

# SMOKESHOP

THE INDUSTRY AUTHORITY ON TOBACCO RETAILING

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## Building a Community

The Cigar Lounge at  
Chicago's Iwan Ries & Co.

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- > Premium Cigar Consumers: The Best Voice to Enlist in Fight for Industry's Survival



>Left: Actor Stephen Dorf currently appears in television commercials for Lorillard's blu e-cigarettes. This modern-day reincarnation of the banished Marlboro Man could be in jeopardy under FDA marketing restrictions expected to be announced in the near future.

## The Uncertain Future of E-Cigarette Marketing

*As e-cigarette sales surge, manufacturers are on an all-out media blitz to build market share and brand awareness while the category still remains unregulated. But regulation appears imminent, and the FDA could apply the same restrictions currently in effect for cigarettes to ecigs, rednering the promotional frenzy short-lived.*

**>BY NANCYELLEN KEANE & ANNE HAMPTON ANDREWS**

When Congress enacted the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act") in 2009, the Food and Drug Administration (FDA) undertook to make changes to the advertising and marketing practices applicable to tobacco products regulated by FDA. The stated reason for the changes is to limit exposure to tobacco product offerings to minors. Advertising and marketing practices of tobacco products is a focus of FDA because a key purpose of the Tobacco Control Act is to address "issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco."

### BANISHING CIGARETTE ADS

By the mid-1900s, the battle between tobacco companies and public health interests had begun. In those days, advertising tobacco products, particularly cigarettes, was common on television and on the radio. Actors, public figures, and even cartoon characters were frequently featured in cigarette advertisements—both on television and on radio. Common themes of sophistication, individualism, and freedom were used to promote cigarette brands. Striking a balance between public health officials' interest in promoting public health and tobacco companies' interest in promoting their legal products, Congress passed the Public Health Cigarette

Smoking Act ("Cigarette Smoking Act") in 1970. The Cigarette Smoking Act banned the advertisement of cigarettes on television and on the radio.

Although the Cigarette Smoking Act applies only to cigarettes, more recently Congress has adopted additional advertising and labeling restrictions that apply to cigarettes, roll-your-own, and smokeless tobacco products. The Tobacco Control Act restricts manufacturers, distributors, and retailers from certain practices in connection with the sale and distribution of tobacco products, with the stated goal being to reduce the access to and appeal of these products to minors. The provisions of the Tobacco Control Act relating to access concern the sale, marketing, and labeling of these products. The advertising and marketing regulations of the Tobacco Control Act restrict the use of the tobacco brand name of the cigarette, roll-your-own or smokeless tobacco product on non-tobacco items. Prior to the Tobacco Control Act, cigarette manufacturers commonly promoted their cigarette brands on race cars and in connection with other types of sponsorships. Although such forms of advertising are now prohibited practices, tobacco companies may still sponsor events in the manufacturer company's name, so long as the name does not include any brand name, logo or motto associated with a particular brand.

### CIGARETTE-STYLE AD BANS FOR E-CIGS? FDA WILL DECIDE

As regulation of cigarettes, roll-your-own, and smokeless has increased, companies have focused on marketing and advertising of the unregulated tobacco products including cigars, pipe tobacco, and e-cigarettes, in an attempt to increase the sales of those products. Since 2009, these additional categories of products have caught the attention of the FDA. In particular, FDA scrutiny has been heightened as a result of the advertising messaging, which opponents contend result in consumers believ-



ing that e-cigarettes pose fewer health risks than smoking cigarettes, or even that they are a useful method to stop smoking. FDA recently notified the industry of its intention to add more products to its regulatory authority and this announcement is expected anytime. The question is whether, and to what extent, the same concepts limiting marketing and advertising will be applied to additional tobacco products, specifically e-cigarettes. Opponents believe that the e-cigarette industry is deceiving the public about the risks associated with e-cigarettes.

#### E-CIG MAKERS RAPIDLY INCREASE ADVERTISING ACTIVITY

E-cigarettes currently make up roughly 1 percent of the tobacco market in the United States, and Americans are purchasing e-cigarettes more frequently. With the recent growth of the product, reports indicate that 2013 sales of e-cigarettes will likely reach \$1.7 billion. As e-cigarettes are becoming more popular, the major tobacco companies have been investing in e-cigarette brands and spending significant

amounts of money on advertising those brands. Advertising spending for e-cigarettes has increased to levels that have not been seen in the industry since the Cigarette Smoking Act that ended television and radio advertisement of cigarettes. E-cigarette makers are marketing their products through a variety of media including television advertisements with celebrities and public figures; catchy slogans and sponsoring various sporting events in an effort to promote their e-cigarette brand. Today, many of the same themes with a more modern twist are used to market e-cigarette brands that were previously used by cigarette manufacturers.

These advertising and marketing techniques cannot be used to promote traditional tobacco cigarettes, roll-your-own, or smokeless tobacco as they are barred by the Cigarette Smoking Act and the Tobacco Control Act. As seen in the advertising today, many of the companies promoting their e-cigarette brands are the same companies that invested large amounts of money in promoting cigarette brands prior to the Cigarette

Smoking Act. Because e-cigarettes remain unregulated by FDA, tobacco companies are advertising their e-cigarette brands as quickly as they can before regulations potentially limit their ability to build brand recognition and loyalty via advertising and marketing.

In the not too distant future, the tobacco industry will learn if history will repeat itself with e-cigarettes, and whether they will follow in the advertising footsteps of cigarettes. Despite the large build up of advertising spent, this freedom to advertise e-cigarettes using mass media could drop off abruptly and be replaced by more regulations. Signals given by regulators indicate an interest in applying the same restrictions as are currently in place for regulated tobacco products to unregulated products like e-cigarettes. **S**

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