

United States Senate

WASHINGTON, DC 20510

September 16, 2019

Mr. Devin Wenig
eBay Headquarters
2025 Hamilton Avenue
San Jose, California 95125

Dear Mr. Devin Wenig,

I am writing to share my concern regarding ongoing e-cigarette sales on online marketplaces, such as eBay. An article published on June 5, 2019 by *The Verge*¹, revealed the pervasiveness of e-cigarette listings across eBay and Alibaba. These listings provide youth with a way to purchase e-cigarettes and other vaping products without the age-verification requirements required for brick-and-mortar sales. The Food and Drug Administration (FDA) raised concerns with eBay about listings for JUUL products on its website. eBay's response has been lackluster at best, and more must be done to ensure that tobacco products, some of which could be adulterated, do not secure a foothold on your marketplace. You must also ensure that your marketplace does not contribute to the addiction of a new generation of tobacco users and the ongoing outbreak of vaping-related illnesses and lung injuries.

Internet commerce is increasingly defining the marketplace. More consumers, including young people, are shifting their shopping, from incidentals to groceries, online. These marketplaces bring together consumers and retailers, large and small, to sell new and used goods. In 2018 alone, eBay reported close to \$10.75 billion² in earnings.

Opportunities for teens to purchase their products online without valid identification, and often in bulk, has contributed to the exploding rates of e-cigarette addiction. As of 2018, an estimated 3.6 million high school and middle school students were current users of e-cigarettes, a sharp increase from 2.1 million in 2017.³ According to a 2015 study, 94% of teens who attempted to buy e-cigarettes online were ultimately able to obtain them.⁴

As it stands, eBay, Alibaba, and Craigslist's marketplaces are allowing tobacco products to be sold by unverified sellers and delivered to unverified buyers. E-cigarettes are no exception. In April 2018, FDA notified eBay that JUUL products were listed on their marketplace.⁵ Though eBay took action at that time to remove individual products, eBay has been negligent by

¹ Makena Kelly, "Teen vapers are using eBay to dodge age restrictions," *The Verge*, June 5, 2019, <https://www.theverge.com/2019/6/5/18652706/teen-vapers-ebay-purchase-age-restrictions-vaping-cigarettes-juul>.

² eBay, "eBay Inc. Reports Fourth Quarter and Full Year 2018 Results and Announces Capital Structure Evolution," Press Release (2019), <https://www.ebayinc.com/stories/news/ebay-q4-2018-results/> (accessed September 13, 2019).

³ U.S. Food and Drug Administration, *Statement from FDA Commissioner Scott Gottlieb, on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use*, by Scott Gottlieb, Press Announcement, U.S. Food and Drug Administration (2019), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco>.

⁴ Rebecca S. Williams, Jason Derrick, and Kurt M. Ribisl, "Electronic Cigarette Sales to Minors," *JAMA Pediatrics* 169, no.3 (2015), September 13, 2019, <https://www.ncbi.nlm.nih.gov/pubmed/25730697>.

⁵ U.S. Food and Drug Administration, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes*, by Scott Gottlieb, Press Announcement, U.S. Food and Drug Administration (2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention>.

continuing to allow e-cigarettes to enter their marketplace and be sold. Notably, one listing for a JUUL pod set on eBay on June 5, 2019 was “promoted,” meaning that eBay is not only allowing individuals to sell tobacco products on its marketplace, but also is encouraging product sales through promotion. On Craigslist, marketplaces across the United States have advertisements for JUUL pods, including one seller in Michigan who is selling Mango pods in bulk to be shipped across the U.S.

There is also evidence that counterfeit products are being sold across online marketplaces.⁶ JUUL and other e-cigarette companies have already worked to secure profits on the back of youth. In allowing these products to secure a foothold on your marketplace, you are not only supporting these companies in their endeavor to increase youth demand and access, but also assisting profiteering counterfeiters seeking to cause teens further harm. Regardless, all of these products – real or counterfeit – are dangerous and shouldn’t be available on your platform.

