



RUTGERS
Institute for Nicotine
and Tobacco Studies

2023 UPDATE

Not Your Grandfather's Cigar

Cheap & sweet cigars lure America's kids.



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EXECUTIVE SUMMARY

Ten years ago, we issued a report showing how products in the cigar category have changed dramatically since the days of “big stogies,” to a landscape of low-cost cigars in a wide array of flavors. At the time of that report, the cigar market was booming compared to declining cigarette sales, and cigar use rates among youth and young adults were higher than that of older adults. In addition, back then, there was limited federal regulation of cigars, and cigar makers easily manipulated their products to take advantage of loopholes and circumvent existing regulations. It wasn’t until 2016 that the U.S. Food and Drug Administration (FDA) established oversight over cigars and other previously unregulated tobacco products, as part of the Family Smoking Prevention and Tobacco Control Act (TCA).

Unfortunately, today, even with FDA oversight over cigars, the cigar market is just as robust as it had been before FDA regulation. Although cigars are now required to have a marketing order from FDA before a new cigar can be sold, cigar companies continue to introduce new flavored cigars regularly. Youth cigar use remains a serious concern as cigars are now the second most popular tobacco product among youth. While some states and localities have taken measures to address these products, more action is needed to address youth use of these harmful products.

In April 2022, the FDA announced a proposed rule to prohibit all characterizing flavors in cigars. Its decision was based on clear evidence that all cigars increase health risks, but particularly, flavors increase the appeal of cigars and make them easier to use, especially for youth, and that removing flavored cigars from the market would reduce the number of youth who smoke cigars. Characterizing flavors are already prohibited in cigarettes except for menthol-flavored cigarettes, which FDA is also proposing to prohibit. This rule will have a profound benefit to public health and FDA should finalize and implement it without further delay. Until the FDA acts, cities and states should move forward with efforts to prohibit the sale of all flavored tobacco products, including flavored cigars.

This report documents how the continued proliferation of new, flavored cigars and their widespread availability and marketing threatens our youth and our nation’s efforts to reduce tobacco use. The report also describes how companies have avoided regulations, including new product marketing restrictions and tobacco taxes, and how these industry actions have also contributed to the ongoing problem of youth use. This report’s key findings include:

Cigar manufacturers have flooded the market with flavored cigars. Sales of all cigars more than doubled between 2000 and 2021, largely driven by increased sales of smaller types of cigars, many of which are flavored. The hundreds of flavored cigars make up about half of the cigar market, with names like “Berry Fusion,” “Maui Pineapple,” and “Cherry Dynamite,” and can be as cheap as 3 for 99 cents. In recent years, cigar makers have also introduced limited edition products described as “new” in flavors likely to be extremely appealing to youth.

Flavored cigars have fueled the popularity of cigars among youth. Flavors improve the taste and mask the harshness of tobacco, making flavored tobacco products more appealing and easier for beginners, who are often youth, to smoke. Flavors in cigars increase youth initiation, progression to regular use and are associated with greater potential for addiction. The majority of youth who have smoked cigars started with a flavored cigar. Nearly three quarters of youth who smoke cigars said they smoked cigars

“because they come in flavors I like.” The most popular cigar brands among youth come in a dizzying array of candy and fruit flavors. Of concern, flavors can create the impression that a product is less harmful than it really is.

Internal tobacco company documents show that they have known for decades how adding flavorings to cigars can make the products more appealing to new users. For example, in developing its Winchester little cigars in menthol flavor, R.J. Reynolds recognized that the flavor and advertising for the “frosty-new taste” would attract young, new users but not established “cigar connoisseurs.”

Young people smoke cigars, especially Black youth. The wide assortment of flavors, colorful packaging, and affordability of many cigars make them an appealing tobacco product for youth. Today, 500,000 youth currently use cigars and cigars are the second most popular tobacco product among youth. Each day, more than 800 youth try cigar smoking for the first time. Black youth have the highest rates of cigar smoking compared to other races and ethnicities. Cigar smoking among Black high schoolers is 1.5 times higher than White high schoolers.

Cigar smoking harms health. Cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke. Cigar smoking causes cancer of the oral cavity, larynx, esophagus and lung, and daily cigar smokers have an increased risk of heart disease, chronic obstructive pulmonary disease (COPD), and an aortic aneurysm.

Cigar makers continue to aggressively market cigars in ways that appeal to youth. Cigar makers use a variety of marketing strategies to attract young people, including shiny, colorful packaging that boldly communicate sweet flavors, engaging in popular social media trends, sponsoring concerts and other events, recruiting celebrities for endorsements, and keeping prices low. Cigars are also promoted through in-store displays, in magazines, and with branded merchandise and rewards programs. Many of these strategies are also used to promote cigars specifically in Black communities.

Strong action is needed to reduce cigar use, particularly among youth, and protect public health.

Action to remove flavored cigars from the market is long overdue. FDA has issued a proposed rule to prohibit flavored cigars and this rule should be finalized and implemented as quickly as possible given the strong evidence that flavored cigars are attracting youth to these harmful and addictive products. Any effort to block or delay FDA’s rulemaking should be opposed. Cities and states should continue their growing efforts to prohibit the sale of all flavored tobacco products.

Additional policy actions to reduce cigar use include ensuring that cigars are taxed at the same level as cigarettes, establishing minimum pack sizes and minimum pricing and funding for programs to educate about the harms of tobacco products and to help people quit.

Introduction

Ten years ago, we issued a report showing how products in the cigar category have changed dramatically since the days of “big stogies,” to a landscape of low-cost cigars in a wide array of flavors. At the time of that report, the cigar market was booming compared to declining cigarette sales, and cigar use rates among youth and young adults were higher than that of older adults. In addition, the regulatory environment was different, as there was limited federal regulation of cigars. Cigar makers easily manipulated their products to take advantage of loopholes and circumvent existing regulations. It wasn’t until 2016 that the U.S. Food and Drug Administration (FDA) established oversight over cigars and other previously unregulated tobacco products, as part of the Family Smoking Prevention and Tobacco Control Act (TCA).

Unfortunately, today, ten years later, even with FDA oversight over the vast majority of cigars, the cigar market is just as robust as it had been before FDA regulation.* As the second most popular tobacco product among youth, youth cigar use remains a serious concern. While some states and localities have taken measures to address these products, more action is needed to address youth use of these harmful products. In April 2022, the FDA proposed a rule to prohibit flavored cigars. Because this rule will have a profound benefit to public health, FDA should finalize and implement it without delay. Until the FDA acts, cities and states should move forward with efforts to prohibit the sale of all flavored tobacco products, including flavored cigars.

This report documents how the continued proliferation of new, flavored cigars and their marketing still threatens our youth and demonstrates the need for common-sense regulation of cigars. The report also describes how companies have avoided regulations, including new product marketing restrictions and tobacco taxes, and how this has also contributed to the ongoing problem of youth use.

* The 2016 rule that established FDA oversight over cigars was vacated for premium cigars in a 2023 court ruling, but the ruling does not affect the regulation of mass-produced cigars, many of which are flavored, that are the focus of this report.

The Cigar Landscape

Cigars come in a wide variety of sizes, flavors, and price points; as a result, they appeal to a broader, more diverse market, including youth. There is enough overlap in product characteristics that it is difficult to delineate between the categories, making the creation of standard definitions challenging. In addition, the public often uses different terms to identify the cigar products they use, further complicating the ability to measure use of products and effectively regulate the products. Appendix A also attempts to describe the products in each category.

Little Cigars, Filtered Cigars



Often comparable to cigarettes in that they are roughly the same size and shape as cigarettes and usually include an internal cellulose acetate filter. However, because they contain some tobacco remnants in the paper wrapper, they are defined as cigars – although some states define them as cigarettes. Little cigars weigh less than 3 lbs per 1000 (1.36 grams per stick) and are often taxed differently than filtered cigars which weigh more than 3 lbs per 1000. These products can also come in a variety of flavors and are usually sold in packs of 12 or 20, but sometimes are sold as "singles."

Small Cigars or Cigarillos, tipped or untipped (also commonly referred to by their brand name, "rillos," or "blunts")



Medium-sized sticks that are mostly machine-made and often wrapped in homogenized tobacco leaf (HTL), which is made from ground tobacco, combustible additives, and water. Some are advertised as having "natural leaf" wrappers and some have plastic or wooden tips. The weight range of these products can vary from about 2.5 grams to 3.5 grams per stick, which surpasses the common 6 pounds per 1,000 sticks threshold used in the definition FDA has been using under court order for "premium cigars." These products often come in a wide variety of flavors and package sizes. While cigarillos used to refer to the smaller versions of traditional cigars, more often cigarillos are cheaper and machine-made.

Large Cigars



Most large cigars are mass-produced and machine-made, with HTL wrappers. They weigh more than cigarillos and tend to come in a variety of non-tobacco flavors.

"Premium" Cigars



True premium cigars are fully hand-rolled without use of machines. These products can vary in size and weight, but tend to be large and are generally more expensive, though some companies have been lowering prices to make them more affordable. FDA has defined "premium cigars" as: "Is wrapped in whole tobacco leaf; Contains a 100 percent leaf tobacco binder; contains at least 50 percent (of the filler by weight) long filler tobacco (i.e., whole tobacco leaves that run the length of the cigar); is handmade or hand rolled (i.e., no machinery was used apart from simple tools, such as scissors to cut the tobacco prior to rolling); has no filter, nontobacco tip, or nontobacco mouthpiece; does not have a characterizing flavor other than tobacco; contains only tobacco, water, and vegetable gum with no other ingredients or additives; and weighs more than 6 pounds per 1,000 units."¹ However, it is noteworthy that the many "premium cigars" weigh considerably more than this, with an analysis for the National Academies of Sciences, Engineering, and Medicine finding a range from 14 lbs per 1,000 to 56 lbs per 1,000.²

Who Is Smoking Today's Cigars?

