

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

CAMPAIGN FOR TOBACCO-FREE KIDS
AMERICAN ACADEMY OF FAMILY PHYSICIANS
AMERICAN ACADEMY OF PEDIATRICS
AMERICAN CANCER SOCIETY CANCER ACTION NETWORK
AMERICAN HEART ASSOCIATION
AMERICAN LUNG ASSOCIATION
TRUTH INITIATIVE
INTERNATIONAL UNION AGAINST TUBERCULOSIS AND LUNG DISEASE
VITAL STRATEGIES

Petitioners

v.

PHILIP MORRIS INTERNATIONAL, INC.
BRITISH AMERICAN TOBACCO, PLC.
JT INTERNATIONAL, SA.
IMPERIAL BRANDS, PLC.

Respondents

August 24, 2018

**REQUEST FOR INVESTIGATIVE AND ENFORCEMENT
ACTION TO STOP DECEPTIVE ADVERTISING ONLINE**

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Table of Contents

I. Introduction and Summary	1
II. The Parties	2
A. Petitioners	5
1. Campaign for Tobacco-Free Kids	5
2. American Academy of Family Physicians	5
3. American Academy of Pediatrics	5
4. American Cancer Society Cancer Action Network	5
5. American Heart Association	5
6. American Lung Association	5
7. Truth Initiative	6
8. International Union Against Tuberculosis and Lung Disease (The Union)	6
9. Vital Strategies	6
B. Respondents	6
1. Philip Morris International, Inc.	6
2. British American Tobacco, Plc.	6
3. JT International, SA	6
4. Imperial Brands, Plc.	6
III. Summary and Examples of Each Respondents' Global Online Marketing Campaigns Using Young Influencer	7
A. Philip Morris International, Inc.	7
B. British American Tobacco, Plc.	14
C. JT International, SA	20
D. Imperial Brands, Plc.	24
IV. Respondents' Deceptive Marketing Practices Reach and Appear to Be Aimed at American Consumers	24
A. Respondents' Online Influencer Campaigns Have a Substantial Viewership and Exposure on Social Media in the United States, Including Through Respondents' Use of Foreign Influencers with U.S. Followers	24
B. Respondents' Global Cigarette Brands Being Promoted Via Their Deceptive Online Influencer Marketing Campaigns Have a Market Presence in the U.S.	26
1. Influencer Marketing Has Historically Been an Important Component for Tobacco Companies to Reach "Young", "Hip" and "Cool" U.S. Consumers "Under The Radar" of the General Public	26
2. Philip Morris International, Inc.	27
3. British American Tobacco, Plc.	27
4. JT International, SA. and Imperial Brands, Plc.	27
C. Foreign Endorsers Affiliated with Respondents' Global Influencer Marketing Campaigns Have Posted Campaign Images While Being Physically Present in the United States	28
D. American Imagery and Contests with U.S. Travel as Prizes Appear in Respondents' Global Influencer Marketing Campaign Posts	30

E. English Language Is Almost Exclusively Used in Respondents’ Global Cigarette Campaign Posts Even Though English Is Not the In-Country Language of Where Respondents’ Influencer Marketing Campaigns Originate	32
V. Respondents’ Deceptive Advertising Is Particularly Egregious and Justifies Prompt Action Because Tobacco Products Are Uniquely Harmful; Certain Respondents Have Engaged in a Decades-Long Conspiracy to Deceive Americans About the Harms of Their Products; and Youth Are Particularly Susceptible to Respondents’ Deceptive Conduct Online	33
A. Tobacco Products Are Uniquely Harmful to Health	33
B. Certain Respondents Have Perpetrated Decades of Fraud Against the American People	33
C. American Teenagers Are Particularly Susceptible to Exposure of Respondents’ Deceptive Practices on Social Media	33
VI. Respondents’ Online Global Marketing Campaigns Using Young Influencers Violate the FTC’s Guides Concerning Use of Endorsements and Testimonials in Advertising	35
A. Images Posted to Social Media Resulting from Respondents’ Marketing Campaigns Are Considered Endorsements and Subject to the FTC Act	35
B. Evidence Exists of a “Material Connection” Between Certain Influencers and Respondents	35
1. Business Relationship Exists Between Certain Respondents, Respondents’ Intermediary Marketing Agency and Influencers	35
2. Certain Respondents’ Marketing Agencies Directed, Trained and Paid Influencers	41
VII. The FTC Has a Long History of Regulating the Tobacco Industry and Protecting the Public From the Tobacco Industry’s Deception and Marketing that Appeals to Youth	46
VIII. The FTC Has the Authority to Investigate the Deceptive Business Practices Alleged in this Petition	47
IX. Respondents’ Deceptive Advertising Violates Section 5(A) of The FTC Act	47
X. The FTC Has Acted Against Similar Violations by Advertisers in the Recent Past and Therefore Ought to Also Take Action Against Respondents	48
XI. Action by the FTC is Necessary Because Voluntary Action Will Not Work as Several Respondents Are Currently Violating Their Own Voluntary Marketing Policies	48
XII. Conclusion	50
XIII. Appendix: Common English Words Paired With Respondents’ Global Cigarette Marketing Campaign Hashtags	51
XIV. References	56

I. Introduction and Summary

As a matter of public interest, nine leading public health and medical organizations (Petitioners) request the Federal Trade Commission (FTC) take prompt investigative and enforcement action against the four largest publicly traded multinational tobacco companies Philip Morris International, British American Tobacco, Japan Tobacco International and Imperial Brands (Respondents) to protect America's youth.

What the Tobacco Companies Are Doing

The tobacco companies are engaging in the same marketing tactics they used in the United States for decades to reach kids and young people — only now they use social media to reach an even wider unlimited audience of all ages to promote their brands and re-normalize tobacco use. Public health authorities largely agree that exposure to tobacco product marketing causes youth to start and keep using tobacco. These companies' actions of flooding social media with cigarette images may be the single greatest threat to youth perception of tobacco use in the United States today.

Evidence from more than 40 countries reveals how these companies deceptively use social media channels to promote tobacco use and smoking to a near-unlimited audience of young people. Extensive evidence and anonymous interviews with social influencers — individuals with large followings who promote specific brands or products on social media platforms — describe how Respondents use social influencers around the world to flood social media with paid advertisements for tobacco without disclosing the content has been financed by Big Tobacco as part of a larger marketing strategy for tobacco products.

These companies are heavily advertising cigarettes online with hundreds of thousands of images, hashtags and videos uploaded to social media networks like Facebook, Instagram and Twitter by young people. For example, just 123 hashtags associated with these companies' campaigns for tobacco products have been viewed 8.8 billion times in the United States (and 25 billion times globally) on Twitter alone.

How and Why the FTC Should Act

The tobacco companies' online deceptive advertising substantially penetrates the U.S. market and appears to target young American consumers. That means these companies are operating their online influencer marketing campaigns in direct violation of the FTC's Endorsement Guides and should therefore be found by the FTC to violate Section 5 of the FTC Act.

The FTC should issue an order requiring the companies to disclose on social media platforms that their pictures, videos and hashtags are in fact paid advertising and endorsements by clearly including #Sponsored, #Promotion, or #Ad in the content.

Additional Background

Respondents' misleading social media cigarette advertising is but the latest chapter in the long history of deceptive marketing practices aimed at young people to ensure a next generation of addicted users. Under the radar of consumers and regulators, Respondents are heavily advertising cigarettes on social media networks. Respondents have recruited or incentivized these young people to be social influencers or spokespeople for their cigarette brands without acknowledging that the resulting social media content is a part of Respondents' paid marketing campaigns.

Petitioners assert that Respondents' deceptive social media advertising for cigarettes adversely impacts and is, in part, aimed at young U.S. consumers in violation of Section 5 of the FTC Act.¹ Petitioners urge the FTC to force Respondents to tell the truth on social media and disclose that the images of tobacco brands and tobacco use resulting from their paid online advertising are in fact sponsored content. Given the harm caused by Respondents' tobacco products, it is critical that the FTC ensure that Respondents will no longer be able to deceptively market their deadly products using the images of young "social influencers" as described in this Petition.

Anonymous interviews with influencers paid to promote Respondents' cigarette brands online disclose that these young people are explicitly instructed on what cigarettes to promote, when to post content for the maximum exposure and how to take natural photos that do not look like a staged advertisement for cigarettes.

As influencers, they are effective messengers for the products of Respondents because of their online popularity and social influence over their peers and others who look up to them, thereby becoming attractive role models among their networks, followers and others exposed to their social media posts. In fact, Respondents' use of young influencers are more likely to be attractive to teenagers. According to substantial evidence, aspirational images and traits of young adults — such as attractiveness, maturity, affluence and popularity — are the most influential to youthful audiences.²

In one country, influencers were instructed to cover up the health warning labels on the cigarette pack prior to posting on social media. As one influencer recruited by Respondent Philip Morris International (PMI) to promote its menthol cigarette brand *Ice Ball* in Uruguay explains:

*[T]heir idea was "marketing among peers... you had to take pictures with their products. But the pictures should not be too obvious or overreacted, you needed to use your creativity to have them to be subtler... We couldn't be too explicit about the pictures we were uploading... The idea was to take pictures but not directly, but indirectly — for example, you would put the cigarettes in your pocket and take a selfie, so you can see in the picture the Ice Ball brand... The idea was to take "natural" pictures to advertise Ice Ball.*³

Another influencer recruited by Respondent British American Tobacco (BAT) to promote its *Lucky Strike* cigarettes in Italy states:

*[W]e have to publish a number of photos a week. We have a normal contract, that includes the ban to cooperate with the competition. We have to publish 2 photos a week with the product, made in a subliminal way, as if right now I put the pack of cigarettes here on the table and I take a photo. Because it's obviously illegal. So they have this group of people in every city... They try to create this thing where they give packets of cigarettes to people with a certain number of followers, so that they post a picture with the packet. The final image they want to give is that smoking Lucky Strike is cool. Then there are the hashtags that we use for the pack — for the product — and the hashtag for the events, situations, places... #Lus for the pack of cigarettes, #Like_Us_Party for the events... We are called Ambassadors.*⁴

Globally, Respondents are paying to create parties and social events with cigarette brand sponsorship and promotion, often in conjunction with free or paid-for distribution of tobacco products, and encouraging event attendees to post to their social media accounts specific hashtags and images as instructed at the party or event. In addition, Respondents are engaging in brand-sponsored contests and encouraging participants to post information about their participation to their social media accounts. In direct violation of the FTC's Endorsement Guides Concerning Use of Endorsements and Testimonials in Advertising (FTC's Endorsement Guides),⁵ Respondents have failed to ensure that their commercial relationship with the influencers is disclosed, despite evidence suggesting and, in many instances, clearly showing such a relationship exists.

The Campaign for Tobacco-Free Kids's extensive multi-year investigation has documented Respondents' deceptive online advertising originating in more than 40 countries for major global cigarette brands, almost all of which are for sale in the United States, and found that Respondents' online deceptive advertising substantially penetrates the U.S. market and appears to target young American consumers. Respondents' foreign-based young influencers use almost exclusively common English words in social media content such as #love, #girls, #party and #cool. Some of these influencers promoting Respondents' campaigns have posted social media content while being physically present in the United States. Also, American imagery with contest prizes of U.S. travel are commonly used in Respondents' deceptive online marketing.

As recognized by Respondent PMI in a 2016 leaked internal social media guide to promote its new tobacco product *iQOS*, the importance of hashtags to reach consumers in an influencer marketing campaign is key to its success, "*Hashtags are gateways to being part of online conversations.*"⁶ An analysis of 123 hashtags associated with Respondents' campaigns shows these companies' reach into the U.S. market is well beyond what could be anticipated as "leakage" due to the porous nature of social media. Instead, Respondents' use of foreign influencers with U.S. followers is considerable. An analysis of Respondents' hashtags using social listening tools reveals that in aggregate Respondents' campaigns were viewed 8.8 billion times in the United States on Twitter alone.⁷ Similarly, nearly 3 million public posts on Twitter, Facebook, and Instagram were posted in the United States.⁸ Further, just 16 top influencers posting Respondents' campaign hashtags had nearly 500,000 followers in the United States.⁹ Shockingly, Respondent PMI's tobacco product *iQOS* has not yet even been approved for sale in the United States, but influencer marketing of the tobacco product on social media already shows substantial reach into the U.S. market. Petitioners's analysis shows that the top 10 influencers posting content about *iQOS* on Instagram alone reached 1.06 million Americans with each post between January 1, 2016 and March 1, 2018.¹⁰

If Respondents — as some of the world's most sophisticated advertisers — did not intend to target U.S. consumers with their global online marketing, they could take steps to limit U.S. reach by not using influencers with a considerable U.S. following, limit content to specific locations via social media features designed to do just that, and monitor their global influencer marketing by using social listening tools, as Petitioners did.

Instead, however, Respondents insist on using the same marketing tactics they long used to reach young people. But this time, they use even further-reaching social media to promote their brands and tobacco use. Philip Morris understood the importance of targeting college students as early as 1949 to

"Get 'em young, train 'em right" because "they are widely copied by others. They set the styles...[and] because they're young and if we sell them, we have customers for a long time."¹¹ Further, an internal tobacco marketing document regarding "trend influence marketing" highlights the "under the radar" advertising concept that cigarette firms perfected in U.S. bars, nightclubs and restaurants in the 1990s:

*T.I.M. [Trend Influence Marketing] is strategic and subtle. It infiltrates the marketplace under the radar of the public's natural resistance to traditional marketing vehicles. Consumers in these settings should not feel that they are being marketed to - properly executed, the program will appear very natural and not at all contrived. The marketing company and process are invisible to the general public. What comes through is a genuine response to a product that is perceived as part of and integral to the setting and the "scene."*¹²

Dangerously, today the "scene" is the internet, where more than 90 percent of teenagers aged 13–17 use the internet daily,¹³ 76 percent of teens and young adults (age 12–24) use Facebook and 73 percent (age 13–24) use Instagram.¹⁴ Teenage exposure to tobacco advertising on the internet is alarming, with the latest estimate showing that 43 percent of middle and high school students were exposed to tobacco advertising online.¹⁵

There is a consensus among U.S. public health authorities that exposure to tobacco product marketing causes the initiation and progression of tobacco use among youth, as documented in major reports from the U.S. Surgeon General (2012, 2014) and the National Cancer Institute (2001, 2008).¹⁶

Respondents have engaged in these actions despite the fact that both PMI and BAT have claimed that they would not carry out this type of marketing in the first place. Respondent BAT's marketing code claims, "*We will not engage in any viral marketing in openly accessible on-line or other digital networks where it is impossible to control the integrity of the message nor the recipients it might reach.*"¹⁷ And, in a 2015 letter to Petitioners complaining about Petitioners's unauthorized and unrestricted use of PMI's advertising materials in an online global advocacy campaign, Respondent PMI stated,

*"Despite our different points of view, I hope that we are both against unrestricted use of tobacco branded materials on the Internet, even as part of an advocacy campaign."*¹⁸

In summary, by failing to disclose or ensure disclosure of the sponsored connection between themselves and their influencers' social media posts, Respondents are operating their on-

line influencer marketing campaigns in direct violation of the FTC's Endorsement Guides and should therefore be found by the FTC to violate Section 5 of the FTC Act. The FTC's Endorsement Guides are clear: Respondents — as advertisers — are ultimately responsible for what is posted on social media on their behalf.¹⁹

Petitioners urge the FTC to investigate and take prompt action against Respondents' deceptive marketing to protect kids, teens and all young people from Respondents' effort to re-glamorize and re-normalize tobacco use and from falsely believing the images of young, hip people with cigarette packs in their pockets or dancing at a cool cigarette-branded party are organic social content. The FTC should issue an order requiring Respondents to disclose on social media platforms that their pictures, videos and hashtags are in fact paid advertising and endorsements by clearly including #Sponsored, #Promotion, or #Ad in the content.

Respondents claim that they do not advertise to kids and do not advertise on unrestricted online media. This Petition demonstrates that those claims are false, and by requiring Respondents to disclose their financial support for and connection to influencers promoting their products, there is a high likelihood that it would either preempt Respondents from engaging in online influencer marketing practices highlighted by this Petition or at the very least provide young consumers clear notice. Therefore, a disclosure remedy would prevent Respondent Tobacco Companies from deceiving American's youth on social media.

II. The Parties

A. Petitioners

1. Campaign for Tobacco-Free Kids

The Campaign for Tobacco-Free Kids is a leading force in the fight to reduce tobacco use and its deadly toll on consumers in the United States and around the world. In the United States, the organization advocates at the national, state and local levels for the proven policies that reduce tobacco use and save lives. Globally, the Campaign for Tobacco-Free Kids supports governments and non-governmental organizations in promoting and implementing policies called for in the World Health Organization Framework Convention on Tobacco Control. The Campaign for Tobacco-Free Kids is a partner in the Bloomberg Initiative to Reduce Tobacco Use,²⁰ which focuses on low- and middle-income countries where more than 80 percent of tobacco-related deaths will occur in the coming decades. Headquartered in Washington DC, the Campaign for Tobacco-Free Kids is a 501(c)(3) non-profit organization that accepts no government or tobacco industry funding.

2. American Academy of Family Physicians

The American Academy of Family Physicians (AAFP) represents more than 131,000 family physicians, students and residents across the globe. More Americans depend on family physicians than on any other medical specialty. The AAFP supports family physicians to provide comprehensive, evidence-based, and cost-effective care with resources ranging from education to advocacy. Since 1947, the AAFP has been committed to serving family physicians and working to improving the health of patients, families and communities alike. The AAFP recognizes family physicians serve a pivotal role family physicians play in tobacco cessation as the cornerstone of integrated care teams. The AAFP prioritizes and facilitates diverse, cross-sectional, on-going efforts to address the leading cause of preventable death by preventing and reducing tobacco use.

