

E-cigarette retailers fined over false claims to customers

Three online retailers have been fined thousands of dollars in what is believed to be a world-first ruling against false and misleading claims about the presence of carcinogens in electronic cigarettes.

The ruling is expected to prompt a flood of action against the e-cigarette industry, which one public health advocate describes as a "no-man's land" of regulation.



The Federal Court has ruled that The Joystick Company Pty Ltd, Social-Lites Pty Ltd and Elusion Australia Limited contravened Australian Consumer Law by claiming their e-cigarettes did not contain harmful carcinogens and toxins, when this was not the case. Photo: Eddie Jim
Electronic cigarettes, or e-cigarettes, are battery-powered devices that produce a mist that the user inhales.

Products containing nicotine are banned in Australia but are available online or on the black market.

In separate actions against each company, the Federal Court ruled that The Joystick Company Pty Ltd, Social-Lites Pty Ltd and Elusion Australia Limited contravened Australian Consumer Law by claiming their products did not contain harmful carcinogens and toxins, when this was not the case.

Australian Competition and Consumer Commission acting chair Delia Rickard said consumers were led to believe that they would not be exposed to harmful chemicals found in ordinary cigarettes.

"In fact, they were exposed to the same chemicals, including a known carcinogen that has no safe level of exposure," she said.

The court also found that the directors of Joystick and Elusion, and the CEO of Social-Lites were aware of their respective companies' misconduct.

Joystick was fined a pecuniary penalty of \$50,000 and its director a penalty of \$10,000; Social-Lites was fined \$50,000 and its CEO \$10,000; and Elusion was fined \$40,000 and its director \$15,000.

Simon Chapman, emeritus professor of public health at the University of Sydney, said the penalties were likely to be the first of many.

"It's very, very easy to find e-cigarette companies making these claims," he said.

E-cigarettes have only been available for up to 10 years. The federal government has commissioned a discussion paper to guide e-cigarette policy but had so far not responded.

Professor Chapman said the ruling underscored the need for greater regulation of e-cigarettes, which were often billed as therapeutic.

"When cigarettes first started to be mass marketed at the beginning of the last century, it took another 30 to 40 years before we knew how dangerous they were," he said.

"If we knew then what we know now, we would have never let them onto the market in the first place."

Professor Chapman said he favoured regulation that started strong and could be adjusted as evidence of e-cigarettes' health effects accumulated, which would take at least another decade.

"The point is that we need to be very, very cautious in the early years and regularly monitor what's going on with people who are chronic users," Professor Chapman said.

Independent testing commissioned by the ACCC identified the presence of carcinogens and toxic chemicals, such as formaldehyde, acetaldehyde and acrolein in the products of Joystick, Social-Lites and Elusion.

It also found acetone in Social-Lites' products.

Formaldehyde is classified by the World Health Organisation International Agency for Cancer Research as a Group 1A carcinogen, meaning there is sufficient evidence to show it is carcinogenic to humans.

Acetaldehyde is classified as a Group 2B carcinogen, meaning it is possibly carcinogenic to humans.

Acetone, a chemical used in nail polish remover, and acrolein are also recognised by health bodies as toxic chemicals.

The ACCC said it understood this was the first time any regulator globally had successfully taken action for false and misleading claims about the presence of carcinogens in e-cigarettes.

It had written to more than 30 Australian e-cigarette suppliers, reminding them of their Australian Consumer Law obligations, in particular to ensure information provided to consumers was accurate.

Source: <http://www.theage.com.au/national/ecigarette-retailers-fined-over-false-claims-to-customers-20170508-gw06zr.html>