

**Prepared Statement of
The Federal Trade Commission**

Before the

**Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
United States House of Representatives**

Washington, D.C.

June 3, 2003

Mr. Chairman and members of the Committee, I am Timothy J. Muris, Chairman of the Federal Trade Commission ("Commission" or "FTC"). The Commission is pleased to have this opportunity to provide information concerning the potential advertising of reduced risk tobacco products.⁽¹⁾ This statement discusses the Commission's mission, our activities in the tobacco area, and then addresses the process the Commission would use in examining the advertising of these products.

FTC Jurisdiction Over Tobacco Advertising and Marketing

The FTC's mission is to prevent unfair competition and unfair or deceptive acts or practices in the marketplace. The Commission regulates national advertising, including the advertising and promotion of cigarettes, smokeless tobacco, and other tobacco products, pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits "unfair or deceptive acts or practices in or affecting commerce." The Commission's activities promote informed consumer choice.

The FTC's law enforcement activities involving tobacco advertising and promotion date back to the 1930s.⁽²⁾ In 1962, the FTC's request for technical guidance from the U.S. Public Health Service was among the factors that led the then-Surgeon General of the United States to establish an advisory panel to undertake a comprehensive analysis of the data on smoking and health. The work of the advisory panel, in turn, led to the historic 1964 Report of the Surgeon General finding that cigarette smoking presented significant health risks. In that same year, the Commission issued a

has taken a number of law enforcement actions against unfair or deceptive tobacco advertising and promotional 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 here.

"Reduced Risk" Tobacco Claims

As with other products, the Commission's primary role for tobacco products is to ensure that products are marketed in a manner that is truthful, not misleading, and adequately substantiated. The Commission does not pre-screen advertising claims for tobacco products.⁽¹⁶⁾ The Commission's primary role for tobacco products is to ensure that products are marketed in a manner that is truthful, not misleading, and adequately substantiated. The Commission does not pre-screen advertising claims for tobacco products.⁽¹⁶⁾

3. See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324, 8354 (1964).

4. Pub. L. No. 89-92, 79 Stat. 282 (1965), as amended by Pub. L. No. 98-474, 98 Stat. 2204 (1984), and by Pub. L. No. 99-92, § 11, 99 Stat. 393, 402-04 (1985), current version at 15 U.S.C. § 1331 (1994).

5. See *Lorillard et al.*, 80 F.T.C. 455, 460-65 (1972) (consent orders). Under the orders entered into with six tobacco manufacturers, the companies were required to disclose the Surgeon General's warning in identified forms of advertising. The consent orders were modified in 1981, when the Commission sought civil penalties in federal district court against each of the cigarette companies for failure to comply with the 1972 orders. See *United States v. Lorillard*, No. 76-Civ. 814 (JMC) (S.D.N.Y. July 13, 1981).

In 1982, the Bureau of Consumer Protection notified the House Committee on Energy and Commerce that the staff supported a new system of rotational health warnings. Letter from Timothy J. Muris, Director, Bureau of Consumer Protection, *Federal Trade Commission*, to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, *U.S. House of Representatives* (Sept. 1, 1982). In May 1984, the Commission sent letters to Congress

