

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, *ex rel.*
DAVE YOST,
ATTORNEY GENERAL
30 East Broad Street
State Office Tower – 14th Floor
Columbus, Ohio 43215

Plaintiff,

V.

JUUL LABS, INC.
1000 F Street NW, 8th floor
Washington, DC 20004

Defendant.

CASE NO.:

JUDGE:

COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CIVIL
PENALTIES AND COSTS

COMPLAINT

Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Dave Yost and his Consumer Protection Section brings this action to enjoin Defendant Juul Labs, Inc. (“Defendant,” or “JLI”) from engaging in unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq. and its Substantive Rules, Ohio Administrative Code (“O.A.C.”) 109:4-3-01 et seq. and states as follows:

PARTIES

1. Plaintiff is the State of Ohio, by and through the Attorney General of Ohio, Dave Yost and his Consumer Protection Section.

2. Defendant Juul Labs, Inc. is a Delaware corporation, with its principal place of business at 1000 F Street NW, 8th floor, Washington, DC 20004.

JURISDICTION AND VENUE

3. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Dave Yost and his Consumer Protection Section, having reasonable cause to believe that violations of Ohio's consumer laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him pursuant to R.C. 1345.07 of the CSPA.

4. The actions of Defendant, hereinafter described, have occurred in the State of Ohio, County of Franklin and various other counties, and as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq.

5. JLI is a "supplier" as that term is defined in R.C. 1345.01(C) as JLI was, at all times relevant herein, engaged in the business of effecting "consumer transactions" by promoting, marketing, advertising, selling, and distributing its e-cigarette products in the State of Ohio for purposes that were primarily for personal, family or household use within the meaning specified in R.C. 1345.01(A) and (D).

6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.

7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C), as some of the transactions complained of herein and out of which this action arose, occurred in Franklin County.

FACTUAL ALLEGATIONS

8. Nicotine is a highly addictive chemical, particularly to young people who are more susceptible to nicotine addiction. Much of the progress to combat youth smoking has been reversed by the emergence of e-cigarettes. Also known as vaporizers or electronic nicotine delivery systems, e-cigarettes are devices that operate by heating a liquid solution, almost always containing

nicotine, thereby creating an aerosol which can then be inhaled. In addition to nicotine, the liquid solution typically contains other chemicals and flavorings that are inhaled into the lungs and rapidly absorbed into the user's bloodstream. Teenagers who use e-cigarettes are seven times as likely to smoke combustible cigarettes and suffer the harms associated with traditional smoking.

9. E-cigarettes entered the United States market around 2007 and began rapidly rising in popularity with the arrival of JLI's JUUL e-cigarette in 2015. By 2019, over 5 million U.S. middle and high school students reported currently using e-cigarettes, with 27.5% of high schoolers and 10.5% of middle schoolers reporting current using e-cigarettes.¹ Of those current e-cigarette users, 34.2% of high schoolers and 18% of middle schoolers were using e-cigarettes on 20 days or more per month.²

10. The data showed that flavors were a big driver of youth e-cigarette usage. Among exclusive e-cigarette users in 2019, 72.2% of high schoolers and 59.2% of middle schoolers reported the use of flavored products, with fruit, menthol, and mint being the most commonly reported flavors.³

11. E-cigarettes are not subject to the advertising and marketing restrictions contained in the 1998 Tobacco Master Settlement Agreement and were largely unregulated until the FDA brought e-cigarettes under its authority through the "deeming rule" on August 8, 2016. E-cigarettes were not subject to federal warning label requirements until August 2018.

12. As set forth below, JLI borrowed from the same playbook used by "Big Tobacco" decades earlier to become the largest e-cigarette company in the United States. JUUL sales

¹ Karen A. Cullen et al., *e-Cigarette Use Among Youth in the United States*, 2019, JAMA 2019, <https://jamanetwork.com/journals/jama/article-abstract/2755265>.

