



Tuesday, March 21, 2023
Eugene, Ore. U.S.A.

Re: HB 3090 “Prohibits distributing, selling, attempting to sell or allowing to be sold flavored inhalant delivery system product or flavored tobacco product in this state

Chair Nosse and Members of the House Committee on Behavioral Health and Health Care,

Thank you for the opportunity to testify **in support** of HB 3090.

The bulk of my testimony (attached herein) is a report I wrote in 2015 in response to a call for testimony from the Federal Trade Commission regarding advertising of then-novel e-cigarettes.

The tobacco industry has proven resilient in developing new and deadly campaigns to hook young people on nicotine. As you can read, even back in 2015, the parallels between the playbook used by big tobacco in the 20th century and the playbook used by big tobacco (under the guise of e-cigarette companies) in the 21st were eerily familiar.

Indeed, despite the fact that advertising sweet flavors was banned under the Master Settlement Agreement of 1998, such advertising was (and to a degree, remains) a key component of the commercial strategy for e-cigarettes.

We remain in the opening stanzas of the e-cig industry and it is incumbent upon us to not exhibit the same naïveté in the face of the tobacco companies as we did for much of the 20th century. If we do, the effects will continue to be measured in billions of dollars and millions of lives.

Thank you once again for the opportunity to submit testimony and for your leadership in addressing the urgent matter of public health.

Sincerely,

Andrew Kalloch
Eugene, Ore.

Analysis

In 1981, a market research report from Philip Morris declared, “It is important to know as much as possible about teenage smoking patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer and the overwhelming majority of smokers first begin to smoke while in their teens.”³

Indeed, for decades, the tobacco industry had specifically crafted marketing campaigns to appeal to what R.J. Reynolds called, the “fragile, developing self-image of the young person.”⁴ Companies exploited the appeal of celebrities and cartoon characters, in addition to targeting advertisements to locations and media popular with young people.

As you know, pursuant to the 1998 Master Settlement Agreement (MSA) between 46 state Attorneys General and major tobacco companies, the industry is slated to pay approximately \$200 billion over the first 25 years, with additional payments being made in perpetuity.⁵

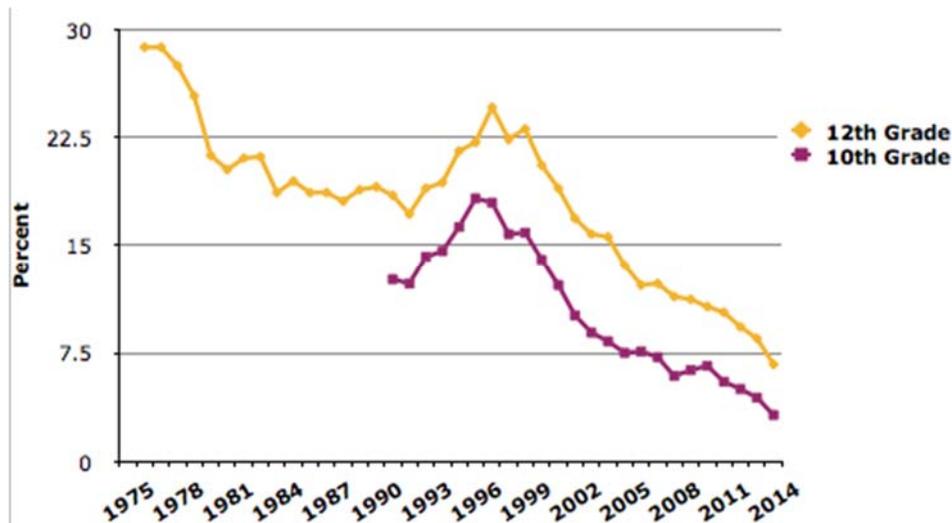
In addition to those payments, the MSA also laid out a series of steps that the industry must take to address marketing to minors, including banning:

- Cartoons in the advertising, promotion, packaging or labeling of tobacco products.
- Industry actions aimed at initiating, maintaining or increasing youth smoking.
- Most outdoor advertising, including: billboards, signs and placards in arenas, stadiums, shopping malls, and video game arcades.
- Advertising of tobacco products on transit (buses, trains, etc.).
- Distribution and sale of apparel and merchandise with brand-name logos (caps, T-shirts, backpacks, etc.).
- Payments to promote tobacco products in movies, television shows, theater productions or live performances, live or recorded music performances, videos and video games.
- Brand name sponsorship of events with a significant youth audience or team sports (football, basketball, baseball, hockey or soccer).
- Sponsorship of events where the paid participants or contestants are underage.
- Tobacco brand names for stadiums and arenas.
- Free samples except in areas where the operator ensures no underage person is present.

