

Picking Up Where Joe Camel Left Off
Juul–The New Tobacco Litigation

Tom Egler | Roxana Pierce

Robbins Geller Rudman & Dowd, LLP

April 21, 2020

Juul Electronic Cigarettes

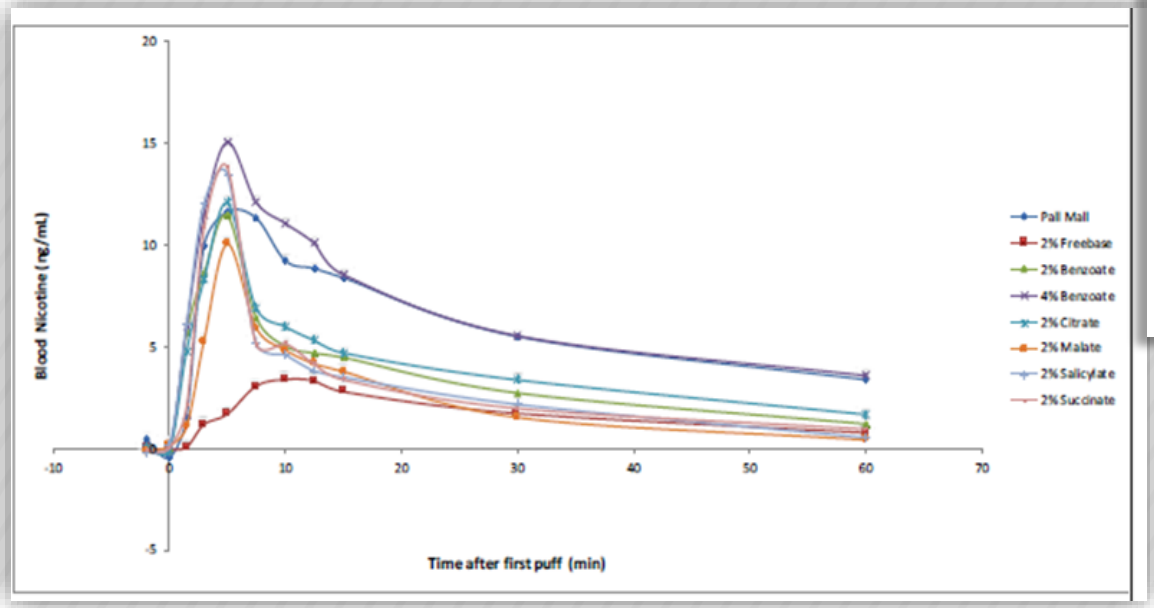
Juul Labs, Inc.

- Private company based in San Francisco
- Former subsidiary of Pax Labs, Inc., now independent
- Makes one product: Juul Electronic Cigarettes
- Patented and first marketed in 2015



U.S. Patent No. 9,215,895 (2015)

- "... nicotine salt formulation ... inhalable by the user."
- "Nicotine transfer to an individual is associated with a ***feeling of physical and/or emotional satisfaction***."
- Maximum ***nicotine concentration nearly 30 % higher than smoking a Pall Mall cigarette***



US009215895B2

(12) **United States Patent**
Bowen et al.

(10) **Patent No.: US 9,215,895 B2**
(45) **Date of Patent: Dec. 22, 2015**

(54) **NICOTINE SALT FORMULATIONS FOR AEROSOL DEVICES AND METHODS THEREOF**

(71) Applicant: **PAX Labs, Inc.**, San Francisco, CA (US)

(72) Inventors: **Adam Bowen**, San Francisco, CA (US); **Chenyue Xing**, San Francisco, CA (US)

(73) Assignee: **PAX Labs, Inc.**, San Francisco, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **14/512,311**

(22) Filed: **Oct. 10, 2014**

(65) **Prior Publication Data**

US 2015/0020824 A1 Jan. 22, 2015

Related U.S. Application Data

(63) Continuation of application No. 14/271,071, filed on May 6, 2014.

(60) Provisional application No. 61/912,507, filed on Dec. 5, 2013, provisional application No. 61/820,128, filed on May 6, 2013.

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(Continued)

FOREIGN PATENT DOCUMENTS

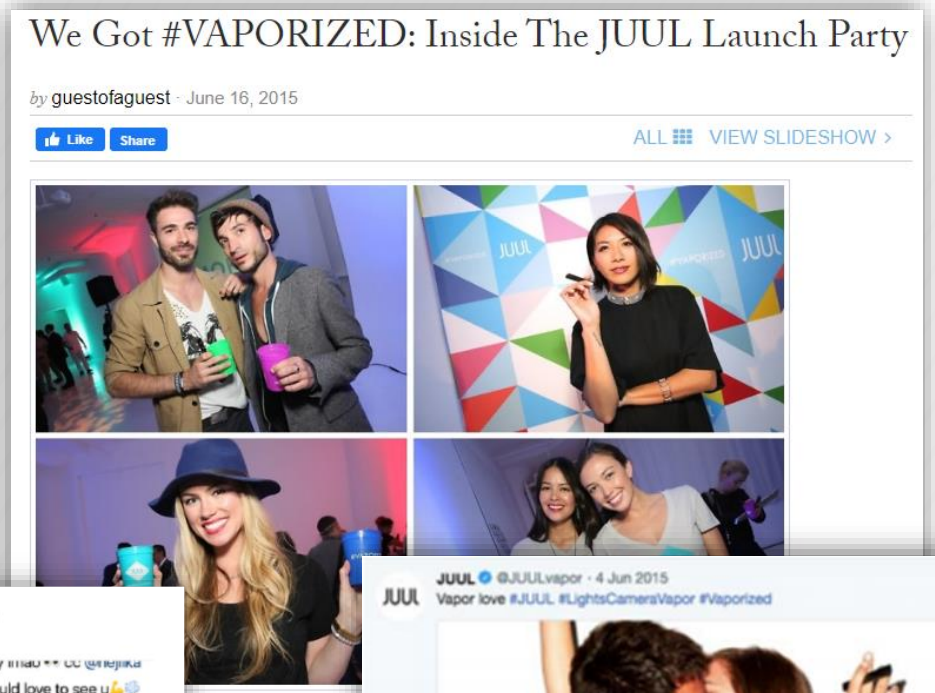
Robbins Geller Rudman & Dowd LLP

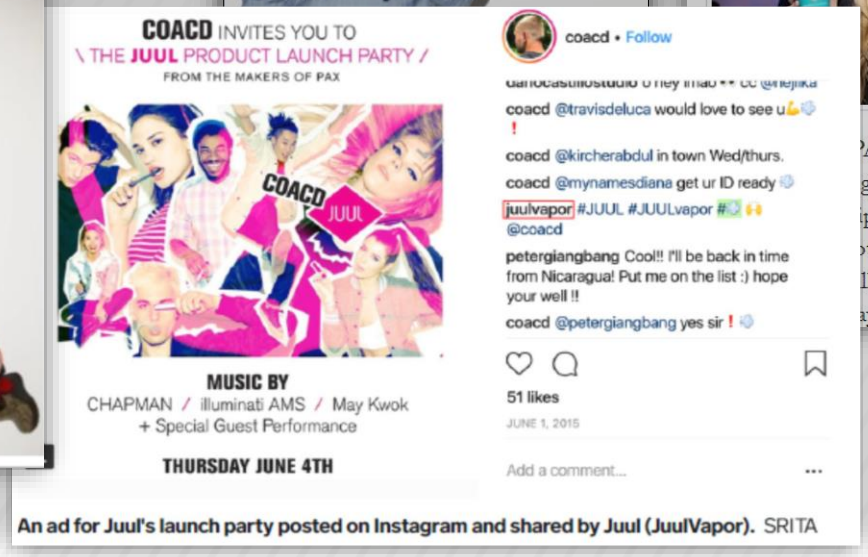
June 2015 Launch Party

- Los Angeles & New York
- #Vaporized
- #LightsCameraVapor









An ad for Juul's launch party posted on Instagram and shared by Juul (JuulVapor). SRITA

