. complaining that instead of getting the product for free, their credit cards were repeatedly charged. Upon investigation prompted by these complaints, TINA.org learned not only that the "free trial" offer is a deceptive marketing ploy, but also identified a number of other serious issues. Testimonials on one site are fake, there was no official E-cigarette Taste Test, and there is no substantiation to the claim that e-cigarettes save consumers money.

I. Vapex, LLC¹

Vapex LLC is a limited liability company based in Utah.² The company, which currently has an “F” rating from the Better Business Bureau³ and has been the subject of at least 28 consumer complaints filed with the FTC,⁴ is linked to several different websites, including, but not limited to:

- vapexecig.net,
- vapeselectroniccigarette.com,
- vapexecig.org,
- vapexecigarette.com,
- sinlessvapor.com, and
- vaperlite.com/us/eval.⁵

Determining which urls are owned, operated, and controlled by Vapex is difficult. In order to link the above websites to Vapex, TINA.org relied upon Vapex copyright claims, information from an FTC FOIA request, and information listed on the BBB website. TINA.org has found deceptive marketing tactics on all of these websites.⁶

II. How These Sites Market Their E-Cigarettes

Vapex primarily markets e-cigarettes through various websites, as well as radio commercials.⁷ Product names and associated website landing pages change frequently.⁸ For example, in January 2014, consumers wishing to order a Vapex starter kit from one of the various webpages were brought to www.sinlessvapor.com, a website selling Sinless Vapor e-cigarettes. In April and June 2014, consumers wishing to order the starter kit were taken to <https://getgovapor.com>.⁹ Both webpages look extremely similar, featuring the same model and many of the same images.

Moreover, these sites use deceptive marketing tactics to convince consumers to try e-cigarettes, and convince them to provide Vapex with their credit/debit card information. TINA.org found four false advertising tactics on various websites:

1. Falsely claims that consumers can receive a “Free Trial” offer;
2. Relies on fake testimonials;
3. Makes price comparisons that are not supported by reliable data; and
4. Asserts winning a 2013 taste test contest that does not exist.

Each deceptive tactic will be examined in turn.

a. Paying for “Free” Trial or Starter Kit

Various websites marketing electronic cigarettes lure in potential customers by offering a “Free” Trial or Starter Kit or a “Risk Free” Trial or Starter Kit.¹⁰



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The problem with these claims, however, is that the “free” trial is neither free nor a true trial. First, in order to receive the “free” trial, consumers must provide a credit card number and pay a \$4.95 non-refundable shipping fee.¹⁴ Second, in order to receive the “free” trial, consumers are automatically enrolled in an auto-ship program whereby they are billed anywhere from \$64.95 to \$99.95 every 30 days.¹⁵

One website – vaperlite.com/us/eval – offers consumers a starter kit where they “just pay 4.95 shipping & handling.” However, consumers returning unwanted products are charged a \$17.50 restocking fee.¹⁶ And, in order to cancel or unsubscribe from the auto-shipment program, consumers must return the products “in their original, unopened package.”¹⁷

b. Fake testimonials

As of April 15, 2014, consumers choosing to learn more about the electronic cigarette “free” trial from vapexecig.net were brought to the website -- www.getgovapor.com/trial/ -- which touts the benefits of e-cigarettes. The website showed, among other things, three testimonials from alleged happy customers:

What Our Clients are Saying

 "At a time when smoking is taboo, I finally don't feel like an outcast because of Go Vapor. I no longer have cravings due to being stuck inside at work or out eat"
-Ben Sarasota, FL

 "Go Vapor has made quitting cigarettes a reality. I was highly impressed with the quality and design. I've bought tons of other ecigs and I can tell you that Go Vapor has the best battery life. I could not be happier with my starter kit. Go Vapor has my vote!"
-Dan Chicago, Illinois

 "I was very pleased when I received my e-cig kit from Go Vapor. It came in a nice case with a needle nose bottle for my smoke juice. That makes filling the tank much easier. I have been using my kit for about 4 weeks now with very little reduction in battery life or vapor production. The tank atty the kit comes with lasts all day and hasn't leaked at all. I was pretty impressed with the tank actually. I've tried just about every kind of atomizer/cartomizer under the sun, and this one has really held up. Overall, good buy! Thanks Go Vapor!"
-Justin Barrington, Rhode Island

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The problem, however, is that Ben from Sarasota, FL is actually Michael Hannigan,¹⁹ Dan from Chicago, IL is actually Guy Yosiphon,²⁰ and Justin from Barrington, RI is actually Guy Dauncey,²¹ and they informed TINA.org that they did not provide the testimonials above or gave the company permission to use their photographs.