The results of these efforts have been nothing short of extraordinary. As shown below, since the MSA was signed in 1998, tobacco use among teenagers has fallen precipitously.

Between 1998 and 2014, the share of 8th graders reporting that they smoke cigarettes daily has fallen by 84 percent, while the share of 10th and 12th graders who smoke daily has fallen by 80 and 70 percent, respectively.⁶

30 Day Prevalence of Daily Use of Cigarettes, by Grade, 1976-2014⁷



“Occasional” smoking by adolescents has also plunged, with 8 percent of U.S. 8th, 10th, and 12th graders reporting smoking at least once in the past month in 2014, down from 28 percent in 1997-1998.

These achievements have saved thousands of lives and billions of dollars in medical costs associated with tobacco use.

However, instead of adopting these tools to the rise of e-cigarettes, the industry appears to have harkened back to an old playbook—one that explicitly and implicitly targets minors as a source of potential revenue.

Indeed, a major concern for public health officials is that the industry’s marketing strategies for e-cigarettes are remarkably similar⁸ to the types of strategies banned under the MSA, including:

- Sponsoring summer concert events
- Advertising in magazines
- Sponsoring NASCAR drivers (including free samples at events)
- Using celebrity endorsers
- Advertising sweet flavors⁹
- Using cartoons, including Santa Claus¹⁰

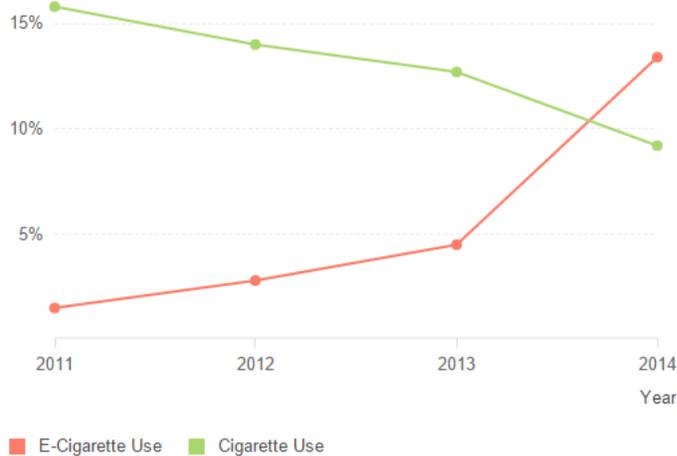
An appendix attached to this testimony showcases the similarities between marketing of traditional tobacco pre-MSA and e-cigarettes today. Many of the advertisements shown were compiled by the Campaign for Tobacco Free Kids.

As a result of this marketing, it comes as no surprise that a recent report found that the vast majority of American youth—more than 80 percent—are exposed to e-cigarette advertising.¹¹

The report also found that marketing for e-cigarettes is booming and that the big players are brands largely controlled by the nation’s largest tobacco companies.

- The top 10 e-cigarette brands with the highest advertising expenditure in 2013 and 2014 account for 98 percent of total category spend.
- Five brands (blu, MarkTen, NJOY, Vuse and Fin) account for 95 percent of total category spend. The three brands with highest advertising expenditure in 2014 — MarkTen, blu, and Vuse — are all owned by large tobacco companies (Altria, Lorillard, and Reynolds Americans, respectively).
- The top 10 brands spent \$75.7 million in 2013 and \$115.3 million in 2014. Magazines and cable TV accounted for the vast majority of dollars spent in both years.
- The brand with the highest 2014 spending—MarkTen—increased its spending from \$431,000 in 2013 to \$54 million in 2014.