3. American Academy of Pediatrics

The American Academy of Pediatrics (AAP), founded in 1930, is a national, not-for-profit organization dedicated to furthering the interests of children's health and the pediatric specialty. Since its inception, the membership of the AAP has grown from the original group of 60 physicians specializing in children's health to 66,000 pediatricians. Over the past 85 years, the AAP has become a powerful voice for children's health through education, research, advocacy, and expert advice and has demonstrated a continuing commitment to

protect the well-being of America's children. The AAP has engaged in broad and continuous efforts to prevent harm to the health of children and adolescents caused by the use of tobacco products and exposure to secondhand tobacco smoke.

4. American Cancer Society Cancer Action Network

American Cancer Society Cancer Action Network, Inc. ("ACS CAN") is the nonpartisan advocacy affiliate of the American Cancer Society, a nationwide, community-based voluntary health nonprofit organization. Because smoking is a principal cause of lung and other forms of cancer, ACS CAN has been a leader in educating the public about the dangers of using tobacco products and in advocating for policies and programs to discourage tobacco initiation and encourage cessation.

5. American Heart Association

The American Heart Association (AHA) is the nation's oldest and largest voluntary organization dedicated to fighting heart disease and stroke. Founded by six cardiologists in 1924, AHA now teams with millions of volunteers and supporters to fund innovative research, fight for stronger public health policies, and provide critical tools and information to save and improve lives. AHA works at the local, state, and national level, and with the global health community, to promote policies that reduce the prevalence of tobacco use and eliminate exposure to secondhand smoke. Tobacco use is a major risk factor for heart disease and stroke, the two leading causes of death in the world.

6. American Lung Association

The American Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease, through research, education and advocacy. Among our strategic imperatives is the elimination of tobacco use and tobacco-related diseases; as many of the 33 million Americans living with lung diseases including lung cancer and COPD are primarily caused by tobacco use and exposure to secondhand smoke. Each year, the American Lung Association releases its "State of Tobacco Control" report which grades state and federal governments on the policies proven to prevent and reduce tobacco use. The Lung Association has been helping people quit smoking for over 35 years through our Freedom from Smoking® program, which is ranked as one of the most effective programs in the country.

7. Truth Initiative

The Truth Initiative envisions an America where tobacco is a thing of the past and where all youth and young adults reject tobacco use. Truth Initiative's proven-effective and nationally recognized public education programs include truth®, the national youth smoking prevention campaign that has been cited as contributing to significant declines in youth smoking; EX®, an innovative smoking cessation program; and research initiatives exploring the causes, consequences, and approaches to reducing tobacco use. Truth Initiative also develops programs to address the health effects of tobacco use—with a focus on priority populations disproportionately affected by the toll of tobacco—through alliances, youth activism, training, and technical assistance. Located in Washington, D.C., Truth Initiative was created as a result of the November 1998 Master Settlement Agreement between attorneys general from 46 states, five U.S. territories, and the tobacco industry.

8. International Union Against Tuberculosis and Lung Disease (The Union)

The Union was founded in 1920 and is the world's first global health organisation. We are a global leader in ending TB, we fight the tobacco industry, and we solve key problems in treating major diseases. We use science to design the best treatments and policies for the most pressing public health challenges affecting people living in poverty around the world. The Unions members, staff and consultants operate in more than 150 countries and embody our core values of accountability, independence, quality and solidarity.

9. Vital Strategies

Vital Strategies is a global health organization that believes every person should be protected by a strong public health system. Our team combines evidence-based strategies with innovation to help develop and implement sound public health policies, manage programs efficiently, strengthen data systems, conduct research, and design strategic communication campaigns for policy and behavior change in 11 programmatic priority areas including tobacco control.

B. Respondents

Petitioners name each of the four largest publicly-traded multinational tobacco companies as Respondents in this Petition where related hashtags and/or social media campaigns have been identified with their cigarette or other tobacco product brands.²¹

1. Philip Morris International, Inc.

Philip Morris International, Inc. (PMI) sells six of the world's top fifteen international cigarette brands in more than 180

markets, including the number one global cigarette brand *Marlboro*.²² PMI is incorporated in Virginia, U.S., headquartered in New York, U.S., and has its operations center in Lausanne, Switzerland. PMI is listed on the New York Stock Exchange under the ticker symbol "PM." Although Altria Group, Inc. spun off PMI on March 28, 2008, the companies maintain a direct business relationship to jointly research and commercialize electronic vapor products inside and outside the United States.²³ PMI also has two applications related to the sale and marketing of its heated tobacco product *iQOS* currently pending at U.S. Food and Drug Administration: (1) PMI's application for a marketing order for *iQOS* under Section 910 of the Food, Drug and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act); and (2) PMI's application under Section 911 of the Tobacco Control Act to allow *iQOS* to be marketed as a modified risk tobacco product.²⁴

2. British American Tobacco, Plc.

British American Tobacco, Plc. (BAT) sells cigarettes in over 200 markets and owns the leading global cigarette brands *Pall Mall*, *Kent*, *Dunhill*, and *Lucky Strike*. Following a merger between Reynolds American, Inc. (RAI) and BAT in July 2017, BAT has stated it is the largest tobacco company in the world by operating profit and the United States will be its largest market. The RAI-BAT merger gave BAT full ownership of a United States tobacco company for the first time since 2004, when R.J. Reynolds Tobacco Holdings, Inc. acquired BAT's then United States company, Brown & Williamson Tobacco Corporation. BAT is headquartered in London, U.K. and trades on the NYSE in the form of American Depositary Receipts (ADRs) under the symbol "BTI."²⁵

3. JT International, SA.

JT International, SA (JTI) is the third largest publicly-traded tobacco company and a fully owned subsidiary of the Japan-based JT Group. Outside the United States, JTI sells cigarettes in over 120 markets including global brands *Winston* and *Camel*. In May 1999, JTI acquired the non-US tobacco business of RJR Nabisco, Inc. In July 2015, the JT Group acquired the US-based e-cigarette company Logic. JTI is headquartered in Geneva, Switzerland.

4. Imperial Brands, Plc.

Imperial Brands, Plc. is the fourth largest publicly traded international tobacco company globally. Imperial Brands operates in the United States through its business ITG Brands, which acquired the following cigarette brands in 2015: *Winston*, *Salem*, *Kool* and *Maverick*. Imperial Brands is headquartered in London, U.K. ITG Brands is headquartered in North Carolina, U.S.

III. Summary and Examples of Each Respondents’ Global Online Marketing Campaigns Using Young Influencers

The Campaign for Tobacco-Free Kids’s multi-year investigation provides examples of the pervasive deceptive advertising undertaken by Respondents. Broadly, Respondents carry out their online campaigns using brand ambassadors or influencers in three ways: 1) directly entering into a material relationship with young influencers to post tobacco brand images and campaign hashtags related to their tobacco brands; 2) creating parties and events with tobacco brand sponsorship and promotion, often in conjunction with distribution of (free or paid-for) tobacco products, and encouraging event attendees to post to their social media accounts specific hashtags

and images as instructed at the party or event; and 3) engaging in brand sponsored contests and encouraging participants to post information, including specific hashtags, about their participation to their social media accounts. Although the vast majority of the deceptive advertising described in this Petition is focused on certain Respondents’ documented use of paid influencers, Petitioners urge the Federal Trade Commission to take investigative action of all of Respondents’ possible use of social media to deceive American consumers and influence America’s youth and young people via social media.

A. Philip Morris International, Inc.

Petitioners have documented deceptive advertising of each of the following of Respondent PMI’s cigarette brands: *Marlboro*; *L&M*; *Ice Ball*; and *Chesterfield*. Petitioners have documented Respondent PMI’s misleading influencer marketing campaigns as follows:

Country	Brand	Hashtag	Slogan	Party/ Event with Social Media	Contests with Social Media	Evidence of Brand Ambassadors at Events	Paid or Participating Influencer Campaign
Albania	Marlboro	#HowBigIsYourWorld #YouDecide	You Decide How Big is Your World	Y	Y	Y	N
Algeria	Marlboro	#RedIsHere	Red is here	Y	N	N	N
Australia	Marlboro	#Coadventure	Cross Over	Y	N	N	N
Croatia	Marlboro	#rednewnow	Red New Now	N	N	N	N
Egypt	Marlboro	#RedMoveNow	Red Move Now	Y	N	N	N
France	Marlboro	#DecideTonight	Decide Tonight	Y	N	N	N
Gabon	Marlboro	#Rednewnow	Red New Now	N	N	N	N
Germany	Marlboro	#YouDecide	You Decide	Y	Y	N	N
Guatemala	Marlboro	#ILoveBach	I Love Bach	Y	N	Y	N
Indonesia	Marlboro	#Movers #Idecideto #Evolve #JakartaMovers #DecideYourFlow #7treasure #sublimemovers #dgtllve #iamonthemove #tiltproject #RideToBarcelona #mbience #DewataProject	I Decide to Evolve Move Movers Unleash	Y	Y	Y	Y

Country	Brand	Hashtag	Slogan	Party/ Event with Social Media	Contests with Social Media	Evidence of Brand Ambassadors at Events	Paid or Participating Influencer Campaign
Jamaica	Marlboro	#RedIsHere		Y	N	Y	N
Jordan	Marlboro			Y	N	Y	Y
Kosovo	Marlboro Chesterfield	#HowBigIsYourWorld #YouDecide	How Big is Your World	Y	N	Y	N
Moldova	Marlboro	#MyDayNow	My Day Now	Y	Y	N	Y
Morocco	Marlboro	#BeMarlboro	Don't be a maybe	Y	N	Y	N
Paraguay	Marlboro			Y	N	Y	N
Peru	Marlboro	#BeMarlboro	Don't be a Maybe	Y	N	Y	N
The Philippines	Marlboro	#Crossover #BeMarlboro	Don't be a Maybe	Y	Y	Y	Y
Poland	Marlboro L&M	#Marlboroyourmove #strefaMarlboro #terazalbonigdy #tuitaraz	<i>Marlboro</i> Your Move	Y	Y	Y	N
Russia	Marlboro	#RedIsHere	Red is Here	Y	N	Y	Y
Russia	Marlboro	#InspiredMilan #InspiredLondon		Y	Y	Y	Y
Russia	L & M	#BestNightEverNN	Best Night Ever	Y	N	Y	Y
Spain	Marlboro	#YouDecide		N	N	Y	N
Switzerland	Marlboro	#MarlboroBeat					
Thailand	Marlboro	#DontBeAMaybe	Don't be a Maybe	Y	N	Y	N
Trinidad	Marlboro	#RedIsHere	Red Is Here	N	N	N	N
Tunisia	Marlboro	#RedIsHere #MomentYouMerit	Moment You Merit	Y	N	Y	N
Ukraine	Marlboro L&M	#MarlboroMove	Make Your Move M Startl Act Today, Change Tomorrow	Y	N	Y	N
Uruguay	Ice Ball	#NightHunters		Y	Y	Y	Y

In Indonesia, for example, Respondent PMI’s online “Decide to Evolve”²⁶ campaign promotes *Marlboro* cigarettes. Respondent PMI hosts offline events like parties and concerts that are used as vehicles for generating social media content. These events are sponsored by Respondent PMI and filled with images and branding for *Marlboro* brand cigarettes. Young brand ambassadors or social influencers post content to their network of social media followers from the events where cigarettes advertisements are plentiful and young influencers are in attendance, likely to ensure that a high volume of images end up on social media — advertising *Marlboro* to an unrestricted global audience. A video uploaded to YouTube²⁷ and screen captured shows brand ambassadors walking around in t-shirts with specific campaign hashtags on them and helping to take photos of partygoers, which are then posted online to social media accounts with those specific hashtags.



In a video posted to YouTube for *Marlboro*, a person wears a shirt at an event describing the *Marlboro*-sponsored party as an “Evolving Movement” and advertising the *Marlboro* campaign hashtags #decideto, #Evolve, #Movers and #DewataProject. The video has been viewed more than 2,000 times on YouTube.

Social influencers post content to their followers both promoting *Marlboro*-branded parties and events and promoting the “*Marlboro* lifestyle.” Much of this content is posted in English and uses English hashtags like #idecide, #evolve and #RedIsHere. These aspirational phrases are part of Respondent PMI’s marketing campaign for *Marlboro* cigarettes in Indonesia.



@agnesladylia (10.6k Instagram followers) posted the above photo at a *Marlboro*-sponsored event in 2016. The image features an advertisement for *Marlboro* Filter Black cigarettes and is accompanied by the hashtags #jakartamovers and #decideyourflow, two hashtags associated with *Marlboro* social media campaigns in Indonesia. The post was liked by 242 people.



A stage displays the phrase, “Marlboro is Evolving” at a Marlboro party in the Indonesian city of Surabaya in 2016. The post is written in English and uses the English hashtags, #RedIsForward, #RedIsOnTheMove, #MotionHouseVJs and #HuntedByHurricane.



Instagram post from @oktajuliantara using hashtags for a Marlboro marketing campaign in Indonesia. The post is in English and uses the hashtags #iamonthemove #idecideto #evolve #movers. The photo was liked more than 100 times and features smoking and a visible pack of cigarettes. The overlay appears to be a play on the Marlboro cigarette logo.

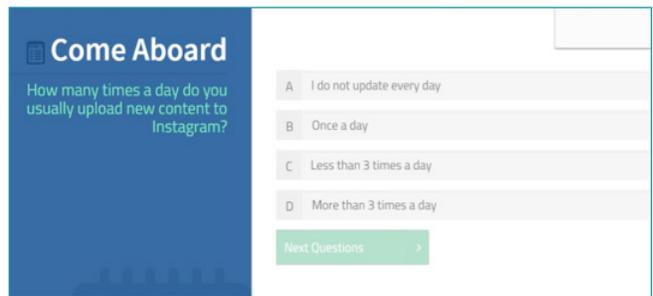


An Instagram post from @salskristiasa (1,611 followers) describes smoking a Marlboro Ice Blast cigarette and uses the campaign hashtags #idecideto #evolve.



@yunisintyadevi (3,784 Instagram followers) posted the image, captioning it in English, “Ready to EVOLVE? See you on June 4th, 2016. #idecideto #evolve #MOVERS #DEWATApject.

Additionally, Petitioners have documented a website (comeboard.co) maintained by Respondent PMI's Indonesia subsidiary PT Sampoerna that recruits social influencers online. The website asks participants a series of questions including how likely they are to attend parties and events, how many times a day they post on social media and how many followers they have on social media platforms like Instagram, Twitter and YouTube.



Screenshots of comeboard.co, a website run by PT Sampoerna in Indonesia to recruit social influencers. The homepage reads (in English): “Those people had taken decision to accelerate their dreams. They gave their full potential to the coming chances, take the chance and leap towards it. Converting their strength into actions they stepped forward closer to realizing their dream. Now, it is your turn.” A quiz on the website asks users to disclose information on social media use and reach.

In Russia, in 2016, Respondent PMI conducted a large social media campaign centered around the color red to market its *Marlboro* cigarette brand. The campaign hosted parties with brand ambassadors and imagery throughout the event and used tags like “Red is Here,” “InspiRed” and “Red New Now,” which were reflected in event hashtags. Contests were used in the campaign to travel to Milan, London, and to the Sochi Formula 1 race. Many of the contest winners had significant social media followings and posted about their experience throughout the trip.



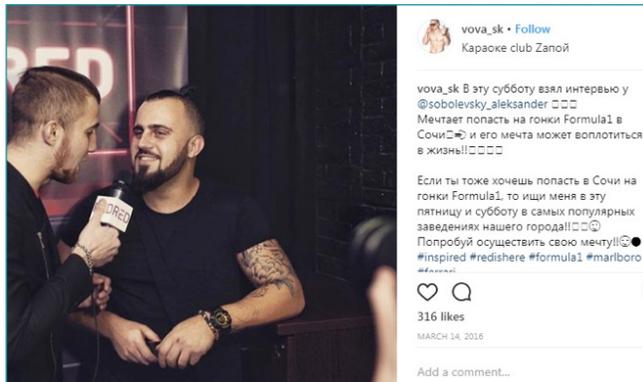
@Joymill (576,000 Instagram followers) posted a photo at a Red is Here party (#RedRoofTopNN) that depicts the group smoking cigarettes along with the hashtags #Marlboro, #red, #inspired, #good and #best.” The post received over 10,000 likes.



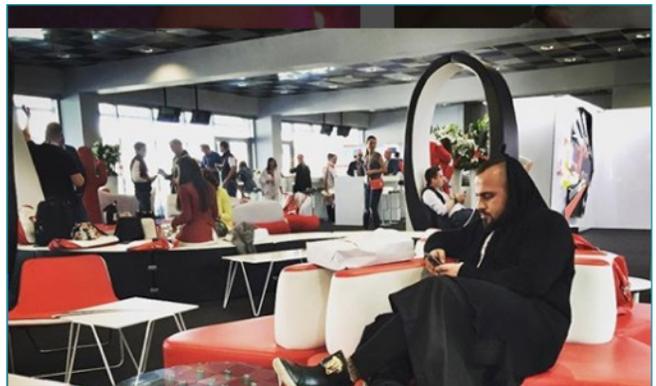
@Asylucky (762 Instagram followers) poses in front of a Red is Here sign at an event. She tags the post with common English hashtags including #halloween, #club, #girl, #dress and #joy.



@irena_garmat (479 Instagram followers) posted a photo of herself at a Marlboro stand at a Red is Here party along with the hashtags #Italylook, #GoToMilan and #RedisHere.



