

Congress of the United States
Washington, DC 20510

December 18, 2020

The Honorable Stephen M. Hahn
Commissioner of Food and Drugs
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Commissioner Hahn and Chairman Simons:

We write regarding a recent study by public health experts at Stanford University that revealed that numerous tobacco companies - including several subsidiaries of British American Tobacco (BAT) and Philip Morris International (PMI) – have “chosen to exploit a global pandemic for marketing purposes.” They have used the coronavirus disease 2019 (COVID-19) pandemic to unethically – and perhaps illegally - promote the sale of their tobacco and e-cigarette products, often on social media platforms primarily used by children and young adults.¹ Advertisements for vaping products have offered free gifts of scarce supplies – such as hand sanitizer, toilet paper, and masks, with the purchase of one of their products and have “profess[ed] the healthfulness of the company’s products” while pitching their “purported stress and anxiety relieving effects” during the pandemic.² This attempt to profit off the back of a global health crisis, reminiscent of decades of false and misleading advertising about cigarettes by tobacco companies, represents a callous indifference to the lives and well-being of millions of people across the world. The Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) are responsible for combatting these and other dangerous advertisements, and we request information on both agencies’ work to do so during the COVID-19 pandemic.

Since February 2020, the COVID-19 pandemic has wreaked havoc in communities across the world.³ To date, more than 71 million cases have been detected and nearly 2 million people have died across the globe. The United States alone has recorded more than 16.5 million cases, and

¹ Tobacco Control Journal, “Exploitation of the COVID-19 pandemic by e-cigarette marketers,” Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

² *Id.*

³ World Health Organization, “Coronavirus disease (COVID-19) pandemic,” <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>.

nearly 300,000 Americans have been killed by the virus.⁴ Similar to the larger family of coronaviruses, COVID-19 is a disease that primarily affects the respiratory system. Symptoms can range from a cough or shortness of breath to pneumonia or acute respiratory distress syndrome, both of which can be deadly. The long-term effects of contracting COVID-19 are just now beginning to come to light.⁵

Individuals with a history of chronic respiratory illness such as asthma are at greater risk for suffering more severe symptoms of COVID-19. Among this at-risk group are individuals that smoke or use e-cigarettes.⁶ In August 2020, a peer-reviewed study found significant links between vaping and an increased risk of contracting COVID-19.⁷ The study found people who have vaped even once in their lives were five times more likely to receive a COVID-19 diagnosis than people who have not. A COVID-19 diagnosis was 4.7 times more likely for someone who had vaped in the last 30 days.⁸ Vaping can also cause inflammation in the lungs and suppress the body's immune system, which could prolong and intensify lung infections including COVID-19.⁹ And because "vaping is typically a group social activity that often involves sharing of devices," and involves repetitive hand to mouth motion, a highly discouraged behavior during the pandemic, it may exacerbate the spread of COVID-19.¹⁰ Overall, there is a large body of evidence that demonstrates the use of e-cigarettes increases one's risk of COVID-19.

Despite the clear increased risk for COVID-19 for individuals that vape, several companies have exploited the ongoing pandemic to promote their e-cigarette products. An August 2020 study by Stanford researchers, published in the journal *Tobacco Control*, found that since the pandemic began, 21 e-cigarette brands and 41 online vaping stores published more than 300 COVID-19 themed promotional images and advertisements.¹¹ Many of these advertisements offered supplies such as toilet paper, hand sanitizer, or face masks emblazoned with the company's logo as gifts after a purchase of a vaping or tobacco product, at a time when they were scarce and difficult to find.¹² Alarming, the hand sanitizer was offered in the same bottle as the companies' flavored nicotine liquids, creating the risk that a user could accidentally vaporize and inhale the sanitizer.¹³ Companies also sought to expand access to their products through targeted COVID-

⁴ Johns Hopkins University, "Coronavirus Resource Center," <https://coronavirus.jhu.edu/>.

⁵ Elsevier Public Health Emergency Collection, "COVID-19 pathophysiology: A review," Koichi Yuki et al., April 20, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7169933/>; Centers for Disease Control and Prevention, "Long-Term Effects of COVID-19," December 1, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html>.