E-Cigarette vs. Cigarette Use in Adolescents 2011-2014



Source: [Centers for Disease Control and Prevention](#). Adolescents were surveyed about whether they had smoked an electronic cigarette or a regular cigarette at least once in the past month.

Thus, even as traditional tobacco use by adolescents has declined in recent years, e-cigarette use by high school students has soared, rising from 1.5 percent in 2011 to 13.4 percent in 2014, as shown in the chart below.¹²

In fact, in 2014, the use of e-cigarettes among U.S. high school students surpassed every other “tobacco product” for the first time ever.¹³

A similar increase occurred among middle school students, with e-cigarette use rising from 1.1 percent in 2011 to 3.9 percent in 2014.

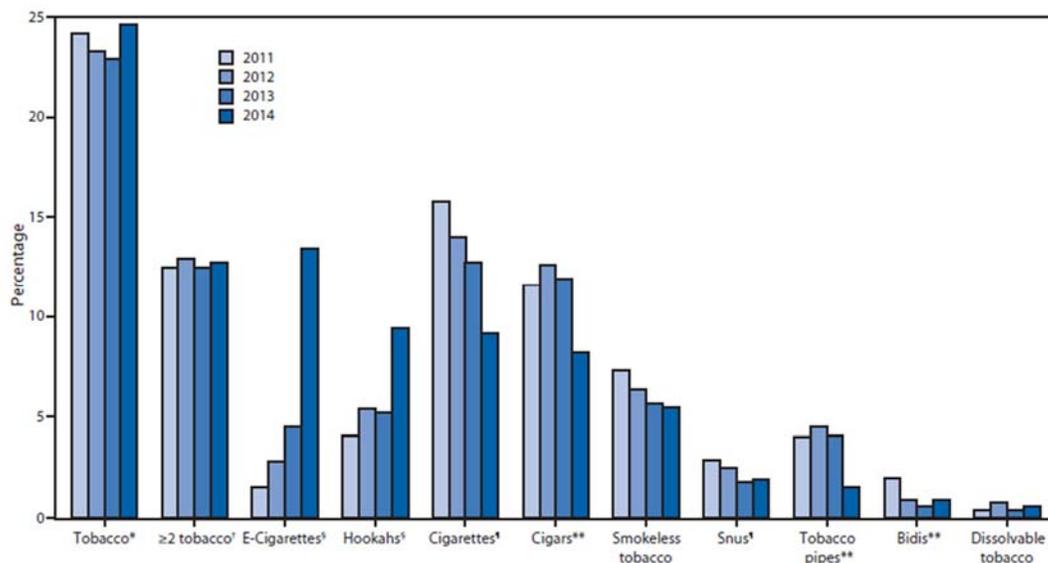
These increases are particularly troubling because they have contributed to an overall increase in

“tobacco product” use by youth—reversing a years-old trend.

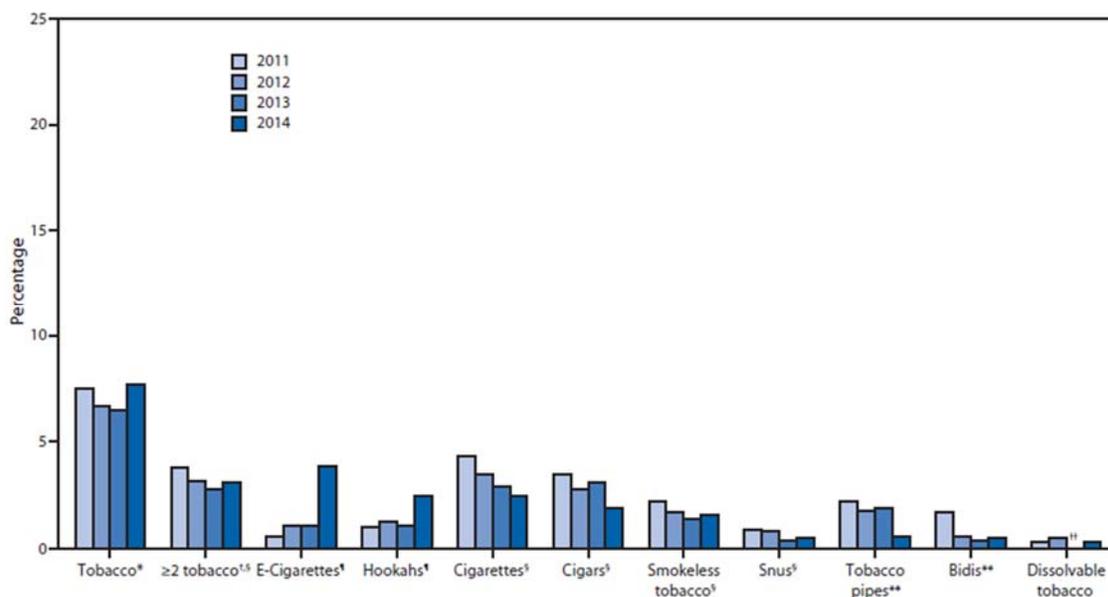
As shown in the following chart, overall tobacco use (defined as preceding 30-day use of cigarettes, cigars, smokeless tobacco, e-cigarettes, hookahs, tobacco pipes, snus, dissolvable tobacco, and/or bidis) among high school students had steadily declined between 2011 and 2013.

