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15
16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

17 **IN AND FOR THE COUNTY OF MARICOPA**

18 STATE OF ARIZONA, *ex rel.* MARK
19 BRNOVICH, Attorney General,

20 Plaintiff,

21 v.

22 JUUL LABS, INC.,

23 Defendant.
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Case No. CV 2020-000317

COMPLAINT

(Consumer Fraud Act)

(Complex Court Assignment Requested)

(Jury Trial Demanded)

1 Plaintiff, the State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
2 alleges the following for its Civil Complaint against Defendant Juul Labs, Inc. (“JUUL” or
3 “Defendant”).

4 **INTRODUCTION**

5 1. Federal and state health officials have sounded the alarm that Arizona, along with
6 the rest of the nation, faces an epidemic of youth e-cigarette use (“vaping”).¹ This national
7 crisis prompted Congress in recent weeks to enact a new law, effective immediately, prohibiting
8 the sale of tobacco products—including e-cigarettes—to anyone under the age of 21. Nicotine
9 consumption by young people in any quantity or form is unsafe.

10 2. JUUL has exploited a generation of youth by implementing tactics and marketing
11 themes once used by the tobacco industry and updating these strategies to craft a marketing plan
12 that appealed to, targeted, misled, and exploited Arizona’s youth.

13 3. JUUL attracted young people with its youth-focused advertising, induced them to
14 try vaping by offering flavors, and then hooked them on its products by addicting them to
15 nicotine which was deceptively and unfairly presented.

16 **JURISDICTION AND VENUE**

17 4. The State brings this action pursuant to the Arizona Consumer Fraud Act, A.R.S.
18 §§ 44-1521 to 44-1534 (the “CFA”), to enjoin permanently and prevent the unlawful acts and
19 practices alleged in this Complaint, and to obtain other relief, including restitution,
20 disgorgement of profits, gains, gross receipts, or other benefits, civil penalties, and costs and
21 attorneys’ fees.

22 5. This Court has subject-matter jurisdiction.

23 6. This Court may issue appropriate orders both prior to and following a
24 determination of liability, pursuant to A.R.S. § 44-1528.

25 7. Defendant transacted business within Arizona at all times relevant to this
26 Complaint.

27 ¹ Ariz. Dep’t of Health Serv., *Bureau of Tobacco and Chronic Disease, Biennial Report*
28 *2017-2018*, 3 (2018).

8. Defendant caused events to occur in this state out of which the claims which are the subject of this Complaint arose.

9. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

PARTIES

10. Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of Arizona, who is authorized to bring this action under the CFA.

11. Defendant Juul Labs, Inc. is a Delaware corporation, with its principal place of business in San Francisco, California.² JUUL transacts business in Arizona and nationwide by manufacturing, importing, marketing, promoting, advertising, offering for sale and/or distribution, and selling e-cigarettes.

GENERAL ALLEGATIONS

A. History of Big Tobacco's Exploitation of Youth

12. An understanding of the history of the tobacco industry is necessary to appreciate the risks and dangers of e-cigarettes³ and the conduct of JUUL.

13. The success of the tobacco industry, often referred to as “Big Tobacco,” lies in selling a delivery device for the addictive chemical nicotine. In an internal memo from July 17, 1963, a lawyer for one major tobacco corporation boldly stated, “Nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug.”⁴

² In 2017, Defendant was spun off by PAX Labs, Inc. Certain documents cited in this Complaint from the early years of the JUUL product's existence, therefore, refer to PAX Labs, Inc.

³ Terms such as “vaping” and “e-cigarette use” are used interchangeably throughout the industry, among regulators, health officials, and consumers. These terms also vary according to time periods dating back to 2006. The State uses them interchangeably throughout this Complaint to refer to the use of devices that deliver nicotine by “vaporizing,” i.e., aerosolizing, a liquid that includes chemicals and flavorings to create an aerosol that is inhaled by the user.

⁴ Stanton A. Glantz et al., *The Cigarette Papers*, Berkeley: Univ. of Calif. Press 74 (1996) (quoting Memorandum by Addison Yeaman, *Implications of Battelle Hippo 1 & 11 and the Griffith Filter*, Document No. 1802.05 (July 17, 1963)),

1 14. If youth can be prevented from exposure to nicotine, the odds of developing a
2 lifelong addiction are reduced dramatically.⁵

3 15. For decades, Big Tobacco has been aware of the importance of introducing youth
4 to nicotine before they age out of the critical window of opportunity for developing a lifetime
5 addiction. In a 1973 memo entitled “Research Planning Memorandum on Some Thoughts
6 About New Brands of Cigarettes for the Youth Market,” the Assistant Chief of Research and
7 Development for R.J. Reynolds recognized that “[r]ealistically, if our Company is to survive and
8 prosper, over the long term, we must get our share of the youth market. In my opinion this will
9 require new brands tailored to the youth market.”⁶

10 16. Big Tobacco has a long history of targeting youth with marketing, from Winston
11 ads featuring Fred Flintstone and Barney Rubble in the 1950s, to Marlboro placements in
12 Superman films in the 1980s, to the Joe Camel cartoon used through the late 1990s.

13 17. The United States Surgeon General has found that the tobacco industry
14 “capitalized on the vulnerability” of youth to promote their products and that extensive research
15 “consistently and coherently points to the intentional marketing of tobacco products to youth as
16 being a cause of young people’s tobacco use.”⁷

17 18. Internal memos show that part of Big Tobacco’s youth-marketing scheme included
18 developing flavors that would appeal to teenagers and younger customers, suggesting that

19 <https://publishing.cdlib.org/ucpressebooks/view?docId=ft8489p25j;brand=ucpress> (accessed on
20 Dec. 18, 2019).

21 ⁵ Inst. of Med. of the Nat’l Acad., *Public Health Implications of Raising the Minimum*
22 *Age of Legal Access to Tobacco Products* 4 (2015).

23 ⁶ Internal Memorandum by Claude Teague, R.J. Reynolds Tobacco Company, *Research*
24 *Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth*
25 *Market* 1 (Feb. 2, 1973), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=gnjc0068>
26 (accessed on Dec. 18, 2019).

27 ⁷ Office of the Surgeon Gen., U.S. Dep’t of Health and Human Serv., *Preventing*
28 *Tobacco Use Among Youth and Young Adults: Executive Summary* 2, 5 (2012).

1 “teenagers like sweet products,” and “[h]oney might be considered.”⁸ Internal memos even
2 reveal that Big Tobacco companies discussed swapping research on flavors with youth appeal
3 with the makers of Life Savers Candy.⁹

4 19. In 1998, forty-six states, led in part by Arizona, pursued litigation against Big
5 Tobacco for, among other things, engaging in widespread consumer fraud including directly
6 marketing its addictive, deadly products to youth. The states and certain tobacco manufacturers
7 ultimately entered into a landmark public-health agreement known as the Master Settlement
8 Agreement (“MSA”), which the settling states viewed as a path to “reduce Youth smoking, to
9 promote the public health and to secure monetary payments.”¹⁰

10 20. The MSA contains several provisions that are designed specifically to prevent
11 tobacco marketing that targets youth. The first provision sets out a general prohibition on “any
12 action, directly or indirectly, to target Youth . . . in the advertising, promotion or marketing of
13 Tobacco Products.”¹¹ Subsequent provisions prohibit specific actions such as utilizing cartoons,
14 sponsoring certain music or sporting events, advertising on billboards or on public
15 transportation, using paid product placement in media, creating and distributing tobacco brand-
16 name merchandise, distributing free samples, and providing gifts to youth in exchange for
17 proofs of purchase, rewards points, or coupons.

18
19 ⁸ Students Working Against Tobacco, Okla. Dep’t of Health, *Tobacco Industry Quotes*
20 *on Nicotine Addiction* (quoting Brown & Williamson memorandum from consultants (1972)),
21 <https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf> (accessed on Dec. 18, 2019).

