

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

HOWARD A. ENGLE, M.D., et al.

Plaintiff,

v.

CASE NO: 94-08273 CA22

R. J. REYNOLDS TOBACCO CO., et al.,

JURY DEMAND

Defendants.

COMPLAINT FOR DAMAGES BY INTERVENOR
GLORIA TUCKER, PERSONAL REPRESENTATIVE OF
THE ESTATES OF DOROTHY OLIVER AND ANNIE MAE SWAIN

Plaintiff, Gloria Tucker, as personal representative of the Estates of Dorothy Oliver and Annie Mae Swain, and for the use and benefit of herself, Gloria Tucker and any all survivors who may claim damages by and through the estates, hereby sues for an amount in excess of one billion dollars (\$1,000,000,000) the Defendants: Philip Morris, Inc. (Philip Morris U.S.A.); Lorillard Tobacco Company; Lorillard, Inc.; R. J. Reynolds Tobacco Company, individually and as successor by merger to Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company; Liggett Group, LLC (f/k/a Liggett Group, Inc., f/k/a Brooke Group, Ltd., Inc., f/k/a Liggett & Myers Tobacco Company) (“Liggett”); Vector Group, Ltd., Inc., (f/k/a Brooke Group, Ltd., Inc.) (“Vector”); Liggett, Brooke Group, Ltd., Inc., (“BGL”) and Brooke Group Holding, Inc., (“BGH”); The Council for Tobacco Research-U.S.A., Inc., (the “Council”); and the Tobacco Institute, Inc., (the “Institute”), and alleges as follows:

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JURISDICTIONAL ALLEGATIONS

1. This is an action for damages in excess on \$1,000,000,000, which exceeds the minimum jurisdictional amount of this court.

2. The Plaintiff, on behalf of the Estates of Dorothy Oliver and Annie Mae Swain, is a member of the currently decertified class defined in *Engle v. R. J. Reynolds Tobacco Company, et al.*, Case Number 94-08273-CA22 in this court, as further defined in the opinion of the Supreme Court of Florida in *Engle v. Liggett Group, Inc.*, 954 So.2d 1246 (Fla. Dec. 21, 2007) (“*Engle*”).

3. The Plaintiff, on behalf of the Estates of Dorothy Oliver and Annie Mae Swain, is bringing this action as a former member of the *Engle* class, relying on the Phase I *Engle* findings as *res judicata* as authorized by the *Engle* opinion.

THE PLAINTIFFS

4. The Plaintiff is the personal representative of the Estates of Dorothy Oliver, her mother, who died on November 29, 2000, and of Annie Mae Swain, her grandmother, who died on July 5, 1994. She has been duly appointed by this court as the personal representatives of their Estates, respectively. Dorothy Oliver and Annie Mae Swain have no surviving spouses. Plaintiff brings this claim under the Florida Wrongful Death Act, §768.16 - 768.27, Fla. Stat. At all times relevant hereto Gloria Tucker and the decedents Dorothy Oliver and Annie Mae Swain were African Americans, citizens of the State of Florida and residents of Broward County.

THE DEFENDANTS

5. Defendant, Philip Morris, Inc. (Philip Morris U.S.A.), is a Virginia corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action. Defendant, Philip Morris, Inc. (Philip Morris U.S.A.), was and remains a Defendant in the *Engle* class action.

6. Defendant, Lorillard Tobacco Company, is a Delaware corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action. Defendant, Lorillard Tobacco Company, was and remains a Defendant in the *Engle* class action.

7. Defendant, Lorillard, Inc., is a New York corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action. Defendant, Lorillard, Inc., was and remains a Defendant in the *Engle* class action.

8. Defendant, R. J. Reynolds Tobacco Company (“RJR”), individually and as successor by merger to Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company, is a New Jersey corporation that conducts business in the State of Florida, including Miami-Dade County, and did so during all times relevant to this action. Defendant, RJR, individually and as successor by merger to Brown & Williamson Tobacco Corporation, individually and as successor by merger to the American Tobacco Company, was and remains a Defendant in the *Engle* class action.

9. Defendant, Liggett Group, LLC (f/k/a Liggett Group, Inc., f/k/a Brooke Group, Ltd., Inc., f/k/a Liggett & Myers Tobacco Company) (“Liggett”), is a Delaware corporation that conducts business in

the State of Florida, including Miami-Dade County, and did so during all times relevant to this action. Defendant, Liggett, (f/k/a Liggett Group, Inc., f/k/a Brooke Group, Ltd., Inc., f/k/a Liggett & Myers Tobacco Company), was and remains a Defendant in the *Engle* class action.

10. Defendant, Vector Group, Ltd., Inc., (f/k/a Brooke Group, Ltd., Inc.) (“Vector”) is a Delaware corporation that conducts business in the State of Florida and has its principal place of business in Miami, Miami-Dade County, Florida, making it a Florida citizen.

11. Defendants, Council for Tobacco Research-U.S.A., Inc., (the “Council”) and the Tobacco Institute, Inc., (the “Institute”), at all times relevant to this action, were involved in promotion, lobbying, medical research, legislative and political activities or related ventures, in connection with an on behalf of the Defendants throughout Florida and the United States to increase the sale of cigarettes. Defendants, Council and Institute, were and remain Defendants in the *Engle* class action.

12. Liggett, Brooke Group, Ltd., Inc., (“BGL”) and Brooke Group Holding, Inc., (“BGH”) were Defendants in the *Engle* class action.

13. The class was estimated to include several hundred thousand class members seeking damages against Defendants, including Liggett and BGL.

14. On July 7, 1999, after a lengthy jury trial in what is known as “Phase I” of the case, the jury found all Defendants liable to the class, jointly and severally, exposing them to substantial judgments for compensatory and punitive damages. This finding is binding as *res judicata* in this action pursuant to the *Engle* opinion.

15. In September and October 1999, Defendants Liggett and BGL undertook a sham reorganization of BGL that involved the creation of several new holding companies, multiple mergers, acquisitions, and the shuffling of BGH's assets, including Liggett, in an attempt to mislead or defraud creditors, including *Engle* class members and the Plaintiffs herein, and/or to improperly divert revenues and assets of Liggett and BGL. This sham reorganization established Vector as the parent of BGH and Liggett (n/k/a Liggett Group, LLC).

16. These transactions were the product of an actual intent on the part of these Defendants to hinder, delay or defraud creditors, in violation of Florida's Uniform Fraudulent Transfer Act.

17. In addition to the reorganization and transfer of assets described above, the management, officers, directors, personnel, location of operation, assets, liabilities, business operations, and stockholders of BGL remained the same when the name was changed to Vector; nominal consideration was involved in the reorganization; the vast majority of Liggett's revenues continue to be diverted to Vector to fund Vector's cigarette operations; and Bennett S. LeBow, through Vector, continued after the reorganization to exercise unilateral control over the assets of BGL and BGH (including the asset Liggett), as he had with the predecessor entities.

18. Vector therefore is the successor to the original cigarette manufacturer, Liggett, which changed its name to Brooke Group Ltd., Inc. ("BGL"). Vector is a successor to BGL as a mere continuation of BGL and Liggett. Vector is a successor to BGL by way of de facto merger with BGL. Vector also is successor to BGH.

19. Vector is but an *Engle* Defendant, BGL (f/k/a Liggett Group, Inc., f/k/a Liggett & Myers, Inc., f/k/a Liggett & Myers Tobacco Co.) by another name.

20. Vector exercises such control over Liggett that Liggett is a mere instrumentality and/or alter ego of Vector. Assets and profits of Liggett have been, and continue to be, improperly diverted from Liggett and BGL in an effort to mislead or defraud creditors, and/or hide assets of Liggett and BGL, from creditors, including Plaintiffs herein, and for other improper purposes.

21. Vector exercises such control over Liggett that Liggett is the agent of Vector and manifests no separate corporate interests of its own. Vector acknowledges Liggett as its agent for purposes including, but not limited to, the sale, marketing, and distribution of tobacco products. Liggett has accepted by act or word to be the agent of Vector and acquiesced in the control exercised over it by Vector.

22. Vector further exercises control over Liggett through the formation of Liggett Vector Brands, Inc., a company controlled by Vector, which now has taken over the sales and marketing of both Vector Tobacco, Inc., and Liggett.

THE ENGLE DECISION BY THE SUPREME COURT OF FLORIDA

23. In *Engle*, the Supreme Court of Florida approved certification for liability purposes of a class including all Florida citizens and residents, and their survivors, who have suffered, presently suffer, or who have died from diseases and medical conditions caused by their addiction to cigarettes that contain nicotine.

24. In addition, the Florida Supreme Court also upheld the jury's findings that that the Defendants committed fraud, were negligent and concealed from consumers the addictive nature and

dangers of smoking in order to sell more cigarettes, and that cigarettes cause a variety of illnesses, including Aortic Aneurysm; Bladder Cancer; Cerebrovascular Disease; Cervical Cancer; Chronic Obstructive Pulmonary Disease; Coronary Heart Disease; Esophageal Cancer; Kidney Cancer; Laryngeal Cancer; Lung Cancer; (specifically: adenocarcinoma, large cell carcinoma, small cell carcinoma, and squamous cell carcinoma); Complications of pregnancy; Oral Cavity – Tongue Cancer; Pancreatic Cancer; Stomach Cancer; and Peripheral Vascular Disease. These findings, too, are binding as *res judicata* in this action pursuant to the *Engle* opinion.

