Don't Be Fooled: E-Cigarette Companies and the Revitalized Attack on America's Youth

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DON’T BE FooLED: E-CIGARETTE COMPANIES AND THE REVITALIZED ATTACK ON AMERICA’S YOUTH

INTRODUCTION

Whether it is gummy bears, cotton candy or bubble gum, the youth in America adore candy and the flavors associated with it.¹ These flavors are the embodiment of fun, delectable snacks and the reminiscence of blissful childhoods. However, e-cigarette companies are exploiting the innocuous image of these flavors and utilizing their appealing nature to revitalize their business amongst America’s youth.

Electronic cigarettes ("e-cigarettes"), introduced to the United States market in 2006, are a highly addictive battery-powered smoking device filled with a liquid containing nicotine, flavorings, and other chemicals.² When heated, the liquid produces a vapor which is inhaled by the user.³ Unlike traditional cigarettes, which have experienced a steady decline in use by young people over the past decade, e-cigarettes have experienced a surge in popularity since 2011.⁴ This appeal amongst the younger generation stems from their variety of flavors as well as their perceived lowered health risks.⁵ Although e-cigarette usage has proven to have dangerous effects on the development of young people, neither the Food and Drug Administration (FDA) nor Congress, both with regulatory authority, have adequately addressed this rapidly expanding market and its negative influences on America’s vulnerable youths.

This Perspective will try to first dispel the misconception that e-cigarettes are harmless by introducing current research on their dangers, especially with regard to teenagers. It will awaken young consumers to the marketing tactics of

⁵ Id.
tobacco companies who rely on friendly flavors to re-attract teenagers to smoke. It will also present viable legal solutions that have proven successful in the past in curtailing tobacco companies’ attempts to seduce America’s youth to smoke. Ultimately, this argument will impress upon Congress and the FDA the necessity of regulating e-cigarettes as traditional cigarettes by: 1) prohibiting the flavoring of e-cigarettes, 2) prohibiting advertisement geared toward young people, and 3) initiating a media campaign informing teenagers of the dangers of e-cigarettes.

I. E-CIGARETTES EFFECT ON ADOLESCENTS

E-cigarettes are dangerous, and particularly so amongst adolescents.\(^6\) Similar to traditional cigarettes, e-cigarettes contain nicotine which poses several negative health effects.\(^7\) Nicotine, a remarkably addictive drug, can lead to significant changes in the brain.\(^8\) In particular, nicotine has been shown to have a special impact on teenagers who are in a critical age for brain development.\(^9\) For these adolescents, the consistent use of nicotine can impair prefrontal brain development leading to long-lasting effects, including attention deficit disorder and poor impulse control.\(^10\)\(^11\) However, the gravest effects on teens are nicotine addiction which is responsible for 1 in every 10 deaths worldwide and addiction to other drugs such as cocaine and methamphetamine.\(^12\)

In addition to nicotine, there are other major and dangerous chemicals found in the e-liquid such as propylene glycol and glycerol.\(^13\) When heated by the vaporizer, these chemicals can transform into toxic compounds, one of which is formaldehyde.\(^14\) Formaldehyde, a cancer-causing chemical, can be

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\(^6\) See id.
\(^8\) Id.
\(^12\) The Potential Dangers of E-Cigs for Teens and Young Adults, QUIT SMOKING COMMUNITY (2017), https://quitsmokingcommunity.org/dangers-of-e-cigs/.
\(^14\) Id.
toxic to one’s health the longer one is exposed to it. The higher the level and the longer the exposure to formaldehyde, which daily smoking entails, the greater the risk of being diagnosed with cancer. Consequently, the International Agency for Research on Cancer and the National Toxicology Program, an agency within the Department of Health and Human Services, have both classified formaldehyde as a human carcinogen. Litigation over the fact that consumers are not made aware of the presence of such dangerous chemicals in e-cigarettes is growing, as can be referenced in the California Central District Court case, In re NJOY, Inc. Consumer Class Action Litigation. In 2017, Australia became the first country to successfully litigate the issue of e-cigarette companies making “false and misleading claims about the carcinogens in their products.”

The flavoring in e-cigarettes may also pose another health threat as they often contain a chemical compound called diacetyl, which is associated with a rare and irreversible lung disease called bronchiolitis obliterans. The flavoring of e-cigarettes has also contributed to the steep rise of nicotine poisoning cases. Children are accidentally ingesting the e-liquids and this exposure to the child’s skin has a lethal impact. Cases have risen by 1,500 percent in the past three years. Emergency operators received 2,452 calls about exposure to these e-liquids in 2015, whereas they received 1,543 calls in 2013.

