

# NORTH CAROLINA v. JUUL LABS, INC.

## Superior Court of Durham County

### INTRODUCTION AND SUMMARY

Nicotine, which is highly addictive, is a neurotoxin — meaning it is poisonous to the human brain. The brains of teenagers are particularly vulnerable to nicotine and have what one study describes as “exquisite sensitivity” to nicotine’s neurotoxic effects. Even small and brief exposures to nicotine can cause lasting neurobehavioral damage in adolescents.<sup>1</sup> When a teenager gets addicted to nicotine, it makes it much more likely that he or she will later become a user of traditional cigarettes or illegal drugs.<sup>2</sup>

Distributing e-cigarettes to minors is illegal in North Carolina and most other states.<sup>3</sup> Despite that, within the past year, use of e-cigarettes has increased among high-schoolers by 78%, and among middle-schoolers by 48%.

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<sup>1</sup> Yael Abreu-Villaça, et al., *Nicotine is a neurotoxin in the adolescent brain: critical periods, patterns of exposure, regional selectivity, and dose thresholds for macromolecular alterations*, 979 *Brain Research* 114-28 (July 25, 2003), <https://www.ncbi.nlm.nih.gov/pubmed/12850578>.

<sup>2</sup> U.S. Department of Health, and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease, Prevention and Health Promotion, Office on Smoking and Health, *E-Cigarette Use Among Youth And Young Adults: A Report of the Surgeon General — Executive Summary* (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Exec\\_Summ\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf).

<sup>3</sup> North Carolina law makes it illegal to “distribute, or aid, assist, or abet any other person in distributing” electronic cigarettes to minors. N.C. Gen. Stat. § 14-313(b).

In 2017, in North Carolina, nearly 17% of all high school students—and more than 5% of all middle-schoolers—reported using an e-cigarette within the previous 30 days.<sup>4</sup> National studies show that the situation got even worse during 2018, with “alarming increases” in reported tobacco use among both middle and high school students between 2017 and 2018, primarily because of an increase in e-cigarette use.<sup>5</sup> Both the U.S. Surgeon General and the federal Food and Drug Administration (FDA) Commissioner have described underage use of e-cigarettes as an “epidemic.”<sup>6</sup>

JUUL has played a central role in fostering the epidemic of e-cigarette use among youth. Over the past year, JUUL’s share of the e-cigarette market has risen from 24% to 75%,<sup>7</sup> and its brand name is so well-known that it has

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<sup>4</sup> N.C. Department of Health and Human Services, Division of Public Health, Tobacco Prevention and Control Branch, *North Carolina Youth Tobacco Survey Middle & High School Fact Sheet* (2017), <https://www.tobaccopreventionandcontrol.ncdhhs.gov/data/yts/docs/2017-YTS-FactSheet-FINAL.pdf>.

<sup>5</sup> U.S. Food and Drug Administration, *Youth Tobacco Use: Results from the National Youth Tobacco Survey* (2018), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey> (content current as of June 6, 2018).

<sup>6</sup> U.S. Food and Drug Administration, FDA News Release: *FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufacturers for their roles perpetuating youth access* (Sept. 12, 2018), [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm); see also U.S. Department of Health and Human Services, Public Health Service, Surgeon General’s Advisory on E-cigarette Use Among Youth (Dec. 18, 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>7</sup> Truth Initiative, *Behind the Explosive Growth of JUUL* (Jan. 3, 2019), <https://truthinitiative.org/news/behind-explosive-growth-juul>.

become a verb (i.e., “Juuling,” also known as “vaping,” means to use an e-cigarette).

JUUL has long claimed that its e-cigarettes are intended only for adult smokers seeking to transition away from traditional cigarettes, even though it has not sought nor has the FDA granted a designation as an approved smoking cessation device. But the facts tell a very different — and sobering — story: teens aged 15 to 17 are far *more* likely to use JUUL than JUUL’s supposed target demographic of 25- to 34-year-olds.<sup>8</sup>

It is no accident that JUUL has achieved such striking success in attracting underage users. JUUL’s popularity among teens is the predictable result of JUUL’s youth-focused business strategy. That strategy drove the development and design of JUUL’s products, the ways in which they were marketed, and their methods of delivery.