25. The cigarettes manufactured and distributed by the Defendants contained nicotine and were addictive and/or dependence producing as found in the Phase I *Engle* verdict incorporated in the final judgment. This finding also is binding as *res judicata* in this action pursuant to the *Engle* opinion.

26. In the *Engle* opinion of July 6, 2006, as modified on rehearing on December 21, 2006, the Supreme Court of Florida ruled that the *Engle* class as such was decertified but recognized the continuing effect of the “Phase I” *Engle* class trial verdict of July 7, 1999, incorporated into a final judgment on November 7, 2000.

27. The *Engle* Court held that the former class members could file individual claims within one year of its mandate and that in those individual claims, certain findings made in the Phase I verdict would be binding as *res judicata*. The Phase I *Engle* verdict, previously entered in this action is incorporated herein by reference.

28. The Florida Supreme Court decertified the *Engle* class because class-wide treatment of causation and damages was not feasible. The Supreme Court of Florida expressly reserved to class

members, including Plaintiff, the right to bring individual action against Defendants for smoking-related injuries and damages, including punitive damages.

29. The Supreme Court of Florida issued its mandate on January 11, 2007. Less than one year has elapsed since the Supreme Court of Florida issued its mandate.

THE DEFENDANTS' MISCONDUCT

30. The Defendants have been and are engaged in the business of manufacturing, distributing and selling for profit cigarettes that are made from tobacco containing nicotine that is spiked with other additives or chemicals, which either boosts the addictive nature of nicotine and/or cause cancer or other diseases as determined as a matter of law under *Engle* to be caused by cigarettes, thus making cigarettes a dangerous and defective product.¹

31. The Defendants have placed these products into the stream of commerce knowing that they would not be inspected for defects and have sold them through networks of distributors and retailers to ultimate users and consumers, including Dorothy Oliver and Annie Mae Swain, in Florida and elsewhere in the United States.

32. At all times relevant, all Defendants (except Council and Institute) manufactured and distributed tobacco products which they knew contained tar, nicotine and other dangerous chemicals throughout Florida and the United States.

¹ Unless otherwise indicated all **bold text**, • and > are added for emphasis throughout.

33. At all times relevant, Defendants, Council and Institute, were involved in promotion, lobbying, medical research, legislative and political activities or related ventures, in connection with an on behalf of the Defendants throughout Florida and the United States to increase the sale of cigarettes.

34. The cigarettes manufactured and distributed by the Defendants were addictive or dependence-producing and caused those diseases as found in the Phase I *Engle* verdict. This finding is binding as *res judicata* in this action pursuant to the *Engle* opinion.

35. In addition to placing into the stream of commerce products that Defendants knew or should have known were dangerous and defective, they did so with complete and utter disregard for health and human safety, and in a systematic and deliberate manner meant to addict and ultimately kill as many smokers as possible, especially African Americans, whose lives were cut short by Defendants' reckless and outrageous conduct, including without limitation, the lives of Dorothy Oliver and Annie Mae Swain.

36. Cynical and exploitive, the Defendants' files are replete with damning evidence of massive marketing campaigns, aimed specifically at African Americans, employing some of the most sophisticated advertising methods ever developed -- some subtle and subliminal, others overt and obvious -- meticulously planned and executed with a clear racist intent.

37. In doing so, Defendants knowingly besieged the most vulnerable and beleaguered segments of society, including the least educated, poor, inner-city African Americans, many on public support, including food stamps.

38. These ad campaigns -- a small sampling of which are described herein in detail -- included placing a disproportionate number of billboards in Black neighborhoods;² sponsoring sporting events known to draw Black people; co-opting Black celebrities to hawk Defendants' products; paying above rate advertising fees to Black owned publications like Ebony, Jet and Essence and engaging in saturation advertising in those and other publications;³ insinuating themselves into church run activities and holding street fairs and other large social events, where banners, billboards and the free distribution of cigarettes to minors and others were present. Indeed, Defendants tactics in this regard represent racial profiling of the highest order.⁴

² "Tobacco industry studies have found a higher density of tobacco billboards in racial/ethnic minority communities." See http://www.cdc.gov/tobacco/sgr/sgr_1998-min-fs-asi.htm.

³ "A one year study found that three major African American publications – Ebony, Jet, and Essence – received proportionately higher profits from cigarette advertisements than did other magazines." See http://www.cdc.gov/tobacco/sgr/sgr_1998-min-fs-asi.htm.

⁴ Writing for a March 1992 *Journal of Advertising* piece titled, *Separate, But Not Equal, Racial Segmentation in Cigarette Advertising*, Richard W. Pollay, Jung S. Lee, and David Carter-Whitney, concluded:

[S]egregation involved more than buying space in black magazines and appealing to ethnic pride with black models. Inequalities existed in differential promotional intensity, endorsements from athletes, the number of brands, and the timing of filter introductions. Blacks were subject first to less and then to more advertising than whites. Advertising in Ebony featured endorsements from athletes five times more often than it did in Life. Blacks were not offered filtered brands until years after whites. The cigarette industry treated the black and white markets separately, but not equally. They appealed to black pride, but did so with some prejudice.

39. Decedents, Dorothy Oliver and Annie Mae Swain, were victims of this insidious and outrageous conduct, which -- when combined with the addictive and defective nature of cigarettes -- caused them to become addicted and unable to kick a deadly habit that ultimately killed them.⁵

40. At the same time Defendants were pouring millions of dollars into designing, refining, planning and executing highly sophisticated ad wars -- while simultaneously boosting tar and nicotine levels in cigarettes -- they did so for the sole purpose of addicting as many African Americans as possible, in a manner that far exceeded any other attempts to reach any other market segment in the United States.⁶

⁵ “African Americans currently bear the greatest health burden” among the minority population groups studied: Hispanic, Asian, Native Americans and African Americans. *See 1998 Surgeon General’s Report.*

⁶ *See* fn 1-4 . *supra.*

See also Tobacco Timeline in African-American History

- 1660s: The industrialization of tobacco contributes to the commercialization of slave trade in North America.
- 1839: Stephen, slave of Abisha Slade, discovers a process for curing yellow tobacco.
- 1860s: Estimated 350,000 slaves are involved in tobacco cultivation in the United States.
- 1900s: Major cigarette manufacturing companies are formed
- 1910: U.S. cigarette production and consumption overtakes cigars for the first time the same year the National Negro Committee becomes the National Association for the Advancement of Colored People (NAACP).
- 1920s: Mentholated cigarettes are introduced and gain appeal in the Black community for their cool taste.
- 1930s: Half of the people working in the tobacco manufacturing industry are African-American. African-Americans’ exposure to tobacco is already at a higher level than whites.
- 1940s: Brown & Williamson Tobacco Corp. claims that Kools keep the head clear and/or give extra protection against colds.

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- 1950s: White supremacists boycott and attack Philip Morris for "race-mixing" by placing blacks in executive jobs.
 - 1960s: Black magazines are packed with cigarette advertisements that feature African-American models and reference black culture, including Lorillard's "Newport Is a Whole New Bag of Menthol Smoking" (after James Brown's "Papa's Got a Brand New Bag") and R.J. Reynolds' "Different Smokes for Different Folks" (a nod to a Sly Stone hit) campaign for Salem Extra.
 - 1964: First major report on smoking and health is published concludes that cigarette smoking is a cause of lung cancer.
 - 1970: Congress bans cigarette advertising on television and radio; however, tobacco billboard advertisements are permitted.
 - 1989: R.J. Reynolds Tobacco Company plans test market of African-American targeted cigarette called "Uptown", prompting health advocates in Philadelphia, PA, to form "Coalition Against Uptown Cigarette". The test market is cancelled in 1990.
 - 1992: "Pathways to Freedom: Winning the Fight Against Tobacco", a guide promoting tobacco cessation in the African-American community, is released.
 - 1994: The National Medical Association (NMA) and the Centers for Disease Control and Prevention (CDC) launches the largest public anti-smoking campaign specifically targeting Blacks.
 - 1995: Philip Morris "X" cigarettes, targeted toward African Americans, are pulled off shelves because of pressure from Black health advocates in Boston.
 - 1998: Tobacco companies sign Master Settlement Agreement limiting cigarette marketing to minors [but none of the settlement funds compensated individuals directly for their own smoking related illnesses].
 - 1999: A group of nationally recognized African-American stakeholders meet in Dallas, TX, to facilitate the development of comprehensive tobacco prevention and control programs for African Americans.
 - 2000: National African American Tobacco Prevention Network (NAATPN) is chartered in Raleigh, NC.
 - 2004: NAATPN successfully organizes grassroots activities to stop Brown & Williamson's KOOL MIXX hip-hop campaign targeted to African-Americans and other minority youth.

41. Carried out with calculated and cunning detail, these battles became Defendants' equivalent of the "final solution," the sole purpose of which was to boost profits by exploiting the vulnerabilities of society's underclass.⁷

42. Like researchers studying lab rats, beginning in the early 1950's Defendants began to systematically employ scientific methods to examine the preferences and weaknesses of African Americans, to entice them to smoke and then to keep them hooked.

43. Such techniques included integrating into the Defendants' marketing strategies, market surveys and segmentation, statistical and trend analyses, psychographics, and socio-economic and geographic factors.⁸

See <http://naatpn.org/resources/wall.htm>

⁷ Even comedian Jay Leno's joked darkly that **R. J. Reynolds had to name a new cigarette "Uptown because the word 'Genocide' was already taken."** (Spivey 1990). See fn. 1. The "Uptown" campaign is discussed in greater detail below.

