

GATEWAY TO ADDICTION?

A Survey of Popular Electronic Cigarette Manufacturers and Targeted Marketing to Youth



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A report written by the staff of Senator Richard J. Durbin (D-IL), Representative Henry A. Waxman (D-CA), Senators Tom Harkin (D-IA), John D. Rockefeller IV (D-WV), Richard Blumenthal (D-CT), Edward J. Markey (D-MA), Sherrod Brown (D-OH), Jack Reed (D-RI), Barbara Boxer (D-CA), Jeff Merkley (D-OR), and Representative Frank Pallone Jr. (D-NJ)

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Executive Summary

Electronic cigarettes, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor and other chemicals.¹ They contain cartridges filled with flavors and chemicals, including the highly addictive substance nicotine, which are vaporized into an aerosol that is inhaled by the user. Many e-cigarettes are manufactured to look like conventional cigarettes and mimic the act of smoking.²

According to the Centers for Disease Control and Prevention (CDC), e-cigarette use is growing rapidly.³ However, these products are currently not subject to federal laws and regulations that apply to traditional cigarettes. For example, federal laws and regulations prohibit traditional cigarettes from being sold to persons younger than 18 years of age, distributed as free samples, advertised on television and radio, and having characterizing candy and fruit flavors that appeal to children. There is no federal ban on the use of such tactics by e-cigarette manufacturers. In the absence of federal regulation, some e-cigarette manufacturers appear to be using marketing tactics similar to those previously used by the tobacco industry to sell their products to minors.

To address growing questions over e-cigarettes and the marketing of these products, on September 26, 2013, Senator Richard J. Durbin (D-IL), Representative Henry A. Waxman (D-CA), Senator Tom Harkin (D-IA), Senator John D. Rockefeller IV (D-WV), along with Senators Richard Blumenthal (D-CT), Edward J. Markey (D-MA), Sherrod Brown (D-OH), Jack Reed (D-RI), Barbara Boxer (D-CA), Heidi Heitkamp (D-ND), Jeff Merkley (D-OR), and Representative Frank Pallone Jr. (D-NJ) launched an investigation into the practices of nine commonly sold e-cigarette brands. This report draws from written responses provided by the companies in response to this investigation. In instances where companies did not provide complete responses or simply did not respond to a question, supplemental information was gathered from company websites and through reviewing other publically available information.

Findings in Brief

The findings of this analysis demonstrate the need for the Food and Drug Administration (FDA) to act quickly to issue e-cigarette regulations.

Major findings:

- All surveyed companies appear to use various marketing practices that appeal to youth. For instance:
 - Eight e-cigarette companies promote their products through sponsored or sampling events, many of which appear to be youth-oriented. In 2012 and 2013 alone, six of the surveyed companies sponsored or provided free samples at 348 events.⁴
 - Seven e-cigarette companies air television and radio advertisements during events and programs, including those with youth viewership. Blu's commercials "have aired thousands of times at various times of the day and night on 48 networks," and NJOY has advertised during programs including the Super Bowl, an event that reaches a substantial audience of youth under age 18.
- Six e-cigarette companies market e-cigarettes in flavors that could appeal to children and teens. For example, e-cigarette manufacturers are marketing flavors like Cherry Crush, Chocolate Treat, Peachy Keen, and Grape Mint.
- E-cigarette manufacturers have significantly increased marketing spending, more than doubling expenditures between 2012 and 2013. In total, six e-cigarette companies spent \$59.3 million in 2013 to market e-cigarettes.

Additional findings:

- There is wide variation in e-cigarette industry point-of-sale practices. One e-cigarette company reported that it does not maintain any policy barring sales to minors. Other companies have policies barring such sales, but these vary in scope and the level of company oversight.
- Four e-cigarette companies use celebrity spokespeople to market their products and depict e-cigarette smoking as glamorous. For example, celebrities have appeared in advertisements and at a prominent music festival.
- Seven e-cigarette companies utilize social media to promote their products. While some companies impose age restrictions to prevent youth access to their Facebook, Twitter, and YouTube content, three companies – Eonsmoke, VMR, and Lead by Sales – do not utilize any age restriction options for social media accounts.

- E-cigarette product warning labels lack uniformity and may confuse consumers. While some manufacturers' warning labels are succinct, make clear that e-cigarettes don't offer health benefits, and detail the health risks associated with nicotine, others do not.
- Six e-cigarette companies support some form of regulation, such as restrictions on the sale and marketing of e-cigarettes to children and teenagers, a ban of the usage of television to market e-cigarettes, a prohibition on characterizing flavors, restricting online sales, and regulation of e-cigarettes at the point-of-sale.

Recommendations

- 1) FDA should promptly issue deeming regulations asserting authority to regulate e-cigarettes. Responses from manufacturers indicate that overall the industry is supportive of some federal oversight.
- 2) Research shows that nicotine exposure has adverse health consequences for youth. Companies should take immediate action to prevent the sale of e-cigarettes to children and teens under the age of 18.
- 3) FDA should issue regulations to prohibit the sale of e-cigarettes to any person under the age of 18, including requirements for age-verification and face-to-face sales, and limits on purchases through vending machines.
- 4) FDA should ban and companies should cease marketing e-cigarettes in ways that are attractive to children and teens under the age of 18, such as the use of characterizing flavors that appeal to children and teens, distributing free samples of e-cigarettes, and product promotion through social media, sponsorship of events, and other activities that are intended for a youth audience. FDA and the Federal Trade Commission (FTC) should work to enforce restrictions.
- 5) E-cigarette manufacturers should refrain from the use of television and radio advertisements.
- 6) FDA should require strong, uniform labels to inform consumers of health risks and should prohibit misleading product claims.

Background

In recent years, there has been a significant increase in the popularity of electronic cigarettes. Electronic cigarettes, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor, and other chemicals.⁵ They contain cartridges filled with flavors and chemicals, including the highly addictive substance nicotine, which are vaporized into an aerosol that is inhaled by the user.⁶ Many e-cigarettes are manufactured to look like conventional cigarettes and mimic the act of smoking.⁷

E-cigarette use is growing rapidly, particularly among teenagers. Between 2010 and 2011, the number of U.S. adults who had tried e-cigarettes doubled.⁸ A Centers for Disease Control and Prevention (CDC) study issued in September 2013 found that in just one year, from 2011 to 2012, the percentage of high school students who had used e-cigarettes more than doubled from 4.7% to 10%.⁹ More than 20% of the middle school students who reported using e-cigarettes said they had never tried traditional cigarettes. Sales data support public health evidence illustrating the growing popularity of e-cigarettes, with sales doubling every year since 2010 and projected to reach \$2 billion in 2013.¹⁰ Moreover, at least one Wall Street analyst projects that the consumption of e-cigarettes will overtake traditional cigarettes in the next decade.¹¹

In spite of the growing consumption of e-cigarettes and the fact that there has been limited research on their health effects, e-cigarettes are currently unregulated by the Food and Drug Administration (FDA). Unlike traditional tobacco products, e-cigarettes are not subject to federal age verification laws and can be legally sold to children unless state or local laws bar their sale to minors. Presently, 28 states prohibit the sale of e-cigarettes to minors.¹² Table 1 shows examples of federal regulations over the manufacturing, sale, and marketing of cigarettes that currently do not apply to e-cigarettes (see Table 1).

Table 1: Comparison of Federal Restrictions on Cigarettes and E-Cigarettes

Federal Restrictions	Cigarettes	E-Cigarettes
Sales Restrictions		
Prohibition on the sale to any person younger than 18	✓	
Age-verification before purchase	✓	
Penalties against retailers who sell to minors	✓	
All sales must be based on face-to-face transactions i.e., no vending machine sales or self-service displays (except in adult-only facilities)	✓	
Prohibition of free samples	✓	
Marketing Restrictions		
Prohibition of tobacco brand sponsorships of sports and entertainment events	✓	
Prohibition of non-tobacco gifts with purchase of a tobacco product or in exchange for coupons	✓	
Warning labels required	✓	
Product Regulation		
Prohibition on characterizing flavors such as cherry, strawberry, grape, etc.	✓	
Ingredient disclosure	✓	
Required listing of harmful and potentially harmful constituents	✓	
Required disclosure of all documents of health effects of products	✓	
Obligation to respond to FDA request for information regarding product and marketing research	✓	
Manufacturers must register and list all products	✓	
Prohibition of claims that product is less harmful without prior FDA review and permission	✓	
Review of new products before going on the market	✓	

For more than four decades a federal ban on cigarette ads for radio and television has helped to deglamorize smoking for young people. But now e-cigarette makers are using a broad range of marketing techniques previously employed by traditional cigarette companies to entice young people to use their products. These marketing techniques include advertisements and product placement with celebrities; sponsorship of events frequented by youth; distribution of samples;

sales of e-cigarettes with flavors that appeal to children, such as “Cherry Crush” and “Chocolate Treat”; and making e-cigarettes easily available to children and teens under the age of 18 both online and during in person shopping experiences, such as at mall kiosks.