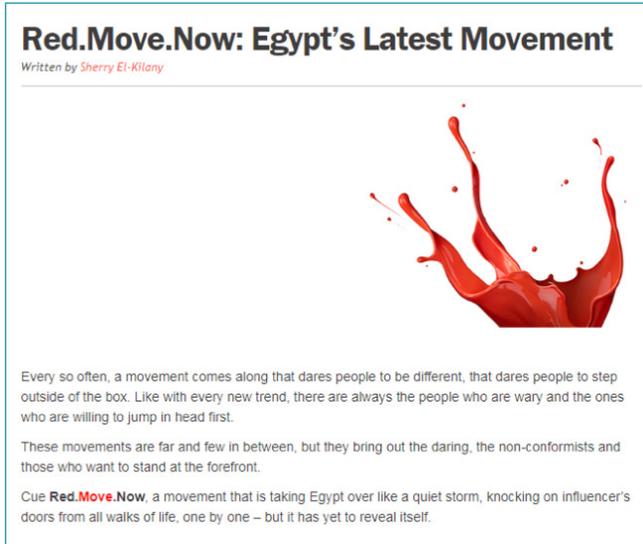
@vova_sk (6,555 Instagram followers), a self-described Project Manager of “Jgalt” IQOS (another PMI brand) attended a Marlboro #RedisHere party and posted this photo. The caption reads, “This Saturday I interviewed @sobolevsky_aleksander. He dreams of getting on the Formula1 races in Sochi and his dream can come true !! If you also want to get to Sochi on Formula1 races, then look for me this Friday and Saturday in the most popular institutions of our city !! Try to realize your dream !! #inspired #redishere # formula1 #Marlboro.”



@Sobolevsky_Aleksander (27.2k Instagram followers), the same man interviewed in the photo to the left later posted this image at the Sochi Formula 1 races with the hashtag #Marlboro.

In Egypt, from May–July 2015, Respondent PMI worked with a popular media agency and several social influencers to promote its *Marlboro* cigarette brand as a new movement sweeping across Egypt. Respondent PMI billed the campaign as “Egypt’s Latest Movement.”²⁸ Using the slogan #RedMoveNow, the campaign encouraged people with large social media followings to promote and attend RedMoveNow

events without disclosing that the content or events were originating from Respondent. At the events, influencers used social media to share content with followers about their experience using photo props and branded images — including photos of smoking and *Marlboro* cigarettes.



A news story printed in Scoop Empire (popular Egyptian news outlet comparable to “Buzzfeed” in the U.S.) describes the Red Move Now parties as a movement, “knocking on influencer’s doors from all walks of life.”



Photo compilation from a popular Egyptian fashion blogger with more than 30k followers on Instagram. In a series of photos from 2015, the blogger poses with *Marlboro* cigarettes and posted content about the campaign to her Instagram account using #redmovenow.



Photo from a famous Egyptian comedian posted to his Instagram account (24k followers). The post is in English and uses #redmovenow. The photo was liked 269 times.



Egyptian socialite, @Lillynization (20.7k Instagram followers) posted this photo of her and friends holding prop signs at a Red Move Now event. The signs read, “Bold,” “Hot,” “Passion,” and “Fearless.” In the background a *Marlboro* cigarette pack can be seen in a display case. This post received 100 likes.

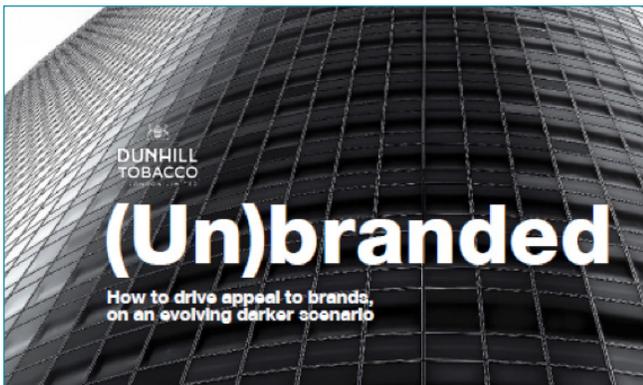
B. British American Tobacco, Plc.

Petitioners have documented deceptive advertising of each of the following of Respondent BAT's cigarette or tobacco brands: *Lucky Strike*, *Kent*, *Dunhill*, and *iFuse*.

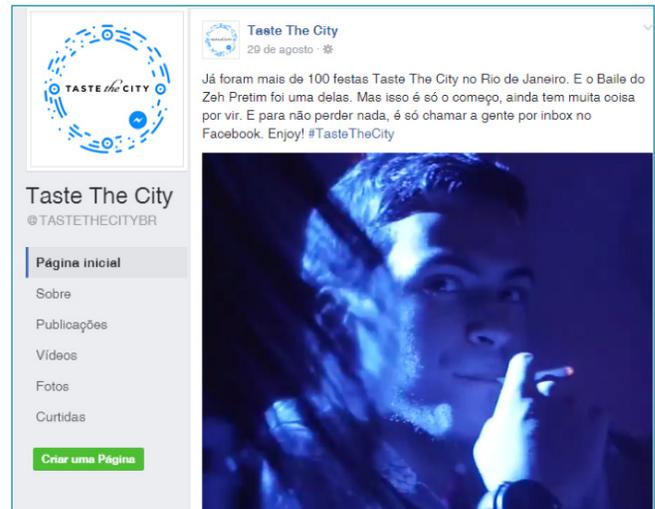
Country	Brand	Hashtag	Slogan	Party/ Event with Social Media	Contests with Social Media	Evidence of Brand Ambassadors at Events	Paid or Participating Influencer Campaign
Argentina	Lucky Strike	#LikeUs #LikeUsArgentina #LikeUs_Fest #LikeUsSummer #LikeUSParty #TheTubeNightParty #Likeus_people #Likeus_Trip	LikeUs	Y	Y	Y	N
Brazil	Dunhill Lucky Strike Kent	#AheadBR #TasteTheCity		Y	N	Y	Y
Chile	Lucky Strike	#LikeUs #LikeUsChile	Like Us	Y	N	Y	N
Colombia	Lucky Strike			Y	N	Y	N
Croatia	Lucky Strike	#LikeUs #LikeUsCroatia	Party Like Us	Y	N	Y	N
Croatia	Dunhill	#Refined	Refined	Y	N	Y	N
Italy	Lucky Strike	#Party_LikeUS	Party Like Us	Y	N	Y	Y
Italy	Lucky Strike	#Likeus_Party & #LUS		Y	N	Y	Y
Italy	Lucky Strike	#LikeUs_Hunters #LikeUs_Village		Y	N	Y	Y
Malyasia	Dunhill	#DefineTastemakers #Decode #IAPrivateLounge #Definemy	Create Your Own Experience	Y	N	N	N
Romania	Dunhill Glo iFuse	#Tastemakers #Ifusemoments		Y	N	Y	N
Slovenia	Lucky Strike	#LikeUs #Partylikeus		Y	N	N	N
Venezuela	Lucky Strike	#LikeUs #LikeUsVenezuela		Y	N	Y	N

In Brazil, marketing presentations posted to LinkedIn by a former employee of Geometry Global, disclose that the marketing firm developed a sophisticated social media campaign to advertise *Dunhill* cigarettes for Respondent British American Tobacco beginning in 2016. The presentation discloses that in light of Brazil’s legal restrictions on cigarette advertising, Geometry Global designed an “unbranded platform” called “Taste the City” to advertise *Dunhill* cigarettes. According to the presentation “the work of selected digital influencers [...] made our platform alive and relevant.”²⁹

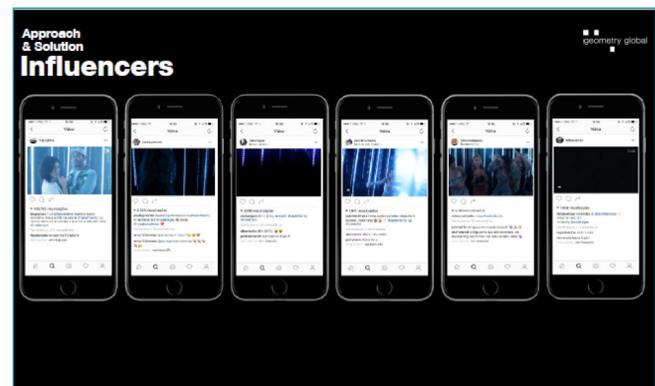
The campaign used the hashtag #tastethecity and featured several high profile social influencers promoting the content online. The main hashtag for the campaign is in English and several of the top accounts posting about the campaign including @HugoKloss (11.4 million followers) and @contridi (140,000 followers) and both have at least 2 percent of their followers in the United States, according to Klear.com.



Slide from Geometry Global’s *Dunhill* marketing presentation. The slide introduces the concept of “unbranded marketing” to drive the appeal of brands.



Screenshot of the Taste the City Facebook page featuring a photo of man smoking and the hashtag #TasteTheCity. A bot on the Facebook page engages users in a chat and promotes upcoming parties and events. The bot did not reference British American Tobacco.



Additional slides from Geometry Global’s *Dunhill* marketing presentation. Slide One discussing using *Dunhill* as a brand that offers “exclusive experiences to younger audiences”. Slide two features Instagram posts for social influencers used to promote #tastethecity on social media.

Similarly in Brazil, an October 27, 2017 media report from a leading business magazine, EXAME, disclosed that Respondent BAT's Brazil subsidiary Souza Cruz paid influencers — with 2,000–100,000 followers — to post images of smoking, and in at least one instance, a pack of its cigarette brand *Kent* without any disclosure of the campaign being paid advertising.³⁰ According to the article, online influencers were paid to post eight photos per month with the hashtag #aheadbr. The EXAME story reports that Souza Cruz'

cigarette advertising and non-disclosure of paid cigarette advertising is likely in violation of both national law and rules set out by the self-regulatory advertising body in Brazil, respectively.³¹ Petitioners previously documented Respondent BAT's #aheadbr influencer marketing campaign between August 16, 2017 and October 26, 2017 with some examples as follows:



Bruna Huli (74.4k Instagram followers), a photographer in Sao Paulo, posted this photo on October 23, 2017 with the hashtag #aheadbr and the English caption, “Gloomy Sunday.”



Nicole Balestro Pinto (58.3k Instagram followers) posted the photo in front of a wall of *Kent* cigarettes displayed at an ahead.br event. The post translates as, “Speak! @ahead.br #aheadbr (photo credit) @tico13”. It received more than 5k likes.



The account @ahead.br (3,970 Instagram followers) posted this photo of a person smoking on October 6, 2017. The description reads: “#tb of the last reunion of the crew in Light Ahead. The immersive experience that will change way to enjoy the night. See more photos details of the party on our profile #aheadbr @afurcolin”.



Ellen Milgrau (183k Instagram followers), a Sao Paulo model and social media influencer, posted the above on October 15, 2017 with hands full of *Kent* cigarettes. The caption is in English and it received more than 12k likes.

In Malaysia, beginning in 2013, Respondent BAT launched a social media campaign to advertise *Dunhill* cigarettes under the slogan “Define Tastemakers.” influencers were invited to attend parties through canvas invitations such as blank coffee sleeves that they were encouraged to turn into an art project and post to their social media accounts, along with related campaign hashtags such as #define, #definemy, and

#definetastemakers. Parties were then held centered around fashion, music and art. According to a campaign synopsis by Trad3mark, a third party company promoting Respondent BAT’s *Dunhill* campaign, social media posts per consumer increased by over 300 percent in some instances. In 2015, the campaign was rebranded under the slogan “Dcode,” which is still currently running.



Canvas-like invitations were distributed and attendees were encouraged to post images of their art work as noted in the comment from @yapjune! in this 2013 Instagram post.



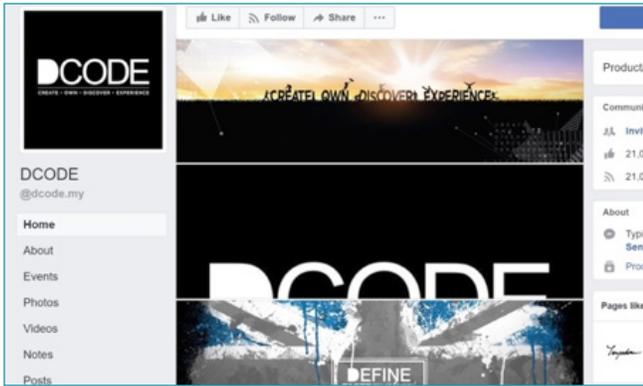
A screenshot from Trad3mark’s website describes how the company designed a 360-degree marketing approach and social media postings per consumer reached 300 percent for Respondent BAT’s *Dunhill* campaign.



A screenshot from trad3mark of a product showreel shows the brand largely displayed across screens at an event.



Lēēñ Lēēñ, a freelance makeup artist (747 Instagram followers, 1,476 Facebook followers) poses in front of a wall of cigarettes and posts using one of the hashtags for this campaign, #CreateOwnDiscoverExperience.



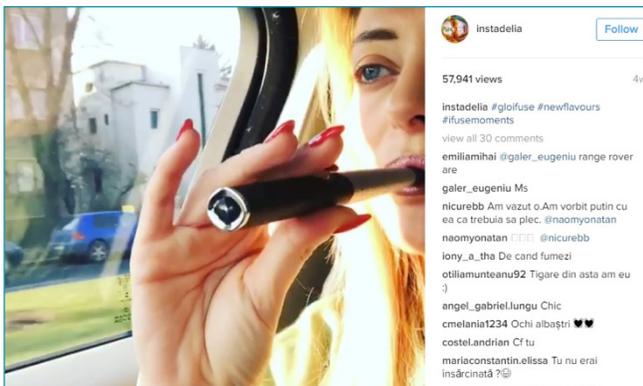
The campaign's Facebook page advertises events and has over 21,000 followers.



Contest winners are announced on Instagram. Winners of this contest were awarded a Samsung Gear 360 camera, a \$200 value on Samsung.com.

In Romania, beginning in 2016, Respondent BAT launched a social media influencer campaign to promote its new tobacco product; *iFuse*. The campaign featured social media influencers with large followings including Romanian musicians, fashion bloggers, DJs and club owners, who posted photos with their *iFuse* product³² along with the hashtag #gloifuse. Note that Respondent BAT has indicated to investors that it plans to submit a Substantial Equivalence application to

the U.S. Food and Drug Administration (FDA) for its heated tobacco product *glo* in 2018, and if the application is not successful, it plans to file a Modified Risk Tobacco Products application to the FDA in 2020.³³



Delia, a Romanian singer (2,393 followers on Instagram), smokes on a Glo iFuse. The video has been viewed more than 57,000 times and uses the hashtags #GloIFuse, #iFuseMoments and #NewFlavors.



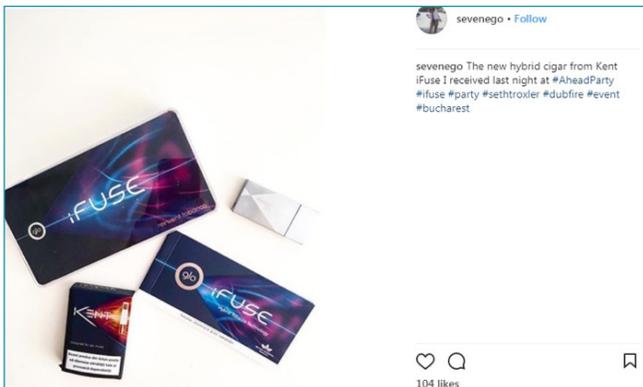
Alina Ceusan (334k Instagram followers), a Romanian fashion blogger, smokes on a Glo iFuse, writing in English that she's in love with their smell and pairing it with the hashtags #vaping, #cherry, and #rubyswirl.



Oana Craioveanu (12.5k Instagram followers), owner of the Princess Club in Bucharest, Romania, walks down a runway while women at the club dance around her holding iFuse. She writes in English, "I invite you to a #hybrid world" and tags it with 28 English hashtags including popular tags like #instagram, #enjoy and #followers.



Another post from Oana Craioveanu shows an iFuse with multiple Kent neopods. The post tags 15 English hashtags including #BrandAmbassador and #GloIFuseAmbassador, possibly noting Craioveanu's relationship to the product.



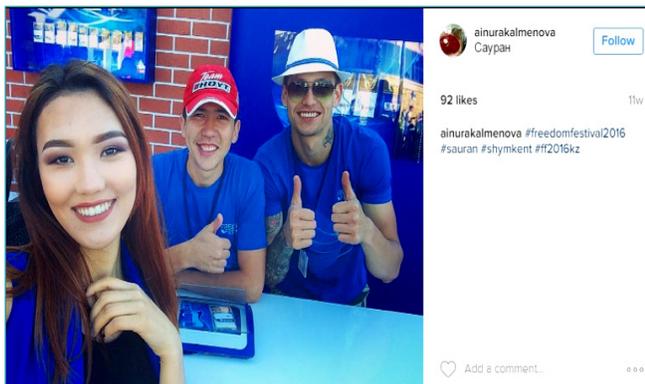
Sevenego (1,852 Instagram Followers) posts about receiving an iFuse at a party the night before. The post tags popular English hashtags like #event, #dubfire and #party.

C. JT International, SA.

Petitioners have documented deceptive advertising originating from Respondent JTI’s cigarette brands: *Winston*, *Camel*, and *Mevius*.

