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August 24, 2020

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

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

Dear Chairman Simons:

Truth Initiative writes today to wholeheartedly support the renewal of the information collection of the Federal Trade Commission (FTC) Cigarette and Smokeless Tobacco Reports and to reiterate their powerful utility. We also propose some suggestions to enhance the quality and make the utility of these information collections even more valuable. We appreciate the opportunity to provide information based on our expertise as a public health and public education and marketing organization during this public comment period.

Truth Initiative is committed to creating a generation of Americans for whom tobacco use is a thing of the past. Truth Initiative's flagship program is the proven-effective and nationally recognized youth smoking prevention campaign, truth®. Other programs include This is Quitting, a first-of-its-kind text messaging program to help young people quit vaping; EX®, an innovative smoking cessation program; research initiatives exploring the causes, consequences and approaches to reducing tobacco use; and programs to address the health effects of tobacco use – with a focus on priority populations disproportionately affected by the toll of tobacco.

**Utility of the Data**

First, Truth Initiative reiterates, as it has for many years, the critical importance and utility of these data collections. The Cigarette and Smokeless Tobacco Reports provide information that is not available elsewhere and is not duplicative of other data collections. These reports often provide the basis for strong public health policies with regard to tobacco use and marketing – these are policies that save lives. The advertising and marketing of cigarettes and smokeless tobacco contribute to youth initiation of these products.<sup>1</sup> Without the data FTC collects for these reports, researchers, public health practitioners, advocates, and the public in general would have a much



less complete picture of the tobacco industry's tactics to lure new users and keep current users of their deadly products.

Truth Initiative thanks the FTC for making changes to the Cigarette and Smokeless Tobacco report orders over the years so that the reports continue to be relevant and reflect the current cigarette and smokeless tobacco marketplace. For example, we appreciate the removal of tar, nicotine and carbon dioxide yields as part of the cigarette report. Truth Initiative (writing as the American Legacy Foundation at the time) strongly supported this change and submitted comments to that effect in October of 2014.

As the tobacco industry's products and marketing evolve, we respectfully submit suggestions to continue to improve the utility of these data and ensure that they accurately reflect the current market situation, as well as marketing strategies, employed by the industry.

### **Ensuring New Products and their Marketing are Included in the Reports**

#### **Cigarettes**

##### **Heated Tobacco Products**

The tobacco industry has engaged in a strategy to attempt to overhaul its reputation with novel products and electronic devices – even in the cigarette category – that claim to deliver fewer toxins to users. This includes heated tobacco products under the brand name iQOS or Eclipse. Other brands are available worldwide. These products are considered cigarettes because they use a roll of tobacco wrapped in paper. iQOS has recently received marketing orders from the Food and Drug Administration (FDA) to not only be marketed in the U.S. but to also claim that complete switching to iQOS from regular cigarettes can reduce consumer's exposure to harmful constituents.<sup>2</sup> While Philip Morris International (PMI)\* has thus far only released iQOS in a limited number of U.S. cities, they do plan to begin expanding their sale and marketing to other cities.<sup>3</sup>

Despite a limited release of the product, marketing of iQOS has been significant. In the fall of 2019 alone, Nielsen Ad Intel reported that PMI had spent \$1.29 million in advertising in higher-end fashion and tech magazines in the U.S.<sup>4,5</sup> While FDA has required Altria to provide information on steps it is taking to prevent youth exposure to social media advertising and they are not allowed to target youth, social media advertising is still allowed. We know that iQOS already has Facebook and Instagram accounts for its U.S. market which promote its referral reward program, introduce product features, and highlight store locations. For now, the accounts have very small followings, but there is no guarantee they will stay that way as the product is released in additional cities, and we have learned already that online searches for iQOS, its Atlanta store and iQOS airport lounges have gradually

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\* While iQOS is a Philip Morris International product, it is licensed to be sold and marketed in the U.S. by Altria, PMI's American counterpart.



increased since November of 2019.<sup>6</sup> Furthermore, the fact that IQOS is sold in standalone stores and its Heat Sticks are sold in convenience stores presents new marketing outlets and expenditures.