E-cigarette manufacturers are currently not required to disclose to FDA a list of all ingredients, potentially harmful constituents, and documents on their products’ health effects. Although there is limited data on the health effects of e-cigarettes, decades of research summarized in the 2014 Surgeon General Report suggest that exposure to nicotine in youth increases the risk of nicotine addiction and that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences.¹³ The 1988 Surgeon General’s Report, *The Health Consequences of Smoking: Nicotine Addiction*, states that “nicotine is a psychoactive drug with actions that reinforce the use of tobacco...and that causes addiction.” The report goes on to say that, “the pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.”¹⁴ A 2007 study found that teens can begin to feel powerful desires for nicotine and demonstrate addictive behavior within two days of first inhaling traditional cigarettes.¹⁵

FDA’s webpage on e-cigarettes states that “E-cigarettes have not been fully studied so consumers currently don’t know the potential risks of e-cigarettes when used as intended, how much nicotine or other potentially harmful chemicals are being inhaled during use, or if there are any benefits associated with using these products.”¹⁶ The few studies that are available show variation in the amount of nicotine delivered to the user by different products (even within the same brands), from virtually no nicotine absorbed by the user to just as much nicotine as a cigarette.¹⁷ In addition, several studies show that e-cigarettes produce more than just nicotine vapor and water. The vapors generated by e-cigarettes have been found to contain toxins, including formaldehyde, acetaldehyde, acrolein, volatile organic compounds like toluene, tobacco-specific nitrosamines, and metals like cadmium, nickel, and lead.¹⁸ Though levels of these compounds are generally much lower than those found in mainstream cigarette smoke, they are nonetheless among those identified as harmful or potentially harmful substances by the FDA.¹⁹

While several e-cigarette companies have made claims about the potential of their products to assist in efforts to quit smoking, e-cigarettes could also increase public health risks by serving as a more socially acceptable gateway for non-smokers to pick up the habit. Additionally, the lack of data substantiating the cessation potential of these products or comparing their efficacy to other FDA regulated cessation tools underscores concerns regarding dual use of e-cigarettes and traditional cigarettes, especially when such dual use serves to delay successful cessation efforts. Especially troubling is the marketing and sales of e-cigarettes to youth, which has the potential to lead to early and long-term nicotine addiction that carries serious and chronic health consequences.

E-cigarettes are an emerging, heavily marketed nicotine delivery product, and federal regulations have not kept pace with the increasing popularity of these products. The 2014 Surgeon General Report states that, “we need to monitor patterns of use of an increasingly wide array of tobacco products across all of the diverse segments of our society, particularly because the tobacco

industry continues to introduce and market new products that establish and maintain nicotine addiction.”²⁰

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gave FDA the statutory authority to regulate e-cigarettes, which could subject them to evaluation and marketing restrictions.²¹ FDA can do so by issuing deeming regulations that declare these products as tobacco products under the Tobacco Control Act.²² In April 2011, FDA issued a notice of intent indicating that it would issue deeming regulations, but the agency has not yet done so.²³ The findings of this investigation reveal that e-cigarette companies are taking advantage of the regulatory vacuum that currently exists to market their products to youth.²⁴

Investigation

To address the growing consumer concern over e- cigarettes and the marketing of these products to young people, key Senate and House members launched an investigation into the practices of nine of the largest electronic cigarette manufacturers (see Table 2). The investigation was initiated by Senator Richard J. Durbin (D-IL); the Ranking Member of the House Energy and Commerce Committee, Representative Henry A. Waxman (D-CA); the Chairman of the Senate Health, Education, Labor and Pensions Committee, Senator Tom Harkin (D-IA); and the Chairman of the Senate Commerce, Science, and Transportation Committee, Senator John D. Rockefeller IV (D-WV), along with Senators Richard Blumenthal (D-CT), Edward J. Markey (D-MA), Sherrod Brown (D-OH), Jack Reed (D-RI), Barbara Boxer (D-CA), Heidi Heitkamp (D-ND), Jeff Merkley (D-OR), and Representative Frank Pallone Jr. (D-NJ).²⁵ Each company was asked to respond to a series of questions seeking information related to:

- the marketing and advertising practices employed by companies to target youth audiences;
- steps taken by companies to restrict the marketing and sales of e-cigarettes to minors;
- types of warning labels on electronic cigarettes; and
- the use of advertising claims suggesting health benefits or reduced exposure to potentially harmful or addictive substances.

Table 2: E-Cigarette Manufacturers Surveyed

Manufacturer	Altria	R.J. Reynolds Vapor Company	NJOY	Eonsmoke	LOGIC	VMR	Lorillard	Green Smoke	Lead by Sales
Brand(s)	Mark-Ten	Vuse	NJOY King	Eonsmoke	LOGIC	V2, Vapor Couture	Blu	Green Smoke	White Cloud Cigarettes

With the exception of Lead by Sales LLC, the maker of White Cloud Cigarettes (White Cloud), all companies responded to the letter. Two companies – Altria and Green Smoke – did not provide complete responses.²⁶ In instances where companies did not provide complete responses or simply did not respond to a question, supplemental information was gathered from company websites and through reviewing other publically available information. This report presents the information gathered in response to this investigation.²⁷

In February 2014, five months after the launch of this investigation, Altria agreed to purchase Green Smoke. This report presents responses from both companies before the acquisition and treats them as separate companies for the purposes of this investigation.

Findings

FINDING 1: Many surveyed e-cigarette companies are promoting their products through sponsorship of youth-oriented events, and some companies are offering free samples of e-cigarettes.

Two important prohibitions and restrictions contained in the Tobacco Control Act related to advertising and product sampling apply to tobacco products such as cigarettes and smokeless tobacco, but currently do not apply to e-cigarettes. First, the Act prohibits tobacco product sponsorship of sporting, entertainment, or other cultural events under the brand name of cigarettes or smokeless tobacco.²⁸ Such sponsorships can provide the impression that tobacco use is part of an active lifestyle and tie the products to celebrities and athletes.²⁹ Second, the Tobacco Control Act prohibits and restricts the dispensing of tobacco product samples.³⁰ This investigation has found that e-cigarette manufacturers are exploiting the absence of regulations by sponsoring dozens of athletic, musical, social and cultural events that appeal to youth and dispensing product samples at sponsored youth-oriented events.³¹

Six of the surveyed e-cigarette manufacturers – R.J. Reynolds, NJOY, LOGIC, VMR, Lorillard, and Green Smoke – reported that they have sponsored events. And eight of the e-cigarette companies – Altria, R.J. Reynolds, NJOY, LOGIC, VMR, Lorillard, Green Smoke, and Lead by Sales – distributed free samples at promotional events. In 2012 and 2013 alone, six of the surveyed companies sponsored or provided free samples at 348 events, many of which appear geared toward youth.³² (see Appendix 1 for a list of all sponsored or sampling events reported by the surveyed companies).

For instance, last year Lorillard indicated that it had sponsored at least 13 high profile music festivals, parties, and motorsports events, including the Bonnaroo Music Festival and numerous Grand Prix auto racing events. In the past two years, Lorillard alone participated in or provided free e-cigarette samples to attendees at 227 events. A review of publicly available websites found that Lorillard was also the exclusive sponsor of the Freedom Project (see Figure 1)³³, a nationwide tour starring a number of bands and musicians.



Figure 1

According to the company's press release:

“As the exclusive sponsor of the Freedom Project, blu eCigs has committed to transform each performance into an interactive experience, providing fans a platform for self-expression and personal freedom. Echoing blu's brand message, each concert will feature a Freedom Wall where guests can inscribe their most enjoyable freedoms and freely embrace the everyday liberties of being an American.”³⁴

LOGIC has also sponsored music events and NJOY has sponsored high-profile events like Coachella Music Festival and Mercedes-Benz Fashion Week.

Our investigation found that Lead by Sales promotes Operation Comedy Ha Ha, a partnership through which the company sponsors up-and-coming stand-up comedians touring the throughout the United States.³⁵ After the performance, free disposable White Cloud e-cigarettes called Flings are offered to patrons.

The company describes the program as follows:

We at White Cloud are interested in one thing, and that is having a good time. Whether it is by providing e cigs that allow smokers to enjoy nicotine indoors, or entertaining and informing our customers through social networks, we want everyone to enjoy life and always have a good time. We know everyone loves to laugh and we are happy to announce that we are now officially in the comedy business. We have teamed up with several national comedians and they are bringing Flings to all of their shows. Check out our roster of comedians and make sure you stop by one of their shows. You will not be disappointed. Have a laugh and while you are at it have a Fling!³⁶

Figure 2 demonstrates how White Cloud street team and models were passing out Flings at the 2012 Red Bull Wake Open.



Figure 2

FINDING 2: Surveyed e-cigarette companies market e-cigarettes in flavors that appear to be designed to appeal to youth.

The Tobacco Control Act restricts the distribution and sale of cigarettes with characterizing flavors, such as strawberry, grape, or chocolate.³⁷ No such ban applies to e-cigarettes. As a result, manufacturers are free to use child-friendly flavors to attract young customers and they are doing so.

Six of the surveyed companies – R.J. Reynolds, VMR, Lorillard, Eonsmoke, Green Smoke, and Lead by Sales – use a wide range of e-cigarette flavorings that could appeal to youth (see Table 3). All companies manufacture menthol flavored e-cigarettes.^{38,39}

R.J. Reynolds offers e-cigarettes in eight flavors such as Rich Mint, Crema, and Chai.

VMR offers 42 flavors such as Strawberry Champagne, Pineapple Luau, Snappin' Apple, Rodeo Drive, and Bombshell. Lorillard offers seven flavors such as Cherry Crush, Vivid Vanilla, and Piña Colada. Eonsmoke carries 16 different flavors including Chocolate, Strawberry, Cherry, and Mojito. Lead by Sales offers e-cigarettes in 19 flavors including Peach Pit, Strawberry, and Chocolate (see Figure 3).

Green Smoke offers eight flavors, including Smooth Chocolate and Vanilla Dreams (see Figure 4).