22
23 ⁹ Students Working Against Tobacco, Fla. Dep’t of Health, *Tobacco Industry Quotes*
24 *and Facts Related to Flavored Tobacco* (quoting Sedgefield Idea Sessions 790606-790607 (June
25 8, 1979)),
26 <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (accessed on Dec. 18, 2019).

27 ¹⁰ Master Settlement Agreement § I, p1.

28 ¹¹ *Id.* § III(a).

1 21. In 2009, the federal government passed the Family Smoking Prevention and
2 Tobacco Control Act (the “TCA”), which prohibited the sale of cigarettes with “characterizing
3 flavors” other than menthol, in an effort to prevent youth targeting through flavored products.

4 22. The implementation of the MSA’s marketing restrictions in the late 1990s,
5 combined with public health and public policy efforts inspired or funded by the MSA, disclosure
6 documents relating to Big Tobacco’s wrongdoing, and subsequent litigation enforcing the MSA,
7 contributed to dramatic declines in tobacco use, including among youth.

8 23. For example, Arizona’s youth smoking rate declined from 37.7 percent in 2000 to
9 7.1 percent in 2017.¹²

10 **B. The E-Cigarette Youth Epidemic**

11 24. In less than a decade, e-cigarettes have reversed most of this significant progress.

12 25. Unfortunately for Arizona’s youth, the dramatic and hard-fought decrease in youth
13 smoking rates has been offset in recent years by a spike in e-cigarette use, and current youth use
14 of any nicotine product now sits at 31.2 percent nationwide in 2019.¹³

15 26. The modern e-cigarette was invented in 2006 in China and began appearing in the
16 United States in about 2007. The device is comprised of a battery that powers a heating element
17 which heats a liquid mixture of one or more humectants, typically a combination of propylene
18 glycol and glycerin, plus nicotine and flavoring to create an aerosol that is inhaled by the user.

19 27. Tobacco laws at all levels of government typically defined “tobacco products” as
20 products that contained or burned tobacco. As a result, e-cigarettes initially fell outside of
21 nearly all tobacco regulations, including age restrictions.

23 ¹² CDC, *Extinguishing the Tobacco Epidemic in Arizona*,
24 <https://www.cdc.gov/tobacco/about/osh/state-fact-sheets/arizona/index.html> (accessed on Dec.
25 18, 2019); CDC, *Youth Tobacco Surveillance—United States, 2000* Table 3 (Nov. 2, 2001),
26 <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss5004a1.htm> (accessed on Dec. 18, 2019).

27 ¹³ Karen A. Cullen, et al., *E-cigarette Use Among Youth in the United States, 2019*,
28 322(21) JAMA 2095, E3-E4 (electronic pagination) (Nov. 5, 2019),
<https://jamanetwork.com/journals/jama/fullarticle/2755265> (accessed on Dec. 18, 2019).

1 28. In the early 2010s, states began passing laws to restrict the purchase age of e-
2 cigarettes, including a revision to Arizona’s Youth Furnishing Statute, A.R.S. § 13-3622, that
3 went into effect in September 2013.

4 29. The 2010 implementation of the TCA provided the United States Food and Drug
5 Administration (“FDA”) with authority over all products made or *derived from* tobacco.

6 30. Although the FDA had immediate jurisdiction over cigarettes, smokeless tobacco,
7 and roll-your-own tobacco, it needed to take additional regulatory action to “deem” any
8 additional tobacco products under its jurisdiction.

9 31. The FDA issued a deeming rule that went into effect on August 8, 2016 (the
10 “Deeming Rule”) and initiated the first stages of regulation of the e-cigarette industry, such as a
11 national minimum sales age of at least eighteen. JUUL, however, exploited the time period
12 leading up to the Deeming Rule and the issues the FDA’s initial regulatory actions did not yet
13 cover.

14 32. This strategy helped drive JUUL’s incredible growth to a multi-billion dollar
15 company with an estimated e-cigarette market share of 76 percent in 2018.

16 33. In Arizona alone, JUUL has reaped tens of millions of dollars in revenue through
17 its online and retail channels.

18 34. JUUL’s explosive growth in sales also created an overall increase in the e-
19 cigarette market rather than simply shifting e-cigarette sales away from its competitors. (Pub.
20 Health Law Center, The FDA’s Tobacco Regulatory Plan—An Analysis of the First Two Years
21 16 (2019), [https://www.publichealthlawcenter.org/sites/default/files/The-FDAs-Tobacco-](https://www.publichealthlawcenter.org/sites/default/files/The-FDAs-Tobacco-Regulatory-Plan-An-Analysis-of-the-First-Two-Years-2019.pdf)
22 [Regulatory-Plan-An-Analysis-of-the-First-Two-Years-2019.pdf](https://www.publichealthlawcenter.org/sites/default/files/The-FDAs-Tobacco-Regulatory-Plan-An-Analysis-of-the-First-Two-Years-2019.pdf), excerpt attached as **Appendix**
23 **1.**)

24 35. The same strategy that produced much of JUUL’s extraordinary profits also
25 produced an epidemic of youth e-cigarette use in Arizona and across the nation.

26 36. The FDA Commissioner has pointed to JUUL as a significant cause of the youth
27 e-cigarette crisis, stating to a reporter, “The dramatic spike of youth [vaping] – that was driven
28

1 in part at the very least if not largely by JUUL . . . I hope they recognize the problem that's been
2 created has been created largely by their product.”¹⁴

3 37. A study by the nonprofit organization Truth Initiative found that “teens between
4 15 and 17 years old have 16 times greater odds of using JUUL than 25- to 34-year-olds.”¹⁵ And
5 high school and middle school students report that their usual brand of e-cigarette, by an
6 overwhelming margin, is JUUL.¹⁶

7 38. In just a few years, JUUL nearly single-handedly has reversed decades of intense,
8 successful efforts to reduce youth smoking and nicotine addiction.

9 39. In 2018, the United States Surgeon General declared youth use of e-cigarettes to
10 be an “epidemic” following a 70 percent increase in youth use rates from 2017 to 2018.
11 Between 2018 and 2019, youth use rates continued to increase.¹⁷

12 40. In 2018, almost half of Arizona high school seniors that were surveyed reported
13 trying e-cigarettes, and more than 25 percent reported using an e-cigarette in the last thirty days.
14 The same year, more than 25 percent of Arizona eighth graders that were surveyed reported
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18 ¹⁴ Julia Belluz, *Scott Gottlieb's Last Word as FDA Chief: Juul Drove a Youth Addiction*
19 *Crisis*, Vox (April 5, 2019),
20 <https://www.vox.com/science-and-health/2019/4/5/18287073/vaping-juul-fda-scott-gottlieb>
21 (accessed on Dec. 18, 2019).

22 ¹⁵ Truth Initiative, *Behind the Explosive Growth of Juul: Social Influences and Flavors*
23 *Drive Rising Teen Use of the Top E-cigarette 2* (2018),
24 [https://truthinitiative.org/sites/default/files/media/files/2019/03/Behind-the-explosive-growth-of-](https://truthinitiative.org/sites/default/files/media/files/2019/03/Behind-the-explosive-growth-of-JUUL.pdf)
25 [JUUL.pdf](https://truthinitiative.org/sites/default/files/media/files/2019/03/Behind-the-explosive-growth-of-JUUL.pdf) (accessed on Dec. 18, 2019).

26 ¹⁶ Cullen et al., *supra* note 13, at E5.

27 ¹⁷ CDC, *Youth Tobacco Survey*,
28 https://www.cdc.gov/tobacco/data_statistics/surveys/yts/index.htm (accessed on Dec. 18,
2019).

1 trying e-cigarettes, and more than 13 percent reported using an e-cigarette in the last thirty
2 days.¹⁸

3 41. The risks of nicotine addiction are well-known and undisputed. As far back as
4 1988, the United States Surgeon General declared that cigarettes and other forms of tobacco are
5 addicting, that nicotine is the drug in tobacco that causes addiction, and the pharmacologic and
6 behavioral processes that determine tobacco addiction are similar to those that determine
7 addiction to drugs such as heroin and cocaine.