These decreases built on progress starting as early as 1999, as measured by the National Youth Tobacco Survey.¹⁴

However, this trend was reversed in 2014, thanks almost exclusively to a meteoric rise in use of e-cigarettes and hookah.



Similar trends are seen in use of tobacco products by American middle school students.



According to the Centers for Disease Control (CDC), “the lack of decline in overall tobacco use from 2011 to 2014 is concerning and indicates that an estimated 4.6 million youths continue to be exposed to harmful constituents, including nicotine, present in tobacco products.”¹⁵ As a result, the CDC concluded that “it is critical that comprehensive tobacco control and prevention strategies for youths should address all tobacco products and not just cigarettes.”¹⁶

Urgent action is needed to reverse this trend. Recent research links e-cigarettes to a variety of public health hazards, especially for young people.

A December 2015 study from the Harvard School of Public Health found that a flavoring chemical linked to cases of severe respiratory disease was found in more than 75 percent of flavored electronic cigarettes.¹⁷

Co-author David Christiani stated, “In addition to containing varying levels of the addictive substance nicotine, [e-cigs] also contain other cancer-causing chemicals, such as formaldehyde, and as our study shows, flavoring chemicals that can cause lung damage.”¹⁸

The study, which was funded with grant money from the National Institutes of Health, called for “urgent action...to further evaluate this potentially widespread exposure via flavored e-cigarettes.”

While there is no scientific consensus concerning health effects of long-term use of e-cigarettes or whether e-cigarettes are a “gateway” to traditional tobacco, the research about the damaging effects of nicotine on adolescent brain development are clear.¹⁹ As a result, the CDC has declared that, “no youth should use e-cigarettes.”²⁰

Conclusion

In April 2014, the U.S. Food and Drug Administration (FDA) recommended banning sales of e-cigarettes to those under age 18, requiring health warning labels, requiring an agency review of existing and future products, and eliminating free samples, which often attract young smokers.²¹ A proposed final rule was sent to the Administration in October 2015.²²

While e-cigarettes clearly fall under the FDA’s mandate to “regulat[e] the manufacturing, marketing and distribution of tobacco products to protect the public health and to reduce tobacco use by minors,” the sale and distribution of e-cigarettes is also squarely within the FTC’s duty to investigate and eliminate “unfair, deceptive or fraudulent practices.”²³

I thank you for taking steps to study this growing industry and urge you to seek information from companies about how and to what degree their marketing campaigns are targeted to youth.