Figure 3



Figure 4

Table 3: E-Cigarette Manufacturers' Use of Characterizing Flavors

Manufacturer	Flavors	Number of Flavors
Altria	Classic, Menthol	2
R.J. Reynolds Vapor Company	Original, Menthol, Mint, Rich Mint, Spearmint, Wintergreen, Crema, Chai	8
NJOY	Traditional, Menthol	2
Eonsmoke	Cartridges- Cherry, Tobacco, Menthol, President, Wrangler, Chocolate, Coffee, Sands, Vanilla, Mint, Mango, Apple, Strawberry, Mojito, Grape Mint, Frost E-Liquid- Apple, Strawberry, Vanilla, Mint, Cherry, Kiwi Strawberry, Blackberry, Grape Mint, Mango, Platinum Tobacco, Grape, Chocolate	16, 12
LOGIC	Menthol	1
VMR	Red, Sahara, Congress, Menthol, Peppermint, Green Tea Menthol, Cherry, Coffee, Vanilla, Cola, Grape, Chocolate, Rodeo Drive, Bombshell, Fresh Mint, Passion Fruit, Strawberry Champagne, Arctic Mint, Turkish Tobacco, Pumpkin Spice, Mango, Caribbean, Clove, Columbian, Java Jivin' Coffee, Peachy Keen, Snappin' Apple, Pineapple Luau, Traditional, Cherry Blast, Sweet Vanilla, Coffee Roast, French Vanilla, American Ranger, Refined Blend, Menthol Breeze, Cinnamon, Chocolate Treat, Escape, Tobacco, Mint Tea, Peppermint Ice	42
Lorillard	Vivid Vanilla, Cherry Crush, Magnificent Menthol, Classic Tobacco, Java Jolt, Piña Colada, Peach Schnapps	7
Green Smoke	Absolute Tobacco, Red Label Tobacco, Tobacco Gold, Menthol Ice, Menthol Clove, Mocha Mist, Vanilla Dreams, Smooth Chocolate (Also a variety pack)	8
Lead by Sales	Regular, Apache, Bora Bora, Atlantic-Cut, Menthol, Snap!, Iced Berry, Zero K, Strawberry, Bad Apple, Peach Pit, The Lime & The Coconut, Banana, Vanilla, Chocolate, Espresso, Kick!, Cin, Clove	19

FINDING 3: E-cigarettes are available for purchase in stores and online by children and teenagers.

The Tobacco Control Act prohibits the sale of cigarettes and smokeless tobacco products to individuals under the age of 18 and purchases of these products require face-to-face contact with the retailer, who must verify that a purchaser is at least 18 years old. The Tobacco Control Act also prohibits vending machine sales except in limited situations and the sale of packages with fewer than 20 cigarettes.

Because the FDA has yet to issue regulations asserting authority over e-cigarettes, no such federal restrictions apply to e-cigarettes. Twenty-eight states have prohibited the sale of e-cigarettes to minors, but in other states, no such protections are in place and industry self-regulation is the only way to prevent minors from purchasing e-cigarettes. Industry responses show significant variation among companies in their effort to restrict sales to minors.

Five companies require retailers to sign contracts agreeing to not sell their products to purchasers under the age of 18. Two other companies have similar restrictions in place, but they only apply to vendors that participate in promotional programs or with which one company has a "direct relationship." One company did not report to have any policy or contract with vendors barring the sale of their products to minors. Given the varied scope and company oversight of these policies, their effectiveness at restricting sales to minors is unclear.

Three of the surveyed companies require vendors to display their products behind the counter or where they are accessible to the public only through direct contact with a sales clerk. Two other companies have similar restrictions in place, but they only apply to vendors that participate in promotional programs or with which one company has a "direct relationship." One company "instructs its retail vendors to allow access by the public only through contact with a sales clerk." To purchase another company's products, a consumer must enter into a face-to-face transaction where they must establish that they are an adult. A third company "requires vendors to display...products either through enclosed displays or behind the counter." Further, according to the merchandising plan agreements of another company, the e-cigarette products must "be displayed behind the counter or only through direct contact with a sales clerk."

Three e-cigarette companies do not impose restrictions on the placement of their products. While one company "requires vendors to agree to its Sales Practices Policy, which requires sales clerk involvement in all retail sales transactions to perform age verification," the company does not require "behind-the-counter placement of its products, where 'Big Tobacco' has already acquired prime placement." The second company does not require "its products to be sold in a non-self-service manner" though the company claims to "strongly encourage" retailers to do so. The third only requires vendors in California to display its products behind the counter.

Only three of the eight companies periodically monitor vendors for compliance with these policies, meaning that, for most companies, even if policies are in place, it is difficult to see how they ensure compliance.

In addition to selling products in brick and mortar stores, seven of the nine surveyed companies also sell their products online. R.J. Reynolds and Altria do not currently sell their products online. Among the companies that allow online sales of products, the responses indicated wide variation in the use of age-verification to limit access to their website and to purchase their products.

Among the seven surveyed companies that sell e-cigarettes online, Green Smoke, VMR, and Lead by Sales allow access to their sites without any age verification or confirmation. Three companies – NJOY, Lorillard, and Eonsmoke – require the user to click a button verifying that they are 18 years of age or older in order to gain access to the website. Prior to completing an online purchase Lorillard, NJOY, LOGIC, and VMR require the consumer to provide information that is used by a third-party system, such as Experian, Aristotle, or Veratad, to verify that the purchaser is of legal age.⁴⁰

Although Altria and R.J. Reynolds do not sell their e-cigarette products online, both companies have product websites. General access to company owned websites exposes youth to pro-e-cigarette images and unsubstantiated claims about e-cigarettes. Altria's website allows access without any age verification or confirmation. Altria and R.J. Reynolds' e-cigarette sites were the only ones that required registration of a full user profile before one is able to enter their full site. R.J. Reynolds also offers information on its website about how to use age filtering browser tools such as Net Nanny and Safe Eyes.

FINDING 4: Surveyed e-cigarette manufacturers have significantly increased marketing expenditures.

The manufacturer responses show that tens of millions of dollars are spent each year to market e-cigarettes, and that these advertising expenditures by e-cigarette manufacturers have skyrocketed in recent years.

Six of the surveyed companies provided marketing expenditure data, and these companies spent a total of \$59.3 million on advertising and promotion in 2013. Five companies provided expenditure information for 2012 and 2013, and these five companies increased spending by 164% in this one-year period. One company's marketing expenses increased by 300% and another company's marketing expenses increased by 352% (see Appendix 2 for a list reported marketing and advertising tools used by surveyed companies).

FINDING 5: Many surveyed e-cigarette companies air television and radio advertisements, often with celebrity spokespeople, including during events and programs with youth viewership.

The Public Health Cigarette Smoking Act, which was signed into law on April 1, 1970, prohibits the airing of cigarette ads on television and radio. The importance of the current ban on tobacco ads was reinforced in the recent Surgeon General’s report, which concluded that “the evidence is sufficient to conclude that advertising and promotional activities by the tobacco companies cause the onset and continuation of smoking among adolescents and young adults.”⁴¹

E-cigarettes are not subject to the federal ban on television and radio advertising. Manufacturers are taking advantage of this regulatory vacuum to air advertisements during events and programming with high levels of youth viewership. Seven of the surveyed companies – Lorillard, R.J. Reynolds, VMR, LOGIC, NJOY, Eonsmoke, and Green Smoke – have used radio and television advertisements to market their products (see Appendix 3). Of the eight companies that responded, Altria is the only company that does not air radio or television ads.

While eight companies have policies or guidelines for media buying targets that restrict advertisements to audiences under the age of 18, these policies vary and are not always in written form. For example, four companies restrict media buying to programs where 85% or more of the audience is over the age of 18. One company targets advertising to an 18 and older audience. Another company states that it targets “only adult tobacco smokers” and another states that it targets “35-65 year olds,” while a third company limits radio-based marketing to audiences where 70% or more is above the age of 21. Three companies stated that they have media buying policies but they are not currently in written form.

It is not clear that these policies are effective. Seven of the e-cigarette companies run television and radio advertisements. NJOY has advertised its products on both radio and television. NJOY’s ads have appeared during programs such as the Super Bowl, the Academy Awards, and on ESPN, programs that reach substantial audiences of children and teens.⁴² For example, in 2013 NJOY reportedly reached 10 million viewers through advertising during the Super Bowl,⁴³ an event that is “the highest-rated shows across all age groups.” The 2013 game averaged a 30.2% rating with teens and a rating of “21.8% with kids 2-11.”⁴⁴ Green Smoke aired “2,188 radio ad spots in nine local markets in the last calendar quarter.” Green Smoke reported that in seven days, from November 18 to 24 of 2013, the company had aired 50 television spots in eight local markets.

Blu has reported airing two prominent television commercials featuring celebrity spokespeople Jenny McCarthy (see Figure 5) and Stephen Dorff.

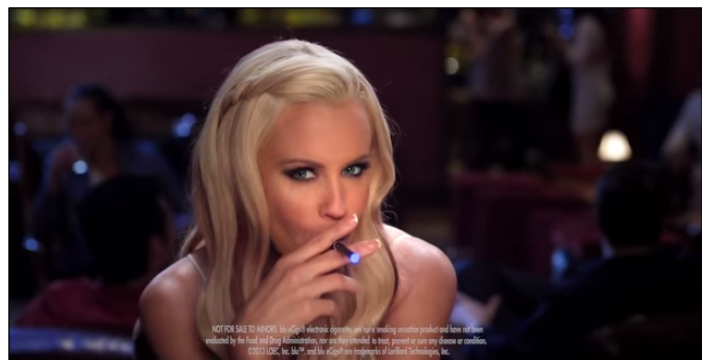


Figure 5

According to Lorillard, “the commercials have aired thousands of times at various times of the day and night on 48 networks.” Our investigation found that Blu ads have aired nationally between episodes of the popular show “Breaking Bad” and on Comedy Central where the target audience is young males, including on the network’s show *Workaholics*.⁴⁵

Celebrity endorsements, once used by tobacco companies, are now employed by e-cigarette manufacturers to depict e-cigarette smoking as glamorous, rebellious, sexy, and masculine. Four surveyed companies – Lorillard, Green Smoke, NJOY, and Lead by Sales – have used or currently use celebrity spokespeople (see Appendix 2).