8 42. The risks of e-cigarettes even to adults – beyond the risk of nicotine addiction –
9 are largely unknown. There has not been sufficient time for appropriate testing in the scientific
10 and medical communities to fully understand these risks. E-cigarettes, including JUUL’s
11 specifically, contain a number of components whose health effects are not fully understood by
12 government regulators or health professionals, such as the long term effects of regular inhalation
13 of propylene glycol, glycerin, benzoic acid, metallic particles, and flavors that contain unknown
14 and untested ingredients.

15 **C. JUUL Appealed To, Targeted, and Exploited a Generation of Youth**

16 43. From the beginning, JUUL sought to emulate the success of the cigarette industry.

17 44. JUUL co-founder James Monsees described the cigarette as “probably the most
18 successful consumer product of all time” and explained how JUUL’s success sprung from the
19 strategies of Big Tobacco, stating in an interview, “It became a very intriguing space for us to
20 investigate because we had so much information that you wouldn’t normally be able to get in
21 most industries. And we were able to catch up, right, to a huge, huge industry in no time. And
22 then we started building prototypes.”¹⁹

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25 ¹⁸ Ariz. Criminal Justice Comm’n, *2018 Arizona Youth Survey: State Report* 48-49
26 (2019).

27 ¹⁹ Gabriel Montoya, *Pax Labs: Origins With James Monsees*, Social Underground,
28 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (accessed on
Dec. 14, 2019).

1 45. Monsees and JUUL co-founder Adam Bowen capitalized on a central database of
2 Big Tobacco advertising information maintained by a research group known as Stanford
3 Research Into the Impact of Tobacco Advertising (“SRITA”), run by Dr. Robert Jackler.²⁰
4 Monsees credited SRITA and Dr. Jackler with providing the building blocks for JUUL’s
5 advertising strategy.²¹

6 46. JUUL replicated several highly successful strategies perpetrated by Big Tobacco
7 and supplemented them with the personalized marketing capabilities of the Internet and social
8 media, allowing JUUL to bypass the limitations of traditional advertising methods.

9 47. By combining a highly-addictive product with features that appealed to young
10 people and a marketing strategy geared towards youth, JUUL addicted a new generation of
11 youth to nicotine.

12 48. In doing so, JUUL secured enormous financial gains for itself without regard for
13 the health and safety of its young consumer base.

14 **1. Marketing Techniques**

15 ***a. “Vaporized” campaign and the Big Tobacco template***

16 49. JUUL developed its initial marketing strategy with the help of two creative
17 agencies – Cult Collective and Grit. Cult Collective promises to provide companies with a
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22 ²⁰ Robert Jackler et al., Stanford Univ. Sch. of Med., *JUUL Advertising Over its First*
23 *Three Years on the Market* 27 (2019),
24 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (accessed
25 on Dec. 18, 2019).

26 ²¹ *Examining JUUL’s Role in the Youth Nicotine Epidemic Part I: Hearing Before the H.*
27 *Comm. on Oversight and Reform*, 116th Cong. 1:32:25-1:33:18 (July 24, 2019) (statement of
28 Dr. Jackler).

1 competitive edge by “focusing on proven platforms that . . . forge fanatical loyalty”²² while Grit
2 declares itself an “authority on Millennial culture.”²³

3 50. With the help of Grit and Cult Collective, JUUL launched its first advertising
4 campaign in June 2015—known as “Vaporized.” The multimillion dollar Vaporized campaign
5 was directed specifically at a youthful audience both in its substance and its delivery.

6 51. Internal JUUL emails and email exchanges between JUUL and its marketing firms
7 in 2015 demonstrate that it was JUUL’s intent to target young audiences and also that JUUL
8 failed to implement any standards to ensure that its products would not target youth.

9 52. The Vaporized campaign flooded social media with posts that used models who
10 appeared to be in their twenties or younger to depict a fun, trendy lifestyle, with hip trendsetters
11 typically “dressed for a night out,” in midriff-exposing crop tops, ripped jeans, and jean jackets.
12 Richard Mumby, JUUL’s first Chief Marketing Officer, noted that rather than being “overtly
13 reliant on just the product,” Vaporized would use the youth models to portray a “dynamic
14 energy.”²⁴

15 53. Advertisements featured a vivid color scheme and displayed young models whose
16 “poses were often evocative of behaviors more characteristic of underage teens than mature
17 adults.”²⁵

22 ²² Cult, <https://cultideas.com/about> (accessed on Dec. 13, 2019).

23 ²³ Grit Creative Group, <http://www.gritcreativegroup.com/#/about> (accessed on Dec. 13,
24 2019).

25 ²⁴ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads With “Vaporized”*
26 *Campaign*, Adage (June 23, 2015), [https://adage.com/article/cmo-strategy/juul-hopes-reinvent-](https://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142)
27 [e-cigarette-ads-campaign/299142](https://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142); Jackler, *supra* note 20, at 7.

28 ²⁵ Jackler, *supra* note 20, at 7.



54. The Vaporized campaign used the slogan “Smoking Evolved,” which associated JUUL with “themes of high tech and the latest generation” and “establish[ed] a notably youth-oriented brand identity for JUUL.”²⁶

55. JUUL also devised a plan to put its product directly into the hands of a young, hip audience through high-profile promotional events held at major hotspots in New York, California, Las Vegas, and Miami. JUUL-sponsored launch parties were youth-oriented and featured popular young DJs such as Chapman, Illuminati AMS, May Kwok, and other celebrities.

56. The launch parties were free to attend and offered an unlimited supply of free samples of JUUL product.²⁷

57. JUUL also held sampling events, dubbed its “Container Tour,” where it created pop-up lounges at festivals, concerts, and other events. On average, each event distributed over 5,000 samples of JUUL products.

58. This is eerily similar to Big Tobacco, where Camel used luxurious tour buses to create smoking lounges and parked them in front of “hip” bars. R.J. Reynolds, the owner of Camel, also hired “cigarette fairies” to go to bars and clubs to offer coupons for its latest products as recently as 2008. A report quoted one of the cigarette fairies as saying, “I get paid

²⁶ *Id.*

²⁷ *Id.* at 4-7.

1 to . . . go to free gigs and to smoke. Camel [is] clever about the smoking ban. We're all over the
2 place . . . all over America. It's a sweet job.”²⁸

3 59. Potential new JUUL consumers also were invited via brightly-colored and
4 inherently youth-driven flyers to various promotional events such as movie nights held on roof
5 tops or a slumber party in Hollywood's Forever Cemetery.

6 60. When partygoers arrived at launch parties and sampling events, they were
7 frequently given free samples of JUUL products by attractive young women.

8 61. Not only did JUUL post photos from the events on social media, but guests were
9 encouraged to post photos using various hashtags such as #Vaporized and #LightsCameraVapor
10 to generate additional interest.

11 62. JUUL held at least 25 promotional events between June 4, 2015 and December 8,
12 2015, alone. Sampling events continued over the following three years. JUUL sponsored a
13 “Music in Film Summit” at the Sundance Film Festival in January 2018 which was laden with
14 celebrities such as Nicholas Cage, Elijah Wood, and members of the rock band Imagine Dragons
15 – an extremely popular band among youth.²⁹

16 63. The purpose of these events was to place JUUL's product directly into the hands
17 of hip and trendy youth “influencers” who, through social media, would help JUUL permeate its
18 target market with JUUL products.³⁰

19 64. A social media influencer is a content creator with a large following who can start
20 social conversations, drive engagement, and set trends among a receptive audience. Brands
21 frequently pay influencers to post sponsored content that will increase exposure for the brands'
22 products and drive sales.

24 ²⁸ Truth Initiative, *Experiential Tobacco Marketing* 3 (2018),
25 [https://www.truthinitiative.org/sites/default/files/media/files/2019/03/truth_initiative-](https://www.truthinitiative.org/sites/default/files/media/files/2019/03/truth_initiative-experiential_tobacco_marketing-fact_sheet-FINAL.pdf)
26 [experiential_tobacco_marketing-fact_sheet-FINAL.pdf](https://www.truthinitiative.org/sites/default/files/media/files/2019/03/truth_initiative-experiential_tobacco_marketing-fact_sheet-FINAL.pdf) (accessed on Dec. 19, 2019).

27 ²⁹ Jackler, *supra* note 20, at 6.

28 ³⁰ *Id.*

65. For example, in preparation for one of its launch parties, Grit provided to JUUL a potential guest list of approximately 230 individuals – comprised of artists, bloggers, designers, DJs, models, musicians, photographers, promoters, pro skaters, stylists, and the like – to which JUUL Chief Marketing Officer Richard Mumby responded in an email dated May 20, 2015, “Overall, this looks fucking incredible. A+ . . . this makes me all the more intent on our having enough products to sample. What’s the max number of people the space can hold?”

66. The listed individuals had an influential social media presence with a youth following.

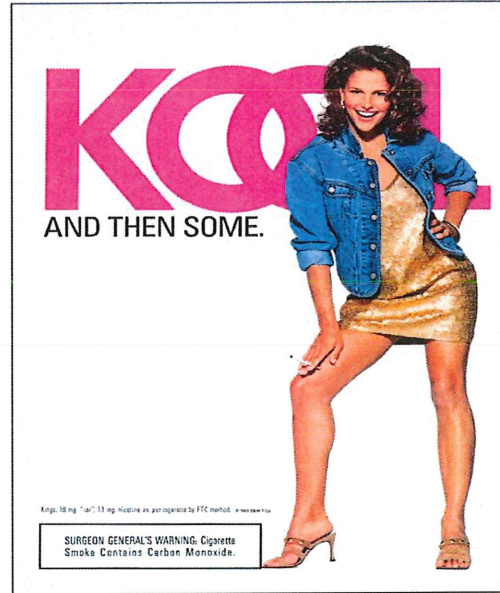
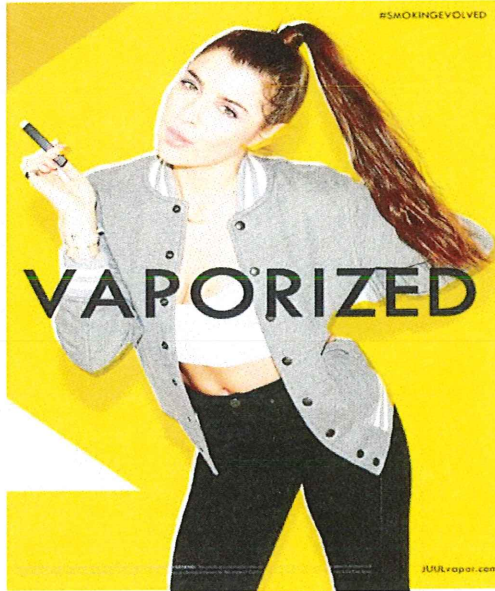
67. In his May 20 email, Mumby expressed no concern for JUUL’s messaging being spread to a youth audience.

68. Even as JUUL shifted in 2016 to a new lifestyle-themed advertising campaign, its advertisements continued to emulate Big Tobacco in their appeal to youth users. The influence of Big Tobacco on JUUL’s marketing campaign is most evident in the striking similarities between JUUL’s advertisements and previous tobacco advertisements.

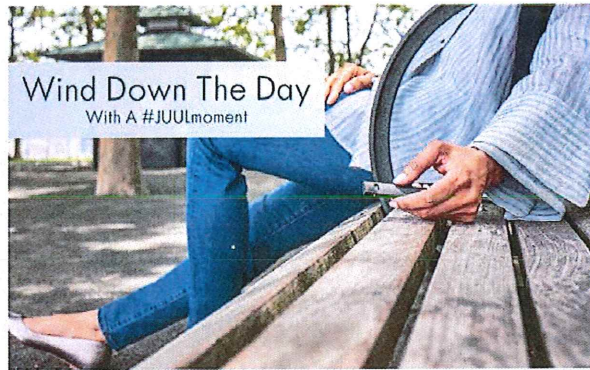
Utilizing a youthful color scheme:



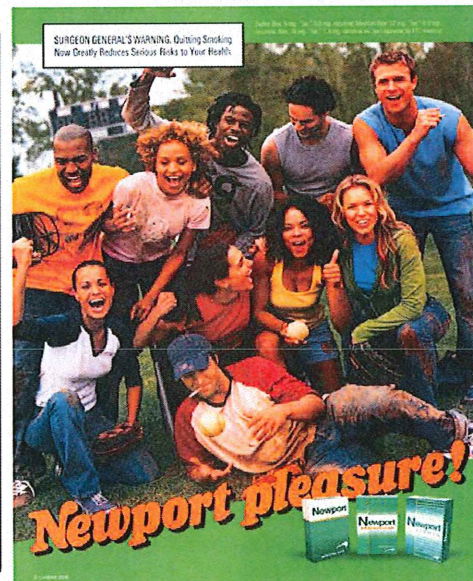
Featuring young, attractive women in suggestive or casual and fun poses:



Promoting product use as a relaxation tool:



Depicting groups of young people, socializing and having fun:



Promoting product as a romantic prop:



69. In response to intense negative media attention and tremendous pressure from investigators due to JUUL's widespread use among non-smoking youth, JUUL, in mid-2018, redefined its mission and marketing from a youthful-oriented campaign to one more closely resembling smoking cessation – the “Switch” campaign.

70. Instead of images depicting glamorous young models seductively exhaling clouds of vapor, JUUL's website depicted middle-aged adults in non-glamorous settings and suggested that JUUL exists solely for the benefit of adult smokers looking for an alternative to traditional tobacco products.

2015



2019



71. JUUL's new focus and imagery of the Switch campaign highlights the egregious nature of its earlier advertising campaigns.

b. Social media

72. JUUL favored youth-driven social media platforms over traditional advertising mediums. Following the then-current youth trends, JUUL heavily leaned on YouTube, Instagram, Facebook, and Twitter to market its products.

1 73. Audiences of these social platforms were comprised disproportionately of youth
2 and young adults, and thus social media marketing reached that population more effectively.

3 74. One effect of JUUL's use of social media was that JUUL was able to evade
4 regulation. Social media is not as visible to the average adult as traditional forms of advertising.
5 This allowed JUUL to continue its marketing campaign with a lower risk that ads would be
6 flagged by regulators.

7 75. The cornerstone of JUUL's strategic social media marketing was its use of paid
8 social media influencers to increase brand awareness and secure the cult following promised by
9 Cult Collective.

10 76. JUUL has employed influencers to boost its product sales and visibility since its
11 inception in June 2015, including when it sought to get its product into the hands of influencers
12 through its launch parties and sampling events. JUUL used influencers to "drive positive
13 commentary and recommendations through word of mouth and social media channels, etc."³¹

14 77. By August 2015, one month into its launch, JUUL estimated that "the Container
15 Tour will get JUUL into the hands of over 12,500 influencers, subsequently introducing JUUL
16 to over 1.5 million people."³²

17 78. Although influencers were paid to promote JUUL products to their followers, their
18 success stems from the consumer misconception that influencers' recommendations are free
19 from company coercion.

20 79. Through social media and the Internet, JUUL harnessed the power of user-created
21 content to expand its reach far beyond what it could accomplish with company advertisements
22 alone.

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25 ³¹ Jackler, *supra* note 20, at 19.

