

A Review of R.J. Reynolds' Internal Documents Produced in Mangini vs. R.J. Reynolds Tobacco Company, Civil Number 939359 -- The Case that Rid California and the American Landscape of "Joe Camel."

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I. OVERVIEW

Despite contrary assurances to Congress and the public, documents produced by R.J. Reynolds Tobacco Company ("RJR" or the "Company") in Mangini v. R.J. Reynolds Tobacco Company, San Francisco Superior Ct. No. 959516 (the "Mangini action" or "Mangini") demonstrate that RJR, like the other major tobacco companies, long studied: (1) the reasons people start smoking; and (2) the smoking patterns of children. RJR needed answers to these questions because, in order to survive, it and the other tobacco companies had to find "replacement smokers" for the thousands of smokers who die every day. Children's smoking patterns were important because RJR knew that the overwhelming majority of all "replacement smokers" were children, and that it was virtually impossible to grow market share through "switching" smokers from its competitors' brands.

By the 80s -- having conducted reams of "SECRET" and "CONFIDENTIAL" research both internally and through outside sources -- RJR was convinced that obtaining the cigarette business of underage smokers was critical to its future survival. Due to its considerable research, RJR knew that it was operating under an unholy paradigm:

(a) Because 2/3 of all smokers begin smoking before they are 18 (currently, 90% of all smokers begin smoking by 18);

(b) Because it is extremely difficult to get a smoker to "switch" cigarette brands due to "brand loyalty" (i.e., the first brand to hook a smoker typically retains that smoker's business over many years, during which the smoker's daily consumption increases with age); thus

(c) The only source of replacement smokers for tobacco companies like RJR are children choosing their "first usual brand," not adult "switchers."

The importance of the youth market was succinctly stated by RJR's Vice-President of Marketing (C.A. Tucker) in a 1974 presentation to the Board of Directors of RJR's parent company who explained that the "young adult market . . . represent[s] tomorrow's cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years." Exhibit 1 at 50142 1311, presentation to the Board of Directors of RJR Industries (September 30, 1974). (Emphasis added.) Indeed, as one RJR senior researcher, Dr. Claude Teague explained: "Realistically, if our Company is to survive and prosper, over the long term we must get our share of the youth market." Exhibit 2 at 1, research planning memorandum, "Some Thoughts About New Brands of Cigarettes for the Youth Market" (February 2, 1973). (Emphasis added.)

Faced with this reality, RJR's management developed the "Joe Camel" advertising and promotion campaign (the "Joe Camel

campaign") with the specific purpose of targeting children and encouraging them to smoke Camel cigarettes. The Joe Camel cartoon was selected to accomplish this task because its cartoon forerunner -- known as the "funny Camel" or the "French Camel" -- showed strong appeal with underage smokers in France during the 70s when RJR was attempting to "youthen" the Camel brand. After governmental action in France against RJR and its successful "funny Camel" campaign, in the mid-80s RJR brought the cartoon character to the United States for the Camel brand's 75th anniversary celebration. Because reception appeared positive and surveys showed that the cartoon Joe Camel did not alienate older Camel smokers, in 1987 RJR launched the Joe Camel campaign in the United States. The impact of the campaign was a spectacular surge in sales, based primarily on Joe Camel's popularity with underage smokers.

In 1991, RJR was publicly charged in the Journal of the American Medical Association ("JAMA") with targeting children through its Joe Camel campaign. Rather than terminate the campaign, RJR pretended it had no idea whether Joe Camel appealed to children. In December 1991, Janet C. Mangini, a San Francisco Family law attorney, brought suit to end the pervasive and insidious campaign, becoming the first person to challenge the tobacco industry for targeting minors with its advertising.

Originally, the Mangini complaint was dismissed by the trial court which determined that the action was preempted by the Federal Cigarette Labeling and Advertising Act (codified at 15 U.S.C. §§1331 et seq.). The Court of Appeal reversed the trial court and RJR appealed to the California Supreme Court. Because of its national impact, the Attorney Generals of 23 states, and Dr. C. Everett Koop, along with the American Lung Association, the American Cancer Society and the American Heart Association, filed amicus briefs in support of Ms. Mangini. Recognizing the national impact of the Mangini action, the Attorney Generals urged the Court to permit the action to proceed, arguing: "[T]here can be no doubt that an advertising campaign directly aimed at children would violate `public policy' everywhere and would uniformly be `unfair' under both federal and state laws."^{1/} Two months later, the first medicaid recoupment action was brought against the tobacco industry.

In a unanimous decision, the California Supreme Court determined that Ms. Mangini should be permitted to prosecute her claims. Exhibit 3, Mangini v. R.J. Reynolds Tobacco Co., 7 Cal. 4th 1057, 1073-74 (1994). In affirming a reversal of the

^{1/} Brief of Amici Curiae the States and Commonwealths of Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Utah, Vermont and Washington in Support of Plaintiff and Appellant at 24.

dismissal, the California Supreme Court noted: "[T]he targeting of minors is oppressive and unscrupulous, in that it exploits minors by luring them into an unhealthy and potentially life-threatening addiction before they have achieved the maturity necessary to make an informed decision whether to take up smoking despite its health risks.'" Exhibit 3 at 1062. (Citation omitted.)

Upon the action's reinstatement, we engaged RJR and its advertising agencies in discovery regarding the design and implementation of the Joe Camel campaign. Several million pages of documents were produced by defendants and reviewed by plaintiff's counsel. In addition, over 100 informal interviews and a number of depositions of RJR's outside advertising executives, internal marketing personnel and research and development personnel and experts were taken in preparation for the December 1997 trial date. In May 1997, the City and County of San Francisco, together with the Cities of Los Angeles and San Jose and ten additional California counties, intervened in the suit to help end the Joe Camel campaign.^{2/}

As the trial date neared, RJR approached us to determine if the Mangini action could be resolved. We responded that the case could be resolved "if the campaign was pulled." RJR terminated the campaign and settled Mangini. RJR acknowledged that the Mangini

^{2/} A year earlier, these local governmental entities filed an industry-wide action, becoming the first local governmental entities to sue the tobacco industry.

action "constituted a major part of the litigation pressure on tobacco issues," and that "the Mangini action, and the way that it was vigorously litigated, was an early, significant and unique driver of the overall legal and social controversy regarding underage smoking that led to the decision to phase out the Joe Camel Campaign." Exhibit 4 at 7, Mangini Settlement Agreement (September 5, 1997). (Emphasis added.) A second important component to the Settlement provides for public release of RJR's "SECRET" and "CONFIDENTIAL" documents about youth marketing and the Joe Camel campaign.^{3/} This paper has been written to give context to RJR's internal documents.

