HENRY A. WAXMAN, CALIFORNIA
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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

October 2, 2009

Mr. Mark Cassar
President and CEO
Kretek International
5449 Endeavour Court
Moorpark, CA 93021

Dear Mr. Cassar:

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the marketing and sale of tobacco products to children. On September 22, 2009, the U.S. Food and Drug Administration banned the sale of flavored cigarettes, including those flavored with clove. The FDA took this action under the authority of the Family Smoking Prevention and Tobacco Control Act, a law that originated within this Committee.

Recent press accounts have reported that that your company is attempting to circumvent this ban by repackaging flavored cigarettes as filtered cigars that share a similar appearance and size.[1] According to these press accounts, Kretek's flavored cigars appear no different than flavored cigarettes outside of minor cosmetic differences and altered packaging.

According to another news article, a Kretek spokesman stated, "We have made every effort to meet the letter and spirit of the law, and to ensure that these products are displayed in the cigar section of the tobacco counter. The Djarum product is clearly labeled as a cigar in at least seven places on the pack, in addition to clear merchandising messaging."[2]

The Family Smoking Prevention and Tobacco Control Act defines a cigarette as a product that:

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[1] "Importer tries to get around clove smoke ban." National Public Radio (Sept. 7, 2009) (online at http://www.npr.org/templates/story/story.php?storyId=112617160).

[2] "Kretek International Sues FDA on Flavored Cigar Issue." Convenience Store Decisions (Sept. 23, 2009) (online at http://www.csdecisions.com/news/7946/kretek-international-sues-fda-on-flavored-cigar-issue.html) .

meets the definition of the term 'cigarette' in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.[3]

The Federal Cigarette Labeling and Advertising Act defines cigarettes as:

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).[4]

We are investigating the allegations that Kretek's flavored cigars are no different than flavored cigarettes and are merely an attempt to circumvent the recent FDA regulatory action by continuing to market tobacco products that appeal to children. To assist us in our investigation, we ask that you provide the following documents and information to the Committee, from January 1, 2004 to the present:

1. Kretek's official corporate definition of flavored cigars and flavored cigarettes and, if none exists, a written explanation of how Kretek's flavored cigars differ from flavored cigarettes;

2. A written explanation supporting Kretek's position that its flavored cigars cannot be regulated as cigarettes under federal law;

3. All internal and external communications related to Kretek's decision to market flavored cigars;

4. All marketing materials related to Kretek's flavored cigars, including (a) all advertisements for Kretek's flavored cigars and a schedule of publications in which they have appeared to date, and (b) the marketing budget for Kretek's flavored cigars for calendar 2009 to date;

5. All marketing or consumer research related to Kretek's flavored cigars, including, but not limited to, research related to the age of consumers of flavored tobacco;

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[3] 21 U.S.C. § 387.

[4] 15 U.S.C. § 1332.

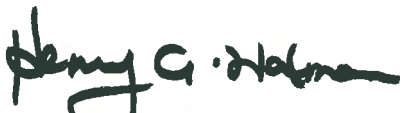
6. All corporate policies and actions by Kretek to ensure that its flavored cigars are not consumed by minors. Please include a detailed description of all costs Kretek has incurred to implement these policies and actions;

7. A detailed break-down of all Kretek's sales of flavored cigars in comparison to your other non-flavored tobacco products, including total sales, monthly sales, sales per distributor, and sales per retailer.

Please produce the requested information by October 16, 2009. In addition, please inform Committee staff by October 9, 2009, as to whether you will provide the requested information voluntarily.

An attachment to this letter provides additional information on how to respond to Committee requests. If you have questions regarding this request, please contact David Leviss or Paul Jung of the Committee staff at (202) 226-2424.

Sincerely,



Henry A. Waxman
Chairman

Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Enclosure

cc: The Honorable Joe Barton
Ranking Member

The Honorable Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations