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**Testimony to the Senate Committee on Commerce, Science, and Transportation**

**June 18, 2014**

I am Matthew Myers, President of the Campaign for Tobacco-Free Kids. The Campaign works to reduce tobacco use and its deadly toll in the United States and around the world. We advocate for public policies proven to prevent kids from smoking and other tobacco use, help smokers quit, and protect everyone from secondhand smoke.

Chairman Rockefeller and Ranking Member Thune, I appreciate the opportunity to testify today on the marketing of electronic cigarettes and its consequences for youth.

***The Debate About E-Cigarettes***

Over the last several years, there has been a dramatic growth in the marketing and sale of e-cigarettes. Despite the rise in use of e-cigarettes, little is proven about their actual health risk or their impact on overall tobacco use. Although Congress gave the FDA the authority in 2009 in the Family Smoking Prevention and Tobacco Control Act to assert its authority to regulate tobacco products not explicitly mentioned in the Act, including e-cigarettes, as of today no federal agency regulates e-cigarettes. As a result, companies are not required to control or disclose the level of nicotine or other ingredients in these products, test them for harmful and potentially harmful constituents, and there are no restrictions on how they are marketed or to whom.

Responsibly marketed and properly regulated, e-cigarettes could benefit public health if they help significantly reduce the number of people who smoke conventional cigarettes and become sick and die as a result. However, e-cigarettes pose a potential risk to public health if they are not used by smokers and other tobacco users to stop smoking cigarettes altogether; if they cause more people, particularly kids, to begin using nicotine products; or if they discourage smokers from quitting cigarettes. It is important to note that the scientific evidence does not indicate a health benefit if a cigarette smoker uses both e-cigarettes and regular cigarettes (dual use) or if an

e-cigarette smoker simply reduces the number of cigarettes one smokes but continues to smoke cigarettes.

Today, as the result of the failure of the government to act swiftly, the market place for e-cigarettes is truly the Wild West. The rapidly growing and completely unregulated e-cigarette marketplace has outpaced the science, and the behavior of the e-cigarette industry raises serious concerns about the ultimate effect of e-cigarettes on public health if strong, thoughtful regulation is not adopted quickly over both the products and how and to whom they are marketed. It is hard to look at how e-cigarettes are made and marketed today and not be concerned.

Today's hearing focuses on the marketing of e-cigarettes, and especially the impact of current e-cigarette marketing on youth, but it is also important to recognize the significance of the failure of the FDA to act swiftly to regulate the product itself.

Nicotine is not the substance in cigarettes that causes cancer, but neither is it benign. The most recent Report of the Surgeon General issued this January documents extensively the health risks of nicotine. It found that at high enough levels nicotine can cause "acute toxicity" and is implicated in the increased risk of diseases from smoking. Nicotine exposure has long lasting consequences. It impacts fetal development and adolescent brain development.<sup>1</sup> And, of course, nicotine is highly addictive, with research indicating that young people are more susceptible and sensitive to the effects of nicotine and can often feel dependent earlier than adults.<sup>2</sup>

It is also important to recognize that the term "e-cigarette" is being used to describe literally hundreds of different products that are changing rapidly.<sup>3</sup> This means that the few studies that exist do not cover many of the products now on the market and, in the absence of FDA getting a handle on the market rapidly, there is no way to know how helpful or how dangerous the products are that are now on the market. For example, in the current unregulated environment, e-cigarettes and refill liquids are sold containing widely varying levels of nicotine with no controls.

How e-cigarettes are made can impact whether they are effective at helping people quit smoking cigarettes or whether they lead to sustained cigarette use or introduce a whole new generation to smoking. Unfortunately, it appears that a substantial segment of the industry is neither designing their products nor their marketing with an eye towards reducing the number of people who

smoke cigarettes. Instead, it appears that many if not virtually all of today's products, and much of the marketing for these products, are designed to expand the e-cigarette marketplace as broadly as possible, regardless of the age or smoking status of the consumer.

### ***Concerns About Marketing Practices That Attract Kids***

The marketing practices, themes, and images of e-cigarette manufacturers today are virtually the same as those used by the cigarette manufacturers to successfully attract kids to smoking – including many images and strategies that have become unlawful for cigarettes precisely because of their appeal to youth. Appendix A shows some illustrative examples that demonstrate:

- E-cigarette companies are using celebrity spokespeople to pitch their products. Actor Stephen Dorff, former Playboy model Jenny McCarthy and musician Courtney Love are promoting e-cigarettes just as old Hollywood stars like Gary Cooper, Marlene Dietrich and Joan Crawford once promoted cigarettes.
- E-cigarette companies are using images and themes that appeal to youth and running ads that depict e-cigarette use as a way to express masculinity, sexiness, rebelliousness, freedom and liberation.
- E-cigarette companies are reaching millions of teens by placing their ads in places with huge youth viewership, including ads on television, online, in newspapers, and in magazines like *Rolling Stone*, *Sports Illustrated*, *InStyle* and *Us Weekly*.
- E-cigarette companies are sponsoring youth-oriented sports and entertainment events, including auto racing and music festivals, just like cigarette companies used to do.
- Blu e-cigarettes even featured a cartoon pitchman named “Mr. Cool” on its website, reminiscent of the Joe Camel cartoon character that so effectively marketed cigarettes to kids in the 1990s.

Mr. Chairman, the investigative report you released in April with other Members of the Senate and House provided some of the most detailed evidence to date about how e-cigarette companies are marketing their products, including the use of television and radio ads, free sampling at promotional events, and use of social media.<sup>4</sup>

When cigarette companies used these marketing practices, they were extraordinarily successful in increasing the number of kids who smoke. Congress banned cigarette advertising on

television in 1970 precisely because of the impact of these ads on youth. Congress banned advertising of smokeless tobacco on TV in 1986 for the same reason. All 50 states sued the tobacco industry in the mid-1990's to bring a halt to cigarette advertising practices that are virtually identical to what we now see being used to market e-cigarettes, resulting in the prohibition of many of these practices in the Master Settlement Agreement between the major tobacco companies and state Attorneys General in 1998. Just 5 years ago, Congress cited the impact of cigarette marketing on youth as one of its reasons for enacting the Family Smoking Prevention and Tobacco Control Act and instructed the FDA to adopt regulations restricting advertising of cigarettes and smokeless tobacco products. These marketing restrictions have contributed to a steep decline in cigarette smoking by youth. Just last week, CDC reported that 15.7 percent of high school students smoked cigarettes in 2013, a decline of 57 percent since the high school smoking rate peaked in 1997.<sup>5</sup>

But while we are seeing a decline in cigarette smoking among youth, we are seeing a rapid rise in youth use of and experimentation with e-cigarettes. The percentage of high school students who ever used e-cigarettes doubled in a single year, from 4.7 percent in 2011 to 10 percent in 2012. An estimated 1.78 million youth (middle and high school students) had used e-cigarettes as of 2012.<sup>6</sup> The rise took place at exactly the same time we witnessed the dramatic growth in both the amount of advertising for e-cigarettes and the explosion of e-cigarette advertising using the images and themes that are identical to those previously used for cigarettes.

