



August 4, 2021

Chair Lina Khan
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Lina Khan:

We write to bring your attention to recent revelations that Juul Labs (Juul) purchased an entire issue of a medical journal—publishing 11 company-funded studies in what appears to be an effort to argue that Juul products are benefiting public health by helping people to stop smoking cigarettes. As the Federal Trade Commission (FTC or the Commission) conducts its review of e-cigarette marketing – an extraordinarily important investigation for public health – we encourage the Commission to address this potential manipulation of the scientific record in its ongoing investigation and consider all appropriate enforcement action to deter e-cigarette manufacturers’ manipulation of consumers.

The tobacco industry has a decades-long history of misleading consumers and public health officials about the dangers of its products, and this appears to be yet another example of the industry’ abhorrent behavior. As you may know, the Food and Drug Administration is currently reviewing Juul’s Pre-Market Tobacco Application (PMTA) and is expected to reach a decision imminently on whether Juul should remain on the market. Ahead of this decision, Juul has mounted “an all out campaign ... sparing no expense to fight back” against any agency action that would impact their profits.¹

Juul’s efforts to influence the agency include “pa[ying] \$51,000 to have the entire May/June issue of the *American Journal of Health Behavior* devoted to publishing 11 studies funded by the company offering evidence that Juul products help smokers quit.”² The issue of the journal that Juul paid for appears to be an effort to provide a veneer of scientific objectivity for its own self-interested research: “there are 26 named co-authors on the 11 studies. According to the “Conflict of Interest” statements associated with them, 18 of the co-authors are either current full-time employees of Juul, or were full-time employees at the time they conducted the research. Five others are consultants with Pinney Associates, working ‘on an exclusive basis to Juul Labs.’ And the final three, who co-authored one of the 11 studies, are employees of the

¹ The New York Times, “Juul Is Fighting to Keep Its E-Cigarettes on the U.S. Market,” Sheila Kaplan, July 5, 2021, <https://www.nytimes.com/2021/07/05/health/juul-vaping-fda.html>.

² The New York Times, “Juul Is Fighting to Keep Its E-Cigarettes on the U.S. Market,” Sheila Kaplan, July 5, 2021, <https://www.nytimes.com/2021/07/05/health/juul-vaping-fda.html>.

Centre for Substance Use Research, an “independent” consultancy that designed that study under a contract with ... Juul Labs.”³ This is an egregious example of the industry “taking academic corruption to a new level,” raising questions about decisions made by the Journal’s editors and about Juul’s behavior.

While we recognize that the FTC is not engaged in FDA’s work to review the PMTA submitted by Juul, we are mindful that the FTC, using its authority under Section 6(b) of the Federal Trade Commission Act of 1914, has been conducting a study of Juul’s advertising and marketing data for the years 2015, 2016, 2017, and 2018 in an attempt to better understand the e-cigarette market, and to prepare for possible enforcement actions against the company. Also, under Section 5 of the FTC Act, the Commission has the ability to initiate enforcement action against companies engaging in unfair or deceptive acts or practices in commerce. By the Commission’s own Policy Statement on Deception, a deceptive practice is one “that is likely to mislead a consumer acting reasonably in the circumstances. An act or practice is ‘unfair’ if it ‘causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.’”

As you have likely seen in your investigation, Juul has a well-earned reputation for deceptive marketing tactics towards youth and adults, particularly adult smokers. Juul continues to claim that vaping is safer than cigarettes, a baseless claim that earned them a warning from the FDA and is the premise of the argument that Juul pushed through the May/June issue of the American Journal of Health Behavior.⁴

Given Juul’s apparent efforts to perpetuate baseless claims on its product’s safety compared to combustible cigarettes in an effort to addict not only adult smokers, but also youth non-smokers, we would ask that you take action under section 6(b) of the FTC Act. We also ask that you provide answers to the following questions, in writing or in the form of a staff-level briefing, as quickly as possible.

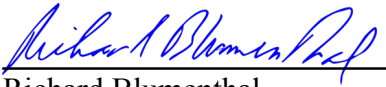
1. Does the FTC consider Juul-funded scientific studies as a form of advertising and promotional for the company?
2. Would the agency consider the use or citation of these Juul-funded scientific studies in advertising and other promotions as a potential deceptive practice? Is there any precedent for the agency taking such actions?

³ The American Prospect, “Juul: Taking Academic Corruption to a New Level,” David Dayen, July 7, 2021, <https://prospect.org/health/juul-taking-academic-corruption-to-new-level/>

⁴ The New York Times, “Juul Illegally Marketed E-Cigarettes, F.D.A. Says,” Sheila Kaplan and Matt Richtel, Sept 9, 2019, <https://www.nytimes.com/2019/09/09/health/vaping-juul-e-cigarettes-fda.html>; The American Prospect, “Juul: Taking Academic Corruption to a New Level,” David Dayen, July 7, 2021, <https://prospect.org/health/juul-taking-academic-corruption-to-new-level/>.

3. Has the Commission shared information regarding Juul's marketing practices with the FDA during the Agency's PMTA review process? Has FDA shared information with the FTC?

Sincerely,



Richard Blumenthal
United States Senator



Elizabeth Warren
United States Senator