While cigar smoking is often perceived as an activity of middle-aged and older men, many of today's cigar smokers are youth. Today, 500,000 youth currently use cigars, making them the second most popular tobacco product used by youth.³ Each day, more than 800 youth try cigar smoking for the first time.⁴ While cigarette smoking among youth has declined rapidly in the United States, particularly in the last five years, cigar smoking has declined much more slowly. Since 2019, cigar use has surpassed cigarette smoking.⁵ Further, the unique challenges to accurately collecting data on cigar use mean that the statistics likely underestimate actual use.[†]

In 2022, more high schoolers smoked cigars than smoked cigarettes.⁶ Of great concern, in 2021, one in five (20.7%) youth who smoke cigars smoked them frequently (at least 20 of the preceding 30 days).⁷ In 2020, cigarillos were the most popular type of cigar smoked by current youth cigar smokers (44.1%), followed by traditional cigars (33.1%), then little cigars (22.6%), with 21.8 percent reporting not knowing the cigar type used.⁸

There are marked disparities in cigar smoking among youth. Historically, Black youth have smoked cigars at far higher rates than their peers. In 2022, Black high school students smoked cigars at 1.5 times the rate of white high school students and twice the rate of Hispanic high school students (4.4% for Black vs. 2.8% for white, non-Hispanic or 2.2% for Hispanic high school students).⁹ LGBTQ+ youth, as well as disabled youth, also smoke cigars at higher rates compared to heterosexual and cisgender youth, and non-disabled peers, respectively.¹⁰

Poly-tobacco use, including combinations involving cigars, among youth and young adults is common.¹¹ In 2020, 78 percent of current youth cigar smokers used multiple tobacco products.¹² Youth and young adults who used e-cigarettes or cigarettes were found to have higher odds of starting to smoke little

[†] Several challenges exist with collecting accurate data on cigar use. First, cigar use is not measured consistently across national surveillance studies. Second, the variation in the terms used for products makes it difficult to ensure that researchers and participants are talking about the same products. Many people, including youth, do not identify the products as cigars, cigarillos, little cigars, or large cigars, which are the common terms used in surveys, so there could be a degree of underreporting or misreporting by category. Some cigar types are often used with marijuana, commonly known as blunts, but people will use this term whether or not the products contain marijuana. This practice further complicates surveillance and prevention practices, as those who do so may not identify these products as cigars or may not realize that replacing the filler tobacco in cigars with marijuana still exposes them to tobacco smoke from the cigar's shell or wrapper, so they may not report using a cigar or tobacco product. In addition, many young people refer to these products only by brand names. Similarly, confusion about cigars with "concept" names instead of explicit flavor names could lead to misreporting in survey data. [Dickinson DM, Johnson SE, Coleman BN, Tworek C, Tessman GK, Alexander J. The Language of Cigar Use: Focus Group Findings on Cigar Product Terminology. *Nicotine Tob Res.* 2016;18(5):850-856. doi:10.1093/ntr/ntv285. Cornacchione Ross J, Reboussin DM, Noar SM, Wiseman KD, Sutfin EL. What Do Adolescents and Young Adults Think a Cigarillo Is? Implications for Health Communication. *Int J Environ Res Public Health.* 2021;18(6):3311. Published 2021 Mar 23. doi:10.3390/ijerph18063311. Nasim A, Blank MD, Berry BM, Eissenberg T. Cigar use misreporting among youth: data from the 2009 Youth Tobacco Survey, Virginia. *Prev Chronic Dis.* 2012;9:E42. Peters EN, Schauer GL, Rosenberry ZR, Pickworth WB. Does marijuana "blunt" smoking contribute to nicotine exposure?: Preliminary product testing of nicotine content in wrappers of cigars commonly used for blunt smoking. *Drug Alcohol Depend.* 2016;168:119-122. doi:10.1016/j.drugalcdep.2016.09.007. Jackson DD, Sanders EC, Barry M, Wagner DE, Vigorita MW, Navarro MA. Unpacking Cigar Product Familiarity and Terminology among Black and Hispanic Youth: It's All about Blunts. *Int J Environ Res Public Health.* 2022;19(3):1689. Published 2022 Feb 1. doi:10.3390/ijerph19031689. Delnevo CD, Bover-Manderski MT, Hrywna M. Cigar, marijuana, and blunt use among US adolescents: Are we accurately estimating the prevalence of cigar smoking among youth?. *Prev Med.* 2011;52(6):475-476. doi:10.1016/j.ypmed.2011.03.014.]

cigars or cigarillos compared to those who didn't use those products.¹³ Cigar smoking is also associated with cigarette smoking. A national longitudinal study found that between 2013 and 2018, "9.1% of cigarette initiation among non-Hispanic black youth was attributable to cigar products." According to the study's authors, "decreasing cigar use among youth could prevent up to 4.6% of cigarette initiation overall and 9.1% among black youth specifically."¹⁴

Use of blunts (cigars that are hollowed out and refilled with marijuana or a mix of marijuana and tobacco) among young people is fairly common and initiation at a younger age is associated with lifetime blunt use throughout adulthood.¹⁵ Analysis of data from the 2021 National Survey on Drug Use and Health (NSDUH) showed that among youth (12-17 years old) who used blunts in the past 30 days, 12.5 percent reported smoking them frequently (20-30 days).¹⁶

The National Health Interview Survey (NHIS) showed that in 2021 (most recent available), 3.5 percent of all adults reported smoking cigars, cigarillos or filtered cigars every day or some days.¹⁷ Several studies show that, as with youth, cigar use is higher among Black adults compared to non-Hispanic white and Hispanic adults and higher among lesbian, gay, and bisexual adults compared to heterosexual or straight adults.¹⁸

Patterns of use of cigars vary by cigar product. Analysis of NSDUH data showed that adults who smoke premium cigar were less likely to smoke cigars daily and more likely to smoke 1-2 days per month, compared to adults who smoke non-premium cigars.¹⁹ In addition, anecdotes suggest some seasonal use of premium cigars – smoking more frequently in the summer and less in the winter.²⁰ Adults who smoked filtered cigars have the highest rates of daily smoking, followed by those who smoked cigarillos and non-premium large cigars, then premium cigars.²¹ Nascent research shows that adults who smoke premium cigars were less likely than those who smoke other cigar types to also smoke cigarettes,²² though one study found that more than a third of those who dual-use premium cigars and cigarettes will switch to exclusive cigarette smoking within a year.²³

Flavors are driving youth cigar use. The majority of youth who have ever smoked cigars started with a flavored cigar.²⁴ Nearly three quarters of youth who smoke cigars said they did so "because they come in flavors I like."²⁵ In 2021, 60 percent of middle school students who smoked cigars and 41.1 percent of current high school cigar smokers used flavored cigars.²⁶

Youth and young adults use a variety of flavors. Among those youth who reported using flavored cigars in 2020, fruit flavors were the most reported flavor (61.5%), followed by candy/dessert/other sweets (34.0%), then mint (30.4%).²⁷ In fact, the most popular cigar brands among youth²⁸ come in a dizzying array of candy and fruit flavors that underscore how different these products are from your grandfather's cigar. Teens and young adults who smoke cigars are more likely than older adult cigar smokers (25 years and older) to use flavored cigars.²⁹

The 2018-2019 wave of the Population Assessment of Tobacco and Health (PATH) study found that flavored cigars were used by half (50.2%) of youth filtered cigar users and nearly half (46%) of youth cigarillo users. The study also found that one-third (33.9%) of youth who smoke traditional cigars used flavors, despite claims to the contrary from the premium cigar industry.³⁰

Cigar Smoking Harms Health

Health risks associated with cigar use have long been recognized. The National Cancer Institute's 1998 monograph on cigars, which reviewed decades of science, stated, "There is sufficient evidence to conclude that a causal relationship exists between regular cigar use and cancers of the lung, larynx, oral cavity, and esophagus" and linked smoking cigars regularly to coronary heart disease and respiratory diseases.³¹ Each year, about 9,000 Americans die prematurely from smoking cigars regularly.³²

Cigar smoke contains the same toxic and carcinogenic constituents found in cigarette smoke, but different patterns of use may create differential risk profiles. All cigars contain and emit nicotine, a highly addictive chemical that can harm adolescent brain development. The National Academies of Sciences, Engineering, and Medicine's (NASEM) report on premium cigars noted that "[a]ll cigars contain harmful and potentially harmful constituents, and the extent to which they negatively affect health largely depends on how they are used (e.g., frequency and duration of use, pattern of inhalation)."³³ In addition, to the extent that some "cigars" (e.g., filtered cigars) are simply cigarettes disguised as cigars and smoked just like cigarettes,³⁴ the health risks are likely very similar to smoking cigarettes. In the end, any cigar use increases health risks compared to not using tobacco at all.

In addition to the higher risk for cancers mentioned above, cigar smokers are also at increased risk for an aortic aneurysm.³⁵ Cigar smokers who inhale absorb smoke into their lungs and bloodstream, and deposit tobacco smoke particles in their lungs as well as their stomachs and digestive tract.³⁶ People who smoke cigars daily, particularly those who inhale, have an increased risk of heart disease and COPD.³⁷ In addition, all people who smoke cigars, whether they inhale or not, expose their lips, tongue, and throat to smoke and its toxic and cancer-causing chemicals.³⁸ Studies suggest that a high number of cigar smokers, including those who smoke premium cigars, tend to inhale.³⁹

Since the last report, more research has been published demonstrating the health impact of cigars. An analysis of data from the NHIS found that "nearly 200,000 cardiovascular conditions and cancer cases were attributable to exclusive cigar smoking among US adults aged ≥ 35 years in 2015."⁴⁰ Compared to never smokers, people who had exclusively ever smoked cigars had a higher risk of developing tobacco-related cancer, particularly lung cancer and head and neck cancers.⁴¹ Furthermore, exclusive cigar smokers were found to have higher risks for all-cause mortality compared to never tobacco users.⁴²

Using cigars with other tobacco products may further increase health risks through greater exposure to tobacco smoke constituents and associated diseases and developing greater nicotine dependence.⁴³

Cigars also pose a health hazard for those around the smokers. Because of their size, cigars can produce even more secondhand smoke than cigarettes and can contain higher levels of some toxins than cigarettes.⁴⁴ A person smoking a regular cigar creates much more air pollution than a cigarette smoker.

Misperceptions of the harms of cigar use. Adding to the concern is that many people perceive, incorrectly, that cigars are less harmful than cigarettes,⁴⁵ and these misperceptions are associated with an increased likelihood of cigar use.⁴⁶ FDA specifically noted in its 2014 proposed deeming rule that "youth perceive cigars in a more positive light than cigarettes and believe cigars are more natural and less harmful; and some do not realize that cigars contain nicotine. In addition, in a focus group of

African-American youth aged 14 to 18, researchers found that the participants were not well versed in the harms caused by smoking cigars.”⁴⁷

On top of misperceptions of the health harms of cigars generally, people often believe that flavored cigars are less harmful than unflavored cigars and cigarettes. One study’s finding that non-Hispanic Black and Hispanic adults were more likely than non-Hispanic white adults to believe flavored cigars were less harmful could account for disparities in cigar use.⁴⁸

The Aggressive Marketing of Cigars Using the “4 Ps”

Even now when cigars are regulated by FDA, cigar makers have continued to market cigars with the classic “four Ps” of marketing – product, placement, promotion, and price – in ways that draw the attention of youth and young adults. Appendix B shows additional examples of each type of marketing.