Sincerely,



Scott M. Stringer
Comptroller
City of New York

APPENDIX: Tobacco Advertising vs. E-Cigarette Advertising

THEN



NOW



Vapor Shark E-Cigarette Billboard, Florida, 2013

“Joe Camel” and “Mr. Cool”

THEN

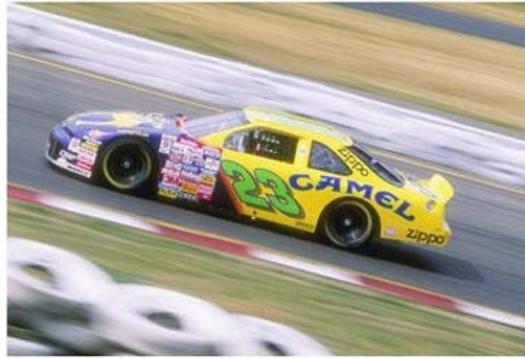


NOW



Auto Racing Sponsorships

THEN



NOW



Concert Series Sponsorships

NOW

blu ELECTRONIC CIGARETTES PRESENTS

electric lounge

MARCH 14-16, 2013 • 418 E. 6th St. • AUSTIN, TX

| Thursday | Friday | Saturday |
|---|--|---|
| DAY NOON - 2:00 DIME MAK KITT & FLAVOR WILL BRUNSWAR THE DOG IN THE REARVIEW NEW FUNK BONDS IN THE | DAY NOON - 4PM FUTURE CLASSIC/ BOND MUSIC FUNK SOUL CLASSICS HIP HOP TRENCH DISCO/SOUL/JAZZ | DAY NOON - 3:00PM OM RECORDS/ LAVISH HABITS ROCK LANGUAGE WOLFE BUNARD FRENCH ROCK/REBELLION MYSTERY BEAT GOSPEL/JAZZ CLASSIC/JAZZ BLUES/JAZZ REPERATIVE |
| NIGHT 8PM - 1AM FIREPOWER DANCE DANCE MUSIC SWEET HOUSE MANTON DUSTY MIDNIGHT | NIGHT 8PM - 1AM STYLIS & COMPANY TRIP HOP/JAZZ/BLUES TRIP HOP/JAZZ BLUES/MIDNIGHT BLUES | NIGHT 8PM - 1AM BEATY BOY (LIVE) DJ SET TRIP HOP DANCE/JAZZ HIP HOP/JAZZ |

Small text at bottom: Please don't drink & drive... MEN'S AGE-REPORTING INSTITUTE

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KOOL JAZZ FESTIVAL

COOL JAZZ FESTIVAL SCHEDULE

| Day | Time | Artist |
|----------|-------------------|-------------------------|
| Thursday | 8:00 PM - 1:00 AM | THE DOG IN THE REARVIEW |
| Friday | 8:00 PM - 1:00 AM | THE DOG IN THE REARVIEW |
| Saturday | 8:00 PM - 1:00 AM | THE DOG IN THE REARVIEW |

There's only one way to play it. KOOL.

Warning: The Surgeon General has determined that Electronic Cigarettes may be harmful to you. Quitting now can greatly reduce serious risks to your health.

Celebrity Endorsements (e-cigarettes)

NOW



**TAKE BACK
YOUR FREEDOM**

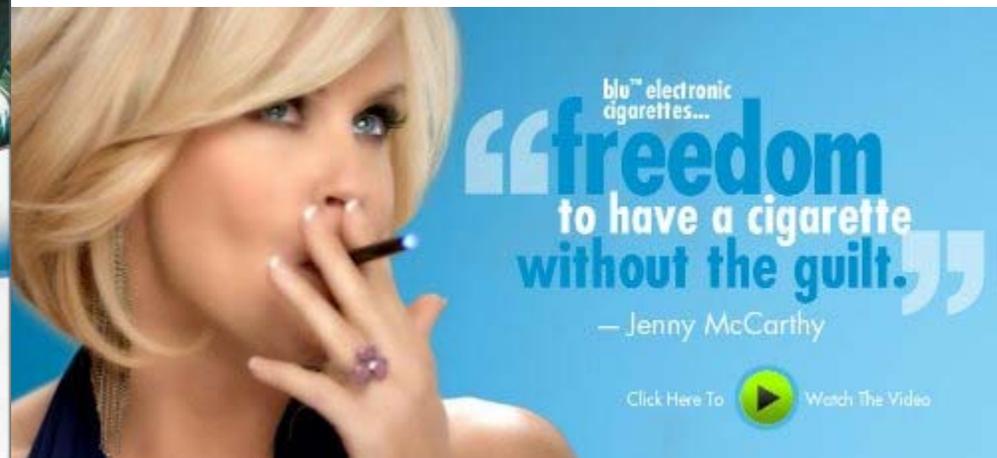
with blu eCigs®, the smart alternative to cigarettes.

