

HP: The first topic we're going to talk about is e-cigarettes. E-cigarettes have become very popular in the last few years, and there have been some new legislative attempts to regulate this market. Now many companies in this industry have already started getting their trademarks and patents, so there'll be plenty of IP issues to address in the near future. So, Geoff, to start out with, why don't we start what e-cigarettes are and why they're so contentious.

GM: Yes, so an e-cigarette is a handheld device that is sometimes the size of a conventional cigarette or sometimes made to resemble a conventional cigarette. Otherwise, they can be in flashier packages, more appealing to today's youth. Basically, with an e-cigarette, the user inhales a vaporized liquid known as e-juice. The e-juice is vaporized within the device itself using what's called an atomizer which is typically battery powered.

The e-juice is often available in various flavors and may contain various amounts of nicotine. It's the nicotine content that sometimes raises some concerns. There's also a concern with respect to health issues, many of which are unknown because the e-juice contains excipients like propylene glycol, which once vaporized, inhale deep into the lungs. And so, there are some concerns about that.

HP: And so why are e-cigarettes so popular nowadays?

GM: As the decline in the use of conventional cigarettes increases, e-cigarettes are certainly a smoking secession aid. That's one factor. It seems vaping, as it's called, vapors, as opposed to smokers, it does seem to be something that's trending in the younger population.

HP: Okay, and is it clear right now whether the e-cigarettes are healthier or not?

GM: To my knowledge, it's not clear one way or the other. E-cigarettes on the grand scheme of things are somewhat in their infancy. Their long term health impacts of ingesting an excipient like propylene glycol or even the flavoring chemicals deep into your lungs may be something that may cause health concerns we may not see for years and years, much like has happened with conventional cigarettes over the years.

HP: All right. I know recently the Ontario government has tried to regulate this field. Can you talk a bit about the Bill C-45?

GM: As of May 26th, the Making Healthier Choices Act came into force in Ontario, following suit with Nova Scotia that I believe has adopted similar legislation. Ontario considers itself to be on the forefront of protecting today's youth from the

dangers of tobacco and the potential harm of e-cigarettes. As of late May, it was passed, it's now legislation, and as the new legislation, some of the things that are now illegal to do include the use of e-cigarettes in designated non smoking areas, selling e-cigarettes in certain places where the sale of tobacco is prohibited, displaying e-cigarettes in places where e-cigarettes are sold or offered for sale, much like the restrictions on displaying cigarettes. Promoting e-cigarettes in places where e-cigarettes or tobacco products are sold or offered for sale. There are a number of practices that are now illegal with respect to e-cigarettes much how we've seen over the years with cigarettes themselves.

HP: So how did this affect the IP landscape?

GM: So with respect to IP, when anything starts to become more and more popular, you would expect to see IP issues surrounding it. And so, we expect to see developments both on the patent front as well as the trademark front. If you look at the Canadian patent database already, there's more than 30 either granted patents or pending applications. We would expect to see more as the market for e-cigarettes continues to grow. As those patents become granted, in all likelihood, you'll start to see infringement actions based on those Canadian patent rights to pop up in the federal courts and provincial courts as well.

The market for e-cigarettes is definitely a growing market, globally, as of 2013. It was estimated to be 3 billion, and it's expected to grow 10 to 20 fold over the next few—by 2030. That's the patent issues. With respect to trademark rights. Similarly as something becomes more popular in the mainstream media, you would expect a lot more trademark applications related to such products and then the litigation as well.

Now, with trademarks there's going to be issues surrounding—you would assume restrictions on marketing and advertising you could put on the packaging much like you would see on cigarettes. When considering trademark rights, you'll have to consider those restrictions as well.

HP: Can we talk a bit more about that? How does litigation in the IP sphere differ in the cigarette world as opposed to other products, given there are such strong restrictions for the advertising? Are there things IP lawyers would be doing differently in this realm rather than another?

GM: Yes. If a client approaches a trademark lawyer for example and seeks to register a trademark, it's not necessarily our job per se to tell them they can or cannot use that trademark from a regulatory perspective. When our clients come in, we want to provide them with full consideration of all the issues and so I think it would incumbent on a trademark lawyer or an IP lawyer in general really to

raise any concerns that marking, that trademark use or packaging, marking on a packaging, might have from a regulatory perspective as well because you don't want your client to be stung either from putting a product out there that runs a foul from regulatory issues or trademark rights of others. That's how those two things are going to interplay from my perspective.

HP: Are there other lessons that IP lawyers can take away from the cigarette industry that can be applicable to the e-cigarette industry?

GM: Recently we have seen litigation around the trademark use on actual cigarette packaging. There's been some Marlboro disputes, etc. so once you're into a trademark action, the issues are very similar to any other case.

HP: Do you think legislation will get across the goals that are intended?

GM: Well, it will certainly restrict access to minors, so those under the age of 19 to have access to e-cigarettes much in the effectiveness will probably similar to the effectiveness you would see with cigarettes, whether that means it's effective or not is a different story I suppose. So I think it will restrict it in that sense and then you'll also see less use of e-cigarettes in places where using actually cigarettes was previously prohibited because now they're going to have to be used in the same place.

HP: Okay, so Geoff, thanks so much for your time for talking about this issue. Looking forward to following this as it develops.

GM: Thank you.