Prepared Statement of
The Federal Trade Commission

Before the

Committee on Government Reform
United States House of Representatives

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Mr. Chairman and members of the Committee, I am Lee Peeler, Deputy Director of the Federal Trade Commission's ("Commission" or "FTC") Bureau of Consumer Protection. The Commission is pleased to have this opporto( )13(o [(M)24(r))3(on")-1( )1

practices. For example, in 1983, the Commission sued the Brown &Williamson Tobacco Corporation over ads that continued to describe Barclay as a 1 mg. of tar brand, even though the Commission had revoked Barclay's 1 mg. rating because the cigarette's unusual design prevented the cigarette test method from measuring Barclay's yields on a basis comparable to other cigarettes.[10] Moreover, in 1997, the Commission issued a complaint against the R.J. Reynolds Tobacco Co. alleging that the company's Joe Camel advertising campaign caused or was likely to cause many young people to begin or continue to smoke, thereby exposing them to significant health risks.[11] In 1999 and 2000, the Commission entered into consent agreements with several cigarette manufacturers, resolving charges that their advertisements implied that their "no additive" cigarettes were safer than otherwise comparable cigarettes because they did not contain additives.[12] In 2000, the Commission also entered into a consent agreement with a company claiming reduced health risks for its herbal cigarettes.[13]

Testing for the tar and nicotine yields of cigarettes is also conducted by the tobacco industry under a methodology adopted by the Commission in 1967. For the past several years, the FTC has also actively sought the views of the Federal government's public health agencies about what changes should be made in that methodology.[14] The agency has also recommended to Congress that authority for cigarette testing be given to one of the government's science-based public health agencies[15] and we renew that recommendation h.non h. 4ue9(t)2(hat)2()]TJ 0 Tc 0 Tw (-)Tj 0.004 Tcne

In examining a harm reduction claim, the first question that the Commission would address is what messages consumers take away from the advertising in question. Taking into account the full context of the advertising in which the claim appears,[16] the Commission would seek to identify the range of messages - both express and implied - that consumers would take from the advertisement. These would include: (1) whether claims about a reduction in carcinogens and toxins in the product conveys risk reduction messages; and (2) whether consumers might take away from a harm reduction representation the message that a product containing known carcinogens was not just safer than cigarettes, but that it poses no risk or only a minimal risk.

Once the Commission has determined what messages consumers take away from a particular ad, the next issue is whether those claims are truthful and substantiated. The FTC Act requires that objective claims about products and services be substantiated before the ad is disseminated. When the advertisement does not claim to have a specific level of substantiation supporting its claims, the Commission determines what constitutes a reasonable basis for those claims by analyzing the so-called "Pfizer factors": the type of claim; the benefits if the claim is true; the consequences if the claim is false; the ease and cost of developing substantiation for the claim; the type of product; and the level of substantiation experts in the field would agree is reasonable. *Pfizer, Inc.*, 81 F.T.C. 23 (1972). In the context of safety claims, the FTC has typically required a substantiation standard of "competent and reliable scientific evidence."

Analyzing the evidence whether any particular tobacco product is safer than traditional cigarettes, or whether a reduction in exposure to known carcinogens is associated with reduced health risks, requires expertise in biology, chemistry, toxicology, and epidemiology, among other fields. Moreover, the scientific issues raised by purported reduced risk products are often not only extremely complex, but may take years to develop.[17] The Commission brings a unique market-based expertise to its scrutiny of consumer protection matters and our work often requires review and analysis of scientific literature. Because the Commission is an agency of lawyers and economists, however, and not a science-based agency, we rely on assistance from other experts in evaluating scientific evidence.[18] Just as the Commission has requested the assistance of the Department of Health and Human Services in connection with the test method that produces cigarette tar and nicotine ratings, the Commission would require similar assistance in evaluating the substantiation for advertising claims made for reduced-risk tobacco products.

Finally, although a determination that an individual risk reduction claim is truthful and substantiated would end the Commission's deception inquiry, broader public health issues may remain.[19] For example, some commenters on the USST petition focused on the overall impact on public health from the marketing of these products; these comments argued that smokeless tobacco promoted as a reduced risk product might degrade overall public health, depending on how consumers react.[20] Similarly, some commenters questioned whether such advertising and promotion might promote more widespread use of smokeless tobacco, rather than just as a replacement for smoking.[21] Others, however, believe that notwithstanding this empirical question, the potential harm to public health is not clear enough to justify depriving individuals of information they might use to reduce risks to their own health.[22] This debate on the public health effects of these alternative tobacco products is an important one the appropriate science-based agencies of the government need to address.

Health claims in advertising, including tobacco advertising, are of particular importance to the Commission. The Commission welcomes the Committee's interest in the role that this agency will play in ensuring that the marketplace works efficiently to provide consumers with information that may enable them to reduce their risks of smoking-related disease, while protecting them from claims that are not supported by sound scientific evidence. The agency is committed to reviewing advertising for potential reduced risk tobacco products on a case-by-case basis to try to ensure that the information consumers receive about reduced risk products is truthful and non-misleading.

Conclusion

The Commission thanks this Committee for focusing attention on this important and evolving public health issue, and for giving us an opportunity to present our views.

Endnotes:

1. The written statement presents the views of the Federal Trade Commission. Oral testimony and responses to questions reflect my views and do not necessarily reflect the views of the Commission or any Commissioner.

2. *See, e.g., Julep Tobacco Co.*, 27 F.T.C. 1637 (1938) (stipulation prohibiting claims that Julep cigarettes help counteract throat irritations due to heavy smoking and never make the throat dry or parched).

3. *See*