No one should be surprised. The scientific evidence is overwhelming that cigarette marketing that used these same tactics, themes and images increased youth tobacco use. A comprehensive report released by the National Cancer Institute (NCI) in June 2008 and another by the Institute of Medicine of the National Academy of Sciences found a causal relationship between tobacco advertising and increased levels of tobacco initiation by youth, focusing very specifically on the type of advertising and marketing we are seeing from the e-cigarette industry today.<sup>7</sup> The 2012 Report of the Surgeon General also found that the evidence is sufficient to conclude that there is a causal relationship between advertising and promotional efforts of the tobacco companies and the initiation and progression of tobacco use among young people.<sup>8</sup>

The e-cigarette companies claim that they don't market to kids. The sad reality is that the cigarette companies, including those now marketing e-cigarettes, have always said the same thing. As shown in Appendix B, in the case brought by the U.S. Government against the major US cigarette manufacturers, Judge Kessler quoted Lorillard's Vice-President for External Affairs as saying, "Lorillard Tobacco Company has never marketed or sold its products to youth" and others in the industry who made similar statements and then found:

*The evidence is clear and convincing – and beyond any reasonable doubt – that Defendants have marketed to young people twenty-one and under, while consistently, publicly, and falsely, denying they do so.<sup>9</sup>*

Even as Lorillard has, for example, run a provocative ad displaying the name "blu" on the bikini bottom of a scantily clad woman in this year's swimsuit issue of *Sports Illustrated* and even more provocative and sensual YouTube videos online, it has written to FDA claiming that it does not market e-cigarettes to youth. (See Appendix C for images. See Appendix D-1 for Lorillard's letter to FDA and Appendix D-2 for the Campaign's response). This is straight out of the tobacco industry's old playbook – engage in egregious behavior that impacts youth and then engage in a campaign of denial.

### ***Concerns about Product Appeal to Youth***

It is not just the advertising that raises concerns about the impact of the current e-cigarette market on youth and other non-smokers; it is how the product itself is being manufactured. E-cigarettes are being sold in a way that maximizes their appeal with little regard to the effect on public health. The use of flavorings is a prime example. E-cigarettes and e-liquids come in an ever growing variety of flavors, including fruit- and candy-flavors, that cigarette companies are prohibited from using. E-cigarette liquids come in flavors such as vivid vanilla, Cinabon, cherry crush, chocolate, jolly rancher, gummi bear, bubble gum, and cotton candy and many others (see Appendix C for examples).

Congress explicitly banned the use of cigarettes with similar characterizing flavors because of their appeal to youth. Before cigarettes with fruit- and candy-flavors were prohibited, they were most attractive to the youngest smokers and were being used primarily by younger smokers.

One study found 22.8 percent of 17 year old smokers and 21.7 percent of 18 and 19 year old smokers used flavored cigarettes while only 9 percent of 24-26 year olds did.<sup>10</sup> Similarly, youth and young adults prefer cigar brands that come in a variety of flavors, and that preference declines significantly with age. According to a recent study, 95 percent of 12-17 year old cigar smokers reported a usual brand that makes flavored cigars compared with 63 percent of cigar smokers aged 35 and older.<sup>11</sup>

The addition of fruit and candy flavorings to e-cigarettes creates the very real possibility of broadening the appeal of this product to non-smokers who find the flavor of tobacco distasteful, including kids. Given the rapidity with which new flavors are being introduced and by whom, it is almost certain that no one is testing these products to insure that they do not appeal to youth.

Once again the industry claims that flavored e-cigarettes don't appeal to kids and are about making the product for long term committed smokers. However, Lorillard's own youth prevention website acknowledges, "Kids may be particularly vulnerable to trying e-cigarettes due to an abundance of fun flavors such as cherry, vanilla, pina-colada and berry." Three of these flavors are also offered by Lorillard's blu (see Appendix C).

It is not just the flavors that are of concern. Three decades ago, the smokeless tobacco industry recognized one way to attract youth was to introduce them to mild, low nicotine products and then "graduate" them to stronger products. Internal company documents show that United States Tobacco developed a strategy for hooking new spit-tobacco users (meaning kids) some time ago. As one document states:

*New users of smokeless tobacco -- attracted to the category for a variety of reasons -- are most likely to begin with products that are milder tasting, more flavored, and/or easier to control in the mouth. After a period of time, there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated 'tobacco taste' than the entry brand.<sup>12</sup>*

We may well be seeing the same tactic with regard to e-cigarettes. When tested, many e-cigarettes appear to have far less nicotine than is needed to satisfy the craving of an addicted cigarette smoker but have a mild enough taste to be easy to use for a non-smoker. This poses

two concerns: Are products being made that make it easy for an adolescent non-smoker to use? Are they also being made with too little nicotine to serve as an effective tool to help a cigarette smoker quit, but just enough to enable a cigarette smoker to use these products when they are in places where they cannot smoke to serve as a bridge that enables them to maintain their cigarette addiction?

### ***Recent Studies on Youth Viewership of E-Cigarette Advertisements***

E-cigarette companies say they are marketing their products only to adults. But we should pay attention to what they do, not just what they say. A look at the numbers tells a different story. Recent studies have found that advertising by e-cigarette companies is reaching many youth and young adults.

In a recent report detailing the results of a survey of youth and young adults, Legacy found that 60 percent of teens 13-17 years old said they saw e-cigarette advertising at convenience stores and similar retail outlets always, most of the time, or some of the time; 45 percent said they saw e-cigarette advertising on TV always, most, or some of the time; and 43 percent saw e-cigarette advertising online always, most, or some of the time. Viewership of these forms of e-cigarette advertising was even higher among young adults 18-21 years of age.<sup>13</sup>

A second study in the Legacy report analyzed media expenditure data to estimate whether e-cigarette advertising was reaching young people. It estimated that 58 percent of teens ages 12-17 (14.1 million) were exposed to e-cigarette ads on TV. E-cigarette ads ran on a number of networks including Comedy Central, USA, ABC Family, Bravo, E!, MTV, VH1, and Spike. And ads were run on programs featuring mature cartoons such as *South Park* and *Futurama*, reality shows like *Bar Rescue* and *COPS*, and sitcoms like *The King of Queens*. Legacy's analysis also found that 39 percent of teens ages 12-17 (9.5 million) were reached through e-cigarette ads in magazines. Top magazines featuring these ads included *Star*, *OK!*, *Entertainment Weekly*, *Us Weekly*, *Men's Journal*, and *Rolling Stone*.<sup>14</sup>

Researchers at RTI published a recent study in the journal *Pediatrics* that found that youth (12-17 years old) exposure to e-cigarette television ads increased 256 percent from 2011 to 2013, and young adult (18-24 years old) exposure increased 321 percent of that time period. The study also estimated that youth exposure to e-cigarette television ads was extensive – the equivalent of

50 percent of 12-17 year olds viewing an average of 21 ads from October 2012 to September 2013. It found that cable network AMC, Country Music Television, Comedy Central, WGN America, TV Land, and VH1 aired the most e-cigarette ads in 2013, and e-cigarette ads appeared on programs that were among the 100 highest-rate youth programs for 2012-2013, including *The Bachelor*, *Big Brother*, and *Survivor*).<sup>15</sup>

### ***The Growing Presence of Big Tobacco in the E-Cigarette Marketplace***

Both the Legacy and RTI studies noted that blu e-cigarettes, owned by the cigarette company Lorillard, was by far the largest spender on advertising. This raises concern about what will happen when the other cigarette companies fully enter the e-cigarette marketplace. Altria and Reynolds American have successfully test-marketed their e-cigarettes and are rolling out nationwide campaigns this year to promote them.<sup>16</sup> If they follow a marketing strategy similar to the one Lorillard has used for blu, the amount of e-cigarette advertising is likely to expand dramatically and result in high numbers of youth exposed to e-cigarette ads.

The growing dominance of Big Tobacco companies in the e-cigarette market should make us all skeptical of any claims they make about only marketing to adults.

### ***FDA Must Move More Rapidly to Exercise its Authority to Address E-Cigarette Marketing***

When Congress enacted the Family Smoking Prevention and Tobacco Control Act in 2009, it recognized the harm to public health that can arise from the manufacture, marketing and sale of tobacco products not directly addressed in the legislation, including e-cigarettes, and gave FDA the authority to assert its authority over all other tobacco products, including the authority to restrict the advertising and promotion of these tobacco products if the Secretary of Health and Human Services determines such regulation is appropriate for the protection of the public health.<sup>17</sup>

In April, after three full years of internal deliberation, FDA issued a proposed rule that would assert its authority over e-cigarettes and other tobacco products not currently regulated by FDA, but that proposed rule does not include any marketing, including flavoring, restrictions for e-cigarettes.<sup>18</sup> As a result, it could be years more before FDA even begins to grapple with what restrictions should be placed on e-cigarette marketing to protect youth and the public health. It



also means that marketing restrictions that FDA applies today to cigarettes – such as no branded sponsorship of athletic or musical events, no distribution of non-tobacco merchandise carrying a tobacco product logo and restrictions on flavorings – will not apply to e-cigarettes any time in the foreseeable future unless significant changes are made to the proposed rule before it is finalized.