Since April 2012, Lorillard reported promoting Blu e-cigarettes at Indy Car events by Graham Rahal, Bobby Rahal, and Mike Conway. Blu e-cigarettes also indicated that its products have been placed in music videos for Natalia Kills and Major Lazer, and the company films celebrities visiting Blu-sponsored events. Eonsmoke reported that it does not utilize celebrity spokespeople, but the company cited one instance of purchasing a product placement advertising opportunity during a music video featuring Sevyn Streeter and Chris Brown. NJOY has hired one celebrity spokesperson, Courtney Love, who has appeared in a YouTube video and at the Coachella music festival. Green Smoke reported that the company occasionally uses testimonials from celebrities to market its products. NASCAR driver T.J. Bell has also promoted Green Smoke’s products.



Figure 6

In the absence of an explicit celebrity endorsement, many e-cigarette companies seek to highlight instances in which celebrities are using their products (see Figure 6).

FINDING 6: Surveyed e-cigarette companies extensively utilize social media and product websites to promote their products.

E-cigarette companies have embraced social media as a way to reach new customers and promote their products. This is a potential concern because marketers have recognized social media sites as an avenue through which to engage with predominantly youth audiences. In spite of the significant online presence by e-cigarette manufacturers, there is wide variation in their use of available tools to limit access to websites and social media by individuals under the age of 18.

Seven of the surveyed companies – Eonsmoke, LOGIC, Lorillard, NJOY, VMR, Green Smoke, and Lead by Sales – use social media sites such as Facebook, Twitter, Pinterest, YouTube, and Instagram, to promote or market their e-cigarette products (see Table 4). E-cigarette companies have widely differing policies to address minors’ access to their social media websites. In many cases it is not possible for the companies to limit access: Instagram and Pinterest have no age restriction functionality, and Twitter and YouTube only provide age restriction features to certain advertising partners.

Three of the eight companies with social media accounts – Eonsmoke, VMR, and Lead by Sales – do not utilize any age restrictions to limit access, even where age restriction functionality is available.

Table 4: E-Cigarette Manufacturer Social Media Age Restrictions

Manufacturer	Social Media	Social Media Age Restrictions⁴⁶
Altria	N/A	N/A
R.J. Reynolds Vapor Company	N/A	N/A
NJOY	Facebook, Twitter, YouTube, Instagram	Yes
Eonsmoke	Facebook, Twitter, Instagram, YouTube, Pinterest	No
LOGIC	Facebook, Twitter, YouTube	Yes
VMR	Facebook, Twitter, YouTube, Pinterest, Instagram	No
Lorillard	Facebook, Twitter, YouTube, Pinterest, Instagram	Yes
Green Smoke	Facebook, Twitter, YouTube, Pinterest	Yes
Lead by Sales	Facebook, Twitter, YouTube, Pinterest	No

Lorillard's Facebook and Twitter pages use age restrictions so that "only people 18 and above will see the blucigs [page] on Facebook" and that any "likes" from people younger than 18 are automatically deleted. Similarly, NJOY maintains Facebook and Twitter accounts that are restricted to those 18 years of age or older. To follow NJOY on Twitter, a user must verify their age by entering their birthdate, confirming they are above 18 years of age.

LOGIC uses Facebook's age restriction functionality and states that its products "are intended for use by adults of legal smoking age 18 years or older according to state law." Green Smoke also "uses the official Facebook service to restrict those under 18 from viewing [its] content" and gears its "social media messages towards adults [and deletes] fan posts, comment or images that might appeal to minors." Green Smoke also uses YouTube's age-restriction feature to limit viewership to those above 18 years of age.

VMR does not use Facebook's age restriction tools, despite the fact that these tools are available. Their page simply warns followers that they must be 18 years or older to "follow or purchase" its products.⁴⁷ VMR stated that it has a process to monitor and "unfollow users that it believes to be under the age of 18." (see Figure 7).



Figure 7

While Eonsmoke and Lead by Sales maintain social media accounts, these companies do not utilize available age restriction tools.

Eonsmoke, which maintains a Facebook page, only provides a statement that one "MUST BE OVER 18 AND OLDER TO PURCHASE EONSMOKE," but access is not restricted.⁴⁸

Figure 8 demonstrates Eonsmoke's use of social media in order to poll Facebook users regarding what flavor of e-cigarette they would like to see released. Because Eonsmoke does not utilize available age restriction tools, there is nothing to prevent people younger than 18 from viewing or engaging with this kind of content or other similar content.

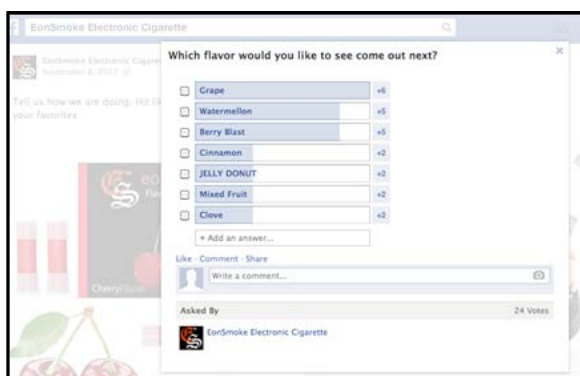


Figure 8

Lead by Sales' White Cloud Facebook page is also unrestricted and contains no statements or warnings about age restrictions. Lead by Sales also offers what it calls the "Fling a Friend Game" (see Figure 9), an animated cartoon game that allows one to earn coupons for e-cigarettes that can only be redeemed through Facebook.

LOGIC wrote that it "has historically used social media to communicate with" its adult consumers but that it is "currently reviewing that practice to ensure" it is not initiating contact with consumers prior to age verification.

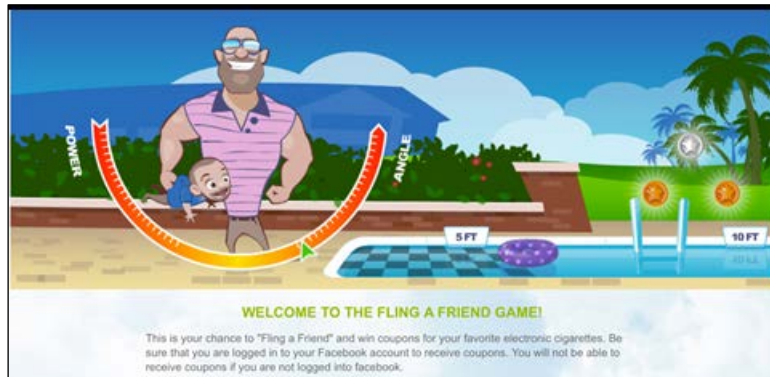


Figure 9

FINDING 7: E-cigarette product warning labels lack uniformity and may confuse or mislead consumers.

Warning labels were first required on cigarettes by the Federal Cigarette Labeling and Advertising Act of 1965, and the Tobacco Control Act expanded FDA’s authority to also prohibit false and misleading labeling and advertising for cigarettes, such as claims that a product reduces harm. For example, in order for a manufacturer to claim a product reduces harm or the risk of a tobacco-related disease, the law requires manufacturers to first file an application with FDA and receive an official determination before claiming a product has a modified risk.⁴⁹

Once FDA issues deeming regulations and without the necessary evidence that e-cigarettes reduce the public’s risks, the agency could prohibit e-cigarette products from making health and harm reduction claims. Although none of the companies reported using harm reduction or health benefits claims to market e-cigarettes, our investigation found that some manufacturers are in fact making such claims. Lead by Sales marketing for White Cloud states, “You get the feeling of smoking real cigarettes without all of their negative side effects.” Their marketing also states that you can “Give the Gift of Fresh Air!” and “eliminate the tar, ash, and unwanted chemicals from your cigarettes”⁵⁰ (see Figure 10).

Unlike traditional cigarettes, federal law does not require that e-cigarette products contain a warning label. With the exception of Lead by Sales, all surveyed companies indicate that a health warning or disclaimer is displayed on e-cigarette packages; however, there is significant variation in the statements on labels (see Appendix 4).

Eonsmoke’s warning is: “SURGEON GENERAL’S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health. NOT TO BE SOLD TO MINORS!” Some

warning labels state that “this product does not treat, diagnose, or cure any disease, physical ailment or condition. This product is not marketed for use as a smoking cessation product,” while others do not. Some product labels list detailed health risks associated with nicotine and the risks for pregnant women while others are vague. As it pertains to age, some labels state that their product is only for people of legal age, whereas others warn that the product is not intended for minors.

The current lack of uniformity in e-cigarette warning labels could mislead and confuse consumers and make it difficult for the public to gain a clear understanding of the products’ risks.



Figure 10

FINDING 8: Most surveyed e-cigarette companies support some form of regulation.

Six companies, which account for 75% of respondents – Altria, LOGIC, Lorillard, NJOY, R.J. Reynolds, and VMR – reported that they support some regulation of e-cigarettes.