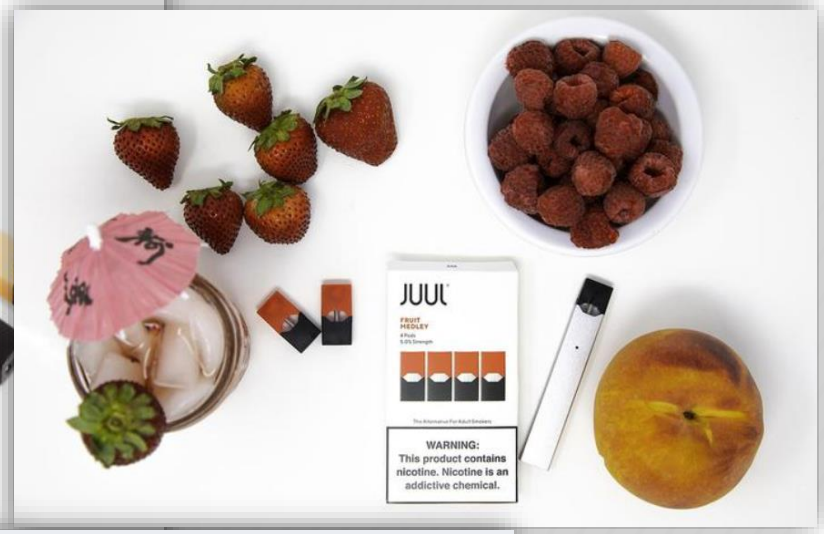


Fresh Flavors

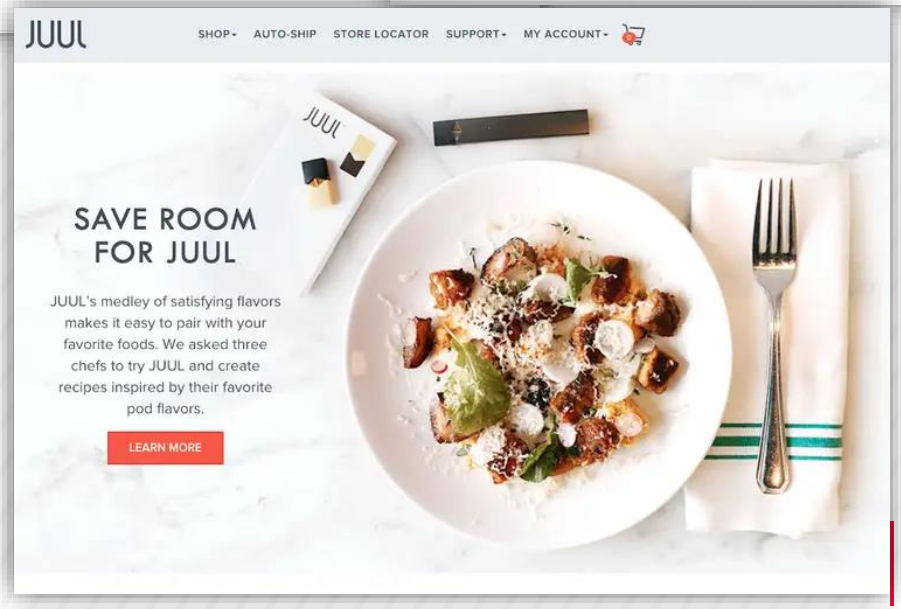
- Cool Cucumber
- Fruit Medley
- Crème Brulee
- Mango













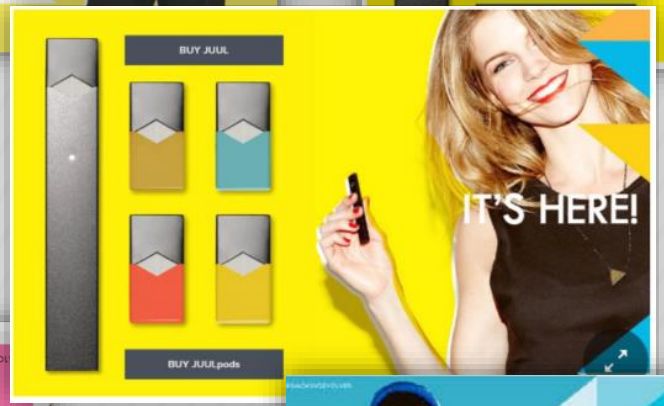
Robbins Geller Rudman & Dowd LLP

Vaporized















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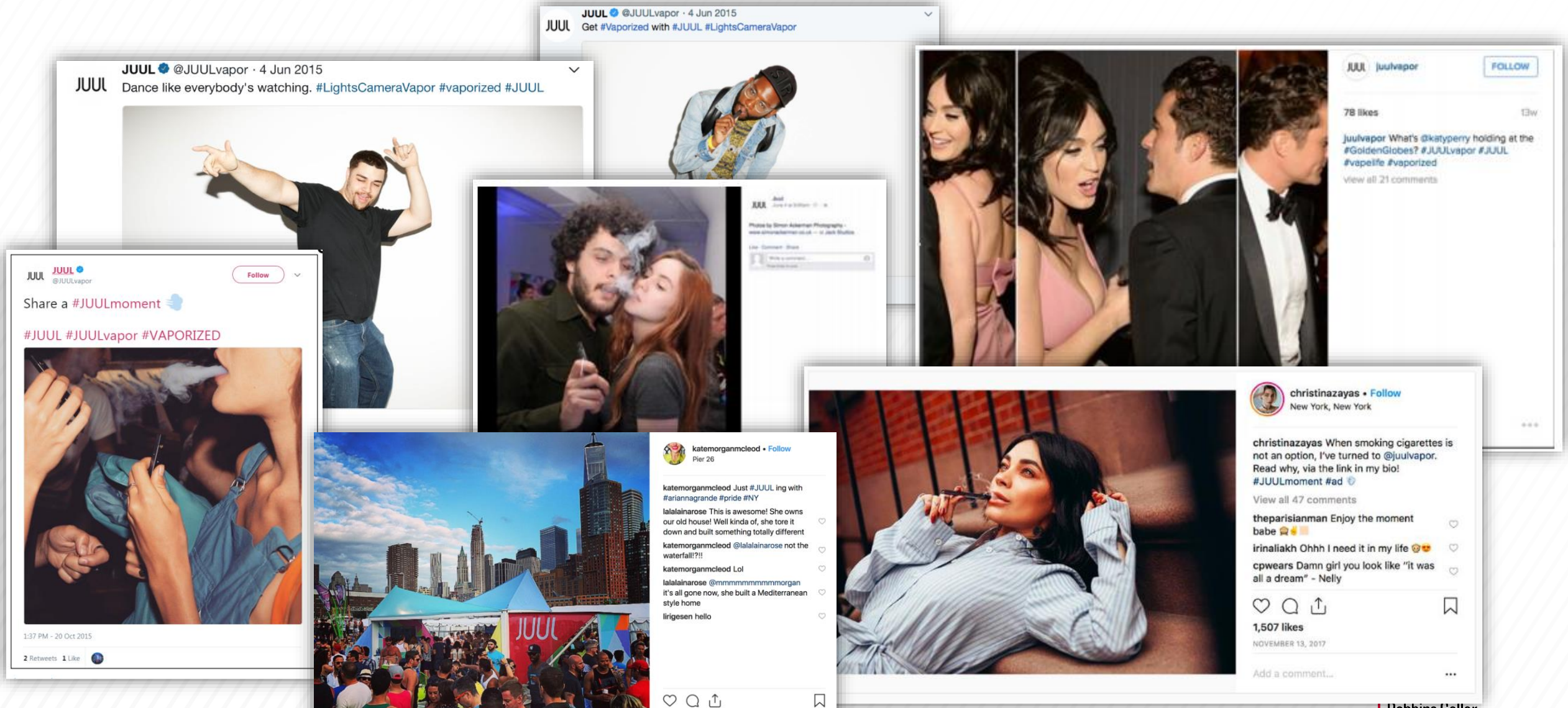
Social Media/Social Influencers