26 ³² Staff of H. Subcomm. On Econ. And Consumer Policy, *Supplemental Memo for*
27 *Hearing on "Examining JUUL's Role in the Youth Nicotine Epidemic: Parts I & II,"* 116th
28 Cong. 7 (2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

1 80. JUUL’s use of influencers helped create a community of users, or “JUULers,”
2 who perpetuated JUUL’s advertising through favorable user-generated comments and images.

3 81. Hashtag marketing supplemented the work done by influencers and exponentially
4 increased the reach of JUUL’s social media marketing strategy, which expanded globally.

5 82. Hashtags link general categories of postings. Three categories of hashtags were
6 relevant to JUUL’s rise in the social media domain: (i) hashtags created by JUUL such as #juul,
7 #juulvapor, and #vaporized; (ii) user-created hashtags that are JUUL focused such as
8 #juulnation and #juullife; and (iii) hashtags for non-JUUL related trending topics such as
9 #mothersday, #goldenglobes, and #nyc.

10 83. JUUL’s marketing agency, Cult Collective, said in its JUUL case study: “We
11 created ridiculous enthusiasm for the hashtag ‘Vaporized,’ and deployed rich experiential
12 activations and a brand sponsorship strategy that aligned perfectly with those we knew would be
13 our best customers.”³³

14 84. JUUL-specific hashtags, used by JUUL, its influencers, and non-affiliated users,
15 targeted JUUL’s existing audience, but its use of non-specific hashtags, like #GoldenGlobes,
16 was an effort to reach a broader audience of non-nicotine users and those who may not have
17 indicated any interest in JUUL’s products or vaping generally. For example, JUUL used its
18 social media account to promote images of Katy Perry at the Golden Globes holding a JUUL.

19 85. Posts by non-affiliated users using the popular JUUL hashtags are predominately
20 youth-created and/or youth-oriented, and most commonly included humor, memes, and pop
21 culture references—evidencing JUUL’s success at capturing the attention of the youth market.
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27 ³³ Jackler, *supra* note 20, at 7 (quoting Cult Creative, JUUL Case Study,
28 <http://cultideas.com/case-study/juul> (accessed Sept. 21, 2018)).

1 when you unplug your grandfather's
2 life support to charge your juul



Hey Kids! Elmo Says:



to be cool,
You gotta hit the Juul!

9 86. JUUL further engaged with social media users by commenting on posts with large
10 followings.

11 87. JUUL's social media campaign was focused and deliberate.

12 88. By the end of 2017, there were 366,786 JUUL-related tweets. "[T]he growth trend
13 in JUUL tweets noticeably tracks well the growth in JUUL retail sales."³⁴

14 89. Seven JUUL-related Instagram accounts, including the official JUUL account and
15 user-created accounts, had 4230 total posts and over a quarter of a million followers by mid-
16 2018.

17 90. As of March 2018, there were approximately 100,000 JUUL-related YouTube
18 videos, 35 of which garnered over 100,000 views each. In total, as of March 2018, those 35
19 JUUL-related videos had over 8 million views combined.³⁵

20 91. As of December 2019 on Instagram alone, the hashtag #juul had over 643,000
21 posts and #juulvapor had over 50,000 posts.

22 ***c. Other youth-oriented advertising efforts***

23 92. Although JUUL primarily focused on social media advertising, JUUL chose a
24 single magazine as part of its advertising campaign in 2015—VICE Magazine.

25 ³⁴ Jidong Huang, et al., *Vaping Versus JUULing: How the Extraordinary Growth and*
26 *Marketing of JUUL Transformed the US Retail E-cigarette Market*, 28 Tob. Control 146, 148
27 (2018).

28 ³⁵ *Id.* at 149.

1 93. VICE Magazine declares itself “[t]he fastest growing, #1 Youth Media Company
2 in the World”³⁶ and has been referred to as “the new teen bible.”³⁷

3 94. JUUL followed up with a twelve-unit billboard in Times Square which “flashed
4 images of attractive and fashionably casual young models smiling, joyously jumping, and
5 kissing while enthusiastically vaping.”³⁸

6 95. Again JUUL’s strategy mirrored that of Big Tobacco which used, for example, a
7 block long billboard in Times Square that depicted an illuminated Joe Camel and puffed “smoke
8 rings.”³⁹

9 *d. In-person presentations at schools*

10 96. In 2012, a Report of the Surgeon General titled, “Preventing Tobacco Use Among
11 Youth and Young Adults,” found that a school-based prevention program sponsored by tobacco
12 companies was not effective and showed negative changes in relation to youth smoking.

13 97. Despite this, JUUL also marketed its products in schools through in-person
14 programs funded by JUUL and attended by its employees or designees.

15 98. At least one JUUL designee came and pitched the program to principals in an
16 Arizona school district.

17 99. On at least one occasion, the program was presented to incoming freshman of an
18 Arizona high school.

22 ³⁶ Vice, *Vice Digital Media Kit* (Jan. 2018), [https://upload-](https://upload-assets.vice.com/files/2016/01/15/1452894236compressed.pdf)
23 [assets.vice.com/files/2016/01/15/1452894236compressed.pdf](https://upload-assets.vice.com/files/2016/01/15/1452894236compressed.pdf).

24 ³⁷ *The Vice Squad: How ‘Vice’ Magazine Became the New Teen Bible*, Independent (Jul.
25 26, 2008), [https://www.independent.co.uk/news/media/the-vice-squad-how-vice-magazine-](https://www.independent.co.uk/news/media/the-vice-squad-how-vice-magazine-became-the-new-teen-bible-876351.html)
26 [became-the-new-teen-bible-876351.html](https://www.independent.co.uk/news/media/the-vice-squad-how-vice-magazine-became-the-new-teen-bible-876351.html) (accessed on Dec. 19, 2019).

27 ³⁸ Jackler, *supra* note 20, at 17.

28 ³⁹ *Id.*

1 **2. The JUUL Product**

2 ***a. JUUL’s youth-oriented design***

3 100. JUUL’s e-cigarette consists of a combination of the JUUL device and replaceable
4 JUUL pods that are prefilled with a proprietary e-liquid made of aerosol carriers, nicotine salt
5 extracts, and flavoring.

6 101. JUUL devices’ sleek design has drawn comparisons to Apple products, including
7 being coined the “iPhone of e-cigarettes.”

8 102. JUUL has touted the comparisons to Apple, while framing its device as beautiful,
9 sleek, cool, hip, fashionable, and smart.

10 103. JUUL devices are easy to use.

11 104. JUUL devices are small, discreet, and closely resemble a USB drive that can be
12 easily hidden and used in a variety of settings – all of which make it more appealing to youth
13 users.

14 105. Across the nation, teachers and school administrators note that students routinely
15 engage in “juuling” at school, as students can conceal the device in their palms, take a hit, blow
16 the small, fairly odorless puff into a jacket or backpack, and continue on with school work in a
17 matter of seconds.

18 106. In Arizona, school resource officers have confiscated hundreds of JUUL devices,
19 chargers, and pods from students as young as elementary grades.

20 107. These officers report that student use of JUUL and other vapor products is by far
21 the biggest single discipline issue facing middle and high schools, with students routinely using
22 JUUL devices in hallways, bathrooms, and even classrooms. They report that other students
23 complain about JUUL device use disrupting class and filling the bathroom with secondhand
24 aerosol. Teachers report their frustration with disruptions as students take frequent trips to the
25 bathroom to “rip,” i.e., use, their JUUL device. In addition, discipline resulting from product
26 confiscation is leading to increases in both in- and out-of-school suspensions.

1 108. Between August and November 2019, teachers and school administrators from
2 just two Arizona high schools confiscated from students at least eighty JUUL products,
3 including devices, pods, and chargers.

4 109. The Arizona Attorney General's Office has been asked to give nearly 200
5 presentations in 2019 alone, with more scheduled in the coming weeks, to students, teachers,
6 administrators, and parents on e-cigarettes, especially JUUL.