Altria wrote that FDA should promptly “issue regulations to bring all tobacco products within FDA’s regulatory authority under the Family Smoking Prevention and Tobacco Control Act” and Lorillard wrote that it supports “and [stands] ready to work in partnership with the FDA to develop regulations for electronic cigarettes.” Altria also stated that “both the FDA and all states should enact laws mandating that all tobacco products be merchandised in a non-self-service or clerk-assisted manner.”

NJOY “supports restrictions on the sales and marketing of e-cigarettes to children and teenagers who are not of legal smoking age and is in favor of reasonable regulations that advance this goal.” VMR also wrote of “the need for reasonable regulation” of e-cigarettes. R.J. Reynolds wrote that it “[looks] forward to reviewing the proposed deeming regulation” and that at the state level R.J. Reynolds has promoted and supported “efforts to enact legislation prohibiting minors from purchasing e-cigarettes.”

LOGIC supports “regulation commensurate with harm,” favoring age restrictions for e-cigarettes “in a manner similar to cigarettes” and “support[ing] a ban of the usage of television to market electronic cigarettes.” LOGIC also stated that the company supports a ban of characterizing flavors (with the exception of menthol), a ban on online sales, and regulation of e-cigarettes at the point of sale.

These responses indicate that there is general agreement among manufacturers on the necessity to regulate e-cigarettes to some degree. In the absence of FDA regulations, the marketing and sale of e-cigarettes, use of characterizing flavors, promotional activity, point-of-sale practices, and warning labels are subject to inconsistent state laws or inadequate self-regulation.

Conclusion and Recommendations

This investigation reveals that e-cigarette manufacturers are aggressively promoting their products using techniques and venues that appeal to youth. The company policies covering advertising, promotional events, use of social media, characterizing flavors, warning labels, and point-of-sale procedures vary widely. The result is an inconsistent application of e-cigarette sales policies that fail to protect children and teenagers from e-cigarette marketing and sales.

FDA action is essential to ensure that e-cigarette makers do not target the nation's children and teens.

The Tobacco Control Act gave FDA the statutory authority to regulate e-cigarettes, which would subject them to evaluation and marketing restrictions. In the absence of FDA using its authority to issue e-cigarette regulations, e-cigarette companies are taking advantage of the regulatory vacuum to market their products to youth. In light of concerns regarding exposure to addictive nicotine and other ingredients in e-cigarettes, the sharp rise in e-cigarette use among teens, and the marketing of these products to youth, FDA should act quickly to finalize and issue deeming regulations pertaining to e-cigarettes.

Appendices

Appendix 1: Sponsored or Sampling Events by E-Cigarette Companies

Company	Event	Date	Total
Blu	Magnum Entertainment Group Event at the Republican National Convention	08/2012	
	Smoker Intercept – Downtown	08/15/2012	
	Alive After Five	08/16/2012	
	Pre-Season Panthers Tailgate - CBS Radio Doghouse	08/17/2012	
	Butter	08/17/2012	
	Suite	08/17/2012	
	Kiss Anchor Island Boat Cruise	08/18/2012	
	Neighborhood Theatre Wrestling	08/18/2012	
	All-American Pub	08/18/2012	
	Whiskey Warehouse	08/18/2012	
	Tyron & EpiCentre	08/21/2012	
	Uptown Businesses	08/22/2012	
	Alive After Five	08/23/2012	
	Charlotte Knights Game	08/23/2012	
	Pre-Event Sampling & Butter	08/24/2012	
	My Morning Jacket	08/25/2012	
	Phish	08/26/2012	
	Smokey Joes	08/28/2012	
	Guerilla-Belk HQ, Lowes HQ, Bellantyne	08/28/2012	
	Thomas Street Tavern	08/29/2012	
	Blind Pig	08/29/2012	
	Smoker Intercept – Uptown	08/29/2012	
	Alive After Five	08/30/2012	
	Charlotte Knights Game	08/30/2012	
	Tavern on the Tracks	08/31/2012	
	Common Market-South End	08/31/2012	
	Butter	08/31/2012	
	International Civil Rights Museum Reception at the Democratic National Convention	09/2012	
	Rusty Rudder Team A	09/01/2012	
	Kiss Anchor Island Boat Cruise	09/01/2012	
	Rusty Rudder Team B	09/01/2012	
	Sunday Funday Boat Cruise	09/02/2012	
	Charlotte Knights Game	09/02/2012	
	DNC CarolinaFest	09/03/2012	
	Rock the Red Local Music Festival	09/05/2012	
	DNC Lorillard Event	09/06/2012	
	Dillworth Bars: Dilworth Grill, Summit House	09/06/2012	
	Smoker Intercept – Uptown	09/06/2012	
	Plaza Midwood Bars- Thomas Street Tavern	09/07/2012	
	Butter	09/07/2012	
	Dharma Lounge, Republic, Cosmos	09/08/2012	

	NFL game day	09/09/2012	
	Smoker Intercept – Uptown	09/11/2012	
	Smoker Intercept –Uptown	09/12/2012	
	DJ Nova at Suite	09/12/2012	
	Style Night Out	09/13/2012	
	Alive After Five	09/13/2012	
	Butter	09/14/2012	
	Brad Paisley	09/15/2012	
	Park Lanes	09/15/2012	
	Epicenter Bars: Whiskey River, Suite, Strike City	09/15/2012	
	Weenie Roast	09/16/2012	
	CBS Radio Doghouse	09/16/2012	
	Smoker Intercept – Downtown	09/17/2012	
	Smoker Intercept - East Trade	09/19/2012	
	Bartender Beatdown Afterparty at Suite	09/19/2012	
	CBS Radio Doghouse	09/20/2012	
	Oysterfest	09/21/2012	
	Butter	09/21/2012	
	Guerilla College Game Day Bars-American Pub, Tavern on the Tracks	09/22/2012	
	Charlotte Fashion Week	09/22/2012	
	Guerilla Bars Plaza Midwood-Snug Harbor, Whisky Warehouse, Elizabeth Billiards and Thomas Street Tavern	09/24/2012	
	Smoker Intercept – Downtown	09/25/2012	
	Bars - Southend Area	09/25/2012	
	Butter College Night	09/25/2012	
	Smoker Intercept – Downtown	09/25/2012	
	CPCC Sampling	09/27/2012	
	Plaza Midwood Bars- The Diamond, Elizabeth Billiards, Thirsty Beaver	09/27/2012	
	Butter	09/28/2012	
	Food Truck Park, Tremont	09/28/2012	
	Oktoberfest	09/29/2012	
	Guerilla Downtown Team	09/30/2012	
	NFL game day bars: Elizabeth Billiards, The Diamond, Thirsty Beaver	09/30/2012	
	Bar Sampling in University Area: Boardwalk Billies, Bad Dog, Wine Vault	10/01/2012	
	Tremont	10/02/2012	
	Bar Sampling in Noda: Blind Pig, Noda 101, Cabo Fish Taco and Muse	10/03/2012	
	Charlotte Best of Awards	10/03/2012	
	Bar Sampling: Finz, Rack 'em, Boardwalk Billy's	10/04/2012	
	NC Factory and Butter Nightclub	10/05/2012	
	Great Grapes Food and Wine Festival	10/06/2012	
	Drop It! @ Neighborhood Theatre	10/06/2012	
	CBS Radio Doghouse	10/07/2012	
	Charlotte Motor Speedway	10/11-14/2012	

	Pre-Grammys Party Hosted by Skrillex	01/2013	
	blu Electronic Lounge at South by Southwest Music Festival	03/2013	
	Indy Car in Long Beach Indy Car Race	04/2013	
	DC Sampling – Pour House	04/09/2013	
	National's Baseball Game	04/10/2013	
	DC Sampling – Ugly Mug	04/11/2013	
	Taste of the South	04/13/2013	
	Capital's Hockey Game	04/16/2013	
	DC Sampling – Capitol Hill Smoking Areas	04/17/2013	
	DC Sampling – Capitol Hill Smoking Areas	04/18/2013	
	Hangout Music Festival	05/2013	
	Sasquatch Music Festival	05/2013	
	Indy Car in the San Paulo 300	05/2013	
	Hollywood Sampling – Velvet Margarita	05/01/2013	
	Downtown LA Sampling – Lucky Strike	05/02/2013	
	Los Feliz Sampling	05/03/2013	
	Culver City Sampling	05/04/2013	
	Santa Monica Sampling – Cabo Cantina	05/08/2013	
	Sawtelle Sampling – Karaoke Bleu	05/08/2013	
	ArtWalk Sampling	05/09/2013	
	Burbank Sampling	05/10/2013	
	North Hollywood Sampling – Eclectic Wine Bar & Grille	05/10/2013	
	East Hollywood Sampling – El Prado	05/11/2013	
	Ventura Blvd Sampling – House of Billiards	05/11/2013	
	Santa Monica Sampling – Barney's Beanery	05/15/2013	
	3rd Street Sampling	05/15/2013	
	West Hollywood Sampling	05/16/2013	
	Little Tokyo Sampling	05/16/2013	
	Silver Lake Sampling	05/17/2013	
	Grand Street Sampling	05/17/2013	
	Los Feliz Sampling	05/18/2013	
	Venice Sampling – The Blue Room	05/18/2013	
	Acct Sampling - Echo park	05/23/2013	
	Acct Sampling - Los Feliz	05/24/2013	
	Acct Sampling – WeHo	05/25/2013	
	Acct Sampling - Culver City	05/30/2013	
	Acct Sampling – EAHO – Gold Room	05/31/2013	
	Governors Ball Music Festival	06/2013	
	Bonaroo Music Festival	06/2013	
	Six Flags Sampling	06/01/2013	
	Acct Sampling – Hollywood	06/01/2013	
	Six Flags Sampling	06/02/2013	
	PRIDE LA	06/08/2013	
	PRIDE LA	06/09/2013	
	ArtWalk – June	06/13/2013	
	Acct Sampling – Hollywood	06/14/2013	
	Acct Sampling – DTLA	06/14/2013	