More must be done to ensure that youth cannot purchase e-cigarettes online. FDA has recognized online e-cigarette sales as a problem, however, its anticipated heightened age-verification requirements for online sales still lack important details.⁷ In addition, if online marketplaces do not block e-cigarette sales through their websites, any future laws and regulations on age restrictions could be rendered ineffective. On September 11, 2019, the administration also announced plans to advance regulation to remove all flavored products from the marketplace. If eBay continues to operate as it has, providing unfettered access to legitimate and counterfeit e-cigarettes, this flavor restriction will be meaningless. EBay can shut off a key access point for youth by ensuring that e-cigarettes and other tobacco products are not available for purchase on your online marketplace.

eBay’s lackluster response to JUUL and e-cigarette listings suggests a lack of understanding of the seriousness of the epidemic. As youth e-cigarette use has soared, your marketplace has provided a no-questions-asked environment for minors to access products that are addictive, and expose youth to harmful substances. In light of the ongoing vaping-related illness outbreak, which has resulted in numerous hospitalizations and six confirmed deaths, it is especially important that eBay police their site to prevent the sale of any product that could be contributing to this outbreak. Failing to do so not only exposes adolescents to significant harms, but also could impede the work of the Centers for Disease Control and Prevention (CDC) and FDA as they seek to locate the cause of vaping-related illnesses. Online marketplaces must do more to prevent these postings from getting, and staying, online if e-commerce is going to continue to expand and serve as a trusted resource for Americans.

In order to understand what eBay is doing to respond to this public health threat, we ask you or an appropriate individual at your company answer the following questions:

⁶ Jordan Crook, “Juul Labs reveals its plan to combat underage vape use,” *Tech Crunch*, November 13, 2018, <https://techcrunch.com/2018/11/13/juul-labs-reveals-its-plan-to-combat-underage-vape-use/>.

⁷ U.S. Food and Drug Administration, *Statement from FDA Commissioner Scott Gottlieb, on new data demonstrating rising youth use of tobacco products and the agency’s ongoing actions to confront the epidemic of youth e-cigarette use*, by Scott Gottlieb, Press Announcement, U.S. Food and Drug Administration (2019), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco>.

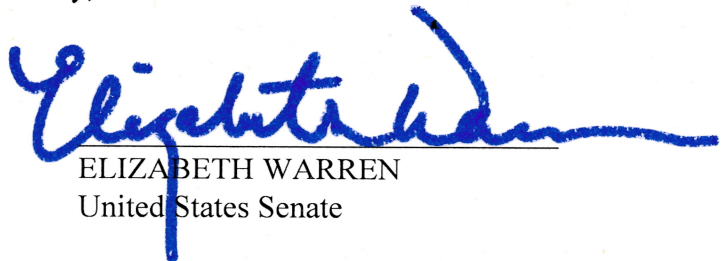
1. Does eBay have a policy to prohibit e-cigarettes and other tobacco products from being sold on its marketplace?
 - a. If so, please describe that policy.
2. Does eBay currently monitor sellers' postings to identify e-cigarettes, or other tobacco products, being sold?
 - a. If yes, does eBay have an automated system to identify these posts, or does eBay rely on human review?
3. Despite assuring FDA that e-cigarette products would be removed, they continue to enter the marketplace through eBay. Does eBay have plans to improve the system that is currently used to monitor its marketplace for e-cigarettes?
4. Does eBay have a process for approving "promoted" listings?
 - a. If yes, can you share how an illicit posting for JUUL pods would be approved by eBay for promotion?
5. Has eBay been in touch with FDA to determine effective ways to prevent the sale of e-cigarettes and other tobacco products on your platform?
6. Does eBay have a system of warning, banning, or reporting sellers who post e-cigarettes and other tobacco products for sale?
7. Has eBay been in touch with HHS, including the FDA and CDC, on working with them to identify products that have been sold on your site that could be linked to the vaping-related illnesses?

Given the gravity of the public health crisis posed by e-cigarettes, I urge you to ensure that teens do not access these products through your online marketplace. Please provide an answer to these questions by October 1, 2019.

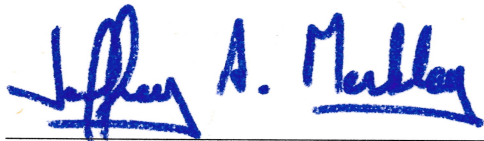
Sincerely,



RICHARD BLUMENTHAL
United States Senate



ELIZABETH WARREN
United States Senate



JEFFREY A. MERKLEY
United States Senate



JEANNE SHAHEEN
United States Senate

Edward J. Markey

EDWARD J. MARKEY
United States Senate

Robert Menendez

ROBERT MENENDEZ
United States Senate

Sherrod Brown

SHERROD BROWN
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