II. THE SMOKING DYNAMICS UNDERLYING THE JOE CAMEL CAMPAIGN

A. RJR Was Desperate To Find A Way To Compete With Marlboro For The 14-24 Year-Old Market

Throughout the 50s, 60s, 70s and early 80s, RJR diligently tracked the sale of cigarettes to teens aged 14-17. See pp. 10-11, infra. The trends revealed through this tracking information shocked RJR to the core. RJR -- who had dominated the cigarette market through the 60s and 70s with its Winston brand -- was quickly losing ground to Philip Morris. In the mid-60s Philip

^{3/} As part of the agreement, RJR also paid \$10 million to San Francisco and the other California cities and counties who intervened in Mangini. This money will be used primarily to fund anti-smoking efforts targeted at youth. The cities and counties did not settle any of their claims against RJR as part of the Mangini Settlement. Rather, those claims remain part of the cities' and counties' industry-wide action, which will be tried starting March 1, 1999.

Morris had successfully repositioned its Marlboro brand to attract the "younger adult" market. See Exhibit 5 at 1, Camel Advertising Development "White Paper" (1986). Although Winston's overall share continued to grow into the late 70s through its older franchise, it quickly declined as these older smokers began to die off and the young Marlboro loyalists grew into smoking more and more Marlboro cigarettes. Exhibit 5 at 1.

As noted above, RJR's Vice-President of Marketing explained the importance of "14-24" year-old smokers -- what he defined as the "young adult market" -- and the Company's precarious position in his 1974 presentation to the Board of Directors of RJR's parent company:

First, let's look at the growing importance of the young adult in the cigarette market. In 1960, this young adult market, the 14-24 age group, represented 21% of the population.

As seen by this chart, they will represent 27% of the population in 1975. They represent tomorrow's cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years.

Both Philip Morris and Brown & Williamson, and particularly their fast growing major brands, Marlboro and Kool, have shown unusual strength among these younger smokers. In the 14-24 age category, Philip Morris has a 38% share and B&W a 21% share. Both companies have significantly lower shares in the remaining age categories.

With strong young adult franchises and high cigarette brand loyalties, this suggests continued growth for Philip Morris and B&W as their smokers mature.

* * *

Our two major brands, Winston and Salem, show comparative weakness against Marlboro and Kool among these younger smokers. Winston is at 14% in the 14-24 age group versus Marlboro at 33%. Salem is at 9% versus Kool at 17%. Again, our brands show competitive strength in the 25 and older age groups.

This suggests slow market share erosion for us in the years to come unless the situation is corrected.

Exhibit 1 at 50142 1311-50142 1312, presentation to the Board of Directors of RJR Industries (September 30, 1974). (Emphasis added.)

In a vigilant effort to protect its market share, RJR annually engaged in 10-year planning forecasts. The 10-year forecast for the years 1977-1987, stamped "RJR SECRET," confirmed Tucker's presentation to the Board of Directors, and could not be more explicit in revealing RJR's critical need to sell cigarettes to teens:

Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become the dominant brands in future years. Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR-T [RJR Tobacco] must soon establish a successful new brand in this market if our position in the Industry is to be maintained over the long term.

Exhibit 6 at 14, "Planning Assumptions and Forecast for the Period 1977-1986+" (April 15, 1976). (Partial emphasis added.)^{4/}

^{4/} Interestingly, while the prior versions of this annual report include similar statements about the 14-18 year-old market, the March 21, 1977 forecast sterilized this statement to refer only to 18-25 year-olds. See Exhibit 7 at 17, "Planning Assumptions and Forecast for the Period 1978-1987+" (March 21,

Similarly, notes from a mid-70s meeting to discuss Winston's marketing and advertising strategies describe Winston's decline against Marlboro and gives context to RJR's maniac quest for new teenage smokers:

1. Marlboro's current ability to gain market share while Winston is losing market share should, in my judgment, be the primary concern of Reynolds in the cigarette field. . . . In my opinion some way must be found to sharply reverse the present market share trend on Winston vs. Marlboro if Reynolds is to retain its preeminent position in the cigarette field. It was said that young smokers are smoking Marlboros two-to-one over Winstons. This is an alarming statistic for Winston.

Exhibit 8, meeting notes discussing "Cigarette Product Formulation" (April 12, 1973). (Emphasis added.)

As RJR's market share continued its decline into the 70s, RJR redoubled its research efforts to attract 14-24 year-olds to its brands.^{5/} A May 4, 1973 proposal presented to RJR management,

1977). However, even in this sterilized version it is apparent that the real subject is 14-18 year-olds. The sterilized version discusses "beginning smokers," 2/3 of whom RJR knew to be between the ages of 12 and 18:

The present large number of people in the 18-25 year old age group represents the greatest opportunity for long-term cigarette sales growth. Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become dominant brands in future years.

Exhibit 7 at 17. (Emphasis added.)

^{5/} There are numerous examples from the 50s, 60s and 70s demonstrating RJR's interest in marketing its products to teenagers and children. Correspondence from RJR's advertising agency, William Esty Company Inc. ("William Esty") provides

entitled "Originals for Turk Test Market," provides an example of RJR's "aggressive" pursuit of the 14-17 year-old "young adult" smokers. This document, discussing the "importance of young adults to the 85mm NFF category," states:

As a result of this strong preference for the 85mm NFF category among young-adult males, males 14-34 years old represent approximately 35% of 85mm NFF smokers (at least 50% higher than total industry).