⁸ Gone were "good ole" days when a 1931 Lucky Strike Radio Hour hawked Luckies to the general market by employing such advertising hooks like the "Chant of the Darkies," which not only resonated with Blacks and Whites (for obvious reasons), it also sounded more a like a theme from *Gone With the Wind*, than one created by any contemporary advertising firm:

THE LUCKY STRIKE PROGRAM with B.A.Rolfe and his LUCKY STRIKE Dance Orchestra

MR.THORGERSEN: The finest tobacco, the Cream of the Crop. Let's take you to the Southland among the tobacco fields. Listen to the whistle of the steamboat around the bend of the river. (Three blasts of ship's whistle. **One chorus of Negroes chant being hummed in full.** Chant dies away gradually allowing for slight pause before announcement)

MR. BOND: (With Southern accent)(chant is low all thru this announcement). Well, suh, look at those broad, golden fields of sun-ripened tobaccos stretchin' out before us.

44. Once underway, the use of such calibrations against Blacks became like shooting fish in a barrel. African Americans simply stood no chance against Big Tobacco's big sell.

45. As proof, one 1954 survey commissioned by Philip Morris was documented in a *Progress Report on Negro Market Study*, prepared by Elmo Roper, a syndicated columnist and radio personality who was a pioneer in the fields of market research and public opinion polling.⁹ (Exhibit "B" attached hereto).

46. The purpose of the survey was to learn how best to position Philip Morris cigarettes among Blacks vis-à-vis the competition.

47. During the examination, Roper interviewed dozens of "Negroes" from various walks of life and uncovered such views as the following:

(Interview conducted in a medium-sized, twelve or fifteen stool luncheonette in all Negro neighborhood, mid-Harlem. Cigarettes sold from counter. Interview tried after seeing poster in the window that read as follows: "SEE THE PHILIP MORRIS STORY IN THE PITTSBURGH COURIER (national Negro weekly newspaper) Oct. 17, 1953 (READ ABOUT IT) PHILIP MORRIS HUMAN RELATIONS PROGRAM." Poster

Fragrance and mellowness and ripeness of choice tobacco fills the air. Down the long rows of tobacco march the workers, cuttin' every plant at the stalk. **They sing while they work. Yes suh, a melodious, soothin' spiritual handed down ever since the days when George Washington, himself was one of America's great tobacco planters.** You all listen now to the workers chanting in the fields. **(CHANT OF DARKIES --chant is loud here for twenty seconds then grows faint and continues all through Thorgersen's announcement)**

(Exhibit "A" attached hereto).

⁹ Documented and hidden among the millions of pages of Defendants' records disgorged under a 1998 Master Settlement Agreement with 46 state Attorneys General, the Roper report and those that follow are a mere sampling of marketing studies commissioned, or undertaken internally, by the Defendants, the majority of which have never been seen by the public.

had a picture of “Johnny” surrounded by a group of young Negro girls. Luncheonette manager, a Negro man of about thirty, was interviewed.)

Effective? Sure, it’s effective. . . . don’t kid yourself, friend . . . when those people down at those big companies put their money and time on something, you can know it’ll work. People will believe anything! And they want to believe anything! And when people have been giving their quarters to somebody like that cigarette company, they want to believe that the company is trying to do something for them. Otherwise, they’d seem like fools, wouldn’t they? There ain’t a single thing special about the cigarettes -- all cigarettes are the same -- so if people know there’s nothing to the cigarette -- they want to think there’s something to the company.

(Emphasis in original).

48. Then, in response to the question, “What particular things do they [cigarette companies] do which appeal to Negroes?”, Roper uncovered from another subject a particularly prophetic, yet tragic, observation that Defendants would later take to heart and come to exploit with great enthusiasm:

On the good side, the ads they use--posters, etc, with Negro models -- are all in good taste -- they have nothing in language or suggestiveness that is different from their regular advertising. I know of one company, a chewing gum company, that uses special “jargon” in their ads for the Negro market, something they think is typical of the expressions or tastes of Negroes, and, it’s disgusting. None of the cigarette companies has been guilty of this.

On the other hand, none of the cigarette companies -- or any other companies, for that matter -- has used Negroes in their regular advertising in the general market media. They’re always on posters in Negro areas or in ads in special Negro circulations, but never on the highway billboards, or in the large circulation magazines. This, I think, is a definite weakness. And I think the company that does something about this will be noticed.

(The following was volunteered without any probing on the point.)

There’s one peculiar thing, though -- not about advertising. Now, I’m a guy who always said that there’s no “Negro market” as such -- just that there are another 13 million people in the general market. But if you do a general study among Negro smokers, I’d be willing to swear that most of them would be Philip Morris smokers. For one thing, it’s a pretty decent company -- I’ve found that out working on the magazine (EBONY).

But the other thing is this -- that pack color. This all is part of one of my pet theories, understand. **The Philip Morris pack is rich-looking, dignified, and quiet-looking -- certainly not garish like most of the other packs. Well, Negroes have been downtrodden economically and socially for so long -- and have been so often accused of wanting everything flashy and loud -- that they consciously, or otherwise, want to impress people with the fact that they have taste and are discriminating -- that they are dignified and sophisticated. And one of the easiest ways to do it is to align themselves with a cigarette pack -- something they show everywhere -- that is quiet and tasteful and rich-looking. It's really strange.**

Some Negroes will go on for the flashy cars that they can't afford and the flashy clothes that they look like hell in -- and, yet they will think they are showing their dignified taste by some small thing like the color or design of their cigarette pack. This may all sound pretty farfetched to you -- and remember, it's just a theory of mine -- but I really think there's something to it.

49. Like cigarettes themselves, over time studies like Roper's became more refined. For example, in 1963 Defendant, Liggett, commissioned a lengthy report by Arthur D. Little, Inc. on how best to develop a "new package" for a new brand of menthol-filter cigarettes for various minorities, including Jews, Hispanics and Negroes.

50. The plan entitled, *Development of Cigarette Packaging*, first acknowledged:

There has been a steady increase recently in the number of male smokers of menthols, and it is thought that these people have come to like the taste of menthols and smoke them for this reason rather than health connotations. In other words, the market for menthol cigarettes seems to be changing -- the smoker is now an average person rather than an odd type, and he is smoking for enjoyment rather than for medicinal reasons. Salem with its filter had the most to do with changing the image from menthols Kools. Salem has just enough menthol to impart a pleasing flavor, not a jolt. Salem was the first flavored filter cigarette. People accepted it because it had more flavor than regular filter cigarettes.

51. The report went on to state that "Ethnic factors -- sales variations between races are a result of differences in promotion rather than basic radical differences in smoking desires or habits . . . **Menthol**

cigarettes seem to be going very well in this [the Spanish and Negro] market In the case of the Spanish and Negro markets, **there must be a racial slant in the marketing efforts directed toward them**”¹⁰ (Exhibit “C” attached hereto).

52. While earlier surveys like those produced for Philip Morris and Liggett were odious enough, by comparison the marketing tactics later employed by of Defendants, R.J. Reynolds Tobacco Co. (RJR), Brown & Williamson against Blacks were downright evil.

53. As proof, by July 1970, RJR had compiled a *Confidential Market Research Report* subtitled the “*Results of the 1970 Negro market Audits.*” (Exhibit “D” attached hereto).

54. Among other things, the report stated:

The purpose of this report is to present the major findings of the 1970 Negro Market Audits conducted during March-May of this year. The audit program is designed to reveal both brand and company trend data in the urban Negro market

CONCLUSIONS: The menthol category continued to enjoy substantial growth and now accounts for well over one-third of the Negro market. Again this growth resulted primarily from the continued success of Kool. Salem King performed a great deal better in the Negro market than it did in the corresponding divisions. Although both Salem brands increased in growth achieved by Kool and the menthol category.

The 100mm category continued to grow in the Negro market primarily because of the good performances shown by Brown and Williamson’s 100mm brands (Kool, Viceroy, Raleigh and Belair).

R. J. Reynolds and Brown and Williamson were the only two companies to show growth in the Negro market between 1969 and 1970. Both also showed significantly more growth in the Negro market than in the corresponding divisions.

¹⁰ The report goes on to state that flip-top boxes “were more of an influence in terms of style than utility and therefore sales were higher in cities than in the country” and that “[t]here is an average of one smoker per household – 60 million smokers in the U.S.”

55. Using the *Negro Audits* as a point of reference, by February 1973 RJR was circulating among its top executives a *Confidential Research Planning Memorandum on Some Thoughts about New Brands of Cigarettes for the Youth Market*. (Exhibit "E" attached hereto).

56. This document provided the intellectual underpinnings for a change in corporate attitudes toward selling cigarettes to minors in general, and African Americans in particular, that would later come to dominate the industry.

57. In this memo -- worth quoting in some detail -- the company's diabolical intent is clear:

At the outset it should be said that we are presently, and I believe unfairly, constrained from directly promoting cigarettes to the youth market; that is, to those in the approximately twenty-one years old and under group.

Statistics show, however, that large, perhaps even increasing numbers in that group are becoming smokers each year, despite bans on promotion of cigarettes to them. If this be so, there is certainly nothing immoral or unethical about our Company attempting to attract those smokers to our products.

