



December 28, 2015

Submitted via the FTC online portal

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Suite CC-5610 (Annex J)  
Washington, DC 20580

Re: Electronic Cigarettes: Paperwork Comment, FTC File No. P114504

To Whom It May Concern:

I write on behalf of Logic Technology Development LLC ("Logic") to comment on the Federal Trade Commission's ("FTC") proposed information requests to marketers of electronic cigarettes. Logic distributes disposable and rechargeable electronic cigarettes, as well as the Logic Pro Advanced Vapor System, which includes a vaporizer pen and pre-filled, vacuum-sealed e-liquid capsules.

I. The FTC's Proposed Information Collection

The FTC proposes to issue information requests to five large and ten small e-cigarette marketers regarding their sales and marketing practices. The FTC anticipates collecting information in the following categories: (1) sales and give-aways of e-cigarettes and related products; (2) marketing expenditures; (3) product placements in various media; (4) efforts to prevent minors from being exposed to e-cigarettes; (5) expenditures on advertising to deter minors from purchasing or using e-cigarettes; and (6) data collection activities, including efforts to avoid collecting data from minors. The FTC's comment request invites commentary on: (1) whether the study is necessary, including whether the information will be useful; (2) the accuracy of the FTC's burden estimates; (3) ways to enhance the quality of the information collected; and (4) ways to minimize the burden of the information collected.

## II. Logic's Comments on the Proposed Information Collection

Logic believes that there is value in collecting certain information regarding e-cigarette sales and marketing practices. However, before the FTC collects this information, we believe that it would be important to consider two issues: (1) What are the societal issues that the FTC seeks to address, and (2) what information is directly relevant to those issues? The FTC's notice for the proposed information collection does not articulate a rationale, other than the fact that the FTC collects similar information from domestic cigarette and smokeless tobacco manufacturers, and that sales of e-cigarettes "have grown rapidly."

In our view, the relevant societal issues, consistent with the FTC's mandate to prevent "unfair or deceptive" business practices, 15 U.S.C. § 45, are: (1) youth access, and (2) unlawful and deceptive advertising. With respect to youth access, it is our observation that the vast majority of brick-and-mortar retailers conduct rigorous age verification to prevent sales of e-cigarettes to minors. However, for Internet sales of e-cigarettes, we have observed that most online sellers conduct no age verification whatsoever. With respect to unlawful and deceptive advertising, we believe that the FTC has an important role in ensuring that e-cigarette marketers do not make impermissible claims about their products, including unsubstantiated health claims.

We therefore believe that the FTC's collection of information should be directed toward these two objectives – preventing youth access to e-cigarettes and preventing illegal, inaccurate or deceptive claims about the products. In light of these objectives, we believe that the FTC's proposed information collection is both under- and over-inclusive.

The FTC's proposal is under-inclusive because of its limited scope. There are hundreds (if not thousands) of companies selling e-cigarettes in various channels, including the Internet. The FTC proposes to collect information from only fifteen of those companies. The proposed information collection also is under-inclusive because it does not appear to require the production of e-cigarette companies' actual advertising so that the FTC may ascertain whether companies are advertising truthfully. The proposed information collection is over-inclusive because it appears to seek exhaustive information regarding total sales and marketing expenditures that appear unrelated to the aforementioned regulatory objectives.

These issues are discussed in greater detail below.

### A. Youth Access

Logic has long supported measures to prevent minors from purchasing e-cigarettes. Logic is and has been a strong supporter of the We Card program, which aims to prevent youth access to e-cigarettes at brick-and-mortar outlets nationwide. Logic has always supported laws prohibiting youth access to e-cigarettes. Logic also has been a pioneer on age verification for Internet sales. Logic uses Aristotle, a state of the art age verification system that checks age and identity using multiple databases and identity algorithms, as well as knowledge-based authentication using various challenge

questions.

The proposed information collection would seek information regarding efforts such as age-screening mechanisms to prevent minors from purchasing e-cigarettes. We concur with this, but suggest that it be expanded to include a much larger number of e-cigarette marketers, and that it specifically include a significant number of online marketers.

This is important because industry analysts estimate that 25-30% of e-cigarette sales are online. And although 47 states prohibit the sale of e-cigarettes to minors, it appears that the vast majority of online vendors conduct absolutely no age verification. It is therefore imperative that the FTC address age-verification for remote sales, including robust age-verification measures such as Aristotle. Such controls (in addition to brick-and-mortar age verification) are imperative to prevent underage sales.

#### B. Unfair and Deceptive Advertising

While we believe that most e-cigarette companies advertise responsibly and in accordance with applicable law, there remain companies that do not. There are still companies that make impermissible health claims without Food and Drug Administration approval. There are companies that make health claims without an apparent factual basis. Consistent with its statutory mandate, the FTC can and should take an aggressive role investigating these unlawful trade practices.

The proposed information collection does not directly address these issues. As noted above, the FTC proposes to seek information from only fifteen companies, a small fraction of the industry. Nor does it appear that the FTC intends to collect information regarding the actual content of companies' advertising and marketing. This information is necessary to ascertain whether companies are engaging in unlawful or deceptive trade practices. We therefore suggest that the FTC collect information from more companies representing a broader cross-section of the industry, and that it require companies to produce the actual content of their advertising.

#### C. Scope of Sales Information to Be Collected

The FTC proposes to collect substantial information regarding companies' sales (perhaps segmented by product, state and sales channel) and marketing expenditures. It is not clear how the information sought, which would represent a substantial burden to collect, is tailored to the FTC's laudable objective of deterring marketing to minors and unlawful advertising. We therefore suggest that the FTC confine the information sought to companies' age-screening mechanisms and to the actual content of their marketing campaigns.

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Thank you for the opportunity to submit these comments. We look forward to continue working collaboratively with the federal government on reasonable regulation of e-cigarettes and other vapor products.

Very truly yours,

*Miguel Martin*

Miguel Martin  
President, Logic Technology Development LLC