Exhibit 12 at RJR 464370. (Emphasis added.) And again, in a 1975 memorandum, RJR's J.W. Hind reiterated that Camel's marketing objective was to "increase our young adult franchise" -- with "young adults" being defined to include 14-24 year-olds -- who "represent tomorrow's cigarette business." Exhibit 13, memorandum regarding "Recommendation to Expand 'Meet the Turk' Ad Campaign" (January 23, 1975). Specifically, Hind stated:

To ensure increased and longer-term growth for CAMEL FILTER, the brand must increase its share penetration among the 14-24 age group which have a new set of more

evidence that RJR actively sought information regarding children and smoking: see, e.g., Exhibit 9, letter regarding "Study of Attitudes Toward Cigarette Smoking Among High School Students" from William Esty Company Inc. to RJR (March 14, 1958) (conveying ideas for a study of attitudes towards cigarette smoking among high school students, a study suggested by RJR); Exhibit 10, letter regarding "Plan for Consumer Research on Cigarette Smoking 1964" from William Esty Company to RJR (January 16, 1964) (discussing consumer research plan on "[t]rend studies on cigarette smoking at the teen-age level," a plan which reflects "your [RJR's] thinking and your suggestions"); and Exhibit 11, letter regarding "Preliminary Cigarette Findings from April 1971 Screening" from William Esty to RJR (July 2, 1971) (forwarding cigarette research findings containing the "[s]moking incidence and preference shares, by age, among those aged 14 to 20" as requested by RJR).

liberal values and which represent tomorrow's cigarette business.

Exhibit 13. (Emphasis added.)

To work towards its stated objective of enticing 14-24 year-olds to smoke its brands, RJR obtained hundreds of pages of data from National Family Opinion ("NFO") on the smoking habits of 14 to 17 year olds, compiled under the title "Smokers Screening -- April 1976 Profile (14-17)." See, e.g., Exhibit 14, "Smokers Screening -- April 1976 Profile (14-17)" (September 7, 1976) and Exhibit 15, "Smokers Screening Cigarette Switching Matrix (14-17)" (October 1975).^{6/} RJR regularly used NFO information internally to guide research and marketing.^{7/} During 1980, for example, RJR issued a series of internal reports analyzing NFO data on teenage smokers, aged 14-17. See, e.g., Exhibits 17-23, all entitled "Teenage Smokers (14-17) and New Adult Smokers and Quitters." The February 1, 1980 report explains the important concept of "Franchise Aging," noting that in 1979, one million "Young Adult Smokers" (YAS) turned

^{6/} Due to the length of these documents, we have only included exemplars of the "Smokers Screening Profile" (Exhibit 14) and the "Cigarette Switching Matrix" (Exhibit 15). Two similar reports were utilized by RJR: (1) "Smokers Incidence and Preference' Ages 14-17"; and (2) "Mass Tobacco User Screening . . . Ages 14-17."

^{7/} In addition to these quarterly reports, annual reports showing "trends in share of smokers by age [14-17]" were prepared by RJR's Market Research Department. Exhibit 16 at 50076 9032, memorandum regarding "Share of Smokers by Age Group" (October 30, 1975).

18 and thus entered the smoking population while 450,000 50+ year-old smokers left the market:

Franchise Aging is the dynamic process of young adult smokers (18 year old) entering the smoking population and older smokers (50+) leaving the market. For example, in 1979 approximately one million smokers became 18 years old while approximately 450,000 older smokers left the market. The extent that each company is affected by this process is determined by the age skew of its franchise.

Exhibit 17 at 4. As part of RJR's series of reports on teenage smokers, RJR marketing researcher Kay Duffy wrote exhaustive summaries of the available data on RJR's market share of teenage smokers, aged 14-17. See Exhibits 19, 21, 22.

Desperate to attract this critical market, at times RJR's research focused on individuals even younger than 14. For example, a document discussing the upcoming "Spring 1971 NFO Survey" explains that information is to be tabulated for "Respondents Aged 13 and Younger." Exhibit 24 at 1, "Summary of Decisions Made in MRD [Market Research Department]-Esty Meeting on April 7, 1971, Concerning Spring 1971 NFO Tobacco Products Survey." Ten years later, an RJR outside consultant wrote a "Confidential" memorandum to RJR's Jeannie Marshall which began:

This is a follow-up to the memo I sent you earlier that dealt with teenage smokers. Dawn August is doing a resource search for existing data pertaining to incidence and consumption among youth age 12-17.

Exhibit 25, memorandum regarding "Teenage Smoking Incidence and Consumption" (March 25, 1982). (Emphasis added.)

In one dramatic example from 1980, future CEO (then executive Vice-President of Marketing) Gerald Long wrote to the then-current Chairman E.A. Horrigan, bemoaning RJR's poor showing in market share among 14-17 year-olds, and hoping that "planned activities" would soon correct the situation. Exhibit 26, memorandum regarding "MDD [Marketing Development Department] Report on Teenage Smokers (14-17)" (July 22, 1980). This terse memorandum discussing the latest RJR Marketing Development Department "Report on Teenage Smokers (14-17)" is quoted here in full:

Attached is a MDD [Marketing Development Department] report covering the aforementioned subject. Last January, a report was issued on this subject that indicated that Philip Morris had a total share of 59 among 14-17 year old smokers, and specifically, Marlboro had a 52 share. This latest report indicates that Philip Morris' corporate share has increased by about 4 points; however, Marlboro remains the same at 52.

Importantly, the report further indicates that RJR continues to gradually decline, and between the spring and fall 1979 periods, RJR's total share [of the 14-17 year old market] declined from 21.3 to 19.9.

Hopefully, our various planned activities that will be implemented this fall will aid in some way in reducing or correcting these trends.

Exhibit 26, "MDD Report on Teenage Smokers (14-17)" (Emphasis added.)