As can be seen by the marketing of IQOS, one product in a thus-far limited release, FTC must ensure that marketing information for products like IQOS is captured. Truth Initiative recommends that marketing for heated tobacco products, like IQOS, be included and reflected in all the categories in the Cigarette Order To File Special Report. This includes assigning a Brand Number for each company that sells such products. We note that the 2019 Cigarette Order To File Special Report<sup>7</sup> (referred to throughout this comment as the “Cigarette Order”) has removed the “variety” question seen in previous orders, and encourage FTC to consider if products like these may require that question be reinstated in future Cigarette Orders, particularly as other questions about the variety of cigarettes still remain in the order. We further recommend that in future Cigarette Orders in Data File 1 a field be added to capture these heated tobacco products, similar to the FILCODE and FLAVOR fields in the 2019 Cigarette Order.

#### Low Nicotine Cigarettes

Truth Initiative further recommends that FTC ensure that marketing data on low nicotine cigarettes are also captured in the Cigarette Report. While the market share of these products is extremely small compared to other products, it is important that we understand the kind of marketing that is used to promote these products. This is especially relevant since FDA recently authorized the marketing of 22<sup>nd</sup> Century Group’s Moonlight and Moonlight Menthol low nicotine cigarettes.<sup>8</sup> Cigarettes containing non-addictive levels of nicotine have the potential to help smokers quit.<sup>9</sup> However, the marketing of such products plays a critical role in any public health benefit these products may have. If marketed irresponsibly they could pose considerable public health harms.<sup>9</sup> While they do not enjoy the same level of market share that the companies that the FTC currently surveys do, given the potential public health benefits – and the potential harms if not marketed correctly - of low nicotine cigarettes, it is important to understand how and to what extent they are marketed.

To that end, we respectfully recommend that you add 22<sup>nd</sup> Century to the list of companies (as noted in field 2 of the 2019 Cigarette Order) that are required to fill out future Cigarette Orders. Further, we recommend that for future Cigarette Orders, in Data File 1, you add a question about whether the product is low nicotine, similar to the FILCODE and FLAVOR questions in the 2019 Cigarette Order.

#### New Cigarette Products and Cigarette Products that have been removed

Truth Initiative notes that in the 2019 Cigarette Order, FTC removed fields about the number of new cigarette brands that have entered the market in a given year; as well as those that are no longer sold (and when they were last sold). Given the changing landscape of cigarettes, as highlighted by the two examples above, Truth Initiative recommends that these fields be reinstated. Furthermore, new products are not supposed to enter the market



without FDA authorization. This information may help FDA in its enforcement activities, and/or may help the public assist in those activities as well.

## **Smokeless Tobacco**

### Nicotine Pouches and Lozenges

Several companies in recent years and months have released oral nicotine products, including nicotine pouches and/or lozenges. The major tobacco companies in the smokeless tobacco space have products in this category. For example, Altria owns significant stock in the on! product; Zyn is a Swedish Match product, Velo is a Reynolds product, and Dryft is a Kretek International product.<sup>†</sup>

While not actually containing tobacco, oral nicotine products are regulated as tobacco products, and are closer to smokeless tobacco than other products. Indeed, financial reports include these products in the smokeless tobacco category.<sup>10</sup> Several reports have indicated significant growth in these products in recent months.<sup>10-13</sup> In fact, one report noted that over the last year, as a category, dollar sales are up 25.8%. However, dollar sales of the individual brands increased by at least 140% and most brands increased significantly more than that.<sup>10</sup>

As such, it is important that these products are specifically accounted for in the FTC Smokeless Tobacco Reports going forward. To that end, we recommend that in the Product Type question (Question 6 in the 2019 Smokeless Tobacco Order to File Special Report), FTC add a new letter for Nicotine Pouches or Lozenges. Thus, based on the 2019 Smokeless Tobacco Order to File Special Report, we recommend that “Nicotine Pouches or Lozenges” be assigned letter “J” and the “Other” category be assigned letter “K”.

