Judge Ends FDA Blockade On E-Cigarette Imports

Pete Yost, Associated Press Writer

WASHINGTON (AP) — A federal judge said Thursday the Food and Drug Administration cannot stop shipments of electronic cigarettes into the United States.

The preliminary ruling by U.S. District Judge Richard Leon came as California Attorney General Jerry Brown sought in a state court to halt one company's sale of electronic cigarettes. Brown says the e-cigarettes contain dangerous chemicals and are being marketed to children.

E-cigarettes operate with a heating element and a battery. Users inhale a vaporized liquid nicotine mixture much the way traditional smokers inhale smoke.

The FDA says electronic cigarettes are subject to regulation as drug-device combinations.

"This case appears to be yet another example of FDA's aggressive efforts to regulate recreational tobacco products as drugs," Leon wrote. The judge said he found the regulatory agency's claim of jurisdiction "at first blush, to be unreasonable and unacceptable." A final ruling in the lawsuit will come later.

The lawsuit was brought against the FDA by Smoking Everywhere Inc. of Florida and Sottera Inc. of Arizona.

Smoking Everywhere was the company involved in the separate action brought by Brown in Alameda County, Calif., Superior Court.

Ray Story, vice president of Smoking Everywhere, said Leon's finding that e-cigarettes were effectively the same as cigarettes should make Brown's lawsuit moot.

"Understand that this is a cigarette. We are acting as a cigarette company. We have all the applicable warnings on all our packaging that actually backs that up," Story said.

He said his company did not represent the product as healthy or safe.

Story said his company made a point of cutting ties with any retailer discovered to be selling its e-cigarettes to minors. At the same time, he said, no specific law prior to the federal judge's ruling barred selling the devices to minors.

Now that Leon has ruled that his product is a cigarette, Story said he believed all laws barring the sale of cigarettes to minors apply to the e-cigarettes.

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