	Rockstar Energy Drink Mayhem Festival	06/29/2013	
	Hard Summer Music Festival	08/2013	
	In Touch Weekly Magazine's Icons and Idols Event	08/2013	
	Indy Car in the Baltimore Grand Prix	08/2013	
	Washington Ave	08/29/2013	
	Washington Ave.	08/29/2013	
	Washington Ave	08/29/2013	
	Switch Office Sampling	08/30/2013	
	Big Muddy Blues Festival	08/31/2013	
	Freedom Project™ in conjunction with Live Nation concerts	09/2013-Present	
	Big Muddy Blues Festival	09/01/2013	
	Miranda Lambert, Verizon Wireless Amp	09/06/2013	
	Festival de la Villita	09/06/2013	
	Shinedown, Verizon Wireless Amp	09/07/2013	
	Maryland Seafood Festival	09/07/2013	
	Festival de la Villita	09/07/2013	
	Iron Maiden, Verizon Wireless Amp	09/08/2013	
	Maryland Seafood Festival	09/08/2013	
	Festival de la Villita	09/08/2013	
	Six Flags- St. Louis	09/08/2013	
	Depeche Mode, Jiffy Lube Live	09/10/2013	
	OC Bikefest	09/12/2013	
	Funny or Die Oddball Festival	09/13/2013	
	OC Bikefest	09/13/2013	
	Riot Fest	09/13/2013	
	VIP Party - Snowboard on the block	09/13/2013	
	Snowboard on the Block	09/14/2013	
	OC Bikefest	09/14/2013	
	OC Bikefest	09/15/2013	
	Bike Beer and BBQ	09/18/2013	
	Freedom Training, Switch HQ	09/18/2013	
	Bike Beer and BBQ	09/19/2013	
	Downtown Bar Sampling – Progressive Field Arena	09/19/2013	
	U-Street/Adams Morgan – Nellie's Sports Bar	09/19/2013	
	Bike Beer and BBQ	09/20/2013	
	Steely Dan, Jiffy Lube Live	09/20/2013	
	Ingenuity Fest	09/20/2013	
	Bike Beer and BBQ	09/21/2013	
	Ingenuity Fest	09/21/2013	
	Beer, Bourbon, & BBQ	09/21/2013	
	Ingenuity Fest	09/22/2013	
	Bar Sampling – Cincinnati Bar District around stadium	09/24/2013	
	Bar Sampling – Cincinnati Bar District around stadium	09/25/2013	
	NYC Street Activation	09/25/2013	

	6th Street Austin	09/25/2013	
	6th Street Austin	09/25/2013	
	Midpoint Music Fest	09/26/2013	
	New York Burlesque Festival	09/26/2013	
	Rainey Street Austin, TX Nightlife	09/26/2013	
	Midpoint Music Fest	09/27/2013	
	Grand Central Fall Festival	09/27/2013	
	6th Street Nightlife Downtown Austin,TX	09/27/2013	
	Old Pecan Street Festival	09/28/2013	
	Midpoint Music Fest	09/28/2013	
	New York Burlesque Festival	09/28/2013	
	New York Burlesque Festival	09/29/2013	
	NYC Octoberfest	09/29/2013	
	Bar Sampling – Cincinnati Bar District around stadium	09/29/2013	
	Old Pecan Street Festival	09/29/2013	
	New Orleans Sampling – Parish	09/30/2013	
	Indy Car in Grand Prix of Houston	10/2013	
	Indy Car- Reliant Park	10/04/2013	
	International Festival of Raleigh	10/04/2013	
	North Carolina Seafood Festival	10/04/2013	
	Indy Car- Reliant Park	10/05/2013	
	International Festival of Raleigh	10/05/2013	
	North Carolina Seafood Festival	10/05/2013	
	Indy Car- Reliant Park	10/06/2013	
	International Festival of Raleigh	10/06/2013	
	North Carolina Seafood Festival	10/06/2013	
	International Balloon Fiesta	10/10/2013	
	Charlotte Bar Sampling – Dilworth Billiards	10/10/2013	
	International Balloon Fiesta	10/11/2013	
	Soulard Oktoberfest	10/11/2013	
	Zac Brown Band, Charlotte Verizon Wireless Amphitheatre	10/11/2013	
	International Balloon Fiesta	10/12/2013	
	Soulard Oktoberfest	10/12/2013	
	International Balloon Fiesta	10/13/2013	
	Soulard Oktoberfest	10/13/2013	
	NACS	10/13/2013	
	NACS	10/14/2013	
	Avenged Sevenfold- Atlanta	10/15/2013	
	NACS	10/15/2013	
	Biketoberfest	10/17/2013	
	Jason Aldean-PHX	10/17/2013	
	Biketoberfest	10/18/2013	
	Playboy Party	10/18/2013	
	Arizona Taco Festival	10/19/2013	
	Biketoberfest	10/19/2013	
	Playboy Party	10/19/2013	
	Arizona Taco Festival	10/20/2013	

	Biketoberfest	10/20/2013	
	Luke Bryan, Mid-Florida Credit Union Amphitheatre	10/24/2013	
	River Arts Fest	10/25/2013	
	Luke Bryan, Mid-Florida Credit Union Amphitheatre	10/25/2013	
	River Arts Fest	10/26/2013	
	Halloweenie Roast	10/26/2013	
	River Arts Fest	10/27/2013	
	Jupiter Bar Sampling – Uncle Mick’s Bar & Grill	10/31/2013	
	Lone Star Rally	10/31/2013	
	Feast of Little Italy	11/01/2013	
	Lone Star Rally	11/01/2013	
	Greater Palm Springs Pride Festival	11/02/2013	
	Feast of Little Italy	11/02/2013	
	Lone Star Rally	11/02/2013	
	Greater Palm Springs Pride Festival	11/03/2013	
	Feast of Little Italy	11/03/2013	
	Lone Star Rally	11/03/2013	
	Fountain Hills Festival	11/08/2013	
	Fountain Hills Festival	11/09/2013	
	Coastline Music Fest-WPB	11/10/2013	
	Fountain Hills Festival	11/10/2013	
			242
Green Smoke	Emmy Awards Gift Lounge	09/2011	
	Nascar Event	Spring 2012	
	Nascar Event	Summer 2012	
	Nascar Event	Fall 2012	
	Malibu House Sampling Event	Summer 2012	
	New York Fashion Week	N/A	
			6
LOGIC	Oak Night Club Private Party	02/04/2013	
	Summer Jam	06/02/2013	
	KTUphoria	06/08/2013	
	Beekman Beer Garden Beach Club	08/06/2013	
	iHeartRadio Music Festival	09/21/2013	
			5
NJOY	Coachella Music Festival	04/2013	
	Mercedes Benz Fashion Week	02/2013	
	Mercedes Benz Fashion Week	09/2013	
	Hollister Motorcycle Rally	07/2013	
			4
Vuse	Rocky Mountain Music Festival	08/11/2013	
	Downtown Denver PR Event	08/14/2013	
	Rock Jam	08/23-24/2013	
	Telluride Blues & Brews Festival	09/13-15/2013	
	Westword Dish	09/22/2013	
	Oktoberfest	09/27-29/2013	

	Oktoberfest	10/04-06/2013	
	1UP Bar Sampling Event		
	2UP Sampling Event		
	7-11 #13209 – Sampling Event		
	7-11 #22537 – Sampling Event		
	7-11 #23172 – Sampling Event		
	7-11 #26933 – Sampling Event		
	7-11 #27067 – Sampling Event		
	7-11 #27620 – Sampling Event		
	7-11 #29420 – Sampling Event		
	7-11 #33630 – Sampling Event		
	7-11 #34357 – Sampling Event		
	7-11 #34526 – Sampling Event		
	7-11 #34570 – Sampling Event		
	7-11 #35503 – Sampling Event		
	7-11 #35506 – Sampling Event		
	Armoury Denver Sampling Event		
	Atomic Cowboy Sampling Event		
	Badger’s Pub Sampling Event		
	Barricuda’s Sampling Event		
	BETA Sampling Event		
	BFG Office Sampling Event		
	Blind Pig Pub Sampling Event		
	Blondies Sampling Event		
	Brendan’s Pub Sampling Event		
	Capitol Convenience Sampling Event		
	Carioca Sampling Event		
	Circle K #8006492 Sampling Event		
	Circle K 3290 Sampling Event		
	Circle K 9900 Sampling Event		
	Conoco #6547 Sampling Event		
	D U Conoco Sampling Event		
	Delany’s Sampling Event		
	Don’s Club Tavern Sampling Event		
	El Churrito Sampling Event		
	Falling Rock Tap House Sampling Event		
	Gary Lee’s Motor Club & Grub Sampling Event		
	GI Jodi’s Sampling Event		
	Giggling Grizzly Sampling Event		
	Gin Mill Sampling Event		
	Goosetown Tavern Sampling Event		
	Grizzly Rose Sampling Event		
	Hayters & Co Sampling Event		
	Herbs Hideout Sampling Event		
	Historians Ale House Sampling Event		
	Horseshoe Lounge Sampling Event		
	In the Zone Sampling Event		
	Jackson’s Sports Rock Sampling Event		
	Lakewood Grill Sampling Event		

