



VENTURA CIGAR UNVEILS ARCHETYPE

Tobacco BUSINESS

SEPTEMBER/OCTOBER 2016 ★ VOLUME 19 ★ NUMBER 4

ARE YOU
READY FOR THE
MARIJUANA MARKET?

CIGAR MAKERS

WEIGH IN ON
DEEMING REGS

WHAT THE

NEW REGULATION
MEANS FOR RETAILERS

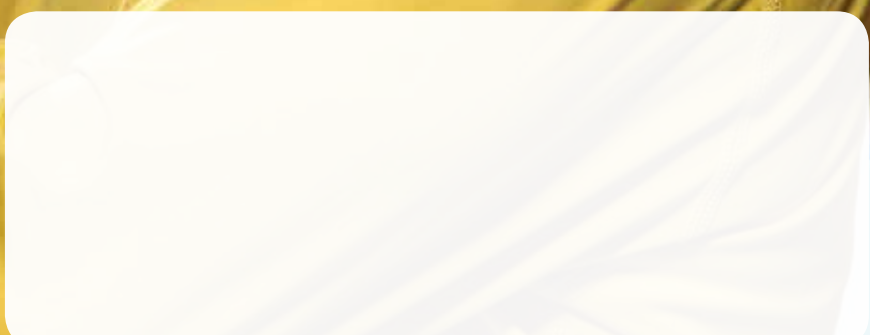
PLUS:

HIGHLIGHTS
FROM **IPCPR 2016**

CANNABIS RISING:

CHATting WITH CHEECH MARIN

*Cheech Marin of Cheech & Chong opens up about the past,
present and future of the marijuana market.*



Turning Over **New Leaves**

There's an old adage based on an Alexander Graham Bell quote that few people know in full. It goes like this: "When one door closes another door opens, but we so often look so long and so regretfully upon the closed door, that we do not see the ones which open for us."

That particular saying seems apropos for those of us who make our living in the tobacco and vapor industries today. Even as many predict gloom and doom for the newly FDA-regulated product categories in our industry, there are others who are looking forward—confident that there will be opportunities in the evolving marketplace and determined to make the most of them.

Those potential opportunities come in many forms, as evidenced by the stories in our current issue. For example, our cover story explores the market potential that cannabis offers both retailers and manufacturers as state after state legalizes the leaf for consumption. *TBI* talked to Cheech Marin, a well-known advocate of marijuana, about his foray into marketing—rather than making movies about—what is fast becoming a legal product (see p. 46). And our cover story on the topic (p. 52) explores the opportunities that abound for those willing to open their doors to cannabis, from a tobacco shop retailer who describes her successful move into the glass pipe market to a vapor device that's winning raves from marijuana tokers.

Despite dire predictions from many about the future of vapor products under FDA regulation, both this issue's Electric Alley column (p. 62) and vendor profile story (p. 80) showcase businesses that are forging ahead in that category, determined to fight for its future—and their own.

Not to be outdone, the cigar industry is also gearing up for battle, as reported in our Cigar Sense column on p. 38 and our coverage of this year's IPCPR show on p. 72. Even as

***TBI* talked to Cheech Marin, a well-known advocate of marijuana, about his foray into marketing—rather than making movies about—what is fast becoming a legal product.**

cigar makers unveiled a slew of new products at the show, racing against an August 8 deeming regulation deadline, the industry also took the battle to the courts and to legislators, arguing for an exemption for premium cigars and for changes to the rules.

And finally, retailers are navigating the new rules, sussing out what the regulatory changes under way mean for the retail landscape both today and in the future. In our feature story on p. 18, NATO's Tom Briant offers an in-depth look at how the deeming regulation compliance will unfold for the tobacco retail community. (Look for more from Briant in our next issue's cover story, which celebrates NATO's 15th anniversary.) Meanwhile, it's business as usual for David Barnes, owner of Asheville, North Carolina-based B&B Tobacconists, who reports planning to take a wait-and-see approach to FDA regulation as he continues to build on his base of pipe and cigar customers in our Trench Marketing column (p. 66).

Clearly, there are plenty of doors opening in this ever-evolving industry. We hope these pages will point you toward a few worthy of exploring for your business.

—The Editors

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On July 13, 2016, Pennsylvania Governor Tom Wolf signed into law House Bill 1198, which increases the state cigarette tax by \$1 per pack.

Colorado Organization Seeks Cigarette/OTP Tax Increase

A group known as the Campaign for a Healthy Colorado has announced that it is pursuing a petition drive to support Ballot Initiative 143 to increase the Colorado cigarette tax by \$1.75 per pack from the current 84 cents per pack to a new rate of \$2.59 per pack. The measure would also raise the state's tax on other tobacco products including cigars, smokeless tobacco and pipe tobacco by another 22 percent.

Pennsylvania Raises Cigarette Taxes and Sets OTP Tax Rates

On July 13, 2016, Pennsylvania Governor Tom Wolf signed into law House Bill 1198, which increases the state cigarette tax by \$1 per pack, assesses a new tax on other tobacco products of 55 cents per ounce (excluding cigars), and enacts a new tax on electronic

cigarettes and e-liquids at a rate of 40 percent of the purchase price charged to retailers, reports NATO. The new law also imposes a floor stocks tax on both wholesalers and retailers that have cigarettes, tobacco products (excluding cigars), e-cigarettes and e-liquids in inventory as of August 1, 2016. The floor tax is to be reported and paid within 90 days of this effective date. The OTP and electronic cigarette/vapor taxes go into effect on October 1, 2016, with the floor stocks tax to be reported and paid within 90 days of this later effective date.

The Pennsylvania Department of Revenue has confirmed that information about the new cigarette and OTP tax rates will be posted on the agency's website soon with the necessary forms needed to report and file the floor stocks tax. Retailers will also receive a mailing from the Department of Revenue regarding the floor stock tax requirement. "NATO will follow up and include a link to the revenue department's website page with the new floor stocks tax forms," says Tom Briant, the association's executive director.

City of Chicago Files Formal Answer to Lawsuit on OTP Tax

The City of Chicago has filed a formal answer, or legal response, to the lawsuit filed by NATO, Iwan Ries & Co. (a Chicago retail store), the Cigar Association of America, the Illinois Association of Wholesale Distributors, the Illinois Retail Merchants Association, the International Premium Cigar and Pipe Retailers Association, and Arangold Corporation d/b/a Arango Cigar Co., reports Tom Briant, NATO's executive director.

The lawsuit seeks a preliminary and permanent injunction against the enforcement and imposition of the tax on other tobacco products passed by the Chicago City Council earlier this year. "Its primary claim is that the new Chicago tax on other tobacco products is pre-empted by Illinois state law," Briant explains. "Illinois statutes provide that a home rule charter city can adopt a tax on cigarettes or tobacco products provided that the city adopted such a tax on cigarettes or tobacco products prior to July 1, 1993."

The City of Chicago, however, enacted a cigarette tax before July 1, 1993, but not an OTP tax. The City of Chicago admits that the Illinois legislature adopted this law prohibiting a home rule charter city from enacting a local cigarette or OTP tax and admits that it did not enact an OTP tax by the legislated deadline of July 1, 1993.

In its answer to the lawsuit, Chicago denies that it is now prohibited from enacting an OTP tax and also denies most of the other principle claims in the complaint regarding the state legislature's intent to limit cities from adopting an OTP tax and that the imposition of minimum package size and minimum pricing would penalize retailers for pursuing their rights in court.

"These kinds of denials were to be expected since the Chicago City Council approved the new OTP tax after NATO, other organizations and industry members informed the council members that Illinois state law pre-empted the adoption of a local OTP tax," says Briant. The City of Chicago and the attorney for all of the plaintiffs filed an Agreed Order with the court to delay the implementation of the OTP tax for a period of 60 days after the date that the court issues a ruling on the lawsuit. A hearing on the lawsuit is scheduled for September 14, 2016.

Alaska Proposes Tax Increase

In Alaska, two bills (House Bill 5002e and Senate Bill 5002e) propose to increase the tax on cigarettes by \$ per pack, increase the tax on tobacco products from 75 percent to 100 percent of the wholesale price, and impose a tax on electronic cigarettes at 75 percent of the wholesale price. Senate Bill 4001d, which increases the tax on cigarettes by \$1 per pack, raises the tax on tobacco products from 75 percent to 100 percent of the wholesale price and imposes a tax on electronic cigarettes at 75 percent of the wholesale price, was reintroduced on July 13, 2016 at the start of the state legislature's current special session. SB4001d remains in the Senate Finance and Labor and Commerce Committees.

Judge Rules on Label Changes

A redesigned label does not a new product make, according to a federal judge's ruling.

In August, Federal Court Judge Amit Mehta ruled that the U.S. Food and Drug Administration (FDA) cannot consider a label revision for a tobacco product as constituting that product as "new." The judge ordered FDA to eliminate its proposed label changes guidance, which called for any label changes to mean that the product in question would need to go through the agency's costly and time-consuming application for approval process.

The decision came as a result of a lawsuit filed jointly by Altria Group, Lorillard and Reynolds American against the FDA and the U.S. Department of Health and Human Services just over two years ago. Their suit claimed that the agency's new rules restricted their First Amendment rights. Mehta's ruling stated that under the Tobacco Control Act of 2009, "a modification to an existing product's label does not result in a new tobacco product, and therefore such a label change does not give rise to the act's substantial equivalence review process."

However, the judge also said that a change in the quantity of product contained in a given package would make that product a new tobacco product subject to FDA approval. This would include changing the number of cigarettes in a pack, for example.

"[Altria] is pleased the court struck down FDA's requirement that manufacturers obtain pre-approval from the agency before modifying product labels, which was the principal focus of our lawsuit," noted Altria Spokesperson Brian May in response to the news. "Specifically, the court ruled that changing labels does not change the tobacco product itself, and therefore cannot be part of FDA's process for approving new tobacco products."



ITG Promotes Kathleen Sparrow

Kathleen A. Sparrow has been promoted to executive vice president, marketing and sales, at ITG Brands. "With more than 36 years of service to ITG Brands and its predecessor companies, Kathy has held many key positions in our sales organization," says David Taylor, ITG Brands president and CEO. "As senior vice president of sales, Kathy worked diligently to ensure the success of ITG Brands, and has served on the company's operating committee for several years. In that capacity she has garnered the respect of her peers and has demonstrated the capability to lead the marketing and sales organizations," he says. Sparrow succeeds Randy B. Spell, ITG Brands' executive vice president for marketing and sales, who has announced he will be retiring October 1.

"Randy began his distinguished career more than 39 years ago as a Lorillard Tobacco Company sales representative," Taylor says. "This past March, Randy became the first recipient of our company's President's Key Award, a fitting honor for a career highlighted by many contributions to our company and our industry by an individual who has earned the widespread respect of both colleagues and customers alike for his leadership, character and professionalism."

In conjunction with Sparrow's promotion, Fred A. Paternostro, vice president of national sales, will be promoted to vice president of sales, and will assume responsibility for ITG Brands' entire sales department. As vice president of national sales over the past year, Paternostro has been invaluable in the integration of the sales organization at ITG Brands. With 37 years of service, he has held numerous sales positions, traveled extensively throughout the U.S. representing the company's sales efforts, and has earned the respect of ITG Brands' wholesale and retail trade partners.



Rick Ardito Joins Foundation Cigar

Rick Ardito has officially joined Foundation Cigar Company as brand manager for the highly anticipated July 2016 release of Nick Melillo's exciting new brand, "The Upsetters." Ardito brings nearly two decades of industry experience to the project, including a lengthy tenure at Drew Estate, from which he retired in 2010 as both a partner and EVP of public relations.

"The exotic nature of Nick's visionary-enhanced Upsetters brand is right up my alley and my expectations for the brand's complete success are very high," says Ardito.

Indiana Announces E-Liquid Enforcement Plan

The Indiana Alcohol Tobacco Commission (ATC) has announced that it will not enforce for a period of 60 days the provisions of a 2015 Indiana law that requires e-liquid manufacturers to be licensed, and that unlicensed e-liquid products cannot be sold in the state beginning July 1, 2016, reports the National Association of Tobacco Outlets (NATO). A recent announcement on the agency's website listing frequently asked questions about the new e-liquid law stated that the ATC will conduct a period of educational enforcement for 60 days beginning June 30, 2016 and that retailers have the option of selling or removing from store shelves any non-compliant e-liquids that were manufactured after July 1, 2015 and before June 30, 2016.

This 60-day educational enforcement period does not apply to unpermitted e-liquid products made after June 30, 2016, nor does it apply to any e-liquid products made after June 30, 2016 by a manufacturer that has not received a manufacturing permit from ATC.



2016 Tobacco Legislative Roundup

With summer now officially concluded, the vast majority of state legislatures have adjourned for the year. Meanwhile, local governments continue to consider a multiplying number of restrictive tobacco ordinances.

Cigarette and Tobacco Tax Increases

This year, 22 states considered bills to increase cigarette and/or tobacco product tax rates. Three states passed and enacted tax increases, including Louisiana (22 cents per pack cigarette tax increase); Pennsylvania (\$1 per pack cigarette tax increase, a new OTP tax rate of 55 cents per ounce that excludes cigars, and a new tax on electronic cigarettes and e-liquids at a rate of 40 percent of the wholesale price); and West Virginia (65 cents per pack cigarette tax increase, another 5 percent tax rate hike on OTP, and an excise tax on e-cigarettes and vapor products at the rate of 7.5 cents per ml of nicotine).

The 19 states that have considered bills to raise cigarette and tobacco taxes but have not yet passed any legislation are Alaska,



California, Florida, Georgia, Hawaii, Indiana, Kentucky, Maryland, Massachusetts, Mississippi, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Vermont, Virginia and Washington.

Although the California legislature did not pass a bill to raise the state cigarette and OTP tax rates, a petition to place a question on the November ballot was certified. This means that California voters will vote on whether to raise the cigarette and OTP tax rates by \$2 per pack and increase the OTP tax rate proportionately in line with the higher cigarette tax.

In Missouri, there are two pending ballot questions. One ballot question would increase the state's current 17 cents per pack cigarette tax rate to 23 cents per pack by 2021 and increase the OTP tax rate by another 5 percent. The second ballot question would increase the cigarette tax rate by 60 cents per pack by the year 2020 and impose a 67 cent per-pack fee on those cigarette manufacturers that are not a part of the Master Settlement Agreement.

E-Cigarette and Vapor Taxes

Pennsylvania's e-cigarette and vapor products tax of 40 percent of the wholesale price joins four other states that are already taxing e-cigarettes and vapor products, including Kansas (20 cents per ml of nicotine), Louisiana and North Carolina (both at 5 cents per ml of nicotine), and Minnesota (95 percent of the wholesale price).

The other states that had e-cigarette

and vapor tax bills pending but have not been passed include Hawaii, Kentucky, Maine, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington and West Virginia.

State Minimum Age Bills

During 2016, 17 state legislatures had bills introduced to raise the legal age to purchase tobacco products to either age 19 or age 21. So far this year, only California enacted a statewide law to increase the legal minimum age to 21. California joins Hawaii as the only two states with an age 21 law. Bills introduced to raise the legal age to 21 in Connecticut, Illinois, Kentucky, Maryland, Massachusetts, Mississippi, New Jersey, New York, Oklahoma, Rhode Island, Tennessee, Utah, Vermont, Washington and West Virginia did not pass, nor did a bill in Iowa that would have raised the legal age to 19 years old.

