



NATIONAL CENTER FOR TOBACCO-FREE KIDS

August 1, 2000

The Honorable Robert Pitofsky
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Pitofsky:

The National Center for Tobacco-Free Kids and its partners urges the Federal Trade Commission (FTC) to take actions against the RJ Reynolds Tobacco Company (RJRTC) pursuant to section 5 of the Federal Trade Commission Act (15 U.S.C. 45) concerning RJRTC's advertising for its Eclipse product.

This advertising contains a series of statements making claims that are not substantiated and that are likely to mislead consumers acting reasonably under the circumstances into believing that Eclipse presents diminished health risks. The advertisements falsely and misleadingly imply that the Eclipse product is safer than traditional tobacco products. However, RJRTC has not substantiated and cannot substantiate any claims that Eclipse presents less health risk or does not lead to increased use of tobacco products.

As the enclosed letter from the Society for Research on Nicotine and Tobacco (SRNT) demonstrates, there are insufficient and conflicting scientific data relating to RJRTC's claims about Eclipse, and there is a grave likelihood that consumers will rely to their detriment on these claims. It is essential that the FTC act now to review RJRTC's advertising claims and marketing practices before the product is marketed nationwide and/or seek a temporary or permanent injunction pursuant to section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)) to prevent the marketing and promotion of this product if RJRTC's claims are false and misleading.

In the 1989 Report of the Surgeon General on The Health Consequences of Smoking, the Surgeon General reported that there is a clear consensus that consumers have concerns about the health effects of smoking, motivating (for example) the shift towards brands lower in "tar" and/or nicotine yield. For many years, the tobacco industry has recognized that the major benefit of advertising lower yields of certain components would be consumer perceptions of decreased health risks.

RJRTC has introduced its Eclipse product with a press and advertising campaign designed to mislead consumers into falsely believing that Eclipse presents reduced health risks. Statements in this advertising program assert that Eclipse poses, for example, fewer risks of cancer, chronic bronchitis, and emphysema. Consider the following statements drawn from Eclipse's own advertisements:

- Eclipse may present less risk of cancer.
- Eclipse produces less inflammation in the respiratory system, which suggests a lower level of chronic bronchitis, and possibly even emphysema.
- Eclipse reduces secondhand smoke by 80%.
- Eclipse reduces carcinogenic compounds.
- Eclipse responds to certain smoking-related illnesses, including cancer.
- Eclipse may pose less risk to smokers of developing cardiovascular disease.

In addition, this advertising campaign claims odor reduction and elimination of visible stains from cigarette smoke on consumer premises. The advertising for Eclipse suggests that the use of this product is easier ("less hassle") and therefore more acceptable than use of other tobacco products. In addition, these claims imply that Eclipse produces reduced level of environmental tobacco smoke. In short, this advertising creates in consumers a false sense of security regarding the use of the Eclipse product around children and other vulnerable groups.

RJRTC has promoted the image that Eclipse is a revolutionary and new product that is vastly different from cigarettes, implying that consumers can use this product free of the concerns and risks traditionally associated with cigarette use. In its own ads, RJRTC is quite direct – it claims this is a "new cigarette that may present less risk". Further, RJRTC-generated contacts with the media led the New York Times to run the headline "A Whole New Cigarette" (April 12, 1996). These efforts deceive consumers into believing that this product is substantially different from, and safer than, traditional cigarettes.

RJRTC's advertising for Eclipse is inconsistent and misleading. On the one hand, RJRTC asserts that Eclipse is not "a cigarette for those who want to avoid the risks of smoking". However, its advertising also claims that Eclipse "is for smokers who have been waiting for a cigarette that responds to certain smoking-related illnesses, including cancer."

Contrary to the deceptive and misleading claims noted above, RJRTC has not substantiated and cannot substantiate that Eclipse minimizes or significantly reduces health risks from tobacco use. RJRTC has not presented and cannot present valid, reliable scientific data to substantiate that its Eclipse product yields fewer of the health risks associated with tobacco products and therefore are a safe alternative to traditional tobacco products.

As has been established previously, an advertisement, series of advertisements, or advertising campaign is deceptive if it/they contain a representation or series of representations or if it/they create an overall impression that is likely to mislead consumers acting reasonably under the circumstances and that representation or series

of representations is material.¹ A representation, omission, or series of representations may be deceptive whether the claims are expressed or implied.² Further, whether an advertisement or series of advertisements makes a particular claim depends upon the net impression created by the interaction of different elements in the advertisement or advertisements, rather than an unduly narrow focus on any individual element in isolation.³

The advertisements for Eclipse create an overwhelming message: Eclipse significantly reduces the risk to health from smoking, both to the user of the cigarettes as well as those around the user. These claims are false, deceptive and misleading. These false, deceptive and misleading statements expressly and impliedly made by RJRTC are material because of consumer concern about the health effects of tobacco use.

As you well know, the FTC is charged by law with taking actions to stop false and deceptive advertising, and this obligation is particularly acute when that advertising affects issues of health and safety. Therefore, RJRTC's advertisements regarding possible health-related effects of its Eclipse product are especially egregious and serious, and justify the FTC's prompt action.

For all of the above-noted reasons, the National Center for Tobacco-Free Kids and its partners urges you to take prompt action (1) utilizing your subpoena and other authority, to require RJRTC to produce all studies, analyses and other materials in its possession regarding Eclipse, both those supporting RJRTC's claims as well as those disproving them; (2) requiring RJRTC to substantiate its claims with regard to Eclipse's health effects; (3) to convene a panel of experts to review whether such substantiation is appropriate for the type of claims made by RJRTC with regard to Eclipse;⁴ (4) to provide for independent testing of Eclipse to ascertain whether the benefits claimed by RJRTC are in fact real; (5) to evaluate the reactions, both quantitative and qualitative, of consumers to claims disseminated in any media by RJRTC about its Eclipse product; (6) if Eclipse is marketed, to require post-market surveillance activities in order to determine characteristics of those individuals who choose to use this product; and (7) to enjoin any further advertising of Eclipse by RJRTC which is false, deceptive and misleading.

Sincerely,

Matthew L. Myers
President

¹ Cliffdale Associates, Inc., 103 F.T.C. 110, 164-165 (1984), appeal dismissed sub. nom., Koven v. F.T.C., No. 84-5337 (11th Cir. 1984).

² Thompson Medical Co., 104 F.T.C. 648, 788-789 (1984), aff'd., 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 107 S. Ct. 1289 (1987).

³ Thompson Medical Co., supra.

⁴ In the early 1980's, the Commission hired three experts to review the evidence concerning Brown & Williamson's Barclay cigarette and its unique filter. The question at that time involved issues of machine technology, analytical chemistry, addiction research, and consumer psychology. A similar procedure could be utilized in this matter. The Commission could get assistance from the Department of Health and Human Services as to the types of experts that would be required.

American Cancer Society
American Heart Association
American Lung Association
American Medical Association
Action on Smoking and Health
African American Tobacco Education Network
American Academy of Otolaryngology, Head & Neck Surgery, Inc.
American Academy of Pediatrics
American College of Cardiology
American College of Preventive Medicine
American Medical Student Association/Foundation
American Medical Women's Association
American Psychological Association
American Public Health Association
American Society of Addiction Medicine
Campaign for Tobacco-Free Kids
General Board of Church & Society of the United Methodist Church
National Association of Local Boards of Health
New Jersey GASP - Group Against Smoking Pollution
Oncology Nursing Society
Partnership for Prevention
Society of Public Health Education

Enclosure