	LOAF N JUG #19 Sampling Event		
	Lodo's Bar & Grill Sampling Event		
	Lost Lake Lounge Sampling Event		
	MOAF @ Ginn Mill Parking Lot Sampling Event		
	MOAF @ Market and 20 th Sampling Event		
	MOAF @ Market b/w 14 th and 15 th Sampling Event		
	Match Ups Pool Hall Sampling Event		
	Murphy Express #8587 Sampling Event		
	Murphy Express #8697 Sampling Event		
	Nallen's Sampling Event		
	Quixotes True Blue Sampling Event		
	Retro Room Sampling Event		
	Rock Rest Lounge Sampling Event		
	Sancho's Broken Arrow Sampling Event		
	Satellite Bar Sampling Event		
	Scruffy Murphy's Sampling Event		
	Skylark Lounge Sampling Event		
	Sobo 151 Sampling Event		
	Solids & Stripes Billiards Sampling Event		
	Sports Column Sampling Event		
	Star Bar Sampling Event		
	Streets of London Sampling Event		
	Surfside 7 Sampling Event		
	Swanky's Sampling Event		
	The Astoria Bar Sampling Event		
	The Matchbox Sampling Event		
	Three Kings Tavern Sampling Event		
	Tony's Bar and Rooftop Sampling Event		
	Tooeys Sampling Event		
	Trailhead Tavern Sampling Event		
	W Studio Sampling Event		
	Washington's Bar and Grill Sampling Event		
	Western Conv #111 Sampling Event		
	Whiskey Bar Sampling Event		
	X Bar Sampling Event		
			90
V2	Venice Beach Event to Set Record for Number of People Vaping E-Cigarettes at One Time	06/08/2012	
	Little Lighthouse Foundation's Nightmare on the Beach	10/27/2012	
	WKIS Radio Chili Cook-off	01/27/2013	
			3
White Cloud	Operation Comedy Ha Ha Events	03/2014 - Present	
Altria	Did not provide a list of sampling events.	N/A	N/A

Appendix 2: Types of Marketing by E-Cigarette Manufacturers

Manufacturer	Reported Forms of Marketing
Altria	Sampling events; print advertising in magazines where less than 15% of readers are under 18 and less than 2 million readers are under 18
R.J. Reynolds Vapor Company	Sponsored and sampling events; television advertising on programs where more than 85% of viewers are 18+; print advertising in publications with at least 85% of readership 18+ OR median readership age of 23+
NJOY	Sponsored or sampling events; television, radio, and print advertising targeted at adult smokers between 25 and 54 in publications/programs where less than 15% of audience is under 18; celebrity spokesperson; social media
Eonsmoke	Radio advertising intending to target 18+ audience; product placement; social media
LOGIC	Sponsored or sampling events; radio advertising where 70% of the audience is 21+; product placement; social media
VMR	Sponsored or sampling events; television and radio advertising targeting adult smokers; print advertising in the Miami Herald; social media
Lorillard	Sponsored and sampling events; radio advertising where 85% of listening audience is 21+, television advertising where at least 85% of target audience was 18+; print advertising in magazines where less than 15% and/or less than 2 million readers are under 18; celebrity spokespeople; product placement in movies with at least an R rating; social media
Green Smoke	Sponsored or sampling events; radio, television, and print advertising targeted at 35 to 65 age group, celebrity spokesperson; social media
Lead by Sales	N/A

Appendix 3: E-Cigarette Manufacturers' Event Sponsorship, Advertising, Celebrity Sponsors, and Social Media Use

Manufacturer	Brand(s)	Target Age	Sponsor/ Sample Events	TV/Radio Ads	Media Restrictions	Social Media	Celebrity Spokesperson
Altria	Mark-Ten	18+	•		•		
R.J. Reynolds Vapor Company	Vuse	adult tobacco users	•	•	•		
NJOY	NJOY King	25 to 54	•	•	•	•	•
Eonsmoke	Eonsmoke	adult tobacco users		•	•	•	
LOGIC	LOGIC	18+	•	•	•	•	
VMR	V2, Vapor Couture	adult tobacco users	•	•	•	•	
Lorillard	blu	18+	•	•	•	•	•
Green Smoke	Green Smoke	35 to 65	•	•	•	•	•
Lead by Sales	White Cloud Cigarettes	N/A	N/A	N/A	N/A	•	•

Appendix 4: E-Cigarette Manufacturer Warning Labels

Manufacturer	Warning Labels
Altria	<p>This product is not a smoking cessation product and has not been tested as such. This product is intended for use by persons of legal age or older, and not by children, women who are pregnant or breast feeding, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medicine for depression or asthma. Nicotine is addictive and habit forming, and it is very toxic by inhalation, in contact with the skin, or of swallowed. Nicotine can increase your heart rate and blood pressure and cause dizziness, nausea, and stomach pain. Inhalation of this product may aggravate existing respiratory conditions. Ingestion of the non-vaporized concentrated ingredients in the cartridges can be poisonous.</p> <p>CA Proposition 65 Warning: This product contains nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm.</p>
R.J. Reynolds Vapor Company	<p>This is a tobacco product. No tobacco product has been shown to be safe and without risks. This tobacco product contains nicotine which is addictive. This product is intended for use only by adult tobacco consumers and is not intended for persons who are pregnant or breast feeding; persons who have an unstable heart condition, high blood pressure, or diabetes; or persons who are at risk for heart disease or are taking medication for depression or asthma. Keep out of reach of children.</p> <p>Vuse reusable warning:</p> <p>VUSE is a tobacco product because the nicotine used in this product is extracted from the tobacco plant. No tobacco product has been shown to be safe and without risks. This tobacco product contains nicotine which is addictive. This product is intended for use only by adult tobacco consumers and is not intended for persons who are pregnant or breast feeding; persons who have an unstable heart condition, high blood pressure, or diabetes; or persons who are at risk for heart disease or are taking medication for depression or asthma. Keep out of reach of children.</p> <p>WARNING: This product contains nicotine, a chemical known to the State of California to cause birth defects or other reproductive harm.</p>
NJOY	<p>Warning: NJOY products are not smoking cessation products and have not been tested as such. The U.S. FDA has not approved NJOY products for any other use and they are not intended to diagnose, cure, mitigate, treat, or prevent any disorder, disease, or physical or mental condition. NJOY products contain nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm. Nicotine is addictive and habit forming and it is very toxic by inhalation, in contact with the skin, or if swallowed. Ingestion of the non-vaporized concentrated ingredients in the cartridges can be poisonous. Physical effects of nicotine may include accelerated heart rate and increased blood pressure. If the cartridge is swallowed, seek medical assistance immediately. NJOY products are intended for use by adults of legal smoking age (18 or older in California), and not be children, women who are pregnant or breastfeeding, or persons with or at risk of heart disease, high blood pressure, diabetes or taking medicine for depression or asthma. NJOY products may not be sold to minors. Identification of all persons under 26 will be required before purchase. Keep out of reach of children.</p>

<p>Eonsmoke</p>	<p>SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.</p> <p>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.</p> <p>Eonsmoke, LLC products are not a smoking cessation product and have not been evaluated by the Food and Drug Administration, nor are they intended to treat, prevent or cure any disease or condition. For their protection, please keep out of reach of children and pets.</p> <p>NOT TO BE SOLD TO MINORS</p> <p>NOT FOR SALE TO MINORS</p>
<p>LOGIC</p>	<p>(Disposables) Warning: This product is an electronic cigarette and should not be used by non-smokers, women who are pregnant or breast feeding, those sensitive to nicotine, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medicine for depression or asthma. LOGIC products contain nicotine, a highly addictive drug. LOGIC products are not for smoking cessation, and no way claim to assist in lessening the frequency or quitting of smoking tobacco products. They are not intended to be drug products that diagnose, treat, cure or mitigate any disease or condition. THE FDA DOES NOT APPROVE TOBACCO CIGARETTES AND ELECTRIC CIGARETTES AT THIS TIME.</p> <p>KEEP OUT OF THE REACH OF CHILDREN. Choking and ingestion hazard.</p> <p>NO ANIMAL TESTING. 1X USE/RECYCLE</p> <p>CA Proposition 65 Warning: This product contains nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm.</p> <p>(Rechargeables) Warning: This product contains nicotine and should not be used by non-smokers, women who are pregnant or breast feeding, those sensitive to nicotine, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medicine for asthma or depression. Underage sale prohibited. Keep out of reach of children. This product is not a smoking cessation device and no way claims to assist in lessening the frequency or quitting of smoking tobacco products. They are not intended to be drug products that diagnose, treat, cure or mitigate any disease or condition. This product is not regulated by the U.S. Food and Drug Administration.</p> <p>Logic Products are intended for use by adults of legal smoking age 18 years or older according to each state law. Identification of all persons under 26 will be required before purchase.</p> <p>NO ANIMAL TESTING. 1X USE/RECYCLE</p> <p>CA Proposition 65 Warning: This product contains nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm.</p>