Country	Brand	Hashtag	Slogan	Party/ Event with Social Media	Contests with Social Media	Evidence of Brand Ambassadors at Events	Paid or Participating Influencer Campaign
Chile	Winston	#WinstonRD		Y	N	N	N
Czech Republic	Camel	#Objevtevice	Objev te vice	Y	Y	Y	N
Dominican Republic	Winston	#WinstonRD		Y	N	N	N
Italy	Camel	#ForwardParty		Y	N	N	N
Jordan	Winston	#FreedomMusic		Y	N	N	N
Kazakhstan	Winston	#FreedomMusic	Destination Freedom Stay True Stay Free	Y	N	N	N
Kyrgyzstan	Winston	#FreedomMusic	Destination Freedom Stay True Stay Free	Y	N	N	N
Philippines	Mevius Winston Camel	#FreedomMusic	Stay True Stay Free	Y	N	Y	N

Beginning in 2014, Respondent JTI launched a multi-country campaign for *Winston* cigarettes under the slogan “Stay True, Stay Free.” The campaign held live music events in Chile, Kazakhstan, Kyrgyzstan, Jordan and Japan, where attendees were exposed to multiple points of engagement with the brand including through promoters, photo opportunities and cigarette products. The campaigns and events have continued in 2018.



Ainura Kalmenova (2,598 Instagram Followers) poses with event staff at Freedom Festival 2016 in Kazakhstan. Behind them you can see packs of *Winston* cigarettes as well as on the tablet on the table. The post is tagged with the hashtags #freedomfestival2016 and #ff2016kz.



A partygoer in Kyrgyzstan poses in front of the event stage displaying *Winston* brand imagery. The attendee pairs the photo with English hashtags #DestinationFreedomParty and #WinstonParty.



Image description: Misato (3,962 Instagram followers), a DJ in Japan, poses in front of *Winston* signage and Freedom Music sign at a party held on December 30, 2016. The post was paired with English hashtags like #dj and #nightlife.



Elisa Duarte Jeréz (7,683 Instagram followers), a blogger, Youtuber and TV host in Chile, poses in front of a “step and repeat” at a *Winston* event with *Winston* branding. The caption reads in English, “Stay True, Stay Free” and includes 16 English hashtags.



Image description: Amray (2,185 Instagram followers), a DJ and Producer in Jordan, posted a thank you for a New Year’s gift he received from the Freedom Music brand. Included in the thank you are *Winston* products.

Beginning in 2015, Respondent JTI launched a campaign in the Czech Republic to advertise their *Camel* brand cigarettes under the slogan “Objevte Vice” which translates to “Discover More” in Czech. The campaign featured a series of parties and live music events where attendees were encouraged to interact with brand ambassadors, consume alcoholic beverages, smoke cigarettes, play games and win prizes including a trip to New York City. Content is branded under the hashtag #objevtevice and the campaign has its own website and Facebook page that continues to host events in 2018.



A photo taken from the photo gallery of the campaign website shows the hashtag and Camel branding at a party.



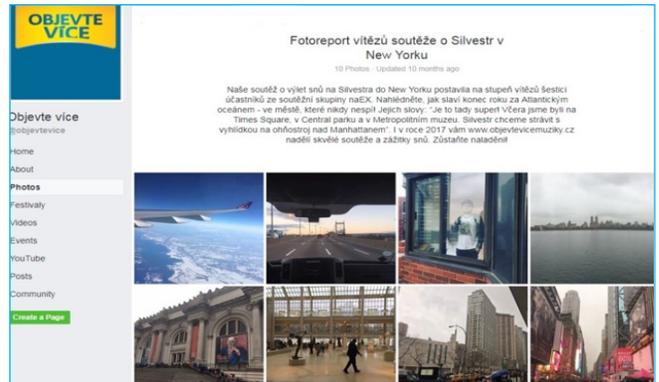
A print out at an event encourages attendees to post using the hashtags #objevtevice and #velbloud. “Velbloud” is Czech for “Camel.” The photo appears along with common English hashtags like #summer17, #followme and #happy.



Brand ambassadors engage with an event attendee using a tablet. The photo is branded with the hashtag and appears on the campaign’s website.



A photo from a Camel event photo booth shows a man holding a child in front of Camels and a health warning sign, suggesting there are no age restrictions to these events. The man tags the photo with both hashtags.



An album on the campaign Facebook page describes a trip to New York City for New Year’s Eve for the winners of a competition. The caption reads, “Our competition for a New Year’s Eve dreams drew six participants from the naEX competition. See how he celebrates the end of the year behind the Atlantic Ocean — a city that never sleeps! In their words: “It’s great here! Yesterday, we were at Times Square, the Central Park and the Metropolitan Museum. We want to spend the New Year’s Eve with the prospect of a firework over Manhattan.” Even in 2017, www.objevtevicemuziky.cz will give you great competitions and dreams. Stay tuned!”



A giant camel is displayed prominently at an event. The photo is branded with the campaign hashtag and the event slogan is displayed along the wall and on the banners and signs.

D. Imperial Brands, Plc.

Petitioners have documented deceptive advertising originating from Respondent Imperial Brands promoting *Peter Stuyvesant* and *Davidoff* cigarettes as follows:

Country	Brand	Hashtag	Slogan	Party/ Event with Social Media	Contests with Social Media	Evidence of Brand Ambassadors at Events	Paid or Participating Influencer Campaign
Australia	Peter Stuyvesant	#PeterStuyvesant	Unknown	Y	N	Y	N
Bosnia	Davidoff	#ForTheHunters	For the Hunters	N	N	Y	N
Egypt	Davidoff	#ForTheHunters	For the Hunters	Y	N	Y	N
UAE	Davidoff	#ForTheHunters	For the Hunters	Y	N	Y	N

In 2016, Respondent Imperial Brands launched a campaign in Egypt to advertise its *Davidoff* cigarette brand. The campaign featured DJs, models and actresses to be “hunters” and social media posts using the hashtag #ForTheHunters, which is also the marketing slogan for *Davidoff* cigarettes. The

posts were shared by the “hunters” and also featured on an Instagram page for the campaign which has 1,414 followers. The campaign also hosted events which “hunters” attended.



A post from Egyptian DJ Akladios (8,274 Instagram followers) identifies her as an ambassador for the “hunters”. The post is part of an individual promo video filmed for each “hunter”.



A post on the campaign page shows highlights from the event, including brand ambassadors posing with *Davidoff* cigarettes (bottom right).



A video of Miral Michel (87.6k Instagram followers) received more than 5,000 views. In English she writes, “Well, this hunt! Is just getting started @for.the.hunters #forthehunters” and tags back to the campaign page.



A post from the campaign identifies four of the “hunters.” From left to right, fitness guru Yusef Elserafy (2,764 Instagram followers), actress Malak Badawi (68.2k Instagram followers) Youtuber Mohamed El Shaarawy (5,376 Instagram followers) and model Miral Michel (87.6k Instagram followers).

IV. Respondents' Deceptive Marketing Practices Reach and Appear to Be Aimed at American Consumers

A. Respondents' Online Influencer Campaigns Have a Substantial Viewership and Exposure on Social Media in the United States, Including Through Respondents' Use of Foreign Influencers with U.S. Followers

Without a doubt, Respondents' online deceptive global marketing has a substantial U.S. reach on Twitter, Instagram and Facebook beyond what one may anticipate as "leakage" due to the global and porous nature of social media. Analyses of Respondents' hashtags used in their deceptive advertising via social listening tools such as Crimson Hexagon indicate that Respondents' reach into the U.S. market is deliberate, given the sheer volume of U.S. exposure and Respondents' use of foreign influencers with considerable U.S. followers.

An analysis of all 123 of Respondents' hashtags in aggregate from 2007–2016 and presented in this Petition shows the following:

- Via Twitter alone, Respondents' hashtags were viewed 8.8 billion times in the United States.³⁴
- On Twitter, Instagram and Facebook combined, 2,799,812 public posts were posted in the United States. Of these public posts, 1,716,640 have identifiable cities in the United States, including New York (15.5%), Los Angeles (11%), West Palm Beach (6%), Chicago (3.5%), and Atlanta (3%).³⁵

Examples of social media data analyses from some of Respondents' campaigns presented in this Petition are as follows:

- Respondent PMI's #Idecidedto campaign promoting *Marlboro* cigarettes was viewed 31 million times globally, with 4,238 views in the United States on Twitter alone.³⁶ Another of Respondent PMI's *Marlboro* cigarette campaigns, #Jakartamovers, was viewed 42 million times globally, with 14,000 views in the United States on Twitter alone.³⁷
- Respondent BAT's #LikeUs hashtag promoting *Lucky Strike* cigarettes was viewed 481 million times globally, with 221 million views in the United States on Twitter alone.³⁸
- Respondent Imperial Brands' #FortheHunters hashtag promoting *Davidoff* cigarettes was viewed 143,439 times globally, with 12,207 views in the United States on Twitter alone.³⁹

- Respondent JTI's #freedommusic hashtag promoting *Winston* cigarettes was viewed 1.5 billion times globally, with 2.8 million views in the United States on Twitter alone.⁴⁰ Of 63,925 Twitter posts with an identifiable location, 764 posts originated in the United States, including from Los Angeles (24%), New York (74%) and Chicago (8.25%).⁴¹

In addition to analyzing all 123 campaign hashtags presented in this Petition in aggregate, Petitioners also studied 8 hashtags in more detail to assess U.S. followers of top individual influencers posting certain of Respondents' campaign hashtags (table on page 25). These 8 hashtags generated the identification of 16 high profile influencers with over 5 million followers in total of which 484,944 of those followers are in the United States.⁴² Further analysis of the 16 influencers in aggregate shows that *each post* from this group of influencers is viewed 65,288 times in the United States.⁴³ The following chart shows the number of followers of the top 16 influencers with the extrapolated number of U.S. followers for each influencer.⁴⁴

U.S. Reach of 16 High Profile Influencers Promoting Respondents' Brands

Hashtag	Respondent	Cigarette Brand (all with U.S. Market Share)	Influencer	Number of Followers	Percentage Audience in the U.S.	Extrapolated Number of U.S. Followers
#AheadBr	BAT	Dunhill	@eufernandotorquatto	693,000	3%	20,790
			@jujulawrence	222,164	5%	11,108
#ForththeHunters	Imperial Brands	Davidoff	@ludangelo	236,074	7%	16,525
			@jacobabrian	285,668	20%	57,134
#FreedomMusic	JTI	Winston	@radojicic_aleksandar	111,132	7%	7,779
			@beauty_glam75	84,300	4%	3,372
#IDecideTo	PMI	Marlboro	@windaangelita	236,629	1%	2,366
			@djtripleks	28,731	3%	892
#JakartaMovers	PMI	Marlboro	@astryovie	8,608	11%	947
			@jerrylikumahwa	49,750	5%	2,487
#LikeUs	BAT	Lucky Strikes	@elisazanetti	231,018	10%	23,102
			@giovanniodice	181,323	19%	34,451
#Marlboro Crossover	PMI	Marlboro	@moriez	17,448	14%	2,443
			@dimgsanggara	2,957,184	2%	59,144
#RedMoveNow	PMI	Marlboro	@shoukrylive	31,542	17%	5,362
			@SherryKilany	13,700	13%	1,718

Further, an Italian social media influencer, Fabrizia Girardi, who has posted Respondent BAT's #LikeUs hashtags on Instagram, has a total of 18,952 followers globally and 758 in the U.S.⁴⁵ Last, all of Respondents' campaign hashtags and images included in this Petition were accessed and viewed by Petitioners while being physically present in the District of Columbia, United States.

Respondent PMI's tobacco product *iQOS* has not even been approved for sale in the United States, yet influencer marketing of the tobacco product on social media already shows substantial reach into the U.S. market. An analysis shows that the top 10 influencers posting content about *iQOS* on Instagram alone reached 1.06 million Americans with each post between January 1, 2016 and March 1, 2018.⁴⁶ Social listening of *iQOS* indicates that foreign-based influencers posting about the tobacco product and reaching U.S. audiences do engage in paid influencer marketing for brands. Petitioners' findings further point to a sophisticated and expensive online global marketing strategy for Respondent PMI to penetrate the United States market with *iQOS* advertising prior to its legal sale here.

Respondents — as highly sophisticated advertisers — clearly intend to reach U.S. consumers with their global influencer campaigns (that clearly do not meet the FTC's disclosure requirements) because they have the ability to take steps to avoid the substantial penetration into the U.S. market, yet they have not done so; including, at a minimum, to 1) ensure that social influencers promoting their specific campaign hashtags do not have a considerable U.S. following; 2) direct influencers to limit content to specific locations by using features on social media platforms such as "smart lists" in Facebook; and 3) use social media analysis tools like Crimson Hexagon to conduct a basic analysis of the networks of influencer partners and not engage with those that had networks in the United States. The fact that they have not taken such steps is further evidence that Respondents' want and intend their tobacco marketing campaigns to have a major impact in the United States.

B. Respondents' Global Cigarette Brands Being Promoted Via their Deceptive Online Influencer Marketing Campaigns Have a Market Presence in the United States

1. Influencer Marketing Has Historically Been an Important Component for Tobacco Companies to Reach “Young”, “Hip” and “Cool” U.S. Consumers “Under The Radar” of the General Public

Beginning in 1998, millions of pages of internal tobacco industry records were made public through two U.S. legal settlements, which required the major tobacco companies to house documents and electronic media in hard-copy in document depositories in Minnesota, U.S. and Guildford, U.K.⁴⁷ and to post copies online at document websites.⁴⁸ To date, approximately 55 million pages of documents and nearly 20,000 audiotapes, videotapes and other electronic media materials have been released to the public at the depositories and/or on the internet.⁴⁹ Further, a 2011 order in the United States' long-standing racketeering litigation against the tobacco industry requires certain tobacco companies to pay more than US\$ 6 million dollars to improve the online accessibility of these records on the website of the University of California San Francisco's (UCSF) Legacy Tobacco Documents Library, which houses the vast majority of the tobacco companies' documents at www.industrydocumentslibrary.ucsf.edu/tobacco/.

A non-exhaustive search of these tobacco companies' records dated from approximately 1950 to 2010 and currently available online indicates that the tobacco industry — decades before the internet existed — was an early adopter of covert-style influencer marketing in order to reach “young”, “hip” and “cool” consumers. A 1949 document from Philip Morris underscores the importance of targeting college students for the company to “Get’ em young, train ‘em right” because “they are widely copied by others. They set the styles...[and] because they’re young and if we sell them, we have customers for a long time.”⁵⁰ A 1994 Camel cigarette brand marketing proposal prepared for R.J. Reynolds Tobacco Company (now the U.S. subsidiary of Respondent BAT) described “trend influence marketing” as follows:

Shoving products in the face of the consumer is no longer the successful way to infiltrate this market. Today's “Generation X” consumer is most influenced by what he or she sees in the hands of friends, not by some stiff riding a horse in a magazine advertisement... These “hipsters”’ entire social lives revolve around nightclubs, cafes, fashion and music. Every day these ‘trend-setters’ ride the wave on the crest of cool. These are the people who start trends. Music and fashion, amongst other trends, are made or broken by these select few

people. Camel's goal of Trend Influence Marketing is to attract and convert smokers in the trend setting urban scene.

One thing to know about trend setting; the minute someone blatantly pushes “trendy”, it's not. Trend Influence Marketing is underground. For this program to be executed properly, we as a marketing company will appear almost invisible. Nothing that takes place can appear sales-oriented and everything we do will be perceived as cool. [Emphasis in original]⁵¹

Similarly, in 1996, the same marketing firm prepared an influence marketing program for *Salem* cigarettes and described the “under the radar” concept of influence marketing as follows:

T.I.M. [Trend Influence Marketing] is strategic and subtle. It infiltrates the marketplace under the radar of the public's natural resistance to traditional marketing vehicles. Consumers in these settings should not feel that they are being marketed to - properly executed, the program will appear very natural and not at all contrived. The marketing company and process are invisible to the general public. What comes through is a genuine response to a product that is perceived as part of and integral to the setting and the “scene.”⁵²

Respondent BAT also reportedly registered several websites in 2001 and launched a site in Poland, codenamed internally Project HORECA, aimed at promoting its cigarette brands to young people on an online platform designed to offer seemingly independent advice for users to attend bars, clubs and restaurants where BAT cigarettes were being handed out or sold. The site was purposefully designed to remove any associations with Respondent.⁵³ *Marlboro* cigarette brand ambassador programs in bars, restaurants, beaches and in other socially relevant places for younger people have been part of the marketing mix for the brand for years in the United States⁵⁴ and also have been documented globally.⁵⁵

2. Philip Morris International, Inc.

Respondent PMI's number one selling global brand *Marlboro* is sold in the United States by Philip Morris USA, Inc. a wholly owned subsidiary of the Altria Group, Inc. In the United States, *Marlboro* has about 40% market share.⁵⁶ *Marlboro* is available for sale to United States' consumers via retail sales.

3. British American Tobacco, Plc.

Respondent BAT's global brand *Pall Mall* is sold in the United States by RJ Reynolds Tobacco Company, a wholly owned subsidiary of Reynolds American, Inc., which is now Respondent BAT's wholly owned U.S. subsidiary. In the United States, *Pall Mall* has about 8% market share.⁵⁷ *Pall Mall*, *Kent*, *Dunhill*, and *Lucky Strike* are available for sale to United States' consumers via retail sales.

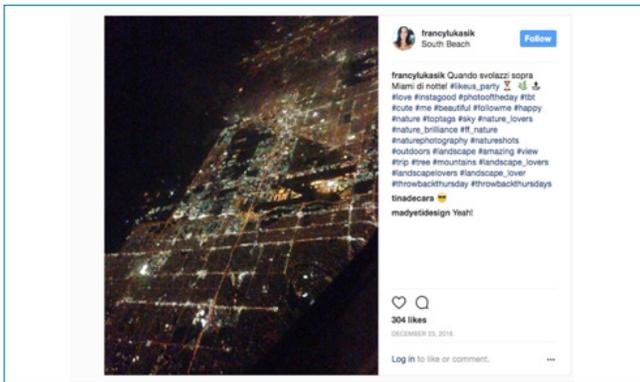
4. JT International, SA. and Imperial Brands, Plc.

