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From: Jack Cannon <jcannon@gate.net>
Certify: N
Subject: 25/MAR/97_Tobacco_Control_E-news_2/2
Date: Wednesday, March 26, 1997 at 6:43:11 am EST
Attached: None

==================== ADVERTISING ISSUES: ====================
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FTC Investigators Urge a Case Against RJR's Joe Camel Ads

Wall Street Journal - Interactive Edition
Wednesday, March 26, 1997
By BRUCE INGERSOLL
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- Federal Trade Commission staff investigators are urging the agency to bring an unfair-advertising case against R.J. Reynolds Tobacco Co., alleging that its colorful Joe Camel campaign targets youngsters.

In a memo, Jodie Bernstein, the FTC's director of consumer protection, recommended going after the nation's No. 2 cigarette maker, citing a vast amount of new evidence about the tobacco industry's advertising tactics that wasn't available in 1994 when the commission voted 3-2 against bringing a case over the Joe Camel character. The memo was sent two weeks ago.

The FTC staff reopened its investigation of the highly successful Joe Camel cartoon ads in the summer after receiving a bipartisan petition from 67 House members, led by Rep. Timothy Roemer.

"The commission is being presented new evidence and will respond to it accordingly," said FTC spokeswoman Victoria Streitfeld. "The company will be given a full opportunity to meet with commissioners before they vote."

Protection Becomes Priority

The vote on the staff recommendation could come within a month or two, and some expect the commission -- now headed by Clinton appointee Robert Pitofsky -- to do an about-face on the Joe Camel ads. The FTC already has evinced a strong interest in protecting youngsters from unfair and deceptive ads by opening an

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investigation of Stroh's beer advertising on television.

"The composition of the new commission is very helpful," said Rep. Roemer, an Indiana Democrat. "And the introduction of new evidence in the last few years will help make the case that Liggett [Group] and other companies have marketed cigarettes to kids."

RJR spokeswoman Peggy Carter said "nothing has changed" in the two years since the FTC voted against bringing a Joe Camel case. "There is no substantive research that indicates anything different," she said.

"They looked at tens of thousands of pages of our documents and concluded there wasn't any evidence to support the allegations about this campaign," she added. "They haven't asked for any new information."

In comments on the FDA regulations last year, RJR and other tobacco companies argued that the FTC vote should have disposed of the Joe Camel matter. But in a June 1994 letter to RJR, the FTC reserved the right to reopen the case, saying that the decision not to take any action shouldn't be construed as "a determination that a violation may not have occurred."

Widening Array of Challenges

An FTC administrative complaint against the RJR Nabisco Holdings Corp. unit would open another front in the tobacco wars, greatly complicating the industry's efforts to fend off a growing array of legal and regulatory challenges.

One of the arguments that the industry advanced against the Food and Drug Administration's regulations to ban tobacco sales to people under 18 and sharply restrict cigarette and chewing-tobacco advertising was that only the FTC is empowered to crack down on unfair and deceptive advertising. Moreover, the FDA has provided the FTC staff with a trove of internal RJR documents and other industry files to buttress any case it might file.

If the FTC decides to move against RJR, it would allege that the Joe Camel ad campaign is unfair because it is likely to "cause substantial consumer injury" that children and teenagers "cannot reasonably avoid," federal trade lawyers said.

Finding Legal Grounds

In an interview earlier this year, Ms. Bernstein, the agency's consumer-protection director, said the grounds for making such a case would be strengthened by the fact that selling tobacco to young people is unlawful in all states. "If it's illegal to sell it, it's unfair to target kids," she said.

Liggett Group's settlement with 22 state attorneys general and numerous plaintiffs' lawyers last week is likely to further strengthen the FTC's enforcement hand. Liggett, a unit of Brooke Group Ltd. and the nation's smallest major cigarette company, agreed to turn over hundreds of internal documents and publicly acknowledge, among other things, that the industry targets underage smokers with its advertising.

In addition, the FTC will have the benefit of all the evidence the FDA accumulated over the past two years, including RJR marketing documents.

The FDA has alleged that the Joe Camel campaign is "the logical outgrowth" of a company policy to develop new brands that would appeal to "presmokers" and "learners" aged 14 to 18.

The Joe Camel cartoon, the FDA said, was the "centerpiece" of a campaign so successful that it quickly boosted the Camel brand's youth market share from less than 4% to at least 13%.