7 ***b. JUUL's youth-friendly flavors***

8 110. History and research has shown that sweet-tasting flavored tobacco products are
9 particularly appealing to youth.⁴⁰

10 111. As a result, the sale of flavored cigarettes has been banned under federal law since
11 the passage of the TCA in 2009.

12 112. After the FDA banned flavored cigarettes other than menthol in 2009, JUUL,
13 mirroring the same strategies as Big Tobacco, exploited the opportunity to continue to push
14 flavors for its e-cigarettes.

15 113. JUUL has advertised and sold its pods in a variety of sweetened flavors that appeal
16 to youth, such as Mint (formerly Cool Mint), Cucumber (formerly Cool Cucumber), Creme
17 (formerly Creme Brulee), Fruit (formerly Fruit Medley), and Mango.

18 114. A recent study determined that 96.1 percent of new e-cigarette users between the
19 ages of 12 and 17 started with a flavored product.⁴¹ Additionally, the study found that 70.3
20 percent of 12- to 17-year-old users use e-cigarettes "because they come in flavors I like."⁴² The
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23 ⁴⁰ U.S. FDA, *Menthol and Other Flavors in Tobacco Products* (July 20, 2018),
24 [https://www.fda.gov/tobacco-products/products-ingredients-components/menthol-and-other-](https://www.fda.gov/tobacco-products/products-ingredients-components/menthol-and-other-flavors-tobacco-products)
25 [flavors-tobacco-products](https://www.fda.gov/tobacco-products/products-ingredients-components/menthol-and-other-flavors-tobacco-products).

26 ⁴¹ Draft Guidance, U.S. FDA, *Modifications to Compliance Policy for Certain Deemed*
27 *Tobacco Products* 9 (March 2019).

28 ⁴² *Id.*

1 FDA stated, “This evidence is consistent with earlier research indicating that flavors increase
2 youth appeal of tobacco products.”⁴³

3 115. Over 70 percent of current youth e-cigarette users report using flavored e-
4 cigarettes.⁴⁴

5 *c. JUUL’s new formulation and more potent nicotine strength*

6 116. Early e-cigarettes utilized freebase nicotine, which provided a constant, low blood
7 nicotine level as opposed to the rapid absorption or “spike” of nicotine delivered by a cigarette.
8 They also became uncomfortable to inhale with increasing concentrations of nicotine.

9 117. JUUL’s founders saw this issue as a limitation of the existing e-cigarettes on the
10 market, and set out to create a device that would increase dramatically the nicotine content and
11 delivery while allowing the aerosol to remain comfortable for inhalation by the user.

12 118. JUUL discovered that the addition of an acid, specifically benzoic acid, created a
13 more neutral pH solution. This new solution allowed much higher levels of nicotine to be
14 comfortably inhaled and produced a blood nicotine spike that was approximately equal to or
15 even more potent than combustible cigarettes.

16 119. The resulting JUUL pods brought a new strength of nicotine to the industry that
17 was three times more concentrated than existing e-cigarettes, thus spurring what Dr. Jackler has
18 described as a nicotine “arms race” in the e-cigarette industry.⁴⁵

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24 ⁴³ *Id.*

25 ⁴⁴ Cullen et al., *supra* note 13, at E5.

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27 ⁴⁵ Hanae Armitage, *5 Questions: Robert Jackler Says Juul Spurs ‘Nicotine Arms Race,’*
28 (Feb. 6, 2019), <https://med.stanford.edu/news/all-news/2019/02/5-questions-robert-jackler-says-juul-spurs-nicotine-arms-race.html> (accessed on Dec. 19, 2019).

1 120. Most e-liquids pre-dating JUUL carried 1 to 2 percent nicotine strength, whereas
2 JUUL marketed and continues to market its pods as containing 5 percent⁴⁶ nicotine strength (by
3 weight), which is equivalent to 5.9 percent by volume or approximately 59 mg/ml of nicotine.⁴⁷

4 121. For perspective, 3 percent nicotine strength has been described as intended for the
5 two-pack-a-day smoker,⁴⁸ and the European Union has banned any e-cigarette product
6 containing more than 20 mg/ml of nicotine.

7 122. JUUL's pods enabled a user to inhale nicotine in higher volume and frequency and
8 with less irritation than a conventional e-cigarette or combustible cigarette. This is especially
9 appealing to and is the perfect adaptation for new users, such as youth, who are not accustomed
10 to the effect on the mouth, throat, or lungs from vaping or smoking combustible cigarettes.

11 123. In describing the chemical nicotine formulation and effect in an interview, JUUL
12 engineer Ari Atkins stated, "In the tobacco plant, there are these organic acids that naturally
13 occur. And they help stabilize the nicotine in such a way that makes it . . . I've got to choose the
14 words carefully here: Appropriate for inhalation."⁴⁹ Steven Christensen, a design engineer
15 piped in, "Smoother." Atkins then agreed, "Yeah, it's smoother."⁵⁰

16 124. While providing this "smooth" inhalation, JUUL's own patent indicates that its
17 nicotine salt solution causes blood nicotine levels to be higher than a traditional cigarette.⁵¹

18 ⁴⁶ In 2018, JUUL would introduce 3 percent nicotine strength (by weight) for select
19 flavors although the non-traditional, more appealing, kid-friendly flavors, such as Mango,
20 Cucumber, Creme, and Fruit were typically only offered in 5 percent nicotine strength.

21 ⁴⁷ Armitage, *supra* note 45.

22 ⁴⁸ *Id.*

23 ⁴⁹ David Pierce, *This Might Just Be the First Great E-cig*, Wired (April 21, 2015),
24 <https://www.wired.com/2015/04/pax-juul-ecig/> (accessed on Dec. 19, 2019).

25 ⁵⁰ *Id.*

26 ⁵¹ Patent Filing, PAX Labs, Inc., *Nicotine Salt Formulations For Aerosol Devices and*
27 *Methods Thereof*, US-9215895-B2 (Dec. 22, 2015).

1 125. United States Surgeon General Jerome Adams stated that JUUL’s liquid nicotine
2 mixture is specially formulated to give a smoother, more potent nicotine buzz that “can promote
3 dependence in just a few uses.”⁵²

4 126. JUUL sought nicotine dependence from a young generation of non-smokers.
5 Indeed, the instructions that JUUL included with its devices demonstrated the desire to appeal to
6 inexperienced non-smokers, such as youth.

7 127. JUUL’s device instructions encouraged users to “take small puffs” and “get a feel”
8 for the vapor, “then ease into inhaling.” The instructions continued: “Don’t give up, you’ll find
9 your perfect puff.”

10 128. Experienced smokers would not need such instructions.

11 129. Unfortunately, a large percentage of youth do not even know that they are using a
12 nicotine product when they use e-cigarettes.⁵³

13 130. Nicotine is especially harmful to developing brains. Nicotine use during
14 adolescence can harm the part of the brain responsible for memory, attention, and learning, and
15 early exposure to nicotine increases the severity of future nicotine dependence.⁵⁴

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21 ⁵² Matthew Perrone, *US Surgeon General Takes Aim at Juul, Teen Vaping*, Chicago Sun
22 Times (Dec. 18, 2018 11:02 AM), <https://chicago.suntimes.com/2018/12/18/18482867/us-surgeon-general-takes-aim-at-juul-teen-vaping>.

23 ⁵³ Rachel Boykan, et al., *Self-Reported Use of Tobacco, E-cigarettes, and Marijuana*
24 *Versus Urinary Biomarkers*, 143(5) Pediatrics (May 2019).

25 ⁵⁴ CDC, *E-cigarettes: Talk to Youth About the Risks*,
26 [https://www.cdc.gov/tobacco/features/back-to-school/e-cigarettes-talk-to-youth-about-](https://www.cdc.gov/tobacco/features/back-to-school/e-cigarettes-talk-to-youth-about-risks/index.html)
27 [risks/index.html](https://www.cdc.gov/tobacco/features/back-to-school/e-cigarettes-talk-to-youth-about-risks/index.html) (accessed on Dec. 14, 2019); see Office of the Surgeon Gen., *infra* note 56, at
28 104-107.