FDA has claimed that it cannot address the issue of marketing for e-cigarettes until after it has issued a final rule asserting jurisdiction over these products. It is true that FDA cannot actually impose any restrictions on e-cigarette marketing until it finalizes its pending rule, but there is nothing that prevents FDA from fully investigating current e-cigarette marketing practices and proposing specific restrictions to protect the public that can be finalized either as part of the pending final rule or immediately thereafter. Indeed, to do anything else leaves our children vulnerable to the most unscrupulous e-cigarette marketing.

As a first step, FDA should establish a record to support the necessary regulation of marketing restrictions on e-cigarettes. Based on the information that is publicly available, it is our view that the record will support the application to e-cigarettes the same marketing restrictions it currently applies to cigarettes, either by incorporating them during the current rulemaking process or starting a new rulemaking process that will be finalized shortly after FDA issues a final rule asserting jurisdiction over e-cigarettes.

Regardless of how one weighs the potential benefits and risks of e-cigarettes, all should be able to support policies that will reduce the likelihood of young people using them. Leaving it to the industry to police itself has led to a situation that puts our nation's youth at risk and could reglamorize smoking to youth, undermining the progress that has been made over the last 30 years.

If e-cigarettes are to provide a benefit to public health, they must be marketed only to adult cigarette smokers, not youth or adults who are tobacco-free.

Thank you for the opportunity to testify today.

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- <sup>1</sup> U.S. Department of Health and Human Services (HHS), *The Health Consequences of Smoking—50 Years of Progress: 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, 2014, <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>.
- <sup>2</sup> HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, Centers for Disease Control and Prevention, Office on Smoking and Health, 2012  
<http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>;
- <sup>3</sup> Brown, CJ & Cheng, JM, “Electronic cigarettes: product characterisation and design considerations,” *Tobacco Control* 23:ii4-ii10, 2014.
- <sup>4</sup> Durbin, R, et al., “Gateway to Addiction? A Survey of Popular Electronic Cigarette Manufacturers and Marketing to Youth,” April 14, 2014, [http://www.durbin.senate.gov/public/index.cfm/files/serve?File\\_id=a85bb717-ac5d-4835-a584-206dbdb1f856](http://www.durbin.senate.gov/public/index.cfm/files/serve?File_id=a85bb717-ac5d-4835-a584-206dbdb1f856).
- <sup>5</sup> U.S. Centers for Disease Control & Prevention (CDC), “Youth Risk Behavior Surveillance—United States, 2013,” *Morbidity and Mortality Weekly Report (MMWR)* 63(No. 4), June 12, 2014.
- <sup>6</sup> CDC, “Electronic Cigarette Use Among Middle and High School Students — United States, 2011 – 2012,” *MMWR* 62(35), September 6, 2013.
- <sup>7</sup> National Cancer Institute, *The Role of the Media in Promoting and Reducing Tobacco Use*, Smoking and Tobacco Control Monograph No. 19, NIH Pub. No. 07-6242, June 2008. Institute of Medicine (IOM), *Ending the tobacco problem: A blueprint for the nation*, Washington, DC: The National Academies Press, 2007.
- <sup>8</sup> HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: HHS, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.
- <sup>9</sup> U.S. v. Philip Morris USA, Inc., 449 F.Supp.2d at 691.
- <sup>10</sup> Klein, S et al., “Use of flavored cigarettes among older adolescent and adult smokers: United States, 2004 – 2005,” *Nicotine and Tobacco Research*, 10(7):1209-14, July 2008.
- <sup>11</sup> Delnevo, C, et al., “Preference for flavoured cigar brands among youth, young adults and adults in the USA,” *Tobacco Control*, [Epub ahead of print], April 10, 2014.
- <sup>12</sup> Connolly, GN, “The Marketing of Nicotine Addiction by One Oral Snuff Manufacturer,” *Tobacco Control* 4(1):73-79, Spring 1995.
- <sup>13</sup> Legacy, *Vaporized: E-Cigarettes, Advertising, and Youth*, April 2014.
- <sup>14</sup> Legacy, *Vaporized: E-Cigarettes, Advertising, and Youth*, April 2014.
- <sup>15</sup> Duke, JC, “Exposure to Electronic Cigarette Television Advertisements Among Youth and Young Adults,” *Pediatrics* [Epub ahead of print] pii: peds.2014-0269, June 2, 2014.
- <sup>16</sup> Esterl, M, “Altria To Launch MarkTen E-Cigarette Nationally,” *The Wall Street Journal*, February 19, 2014. Citi, “Start Spreading the Vuse: National Launch Slated for 2014,” November 18, 2013.
- <sup>17</sup> 21 U.S.C. 387a. 21 U.S.C. 387f(d).
- <sup>18</sup> “Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products,” U.S. Federal Register 79(80):23142-23207, April 25, 2014.

## Appendix A. E-Cigarette Companies Are Copying Big Tobacco's Playbook

There has been an explosion in e-cigarette marketing in recent years, and e-cigarette manufacturers are using the same slick tactics and imagery long used to market regular cigarettes to kids. These are just a few examples of how e-cigarette companies are copying Big Tobacco's marketing playbook.

### 1. Use of celebrity spokespeople

Like cigarette ads of old, television, online and print ads for e-cigarettes feature catchy slogans and celebrity endorsers.



1948



2012



1950



2013

## 2. Images and themes that appeal to youth

These ads feature today's equivalents of the Marlboro Man and the Virginia Slims woman, depicting e-cigarette use as masculine, sexy, or rebellious. E-cigarette ads have appeared on television, online, in newspapers, and in magazines that reach millions of teens, including *Rolling Stone*, *Sports Illustrated*, *InStyle*, and *Us Weekly*.

In 1904, Mrs. George Hubbard found a clever way to sneak a cigarette while her husband still got the attention he demanded.

**You've come a long way, baby.**

Winston Lights

10 mg "tar," 0.8 mg nicotine av. per cigarette. FTC Report Feb '95.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

1989

**SMOKE IN STYLE**  
With blu Electronic Cigarettes

Freedom never goes out of fashion. Control when and where you want to smoke with blu electronic cigarettes. blu produces no smoke and no ash, only vapor, making it the ultimate accessory and the smarter alternative to regular cigarettes. Step out in style with blu.

SCAN FOR A CHANCE TO WIN A STARTER KIT

Like us on Facebook  
facebook.com/blucigs

blucigs.com

Available at these fine retailers:  
Walmart HEB Target meijer

Introducing the World's First Smart Pack (View Only)

18+ only. CALIFORNIA PROPOSITION 65 Warning: This product contains nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm.

2011

*In cigarettes, as in naval patrol planes, it's modern design that makes the big difference!*

**"You'll like Pall Mall's modern design — it filters the smoke — lessens throat irritation!"**

**PALL MALL**  
FAMOUS CIGARETTES

**"WHEREVER PARTICULAR PEOPLE CONGREGATE"**

16 TRADITIONAL KING CIGARETTES

Rewrite The Rules.

**FIN**  
Electronic Cigarettes

FIN  
Premium Cigarettes

NEW YORK \$5 OFF COUPON AT [FINCIGS.COM/NEWYORK](http://FINCIGS.COM/NEWYORK)

Must be Available in NEW YORK

2013

1941



1996



2013

### 3. Sex sells

Like cigarette companies have long done, e-cigarette makers portray use of their products as sexually attractive.