In developing its e-cigarette products, JUUL deliberately designed the flavors, the look, and even the chemical composition of the e-cigarettes to appeal to youthful audiences, including minors. Belying its claimed “corporate mission” of helping experienced smokers wean themselves from traditional cigarettes, JUUL developed dessert- and fruit-like flavors

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<sup>8</sup> Truth Initiative, *The Youth E-Cigarette Epidemic: 5 Important Things to Know* (Nov. 14, 2018), <https://truthinitiative.org/news/youth-e-cigarette-epidemic-5-important-things-to-know>.

calculated to introduce tobacco in an appealing way to non-smokers, especially young people. To further ease new smokers into the habit, JUUL manipulated the chemical content of its e-cigarettes to make the vapor less harsh on the throats of young and inexperienced smokers. JUUL also created a sleek design for its smoking device that it knew would be attractive to young people, in part because it is easily concealable.

JUUL's focus on youth is also evident in its marketing. JUUL has consciously chosen social media platforms and marketing channels that are known to attract minors, has used models who look like teenagers or very young adults, and has sought out and paid youth-oriented sponsors and "influencers" popular among teenagers to spread the popularity of JUUL's youth-focused brand identity among the young.

After knowingly creating an e-cigarette product that appeals to minors and knowingly marketing that product in a way that attracts minors, JUUL pursued a sales strategy with a strong emphasis on internet-based sales, where the seller does not typically see the customer face-to-face and cannot directly confirm her age. In selling e-cigarettes online, JUUL has relied on age-verification techniques that it knows are ineffective, and has been slow to change its techniques, despite evidence that they are not working, in an effort to avoid creating "friction" with customers. In some instances, JUUL's management has encouraged its employees to actively avoid "digging around"

to ensure that underage users were not purchasing JUUL products. Because of JUUL's lackadaisical—and, at times, willfully blind—approach to age verification, enormous numbers of underage users have easily obtained JUUL products, often simply by ordering them online.

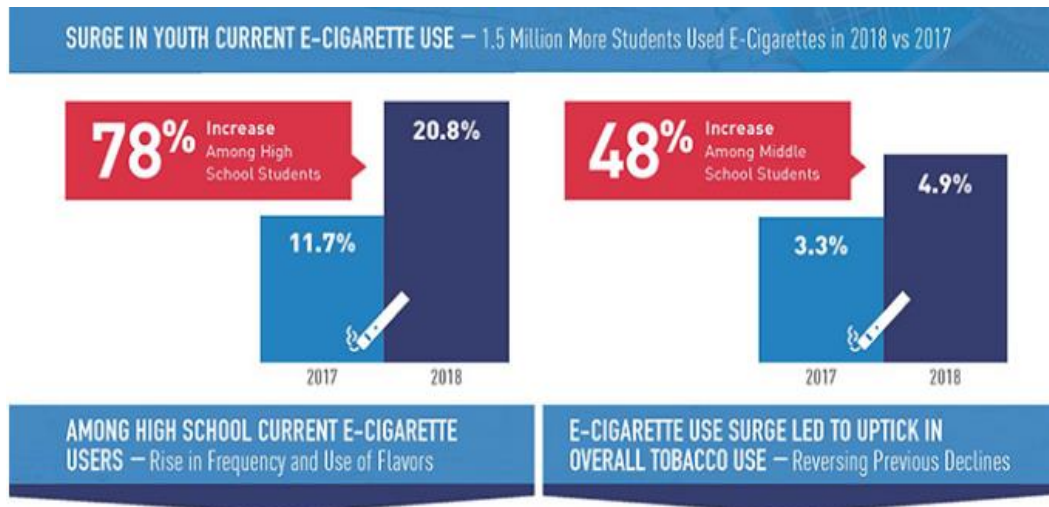
In a remarkably short span of time, JUUL has marketed, sold, and delivered millions of e-cigarette products to minors, helping reverse the historic decline in teen tobacco use that had occurred over the previous two decades. From 2000 to 2017, cigarette use among teens dropped from 28% to just above 5%.<sup>9</sup> But in 2018, due in large part to JUUL, there were 1.5 million new underage e-cigarette users.<sup>10</sup> Now, 27.1% of high school students and 7.2% of middle school students use tobacco products.<sup>11</sup>

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<sup>9</sup> U.S. Department of Health & Human Services, Office of Adolescent Health, *Adolescents and Tobacco: Trends* (2018), <https://www.hhs.gov/ash/oah/adolescent-development/substance-use/drugs/tobacco/trends/index.html> (content current as of May 1, 2019).

<sup>10</sup> A. LaVito, *CDC blames spike in teen tobacco use on vaping, popularity of Juul*, CNBC (Feb. 11, 2019), <https://www.cnbc.com/2019/02/11/e-cigarettes-single-handedly-drives-spike-in-teen-tobacco-use-cdc.html>.

