

Attachments—Additional Questions for the Record

Subcommittee on Health

Hearing on

“Legislation to Reverse the Youth Tobacco Epidemic”

October 16, 2019

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The Honorable Lisa Blunt Rochester (D-DE)

1. Mr. Myers, research shows that kids who have started using e-cigarette products in the last 5 years are historically the kids that are categorized as “low-risk” for substance use, based on qualities like family structure, self-categorized rebelliousness, and parental education. Do you attribute this rise in first-time youth tobacco users to the mainstream marketing of these products?

E-cigarettes are reversing declines in tobacco use by attracting a new generation of youth. The mainstream marketing of these products, particularly through social media, as well as the use of kid-friendly flavors and a nicotine formulation that makes these products more palatable to new users, have led to the surge in popularity of e-cigarettes among youth. Juul’s popularity in particular arose from its powerful combination of a product that is sleek, cool, high tech, and discreet, that comes in sweet flavors and provides an extraordinarily powerful hit of nicotine, along with marketing that, according to one researcher, was “patently youth oriented.”¹

In 2016, the Surgeon General concluded that, “Themes in e-cigarette marketing, including sexual content and customer satisfaction, are parallel to themes and techniques that have been found to be appealing to youth and young adults in conventional cigarette advertising and promotion.”² By mimicking the tobacco industry’s strategies, including celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships, e-cigarette advertising has effectively reached youth and young adults. The 2016 National Youth Tobacco Survey (NYTS) found that 78.2% of middle and high school students—20.5 million youth—had been exposed to e-cigarette advertisements from at least one source, an increase from 68.9% in 2014.³ Another study found that 82% of 12-17 year olds and 88% of 18-21 year olds reported seeing e-cigarette advertising in 2015.⁴ The investment in e-cigarette marketing has been coupled with an increase in use among youth and young adults. A 2016 study in *Pediatrics*, analyzing 2014 NYTS data, found that exposure to e-cigarette advertising is associated with current e-cigarette use among youth and that greater exposure to e-cigarette advertising is associated with higher odds of use.⁵

E-cigarette companies market extensively on product websites and maintain a strong presence on social media sites popular among youth, like Facebook, YouTube, Instagram, and Twitter.⁶ One study found nearly 74,000 tweets about e-cigarettes in just a two month period, most of which were sent by a few commercial enterprises.⁷ E-cigarette manufacturers have also placed ads on search engines and websites that focus on music, entertainment, and sports and which often have substantial youth and young adult audiences.⁸ The companies rarely take steps to effectively prevent access to these websites by minors, as

evidenced by data from the 2016 YTS, which found that 40.6% of high school students had been exposed to e-cigarette advertisements online.⁹ Another research study found that 40% of teens (ages 13-17) had seen e-cigarette advertisements online always, most or some of the time.¹⁰

The 2016 Surgeon General report stated that, “E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”¹¹ Cigarettes with specific characterizing flavors were prohibited in the U.S. on September 22, 2009, as part of the Family Smoking Prevention and Tobacco Control Act. However, this prohibition did not apply to other tobacco products, including e-cigarettes, which come in flavors with obvious youth appeal such as gummy bear, cotton candy, and fruit punch.¹² As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.¹³ An earlier study of e-cigarette flavors found that among the more than 400 brands available online in 2014, 84% offered fruit flavors and 80% offered candy and dessert flavors.¹⁴ In addition to the vast selection available online, thousands of “vape” shops have now opened throughout the country that allow consumers to sample and purchase refill liquids, including a combination of flavors chosen by the user.¹⁵

Research shows that flavored products are not only popular among youth, but play a role in initiation and uptake of tobacco products. Data from the 2016-2017 wave of the Population Assessment of Tobacco and Health (PATH) study found that 97% of current youth e-cigarette users had used a flavored e-cigarette in the past month and 70.3% say they use e-cigarettes “because they come in flavors I like.”¹⁶ While the methodology is not comparable to the PATH study, the 2019 NYTS found that 57.3% of high school e-cigarette users use mint or menthol flavors, an increase from 38.1% in 2018.¹⁷ Among 10th and 12th grade Juul users, mint is the most popular flavor.¹⁸

Juul also appealed to new users by pioneering a new e-liquid formulation that delivers nicotine more effectively and with less irritation than earlier e-cigarette models. According to the company, the nicotine in Juul is made from “nicotine salts found in leaf tobacco, rather than free-base nicotine,” in order to “accommodate cigarette-like strength nicotine levels.”¹⁹ According to a 2018 Surgeon General advisory on e-cigarette use among youth, nicotine salts allow users to inhale high levels of nicotine more easily and with less irritation than e-cigarettes that use free-base nicotine. As a result, it could be easier for young people to initiate the use of nicotine with these products.²⁰

2. Marketing is cited as one of the main causes of the steady increase of youth use of e-cigarettes and other tobacco products, 1.5 million more in 2018 than 2017. A Stanford University research study included in your testimony cited that in 2018 there was significant use of the #Juul hashtag and posts from the JuulVapor Instagram account. JuulVapor’s Instagram account has been inactive since November 2018, but the #Juul hashtag is still utilized. This hashtag has over 611k posts according to Instagram, more than double the number of posts at the time the study was done. How can we reverse this youth targeted marketing that has already been set into motion, even when the companies no longer use the platform?