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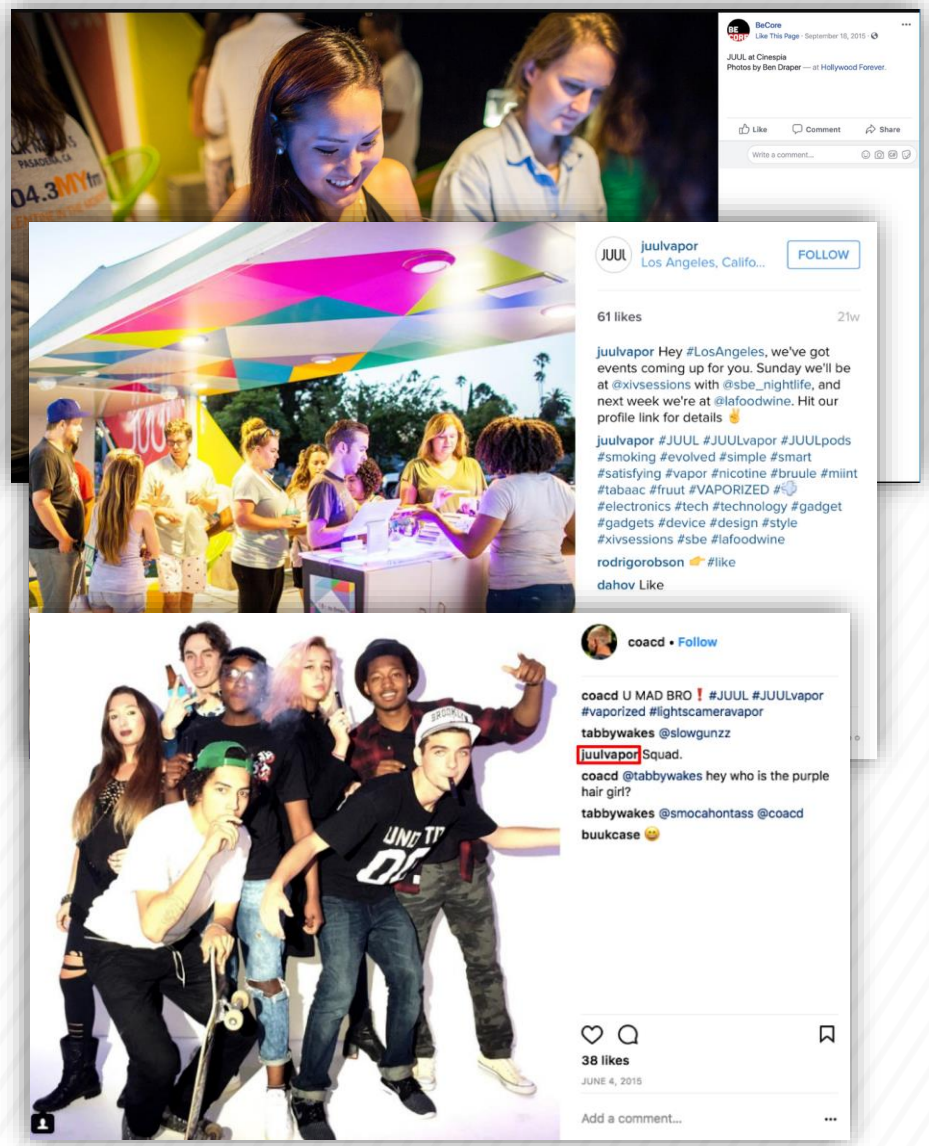
Exponential Growth in 2017





Robbins Geller Rudman & Dowd LLP

Valued at $15 billion in early 2018

- Likely controlled 68 percent of the "U.S. e-cigarette market."
- 2017 revenues: $245 million
- Gross margin: 70 percent
- U.S. and overseas expansion



Photographer: Bill O'Leary/The Washington Post via Getty

Business

E-Cigarette Maker Juul Labs Is Raising $1.2 Billion

Investors are valuing the vaping giant at $15 billion.

By Olivia Zaleski
June 29, 2018, 12:40 PM PDT
Updated on June 29, 2018, 2:22 PM PDT

Juul Labs Inc., a startup that makes electronic cigarettes, is raising $1.2 billion in a financing round that would value the company at $15 billion, said people familiar with the matter.Juul plans to use the influx of cash to expand internationally. Outside of the U.S., Juul's flagship vape pen is currently only available in Israel and the San Francisco-based company wants to broaden distribution, said one of the people, all of whom asked not to be identified because the company's plans are private. Current Juul shareholders include Tiger Global Management and the mutual fund firm Fidelity Investments, according to publicly available disclosures. With the new money, the company will be worth more than $16 billion. Juul declined to comment on the funding.

Jul 2, 2018

Scoop: The numbers behind Juul's investor appeal

Dan Primack



Illustration: Lazaro Gamio/Axios

Juul, the maker of vaping devices and nicotine flavor pods that dominate college and (yes) high school campuses, is raising $1.2 billion at a valuation of around $15 billion.