<sup>11</sup> U.S. Food and Drug Administration, *2018 National Youth Tobacco Survey Finds Cause for Concern* (Nov. 2018) <https://www.fda.gov/media/120063/download>.



2018 National Youth Tobacco Survey<sup>12</sup>

At the same time JUUL has pursued a youth-focused business strategy, it has also routinely understated the strength of the nicotine in its products and downplayed their health risks. JUUL entered the e-cigarette market with among the highest nicotine potency of any product, a nicotine level so high that, in some countries, it is illegal for consumers of any age. JUUL has deceived consumers about that nicotine strength, has misrepresented the nicotine equivalency of its products to traditional cigarettes, and has understated the risks of addiction that occur with such powerful levels of nicotine.

JUUL's actions—designing, marketing, and selling e-cigarettes in ways that it knows will attract minors and deceptively downplaying the potency and danger of the nicotine in its e-cigarettes—are unfair, deceptive, and

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<sup>12</sup> *Id.*

illegal under North Carolina law. JUUL has harmed consumers throughout this State. The Attorney General brings this action on behalf of the State in an effort to put a stop to JUUL's wrongful actions and to hold JUUL accountable for them.

### **REQUEST FOR RELIEF**

The State requests that the Court:

1. Preliminarily and permanently enjoin JUUL, its officers, directors, employees, and agents, and all those acting in concert with them, as follows:
  - a. JUUL shall not offer, sell, deliver, or in any manner provide e-cigarette products to minors within this State.
  - b. JUUL shall not facilitate, assist, or enable any individual or entity in offering, selling, delivering, or in any manner providing e-cigarette products to minors within this State.
  - c. JUUL shall not offer, sell, deliver, or in any manner provide e-cigarette products within this State in any flavors other than tobacco or menthol through online sales.
  - d. JUUL shall not facilitate, assist, or enable any individual or entity in offering, selling, delivering, or in any manner

providing e-cigarette products within this State in any flavors other than tobacco or menthol through online sales.

e. JUUL shall not engage in or participate in any marketing or advertising activities within this State, including on social media accessed within this State, involving e-cigarette products that are intended to or are known to be likely to appeal to minors, nor shall JUUL retain, facilitate, assist, enable, or encourage any other person or entity to engage or participate in such marketing or advertising activities within this State. Accordingly, JUUL, without limitation, shall not:

- i. Send marketing emails to any minors within this State;
- ii. Advertise outdoors (including window advertisement visible from the street or sidewalk) within 1,000 feet of schools and playgrounds in North Carolina;
- iii. Sponsor sports, entertainment, or charity events held in North Carolina;
- iv. Provide free or discounted samples, starter kits, or



e-cigarette products to consumers. In addition, JUUL may not provide automatic renewals or bulk orders to recipients less than 18 years of age;

- v. Advertise in any fashion in media or outlets that primarily target or serve consumers under 30 years of age.
- f. Within 30 days of entry of this order, JUUL shall produce to the State a confidential database containing all customer-related information, including but not limited to names, addresses, email addresses, telephone numbers, and any other information in JUUL's possession regarding any individual consumer that is under age 18 or that JUUL is unable to confirm is at least 18 years of age. Within 10 days of providing such information to the State, JUUL shall permanently delete all such information in its possession, including but not limited to all account information on JUUL's website and inclusion of such individuals on JUUL's email marketing lists.
- g. JUUL shall not offer, sell, deliver, or in any manner provide e-cigarette products within this State that describe the nicotine potency of such products as calculated by

weight rather than by volume, or in a manner that misrepresents the nicotine potency of e-cigarette products as compared to combustible cigarettes.

- h. JUUL shall not facilitate, assist, or enable any individual or entity in offering, selling, delivering, or in any manner providing e-cigarette products within this State that describe the nicotine potency of such products as calculated by weight rather than by volume or that misrepresents the nicotine potency of e-cigarette products as compared to combustible cigarettes.

2. Award civil penalties to the State from JUUL pursuant to N.C.G.S. § 75-15.2;

3. Disgorge JUUL's profits from its unfair or deceptive acts and practices to the State;

4. Award the State its costs, including a reasonable attorneys' fee, incurred by the investigation and litigation of this matter pursuant to N.C.G.S. § 75-16.1; and

5. Any and all further legal and equitable relief as the Court deems the State is entitled to receive.