We should not in any way influence non- smokers to start smoking; rather we should simply recognize that many or most of the "21 and under" group will inevitably become smokers, and offer them an opportunity to use our brands.

Realistically, if our company is to survive and prosper, over the long term, we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market; I believe it unrealistic to expect that existing brands identified with an over-thirty 'establishment' market can ever become the 'in' products with the youth group.

Thus we need new brands designed to be particularly attractive to the young smoker, while ideally at the same time being appealing to all smokers.

* * * *

For the pre-smoker and "learner" the physical effects of smoking are largely unknown, unneeded, or actually quite unpleasant or awkward. **The expected or derived psychological effects are largely responsible for influencing the pre-smoker to try**

smoking, and provide sufficient motivation during the "learning" period to keep the "learner" going, despite the physical unpleasantness and awkwardness of the period.

In contrast, once the "learning" period is over, the physical effects become of overriding importance and desirability to the confirmed smoker, and the psychological effects, except the tension-relieving effect, largely wane in importance or disappear.

The common thread binding the three groups together appears to be the fact that smoking of cigarettes offers and provides a desired mechanism for coping with the stresses of living, which may range from boredom to high tension and from fatigue to high arousal and hyperactivity.

Once this mechanism has been experienced and used, physical and psychological habit patterns are firmly established and become self-perpetuating.

If the above analysis is approximately correct, then the basic theme for promoting any cigarette to any group should aim, directly or indirectly, at the desirability of using a given brand as a mechanism for coping with stress.

Brands tailored for the beginning smoker should emphasize the desirable psychological effects of smoking, also suggesting the desirable physical effects to be expected later. Happily, then, it should be possible to aim a cigarette promotion at the beginning smoker, at the same time making it attractive to the confirmed smoker.

The information and outline in Table I then may be used as a basis for arriving at some specifications for new "youth" brands and for determining how they should be promoted.

* * * *

The fragile, developing self-image of the young person needs all of the support and enhancement it can get. Smoking may appear to enhance that self-image in a variety of ways.

If one values, for example, an adventurous, sophisticated, adult image, smoking may enhance ones self-image. If one values certain characteristics in specific individuals or types and those persons or types smoke, then if one also smokes he is psychologically a little more like the valued image.

This self-image enhancement effect has traditionally been a strong promotional theme for cigarette brands and should continue to be emphasized.

58. Reinforcing this corporate mentality with bureaucratic indifference to turning children into addicts was another “1973 marketing memo [which said] that to help lure ‘younger smokers’ away from Philip Morris' Marlboros, the leading teen brand, ‘comic strip type copy might get a much higher readership among younger people than any other type of copy.’”

See <http://www.cnn.com/HEALTH/9801/15/tobacco.kid.settlement/>

59. The document defined ‘**younger smokers’ as those ages 14 to 24** and shortly thereafter, RJR created the hip cartoon character Joe Camel, who peddled the Camel brand until [1998].”¹¹ *Id.*

60. “‘Our strategy becomes clear for our established brands,’ says a 1974 presentation to RJR's board of directors. ‘Direct advertising appeals to the younger smokers.’” *Id.*

61. Ideas on how best to accomplish these goals were set forth in a December 4th, 1973 internal memorandum from Frank Colby to R.A. Blevins, Director of RJR's Marketing Department entitled, *Cigarette Concept to Assure a Larger Segment of the Youth Market*, which states:

This will summarize the suggestions that I made to you by telephone yesterday.

It is apparently established beyond a doubt that Philip Morris' Marlboro cigarette has a much stronger hold on the up and coming new generation of smokers than Winston or our other brands. It seems to me that a "me too" brand stands very little chance of changing this situation. **What is needed is a new concept.**

¹¹ “Joe Camel was conceived in the 1950s by Billy Coulton, art director in Long Island working on a T-shirt promotion for the brand in Europe. The R.J. Reynolds U.S. marketing team, looking for an idea to promote Camel's 75th anniversary, re-discovered Joe in the company's archives in the late 1980s. At that time, R.J. Reynolds' staff found that the Camel brand had a reputation as an ‘old-man's cigarette.’ The staff wanted a new campaign to make the brand more attractive to contemporary smokers.” See http://en.wikipedia.org/wiki/Joe_Camel.

Another condition seems to me to be a need to be able to develop such a cigarette for the immediate future and not many months hence.

- **My suggestion covers all these conditions. It is basically to go back as much as possible -- probably-at least halfway -- towards the old filter cigarettes, i.e., the cigarettes of the 1950's prior to the Surgeon General's Report. These cigarettes had the following three main characteristics as distinguished from today's cigarettes:**

- 1. They delivered more flavor (tar).**
- 2. They delivered more "enjoyment" or "kicks" (nicotine).**
- 3. They delivered more puffs -- at least 20 more.**

A fringe benefit which may or may not be promotable is that such a cigarette would develop a much less percentage of side stream smoke compared to today's cigarette. This decrease would be roughly in proportion to the increased number of puffs.

The reasons for these differences are not so much between the tobacco of today and that of the 50's, but the paper (much more porous today) and the filter material (much more absorbent today)

(Exhibit "F" attached hereto)

62. In 1982, RJR compiled yet another *Confidential Market Research Report* entitled, *Analysis of the MDD Segmentation Study Among Black Smokers*. (Exhibit "G" attached hereto).

63. This document -- a model of racial profiling -- contains some of the most damning evidence against Defendants racist intent ever to come to light.

- With this higher smoking incidence and continued population growth, Blacks represent an increasingly important opportunity segment.

Black Segment Usership

- The "Coolness" segment is by far the largest among Black smokers . . . This segment among blacks is twice as large as it is among the General Market . . . The

study shows that the "Coolness" segment is characterized as mentholated, short in length and high in tar with a fashion model, elegant, delicate, feminine image . . .

- RJR is a major force in the "Virile" and "Moderation" segments, accounting for 76% and 80% of these two Black segments respectively...The use of a more aggressive stand on the part of WINSTON, such as incorporating Black models in the General Market executions, should expand even further the edge that exists over Marlboro...
- The proportion of "Moralists" and "Forerunners" in the Black Market is significantly smaller than in the General Market, but there are a greater proportion of Black smokers in the "Materialists" and "Aimless" subgroups. From a marketing standpoint, the above differences suggest the following about Black smokers relative to General Market smokers:
 - **Blacks tend to buy less things to improve themselves, they appear less concerned about health related issues** (i.e., Blacks don't necessarily identify with the motivations of the "Concerned" and "Moderation" segments) and are more prone to buy on impulse.
 - Blacks are more interested in buying cigarettes for the image it projects to others (i.e., importance of the "Stylish" segment). Blacks are more skeptical of large corporations and their claims about technically "improved" products (i.e., "low tar"/great taste, "breakthroughs"). [NOTE: Merit, with its "breakthrough" in taste and low tar, has never proved to be successful among Blacks]. They are not followers of physical fitness fads but would like to see more 'natural' products.
 - **Blacks have less concern for the future and live from one day to the next. They buy products for instant gratification.**
- Based on the VALS segments, a large proportion of Black smokers (43%) are part of the 'Survivors' subgroup.
- This group is characterized by the following:
 - Economic activities driven by need rather than based on choice.
 - Incomes at or below poverty levels. Minority backgrounds.
 - Live in metro areas.

- Superstitious, unplanned, impulsive life styles. Buy impulsively, erratically, when money available.
- Another large group of Black smokers are part of the ‘Emulators’ segment (14% of Black smokers). This group comprises the status conscious, show-off, upwardly mobile, nouveau rich, relatively young type of people. They tend to buy for conspicuous consumption, ‘in’ items, vogueish fashion.
- Black smokers are less likely to fall in the ‘Socially Conscious’, ‘Experimental’ and ‘Achievers’ segments than are General Market smokers. .
 - Thus, Black smokers appear to buy more impulsively than General Market smokers, they are also more ‘imagery’ oriented in terms of ‘emulation’ and ‘stylishness’ (but not so much in terms of the "masculine reinforcement" provided by the "Virile" brands) and are more skeptical about technically "improved" products and ‘breakthroughs.’

64. Once these philosophical justifications and strategic plans were in place, Defendants assaulted the Black community like Hitler’s invasion of the Rhineland.

65. For example, in a sinister attempt to push Salem cigarettes on young Blacks in the Chicago area, **RJR initiated a 1984 campaign to give away free samples of cigarettes in African American neighborhoods of Chicago** under a study known as the *City of Chicago Black Sampling Opportunities*. (Exhibit “H” attached hereto).

66. Sites chosen for the give away included neighborhood streets, athletic events, roller rinks, play grounds, church functions and as well as those listed below.

67. Among the most insidious observations in the report is one noting the existing prohibitions on smoking in parks and school play grounds, and recommending ways in which RJR might circumvent the rules:

[A]most all softball games are played on Park District or Chicago Board of Education Grounds. RJR’s own policies prohibit sampling of cigarettes on school grounds.

- However, our contact to various political representatives on both the South and West sides of Chicago (areas with a predominantly Black population) lead us to believe we could receive some support/assistance from local Black politicians in obtaining permission to sample at these activities. . .

68. Other areas RJR found desirable for the handout of free cigarettes included:

BOWLING LEAGUES

- There are several bowling alleys in the Black community that provide facilities for bowling leagues. Our contacts to league representatives revealed a strong interest in Salem's participation at both their regular and championship games.