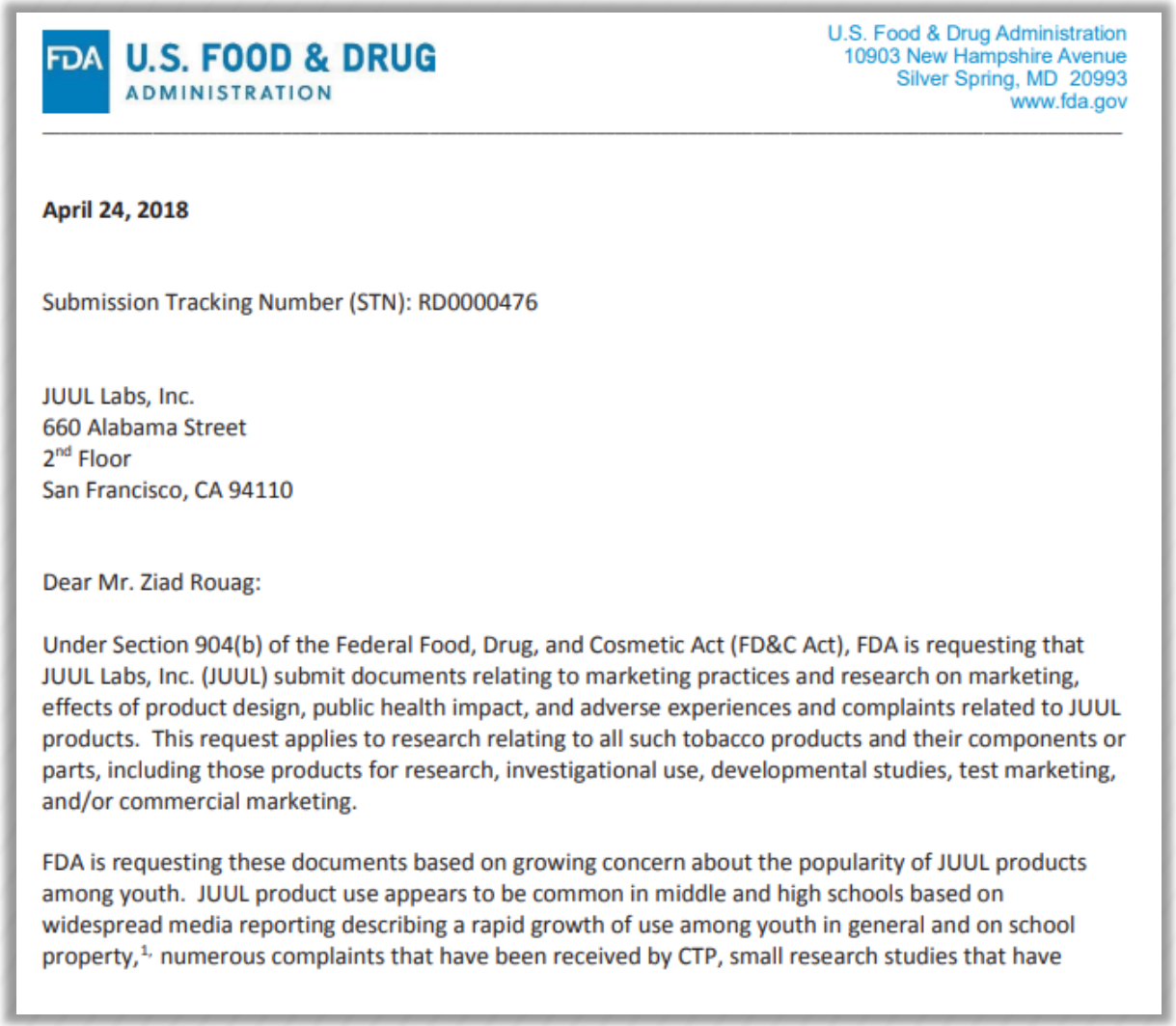
Bloomberg was first with the news on Friday, and Axios has learned that it's basically a done deal that could be announced within just a week or two. We've also obtained some company financials, which helps explain the investor appeal.

The following numbers come from late last year, and word is that Juul is blasting through its 2018 projections:

- **2017 revenue** was around $245 million, with a 54/46 split between product (devices) and subscription (pods). This is up from around $60 million in 2016, and projected 2018 revenue was $940 million.
- **Gross margins** are 70%
- **2018 EBITDA projection** is approximately $250 million.

April 2018: FDA Letter

- FDA asks for "documents relating to marketing practices and research on marketing…"
- Request is "based on growing concern about the popularity of JUUL products among youth."
- "JUUL product use appears to be common in middle and high schools…"



FDA U.S. FOOD & DRUG ADMINISTRATION

U.S. Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
www.fda.gov

April 24, 2018

Submission Tracking Number (STN): RD0000476

JUUL Labs, Inc.
660 Alabama Street
2nd Floor
San Francisco, CA 94110

Dear Mr. Ziad Rouag:

Under Section 904(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA is requesting that JUUL Labs, Inc. (JUUL) submit documents relating to marketing practices and research on marketing, effects of product design, public health impact, and adverse experiences and complaints related to JUUL products. This request applies to research relating to all such tobacco products and their components or parts, including those products for research, investigational use, developmental studies, test marketing, and/or commercial marketing.

FDA is requesting these documents based on growing concern about the popularity of JUUL products among youth. JUUL product use appears to be common in middle and high schools based on widespread media reporting describing a rapid growth of use among youth in general and on school property,[1,] numerous complaints that have been received by CTP, small research studies that have

2018: Public Outcry

Nov 16, 2018, 02:38pm EST

The Disturbing Focus Of Juul's Early Marketing Campaigns



Kathleen Chaykowski Forbes Staff
Billionaires



THE WALL STREET JOURNAL.



HEALTH & WELLNESS

Schools and Parents Fight a Juul E-Cigarette Epidemic

As illicit Juul use sweeps through high schools and middle schools, administrators and parents struggle to stem teens' access to the vaping device, which delivers a powerful dose of nicotine.

Steve Lehman, principal of Northern High School in Dillsburg, Pa., recently met with students on his advisory committee to discuss the rapid rise of Juul use at school. JEFF LAUTENBERGER FOR THE WALL STREET JOURNAL

By Anne Marie Chaker
Updated April 4, 2018 4:49 pm ET

SAVE SHARE TEXT

At Northern High School in Dillsburg, Pa., P
contained the occasional pack of confiscate
devices that look like flash drives.

The device is called a Juul and it is a type of



BUSINESS

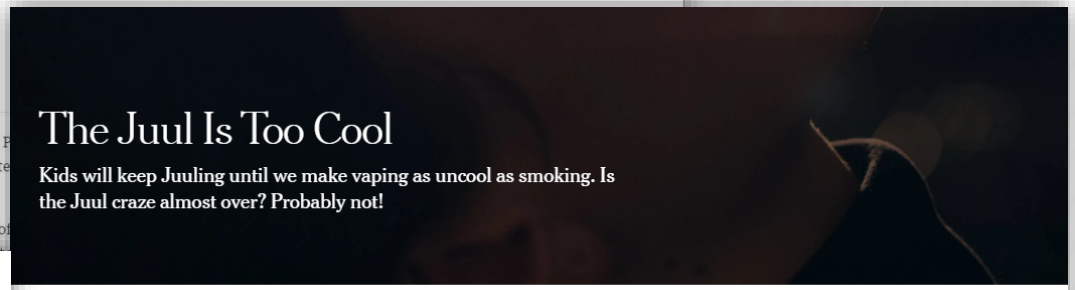
Juul E-Cigarettes Face FDA Probe

Agency requests information on marketing and ingredients from company selling 'Fruit Medley' flavored e-cigs



Juul's e-cigarette flavors include "Creme Brulee" and "Fruit Medley," which critics have said make it more attractive to youngsters.
PHOTO: RICHARD B. LEVINE/NEWSCOM/ZUMA PRESS

By Saabira Chaudhuri and Anne Marie Chaker
Updated April 24, 2018 9:36 pm ET



The Juul Is Too Cool

Kids will keep Juuling until we make vaping as uncool as smoking. Is the Juul craze almost over? Probably not!

"You go to the bathroom, there's a zero percent chance that anyone's smoking a cigarette and there's a 50-50 chance that there's five guys Juuling." Photo Illustration by Caroline Tompkins for The New York Times

By Amos Barshad

April 7, 2018

When Brennan McDermott was an underclassman at Simsbury High in Connecticut, he found himself in a timeless situation, familiar to watchers of horny 1980s comedies and after-school specials alike. "A couple of my buddies were like, 'Hey, let's go to the bathroom,'" said Mr. McDermott, now Simsbury's senior class president. "I was like, 'Whoa, what's going on here?!' I got kind of uncomfortable with it. They were all passing it around. I didn't take it."