The Product

The cigar category is made up of products that come in a wide variety of weights, sizes, wrappers, and tips. Flavors, perceived quality, and the price of products are the most important characteristics to cigar users.⁵⁰ These features along with the packaging can make cigars more appealing to youth.

Tobacco retailers recognize what products sell. An operations manager of a convenience store chain said, “flavors—‘whatever the new one is’—natural leaf wrappers and smaller package sizes as current category drivers.”⁵¹

Top 5 Cigar Brands among 12-17 Year Olds⁴⁹

1. Backwoods
2. White Owl
3. Swisher Sweets
4. Black & Mild
5. Dutch Masters

In the last 20 years, overall cigar sales have increased while cigarette consumption has declined. Convenience store scanner data show that sales of cigars amounted to \$3.27 billion in 2020 compared to \$2.47 billion in 2009.⁵² Sales of all cigars more than doubled between 2000 and 2021, from 6.2 billion cigars to 14.6 billion,⁵³ largely driven by increased sales of smaller types of cigars, many of which are flavored and as cheap as 3 for 99 cents, making them very appealing to price-sensitive youth.⁵⁴

Flavored cigars. Cigars come in hundreds of youth-friendly flavors like “Berry Fusion,” Brownie, and “Cherry Dynamite.” Sweet-flavored cigars use the same flavor chemicals used in popular candy and drink products such as LifeSavers, Jolly Ranchers, and Kool-Aid.⁵⁵ Game’s Iced Donut cigar is described on the packaging as “twice as sweet.” More recently, some cigar companies have been describing their



products as having different “aromas” rather than “flavors.”

Nielsen convenience store market scanner data show that the share of flavored cigars rose from 45% in 2009 to 53.3% in 2020, while the share of non-flavored cigars declined. Among flavored cigars sold in these stores in 2020, the most popular flavors were sweet or candy (30.6%), fruit (29.5%), concept (21.4%), and wine (9.0%).⁵⁶ Earlier data show that sales of flavored cigars in convenience stores increased by nearly 50% between 2008 and 2015, with the number of unique cigar flavor names more than doubling from 108 to 250.⁵⁷ Cigar companies continue to introduce new flavors – the September 2023 issue of the convenience store trade magazine, *NACS Magazine*, includes an advertisement for Game Black Raspberry dark rolled leaf cigars, described as Swedish Match’s “latest creation.”⁵⁸

Previously confidential documents from tobacco companies show that they have known for decades how adding flavorings to cigars can make the products more appealing to new users by reducing the irritation and making the products more tolerable. For example, in developing its Winchester little cigars in menthol flavor, R.J. Reynolds recognized that the flavor and advertising for the “frosty-new taste” would attract young, new users but not established “cigar connoisseurs.”⁵⁹

| Examples of Cigar Flavors and Flavor Names | | | |
|--|----------------|-------------------|---------------------------|
| Cherry Dynamite | Royal Haze | Iced Donut | Rocky Road |
| Fruit Punch | Hard Lemonade | Blue Dream Fusion | Strawberry & Kiwi Swirl |
| Brownie | Cherry Pie | Strawberry Colada | Chocolate & Vanilla Swirl |
| Vanilla | Real Sweet | White Chocolate | Berries & Cream |
| Blues | Ripe Berry | Watermelon | Pineapple |
| Island Madness | Crème | Sweet Aromatic | Mango |
| Apple | Jazz | Swiss Roll | Sticky Sweets |
| Mocha | Green Envy | Berry Blast | Summer Twist |
| Tropical | Black Sapphire | Triple Grape | Blackberry Mojito |
| Wine | Wild Berry | Tropical Fusion | Lil Durk’s Sweet Aromatic |
| OG Fusion | White Peach | Jamaican Me Happy | Maui Pineapple |
| Sweets | Red Sweets | Cherry Blast | Passion Fruit |
| Dragon Fruit | Purple Swish | Banana Daiquiri | Sweet Cream |
| Irish Cream | Maui Mango | Blue | Coco Blue |
| Coastal Cocktail | Calypso Cream | Royale | Banana Smash |
| Bee Berry | Honey Berry | Dulce De Leche | Lemon Ice |
| Boozy Watermelon | Sweet Mint | Peach | Wild Rush |
| Swerve | Blazing Fire | Black Cherry | Mango Lemonade |

Flavored cigars are particularly appealing to youth. Flavors improve the taste and mask the harshness of tobacco, making flavored tobacco products more appealing and easier for beginners, who are often youth, to smoke.⁶⁰ In its comprehensive scientific assessment, FDA has concluded, “that characterizing flavors in cigars are associated with increased likelihood of youth and young adult experimentation, as well as progression to more regular patterns of use.”⁶¹ Adding flavors to cigars help to mask tobacco’s harshness and make them easier to smoke⁶² and are associated with increased dependence.⁶³

The top five most popular cigar brands among youth who have used cigars – Backwoods, White Owl, Swisher Sweets, Black & Mild, and Dutch Masters – all come in flavor varieties.⁶⁴ For example, Backwoods are available in flavors such as Honey Berry and Banana; White Owl has flavors such as

Rocky Road and Strawberry & Kiwi Swirl; Swisher Sweets comes in a wide variety of flavors such as Tropical Fusion and Maui Pineapple; and Black & Mild cigars come in flavors such as Wine and Apple.

The case of *Cumberland Farms v. Town of Yarmouth Board of Health* illustrates how cigar companies and manufacturers introduced concept flavors to circumvent sales restrictions on flavored tobacco products. After Yarmouth, MA banned the sale of flavored tobacco products, including cigars, in 2014, the local convenience store chain Cumberland Farms challenged a citation it received for continuing to sell Black & Mild Jazz cigars. The Yarmouth Board of Health determined through a “sniff” test, expert testimony, marketing examples, and research on cigar concept flavors that the product had an aroma other than tobacco and was being sold in violation of the sales restriction. Cumberland Farms challenged this decision to the Barnstable Superior Court, which affirmed the Board of Health’s decision. Cumberland Farms appealed that decision as well, and the Massachusetts Court of Appeals affirmed the Superior Court’s decision.⁶⁵

Nielsen convenience store market scanner data also show an increasing number of products with names that do not explicitly identify a flavor, such as Swisher’s “Wild Rush” and Altria’s Black & Mild “Jazz,” even though they are flavored. From 2012 to 2016, the proportion of all cigar sales comprised by these products (which researchers call “concept flavors”) increased from 9 percent to 15 percent. The increase was greatest among cigarillos, among which the number of unique concept flavors more than doubled, from 17 to 46.⁶⁶ Cigar companies may try to use concept flavors to evade sales restrictions on flavored tobacco products.

In 2009, FDA banned cigarettes with characterizing flavors, but could not regulate cigars at that time, leaving a large loophole that little cigars easily filled. Cigar and cigarette companies had already been developing little cigars and cigarillos that could evade other cigarette regulations,⁶⁷ so it wasn’t difficult to manipulate flavored cigarettes into flavored cigars, as was described in the previous version of this report. However, since 2016, FDA has been regulating cigars, including requiring a marketing order before new cigars can be brought to market. Yet cigar companies continue to introduce new flavors of cigars every few months.

One way that cigar companies have been dodging FDA requirements and releasing new cigars is by calling them “limited edition.” In their marketing materials, they “introduce” the products as “new.” Some examples of flavored cigars that have been released in the past few years include flavors with names that are likely extremely attractive to youth, including Swisher Sweets’ Banana Daiquiri and Purple Swish, Game’s Strawberry Colada and Swiss Roll, and White Owl’s Rocky Road and white chocolate.⁶⁸ According to the TCA, any cigar that is introduced after February 15, 2007 is a new tobacco product and must be reviewed by FDA before being allowed on the market. There is no indication that FDA has exempted “limited edition” cigars from new product requirements, yet FDA has not adequately enforced against them.

It is clear that using the term “limited” has benefited cigar makers and retailers by creating excitement and anticipation around the launch. Limited edition flavored cigars have been driving cigar sales, as one article in a convenience store trade magazine stated, “Much of the new volume in the category comes

from flavor launches. C-stores are the biggest sector that the cigar companies use to launch new flavors and limited-time offers (LTOs).⁶⁹ In fact, after the limited run, some manufacturers have re-introduced the cigar as an “encore” edition, and they have also added some of them to their permanent line of cigars.

Cigar companies also re-release products under different names and updated packaging. Some examples of re-named products from Swisher Sweets are Mango Lemonade,⁷⁰ which had been previously released as Summer Twist,⁷¹ and Watermelon Haze, recently offered in September 2023,⁷² but had been called Boozy Watermelon in 2018⁷³ and Island Madness in 2014.⁷⁴ White Owl has repackaged cigars by mixing existing flavors into combo packs. A federal court has ruled that changes to a product label, including names, do not constitute a new product,⁷⁵ and FDA – and the public – must trust that the manufacturer has not modified the product.

Natural Leaf Cigars. All of the major cigar brands now have lines of products using “natural leaf” or “natural wrap” descriptors. Convenience store retail data show that the variety and sales of cigars with a “natural” descriptor grew rapidly between 2017 and 2021, whereas sales of other cigars without that descriptor stayed the same or declined.⁷⁶

With these terms, mass-merchandise cigar makers may be trying to more closely align their products with premium cigars, especially since premium cigars are no longer under FDA regulation. Research shows that consumers mistakenly believe that terms like “natural” mean less harmful. Cigars are perceived as more natural and less processed than cigarettes, which leads to misperceptions that cigars are less harmful than cigarettes.⁷⁷ In 2015, FDA sent warning letters to three companies, Santa Fe Natural Tobacco Company (Reynolds American subsidiary), ITG Brands, and Sherman’s (Altria subsidiary) about marketing their cigarettes using such terms in order “to ensure tobacco products are not marketed in a way that leads consumers to believe cigarettes with descriptors



Summer Twist in 2019, Mango Lemonade in 2023.



Island Madness in 2014, Boozy Watermelon in 2018, and Watermelon Haze in 2023, all described as “watermelon rum.”