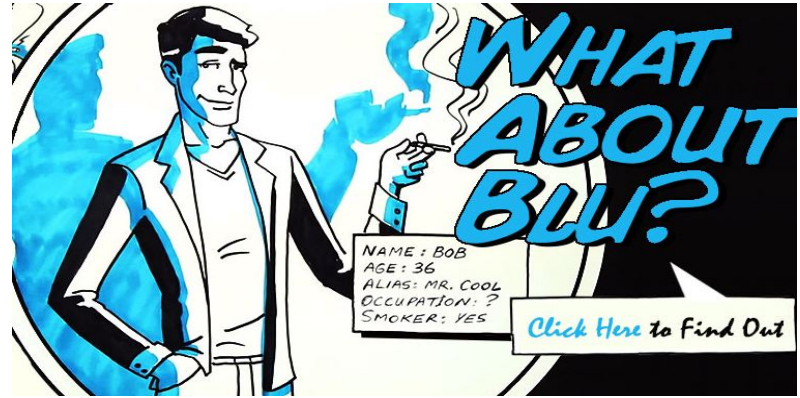
2000



2012

#### 4. Use of cartoons

The website for blu cigs has featured a cartoon pitchman named “Mr. Cool.” It was reminiscent of the Joe Camel cartoon character that so effectively marketed cigarettes to kids in the 1990s.



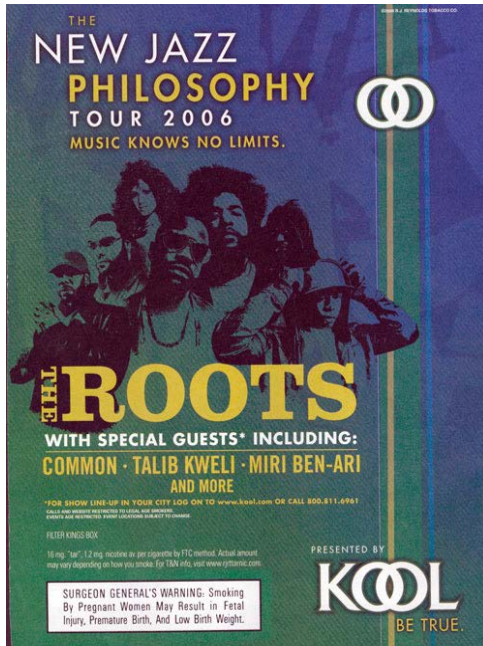
1989

2013

#### 5. Sponsorships

For decades tobacco companies used sponsorships of sports and entertainment events, especially auto racing and music festivals, to promote cigarettes to huge audiences, including kids. Cigarette sponsorships are now banned, but e-cigarette brands have auto racing sponsorships of their own.

#### Sponsorship of Music Events



2006



2013

## Sports Sponsorships



Formula One, 1974-1996



Formula One, 2013



Formula One, 2014



NASCAR, 1997



NASCAR, 2012

## 6. Redeemable Points Program



1994

|  |  |  |
|--|--|--|
| <p>Limited Edition blu Whiskey Set<br/>6,000 points<br/>★ Added to Wishlist</p>                      | <p>blu iPad Mini cover<br/>2,000 points<br/>☆ Add to Wishlist</p>              | <p>blu 18 Bottle Soft Sided Cooler<br/>2,000 points<br/>☆ Add to Wishlist</p>                            |
| <p>blu Picnic Blanket<br/>2,000 points<br/>☆ Add to Wishlist</p>                                     | <p>blu iPad cover<br/>2,000 points<br/>☆ Add to Wishlist</p>                   | <p>Women's blu V-neck Argyle - Take Back Your Freedom (Black)<br/>1,500 points<br/>☆ Add to Wishlist</p> |
| <p>Men's VIP blu - Take Back Your Freedom with blu (Grey)<br/>1,500 points<br/>☆ Add to Wishlist</p> | <p>blu Bobble Filtered Water Bottle<br/>1,500 points<br/>☆ Add to Wishlist</p> | <p>Men's blu Vertical Stripes (Black)<br/>1,500 points<br/>☆ Add to Wishlist</p>                         |

2014

## 7. Images of Doctors



According to a recent Nationwide survey: **MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE**

● Men and women in every branch of medicine—113,997 in all—were queried in this nationwide study of cigarette preference. Three leading research organizations made the survey. The gist of the survey was—What cigarette do you smoke, Doctor?  
*The local news must use Camels!*  
 The rich, full flavor and cool mildness of Camel's special blend of outdoor tobacco seem to have won the same favor in medical circles as with millions of smokers the world around. If you get a Camel smoker, this preference among doctors will hardly surprise you. If you're not—well, try Camels now.

**TRY CAMELS ON YOUR "T-ZONE"**  
 That's T for Taste and T for Trust—the most critical "T-Zone" for any cigarette. For long years taste responds to the rich, full flavor of Camel's cool, full nicotine. For long years throat reacts to Camel's cool mildness. On the basis of the experience of many millions of smokers, we believe Camels will suit your "T-Zone" to a "T."

1946



Clip from The Doctors, 2010

### Doctors Endorsement Boost Sales for E-Cigarettes

After the popular medical program "The Doctors" aired promoting the use of electronic cigarettes as a healthy alternative to traditional cigarettes, sales for electronic cigarettes "dramatically increased" according to CEO of South Beach Smoke Chris Mahne.

Press Release from South Beach Smoke, November 16, 2010

## 8. "Switch, Don't Quit" messages

Tobacco companies have long tried to discourage smokers from quitting by marketing cigarette changes as reducing health risk. Some e-cigarette ads carry a similar message.



1976



2011



## Appendix B

### Excerpts from DOJ Judge Gladys Kessler's Final Opinion in *U.S. V. Philip Morris USA, Inc., et al.*, No. 99-CV-02496GK (U.S. Dist. Ct., D.C.), August 17, 2006

2637. Moreover, smokers are remarkably brand-loyal. LeVan PD, *United States v. Philip Morris*, 6/25/02, 225:3–228:12, 229:4–230:11 (“premium tobacco brands and smokers are very highly loyal and ... they don’t switch brands very often.”). Defendants realize that they need to get people smoking their brands as young as possible in order to secure them as lifelong loyal smokers. As Bennett LeBow, President of Vector Holdings Group, stated, “if the tobacco companies really stopped marketing to children, the tobacco companies would be out of business in 25 to 30 years because they will not have enough customers to stay in business.” LeBow WD, 63:16–64:1.

2782. On June 2, 1966 Lorillard sent a letter authorizing Grey Advertising to conduct a “Penetration/Usage/Image” study designed to examine the success of Kent and True marketing. The letter indicated that the study’s results “will be tabulated out for the age cell of 16 thru 20 years, in order that we may analyze this group separately.” 89834271–4271 (U.S. 20943).

2789. An August 30, 1978 Lorillard memorandum from Ted Achey, Lorillard’s Director of Sales in the Midwest, to company President Curtis H. Judge regarding “Product Information,” demonstrates that Lorillard recognized the significance of the underage market to the company:

The success of NEWPORT has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student. NEWPORT in the 1970’s is turning into the Marlboro of the 60’s and 70’s. It is the “In” brand to smoke if you want to be one of the group. Our problem is the younger consumer that does not desire a menthol cigarette. If that person desires a nonmenthol, but wants to be part of the “In” group, he goes to Marlboro.... I think the time is right to develop a NEWPORT NATURAL (non-menthol) cigarette to attract the young adult consumer desiring a non-menthol product....A good test area might be the Camden, New Jersey Division.

03537131–32 (U.S. 22357).

3264. Steven C. Watson, Lorillard Vice President, External Affairs, was responsible for issuing a press release in 2001, stating “Lorillard Tobacco Company has never marketed or sold its products to youth.” The release was transmitted electronically by e-mail from North Carolina to P.R. Newswire in New York, and distributed from there by wire to various news agencies, to be published in newspapers, magazines or similar publications. Watson PD, *United States v. Philip Morris*, 4/2/02, 190:5–191:6.