Despite the above, RJR maintains that it does not market cigarettes to minors.^{8/} However, even an RJR press release

^{8/} Research into the number of teens who smoke and their brand of choice, conducted as late as July 1993, was found in RJR's files. See, e.g., Exhibit 27, report regarding "Cigarette

attempting to "explain" and "contextualize" the Company's intense focus on underage individuals as revealed in its internal "SECRET" documents, concedes that during the 80s, RJR was concerned it was losing market share "among younger smokers (both over and under the age of 18)."^{9/} This press release states:

RJR documents in this time frame continually reflect company concern over Marlboro's continuing gains among 18-30 year-old smokers. A time when most initially choose and tend to stick with one brand. RJR's declining market share among younger smokers (both over and under the age of 18), largely attributed to a perceived product quality difference between RJR and its competitors, suggested a substantial decline in the company's future market share. At the time, the company faced critical decisions about how to improve its products and product quality and increase its modern manufacturing capacity.^{10/}

By 1986, RJR's fear that it would be overtaken by the fast growing Marlboro brand proved to be correct. The 1986 Camel "White Paper," which looked at the question of whether the Camel brand could be repositioned to compete with Marlboro, summarized RJR's fall from number one:

WINSTON's share among younger adult smokers peaked in the mid-60s when Marlboro's repositioning began to take hold among this target, however, WINSTON continued to grow until the late 70s. WINSTON's growth and subsequent

Brand Preferences Among Teenage Smokers" (July 21, 1993) (a survey of "12-17 year olds"); see also Exhibit 28, letter regarding Camel underage market data (March 16, 1992) (providing the "Percentage of Camel Volume Underage" as "2,389,000 million" 12-17 year-old smokers).

^{9/} P.R. Newswire at 10 (January 3, 1997.)

^{10/} P.R. Newswire at 10. (Emphasis added.)

decline can be attributed to its performance among younger adult smokers.

Exhibit 5 at 1, Camel "White Paper." (Emphasis added.)

Having learned its lesson from Marlboro's new-found dominance in the "young adult" market, RJR's paramount marketing objective was to re-establish RJR's place in this youth market.^{11/}

B. It Was Critical That RJR Attract Minors Because 90% Of All Smokers Start Smoking By Age 18 And Cigarette Smokers Are Extremely Loyal To Their First Brand

As evidenced in "SECRET" RJR internal documents, the number of smokers who began to smoke in their early teens has steadily risen from more than 50% in 1974 to over 90% today. A confidential report from RJR's outside advertising agency (William Esty), discussed the "Starting Age" of smokers and the "Reasons for Selecting First 'Usual' Brand." Exhibit 29 at RJM 053055, RJM 053059, report regarding "What Causes Smokers to Select Their First Brand" (1974). RJR's outside advertising agency recognized that: "If a person is going to smoke, he generally . . . starts during his teens." Exhibit 29 at RJM 053060. As this document expressly recognizes, in 1974 more than 50% of current smokers had selected their "First Usual Brand" of cigarettes before the age of 18. Exhibit 29 at RJM 053059.

^{11/} It was this single-minded devotion that led one RJR senior manager to leave the Company. He/she told us that in his/her opinion, KKR "would sell cigarettes to babies" to make money. This individual's identity, at his/her request, remains confidential.

Like its outside advertising agency, RJR knew that the majority of smokers select their cigarette brand before the age of 18. In 1974, RJR marketing researcher Donald W. Tredennick (Director of Consumer Research) wrote an internal memorandum to F. Hudnall Christopher (Director of Marketing Research) entitled "What Causes Smokers to Select Their First Brand of Cigarette?" Exhibit 30.^{12/} This memorandum summarized RJR's knowledge as to "the age at which people generally start smoking, their initial reasons for smoking, the brands they initially select for regular use and their reasons for selecting that brand." Exhibit 30 at 1. Confirming the conclusions of William Esty, Tredennick determined that "virtually all [smokers] start by the age of 25" and that "most smokers begin smoking regularly and select a usual brand at or before the age of 18." Exhibit 30 at 1. (Emphasis added.)

In 1982, senior market research analyst Diane Burrows explained that "[i]f a man has never smoked by age 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one." Exhibit 31 at 2, memorandum regarding "Estimated Change in Industry Trend Following Federal Excise Tax Increase" (September 20, 1982). By 1984, just one year before the Joe Camel character was test-marketed in the United States through a T-shirt give-away promotion, RJR's current thinking was that more than 2/3 (69%) of

^{12/} The other conclusions reached in this important report are discussed in detail in Section III.B, infra.

all smokers had selected a "First Usual Brand" before the age of 18. Exhibit 32 at Appendix B, Strategic Research report, "Younger Adult Smokers: Strategies and Opportunities" (February 29, 1984). Moreover, RJR knew that if a person did not begin smoking by the age of 24, it was virtually certain (95%) that such individual would never take up smoking. Exhibit 32 at Appendix B. This "Confidential" 1984 Burrows report traced the rise and fall of every major brand in the history of the American cigarette market in great detail. Exhibit 32 at 1-32.

The 1984 Burrows report discussed the continued importance of attracting the euphemistic "Younger Adult Smokers" which her charts revealed were pre-smokers aged 12 to 24. Exhibit 32 at Appendix B. In addition to recognizing that the only "new" smokers available were people aged 12-24, Burrows determined that "Younger Adult Smokers" (12-24 year olds) were doubly important to RJR because smokers are extremely brand loyal. Exhibit 32 at Appendix B. Burrows summarized her conclusions:

Younger adult smokers are the only source of replacement smokers. Repeated government studies (Appendix B) have shown that:

! Less than one-third of smokers (31%) start after age 18.

! Only 5% of smokers start after age 24.

Thus, today's younger adult smoking behavior will largely determine the trend of Industry volume over the next several decades. If younger adults turn away from smoking, the Industry must decline, just as a population which does not give birth will eventually dwindle. In

such an environment, a positive RJR sales trend would require disproportionate share gains and/or steep price increases (which could depress volume).

Exhibit 32 at 2. (Emphasis added.)

Thus, Burrows articulated the driving principle behind the Joe Camel campaign:

Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years. They will continue to be just as important to brands/companies in the future for two simple reasons:

! The renewal of the market stems almost entirely from 18-year-old smokers. No more than 5% of smokers start after age 24.

! The brand loyalty of 18-year-old smokers far outweighs any tendency to switch with age.

