Flavor Craze: Restricting Flavored Tobacco Products at the Point of Sale

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Tobacco Control Legal Consortium Webinar Series

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Agenda

- Flavored tobacco products in the retail environment (Mollie Mayfield)

- Legal issues to consider (Mark Meaney)
Flavor Craze: Restricting Flavored Tobacco Products at the Point of Sale
In the US, 82.3% of stores sell flavored cigars

Industry Targeting

PROJECT: Youth Cigarette - New concepts

COLA FLAVOR

While the government would not permit us to add caffeine to a cigarette, it may be possible to use artificial ingredients to obtain a cola taste and aroma. Suitable names might be COLA-COLA, COLA-COOLER.

APPLE FLAVOR

Apples connote goodness and freshness and we see many possibilities for our youth-oriented cigarette with this flavor. Apple cider is also a possibility.

SWEET FLAVOR CIGARETTE

We believe that there are pipe tobaccos that have a sweet aromatic taste. It's a well known fact that teenagers like sweet products. Honey might be considered.
3. Fruit Flavored Chewing Products

Several avenues were explored in this area with the idea being directed toward younger chewers coming into the market. Many people felt that younger chewers would be attracted to products with less tobacco taste. For example, it was suggested that we investigate the possibility of borrowing switching study data from the company which produces "Life Savers" as a basis for determining which flavors enjoy the widest appeal.
Industry Targeting

Candy Flavored Tobacco

Look familiar?

How are we supposed to tell the difference?
Retail Tobacco and Health

The Industry Spends $1 Million/ Hour

On cigarette and smokeless tobacco advertising and promotion at the point of sale

- ATTRACT NEW SMOKERS
- SUSTAIN CURRENT SMOKERS
- PREVENT QUITTING & PROMOTE RELAPSE
Youth Initiation

- 40% of US middle and high school smokers use flavored cigars or cigarettes

Youth Initiation

- NYC youth who have tried flavored tobacco products twice as likely to be current smokers vs. those who had not.

- NYC youth who have tried menthol tobacco products were 10 times as likely to be current smokers vs. those who had not.

Menthol and Youth Initiation

- Cohort study: Youth who initiate smoking with menthol cigarettes are more likely to become regular smokers and more likely to become dependent on nicotine.

Disparities
Who uses flavors?

- Candy, fruit, or alcoholic-beverage flavored: 18.5% of tobacco users
- Young adults
- Minorities
- Menthol cigarettes: 37.1% of current smokers

Toxic Flavors?

Minneapolis restricts sale of flavored tobacco

The Minneapolis City Council thinks of the children. “The City Council has unanimously voted to approve new restrictions on the sale of flavored tobacco products — a policy change designed to prevent young people from smoking,” reports the Southwest Journal’s Sarah McKenzie. “The amendment to the city’s tobacco ordinance authored by Council Members Cam Gordon (Ward 2) and Elong Yang (Ward 13) was in a response to a push from the city’s Youth Congress, a group of youth leaders who brought the issue to the Council’s attention. The products have flavors like chocolate and grape...
What can local & state practitioners DO about flavored tobacco products?

- Flavor bans, including menthol
- Bans near schools
- Self-service ban
- Minimum pack and minimum price (indirect)
- Restricting advertisements and promotions
- Plain packaging – not likely in the US, but picking up steam internationally
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Tobacco Control Legal Consortium

- Legal research, analysis, and interpretation
- Policy development
- Litigation support
- Education and training
Flavor Restrictions
The Tobacco Control Act
The Act: Sets Standards

• No sales of tobacco products (as currently defined) to minors
• **No flavored cigarettes (except menthol)**
• No use of terms “light,” “mild,” and “low tar” and generally no health claims by the industry
• Disclosures about the contents of tobacco products & FDA approval of products
• Larger, more informative warning labels for cigarettes and smokeless tobacco
• Creation of the Tobacco Products Scientific Advisory Committee
The Act: FDA Authority

- Set product standards (rules regarding the design or safety of products)
- Require the disclosure of information about product contents and health effects of the products
- Change warning labels
- Regulate the sale and distribution of tobacco products
- Extend existing requirements to other tobacco products
Public Health Standard

“Appropriate for the protection of the public health”
The Act and Flavors

“[A] cigarette or any of its component parts ... shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke.”

The Act and Menthol

“Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee under section 917(a), the Secretary shall refer to the Committee for report and recommendation, under section 917(c)(4), the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African-Americans, Hispanics, and other racial and ethnic minorities.”

The Deeming Regulation and Flavors

- E-cigarettes, cigars, hookah, etc. would be regulated under existing rules for tobacco products
- The FDA will also have the authority to make new rules specifically for each product
State and Local Authority

- **Preservation Clause** preserves the authority of state and local governments to regulate the sale of tobacco products.

- **Preemption Clause** prohibits state and local governments from adopting tobacco product standards.

- **Savings Clause** reiterates that state and local governments can adopt regulations relating to the sale of tobacco products.
Why restrict flavored products?

- Flavored tobacco products appeal to youth.
- The younger individuals are when they begin to use tobacco, the more likely they will become addicted to nicotine.
- Tobacco users often mistakenly assume that flavored tobacco products are safer than other tobacco products.
- Flavors such as menthol in tobacco products can also make it more difficult for adult tobacco users to quit.
In October 2009, New York City prohibited the sale of flavored OTPs (other than menthol) in all places within the city, except in certain tobacco bars.
Providence, RI

January 5, 2012, the city of Providence enacted an ordinance to prohibit the sale of flavored non-cigarette tobacco products (including e-cigarettes but not including menthol).
Chicago, IL

In December 2013, the City of Chicago adopted an ordinance to prohibit the sale of all flavored tobacco products – *including menthol* – within 500 feet of a school or daycare.

Three lawsuits were filed – all have been dismissed as of last month.
Policy Options

- Prohibit the sale of all flavored products
- Restrict sales to adult-only tobacco retailers
- Prohibit sales in areas frequented by children
- Restrict the placement of products in stores
- Tobacco retailer licensing
Lessons Learned

- Ensure the legislation is clear, complete and well-drafted
- Set up a well-planned implementation process
- Understand the political and legal landscape
- Engage stakeholders from diverse sectors of the community
- Build supportive network of traditional and nontraditional partners
Resources
Contact us

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