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October 5, 2017

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

RE: Tobacco Reports: Paperwork Comment, FTC File No. P054507

Dear Chairwoman Ohlhausen,

The Campaign for Tobacco-Free Kids is pleased to submit comments on the FTC's tobacco marketing reports. We strongly support the FTC's intention to continue its collection and reporting of cigarette and smokeless tobacco manufacturers' annual sales and marketing expenditures, which provide critical data to researchers, policymakers, advocates and the general public.

Tobacco use is the leading preventable cause of death in the United States and around the world, and it is perpetuated by the tobacco industry's extensive marketing practices—many of which appeal to youth. As reported by the U.S. Surgeon General in 2014, "Tobacco industry advertising and promotion cause youth and young adults to start smoking, and nicotine addiction keeps people smoking past those ages."¹

In order to reduce tobacco use and its deadly toll, it is necessary to have access to timely and accurate data that provides a detailed look at how and where the tobacco industry is spending its marketing dollars. While we know more about the industry's marketing practices than perhaps ever before, we also know that, in the face of a growing number of tobacco regulations, tobacco companies have been altering their marketing strategies in an effort to maintain their sales and profits. Continuing to collect data that illuminates how the industry's tactics are changing is crucial for informing future tobacco control efforts.

The FTC is currently the only public source for data on cigarette and smokeless tobacco companies' marketing and promotional expenditures. No other agency collects and publishes such information directly from the companies, making the FTC reports the most accurate and reliable assessment of tobacco marketing and promotion expenditures available.

The FTC marketing reports on cigarettes and smokeless tobacco provide important information that the tobacco control and public health communities rely upon in their daily efforts to reduce tobacco use and monitor industry marketing activities. This information is widely used by public health professionals, academics, the media, policymakers and government agencies at local, state and federal levels to monitor trends in marketing and sales, emphasize the significant investment tobacco companies make to market their products and understand the impact it has on youth and adult tobacco use. These data are also critical to inform policy and regulatory decision-making.

¹ U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 2014, available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

While the current reporting of tobacco companies' marketing and promotional expenditures is informative, there are additional actions that could be taken to enhance the quality, utility and clarity of the data. For example:

- Providing a breakdown of price discount expenditures by retailer and wholesaler categories.
- Clarifying definitions for expenditure categories. For instance, for "coupons" and "internet – other," are coupons obtained online, whether through websites or electronic mail messages, counted as coupon expenditures or internet expenditures?
- Including data on a company-specific or brand-specific basis.²
- Requiring manufacturers to report on expenditures related to corporate sponsorships and advertisements.
- Providing an option to download published report data in spreadsheet format, so that users can search, graph and further analyze it.

We also recommend that the FTC extend its data collection to include electronic cigarettes (e-cigarettes) and cigars. Data demonstrate that youth use e-cigarettes and cigars in large numbers. According to the National Youth Tobacco Survey, over 2 million middle and high school students currently use e-cigarettes and over 1.3 million middle and high school students currently smoke cigars. Youth use of e-cigarettes exceeds use of cigarettes and other tobacco products.³

The FTC released one report with marketing data for cigars in 1999.⁴ Considering the dramatic changes in the cigar landscape since then, it is important to know how the cigar industry has been marketing its products. Sales of all cigars (i.e., large cigars, cigarillos and small cigars) doubled between 2000 and 2016, from 6.1 billion cigars to 12.3 billion cigars, and sales have been generally increasing at a time when cigarette sales have been slowly declining.⁵ Recently, there has been an explosion of cheap, flavored cigars, which are popular among youth and young adults. According to Nielsen market data, dollar sales of flavored cigar products increased by 46.5 percent between 2008 and 2015, and the number of unique cigar flavor names more than doubled, from 108 to 250, over this same time period.⁶

In 2015 and 2016, FTC issued a request for comments on proposed sales and marketing data collection from e-cigarette companies. The Campaign for Tobacco-Free Kids and other public health groups strongly supported the need for this data collection, and we object to FTC's decision in March 2017 to withdraw its request. The e-cigarette industry has rapidly grown in just the last ten years. For example, a 2014 study found more than 460 brands of e-cigarettes available for purchase online, with the number increasing by an average of more than ten brands per month.⁷ E-cigarette manufacturers promote these products in the absence of marketing or advertising restrictions like those that apply to cigarettes under the Master Settlement Agreement ("MSA") or regulations promulgated pursuant to the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act") that were designed to protect youth from

² We recognize that the FTC is constrained from releasing certain data due to trade secret or confidentiality reasons as detailed in U.S.C. 15 Section 46(f). However, we believe that the data provided by the tobacco industry for these marketing reports does not fall into the category of trade secrets or confidentiality, particularly since much of it is already available to other private sector entities that track and report on industry sales, marketing and promotion trends (e.g., Simmons, MRI, Maxwell).

³ CDC, "Tobacco Use Among Middle and High School Students — United States, 2011-2016," *MMWR*, 66(23):597-603, June 16, 2017, <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6623a1.pdf>

⁴ See FTC, Commission and Staff Reports, *1999 Report on Cigar Sales, Advertising and Promotion*, July 1999, <http://www.ftc.gov/reports/1999-report-cigar-sales-advertising-promotion>.

⁵ U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics, <https://www.ttb.gov/tobacco/tobacco-stats.shtml>.

⁶ Delnevo, CD, Giovenco, DP, & Miller, EJ, "Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act," *Tobacco Regulatory Science*, 3(2 Suppl 1):S8-S16, 2017.

⁷ Zhu, S-H, et al., "Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation," *Tobacco Control*, 23(Suppl 3):iii3-iii9, 2014, http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full.

cigarette and other tobacco marketing. As a result, e-cigarette companies are able to employ many of the same strategies used for years by cigarette manufacturers that proved so effective in reaching kids, such as celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships. Another strategy has been the widespread marketing of e-cigarettes and nicotine “e-juice” with a wild assortment of candy, fruit and other flavors. As of January 2014, researchers had identified more than 7,700 unique e-cigarette flavors available online, with an average of more than 240 new flavors being added per month.⁸

Additional data detailing how and where cigars and electronic cigarettes are being marketed are essential to understanding the changing tobacco landscape and informing tobacco control efforts and regulatory decision-making at the local, state and federal levels.

Moving forward, we encourage the FTC to publish its tobacco marketing reports in a timely manner. In the past, there has been roughly a two-year time lag in making this data available to the public. Because marketing practices can change quickly, the utility of the tobacco marketing reports for tracking, monitoring and responding to industry marketing practices will be greatest if the information is published soon after it is collected (ideally within one year).

Despite the progress made in tobacco control, the ever-changing tobacco environment makes the continuation of the FTC’s tobacco marketing reports just as important as before. These reports are fundamental to much of the work being done in tobacco control. It is critical that the FTC continue to publish these data, which can be used to support tobacco control policies, inform regulatory decision-making and educate the public, policymakers and media about the nature and extent of the tobacco industry’s marketing practices.

Thank you for your ongoing work on these important tobacco marketing reports.

Respectfully submitted,

Matthew L. Myers
President
Campaign for Tobacco-Free Kids

⁸ Zhu, S-H, et al., “Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation,” *Tobacco Control*, 23(Suppl 3):iii3-iii9, 2014, http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full.