Thus, the annual influx of 18-year-old smokers provides an effortless momentum to successful "first brands" (i.e., those which appeal to 18-year-old smokers rather than switchers ages 19-24). Marlboro grows by about .8 share points per year due to 18-year-old smokers alone.

On the other hand, brands/companies which fail to attract their fair share of younger adult smokers face an uphill battle. They must achieve net switching gains every year to merely hold share. By not attracting its fair share of 18-year-old smokers, RJR yielded a .5 point ingoing [sic] share advantage to PM in 1983.

Marlboro and Newport, the only true younger adult growth brands in the market, have no need for switching gains. All of their volume growth can be traced to younger adult smokers and the movement of the 18-year-olds which they have previously attracted into older age brackets, where they pay a consumption dividend of up to 30%. A strategy which appealed to older smokers would not pay this dividend.

Exhibit 32 at 1. (Partial emphasis added.)

This point was again driven home in the Camel "White Paper":

The aging of younger adult smokers combined with their brand loyalty guarantees the growth of a brand for decades. Even if a brand falls from grace among younger adult smokers, the increasing consumption rate of the aging franchise can carry the brand's performance for years, thus extending its life cycle. WINSTON's share among younger adult smokers peaked in the mid-60s when Marlboro's repositioning began to take hold among this target, however, WINSTON continued to grow until the late 70s. WINSTON's growth and subsequent decline can be attributed to its performance among younger adult smokers.

Exhibit 5 at 1.

Burrows correctly forecast that attracting younger smokers would remain critically important for RJR as the "Baby Boomers" aged and were replaced by teens from the smaller "Generation X," and even as smoking declined in popularity among teens. In many of her reports, Burrows and other RJR "forecasting" personnel quantified for management precisely what an accelerating decline in market share each year would mean to RJR if it continued over ten years, or twenty years, or more. See, e.g., Exhibit 33 at RJR 034089, presentation regarding "Younger Adult Smoker Opportunity" (1984) (projecting a 22 point share decline for RJR by 1995). These forecasts conjured a very stark vision of RJR's future as a third-tier, bit player in the cigarette industry -- much like American Tobacco, a former tobacco giant that failed to change its Pall Mall advertising to keep pace with the times and attract new teen smokers.^{13/}

^{13/} Burrows was a highly respected marketing researcher at RJR during the 80s. Evidence of her continuing high reputation

Current research demonstrates that attracting underage smokers is now even more important to the tobacco industry. Data from the 1991 National Household Surveys on Drug Abuse reveals that 89% of all daily smokers had tried their first cigarette before the age of 18.^{14/} This report further concluded that 71% of current smokers became daily smokers by age 18. Specifically, this report states:

Most smokers begin smoking during childhood and adolescence, and nicotine addiction begins during the first few years of tobacco use. Moreover, decades of experience in tracking tobacco use show that if people do not begin to use tobacco as youngsters, they are highly unlikely to initiate use as adults. For any cross section of adults who smoke daily, 89% began using cigarettes and 71% began smoking daily by or at age 18.^{15/}

As RJR began to develop a new image for Camel in 1986, it grew even more committed to the central theme developed by Burrows -- that it was recruitment of "Younger Adult Smokers" and not "switching" that would ensure RJR's future as a tobacco company. As a logical outgrowth of Burrows' research and forecasting, RJR focused on which of its current brands could be "repositioned" to attract the teens whom RJR was euphemistically calling "Young Adult

today -- and perhaps also the need to maintain her loyalty to RJR -- is found in her continued employment by RJR as an independent marketing research consultant.

^{14/} Institute of Medicine, "Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths," pp. 5-6, National Academy Press, Washington, D.C. (1994).

^{15/} Institute of Medicine, "Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths," pp. 5-6, National Academy Press, Washington, D.C. (1994). (Citations omitted.)

Smokers." The old Camel brand, with its "virile appeal," was identified as RJR's best bet for "repositioning" to compete with Marlboro and Kool for the underage market.^{16/} Exhibit 5 at 1, Camel "White Paper." The Camel "White Paper" adopted and expanded the conclusions reached by Burrows:

I. IMPORTANCE OF YOUNGER ADULT SMOKERS

* * *

^{16/} RJR had begun looking to established brands, such as Camel, as a means to attract the young adult market as early as 1980:

Most of us agree that peer group acceptance has a dominant influence on the brand choice of younger adult smokers. Socially insecure, they gain reinforcement by smoking the brands their friends are smoking, just like they copy their friends' dress, hairstyle, and other conspicuous things. To smoke a brand no one has heard of -- which all new brand names are -- brings one the risk of ostracism. It's simply not the "in" thing to do.

If this theory is correct, it would be extremely difficult to achieve success with a brand name whose primary thrust was against younger adult smokers . . . Even Marlboro had been around for years before it took off among younger adult smokers.

My thinking is that to maximize our success among this important group [younger adult smokers], we should place our efforts and our resources behind our established brand names, keeping them young and contemporary through advertising, promotion, and line extension strategies and executions. If we do this well, I believe history is telling us we are much more likely to achieve success with this strategy than via new brands.

Exhibit 34 at 1-2, memorandum regarding "Younger Adult Smoker Opportunity Analysis - New Brands" (September 29, 1980). (Emphasis added.)

! More than 40% of the Virile Segment's current total business is a result of brand choices of smokers at age 18.

! The aging of younger adult smokers combined with their brand loyalty guarantees the growth of a brand for decades. Even if a brand falls from grace among younger adult smokers, the increasing consumption rate of the aging franchise can carry the brand's performance for years, thus extending its life cycle. WINSTON's share among younger adult smokers peaked in the mid-60s when Marlboro's repositioning began to take hold among this target, however, WINSTON continued to grow until the late 70s. WINSTON's growth and subsequent decline can be attributed to its performance among younger adult smokers.

! Marlboro, which has 55% of 18-24 year old smokers, and 75% of non-menthol 18-24 year old smokers, grows approximately 1.0 total market sharepoints every year due to gains among younger adult smokers. Although Marlboro sustains yearly net switching losses among total smokers, the substantial yearly gains among younger adult smokers more than offset switching losses and thus ensures continued brand growth. Previous brands including WINSTON and Pall Mall showed the same pattern and ensuing strong share growth until long after they lost appeal among younger adult smokers.