As of July 8, 2014, the photo of “Dan” from Chicago, Illinois was changed to another gentleman, but the name and quoted testimonial remained the same.

What Our Clients are Saying

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 "Go Vapor has made quitting cigarettes a reality. I was highly impressed with the quality and design. I've bought tons of other ecigs and I can tell you that Go Vapor has the best battery life. I could not be happier with my starter kit. Go Vapor has my vote!"
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-Justin Barrington, Rhode Island

Further, this new “Dan” appears to be Ryan Scibelli from Sarasota, Florida.²²

Finally, Vapex's SinlessVapor website – <https://sinlessvapor.com/eval-a> – lists another two testimonials: one from “Michael” in Washington and one from Sophie in California.²³ However, the image used in “Michael's” testimonial appears to be taken from a blog written by Beverly Hayden, a blogger documenting her trip around Southeast Asia, and the man in the center of the photograph is identified by Ms. Hayden as “random French guy.” It is quite possible that “Michael” did not provide the testimonial or give the company permission to use his photograph.²⁴

Compare:



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To:



(left to right) Nita, me, random French guy, Adriana, Mun

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c. E-cig Taste Test Winner Assertion



Various websites state that their e-cigarette is the winner of the “2013 E-cig taste test,” – an assertion that multiple e-cigarette websites make.²⁸ Upon information and belief, there is no annual official taste test contest for e-cigarettes. This unsubstantiated claim is simply used as a marketing ploy to persuade consumers to purchase electronic cigarette products.

d. Deceptive Price Comparison

Several websites claim that purchasing its e-cigarettes rather than traditional cigarettes will save those who smoke one pack of cigarettes a day over \$900 in a twelve-month period.²⁹ However, there is no competent and reliable data to support such a factual assertion.

Save Thousands with GoVAPOR.

The cost of smoking traditional cigarettes goes well beyond what you pay at the cash register. With traditional cigarettes, you are limited in the places you can smoke, you make many compromises, and your smoking also affects those around you. GoVapor vaporizers have no smoke and no odor, leaving you free to smoke in far more places, and with far less negative impact.

MONTHS

12

6

0

SAVE OVER \$300

SAVE OVER \$900

1 PACK PER DAY

GOVAPOR ECig

Traditional Cigarette

This advertisement features a bar chart comparing the savings over 12 months for a pack per day of traditional cigarettes versus GoVapor e-cigs. The y-axis is labeled 'MONTHS' with markers at 0, 6, and 12. The x-axis is labeled '1 PACK PER DAY'. A red bar for 'Traditional Cigarette' shows a saving of \$300. A blue bar for 'GOVAPOR ECig' shows a saving of \$900. A large green dollar sign is positioned to the left of the chart.

SAVE THOUSANDS PER YEAR!

The cost of smoking traditional cigarettes goes well beyond what you pay at the cash register. With traditional cigarettes, you are limited in the places you can smoke, you make many compromises, and your smoking also affects those around you. Sinless Vapor e-cigarettes have no smoke and no odor, leaving you free to smoke in far more places, and with far less negative impact.

STOP PAYING RISING CIGARETTE COSTS!

Traditional Cigarette

Our E-Cigarettes

Save Over \$300

Save Over \$900

1 PACK PER DAY

NUMBER OF MONTHS

This advertisement features a bar chart comparing the savings over 12 months for a pack per day of traditional cigarettes versus GoVapor e-cigs. The y-axis is labeled '1 PACK PER DAY' and the x-axis is labeled 'NUMBER OF MONTHS' with markers from 1 to 12. A red bar for 'Traditional Cigarette' shows a saving of \$300. A blue bar for 'Our E-Cigarettes' shows a saving of \$900. The background includes an image of a lit cigarette and a stack of US dollar bills.