### **Capturing Flavored Smokeless Tobacco Products**

Smokeless tobacco products come in a wide variety of flavors. Indeed, flavors are very popular among youth smokeless tobacco users. A recent national survey noted that nearly half (48.0%) of current youth smokeless tobacco users use a flavored product.<sup>14</sup> Further, 81.2% of youth ever snus users reported using a flavored product the first time they used it; and 68.9% of youth ever smokeless tobacco users reported that the first time they used smokeless tobacco it was a flavored product.<sup>15</sup> Moreover, 69.3% of youth current smokeless tobacco users and 67.2% of youth current snus users reported flavors as a major reason they use the product.<sup>15</sup> Historically, smokeless tobacco companies added flavors to their products to attract new users, especially young males.<sup>16</sup> There is evidence that advertising

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<sup>†</sup> We note that Kretek International is not among the companies that the FTC currently surveys for the Smokeless Tobacco Report. We encourage FTC to keep a close eye on the Dryft product and ensure that, should Kretek's market share rise to the appropriate level, that Kretek International be sent the Order to File Special Report for Smokeless Tobacco.



for flavored smokeless tobacco products has increased over time as well – rising from 17% of magazines in 1998 to 71% in 2005.<sup>16</sup>

Thus, it is important that the Smokeless Tobacco Report collect more specific data on flavored smokeless tobacco products. While flavor is captured to a certain extent in the Variety Description question (Question 7 in Datafile Number 1 of the 2019 Smokeless Tobacco Order to File Special Report) it is also lumped in with several other descriptive characteristics of the product. Truth Initiative recommends that information about flavors be specifically reported. This could be accomplished by adding a field for FLAVOR, as is required in the Cigarette Order to File Special Report.

### **Clarifying that Streaming Shows are Included in the Certification Questions**

Truth Initiative greatly appreciates and applauds FTC for including video games among the categories of media for which tobacco companies must certify that no compensation was received or given in connection with the production of such media, product placement in such media, or the appearance of cigarette or smokeless tobacco products or tobacco imagery in such media. (Questions 9A-D in the 2019 Cigarette Order to File Special Report, and Questions 10A-D in the 2019 Smokeless Tobacco Order to File Special Report). Truth Initiative has reported about the infiltration of cigarette and smokeless tobacco imagery in video games previously.<sup>17-19</sup>

While we have long supported keeping tobacco imagery of any kind out of movies, more recently we have become extremely concerned with the amount of tobacco imagery in streaming shows, especially as streaming has become a larger and larger portion of media consumption in the U.S. Indeed, in 2019, media and entertainment companies spent over \$120 billion on original content.<sup>20</sup> U.S. streaming accounted for nearly 20% of television consumption for most Americans in 2019, almost doubling its 2018 market share.<sup>21</sup> The percentage of youth reporting that their most-watched shows aired on streaming platforms rose from 29% in 2018 to 84% in 2019.<sup>22</sup>

A new Truth Initiative study establishes a link between smoking imagery and e-cigarette use, finding that high exposure to tobacco imagery through episodic programming can triple a young person's odds of starting to vape.<sup>22,23</sup> This makes it even more important to ensure that tobacco imagery of any kind is discouraged in the movies, television – including streaming-, or video games that young people watch and play. As such, we strongly recommend that FTC make it clear that streaming content is included in the “television” category for these questions. For example, FTC might phrase the question in 9A of Cigarette Order to File Special Report (10A in the Smokeless Tobacco version)<sup>7,24</sup> to read: “State whether the Company or any other persons working for or on behalf of the Company paid any money or compensation, or many any other contribution (including, but not limited to, goods or services, including free cigarettes [or smokeless tobacco]) in connection with any production or filming of any motion picture(s), television show(s) – *including scripted, original shows streamed via the internet* – or video game(s) during calendar year \_\_\_\_\_. If so,





please identify those show(s), movie(s), and video game(s), and the dollar value of each payment or contribution.” Italics are simply to show where the change was made.

Adding the “including scripted, original shows steamed via the internet” as described above to Questions 9A-D in the Cigarette Order to File Special Report (10A-D in the Smokeless Tobacco Order to File Special Report) will make it clear where streamed television shows fit. As the Cigarette and Smokeless Tobacco orders are currently written, it is possible that companies might not include streaming shows at all or may include them in 9E or 10E respectively, which refer to videos on the internet. This would not be an appropriate comparison, since it is important to look at scripted, original programming whether it is on broadcast or streaming platforms.