The all-natural leaf segment is the fastest growing in the mass market cigar category, outperforming natural leaf and homogenized tobacco leaf. All-natural leaf products produce 60% of sales—and account for 42% of total natural leaf volume.

Image from an advertisement for Dutch Master’s Dutch Leaf cigars in *Convenience Store News*, accessed April 25, 2023, <https://csnews.com/dutch-leaf-distguishes-cstore-innovation>.

like ‘additive-free’ and ‘natural’ pose fewer health risks than other cigarettes,” without scientific evidence.⁷⁸ Consumers may also believe that “natural” implies better quality.⁷⁹

Packaging. Many cigars, especially flavored ones, come in shiny, colorful packages that boldly communicate features, such as the sweet flavors and low prices, that appeal to youth and young adults. Among the top selling brands in the U.S., common package characteristics include resealable foil pouches, relatively small package sizes (2-3 sticks), and pricing printed directly on packaging (e.g., “2 for 99¢”).⁸⁰

Studies have shown that visual features on packaging, including color and certain descriptive words, can impact consumer perceptions of the product and convey specific attributes to consumers.⁸¹ For instance, consumers often favorably associate the color purple on cigar packaging with flavor.⁸² Colors can also indicate differential appeal to men compared to women.⁸³

Over time, cigar pack size has declined, making them more affordable, particularly to youth, who are more price-sensitive than adults. Convenience store sales data show that in 2009, 2- or 3-packs of cigars made up 2.3% of sales but made up 42.6% of cigar sales by 2020, while sales of single sticks or 5-packs declined during that period.⁸⁴ Cigars in smaller package sizes are more likely to be purchased by new cigar users, because of the lower cost barrier could encourage trial.⁸⁵

Placement

Convenience stores are still the main way that mass marketed cigars are purchased in the U.S.⁸⁶ In-store displays of cigar products, particularly with their colorful packaging and rainbow array of flavors, can also draw the attention of young people, particularly when they’re placed prominently for young people to see. While cigarettes and smokeless tobacco cannot be accessible customers for self-service, brightly packaged, flavored cigars are still very visible on or around retail countertops for anyone to help themselves.

Even premium cigars, which are more typically sold in specialty cigar stores or purchased online, are expanding into convenience stores. A representative of the Scandinavian Tobacco Company has stated that convenience stores are a “fast-growing, alternative tobacco profit stream potential...thanks to innovation in packaging” and that the novel packaging would “entice the occasional premium cigar smoker, typically younger generation consumers....”⁸⁷ Scandinavian Tobacco Company claims on its website to be “#1 in the U.S” for handmade cigars.⁸⁸



Waxahachie, TX, 2018. Courtesy of CounterTobacco.org.

Promotion

Cigars are advertised in various places including in stores, in magazines, on websites, through social media, and at sponsored events. While the U.S. Federal Trade Commission (FTC) issues comprehensive marketing reports for cigarettes, smokeless tobacco, and e-cigarettes regularly, similar comprehensive data on cigar marketing is not available. In 1999, the U.S. Federal Trade Commission (FTC) released a report, “Cigar Sales and Advertising and Promotional Expenditures for Calendar Years 1996 and 1997,” but has not released any subsequent reports on cigars.



Phoenix, AZ, 2016. Courtesy of CounterTobacco.org.

Point-of-sale (POS) advertising. It is common to see posters and signage inside and outside of stores advertising cigars at low prices. Marketing in these venues not only prompts current users to purchase the products, but makes the products seem acceptable and normal for young non-users. In addition, higher perceptions of exposure to cigar marketing are associated with higher odds of daily cigar smoking.⁸⁹

A recent study looking at cigar advertisements at retailers near middle and high schools in California found that the three brands advertised the most (Black & Mild, Swisher Sweets, Dutch Masters) were among the top five brands most often used by youth cigar smokers and most (64.5%) ads were for flavored products.⁹⁰ An analysis of exterior storefront ads at tobacco retailers in New York City found that cigar ads are often placed on the door of stores and at heights below three feet – low enough for young children to see.⁹¹

POS marketing of tobacco products is associated with tobacco use – which is precisely why tobacco companies spend so much money to promote their products in this channel. While most of the studies have involved cigarettes, those focusing on cigar marketing at the POS show a positive link between exposure or recall of POS cigar ads and susceptibility to using cigars, current or ever use of cigars, and daily use of cigars, particularly among youth and young adults.⁹²

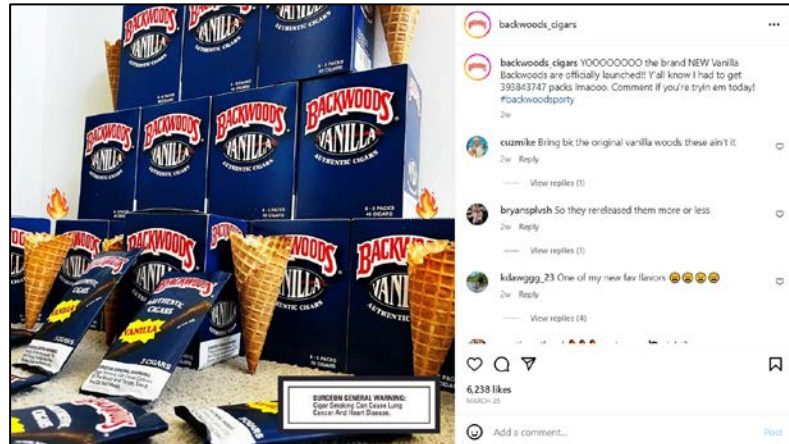
Magazine advertising. The tobacco industry has been using this medium for decades to target specific populations and people interested in certain activities or lifestyles. Studies show that exposure to tobacco product advertising in magazines is associated with favorable beliefs about smokers, greater experimentation, increased likelihood of use, and brand used at initiation.⁹³ Though most of the studies are about cigarette advertisements, there is no reason to believe these relationships don't hold true for cigars as well.

A recent analysis of cigar marketing in magazines found that Altria's Black & Mild cigars is currently the only mass-market brand still placing ads in consumer magazines, spending about \$9 million per year. Ads were mostly placed in magazines with disproportionately high Black readership. Features such as

images of the pack, repetition of the brand logo, and frequent use of “enjoy” or “enjoyment” can reinforce positive feelings of satisfaction about the brand and smoking Black & Mild cigars.⁹⁴

Social media. Most of the major cigar brands have official social media accounts that can quickly and cheaply reach their followers, but can also extend that reach depending on the post.

Content posted by cigar brands and influencers often feature themes that resonate strongly with youth, including colorful images of flavored products, young people (often young women), sponsored music events, promotional items (i.e., branded non-tobacco products like t-shirts and hats), and other content meant to engage the audience (i.e., asking viewers to ask a question or tag someone in the comments).⁹⁵ Cues to smoke, such as images of someone smoking, are also common.⁹⁶



Backwoods Instagram, March 25, 2023, <https://www.instagram.com/p/CqOrwdOvtt2/>

Some brands participate in popular trends to connect with consumers. Many of these trends have very specific references that would resonate more with younger than older generations. The fact that cigar brands are creating content that resonates with younger audiences is troubling.

Social media posts of cigar brands often used with marijuana and blunts, using blunt-related images and themes.⁹⁷ Exposure to this type of messaging further reinforces the connection between cigars and marijuana, given young people are already modifying cigars⁹⁸ and using marijuana-containing blunts.⁹⁹

Paid sponsorships and endorsements. Sponsorships can expose a wider audience to cigar brands and create favorable brand associations. These can take the form of concerts or parties, providing grants for artists, hosting art contests, and convening publicized discussion forums. Similarly, paid endorsements of celebrities and influencers can enhance the cigar brand’s reputation and reach.

Swisher likely has the most sponsored events and celebrity endorsements. Its Artists Project promotes emerging performers as well as established ones like Cardi B and Machine Gun Kelly and holds the annual Spark Awards to honor a celebrity of the year.¹⁰⁰ Swisher has also sponsored events at SXSW¹⁰¹ and Shaquille O’Neal’s circus-themed Fun House tour.¹⁰² It has also hosted celebrity- and influencer-filled parties centered around a new product.¹⁰³ Past events that Swisher hosted included a series of “Pack Nights” concerts and Convenience Store sessions – essentially pop-up concerts within a convenience store, which were recorded and posted on Swisher’s website, YouTube channel, and other social media.¹⁰⁴ These events display the Swisher logo throughout the performance space – notably behind the stage – and offer branded merchandise.¹⁰⁵

Additional examples of sponsored events by other cigar companies include Backwoods’ Artist Showcase concert series, Dutch Master’s Craft Syndicate program to “find aspiring creatives w/ hustle in music,

art, film & fashion & fund a collaboration w/ an icon in their field,”¹⁰⁶ and Optimo’s “Biggie Inspires” art contest honoring Notorious B.I.G.¹⁰⁷

Paid endorsements are especially effective in amplifying brand recognition through social media, since a cigar brand can feature and tag influencers, who can share the post with their followers, who may not be familiar with the brand or products but who like the influencers. In their social media marketing, cigar brands that are popular with youth include images of influencers at sponsored events and parties, holding products, and wearing branded gear. Following the tradition of tobacco companies’ targeting populations of interest, most of the influencers were people of color and associated with the hip-hop music industry.¹⁰⁸

A recent example of celebrity endorsement is the launch of the new Cignature line of cigars from Superstar Brands, partnering with T.I., Lil Durk, Moneybagg Yo, and Soulja Boy. Flavors options include Lil Durk’s Sweet Aromatic, Moneybagg Yo’s Banana, T.I.’s Honey, and Black Cherry. A wholesaler magazine article about Superstar Brands perfectly illustrates why these types of endorsements are concerning: “With the success of these top tier brands exceeding expectations, it became obvious that the popularity of these artists extends nationally, with a need for branded products that can be put into the hands of their fans on a larger scale.” Furthermore, “The celebs that work with Superstar Brands to bring their products to market boast millions of followers on social media, capturing a huge audience.”¹⁰⁹ Superstar Brands itself stated, “These artists are some of the biggest influences on the culture. Our company is thrilled to translate our mega stars’ presence into a vibrant and dramatic packaging.”¹¹⁰ In other words, these affiliations make the products more appealing to fans who might not have otherwise paid attention to such products.