III. Conclusion

TINA.org urges your office to protect consumers by taking action against these websites to compel them to remove from their promotional materials all false and deceptive marketing claims.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

¹ According to the BBB, Vapex, LLC is also known as Vapex and Vapex ECig. *See* BBB rating for Vapex, available at <http://www.bbb.org/utah/business-reviews/e-cigarettes/vapex-in-holladay-ut-22357886> (Exhibit 1). According to the State of Utah's Division of Corporations and Commercial Code, Vapex LLC also does business as ALPHAFILL. *See* Utah Business Search Details, available at <https://secure.utah.gov/bes/action/details?entity=8678494-0160> (Exhibit 2).

TINA.org sent the FTC a FOIA Request for consumer complaints regarding Vapex LLC. In its response to this request, the FTC sent TINA.org consumer complaints regarding Vapex LLC d/b/a New Riches LLC/Vaper Lite. The FTC also included information for, but not limited to, Vapex, Vapex Ecig, Vaperlite, Vapor XS, Vaper XS, Vaper Ultra Positive Focus Nutrition, LLC, Vaper XS aka Vapor Corp or sinlessvapor.com, Vapor Ultra, Vaper Lite, and Vapex Electronic Cigarettes. *See* Consumer Complaints to the FTC.

In addition, TINA.org relied upon Vapex copyright claims on the following websites: vapexecig.net (Exhibit 3), vapexecig.org (Exhibit 4), vapexecigarette.com (Exhibit 5), and vapeselectroniccigarette.com (Exhibit 6).

² Both the State of Utah's Division of Corporations and Commercial Code (<http://www.corporations.utah.gov/>) and LexisNexis have information on a company called "Vapex LLC," which was incorporated in May 2013 and is located at 197 East 800, North

Bountiful, UT 84010. *See* Utah Business Search Details, available at <https://secure.utah.gov/bes/action/details?entity=8678494-0160> (Exhibit 2) and LexisNexis Records for Vapex LLC. LexisNexis also has listings for “Vapex,” “Vapex Ecig,” and “Vapex Lite,” all located at 4525 S. 2300 E. Ste 100, Salt Lake City, UT 84117. *See* Nexis Listings for Vapex, available at https://w3.nexis.com/new/seisint/shared/handleSSL.do?sslPersistenceDO=45_T19538182741 (Exhibit 7). According to the BBB, Vapex (which is also known as Vapex ECig and Vapex LLC) is located at 4525 S 2300 E Ste 100, Holladay, UT 84117. *See* BBB rating for Vapex, available at <http://www.bbb.org/utah/business-reviews/e-cigarettes/vapex-in-holladay-ut-22357886> (Exhibit 1). In addition, the BBB has information on a company called “Vapex Lite” which is located at 4525 S 2300 E # 100, Salt Lake City, UT 84117. *See* BBB Rating for Vapex Lite, available at <http://www.bbb.org/utah/business-reviews/business-services-general/vapex-lite-in-salt-lake-city-ut-22357362> (Exhibit 8).

³ As of July 16, 2014, there have been 82 consumer complaints regarding Vapex filed with the BBB in the last year. Of these complaints, 19 reported advertising/sales issues, 17 reported billing/collection issues, 9 reported delivery issues, and 37 reported problems with the product/service. According to the BBB, Vapex has a pattern of complaints in which consumers claim they sign up to receive the “free trial” and learn they must pay \$49.95 for the starter pack/trial when they attempt to cancel within 12 days. The business did not respond to the BBB’s request for clarification. *See* BBB rating for Vapex, available at <http://www.bbb.org/utah/business-reviews/e-cigarettes/vapex-in-holladay-ut-22357886> (Exhibit 1).

⁴ The FTC’s response to TINA.org’s FOIA Request for consumer complaints regarding Vapex LLC included consumer complaints from the following states: Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, and Wisconsin. *See* Consumer Complaints to FTC.