- Smoke Virtually Anywhere
- No Tobacco Smoke, Only Vapor
- Flavors Made in the U.S.A.

blu™ electronic cigarettes are now available
in retail stores nationwide.

Visit us at blucigs.com/store-locator

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blu™ electronic
cigarettes...

**“freedom
to have a cigarette
without the guilt.”**

— Jenny McCarthy

Click Here To  Watch The Video

Fruity Flavors

THEN



NOW

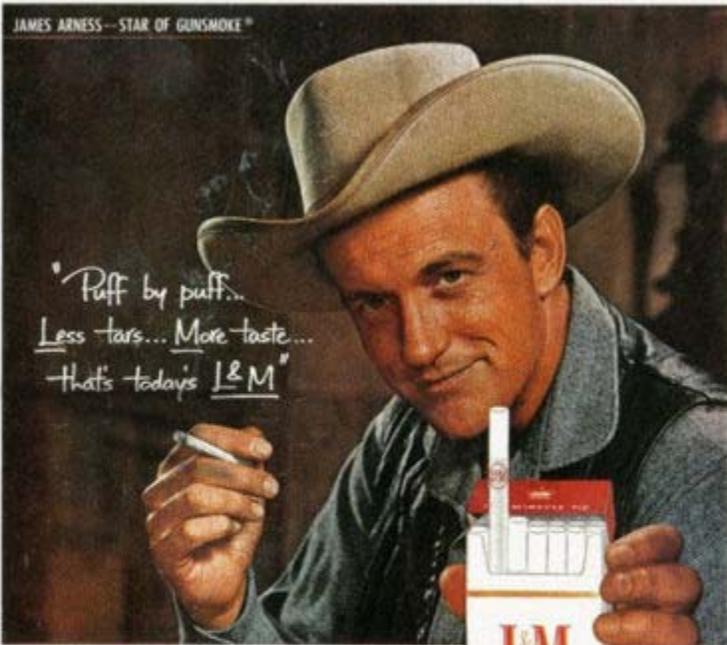


Similar Imagery Used in Marketing

THEN

JAMES ARNESS—STAR OF GUNSMOKE™

"Puff by puff...
Less tars... More taste...
That's today's L&M"



Yes, today's L&M gives you... **Less tars & More taste**

Live Modern... change to modern L&M

They said it couldn't be done... a cigarette with such an improved filter... with such exciting taste. But L&M did it! L&M's patented filtering process electronically places extra filtering fibers crosswise to the stream of smoke... enabling today's L&M to give you - puff by puff - less tars in the smoke than ever before. Yet L&M draws easy... delivering you the clean rich taste of the Southland's finest cigarette tobaccos. The best tasting smoke you'll ever find!

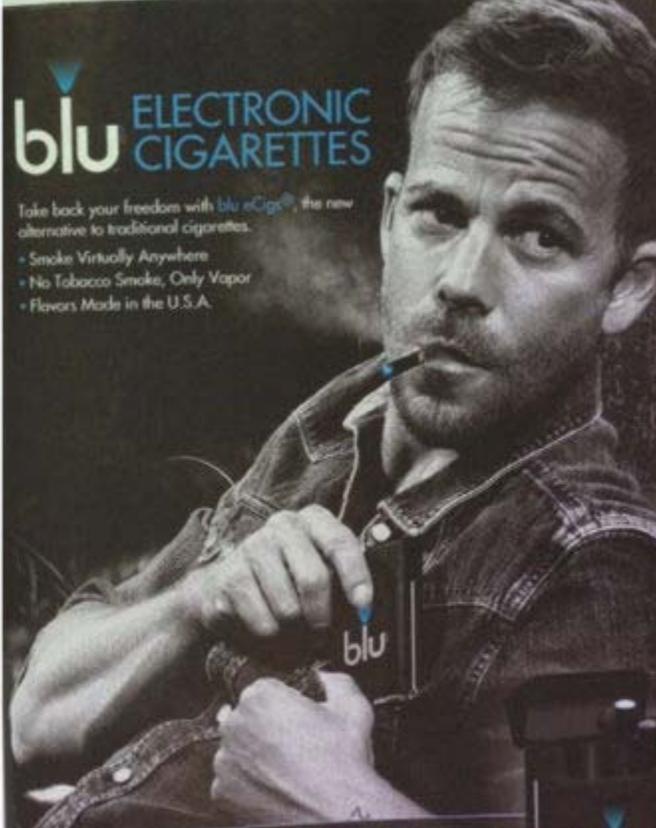
© 1988 Philip Morris Inc. All rights reserved. L&M and the L&M logo are trademarks of Philip Morris Inc. in the U.S. and other countries.

