



E-Cigarette Imports Banned Indefinitely // Court of Appeals Strongly Sides With FDA, Reports ASH



2010-04-01 21:14:54 - **The importation of e-cigarettes will be banned indefinitely as the result of a unanimous ruling by the U.S. Court of Appeals. The court agreed to permit their continued import ban while it considered an appeal from a lower court ruling which had prohibited the Food and Drug Administration [FDA] from stopping the imports of this new product, reports public interest law professor John Banzhaf of Action on Smoking and Health (ASH), who participated in the legal proceeding.**

The court went out of its way in its brief ruling to suggest that the FDA was correct in declaring the product illegal, noting that "appellants [FDA] have

satisfied the stringent standards required for a stay pending appeal." These standards require that the party seeking the stay show that it has made a "strong showing that it is likely to prevail on the merits of its appeal" - in other words, that it is likely correct on the law, and will be the victor when a final decision is announced.

The FDA had warned that e-cig use poses "acute health risks," that "the dangers posed by their toxic chemicals . . . cannot seriously be questioned," and that they have caused a wide variety of potentially serious symptoms "including racing pulse, dizziness, slurred speech, mouth ulcers, heartburn, coughing, diarrhea, and sore throat."

The FDA had found that samples it tested contained detectable levels of known carcinogens and toxic chemicals to which users could be exposed. The FDA said the toxic chemicals included diethylene glycol, "an ingredient used in antifreeze, [which] is toxic to humans"; "certain tobacco-specific nitrosamines which are human carcinogens"; and that "tobacco-specific impurities suspected of being harmful to humans -- anabasine, myosmine, and B-nicotyrine -- were detected in a majority of the samples tested." The FDA does not currently monitor or license e-cigs, and indeed considers them "illegal."

E-cigarette use is banned in no-smoking areas in New Jersey, Virginia, and Suffolk County, NY, and several states -- as well as a few attorneys general -- are pushing to ban their sale to children or otherwise restrict them. E-cigarettes have already been banned in Australia, Brazil, Canada, Israel, Mexico, Panama, and Singapore, and restricted in Denmark, Finland, Malaysia, Netherlands, and New Zealand, and the UK is poised to begin regulating them as drugs.

At least two attorneys general have filed law suits to stop the sale of e-cigarettes until they are approved by the FDA, they are being challenged in a class action law suit, and a number of states are also considering restrictions on the sale or use of the novel and unregulated products.

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