Local Ordinances

The real battleground on tobacco restrictions is on the local level. For 2016, NATO is projecting that the association will be monitoring and responding to some 200 local tobacco ordinances—double the number of ordinances in 2015.

One of the major local regulatory trends is a ban on the sale of flavored tobacco products. Cities in six states have adopted flavor bans, including 47 cities and towns in Massachusetts, nine in California, six in both Minnesota and New York, three in New Jersey and two in Illinois.

The real battleground on tobacco restrictions is on the local level. For 2016, NATO is projecting that the association will be monitoring and responding to some 200 local tobacco ordinances—double the number of ordinances in 2015.

On the minimum legal age issue, numerous cities in 12 different states have adopted a higher legal age, including 122 cities and towns in Massachusetts, 19 localities in New Jersey, 10 cities in Kansas, five towns in Missouri, New York and Ohio, three cities in Illinois, two cities in both Utah and Washington, and one city each in Arizona, Florida and Idaho. **TBI**

Thomas Briant is the executive director and legal counsel of NATO, the National Association of Tobacco Outlets.



BREAKING NEWS FROM THE TMA

The following are excerpts from harm reduction, tobacco regulation and other tobacco-related news.



Farrell Delman,
President, TMA

ON THE FDA...

...Commenting on the FDA's response to a small business owner's question as to whether e-cigs that do not contain nicotine or any other tobacco extracts are also covered by the deeming rules and will require pre-market approval like products that contain nicotine, **Boston University Prof. Michael Siegel** said that the answer to this "simple and straightforward question" seems to be "no." However, he noted, FDA "hides this answer in such a stream of incomprehensible gibberish that the poor small business owner (or even the large business owner) is more confused after having asked the question than they were before." Siegel suggested that plaintiffs suing the agency could use the FDA's own response to "demonstrate the arbitrariness and capriciousness of the regulations, as well as their undue complexity and burden on small business owners." The FDA response stated that "if your zero-nicotine product is not made or derived from tobacco, it may still be a tobacco product subject to FDA regulation if it is intended or reasonably expected to be used with or for the human consumption of a tobacco product."

...Taking FDA to task for its NSE

order on **Maverick Menthol Silver Box 100s**, Prof. Siegel writes that FDA's claim that its "rigorous science-based review" to "protect the public from the harms caused by tobacco use" fails to acknowledge the presence of all other cigarette brands on the market.

Reactions to the FDA's deeming rule, which took effect August 8, continue to percolate. Emille Mustafa of Cordoba & Morales in Casselberry, Florida said that the new regulations "would put us out of business," while Jeff Borysiewicz of Corona Cigar Co. in Orlando said that the FDA action is "government overreach" since "nobody's chain-smoking two boxes of cigars a day."

...Citing concerns about the burdens that the FDA deeming rule places on small e-vapor businesses, along with likely unintended negative health consequences for consumers who return to conventional cigarettes, **U.S. Sen. Ron Johnson** (R-Wisconsin), chairman of the Senate Committee on Homeland Security and Governmental Affairs, sent a third letter to FDA Commissioner Robert Califf to demand additional answers to the questions he posed on May 17. These included a request for data on

the economic effects of the rule on e-vapor businesses and whether FDA would issue a revised rule if data demonstrates that vaping is a safer alternative to cigarette smoking. Despite Johnson's request for concrete data on the rule's efficacy, he said that he received an "inadequate response" in June that "raises questions about the adequacy of the FDA's justification of the rule," he said.

...FDA announced that in line with its **good guidance practices** (GGP) regulation, the agency is issuing a revised Guidance for Industry titled "Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments," which reflects changes in FDA authority over deemed tobacco products and is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA.

...Noting comments that **NuMark/Altria Client Services** submitted to FDA on pre-market tobacco application (PMTA) requirements for e-vapor products, including that the rules are not aligned with the Tobacco Control Act's goal of promoting public health and will force some existing products off the mar-

Altria is “trying to save at least some vitality in the e-cigarette and vaping market by urging FDA to weaken the burdensome requirements so that many more manufacturers have an opportunity to stay on the market.”

ket, Prof. Michael Siegel said that Altria is “trying to save at least some vitality in the e-cigarette and vaping market by urging FDA to weaken the burdensome requirements so that many more manufacturers have an opportunity to stay on the market.” Altria and RAI are the only companies with the resources to develop the required PMTAs, but they are in strong support of the Cole-Bishop Amendment to grandfather existing products to create a “robust market for harm-reduction products” and prevent a “Big Tobacco oligopoly,” Siegel said.

...The **Cigar Association of America (CAA)**, **International Premium Cigar and Pipe Retailers Association (IP-CPR)**, and the **Cigar Rights of America (CRA)** have filed suit in U.S. District Court for the District of Columbia against the FDA’s deeming rule. The complaint alleges that it “violates numerous federal statutes as well as the federal rulemaking process” and asks for a declaratory injunction to “vacate, set aside and enjoin the enforcement of the final rule.” The plaintiffs said that the lawsuit challenges the FDA’s 1) “improper application of the February 15, 2007 grandfather date to cigars and pipe tobacco”; 2) “impermissible assessment” of user fees and the allocation of the fees only to cigars and pipe tobacco, not other newly deemed products; 3) “failure to perform an adequate cost-benefit analysis,” per the Regulatory Flexibility Act, to ac-

count for the deeming rule’s effect on small businesses; 4) “unjustified decision” to require health warning labels to cover 30 percent of the two principal display areas of cigar packages; 5) “unlawful designation” of tobacconists as “manufacturers,” rather than “retailers,” if they blend finished pipe tobacco or create cigar samplers; and 6) “incorrect decision” to regulate pipes as “components” or “parts” instead of “accessories.”

...Three **vape shops in Alabama**—Operation Vapor in Daleville, Tiger Vapor in Opelika, and Cyclops Vapor 2 in Montgomery—also filed a lawsuit against FDA. Their suit claims that the agency’s deeming rule for e-vapor products will “annihilate” the vaping industry rather than regulate it. Unlike the other pending suits against the deeming rule, Alabama’s is the only one that demands a jury trial.

...Representing many e-vapor associations, including the **Right to be Smoke-Free Coalition, Not Blowing Smoke, AEMSA, SFATA, CASAA, AVA, EVCA, SEVIA** and various state vaping associations, Washington, D.C.-based law firm Keller and Heckman announced June 21 that it filed an eight-point complaint in the U.S. District Court for the District of Columbia that challenges the CTP’s deeming rule and the Tobacco Control Act on various constitutional and administrative grounds.

...Judge Amy Berman Jackson of the

U.S. District Court for the District of Columbia ordered that the aforementioned legal challenge to the FDA’s new deeming rule filed by a **coalition of 10 e-vapor associations** be consolidated with another lawsuit brought by Tampa, Florida-based **Nicopure Labs**. Judge Jackson scheduled a hearing for October 19. Nicopure Labs filed a motion for summary judgment in the same court to request that the court affirm that “the deeming rule is unlawful and should be set aside.”

...Prof. Michael Siegel said that FDA either 1) grossly underestimated the **number of regulated products on the market** as its deeming rule estimates only 750 pre-market tobacco applications (PMTAs) to be submitted per year, or 2) assumed that hundreds of small companies would go out of business and therefore not file PMTAs, given that Nicopure Labs alone, which has sued the FDA, reports having 2,400 stock keeping units (SKUs). It would cost the company \$720 million to file PMTAs even using FDA’s conservative estimate of \$300,000 per application. Nicopure Labs estimates the actual cost to be \$3-5 million per PMTA.

...E-liquid company **SQN** is introducing three lines of new e-liquids called “NKTR,” “NKTR Sour” and “Melt,” which use **synthetic, lab-made tobacco-free nicotine** manufactured by Next Generation Labs, a company co-founded

“E-cigarettes are not undermining efforts to reduce youth smoking and/or youth tobacco use. They are actually contributing to those efforts.”

by Ron Tully, consultant to National Tobacco and the Vapor Technology Association. FDA said the status of synthetic nicotine “will be evaluated on a case-by-case basis.”

...*Cigar Aficionado* reports that cigar companies in the U.S. will now face an added cost of doing business as the FDA’s rule for newly deemed tobacco products, including cigars, will require **domestic manufacturers and importers of cigars to pay user fees** to the agency that could add up to a combined \$65 million per year for the industry, which will be divided based on each cigar company’s share of federal excise taxes it paid.

...Commenting on what he calls a “**letter-writing campaign** orchestrated by the American Cancer Society” in which ACS “volunteers” state that the Cole-Bishop Amendment would “strip FDA’s authority to review new products, ones becoming increasingly popular with youth, like e-cigarettes, cigars and hookah,” Prof. Michael Siegel writes that the amendment does not eliminate FDA’s authority to review new products before they enter the market, but “retains authority to require these ridiculous pre-market approval applications, which stifle innovation and freeze existing defective products on the market so that they cannot make safety improvements.”

...Miami, Florida-based **Global Premium Cigars**, which owns the 1502 Ci-

gars brand, filed a lawsuit June 1 in the U.S. District Court in Miami arguing, among other things, that the rules violate its First and Fifth Amendment rights and the rights of its owner, Enrique Sánchez. The company urged the court to vacate the deeming rule and issue a preliminary injunction to prevent FDA from taking any action pending resolution of the case on the merits.

...FDA updated an online tool to make it easier for **consumers to report problems** with e-vapor, cigarettes, cigars, smokeless tobacco and hookah. The tool enables users to report injuries, allergic reactions, poisonings, problems with product quality, and other issues.

ON OTHER TOBACCO-RELATED NEWS...

...Swedish Match has started legal proceedings to challenge the **EU’s ban on snus** except in Sweden by calling on the UK High Court of Justice to ask the European Court of Justice to revisit the legal grounds of the snus ban.

...Timed with Canada Day on July 1, **Rothmans Benson & Hedges** released a limited edition of its Canadian Classics brand that features a white maple leaf containing the names of Canadian provinces and territories on its packaging. Its barcode is also stylized with a partial maple leaf.

...Saying the “government is not a

nanny,” Guam Gov. Eddie Calvo on July 1 vetoed legislation to raise the U.S. territory’s **minimum age to buy tobacco products** from 18 to 21.

...The **minimum age to buy tobacco products in Chicago** rose from 18 to 21 on July 1, joining about 170 jurisdictions, including New York City and Boston.

...*Science Daily Magazine* reports that scientists at the Max Planck Institute of Molecular Plant Physiology in Germany have engineered tobacco plants to produce artemisinic acid, the chemical precursor to the **anti-malarial drug artemisinin**, with the research team saying that artemisinic acid harvested from tobacco grown on a 200-square-kilometer area would provide enough artemisinin to meet the entire worldwide demand.

...While noting that the CDC report has **youth smoking prevalence** at a “historic low” as shown by the “41 percent drop in youth smoking from 2011 to 2015,” Prof. Michael Siegel argues that “the 24-fold increase in youth” e-vapor use “from 1 percent in 2011 to 24 percent in 2015” shows that “vaping is becoming increasingly cool among youth and helping to make smoking ever more unpopular.” He added, “E-cigarettes are not undermining efforts to reduce youth smoking and/or youth tobacco use. They are actually contributing to those efforts” such that “vaping is helping to further de-normalize smoking.” **TBI**

FDA Deeming Regulations:

What They Mean for Your Store

Here's what you need to know—and do—
to survive the coming storm.

BY JENNIFER GELFAND

Five months after the FDA's deeming regulations were released, there are still a lot of questions and much confusion around what they mean for retailers. Following up on our last issue, which offered a regulatory overview by Tom Briant, executive director of the National Association of Tobacco Outlets, *TBI* took a more detailed look at what the regulatory changes under way mean for the retail landscape. Here's what we found out.

First, the good news: As concerning as the deeming regulations are, they could have been a whole lot worse. For example, while many remain concerned about what the requirements will ultimately mean for flavored tobacco, there is currently nothing in the regulations that prohibits flavors in any of the newly regulated categories—cigars, pipe tobacco, e-liquids and hookah products. “The only flavored products banned remain flavored cigarettes, with the exception of menthol,” notes Briant.

Furthermore, self-service display of those newly regulated products is also still permitted, as long as no state or local law prohibiting them is in effect, in which case such bans will remain in effect. Also, accessories do not fall under the FDA's purview. FDA regulatory authority now covers premium and domestic cigars, e-cigarettes and all vapor products, hookah tobacco, dissolvable nicotine products and gels, but matches, lighters, humidors, cigar cutters, ashtrays, hookah tongs and pipe tobacco pouches are not regulated.

“However, ‘components’ and ‘parts’ as defined by FDA are regulated,” cautions Briant. “That means traditional tobacco pipes and, in the case of vapor products, e-liquids and parts of the apparatus, such as the cartridge or tank, batteries and digital displays on tank models.”

What's more, while the deeming regulations do ban free samples, there is no provision against buy-one-get-one-free promotions, nor does the sampling ban prevent retailers from rewarding regular customers through loyalty programs. (See “Sizing up the Sampling Ban” sidebar, at right). “Also, products that have been introduced and are in the marketplace prior to August 8 will be able to remain in market for a limited time provided that their manufacturers file the necessary applications to seek FDA approval for those products,” adds Briant. In other words, it will be status quo for stores shelves in the near term.

Sizing Up the Sampling Ban

NATO's Tom Briant offers these answers to the most frequently asked questions about the FDA ban on free samples.

1.

What is a free sample?

The FDA defines a free sample as a tobacco product that does not cost the recipient anything. In other words, no money changes hands between the customer and the retailer.

2.

Are promotions like buy two, get one free or buy one, get one free banned?

The answer is no. That is because there is an exchange of money between the customer and the retailer in this type of promotion, so the free product is not really free. Also, FDA does not have the authority to regulate tobacco prices, and if the agency were to ban those types of promotions that would be a price regulation. Pricing is up to Congress, not FDA. Finally, in 2012 a U.S. Court of Appeals court made a ruling to address this issue and they decided that while free samples can be banned when no money exchanged hands, promotional prices do not constitute free samples and are to be allowed.

3.

Are coupons banned?

Yes and no. If the coupon is for a free tobacco product with no money exchanging hands, the coupon is not allowed. However, if the coupon is \$1 off of the price of a product and the price is more than \$1, then the coupons are allowed because there is still an exchange of money between the customer and the retailer.

4.

Are free products under loyalty or award programs banned?

No, the U.S. court decision referred to above found that loyalty programs are provided to adults only and there is a prior exchange of money to earn points or awards to apply toward the free product at a later date thus making the product not really free.

HURDLES AHEAD FOR MIXERS

Now for the bad news: As most in the industry are well aware, the deeming regulations place numerous hurdles in the path of manufacturers of the newly regulated products, from submitting ingredient lists and registering manufacturing facilities to undergoing one of two onerous and prohibitively expensive product approval application processes to enable products introduced to the market over the last nine years to stay on store shelves. For most retailers, the biggest impact—and it's a significant one—of these requirements will be a dramatic reduction in the number of products available in the market. Assuming the regulations remain in effect despite the mounting legal challenges the agency faces, the field will narrow considerably over the compliance period as manufacturers who cannot afford the costly process fold their tents.