#### **Clarifying Definitions of “Youth” and “Underage” in the Orders**

In both the 2019 Cigarette and Smokeless Tobacco Orders, FTC defines “youth” and “underage” as meaning “persons younger than 18 years of age.”<sup>7,24</sup> Now that the federal minimum age to purchase tobacco is 21, Truth Initiative recommends that FTC clarify that “youth” refers to persons younger than 18 years of age, and “underage” refers to person younger than 21 years. We further recommend that for future Cigarette and Smokeless Tobacco Orders, FTC includes both “youth and underage” wherever “youth” appears in the 2019 Orders. For example, Item 12 in the 2019 Cigarette Order currently reads: Report the dollar amount expended during calendar year 2019 by the Company in the United States on advertisements directed to youth or their parents that are intended to reduce youth smoking.”<sup>7</sup> We recommend that in future Orders that item read: Report the dollar amount expended during calendar year \_\_\_\_ by the Company in the United States on advertisements directed to youth and underage persons or their parents that are intended to reduce youth and underage smoking.”

#### **E-cigarette and Cigar Marketing Data Must Also Be Collected**

While not the subject of this particular information collection, Truth Initiative takes the opportunity here to continue to urge FTC to collect similar marketing data on e-cigarettes and cigars as that found in the Cigarette and Smokeless Tobacco Reports. Truth Initiative has been advocating that FTC collect these data since at least 2014, and we reiterate that advocacy here. We realize that FTC has already put an order for collecting such data from e-cigarette companies – and we appreciate FTC’s careful consideration of comments that Truth Initiative and other public health organizations put forward on that data collection. However, no report has been forthcoming. Given the youth e-cigarette epidemic, marketing information around these products is more important than ever. Youth use cigars at higher rates than cigarettes,<sup>14</sup> making marketing information around cigars equally important. Truth Initiative encourages FTC to issue orders to the manufacturers of those products and produce the reports as soon as possible.



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### **Conclusion**

The FTC Cigarette and Smokeless Tobacco Reports are invaluable resources of information on the tactics the tobacco industry uses to market its addictive and harmful products. We believe the utility of these reports would be even greater if FTC makes the suggested changes above, and can help in developing evidence-based, life-saving policies with regard to tobacco marketing and advertising. Please contact Stacey Younger Gagosian, Managing Director of Public Policy at [sgagosian@truthinitiative.org](mailto:sgagosian@truthinitiative.org) if you have further questions.