Exhibit 5 at 1. (Emphasis added.)

By 1987, the Burrows themes had reached a fever pitch at RJR because of the accelerating rate of decline in share among the so-called "Younger Adult Smokers" (90% of whom, of course, are younger than 18). A 1987 presentation to RJR senior management drove many of the Burrows themes home again:

YAS [young adult smokers] are the only source of replacement smokers.

- Less than one-third of smokers start after age 18.

First Usual Brand Younger Adult Smokers (FUBYAS) drive the growth of Marlboro and Newport.

The value of FUBYAS compounds over time due to extreme brand loyalty and rate per day increases.

- Of all smokers who chose Marlboro as a FUB [first usual brand] in the mid 1970s, 41% still smoke the brand.
- Rate per day increases 30% between ages 18 and 35.

RJR is substantially underdeveloped and declining in share of 18-20 year old smokers.

Exhibit 35 at 2, "Younger Adult Smokers" (1987) (Emphasis added.)^{17/}

By 1987, RJR management had developed a plan of action -- an advertising plan modeled, expressly, on the successful youth pitches of other products. Exhibit 35 at 61. RJR executives were cautioned, however, that "big pay-offs may take 3 or 4 years to achieve bottom-line results." Exhibit 35 at 61. This forecast proved accurate with respect to the Joe Camel campaign.

C. In 1981, RJR Began Using The Terms "Young Adult Smokers" And "First Usual Brand Young Adult Smokers" As Euphemisms For Illegal Underage Smokers

By September 1980, RJR began to grow concerned about explicitly stating that it was targeting kids, even in internal memoranda. An interoffice memorandum discussing "Younger Adult Smokers -- Terminology" -- ostensibly aimed at emphasizing RJR's policy of not marketing its cigarettes to children -- suggested changing certain terminology used in RJR's internal communications.

^{17/} As explained in Section II.C, by 1981 RJR was careful to rely on the "Younger Adult Smoker" (YAS) and "First Usual Brand Younger Adult Smoker" (FUBYAS) euphemisms when referring to the illegal teen market.

Exhibit 36, memorandum regarding "Younger Adult Smokers -- Terminology" (September 11, 1980). However, the specific terms that were to be erased from RJR's vocabulary were redacted from the copy of the document produced. We believe that the redacted portion discusses the terms "new smoker," "pre-smoker" and "beginning smoker" -- 90% of whom are younger than 18. This document states, in pertinent part:

Given this policy, it is important that we do not do anything that would leave the false impression that our real intentions are otherwise. The risk area here is in the references we make in our written communications regarding the younger adult smoker market.

PRIVILEGED MATERIAL REDACTED

As an additional thought, I would also suggest that we all begin using this terminology in our oral communication, both formal and informal. By doing so, we'll develop a good habit what will reflect itself in our written communications.

Please discuss this with your people and assure that they understand this new terminology, the rationale behind it, and that they put it into practice immediately.

Exhibit 36.^{18/}

^{18/} In this case, as opposed to the industry-wide conspiracy cases, few documents were withheld or redacted. Further, RJR produced many documents originally withheld on various privilege grounds. This said, there remain a few documents that continue to be withheld or for which only redacted versions have been produced. We continue to fight for the release of those documents. For example, handwritten meeting notes dated May 9, 1989 appear to have been surreptitiously altered to delete a particular reference to underage smokers. The meeting notes discussing appeal of various brands, state the following about the Newport brand: "Pop[ular] among young people; real young; [deleted] year olds." Exhibit 37 at RJR 481921.

A later internal memorandum told RJR employees to continue to track underage smokers but not to refer to them as such. Exhibit 38 at 1, memorandum regarding "Aging 18 Year Old Smokers into NFO Panel Data" (December 8, 1981). Specifically, this document states:

The purpose of this memo is to recommend aging all known under 18 year old smokers into the NFO Panel Data at age 18 and classifying them as "Continuing Smokers," with only those smokers new to the business classified as "new" smokers. This represents maintenance of the current method of tabulation.

Exhibit 38 at 1. (Emphasis added.)

Indeed, RJR expanded its investigation into the illegal underage market. According to a July 8, 1982 letter agreement, RJR contracted with a company called Data Resources, Inc. to develop "AGEMIX," a model that could be used to determine smoking incidence and smoking rates for individuals aged 12 and over.^{19/} Exhibit 39, letter regarding "AGEMIX" Development (July 8, 1982). Specifically, RJR and Data Resources Inc. agreed:

1. To develop AGEMIX based on groupings which are more consistent with government reports on [smoking] incidence and rate, which provide the initial conditions for AGEMIX. The breaks will be: 12-17, 18-24, 35-44, 45-64, and 65+.

Exhibit 39 at 1. (Emphasis added.)

A more detailed description of AGEMIX's function is found in a document entitled "R.J. Reynolds Cigarette Industry Volume

^{19/} This document also once again confirms that "few people start smoking after age 24." Exhibit 39 at 1.

Forecasting System." Exhibit 40. This document explains that the AGEMIX system was designed to make "use of an age-sex approach (described below) to track various smoking traits through the population." Exhibit 40 at RJM 054877. In its final form, AGEMIX allows RJR to track the incidence and rates of smokers aged 14-17, 18-24, 25-34, 35-49 and 50 and over. Exhibit 40 at RJM 054878. Specifically:

The model not only computes the number of cigarettes smoked by each cohort, it also tracks the changes of consumption in each cohort as people enter and leave the cohort.

Exhibit 40 at RJM 054878. Significantly, the AGEMIX model recognizes that "[t]he formulas for the youngest cohorts are slightly different since the model assumes that no one younger than 14 smokes." Exhibit 40 at RJM 054879.

As a result of this vocabulary change, RJR employees currently use the terms "Young Adult Smokers" ("YAS") and "First Usual Brand Young Adult Smokers" ("FUBYAS")^{20/} as the accepted euphemisms for underage smokers.^{21/} Henceforth, RJR employees tried to avoid the

^{20/} The "Younger Adult Smokers" document explains that "FUBYAS are in a transition -- belonging to the FAMILY (secure) replaced by belonging to selected PEER GROUP (not as secure)." Exhibit 35 at 29. It also explains that to FUBYAS, "no fun = parents." Exhibit 35 at 39. Only teenagers are in transition from belonging to the family to seeking belonging in a peer group, and have the mindset that parents are "no fun."