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22 Id.
23 See id.
II. THE NEED TO RESTRICT FLAVORING

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act, which prohibited the flavoring of traditional cigarettes to discourage children and young adults from smoking.26 The FDA, authorized to regulate the act, specifically banned fruit, candy and clove flavors.27 These flavors were identified by FDA research as the ones which tasted like sweets, and thus favored by youth.28 According to research, these ‘sweet culprits’ enticed 3,600 young people daily between the ages of 12 and 17 to try flavored cigarettes.29 Consequently, children were three times as likely as adults to smoke.30 Since the passing of the Family Smoking Prevention and Tobacco Control Act, studies revealed a drastic decline in youth smoking traditional cigarettes.31

Since then, new research indicates that the steep decline in use of traditional cigarettes by children (ages 21 and under) has been offset by a sharp increase in the use of e-cigarettes.32 With over 7,700 unique e-cigarette flavors and 240 new flavors being added every month, e-cigarette companies, largely owned by large tobacco companies, can re-attract young customers.33 These efforts have proven successful as over 1.6 million high school students and 500,000 middle school students admitted to using e-cigarettes.34 When asked

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28 Id.
29 Id.
30 Id.
34 Abby Ohlheiser, Big Tobacco Companies are Putting Big Warning Labels on their E-cigarettes, THE
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why they used e-cigarettes, 81.5 percent of current young adult users answered: “because they come in flavors I like.”

Furthermore, research shows that “when the e-cigarettes were flavored, the teens were less likely to think of tobacco as dangerous.” This finding suggests that the bubble gum, cotton candy, and gummy bears flavorings are commonly associated with safety and innocence, and that teenagers have become blind to the harsh reality that e-cigarettes pose a threat to their health. Thus, it follows that Congress should extend the ban on flavoring to include e-cigarettes and prevent tobacco companies from re-establishing their control over America’s youth.

III. BAN E-CIGARETTE ADVERTISING TO ADOLESCENTS

To combat tactics used by cigarette companies, the Federal Communications Commission authorized countrywide foreign service announcements dramatizing the health hazards of smoking on television in 1967. In 1971, Congress banned traditional cigarette television advertisements under the Public Health Cigarette Smoking Act. The implementation of these strategies spurred a gradual decline in self-reported adult smoking beginning in the early 1970s. “The average rate of smoking across the decades has consistently fallen from 40 percent in the 1970s to 24 percent in the 2000s. History and research demonstrate that “bans on advertising, promotion and sponsorship are one of the most effective ways to reduce tobacco consumption.” Furthermore, research also shows that when countries introduce these bans, they effectively and significantly cut tobacco use within a few years.


Id.


Id.


Tobacco Atlas, Governments Should Implement Comprehensive TAPS, WORLD LUNG FOUNDATION.
Thus, Congress should extend the television advertisement ban to include e-cigarettes and focus on informative advertisement about their dangers. E-cigarette companies are appealing to the visual senses of youth by flashing sleek television and magazine advertisements generally featuring celebrity endorsements. The use of the media to seduce youth was a tactic also used by tobacco companies decades ago that is now being reintroduced. In a 2016 report, the Surgeon General concluded that “themes in e-cigarette marketing are parallel to themes and techniques that have been found to be appealing to youth and young adults in conventional cigarette advertising and promotion.”

Both traditional and e-cigarette companies strategically aired their ads on popular teen channels such as Comedy Central, ABC Family and MTV. These methods proved effective in reaching their targeted audience. In 2015, a study reported that 82 percent of 12-17-year olds, and 88 percent of 18-21-year olds reported seeing e-cigarette advertising. A 2016 study found that “… greater exposure to e-cigarette advertising is associated with higher odds of use.” Ultimately, exposure led to 50 percent higher intentions to use e-cigarettes.

Americans faced common issues in 1967, 1971, and 2017 – the ignorance of the health risks of smoking and the seduction of the youth to smoke. By utilizing the same channels that e-cigarette companies use, American youth will effectively be reached. By publishing the health hazards of using e-cigarettes, young people will be equipped with the knowledge necessary to make informed decisions regarding whether to use e-cigarettes. This idea to revisit mechanisms previously used to prevent children smokers is being projected by researchers, who are now advising the FDA to “strongly consider regulating these messages on television.”

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43 Laura Bach, Electronic Cigarettes and Youth, CAMPAIGN FOR TOBACCO FREE KIDS (June 20, 17), https://www.tobaccofreekids.org/research/factsheets/pdf/0382.pdf.
44 Id.
45 See id.
46 Id.
47 Id.
48 Id.
49 Id.
50 Id.
51 Id.
CONCLUSION

Today, e-cigarettes pose a similar threat to America’s youth as traditional cigarettes did in the past. E-cigarette and tobacco companies are targeting young people by providing enticing flavors and disguising their products as benign. However, to better protect children, who are not fully informed of the lasting impacts smoking e-cigarettes can have, both Congress and the FDA must once again move to enact laws and regulations that will curtail exposure of the enticing tactics of e-cigarette companies upon youths. The FDA must go beyond simply banning the sale of e-cigarettes to minors and prohibiting their sale at sports and cultural events. It must utilize older tactics to tackle the same threat.

In addition to the FDA and Congress acting, attorneys are currently seeking clients for class action suits about the hidden negative effects of e-cigarettes, the dangers they pose to children, and the companies who market these things to young adults. While these appropriate measures take place in the legal community, it is imperative that researchers and professionals in the health community continue to pursue studies of e-cigarettes, their long-term effects, and their hazards.

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