NOW

blu ELECTRONIC CIGARETTES

Take back your freedom with blu eCigs®, the new alternative to traditional cigarettes.

- Smoke Virtually Anywhere
- No Tobacco Smoke, Only Vapor
- Flavors Made in the U.S.A.



Now Available in Retail Stores Nationwide

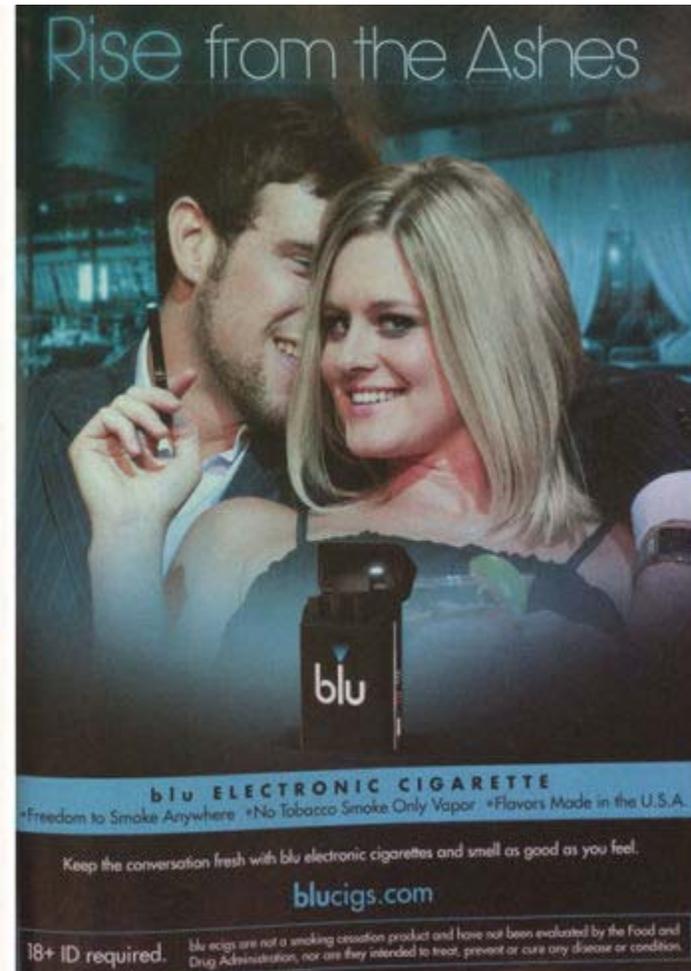
blucigs.com/store-locator/

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THEN



NOW



THEN

20,679 Physicians
*say **LUCKIES** are*
less irritating

I too prefer
LUCKIES
because

Toasting removes dangerous irritants that cause throat irritation and coughing

LUCKY STRIKE
IT'S TOASTED
CIGARETTES

"It's toasted"

Your Throat Protection —
against irritation — against cough.

© 1988, Philip Morris Inc. All Rights Reserved.

NOW

SMOKE IN STYLE
With blu Electronic Cigarettes

Freedom never goes out of fashion. Control when and where you want to smoke with blu electronic cigarettes. blu produces no tobacco smoke and no ash, only vapor, making it the ultimate accessory and the smarter alternative to regular cigarettes. Step out in style with blu.