² *Id.*

³ *Id.*

skyrocketed 700% in 2016 and by the end of 2018, JLI held more than 75% of the e-cigarette market.⁴

JLI's Course of Conduct

JLI's Misrepresentations and Material Omissions about Nicotine

13. In marketing its devices, JLI often claimed that e-cigarettes are safer than combustible cigarettes because they do not contain many of the toxins found in combustible cigarettes. In fact, the long-term health effects of e-cigarette use are unknown. Recent research suggests that e-cigarettes may uniquely harm the human body due to the way in which nicotine and other chemicals are aerosolized and inhaled into the lungs.

14. Like combustible cigarettes and other e-cigarettes, JUUL is a nicotine delivery device. JLI introduced a product, called "pods," which attach as part of the JUUL device and are the source of nicotine ingested by users. The pods contain a proprietary blend of nicotine liquid with significantly more nicotine than other e-cigarette products on the market at the time the pods were introduced, yet provide a "smoother" experience that is less harsh on the user's throat. The combination of high nicotine concentration and reduction of irritation is possible through the use of nicotine salts pioneered by JLI.

15. In the marketing, promotion, and sale of its products, JLI made misleading representations to consumers, leading them to believe that its products (i) did not include nicotine at all or, alternatively, (ii) contained a lower concentration of nicotine than they do.

16. E-cigarette products on the market before JUUL contained what is called freebase nicotine. Freebase nicotine is bitter and harsh on the throat, especially at higher nicotine

⁴ Richard Craver, *JUUL Ends 2018 With 76 Percent Market Share*, WINSTON-SALEM JOURNAL (Jan. 8, 2019), https://journalnow.com/business/juul-ends-2018-with-76-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

concentrations. JUUL's use of nicotine salts made its products more palatable to inhale than the aerosol produced by other e-cigarettes.

17. Until approximately 2017, JLI made material omissions by failing to mention nicotine, or nicotine's addictive nature, in its product marketing. None of JUUL's advertisements, billboards, or social media posts disseminated as part of its launch contained the word "nicotine," nor did JUUL's marketing warn that its e-cigarettes were addictive.

18. JUUL's packaging also contained material omissions related to nicotine content. JUUL did not include the word "nicotine" on the front of its packaging until mid-2018.

19. By failing to disclose that its products contained nicotine, JLI hid the true nature of its products.

20. As a predictable consequence of JLI misleading consumers, many did not realize that JUUL pods contained nicotine and were addictive.

21. Three years after its launch, JLI finally added a clear nicotine label to its products. However, JLI misrepresented its product's nicotine content as equivalent to the amount of nicotine in a pack of cigarettes. On its website, in advertisements, and in public statements, JLI represented that one JUUL pod was equivalent to one pack of cigarettes. This representation is false because the overall amount of nicotine in a JUUL pod is equivalent to 1.72 packs of cigarettes.

22. JLI has also made representations giving the impression that its products could be used as smoking cessation devices, despite the fact that the JUUL products have not been approved for such use by the FDA. In 2019, the FDA issued a warning letter to JLI relating to such representations.

JLI's Youth-Oriented Marketing Campaign

23. From its inception, JLI directed its marketing at youth.

24. A principal driver of JLI's explosive growth was youth adoption of its products. Emulating the cigarette industry, JLI engaged in a massively successful campaign to addict youth.

25. The appeal to youth was an intentional marketing strategy. To introduce its products to America's youth, JLI launched its Vaporized campaign with high-profile promotions and sampling opportunities. The Vaporized campaign relied on youthful models in trendy clothes and provocative poses. In the first 6 months after product launch, JLI's advertising imagery was patently youth oriented.

26. Internal documents show that JLI recognized that "[t]he models we used for the #Vaporized campaign appeared to be too youthful for many consumers (and the media)." A former senior manager at JLI said that he and others in the company were well aware that its products could appeal to teenagers.

27. JLI's advertising channels were targeted to youth. JLI made minimal use of newspapers, magazines, radio, and television advertisements. Instead, it conducted its marketing through Instagram, Twitter, and Facebook.