First it is important to note that while Juul no longer has social media accounts, the company should still be considered responsible for the product’s continued viral popularity on social media, which stems from Juul’s marketing launch. Juul’s popularity on social media was intentional and preventable. According to the *New York Times*, “Cult Collective, the marketing company that created the 2015 campaign,

“Vaporized,” claimed that the work *“created ridiculous enthusiasm”* for the campaign hashtag, part of a larger advertising effort that included music event sponsorships and retail marketing.”²¹ Despite overwhelming evidence, Juul officials claim that its popularity among youth is purely accidental and that the product’s viral social media presence following its launch was beyond the company’s control. Ashley Gould, former Chief Administrative Officer of Juul Labs, said that the explosion of youth users *“was not anticipated and completely unexpected to us.”*²² Gould has noted that, *“All of the things you see on social media, we have absolutely nothing to do with. We actively try to take these things down. But unless there’s an infringement of our intellectual property it’s quite difficult.”*²³ Another Juul spokeswoman said that, *“I know we appear on social media quite a bit; that is completely separate from us.”*²⁴ Conversely, a *New York Times* investigation interviewed a former senior manager at Juul who *“said that he and others in the company were well aware the campaign launch might appeal to youth. After Juuls went on sale in June 2015, he said, the company quickly realized that teenagers were, in fact, using them because they posted images of themselves vaping Juuls on social media.”*²⁵ In response to public criticism from parents, the media, Members of Congress, and leading health officials at the CDC and FDA, Juul amended its marketing code to no longer use young models and later deleted most of its social media presence in late 2018.^{26,27} Juul then said it was cracking down on “inappropriate material from third-party accounts” in social media, despite previously claiming it could not do so. It’s clear that Juul only took action to rein in its social media presence when it faced pressure from the public and government officials.

As you have noted, the youth epidemic fueled by Juul, and Juul’s popularity on social media, cannot be reversed by simply deleting its Instagram or Twitter account. However, the social media companies are fully capable of banning and/or monitoring use of certain hashtags and imagery, and there is extensive precedent for them doing so. They have advanced proprietary content monitoring technology which allows them to flag content based on hashtags, key words, and logo/brand recognition in images, which allows them to identify and remove content related to hate speech, self-harm, bullying and nudity.

Hashtags like #AdultsOnly and #selfharm are banned. In 2017, Instagram acted to protect endangered wildlife by implementing a content policy to block influencers posting selfies with exotic animals.

It is critical for the social media companies to address the current problem of Juul’s popularity on social media as well as to take measures to prevent the next Juul from engaging in a similar social media campaign. The Campaign for Tobacco-Free Kids, Smoke Free Partnership, and 125 other civil society organizations from 48 countries have publicly written to Facebook (Instagram), Twitter and Snapchat to immediately end the promotion of cigarettes, e-cigarettes and all other tobacco products on their platforms, including prohibiting the use of social media influencers to promote these products.²⁸ Our letter urged the social media companies to 1) strictly enforce their existing policies prohibiting paid advertising for tobacco products and e-cigarettes on their platforms; and 2) extend these policies to prohibit the use of paid influencers to promote tobacco products and e-cigarettes. This recommended policy change would address disclosed influencer promotions (content that includes a disclaimer indicating the post has been incentivized such as #ad, #paid, #ambassador, #sponsored, etc.) – the bare minimum these companies could potentially do to eliminate tobacco and e-cigarette influencer promotion on their platforms. Since May 2019, the Campaign for Tobacco-Free Kids has continued to be engaged with Facebook (Instagram) on behalf of 200+ civil social organizations and we continue to push these platforms to prohibit content promoting tobacco products and e-cigarettes that has been paid or incentivized. See links for referenced letters:

https://www.tobaccofreekids.org/press-releases/2019_07_25_facebook
https://www.tobaccofreekids.org/press-releases/2019_05_21_socialmedia_advertising

3. The majority of social media users are under the age of 29 and Pew Research Center reports that roughly half of U.S. teens ages 13 to 17 say they use social media. Do you think utilizing social media platforms could be an effective public health tool to educate kids on the risk of using e-cigarettes and similar tobacco products?