FOOTBALL LEAGUES

- Representatives from the Afro-American touch football league discussed the possibility of Salem's sponsorship of the entire league or individual teams within the league.
- Salem could best participate through:
 - i. Donation of football equipment to the league.
 - ii. Distribution of premium items at the games.
 - iii. Sampling of cigarettes at the games.
 - iv. Sponsorship of awards banquet held in December...

ROLLER SKATING

- Chicago's young Black adult population can often be found at roller rinks.

NIGHTCLUBS

Chicago Black nightclubs can be separated into three categories according to the specific groups of people they attract. These categories are:

- i. Professional after work/weekend set.
- ii. Blue collar after work/weekend set.
- iii. Disco/singles bar.

- The income class of the people patronizing the nightclub is usually determined by the location of the club and the type of neighborhood in the area. All of the nightclubs we contacted were interested in participating in a Salem program. Most have been involved in this type of promotion before and were pleased with the success of the activity. They suggested at least one month of lead time before the actual promotion.
- In all cases, the nightclub owners requested that in return for sampling, premium distribution and signage privileges, Salem purchase the first drink for each customer that patronizes the club that night. The majority of Black nightclubs have a cover charge at the door, but most owners are willing to forego that charge on the night of Salem's promotion if the drink purchase is made.

CONCERTS

- Concert activities represent an ideal way in which to reach the target Black consumer in an effective, environmental atmosphere.

MALL/STREET INTERCEPT SAMPLING

- Sampling activity could be conducted at key intersections and in malls and shopping centers with a **heavy flow of Black pedestrian traffic**. No fees or permits are required for sampling on public property.

STREET INTERCEPT LOCATIONS

- There are several key locations in the Black community with a heavy flow of pedestrian traffic. **These locations include public transportation stops, shopping area, banks, currency exchanges and offices.**

BUSY CURRENCY EXCHANGES

- Heavy transaction of business usually occurs on Friday and Saturday. However, because of **public aid checks being delivered daily for pick-up by recipients**, transactions may be heavy during the week at some locations. Transactions may be heavy during the week at some locations. **Business is probably heaviest from the 25th through the 31st of the month (when food stamps arrive).**

TRAFFIC COURT

- **Traffic court as a heavy flow of pedestrian traffic during weekdays, 75% of which is Black.**

NATIONAL GUARD ARMORY

- The National Guard meets on weekends each month and this particular armory houses a predominantly Black National Guard unit.

OPPORTUNISTIC

- Despite our efforts to include all appropriate possibilities for Salem's participation in the Black community of Chicago, in a city this large, there are certain to be some sampling opportunities which we have been unable to locate. . . . For these reasons, we would recommend that funds be set aside in the budget for the possible inclusion of such events as they arise. In this way, Salem can be assured of making the maximum impact on the Chicago Black community.

CHURCH

- **In the Black community, the Church plays an important role in the lifestyle of the people.** Not only is it considered a place of worship, but also a place to socialize with friends, and a way to participate in serving the community. Many Blacks visit the Church as many as 3-5 days out of the week for choir rehearsals, community organization meetings, assistance at the child care center or food distribution programs, or special continuing education programs.
- Because the Church does represent an important part of the Black lifestyle, we believe that **Salem's participation at appropriate Church functions would serve to enhance the image of the Brand within the Black community. It allows Salem to reach them when they are most comfortable and at ease.** They will, in turn, associate a pleasurable experience with Salem's participation at the activities and recognize Salem as an active participant in the Black community.

69. Another equally menacing plan to push Salems on Black smokers was the *Salem Black Initiative Program Brand Team Ideation Session*, concocted by RJR at Tanglewood, NY on August 3, 1989, as well as the *Inner City Black Creative Exploratory* of January, 16, 1989. (See Exhibits "T" and "I-1" attached hereto).

70. Like the government describing the salutary effects of breast milk on babies, and developing a plan to encourage mothers to nourish infants in this way, the purpose of the *Salem Black Initiative* was to generate a long and varied list of ideas that would "**Contribute to the Black Community in a Real Way:**"¹²

The best way to reach minority consumers is through their local communities, and they tend to support brands that they see are doing something for them. **But the brand's support must be seen as authentic and as being backed by other blacks--not as a big white company's tactic to sell to blacks.**

If Salem can become a positive contributing factor to blacks' economic and person well-being, it could ultimately be "unpatriotic" to smoke anything else.

As some team members put it:

- [Salem] should be **endearing to the target** [African Americans].
- **Should be seen as a friend.**
- Reinforce their knowledge about and pride in their heritage.
- [Sponsor] birthday parties at clubs for famous black personalities.
- **Build on black history.**
- **Offer positive role models.**
- Sponsor inner city kids, giving them a role model/mentor.
- Help them find jobs.
- Bring employment agencies to inner cities

¹² RJR's Salem went head to head with Brown & Williamson's Kool cigarettes in their fight to control the largest share of the African American market.

PLAYING UP THE POSITIVE ASPECTS OF YA [young adult] BLACK SMOKERS AND THEIR LIFESTYLE

- **Bolster their self-perceptions and feed their self-esteem by recognizing and heralding positive aspects of their lives.**
 - **Speak to the fun side of inner city life.**
 - [Salem should say,] **"It's OK to be black, hang out and have fun."**
 - Be consistent with and relevant to this lifestyle.
 - Be spontaneous. Break all the rules!
 - The Program should provide continuity.
 - The daring, flamboyant aspect of YA black smokers' personalities are evident in the many trends they start. And the fact that these trends spread to the general public speaks to the unrecognized power and influence this subgroup yields on society.
 - Trends are often started by lower income males who are looking for a way to be important or interesting, to create their own identity, to stand out in a melting pot environment.
 - It gives them the opportunity to add their own touch. Gangs [differentiate themselves] by wear[ing] certain colors.

THEMES and IDEAS DEVELOPED

- **Builds on the Current Music Theme**
 - Have a Salem 21+ rap contest -- Create your own concert -- Wear the Salem T-shirt and get free admission
 - Stage a Battle of the Bands at clubs
 - For the winner, finance a recording studio tape
 - Salem could have its own group --Its records would essentially be commercials for Salem.
 - Have a Salem MTV channel
 - An interactive telephone line -- e.g., for information on concerts, press 1, For fashion, press 2 (Instead of a "hot line" it could be called the Salem "fresh line.")
 - A "Be a Star" Sweepstakes -- win **a screen test with Spike Lee.**
 - Could get in there and help increase distribution of black films. --Call the sweepstakes "Star Quality" to reinforce the quality image of the entire Black Initiative.

- **Leverage RJR's involvement with stadiums and arenas.**
 - Give away tickets at retail to attend these games --Or they could be won at a club event.
 - Make Salem innovative by changing the pack frequently. Do pack inserts that give the pack a different identity in the black community.
 - Line extend with a stronger cork tip product with a kick.

- **Exploit the Salem star**
 - Can get one's nails done with it in design --Sample Salem star earrings with add-ons for several holes, ankle bracelets, toe rings.
 - Extend the Black Initiative to BYAS [black young adult smokers] in the military via --Club promotions -- Salem van

71. Building on the *Salem Black Initiative Program Brand Team Ideation Session*, yet another marketing brainstorm dreamed up by RJR to reach the Black community was a 1990 report titled, *New Marketing Ideas. Summary of Programs*. (Exhibit "J" attached hereto).

72. This report proposed an assortment of promotional gimmicks aimed at increasing sales of RJR brands. One idea was to use personal information gleaned from **RJR's massive database of 40 million smokers**, to send each smoker a free gift on his/her birthday: a birthday card and a coupon good for three free packs of an RJR brand.

73. The rationale, "Giving consumers a gift on their birthday can create a special relationship between a consumer and a brand that is not possible with any other promotion." (Of course, the irony of helping a smoker to celebrate his birthday by helping to hasten his death was apparently lost on RJR's marketing department.)

74. Other ideas included manipulating “young adult” customers into “talking about the brand with their peers by introducing intriguing trivia, puzzles and guessing-game contests conducted through on-pack hints.”

75. “This promotion will further encourage team involvement by consumers making Camel a frequent and exciting topic of discussion among target younger adult smokers . . .”, stated the report.

76. Yet the most contemptuous idea, contained under the heading, *Special Markets: Inner-City Black Targeted Brand*, was to introduce brands targeted specifically at “inner-city blacks.”

77. The concept: “[S]ponsor events within the inner city which are consistent with the interests and activities of the target including ‘Rap’ music concerts, amateur ‘Rap’ contests and graffiti exhibitions.”

78. The “Rationale [for] these activities [was to] increase awareness of the brand among the target and create an association between the brand and culturally relevant activities for the inner-city Black smoker.”

79. Around this time RJR brazenly rolled one of the most lethal brands ever made for the enjoyment of African Americans, called “Uptown.”¹³

¹³ The program was outlined in the *Special Markets* report as follows:

- **Program: Inner-City Black Targeted Brand**
- **Objective: The objective of this program is to develop and introduce a distinctive cigarette brand targeted at the inner-city Black smoker.**
- **Description:** This brand will leverage the Black consumers' desire to use products which:

- are distinctive and are associated primarily with Blacks, and

80. Moving from the drawing board to the sales counter, Lynn B. Beasley, vice president of strategic marketing for RJR stated in a press release dated December 12, 1989, RJR, "We expect Uptown to appeal most strongly to black smokers." (Exhibit "K" attached hereto).