In a modern twist from coming-of-age canon, though, "it" wasn't a cigarette — it was a small, rectangular vape product known as the Juul.

2018: FDA and Private Litigant Actions

- First individual cases alleging fraud filed (April)
- FDA declares teen e-cigarette use “an epidemic” (September)
- FDA raids Juul’s San Francisco headquarters (October)



The New York Times

F.D.A. Seizes Documents From Juul Headquarters

The F.D.A. inspection at Juul Labs’s headquarters in San Francisco was a follow-up for a request of documents in April. Jason Henry for The New York Times

By Jan Hoffman

Oct. 2, 2018

November 2018: Juul "Action Plan"

- "We certainly don't want youth using the product."
- End retail sales of mango, fruit, crème brulee and cucumber flavors
- Enact additional age checks for online flavor sales
- Delete Facebook and Instagram pages
- End Twitter promotional posts



JUUL LABS ACTION PLAN

COMPANY NEWS | YOUTH PREVENTION
NOVEMBER 13, 2018

Message From Kevin Burns, CEO, JUUL Labs:

JUUL Labs is committed to improving the lives of the world's one billion adult smokers, with the ultimate goal of eliminating cigarettes. While we have been working to solve that problem, another unintended and serious problem has developed – underage use of e-cigarettes, including JUUL.

We don't want anyone who doesn't smoke, or already use nicotine, to use JUUL products. We certainly don't want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. To paraphrase Commissioner Gottlieb, we want to be the off-ramp for adult smokers to switch from cigarettes, not an on-ramp for America's youth to initiate on nicotine. We won't be successful in our mission to serve adult smokers if we don't narrow the on-ramp.

Our intent was never to have youth use JUUL products. But intent is not enough, the numbers are what matter, and the numbers tell us underage use of e-cigarette products is a problem. We must solve it.

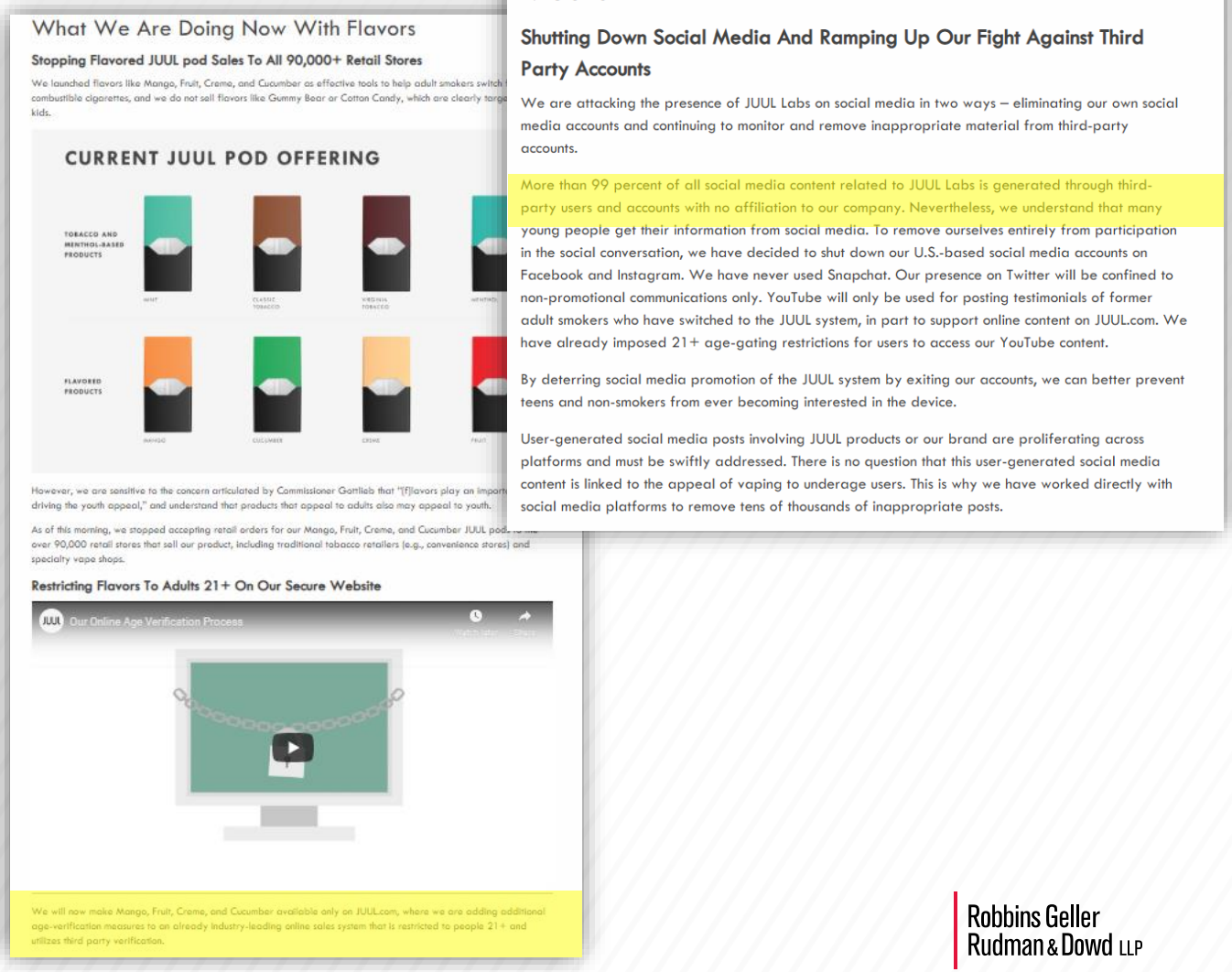
For us to successfully fulfill our mission of helping adult smokers, we must be trusted – and we must earn that trust. That starts with action, not words. Here is our action plan:

What We Are Doing Now With Flavors

November 2018: Juul "Action Plan"

But...

- "***More than 99 percent of all social media content*** related to JUUL Labs is generated through third-party users and accounts with ***no affiliation to our company***."
- "We will now make Mango, Fruit, Creme, and Cucumber available only on JUUL.com..."



What We Are Doing Now With Flavors

Stopping Flavored JUUL pod Sales To All 90,000+ Retail Stores

We launched flavors like Mango, Fruit, Creme, and Cucumber as effective tools to help adult smokers switch from combustible cigarettes, and we do not sell flavors like Gummy Bear or Cotton Candy, which are clearly targeted to kids.

CURRENT JUUL POD OFFERING

TOBACCO AND MENTHOL-BASED PRODUCTS

FLAVORED PRODUCTS

However, we are sensitive to the concern articulated by Commissioner Gottlieb that "[f]lavors play an important role in driving the youth appeal," and understand that products that appeal to adults also may appeal to youth.

As of this morning, we stopped accepting retail orders for our Mango, Fruit, Creme, and Cucumber JUUL pods to all over 90,000 retail stores that sell our product, including traditional tobacco retailers (e.g., convenience stores) and specialty vape shops.

Restricting Flavors To Adults 21+ On Our Secure Website

Our Online Age Verification Process

We will now make Mango, Fruit, Creme, and Cucumber available only on JUUL.com, where we are adding additional age-verification measures to an already industry-leading online sales system that is restricted to people 21+ and utilizes third party verification.