Respondent JTI's global brand *Camel* is sold in the United States by RJ Reynolds Tobacco Company, a wholly owned subsidiary of Reynolds American, Inc., which is now Respondent BAT's wholly owned U.S. subsidiary. In the United States, *Camel* has about 8.5% market share.⁵⁸ *Camel* is available for sale to United States' consumers via retail sales. Respondent JTI's global brand *Winston* is sold in the United States by ITG Brands, a wholly owned subsidiary of Imperial Brands, Plc. In the United States, *Winston* has about 2.5% market share.⁵⁹ *Winston* is available for sale to United States' consumers via retail sales. Imperial Brands' *Davidoff* brand is also for sale to United States' consumers via retail sales.

C. Foreign Endorsers Affiliated With Respondents' Global Influencer Marketing Campaigns Have Posted Campaign Images While Being Physically Present in the United States

Petitioners have documented that contestants for Respondents PMI's #MarlboroCrossover events and influencers for BAT's #LikeUs *Lucky Strike* brand campaign, for example, have posted campaign content to Instagram while being physically present in the United States. Therefore, any U.S. consumers scrolling through images tagged to "NYC," "New York," or "South Beach," for example, will see these Respondents' deceptive advertising.

The following are example images posted and tagged to locations within the United States:



Posts promoting *Lucky Strike* cigarettes in the United States. Instagram photos using #likeus_party with locations set to U.S. cities (South Beach, New York). Any person in the United States searching for images taken in these locations will see these photos.



Posts promoting *Lucky Strike* cigarettes in the United States (New York). On both posts, the location is tagged as New York. Image on the right is a “gif” of a cigarette package opening and closing on the streets of Manhattan.



A winner of a *Marlboro* contest from the Philippines posts a photo of his trip to the United States (Route 66) using hashtags associated with a *Marlboro* social media campaign.



Instagram post from @yelitalzora (318K Followers, 27 percent in the U.S.) using the hashtags #WinstonRD and #staytruestayfree with the location tagged as Florida. The hashtags are associated with a Japan Tobacco International social media campaign. The image features her smoking a cigarette and was liked 2,758 times.

D. American Imagery and Contests with U.S. Travel as Prizes Appear in Respondents' Global Influencer Marketing Campaign Posts

American imagery, in particular depictions of the American West, has been essential in building the number one selling cigarette brand in the world — *Marlboro*. Internally, Philip Morris' advertising firm Leo Burnett understood years ago that young people worldwide were influenced by “western” values and American styles.⁶⁰ Similarly, *Lucky Strike* — An American Original campaign was used to promote and market *Lucky Strike* cigarettes for decades.⁶¹ The National Cancer Institutes Monograph 19 on The Role of the Media in Promoting and Reducing Tobacco Use also recognizes that, “Western brand imagery features heavily in branded cigarette advertising in many other countries, especially low-income nations.”⁶²

Respondent PMI's contests promoting its *Marlboro* cigarette brand such as #MarlboroCrossover have extensive social media components and award winners with U.S. travel. Based on social media posts, the contests appear to range from contestants engaging in sport challenges such as mountain biking (Philippines) to earning points from online purchases and attending parties to qualify as finalists (Indonesia). Social media posts from these contests result in easily searchable and accessible terms that any user on the social media platforms could see including, #California, #Alaska, #DeathValley, and #Roadtrip.



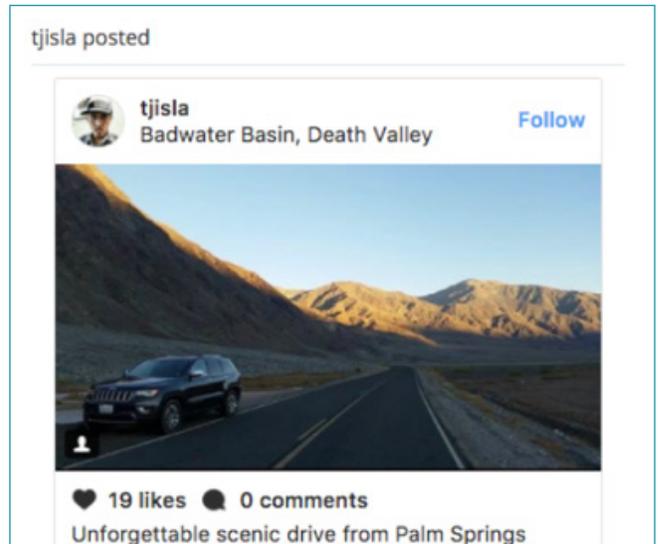
Post from a *Marlboro* campaign in Indonesia showing photos of the United States to promote a *Marlboro*-sponsored contest to win a trip to the U.S.



Photos from a Marlboro-sponsored event in the Philippines promotes a contest for attendees to win a trip to the United States.



Winners of a trip to the United States are shown at a Marlboro party in Indonesia.



A winner of a Marlboro contest from the Philippines posts a photo of his trip to the United States (Route 66) using hashtags associated with a Marlboro social media campaign.

E. English Language Is Almost Exclusively Used in Respondents’ Global Cigarette Campaign Posts Even Though English Is Not the in-Country Language of Where Respondents’ Influencer Marketing Campaigns Originate

As Respondent PMI recognized in a 2016 internal social media guide leaked and published in the press, “Hashtags are gateways to being part of online conversations.”⁶³ English-speaking American consumers can easily view and search for common English language words that are extensively used in campaign hashtags in virtually all of Respondents’ deceptive influencer marketing campaigns. Respondents’ pairing of common English words with campaign hashtags for cigarette brands or cigarette brand-associated slogans suggests that Respondent’s intent is to ensure that social media posts flooding the internet with is global market-

ing reaches an English-speaking audience outside the country of origin of the campaign. Of Respondents’ 123 campaign hashtags across 41 countries presented in this Petition, only one of the countries has English as an official language.

The following are examples of such posts and **Appendix I** includes a list of common English language words that are commonly used for each Respondent’s campaigns such as #love, #girls, #yum, #party, #dance, #smile, #cool, #hiphop, #friends, among dozens of other English words.



A woman poses in front of a case with a *Marlboro* cigarette. The photo includes the English hashtags, #event, #thegarden, #tagforlikes, #photo, #ladies, #dance and #night.



A woman poses in front of a game at a *Lucky Strike* party in Chile. She uses the English hashtags #Saturdaynight, #partynight and #workhard.



An event agency posted this collage following an event in Kyrgyzstan. The post uses the English hashtags #party and #rightnow.

Respondents’ almost exclusive use of English words paired with campaign hashtags and English language campaign hashtags themselves is strongly suggestive of a deliberate effort to target consumers in English-speaking countries in-

cluding the United States — particularly because, of all the campaigns documented by Petitioners, English is not a principal language in all but one of the countries identified.

V. Respondents' Deceptive Advertising Is Particularly Egregious and Justifies Prompt Action Because Tobacco Products Are Uniquely Harmful; Certain Respondents Have Engaged in a Decades-Long Conspiracy to Deceive Americans about the Harms of their Products; and Youth Are Particularly Susceptible to Respondents' Deceptive Conduct Online

A. Tobacco Products Are Uniquely Harmful to Health

Despite enormous progress in reducing smoking in the United States, tobacco use still kills more than 480,000 Americans each year — more than AIDS, alcohol, car accidents, illegal drugs, murders and suicides *combined*.⁶⁴ Tobacco use and exposure to tobacco smoke cause nearly a third of all deaths from cancer and heart disease.⁶⁵ Unless smoking rates decline, 5.6 million American children alive today will ultimately die from smoking.⁶⁶ According to the most recent data from 2006-2010, smoking-attributable healthcare expenditures in the United States amounted to \$170 billion annually.⁶⁷ Globally, tobacco use and exposure kills more than 7 million people each year.⁶⁸

B. Certain Respondents Have Perpetrated Decades of Fraud Against the American People

The tobacco epidemic in the United States is the direct result of deliberate fraudulent misconduct by the major U.S.-based and multinational tobacco companies that participated in a decades-long conspiracy to lie to American consumers about their marketing to youth, the harms of their tobacco products, and the addictiveness of nicotine in order to enhance their profits. Respondents' influencer marketing campaigns are but the latest chapter in the long history of deceptive marketing practices aimed at young people to ensure a next generation of addicted users.

In 2006, the U.S. District Court for the District of Columbia found that several major tobacco companies — including Respondent BAT and Respondent PMI, via its then parent company Altria Group, Inc. — coordinated efforts in a scheme to defraud American consumers and the public about the health harms of their products in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO).⁶⁹ While Respondent PMI is not a defendant in the case, the Court noted that Defendant Altria, the then parent company of PMI, effectively and actively controlled the activities of all of its subsidiaries, including Defendant Philip Morris USA Inc. and PMI over the period of the Court's findings.⁷⁰ Although Respondent BAT is no longer under the Court's Final Order,⁷¹ the findings of liability by the Court against BAT's decades-long fraud and deceit still stand.⁷²

Relying on acts carried out by Respondents PMI and BAT and other tobacco-related entities, and after seven years of

litigation, the Honorable Gladys Kessler of the U.S. District Court for the District of Columbia specifically found that, for five decades, the multiple tobacco entities: 1) falsely denied that they marketed to youth;⁷³ 2) fraudulently denied that smoking is addictive;^{74,75,76} 3) suppressed and concealed vital information about their products from the public and public health authorities;⁷⁷ 4) deceived the public and public health authorities about the harmful effects of smoking⁷⁸ and tobacco smoke exposure;^{79,80,81} 5) deceived consumers and regulators about the nature of so-called "low tar" cigarettes;^{82,83} and 6) falsely denied that they manipulated their products to increase users' addiction to cigarettes.^{84,85}

Judge Kessler further found that the major tobacco companies were likely to continue their deceptive and unlawful behavior. Therefore, she crafted equitable relief designed to 'prevent and restrain' those future violations, as authorized under RICO.⁸⁶ These remedies include publishing corrective statements on five topics about which they had deliberately deceived the public for decades, which will run in print and online in about 50 newspapers and for one year on the major television networks during prime time.⁸⁷ RICO Defendants must also publish the corrective statements on their websites and cigarette packs.

Respondents' influencer marketing campaigns aimed at Americans without any disclosures of being paid advertising are perhaps subtler and more sophisticated frauds, but they are frauds nonetheless. Accordingly, when assessing investigative and possible subsequent enforcement action, the Federal Trade Commission should be reminded that tobacco products are not like any other legal consumer product and the tobacco industry advertisers ought not to be viewed as any other advertisers given the industry's decades-long deceptive behavior, which continues today via Respondents' deceptive online advertising.

C. American Teenagers Are Particularly Susceptible to Exposure of Respondents' Deceptive Practices on Social Media

Prompt action should be taken against Respondents given the high likelihood that American youth are being exposed to Respondents' deceptive online advertising. According to the Pew Internet Project, 92 percent of teens (ages 13–17 years) use the internet daily, and more than half (56%) go online several times a day. Smartphone access by 73 percent of teens

helps to enable this frequent internet access. In addition, over three-quarters (76%) of teens report use of at least one social media platform.⁸⁸ An additional study measuring social media platform usage among American youth found that 76 percent of teens and young adults (age 12–24) use Facebook and 73 percent (age 13–24) use Instagram.⁸⁹

A study based on data from the National Youth Tobacco Survey found that in 2012, 43 percent of middle and high school students were exposed to tobacco advertising on the internet, almost doubling the exposure level since 2000 (22.3%).⁹⁰ Exposure to tobacco advertisements via the internet among high school students susceptible to smoking cigarettes increased 73 percent from 2000 to 2011, reaching 44.7 percent of teens.⁹¹

Among youth aged 11–18 years, exposure to tobacco promotion on social media was correlated with a more favorable attitude towards tobacco, including the intention to initiate tobacco use among those who had not yet tried tobacco products.⁹² A 2015 study assessing the role of social media in influencing tobacco-related behavior in young people found that exposure to tobacco content on social media predicts smoking tendency over that of exposure on television and movies.⁹³ Finally, a 2018 study evaluating brand-sponsored Facebook pages concluded that widespread tobacco promotion and sales were found in direct opposition with Facebook’s tobacco-specific policies.⁹⁴

It is undisputed by U.S. public health authorities that exposure to tobacco marketing causes the initiation and progression of tobacco use among youth, as documented in major research reports from the U.S. Surgeon General (2012, 2014) and the National Cancer Institute (2001, 2008).⁹⁵ A key finding of the 2012 Surgeon General Report was that there is a causal relationship between the advertising and promotional efforts of the tobacco companies and the initiation and progression of tobacco use among young people.⁹⁶ A 2010 study in the *Journal of Preventive Medicine* confirmed the dose-response impact between exposure to cigarette advertising and higher risk of smoking among youth and also found that “the association between tobacco advertising and youth smoking is specific to tobacco advertising content and not simply a marker of an adolescent who is generally receptive to marketing.”⁹⁷ A 2013 study found that youth with extensive exposure to pro-tobacco messages on the internet are roughly 1.6 times more likely to experiment with e-cigarettes or snus.⁹⁸

In summary, given the tobacco industry’s fraudulent history perpetrated against the American public and Respondents’ current deceptive online global marketing influencer campaigns reaching American consumers — with a high likelihood of exposure to U.S. teens — via social media, the Federal Trade Commission should take prompt action to investigate and stop Respondent’s deceptive online advertising.

VI. Respondents’ Online Global Marketing Campaigns Using Young Influencers Violate the FTC’s Guides Concerning Use of Endorsements and Testimonials in Advertising

The Federal Trade Commission’s Guides Concerning Use of Endorsements and Testimonials in Advertising states that “when there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.”⁹⁹ The Federal Trade Commission has offered further guidance that material connections may include a business relationship, monetary payments, free products or any other gift or incentive.¹⁰⁰

A. Images Posted to Social Media Resulting From Respondents’ Marketing Campaigns are Considered Endorsements and Subject to the FTC Act

The Federal Trade Commission interpretation of its Endorsement Guides states,

“[S]imply posting a picture of a product in social media...could convey that you like and approve a product. If it does, it’s an endorsement. You don’t necessarily have to use words to convey a positive message. If your audience thinks that what you say or otherwise communicate about a product reflects your opinions or beliefs about the product, and you have a relationship with the company marketing the product, its an endorsement subject to the FTC Act.”¹⁰¹

As highlighted in previous sections of this Petition, the vast majority of images posted under the radar by young influencers engaged in Respondents’ marketing campaigns show attractive, young people using or promoting a specific cigarette brand (i.e. *Marlboro*). Photos also depict parties and

events organized to promote tobacco products and generate content for posts on social media networks. These photos are identified by unique hashtags associated with campaigns for tobacco products. Accordingly, Respondents’ resulting products of their marketing campaigns — i.e. cigarette brand images flooding social media — are undoubtedly endorsements subject to the FTC Act.

B. Evidence Exists of a “Material Connection” Between Certain Influencers and Respondents

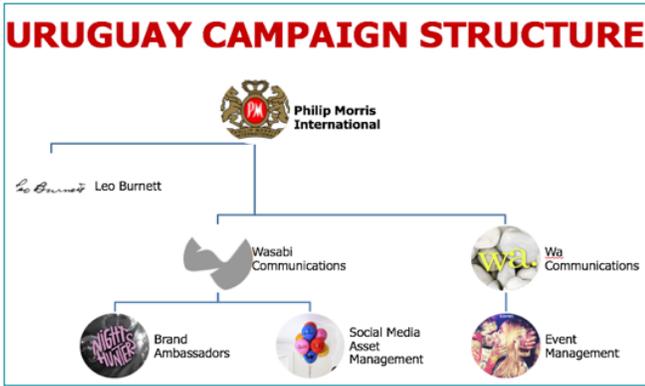
Over the course of a multi-year investigation, Petitioners have identified instances where a “material connection” exists via a business relationship between influencers and Respondents via an intermediary marketing or public relations company, as well as instances of direct payments and incentives given to certain influencers. The evidence contained in this Petition supports action by the Federal Trade Commission to further investigate Respondents’ business relationships with influencers.

1. A Business Relationship Exists Between Certain Respondents, Respondents’ Intermediary Marketing Agency and Influencers

Through online, publicly available sources and confidential interviews of paid influencers, Petitioners have mapped out examples of the relationships between marketing agencies and influencers of some of Respondents’ global marketing influencer campaigns. For example, in Uruguay, Respondent PMI used an in-country marketing firm, Wasabi Communications, to run its online influencer campaign via “Night Hunters” for its *Ice Ball* brand.



A screen capture of Wasabi Communications list of clients including Respondent PMI and “Night Hunters.”



Mapping of the potential campaign structure for social media marketing in Uruguay. Petitioners’s research indicates that Wasabi Communications and WA Communications run PMI social media campaigns in Uruguay.



Promotional photo from former Night Hunters website (nighthunters.com.uy). The description on the website read: The Night Hunters are a group of guys/girls that have the job of their dreams: they get rewarded for going out and spending time with their friends. This photo is from the “8th edition” of NightHunter Ambassadors. Interviews indicate the program was run several times.



Homepage of Night Hunters website featuring Wasabi and WA Communications logos. The website plays a video that describes what it means to be a Night Hunter (¿Que es ser un Night Hunter?)

Translation of video text:

*Are you somebody who goes out by yourself at night?
 Or is the day and the night the same to you?
 Are you waiting for somebody to call you,
 or are you going to make the party [happen]?
 Are you content with going out with a couple of friends?
 Or with a whole group of friends?*

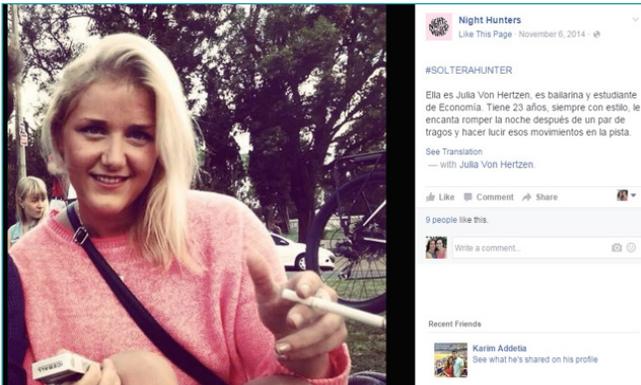
*We’re looking for Montevideo’s partiers
 Those that go out to the best parties
 And that the people, no matter what, will go with you
 Register and then share the best of the night*

*So if you feel like that’s your role, Run, Vote!
 And then we’ll do the rest*

*VIP access to the best parties
 Cash. Shots.
 And everything else you need to make
 the best party possible with your friends*

“Night Hunters” is a marketing program which recruits smokers ages 18–29 years who are active on social media and enjoy nightlife in Uruguay. Selected ‘competitors’ are ‘rewarded’ to go out to parties and given benefits for three months — including cigarettes — in exchange for engaging in advertising through social media, activities, events, and posting with the #NightHunters hashtag. Winners are the competitors with the most likes, shares and comments, and the most creative pictures. They get access to a beach house to throw their own private parties with alcoholic beverages and Marlboro cigarettes.¹⁰² The program is orchestrated by Wasabi Communications and WA Communications —

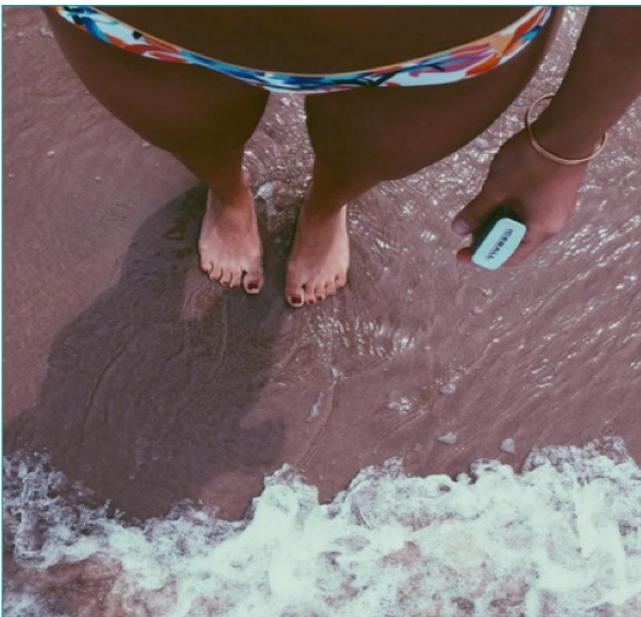
marketing agencies that work for Respondent PMI. Products endorsed include *Ice Ball* cigarettes, as well as a number of alcohol brands. Petitioners documented this campaign in 2016 and, while the website for the campaign is still active at nighthunters.com.uy, the social media content posted during the campaign period that Petitioners tracked appears to have now been removed from the internet.



Facebook post from the now deleted Night Hunters Facebook page (34,000 Followers). The photo shows a young woman, identified as a 23 year old who likes dancing smoking an Iceball cigarette.



Instagram post showing photos of Philip Morris Iceball cigarettes with the caption "Who wants to smoke?" The post uses #Marlboro #ice and #nighthunters and contains English-only content.

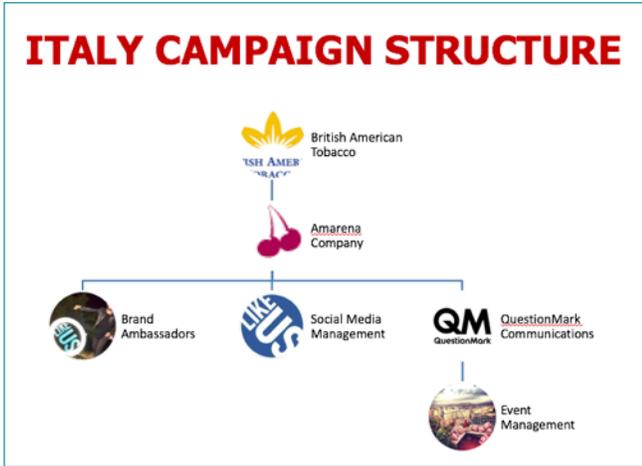


Instagram content from a formerly public Night Hunters account. The photo features a young woman in a bikini holding a pack of Iceball cigarettes.



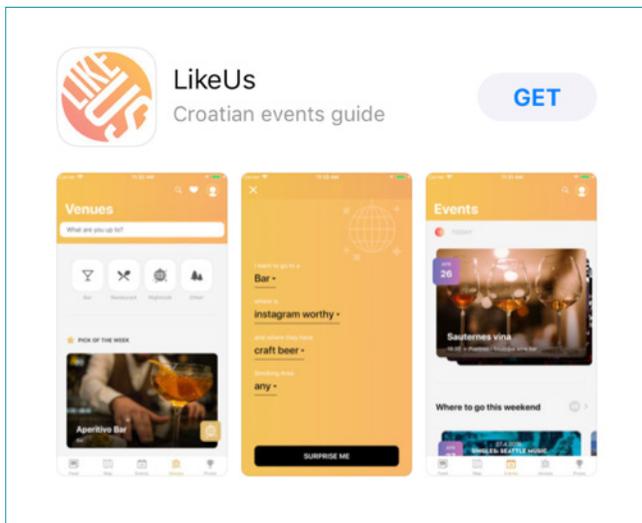
Facebook post from the now deleted Night Hunters Facebook page. The photo shows a young woman, identified as a 19 year old flamenco dancer sitting on a bench next to a pack of Iceball cigarettes.

Similarly, the identified campaign potential structure of Respondent BAT's *Lucky Strike* cigarette brand marketing in Italy is as follows:

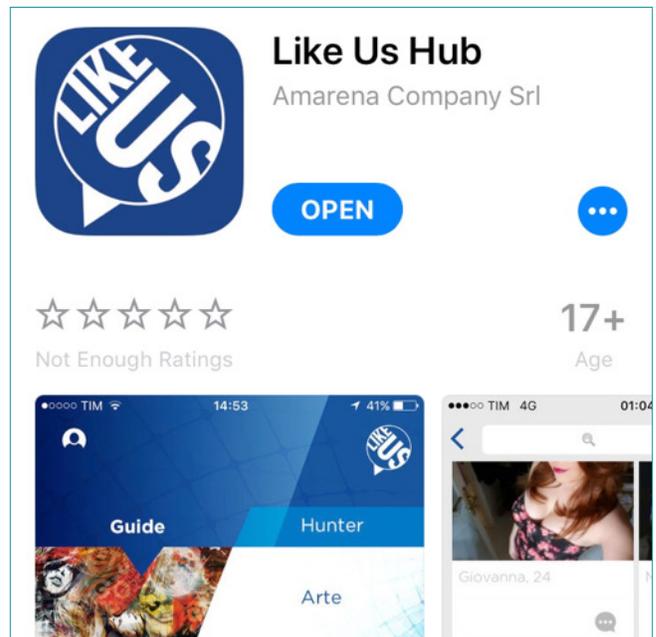


Mapping of the potential campaign structure for social media campaigns in Italy. Petitioners's research indicates that Amarena and QuestionMark run BAT social media campaigns in Italy.

In Italy, the "Like Us" campaign promotes *Lucky Strike* cigarettes through paid content on Instagram via popular social influencers, parties and events and a public Facebook page with more than 125,000 followers. Additionally, there is a "Like Us" app available for download on any mobile device, including in the United States.

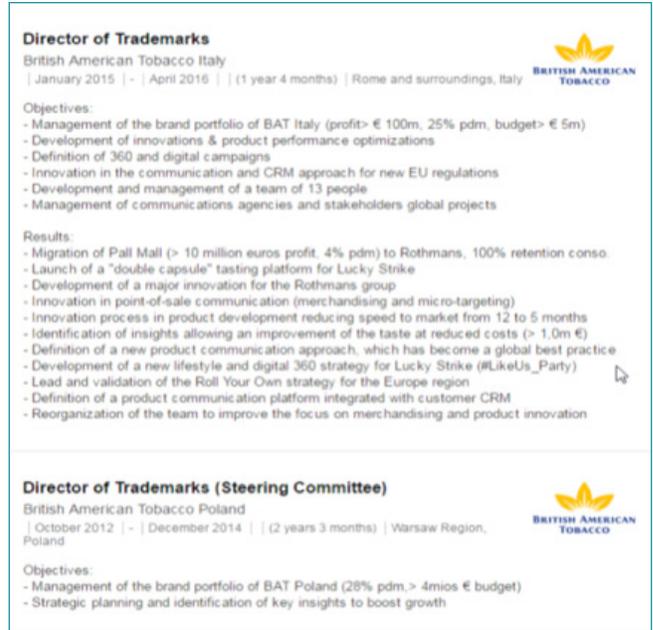


Apps for "LikeUs" campaigns available for download in the U.S. via iPhone app store.

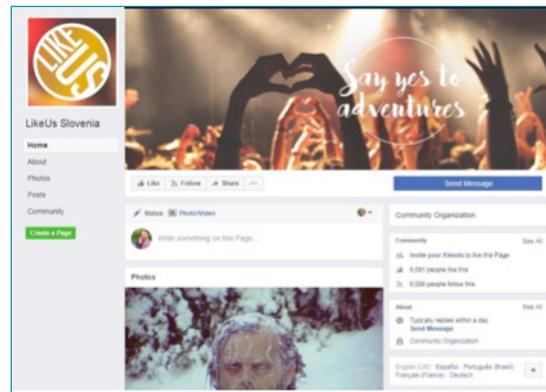


Young people recruited as influencers for “Like Us” are paid by a third party marketing agency — Amarena Company — to post content to their social media followers. As outlined in Section VI.B.ii. below, these influencers are explicitly instructed on what hashtags to use, how to display products and what kind of content to post. Influencers are instructed to post “lifestyle” images showing cigarettes using the hashtag #Lus and images from parties or events using the hashtag #LikeUs_Party. Influencers are instructed not to make the photos of cigarettes “too obvious,” but to “appear natural” and are told what brands to promote and when, and to make sure that warning labels on the tobacco products are not visible in photos posted to social media.

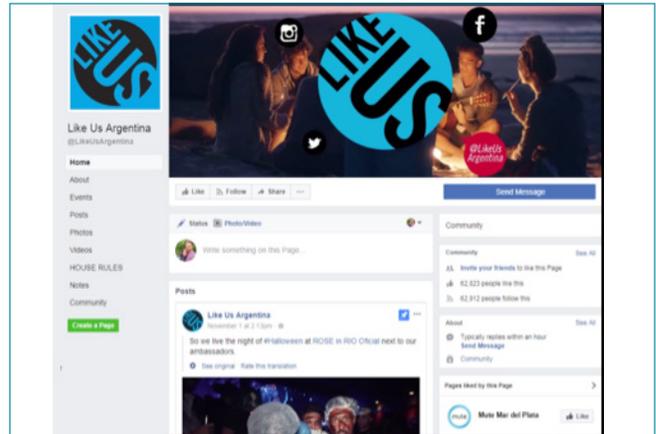
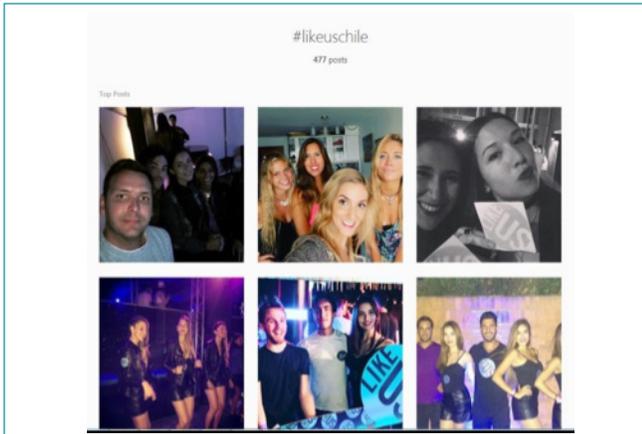
Information from the employment networking site LinkedIn also discloses that a marketing employee of Respondent BAT, acting as Director of Trademarks for BAT’s Italy company from January 2015 to April 2016, reported that he was responsible for the “development of a new lifestyle and digital 360 strategy for *Lucky Strike* (#LikeUs_Party)”.¹⁰³ As well, a LinkedIn profile of an Amarena company employee lists Respondent BAT as a client.¹⁰⁴ Respondent BAT’s #LikeUs campaign promoting *Lucky Strike* cigarettes is being carried out in several countries including Argentina, Chile, Croatia, Italy, Slovenia and Venezuela.



LinkedIn profile of a BAT marketing employee referencing Respondent BAT’s development of #Like Us influencer campaign.



LikeUs Facebook pages for LikeUs Slovenia (6k followers) and LikeUs Croatia (20k followers).



Instagram posts (477 posts) using the hashtag #likeuschile and a Facebook page for LikeUs Argentina (62k followers).

Petitioners also obtained a 2017 contract and instructions to influencers originating from Respondent BAT's digital marketing firm in Italy. These redacted materials can be made available to the Federal Trade Commission upon request.



Instagram posts from the "LikeUs" campaign with each post generating at least 1,500 likes.

2. Certain Respondents' Marketing Agencies Directed, Trained and Paid Influencers

Certain confidential and anonymous (to Petitioners) interviews of influencers paid by Respondents or their agents in Brazil, Italy, and Uruguay, conducted by the netnography market research firm Netnografica,¹⁰⁵ with financial support from the Campaign for Tobacco-Free Kids, revealed examples of how certain Respondents, via their marketing firms,

worked with digital influencers to promote their cigarette brands. Across countries, the various interviews suggest that the youngest influencers, with the largest potential audience for advertising tobacco products, were recruited and used as influencers for certain Respondents' deceptive advertising campaigns.

<p>Italy #LikeUs Respondent BAT Lucky Strike Interview # 4</p>	<p><i>"Lucky Strike choose a number of persons that sponsor their cigarettes. [My friend REDACTED] has to post three pictures a week and the pack of cigarettes has to appear in them, followed by the tags #lus and #likeus_ party. There are lots of people that do it and they are given 200 Euros a month and two cartons of cigarettes. They only choose persons with an important number of followers."</i></p>
<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #1</p>	<p><i>"They told us they were doing the same in Japan or China. Although we all know it is prohibited to do advertising of cigarettes in any media (tv, radio, press), they found a way...First because they target a super young profile, Night Hunters goes from 18 to 29 years old, but the people they selected are always the youngest."</i></p>
<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #1</p>	<p><i>"They look for young people that have large groups of friends so this gets expanded more and more. But it's not only with the cigarettes, but also with the alcohol, the thing is that with the cigarettes it works more because of all the prohibitions that are in place. Social networks are key, when you are NightHunter you need to have all your profiles as public. I had to have Instagram without any privacy, even if I didn't like it. In the videos we had to upload to Youtube, introducing ourselves, they will "make" us to appear showing the cigarette brand or one of the alcohol brands...Wasabi people would give us feedback about how they were – how they looked like – the pictures we uploaded."</i></p>
<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #2</p>	<p><i>"The role of the social networks was key to advertise over the Internet what they wanted... it was about getting together young people that will move other young people because, as I already said, they were looking for people that were already in the social networks."</i></p>
<p>Russia #BestNightEver Respondent PMI L&M Interview #1</p>	<p><i>"What else can I say? I am the face of many popular brands, and of the top club in the city. . .Sometimes, when I am out in the city, it is impossible to stay unrecognized"</i></p>

None of the influencers reported that they were instructed to disclose their relationship with Respondents. Yet, certain influencers reported receiving incentives for cigarette brand posts, including money and free cigarettes, free trips, and training on how to be a successful influencer.

