

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v. Case No.

JUUL LABS, INC.

DEFENDANT

PLAINTFF'S ORIGINAL PETITION

I. INTRODUCTION

1. Plaintiff, State of Arkansas, (“State” or “Arkansas”), acting through its Attorney General, Leslie Rutledge, brings this action against Defendant, Juul Labs, Inc. (hereinafter “JLI” or “JUUL”), for violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 *et seq.*, (“ADTPA”) and alleges the following:

II. PARTIES

2. Plaintiff, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, brings this action pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113.

3. Defendant Juul Labs, Inc. is a Delaware corporation and maintains its principal place of business at 1000 F Street NW, 8th floor, Washington, DC 20004.

III. JURISDICTION

4. The State files this complaint and institutes these proceedings under Ark. Code Ann. §§ 4-88-104.

5. JUUL has engaged in the conduct described below in the State of Arkansas,

1 County of Faulkner, and elsewhere in the State of Arkansas. This Court has jurisdiction over this
2 matter pursuant to the ADTPA.

3 IV. VENUE

4 6. Venue is proper in the Circuit Court of Faulkner County, Arkansas pursuant to
5 Ark. Code Ann. §§ 4-88-104, 4-88-112, and the common law of the State of Arkansas.

6 7. JUUL promotes, markets, advertises, sells, and distributes its product in Arkansas.
7 JUUL regularly conducts business within the State of Arkansas and derives substantial revenue
8 from goods sold and/or consumed in Arkansas.
9

10 8. At all relevant times, JUUL has purposefully availed itself of this forum.

11 V. FACTUAL ALLEGATIONS

12 A. Tobacco History and E-Cigarettes

13 9. Prior to the late 1990s, the traditional tobacco industry—often referred to as “Big
14 Tobacco”—utilized aggressive marketing and sales tactics to deceive consumers and expand its
15 sales.
16

17 10. The major tobacco companies recognized that increasing cigarette sales depended
18 heavily on addicting individuals to their products from a very young age. As a result, the major
19 tobacco companies developed a comprehensive scheme to appeal to impressionable children and
20 entice them to use their products. They also expended significant resources in exposing youth to
21 tobacco imagery through advertisements in magazines, at sporting events, and on billboards.
22

23 11. Eventually, through increased regulation and a wave of litigation, including
24 lawsuits brought by State Attorneys General to recover health care costs and other damages
25 imposed upon the states by cigarette smoking, Big Tobacco was held responsible in the U.S.

26 12. In 1997, four states (Mississippi, Minnesota, Florida, and Texas) settled with the

1 major tobacco companies. A year later, in 1998, the major tobacco companies entered into the
2 Tobacco Master Settlement Agreement (“MSA”) with 46 State Attorneys Generals, four U.S.
3 territories, the Commonwealth of Puerto Rico, and the District of Columbia (the “Settling States”).

4 13. In addition to requiring the settling cigarette companies to pay billions of dollars to
5 the Settling States each year in perpetuity, the MSA imposes prohibitions on marketing and
6 advertising to youth.

7
8 14. The tobacco industry was further restrained by the passage of the federal Family
9 Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”) in 2009, prohibiting the
10 sale of most flavored cigarettes because “flavored cigarettes are a gateway for many children and
11 young adults to become regular smokers.”¹ The Tobacco Control Act also imposed additional
12 restrictions on cigarette manufacturers, such as requiring them to include stronger warning labels
13 on their products and disclose the ingredients contained in their products, prohibiting them from
14 certain sales and marketing practices targeting youth, and prohibiting them from making “modified
15 risk” claims (e.g., “light,” “low,” or “mild”) without first obtaining approval from the FDA.
16

17 15. As a result of the concerted effort of the States, the federal government, public
18 health advocates, and many others, smoking among youth and adults plummeted.

19 16. Unfortunately, much of this progress has been reversed by the emergence of e-
20 cigarettes. Also known as vaporizers or electronic nicotine delivery systems (“ENDS”), e-
21 cigarettes are devices that operate by heating a liquid solution, almost always containing nicotine,
22 thereby creating an aerosol which can then be inhaled. In addition to nicotine, the liquid solution
23 typically contains other chemicals and flavorings that are inhaled into the lungs and rapidly
24

25
26 ¹ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youths*, New York Times (Sept. 22, 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html> (last visited Jan. 20, 2019).

1 absorbed into the user's bloodstream.

2 17. Nicotine is a highly addictive chemical, particularly to young people who are more
3 susceptible to nicotine addiction. Additionally, teenagers who use e-cigarettes are seven times as
4 likely to smoke combustible cigarettes and suffer the harms associated with traditional smoking.