## Conclusions

3296. The evidence is clear and convincing—and beyond any reasonable doubt—that Defendants have marketed to young people twenty-one and under while consistently, publicly, and falsely, denying they do so. Dolan WD, 24:3–16; Krugman WD, 17:2–19:1; Chaloupka WD, 30:832:20; Biglan WD, 100–379.

3302. In the face of this evidence, Defendants have denied, over and over, with great self-righteousness, that they have marketed to youth.

## Appendix C.

**Image 1.** Blu uses provocative images in an advertisement for blu e-cigarettes placed in the March 2014 Swimsuit issue of Sports Illustrated and an online video available through blu's YouTube channel.

A screenshot of a YouTube video player. The video shows a woman from behind, wearing blue shorts, riding a bicycle on a path next to a lake. The video player interface includes a progress bar at 0:04 / 0:37. Below the video, the title is 'Cycling With Natasha Leggero'. The channel is 'blu Cigs' with 86 videos and 2,816 subscribers. It shows 837 views, 14 likes, and 1 dislike. The video was published on Jun 5, 2014. A description follows: 'If you want something eye-catching: <http://bit.ly/1rOsLQC>. www.blucigs.com'. A warning at the bottom states: 'Viewers of this video and all blu videos must be 18 years of age or older. Show more'.

**Image 2.** There are thousands of e-cigarette liquid flavors available in stores and online, including flavors that can be mixed according to users' tastes. These are just some of the kid-friendly options for sale.



Banana Split



Cotton Candy



“Kool-Laid” Grape



Skittles



Sweet Tart



Gummi Bear



“Fruity Loops”

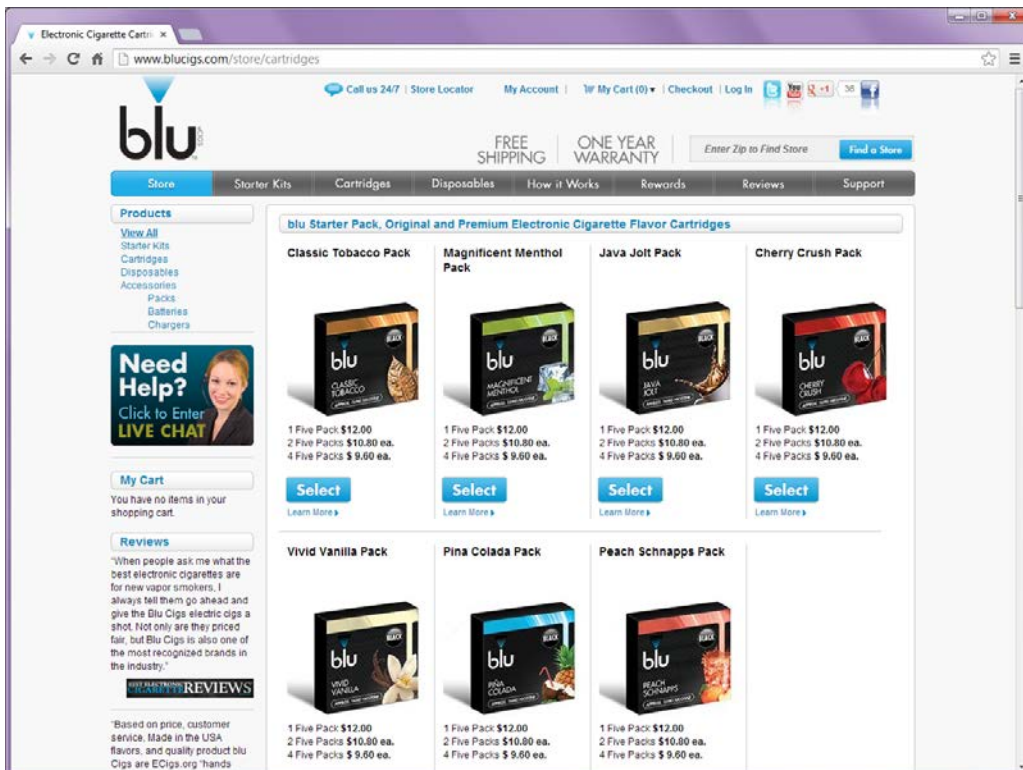
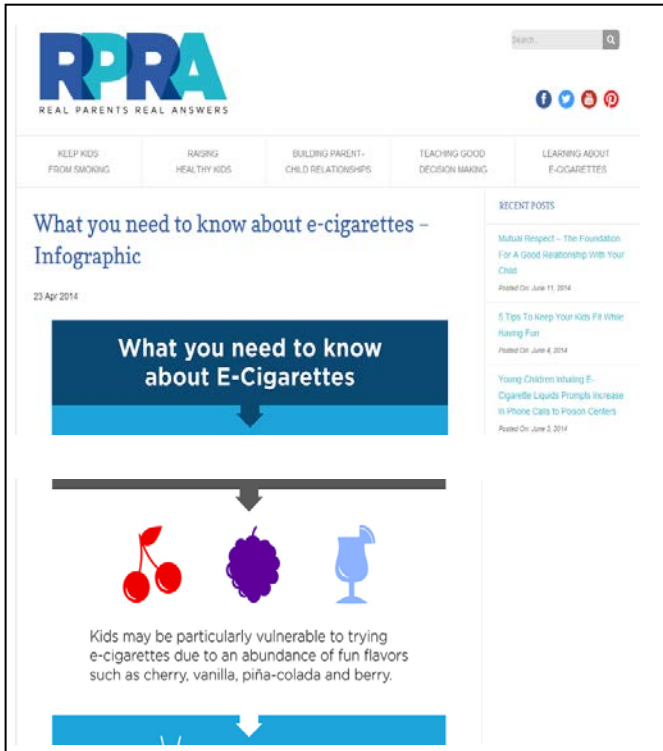


Rocket Pop



Hawaiian Punch

**Image 3.** Lorillard’s “Real Parents Real Answers” youth prevention website features an infographic on e-cigarettes, including a statement that “kids may be particularly vulnerable to trying e-cigarettes due to an abundance of fun flavors such as cherry, vanilla, piña-colada and berry.” For comparison, Lorillard’s blu e-cigarette brand offers flavor cartridges for sale on its website, including cherry, vanilla, and piña colada.



**Image 4.** Billboards by an e-cigarette company and a vape shop.



Billboard off of I-95 South in Miami, FL, December 2013



Billboard in Janesville, WI, June 2014

**Image 5.** E-cigarette companies use attractive and scantily-clad models to promote their products.



*Lorillard, Inc.*

A.G.  
Vivian M.  
Linda C.  
Tim F.

Ronald S. Milstein  
Executive Vice President,  
Legal and External Affairs,  
General Counsel and Secretary

October 23, 2013

(336) 335-7718  
Fax (336) 335-7707

The Honorable Margaret Hamburg, Commissioner  
U.S. Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

**Re: FDA Regulation of E-Cigarettes**

Dear Commissioner Hamburg,

On behalf of Lorillard Inc., the owner of blu eCigs, the leading electronic cigarette company in the United States, I am writing to express our agreement with many of the principles expressed by state Attorneys General who urged the Food and Drug Administration (FDA) on September 24, 2013<sup>1</sup>, to assert its authority to regulate electronic cigarettes under the Tobacco Control Act.

Lorillard agrees that FDA is authorized to regulate e-cigarettes. Since acquiring blu eCigs in April 2012, Lorillard repeatedly has stated that it stands ready to work with FDA to develop regulations for e-cigarettes. Lorillard has reiterated this publicly and in private meetings with FDA.

E-cigarettes are a product that has the potential to play a critical role in the national harm reduction discussion. For too many years, tobacco policy has been mired in an all-or-nothing philosophy. Under this approach, smokers are presented with just one alternative: quit. This mindset has prevented the implementation of a comprehensive public health strategy designed to reduce tobacco-related disease.

E-cigarettes are distinctly different from combustible tobacco cigarettes in that e-cigarettes have no tobacco smoke, no ash, no odor and no combustion, resulting in virtually none of the chemicals present in cigarette smoke. On the other hand, e-cigarettes are similar to combustion cigarettes, in that they mimic the behavior of traditional smoking.

