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August 14, 2020

Joseph J. Simons, Chairman
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J)
Washington, DC 20580

RE: Tobacco Reports; PRA Comment: FTC File No. P072108

Dear Chairman Simons,

The Campaign for Tobacco-Free Kids is pleased to submit comments on the FTC's tobacco marketing reports. We strongly support the FTC's intention to continue its collection and reporting of cigarette and smokeless tobacco manufacturers' annual sales and marketing expenditures, which provide critical data to researchers, policymakers, advocates and the general public.

Tobacco use is the leading preventable cause of death in the United States and around the world, and it is perpetuated by the tobacco industry's extensive marketing practices—many of which appeal to youth. As reported by the U.S. Surgeon General in 2014, "Tobacco industry advertising and promotion cause youth and young adults to start smoking, and nicotine addiction keeps people smoking past those ages."¹

In order to reduce tobacco use and its deadly toll, it is necessary to have access to timely and accurate data that provide a detailed look at how and where the tobacco industry is spending its marketing dollars. While we know more about the industry's marketing practices than perhaps ever before, we also know that, in the face of a growing number of tobacco regulations, tobacco companies have been altering their marketing strategies in an effort to maintain their sales and profits. Continuing to collect data that illuminate how the industry's tactics are changing is crucial for informing future tobacco control efforts.

The FTC is currently the only public source for data on cigarette and smokeless tobacco companies' marketing and promotional expenditures. No other agency collects and publishes such information directly from the companies, making the FTC reports the most accurate and reliable assessment of tobacco marketing and promotion expenditures available.

¹ U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 2014, available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

The FTC marketing reports on cigarettes and smokeless tobacco provide important information that the tobacco control and public health communities rely upon in their daily efforts to reduce tobacco use and monitor industry marketing activities. This information is widely used by public health professionals, academics, the media, policymakers and government agencies at local, state and federal levels to monitor trends in marketing and sales, emphasize the significant investment tobacco companies make to market their products and understand the impact it has on youth and adult tobacco use. These data are also critical to inform policy and regulatory decision-making.

While the current reporting of tobacco companies' marketing and promotional expenditures is informative, there are additional actions that could be taken to enhance the quality, utility and clarity of the data. For example:

- Clarifying definitions for expenditure categories. For instance, for “coupons” and “internet – other,” are coupons obtained online—whether through websites, e-mail messages, or mobile applications—counted as coupon expenditures or internet expenditures?
- Including data on a company-specific or brand-specific basis.²
- Requiring manufacturers to report on expenditures related to corporate sponsorships and advertisements.
- Timely publication of data reports (within one year of data collection).

We also recommend that the FTC extend its data collection to include electronic cigarettes (e-cigarettes) and cigars. Data demonstrate that youth use e-cigarettes and cigars in large numbers. According to the 2019 National Youth Tobacco Survey, over 5.3 million middle and high school students currently use e-cigarettes and over 1.4 million middle and high school students currently smoke cigars. Youth use of e-cigarettes far exceeds use of cigarettes and other tobacco products.³

The FTC released one report with marketing data for cigars in 1999.⁴ Considering the dramatic changes in the cigar landscape since then, it is important to know how the cigar industry has been marketing its products. Although cigarette smoking has declined, total consumption of cigars in the United States has increased dramatically since 1993, reversing a decline in consumption that had persisted for most of the twentieth century.⁵ Between 2000 and 2018, for example, cigar consumption increased by 114 percent while cigarette consumption declined by 46 percent.⁶ There has been an explosion of cheap, flavored cigars, which are popular among youth and young adults. According to Nielsen market data, dollar sales of flavored cigar products increased by 46.5 percent between 2008 and 2015, and the number of unique

² We recognize that the FTC is constrained from releasing certain data due to trade secret or confidentiality reasons as detailed in U.S.C. 15 Section 46(f). However, we believe that the data provided by the tobacco industry for these marketing reports does not fall into the category of trade secrets or confidentiality, particularly since much of it is already available to other private sector entities that track and report on industry sales, marketing and promotion trends (e.g., Simmons, MRI, Maxwell).

³ CDC, “Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019,” *MMWR* 68(12), December 6, 2019.

⁴ See FTC, Commission and Staff Reports, *1999 Report on Cigar Sales, Advertising and Promotion*, July 1999, <http://www.ftc.gov/reports/1999-report-cigar-sales-advertising-promotion>.

⁵ National Cancer Institute (NCI), *Cigars: Health Effects and Trends. Smoking and Tobacco Control Monograph No. 9*, 1998, http://cancercontrol.cancer.gov/Brp/tcrb/monographs/9/m9_complete.pdf. Economic Research Service, U.S. Department of Agriculture (USDA). U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics.

