

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

October 10, 2019

Mr. Ricardo Oberlander
President and Chief Executive Officer
Reynolds American Inc.
401 North Main Street
Winston Salem, NC 27101

Dear Mr. Oberlander:

On September 25, 2019, I sent you a letter urging your company to halt all television, radio, print, and digital advertising for your e-cigarette products “in the interest of safeguarding the health and well-being of one of our nation’s most precious resources—our youth.”¹ Reynolds American Inc. responded by letter on October 8, 2019, giving no indication that it would make any changes to its advertising practices, instead stating that it would make my letter “part of [y]our considerations going forward.”²

Two of your competitors have already confirmed that they will not be advertising their products going forward, and we expect more confirmations to come soon. Your company, however, has given no indication that it plans to halt its advertisements.

With increasing federal attention on the epidemic of youth use of e-cigarettes, one would expect to see e-cigarette companies taking steps on their own to avoid making the problem worse. Instead, Americans of all ages are bombarded by ads for e-cigarettes.

¹ Letter from Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, to Ricardo Oberlander, President and Chief Executive Officer, Reynolds American Inc. (September 25, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-25%20RK%20to%20Four%20E-Cigarette%20Companies%20re%20Ad%20Ban%20Request.pdf>).

² Letter from Richard Haselwood, Vice President, Reynolds American Inc. to Chairman Raja Krishnamoorthi Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform (October 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-10-08%20RAI%20Letter%20to%20Chairman%20Krishnamoorthi%20%281%29.pdf>).

Studies show that youth exposure to e-cigarette advertising increases the likelihood of youth e-cigarette use.³ The U.S. Surgeon General, the Secretary of the Department of Health and Human Services (HHS), the Director of the Centers for Disease Control and Prevention (CDC), and the former Commissioner of the Food and Drug Administration (FDA) have all declared that e-cigarette use among teenagers is an epidemic.⁴

From 2017 to 2018, youth e-cigarette and vaping use increased by 78% among high school students.⁵ The most recent figures from CDC's National Youth Tobacco Survey (NYTS) show another significant jump in youth use, with 27.5% of high school students reporting e-cigarette use. That is a 32% increase in the past year, and a 135% increase over two years.⁶

For generations of Americans who have never seen cigarette ads on television or heard them on the radio, the ubiquitous vaping advertisements are disturbing and dangerous. Some may view your current advertising push as an attempt to reach more consumers before the Food and Drug Administration (FDA) imposes regulation on such products.

To assist the Subcommittee in its investigation, I request that you produce, by October 24, 2019, the following documents and information for the period of January 1, 2017, to the present:

1. A list identifying all advertising purchased by your company, including:
 - a. whether the ad buy was for television, radio, print, or digital;
 - b. where the ad appeared, including the television station, radio station, print outlet, or online site;

³ Dale Mantey, et al., *E-Cigarette Marketing Exposure is Associated with E-Cigarette Use Among U.S. Youth*, *Journal of Adolescent Health* (Apr. 12, 2016) (online at www.ncbi.nlm.nih.gov/pubmed/27080732); Pallav Pokhrel, et al., *Receptivity to E-Cigarette Marketing, Harm Perceptions, and E-Cigarette Use*, *American Journal of Health Behavior* (Jan. 2015) (online at www.ncbi.nlm.nih.gov/pubmed/25290604).

⁴ Food and Drug Administration, *Statement from Food and Drug Administration Commissioner Scott Gottlieb, M.D., on New Steps to Address Epidemic of Youth E-cigarette Use* (Sept. 12, 2018) (online at www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-steps-address-epidemic-youth-e-cigarette-use); Department of Health and Human Services, *Surgeon General Releases Advisory on E-cigarette Epidemic Among Youth* (Dec. 18, 2018) (online at www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html); Centers for Disease Control and Prevention, *Sales of JUUL E-cigarettes Skyrocket, Posing Danger to Youth* (Oct. 2, 2018) (online at www.cdc.gov/media/releases/2018/p1002-e-Cigarettes-sales-danger-youth.html); Centers for Disease Control and Prevention, *Progress Erased: Youth Tobacco Use Increased During 2017-2018* (Feb. 11, 2019) (online at www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html); *The Future of E-cigarettes Depends on the Industry's Willingness to Protect Teens*, *Washington Post* (Mar. 20, 2019) (online at www.washingtonpost.com/opinions/2019/03/19/future-e-cigarettes-depends-industrys-willingness-protect-teens/?noredirect=on&utm_term=.907f5dc750cb).

⁵ *Id.*

⁶ Food and Drug Administration, *Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products* (Sept. 11, 2019) (online at www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non).

- c. the program and timeslot when the ads appeared;
 - d. how many times the ads ran;
 - e. the dates that the ads ran; and
 - f. how much your company paid for the ads;
2. A list of all celebrities and/or influencers your company has engaged, or who were engaged on your behalf, as well as the dates of each engagement, the compensation provided to each, and all contracts with each;
3. A list of all third-parties your company has engaged for marketing and/or advertising, or who were engaged on your behalf, as well as the dates of each engagement, the compensation provided to each, and all contracts with each;
4. Discounted product promotions you have run, including the dates of the promotion, the discount offered, and how it was advertised;
5. All documents referring or relating to the decisions regarding where to place ads, in which media, and how to target which demographics;
6. A list, with a separate entry for each device and/or pod in each flavor and at each nicotine strength, indicating:
 - a. the date it was placed on the market;
 - b. how it was placed on the market, including where it was available online and the location of physical retail locations at which it was available;
 - c. the monthly online sales revenue for each for each month it was on the market; and
 - d. the monthly retail sales revenue for each for each month it was on the market;
7. All documents referring or relating to your company's marketing to health insurers, employers, and/or healthcare providers;
8. All documents from September 11, 2019, through the present referring or relating to lobbying the FDA, Members of Congress, and/or the White House about the proposed flavor ban announced on September 11, 2019; and
9. All documents referring or relating to:
 - a. The impact of your company's marketing strategy on individuals under the age of 18;
 - b. The involvement of behavioral scientists in your advertising and the identity of all behavioral scientists involved; and
 - c. The decision(s) to implement and maintain social media accounts and to actively post on them, including identifying all employees and third parties involved in such decisions, and in creating and posting content.

Mr. Ricardo Oberlander
Page 4

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raja Krishnamoorthi", written over a horizontal line.

Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy

Enclosure

cc: The Honorable Michael Cloud, Ranking Member

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.