Direct-to-consumer communication and coupons. Communicating directly to consumers generally takes place under the radar and avoids much of the criticism of other types of more publicly visible advertising. Cigar companies send direct mail through traditional mail channels and email to consumers offers like free gifts, reward points, or sweepstakes offers, but the large majority of these communications are for providing coupons.¹¹¹ They also use this channel to introduce new products to recipients and entice them with discounts. Some premium cigars cigar retailers still mail out product catalogs that include discounts and other pricing strategies.¹¹²

Tobacco companies have turned to this form of marketing to enable them to target specific groups in the face of falling use rates and criticism about marketing to youth.¹¹³ Despite claims that direct mail avoids youth exposure to marketing, surveys still show that youth are not only receiving coupons through direct mail, but also that receiving coupons increases the odds of starting to use tobacco products.¹¹⁴ Overall, research finds that coupons keep people using tobacco products. Receiving coupons for tobacco products is associated with more young people starting and fewer people stopping tobacco use.¹¹⁵



TikTok post, January 21, 2023, <https://www.tiktok.com/@samanthal92/video/7190982932616564014>.

Branded merchandise and rewards programs. Cigar companies use rewards programs to build customer loyalty and increase purchasing, not unlike cigarette companies' strategies. For instance, Black & Mild offers Aroma Rewards, Game has Game Rewards, White Owl has "Bird Bucks," and Swisher has Swisher Rewards. For each cigar purchase, consumers can gain points that can be traded in for branded merchandise and other items. Research has shown that participation in a tobacco promotional campaign like rewards programs, willingness to wear or use tobacco-branded items, or owning branded items is associated with greater susceptibility to using tobacco products or greater likelihood of being a tobacco user.¹¹⁶ The 1998 Master Settlement Agreement between the major cigarette companies and states prohibited participating manufacturers from distributing non-tobacco products with cigarette branding and restricted companies from distributing rewards in exchange for points or proofs of purchase to underage recipients,¹¹⁷ but those provisions do not apply to cigars.

Premium cigar marketing. Marketing and promotional activities by premium cigar companies and retailers uses many of the same channels as cigar marketing generally, but there is a strong effort to link the products with luxury lifestyles and success, which can connote less harm and promote more positive feelings towards the products. Many of the activities, such as sponsorships at music festivals, can also appeal to young people.¹¹⁸

Premium cigar enthusiasts have specialty magazines dedicated to framing cigars as a type of lifestyle symbol and normalizes its use. A recent analysis of various premium cigar magazines in 2021 found, not surprisingly, the consistent positive reinforcement of cigars through articles boasting the quality of various brands, the promotion of cigar festivals and similar events, features of celebrities (primarily young adults), and highlighted cigar-adjacent products such as alcohol and accessories. There were essentially no mentions of negative health effects, whereas positive health claims, such as stress relief, were discussed more often, using words connoting less harm, such as "natural" and "light." These magazines also raised awareness about FDA regulation for readers.¹¹⁹



Instagram post by Nick Jonas, September 9, 2019, <https://www.instagram.com/p/B2MfxMzDnaP/>.

While these magazines ostensibly are targeted to adults, they include premium cigar smoking as part of an aspirational lifestyle for young people. For example, Nick Jonas, of the Jonas Brothers, was put on the cover of the September/October 2019 issue of *Cigar Aficionado*. At the time, he was 26 years old, the youngest person ever to be featured holding a cigar on the cover of the magazine.¹²⁰ The feature article noted that Jonas is a "teen idol" and stated that Jonas began using "premium" cigars at 18 years old but was surrounded by cigar smokers prior to that, which piqued his interest. In the article, Jonas stated, "[o]ne of the things a lot of people say to me is: 'You're so young to like cigars.' ... It is a narrative that I'm aware of, and actually something that I love being able to speak to... I think that cigars as a whole should be something that you share with friends, and there shouldn't be any barriers around who can

enjoy them.... And no matter your age—you should be able to enjoy the process.”¹²¹ On Twitter, *Cigar Aficionado* pointed out that Jonas’ Instagram posts of pictures from the issue had been “liked 1.23 million times” and “no other cover has ever drawn such attention on social media.”¹²² This achievement is not so difficult to believe considering young people are more active on social media than older people and likely saw the post through Jonas’ own post. Highlighting celebrities who are popular with younger people widens the audience and favorably associates the product with the celebrity.

Social media is a growing outlet for premium cigar companies. One study found that premium cigar brands have more than tripled their social media posts between 2020 and 2022. These posts echo the content in premium cigar lifestyle magazines and direct-to-consumer marketing pieces, such as pairing the products with alcohol and showing images linking premium cigars to aspirational luxury lifestyles. Some themes were similar to those used by other tobacco product brands, such as posts from festivals or other events centered around cigars, but other themes were more unique to premium cigars, such as highlighting Latin American culture or referencing cigar lifestyle magazines. The Nick Jonas posts were a prime example of this latter theme. Of concern, this study found that age-gating on social media accounts was low, so young people could easily see these pro-tobacco posts.¹²³

Specialty premium cigar festivals are also popular. These events reinforce the notion that cigars are high-class status symbols. Black Americans and veterans are often targeted at such events. The researchers stated, “Such tactics show how the premium cigar industry tries to represent itself as making a positive social impact by highlighting inclusivity, community, or charitable acts, while simultaneously ignoring the health harms associated with premium cigar use among populations disproportionately affected by combustible tobacco use (ie, menthol cigarettes, little cigars, cigarillos).”¹²⁴

Price

As with all tobacco products, cigar pricing impacts consumption, particularly among youth. As with cigarettes, the lower the price, the more appealing the product to youth, who generally have less disposable income than adults and are thus more responsive to price. Likewise, increasing the price of cigars can reduce cigar use.¹²⁵

Data from the 2021 PATH study showed that the average price paid per stick of cigarillos was \$1.34 compared to \$3.09 per stick for non-traditional large cigars and \$8.67 per premium cigar.¹²⁶ Between 2016 and 2020, while the price of cigarillos and filtered cigars did not change, cigarillo sales increased. However, the price of large cigars increased, accompanied by a decline in large cigar sales.¹²⁷ Little or filtered cigars are often priced much lower than cigarettes in the equivalent pack size.¹²⁸ That price differential can drive more people to use filtered or little cigars.¹²⁹

Price promotions also play a strong role in increasing intentions to purchase and increasing interest in cigars.¹³⁰ This can help explain why more and more cigar companies print price promotions such as “2 for 99¢” or “Save on 2 Cigars” directly on the cigar packaging.

Pricing is also tied to pack size – fewer cigars in a package means the price is lower, which makes the products more accessible to price-sensitive consumers, particularly youth.¹³¹

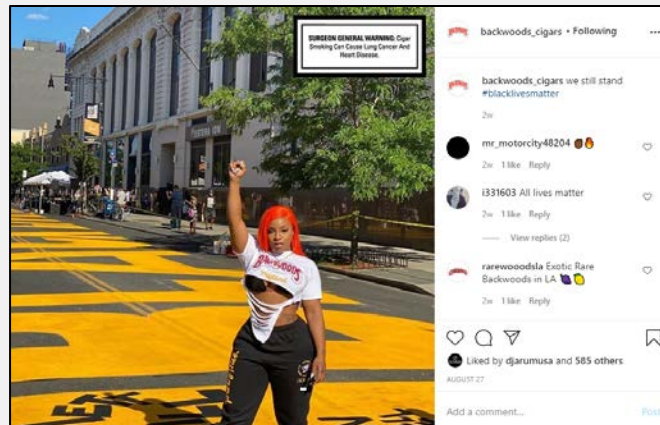
Cigar Marketing Targets Communities of Color

The tobacco industry has a long legacy of targeted marketing to the Black community through location-specific strategies and making cultural connections.

Generally, Black neighborhoods have a disproportionate number of tobacco retailers and pervasive tobacco marketing.¹³² Research consistently documents greater cigar availability and more cigar marketing, including flavored cigars and price promotions, in Black neighborhoods.¹³³ Cigarillos are significantly cheaper in neighborhoods with higher proportions of Black residents, which can exacerbate disparities in use.¹³⁴ Flavored tobacco products were more widely available at retailers located in neighborhoods with predominantly Black residents, in violation of city laws that restrict the sale of flavored tobacco products.¹³⁵ Black youth are twice as likely as their non-Black peers to visit a convenience store every week.¹³⁶

Content of cigar marketing often includes elements to attract Black Americans. Sponsored events will feature artists popular among the Black community to link entertainment and lifestyle activities with cigar brands. Cigar companies' paid celebrity endorsements create favorable sentiments for those products among the celebrity's fans. Cigar brands' social media posts contain images of Black Americans holding or smoking their products.

As companies have generally become more vocal about their positions on social issues to burnish their image with customers, cigar companies have similarly made public announcements in support of issues that likely resonate with its customers. For instance, in August 2020, ITG Brands' Backwoods Instagram account posted a photo of a woman wearing a Backwoods t-shirt at Black Lives Matter Plaza in Brooklyn, NY, with the caption, "we still stand #blacklivesmatter."¹³⁷ Altria's subsidiary John Middleton (makers of Black & Mild cigars) announced donations to Black-owned businesses.¹³⁸ Swisher announced a new "Inclusion, Diversity, and Transformation Strategy" that included partnering with "multicultural groups" and "creat[ing] opportunities for Black-owned businesses."¹³⁹ The irony is that these companies sell products that disproportionately harm the health of the people to whom these types of messages are aimed and that the marketing of these products – on which spending far surpasses any investments in these social justice efforts – work to widen health disparities.¹⁴⁰



Backwoods cigars Instagram, August 27, 2020, <https://www.instagram.com/p/CEZgDITJA4E/>.

Cigar Regulations Must Be Based on Scientific Evidence and Made without Political Interference

Given that cigars are the second most popular tobacco product used by youth, the serious health risks associated with cigar use, and the wide variety of appealing products and attractive marketing, it is clear that additional action is needed to minimize use, particularly among youth, and protect health. Policies must be comprehensive and forward-looking, as cigar companies have a long history of manipulating their products to evade regulation.¹⁴¹

Federal Policies

FDA Regulation. When FDA completed a rulemaking process that enabled the agency to begin to regulate cigars in 2016, the agency asserted jurisdiction over all cigars because it determined that there was no public health justification for exempting certain types of cigars.¹⁴² As discussed later in this report, the deeming rule extending FDA’s regulatory authority to cigars was vacated as to premium cigars. Thus, premium cigars now are not subject to any FDA regulation. Under FDA regulation as to non-premium cigars, manufacturers must follow very basic reporting requirements that, at a minimum, allow a regulating agency – if not also the public – to know what is in the products they’re using, including ingredients and harmful and potentially harmful constituents produced by their products. Any non-premium cigars that enter the market, or are modified, after February 15, 2007 must be reviewed by FDA to assess their health risk, addictiveness, and appeal to youth – to enable FDA to determine the product’s impact on public health. FDA has made some allowances for cigar manufacturers to account for unique issues raised by cigars, such as allowing them to make blending changes to address the natural variation of tobacco without having to go through product review.