81. "Black smokers show a strong preference for menthol brands. Our research leads us to believe that Uptown's blend of both traditional tobacco tastes and refreshing menthol flavor will be an appealing alternative to smokers currently choosing a competitive brand, Beasley said."

-
- **are more "potent" (e.g., Blacks drink malt liquor rather than beer).**
 - **This brand will incorporate many distinct features which will appeal to the Black smoker.**
 - **Product Description - menthol with strong tobacco taste -20+ mg. of tar -cork tipping -larger circumference -shorter filter**
 - **Rationale:** Black smokers primarily smoke cork tipped full flavor menthol cigarettes.
 - **Blacks are less concerned with tar and nicotine levels.**
 - **The larger circumference and shorter filter will provide a distinctive look and feel. Will also and provide support to the more "potent" delivery benefit.**
 - **Packaging Description -soft pack and/or box with 10 cigarettes per pack.**
 - The cigarettes will be placed in the package with the filter end down and the tobacco end up.
 - The packaging will have an inner city look to it--possibly a graffiti look (see attachment for a potential package design).
 - **Rationale:** Blacks smoke fewer cigarettes per day and have less money making a 10 pack an ideal configuration.

82. Left unsaid was that Uptown was **more “potent” (“20+ mg tar” and 1.3+ mg of nicotine)**, meaning RJR’s rollout of the brand with all the hoopla was a calculated, cold-blooded attempt to target African Americans, and a racist one at that.

83. Again, the reasons for the added potency were that **“Blacks drink malt liquor rather than beer”** and **“are less concerned with tar and nicotine levels.”**

84. In this vein, a 1990 *Confidential Marketing Report on Uptown* also made no pretensions about which market Uptown was intended to reach. “[Uptown is to] provide a premium menthol brand for urban Black younger adult smokers that has the ultimate balance in menthol/tobacco delivery.”¹⁴ (Exhibit “L” attached hereto).

¹⁴ In a “Q&A Leave Behind” for retailers and consumers RJR asks and answers the following questions about Uptown

What is Uptown?

Uptown is a premium quality solo menthol cigarette brand offered in a box, soft pack and 10’s box styles.

Will Uptown be priced higher than regular cigarettes?

No. Uptown’s box and soft pack styles will be sold at regular cigarette prices, and the 10’s box style will be half the price of regular cigarettes.

What kind of smoker is Uptown intended for?

We anticipate that the brand’s taste and advertising will appeal to black smokers.

Why is Uptown intended solely for black smokers?

Black smokers have some well-defined taste preferences in cigarette products, and none of RJR’s current brands fully meet those expectations. The majority of

black smokers prefer a menthol brand with a stronger tobacco flavor and less of a menthol overtone than that of our major menthol brand, Salem. We developed Uptown to meet those taste preferences and help us convert smokers of competitive brands to an RJR brand.

Why are you marketing packs of 10? Is this a first?

Our research shows that most black smokers smoke less than one pack of cigarettes a day. In addition, most purchase their cigarettes by the pack rather than the carton. therefore, we felt that a 10-pack might better suit their buying trends. This is not the first 10-pack ever to be tested in the U.S. market. We have tested the concept in the past in limited areas, and 10-packs are currently for sale in Puerto Rico and other areas of the world. I also understand Philip Morris is testing a 10-pack, but under a different strategy -- their's costs as much as a 20-pack.

What kind of marketing support is planned for Uptown?

Uptown will have advertising and promotion activities to gain awareness of the new brand and encourage trial among smokers. The advertising will include billboard, magazine, and newspaper advertising in all areas of Philadelphia. Uptown will be promoted in retail stores and will have a sampling program throughout the city.

Why did you choose the Philadelphia area for Uptown?

Philadelphia offers a large population of black smokers to measure the market performance of Uptown.

Will Uptown be in other cities besides Philadelphia?

The uptown test market is primarily located in Philadelphia, however, it will also be available in some surrounding cities in New Jersey, including Camden and Atlantic City.

When will Uptown be available for sale?

Shipments of Uptown to wholesalers will begin very soon. We expect the brand will have full distribution in stores by February, 1990.

85. Further “Uptown will be introduced in retail accounts with 50%+ Black consumer traffic.”

86. While RJR sold Uptown in packs of ten, packed upside down in the package -- the way Black like to open cigarettes -- and initially RJR envisioned the package to “have an inner city look to it -- possibly a graffiti look,” that idea was scrapped to “[r]einforce premium quality brand image with Uptown name and contemporary gold and black packaging.”

87. “The absence of traditional menthol green and blue coloring on the pack provided a unique and appealing packaging which makes a positive personal image statement.”

88. While selling ten-packs to African-Americans was based on the idea that “Blacks smoke fewer cigarettes per day and have less money, making a 10 pack an ideal configuration,” boosting the tar and nicotine levels in Uptown guaranteed an unbreakable loyalty through an unbeatable addiction.¹⁵

(Exhibit “M” attached hereto).

¹⁵ Uptown was eventually pulled from the shelves amidst a firestorm of criticism for RJR’s sinister production methods and marketing techniques used to hawk the product. Nevertheless, the Uptown project was indicative of the lengths to which the Defendants would go to addict young Black smokers. The fact that it withered under the light of scrutiny did not forestall Defendants efforts to utilize the same or similar methods dressed-up as different brands. Indeed, “[i]n a 1988 speech, a senior RJR marketing official noted that “Reynolds Tobacco has made a special effort to reach Black smokers since the early 1960’s . . . According to the company’s internal documents, RJR has had in place for years special marketing programs designed to reach African Americans, beginning long before Uptown and persisting after Uptown had been canceled.””
See <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1447846>.

Louis W. Sullivan, Secretary of Health and Human Services, publicly denounced the test marketing of the very high tar (19 mg) Uptown brand targeted at a black audience. He called it ‘contemptible that the tobacco industry has sought to increase their market’ among minorities because this population was “already bearing more than its fair share of smoking-related illness and mortality’ (Schiffman 1990; Sullivan 1990). More pointed was comedian Jay Leno’s jest that R. J.

89. Other brands like Camel were also reevaluated within the *New Marketing Ideas Program*.¹⁶

90. For instance, in a section entitled, *Special Occasion Promotional Tie-ins Objective*, some of the objectives included:

- The objective of this program is for RJR core brands to provide promotions that are more directly tied in to special occasions, holidays or other relevant dates.

Description: Promotions will be developed to correspond with special times of the year including:

- [Consumers] will be honored [during various holidays throughout the year] with a special gift from the appropriate RJR brand. The consumer will be sent a greeting card which will include a birthday greeting, and a coupon good for three free packs of cigarettes.

Reynolds named it Uptown 'because the word "Genocide" was already taken' (Spivey 1990). Despite a new product development sunk cost estimated at \$10 million, R. J. Reynolds abandoned its launch of Uptown (Assael 1990; Newsweek 1990; Quinn 1990)." *See Fn. 1, supra.*

¹⁶ Like the Uptown campaign, RJR was also forced to abandon the "Joe Camel" advertising campaign "in the wake of growing public awareness confirmed in a 1987 memo stamped "RJR Secret" that stated the company created the Camel Wides brand under the code name Project LF. It was a 'wider-circumference non-menthol cigarette targeted at young adult male smoker (primarily 13-24-year-old male Marlboro smokers).' Camel Wides eventually were sold."

- While RJR has always insisted that teens smoke because of peer pressure, not because of advertising, a 1986 memo says Joe Camel advertising 'will be directed toward using peer acceptance/influence to provide the motivation for target smokers to select Camel.'
- RJR ended the successful Joe Camel campaign [1998, more than 40 years after its initial conception], but has always denied that it was targeted to minors."

See <http://www.cnn.com/HEALTH/9801/15/tobacco.kid.settlement/>

Rationale/Benefits: More closely linking promotions with special times during the year will increase the relevance and appeal of our offers and provide a seasonal flavor to our promotions (as we do with our advertising) that is unique in the industry.

- Giving consumers a gift on their birthday can create a special relationship between a consumer and a brand that is not possible with any other promotion.
- **Date of birth information is available for nearly 40 million smokers via [RJR's] Direct Marketing data base.**
- **Program:** SALEM Refreshest Olympics
- **Objective:** The objective of this program is to develop a unique consumer participation special event to reinforce Salem's refreshest positioning.
- **Description:** The SALEM Refreshest Olympics will incorporate numerous consumer participation events that relate to Salem's refreshest positioning and advertising.
 - Events would revolve around symbols of refreshment such as water and ice. Teams of consumers will compete in a number of events for medals, ribbons and prizes.
 - The Refreshest Olympics Trials will be held in numerous cities across the country. Winning teams from across the country will be flown to the site of the Olympic Finals where gold, silver and bronze medals will be awarded to the top finishers in each event.¹⁷
- **Rationale/Benefits: Younger adults enjoy being involved in unique activities with others. The SALEM Refreshest Olympics will provide a fun and exciting event.** Developing the event to be oriented completely around the "refreshest" theme will provide strong and relevant support for the brand's positioning and advertising.
- **Program:** CAMEL "Smooth Moves" Adventure
- **Objective:** The objective of the CAMEL "Smooth Moves" Adventure is to **increase the level of involvement by younger adult target smokers** with the CAMEL brand and to reinforce Camel's Smooth Character advertising imagery through a unique and involving treasure hunt.

¹⁷ The obvious irony of this program was also lost on RJR.