QR code | **Like us on Facebook**
facebook.com/blucigs

blu

blucigs.com

* Introducing the World's First Sweet Peak flavor Blu

18+ ID required. | blu cigs are not a smoking cessation product and have not been evaluated by the Food and Drug Administration, nor are they intended to treat, prevent or cure any disease or condition.

THEN

**WHY QUIT?
SWITCH TO BLU**

blu is the next choice for smokers wanting a change. Take back your freedom to smoke when and where you want without ash or smell. blu is everything you enjoy about smoking and nothing else. Nicotinely like a cigarette, so make the switch today.

Visit blucigs.com

blu

4 Free Blu Green Packs

PREMIUM ELECTRONIC CIGARETTE

18+ only. CALIFORNIA PROPOSITION 65: Warning: This product contains nicotine, a known carcinogen. The only way to avoid exposure to this and other chemicals is to quit using all tobacco products.

NOW

Considering all I'd heard, I decided to either quit or smoke True. I smoke True.

The low tar, low nicotine cigarette. Think about it.

Warning: The Surgeon General Has Determined That Cigarette Smoking Is Causative of Lung Cancer.

See Inside True 100's for Free Nicotine 0.1 mg. Tar 0.5 mg. (tar and nicotine av. per cigarette) FTC Health Warn. 20

ENDNOTES

¹ <https://www.ftc.gov/news-events/media-resources/truth-advertising>.

² <http://www.nytimes.com/1990/10/16/nyregion/new-york-city-moves-against-cigarette-machines.html>.

³ Myron E. Johnston, "Young Smokers Prevalence, Trends, Implications, and Related Demographic Trends," cited in Congressional Record, Proceedings and Debates of the 10th Congress, Second Session, Vol. 144, Part 7, p. 9456.

⁴ "Some Thoughts About New Brands of Cigarettes For the Youth Market." R.J. Reynolds (1973), quoted at: <https://www.tobaccofreekids.org/research/factsheets/pdf/0114.pdf>.

⁵ <https://oag.ca.gov/tobacco/resources/msasumm>.

⁶ <http://www.hhs.gov/ash/oah/adolescent-health-topics/substance-abuse/tobacco/trends.html>.

⁷ <http://ns.umich.edu/new/multimedia/videos/22574-use-of-alcohol-cigarettes-number-of-illicit-drugs-declines-among-u-s-teens>.

⁸ <http://ecigflashbacks.strikingly.com/>; A report published by a series of Congressmembers in 2014 also indicated how marketing practices directed at youth are widespread in the industry. See: <http://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

⁹ <http://www.nytimes.com/2015/04/17/health/use-of-e-cigarettes-rises-sharply-among-teenagers-report-says.html>; teen users have specifically mentioned the appeal of flavored e-cigarettes and the lower-price point relative to traditional tobacco as attractive qualities of e-cigarettes.

¹⁰ http://www.tobaccofreekids.org/tobacco_unfiltered/post/2013_12_17_santa.

¹¹ <http://truthinitiative.org/sites/default/files/VAPORIZED%20-%2012%202%2015%20-%20FINAL.pdf>.

¹² <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>.

¹³ http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm?s_cid=mm6414a3_e#fig1.

¹⁴ http://www.cdc.gov/tobacco/data_statistics/surveys/nyts/.

¹⁵ http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm?s_cid=mm6414a3_e#fig1.

¹⁶ *Id.*

¹⁷ <http://ehp.niehs.nih.gov/15-10185/>.

¹⁸ <http://news.harvard.edu/gazette/story/2015/12/popcorn-lung-seen-in-e-cigarette-smokers/>.

¹⁹ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>; <https://iom.nationalacademies.org/~media/79C64AF3B65448ECBECE08FDFDDFC83E.ashx>.

²⁰ http://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/pdfs/fs_smoking_youth_508.pdf.

²¹ <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm394667.htm>.

²² <http://www.fda.gov/TobaccoProducts/Labeling/ucm388395.htm>; <http://thehill.com/regulation/pending-regs/257920-fdas-tobacco-deeming-rule-under-final-review>.

²³ <http://www.fda.gov/AboutFDA/WhatWeDo/>; <https://www.ftc.gov/about-ftc/what-we-do>.