⁶ Centers for Disease Control and Prevention, "People with Certain Medical Conditions," November 2, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

⁷ Journal of Adolescent Health Volume 67, Issue 4, "Association Between Youth Smoking, Electronic Cigarette Use, and COVID-19," Shivani Mathur Gaiha Ph.D., Jing Chend, Ph.D., Bonnie Halpern-Felsher, Ph.D., October 2020, <https://www.sciencedirect.com/science/article/pii/S1054139X20303992>.

⁸ *Id.*

⁹ Tobacco Control Journal, "Exploitation of the COVID-19 pandemic by e-cigarette marketers," Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Appendix A-C.

¹³ Tobacco Control Journal, "Exploitation of the COVID-19 pandemic by e-cigarette marketers," Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

19 discount codes for doctors, nurses, and other front line staff and increased contactless delivery options.¹⁴

These advertisements also misused public health slogans promoted by governments and public health authorities to encourage the continued use of e-cigarette and vaping products. Slogans such as “Stay Safe, Stay Home,” and “Keep calm and [vape] at home,” were common across several advertisements - a perversion of public health messages to instead sell addictive e-cigarettes that increase risk for users, while falsely creating the impression that e-cigarette and vape products may ease the stress of social distancing.¹⁵

In perhaps the most dangerous advertisements, companies even touted their products’ supposed health benefits, claiming that vaping could help users cope with the ramifications of social distancing and avoid loneliness.¹⁶ Some companies used advertising to dispute the validity of peer-reviewed studies showing a link between vaping and an increased risk for COVID-19, calling such findings “misinformation... spreading faster than the virus itself.”¹⁷ This comes despite the growing body of evidence that shows a clear link between vaping and an increased risk of contracting COVID-19.

Finally, the vast majority of these advertisements were placed on popular social media platforms such as Instagram and Twitter, which are largely utilized by youth and adolescent users.¹⁸ This is not the only step some companies have taken to attract younger users. Exacerbating these concerns, one company temporarily waived identification and age verification to minimize points of contact - a technique that could contribute to increased underaged, illegal use.¹⁹

These advertisements are a blatant exploitation of a pandemic that has killed over a million people across the world and devastated the lives of countless more. They are reckless and endanger millions, especially as countries around the globe are experiencing yet another a surge in cases.²⁰ These efforts may also be illegal. According to the Stanford University experts:

The US Food and Drug Administration’s (FDA) regulations prohibit e-cigarette marketers from advertising their products as beneficial to health. By linking e-cigarettes to the COVID-19 pandemic, marketers are implicitly, and at times

¹⁴ Appendix D-E.

¹⁵ Appendix F-G; Tobacco Control Journal, “Exploitation of the COVID-19 pandemic by e-cigarette marketers,” Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

¹⁶ Tobacco Control Journal, “Exploitation of the COVID-19 pandemic by e-cigarette marketers,” Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

¹⁷ Appendix H; CNN, “Vaping ad tactics ‘exploited’ the pandemic, study says,” Michael Nedelman and Lauren Mascarenhas, August 28, 2020, <https://www.cnn.com/2020/08/27/health/vaping-ad-tactics-exploited-pandemic/index.html>.

¹⁸ Centers for Disease Control and Prevention, “E-cigarette Ads and Youth,” <https://www.cdc.gov/vitalsigns/ecigarette-ads/index.html>.

¹⁹ Tobacco Control Journal, “Exploitation of the COVID-19 pandemic by e-cigarette marketers,” Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

²⁰ Associated Press, “Europe, US reel as virus infections surge at record pace,” David Crary, Carla K. Johnson, and Geir Moulson, October 15, 2020, <https://apnews.com/article/virus-outbreak-netherlands-italy-france-czech-republic-987993953a51f39a861c0f481c0e38f8>.

explicitly, implying a health benefit of their products. Claims of reduced risk are prohibited by the FDA.²¹

Exploiting the COVID-19 pandemic of a respiratory disease to promote a product that increases risk for the very same disease is unconscionable. Together, FDA and the FTC are responsible for the oversight and regulation of unfair, deceptive, and potentially harmful advertisements.²² FDA has consistently warned about the dangers of e-cigarettes through their own nationwide ad-campaign, and the agency has indicated that it has “prioritize[d] enforcement with respect to any [e-cigarette] products that are targeted to youth or likely to promote use of [e-cigarettes] by youth.”²³ In October 2019, FTC opened an extensive investigation of “[e-cigarette manufacturers](#) ... sales, advertising, and promotional methods.”²⁴

In order to better understand the agencies’ work to combat these dangerous advertisements, we request the following information and a staff-level briefing no later than December 30, 2020. We appreciate your attention to this important matter.