⁶ TTB, Tobacco Statistics.

cigar flavor names more than doubled, from 108 to 250, over this same time period.⁷ Additionally, similar to e-cigarettes, cigars are marketed using social media, hip hop and rap music event sponsorship, celebrity endorsements and point-of-sale promotions.⁸ As a result, there has been no significant change in cigar smoking among youth since 2014, and cigars are the second most popular tobacco product among youth. In 2019, 7.6 percent of high school students reported smoking cigars in the past 30 days.⁹ The public would greatly benefit from the transparency provided by cigar marketing and sales data collection by FTC.

In 2015 and 2016, FTC issued a request for comments on proposed sales and marketing data collection from e-cigarette companies. The Campaign for Tobacco-Free Kids and other public health groups strongly supported the need for this data collection, and we objected to FTC's decision in March 2017 to withdraw its request. In October 2019, the FTC issued orders to six e-cigarette manufacturers on the companies' sales, advertising, and promotional methods. We urge the FTC to promptly publish the findings of these submissions. We also stress the importance of extending such data collection to a larger swath of the e-cigarette market and must account for the rapidly changing nature of the market. As of January 2014, researchers had identified more than 7,700 unique e-cigarette flavors available online, with an average of more than 240 new flavors added per month.¹⁰ By 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.¹¹ While larger manufacturers like Juul undoubtedly fueled the youth e-cigarette epidemic, marketing and sales data collection should not be limited to larger manufacturers like Juul. By September 2018, researchers had identified 14 brands offering "Juul-compatible" pods and 39 Juul knock-off devices that offered nicotine levels equal or higher to that of JUUL. Many of these companies offer the devices and pods for cheaper than Juul and in a wider variety of kid-friendly flavors.¹² After the FDA exempted disposable e-cigarettes from its January 2020 policy prioritizing enforcement of flavored e-cigarettes, disposable e-cigarettes rapidly gained market share. A 2019 study identified over 30 brands of disposable e-cigarettes. In some cases, these products are similar in appearance to Juul, but are pre-charged, cheaper (some for less than \$5), available in a wide variety of flavors, and some have even higher nicotine concentrations.¹³

E-cigarette manufacturers promote their products in the absence of many of the marketing or advertising restrictions like those that apply to cigarettes under the Master Settlement Agreement ("MSA") or regulations promulgated pursuant to the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act") that were designed to protect youth from cigarette and other tobacco marketing. As a result, e-cigarette companies are able to employ many of the same strategies used for years by cigarette manufacturers that proved so effective in reaching kids, such as celebrity endorsements, slick magazine

⁷ Delnevo, CD, Giovenco, DP, & Miller, EJ, "Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act," *Tobacco Regulatory Science*, 3(2 Suppl 1):S8-S16, 2017.

⁸ Ganz, O, et al., "Swisher Sweets 'Artist Project': using musical events to promote cigars," *Tobacco Control*, published online February 8, 2018.

⁹ CDC, "Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019," *MMWR* 68(12), December 6, 2019.

¹⁰ Zhu, S-H, et al., "Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation," *Tobacco Control*, 23(Suppl 3):iii3-iii9, 2014, http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full.

¹¹ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018

¹² Jackler, RK, Ramamurthi, D, "Nicotine arms race: JUUL and the high-nicotine product market" *Tobacco Control*, published online February 6, 2019.

¹³ Williams, R, "The rise of disposable JUUL-type e-cigarette devices," *Tobacco Control*, published online December 5, 2019.

advertisements, and sports and music sponsorships. In 2016, the Surgeon General concluded that, “E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”¹⁴ Research shows that these marketing strategies have effectively reached youth and young adults. The 2019 National Youth Tobacco Survey found that 7 out of 10 middle and high school students—18.3 million youth—report being exposed to e-cigarette advertisements.¹⁵

Additional data detailing how and where cigars and electronic cigarettes are being marketed are essential to understanding the changing tobacco landscape and informing tobacco control efforts and regulatory decision-making at the local, state and federal levels.

Despite the progress made in tobacco control, the ever-changing tobacco environment makes the continuation of the FTC’s tobacco marketing reports just as important as before. These reports are fundamental to much of the work being done in tobacco control. It is critical that the FTC continue to publish these data, which can be used to support tobacco control policies, inform regulatory decision-making and educate the public, policymakers and media about the nature and extent of the tobacco industry’s marketing practices.

Thank you for your ongoing work on these important tobacco marketing reports.

Respectfully submitted,

A handwritten signature in cursive script that reads "Meg Riordan".

Meg Riordan
Vice President, Research
Campaign for Tobacco-Free Kids

¹⁴ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

¹⁵ CDC, “Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019,” *MMWR*, 68(12), December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>.