What We Are Doing Now About Social Media

Shutting Down Social Media And Ramping Up Our Fight Against Third Party Accounts

We are attacking the presence of JUUL Labs on social media in two ways – eliminating our own social media accounts and continuing to monitor and remove inappropriate material from third-party accounts.

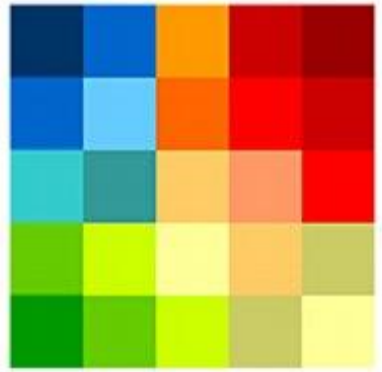
More than 99 percent of all social media content related to JUUL Labs is generated through third-party users and accounts with no affiliation to our company. Nevertheless, we understand that many young people get their information from social media. To remove ourselves entirely from participation in the social conversation, we have decided to shut down our U.S.-based social media accounts on Facebook and Instagram. We have never used Snapchat. Our presence on Twitter will be confined to non-promotional communications only. YouTube will only be used for posting testimonials of former adult smokers who have switched to the JUUL system, in part to support online content on JUUL.com. We have already imposed 21+ age-gating restrictions for users to access our YouTube content.

By deterring social media promotion of the JUUL system by exiting our accounts, we can better prevent teens and non-smokers from ever becoming interested in the device.

User-generated social media posts involving JUUL products or our brand are proliferating across platforms and must be swiftly addressed. There is no question that this user-generated social media content is linked to the appeal of vaping to underage users. This is why we have worked directly with social media platforms to remove tens of thousands of inappropriate posts.

December 2018: Altria Investment

- $12.8 billion cash for 35% of Juul Labs, Inc.
- Values Juul at ***$38 billion***
- Altria is the parent of Philip Morris which also makes Marlboro cigarettes
- Altria has its own e-cigarette



Altria

JUUL

2019: Expansion

5,622 views | Aug 19, 2019, 04:38pm EDT

Juul Raises $325 Million For International Expansion

Rachel Sandler Forbes Staff

Juul is fighting a

SCOTT OLSON/GETTY

Topline: El
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Los Angeles Times

BUSINESS

Teens say they don't vape, they 'Juul.' That makes the activity hard to track



Some who use Juul think it's different from other e-cigarettes. Anti-tobacco groups and health officials worry that has led to confusion on nicotine surveys. (Bill O'Leary / Washington Post via Getty Images)

By ANNA EDNEY

APRIL 29, 2019 | 10:31 AM

BLOOMBERG

A language gap is making it harder for U.S. health officials to measure a teen-vaping epidemic.

For some young people who use the popular vaping device sold by Juul Labs Inc.,

18 JUNE 2019 / SF NEWS / JAY BARMANN

Juul Just Bought A 28-Story Office Tower On Mission Street Worth an Estimated $400 Million

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y

Menu Search Bloomberg

Technology

Juul Tells Investors Sales Are Climbing Again Despite Flavor Pullback

By Ellen Huet

June 11, 2019, 11:46 AM PDT

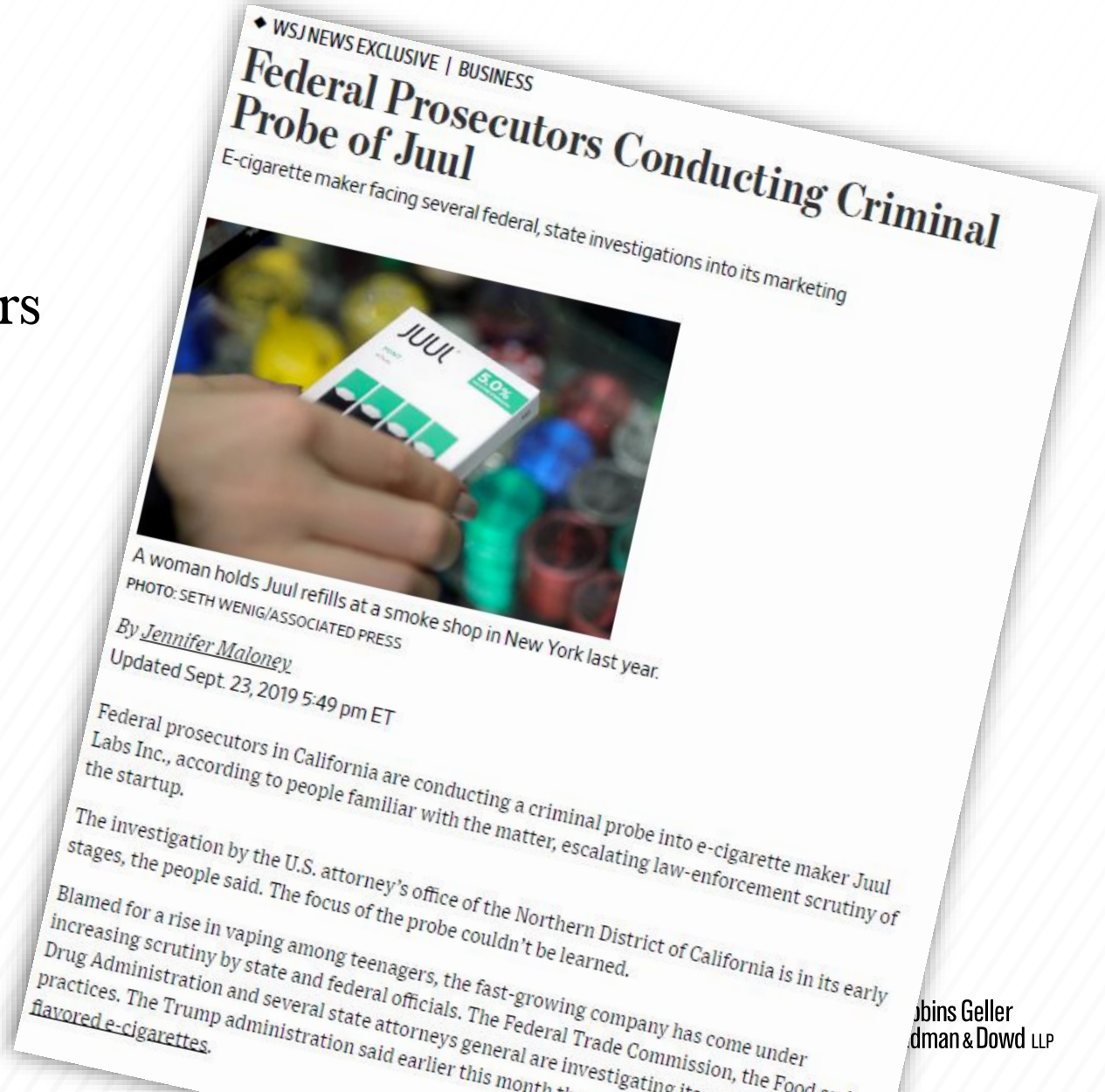


Business Heats Up For Juul

Juul Labs Inc. told investors that it has recovered from a brief dip in sales of its trendy e-cigarette late last year, stemming from the company's decision to pull some flavored vape options off shelves in the U.S. thanks to their surging popularity with underage users.