In addition, manufacturers are prevented from making misleading health claims. Sales are prohibited for youth under 21, with requirements that retailers verify age. Free samples are prohibited. These and other provisions are meant to help reduce the disease and premature death caused by cigars by better informing consumers, blocking more harmful products from the market, and reducing youth access to these products. Small businesses are given additional time to fulfill FDA’s requirements.

In April 2022, FDA issued a proposed product standard to prohibit characterizing flavors in cigars.¹⁴³ FDA must act quickly to finalize this standard, which it determined “is appropriate for the protection of the public health” because it would reduce the appeal of cigars, particularly to youth and young adults, thereby decreasing the likelihood both that nonusers would experiment with cigars and that current and future experimenters would continue to use cigars, develop an addiction to nicotine, and progress to regular use of cigars and/or other tobacco products.” FDA estimated that banning cigars with characterizing flavors would prevent 34,000 youth from starting to use cigars and save approximately 800 people from premature deaths annually.¹⁴⁴ FDA initially considered doing so back in 2016, stating in the final deeming rule, “FDA is announcing that it intends in the future to issue a proposed product standard that would, if finalized, eliminate characterizing flavors in all cigars including cigarillos and little cigars.”¹⁴⁵

FDA has also announced its plans to consider a proposed product standard to set a maximum level of nicotine for cigarettes.¹⁴⁶ This standard should be applied to cigars as well, since research and experience demonstrate that cigarette smokers will shift to cigars if their access or satisfaction with cigarettes is hindered and tobacco companies will manipulate cigarettes so that they fall into the cigar definition and can evade a regulation that applies only to cigarettes.¹⁴⁷

Federal Excise Tax. We have already experienced how tobacco companies have evaded paying higher excise taxes by manipulating their products, such as offering cigarette-like products like filtered cigars or slightly increasing the weight of their cigars to qualify as lower-taxed “large” cigars.¹⁴⁸ Congress must set tax rates on all cigars at the same level as the cigarette rate to once and for all close the loophole that cigar companies have used for years to avoid their financial obligations to the government.

State and Local Policies

With limited exceptions, the Family Smoking and Tobacco Prevention Act gives states and localities the freedom to regulate the sale of tobacco products. Rather than wait for FDA, states and localities should pass legislation to protect their communities. These include prohibiting the sale of flavored tobacco products including all cigars, setting cigar taxes equal to cigarette taxes, and setting package size and price minimums. Additionally, state and localities could also pass policies impacting premium cigars.

Prohibiting the Sale of Flavored Cigars. States and localities must include flavored cigars as part of a comprehensive policy to take all flavored tobacco products out of the hands of youth. Several localities already have policies that prohibit the sale of flavored cigars, which have been upheld by courts wherever tobacco companies have challenged them.

Studies show these policies work to reduce the availability of flavored cigars. New York City was one of the first localities that prohibited the sale of flavored tobacco products, including flavored cigars. Analysis of youth data found lower odds of ever use of flavored tobacco products after NYC's policy went into effect.¹⁴⁹ Similarly, in Massachusetts, which implemented a comprehensive ban on the sales of all flavored tobacco products, including flavored cigars, in June 2020, preliminary data from the state Youth Health Survey show youth cigar use declined from 4.7 percent before the law went into effect to 2.0 percent afterwards.¹⁵⁰

Analysis of cigar sales data also demonstrate declines following the implementation of flavor policies. From Providence, Rhode Island and New York City, studies showed immediate declines in sales of flavored cigars in those cities, with some increases in sales of non-flavored cigars and, unfortunately, concept-flavored cigars.¹⁵¹ A recent study looking at state and local flavored cigar sales restrictions in Massachusetts, California, Illinois, and New York found significant reductions in per-capita cigar sales, particularly for cigarillos and little cigars, which are predominantly flavored.¹⁵²

Concept-flavored cigarettes present an enforcement challenge for states and localities, since those products are not immediately identifiable as flavored by most inspectors. States and localities have addressed that problem by creating lists of acceptable or not acceptable products and using a "smell test" to determine if products have an aroma other than tobacco.

An additional benefit of banning the sale of flavored cigars would be a decline in point-of-sale advertisements for these products, which have been associated with increased susceptibility and use of flavored cigars.¹⁵³

State and Local Taxes. States vary widely in the way they tax cigars.¹⁵⁴ Some states impose a tax per stick or as a percentage of price (either wholesale, manufacturer, or retail price). Some state cigar tax rates differ depending on the type of cigar, while others apply the same tax rate across all cigars, and some states specifically tax little cigars at the same rate as cigarettes. Some states have set a maximum tax cap on cigars, which allows higher priced cigars to pay less than their fair share of the tax. But in particular, those tax caps are very low, which means cheaper cigars can qualify to pay the lower tax. This keeps prices low and affordable for youth. Florida does not tax cigars at all, while Pennsylvania and New Hampshire only tax certain cigars. In most cases, cigars are taxed at lower rates compared to cigarettes.

As with the federal excise tax, it is important to ensure that cigars are taxed at the same level as cigarettes, to discourage product switching based on price.

Minimum Pack Sizes and Minimum Pricing. Requiring minimum pack sizes would make cigars less accessible by youth, since the prices for larger packages would be higher. One policy scan found that by mid-2021, more than 250 localities already implemented these policies, which varied in provisions such as inclusion of coupon redemption or discount bans.¹⁵⁵ Preliminary studies of the impact of these types of policies show their promise in reducing youth and adult cigar use,¹⁵⁶ including the finding that purchasing larger packs of cigars has not been found to be associated with continued cigar use.¹⁵⁷ Not surprisingly, the cigar industry and its allies, particularly the convenience store industry, have filed lawsuits or otherwise worked to block implementation of the policies.

Industry Efforts to Exempt Cigars from Regulation

The previous report described how cigarette and cigar companies modified their products to enable them to qualify for lower regulation or taxation as cigars. The tobacco industry continues to take advantage of loopholes in existing law or work to oppose or weaken proposals that might hurt their business.

Industry Opposition to Bans or Restrictions on Flavored Cigars

FDA's Proposed Standard on Flavored Cigars.

Cigar companies and cigar interests have submitted comments opposing FDA's proposal to ban characterizing flavors in cigars. The cigar industry claims that FDA is finding a solution to a made-up problem and challenges FDA's research. Some companies have even alleged that this proposal is discriminatory, even though it's the companies' targeted marketing that has caused the racial disparities in cigar use in the first place. FDA would not have to address this issue if cigar companies hadn't created the problem.

State and Local Actions to Prohibit the Sale of Flavored Cigars.

Tobacco companies and allies have mounted legal challenges against states and localities that have passed laws to prohibit the sale of flavored tobacco products, including cigars, but they have lost in every

case. Their lawsuits are commonly based on allegations that state and local laws are preempted by federal law, but the Tobacco Control Act expressly allows states or localities to regulate the sale of

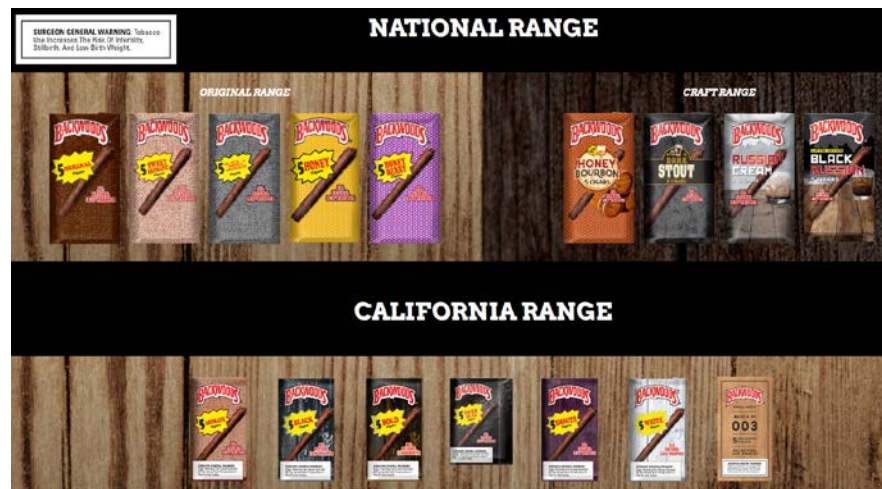
Key Points about Flavored Cigars

- Cigar manufacturers have flooded the market with flavored cigars.
- Flavored cigars are particularly appealing to youth. Flavors increase the number of kids who start using cigars by attracting them to the products and making them easier to smoke.
- Cigars are addictive and smoking cigars regularly can cause various cancers, heart disease, and respiratory diseases.
- Cigar companies use marketing strategies that attract young people, including bright and colorful packaging, engaging in popular social media trends, sponsoring concerts, and recruiting celebrities for endorsements, and keeping prices low.
- Tobacco companies have targeted their marketing of flavored cigars to Black Americans and young people, leading to disproportionately high use among those populations.
- Policies should be comprehensive and without any product exemptions. Cigar makers have demonstrated that they can manipulate their products to fit through any loophole and youth have already shown that they will migrate to any other flavored products left on the market.

tobacco products in their jurisdictions. Tobacco companies have also claimed that these types of restrictions on flavored tobacco products violate freedom of speech,¹⁵⁸ when in fact the companies aren't prevented from communicating that their products are flavored; but rather they cannot sell products with characterizing flavors under these laws.

Concept flavors and flavors merely described as “sweet” also present a problem for enforcement, and an avenue for challenges by the cigar industry and retailers. The case of *Cumberland Farms v. Town of Yarmouth Board of Health*, described earlier in this report, is a prime example of an attempt to sidestep an ordinance and then challenge it in court.

Cigar companies are also actively making sure that consumers are aware of non-flavored products that continue to be sold in stores. While doing so does not violate these laws, it does demonstrate that the cigar industry is resilient and claims that these policies will drive them out of business are exaggerated.



