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BUSINESS

Puff Bar Defies FDA Crackdown on Fruity E-Cigarettes by Ditching the Tobacco

E-cigarette brand resumes online sales of its disposable vaporizers, saying they now contain 'tobacco-free nicotine'

A Puff Bar flavored disposable vape device. The brand's sales have plummeted this year as a result of improved compliance with the FDA's order.

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By Jennifer Maloney
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Fancy a mango, watermelon or lemon-ice flavored vape? You are in luck. They are being sold online by Puff Bar, a brand that last year was ordered to take its e-cigarettes off the U.S. market.

The Food and Drug Administration told the e-cigarette maker to stop selling its fruity, disposable vaporizers, as part of a broader crackdown on underage vaping. The brand resumed sales on its website last month and introduced a change that may allow it to sidestep the FDA: Puff Bar says it is using nicotine that isn't derived from tobacco.

The FDA, which regulates tobacco products and smoking-cessation devices like nicotine gum, said it was aware of Puff Bar's move. An agency spokeswoman declined to say whether the agency's Puff Bar ban was still applicable, noting that she couldn't comment on an ongoing investigation.

It's unclear who owns the brand; the operators of the Puff Bar website didn't respond to requests for comment. The brand was previously owned by Cool Clouds Distribution Inc., a California company. Its chief executive said he sold it last year to its Chinese manufacturer, DS Technology Licensing LLC, because of FDA scrutiny and criticism that the vaporizers were attracting young people. A lawyer representing DS Technology said it no longer owned the brand, had stopped exporting Puff Bar products to the U.S. and had no knowledge of the new products.

Puff Bar has a sleek, USB-drive shape similar to the market-leading e-cigarette, Juul. But while Juul's device uses refill pods, Puff Bar is designed for one-time use. Puff Bar vaporizers come in more than a dozen flavors and cost between $9 and $15 on the brand's website. The devices deliver between 200 and 800 puffs each, depending on the size.

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What should be done, if anything, to curb underage use of disposable e-cigarettes? Join the conversation below.

Puff Bar's sales surged in early 2020 when federal restrictions took sweet and fruity e-cigarette refill pods like Juul's off the market. Because Puff Bar devices couldn't be refilled, the FDA's initial flavor restrictions didn't apply to them.

Underage vaping dropped after those restrictions were implemented, but disposable e-cigarette use among children and teens jumped, according to a federal survey conducted from January to March 2020. Some 26.5% of high-school e-cigarette users said they used disposable e-cigarettes, up from 2.4% in 2019. The most popular e-cigarette flavor type among those students was fruit.

Antitobacco groups and lawmakers last year called for a ban on Puff Bar, which had become the leading disposable brand. In response, Puff Bar said it was voluntarily stopping its U.S. sales. In July, the FDA formally ordered the company to halt its sales.

In a letter to Puff Bar on July 20, the FDA's Center for Tobacco Products said Puff Bar products hadn't been authorized for sale by the agency and that the company had made unauthorized claims on its website that its vaporizers were less harmful than traditional cigarettes.

Puff Bar stopped selling vaporizers on its website, but retail-store sales of Puff Bar continued. The brand's sales have plummeted this year as a result of improved compliance with the FDA's order, said Goldman Sachs analyst Bonnie Herzog. Puff Bar has fallen to No. 3 in the disposable category, after Bidi Stick and Blu, according to Ms. Herzog's analysis of Nielsen data. Puff Bar's retail-store sales totaled $168 million in the year ended Feb. 6, that analysis shows.

In May 2020, DS Technology, which then owned Puff Bar, said in a news release that the anticounterfeit verification system at puffbar.com had "identified thousands of retail stores at which consumers bought devices which failed the check." DS Technology that month sued more than a dozen Chinese and American companies it said were selling knockoffs or counterfeit Puff Bars.

Todd Gallinger, a lawyer representing DS Technology, told The Wall Street Journal this week that the company had cooperated with the FDA and law enforcement. Mr. Gallinger declined to identify the new owners.

Puff Bar in an email to customers last month said it had upgraded its vaporizers and they now contained "tobacco-free nicotine." The health claims cited by the FDA last July have been removed from the brand's website, where online sales have resumed.

Most e-cigarettes contain nicotine derived from tobacco, but the addictive chemical can also be made synthetically. That process is more expensive. The FDA's Center for Tobacco Products says it regulates any product made or derived from tobacco, including any component or accessory of a tobacco product.

Puff Bar's website now says its products "contain nicotine but do not contain tobacco or anything derived from tobacco." It adds that they "are not intended for use with any tobacco product or any component or part of a tobacco product."

An e-cigarette containing synthetic nicotine might still have components or parts of a tobacco product and thus be subject to FDA's tobacco regulations, the FDA spokeswoman said. A synthetic nicotine e-cigarette might alternately fall under the jurisdiction of the

FDA's Center for Drug Evaluation and Research, which regulates smoking cessation products.

"This is really a case-by-case determination to be made by the agency," the FDA spokeswoman said.

Matthew Myers, president of the Campaign for Tobacco-Free Kids, said the FDA must assert jurisdiction over Puff Bar. "This is a brazen attempt to continue to sell the flavored products that are now fueling the youth e-cigarette epidemic without any regulation whatsoever," he said.

In December, U.S. Customs and Border Protection, working with the FDA, seized more than 30,000 counterfeit or unauthorized e-cigarettes at the Dallas Fort Worth International Airport, including some labeled Puff Bar.

"We are very concerned about how popular these products are with youth," Mitch Zeller, director of the FDA's Center for Tobacco Products, said in a January news release announcing the seizure. "The FDA is keeping a close watch on the marketplace and will hold accountable those companies that violate tobacco laws and regulations."

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