131. Youth who are exposed to nicotine through e-cigarette use are more likely to become cigarette smokers, regardless of their risk of cigarette addiction prior to e-cigarette use.⁵⁵

132. Nicotine is a powerful neurotoxin and can be toxic when ingested, causing dizziness, nausea, vomiting, seizures, coma, and even death.⁵⁶

133. JUUL created the perfect storm for a youth epidemic:

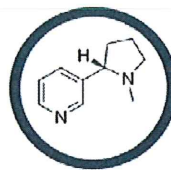
Advertising



Flavors



Nicotine



134. JUUL advertised and sold a highly addictive product that many young users did not even know contained nicotine or did not associate with smoking.

135. It exposed youth to e-cigarettes through “cool” advertising that it knew, from Big Tobacco’s experience, would attract young customers, and it enhanced such tactics with technology-driven tools.

136. JUUL also lured young people with sweet, kid-friendly flavors and a delivery device that was easy to use and easy to hide.

137. Then JUUL hooked youth who tried its product by delivering record levels of nicotine, through a flavored aerosol that was gentle on the mouth, throat, and lungs.

⁵⁵ Michael S. Dunbar et al., *Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-cigarette and Cigarette Use Trajectories From Late Adolescence to Young Adulthood*, 21(10) *Nicotine & Tob. Research* 1414, 1421 (2018).

⁵⁶ Office of the Surgeon Gen., U.S. Dept. of Health and Human Serv., *E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* 119 (2016).

1 138. Through these tactics, JUUL successfully marketed and sold its extremely
2 addictive product to Arizona youth, most of whom were new users to tobacco products and
3 never would have become addicted to nicotine in the first place.

4 **3. JUUL’s failure to take minimal precautions to protect youth**

5 139. Despite JUUL’s disingenuous assertions that it never intended to target youth with
6 its marketing campaigns, it cannot be argued that, JUUL was not on notice of the appeal of its
7 brand to young people. Soon after JUUL’s launch in 2015, the prevalent use of its product
8 among youth was apparent from the volume of youth posts about its product throughout various
9 social media platforms.

10 140. Despite clear evidence of the product’s appeal to youth, JUUL refused to take any
11 meaningful corrective measures in its marketing practices relating to youth for several years.

12 141. For example, prior to August 2018, any individual who “self-identified” as being
13 of legal age could sign up for marketing emails through JUUL’s website without going through
14 a formal age verification process.

15 142. In addition to JUUL’s problematic marketing techniques, its sales practices to
16 restrict underage purchases have been deficient.

17 143. Although JUUL claims that its online store is restricted to “people 21+” and uses
18 third-party verification to prevent underage sales, many underage purchasers have been able to
19 purchase products through its website.

20 144. Although JUUL contends it maintains strict policies and agreements to prevent
21 underage sales of its product in retail stores, these measures also have been largely ineffective.

22 145. For instance, the State has evidence of JUUL products being sold to minors as
23 recently as December 4, 2019. On that date, a fifteen-year-old girl, carrying identification with
24 her true 2004 birthdate, and working with law enforcement officers on routine youth tobacco
25 inspections, entered eight different retailers in the Phoenix metropolitan area and requested
26 vapor products. In three of those stores she was able to purchase a JUUL device and JUUL-
27 compatible pods or a JUUL starter kit. None of the three stores that sold these products in
28 violation of state and federal law even asked the fifteen-year-old girl for her identification.

1 146. As of September 20, 2019, JUUL had yet to discontinue sales to even a single
2 Arizona retail seller of JUUL products for violations of policies and procedures regarding age
3 verification.

4 **D. JUUL’s Deceptive and Unfair Advertising Regarding Nicotine Content**

5 147. JUUL has misrepresented and continues to misrepresent the most material feature
6 of its product – the nicotine content.

7 148. JUUL’s advertisements, including the back of the JUUL pod package, have
8 asserted that “1 JUUL pod contains ~0.7ml with 5% nicotine by weight. Approximately
9 equivalent to about 1 pack of cigarettes.”

10 149. First, JUUL understates its nicotine concentration by using a measuring system of
11 *weight* – where it measures the number of milligrams (mg) of nicotine per milligrams (mg) of
12 liquid in an e-liquid container (i.e., mg/mg).

13 150. JUUL’s measuring system by weight is at odds with the standard industry practice,
14 which employs a measuring system by *volume* – measuring the number of milligrams (mg) of
15 nicotine per milliliter (ml) of liquid in an e-liquid container (i.e., mg/ml).

16 151. Using the industry standard, JUUL’s 5 percent nicotine strength is actually 5.9
17 percent and thus comparable with competitors marketing a 6 percent strength pod.

18 152. Although a difference of 0.9 percent does not seem significant at first glance, this
19 equates to approximately 9 additional mg/ml of nicotine, roughly a 20 percent increase in
20 nicotine strength, taken in by the user.

21 153. Second, the only seeming support that a JUUL pod is equivalent to a pack of
22 cigarettes is in terms of puffs. There are approximately 200 puffs in a JUUL pod while studies
23 estimate there are approximately a similar number of puffs in one pack of cigarettes (i.e., 10
24 inhalations per cigarette with each pack containing 20 cigarettes).

25 154. JUUL’s attempt to equate a JUUL pod with a pack of cigarettes in terms of
26 nicotine content is misleading.

27 155. Although the amount of nicotine ingestion can vary depending on the type of
28 cigarette and user’s inhalation, JUUL pods contain substantially more nicotine than any typical

1 pack of cigarettes. For example, an average smoker ingests anywhere from less than 1 mg to
2 approximately 2 mg of nicotine per cigarette, or roughly 20 mg to 40 mg per pack of cigarettes.
3 A single JUUL pod includes approximately 50 mg of nicotine.

4 156. In addition, JUUL's own patent indicates that its nicotine salt solution causes
5 blood nicotine levels to be higher than a traditional cigarette.⁵⁷

6 157. Third, JUUL only provides nicotine strength in terms of percentage while failing
7 to tell consumers how many actual milligrams of nicotine per milliliter its salt formulation
8 contains.

9 158. Before the emergence of JUUL, the industry primarily relied on disclosing the
10 number of milligrams of nicotine in a given milliliter of e-liquid.

11 159. For example, freebase nicotine, which was the most prevalent type of e-cigarette
12 nicotine on the market at the time, included disclosures such as 3 mg/ml, 6 mg/ml, 12 mg/ml or
13 18 mg/ml.

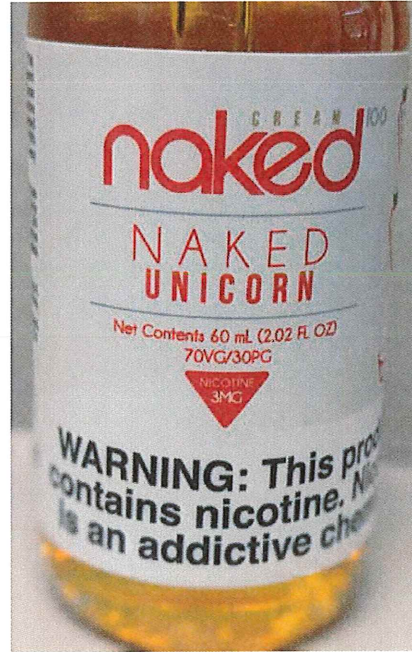
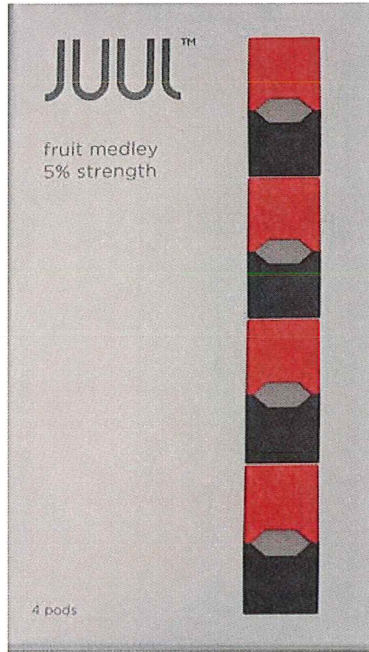
14 160. In order to downplay its nicotine content and avoid disclosing to consumers that
15 its product contained an astronomical 59 mg/ml of nicotine, levels which dwarfed the existing
16 competition and would have likely steered away many consumers, JUUL instead opted to
17 implement a measuring system that would put its numeric "5" in the range of the 3, 6, 12, or 18
18 figures that were prevalent in the existing e-cigarette market.