However, retailers who have been blending pipe tobacco or mixing e-liquid face a more pressing concern, notes Briant. "There is a new requirement under the deeming regulations that requires retailers who formulate new flavors of pipe tobacco by blending tobaccos together and/or who mix e-liquid nicotine flavors together to form new flavors to be regulated as manufacturers," he explains. This would mean retailers would need to register with the FDA by December 31, 2016; file a list of pipe tobacco blends they make and an ingredient list for each one, and possibly complete and file pre-market approval applications. "The cost to comply with the manufacturing regulations...could result in these retailers ceasing to blend pipe tobacco or e-liquids." (See box, at top p. 34).

In fact, the FDA deeming regulations state that the agency expects retailers to do just that—quit blending pipe tobacco or mixing e-liquids. The trouble is that this will put a great many of retailers who built a business out of catering to customers who want their own pipe tobacco or e-liquid blends out of business. In fact, in the vape shop channel alone, a significant number of the 8,500 vape shops that Wells Fargo's Bonnie Herzog estimates are operating in the U.S. market would be likely to disappear in the deeming regulations' wake if that provision stands.

Even vape shops that don't blend their own e-liquids will struggle, since the range of products avail-



Actions by Altria

As the lawsuits challenging FDA's deeming regulations continue to pile up, Altria can already count one small victory. The company was one of the first to take action, filing a lawsuit in defense of its John Middleton Company Black & Mild cigar brand. Among the many restrictions that now apply to newly regulated products is a ban on use of words like "light" and "mild" as descriptors. However, Altria argued that this rule violates the First Amendment that protects trademarks and brand names, in addition to the Fifth Amendment that prohibits taking private property for public use without compensation.

FDA was quick to concede the point. In August, the agency informed Altria that it would not enforce the provision, according to Marty Barrington, CEO of Altria Group. "FDA has informed us that they do not, at this time, intend to enforce that [provision] against Black & Mild. In consideration of that, we have withdrawn our lawsuit," he says. "The parties have reserved their rights, but we will continue to use Black & Mild unless something changes."

However, the company is still engaging with FDA on multiple fronts, among them its plans for e-cigarette subsidiary NuMark (maker of MarkTen) and PMI's IQOS heat-not-burn product. "On the heated tobacco platform, our work with [PMI] in its FDA applications for pre-market approval authorization and a modified-risk tobacco product designation remains on plan," Barrington says. "We are making excellent progress on commercialization plans for the U.S. market."

In the classic scenario of misery making strange bedfellows, Altria has also joined the vapor business community—made up in large part by smaller companies looking to lure away smokers loyal to PMI brands—in protesting the deeming rule's February 15, 2007 grandfather date. A month after the regulations were released, Altria sent 22 pages of comments to FDA making the case that what it calls "electronic nicotine delivery devices" (ENDS) are exactly the type of reduced-risk products that Congress intended for the agency to support "when it empowered FDA to regulate tobacco products" to improve public health.

"If adopted in its current form, the draft guidance may result in many existing ENDS being forced off the market and make it difficult for some manufacturers to develop new ENDS products," Altria said. "Should this occur, adult tobacco consumers will be deprived of important product choices." As a result, almost all e-cigarette and vapor products would have to retroactively go through tougher regulatory requirements to prove that they don't cause public harm or entice nonsmokers to consume those products, the report added.

"We are both complying with the regulations and we are trying to influence and advocate where we think [they] can be improved," says Barrington.

Estimated time it will take a manufacturing company to complete a Pre-Market Tobacco Application (PMTA) per SKU:

1,713 to 5,000 hours

FDA's estimate of what the application process will cost a manufacturer:

\$330,000

The Wall Street Journal's estimate of that cost:

\$2 million

able to them will narrow considerably and offering a wide variety of options is a big part of the channel's appeal. The impact on the retail landscape could be transformative. "If it goes through, as far as I know, we won't have anything left to sell," Robert Armstrong, owner of Safer Vapors in Worcester, Massachusetts told his local newspaper, *The Telegram*. "Everything we sell would be illegal."

Among more mainstream retailers, sentiment is mixed, with some anticipating a bump in sales as other area retailers exit the category and also hoping the category will be easier to manage. As one c-store retailer noted in Wells Fargo's recent Tobacco Talk survey, "It may be the best thing for us—Might drop a lot of underperforming SKUs and may close some of the vape shops."

Fighting Back—With Teeth

As it turns out, consequences like these may well prove to be chinks in FDA's armor. Lawsuits filed on behalf of the cigar and vapor industries argue, among other

things, that the FDA neglected its required duty to consider the regulations' impact on small businesses. The Cigar Association of America (CRA), International Premium Cigar and Pipe Retailers Association (IPCPR), and the Cigar Rights of America (CAA) teamed up on an action alleging that the agency failed to "perform an adequate cost-benefit analysis," per the Regulatory Flexibility Act, to account for the deeming rule's effect on small businesses. Similarly, a complaint filed by a number of vapor industry associations, including Right to be Smoke-Free Coalition, Not Blowing Smoke, AEMSA, SFATA, CASAA, AVA, EVCA, SEVIA and various state vaping associations challenged the deeming rule and the Tobacco Control Act on various constitutional and administrative grounds. [A previous legal challenge presented by vapor manufacturer Nicopure has been rolled into this action by order of a U.S. District Court for the District of Columbia judge.]

In July, NATO partnered with the pipe tobacco counsel and IPCPR to send a letter

"It may be the best thing for us. Might drop a lot of underperforming SKUs and may close some of the vape shops."

to FDA "requesting that the agency delay the implementation of these manufacturing regulations on retailers because the agency did not conduct a required regulatory review or analyze the financial impact on small businesses, which is required by the federal regulatory flexibility law," reports Briant. "FDA recently responded with a letter indicating that, because there has been a lawsuit filed challenging the manufacturing regulations being imposed on retailers, they will let the lawsuit decide the issue."

While some of the regulatory provisions went into effect on August 8, many in the industry hold out hope that the deeming



Will Innovation be the Answer?

As an industry that has repeatedly weathered regulatory changes, the tobacco industry is better equipped than most to survive this current challenge. From filing lawsuits to debuting new technologies, companies are showing grit and determination in the face of adversity. Here's a look at how some have responded.

1 E-liquid company **SNQ** is introducing three lines of new e-liquids called "NKTR," "NKTR Sour" and "Melt" that use **synthetic, lab-made tobacco-free nicotine** manufactured by Next Generation Labs, a company co-founded by Ron Tully, consultant to National Tobacco and the Vapor

Technology Association. "The synthetic nicotine has the same molecular formula as the 'natural' nicotine derived from tobacco plants, but may potentially skirt FDA regulations that took effect August 8," noted a recent report by the TMA. "The Tobacco Control Act defines tobacco products as 'any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.'" FDA has said that the status of products incorporating synthetic nicotine will be evaluated on a case-by-case basis. Other companies reportedly using synthetic nicotine include **Coastline, CRFT Labs,** and **KVASS.**

2 Miami, Florida-based **Global Premium Cigars**, which owns the 1502 Cigars brand, filed a **lawsuit** June 1 in the U.S. District Court in Miami arguing, among other things, that the rules violate its First and Fifth Amendment rights and the rights of its owner, Enrique Sánchez. The company urged the court to vacate the deeming rule and issue a preliminary injunction to prevent FDA from taking any action pending resolution of the case on the merits.

3 Back in March, **R.J. Reynolds** debuted several next-generation products for its Vuse line, including the **Vuse FOB, Vuse Port** and **Vuse Pro**, a move many speculated the company made in anticipa-

tion of regulations that would preclude further innovation in the category and push existing products made by smaller companies out of the market. RJR, however, simply positioned the introductions as the next step for its vapor business.

"Adult tobacco consumers are looking for a vapor experience that delivers the performance and satisfaction of a tank, with the simplicity of a cig-alike," promised Brice O'Brien, executive vice president, consumer marketing for R.J. Reynolds Tobacco Company. "And that's what the next generation of Vuse will deliver." RJR, of course, is one of the few manufacturers with deep enough pockets to undergo the FDA application process.

regulations may be struck down in court or modified by legislative action to make compliance more feasible. All together, there have been eight lawsuits challenging the deeming regulations thus far and more are expected to be filed in the coming months. There's also a bill before Congress that contains an amendment seeking to change the predicate date—or the date by which a product had to be on the market in order to be exempt from the new tobacco product application processes set forth by FDA. The bill's Cole-Bishop Amendment would change that date from February 15, 2007 to August 8, 2016.

"This bill will still need approval by the full House, the full Senate, and then be signed by the president...so we are not sure if it will get enacted or not," says Briant.

More Regulation on the Horizon?

While many hold out hope for the tide to turn, there is also fear that the requirements already in force are just the beginning of a tidal wave of regulatory actions. "FDA claims that the deeming regulations are what they call 'enabling regulations'—that is, they enable the agency to issue more regulations on tobacco products in the future," says Briant. "One possible addition is extending a self-service display ban on all newly deemed products so that pipe tobacco, e-cigarettes and hookah products could not be displayed in self-service displays."

However, lawsuits may well play a part in what happens in the months to come. "Several lawsuits claim that FDA exceeded its authority by extending its regula-

tion to e-cigarettes and vapor products," says Briant. "They argue that it is not reasonable to apply regulations that govern cigarettes to e-cigarettes and/or vapor products because cigarettes are combustible and e-cigarettes have no combustion. They also claim [that] FDA failed to adequately quantify the benefits of the regulations and that the agency underestimates the cost of the regulations to [the] industry, so FDA cannot now claim that the benefits outweigh the costs, which is a requirement under federal law."

As the legal battles wage and the industry trundles toward compliance deadlines, retailers are waiting for the dust to settle and a new normal to emerge. It may be a long wait. **TBI**



Top Cigar Mind Talk

Regulation and its effect on the market is the headline conversation, but there's always more to talk about among top stogie makers.

By **Renée Covino**

The cigar business is a talking business. Stogie enthusiasts love to chat about the last great cigar they enjoyed. They typically learn of their next great cigar by talking to other cigar lovers and purveyors, conversations that often move beyond cigars and run deep. So naturally, it makes sense that cigar makers are big talkers, too—and lately, they've got a lot to talk about.

The “Racing the August 8 Crunch” Conversation

Perhaps the most obvious topic is regulation, given the FDA's recent finalized deeming rules and the August 8 deadline for releasing new products with a grace period before manufacturers have to file for Substantial Equivalence (SE) or a Pre-Market Tobacco Application (PMTA). The weeks before that fateful day found many cigar makers working overtime, particularly those with pre-predicate tobacco (before the FDA's arbitrary date of February 15, 2007), not just to get out their own new SKUs, but

also to help create blends of tobacco for fellow stogie manufacturers without pre-predicate products.

“I get teased for releasing a lot of blends,” states Rocky Patel, founder of Rocky Patel Cigars. But that turned out to be an industry blessing this past July when Patel’s factories were in full production until 1 a.m., churning out 1,470 new SKUs, according to the cigar great. “We plan on complying with the rules, but of course we’re hoping to defeat this somehow. Churning out those SKUs was our insurance policy looking forward,” he says.

It was also to help out smaller and boutique manufacturers that didn’t have any pre-predicate products—those that didn’t come on the cigar scene until 2009, 2010 and 2011, for example. “I remember when I started, I didn’t have a lot of help, but these times are very tough. I feel for them; they’re getting punished for trying to make a great cigar, so we’re trying to give them as many blends as we can. We’re helping them with this launch,” says Patel.

One of these smaller players is EPC Cigar, makers of La Gloria Cubana cigars. “We started in 2009, so there’s not a lot to fall back on,” admits Ernesto Perez-Carrillo, referring to the fact that his company does not have a pre-predicate product. “But as a company, we are going to be investing and fighting this thing out. Right now, it’s business as usual, and down the road we will see what happens. We’ve seen so many things in this industry; we’ll adapt and find a way to roll forward. I’m very optimistic.”

Meanwhile, there are others in the industry—in between a Rocky Patel and La Gloria Cubana pre-predicate product wise—who are just as optimistic. “As opposed to Rocky, I only came out with 14 new SKUs before August 8, not 1,400, but I was still lucky to have pre-predicate product[s],” says Pete Johnson of Tatu-



Unless regulations change, relatively new boutique companies will need to reblend their products to incorporate predicate date blends.

aje Cigars. “I am confident I have enough product in my portfolio to get an SE on—I have a lot of brands. We have great lawyers and I plan to get old in this business.”

The “Trimming of Brands” Conversation

One of the consequences of regulation is that cigar makers are being forced to scale back on products now and in the near future, knowing that they won’t be able to “save” many SKUs.

“When I look at my portfolio, it’s going to be about trimming products that might not make sense moving forward,” Johnson says. “I can’t hold on to inventory for personal reasons, no matter how much I want to—it doesn’t make economic sense, not when we’re talking about \$100,000 to register one SKU. At this point, I don’t know what the exact cost will be. No one has told us anything yet along those lines, but I know the trimming is coming.”

“Absolutely, lines will go away for us,” agrees Patel. “We have to keep what sells. There are sizes we love, but we have to narrow that portfolio.” As an aside, he reveals that “we took down all our blends from our websites; we want to keep it as vague as possible. All we want to say is that it’s tobacco. The worst thing now would be to list country of origin. We want to keep it as broad as possible, but we already lost a lot of brands.”

From where Perez-Carrillo sits, “we’re a new company and all four of our lines will have to be changed and blended with more predicate date blends—I will probably be knocking on Rocky Patel’s doors for that,” he says.

The “FDA Failings” Conversation

The way Patel sees it, “The FDA has not learned about our business; they’ve not spent time to learn it. It is so different

from cigarette products.”

His analogy is that FDA “went into a bee’s nest with no clue what to do afterwards, now that the bees are flying around.”

He says that the agency has no concept of how to test the products because it doesn’t know anything about how to cure cigars, how to ferment them, etc. It has no idea about the taste profile or any other cigar profile because “it is unlike any other product on the market. They are navigating in a field they have no concept about.”

Patel is hoping to make this “less burdensome on all of us” once he and other leading cigar makers “sit down at the negotiation table” with FDA. “That’s the plan anyway.”

Is it likely that the law will be changed in favor of the cigar industry?

Through Patel’s eyes, “We’ve done something that’s never been done before; we’re finally getting our language [for premium cigar exemption and a change for the predicate date] and bill out of the House. [Now] we have to get it through the Senate, which is more challenging. If I was a betting man, I’d say we have a 20-25 percent chance of it moving through the Senate. No stone will be unturned. We have five months to get it through.”

Johnson agrees that FDA has “no idea what they’re doing with tobacco, especially cigars. This is an artisan industry; we are not manufacturers of chemicals, this is tobacco.”

Patel adds, “I have to call it a handmade cottage industry, and I think we will have the opportunity to sit down with FDA and get some of the definitions we’re looking for. We’re hopeful to work with them, but right now there is too much ambiguity in this rule.”