<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #1</p>	<p><i>“The benefits are countless, it’s awesome!...they will give you all the benefits, but you have to do your part too. Your part means to upload a sort of advertisement [for Respondent PMI’s Ice Ball cigarettes] to Instagram or Facebook, but not something that looks set-up, but something that looks natural...the creative and natural pictures that you uploaded were very important...”</i></p>
<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #1</p>	<p><i>“[E]very fifteen days, you got a bonus of UY\$2000. It was sort of a check, and then we will exchange it for money (with a girl from Wa Comunicación), that money you were supposed to spend it on your nights out. Besides we got, also every fifteen days, tickets with the Night Hunters logo that would say “these tickets are worth a certain amount of money”, and with our name in the back. There were tickets of UY\$50, UY\$100, UY\$150 and UY\$200. Those tickets could be spent only in the night clubs they will assigned to that purpose. When you were beginning they would give you a list with all night clubs and pubs in which you can use the benefits. With those tickets you could buy food, alcohol, etc. Also they would give you UY\$5000 to buy cloth in certain stores in Montevideo Shopping center. Also, they will give us Absolut, Jameson, Ballantines y Pilsen beer every week, bottles from all those brands and a beer six pack. And a package with boxes of cigarettes, I don’t know how many boxes there are in those packages, but it was infinite, we never ran out of cigarettes.”</i></p>
<p>Italy #Like_Us Respondent BAT Lucky Strike Interview # 11</p>	<p><i>“I’m working for Lucky Strike, for their cigarettes. I started 2 years ago when I moved to Milan. ...So, we have to publish a number of photos a week. We have a normal contract, that includes the ban to cooperate with the competition. We have to publish 2 photos a week with the product, made in a subliminal way, as if right now I put the pack of cigarettes here on the table and I take a photo. Because it’s obviously illegal. So they have this group of people in every city... They try to create this thing where they give packets of cigarettes to people with a certain number of followers, so that they post a picture with the packet. The final image they want to give is that smoking Lucky Strike is cool. Then there are the hashtags that we use for the pack – for the product – and the hashtag for the events, situations, places...#Lus for the pack of cigarettes, #Like_Us Party for the events... We are called Ambassadors.”</i></p>
<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #2</p>	<p><i>“When we had just started, the people from Wasabi, who are digital marketers – especially in social networks- teach us which are the best hours to publish pictures [for Respondent PMI’s Ice Ball brand and alcohol brands], how to publish, how to understand and handle each of the social networks and the importance to link them all among each other; the importance of tagging and using hashtags...you always have Wasabi people helping you and available to answer questions...It was all about the pictures in the social networks: shares and likes...We had a training session with the person in charge of marketing in Marlboro, she talked to us about how difficult it was for them to advertise due to all the laws in place. She also talked to us about the brand in general, what the target population was, even she talked about the box and design. And after that, how they make you link the brand to certain colors or situations.”</i></p>
<p>Uruguay #NightHunters Respondent PMI Ice Ball Interview #5</p>	<p><i>“They did place special emphasis on how to take the pictures. Now they also require you add some filters to them. They had to be good pictures, not any picture...They gave us tips about the lighting, how to take the pictures from above, and also the time to post them (you get the better reactions to your posts after 6pm)”</i></p>

An interviewee from Indonesia who works at a marketing events company with tobacco clients disclosed the following regarding cigarette endorsements on social media platforms:

Q: *What do you think is the most important social media channel for the tobacco companies?*

A: *I think all platforms, but if I can choose, I think it's Instagram and YouTube at the moment. Facebook, they don't look at Facebook pages anymore. Instagram, they can actually code it as something lifestylish. You see all these cigarettes. They're taking pictures. It's one of those artsy, hipster kinds of stuff. Instagram and YouTube, all the YouTubers are subscribing for money in cigarettes as well. They're not putting it outside... I don't know if you researched this, this is under the radar. There are YouTubers that actually is (sic) sponsored by tobacco companies. It's very subtle. They play games with the screen on, just light a cigarette. It's good. Then, they smoke. They put it out and then, at a certain distance, you can see that that's the brand they're smoking.*

Q: *For that, they're paid?*

A: *They're paid. But, it's under the radar...It's like Mission Impossible. If he gets caught, we don't know anything about it. He's smoking alone.*

Further, some of the interviews with influencers disclosed that they were specifically instructed on how cigarette brands should be posted to the influencers' social media accounts including what hashtags should be used for the campaigns. Respondent BAT's *Lucky Strike* campaign in Italy instructed influencers, as shown below:

LUCKY STRIKE 2017 - POST

Your activity was confirmed for this new period until April 30. There will not be any events in this period.

YOU HAVE TO:

- Have at least **2 shares** a week with **#likeus_party** (REMEMBER THAT YOU CAN POST PHOTOS generic photos on parties, lifestyle, fashion, travel, etc.
- At least **1 share** a week with **#us** (THIS SHOULD ONLY BE USED FOR PHOTOS WHERE THE PRODUCT IS PRESENT.
- **LIKE** posts and **SHARE** the contents on the LIKE US FB page_ every week.

NB: these are the minimum activities required

There is a small report on the subjects to use in your posts on the following pages. Remember to change them up and to not just photos on the same subject. Do not post pictures that are too sexy or not in line with the LIKEUS MOOD.

Excerpt from guidelines for influencers for BAT's *Lucky Strike* campaign in Italy. (English translation)

Additional relevant excerpts from interviews include:

Uruguay #NightHunters Interview #2	<i>“It was all about the pictures in the social networks: shares and likes. My life at that moment was to stop in the middle of the night to take a picture of myself holding a cigarette and include the hashtag #NightHunters.”</i>
Uruguay #NightHunters Interview #5	<i>“[A] guy from the marketing firm Wasabi was always following us (he would tell us to upload more pictures, that some picture was good, some other not so much, etc). He contacted us through a WhatsApp group we had.”</i>

Interviewees from Respondent PMI’s Uruguay campaign also discussed instructions that were given to them to not post competitors’ cigarette brands.

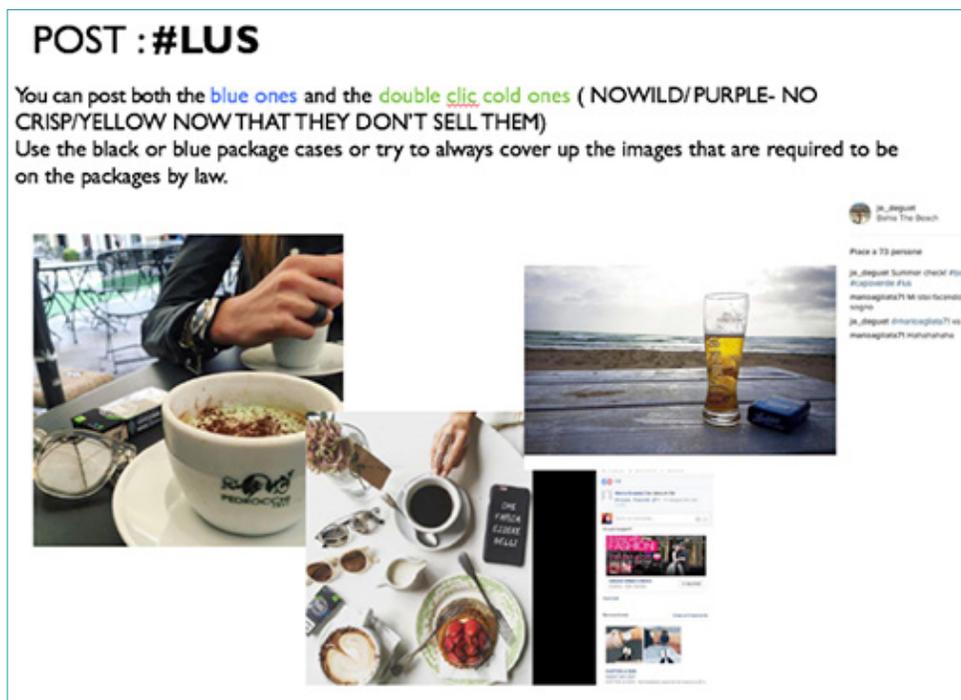
Uruguay #NightHunters Interview #5	<i>“They told us most of our efforts should focus on this (Ice Ball) brand, and we needed to be careful that no other brand was in the pictures. If you uploaded a picture with another brand in sight, they will make you to take it out immediately.”</i>
Uruguay #NightHunters Interview #1	<i>“It was forbidden to exhibit in the pictures other brands other than the ones they were advertising. It happened that someone uploaded a picture where you can see a cigarette box from another brand and they make her/him delete it.”</i>

Influencer interviewees also disclosed that photos should look “organic” and not like the paid advertisements that they were and the campaigns were meant to be under the radar.

Uruguay #NightHunters Interview #5	<i>“[T]heir idea was “marketing among peers...The cigarette brand was the strongest brand, you had to take pictures with their products. But the pictures should not be too obvious or overreacted, you needed to use your creativity to have them to be subtler...We couldn’t be too explicit about the pictures we were uploading... The idea was to take pictures but not directly, but indirectly —for example, you would put the cigarettes in your pocket and take a selfie, so you can see in the picture the Ice Ball brand...The idea was to take “natural” pictures to advertise Ice Ball.”</i>
Brazil #tastethecity Interview #2	<i>“Interviewer: When you post, do you think your followers know what you’re talking about? Interviewee: About #tastethecity? No...Only that I think that is precisely what Souza Cruz [Respondent BAT subsidiary in Brazil] wants. They want to show people who are normal, decent, cool, and even so they smoke.”</i>

Finally, influencers in Italy for Respondent BAT's *Lucky Strike* cigarettes were instructed to cover up health warnings required by law on cigarette packs when posting images using the #Lus hashtag. Respondent BAT's own marketing

policies require any advertising and promotional materials to carry a health warning, which uses at least 10% of the area of the advertisement and applies to web-based advertising.¹⁰⁶



Excerpt from guidelines for influencers for BAT's *Lucky Strike* campaign in Italy. (English translation)

The totality of the evidence collected by Petitioners to date shows numerous examples of Respondents, via their marketing firms, engaging in practices with influencers that “might materially affect the weight or credibility of the endorsement,”¹⁰⁷ in violation of the FTC Endorsement Guides, in that viewers would not know Respondents' cigarette brand images were paid advertising. In addition, Respondents PMI and

BAT's deceptive practices of instructing influencers to make their posted images appear not to be the paid advertisements that they are, but rather organic user content, goes to the heart of materiality in that these campaigns are seemingly designed to ensure the connection between Respondents and influencers is not reasonably expected by a social media audience.

VII. The Federal Trade Commission Has a Long History of Regulating the Tobacco Industry and Protecting the Public From the Tobacco Industry's Deception and Marketing that Appeals to Youth

The Federal Trade Commission has used its legal authority to protect Americans from the tobacco industry's deceptive marketing and product development for 80 years. Respondents' deceptive advertising detailed in this Petition is just the latest in the tobacco industry's nearly century-long campaign to deceive U.S. consumers — this time using social media to attempt to make smoking cool and hip again among youth and young people in ways they are no longer able to do so in traditional paid advertising and to deceive consumers into falsely thinking that the young, hip people posting cigarette brands on social media is organic content and not, in fact, the paid cigarette advertising that it is.

Beginning as early as 1938, the Federal Trade Commission has brought complaints and/or obtained consent decrees and cease-and-desist orders against major U.S. cigarette firms related to those companies' false health claims and deceptive advertising.^{108,109,110,111}

The agency has also played a uniquely critical role in monitoring and reporting on cigarette sales, advertising and content since 1967 and providing similar surveillance on smokeless tobacco products since 1987 pursuant to the Federal Cigarette Labeling and Advertising Act.¹¹²

The Commission has a long history of acting against marketing practices targeting children,¹¹³ including taking aim at protecting kids from tobacco advertising. In 1997, the FTC considered administrative action to ban R.J. Reynolds' Joe Camel cartoon advertising as an unfair practice under Section 5 of the FTC Act, but dismissed the case two years later deciding that relief it sought against R.J. Reynolds for unfair and unlawful marketing of cigarettes to children was largely included in the 1999 Master Settlement Agreement.¹¹⁴

The Federal Trade Commission's policy reports and recommendations have been aimed at strengthening consumer protections against tobacco industry marketing including recommending that consumers be exposed to health warnings on cigarette advertising, proposing stronger and rotating health warnings, advocating that advertising of cigarettes be banned on television and radio, calling for research on less hazardous cigarettes, and questioning the tobacco industry's misuse of the Federal Trade Commission's cigarette testing method, including smokers' compensatory behavior in response to so-called low tar ventilated cigarettes.¹¹⁵

Through its actions, the agency has been instrumental in prompting Congress to strengthen cigarette warning labels through legislation such as the Federal Cigarette Labeling and Advertising Act of 1965¹¹⁶ as well as the Comprehensive Smoking Education Act of 1984¹¹⁷ (requiring four rotating health warning labels).

Most recently, the FTC and the U.S. Food and Drug Administration issued 13 warning letters to companies that misleadingly labeled or advertised nicotine-containing e-cigarette liquids as kid-friendly food products, such as juice boxes, candies and cookies.¹¹⁸

In summary, the Federal Trade Commission has been and continues to be essential in protecting the public health from the tobacco industry's continual deceptive advertising, and Petitioners urge the agency to do so again now.

VIII. The Federal Trade Commission Has the Authority to Investigate the Deceptive Business Practices Alleged in this Petition

The Federal Trade Commission’s Guides Concerning Use of Endorsements and Testimonials in Advertising make clear that practices by advertisers inconsistent with the Guides “may result in corrective action by the Commission” under Section 5 of the FTC Act if “the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.”¹¹⁹ Under Section 5 of the FTC Act, the Federal Trade Commission may initiate an enforcement action if it has the “reason to believe” a potential defendant has violated the FTC Act and that action taken by the agency would be “to the interest of the public.”¹²⁰

While the Campaign for Tobacco-Free Kids’s investigation documented thousands of social media posts on Twitter, Instagram, and Facebook deceptively promoting Respondents’

cigarette brands, a more comprehensive internet sweep by the Federal Trade Commission would likely uncover additional deceptive advertising of Respondents’ cigarette brands reaching and being aimed at U.S. consumers. It is clear that Respondents’ online influencer marketing campaigns have not properly disclosed a material relationship between themselves and any of the documented influencers used to promote their cigarette brands despite engaging in marketing tactics that would certainly reach U.S. consumers including using foreign influencers with substantial U.S. followers. Accordingly, it is difficult to imagine a clearer situation of great import to the public’s interest where the Federal Trade Commission could have reason to believe that Respondents’ conduct reaching U.S. consumers is unlawful under the FTC Act.

IX. Respondents’ Deceptive Advertising Violates Section 5(A) of the Federal Trade Commission Act

Section 5(a) of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce,¹²¹ as commerce is defined under Section 4 of the FTC Act¹²² and where “unfair or deceptive acts or practices” includes such acts or practices involving foreign commerce that “cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States.”¹²³

In 2014, the U.S. Surgeon General stated that “...advertising and promotional activities by the tobacco companies cause the onset and continuation of smoking among adolescents and young adults.”¹²⁴ Respondents’ online marketing

campaigns originating in foreign countries yet reaching and seemingly aimed at U.S. consumers are “likely to cause reasonably foreseeable injury” to American consumers because tobacco advertising is directly linked to smoking initiation and continued smoking, which can lead to addiction, disease and death in American consumers exposed to the tobacco advertising. Therefore, upon further investigation, the Federal Trade Commission will likely find Respondents’ deceptive acts outlined here violate Section 5(a) of the FTC Act.

X. The Federal Trade Commission Has Acted Against Similar Violations by Advertisers in the Recent Past and Therefore Ought to also Take Action Against Respondents

The Federal Trade Commission has recently taken investigative and enforcement action against advertisers' similar deceptive influencer marketing campaigns via social media. In May 2015, the Federal Trade Commission approved a final consent order against clothing retailer Lord & Taylor for its deceptive marketing campaign involving payment, without disclosure, to 50 digital influencers to post pictures of themselves wearing Lord & Taylor dresses on Instagram.¹²⁵ The consent order requires Lord & Taylor — as the advertiser and Respondent — to ensure that a material connection is disclosed between an endorser/influencer and Lord & Taylor where one exists.¹²⁶ Further, Lord & Taylor is now subject to monitoring of its future influencer campaigns by the Federal Trade Commission.¹²⁷ Importantly, the consent order solely penalized Lord & Taylor for its deceptive online influencer campaign and did not subject the individual fashion influencers to any penalties.¹²⁸ Also in 2015, the Federal Trade Commission settled deceptive advertising charges against Machinima, Inc. for failing to disclose that the online entertainment network had paid influencers to upload YouTube videos promoting Microsoft's Xbox One system and other games.¹²⁹

In 2017, the Federal Trade Commission continued its enforcement action and awareness building among advertisers and influencers alike that online paid endorsements need to be disclosed. In its first action against individual influencers, the Federal Trade Commission approved a final consent order settling its complaint against Trevor Martin and Thomas

Cassell, owners of the online gambling site CSGO Lotto, alleging, among other things, that the two owners endorsed their site via their videos and social media posts and those of other paid influencers without disclosing that they owned the company.¹³⁰ Last, in April 2017, the Federal Trade Commission sent educational letters to more than 90 digital influencers and advertisers reminding them to disclose material connections, and 21 of those influencers received follow-up warning letters.¹³¹

Unquestionably, the Federal Trade Commission is committed to ensuring that online influencer campaigns are not deceptive to American consumers. As previously mentioned, the public's interest in disclosure of cigarette brand endorsements — and therefore that of the Federal Trade Commission — is heightened over that of other consumer products given the devastating harm tobacco use and exposure cause U.S. consumers. Further, although the Campaign for Tobacco-Free Kids's non-exhaustive investigation discloses posts from individual influencers, the Federal Trade Commission ought to focus any investigative and enforcement action on Respondents and not on individual influencers. Unlike the Federal Trade Commission's action taken against Trevor Martin and Thomas Cassell, the young influencers being paid by Respondents have no substantial — if any — ownership in Respondents' businesses or that of the marketing firms carrying out their deceptive global influencer marketing campaigns.

XI. Action by the FTC Is Necessary Because Voluntary Action Will Not Work as Several Respondents Are Currently Violating Their Own Voluntary Marketing Policies

The tobacco industry's use of self-regulation and voluntary marketing codes as a means of avoiding meaningful regulation aimed at reducing tobacco use has long been recognized.¹³² And, while there is global consensus that voluntary marketing or other regulatory codes put forth by tobacco companies do not effectively protect consumers from tobacco-related exposures,¹³³ Respondents' seemingly flagrant violation of their own global marketing codes is even more reason for the Federal Trade Commission to take investigative action to protect American consumers.