One of the FDA documents now in FTC hands is a 1993 RJR study showing that 86% of all youngsters aged 10 through 17 surveyed recognized Joe Camel, and of that group, 95% knew from billboard and store ads that the cartoon character sold cigarettes. RJR executives have steadfastly denied targeting minors with their ads.

Last year, in commenting on the FDA antismoking regulations, the FTC emphasized that the 1994 decision to drop the Joe Camel case doesn't "mean that cigarette and smokeless-tobacco advertising, in the aggregate, is not one of a number of factors that plays an important role in a youth's decision to use tobacco."

YOUTH ISSUES:

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Joe Camel/Ads

FTC news

Federal Trade Commission Washington, D.C. 20580 (202) 326-2180

FOR RELEASE: MAY 28, 1997

JOE CAMEL ADVERTISING CAMPAIGN VIOLATES FEDERAL LAW, FTC SAYS

Agency Charges R.J. Reynolds With Causing Substantial Injury to the Health and Safety of Children and Adolescents Under 18

The Joe Camel advertising campaign violates federal law, the Federal Trade Commission charged today. The campaign, which the FTC alleges was successful in appealing to many children and adolescents under 18, induced many young people to begin smoking or to continue smoking cigarettes and as a result caused significant injury to their health and safety. The FTC charged that R.J. Reynolds Tobacco Company, the seller of Camel cigarettes, promoted an addictive and dangerous product through a campaign that was attractive to those too young to purchase cigarettes legally. In fact, the FTC said, after the campaign began the percentage of kids who smoked Camels became larger than the percentage of adults who smoked Camels. The agency is seeking an order that would bar Reynolds from using the Joe Camel campaign to advertise to kids and would require the company to conduct a public education campaign discouraging young people from smoking. The Commission also may order further relief, such as corrective advertising or other affirmative disclosures, after the trial on the case has concluded.

"Consumers who smoke cigarettes risk addiction and long term health problems including cancer and heart disease," said Jodie Bernstein, Director of the FTC's Bureau of Consumer Protection, "and the earlier they begin smoking the greater the risk. That is why it is illegal to sell cigarettes to anyone under the age of 18.

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"R.J. Reynolds has conducted one of the most effective advertising campaigns in decades. Joe Camel has become as recognizable to kids as Mickey Mouse. Yet the campaign promotes a product that causes serious injury, addiction and death. It appeals to our young people. It is illegal and should be stopped. Joe Camel must grow up or go away."

R.J. Reynolds Tobacco Company is based in Winston-Salem, North Carolina.

According to the FTC complaint detailing the charges in this case, by 1984 some Reynolds employees identified the need to attract younger smokers, including "first usual brand" smokers. Beginning in 1987, ads and promotions for Reynolds Camel brand cigarettes had as their central theme a cartoon camel sometimes referred to as "Old Joe," "Smooth Character" or "Joe Camel." The purpose of the Joe Camel campaign, the FTC alleged, was to reposition the Camel brand to make it attractive to younger smokers. In fact, according to the complaint, the Joe Camel campaign was successful in appealing to many children and adolescents under the age of 18 and induced many of these underage consumers to smoke Camel cigarettes or increased the risk that they would do so. For many of these children and adolescents, the decision to smoke Camel cigarettes was a decision to begin smoking; for others, it was a decision to continue smoking. The young smokers' health is at risk because cigarettes have the potential to cause numerous diseases and other adverse health effects. According to the complaint, the alleged injury was neither reasonably avoidable (given the inability of children to comprehend adequately the long-term, chronic health consequences of smoking) nor outweighed by countervailing benefits.

The complaint also alleges that Reynolds knew or should have known that the Joe Camel campaign would have a substantial appeal to children and adolescents below 18, as well as to smokers over 18; or that most smokers initiate smoking and become regular smokers before the age of 18 and that by targeting "first usual brand" smokers, the Joe Camel campaign would cause many children and adolescents to smoke Camel cigarettes.

The FTC's complaint challenges the Joe Camel campaign as an unfair practice under Section 5 of the Federal Trade Commission Act. In order to uphold the charges before an administrative judge, the FTC must provide evidence to support a determination that the law has been violated.