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<sup>1</sup> National Association of Attorneys General. FDA Regulation of E-Cigarettes. Sept. 24, 2013. Letter to The Honorable Margaret Hamburg. <http://www.naag.org/ags-urge-fda-to-regulate-sale-and-advertising-of-e-cigarettes.php>

Making less harmful products available to smokers as soon as possible should be a top priority for policy makers. We should arrive at a place where regulations mirror the continuum of risk. Regulation should promote the development of products that significantly reduce exposure to harm in the users of tobacco products. These and other regulatory actions by the FDA should encourage cigarette smokers to switch to e-cigarettes.

FDA rules should ensure the adoption of quality standards and good manufacturing practices, accompanied by a regulatory framework that ensures sales and marketing to youth is prohibited. In the meantime, absent regulations, blu eCigs has voluntarily implemented many responsible measures concerning the conduct of our business, while pressing state governments for sales restrictions that prevent youth access.

**To be clear: We agree that electronic cigarettes are not a product for youth. Any usage of electronic cigarettes by youth is unacceptable;** electronic cigarettes are intended to be used as an alternative to combustion cigarettes by smokers of legal age, and should not be sold or used by anyone under age 18.

However, it is disturbing that the Attorneys General and others in the public health community are relying on their 1990's tobacco playbook and raising the specter of youth usage of electronic cigarettes as a reason for FDA to ban or adopt draconian restrictions on the marketing and sale of these tobacco alternatives. In fact, concerns that youth are using electronic cigarettes at alarming rates are not supported by evidence.

In their letter the state Attorneys General cite a recent report by the Centers for Disease Control and Prevention (CDC) as proof that youth are taking up the use of e-cigarettes at alarming rates. The CDC study claimed that electronic cigarette use had more than doubled among middle and high school students from 2011 to 2012. This report's "conclusion" has led many to call for the ban on the sale of electronic cigarettes, or at the least the imposition of drastic marketing and sales restrictions that may cause adult smokers to forgo the opportunity to switch from smoking to vaping. Yet the CDC study did not offer evidence, nor are we aware of any such evidence, of an epidemic of youth usage of electronic cigarettes at all.

The CDC survey showed that 2.1 percent of the youth had experimented with e-cigarettes. It did not report daily or regular use statistics for e-cigarettes. In other words, the statistic reported by CDC includes youth who took only so much as one puff from an e-cigarette and may not have used the product ever again. This means that the CDC's claim that electronic cigarette use has doubled among underage youth is likely dramatically overstated. As far as we know from that survey, none of them are using e-cigarettes daily, in contrast with the unfortunate fact that many more youth continue to regularly smoke combustible cigarettes.



Unfortunately, the CDC has claimed that its survey shows that kids are starting with e-cigarettes and then progressing to smoke combustion cigarettes. This is not supported by the scientific evidence. Dr. Michael Siegel, professor in the Department of Community Health Sciences, Boston University School of Public Health, has said the statement is a "fabrication" and that "the study did not document any examples of youth starting to smoke as a result of first trying electronic cigarettes." Furthermore, Siegel notes that the "among youth who experimented with electronic cigarettes in 2012, the overwhelming majority - 90.6% - were smokers."

Lorillard supports reasonable, science based regulations of e-cigarettes. However, that regulation must not have the effect of denying the harm reduction benefits of electronic cigarettes to smokers looking for an alternative. We think there is an opportunity to enact sensible regulation to accomplish this.

After its acquisition of blu eCigs, Lorillard made a commitment to take a leadership role in shaping how manufacturers in this emerging category can be responsible. We agree that e-cigarettes should not be marketed, sold, or used by anyone younger than 18 years of age, and have demonstrated our commitment to this in the following ways:

1. *Two-Step Age Screening Process on blu eCigs Website.*

blu eCigs prohibits the sale of e-cigarettes to anyone younger than 18 years of age through strict age-verification and third party certification procedures on websites or through vendor verification in stores.

Since its acquisition by Lorillard, blu eCigs has implemented a two-step age screening process on its website. The website screening process begins with a self-certification of age. Before being allowed access to the website, the person is asked to certify that he or she is 18 years of age or over. Only individuals certifying they are 18 years of age or older are permitted entry. To purchase any product from the website, a consumer must first provide personal information, including first and last name, address and date of birth. Then two third-party age verification systems compare this information to public records to verify the consumer's identity and that the consumer is 18 years of age or older. If either system verifies the consumer's identity and that the consumer is 18 years of age or older, the transaction is completed. If neither system can verify these facts, the transaction is terminated. This rigorous screening process established by blu eCigs prevents persons under 18 years of age from purchasing blu products on its website.

However, the sale of e-cigarettes to persons under 18 years of age in a face to face transaction at retail stores is still possible in several states that do not make it illegal for retailers to sell, furnish and distribute electronic cigarettes to minors. As a result, Lorillard

has strongly advocated and worked for state legislation to prevent the sale or distribution of electronic cigarettes to minors. It is an important step that states can and should take, and we urge the Attorneys General to support these statutes.

2. *Marketing Targeted at Consumers of Legal Age*

Responsible e-cigarette manufacturers, including blu eCigs, do not market to youth. Lorillard understands the sensitivity associated with advertising and marketing campaigns and their potential influence on minors. For this reason, blu eCigs is actively and effectively ensuring that its advertising is directed at adult smokers.

blu has run two advertisements on television. The advertisements were placed on television shows whose content is directed to viewers who are 18 years of age or older and shown during time slots when at least 85% of the target audience is 18 years of age or older. The advertisements were designed primarily to educate smokers regarding e-cigarettes and included two celebrities. Both celebrities are over 40 years old and have an adult target audience well beyond 18 years of age.

The Attorneys General also assert that flavored electronic cigarettes attract youth to these products. However, it is commonplace for products marketed to adults to be offered in a variety of flavors. Beer and alcohol are available in numerous types of flavors enjoyed by adults, as are many types of coffee and tea. Most notably, nicotine therapy products are also sold in a variety of flavors. For example, flavors of Nicorette gums and lozenges include White Ice Mint, Fruit Chill, Cinnamon Surge and Cherry. While Congress did ban cigarettes with a characterizing flavor other than tobacco or menthol through the Family Smoking Prevention and Tobacco Control Act, Congress did not ban characterizing flavors for other tobacco products, and FDA should not do so with electronic cigarettes. We believe we can and do market and advertise blu eCigs in a responsible manner to adult consumers so that all adults who prefer these flavors may continue enjoying them. Depriving adults the right to use flavored electronic cigarettes may very likely prevent traditional smokers from switching away from combustible cigarettes, resulting in many continuing on a lifelong path of using the most harmful of nicotine products.

We believe strongly that responsible marketing parameters that prohibit marketing and sales to youth can be achieved without suppressing adult access to what may be the most significant harm reduction opportunity ever for traditional smokers.

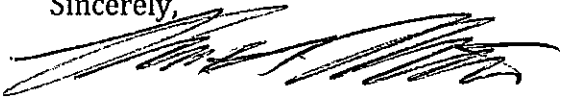
October 23, 2013

Page 5

Lorillard again welcomes the voices of the 40 state Attorneys General in urging FDA to issue proposed regulations to assert regulatory oversight of e-cigarettes.

Lorillard encourages the FDA to ensure appropriate and reasonable regulation of e-cigarettes through policies developed by the FDA and industry in partnership. Like the Attorneys General, Lorillard looks forward to working collaboratively with the FDA to devise a reasonable, scientifically based regulatory framework covering e-cigarettes that does not stifle what may be the most significant harm reduction opportunity ever for traditional smokers.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald S. Milstein", written over a horizontal line.