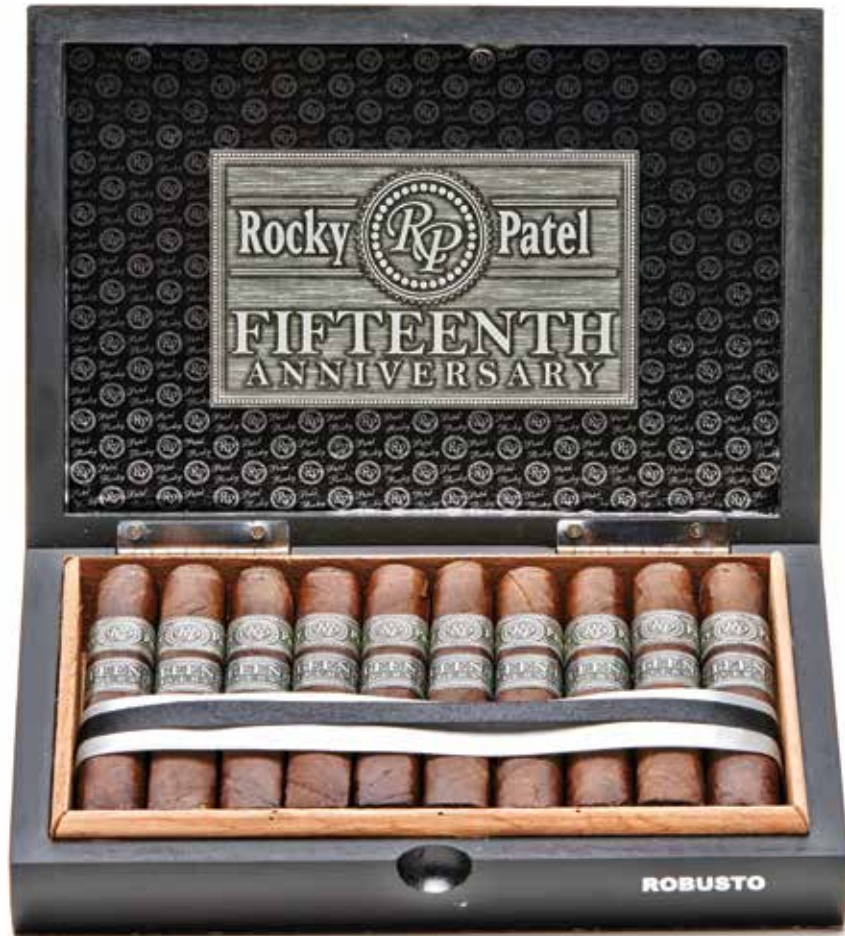
The “Future of New Products” Conversation

Is the future of new products, as the in-

dustry knows it, now dead?

The future of limited editions, in particular, is very uncertain. “We can make them for places outside of this country, we can release them to Europe, but that doesn’t help our U.S. retailers,” states Johnson. “Right now, we don’t know where one SKU of a limited edition really stands yet. If I come out with a new size of a previous limited edition, can I file for an SE to the previous one? I hope so, and I will keep on releasing them until they tell me it’s not part of the rule.”

Herein lies one of the most important aspects of the new ruling: how FDA defines the ingredient list. “How it’s carved out—is it country of origin?—plays a ma-



Cigar makers like Rocky Patel worked feverishly to launch products before August 8.

major role in what we can release for the rest of our lives,” says Patel. “We’re definitely going to release [new lines] in Europe. We’ll make some for ourselves, but in this country, it will be something to watch over the next year or two. I’m hopeful, like everyone else, that we’ll have to persevere and navigate our way through this.”

The “Positives of Regulation” Conversation

Is there really a silver lining in the recent regulatory madness? Oh yes, say some cigar makers.

“We’ve been really sluggish for many years,” says Johnson. “We go to trade shows, we buy new cigars, we see what’s

new, but this will make us better as retailers and manufacturers. I think it will be better with everyone coming together; we'll be a better industry because we will band together. We'll put warning labels on our boxes, but we will do it together. As a whole, this industry will band together and be great, still."

Perez-Carrillo says that loyal customers will come back into vogue, thanks to brands going back to "quality and consistency." He says, "I think the effect will be to build a lot more loyal customers than what we were seeing when new stuff was coming out every day."

The way Patel sees it, "there will be a cleansing" of the industry. "People who looked at this as a hobby will be gone. Consumers will be more serious and more awakened. Retailers will get better and be more challenged by more serious manufacturers. Everyone will take this as a more serious business and that will make us all stronger. We are all one professional family now, working hard to make great products, to lobby and fight the government, and I think we will ultimately succeed and move forward together."

The "Fat Cigar Trend" Conversation

Beyond regulatory concerns, cigar makers are chewing on the current market trends and how they're affecting everyday business. One big trend that doesn't seem to be going away is just that—big, fat cigars.

"Big-ring cigars are here to stay," asserts Perez-Carrillo, who mentions ring gauges of 60, 64 and even 70 as being very popular sizes still. "These are not a

"Everyone will take this as a more serious business and that will make us all stronger. We are all one professional family now, working hard to make great products, to lobby and fight the government, and I think we will ultimately succeed and move forward together."

fad anymore."

Personally speaking, Johnson is "not a great fan" of fat cigars, but admits that he has them in his line, with one pre-predicate product, a 6.5x60 ring gauge that he "can't keep in stock" because it's so popular.

"We obviously make them, but I'm not a fan of anything over 52," says Patel. "But they sell; I was in Europe last week, and I was shocked to see how many are selling there, 64 and 70. It's been such a turn in the last 10 years."

The "Bold vs. Mild and Concept Cigars" Conversation

How about cigar strength? What's trending there lately?

"I like to make rich, bold cigars. That's

what I like to smoke, but when we look at the numbers, we've noticed the trend is still predominant with milder cigars," says Patel.

"I like to blend a cigar. At this point in my life, I do what I like and hopefully people will like it, too," says Perez-Carrillo. "I like a concept cigar—you smoke it, it reminds you of an event, like when your kids were born or when you smoked with your dad. It's not really about strength, but the experience you had when you smoked it. It's not about a certain profile per se, but how the consumer feels about it. Is it special for him? That's what I look for when I blend cigars today."

"I'm similar, I like good cigars no matter what the strength. If they're good and bring me to a special place, that's what it's about," says Johnson. "Today's cigars don't have to blow your head off strong, they just have to be full of flavor."

Perez-Carrillo expresses that he's excited about the future of cigar-making in spite of FDA. "The change in the past 10 years has been incredible from a farm perspective," he says. "We don't have to look for new things, this is the future. It's all about the best experience."

Patel agrees that "better cigars are being made now than in all of history. What we're looking for and producing now is a richness with balance. It used to be strength, but if you have that character from different regions, the cross-pollinating of farms, now [that] is fun—this is what we love to do. It sucks being in Washington, D.C. walking the halls when you can be on a farm. This is what cigar-making should be about." **TBI**



PHOTO BY JAMES COONTZ

CANNABIS RISING.

CHATTING WITH CHEECH

In an exclusive interview with Tobacco Business International, Cheech Marin of Cheech & Chong opens up about the past, present and future of the cannabis industry from his vantage point.

Love of the leaf was central to the comedy of Cheech & Chong, the duo whose comedic albums and movies are widely credited with introducing the stoner persona to mainstream America. (See Marijuana Goes Mainstream, p. 52,). Now that their beloved weed is becoming more accepted than ever before, the two comedians whose names are virtually synonymous with cannabis are finding poetic justice in putting them on newly legal products. TBI's Renee Covino caught up with Richard "Cheech" Marin recently in California. Here are excerpts from their conversation.



TBI: Did you ever think you'd see the legalizing of recreational cannabis in your lifetime?

Cheech: It's always been legal for me, but I want everybody else in this country to enjoy that privilege. Absolutely, I thought I'd see it [become] legal. I operated under the assumption that it *was* legal.

TBI: You are well-loved for your stoner comedy of the '70s and '80s. How would that fit with today's growing cannabis world? Was it funny because it was taboo?

Cheech: We never thought of it as taboo. We always saw ourselves as middle-of-the-road dopers—that was the norm, it's just the establishment that caught up. We traveled from state to state for years saying, "This is the norm, guys," and people laughed because it was true. We are

still out there performing—Cheech & Chong—with this kind of comedy.

TBI: Describe how you view the mainstreaming of cannabis in this country. How do you think we got here?

Cheech: It's inevitable evolution. It started with the Baby Boomer generation, of which I am a part of, on the front end. As the oldest of that group, I thought everything happening to me would happen to the rest of the generation, and it's proven to be true. I saw that whole generation not necessarily give up wine and spirits, but add marijuana to it; they treat it like beer now. It's the intoxicant of choice for the biggest generation America's ever seen, so eventually it had to be legalized.

"We always saw ourselves as middle-of-the-road dopers—that was the norm, it's just the establishment that caught up."

TBI: Do you think cannabis will be legalized for recreational use at the federal level anytime soon?

Cheech: Yes, within two years, because the elections will be over and everyone will have paid their debts. There will be increasing pressure on whoever the elected officials are, from the federal, state and lo-

cal levels, to get this done because the constituency wants it. I compare it to Prohibition—we're in semi-Prohibition right now because we have five places where it's legal recreationally.



But even more importantly, we have 26 states that have some form of legalized marijuana, whether it's recreational or medicinal. That's more than half of the states in the country and that's the tipping point. When more states sign on, it's inevitable [that it will be legalized federally].

Of course, for every state that has some form of legalized marijuana, there's an equal and opposite group that wants to overturn those laws. They are trying to stop it, but I compare it to [trying to stop] a lava flow—you could stand in front of it, but I wouldn't recommend it.



TBI: Cheech's Private Stash is your endorsement so far of three strains of marijuana (an indica, a sativa and a blend) and a loose-leaf vape pen. What influence do you want to have on the marijuana movement with your celebrity-endorsed products?

Cheech: Now that it's more mainstream, I'd like to see more quality control so you know what you're getting on a quasi-strict basis. Marijuana is going through a transition from outlaw growers to a much more controlled environment and I am person-

ally involved in this movement. [As celebrity endorsers], we're just branders, we're not growers or distributors. We oversee the process and give it our seal of approval and keep it as consistent as possible.

Of course we recognize it's going to be different in every single state—every state grows its own weed, sometimes even counties grow differently. But within that state, we make it the best we can, and as consistent as we can.



TBI: Moving forward, do you envision cannabis to be sold commonly in the tobacco shop channel?

Cheech: Absolutely, and in liquor stores and other channels, too. I can go right now to a tire store and buy a dozen doughnuts—it's going to be like that. It's a consumable.

"[As celebrity endorsers], we're just branders, we're not growers or distributors. We oversee the process and give it our seal of approval and keep it as consistent as possible."

TBI: As we see the acceleration of the cannabis movement, will it lose some of its allure to your generation?

Cheech: In other words, if it's easier to get it and smoke it, then nobody will do it? In a word, no.

TBI: What mark would you like to leave on the cannabis industry?

Cheech: We are in the presence of it right now. Our national intoxicant is changing from liquor to marijuana and I think it's so much better health-wise, and the effect it has on society vis-a-vis marital relations, child relations, the insurance industry, etc. [is better, too]. If I could only choose between a beer and a joint for the rest of my life, I would choose a joint. And the Millennials, like my kids, are a part of it. They grew up with their parents doing it, it's just a matter of course. **TBI**

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MARIJUANA GOES MAIN- STREAM

As celebrities like Cheech Marin put their name on cannabis strains and paraphernalia, there is mounting evidence of a cultural shift. Is it time for tobacco stores to merge with the mainstream?

By Renée Covino

Joshua Wright of DoughMain Smoke Shop carries a wide range of glass accessories



He classifies himself as a “middle-of-the-road doper” who never saw marijuana as being taboo. And now that it’s less taboo, he is a marijuana business man, too. “Marijuana is going through a transition from outlaw growers to a much more controlled environment, and I am personally involved in this movement,” he says.

If the mainstreaming of marijuana had a face, it just might belong to Cheech Marin. During the course of an exclusive interview with *Tobacco Business International*, Marin acknowledged that he has always been on the pulse of the cannabis industry where, finally, “the establishment has caught up.” (See Cannabis Rising: Chatting with Cheech, p. 46.) Have tobacco retailers caught up?

As the younger half of the Cheech & Chong entertainment duo, Marin is well-known for the stoner comedy he and Tommy Chong made popular in the ’70s and ’80s. Fast-forward to today, where he is now a part of the latest marketing strategy of the cannabis industry as it gains more mainstream ground: celebrity-sponsored pot. Colorado growers are reportedly leading the charge in these seed/celebrity partnerships.

On the forefront of the trend, Hip-Hop artist Snoop Dogg unveiled several strains of signature marijuana. Rappers Freddie Gibbs and Wiz Khalifa, singer/songwriters Willie Nelson and Melissa Etheridge, and the family of the late Bob Marley followed suit and announced signature weed products last year. This year, Cheech Marin has joined the bunch with his “Cheech’s Private Stash” brand of (so far) three strains of marijuana and a loose-leaf vape pen.

But this is just one sign of a changing cannabis world. There are a multitude of others, including:

★ **Marijuana Consumption is Up**—Gallup’s Consumption Habits poll of 507 adults across the U.S. found that 13 percent of respondents reported being current users of marijuana in 2016, up from 11 percent in 2015 and 7 percent in 2013. What’s more, 43 percent said that they have tried the substance compared to 38 percent in 2013. In 1969, the percentage of Americans who had tried marijuana was 4 percent. According to the review, 19 percent of respondents below 30 reported using marijuana. About 50 percent of respondents aged 30–49 and 48 percent of those aged 50–64 reported having tried marijuana. The review also found that respondents who live in the West are slightly more likely to report currently using marijuana (14 percent) or having tried it (47 percent).



Retailers like Veronica Ridenour, of Bucks Smoke Shop in Hilliard, Ohio, are already doing a booming business in cannabis accessories.

★ **State Legalization is Rising**—The number of states that have legalized recreational marijuana use has risen from two in 2013 (Colorado and Washington) to four today (Alaska and Oregon now, too), plus the District of Columbia. Nevada could become the fifth state when voters consider a ballot initiative later this year. California, too, is considering Proposition 64, which would legalize the cultivation, possession and use of marijuana for nonmedical purposes, with certain restrictions, and impose a tax on the growing and selling of medical and non-medical marijuana.

More than half of the states (26) have legalized medical marijuana. Other states have passed laws allowing residents to possess cannabis oil if they suffer from certain medical illnesses. A number of states have also decriminalized the possession of small amounts of marijuana. Nine states in total will vote on medical or recreational marijuana use in November.

★ **More Americans Favor Legalization**—In 1969, only 12 percent of Americans said they thought that use of marijuana should be legal. That number grew to 31 percent in 2000 and jumped to 58 percent in 2015, according to Gallup statistics. As for federal legalization, analysts believe that it is not that far away. Nik Modi,

managing director at RBC Capital Markets, recently predicted that it could be five to seven years down the road.

★ **Marijuana Use Could Surpass Cigarette Smoking**—*The Washington Post's* Wonkblog analysis reported in August that if Gallup's 13 percent rate for current marijuana use were applied to the entire population, it would work out to be more than 33 million adult marijuana users in the U.S., compared to about 40 million cigarette smokers, based on CDC estimates. So potentially, "marijuana use could become more prevalent than cigarette use in just a few years' time," as cigarette smoking is in decline. The Wonkblog also said that the likely factors driving the increase in marijuana use include the increase in legal recreational marijuana markets and decreased social stigma surrounding marijuana use. National surveys show that support for legal marijuana has hovered at around 55-60 percent, while some lawmakers have called for restrictions on marijuana to be relaxed at the federal level.