19 161. To many consumers, the "5" would imply that the nicotine level in JUUL's
20 products fell within the range of existing e-cigarettes.

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⁵⁷ Patent Filing, *supra* note 51.

1 162. To the contrary, JUUL's "5" has more than twenty times the amount of nicotine of
2 an e-cigarette at 3 mg/ml while the packaging implies that the difference is negligible:



16 E. JUUL Fails to Provide Warnings Regarding Nicotine and its Salt Formulation

17 163. Despite JUUL's repeated comparisons of its product to traditional tobacco
18 products, JUUL did not add a nicotine warning to its devices or pods until 2018, when the
19 exterior packaging was changed to add: "WARNING: This product contains nicotine. Nicotine
20 is an addictive chemical."

21 164. Undoubtedly, this failure helped feed many young users' perception that JUUL
22 products did not contain nicotine and were not harmful or addictive.

23 165. JUUL failed to disclose that its salt formulation delivers an exceptionally potent
24 dose of nicotine.

25 166. JUUL failed to disclose that its pods contain substantially more nicotine than a
26 pack of cigarettes.

27 167. JUUL failed to disclose that its salt formulation causes blood nicotine levels to be
28 higher than a traditional cigarette.

1 168. When JUUL launched its products in 2015, it failed to disclose that its salt
2 formulation tripled the nicotine strength of the then existing e-cigarette market.

3 169. JUUL failed to disclose that its nicotine formulation allows particularly high levels
4 of nicotine to be inhaled at higher volume and frequency and with less irritation than traditional
5 freebase nicotine products.

6 170. According to Portland State University researchers, JUUL's addition of benzoic
7 acid "smoothed out the harshness common in earlier e-cigarettes while retaining the 'kick' that
8 smokers loved in a Marlboro. [Portland State] researchers noted that JUUL had rapidly
9 duplicated – and improved – a formula that it took tobacco growers and purveyors centuries to
10 perfect."⁵⁸

11 171. In 2014, after JUUL's founders recognized that the nicotine delivery of its
12 products to a user was extreme, causing some testers' to vomit or their hands to shake, the
13 company applied for a patent that described methods for alerting the user or disabling the device
14 after a certain nicotine threshold had been reached. According to a former JUUL scientist,
15 Chenyue Xing, who helped patent its liquid-nicotine formula, "One idea was to shut down the
16 device for a half-hour or more after a certain number of puffs . . . The concern stemmed in part
17 from the fact that a JUUL – unlike a cigarette – never burns out." JUUL, however, never
18 adopted a dosage-control feature.⁵⁹

25 ⁵⁸ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters
26 (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/> (accessed on
27 Dec. 19, 2019).

28 ⁵⁹ *Id.*

1 **CLAIM FOR RELIEF**

2 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§ 44-1521 *et seq.***

3 172. The State realleges all prior allegations of this Complaint as though fully set forth
4 herein.

5 173. The conduct described in the preceding paragraphs of this Complaint constitutes
6 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
7 misrepresentations, or concealment, suppression or omission of material facts with intent that
8 others rely on such concealment, suppression or omission, in connection with the sale or
9 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to 44-1534, including, but not
10 limited to:

11 174. Defendant engaged in deceptive and unfair acts and practices by advertising JUUL
12 products in a manner that appealed to young people while misleading them on the risks
13 associated with its products;

14 175. Defendant engaged in deceptive and unfair acts and practices by advertising JUUL
15 products in a manner that targeted young people while misleading them on the risks associated
16 with its products;

17 176. Defendant engaged in deceptive and unfair acts and practices by misleading
18 consumers about the nicotine content of JUUL products in advertising its nicotine strength
19 solely as a percentage without disclosing the strength in milligrams per milliliter (mg/ml);

20 177. Defendant engaged in deceptive and unfair acts and practices by misleading
21 consumers about the nicotine content of JUUL products in advertising its nicotine strength as
22 concentration by weight, rather than volume;

23 178. Defendant engaged in deceptive and unfair acts and practices by misrepresenting
24 that one JUUL pod contains an amount of nicotine approximately equivalent to one pack of
25 cigarettes; and

26 179. Defendant engaged in deceptive and unfair acts and practices by concealing,
27 suppressing, or omitting the material facts that (1) JUUL products contain nicotine, an addictive
28 chemical; (2) JUUL's nicotine formulation delivers an exceptionally potent dose of nicotine

1 with its pods containing substantially more nicotine than a pack of cigarettes and its nicotine salt
2 formulation causing blood nicotine levels to be higher than a traditional cigarette; and (3)
3 JUUL's nicotine formulation allows particularly high levels of nicotine to be inhaled at higher
4 volume and frequency and with less irritation than traditional freebase nicotine products.

5 180. Defendant engaged in the concealments, suppressions, or omissions of material
6 facts described above with the intent that others would rely on such concealments, suppressions,
7 or omissions.

8 181. Defendant's conduct described above caused or was likely to cause substantial
9 injuries to consumers that were not reasonably avoidable by consumers and were not
10 outweighed by countervailing benefits to consumers or to competition.

11 182. While engaging in the conduct alleged in this Complaint, Defendant knew or
12 should have known that its conduct was of the nature prohibited by A.R.S. § 44-1522, subjecting
13 itself to enforcement and penalties as provided in A.R.S. § 44-1531(A).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the State respectfully requests that the Court:

16 183. Pursuant to A.R.S. § 44-1528(A)(1), issue permanent injunctive relief, enjoining
17 and restraining (a) Defendant, (b) its officers, agents, servants, employees, attorneys, and (c) all
18 persons in active concert or participation with anyone described in part (a) or (b) of this
19 paragraph, directly or indirectly, from engaging in the unlawful acts and practices alleged
20 herein;

21 184. Pursuant to A.R.S. § 44-1528(A)(2), order that Defendant restore to all persons in
22 interest any monies or property, real or personal, which may have been acquired by any
23 unlawful act or practice alleged herein;

24 185. Pursuant to A.R.S. § 44-1528(A)(3), order Defendant to disgorge all profits, gains,
25 gross receipts, or other benefits obtained as a result of its unlawful acts alleged herein;

26 186. Pursuant to A.R.S. § 44-1531, order Defendant to pay to the State of Arizona a
27 civil penalty of up to \$10,000 for each willful violation by Defendant of A.R.S. § 44-1522;

187. Pursuant to A.R.S. § 44-1534, order Defendant to reimburse the State for its costs and attorneys' fees incurred in the investigation and prosecution of Defendant's activities alleged in this Complaint;

188. Pursuant to A.R.S. § 44-1201, require Defendant to pay pre-judgment and post-judgment interest to the State and all consumers; and

189. Award the State such further relief as the Court deems just and proper under the circumstances.

DATED this 7th day of January, 2020.

MARK BRNOVICH
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By:

Intro

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Neil Singh
Stephanie Elliott
Assistant Attorneys General
Attorneys for State of Arizona

APPENDIX 1

YOUTH E-CIGARETTE EPIDEMIC & JUUL MARKET DATA + NYTS

Monthly E-Cigarette Sales (in Millions)

