



ATTORNEY GENERAL LESLIE RUTLEDGE

October 6, 2019

Mr. Devin N. Wenig
President and CEO
eBay Inc.
2025 Hamilton Avenue
San Jose, CA 95125

Dear Mr. Weing:

As you undoubtedly know, e-cigarette use in our nation has grown exponentially in recent years. The growth of the e-cigarette industry has been driven by youth. One Centers for Disease Control (“CDC”) study showed a 48 percent rise in e-cigarette use by middle schoolers and a 78 percent increase by high schoolers between 2017 and 2018, an increase from 1.5 million children to 3.6 million.¹ The Surgeon General of the U.S. Public Health Service recently released an advisory opinion describing the growth of e-cigarettes amongst our nation’s youth as an epidemic.² eBay’s platform is a particularly appealing marketplace for minors to obtain e-cigarettes.

Amid the many chemicals found in e-cigarettes is nicotine. Nicotine is a very addictive chemical, and it is particularly harmful to minors. Nicotine harms brain development, memory, and attention and learning in youth. Additionally, long-term use can lead to cardiovascular disease. E-cigarettes also contain other chemicals -

¹ Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018. *MMWR Morb Mortal Wkly Rep* 2018;67:1276–1277.

² Office of the Surgeon General. *Surgeon General’s Advisory on E-cigarette Use Among Youth*. Washington, DC: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2018. <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf> (last visited September 9, 2019).

the effects of which are still being studied. Finally, minors who use e-cigarettes are far more likely to smoke cigarettes in the future.^{3 4}

More recently, the use of e-cigarettes has been linked to a more immediate health crisis. As of September 6, 2019, the CDC announced that it had identified 450 possible cases of severe pulmonary disease in 33 states and one territory, three deaths, and one death under investigation, all tied to vaping.⁵ While scientists are working around the clock to ascertain what is causing this disease outbreak, online sellers such as eBay continue to facilitate the sale of e-cigarettes and nicotine products to youth.

eBay allows a buyer to use guest checkout, ship to an alternate address, and pay for goods using readily obtainable, anonymous electronic gift cards. Additionally, there is no age verification process required for buyers to purchase tobacco products from the eBay site.⁶

According to eBay's policies "tobacco products, including e-cigarettes and vapes, are heavily regulated and can't be sold or advertised on eBay.com."⁷ This prohibition, per eBay policy, covers e-cigarettes and components as defined by U.S. Food and Drug Administration ("FDA") regulation. The FDA includes in its definition of electronic nicotine delivery systems ("ENDS") all vapes, vaporizers, vape pens, hookah pens, electronic cigarettes, and e-pipes. Examples of covered components of ENDS products include e-liquids, cartridges, atomizers, flavorings, and tank systems.⁸

While eBay's policy toward these highly addictive and potentially dangerous products is a laudable policy, it appears no sincere effort is being made to monitor

³ U.S. Department of Health and Human Services. *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*. Atlanta, GA: U.S. Department of Health and Human Services, CDC; 2018. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html (last visited September 9, 2019).

⁴ Truth Initiative. E-cigarette Factsheet. 2018; https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth_E-Cigarette_FactSheet_FINAL.pdf (last visited September 9, 2019).

⁵ Lena H. Sun, *Lung illness tied to vaping has killed 5 people as new case reports surge*, WASHINGTON POST, September 6, 2019, <https://www.washingtonpost.com/health/2019/09/06/lung-illness-tied-vaping-has-killed-third-person-may-be-new-worrisome-disease-officials-say/?noredirect=on>.

⁶ Makena Kelly, *Teen vapers are using eBay to dodge age restrictions*, THE VERGE, June 5, 2019, <https://www.theverge.com/2019/6/5/18652706/teen-vapers-ebay-purchase-age-restrictions-vaping-cigarettes-juul>.

⁷ *Tobacco and smoking accessories policy*, ebay.com, <https://www.ebay.com/help/policies/prohibited-restricted-items/tobacco-policy?id=4273> (last visited September 9, 2019).

⁸ U.S. Food and Drug Administration, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*; 2019. <https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends> (last visited September 9, 2019).

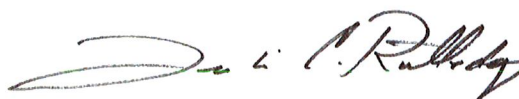
compliance of the policy. I am greatly concerned about the lack of enforcement. A cursory review of eBay.com turns up an extensive list of e-cigarette related products including fruity flavor disposable e-cigarettes from China, JUUL pods, Mystic electronic cigarette cartridges, eGo ce4 E cigarette kits from Israel, and a host of other products that appear to all be covered by eBay's policy against selling or advertising such products. It also appears that eBay makes it very easy to find these products. Its search engine algorithms provide suggested listings to buyers under the category 'E-Cigarettes, Vapes & Accessories.'

I am aware that this is not the first time a governmental agency has asked eBay to engage in responsible behavior.⁹ However, despite the efforts on eBay's part in response to youth who were purchasing JUUL products on eBay.com, there is still an obvious problem.

I am urging eBay to immediately remove all ENDS and nicotine products from its online sales platform and to begin effectively enforcing its own policy against the sale or advertisement of tobacco products.

I am open to discussing additional measures that eBay may utilize to help combat youth access to e-cigarettes. Please contact my office to schedule a meeting.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leslie Rutledge", with a stylized, flowing script.

Leslie Rutledge
Attorney General

⁹ Richard Craver, *FDA tightens marketing standards for top-selling Juul e-cig, cites eBay sales to youths*, WINSTON-SALEM JOURNAL, April 24, 2018, https://www.journalnow.com/business/fda-tightens-marketing-standards-for-top-selling-juul-e-cig/article_fd29729f-c114-56b7-b7fa-00089beb01bd.html.