★ **An Upscale Culture is Rising**—Events taking place in Colorado and Washington are illustrating how cannabis is shedding its "stoner image" and entertaining, literally, a more mainstream, upscale culture. Marijuana products have been

More than half of the states (26) have legalized medical marijuana. Other states have passed laws allowing residents to possess cannabis oil if they suffer from certain medical illnesses. A number of states have also decriminalized the possession of small amounts of marijuana.

4

WHY APRIL 20 IS THE UNOFFICIAL MARIJUANA HOLIDAY

APRIL 20 IS THE "POT HOLIDAY" in Colorado, unofficially speaking. Cannabis users in the Centennial State and elsewhere equate that date in April to "420," another slang term for marijuana that is said to originate back in 1971 at San Rafael High School in Northern California, where a group of pot-smoking students who called themselves the Waldos came up with the term as a shorthand for the time of day that the group would meet at the campus statue of Louis Pasteur to smoke pot. "Intent on developing their own discreet language, they made 420 code for a time to get high, and its use spread among members of an entire generation," according to an entry in urbandictionary.com.

"If we are breaking the law federally, what might that do to our liquor licenses and tobacco licenses?"

featured prominently in gourmet dinners and in cooking seminars. Cannabis-themed weddings are also becoming popular, where "budtenders" are on hand to give advice about strains, bouquets are sprinkled with cannabis, and teepees give guests an area to indulge. Upscale cookbooks are also cropping up from traditional publishers, authored by cannabis stars like Karin Lazarus, the owner of Sweet Mary Jane, a popular spot in Boulder, Colorado for baked medical marijuana-laced edibles. Lazarus was called the "Martha Stewart of weed baking" by *New York* magazine.

Marijuana-fueled yoga classes are another sign of the cannabis-rising culture times. The Colorado Symphony Orchestra is even in on the trend, holding a "Classically Cannabis" fundraiser, where "well-heeled attendees sipped drinks, shook hands and smoked pot from joints, vaporizers and glass pipes while a brass quintet played Debussy, Bach, Wagner and Puccini," according to *The Huffington Post*.

In other consumer media, *Wired* outlined legal marijuana's \$40 billion future and *Forbes* called legal cannabis last year's "best startup opportunity."

Of course, not all the news has been a green light for grass. At press time, the Drug Enforcement Administration (DEA) issued three major decisions on marijuana and industrial hemp, with the most significant running counter to most state action—DEA rejected a petition to reschedule marijuana, thereby affirming its continued status as an illicit Schedule I controlled substance.

"DEA's refusal to remove marijuana from Schedule I is, quite frankly, mind-boggling," stated Marijuana Policy Project spokesperson Mason Tvert. "It is intellectually dishonest and completely indefensible. Not everyone agrees marijuana should be legal, but few will deny that it is less harmful than alcohol and many prescription drugs. It is less toxic, less addictive and less damaging to the body... marijuana should be completely removed from the CSA drug schedules and regulated similarly to alcohol."

The Marijuana Policy Project cited that a variety of prominent national and state organizations have formally recognized the medical benefits of marijuana, including the National Academy of Sciences Institute of Medicine, the American Public Health Association, the American College of Physicians, the American Nurses Association, the American Academy of HIV Medicine, the Leukemia and Lymphoma Society, the Epilepsy Foundation, the British Medical Association, the California Medical Association and the Texas Medical Association.

The Marijuana Policy Project also cited a White House-commissioned report released in 1999 by the National Academy Sciences Institute of Medicine: "[A]lthough [some] marijuana users develop dependence, they appear to be less likely to do so than users of other drugs (including alcohol and nicotine), and marijuana dependence appears to be less severe than dependence on other drugs."

The Tobacco Road Turns

So where do tobacco stores fit in with the marijuana movement? Can they merge into it successfully and tastefully?

Many already have—with a sideways approach into the glass and accessories business. Those who are in it say they recognize the consumer need and retail profit potential, but want to maintain a certain level of sophistication so as not to offend existing tobacco customers who are nonusers of marijuana.

"Some people hesitate and worry what their customers will think about it, but there is probably not a more conservative family business around than ours," says Mary Szarmach, vice president of trade marketing and government relations for Smoker Friendly, which moved into the glass accessories business beginning with a side chain, then developed a program that its authorized dealers could incorporate into their stores: Glass Werx. "It's a nice layout but it's not so in-your-face as to irritate someone and make you look like a head shop," she reasons. The sets can range from 2- to 8-foot counters, fully planogrammed with glass and accessories through a licensed program and

Men and Millennials Top Marijuana Demographics

MEN:

68.9%

WOMEN:

31.1%

MILLENNIALS AGED 25-29

20.4%

(the largest percentage of recreational customers)

SENIORS AGED 65 and older

<5%

AVERAGE AGE
OF MARIJUANA CUSTOMERS:

37.6 YEARS OLD

AVERAGE AGE OF FEMALE
MARIJUANA CUSTOMERS:

38.2 YEARS OLD

AVERAGE AGE OF MALE
MARIJUANA CUSTOMERS:

37.4 YEARS OLD

HOW MUCH ARE CANNABIS
CUSTOMERS SPENDING?

MOST SPEND BETWEEN \$25
AND \$50 PER TRIP

AVERAGE TICKET

\$33

THE MEDIAN
CUSTOMER SPENDS

\$645 PER YEAR

57% SPEND MORE THAN

\$500

partnership with Glow Industries.

A few years ago when Colorado was on the forefront of legalizing cannabis from a recreational standpoint, Smoker Friendly took a serious, hard look at the category. The company decided not to jump into selling pot yet, due to banking and federal law concerns.

"If we are breaking the law federally, what might that do to our liquor licenses and tobacco licenses?" reflects Terry Gallagher, Jr., managing partner of Smoker Friendly. "As long as it's not legal federally, we can't take that risk with our core business today." He recognizes, however, that the cannabis category will remain "an intriguing opportunity." But for now, "we're doing really well with being a supplier of accessories; it's a really good business for us."

It's also a flourishing business for single-store owner Veronica Ridenour, who tells *TBI* that "glass and accessories" make up about 20 percent of overall sales at her store, Bucks Smoke Shop in Hilliard, Ohio. "I sell a couple pieces from the glass department every day," she reports. Like her tobacco giant counterpart Smoker Friendly, her concern is not to look like "a head shop destination."

She admits that she was especially concerned about it a little over a year ago when she took

over the shop; the previous owners had glass devices, ceramic tanks for wax and oil and other cannabis accessories, and she debated how it would affect her business. "One of my sales reps had me worried that it would drive away guys getting their cigars for the golf course and such, because you have to walk right past the glass counters to get into the humidor which is in the back of the store," she says.

Ridenour relaxed after receiving no complaints and seemingly lost no customers. "I have all walks that come in here—suits and hippies—and there are customers from all sets that buy this stuff," she says.

She has even decided to beef up the glass/accessories business a bit, now that Ohio passed the law to legalize cannabis for medicinal purposes. "It will be enacted in October and I'm ready," she revealed. Ridenour added another 3 feet to her existing 5-foot cabinet of glassware options, but she "also packed it more densely."

Her retail price points on the items vary greatly, from \$7 for a tiny metal device to \$120 for a water pipe. She sells mostly in the \$9 to \$15 range—"stuff that customers aren't too sad if they break." The best news of all from a business standpoint: her margins are in the 100 percent range.

Designs on Devices

Retailers with a strong assortment of vaping devices may also benefit from the growing marijuana market, as cannabis fans discover devices capable of vaporizing marijuana leaves and tout them to one another over social media. The PAX 2, for example, has been widely adopted by marijuana users.

While PAX's new CEO, Tyler Goldman, stops short of promoting the product for cannabis use, he acknowledged to *TBI* that cannabis is a popular loose-leaf material that fits well with the \$280 device. "We sell through multiple channels and tobacco stores have become a bigger and bigger point of distribution," he says. "As consumers seek out premium products they tend to go back to channels they are more comfortable with."

Beyond the tobacco shop channel, vapor shops are considering opportunities in the cannabis accessory business, too. One vape shop owner anonymously revealed to *TBI* that glass will be his backup business should his vape business fail due to FDA regulation.

"Our Plan B is to have a perfectly legal glass paraphernalia head shop-type business, and there's nothing wrong with it," he states. "I can get glass in there overnight, and grinders and other accessories in less than 72 hours." **TBI**



Survivors & Strategies Afoot

By Renée Covino

In the wake of the August FDA deadline, which essentially froze industry innovation, strategy-minded vape players push forward with survival tactics.

It's a deadly jungle out there. But it's also business as usual for those vape players up to the industry challenge of the next two years.

As of August 8, vapor products are considered tobacco products and officially operate under FDA control. Industry supporter Gregory Conley, president of the American Vaping Association (AVA), called August 8 "the beginning of a two-year countdown to FDA prohibition of 99.9-percent-plus of vapor products on the market." He says that "if we do not succeed in changing the FDA's arbitrary predicate date of February 15, 2007, the vapor industry will shrink to almost nothing beginning August 8, 2018."

And so the industry's *Survivor* game is underway, with the strongest contestants fighting and strategizing for their future, while at the same time looking to sustain and grow their now-risky business.

Mistic Aims for Mass Appeal

One of these "survivors in progress" is Mistic E-Cigs, which had timing on

its side. Looking to appeal to the "mass smoking population," as well as the vaping population, with an improved experience/easier-to-use device, it released its 2.0 POD-MOD in late July in advance of the FDA deeming rule deadline (the concept was in the works for months before the news of the finalized deeming regulations hit in May). The system is akin to the popular K-cup coffee machine experience; the Mistic 2.0 is a closed system with change-out flavor pods.

The product "gives the experience, flavor profiles and vapor production that mod users are accustomed to, and also provides ease-of-use to cig-alike users who haven't upgraded because they didn't want to deal with the hassle of bottles and tanks," explains Justin Wiesehan, VP of marketing at Mistic. However, it is the latter group that this product is intentionally targeted to.

"In our sales data, cartridges are still our best-selling items for four years; that consumer is still out there, and they're not as in front of this industry as the

mod users," says Wiesehan. "They're not on Instagram, they're not going to vape shows; that demographic is primarily in the 45-70 age range and the majority of them for us are women—all they want to do is use Mistic instead of Marlboro, and they don't make a big fuss of it."

He goes on to tell *Tobacco Business International* that "everybody thinks this industry is made up of hard-core vapers who blow clouds and build big old batteries and coils—that's part of the market, and it's where the negative hype unfortunately comes from. There's still a large part that just wants to stop smoking. They use it and it works for them, and they're not out posting it on Facebook or Twitter." They're also not perpetuating the bad press—and Mistic is looking to tap this largely untapped market as quickly as possible.

With 9 million vapers in the U.S. and 45 million smokers, "we still haven't touched the surface yet," Wiesehan maintains. "If we can provide product convenience that can help replace cigarettes, that's what we're trying to go af-

ter—to give smokers a device that actually works to help them stop smoking.”

The Mystic 2.0 POD-MOD will be sold in “major” retailers—some 20,000 stores by October, he says.

But what about the white FDA elephant in the room? The two-year clock is ticking—does Mystic think it can get FDA approval for this new device by then?

Wiesehan says that the biggest take-away from talking to FDA attorneys, scientists, lobbyists and other industry experts since the final deeming regulations hit is that more time is needed. “FDA really didn’t give us a lot of time at all to submit a PMTA (Pre-Market Tobacco Application); two years seems like a long time, but it really isn’t. We are most concerned about gathering evidence and data from a scientific standpoint to get approval. The burden is unrealistic. FDA needs to rethink the timing on that.”

Mistic plans to be in it for the long haul, though. Wiesehan is realistic and understands there’s a good chance that “most of the industry could go away outside of Big Tobacco and one or two others going through the PMTA process,” but the company intends to be among those that take it all the way to the approval process.

“It’s scary—you can go through the process and spend a lot of money with no guarantee you’re going to get approved. But we’re going to try, that’s for sure,” he states.

Juice Maker/Retailer Hones Quick Delivery Concept

From another corner of the market, a strategizing juice maker and vape retailer is planted in the game with a similar idea to cut through the negative industry hype with atypical and top-quality concepts.

Happy Juice, Cold Turkey and Vaep e-liquid brands, each with a unique focus (Happy Juice puts out more traditional flavors, Vaep represents more trendy fusion flavors, and Cold Turkey has uniquely honed the clove tobacco e-liquid market), are the creation of Victor Vitale, a tobacco industry veteran known for his “super premium”

boutique cigar brands. He intends to bring that same class of quality and integrity to his vape concepts.

As an e-liquid manufacturer arriving on the scene a little over a year ago, Vitale did his homework—all of his juices are produced at a “first-class e-liquid bottling facility in the U.S. using the most ethical practices available,” according to him. He also produces and exclusively distributes about a dozen private label brands for other retailers. The bottling facility is located on the West Coast; Vitale intends to purchase another facility located on the East Coast soon. “My vision is to have facilities on both coasts to fulfill production at the fastest rate possible. My goal is to satisfy demand within two to three days.”

Fulfilling demand is important to him, not only on the delivering end as a juice maker, but also on the receiving end as a retailer. In late spring/early summer, Vitale launched his Vaep/Vapor Lounge retail concept with a flagship location in Hudson, New Hampshire. He intends to open a second store in Philadelphia and has “very interested investors” reportedly ready to open up additional locations in Chicago, Miami, Dallas and Los Angeles.

The production/distribution capability, along with a “whole slew of brands” all under the same roof, reduces the risk of losing sales to down-the-street competitors and online entities due to out-of-stock and backordered inventory, according to Vitale. The Vaep concept was created to address that issue.

It is not a franchise, but rather a partnership concept, one that does not involve cushy couches (that’s right, you won’t find couches in the Vaep store’s Vapor Lounge), nor “kids moving clouds out of the way,” nor a bunch of “rowdy romper room” vapers, as Vitale puts it.

Instead, “we’ve been successful on how clean the shop is and on the expansive and cutting-edge beginner options, which the rest of the industry calls ‘starter kits,’ but the failure rate is incredible on those, so we have a lot of beginner options for people looking to make the transition comfortably and

“It’s scary—you can go through the process and spend a lot of money with no guarantee you’re going to get approved. But we’re going to try, that’s for sure.”

respectfully,” Vitale tells *TBI*. “I don’t like to talk about smoking cessation. In here, it is about people who have just made the transition to vape, and Vaep is focused on keeping that comfort level alive and well.”

Vaep is highlighted by a custom LED bar with stools where people park themselves to “absorb the culture and be comfortable,” Vitale relays. “It’s the perfect place to go on a lunch break.” And indeed, the hours from noon to 2 p.m. are Vaep’s busiest time.

Vaep is also tuned into the “artsy” side of its customers with industry-related painted murals adorning the walls and restaurant-style menus atop the counters. “We get compliments on our menus all the time. Our customers love being able to see an image of what they’re vaping,” says Vitale. “All of our liquids are chef-inspired, so menus make sense.” In fact, the Vaep juice tagline is, “Chef-inspired, science-explored.”

But again, what about the big white FDA elephant? Are Vaep and its investors crazy to carry on with such uncertainty looming? Vitale admits, “It’s risky.” But his strategy is to arm himself with as much information as possible, stay as industry-connected as possible (he’s on the SFATA advisory board and also consults for the New Hampshire Vapers Association), and then to lose himself in “business as usual,” until further notice.