5 18. E-cigarettes entered the United States market around 2007 and began rapidly rising
6 in popularity with the arrival of JUUL in 2015. By 2019, over 5 million U.S. middle and high
7 school students reported currently using e-cigarettes, with 27.5% of high schoolers and 10.5% of
8 middle schoolers reporting current using e-cigarettes.² Of those current e-cigarette users, 34.2%
9 of high schoolers and 18% of middle schoolers were using e-cigarettes on 20 days or more per
10 month.³

12 19. The data showed that flavors were a big driver of youth usage. Among exclusive e-
13 cigarette users in 2019, 72.2% of high schoolers and 59.2% of middle schoolers reported the use
14 of flavored products, with fruit, menthol, and mint being the most commonly reported flavors.⁴

16 20. E-cigarettes are not subject to the advertising and marketing restrictions contained
17 in the Tobacco MSA and were largely unregulated until the FDA brought e-cigarettes under its
18 authority through the "deeming rule" on August 8, 2016. E-cigarettes were not subject to federal
19 warning label requirements until August 2018.

20 21. As more fully set out below, JLI borrowed from the same playbook used by Big
21 Tobacco decades earlier to become the largest e-cigarette company in the United States. JUUL
22 sales skyrocketed 700% in 2016 and by the end of 2018, JLI held more than 75% of the e-cigarette
23

25 _____
26 ² Karen A. Cullen et al., *e-Cigarette Use Among Youth in the United States, 2019*, JAMA 2019,
<https://jamanetwork.com/journals/jama/article-abstract/2755265>.

³ *Id.*

⁴ *Id.*

1 market.⁵

2 **B. JLI's Course of Conduct**

3 **i. JLI's Misrepresentations and Material Omissions about Nicotine**

4 22. In marketing its devices, JLI often claimed that e-cigarettes are safer than
5 combustible cigarettes because they do not contain many of the toxins found in combustible
6 cigarettes. In fact, the long-term health effects of e-cigarette use are unknown. Recent research
7 suggests that e-cigarettes may uniquely harm the human body due to the way in which nicotine
8 and other chemicals are aerosolized and inhaled into the lungs.

10 23. Like combustible cigarettes and other e-cigarettes, JUUL is a nicotine delivery
11 device. JLI introduced a product, called "pods," which attach as part of the JUUL device and are
12 the source of nicotine ingested by users. The pods contain a proprietary blend of nicotine liquid
13 with significantly more nicotine than other e-cigarette products on the market at the time the pods
14 were introduced, yet provide a "smoother" experience that is less harsh on the user's throat. The
15 combination of high nicotine concentration and reduction of irritation is possible through the use
16 of nicotine salts pioneered by JLI.

18 24. In the marketing, promotion, and sale of its products, JLI made misleading
19 representations to consumers, leading them to believe that its products (i) did not include nicotine
20 at all or, alternatively, (ii) contained a lower concentration of nicotine than they do.

21 25. E-cigarette products on the market before JUUL contained what is called freebase
22 nicotine. Freebase nicotine is bitter and harsh on the throat, especially at higher nicotine
23 concentrations. JUUL's use of nicotine salts made its products more palatable to inhale than the
24

26 ⁵ Richard Craver, *JUUL Ends 2018 With 76 Percent Market Share*, WINSTON-SALEM JOURNAL
(Jan. 8, 2019), https://journalnow.com/business/juul-ends-2018-with-76-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

1 aerosol produced by other e-cigarettes.

2 26. Until approximately 2017, JLI made material omissions by failing to mention
3 nicotine, or its addictive nature, in its product marketing. None of JUUL's advertisements,
4 billboards, or social media posts disseminated as part of its launch contained the word "nicotine,"
5 nor did JUUL's marketing warn that its e-cigarettes were addictive.

6 27. JUUL's packaging also contained material omissions related to nicotine content.
7 JUUL did not include the word "nicotine" on the front of its packaging until mid-2018.
8

9 28. By failing to disclose that its products contained nicotine, JLI hid the true nature of
10 its products.

11 29. As a predictable consequence of JUUL misleading consumers, many did not realize
12 that JUUL pods contained nicotine and were addictive.

13 30. Three years after its launch, JLI finally added a clear nicotine label to its products.
14 However, JUUL misrepresented its product's nicotine content as equivalent to the amount of
15 nicotine in a pack of cigarettes. On its website, in advertisements, and in public statements, JLI
16 represented that one JUUL pod was equivalent to one pack of cigarettes. This representation is
17 false because the overall amount of nicotine in a JUUL pod is equivalent to 1.72 packs of
18 cigarettes.
19

20 31. JLI has also made representations giving the impression that its products could be
21 used as smoking cessation devices, despite the fact that the JUUL products have not been approved
22 for such use by the FDA. In 2019, the FDA issued a warning letter to JLI relating to such
23 representations.
24

25 **ii. 2. JLI's Youth-Oriented Marketing Campaign**

26 32. From its inception, JLI directed its marketing at youth.

