

**United States House Energy and Commerce  
Oversight and Investigations Subcommittee  
Hearing on E-Cigarettes  
February 5, 2020**

**Testimony of  
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Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee, thank you for the opportunity to appear today before the House Committee on Energy and Commerce, Oversight and Investigations Subcommittee to discuss the important issues regarding electronic nicotine delivery systems (ENDS), commonly referred to as e-cigarettes.

My name is Antoine Blonde, and I am the President of Fontem US, Inc. Fontem US markets and sells the blu<sup>TM</sup> e-cigarette brand, which we acquired from another company in June 2015. As you are aware, Fontem has cooperated extensively with the Committee's investigation since it began last August and provided several hundred pages of materials in response to the Committee's request for information. We believe the facts make clear that Fontem is a responsible actor in the e-cigarette marketplace, and we are committed to ensuring that our business practices are consistent with our objective of providing adult consumers with the highest quality products and an enjoyable product experience.

I would like to briefly address four points:

**First, Fontem believes, without equivocation, that youth should not use any e-cigarette products.** We share the Subcommittee's view that preventing youth access to e-cigarettes is an issue of critical importance. In this regard, Fontem does not, and has never, directed its marketing efforts for e-cigarettes to youth.

As we have shared with the Committee, Fontem has invested significant resources to ensure that its products are designed for and responsibly advertised to adult consumers only. Fontem has implemented a Youth Access Prevention Program to prevent the sale of its products to individuals under the age of twenty-one and to ensure that its products are marketed only to adult consumers.

First, Fontem uses industry-standard online age-gating and age-verification mechanisms to prevent youth access to its products online. For example, for all purchases through our web site, Fontem relies on industry-standard age-verification technology that compares a potential purchaser's information against records of trusted data sources to verify the age of the purchaser. Fontem will not proceed with the sale of any product on its web site where the age of the consumer cannot be verified as twenty-one years of age or older. Second, Fontem requires that all of its authorized retailers comply with local, state, and federal laws regarding the sale of e-cigarette products, as well as participate in the WeCard Program. Third, Fontem maintains responsible labeling and marketing practices to avoid any branding on products associated with cartoons, toys, candy, or other merchandise popular among youth. Fourth, Fontem has spearheaded partnerships with industry leaders including the WeCard program to further develop

and enhance youth access prevention and education programs. Fifth, Fontem has a dedicated employee whose responsibilities include ensuring that our products are never advertised to youth, including by unauthorized third parties; monitoring social media posts to remove posts that promote youth usage of blu products; and monitoring and taking action on the unauthorized sale of blu products. Our team frequently reviews Fontem’s internal policies and procedures to continue developing initiatives aimed at preventing youth access to e-cigarette products.

**Second, Fontem takes extensive steps to ensure that its e-cigarette sales channels reflect Fontem’s commitment to youth access prevention.** Fontem’s e-cigarettes are sold through three main distribution channels: traditional brick-and mortar outlets (e.g., convenience stores, gas stations, etc.); e-commerce; and vape shops. In each distribution channel, Fontem takes steps to ensure that youth do not have access to blu products.

As to brick-and-mortar locations, Fontem e-cigarettes are distributed to traditional brick-and-mortar retail locations in the United States, primarily through service agreements with its sister company ITGB. Fontem requires all brick-and-mortar retailers, or wholesalers intending to sell to brick-and-mortar retailers, which sell Fontem e-cigarettes to be in full compliance with all applicable local, state, and federal laws. Fontem also monitors its retailers and takes prompt action if it learns that a retailer has been reprimanded by the Food and Drug Administration (“FDA”) or other authorities for selling e-cigarettes to youth. When Fontem learns that a retailer has engaged in conduct that is inconsistent with the Company’s commitment to compliance regarding youth access, Fontem employs a variety of methods to directly address any issues. Such methods include supplemental retailer education, withholding merchandising payments, and up to and including termination of the retail contract with Fontem where applicable. Fontem has zero tolerance for retailers who have received a No Tobacco Sales Order, or NTSO, from FDA and prohibits its wholesalers from selling blu products to such retailers while such NTSOs are in effect.

As to online sales, Fontem offers blu products for sale through online retailers, including its own blu web site, along with third-party e-commerce web sites.

Fontem sells blu products through its own dedicated e-commerce site, [www.blu.com](http://www.blu.com). This web site requires all entrants to certify they are twenty-one years of age or older to enter and states upon landing, as relevant here, “[a]t blu, we responsibly market to adult smokers. Which is why we need to verify your age and location.” Once through the age-gate screen, the web site carries the FDA nicotine addiction warning and states, as relevant here, “[t]his product may be hazardous to health and is intended for use by adult smokers. Keep out of reach of children. blu products with nicotine e-liquid are not suitable for use by: persons under the age of 21....”

In addition, Fontem contracts with Veratad Technologies LLC (“Veratad”) to perform age verification on every sale made on Fontem’s e-commerce site. Veratad is widely regarded as a leading third-party age-verification provider for online sales. Veratad uses its Age-Match system to compare a potential purchaser’s information against records of trusted data sources in order to verify the age of the purchaser. If Veratad is unable to verify the age of the purchaser, Fontem will not proceed with the sale where the age of the consumer cannot be verified against a valid government database, or a government-issued identification.