“The way I see it, we can roll the dice and get lucky and continue moving forward, or we can go out of business,” Vitale says calmly. But actually, he admits to a third option: a “contingency plan” that he is saving for if and when he needs it. “I’ll get back to you on that if I have to,” he quips. **TBI**



Tobacco Road: An Oasis in Asheville

Once known as Bruce's Pipe Shop, B&B Tobacconists is now a thriving North Carolina cigar shop.

By Peter Barry

You might just miss B&B Tobacconists as you drive the winding, narrow lanes of Merrimon Avenue in Asheville, North Carolina, mostly because you'll need to keep your eyes on the road while cruising this busy thoroughfare that carves its way through the city nestled in the beautiful Blue Ridge Mountains. But then you'd miss out on this Southern oasis for cigar smokers, a bit of old school amidst the burgeoning hipster cool that's spreading there like kudzu.

B&B Tobacconists began life as Bruce's Pipe Shop in 1979, when Bruce Barnes retired at age 71 from the radio advertising business. David Barnes, his son and now sole owner of the shop, tells of the time he came home from work, about six months after his father had retired, to find his father and brother sitting around a kitchen table covered with white envelopes and piles of tobacco.

As Barnes tells it, "I said, 'What's going on here?'" His father answered, "I'm bored, I'm going to start a pipe shop." It might

come as no surprise that Bruce Barnes had a reputation as a straight shooter, and that goes a long way in North Carolina. From the kitchen table, the shop opened in an old roadside motel that had been converted into stores. It prospered there until 1984, when it moved just up the road to its present location, a charming 90-year-old house with rocking chairs lined up on the front porch.

In the early days, it was the pipe tobacco business that kept the doors open; selling cigars was more of an afterthought, a way to separate the shop from another one in the area. "In fact, when my dad first opened they didn't have cigars at all," says Barnes. "I kind of talked him into it because I thought people were looking for cigars. He started with General Cigar, J.C. Newman and Fuente. Those were the three companies he dealt with for a very long time."

To step inside the shop today is to cross over into another time. The living room area is filled with leather and upholstered chairs, an old phonograph and a wall full

of vinyl LPs that run the gamut from Sinatra to Country music. There are two main rooms where smokers can light up and exchange their views on the world, speaking with a mixture of the gliding vowels that distinguish the Southern drawl, and the pace of life seems to slow to a crawl.

Visitors will be glad that B&B Tobacconists, as it's now known, has been here for so long: it's the only place in Buncombe County where cigar lovers can smoke inside, thanks to it being grandfathered in when the laws changed. That's an important detail, because David Barnes was an agent for 40 years for the North Carolina State Bureau of Investigation and is not one to flout the law.

EVOLVING WITH THE MARKET

Over the years, the business shifted from pipe tobacco to predominantly cigars. "Most of our pipe smokers are not cigar smokers," says Barnes. "Mostly the pipe smokers here are the older folks—in their 40s and up. And we're not a shop that ca-



Dunhill's and Webb Peterson, but the Savinellis don't sell well here because of the price point. Our popular price points are between \$60 and \$90. We carry Randy Wiley, and we've had Tim West's stuff."

Pipe tobacco now accounts for between 15 percent and 20 percent of the business, and much of that is done through mail order. The shop still creates exclusive blends that have a following as far away as Maine and Hawaii. The most popular is the first blend that Bruce Barnes made: Carolina Home, a mixture created to help him quit smoking cigarettes. It worked for him, and many have since found the same success with it, though its particular magic remains a mystery. Barnes prefers selling through mail order, getting requests by phone or email, because it's the only way he feels confident that the buyer is of legal age.

It's the strict laws around verifying the age of the purchaser that has made selling through a website a nonstarter for Barnes. "On the Internet, I can't verify the age of the people buying the smokes. I spent 40 years enforcing the law, and I'm not going to take a chance in violating it. We have a mail-order business and we have a lot of people who buy pipe tobacco, but I know most of them. The ones that I don't know, before I sell to them, they've got to send me a driver's license with a current address. We don't take credit cards over the

phone—that's something I don't want to get into. We package the tobacco up and mail it to them with an invoice and they send us a check. We go the extra mile to verify if we don't know them."

That strict sense of right and wrong also informs on the shop's approach to marketing. "I've got a personal issue with trying to make somebody into a tobacco user who isn't one already," explains Barnes. "I have turned people away. If a 19-year-old kid comes in with his father and says he wants to smoke a pipe, my first question is, 'Why? If you don't have a bad habit, why start one?' So we don't attempt to convert anybody in our marketing."

But they do try to preach to the choir; they have community pages on Facebook (The Smoke Filled Room—B&B Tobacconists, Asheville) that list events and where followers share their cigar-smoking exploits. They also have a long-running presence on local North Carolina radio through the airwaves of WWNC. Barnes explains, "My dad was in advertising so he tried every print media there was and found it didn't work. He told me, 'Find the right radio station and stick with it.'"

A conservative talk radio channel that runs 30-second spots on a daily basis during Rush Limbaugh's show has proved the most reliable. The store is also an ongoing sponsor of Cigar Dave, a syndicated radio show

run out of Tampa, Florida. Cigar Dave is known as "The General" and "America's Alpha Male." He's also become an important vocal opponent of the FDA's new rulings.

Closer to home, most of the shop's marketing efforts seek ways to engage with existing customers. "What we try to do for our loyal customer base is to provide them with things to do—here in the shop, or somewhere else in the area," says Barnes.

Of course, that means having access to outdoor venues that allow the enjoyment of cigars al fresco. One such place is the legendary Grove Park Inn, built out of granite in the Blue Ridge Mountains more than 100 years ago. Here cigar smokers can enjoy an evening of good food, live music, a cash bar and special promotions of new and classic cigars brands in a magnificent, history-filled setting. Barnes says he tries to promote the boutique brands, but finds that they're a hard sell to his regular clientele. The one exception to that is the PDR brand, which immediately won over followers.

On the first Thursday of every month B&B hosts an evening that features a visit from a cigar manufacturer focusing on a specific cigar or line of cigars, with special deals for those in attendance. Also, on the last Wednesday of every month the store sponsors a Sip & Smoke event at a local restaurant. Patrons are given an outdoor area to pursue their favorite pastime and

the venue provides an appropriate liquor tasting. “For the next one the drink will be Four Roses and we will provide cigars that match that drink,” explains Barnes. “It’s outside under humongous umbrellas. We’ve been there in snow, rain and wind, and the number of people who show up will vary depending on the weather, but those who come always have a good time. Our customers get to try new cigars and it helps the bar keep its customers happy.”

Keeping people happy is a Southern specialty. B&B has been offering customer rewards programs where customers can earn free cigars but, as Barnes reflects on the new ruling, “I don’t think that’s possible now.” So the best way to save is through a membership, which is a reasonable yearly cost that allows for 20 percent off boxes, or the equivalent amount of loose cigars, and includes a humidified cigar locker—created literally from small-size, old-style metal gym lockers. “We’re not a store that caters to high-end customers, necessarily. We have some wealthy customers who come and hang out, but for the most part it’s working [class] guys.”

And they have a separate, private membership to a back room—“lair” might be a better term—with a small stage where members can bring their instruments and play live music. There’s also a huge video screen with a gaming setup and all the usual amenities for good times: a pool table, ping-pong, darts and chess. It’s created a following of 20-somethings, so Barnes plans to make more investments in the space.

Asked about interesting new cigars on the horizon, Barnes answered that he’s too busy thinking about the regulatory landscape to think much about new cigars. “Right now everything’s in limbo. I read everything I can about the FDA ruling, the FDA’s predictions, and predictions about the industry and I just don’t know what to say.” While being in a holding pattern may make some folks uneasy, it’s not necessarily a bad thing for a Southern shop with a steady clientele happy to come to a friendly place that’s as comfortable and welcoming as a rocking chair, sit a while, light a cigar and let the world go by. **TBI**

Future Focus: FDA Ruling

Having spent a lifetime in law enforcement, David Barnes, the owner of B&B Tobacconists in Asheville, North Carolina, is well acquainted with upholding the letter of the law when it comes to rules and regulations. Yet even he is scratching his head over the new FDA measures.

“The FDA may have tried to keep young folks from becoming smokers, and I have no problem with that at all, as I’ve said,” he explains. “But I think they went a little further than they needed to. Instead of focusing on retailers who would do things like selling single cigarettes—which is illegal—or blunts...they focused on the whole thing. I’m not sure that’s all that helpful.”

Even though he worked for the government, Barnes has a healthy respect for setting boundaries around a person’s ability to choose and legal coercion. It’s a no-nonsense view: “If adults, who are perfectly capable of making a decision knowing what risks they’re taking, are allowed to do it, I think things will be fine,” he says. “You make a decision to drive a car, well, that’s dangerous. You make a decision to ride in an airplane, well, that’s dangerous. You make a decision to run six miles a day near a highway, the pollution you’re pulling in[to] your body over a long period of time is dangerous. You make a decision to drink an alcohol[ic] drink, or drink a sugar[y] drink, or eat hamburgers at McDonald’s every day—there’s only so much the government can do to protect people.”

Like many in the cigar industry, Barnes also sees a big difference between the appeal of cigars and addiction to nicotine. “I honestly think that cigars aren’t nearly the danger that cigarettes are,” he says. “It’s a different type of tobacco; the processing’s different. I’ve gone a year without smoking a cigar while working in the shop every day. The thing about it being addictive is a fallacy; it’s not true. My career was in narcotics enforcement and I know what addiction is.”

For now, Barnes is taking something of a wait-and-see attitude in terms of how the new regulations will shake out, though he does expect the cigar associations to have the backs of the retailers. “I’m a member of Cigar Rights of America (CRA), IP-CPR and the state association,” he says. “Several years ago we wanted to do a fundraiser. We contacted one association repeatedly and got no response at all. So we decided to do something that would benefit the state association. I contacted all of our wholesalers and said, ‘I want cigars from you guys, but I want you to give them to me, because we’re going to put them in packs and we’re going to take one day of sales’—it ended up being two—‘and every penny that we make selling those cigars goes to the association.’ The response was absolutely fantastic. I’m hoping this association will have a footprint in Raleigh [the state capitol] that will help the new laws be not as draconian as they could be.”



Highlights From IPCPR 2016

Held just weeks before the momentous August 8 deeming regulation deadline, the 84th annual IPCPR show was a forum for information sharing and new product debuts.

By Jennifer Gelfand

Like many newly regulated tobacco product categories, the cigar industry has been buzzing with activity in the months since FDA's May 10 release of the final deeming regulations. Not surprisingly, July's International Premium Cigar & Pipe Retailers Association show became the place to be as retailers, manufacturers and virtually anyone having anything to do with cigars sought to get out in front of the regulatory wave coming their way.

Manufacturers in particular were scrambling to get products already in the pipeline onto the market by August 8, 2016, the deadline by which a product had to be out before being subject to pre-

market approval in order to be placed on store shelves at all. But retailers were equally overwhelmed as they tried to make sense of a murky ruling that suggested many of them would possibly be considered manufacturers under the new regulatory scheme, and to understand what would and would not be allowed in terms of sampling and displaying products. By the time July's show opened, virtually everyone in the industry was desperate for information—information that doesn't really exist yet, cautioned Barry Schaevitz of Fox Rothschild.

"We are at the very, very beginning of a very long process," he told an audience of IPCPR attendees and exhibitors

who turned out in droves for industry sessions held the day prior to the trade show floor opening. "There is at least as much that we don't know about how this will work as that we do know...we need to have patience. I know it's hard, but a lot will change."

One of the biggest potential changes—a changing of the predicate date—is one that the industry would welcome. Currently, the predicate date is February 15, 2007, which means any product on the market by that date will not be required to go through FDA's pre-market approval process at all as long as no changes are made to the product. Any product that went on the market after that date but

EVENT HIGHLIGHT

before August 8, 2016 will be able to stay on store shelves for the two-year period manufacturers have to file an FDA approval application, after which it will be up to FDA whether the products can continue to be sold. Products not on the market by the August 8, 2016 deadline will not be able to enter the market until they have been approved by FDA. However, all of those facts could still change depending on the success of a number of efforts under way by industry associations, noted Schaevitz, who explained that IPCPR has teamed up with partner associations Cigar Rights of America (CRA) and Cigar Association of America (CAA) on a lawsuit challenging the predicate date and the decision to use the same substantial equivalence process for cigars and pipe tobacco.

The suit asks for a declaratory injunction to “vacate, set aside and enjoin the enforcement of the final rule” because it violates numerous federal statutes as well as the federal rulemaking process. “There are nine separate counts, including challenging the predicate date that forces the cigar industry to look back nine years to find grandfathered products,” he explained. “Cigarettes and smokeless products [were regulated] in 2009, so [they] only had to look back two years.”

In addition to the predicate date, the industry is fighting on other fronts. “FDA has taken the view that any change to a cigar blend or pipe tobacco makes it a new product,” explained Dave Clissold of Hyman Phelps, who said that FDA might ultimately make allowances for some natural variations in cigars from year to year. “We argued to FDA very strongly years ago that cigars are completely different siblings in that there are natural variations due to weather conditions and availability of tobacco. FDA accepted that argument and said natural variations will not necessarily be [considered] a new product. Exactly what constitutes a natural variation is one of the things we will have to work out with FDA.”

The lawsuit also challenges the health warning requirements in the new rule,



EVENT HIGHLIGHT



the decision to treat retailers who blend different pipe tobaccos in their stores as manufacturers, the decision to consider pipes a regulated tobacco product rather than an accessory, and certain restrictions on sampling. Big picture challenges are also a big part of the suit, which argues that the “user fees” it will impose are really a tax, explains Schaevitz.

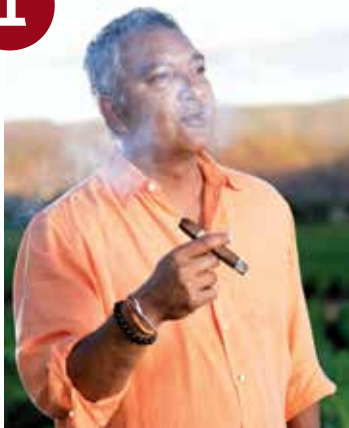
“Every other state and federal agency that assesses user fees on federally regulated companies gives those companies some benefit,” he explained. “When drug companies want to bring a new product to market, FDA does testing and assesses a user fee in order to do all that work. In our case we are simply paying a user fee for a benefit of being regulated.”

In addition to the lawsuit, the industry is also seeking legislative relief through two bills currently in the House and Senate, explained Kip Talley, senior director of federal legislative affairs for the IPCPR, who noted that the bills would exempt premium cigars from the regulation. They argue that the Tobacco Control Act that provides FDA with regulatory oversight of tobacco was set up to combat the health effects from smoking but that because cigars are used differently than cigarettes in terms of frequency and are not as appealing to minors, they should be regulated differently. Both House Bill 662 and Senate Bill 792 would exempt premium cigars, which are defined as cigars that are wrapped in 100-percent leaf tobacco, weigh at least six pounds per 1,000 count and have no filters or tips, from FDA oversight.