1 33. A principal driver of JLI's explosive growth was youth adoption of its products.
2 Emulating the cigarette industry, JLI engaged in a massively successful campaign to addict youth.

3 34. The appeal to youth was an intentional marketing strategy. To introduce its products
4 to America's youth, JLI launched its Vaporized campaign with high-profile promotions and
5 sampling opportunities. The Vaporized campaign relied on youthful models in trendy clothes and
6 provocative poses. In the first 6 months after product launch, JLI's advertising imagery was patently
7 youth oriented.
8

9 35. Internal documents show that JLI recognized that "[t]he models we used for the
10 #Vaporized campaign appeared to be too youthful for many consumers (and the media)." A former
11 senior manager at JLI said that he and others in the company were well aware that its products could
12 appeal to teenagers.

13 36. JLI's advertising channels were targeted to youth. JLI made minimal use of
14 newspapers, magazines, radio, and television advertisements. Instead, it conducted its marketing
15 through Instagram, Twitter, and Facebook.
16

17 37. JLI used a hashtag marketing strategy to promote its products through social media
18 platforms.

19 38. JLI monitored the use of its hashtags and knew, or should have known, that
20 underage consumers were following its social media accounts and advertising posts.

21 39. JLI sought out individual consumers with large Facebook and Instagram followers
22 to participate in its "affiliate program." JUUL affiliates promoted the product on social media
23 platforms and offered discounts to entice followers and other consumers to purchase the product on
24 the JUUL website. Affiliates were compensated for any resulting sales.
25

26 40. JLI's marketing also utilized "influencers," social media users with the power to

1 affect the purchasing decisions of others. JLI relied on influencers with large numbers of young
2 followers to promote JUUL products on social media. Through influencers, JLI harnessed the power
3 of user-created content to expand its reach far beyond what it could accomplish with company
4 advertisements alone, and at a much lower cost.

5 41. Targeting fashion bloggers, stylists, and celebrities, JLI provided influencers with
6 free or discount e-cigarettes with the intent that they would use them in public and post JUUL-
7 related content on their social media accounts. JLI monitored these accounts and reposted JUUL-
8 related social media content created by influencers.

10 42. Until 2018, JLI paid influential social media users to promote its product in blog
11 and Instagram posts.

12 43. JLI knew, or should have known, that many of the individuals targeted as
13 influencers for JUUL e-cigarettes were young or very young, that they were popular with
14 adolescents, and that many or most of their followers were younger than the minimum legal sales
15 age for e-cigarettes.

17 **iii. JLI's Product Appealed to Youth**

18 44. Nicotine is highly addictive, especially to teenagers. Further, it is a known fact that
19 flavors attract underage users. In 2009, the FDA banned cigarettes containing flavoring other than
20 tobacco or menthol flavoring. In announcing the ban, the FDA declared that "flavored cigarettes
21 are a gateway for many children and young adults to become regular smokers." Youth often
22 perceive that flavored e-liquid advertisements are meant for them.⁶

24 45. JLI's emphasis on marketing flavors further differentiated its e-cigarettes from
25 combustible cigarettes.

26 _____
⁶ McKelvey K, Baiocchi M, Ramamurthi D, McLaughlin S, Halpern-Felsher B, *Youth Say Ads for Flavored e-liquids Are for Them*, ADDICT BEHAV. 2018; pii:S0306-4603: 30957-62.

1 46. JLI launched its e-cigarettes with an array of flavors, including “Miint,” “Fruut,”
2 “Bruule,” and “Tobaac,”⁷ eventually adding “Cool Cucumber,” and “Mango”, while also
3 experimenting with so-called limited release flavors.

4 47. In addition to attractive flavors, JLI appealed to youthful users by altering the
5 chemical composition of the nicotine in its products to be less harsh on the throats of new users,
6 while at the same time delivering high doses of addictive nicotine.

7
8 48. JLI’s use of nicotine salts to obtain a lower pH level of the nicotine in its e-cigarettes
9 was an intentional decision to make inhalation “smoother” for the inexperienced smoker.

10 49. This chemical composition made JUUL products more appealing to non-smokers,
11 such as underage, first-time users, while simultaneously making the products highly addictive.

12 50. JLI’s decisions to manipulate the pH level of the nicotine in its products and to
13 include instructions encouraging users to “take small puffs,” “to get a feel for the vapor then ease
14 into inhaling,” and “don’t give up,” were not made for the purpose of appealing to experienced
15 smokers. JLI took these steps to appeal to young and inexperienced smokers, knowing this would
16 include many minors.

