

STATE OF OREGON  
Marion County Circuit Courts  
JUL 30 2009  
**ENTERED**

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**FILED**

CIRCUIT COURT OF OREGON  
MARION COUNTY

IN THE MATTER OF:  
TA OPERATING LLC.

Case No. *09c18233*  
ASSURANCE OF VOLUNTARY  
COMPLIANCE

1.

TA Operating, LLC does business in Oregon and is the Respondent herein. This agreement is between Respondent and the Oregon Department of Justice (DOJ), acting pursuant to ORS 646 632.

**PROCEDURE**

2.

This Assurance of Voluntary Compliance (AVC) is a settlement of a disputed matter. It shall not be considered an admission of a violation for any purpose. Respondent and DOJ agree that no provision of the AVC operates as a penalty, forfeiture, or punishment under the Constitution of the United States, under the Constitution of the State of Oregon, or under any other provision of law.

3.

Respondent acknowledges a notice from the State of Oregon pursuant to ORS 646 632(2) of the alleged unlawful trade practice and the relief to be sought

4.

Respondent understands and agrees this AVC applies to Respondent, Respondent's principals, officers, directors, agents, employees, representatives, successors and assigns to the

1 extent acting through any corporation or other business entities, whose acts, practices or policies  
2 are directed, formulated or controlled by Respondent.

3 5

4 Respondent agree and understand that following acceptance of the AVC by DOJ, DOJ  
5 may communicate directly with Respondent for the purpose of executing and enforcing the  
6 terms of this agreement, resolving future complaints, and conducting undercover investigations  
7 of Respondent to the extent permitted by law.

8 6

9 Respondent understands and agrees that if this AVC is accepted by DOJ, it will be  
10 submitted to the Circuit Court of the State of Oregon for Marion County for approval, and, if  
11 approved, will be filed with the court pursuant to ORS 646.632(2).

12 7

13 Respondent waives any further notice of submission to and filing with the court of this  
14 AVC. Respondent agrees to accept service of a conformed or court certified copy by prepaid  
15 first class mail sent to the address following Respondent's signature or to Respondent's attorney.

16 8

17 Respondent understands that, in addition to any other sanctions which may be imposed  
18 under this AVC or under the law, violation of any of the terms of this AVC may result in  
19 contempt of court proceedings, civil penalties of up to \$25,000 for each violation, and such  
20 further relief as the court may deem appropriate. ORS 646.632(4), ORS 646.642(1) and ORS  
21 646.642(2).

22 9

23 The parties acknowledge that no other promises, representations or agreements of any  
24 nature have been made or entered into by the parties. The parties further acknowledge that this  
25 AVC constitutes a single and entire agreement that is not severable or divisible, except that if  
26

1 any provision herein is found to be legally insufficient or unenforceable, the remaining  
2 provisions shall continue in full force and effect.

3 **REMEDIES**

4 10

5 Respondent shall not represent or imply that DOJ acquiesces or approves of  
6 Respondent's past business practices, current efforts to reform its practices, or any future  
7 practices which Respondent may adopt or consider adopting. DOJ's decision to settle this  
8 matter or to otherwise unilaterally limit current or future enforcement action does not constitute  
9 approval or imply authorization for any past, present, or future business practice.

10 11

11 Effective immediately upon execution by Respondent of this AVC, Respondent shall  
12 cease and desist selling Electronic Smoking Devices in the State of Oregon until such time as  
13 all Electronic Smoking Devices sold by Respondent have been approved by the Food and Drug  
14 Administration (FDA) for sale in the United States or until such time as a court with jurisdiction  
15 over FDA has ruled that FDA does not have jurisdiction over Electronic Smoking Devices.

16 12

17 In the event that a court with jurisdiction over FDA rules that FDA does not have  
18 jurisdiction over Electronic Smoking Devices and Respondent resumes selling Electronic  
19 Smoking Devices in Oregon, Respondent, in connection with the manufacturing, labeling,  
20 advertising, promotion, offering for sale, sale, or distribution of Electronic Smoking Devices,  
21 shall not make any representation, expressly or by implication, concerning such products'  
22 efficacy, performance, safety or benefits, unless, at the time the representation is made,  
23 Respondent possesses and relies upon competent and reliable scientific evidence that  
24 substantiates the representation.

25 ///

26 ///

13.

1  
2 For purposes of this Assurance, "*competent and reliable scientific evidence*" shall mean  
3 tests, analysis, research, studies, or other evidence based on the expertise of professionals in the  
4 relevant area, that have been conducted and evaluated in an objective manner by persons  
5 qualified to do so, using procedures generally accepted in the profession to yield accurate and  
6 reliable results and shall include at least two well designed, randomized, well controlled,  
7 double-blind clinical trials that substantiate the claim for which they are offered as evidence.

14.

8  
9 For the purposes of this Assurance "*Electronic Smoking Device*" shall mean a nicotine  
10 delivery device, whether or not the device can also be used without nicotine, that simulates  
11 smoking a cigar, cigarette or pipe.

15.

12  
13 In the case that Respondent resumes selling Electronic Smoking Devices in the State of  
14 Oregon, Respondent agrees to the following:

- 15 A. Respondent shall provide DOJ with at least 30 days advance notice  
16 before resuming sale of Electronic Smoking Devices in Oregon;
- 17 B. Respondent shall provide DOJ with copies of all advertising and  
18 promotional materials that will be used to sell Electronic Smoking  
19 Devices in Oregon;
- 20 C. If Respondent claims FDA has approved sale of an Electronic Smoking  
21 Device, Respondent shall provide a copy of the FDA approval letter or  
22 similar documentation that demonstrates that the specific Electronic  
23 Smoking Device that Respondent sells or intends to sell in Oregon was  
24 approved by FDA;
- 25 D. Respondent shall provide DOJ with all competent and reliable scientific  
26 evidence relied upon by Respondent to substantiate all express and

1 implied claims that Respondent makes or intends to make to promote  
2 Electronic Smoking Devices in Oregon

3 16.

4 Respondent agrees that DOJ is not required to respond to the notice and submissions  
5 required by 15 above and that DOJ's failure to respond shall not constitute or imply approval of  
6 Respondent's sale of Electronic Smoking Devices in Oregon; nor does it approve or imply  
7 approval of the submitted promotional materials; nor does it indicate that DOJ accepts  
8 Respondent's contention that its promotional claims are supported by competent and reliable  
9 scientific evidence.

10 APPROVAL BY COURT

11 APPROVED FOR FILING and SO ORDERED this 30 day of  
12 July, 2009.

13   
14 Circuit Court Judge

15 REVIEW BY RESPONDENT'S ATTORNEY

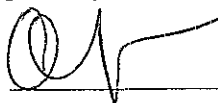
16 Approved as to form.

17   
18 Attorney for Respondent

19 RESPONDENT'S SIGNATURE AND ACKNOWLEDGMENT

20 Respondent has read and understands this agreement and each of its terms. Respondent  
21 agrees to each and every term

22 I, Mark R. Young, being first duly sworn on oath depose and say that I am the General  
23 Counsel of TA Operating LLC, and am fully authorized and empowered to sign this Assurance  
24 hereof.

25 

26 Print Name

Mark R. Young  
Executive Vice President  
and General Counsel