On July 30, 1996, the Commission received a letter and petition from Congressman Tim Roemer and 65 members of the U.S. House of Representatives requesting the Commission reopen a prior investigation of the Joe Camel campaign. In a letter dated April 9, 1997, Senator Frank R. Lautenberg and six U.S. Senators made a similar request. In 1994, the Commission had concluded that there was not sufficient evidence to issue a complaint. The petition from the Members of Congress requested that the Commission reexamine that decision.

Following the administrative trial, the FTC is seeking an order that would prohibit Reynolds from advertising to children its Camel brand cigarettes through the use of images or themes relating or referring to Old Joe, Smooth Character or Joe Camel. Reynolds also would have to conduct a public education campaign discouraging youth from smoking. In addition, the company would be required to make available to the FTC for inspection competent and reliable data concerning sales of each brand of Reynolds cigarettes to any person under the age of 18, and each brand's share of smokers under the age of 18. The Commission also may order further relief, such as corrective advertising or other affirmative disclosures, after the trial on the case has concluded.

The Commission vote to issue the complaint and proposed order was 3-2 with Commissioners Mary L. Azcuenaga and Roscoe B. Starek, III dissenting. Commissioner Azcuenaga's dissenting statement said in part, "The actions alleged in the complaint are serious, and intuition suggests reason to believe they are true. Intuition alone, however, is not a sufficient basis for issuing a complaint under the statute. The Commission is an agency of limited jurisdiction and is authorized to bring a case only if certain elements of the law are satisfied. Not having found reason to believe that the evidence supports each of those elements, I must dissent.

"I have carefully considered the totality of the available evidence, including new material that has been presented to the Commission, and have concluded that the new information does not strengthen the case the Commission rejected in 1994."

In his dissenting statement Commissioner Starek said, "I am very concerned about the harm that cigarette smoking poses to children, but I also take seriously the statutory limits on the Commission's authority to pursue enforcement actions against allegedly unfair practices. The evidence before us now, including the evidence obtained since the Commission considered this matter in 1994, does not convince me that there is reason to believe that the law has been violated. The issue in this case is whether the Joe Camel advertising campaign causes or is likely to cause children to begin or to continue smoking. As was true three years ago, intuition and concern for children's health are not the equivalent of – and should not be substituted for – evidence sufficient to find reason to believe that there is a likely causal connection between the Joe Camel advertising campaign and smoking by children.

Starek continued, "Moreover, it simply is not in the public interest to bring this case now. Before committing a vast amount of scarce agency resources to this litigation, the Commission should await the resolution of the appeal of the federal district court decision striking down the Food and Drug Administration's tobacco advertising restrictions and the outcome of widely-reported settlement discussions between tobacco companies and numerous states. Either of these developments might result in advertising restraints that would largely duplicate any remedies the Commission might obtain."

(Joe Camel--05/28/97)

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. The complaint marks the beginning of a proceeding in which the allegations will be ruled upon after a formal hearing.

Copies of the complaint and proposed order are available from the FTC's web site at *http://www.ftc.gov* and also from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710. FTC news releases and other materials also are available on the Internet at the FTC's web site.

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(FTC File No. (P884517)
(Joe Camel)

B219940

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of R.J. REYNOLDS TOBACCO COMPANY, a corporation.	)	DOCKET NO. 9285

COMPLAINT

The Federal Trade Commission, having reason to believe that R.J. Reynolds Tobacco Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent R.J. Reynolds Tobacco Company is a New Jersey corporation, with its office and principal place of business located at 401 North Main Street, P.O.B. 2959 Winston-Salem, North Carolina 27102.

2. Respondent has advertised, promoted, offered for sale, sold, and distributed cigarettes and other tobacco products.

3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Beginning sometime before 1987, Reynolds identified the need to attract "first usual brand" and/or "presmokers" and/or "learning" smokers to its brands in order to maintain or increase its market share. By 1984, some Reynolds employees recommended that the company establish a formal program to attract "first usual brand" smokers.

5. Beginning in or around 1987, respondent disseminated or caused to be disseminated advertisements and promotions for its Camel brand cigarettes, including, but not necessarily limited to, the attached Exhibits A through F. The ads and promotions have as their central theme a cartoon camel sometimes referred to as "Old Joe," "Smooth Character" or as "Joe Camel" (hereinafter "Joe Camel"), and other similar cartoon characters.

6. The purpose of the Joe Camel campaign was to reposition the Camel brand to make it attractive to younger smokers. At least one of the targets of the campaign was "first usual brand" smokers.

