

**Status Report: New Mexico Attorney General v. Circle K  
(Case No. D-101-CV-2026-00900)**

Procedural Status

- Complaint was filed on March 31, 2026 in the First Judicial District Court in Santa Fe County. Case has been assigned to the Honorable Bryan Biedscheid.
- Focus of the complaint is the sale and distribution of illegal disposable flavored e-cigarettes (“vapes”) in New Mexico. Because of their flavors, high levels of nicotine, potent delivery systems, and the potential to contain heavy metals and other toxins, these products pose a significant public health risk to New Mexico consumers, particularly children.
- Flavored disposable vapes are the leading tobacco product used by youth, and for this reason these types of products, including the brands at issue in this case, have been banned by the U.S. Food and Drug Administration (“FDA”).
- The State’s complaint names four primary Defendants: two chain retailers (Circle K and Southwest Convenience Stores (often branded as Alon or Delek stores)), and the retailers’ primary distributors (Alexander Stearns d/b/a Max Distributing and J&M Distributors).<sup>1</sup> The complaint alleges a variety of unconscionable and deceptive trade practices under New Mexico’s Unfair Practices Act (“UPA”), NMSA 1978, § 57-12-2(D)–(E), relating to the sales, distribution, and marketing of illegal disposable vapes.
- In June 2026, each of the Defendants filed a motion to dismiss the complaint.<sup>2</sup> The State filed an omnibus response in August 2026. Defendants filed their replies in September, and the motions are now fully briefed. The parties are awaiting a hearing date from the Court.

Key Legal Issues for Motions to Dismiss

- Defendants’ motions to dismiss raise five main arguments:

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<sup>1</sup> The State’s complaint also named TMC Franchise Corporation (the franchising entity for Circle K Stores); Alon Brands, Inc. (a holding company for retail businesses that formerly included Southwest Convenience Stores); Delek US Holdings (a holding company that acquired Alon Brands in 2017); and Emprex Proximity LLC (a subsidiary of a Mexican multinational company that acquired 100% of the retail operation of Southwest Convenience Stores in October 2024). Delek US Holdings and Alon Brands, Inc. are referred to collectively as “Delek.”

<sup>2</sup> The State dismissed its claims against Delek without prejudice based on the representations in Delek’s motion that it had operated all of its New Mexico convenience stores through Southwest Convenience Stores (“SCS”) and Skinny’s, two limited liability companies; that it had transferred SCS and Skinny’s, plus two supporting subsidiaries, to Defendant Emprex Proximity LLC, along with any liability associated with the convenience stores; and that Delek no longer owned or operated any convenience stores in New Mexico. The dismissal was expressly conditioned on representations made in these Defendants’ MTD.

- (1) that the State’s action targets vape “labeling” and is therefore expressly preempted by a provision of the federal Food Drug & Cosmetics Act (“FDCA”), or is impliedly preempted because it is seeking to enforce the FDCA based on the FDA’s determination that the flavored e-cigarettes at issue are unauthorized;
- (2) that the State’s complaint lacks sufficient factual detail and/or seeks to hold defendants liable for designing, manufacturing, marketing and advertising decisions that they were not involved in as distributors and retailers;
- (3) that the State has not alleged that any retailers or distributors engaged in direct transactions with a minor;
- (4) that the misrepresentations and omissions are not actionable because they are immaterial or mere puffery;
- (5) that the Attorney General lacks authority to prosecute this action under the UPA because these products are already regulated under New Mexico’s Tobacco Products Act (“TPA”) and/or the sale of flavored e-cigarettes are “expressly permitted” by the TPA.
- The State’s general responses are as follows:
    - Preemption. Defendants repeatedly mischaracterize the State’s complaint. The State is not targeting the “labeling” of tobacco products. Nor is it seeking to enforce federal law; it is suing under New Mexico state law because the sale, distribution and marketing of highly addictive and dangerous tobacco products that target children constitute unconscionable and unfair (deceptive) business practices in violation of New Mexico’s UPA. The fact that the FDA has banned these very products because of their risk to children provides strong *evidentiary support* for the State’s lawsuit, but that does not make it the legal basis for the State’s claims.
    - Sufficiency. New Mexico is a notice pleading jurisdiction and the State’s complaint is over 70 pages long with detailed allegations as to the risks posed by Defendants’ products and the harm that is being caused to the State as a result. The fact that there is significant overlap between Circle K’s misconduct and Southwest Convenience Stores’ misconduct is not the result of impermissible group pleading; it indicates that the two retailers are engaged in similar misconduct, just with different brands of products.
    - Direct Transactions. The UPA specifically covers the distribution of any product that “directly or indirectly” affects the people of New Mexico, there is no need for a direct transaction. This case is about identifying and attacking links in a supply chain for dangerous products that stretches back to overseas manufacturers *in China*. The fact that Defendants are serving as middlemen, and not manufacturers, does not immunize them from liability under the UPA.

- Deception claims. Whether a misrepresentation or omission is actionable is a factual question that is generally inappropriate for resolution on a motion to dismiss. Moreover, Defendants can be liable for the misstatements of third parties (in this case vape manufacturers) if they know these statements are false. Here, Defendants are taking advantage of an illicit market for youth nicotine products supported by marketing and advertising that they know should appeal to youth.
- Authority. Nothing in the TPA purports to strip the Attorney General of authority to enforce the UPA. Taken to its logical conclusion, Defendants argument is essentially that any regulated product is immune from the requirements of the UPA. This cannot be right—the TPA is a licensing and registration statute, it does not dictate what products can be sold, nor does it authorize the sale of products that are dangerous and appeal to children.