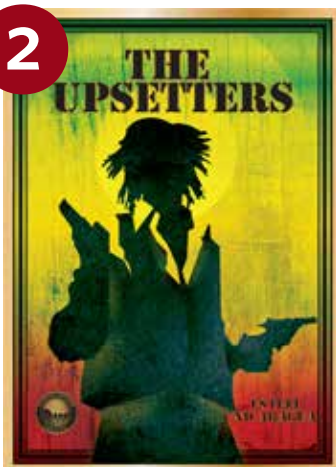
The legal process is not known for speed and, because the case is complex and any decision made is likely to be appealed, the industry will likely be coping with uncertainty for quite some time, warned Craig Cass, president of the IPCPR board and owner of Charlotte, North Carolina-based Tinder Box.

“We will adapt and we will be successful,” he said. “We will be selling cigars three years from now, five years from now and 10 years from now. The rules will change but we will be in the game.” **TBI**

1



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Introduced at IPCPR...

A mind-boggling number of products were debuted at this year's IPCPR show—far too many to list. But here are a select few we thought worthy of noting.

1 **Rocky Patel** followed up the success of its value-priced Catch 22 with a **Connecticut Catch 22** and the **Rocky Patel Fifty-Five**. Both were introduced at the company's huge booth, which featured live entertainment and a bar along with a display showcasing Sun Grown Maduro, Tabaquero by Hamlet and Rocky Patel Twentieth.

2 **Miami Cigar & Co.** debuted **The Upsetters**, an infused/flavored label developed

in collaboration with Nick Melillo, as well as the **Nestor Miranda Collection** Corojo.

3 **Foundation Cigar's** Nick Melillo also introduced **Charter Oak**, an economy cigar paying tribute to the unusually large oak tree that became a symbol for his home state of Connecticut.

4 **La Aurora Cigars** brought its Preferidos Petite Coronas, an Atlantic Coast exclusive, nationwide and introduced a Double

Barrel Aged (featuring an Ecuadorian Habano wrapper over a Dominican binder with Dominican, Cameroon and Brazilian fillers) to its Preferidos line.

5 **Ventura Cigar Company** has released two super-premium brands for 2016, **Case Study** and **Archetype**, for an impressive lineup of 31 highly complex, perfectly balanced cigars in all (see Product Profile for more details).

6 **Among the many**

introductions by **Drew Estate** were a slew of **Undercrown** cigars and accessories: Undercrown Shade Flying Pig, Undercrown Shade Tubos, Undercrown Shade Churchill, Undercrown Shade 10-count metal tins, Undercrown Maduro Churchill, Undercrown Maduro Tubos, and Undercrown Maduro 10-count metal tins. Drew also brought out line extensions for its **Kentucky Fire Cured Swamp Thang** and **Swamp Rat** cigars. The new sizes include the 6x52

Kentucky Fire Cured Swamp Thang Toro, a 5x54 Kentucky Fire Cured Swamp Thang Robusto and a 6x46 Kentucky Fire Cured Swamp Rat.

Camacho brought out a second cigar in its new Brotherhood Series; its **Check Six** cigars feature Camacho's Original Corojo in the filler and a multinational blend from Ecuador, Nicaragua and the Dominican Republic.

6



E-Alternative Solutions: Ready for Vapor Regulation

Experienced with FDA compliance, E-Alternative Solutions, a sister company of Swisher International, is poised to offer solutions to retailers challenged by the agency's new rules on vapor products.

By Jennifer Gelfand

TBI just happened to catch up with Jacopo D'Alessandris, president of E-Alternative Solutions (EAS), on the momentous day of August 8, 2016—the first in a series of FDA deadlines with which the newly regulated vapor industry must cope. Like his peers in the vapor industry, D'Alessandris was in the midst of strategizing with his team for the regulatory environment. But unlike many, he was also optimistic.

"There's a lot going on, but we are feeling pretty good," he said. "We knew this was coming. We knew that this kind of completely unregulated world would not last, and that this plethora of brand and products and the vape shops wouldn't last either. That's one of the reasons we created EAS."

ADAPTING TO THRIVE

A sister company of Swisher International, EAS was launched in February of 2015 after observing the vapor market for several years. At the time, D'Alessandris told *TBI*, "Consumers are confused and underserved, retailers are frustrated—there's a clear need for clarity and leadership. Our goal is to leverage Swisher International's mature and professional business practices to develop the category for the long term." While the company began marketing its Liquid Soul line shortly thereafter, it's only now, in a post-regulatory environment, that its long-term strategic plan can unfurl.

"Now that FDA has done this, we will be able to roll out our strategy even faster than we have been doing," explains D'Alessandris, who reports that EAS has doubled its sales force and hired an experienced general counsel and chief compliance officer, Chris Howard,

Jacopo D'Alessandris





“It’s all about ramping up to expand distribution for the wave of consumers who will be looking for high quality products in a regulated environment. We want to facilitate that and help retailers realize the opportunity that it offers.”

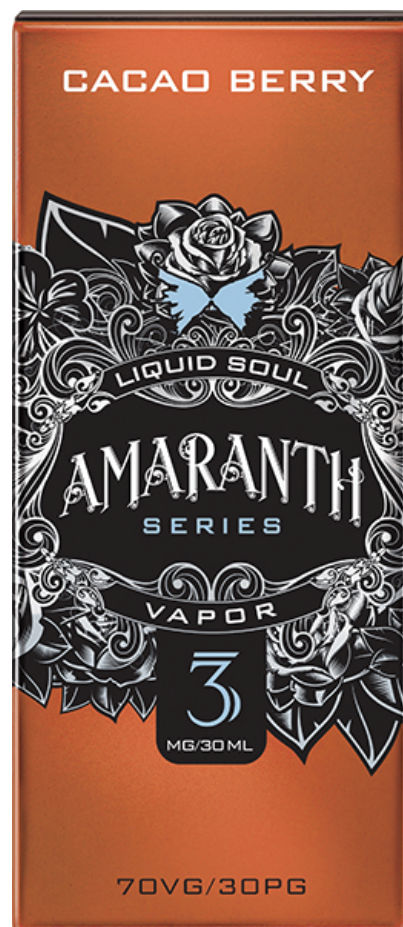
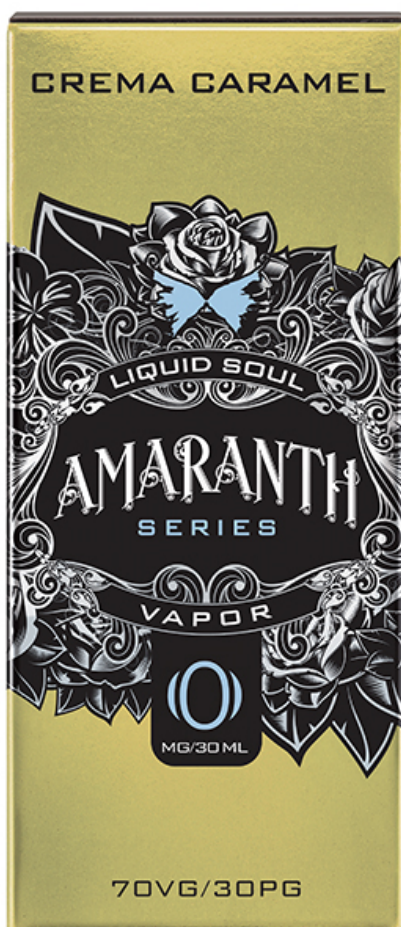
formerly of Fontem Ventures. “It’s all about ramping up to expand distribution for the wave of consumers who will be looking for high quality products in a regulated environment. We want to facilitate that and help retailers realize the opportunity that it offers.”

In particular, tobacco product outlets and c-stores that have been burned by attempts to enter the e-cigarette and vapor market can benefit under the new regulatory scheme, says D’Alessandris, who expects to see 50 percent of existing vape shops disappear over the next few years and the remaining shops to change their business models. “We are telling retailers that there will be a wave of consumers moving out of vape shops and looking for products in other channels, tobacco shops and c-stores.

We are working with these two classes of trade to get them ready for it not only by representing our own brands, but with full category management support, helping them manage their entire assortment and advising them on the best merchandising strategy.

CHANGES STILL AFOOT

Even as EAS seeks to position itself in the evolving market, D’Alessandris expects the landscape underfoot to continue to shift. “There will be lawsuits and legislative efforts that will help shape the regulations, and we are supporting efforts to change the predicate date,” he says. “There are other parts of the regulations that are clearly overreaching, and they are likely to be shaped by litigation. That has been the case in the past when



“Everyone who intends to continue to be a player in this market was launching products in advance of the August 8 deadline. I’ve seen some interesting stuff that I wasn’t expecting.”

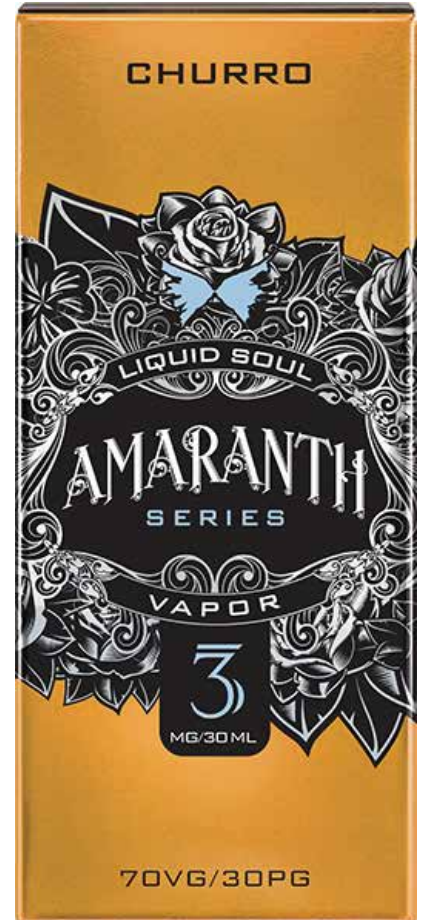
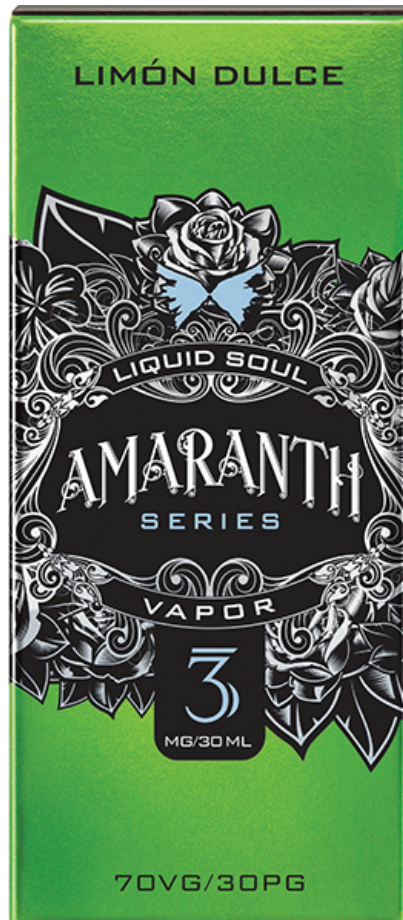
such a wide net is cast. They had to do that because of political pressure, but they also knew that these regulations would be progressively reduced and narrowed down by litigation. FDA is used to that; it is a way for them to operate.”

However, even if the hoped-for changes come, many of the smaller manufacturers and vapor retailers will still be unable to survive the winnowing of the field. In fact, a significant number of manufacturers are already “dumping” products in an effort to exit the market—and for good reason. Both paths to FDA approval, substantial equivalence and the pre-market tobacco applications, will be expensive and time-consuming. Still, there are also plenty of competitors that hope to stay the course. “Everyone

who intends to continue to be a player in this market was launching products in advance of the August 8 deadline,” he says. “I’ve seen some interesting stuff that I wasn’t expecting.”

AN EXPANDING LINEUP

EAS is also expanding its offerings. The company recently introduced Liquid Soul Amaranth, a premium liquid brand made with HydraVape MAX technology, a proprietary process that uses tobacco-free nicotine (TFN). Named for the Amaranth flower, a blossom known to the Ancient Greeks as “the flower that never fades,” Amaranth was designed to produce a consistent vape at any standard temperature, delivering powerful long-lasting flavors with minimal vape tongue.



“The industry has moved on and instead of trying to think how can we go back to what it was before, we are looking at how to help our retail customers adapt and make the most of the opportunity. That is why we are doing everything we do.”

EAS plans to follow up that release with an entry into the device market. “Current devices are very confusing in retail,” says D’Alessandris. “Consumers are unsure of the benefits of each one and which will meet their vaping needs. And, worst of all, many have technical issues. We are working on a line of devices that will address those issue.”

The line of open and closed systems that EAS is about to offer to traditional retail outlets will be designed with both ease of use and safety in mind. “This market is ready for technology that helps consumers vape with ease and confidence,” D’Alessandris says. “There is a large percentage of the population who would like to vape as an alternative to smoking, but they are confused and unhappy about the current offering.”

As vapor companies face the looming requirement of FDA authorization of its products, EAS may be one of the few non-“Big Tobacco” vapor players able to navigate the costly and complicated process necessary—and ultimately, it’s this that gives the company an edge moving forward.

“We know how intensive the approval processes are because Swisher has initiated SE processes recently,” asserts D’Alessandris, who says that his company is committed to forging a future in the vapor business. “The industry has moved on and instead of trying to think how can we go back to what it was before, we are looking at how to help our retail customers adapt and make the most of the opportunity. That is why we are doing everything we do.” **TBI**



“Once Upon a Time...”

Cigars in the future will be determined by what we do today.

The year is 2020. The trauma of the first measure in the history of America to regulate premium handmade cigars by the federal government has taken hold. The aftermath of that morning, May 5, 2016, while almost being a distant memory, is now being remembered as the most dramatic turning point in the history of this artisan industry. The ramifications of it, however, are still being viewed with shock by the surviving manufacturers and retail tobacconists, and a legion of consumers with their own share of concerns.

While the fall season of 2016 quickly arrived and the initial set of cigar regulations began, the industry anxiously awaited the outcome of the election season, hoping that it would spark a change in management at the U.S. Food and

Drug Administration (FDA), responsible for that initial listing of 499 pages of regulations. Companies began to register with the government, noting their contact information and a list of the cigars they produced. The initial rule that called for a ban on samples began, sparking an uncomfortable feeling when cigars were exchanged between friends, company representatives and retail tobacconists. Were they breaking the law? Or were they simply harkening back to the days when exchanging cigars was a simple act of friendship, or just an effort to discover a new blend or favorite new cigar? No one knew. It was a new form of social engineering by the government.

But then the real impact started to settle in. Companies had to begin submitting applications for new cigars or working every conceivable angle to get a substantial equivalence (SE) exemption

or path to market. The estimated 5,000 hours some said it would take to complete the application process proved to be true. Lawyers and consultants were rushing in to snatch up clients, with promises of approval if you used their services—for a hefty fee.

However, the vision of a federal bureaucracy unprepared for the onslaught of requests proved true as well. While the FDA was still behind by thousands of applications for cigarettes and smokeless products, the initial round of more than 10,000 cigar applications swamped the agency and created a backlog that would, according to one projection, last for three to five years.

The mandate that laboratory testing be conducted for new and existing blends also created a slowdown, even for the wealthiest and most sophisticated of companies. In some cases, the technol-

ogy to do the mandated testing did not exist. In others, requests for lab time backed up due to the constantly evolving and inconsistent requests for “new data” made by FDA.