September 2019: Federal Criminal Probe

- N. D. Cal. U.S. Attorney's Office
- Same district as Juul Headquarters
- No subject matter reported



WSJ NEWS EXCLUSIVE | BUSINESS

Federal Prosecutors Conducting Criminal Probe of Juul

E-cigarette maker facing several federal, state investigations into its marketing

A woman holds Juul refills at a smoke shop in New York last year.
PHOTO: SETH WENIG/ASSOCIATED PRESS

By Jennifer Maloney
Updated Sept. 23, 2019 5:49 pm ET

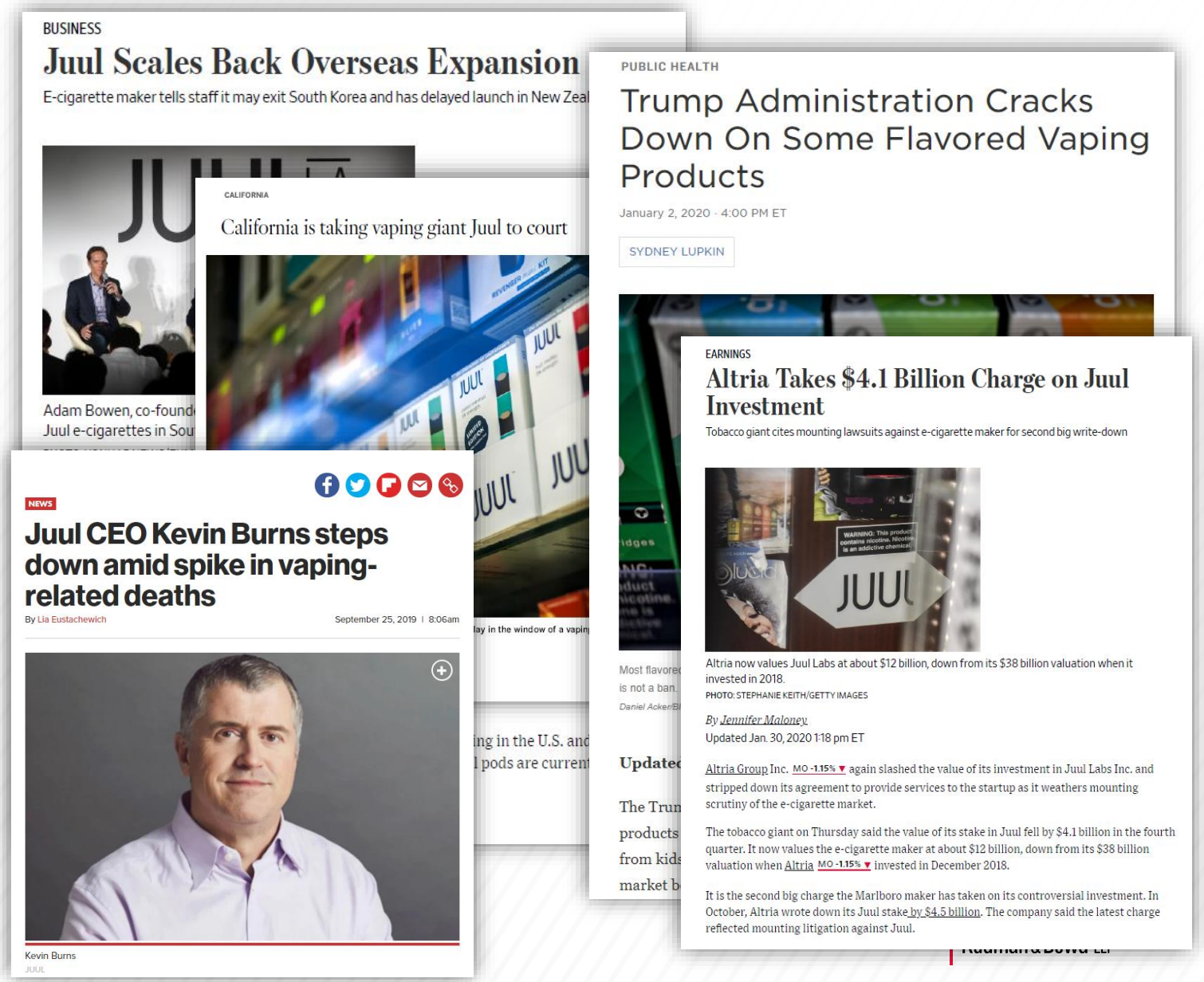
Federal prosecutors in California are conducting a criminal probe into e-cigarette maker Juul Labs Inc., according to people familiar with the matter, escalating law-enforcement scrutiny of the startup.

The investigation by the U.S. attorney's office of the Northern District of California is in its early stages, the people said. The focus of the probe couldn't be learned.

Blamed for a rise in vaping among teenagers, the fast-growing company has come under increasing scrutiny by state and federal officials. The Federal Trade Commission, the Food and Drug Administration and several state attorneys general are investigating its marketing practices. The Trump administration said earlier this month [illegible] flavored e-cigarettes.

Expansion Fades

- Sept. 25, 2019: CEO Quits
- Nov. 18, 2019: California Sues
- Jan. 2, 2020: Flavors Banned
- Jan. 15, 2020: Overseas Expansion Cut
- Jan. 30, 2020: Altria revalues Juul to $12 bil. from $38 bil. (-$26 bil.)



BUSINESS

Juul Scales Back Overseas Expansion

E-cigarette maker tells staff it may exit South Korea and has delayed launch in New Zea

Adam Bowen, co-found
Juul e-cigarettes in Sou

CALIFORNIA

California is taking vaping giant Juul to court

NEWS

Juul CEO Kevin Burns steps down amid spike in vaping-related deaths

By Lia Eustachewich

September 25, 2019 | 8:06am

Kevin Burns
JUUL

PUBLIC HEALTH

Trump Administration Cracks Down On Some Flavored Vaping Products

January 2, 2020 - 4:00 PM ET

SYDNEY LUPKIN

EARNINGS

Altria Takes $4.1 Billion Charge on Juul Investment

Tobacco giant cites mounting lawsuits against e-cigarette maker for second big write-down

Altria now values Juul Labs at about $12 billion, down from its $38 billion valuation when it invested in 2018.

PHOTO: STEPHANIE KEITH/GETTY IMAGES

By Jennifer Maloney

Updated Jan. 30, 2020 1:18 pm ET

Altria Group Inc. MO -1.15% ▼ again slashed the value of its investment in Juul Labs Inc. and stripped down its agreement to provide services to the startup as it weathers mounting scrutiny of the e-cigarette market.

The tobacco giant on Thursday said the value of its stake in Juul fell by $4.1 billion in the fourth quarter. It now values the e-cigarette maker at about $12 billion, down from its $38 billion valuation when Altria MO -1.15% ▼ invested in December 2018.

It is the second big charge the Marlboro maker has taken on its controversial investment. In October, Altria wrote down its Juul stake by $4.5 billion. The company said the latest charge reflected mounting litigation against Juul.

Litigation

- October 2019: Federal MDL Docket created, sent to Juul's home district in San Francisco (N. D. Cal.)
- March 18, 2020 Case Management Statement
  - 385 cases total
  - 56 Governmental Entities from 14 states
  - 52 defendants named
  - 90+ cases pending in California state court consolidated in L.A. County.
  - Attorneys General from : California, Illinois, New York, North Carolina, Mississippi, Minnesota, Washington D.C., Arizona, Pennsylvania, and Massachusetts have filed suit in state court (10 states including DC).
- Since then at least 5 more cases have been transferred in by "Conditional Transfer Order" and there are more to come.