Ronald S. Milstein

cc: James McPherson, Executive Director, National Association of Attorneys General  
~~All States' Attorneys-General~~



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005  
PHONE (202) 296-5469 • FAX (202) 296-5427

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November 19, 2013

The Honorable Margaret Hamburg, Commissioner  
U.S. Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

Re: Lorillard Letter on FDA Regulation of E-Cigarettes

Dear Commissioner Hamburg:

On October 23, 2013, Lorillard Inc., which owns blu eCigs, submitted to you a letter expressing support for Food and Drug Administration (FDA) regulation of electronic cigarettes (e-cigarettes). In its letter, Lorillard insists that e-cigarettes are not a product for youth and claims to have voluntarily implemented “responsible measures” to prevent the sale and marketing of e-cigarettes to youth. At the same time, however, the company questions new research by the Centers for Disease Control and Prevention (CDC) that shows a sharp increase in youth use of e-cigarettes.<sup>1</sup>

Lorillard’s attack on CDC’s research is unwarranted, and its claim of corporate responsibility with respect to youth access to its products is utterly misleading.

### **Youth Use of E-Cigarettes Has Increased**

The CDC recently reported that youth use of e-cigarettes among high school students more than doubled from 2011 to 2012 (from 4.7% to 10%). The CDC estimates that nearly 1.8 million U.S. youth (grades 6–12) had tried e-cigarettes as of 2012, and 160,000 of those who tried e-cigarettes had never used conventional cigarettes.<sup>2</sup> This is a significant and alarming trend and suggests that e-cigarettes may be encouraging greater youth experimentation with tobacco products. Rather than recognizing the adverse implications of these findings for public health, Lorillard dismisses the CDC findings as “dramatically overstated” and lacking evidence. Lorillard’s absence of concern for this documentation of underage use of e-cigarettes is troubling and at odds with its claims of being a responsible manufacturer.

Like cigarettes, e-cigarettes contain nicotine; and nicotine is extremely addictive. Kids and adolescents are more susceptible to the effects of nicotine, because they are still going through critical periods of growth and their brains are still developing.<sup>3</sup> Research shows that youth can experience symptoms of dependence—

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<sup>1</sup> See October 23, 2013 Lorillard letter to Commissioner Hamburg regarding FDA regulation of e-cigarettes

<sup>2</sup> Centers for Disease Control and Prevention (CDC). “Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012,” *Morbidity and Mortality Weekly Report (MMWR)*, 62(35):729-730, September 6, 2013.

<sup>3</sup> U.S. Department of Health and Human Services (USDHSS), *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 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, 2012. See also USDHSS, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, U.S. Department

including withdrawal and tolerance—after minimal exposure to nicotine.<sup>4</sup> Thus, e-cigarettes could serve as a gateway to nicotine addiction and increase kids' risk of initiating other tobacco products.

As a result of nicotine addiction, approximately three out of four teen smokers end up smoking into adulthood, even if they intend to quit after just a few years.<sup>5</sup> Research also shows that the earlier a young person first tries smoking, the higher his or her chances of ultimately becoming a regular smoker, and the less likely he or she is to quit.<sup>6</sup> Lorillard dismisses CDC's data, asserting that it "includes youth who took only so much as one puff from an e-cigarette" but, as FDA's Tobacco Products Scientific Advisory Committee has stated, "Regular cigarette smoking begins with experimentation."<sup>7</sup> The sharp increase in experimentation with e-cigarettes and its potential to draw youth into a lifetime of addiction is, therefore, a cause for great concern and worthy of more serious attention, and responsive action, than shown by Lorillard.

### E-Cigarette Marketing Targets Youth

Lorillard states in its letter that "Responsible e-cigarette manufacturers, including blu eCigs, do not market to youth." Unfortunately, Lorillard's actions contradict its words. The marketing strategies Lorillard uses to promote blu are the same as the marketing strategies that have long been used by tobacco companies to market cigarettes to kids. They include:

- **Kid-friendly flavors:** Lorillard is the only one of the top three e-cigarette manufacturers to sell its product in flavors. In addition to classic tobacco and menthol varieties, blu e-cigarette cartridges are available in candy and fruit flavors, like cherry crush, vivid vanilla, piña colada, and peach schnapps. (See Exhibit A.) Tobacco companies have regularly used flavored products to appeal to youth, who may otherwise be turned off by the harsh taste of nicotine. It was for that reason that Congress approved the prohibition on flavored cigarette sales when it passed the Family Smoking Prevention and Tobacco Control Act in 2009. Current research confirms that flavored tobacco products are particularly popular among youth. A recently published national study found that 42.4 percent of youth smokers use flavored little cigars or flavored cigarettes.<sup>8</sup> Data from the 2013 Florida Youth Tobacco Survey show that 18.7 percent of high school students have tried a flavored tobacco product at least once.<sup>9</sup> It is reasonable to expect that flavored e-cigarettes would appeal to youth in the same way as other flavored tobacco products.
- **Magazine advertisements:** Lorillard regularly places advertisements for blu in magazines with high youth readership, including *Rolling Stone*, *ESPN The Magazine*, and *Sports Illustrated*. (See Exhibit B).

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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, 2010.

<sup>4</sup> USDHSS, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, 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, 2010.

<sup>5</sup> USDHSS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 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, 2012.

<sup>6</sup> See, e.g., Khuder, SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior*, 24(5):673-7, September-October 1999; D'Avanzo, B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology*, 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports*, 9(4):39-46, Spring 1998; Everett, SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999; Breslau, N & Peterson, EL, "Smoking cessation in young adults: Age at initiation of cigarette smoking and other suspected influences," *American Journal of Public Health*, 86(2):214-20, February 1996.

<sup>7</sup> Tobacco Products Scientific Advisory Committee, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations" (July 21, 2001), at 215.

<sup>8</sup> King, B. et al. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students," *Journal of Adolescent Health*, August 27, 2013. Flavored cigarettes may include menthol products.

<sup>9</sup> 2013 Florida Youth Tobacco Survey.

Youth readership (ages 12- 17) for these three magazines alone is more than five million; the reach for all magazines would be millions more.<sup>10</sup> With images of rugged men, glamorous women, and depictions of e-cigarette use as masculine, sexy, and rebellious, these advertisements likely appeal to many teenage boys and girls.

- **Celebrity endorsements:** Lorillard’s advertisements for blu feature TV personality Jenny McCarthy and actor Stephen Dorff. Lorillard may be right that both celebrities are over 40 years old, but they are pictured in trendy settings, such as night clubs, speaking about the ways in which blu enhances their social and dating lives—scenes and topics that are familiar and important to many youth. This strategy mirrors tobacco companies’ strategies from the 1940s and 1950s, when they used celebrities to associate a specific lifestyle and personality with their cigarettes in an effort to construct positive social norms around smoking.<sup>11</sup> And while Lorillard asserts that its TV advertisements featuring these celebrities were shown during time slots when at least 85 percent of the viewing audience was 18 years of age or older, it neglects to mention that these advertisements also are posted on YouTube, a public video-sharing website that is popular with youth. (See Exhibit C.) As such, these advertisements—which associate glamour with the use of blu—can be viewed by individuals of all ages at any time.
- **Sports, music, and other event sponsorships:** Although federal law prohibits Lorillard from sponsoring sporting and music events with its cigarette brands, it continues to take advantage of these popular, youth-friendly events to market blu. (See Exhibit D.) Blu currently sponsors cars in the IndyCar and Nascar circuits. It has sponsored numerous musical festivals, including The Governors Ball Music Festival in New York City, June 2013; the Bonnaroo Music and Arts Festival in Tennessee, June 2013; and Sasquatch! music festival at the Gorge in Washington state, May 2013. Blu has also sponsored “vaping areas,” which show signs displaying the blu logo, in at least one Six Flags theme park in California. Six Flags is an amusement park that attracts thousands of visitors each year—many of which are families and young adults.<sup>12</sup>
- **Cartoons:** The website for blu has featured an animated cartoon pitchman named “Mr. Cool.” The cartoon, which included an animated video, is reminiscent of the notorious Joe Camel cartoon character that effectively marketed cigarettes to kids in the 1990s. (See Exhibit E.)

