



December 2, 2016

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. P14504

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, the Logic Pro Advanced Vapor System, which includes a vaporizer pen and pre-filled, vacuum-sealed e-liquid capsules, and Logic LQD, an open tank system.

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's previous comments on the proposed information collection focused on three issues: (1) preventing youth access to e-cigarettes, (2) preventing unlawful and deceptive advertising, and (3) obtaining information from a broader cross-section of companies. In its request for supplemental comments, the FTC acknowledged the need to prevent youth access to e-cigarettes and indicated that the proposed information requests would include information about company policies pertaining to age-screening mechanisms.

With respect to information collection to prevent unfair and deceptive advertising, however, the FTC responded that "law enforcement action against specific marketers, rather than information collection, is a better means of addressing potentially unfair or deceptive marketing." With respect to Logic's suggestion that the FTC collect information from a broader cross-section of companies, the FTC responded that it could not reliably identify online sellers or other smaller marketers for purposes of additional data requests.

These two issues are discussed in greater detail below:

A. Unfair and Deceptive Advertising

In our view, information pertaining to unfair and deceptive advertising is the only information that is directly relevant to the FTC's statutory mandate to prevent "unfair or deceptive" business practices. 15 U.S.C. § 45. Pursuant to this mandate, the FTC has an important role in ensuring that e-cigarette marketers do not make impermissible claims about their products, including unsubstantiated health claims.

While most e-cigarette companies advertise responsibly and in accordance with applicable law, there remain companies that do not. Consistent with its statutory mandate, the FTC can and should take an aggressive role investigating these unlawful trade practices. Yet, the proposed information collection does not address these issues, and appears to focus instead on issues that are not directly relevant to the FTC's statutory mandate. For example, it does not 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 require companies to produce the actual content of their advertising, rather than focusing on matters that appear less relevant to the FTC's primary mandate, such as information regarding sales and marketing expenditures.

B. Number and Scope of Companies Receiving Information Requests

While the FTC has acknowledged the need to collect information regarding efforts to prevent youth access, including age-verification mechanisms, limiting the sample of online sellers and vape shops is not consistent with this objective. It is our observation that the vast majority of brick-and-mortar retailers conduct rigorous age verification, while many online sellers conduct no age verification whatsoever. This is important because industry analysts estimate that 25-30% of e-cigarette sales are online. Artificially limiting the sample of online sellers would prevent the FTC from obtaining valuable information regarding age-verification over the Internet.

In rejecting requests to broaden the number of companies receiving information requests, the FTC asserts that there is not reliable data to identify smaller online sellers and vape shops. Yet, the FTC acknowledges that it will coordinate with the Food & Drug Administration (“FDA”), which now has responsibility for regulating e-cigarette companies. Given the FDA’s jurisdiction to comprehensively regulate all e-cigarette companies (including smaller online sellers and vape shops), and the FTC’s commitment to coordinate with the FDA, it appears that there is a ready mechanism for identifying the smaller companies through these companies’ registrations with the FDA. In addition, even if these companies do not register, a relatively simple Internet search would allow the FTC to identify the vast majority of online sellers, as the FDA has done through its routine enforcement efforts.

Logic and other responsible companies ensure that any advertising and marketing materials pass through a rigorous approval process, and invest to develop marketing materials in a responsible manner. While these materials are stored and could potentially be supplied, online sellers proliferate the Internet with advertisements that do not necessarily exist once the advertising has ceased. It is therefore imperative that the FTC focus its attention on the Internet and the many domestic and foreign entities that often have a lesser concern with regulatory compliance.

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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 the reasonable regulation of e-cigarettes and other vapor products.

Very truly yours,

Miguel Martin

Miguel Martin
President, Logic Technology Development LLC