Litigation

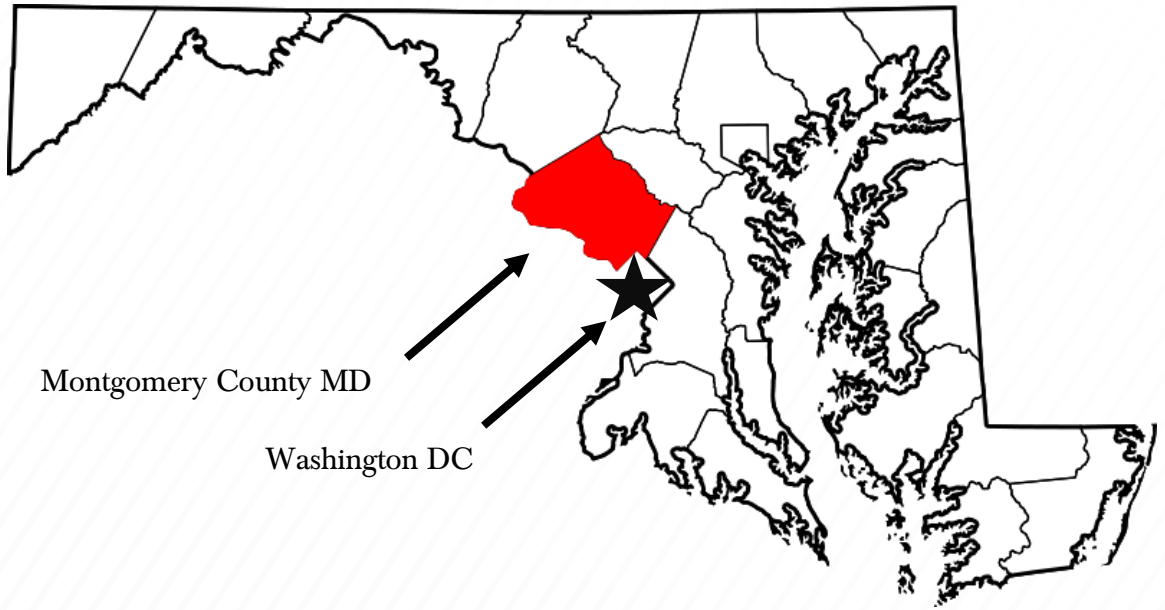
- MDL is: *In Re: Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*, 3:20-cv-02261-WHO (N. D. Cal.) ("WHO" is Hon. William H. Orrick)
- *Order Appointing Plaintiffs' Leadership and Steering Committee Members*, Dckt. 341 (12/20/19)
- *Amended Consoldiated Class Action Complaint*, Dckt. 419 (04/06/20)
  - 749 pages, with fraud and antitrust allegations
  - 423 page Appendix A describing plaintiffs
  - Individuals only (people who directly purchased the product, not governmental entities)

Governmental Entity Bellwethers

- The Court set a system by which the parties (both plaintiffs and defendants) will select "bellwether" governmental entity plaintiff complaints to be tested. Dckt. 400 at 2-3.
- This is similar to the Opioids MDL procedure
- The parties will submit a list and a proposed calendar and procedure by April 21, 2020. Dckt. 442 at 14.
- The intial selection and complaint amendment date was extended due to COVID 19 issues.

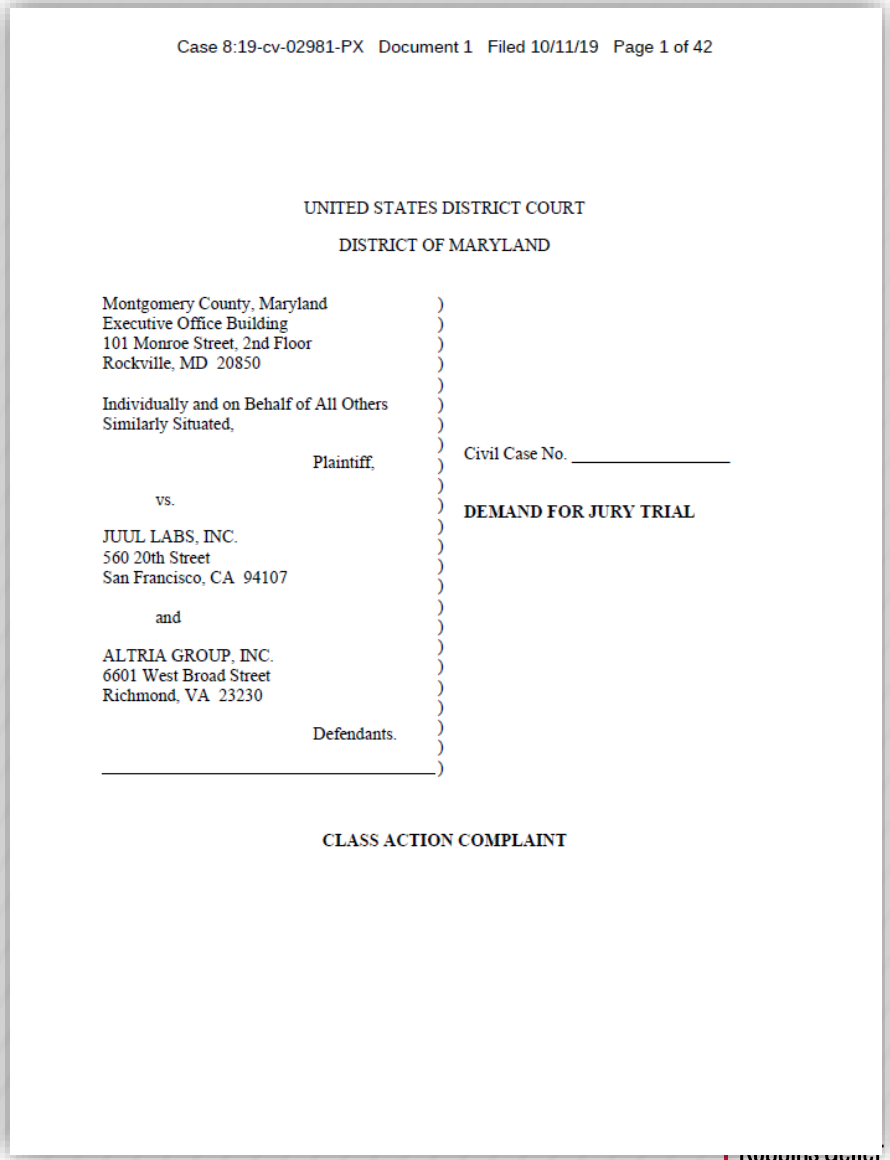
Montgomery County Maryland

- Population 1.051 million
- 507 Square Miles
- Suburban Washington DC
  - About 40 public middle schools
  - About 25 public high schools



Montgomery County Complaint

- Filed in Oct. 2019 in District of Maryland
- Two Defendants
  - Juul Labs, Inc.
  - Altria Group, Inc.
- Class Action Allegations:
  - Counties or municipalities in Maryland, and separately across the United States, that have "expended resources to address or whose property has been affected by, underage use of JUUL products."
- Transferred to N. D. Cal. for pre-trial purposes



Case 8:19-cv-02981-PX Document 1 Filed 10/11/19 Page 1 of 42

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

Montgomery County, Maryland
Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, MD 20850

Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

JUUL LABS, INC.
560 20th Street
San Francisco, CA 94107

and

ALTRIA GROUP, INC.
6601 West Broad Street
Richmond, VA 23230

Defendants.

Civil Case No. _____

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Robbins Geller Rudman & Dowd LLP

ONE FIRM. GLOBAL REACH.

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