⁵ While the url vaperlite.com became inactive as of July 17, 2014, the extended url vaperlite.com/us/eval was still active and accessible.

⁶ TINA.org attempted to contact Vapex about the deceptive advertising issues its investigation found by sending letters to five different addresses linked to the company, including the address the company listed in its Utah incorporation papers and two addresses for OZN Web, LLC. The letter stated that if the sites did not cease the deceptive claims, it would alert the FTC and Utah Attorney General. Vapex did not respond to the letters. An attorney for OZN said while it was contracted by Vapex to “market” its websites, it is a separate entity with no common ownership. The attorney said OZN is not responsible nor has control over Vapex content. The attorney further represented that OZN had ceased relationships with Vapex as of February and two of OZN’s e-cigarette marketing sites (VaperXS.com and TriVaper.com) were no longer operating. Since notifying Vapex seven days ago, there have been multiple changes to the six websites referenced in this letter.

⁷ TINA.org also obtained radio ads marketing Vapex from Kantar Media.

⁸ Moreover, consumers who signed up for a “free trial” offered on one site were given various other company names, urls and emails to contact, making it difficult for them to get refunds or

cancel the reoccurring orders. For example, a consumer who complained to the FTC said he ordered a free e-cigarette kit from <http://vapexecig.net>. When the consumer's credit card was charged for \$99.95 the consumer called Vapex but was told there was nothing that company could do because the company that sent the product was "Vapor Ultra" even though Vapex's address was on the return envelope. When the consumer called the number for Vapor Ultra given by the Vapex representative, no one answered. In another instance, a consumer ordered a free trial kit from Vapex but was charged \$99 and help@tryvapex.com was listed as the contact for consumers. *See* Consumer Complaints Regarding Cancellations and Returns. (Exhibit 9).

⁹ On April 15, 2014, consumers wishing to order the free starter kit were taken to https://www.getgovapor.com/trial/?AFID=56&click_id=1349593 (Exhibit 10). On June 11, 2014, consumers wishing to order the free starter kit were taken to https://www.getgovapor.com/trial/?AFID=56&click_id=2220189 (Exhibit 11).

¹⁰ TINA.org found this offer on the following websites: vapexecig.net (Exhibit 3), vapexecig.org (Exhibit 4), vapexecigarette.com (Exhibit 5), and vapexelectroniccigarette.com (Exhibit 6). TINA.org also found this offer advertised in radio ads obtained from Kantar Media.

¹¹ *See* Vapex Review, available at vapexecig.net (Exhibit 3).

¹² *See* Vapex Review, available at vapexecig.net (Exhibit 3) and Vapex e-Cig Review, available at vapexecig.org (Exhibit 4).

¹³ *See* Vapex E-Cig Review, available at vapexelectroniccigarette.com (Exhibit 6).

¹⁴ The following terms appear on various websites that are connected to Vapex.

A "Special Offer" on <http://vapexecig.net/> say, "For a limited time, you can take a risk free trial of Vapex by just paying \$4.95 shipping and handling." *See* Vapex Review, available at <http://vapexecig.net/> (Exhibit 3).

Consumers ordering a starter kit from various websites are brought to getgovapor.com where the terms state, "If you, the buyer, are unhappy with the product for any reason – even if you've used the full supply of the supplement – you can return the remaining supply or empty bottle for a full refund of the purchase price minus shipping and handling (\$4.95)." *See* Get Go Vapor "Terms and Conditions," available at <https://www.getgovapor.com/trial/terms.html> (Exhibit 14).

¹⁵ *See* the following terms on various websites that are connected to Vapex:

The connection between Vapex and getgovaper.com is explained in endnote 12. The terms state, "If you decide to keep the Go Vapor trial kit, you will receive acceptance in the Go Vapor monthly replenishment program, and will receive a fresh supply of Go Vapor premium e-liquids (4 10mL e-liquids) and (4) clearomizers 30 days after your original order, and every 30 days thereafter at the low price of \$64.95, plus \$9.95 shipping and handling." *See* Get Go Vapor "Terms and Conditions," available at <http://www.getgovapor.com/trial/terms.html> (Exhibit 14).