### **Lorillard’s Age Verification for Access to Its E-Cigarette Website is Superficial**

Lorillard prides itself on its two-step age screening process for the blu website [www.blucigs.com](http://www.blucigs.com). A visit to the website, however, quickly shows that the age verification is superficial and inadequate to prevent youth access.

To access the blu website, an individual only needs to click on an icon that states “18+ (ENTER).” No validation of age is required. The individual is then directed to the full blu website, which includes information on e-cigarettes, a store, customer reviews, a support center, and more. This is a stark contrast to the age verification required to access Lorillard’s website for Newport, its leading brand of cigarettes. Accessing the Newport website is a multi-stage process that first requires individuals to enter their date of birth. Individuals are then directed to a second page where they must enter their full name, address, driver’s

<sup>10</sup> GfK Mediamark Research & Intelligence. Youth readership is 2,002,000 for *ESPN The Magazine*, 1,289,000 for *Rolling Stone*, and 1,727,000 for *Sports Illustrated*.

<sup>11</sup> National Cancer Institute. *The Role of the Media in Promoting and Reducing Tobacco Use*. Tobacco Control Monograph No. 19. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, June 2008.

<sup>12</sup> Americans for Nonsmokers’ Rights. “Do you think Blu e-cigarettes should be promoted at Six Flags?” [http://anr.no-smoke.org/site/MessageViewer?em\\_id=29281.0](http://anr.no-smoke.org/site/MessageViewer?em_id=29281.0).

license number, and the last four digits of their social security number. Only after this information and the individual's age are verified are they able to enter the website. (See Exhibit F.)

Having set up a more rigorous age verification system for its leading cigarette brand, Lorillard clearly has the knowledge and experience to set up a more advanced screening process for its e-cigarette brand. It has not, however; and the company offers no explanation for why the age verification processes differ. As a result, youth can be introduced to blu e-cigarettes just as easily as any adult.

Lorillard states that a second screening process takes place before an individual is allowed to purchase a product from the blu website. As before, however, this system lacks the rigor needed to effectively prevent youth from completing a purchase. Individuals need only enter a name, birthdate, and credit card information—information that could easily be taken from an older individual. A driver's license and social security number are not required for age verification.

Lorillard claims to be a responsible e-cigarette manufacturer and implies that it is part of the solution for reducing tobacco-related harms. Its actions, however, show that it still is part of the problem. The strategies used to market blu e-cigarettes are the same irresponsible marketing strategies used by tobacco companies to market cigarettes to kids.

I urge the FDA to move quickly to regulate e-cigarettes and ensure that tobacco companies, like Lorillard, do not continue to market their addictive products to another generation of kids.

Sincerely,



Matthew L. Myers  
President  
Campaign for Tobacco-Free Kids

Exhibit A: Screenshot of blu eCigs Website, November 1, 2013

The screenshot shows the blu eCigs website interface. At the top, there is a navigation bar with links for 'Call us 24/7', 'Store Locator', 'My Account', 'My Cart (0)', 'Checkout', and 'Log In'. The main header features the 'blu' logo, 'FREE SHIPPING', and 'ONE YEAR WARRANTY'. Below this is a search bar with the text 'Enter Zip to Find Store' and a 'Find a Store' button. A secondary navigation bar lists categories: 'Store', 'Starter Kits', 'Cartridges', 'Disposables', 'How it Works', 'Rewards', 'Reviews', and 'Support'.

The main content area is titled 'blu Starter Pack, Original and Premium Electronic Cigarette Flavor Cartridges'. It displays seven product packs in a grid:

- Classic Tobacco Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.
- Magnificent Menthol Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.
- Java Jolt Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.
- Cherry Crush Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.
- Vivid Vanilla Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.
- Pina Colada Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.
- Peach Schnapps Pack:** 1 Five Pack \$12.00, 2 Five Packs \$10.80 ea., 4 Five Packs \$ 9.60 ea.

Each product pack includes a 'Select' button and a 'Learn More' link. Below the product grid is a section for 'Premium100 Electronic Cigarette Flavor Cartridges'.

On the left side of the page, there is a 'Products' menu with links for 'View All', 'Starter Kits', 'Cartridges', 'Disposables', 'Accessories', 'Packs', 'Batteries', and 'Chargers'. Below this is a 'Need Help?' section with a 'Click to Enter LIVE CHAT' button. Further down is a 'My Cart' section stating 'You have no items in your shopping cart.' and a 'Reviews' section with a quote: 'When people ask me what the best electronic cigarettes are for new vapor smokers, I always tell them go ahead and give the Blu Cigs electric cigs a shot. Not only are they priced fair, but Blu Cigs is also one of the most recognized brands in the industry.'



**Exhibit B: Magazine Ads in Magazines with High Youth Readership**

**TAKE BACK YOUR FREEDOM**  
with blu eCigs, the smart alternative to cigarettes.

- Smoke Virtually Anywhere
- No Tobacco Smoke, Only Vapor
- Flavors Made in the U.S.A.

blu™ electronic cigarettes are now available in retail stores nationwide.  
Visit us at [blucigs.com/store-locator](http://blucigs.com/store-locator)

©2013 B&W T Co. All rights reserved. B&W T Co. is a registered trademark of B&W T Co. All other trademarks are the property of their respective owners.

**Magazine Ad Found In:**

*Rolling Stone*: April 25, 2013; May 23, 2013; June 20, 2013; July 4-18, 2013

*Car and Driver*: June 2013; July 2013

*Men's Journal*: June 2013; July 2013; August 2013

*Esquire*: June 2013

*Field and Stream*: June 2013; July 2013

*Playboy*: June 2013; July/August 2013

*Popular Mechanics*: June 2013; July/August 2013

Source: Trinkets & Trash, [www.trinketsandtrash.org](http://www.trinketsandtrash.org)

~~Filthy. Stinking. Rich.~~

blu ELECTRONIC CIGARETTE

With no ash, no odor, and an unmistakably rich taste, blu is everything you enjoy about smoking without the things you hate. You control when and where you want to smoke. Take back your freedom with blu.

[blucigs.com](http://blucigs.com)

Here by Smart Pick

**18+ only.** CALIFORNIA PROPOSITION 65 Warning: This product contains nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm.

**Magazine Ad Found In:**

*Rolling Stone* - May 2012

Source: Trinkets & Trash, [www.trinketsandtrash.org](http://www.trinketsandtrash.org)

Exhibit C: Screenshots of blu TV Advertisements on YouTube

A screenshot of a YouTube video player. The video title is "Stephen Dorff's Rise From the Ashes- Brought to you by blu Cigs". The video shows a man (Stephen Dorff) in a dark suit holding a black smartphone with a blue triangle on the screen. The video player has a progress bar at the bottom. Below the video, the channel name "BluCigs" is displayed with 33 videos and 1,478 subscribers. The video has 121,817 views, 427 likes, and 123 dislikes. The video was published on Oct 1, 2012. To the right of the video player, there are three recommended videos: "Ice House Chronicles - Joe Rogan vs. Brian Redban on...", "A PBusardo Review - The Blu Electronic Cigarette", and "Blu Cig Tips, Hints And Tricks On Better Performance".

A screenshot of a YouTube video player. The video title is "blu eCigs 2013 TV Commercial: 'Freedom' featuring Jenny McCar...". The video shows a woman (Jenny McCarthy) in a white dress sitting on a table in a dimly lit room. The video player has a progress bar at the bottom. Below the video, the channel name "BluCigs" is displayed with 47 videos and 1,908 subscribers. The video has 39,312 views, 53 likes, and 49 dislikes. The video was published on Aug 6, 2013. Below the video, there is a link to "www.facebook.com/blucigs" and a "Show more" button.

Exhibit D: Sports, Music, and Other Events Sponsorships



blu IndyCar sponsorship



blu sponsorship of Bonnaroo Music and Arts Festival

Exhibit E: Screenshot of “Mr. Cool” Cartoon on blu eCigs Website



Exhibit F: Screenshots of blu eCigs and Newport Age Verification