28. JLI used a hashtag marketing strategy to promote its products through social media platforms.

29. JLI monitored the use of its hashtags and knew, or should have known, that underage consumers were following its social media accounts and advertising posts.

30. JLI sought out individual consumers with large Facebook and Instagram followers to participate in its "affiliate program." JLI affiliates promoted the product on social media platforms and offered discounts to entice followers and other consumers to purchase the product on the JUUL website. Affiliates were compensated for any resulting sales.

31. JLI's marketing also utilized "influencers," social media users with the power to

affect the purchasing decisions of others. JLI relied on influencers with large numbers of young followers to promote JUUL products on social media. Through influencers, JLI harnessed the power of user-created content to expand its reach far beyond what it could accomplish with company advertisements alone, and at a much lower cost.

32. Targeting fashion bloggers, stylists, and celebrities, JLI provided influencers with free or discount e-cigarettes with the intent that they would use them in public and post JUUL-related content on their social media accounts. JLI monitored these accounts and reposted JUUL-related social media content created by influencers.

33. Until 2018, JLI paid influential social media users to promote its product in blog and Instagram posts.

34. JLI knew, or should have known, that many of the individuals targeted as influencers for JUUL e-cigarettes were young or very young, that they were popular with adolescents, and that many or most of their followers were younger than the minimum legal sales age for e-cigarettes.

JLI's Product Appealed to Youth

35. Nicotine is highly addictive, especially to teenagers. Further, it is a known fact that flavors attract underage users. In 2009, the FDA banned cigarettes containing flavoring other than tobacco or menthol flavoring. In announcing the ban, the FDA declared that “flavored cigarettes are a gateway for many children and young adults to become regular smokers.” Youth often perceive that flavored e-liquid advertisements are meant for them.⁵

36. JLI's emphasis on marketing flavors further differentiated its e-cigarettes from combustible cigarettes.

⁵ McKelvey K, Baiocchi M, Ramamurthi D, McLaughlin S, Halpern-Felsher B, *Youth Say Ads for Flavored e-liquids Are for Them*, ADDICT BEHAV. 2018; pii:S0306-4603: 30957-62.

37. JLI launched its e-cigarettes with an array of flavors, including “Miint,” “Fruut,” “Bruule,” and “Tobaac,”⁶ eventually adding “Cool Cucumber,” and “Mango”, while also experimenting with so-called limited release flavors.

38. In addition to attractive flavors, JLI appealed to youthful users by altering the chemical composition of the nicotine in its products to be less harsh on the throats of new users, while at the same time delivering high doses of addictive nicotine.

39. JLI’s use of nicotine salts to obtain a lower pH level of the nicotine in its e-cigarettes was an intentional decision to make inhalation “smoother” for the inexperienced smoker.

40. This chemical composition made JUUL products more appealing to non-smokers, such as underage, first-time users, while simultaneously making the products highly addictive.

41. JLI’s decisions to manipulate the pH level of the nicotine in its products and to include instructions encouraging users to “take small puffs,” “to get a feel for the vapor then ease into inhaling,” and “don’t give up,” were not made for the purpose of appealing to experienced smokers. JLI took these steps to appeal to young and inexperienced smokers, knowing this would include many minors.

42. JLI designed its e-cigarette device to look like the latest tech invention. Initial reviews of the product included comparisons between JUUL devices and iPhones, and JLI even marketed the JUUL device as “the iPhone of E-cigs.”

43. In addition to being rechargeable through a computer’s USB port, the design of the JUUL device resembles an inconspicuous USB drive, able to fit in the palm of a hand. This makes JUUL devices easily concealable, another attractive feature for underage users.

⁶ The creative spellings of flavors were presumably used to mimic the spelling from the company’s name.

JLI's Deficient Age-Verification Process

44. Despite the obvious and acknowledged youthful appeal of its product, JLI failed to put in place adequate screening for online purchases to prevent purchases by minors.