VMR	<p>YOU MUST BE OF LEGAL SMOKING AGE TO BUY AND/OR USE ANY V2 CIGS PRODUCT. This product contains nicotine and is not for use by persons under legal smoking age. Keep out of reach of children and pets. If swallowed, this product can present a choking hazard. Nicotine is addictive and can be toxic if inhaled or ingested and may cause irritation if it comes into contact with your eyes or skin. Wash immediately with soap and water upon contact. Like other products with nicotine, you should not use this product if you are pregnant or breastfeeding, have or are at risk of heart disease, high blood pressure, diabetes, if you are taking medicines for depression or asthma or if you are allergic to nicotine, propylene glycol, or any combination of inhalants. Discontinue use and consult a physician if you experience symptoms of nicotine misuse such as nausea, vomiting, dizziness, diarrhea, weakness or rapid heartbeat. This product does not treat, diagnose or cure any disease, physical ailment or condition. This product is not marketed for use as a smoking cessation product and the statements made herein have not been evaluated by the FDA, or any other health or regulatory authority.</p> <p>"WARNING: This product contains a chemical known to the state of California to cause birth defects or other reproductive harm."</p> <p>"Keep out of reach of children. Underage sale prohibited."</p>
Lorillard	<p>NOT FOR SALE TO MINORS</p> <p>blu eCigs® electronic cigarettes are not a smoking cessation product and have not been evaluated by the Food and Drug Administration, nor are they intended to treat, prevent or cure any disease or co-condition.</p> <p>For their protection, please keep out of reach of children and pets.</p> <p>CA Proposition 65 Warning: This product contains nicotine, a chemical known to the state of California to cause birth defects or other reproductive harm.</p>
Green Smoke	<p>Nicotine is highly addictive. Use only if above legal age. Do not use this product to treat any medical condition or habit. Consult a doctor prior to use if pregnant, breast-feeding or suffer from any medical condition. Stop use if you show any sensitivity to this product. This product contains nicotine, a chemical known to the State of California to cause birth defects or other reproductive harm.</p>
Lead by Sales	<p>N/A</p>

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²Legacy Foundation, *E-cigarette policy: the FDA should promptly exercise regulatory authority over e-cigarettes* (January 2014).

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⁴Altria has held sampling events but declined to provide an itemized list; R.J. Reynolds provided a list of all locations where sampling events were held through October 31, 2013. The total number of events in 2012 and 2013 is based on the conservative assumption that one event was held at each of the R.J. Reynolds' sampling locations.

⁵Food and Drug Administration, *Electronic Cigarettes* (Jan. 10, 2014) (online at www.fda.gov/newsevents/publichealthfocus/ucm172906.htm).

⁶E-cigarettes can also be known by a variety of different names, such as hookah pens, e-hookahs, or vape pipes.

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¹⁵DiFranza JR, Savageau JA, Fletcher K, et al. "Symptoms of Tobacco Dependence After Brief Intermittent Use: The Development and Assessment of Nicotine Dependence in Youth-2 Study." *Arch Pediatr Adolesc Med*. 161(7) (2007): 704-710

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¹⁷Eissenberg, T, "Electronic 'cigarettes': ineffective nicotine delivery and craving suppression after acute administration," *Tobacco Control* 19(1):87-88, February 2010. Vansickel, AR, et al., "A clinical laboratory model for evaluating the acute effects of electronic "cigarettes": nicotine delivery profile and cardiovascular and subjective effects," *Cancer Epidemiol Biomarkers Prev* 19(8):1945-1953, August 2010. Goniewicz, ML, et al "Nicotine content of electronic cigarettes, its release in vapour, and its consistency across batches: Regulatory implications," *Addiction* 109(3):500-7, March 2014. Vansickel, AR, Eissenberg, T, "Electronic Cigarettes: Effective Nicotine Delivery After Acute Administration," *Nicotine & Tobacco Research* 15(1):267-270, January 2013. Etter, JF, "Levels of saliva cotinine in electronic cigarette users," *Addiction* (epub ahead of print), January 2014.

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²¹Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31.

²²The Tobacco Control Act expanded FDA’s authority to regulate tobacco products, such as e-cigarettes, cigars, and pipe tobacco. The Act defines the term “tobacco product,” in part, as any product “made or derived from tobacco” that is not a “drug,” “device,” or combination product under the Food, Drug, and Cosmetic Act. Before FDA can regulate these tobacco products, the agency must issue deeming regulations that have to complete the rulemaking process. On December 31, 2013, FDA submitted to the White House Office of Management and Budget (OMB) a set of proposed deeming regulations. OMB has yet to complete the review of the deeming regulations.

²³Food and Drug Administration, *Regulation of E-Cigarettes and Other Tobacco Products* (Apr. 25, 2011) (online at www.fda.gov/newsevents/publichealthfocus/ucm252360.htm).

²⁴While outside the scope of this report, considerable evidence also exists that e-cigarette cartridge manufacturers are also engaging in the marketing of their products to youth audiences.

²⁵An example of the letters sent to the companies can be found here: www.durbin.senate.gov/public/index.cfm/pressreleases?ID=fafe1d70-0a2c-429c-9372-c5ca201cb261.

²⁶Altria declined to provide information relating to marketing expenditures and sampling events; Green Smoke declined to provide information relating to marketing expenditures.

²⁷In the instance where the company did not respond to questions, supplemental information was gathered from company websites or through reviewing other publically available information, including social media sites and product labels.

²⁸Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31.

²⁹A 1997 study by the Cancer Research Campaign found that tobacco sponsorship of Formula One motor racing events was associated with boys who were racing fans being almost twice as likely to become regular smokers compared to boys who were not motor racing fans. Charlton, A, While, D, Kelly, S., *Boys' smoking and cigarette-brand-sponsored motor racing*. CRC Education and Child Studies Research Group, School of Epidemiology and Health Sciences, University of Manchester. 1997.

³⁰Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31.

³¹Research shows that attending promotional events where free cigarette samples are dispensed is associated with becoming a smoker. See, e.g. Rigott, N, Moran, S, and Wechsler, H, "U.S. College Students Exposure to Tobacco Promotions: Prevalence and Association with Tobacco Use," *American Journal of Public Health*, 94(12); 1-7, 2004.

³²The number of sponsored events and cases of distributing samples is based on self-reporting from six surveyed companies. During the investigation, unreported events were identified that are not included in this report. Altria has held sampling events but declined to provide an itemized list; R.J. Reynolds provided a list of all locations

where sampling events were held through October 31, 2013. The total number of events in 2012 and 2013 is based on the conservative assumption that one event was held at each of the R.J. Reynolds' sampling locations.

³³Stanford School of Medicine. *Electronic Cigarette Ad Gallery*. *Stanford Research into the Impact of Tobacco Advertising*. (Accessed April 9, 2014) (online at http://tobacco.stanford.edu/tobacco_main/main_ecigs.php).

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³⁵White Cloud Cigarettes, *White Cloud Announces Operation Comedy Ha Ha* (March 8, 2014) (online at www.whitecloudelectroniccigarettes.com/blog/white-cloud-announces-operation-comedy-ha-ha/).

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³⁷Numerous studies have demonstrated an association between flavored tobacco products and increased likelihood of use by youth. See American Legacy Foundation, *First Look Report 17: Cigarette Preferences Among Youth--Results from the 2006 Legacy Media Tracking Online (LMTO)*, (June 5, 2007) (online at americanlegacy.org/PDFPublications/fl_17.pdf).

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³⁹Menthol cigarettes are much more likely to be used by youth and young adult smokers than older smokers and are undermining efforts to reduce smoking in the United States. Menthol cigarettes increase overall youth smoking by increasing the number of children who experiment with cigarettes and the number of children who become regular smokers. Giovino, et al., "Differential trends in cigarette smoking the USA: is menthol slowing progress?" *Tobacco Control* (051159) August 30, 2013.; Tobacco-Free Kids, *FDA Advisory Committee Concludes Removal of Menthol Cigarettes Would Benefit Public Health*, (March 18, 2011) (online at https://www.tobaccofreekids.org/press_releases/post/fda_advisory_committee_concludes_removal_of_menthol_cigarettes_would_benefit).

⁴⁰Other surveyed companies may also use a third-party verification system to confirm the purchasers' age, but only Lorillard, NJOY, LOGIC, and VMR disclosed use of one for online purchases.

⁴¹Department of Health and Human Services, *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* (Jan. 2014) (online at www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf), 827.

⁴²*Holy Smokes: E-Cigarette Ads Debut on TV*, Wall Street Journal (Dec. 26, 2013) (online at online.wsj.com/news/articles/SB10001424052702304753504579282752217648562); *NJOY TV Spot, 'Met Your Match,'* iSpot tv (online at www.ispot.tv/ad/7A1B/njoy-met-your-match); *NJoy: Cigarette Advertising is Back, Baby! (Plus It's Still Addictive!)*, Ann Arbor Review of Books (Feb. 27, 2013) (online at www.a2review.net/2013/02/27/njoy-cigarette-advertising-is-back-baby-plus-its-still-addictive/).

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⁴⁴*Super Bowl TV ratings: Fast Facts at a Glance*, CNBC (Jan. 28, 2014).

⁴⁵*In the Tastes of Young Men, Humor is Most Prized, a Survey Finds*, New York Times (Feb. 19, 2012) (online at www.nytimes.com/2012/02/20/business/media/comedy-central-survey-says-young-men-see-humor-as-essential.html).

⁴⁶The Age Restrictions column is noted as "Yes" if at least one of the manufacturer's social media sites employs restrictions.

⁴⁷<https://www.facebook.com/V2Cigs/info>

⁴⁸<https://www.facebook.com/Eonsmoke/info>

⁴⁹Campaign for Tobacco-Free Kids, *FDA Regulation of Tobacco Products: A Common Sense Law To Protect Kids and Save Lives* (June 16, 2010) (online at www.tobaccofreekids.org/research/factsheets/pdf/0352.pdf).

⁵⁰www.whitecloudelectroniccigarettes.com/how-it-works/white-cloud-difference/top-reasons-to-buy-white-cloud/