For tobacco and e-cigarette companies, a handheld device with social media access is the best way to continue reaching teens and young consumers. Likewise, it provides a prime opportunity for public health officials to reach youth with prevention messaging. The FDA's "Real Cost" campaign is doing just that. Kathleen Crosby, Director of the Office of Health Communication and Education (OHCE) at FDA's Center for Tobacco Products (CTP), said that by using social media, FDA is "reaching youth where they—sometimes quite literally—live and spend their time." Social media also allows youth to engage with the information in a way that they cannot with a TV ad, by providing opportunities for youth to share the information and ask questions.²⁹ The Real Cost campaign reaches kids through advertising on TV, radio, the Internet, streaming services, print publications, and social media. A comprehensive public health education campaign that reaches youth through various channels, including social media, is critical to addressing the youth e-cigarette epidemic and undoing the renormalization of tobacco use that the e-cigarette industry has caused.

¹ Jackler, RK, et al., "JUUL Advertising Over its First Three Years,"

http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

² HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

³ Marynak, K., et al., "Exposure to Electronic Cigarette Advertising Among Middle and High School Students—United States, 2014-2016," *MMWR* 67(10): 294-299, March 16, 2018, <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6710a3-H.pdf>.

⁴ Truth Initiative, *Vaporized: Youth and Young Adult Exposure to E-Cigarette Marketing*, November 2015, <http://truthinitiative.org/sites/default/files/VAPORIZED%20-%20FINAL%20VERSION.pdf>.

⁵ Singh, T, et al., "Exposure to Advertisements and Electronic Cigarette Use Among US Middle and High School Students," *Pediatrics*, published online April 25, 2016. See also Dai, H and Hao, J, "Exposure to Advertisements and Susceptibility to Electronic Cigarette Use Among Youth," *Journal of Adolescent Health*, published online August 12, 2016.

⁶ "Gateway to Addiction? A Survey of Popular Electronic Cigarette Manufacturers and Marketing to Youth," April 14, 2014, <http://democrats.energycommerce.house.gov/sites/default/files/documents/Report-E-Cigarettes-Youth-Marketing-Gateway-To-Addiction-2014-4-14.pdf>. See also, Noel, JK, Rees, VW, & Connolly, GN, "Electronic cigarettes: a new 'tobacco' industry?" *Tobacco Control* 20:81, 2011.

⁷ Huang, J, et al., "A cross-sectional examination of marketing of electronic cigarettes on Twitter," *Tobacco Control* 23:iii26-iii30, 2014.

⁸ Richardson, A, et al., "Tobacco on the web: surveillance and characterization of online tobacco and e-cigarette advertising," *Tobacco Control*, Published Online First: February 14, 2014.

⁹ Marynak, K., et al., "Exposure to Electronic Cigarette Advertising Among Middle and High School Students—United States, 2014-2016," *MMWR* 67(10): 294-299, March 16, 2018, <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6710a3-H.pdf>.

¹⁰ Truth Initiative, *Vaporized: Youth and Young Adult Exposure to E-Cigarette Marketing*, November 2015, <http://truthinitiative.org/sites/default/files/VAPORIZED%20-%20FINAL%20VERSION.pdf>.

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- ¹¹ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- ¹² See U.S. Food and Drug Administration's Flavored Tobacco webpage at <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/FlavoredTobacco/default.htm>.
- ¹³ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.
- ¹⁴ Zhu, S-H, et al., "Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation," *Tobacco Control*, 23(Suppl 3):iii3-iii9, 2014.
- ¹⁵ Johnson, A, "Up in smoke? Alamance e-cigarette store operators concerned about proposed regulations," *Times-News*, April 30, 2014, <http://www.thetimesnews.com/news/top-news/up-in-smoke-alamance-e-cigarette-store-operators-concerned-about-proposed-regulations-1.313005>. The website for VapeRite ATL also notes that customers can "mix well over 100,000 possible flavor and mix type combinations" [<https://atlanta.vaperite.com/#vape-bar>, accessed May 30, 2014].
- ¹⁶ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/media/121384/download>.
- ¹⁷ Cullen, KA, et al., "e-Cigarette Use Among Youth in the United States, 2019" *JAMA*, published online November 5, 2019.
- ¹⁸ Leventhal, AM, et al., "Flavors of e-Cigarettes Used by Youths in the United States," *JAMA*, published online November 5, 2019.
- ¹⁹ Pax Labs, Inc. (former name of Juul Labs), *Pax Labs, Inc. Granted U.S. Patent for Nicotine Salt E-Cigarette*, December 22, 2015, https://www.juulvapor.com/media/wysiwyg/Juul/Juul_USPTO_Patent_Press_Release_15-1216.pdf.
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- ²¹ Richtel, M & Kaplan, S, "Did Juul Lure Teenagers and Get 'Customers for Life'?", *The New York Times*, August 27, 2018, <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.
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- ²⁸ https://www.tobaccofreekids.org/assets/content/press_office/2019/2019_05_21_socialmarketing.pdf
- ²⁹ FDA, "FDA's Smoking Prevention Campaigns: Reaching Teens Where They 'Live'" <https://www.fda.gov/consumers/consumer-updates/fdas-smoking-prevention-campaigns-reaching-teens-where-they-live>.