45. By design, the third-party online age-verification system used by JLI was porous. The age-verification system, provided by the company Veratad, did not always analyze the potential customer's name, full address, and date of birth when confirming identity and age. As a result, thousands of deliveries were made to underage consumers using phony names.

46. JLI also used minors' personal email addresses, which were submitted during the age verification process, to send marketing and advertising materials, despite knowing that these minors did not pass age verification. JLI was aware of and did not correct this issue for years, updating its policy only in August 2018.

47. Initially, JLI required an adult signature upon delivery of its products; however, on or about October 2016, JLI stopped requiring a delivery signature and made it an option available at an additional expense.

48. JLI knew of and allowed a loophole by which minors could receive a device merely by submitting the serial number of a device sold to someone of legal age through JUUL's warranty replacement program. No money changed hands and no age verification procedure was employed for such a replacement program. JLI had actual knowledge that minors were taking advantage of this loophole because parents of such minors complained to the company. Although JLI knew that the warranty replacement program provided a way for minors to obtain the product for free, JLI did not fix the loopholes in this program.

49. Because JLI's age-verification system verified age based on the billing address and not the shipping address, minors were able to ship the product in their own name but still pass the

age verification system with their parent's information.

50. In sum, JLI knew its products were available and appealing to youth, but understood, from Big Tobacco's playbook, that its success depended on addicting a new generation to nicotine. It created a product with a design that was attractive to minors and filled it with a flavored nicotine solution that was easy for inexperienced smokers to use. It marketed its product, not to the older demographic it now claims it was seeking, but to the under-aged, through social media accounts, celebrities, influencers, youth-oriented events, and an advertising campaign featuring youthful models styled with the playfulness and fashion of teenagers. JLI's policies, including an inferior age-verification protocol, enabled minors to purchase JUUL products.

CAUSE OF ACTION: VIOLATIONS OF THE CSPA

**COUNT I - UNFAIR OR DECEPTIVE ACTS AND PRACTICES
BY MARKETING TO MINORS**

51. The allegations contained in the paragraphs above are incorporated by reference as if fully reiterated herein.

61. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by marketing, promoting, advertising, selling, and distributing its products to minors.

**COUNT II – UNFAIR OR DECEPTIVE ACTS OR PRACTICES
BY ENGAGING IN MISREPRESENTATIONS**

62. The allegations contained in the paragraphs above are incorporated by reference as if fully reiterated herein.

63. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(2), by, in the course of marketing, promoting, advertising, selling, and distributing its nicotine products, misrepresenting the amount of nicotine in its products which had the capacity or tendency to deceive its users.

64. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(1) and (B)(2), by, in the course of marketing, promoting, advertising, selling, and distributing its products, making material omissions concerning the nicotine content in its products, and those material omissions had the effect, capacity, or tendency of deceiving consumers.

65. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**COUNT III – UNCONSCIONABLE ACTS OR PRACTICES
BY MARKETING TO MINORS**

66. The allegations contained in the paragraphs above are incorporated by reference as if fully reiterated herein.

67. Defendant committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A) as set forth in 1345.03(B)(1), by marketing, promoting, advertising, selling, and distributing its products to minors, knowingly taking advantage of their inability to understand the harm of the product and protect their own interests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Adjudge and decree that the Defendant has engaged in acts or practices in violation of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq., as previously set forth.
2. Permanently enjoin and restrain the Defendant from engaging in unfair or deceptive consumer sales practices set forth herein and from violating the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq.

3. Adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions.
5. Assess, fine and impose upon the Defendant a civil penalty pursuant to R. C. 1345.07(D) of Twenty-Five Thousand Dollars (\$25,000.00) for each unfair or deceptive act or practice alleged herein.
6. Order that all costs in this cause be taxed against the Defendant.
7. Grant Plaintiff such other and further relief as this Court deems just, equitable and appropriate.

Respectfully Submitted,

DAVE YOST
Attorney General

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