^{21/} Similarly, RJR documents discussing "Marlboro smokers" also really mean new 14-24 year-old smokers whom Marlboro was, and is, so successful at obtaining.

kind of frank definition included in the 1973 proposal that the Camel 85mm cigarette be aggressively targeted at "young-adult males, males 14-34 years old" (Exhibit 12); in the Vice-President of Marketing's 1974 presentation to the Board of Directors about the importance of the "young adult market, the 14-24 age group," (Exhibit 1); in J.W. Hind's 1975 memorandum discussing how Camel would meet its marketing objective of increasing "the young adult franchise" by increasing "its share penetration among the 14-24 age group" (Exhibit 13); and in future CEO G.H. Long's 1980 memorandum bemoaning RJR's dwindling share of "14-17 year old" smokers (Exhibit 26).

Despite the 1981 sterilization of RJR's documents, the "SECRET" 1984 Burrows Report unwittingly exposed the truth behind RJR's use of euphemistic language to discuss teens. Exhibit 32. Although throughout her Report, Burrows assiduously avoided any direct admission that what she was talking about was underage smoking -- always using instead the euphemisms "young adult" or "younger adult" -- in Appendix B to the report she slipped. In her chart entitled "Younger Adults Importance as Replacement Smokers," Burrows inadvertently demonstrated just how young a "younger adult" can be -- at least in RJR's euphemistic view -- for this chart begins at age 12. Exhibit 32 at Appendix B.

Another slip occurred in the 1987 "Younger Adult Smokers" presentation to RJR senior management, which stated that "YAS are

the only source of replacement smokers" and that "First Usual Brand Younger Adult Smokers (FUBYAS) drive the growth of Marlboro and Newport." Exhibit 35 at 2. This presentation explicitly recognized that "less than one-third of smokers start after age 18." Exhibit 35 at 2. Once again, reading this document in context with the other RJR documents reveals that YAS and FUBYAS means kids.

Yet another slip occurred in October 1987, just months before the national launch of the Joe Camel campaign. An October 15, 1987 memorandum stamped "RJR SECRET," from a file that incredibly bears the name "YOUTH TARGET," discusses the anticipated launch of "Project LF," commonly known as Camel Wides. Exhibit 41, memorandum regarding "Project LF Potential Year 1 Marketing Strategy" (October 15, 1987). In this memorandum, the author explicitly states:

Project LF is a wider circumference non-menthol cigarette targeted at younger adult male smoker[s] (primarily 13-24 year old Marlboro smokers). This product is also being explored as a CAMEL line extension and will be evaluated (new brand vs. line extension) following receipt of TPT test results which will be received for both products next year.

Exhibit 41. (Emphasis added.)^{22/}

^{22/} RJR asserts that reference to 13-24 year-old smokers is a typographical error and should read 18-24. RJR's assertion lacks credibility in light of its extensive research on children under 18 years of age. Additionally, this document was copied from an RJR file entitled "YOUTH TARGET" -- the same name as a 1987 RJR-McDonald Inc. study of 15-17 year olds, discussed in Section III.D, infra -- confirming that this document does not

Finally, during the Mangini litigation, RJR's counsel all but conceded that "by definition," RJR documents referencing "Young Adult Smokers" or "First Usual Brand Young Adult Smokers" were discussing "new smokers" -- 90% of whom, of course, are younger than 18.^{23/} In opposing our request to include the terms "Young Adult Smoker," "First Usual Brand Young Adult Smokers" and "Marlboro smokers" in the Court's Order requiring RJR and its advertisers to produce all documents which in any way relate to minors, counsel noted:

Nonetheless, Reynolds is in the process of identifying for production nonprivileged documents in its files that refer to persons who are either under the age of 18, or are aged 18 through 24, for the time period beginning January 1, 1973. This production, which is extremely burdensome, will by definition encompass YAS and FUBYAS documents, and should moot Plaintiff's articulated concerns.^{24/}

Ignoring its own internal documents, to this day RJR pretends that the terms "Young Adult Smokers" and "First Usual Brand Young Adult Smokers" are limited to legal smokers of adult age, and that these are the only people to whom RJR markets its products.

merely contain a typographical error.

^{23/} November 22, 1996 letter from RJR's counsel to Mangini's counsel.

^{24/} November 22, 1996 letter from RJR's counsel to Mangini's counsel. (Emphasis added.)

D. The Importance Of New Teen Smokers To RJR Is Further Underscored By RJR's Extensive Efforts To Counteract The Anti-Youth Smoking Movement

Several internal documents describe the anti-youth smoking movement as being of critical importance to RJR. For example, a 70s RJR marketing department report entitled "Key Issues - Position Papers" discusses the impact of various proposed anti-smoking legislation pending across the nation. See Exhibit 42. Each issue identified in the report is analyzed in terms of characterizing a "trend, issue, or event" as well as noting what will be the direct "impact/implication" to RJR. The report recognizes two "key issues" affecting sales of cigarettes to teens.

First, under the general heading of "Enforcement Practices," the report explains the loss of profits that would result from imposition and/or enforcement of state or federal restrictions against the sale of cigarettes to teenagers as a "key issue" facing the Company. Exhibit 42 at RJR 469240. It forecasts that "[p]ublic opinion will mandate that current laws prohibiting sale of cigarettes to teen-agers be enforced." Exhibit 42 at RJR 469240. In a chart entitled "Estimated Impact Implications (+ or -)" under the heading "Quantitative: Effect on Sales/Profits," the author recognizes that stronger enforcement of laws prohibiting sales of cigarettes to teenagers damages the Company because such enforcement would negatively impact future profits. Exhibit 42 at RJR 469256. The report concludes that the effect of strengthening

enforcement practices will be a "[r]eduction in the number of new smokers." Exhibit 42 at RJR 469240. Unquestionably, RJR knows that laws restricting teens from purchasing cigarettes will have a long term impact on Company profits by limiting the number of new smokers entering the market.