¹⁶ In response to TINA.org's FOIA request for consumer complaints for Vapex, the FTC sent complaints for <https://www.vaperlite.com>. (A BBB search for "Vaper Lite" leads to two companies. One of the companies is located in Arizona and the other is located in Utah. The address for the Vaper Lite company in Utah – 4525 S 2300 Ste 100, Holladay, Utah 84117 – is

the same address as one of the addresses TINA.org found for Vapex. *See* BBB Search for Vaper Lite, available at <http://www.bbb.org/search/?term=vaper+lite&tobid=&location=&filter=businesses> (Exhibit 16). According to the terms regarding the “Restocking Fee,” “There is a \$17.50 per unit restocking fee for all returned shipments.” *See* the Vaper Lite “Terms and Conditions” Section 3.2, available at <http://vaperlite.com/us/eval/terms> (Exhibit 15).

¹⁷ The connection between Vapex and Vaperlite is discussed in Endnote 16. According to the terms and conditions, consumers only qualify for the promotional trial if they agree to be enrolled in the autoship program. The terms also state, “If you wish to cancel or unsubscribe from our auto-shipment program, you can do so at anytime . . . Products must be returned to Vaper Lite, PO Box 30816 Salt Lake City, UT 84130, in their original, unopened package within 30 days of shipment.” *See* Vaper Lite “Terms and Conditions” Sections 2.1 and 3.1, available at <http://vaperlite.com/us/eval/terms> (Exhibit 15).

¹⁸ *See* Get Go Vapor website, available at www.getgovapor.com/trial/?AFID=56&click_id=1349593 (Exhibit 10).

¹⁹ *See* About Michael Hannigan, available at www.justanswer.com/general/expert-answers/ (Exhibit 17).

²⁰ *See* Guy Yosiphon Overview, available at <http://computableplant.ics.uci.edu/theses/guy/> (Exhibit 18).

²¹ *See* Guy Dauncey’s “Earth Future” And A ‘So-So’ Review of Eco Short Stories, available at www.greenprophet.com/2008/10/eco-short-stories/ (Exhibit 19).

²² *See* Ryan Scibelli, available at <http://radaris.com/p/Ryan/Scibelli/> (Exhibit 21).

²³ The other testimonial listed is from “Sophie” in California. The image posted next to this testimonial was not found anywhere else.

²⁴ *See* 7 months with Carry-On Luggage, available at <http://sevenmonths.com/page/5/> (Exhibit 20).

²⁵ *See* Sinless Vapor Website, available at <https://sinlessvapor.com/eval-a> (Exhibit 12).

²⁶ *See* 7 Months with Carry-On Luggage, available at <http://sevenmonths.com/page/5/> (Exhibit 20).

²⁷ *See* Vapex e-Cig Review, available at vapexecig.org (Exhibit 4), Vapex E-Cigarette Review, available at vapexcigarette.com (Exhibit 5), and Vapex E-Cig Review, available at vapexelectroniccigarette.com (Exhibit 6).

²⁸ TINA.org found this advertisement on the following websites: vapexecig.org (Exhibit 4), vapexcigarette.com (Exhibit 5), vapexelectroniccigarette.com (Exhibit 6), sinlessvapor.com/eval-a (Exhibit 12), and vaperlite.com/us/eval (Exhibit 13).

²⁹ See Vapex e-Cig Review, available at vapexecig.org (Exhibit 4), Get Go Vapor Website, available at https://www.getgovapor.com/trial/?AFID=56&click_id=1349593 (Exhibit 10), and Sinless Vapor Website, available at <https://sinlessvapor.com/eval-a> (Exhibit 12).

³⁰ See Get Go Vapor Website, available at https://www.getgovapor.com/trial/?AFID=56&click_id=1349593 (Exhibit 10).

³¹ See Vapex e-Cig Review, available at vapexecig.org (Exhibit 4) and Sinless Vapor Website <https://sinlessvapor.com/eval-a> (Exhibit 12).