The real turning point, however, began in early 2018 and through the spring of 2019. As the number of cigar companies rapidly decreased from over 165 to about 50, the prediction of the U.S. Small Business Administration began to unfold. Industry consolidation accelerated, and brand owners began to shutter. As a result, production levels in Latin America were affected. Labor unrest in this economically and politically sensitive region became an issue in elections, with diplomatic relations becoming strained, as the impact of that day in May of 2016 became readily apparent.

As consolidation and shrinking reshaped the industry, the retail sector became adversely affected as well. Over 750 community tobacconists closed their doors by October of 2019, with the major urban markets having the most locations for cigar sales. The impact on state and federal tax collections was as predicted—a shortfall ensued, causing state and local governments to demand answers.

Then there were the consumers, the patrons of those once-vibrant cigar shops, local clubs and lounges. Choices became limited; releases were scarce, production became even more limited and traditional releases marking milestones or the availability of unique tobacco simply could not get through the federal bureaucracy.

The outcry from all sectors of the industry again called for legislative action. The governor of Florida demanded congressional hearings, while the governors of Pennsylvania and Connecticut called upon their federal delegations to reverse the 2016 regulations.

Within weeks, the Traditional Cigar Manufacturing and Small Business Jobs Preservation Act was reintroduced for the sixth time. However, with the impending 2020 elections, this time it not only carried the support of the Florida and Pennsylvania congressional delegations as the base, but with the electoral significance of these two states, it coupled with a dozen other states that

resoundingly endorsed the legislation. On October 1, 2020, the president of the United States endorsed the bill and called for an executive branch review to work toward revision of the regulations, more in keeping with a common sense approach to the 2016 rule. But was the president's action too late?

While the story above is all make-believe, many facets of the narrative are grounded in scenarios that are within a hypothetical reality, depending on how the recently issued federal regulations on cigars is implemented if not addressed by the Congress or courts.

While we will not speculate on any judicial action, the ability of Congress to protect both the industry and your ability to simply enjoy a cigar is clear. They must advance the exemption language from regulations as adopted in April 2016 by the U.S. House of Representatives Appropriations Committee and strive for a means to make that exemption permanent.

By this writing, there will be about eight weeks left this year for Congress to act. They need to hear from you, as never before, that cigar manufacturers, retail and distribution channels and you, the consumer, deserve and demand that premium handmade cigars should not be subject to draconian federal regulations that will assuredly alter the course of cigar history.

We are asking for every manufacturer, retail tobacconist and consumer in America to call their two United States senators and members of Congress. Visit their district offices, call the local office, and call the Washington, D.C. office to voice your disapproval of the cigar regulations. Get your cigar brethren together for a group call. Invite these politicians to your local cigar shops and host a “Cigar Town Hall.” Tell them who you are: cigar voters.

Tell them to support H.R. 662, S. 441 and the actions of the House Appropriations Committee. Call for exemption and for “no funding for FDA actions against premium cigars.”

Tell them you are watching, and will remember on Election Day. We can assure you that 2020 will be determined by what happens in 2016.

CRA ISSUES OPEN LETTER TO PRESIDENTIAL CANDIDATES

Cigar Rights of America has issued an open letter to the U.S. presidential candidates outlining the economic and diplomatic issues surrounding the proposed regulation of cigars. The letter addresses the economic foundation of the industry in Florida, as well as the direct economic relationship with states such as Pennsylvania, Connecticut, Nevada and Louisiana—all of which are significant in the national political landscape.

The message by CRA to the candidates also addresses the failure by FDA and the presidential administration to undertake a comprehensive economic impact analysis of the regulations, as requested by the mayors of Miami, Tampa and Las Vegas, as well as Congressman Joe Courtney.

The letter also raises the issue of adverse economic consequences for women- and minority-owned enterprises associated with premium cigars, in addition to the vast consequences for relations with Latin America.

A full text of the CRA message to the candidates can be found at tobonline.com



J. Glynn Loope is executive director of Cigar Rights of America.



Misha: Making Shisha Simple

These single-use gourmet shisha cups are a convenient solution for fans of the water pipe.

Meet Misha, the company that makes single-use shisha cups that fit any standard water pipe—the Keurig of the hookah business. “Using a normal shisha cup takes between five and ten minutes; this takes one,” explains Robert Peirson, manager of Misha USA.

To use a Misha cup, you simply give it a shake, pull the tab that peels the seal off, and fit it onto your water pipe. “Capsules inside the container keep the shisha inside at optimum temperatures that heat and don’t burn,” notes a spokesperson, who says the resulting taste is smoother and lasts longer than that of other shisha products.

While Misha cups are now being marketed to consumers, the concept came about as a hassle- and mess-free product geared toward owners of hookah lounges and other establishments. Founder Michael Portz, who came up with the idea, began marketing it in the U.S. in early 2016.

“Lots of bar and lounge owners, as well as c-stores, had issues with the mess and said they would never use it,” explains Peirson, who adds that the cups are much harder than the bowls typically used for the same purpose. “Ceramic bowls will shatter. You can drop these on the floor and they won’t break.”

Those same features also make the product appealing to consumers, he adds. “Consumers can use this at home when they don’t want to spend 10 minutes making their own bowl. It’s perfect for when you have friends over and you don’t want to be in your kitchen making a bowl.”

Misha cups currently come in three flavors: Pure (tobacco and fruit), Mint (tobacco and mint) and Zero (a nicotine-free fruit blend). The company hopes to introduce more flavors as distribution grows. **TBI**

What’s in a Misha Cup?

1. THE CAPSULE

Made from strong aluminum that heats and doesn’t burn, the aluminum capsule ensures smoother flavors while reducing health impact.

2. THE CONE

A multi-layer insulating paper cone protects users’ hands from the heat.

3. THE RING

The flexible gasket fits with all modern water pipes. An adaptor is available for traditional Syrian-style water pipes.

Ventura Cigar Unveils Archetype

Ventura Cigar Company launched a new super-premium cigar line, Archetype, at the International Premium Cigar & Pipe Retailers (IPCPR) trade show on July 25. Archetype continues the Ventura Cigar tradition with a full line of five highly complex, yet perfectly balanced cigar blends. Each vitola is artfully crafted with a unique blend of rich, flavorful tobaccos carefully bound in a pristine wrapper—and features stunning visual imagery of the “Hero’s Journey” mythology on the boxes and bands. The blends and imagery work in harmony to create a mesmerizing visual and taste experience.

Series A consists of three blends: two made in the Dominican Republic at Occidental Cigars, and one from Honduras made at the Laepe factory.

- 1** **Dreamstate** features a Dominican Connecticut wrapper and is available in Robusto 5x52 (\$9.99), Toro 6x50 (\$10.99) and Churchill 7x48 (\$11.99). This mild-to-medium cigar features a velvety-golden wrapper that rewards with a complex bouquet of fruit, vanilla and white pepper.
- 2** **Sage Advice**, with an Ecuadorian Habano wrapper, is available in Robusto 5.25x54 (\$10.99), Toro 6x52 (\$11.99) and Gordo 6x60 (\$12.99). This exotic blend of rare, aged tobaccos creates a profound, full-bodied smoking experience that explodes with leather, dried fruit and spice flavors.
- 3** **Strange Passage**, a Honduran box-pressed cigar, is available in Short Robusto 4.25x50 (\$8.99), Robusto 5.5x54 (\$10.49) and Toro 6x60 (\$12.49). Strange Passage is a multi-dimensional cigar powerhouse that weaves flavors of freshly roasted coffee and aged wood with earthy fruit and spice on the finish.

Series B consists of two Nicaraguan blends created in collaboration with Drew Estate that will be extremely limited and initially allocated only to Ventura Cigar VSR accounts.

- 4** **Initiation** has an Ecuadorian Habano wrapper and is available in Corona 5x46 (\$9.99), Robusto 5x54 (\$10.99), Toro 6x52 (\$11.99) and Churchill 7x48 (\$12.99). The intriguing blend of Nicaraguan tobaccos features a surprising mix of floral notes, white sage and orange zest that intensifies throughout the smoke.
- 5** **Axis Mundi** features a Maduro Habano wrapper available in Corona 5x46 (\$10.49), Robusto 5x54 (\$11.49), Toro 5x52 (\$12.49) and Churchill 7x48 (\$12.99). This sublimely balanced Nicaraguan powerhouse delivers rich, complex layers of spice, dried figs, maple syrup and charred oak.



“The Archetype brand is inspired by the work of psychologist Dr. Carl Jung and the writings of mythographer Joseph Campbell who defined ‘archetypes’ as the constantly repeating characters who occur in the dreams of all people and the myths of all cultures,” explains Jason Carignan, chief marketing officer. “Campbell discovered through his study of world myths that the ‘Hero’s Journey’ is a common storytelling arc that has been retold in infinite variations since time began. Cigar-smoking is really no different; we gather and we weave our tales as we share a couple of sticks and a glass of fine whiskey.”

Fans of the Archetype Initiation and Axis Mundi collaborative products between Ventura Cigar Company and Drew Estate are encouraged to download Drew Diplomat, the official mobile application of Drew Estate—The Rebirth of Cigars, which is now available in the App Store for iPhone, and iPod Touch and on Google Play for Android (drewdiplomat.com).

Archetype Series A and Series B will begin shipping to retail customers on August 1, 2016. Phillips & King International, phillipsandking.com

New Tastes for Swisher Sweets

Swisher Sweets has introduced two new tastes to the lineup of its popular Swisher Sweets BLK Tip Cigarillos: Swisher Sweets BLK Grape and Swisher Sweets BLK Berry. Enjoy the “scentsational” aroma and smooth smoke of BLK’s pipe tobacco filler, a fusion of hand-selected air- and fire-cured tobaccos that deliver a unique taste like no other tipped cigar.

Swisher Sweets BLK Grape and Swisher Sweets BLK Berry are available now for shipment to retailers. All BLK blends are offered in “save on two” and “two for 99 cents” pouches. Swisher, 800-874-9720, swisherblk.com



Sparking Innovation

The new CTS line of e-vaping systems from Spark Vapor Brands offers four new closed-tank system devices from Vapage and Cig2o that deliver a premium e-liquid sub-ohm vaping experience. Each Vapage and Cig2o CTS vaping system is equipped with a long-lasting, rechargeable 30-watt power supply along with a prefilled, disposable, sub-ohm, premium e-liquid cartridge. Vapers simply pop in the convenient, prefilled refill and enjoy the flavor and vapor only previously available in larger, more complicated and expensive sub-ohm systems. When the tank is empty, customers then discard the tank and replace it.

The entire Spark Vapor Brands e-liquids lineup including Cig2o, Vapage Original, Vapage Premium, Vapage Private Reserve, and Blind Lion, as well as other popular showcase e-liquids from Space Jam, Cosmic Fog, Beard Vape, Charlie’s Chalk Dust, Holdfast and others provide the variety and selection of popular tobacco and fusion e-liquids that even the most discriminating customers expect. Spark Vapor Brands, 800-280-8089, sparkvaporbrands.com

Arango Cigar Adds New Credo Pipes and Chacom Pipe Tobaccos

Arango Cigar Company, exclusive U.S. distributor for Credo Pipes and Chacom Tobaccos, featured its products at the IPCPR 2016 trade show. Credo, which has never before offered pipes, introduced a line of three briars in three different finishes. The Edgar style has an apple bowl and straight stem, while George has a half curve and Archibald a full curve stem. All three are available in dark sandblast, as well as dark and light smooth finishes, with harmonious dark and light brown stems.

Further details, determined by model, include “frosted” stems lightly blasted with very fine-sand and satin transition rings between shanks and stems. Stems and rings are both made of Lucite (acrylic). Wholesale costs for these innovative pipes are \$75 for the dark and light smooth models, and \$60 for the sandblast finish.

Chacom has entered the pipe tobacco market with three high-quality mixtures. The selections, which are blended using bright and red Virginia tobaccos, are presented in 50-gram airtight tins.

Saint-Claude mixture is named after Chacom’s home-base city, also honored as the birthplace of the briar pipe. This tobacco is a delicate aromatic. Along with the Virginians, Saint-Claude contains a hint of Cavendish, plus chocolate and vanilla. The result is a gentle aroma that never overwhelms.

Royale mixture boasts “refined, elegant simplicity.” White Burley and a hint of Latakia tobaccos round out this nonaromatic blend.

Grand Cru includes sweetened and unsweetened black Cavendish tobaccos, along with Perique tobacco, molasses and vanilla. The result is a heady, unique flavor and aroma. The Chacom tobaccos wholesale at \$5.95 per 50-gram tin. Arango Cigar, Northbrook, IL, 800-222-4427, ArangoCigar@aol.com





Ventura Cigar's “Case Study” Celebrates California

Ventura Cigar Company has released its second new super-premium brand for 2016, Case Study. The new line is an exploration of classic Southern Californian artistry in architecture, honoring the culture of the company's home region.

From 1945 to 1966, *Arts & Architecture* magazine commissioned the rising stars of mid-century architecture to design and build a series of inexpensive, efficient model homes for the post-World War II generation. In total, 26 homes were built, mostly in the Greater Los Angeles area, by renowned architects including Richard Neutra, Charles and Ray Eames, Pierre Koenig and Eero Saarinen. These now iconic homes were designed with a minimalist, modern aesthetic and have been prominently highlighted over the years in Hollywood films, advertising campaigns and photo essays.

The Case Study cigar project from Ventura Cigar pays homage to this triumph of modernist design. Numbered from 1 through 26, each exclusive Case Study blend features a range of vitolas that have been made at some of the best factories in the industry. “We can't reveal the names of the master cigar blenders that we worked with, but the signature of their craft will be recognizable to cigar fans that pay close attention,” says Chief Marketing Officer Jason Carignan. The extensive list of blends and sizes are listed below.

The cigars feature a clean white band with a stark black font. A selection of the blends will be limited release only, distinguished by reversed colors on the bands. The box design also honors the mid-century aesthetic; upcycling left-over wooden cigar box material to create a striking, minimalist plywood that conveys the influence of the brand's inspiration. Phillips & King International, phillipsandking.com



Freshening **ACID G-Fresh Cigars**

In collaboration with Drew Estate, Swisher is reintroducing ACID G-Fresh Cigars in innovative G-Fresh foil pouches that ensure longer lasting shelf life and promise consistent product quality for each individually packaged cigar. In addition to the updated and improved packaging, ACID G-Fresh will also feature new blends only available in the G-Fresh format. The classics, Kuba Kuba and Blondie, will continue to be offered in their traditional infusions with their signature blue cigar bands. Additions will include Blondie Red, a bold infusion with a dark Cameroon wrapper, and Blondie Morado, a rich and robust ACID in a Maduro wrapper. Drew Estate and Swisher continue to work on additional specialty blends to be added to the G-Fresh lineup in late 2016. Swisher, 800-874-9720, experienceacid.com

Swisher Sweets Arctic Blast

Available for shipment to stores nationwide since July 6, Swisher Sweets Arctic Ice limited-edition cigarillos provide a frosty blast of ice mint. Swisher Sweets Arctic Ice cigarillos are packaged in a resealable two-count pouch with the "Sealed Fresh" guarantee. Arctic Ice are available in "two for 99 cents" and "two for \$1.49" options. Swisher International, Jacksonville, FL, 800-874-9720



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