- The CAMEL Smooth Moves Adventure will involve consumers solving the mystery of the lost Golden Camel. The "Archeologist" CAMEL will lead the expedition to find this lost treasure and collect the reward. Clues in the form of puzzles, riddles and logic problems will be contained in each pack of CAMEL via a pack insert.
 - Consumers will solve each individual clue and then put that information together with information from the other available clues to determine the mythical location of the lost Golden Camel. Approximately 50 clues will be available in total. Four to five new clues will be arriving at retail each month with all the clues distributed by the end of a year.
 - At the end of the year consumers will send in detailed descriptions of the location of the lost Golden Camel based on the information provided in the clues. Those correctly identifying the precise location will split the large reward offered for the treasure's safe return. The value of the reward will be based on the equivalent value of the gold in the lost Camel (specific value to be determined).
- **Rationale/Benefits:** Younger adult smokers enjoy games, riddles and puzzles.
- The CAMEL Smooth Moves Adventure will leverage this interest in a unique and involving way.
- This promotion will create excitement and on-going interest in the brand as consumers solve individual clues and make progress toward solving the mystery.
 - This promotion will further encourage team involvement by consumers making CAMEL a frequent and exciting topic of discussion among target younger adult smokers.
 - In addition to each pack insert being a clue to the mystery, these inserts will also be a fun and challenging exercise even for those who do not wish to become fully involved in the adventure and attempt to solve the mystery.
- **Program:** CAMEL "Rough Rolled" Cigarettes
- **Objective:** The objective of this program is to reinforce the uniqueness of the CAMEL brand to younger adult smokers through the introduction of a line extension that is visually unique.

- Description CAMEL "Rough Rolled" cigarettes will be a line extension for CAMEL which will be a rough, uneven cigarette that will be uniquely different and create an unmistakable visual identity for those who smoke it.
 - To support its masculine heritage, this line extension will be introduced in only a full flavor 85mm box style. The product will be targeted to younger adult smokers who desire to make a statement with the cigarette they smoke, even after it is out of the pack. The product will be positioned as a real cigarette With real tobacco taste, for those who really enjoy smoking.
- **Rationale/Benefits: Younger adults are attracted to product and images that allow them to make a statement about themselves.** CAMEL Rough Rolled cigarettes will enable the younger adult smoker to use a product that is unique and a cigarette that makes a statement about the user even when it is out of the pack because of its clear visual difference.
 - **Program:** Camel's Convenience Store Parking Lot Program
 - **Objective:** The objective of this program is to provide CAMEL with a unique and impactful alternative media form that will reach target younger adult smokers where they tend to purchase their cigarettes most often.
 - **Description: CAMEL will dominate the parking lots at convenience stores** through the use of an innovative approach-- providing and maintaining parking space markings, curbs and direction arrows that include the brand's logo, name or cigarette facsimile. See attachment for example program.
 - **Rationale/Benefits:** Younger adult smokers tend to buy their cigarettes at convenience stores. The CAMEL convenience store parking lot program is a unique way of providing CAMEL with continuous advertising presence at a key retail outlet type. Further, this program can be tied in effectively with the national Pack Action Program on CAMEL. • The store owner will appreciate CAMEL providing a service that he would otherwise have to pay for (i.e., relining the parking lot periodically).

91. While RJR as busy devising ways to addict young Black smokers and strip them of their health and welfare, equally insidious campaigns were underway at both Lorillard and Brown & Williamson

92. For example, Lorillard was undertaking the Newport campaign to entice young Black smokers.

93. As proof, in an August 30, 1978 from field representative T.L. Achley writes to Curtis Judge, Lorillard's President, "The success of NEWPORT. Has been fantastic during the past few years. **Our profile taken locally shows this brand being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student.** NEWPORT in the 1970's is turning into the Marlboro of the 60's and 70's. It is the 'In' brand to smoke if you want to be one of the group." (Exhibit "N" attached hereto).

94. Further, like the Salem and Camel initiatives undertaken by RJR, B&W engaged in similar tactics first to entice then to addict young Black smokers.

95. For example, in 1982 B&W prepared a *Creative/Positioning Strategy* paper for Kool cigarettes. (Exhibit "O" attached hereto). Among other observations the paper states:

KOOL is not holding its share of smokers in the Black market and Switching Study data in conjunction with Black Smoker Study data indicates that packaging may be the culprit.

- KOOL's Black population as a percent of total family has declined 19% since 1979, while the industry shows an increase of 7%.
- Salem and Newport appear to be picking up our share losses in switching data; however, the Black Smoker Study confirms that only Newport family has increased Black share of smokers since 1980.

96. To combat this problem the report laid out the following marketing plan for Kool Ten's:

Recommend that we **introduce KOOL Ten's in Black, low income and other value conscious neighborhoods** and possibly college towns. Should include Milds; Box is preferable for starter draw.

- Blacks constitute less than 1% of generic products franchise. While not attracted to generics (on judgment, because they lack status, image and personality cues), Blacks probably would be attracted to lowered price transaction of a recognized and acceptable brand name.
- Young adult starter groups, so valuable to KOOL, has smaller discretionary income and reduced transaction cost alone could lure starters back to KOOL. If creative image is redirected toward and redefined for young adults, the starter market potential is even greater.
- The market, in general, continues to move toward transaction cost consciousness as evidenced by growth of generics.
- **KOOL is not holding its share of Black smokers, a market segment that is hard hit by economic factors (inflation, unemployment and other) on a regular basis.**
- **A potential franchise increase for KOOL exists in occasional/ trial use through vending.**

97. Among other recommendations:

Target Audience Reach Sponsorship

- Revise KOOL JAZZ Festival program format to more accurately reflect the brands target audience who it is and how/where it lives, what music and/or groups it hears daily.
- Continue to push for a change in name for major music program to something more broadly based 'KOOL Concerts Showcase,' 'Live! 83' or other.
- Recommend increasing van program units at earliest feasible date.
- Target audience flexibility through music choice.
- Greater penetration of market available with more vans -- increased reach and frequency.
- Grass roots program can be taken to any market, any time.
- On judgment, is intercepting young adult starters in lifestyle relevant manner.

Broaden KOOL Music on Tour concept in interim while refining its logistical application.

- Tour major metro markets where share is developed or developing and needs to be protected.
- Integrate sales input by local market more closely, allowing flexibility in van's ability to serve local needs and opportunities.

Suggest we explore integration of a clubs program (with local sales input) with existing vans/disc jockeys. Competitive response to Salem's Club program (vans with portable equipment). Portable equipment addition would cost about \$15,000 total.

- Captive target audience.
- Inexpensive way to implement a Clubs Program in 1984.

Enlarge KOOL City Jams as KMDP markets increase.

- Quantitative analysis assures us that KMDP works and KCJ is an integral, grass roots element in overall program success.
- **Black smoker share erosion and outflow in 1982 must be stopped and contemporary artists and image of KCJ are helping.**
- Program is lifestyle relevant execution of KOOL's music umbrella to the target audience, whereas KJF currently is not.
- Preventing further Black share erosion will help us maintain decline at manageable proportions while we seek new starter growth from the young adult White male group in non-menthol.

Record Club

- Viable if used as volume generator; dollars off purchases when redeeming five packs or a carton UPC label,
- Tie in with recording company with liquidator/premium items.
- Run liquidator program for a music box (breakaway portable stereo unit) available at greatly reduced price with redemption of KOOL UPC carton/pack labels. Follow up is tapes available through record company at similar reduced prices.
- Demographically flexible through individual's music choice.

KOOL (commercial) Video Game

- Placement only in bars or other “adult” habitats.
- Could possibly be later licensed for cartridge/home video usage market to extend life of game and spread out cost of initial.
- Recommend that we explore new P.O.P. with greater memorability.
- Sound, motion and light appear to attract young adult market. Statistics indicate that moving P.O.P. is three times more memorable than static P.O.P.
- Continue search for reasonably priced neon—lighted signage.
- Any appropriate usage of KOOL song in P.O.P. or vending.
- General Promotion

Recommend aggressive, increased, promotional activity in the following areas based on their demographic skew.

- Off campus bars and social gathering places in large college towns (could start with the Big 10 or towns that belong to Newport country and build).
- Sponsor music nights with a Kool pack as admission.
- Sponsor a video challenge series in bars with arcade games.
- Tie in with off campus social activities with sampling, music, (KOOL balloon and branded premium items.
- Sponsor contest for organized social groups: Prize Is the KOOL-est off-campus party for collecting most KOOL packs and building something KOOL with than.
- Sponsor college music series ala CF for target audience at off—campus locations.
- Sell self liquidator items through campus paper if possible.
- Sponsor cash donation program with a group of schools which have recognized music departments. Winning the donation could be based on collecting packs or tied in with concert program where profit proceeds become part of the donation.

98. The evidence set forth above is but a few examples of the marketing strategies employed by the Defendants to target the Black community.

99. Decedents Dorothy Oliver and Annie Mae Swain, were victims of these and other savage and grotesque ad wars and as a result became addicted to and died from those *Engle* recognized illnesses caused by cigarettes manufactured and sold by Defendants.¹⁸

100. Based on the foregoing, Plaintiff, Gloria Tucker, as personal representative of the Estates of Dorothy Oliver and Annie Mae Swain, has brought this action against the Defendants for their damages and has had to retain undersigned counsel to bring this suit.