Sincerely,

M. David Dobbins  
Chief Operating Officer



## References

1. U.S. Department of Health and Human Services. *The health consequences of smoking – 50 years of progress: a report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health;2014.
2. Food and Drug Administration. FDA Authorizes Marketing of IQOS Tobacco Heating System with 'Reduced Exposure' Information. <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-iqos-tobacco-heating-system-reduced-exposure-information>. Published July 7, 2020. Accessed.
3. Blackwell JR. Altria expanding test market for iQOS 'heat not burn' device to Charlotte, N.C. Richmond Times-Dispatch. [https://richmond.com/business/altria-expanding-test-market-for-iqos-heat-not-burn-device/article\\_9751b828-0da0-59d5-afd1-79f57c41675d.html](https://richmond.com/business/altria-expanding-test-market-for-iqos-heat-not-burn-device/article_9751b828-0da0-59d5-afd1-79f57c41675d.html). Published February 19, 2020. Accessed.
4. Nielsen Ad Intel.
5. Truth Initiative Internal Marketing Research.
6. Google Trends.
7. Federal Trade Commission. Order to File Special Section 6(b) Report on Cigarettes in Calendar Year 2019 (Generic Text Version). [https://www.ftc.gov/system/files/documents/reports/order-file-special-section-6b-report-cigarettes-calendar-year-2019-generic-text-version/p114508\\_generic\\_cigarette\\_order.pdf](https://www.ftc.gov/system/files/documents/reports/order-file-special-section-6b-report-cigarettes-calendar-year-2019-generic-text-version/p114508_generic_cigarette_order.pdf). Published 2020. Accessed.
8. Food and Drug Administration. FDA permits sale of two new reduced nicotine cigarettes through premarket tobacco product application pathway. <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-two-new-reduced-nicotine-cigarettes-through-premarket-tobacco-product-application>. Published December 17, 2019. Accessed.
9. Truth Initiative. Comment to FDA on Modified Risk Tobacco Product Applications for VLN King and VLN Menthol King, Combusted, Filtered Cigarettes, Submitted by 22nd Century Group, Inc. Docket No. FDA-2019-N-0994. <https://beta.regulations.gov/document/FDA-2019-N-0994-0192>. Published May 18, 2020. Accessed.
10. Herzog B. Goldman Sachs Equity Research. Americas Tobacco: Tobacco Nielsen Data thru 7/25 – Nicotine volumes moderate slightly on stronger pricing. July 25, 2020.
11. Gretler C. BAT Sells More Smoking Alternatives Despite Regulatory Crackdown. Bloomberg Government. Published February 27, 2020. Accessed.
12. Kary T, Gretler C. Big Tobacco Hopes Oral Nicotine Pouches Fill the Vaping Void. Bloomberg. <https://www.bloomberg.com/news/articles/2020-07-17/big-tobacco-hopes-oral-nicotine-pouches-fill-the-vaping-void>. Published July 17, 2020. Accessed.
13. Ryan C. The Battle for Chewing Tobacco's Modern Cousin. The Wall Street Journal. <https://www.wsj.com/articles/the-battle-for-chewing-tobaccos-modern-cousin-11581778801>. Published February 15, 2020. Accessed.





14. Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students - United States, 2019. *Morbidity and mortality weekly report Surveillance summaries* (Washington, DC : 2002). 2019;68(12):1-22.
15. Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*. 2015;314(17):1871-1873.
16. Kostygina G, Ling PM. Tobacco industry use of flavourings to promote smokeless tobacco products. *Tobacco control*. 2016;25(Suppl 2):ii40-ii49.
17. Truth Initiative. Played: Smoking and Video Games. <https://truthinitiative.org/sites/default/files/Played-Smoking-in-Video-Games-2017.pdf>. Published 2017. Accessed.
18. Truth Initiative. Played: This Year's Video Games Glamorize Tobacco Use to Youth. <https://truthinitiative.org/news/played-this-years-video-games-glamorize-tobacco-use-youth>. Published December 19, 2017. Accessed.
19. Truth Initiative. Action needed: Tobacco in pop culture. <https://truthinitiative.org/research-resources/tobacco-pop-culture/action-needed-tobacco-pop-culture>. Published July 11, 2019. Accessed.
20. Variety. Entertainment Companies Spend \$121 Billion on Original Content in 2019. <https://variety.com/2020/biz/news/2019-original-content-spend-121-billion-1203457940/>. Published January 6, 2020. Accessed.
21. Axios. Streaming TV explodes. <https://www.axios.com/streaming-tv-us-viewers-jump-509a98bc-97ce-463b-8559-d55ea28eedca.html>. Published February 13, 2020. Accessed.
22. Truth Initiative. While You Were Streaming 2020. Straight to Vape: Pervasive Tobacco Imagery in Popular Shows Poses New Threat, Making Youth More Prone to E-cigarette Use. 2020.
23. Bennett M, Hair EC, Liu M, Pitzer L, Rath JM, Vallone DM. Exposure to tobacco content in episodic programs and tobacco and E-cigarette initiation. *Preventive medicine*. 2020:106169.
24. Federal Trade Commission. Order to File Special Section 6(b) Report on Smokeless Tobacco in Calendar Year 2019 (Generic Text Version). [https://www.ftc.gov/system/files/documents/reports/order-file-special-section-6b-report-smokeless-tobacco-calendar-year-2019-generic-text-version/p114508\\_generic\\_smokeless\\_tobacco\\_order.pdf](https://www.ftc.gov/system/files/documents/reports/order-file-special-section-6b-report-smokeless-tobacco-calendar-year-2019-generic-text-version/p114508_generic_smokeless_tobacco_order.pdf). Published 2020. Accessed.