17
18 51. JLI designed its e-cigarette device to look like the latest tech invention. Initial
19 reviews of the product included comparisons between JUUL devices and iPhones, and JLI even
20 marketed the JUUL device as “the iPhone of E-cigs.”

21 52. In addition to being rechargeable through a computer’s USB port, the design of the
22 JUUL device resembles an inconspicuous USB drive, able to fit in the palm of a hand. This makes
23 JUUL devices easily concealable, another attractive feature for underage users.

24
25
26

⁷ The creative spellings of flavors were presumably used to mimic the spelling from the
 company’s name.

1 **iv. JLI's Deficient Age-Verification Process**

2 53. Despite the obvious and acknowledged youthful appeal of its product, JLI failed to
3 put in place adequate screening for online purchases to prevent purchases by minors.

4 54. By design, the third-party online age-verification system used by JLI was porous.
5 The age-verification system, provided by the company Veratad, did not always analyze the
6 potential customer's name, full address, and date of birth when confirming identity and age. As a
7 result, thousands of deliveries were made to underage consumers using phony names.
8

9 55. JLI also used minors' personal email addresses, which were submitted during the
10 age verification process, to send marketing and advertising materials, despite knowing that these
11 minors did not pass age verification. JUUL was aware of and did not correct this issue for years,
12 updating its policy only in August 2018.

13 56. Initially, JLI required an adult signature upon delivery of its products; however, on
14 or about October 2016, JLI stopped requiring a delivery signature and made it an option available
15 at an additional expense.
16

17 57. JLI knew of and allowed a loophole by which minors could receive a device merely
18 by submitting the serial number of a device sold to someone of legal age through JUUL's warranty
19 replacement program. No money changed hands and no age verification procedure was employed.
20 JLI had actual knowledge that minors were taking advantage of this loophole because parents of
21 such minors complained to the company. Although JLI knew that the warranty replacement
22 program provided a way for minors to obtain the product for free, JLI did not fix the loopholes in
23 this program.
24

25 58. Because JLI's age-verification system verified age based on the billing address and
26 not the shipping address, minors were able to ship the product in their own name but still pass the

1 age verification system with their parent's information.

2 59. In sum, JLI knew its products were available and appealing to youth, but
3 understood, from Big Tobacco's playbook, that its success depended on addicting a new generation
4 to nicotine. It created a product with a design that was attractive to minors and filled it with a
5 flavored nicotine solution that was easy for inexperienced smokers to use. It marketed its product,
6 not to the older demographic it now claims it was seeking, but to the under-aged, through social
7 media accounts, celebrities, influencers, youth-oriented events, and an advertising campaign
8 featuring youthful models styled with the playfulness and fashion of teenagers. JLI's policies,
9 including an inferior age-verification protocol, enabled minors to purchase JUUL products.
10

11 VI. CAUSES OF ACTION

12 **COUNT I: Deceptive Trade Practices Concerning Underage Consumers in Violation of** 13 **the Arkansas Deceptive Trade Practices Act**

14 60. The allegations contained in paragraphs 1–59 are incorporated by reference as if
15 they were set out herein.
16

17 61. In the course of marketing, promoting, advertising, selling, and distributing its
18 products, JLI directed its marketing at minors in violation of state and federal law.

19 62. Pursuant to Ark. Code Ann. § 4-88-107, such conduct constitutes deceptive trade
20 practices that are prohibited by the ADTPA.

21 63. The acts or practices described herein occurred in trade or commerce as defined
22 in the ADPTA.
23

24 64. These acts or practices affected the public interest because they impacted
25 numerous Arkansas consumers.

26 **COUNT II: Deceptive Trade Practices Concerning Nicotine Content in Violation of the** **Arkansas Deceptive Trade Practices Act**

1 limited to, the unfair and deceptive acts and practices alleged herein;

2 C. A declaration that JLI's acts described above violate the ADTPA, Ark. Code Ann.
3 §§ 4-88-103 *et seq.*

4 D. An injunction pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1)
5 enjoining JLI from engaging in any acts that violate the ADTPA, including, but not limited to,
6 conduct alleged herein;

7 E. An award of a civil penalty for each and every violation of the ADTPA.

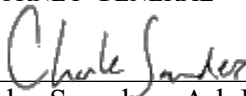
8 F. An award of such relief as the Court finds necessary to redress injury to
9 consumers resulting from violations of law described above, including, but not limited to
10 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

11 G. An award of the State's reasonable costs and attorney's fees incurred in this
12 action, pursuant to Ark. Code Ann. § 4-88-113(e); and

13 H. Any other award the Court determines is just and equitable.
14

15 Respectfully submitted,
16

17 LESLIE RUTLEDGE
18 ATTORNEY GENERAL

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