CIGARETTES PROXIMATELY CAUSED DOROTHY OLIVER AND ANNIE MAE SWAIN'S ILLNESSES AND PROXIMATELY CAUSED THEIR DEATHS

101. Smoking cigarettes is a cause of both coronary heart disease and cerebrovascular disease, as found in the Phase I *Engle* verdict incorporated in the final judgment. This finding is binding as *res judicata* in this action pursuant to the *Engle* opinion.

102. At all times relevant to this action Dorothy Oliver and Annie Mae Swain were addicted to, purchased, and smoked cigarettes containing nicotine and other dangerous chemicals that were designed, manufactured, advertised and marketed by Defendants, and did so in sufficient quantities and for a sufficient time period to cause injury to proximately cause their illnesses and ultimately proximately caused their death.

103. There were no material alterations to or modifications of the cigarettes manufactured by Defendants between the time of their manufacture and the time Dorothy Oliver and Annie Mae Swain smoked them.

¹⁸ See January

104. Dorothy Oliver and Annie Mae Swain's smoking of the Defendants' cigarettes proximately caused them to develop coronary artery disease, congestive heart failure and acute cardiopulmonary failure; and cerebral vascular disease, encephalopathy and acute cardiopulmonary failure, respectively, and to eventually die. Dorothy Oliver and Annie Mae Swain suffered from symptoms of coronary artery disease, congestive heart failure and acute cardiopulmonary failure; and cerebral vascular disease, encephalopathy and acute cardiopulmonary failure, respectively, and were diagnosed with those illnesses prior to November 21, 1996.

105. As a direct and proximate result of smoking cigarettes manufactured and sold by Defendants, Plaintiff's decedent, Dorothy Oliver and Annie Mae Swain, suffered from one or more of the diseases and medical conditions described in the Supreme Court of Florida's *Engle* opinion, which was caused by his addiction to cigarettes that contained nicotine, and which manifested during the class period and Plaintiff's decedents, Dorothy Oliver and Annie Mae Swain, died as a result of those diseases and the medical complications and treatment thereof.

106. Dorothy Oliver and Annie Mae Swain may bear some measure of fault, but less than 100% of the applicable fault, for causing their smoking related injuries, which injuries were a direct and proximate cause of their death.

COUNT I
STRICT LIABILITY

107. The Plaintiff adopts, realleges and incorporates by reference all of the preliminary allegations in Paragraphs 1 through 106 of this complaint

108. The jury, in its response to Question 3 of the *Engle* Phase I verdict, found that the Defendants and each of them had “place[d] cigarettes on the market that were defective and unreasonably dangerous.” This finding is binding in this action as *res judicata* pursuant to the *Engle* opinion.

109. As a direct and proximate result of the conduct of the Defendants as described in the preceding paragraphs, Plaintiff’s decedents, Dorothy Oliver and Annie Mae Swain, died.

110. As a direct and proximate cause of the negligence of the Defendants and Dorothy Oliver and Annie Mae Swain’s consequential death, their survivors have suffered the following losses those damages which are recoverable under §768.16-768.27, Fla. Stat., the “Florida Wrongful Death Act.”, including

- a. The loss of parental companionship
- b. The loss of parental instruction
- c. The loss of parental guidance
- d. Mental pain and suffering

111. As a direct and proximate cause of the negligence of the Defendants and Dorothy Oliver and Annie Mae Swain’ consequential death, their Estates are entitled to recover the following:

- a. Loss of earnings from the date of injury to the date of death;

- b. Loss of prospective net accumulations of the Estate;
- c. Medical or funeral expenses due to Dorothy Oliver and Annie Mae Swain's injury and death.

Such damages are recoverable under §768.16-768.27, Fla. Stat., the "Florida Wrongful Death Act."

WHEREFORE, the Plaintiff, Gloria Tucker, as personal representative of the Estates of Dorothy Oliver and Annie Mae Swain, and for the use and benefit of Gloria Tucker, and any and all survivors who may claim damages by and through the estates, demands judgment against the Defendants for damages and such other relief as this court may deem just and proper.

COUNT II
NEGLIGENT DESIGN

112. The plaintiff adopts, realleges and incorporates by reference all of the preliminary allegations in Paragraphs 1 through 106 of this complaint including the *ad damnum* clause set forth above.

113. The jury, in its response to Questions 8 of the Phase I *Engle* verdict, found that the Defendant had "failed to exercise the degree of care which a reasonable cigarette manufacturer would exercise under like circumstances." This finding is binding in this action as res judicata pursuant to the *Engle* opinion.

114. As a direct and proximate result of the Defendant's conduct as described in the preceding paragraphs, Dorothy Oliver and Annie Mae Swain died.

115. The damages alleged in paragraphs 101 through 105 have been incorporated herein including the *ad damnum* clause. Such damages are recoverable under §768.16-768.27, the "Florida Wrongful Death Act."

WHEREFORE, the Plaintiff, Gloria Tucker, as personal representative of the Estates of Dorothy Oliver and Annie Mae Swain, and for the use and benefit of Gloria Tucker, and any and all survivors who may claim damages by and through the estates, demands judgment against the Defendants and for damages and such other relief as this court may deem just and proper.

COUNT III
FRAUD BY CONCEALMENT

116. The plaintiff adopts, realleges and incorporates by reference all of the preliminary allegations in Paragraphs 1 through 106 of this complaint including the *ad damnum* clauses set forth above.

117. In its response to Question 4a of the Phase I *Engle* verdict, the jury found that the Defendants had “conceal[ed] or omit[ed] material information, not otherwise known or available, knowing the material was false or misleading, or failed to disclose a material fact concerning or proving the health effects and/or addictive nature of smoking cigarettes.” This finding is binding in this action as *res judicata* pursuant to the *Engle* opinion.

118. In making decisions regarding smoking, members of the public including Dorothy Oliver and Annie Mae Swain relied on information that was materially incomplete due to the Defendants’ concealment of, omission of, or failure to disclose information as described in the preceding paragraphs.

119. As a direct and proximate result of the conduct described above of the Defendants, Dorothy Oliver and Annie Mae Swain smoked Defendants’ cigarettes.

120. Such damages are recoverable under §768.16-768.27, the “Florida Wrongful Death Act.”

121. The Plaintiff is entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanedo*, 511 So.2d 536 (Fla. 1987), *Owens-Corning Fiberglas Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999), or both decisions, since the conduct of the Defendants was fraudulent, wanton or reckless.

WHEREFORE, the Plaintiff, Gloria Tucker, as personal representative of the Estates of Dorothy Oliver and Annie Mae Swain, and for the use and benefit of Gloria Tucker, and any and all survivors who may claim damages by and through the estates, demands judgment against the Defendants for damages, including punitive damages and such other relief as this court may deem just and proper.

COUNT IV
CIVIL CONSPIRACY – FRAUD BY CONCEALMENT

122. The plaintiff adopts, realleges and incorporates by reference all of the preliminary allegations in Paragraphs 1 through 106 of this complaint including the *ad damnum* clauses set forth above.

123. In its response to Question 5a of the Phase I *Engle* verdict, the jury found that all the Defendants to this action and named herein had entered “into an agreement to conceal or omit information regarding the health effects of smoking, or the addictive nature of smoking cigarettes, with the intention that smokers and members of the public rely to their detriment.” This finding is binding in this action as res judicata pursuant to the *Engle* opinion.

124. At all material times all the Defendants, including the Council and the Institute, entered into, participated in, and performed overt acts in furtherance of the agreement described in the preceding paragraph.

125. In making decisions regarding smoking, members of the public, including Dorothy Oliver and Annie Mae Swain, relied on information that was materially incomplete due to the Defendants' agreement to conceal or omit information as described above.

126. As a direct and proximate result of the conduct described above of all the Defendants, including the Council and the Institute, Dorothy Oliver and Annie Mae Swain smoked cigarettes sold by Defendants.

127. The damages alleged in paragraphs 1 through 116 have been incorporated herein. Such damages are recoverable under §768.16-768.27, the "Florida Wrongful Death Act."

128. The Plaintiff is entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanado*, 511 So.2d 536 (Fla. 1987), *Owens-Corning Fiberglas Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999), or both decisions, since the conduct of the Defendants was fraudulent, wanton or reckless.

WHEREFORE, the Plaintiff, Gloria Tucker, as personal representative of the Estates of Dorothy Oliver and Annie Mae Swain, and for the use and benefit of Gloria Tucker, and any and all survivors who may claim damages by and through the estates, demands judgment against the Defendants, Philip Morris, Inc. (Philip Morris U.S.A.); Lorillard Tobacco Company; Lorillard, Inc.; R. J. Reynolds Tobacco Company, individually and as successor by merger to Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company; Liggett Group, LLC (f/k/a Liggett Group, Inc., f/k/a Brooke Group, Ltd., Inc., f/k/a Liggett & Myers Tobacco Company) ("Liggett"); Vector Group, Ltd., Inc., (f/k/a Brooke Group, Ltd., Inc.) ("Vector"); Liggett, Brooke Group, Ltd., Inc.,

("BGL") and Brooke Group Holding, Inc., ("BGH"); The Council for Tobacco Research-U.S.A., Inc., (the "Council"); and. the Tobacco Institute, Inc., (the "Institute"), for damages, including punitive damages and such other relief as this court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all issues so triable as a matter of right.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this 6th day of June 2007, to all persons on the attached service list:

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BY: **s/J.B. Harris**
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