Fontem also recognizes that there may be bad actors in the marketplace who attempt to purchase bulk quantity of its products through e-commerce web sites in order to re-sell in a manner contrary to Fontem's policies. This practice is referred to as "strawman sales." Fontem has always had policies in place to monitor for strawman sales and further is implementing a strict 4-Stage standard to monitor site access for any potential strawman purchases on its online platform. This standard will track registered adult consumers' monthly order frequency of pods from its online platform and will flag potential strawman sales. The first stage will verify the customer is at least twenty-one years of age, and will verify if the customer is a registered purchaser of blu products. The second stage will evaluate how much product the customer has purchased in the past thirty days. If the customer purchases over a certain specific amount of product within a thirty-day window, the account will be flagged and the customer will be contacted to verify that it is actually the correct customer and that the purchase is only for personal use. The third stage will evaluate this information and determine if this is a legitimate consumer sale and, if it is determined to not be a legitimate consumer sale, the fourth stage will be termination of the order.

In addition, Fontem is strengthening the strawman purchase monitoring program to limit consumers' unit purchases in excess of certain amounts of product during a given period (intending to reflect an individual's expected use). Pursuant to this initiative, when potential strawman sales are flagged, Fontem places those consumers on a list of individuals requiring additional internal scrutiny prior to the fulfillment or cancellation of the sale. Fontem believes that such protocols for potential strawman sales should be standardized across the e-cigarette industry to ensure that e-cigarettes purchased through online sales do not find their way to youth.

Fontem also contracts directly with certain third party e-commerce web sites to sell blu products on these sites. Fontem vets every third party web site partner to ensure it has appropriate age-verification programs in place. Additionally, Fontem has an e-commerce manager who manages these relationships to ensure that each third party web site partner maintains Fontem's high standards of compliance. These third party web site partners also have the option to purchase blu products from a Fontem-vetted wholesaler.

As to vape shops, Fontem also supplies qualifying specialist brick-and-mortar vape shops with its products. In these cases, Fontem contracts with specific wholesalers which partner with responsible vape shops to place blu products in this channel. Currently, the same wholesale contracts and merchandising agreements used for brick-and-mortar stores signing with ITGB also are used for vape shops. Fontem takes the same enforcement actions described above against any vape shop partner which engages in conduct inconsistent with Fontem's commitment to youth access prevention.

**Third, Fontem has invested extensively in its product stewardship program.** Fontem is also committed to responsible product stewardship practices, and ensuring product quality is thoughtfully integrated from product conception to consumer use. Fontem's product stewardship practices are categorized into three areas: 1) pre-market product stewardship; 2) batch release stewardship; and 3) post-market product stewardship. In the pre-market phase, Fontem conducts rigorous risk assessments of ingredients and materials performed by registered toxicologists, device quality testing, and aerosol chemistry and in-vitro toxicology with a focus on nicotine, carbonyls and metals, and in-vitro biological testing. Fontem's batch release stewardship

focuses on manufacturing quality (input, process, and process controls) and traceability (e.g., device and packaging authenticity), to assure consumers and regulators of product quality, and to contribute to the quality standards and expectations of the electronic vapor product (“EVP”) sector. Finally, Fontem conducts post-market stewardship to more fully understand its products’ impact on consumers and how those impacts may inform both the consumer and scientific communities about EVPs.

***Fourth, Fontem’s products have not been found by the U.S. Centers for Disease Control (“CDC”) to be involved in any of the incidences of respiratory illness it has investigated.*** We were deeply concerned by reports last year linking respiratory illnesses to the use of vaping products, and we joined calls for the CDC to investigate these instances as soon as possible. As the Committee is aware, on January 17, 2020, the CDC provided the latest in the series of updates on its investigation. In pertinent part, the CDC stated: “National and state data from patient reports and product sample testing suggest tetrahydrocannabinol (THC)-containing e-cigarette, or vaping, products, particularly from informal sources like friends, family, or in-person or online dealers, are linked to most EVALI cases and play a major role in the outbreak.” The CDC also stated, “Vitamin E acetate is strongly linked to the EVALI outbreak. Vitamin E acetate has been found in product samples tested by FDA and state laboratories and in patient lung fluid samples tested by CDC from geographically diverse states.”

The facts are that vitamin E acetate is not, and has never been, an ingredient in blu products, and we are not aware of any Fontem product being referenced by the CDC as involved in incidences it has investigated. Further, we fully agree with the CDC’s advice that consumers should not buy any vaping product, particularly those containing THC, “off the street” or from an informal source. Of course, we will continue to monitor these developments closely.

These initiatives are just some examples of Fontem’s extensive efforts in the areas of youth access prevention and product quality. All of us at Fontem are dedicated to ensuring that our products are of the highest quality and that they are marketed and sold only to adult consumers.

Thank you for your time and attention to these important issues. On behalf of Fontem US, we look forward to working with the Congress and I am happy to answer any questions you may have.