According to Respondent BAT's governance documents, the company has a policy on the marketing of their combustible tobacco products¹³⁴ called 'International Marketing Principles,' most recently updated in 2015.¹³⁵ Non-compliance has been publicly reported through both their audit committee and CSR committee.¹³⁶ Interestingly, in 2015, only two violations were reported and three were reported in 2014. One of the core principles underpinning Respondent BAT's voluntary global marketing policy is, "*It should always be clear to our consumers that our advertising originates from a*

tobacco company and that it is intended to promote the sale of our tobacco brands.”¹³⁷ Respondent BAT’s specific policy concerning advertising to children states that they will only advertise on websites where access to the site is restricted to verified adults.¹³⁸ Importantly, Respondent BAT’s branded sponsorship or promotional events are to be limited to events that will only have adult attendees and these events should not get public exposure through the internet or similar media save as a news item.¹³⁹ Further, Respondent BAT has a specific policy dealing with viral and ‘covert’ advertising as follows:

*‘We will not engage in any viral marketing in **openly accessible on-line or other digital networks** where it is impossible to control the integrity of the message nor the recipients it might reach.*

*We will not engage in any ‘covert’ advertising (teaser campaigns, flash mobs, etc.) **unless it is made clear at all times that the activity is tobacco advertising** (e.g. through the application of a health warning). Unless this kind of activity takes place at points of sale or out of home (where age verification is not possible) the **intended audience must be restricted** to verified adult smokers.’¹⁴⁰ (emphasis added)*

Respondent Imperial Brands’ voluntary marketing code similarly states, “We will not engage in any viral marketing in openly accessible on-line or other digital networks where it is impossible to control the integrity of the message or the recipients it might reach.”¹⁴¹

Respondent JTI’s parent company’s voluntary marketing code titled, “Global Tobacco Marketing Principles,” addresses product and brand placement and asserts that it will not permit or pay third parties for product placement or advertising in any mass medium produced by that third party *including* internet postings such as blogs and video.¹⁴²

On the other hand, Respondent PMI’s publicly accessible voluntary marketing policy does not appear to address internet advertising. Respondent PMI appears to have a more detailed policy titled, ‘PMI 4-C — Marketing and Sales of Combustible Tobacco Products,’ but this policy does not appear on its corporate website. However, in a letter to Petitioners complaining about the Campaign for Tobacco-Free Kids’s unauthorized and unrestricted use of PMI’s advertising materials in an online advocacy campaign, Respondent PMI stated, “Despite our different points of view, I hope that we are both against unrestricted use of tobacco branded materials on the Internet, even as part of an advocacy campaign.”¹⁴⁴

Although it is unclear whether Respondent PMI’s global influencer marketing campaigns are violating its internal policy, a review of the other Respondents’ voluntary marketing codes suggests clear violations. Respondent BAT’s global influencer marketing campaigns identified in this Petition are a form of ‘covert advertising’ under its own policy because the premise of the campaigns is to keep the advertising tobacco companies under the radar — out of view of consumers. Further, Respondent BAT’s #LikeUs_Party currently running in Argentina, Chile, Croatia, Slovenia, Italy and Venezuela operates in direct opposition to its policy of limiting “public exposure through the internet” as these parties are designed to encourage attendees to post images and hashtags to their social media accounts with explicit instructions given for doing so. As well, in violation of their policies, the platforms used by Respondents BAT and Imperial Brands often do not have a mechanism to restrict access to adults (e.g. Instagram).

XII. Conclusion

Based on the voluminous evidence presented in this Petition, Petitioners urge the Federal Trade Commission to promptly investigate and take action to stop Respondents' misleading marketing and determine the extent to which Respondents' deceptive social media advertising is aimed at U.S. consumers. Petitioners further urge the Commission to prevent Respondents from using influencers to flood social media platforms with images and videos depicting cool, hip and young people promoting tobacco brands without clearly informing consumers that the content is in fact paid advertising through the use of required hashtags such as #Sponsored, # Promotion, or #Ad.

XIII. APPENDIX
List of Common English Words Paired with Respondents' Global Cigarette Marketing Campaign Hashtags

Respondent	Country	Brand	Common English Hashtags		
Philip Morris International	Albania	Marlboro	#girls #memories #IloveRed #summer	#relax #bethatface #redzone #chillzone	#weareready #udecide
	Algeria	Marlboro	#MLBexperience #Marlboro #Fomula1 #NYC	#NewYork #AppleCity #Fun #Ferrari	#Friends #Red #SelfieTime
	Australia	Marlboro	#MarlboroParty #congratulations #legends #happiness #california #wanderlust	#girlstrip #partytime #Sydney #theboys #onaboat #party	#partyboat #Monday #Thelifestyle #ilovemyjob #Openbar
	Canada	Marlboro	#FerrariLounge	#Formula1	#Montreal
	Croatia	Marlboro	#icecream	#macho	#hustle
	Egypt	Marlboro	#cairo #event #fashionista #night #music #bykojak #repost #red #events #fun #fashionblogger #style #thetap #nightlife #instafasion #ootd #streetstyle #dance #standupcomedy #fearless	#styleblogger #instagood #photooftheday #passion #bold #life #picoftheday #party #friends #menswear #Marlboro #hapiness #thegarden #art #fashion #happiness #kazaloon #hippies #tiedyedress #redmovenoweygpt	#dress #nightlife #repost #hippiestyle #ladies #likeforlikes #red #bloodline #maadi #egypt #movement #comedy #theboulevard #comedy #bestdressed #lastnight #brothers #backstreetboys
	France	Marlboro	#Marlboroparty #decide #Marlboro #icebar #champagne #cocktail	#girls #paris #party #fun #friends #dance	#lovework #lovemyjob #happy #openbar #tattoo #ink

Respondent	Country	Brand	Common English Hashtags		
Philip Morris International	Germany	Marlboro	#Marborolounge #berlin #lolapalooza	#party #dance #fun	#free #vacations #love
	Guatemala	Marlboro	#party #summer #girls #havingfun #friends	#dance #latepost #love #life #picoftheday	#style #cool #beach #GoodVibes
	Indonesia	Marlboro	#Party #Music #Dance #clublife #DJ #Throwback	#ladies #forward #latepost #weekend #friends #lastnight	#Unleash #nightclub #dancefloor #unleash
	Mexico	Marlboro	#friendstime #afterparty	#Saturday #poolday	
	Moldova	Marlboro	#localsmd #party #pleasure #action #inspiration #tipografia5 #friends #team #bestday #red #pleasureteam #music #shooting	#happy #smile #girl #beard #bearded #draggysmile #seaside #moldova #beards #draggy #photooftheday #instamoment #stylist	#lovehim #beardsofinstagram #beardlife #beardstagram #greece #summerday #fashion #soon #weekend #fun #sun #friendship
	Monaco	Marlboro	#party #tattoo	#dancefloor	#music
	Paraguay	Marlboro	#2016	#Marlboro	
	Peru	Marlboro	#Marlboro	#Dontbeamaybe	
	The Philippines	Marlboro	#thankyou #congrats #challenge	#quest #team #explore	#Jetski #goodvibes
	Poland	Marlboro L&M	#sky #relax #Iminheaven #Friends #party #homies	#girls #happy #blonde #brunette #work #love	#smile #selfie #fun #festival
	Russia	Marlboro	#inspired #Marlboro #formula1 #red #ferrari #sochi #redteam #parovstelar #gammafest #mrl #a2greenconcert	#perform #backstage #formula1sochi #performdecor #redlounge #bovaligura #club #style #limecrime #choker #denim	#highlighter #makeup #maccosmetics #lashes #bar #italylook #summer #black #repost #Friday

Respondent	Country	Brand	Common English Hashtags			
Philip Morris International	Russia	Marlboro	#club #photo #night	#party #londonparty #nightlife	#glam #maybe #girls	
	Russia	Marlboro	#inspired #malemodel #ferrari #model	#italy #sunny #speed #bacardi	#likeaboss #instasize #red #Marlboro	
	Russia	L & M	#internship	#waterdance	#extremeland	
	Russia	IQOS	#afterparty #bmw #i8 #luxurylife	#cars #menstyle #art #nature	#model #trip	
	Tunisia	Marlboro	#beach	#white	#party	
	Ukraine	Marlboro L&M IQOS	#friends	#dreamteam		
			#gold	#likeforlike		
Uruguay	Ice Ball	#bored #likeforlike #vote #summer #friends	#lifestyle #dj #lastnight #music #fun	#spa #tanning #Friday #party #girls		
British American Tobacco	Argentina	Lucky Strike	#night #darwin #lucky #luckygirls	#work #after #beach #dj	#music #ibiza #funnymoment	
	Brazil	Dunhill Lucky Strike Kent	#music #dj #photography #trending	#video #dance #festival #job	#work #love #party	
			Chile	Lucky Strike	#teamlucky #nightlife	#work #party
			Colombia	Lucky Strike	#lucky	
	Croatia	Lucky Strike	#PartyLikeUs #EatSleepPartyRepeat #BFF #Pokemon #travel	#winter #love #vintage #fun #friends	#concert #smile #night #lastnight #concert	
			Croatia	Dunhill	#love #vintage #fun	#friends #concert #smile

Respondent	Country	Brand	Common English Hashtags		
British American Tobacco	Italy	Lucky Strike	#likeus #night #party #happy #beautiful #bestoftheday #igers #smile #instagood #music #picoftheday #friends #fun #cool #photoftheday #italy #like4like #summer #girls #fashion #cute #followme #instadaily #rome #nature	#sun #swag #vscocam #vsco #sicily #amazing #tbt #travel #crazy #travel #roma #tagsforlikes #girl #tflers #food #summer #colors #partyhard #instapic #partytime #wait #beautiful #girls #bestoftheday #healthy	#beach #loveit #nightlife #xxl #openbar #free #picoftheday #follow #hiphop #welcome #xxlevent #welcome #program #club #tonight #sunny #work #dance #event #freeentry #private #repost #instaparty #love #colorful
	Malaysia	Dunhill	#createowndiscoverex- perience	#happy #weekend	#party
	Mexico	Lucky Strike	#luckies #workhardplayhard	#Goldenticket #creativity	
	Romania	Dunhill Glo iFuse	#friends #party	#mylife #sisters	#nextlevel #hybrid
	Slovenia	Lucky Strike	#mood	#Mondayblues	
	UAE	Lucky Strike	#smiles #work	#events #promotion	#love #friends
	Venezuela	Lucky Strike Belmont	#night #pool #party	#partylikeus #belikeus #livelikeus	#lifestyle #teamlikeus #dancelikeus
	Japan Tobacco International	Brazil	Camel	#work	
Chile		Winston	#Blogger	#Host	#TVhost
Czech Republic		Camel	#party #smile #cake	#camel #promotion #partytime	#afterparty #art

Respondent	Country	Brand	Common English Hashtags		
Japan Tobacco International	Greece	Camel	#work	#promo	
	Italy	Camel	#party #camel #openbar	#friend #happy #smile	#FridayNight
	Japan	Mevius Winston	#beach #party #music #dance	#smiley #club #yearendparty	#nightlife #summertime #housemusic
	Jordan	Winston	#2017 #amazing	#dj	#newyear
	Kazakhstan	Winston	#StayTrue #stayfree	#festival	#dance
	Kyrgyzstan	Winston	#staytrue	#girls	#party
	Philippines	Mevius Winston Camel	#camel #mevius	#work #jtifamily	#Winston
	South Africa	Winston	#openbar #warehouseparty #dranks	#schoolnight #love #yum	#party #mygirl
	Vietnam	Winston	#lifetag		
Imperial Brands	Australia	Peter Stuyvesant	#openbar #warehouseparty #dranks	#schoolnight #love #yum	#party #mygirl
	Egypt	Davidoff	#happeningnow #hunter	#repost	#liveatthetemple
	Russia	Parker & Simpson	#imperialtobacco		

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110. Federal Trade Commission v. R.J. Reynolds Tobacco Company. May 28, 1997. Available at: www.ftc.gov/sites/default/files/documents/cases/1997/05/d9285cmp.pdf. (The FTC sought to enjoin R.J. Reynolds from using their Joe Camel cartoon in advertising, but withdrew the complaint in 1999 after the Master Settlement Agreement between the majority of Attorney's General and the major U.S. tobacco companies banning cartoons in tobacco advertising was signed.
111. 1999 FTC Report to Congress Pursuant to the Federal Cigarette Labeling and Advertising Act. Available at: www.ftc.gov/sites/default/files/documents/reports/1999-report-cigarette-sales-advertising-and-promotion-covering-1997-section-iii-recommendation-regarding-ftc-cigarette-test-method/1997cigarettereport.pdf. (In March 1999, the FTC accepted a settlement agreement with R.J. Reynolds resolving charges that its Winston brand "no additives" cigarette advertising was misleading.)
112. 15 U.S.C. §§ 1331-1340.
113. Advertising to Kids and the FTC: A Regulatory Retrospective That Advises the Present. 2004. Available at: www.ftc.gov/sites/default/files/documents/public_statements/advertising-kids-and-ftc-regulatory-retrospective-advises-present/040802adstokids.pdf.
114. Federal Trade Commission. Press Release. January 27, 1999. Federal Trade Commission Dismisses Joe Camel Complaint. Available at: www.ftc.gov/news-events/press-releases/1999/01/federal-trade-commission-dismisses-joe-camel-complaint.
115. Jon P. Nelson. Cigarette Advertising Regulation: A meta-analysis. 26 *Int'l Rev. L. & Econ.* 195 (2006).
116. 15 U.S.C. §§ 1331-1340.
117. P.L. 98-474. Comprehensive Smoking Act. Available at: www.gpo.gov/fdsys/pkg/STATUTE-98/pdf/STATUTE-98-Pg2200.pdf.
118. Federal Trade Commission (2018) Press Release. FTC, FDA Take Action Against Companies Marketing E-liquids That Resemble Children's Juice Boxes, Candies, and Cookies. May 1, 2018. Available at: www.ftc.gov/news-events/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids.
119. 16 C.F.R. Part 255.0(a)
120. 15 U.S.C. § 45(b)
121. 15 U.S.C. § 45(a)
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123. 15 U.S.C. § 45(a)(4)(b)
124. HHS, The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General, 2014, www.surgeongeneral.gov/library/reports/50-years-of-progress.
125. Federal Trade Commission. (2016). FTC Approves final Lord & Taylor order prohibiting deceptive advertising. Available at: www.ftc.gov/news-events/press-releases/2016/05/ftc-approves-final-lord-taylor-order-prohibiting-deceptive.
126. In the Matter of LORD & TAYLOR, LLC. Agreement containing consent order. Available at: www.ftc.gov/system/files/documents/cases/160315lordandtaylororder.pdf
127. Ibid.
128. Ibid.
129. Federal Trade Commission. (2015). Xbox One Promoter Settles FTC Charges That it Deceived Consumers With Endorsement Videos Posted by Paid 'Influencers'. Available at: www.ftc.gov/news-events/press-releases/2015/09/xbox-one-promoter-settles-ftc-charges-it-deceived-consumers.
130. Federal Trade Commission. (2017). Cases and Proceedings. CS-GOLotto, Trevor Martin, and Thomas Cassell. Available at: www.ftc.gov/enforcement/cases-proceedings/162-3184/csgolotto-trevor-martin-thomas-cassell; FTC Approves Final Consent Order against Owners of CSGO Lotto Website. November 29, 2017. Available at: www.ftc.gov/news-events/press-releases/2017/11/ftc-approves-final-consent-order-against-owners-csgo-lotto.
131. Federal Trade Commission. (2017). FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship. Available at: www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-Influencers-brands-clearly-disclose.
132. World Health Organization. Tobacco industry interference with tobacco control. 2009. Available at: www.who.int/tobacco/resources/publications/Tobacco%20Industry%20Interference-FINAL.pdf.

133. For example, Respondents BAT, PMI, and JTI created a global voluntary regulation system known internally as “Project Cerberus” during 1999-2001 as an alternative regulatory regime to then being negotiated United Nations treaty, the WHO Framework Convention on Tobacco Control (FCTC). (See Mamudu HM, Hammond R, Glantz S.A. Project Cerberus: tobacco industry strategy to create an alternative to the Framework Convention on Tobacco Control. *Am J Public Health*; Vol 98:9. Available at: <http://dx.doi.org/10.2105/AJPH.2007.129478>.) The final text of the FCTC and its subsequent implementing guidelines urges Parties to reject any voluntary code of conduct as a substitute for legally enforceable tobacco control measures. (See WHO Framework Convention on Tobacco Control. Article 5.3 and Guidelines for Implementation of Article 5.3. Recommendation 3.3. Available at: http://www.who.int/fctc/guidelines/article_5_3.pdf.)
134. Respondent BAT has separate marketing policies for their vapor and snus products.
135. BAT, International Marketing Principles. Available at: [www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9EBFUZ/\\$FILE/medMD9ZXJ29.pdf?openelement](http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9EBFUZ/$FILE/medMD9ZXJ29.pdf?openelement).
136. BAT, Marketing our products responsibly. Available at: www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9EBFUZ.
137. BAT, International Marketing Principles, Core Principle 4. Available at: [www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9EBFUZ/\\$FILE/medMD9ZXJ29.pdf?openelement](http://www.bat.com/group/sites/uk__9d9kcy.nsf/vwPagesWebLive/DO9EBFUZ/$FILE/medMD9ZXJ29.pdf?openelement).
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141. Imperial Tobacco. International Marketing Standard. Page 8. Available at: www.imperialbrandsplc.com/content/dam/imperial-brands/corporate/responsibility/responsible-with-products/2014_International_Marketing_Standard.pdf.
142. JT Group, Global Marketing Principles. Available at: www.jt.com/sustainability/way_of_business/policies/pdf/Our_Global_Tobacco_Marketing_Principles.pdf.
143. PMI, Guidebook for Success. Available at: www.pmi.com/resources/docs/default-source/our_company/english.pdf?sfvrsn=0.
144. Marc Firestone then-Senior VP and General Counsel to PMI in a letter to Tobacco-Free Kids, May 11 2015.