Screenshot from the Backwoods website distinguishes products available in California compared to the rest of the country, due to California's law prohibiting the sale of flavored tobacco products. Image captured June 2, 2023.

Attempts to Exempt Premium Cigars from Regulations

Cigar companies have been using the legislative process and court system to undercut FDA's science-based regulatory process. Premium cigar companies and lobbying groups have fought FDA regulation since before FDA even proposed asserting jurisdiction over cigars. In July, 2022, a federal court found that FDA's application of the Deeming Rule to premium cigars was arbitrary and capricious under the Administrative Procedure Act because the agency had not adequately considered information provided by the cigar industry during the rulemaking process.¹⁵⁹ In August 2023, the court vacated the Rule as applied to those products.¹⁶⁰ As of the writing of this report, FDA has yet to announce if it will appeal these rulings or, alternatively, work to develop and propose a new rule to regulate premium cigars, based on a stronger record of scientific support. If these court decisions stand, it will mean that the category of premium cigars is free from any scientific oversight at the federal level, including basic public health protections such as warning labels, disclosure of ingredients, and measures to reduce youth access to these products. FDA now has less oversight of premium cigars – products that can cause a variety of cancers and other serious medical problems – than it has over food.

In addition, cigar companies were successful in challenging FDA's rule requiring large health warning labels on the packaging or advertising of all cigars. The warnings were struck down by the U.S. Court of Appeals for the D.C. Circuit on the ground that FDA had failed to meet its burden under the Tobacco Control Act to show that they would reduce smoking prevalence.¹⁶¹

Beginning in 2013, federal legislation has been introduced to exclude a broader range of cigars from FDA jurisdiction than the premium cigars exempted by the recent court decisions. Congress originally gave FDA the authority to oversee all tobacco products because it believed science-based regulation would reduce tobacco-caused disease and save lives. It should not interfere with FDA's authority to make a science-based determination about health risks and appropriate oversight of different types of cigars. In addition, while the stated intent of the bills is to exempt "traditional large and premium cigars" from FDA oversight, they also would exempt some machine-made cigars, which tend to be cheaper and more affordable for young people than hand-made cigars.

Cigar Lobbying Groups

Lobbying groups help to amplify the voice of cigar manufacturers and retailers in front of policymakers to make their products seem exceptional and oppose regulations that would apply to them. The Cigar Association of America, Premium Cigar Association, and Cigar Rights Association are some of the more vocal groups pushing for carve-outs for their products by submitting comments to the FDA, testifying in states and localities, rallying local retailers and cigar users to oppose tobacco control policies, and, as described earlier, suing the FDA and states or localities to delay policy implementation.

Conclusion

In the ten years since the first version of this report was released, a lot has changed in the regulatory space – the FDA is now regulating cigars and some states and localities are passing policies to reduce youth access to flavored cigars. However, youth use of cigars, particularly flavored cigars, continues to be a problem. In addition, the cigar industry continues to thrive by releasing new flavors, aggressively marketing products in ways that appeal to youth, and obstructing policies meant to protect youth from these addictive products. Cigar use increases the risk of health harms and addiction, and causes more than 9,000 deaths annually in the U.S. Strong action at the local, state, and federal level is still needed to reduce cigar use, particularly among youth, and protect public health. FDA should finalize its proposed rule to prohibit flavored cigars as quickly as possible and include cigars in any nicotine limit standard. Additional localities and states should prohibit the sale of flavored cigars and other flavored tobacco products. Given the behavior of the cigar industry and the popularity of these products among youth, these policies, are important public health protections and appropriate for products with a risk of addiction and other potential health risks.

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¹⁶¹ *Cigar Ass'n of Am. v. FDA*, 964 F.3d 56 (D.C. Cir. 2020).

Appendix A. Categories of Cigar Products

This table attempts to place cigar products into four categories. However, as discussed in the body of the report, there is a lot of overlap in product characteristics that makes it difficult to delineate between categories without exceptions.

| | Little Cigar/Filtered Cigar | Small Cigar/Cigarillo | Large Cigar | Premium Cigar |
|----------------------------------|------------------------------|--------------------------------------|--------------------------------------|---|
| Wrapper | Paper with tobacco remnants | Usually HTL,* sometimes whole leaf | Usually HTL, sometimes whole leaf | 100% whole leaf |
| Manufacturing Process | Machine-made | Usually machine-made | Usually machine-made | Entirely hand-rolled |
| Filler | Ground tobacco and additives | Usually ground tobacco and additives | Usually ground tobacco and additives | 100% whole leaf |
| Weight (per 1,000 sticks) | Less than 5 lbs. | Varies between 3 lbs. and 8 lbs. | Varies between 5 lbs. and 20 lbs. | Varies between 3 lbs. and more than 40 lbs. |
| Filter | Like cigarettes | No | No | No |
| Flavorings | Many | Many | Many | None |

* HTL = homogenized tobacco leaf, which is made from ground tobacco, combustible additives, and water.

Appendix B. Additional Examples of Cigar Marketing

Flavored Cigars



“Natural Leaf”-Type Cigars



Bright, Colorful Cigar Packaging



Point-of-Sale Advertising



Aurora, CO, 2022.



NJ, 2022.



Bradenton, FL, 2021.



Gainesville, FL, 2014.



Bradenton, FL, 2022.

Images courtesy of CounterTobacco.org, <https://countertobacco.org/>.

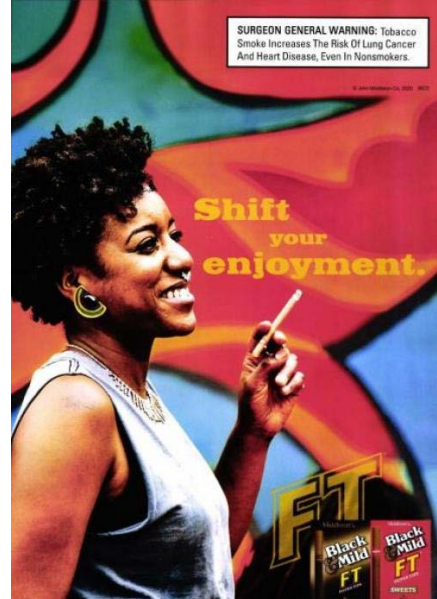
Magazine Advertising



GQ, June 2021



Entertainment Weekly, June 14-21, 2019;
Men's Journal, September 2019; *Popular Mechanics*, March 2019; *Rolling Stone*, January 2019; *Us Weekly*, March 4, 2019, September 30, 2019



In Touch Weekly, December 2020;
Life & Style Weekly, December 2020;
OK Weekly, December 2020;
Star, December 2020

Images courtesy of Trinkets & Trash, <http://www.trinketsandtrash.org/index.php>.

Social Media Marketing – Participating in popular trends



Brain vs. heart meme, popular on TikTok.
Backwoods Instagram, March 21, 2023,
<https://www.instagram.com/p/CqEZaK4vrR0/>.

Red Flag trend, identifying what triggers “red flags”
in relationships.

Cheyenne Cigars Instagram, October 18, 2021,
<https://www.instagram.com/p/CVLXTzoABOy/>.



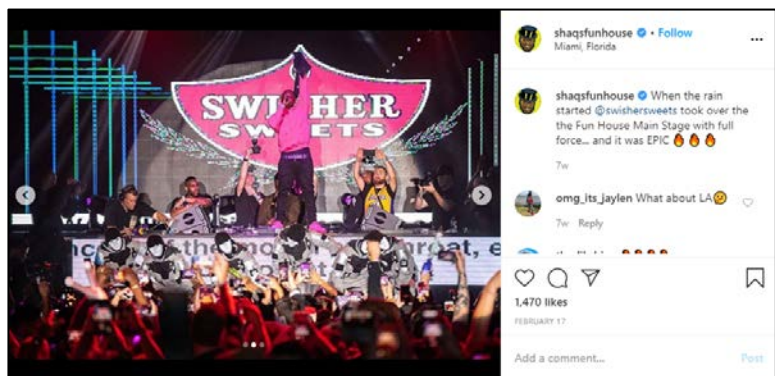
Images courtesy of Rutgers University Center for Tobacco Studies.

Paid Sponsorships and Endorsements



February 2, 2020,
<https://www.instagram.com/p/B8EuyKhAhGu/>

Swisher Sweets sponsored Shaq's Fun House concert series in 2020. Swisher posted images from concerts on its Instagram account and Shaq's Fun House also posted and tagged Swisher Sweets on its own Instagram account.



February 17, 2020, <https://www.instagram.com/p/B8rct2ngcto/>



June 22, 2019, <https://www.instagram.com/p/BzBG8ulgof7/>

Shaquille O'Neal had been invited to Swisher Sweet's Yacht Party to launch the limited edition Summer Twist flavored cigar in 2019. Other celebrities and influencers also attended.

Paid Sponsorships and Endorsements



Backwoods Instagram post,
August 20, 2018,
[https://www.instagram.com/p/Bmq5o3egBhu/?taken-by=backwoods cigars](https://www.instagram.com/p/Bmq5o3egBhu/?taken-by=backwoods%20cigars).



July 24, 2017
[https://www.instagram.com/p/BW8MSkIgh_k/?taken-by=dutchmasterscigars.](https://www.instagram.com/p/BW8MSkIgh_k/?taken-by=dutchmasterscigars)



September 18, 2019, <https://www.instagram.com/p/B2kTEHxnr5y/>

Paid Sponsorships and Endorsements



Image taken from Cignature website, <https://smokecignature.com/collections/cigars>, accessed June 12, 2023.



Swisher Sweets gives its 2019 Spark Award to Cardi B. April 13, 2019, <https://www.instagram.com/p/BwLuPG0ht5N/>

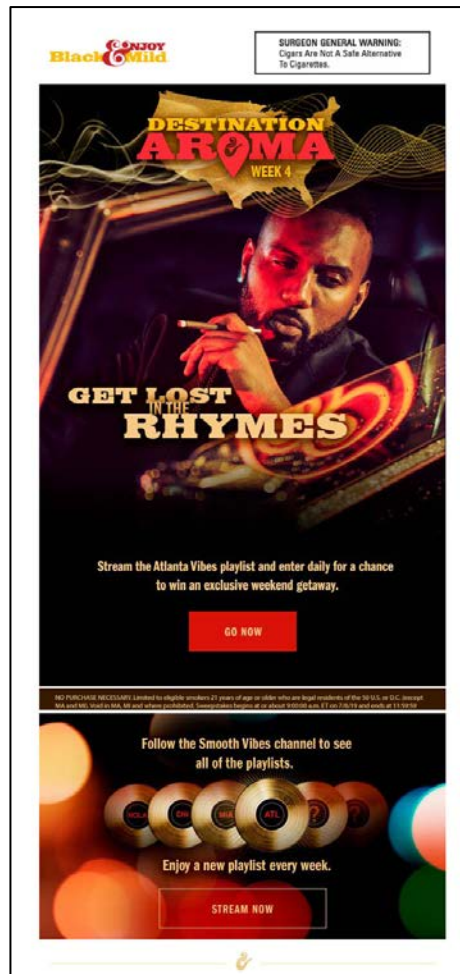
Direct-to-Consumer Communications and Coupons



Direct mail from 2019.