7. The Joe Camel campaign was successful in repositioning the Camel brand to make it attractive to younger smokers. In fact, the campaign was successful in appealing to many children and adolescents under the age of 18, or under the age at which cigarettes may lawfully be sold to consumers.

8. The Joe Camel campaign induced many of these children and adolescents under the age of 18 to smoke Camel cigarettes or increased the risk that they would do so. For many of these children and adolescents, the decision to smoke Camel cigarettes was a decision to begin smoking; for others, the decision to smoke Camel cigarettes was a decision to continue smoking. As a result, the Joe Camel campaign caused or was likely to have caused these children and adolescents to initiate or continue smoking cigarettes.

9. In fact, after the initiation of the Joe Camel campaign, the percentage of smokers under the age of 18 who smoked Camel cigarettes became larger than the percentage of all adult smokers aged 18 and older who smoked Camel cigarettes.

10. Reynolds knew or should have known:

a. that because of the themes and techniques it used in the Joe Camel advertising and promotional campaign, that campaign would have a substantial appeal to children and adolescents below the age of 18, as well as to smokers over the age of 18; or

b. that many smokers initiate smoking and become regular smokers before the age of 18, and that by targeting "first usual brand" and/or "presmokers" and/or "learning" smokers, the Joe Camel campaign would cause many children and adolescents below the age of 18 to smoke Camel cigarettes.

11. Consumers who smoke cigarettes risk addiction (i.e., nicotine dependency) and a number of immediate and long term adverse health effects including, but not limited to, coronary heart disease, lung and laryngeal cancer, oral cancer, esophageal cancer, chronic obstructive pulmonary disease, and low-birth-weight babies.

12. Many children and adolescents do not adequately comprehend the nature of the risk or the seriousness of nicotine addiction, or the other dangerous health effects of smoking cigarettes.

13. R.J. Reynolds' actions, as set forth in Paragraphs 4, 5, 7, 8, 9 and 10 have caused or were likely to cause substantial and ongoing injury to the health and safety of children and adolescents under the age of 18 that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers.

14. Since at least 1988, most states and the District of Columbia have enacted laws that make it illegal to sell cigarettes to persons under the age of 18, in order to protect children and adolescents from the significant adverse consequences of cigarette smoking. In 1992, Congress passed a federal statute that provided that, as a condition of receiving grant funds for substance abuse programs, states must enact and enforce laws prohibiting the sale or distribution of tobacco products to persons under the age of 18.

15. The acts and practices of respondent as alleged in this complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

NOTICE

Notice is hereby given to the respondent hereinbefore named that the twenty-fourth day of June, 1997, at 10:00 a.m. o'clock, or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and the Federal Trade Commission Offices, 6th Street & Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of this complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from the record developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the public, the Commission may order such other relief as it finds necessary or appropriate, including corrective advertising or affirmative disclosure.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in § 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for relief provided for in § 19(b) on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

I.

IT IS ORDERED that respondent, R.J. Reynolds Tobacco Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Camel brand cigarettes in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising to children its Camel brand cigarettes through the use of the images or themes relating or referring to Old Joe, Smooth Character or Joe Camel and/or any companion figure or illustration associated with, used in conjunction with or resembling the Joe Camel figure.

II.

IT IS FURTHER ORDERED that respondent, or its successors and assigns, shall collect, maintain and make available to the Federal Trade Commission for inspection and copying competent and reliable data concerning sales of each brand of its cigarettes to persons under the age of 18, and each brand's share of smokers under the age of 18.

III.

IT IS FURTHER ORDERED that respondent, or its successors and assigns, shall, for a period of ten (10) years from the date of entry of this Order disseminate public education messages discouraging persons under the age of 18 from smoking.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, respondent R.J. Reynolds Tobacco Company shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this Order

V.

IT IS FURTHER ORDERED that respondent R.J. Reynolds Tobacco Company shall:

A. Within thirty (30) days of service of this Order, provide a copy of this Order to each of its current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of entry of this Order, provide a copy of this Order to each of its principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with it or any subsidiary, successor, or assign, within three (3) business days after the person assumes his or her position.

VI.

IT IS FURTHER ORDERED that respondent R.J. Reynolds Tobacco Company shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C this twenty-eighth day of May, 1997.

By the Commission, Commissioner Azcuenaga and Commissioner Starek dissenting.

Donald S. Clark

Donald S. Clark
Secretary

SEAL