1. What enforcement authorities does FDA have regarding e-cigarette manufacturers advertising and promotional activities?
2. What enforcement authorities does FTC have regarding e-cigarette manufacturers advertising and promotional activities?
3. How do your agencies work together to regulate advertising and marketing of e-cigarettes?
4. Has the FDA or FTC received complaints regarding the advertising of e-cigarette or vaping products during the COVID-19 pandemic?
 - a. If so, has FDA or FTC taken any action against any companies responsible for any such advertisements? Please provide this information by company, date, and action taken.

²¹ Tobacco Control Journal, “Exploitation of the COVID-19 pandemic by e-cigarette marketers,” Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.


²² Federal Trade Commission. “Advertising and Marketing on the Internet: Rules of the Road,” <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road#laws>.


²³ U.S. Food and Drug Administration, “FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint,” January 2, 2020, <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>; U.S. Food and Drug Administration, “The Real Cost Campaign,” September 29, 2020, <https://www.fda.gov/tobacco-products/public-health-education/real-cost-campaign>.


²⁴ Federal Trade Commission, “FTC to Study E-Cigarette Manufacturers’ Sales, Advertising, and Promotional Methods,” October 3, 2019, <https://www.ftc.gov/news-events/press-releases/2019/10/ftc-study-e-cigarette-manufacturers-sales-advertising-promotional>.

5. To what extent, if any, have FDA or FTC officials communicated with e-cigarette manufacturers regarding their activities during the pandemic that “implicitly, and at times explicitly, imply[] a health benefit of their products”?²⁵


Sincerely,


Elizabeth Warren
United States Senator


Raja Krishnamoorthi
Member of Congress


Richard Blumenthal
United States Senator

_____/s/_____
Diana DeGette
Member of Congress


Richard J. Durbin
United States Senator

²⁵ Tobacco Control Journal, “Exploitation of the COVID-19 pandemic by e-cigarette marketers,” Robert K. Jackler, et al., August 27, 2020, <https://tobaccocontrol.bmj.com/content/early/2020/08/26/tobaccocontrol-2020-055855>.

Appendix A:



FREE Hand + Sanitiser.
With every order at podsalt.com

HURRY WHILST STOCK LASTS

PODSALT
with 1ml drops

Hand + Sanitiser.
70% Ethanol
HYGIC

podsalt • Follow

podsalt **FREE HAND SANITISER, WHILST STOCK LASTS**
We have teamed up with the team @myvapery to offer free Hand Sanitisers with every order placed from today and beyond, WHILST STOCK LASTS!


THIS OFFER ALSO INCLUDES FREE DELIVERY (LINK IN BIO)

#podsalt #vapeation #nicia #saltic #vapefan #vapelife #quitsmoking #stopsmoking #smoking #vape #vaping #vapecommunity #vapeshop #vapenow #vapeworld #springvapes #vapedevice #cloudchasers #vapertricks #cigarette #vapefamily #liquid #juice #freedelivery #freshnicia

117 likes
MARCH 27

Add a comment... Post

Appendix B:



BLVK KLEAN TOILET PAPER

blvkuniceornejuice • Follow

blvkuniceornejuice Say NO to mess, and YES to KLEAN! Introducing the newest addition to our product line up, BLVK KLEAN toilet papers. For all of you toilet paper hoarders out there, we've got your back (pun intended)! Achieve maximum comfort with the help of the plush 2-ply sheets found in each roll of BLVK KLEAN toilet paper. Tested for strength on wet/dry applications results in using less product while absorbing

1,135 views
5 DAYS AGO

Add a comment... Post

Appendix C:



abik.official • Follow

abik.official Я останусь сегодня дома!
А вы соблюдаете карантин?
Друзья, не стоит рисковать и без особой надобности покидать свои убежища.
Пользуйтесь масками и берегите себя.
Правда, маски нужно ещё купить.
Спасибо @glo.kz за то, что подарили мне такую маску!
И вы можете получить такую в glo адрес по адресу:
Пр. Назарбаева 100 Г.

#todaywillstayhome
#glo.kz
#glo.mask
#карантин#glo.kz

7,757 likes
5 DAYS AGO

Add a comment... Post

Appendix D:

**WARNING: This product contains nicotine.
Nicotine is an addictive chemical.**

**WE THANK YOU ALL FOR YOUR
STRENGTH, COURAGE, AND SERVICE
DURING THESE TIMES.**

30% OFF

FOR ALL MILITARY PERSONNEL, AND FIRST RESPONDERS

BLVK

BLVK.COM/PAGES/DISCOUNTS



blvkunicornejuice • [Follow](#) ...



blvkunicornejuice Despite the chaos going on around the world, they're still out there puttin' in work. To show our gratitude towards your bravery, all first-responders, and military personnel will receive a 30% off discount for all of their orders. Please visit our Discounts page on our website to claim your code.

**WARNING: This product contains nicotine.
Nicotine is an addictive chemical.**

1w



blvkunicornejuice #BLVKUnicorn
#BLVK #MajesticAsFVCK
#Vapeporn #Vape #Ecig #Ecigs
#Eliquid #Ejuice #VapeJuice



266 likes

MARCH 26

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[Post](#)

Appendix E:

From: IQOS Canada <info@iqos.ca>
Date: April 10, 2020 at 1:01:12 PM PDT
To:
Subject: Try IQOS at home today!

IQOS

WE'VE GOT YOU COVERED

Smoke-free tobacco.
Fast, contact-free delivery.
More affordable than cigarettes.

ALL YOU NEED TO GO SMOKE-FREE AT HOME.
Switch to IQOS, a better alternative to smoking, and say goodbye to cigarette smoke, ash, and smells.

SMOKE-FREE TOBACCO
MORE AFFORDABLE THAN CIGARETTES
FAST, CONTACT-FREE DELIVERY

TRY AT HOME BUNDLE

Start exploring the benefits of a smoke-free life in the comfort of your home with a trial bundle.

[TRY NOW](#)

THIS PRODUCT IS HIGHLY ADDICTIVE

- IQOS Starter Kit
- 3 cartons of HEETS 50s
- Remote support from an IQOS Expert
- Enrollment in IQOS CARE PLUS
- Fast, contact-free delivery

[EXPLORE THE BUNDLE](#)

Your IQOS Team

CALL US **EMAIL US** **TWITTER SUPPORT** **SHOP ONLINE**

IQOS

THIS PRODUCT IS NOT RISK-FREE AND IS ADDICTIVE

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Appendix F:



Appendix G:



Appendix H:

**WARNING: This product contains nicotine.
Nicotine is an addictive chemical.**

MYTH:
**VAPING MAY LEAD TO INCREASED
RISKS FROM COVID-19.**

FACT:
CONTRARY TO STATEMENTS BY MISINFORMATION
SOURCES, THERE IS SIMPLY NO EVIDENCE SUGGESTING
THAT VAPING HAS THE CAPACITY TO AFFECT NEGATIVELY
THE IMMUNE BODY RESPONSE IN ORDER TO PRODUCE
THE DEVELOPMENT AND PROGRESSION OF THE DISEASES
CAUSED BY COVID-19 ON E-CIGARETTE USERS.



blvkunicejuice • Follow



blvkunicejuice It's truly sad to see the media take advantage of the current Covid-19 outbreak to yet again cause fear and report misinformation about vaping towards the general public. We hope ya'll are #StayingSafe out there #VapeFam! Keep doing your part during these times, and we will get through this together.

•
WARNING: This product contains nicotine.
Nicotine is an addictive chemical.

1w



drewski.cka Mongrel dogs, no wonder people DIE



267 likes

MARCH 25

Add a comment...

Post