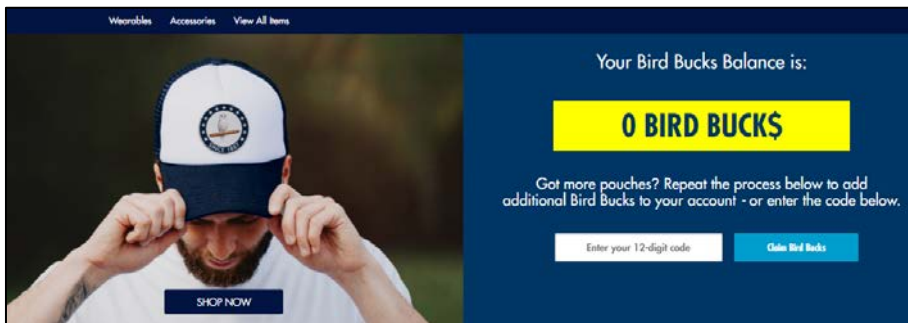
Direct mail from 2017.



Email from 2019.

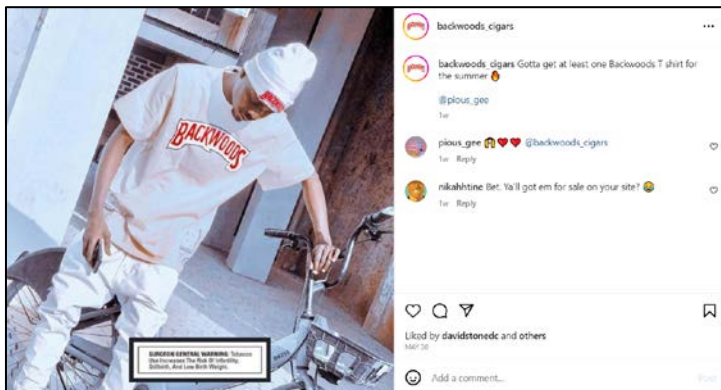
Images courtesy of Trinkets & Trash, <http://www.trinketsandtrash.org/index.php>.

Branded Merchandise and Rewards Programs

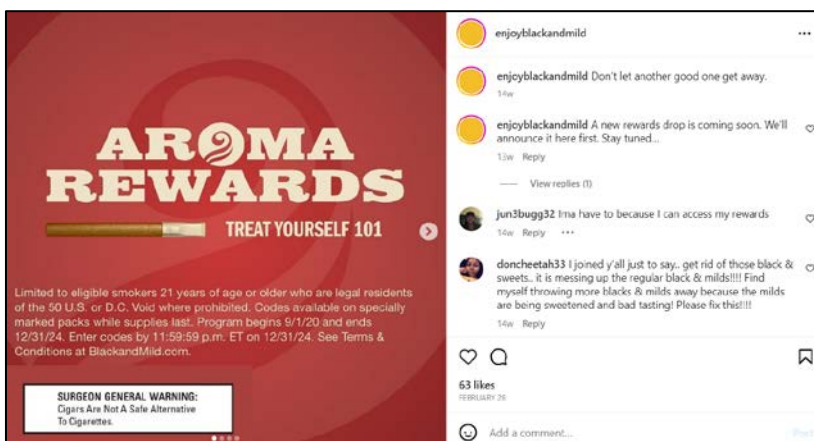


| BIRD BUCKS SWAG | | | |
|------------------------|----|---------------------|-----|
| Key Chain | 8 | Trucker Hat | 50 |
| Tray | 12 | Acid Wash T-Shirt | 60 |
| Shot Glasses | 20 | Slides | 120 |
| Socks | 24 | Owl Logo Hoodie | 128 |
| Tumbler Cup | 30 | Cropped Logo Hoodie | 132 |
| White Owl Logo T-Shirt | 40 | Script Logo Hoodie | 144 |
| Patches | 44 | Canvas Jacket | 308 |
| Bucket Hat | 44 | | |

Images taken from the White Owl website, <https://rewards.whiteowlcigar.com/>, accessed January 24, 2022.



May 30, 2023,
<https://www.instagram.com/p/Cs4uAvhrnul/>

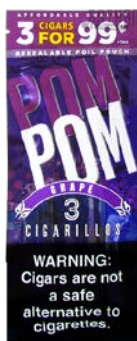


February 28, 2023,
<https://www.instagram.com/p/CpNiQo4sPyetrdxR4zs uLYVMh-NNZjawsVgVww0/>

Pricing and Discounts

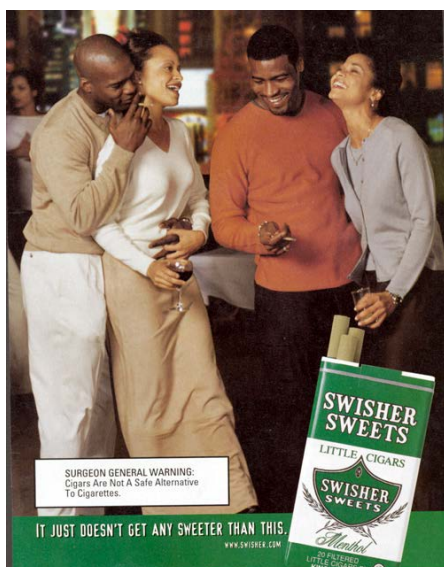


Various pricing options for packages of Swisher Sweets cigars. *Convenience Store News*, June 6, 2018, <https://csnews.com/swisher-sweets-swerve-cigarillos>.



Cheap cigars on display. Franklin, WV, 2017. Image courtesy of CounterTobacco.org, <https://countertobacco.org/>.

Targeting Communities of Color



Sports Illustrated, October 22, 2001, Courtesy of Trinkets & Trash,
<https://www.trinketsandtrash.org/detail.php?artifactid=4716>

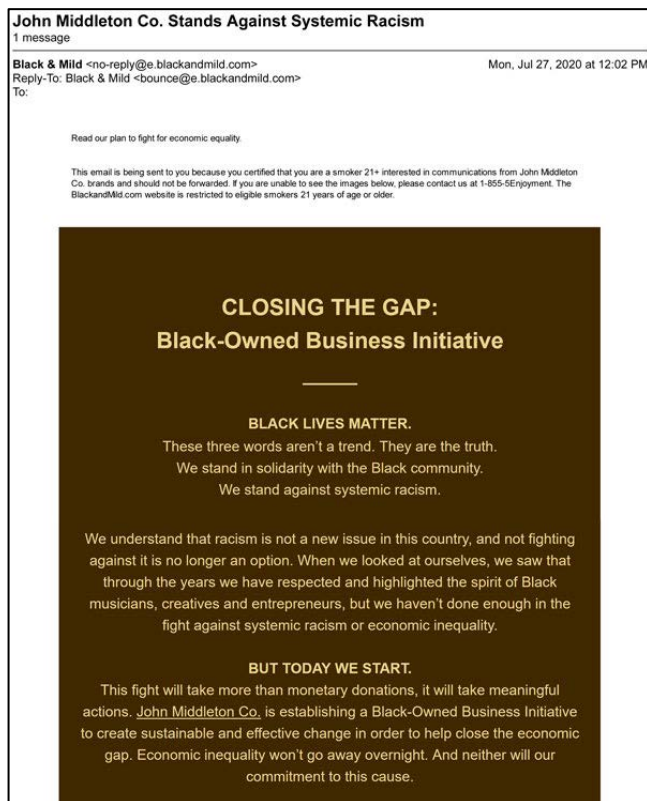


Swisher Sweets Instagram, April 28, 2020,
https://www.instagram.com/p/B_ilz9eIP75/.

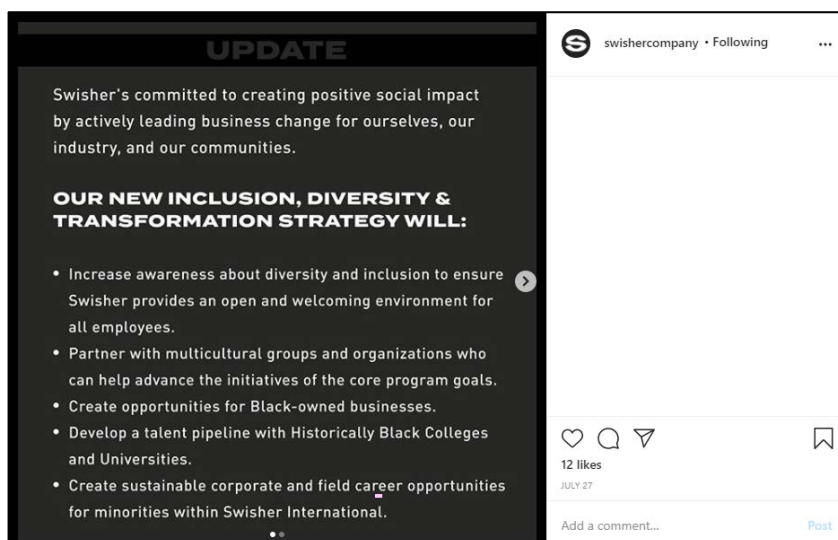


An artist sponsored by Backwoods posting about an event on their own social media account. Real_keewi Instagram, September 27, 2019,
https://www.instagram.com/p/B_26KCLMAsw8/

Targeting Communities of Color: Generating positive corporate images



Email from John Middleton about its new Black-Owned Business Initiative, July 27, 2020.



Swisher announcing its new "Inclusion, Diversity, and Transformation Strategy," May 27, 2020, <https://www.instagram.com/p/CDJgmkenHCF/>

Industry Opposition to Bans or Restrictions on Flavored Cigars



Swisher soliciting opposition to the FDA's proposed ban on flavored cigars. Swisher Instagram Stories, June 2022.