A second "key issue" regarding underage smokers is that smokers under 25 will show a major shift in brand preference away from Marlboro. Exhibit 42 at RJR 469226. Confirming that teenagers are the principal source of "new smokers," the report recognizes that the tobacco company marketing a brand meeting the "wants and desires" of the "under 25" smoker will dominate the market. Exhibit 42 at RJR 469226. It explains that "the decline in Marlboro's share of under 25 smokers will continue opening this segment of the market for another dominant brand to emerge from peer group pressures." Exhibit 42 at RJR 469226. The report supports its conclusions using NFO data on Marlboro's acceptance among 14-17 year olds. Exhibit 42 at RJR 469226.

Similarly, a "Confidential" 1989 draft report entitled "Smoking and Youth" highlights RJR's concerns with anti-youth smoking efforts. Exhibit 43, draft memorandum "Smoking and Youth" (September 25, 1989). This document identifies "[s]moking among youth [a]s the core focus of the emotional strategy being employed by anti-smoking activists to rationalize broad restrictions on the tobacco industry." Exhibit 43 at 1. This RJR "Confidential"

report explicitly describes how the industry -- principally through the efforts of RJR and Philip Morris -- is combating the "antis" by (1) blaming peer pressure for underage smoking and (2) through intensive lobbying. Exhibit 43 at 2. Specifically, it describes the industry's strategy as:

The overall thrust of this effort is to show how beginning to smoke is one of the many facets of peer pressure that parents can teach their children to resist.

The political action element consists of traditional lobbying activity at the federal and state levels, as well as providing witnesses for legislative and regulatory hearings.

Exhibit 43 at 2.

This "Confidential" report goes on to explain that in 1989 the "Reynolds and Philip Morris programs generally stress[ed] government relations activities, although both companies have, on occasion, addressed the issue of smoking among youth via their respective public issues forums." Exhibit 43 at 2. It proposed a program having four components that should be implemented to combat anti-smoking youth efforts: "Government Relations, Sales/Marketing, External Affairs and Public Relations." With respect to "Government Relations" and youth smoking, RJR suggests:

No other legislative "remedy" is necessary, or capable, of influencing smoking among youth. The industry must continue to oppose unwarranted restrictions, including those which are cloaked in the guise of being of benefit to children like H.R. 1250 and H.R. 1493.

Exhibit 43 at 3.

With respect to the "External Affairs" component, RJR suggests that the industry ensure its policies of not marketing to youth are "effectively communicated to the proper constituencies." Exhibit 43 at 4. Identifying the "proper constituencies," this document states: "Two audiences would be targeted in this effort: (1) the general public to include parents, opinion leaders and policy makers, and (2) school-age children (11-17) through their school systems." Exhibit 43 at 4. (Emphasis added.) Moreover, with respect to this component, RJR suggests: "[t]his communication might also include an exposé on the motives behind the anti-smokers who are raising the youth smoking issue." Exhibit 43 at 4.

Another internal document discusses how RJR might "counter" California's anti-smoking advertising campaigns. Exhibit 44, report regarding "Anti-Smoking Advertising." This document explains that the "California campaign enjoys high rate of awareness and appears to be having the intended effect on smoking attitudes (smokers/non-smokers)." Exhibit 44 at RJR 339263. It explains that the "[s]trength of the campaign appears directly linked to the youth smoking issue. Specifically 'anything that might stop a kid from smoking has value to it.'" Exhibit 44 at RJR 339263. This document concludes that "[t]he California campaign, and those like it, represents a very real threat to the industry on the intermediate-term." Exhibit 44 at RJR 339266.

Finally, in the 1984 presentation "Younger Adult Smoker Opportunity," RJR marketing forecasters emphasized the importance of immediately attracting new "Younger Adult Smokers" because they feared that Congress would soon ban all cigarette advertising. Exhibit 33 at RJR 034138. Why would RJR fear that a ban on advertising would reduce its share of "Young Adult Smokers" (i.e., teens), unless it recognized that its advertising indeed attracted kids to smoke?

In sum, RJR's strategy to ensure a continued source of new teenage smokers was three-fold. One, RJR designed a successful advertising campaign relevant to the youth market. Two, it took steps to ensure that new youth smoking laws were not enacted and that existing laws were not more stringently amended or vigorously enforced. Finally, RJR discredited those speaking against the industry's practices.

III. RJR INTENTIONALLY DEVELOPED THE JOE CAMEL CAMPAIGN TO TARGET PERSONS YOUNGER THAN 18 YEARS OF AGE

A. In The 1970s, RJR Used The Joe Camel Cartoon Character To Successfully "Youthen" The Camel Brand In France

Prior to its domestic launch, in the 70s RJR ran a series of advertisements in a French young adult magazine called Pilote, featuring Joe Camel's cartoon predecessor, sometimes called the "funny Camel" or the "laughing Camel":



Pilote, No. 54, November 1978.

RJR introduced the cartoon camel in France seeking to "youthen the brand." See Exhibit 45, memorandum regarding "'Funny' French Camel Design" (March 5, 1985). As early as 1974, RJR's outside advertising agency stated that Joe's cartoon predecessor was very successful in this goal:

I think the French advertisement for Camel Filters is a smash. It would work equally well, if not better, for Camel Regular. It's about as young as you can get, and aims right at the young adult smoker Camel needs to attract.

Exhibit 46, memorandum regarding "French Camel Filter Ad" (February 7, 1974). (Emphasis added.)

Indeed, the French cartoon Camel followed close on the heels of a 1973 meeting discussing, among other things, the use of "comic strip" advertising to combat Marlboro's hold on the critical youth

market. Exhibit 8 at 5, "Cigarette Product Formulation." Although the author believed that product and packaging characteristics were more important than advertising and promotion in determining consumer choice of brands, he recognized the importance of marketing and advertising when the target audience is young smokers. Exhibit 8 at 5. According to this document, just prior to Joe Camel's launch in France, RJR looked at cartoon advertising's effectiveness at targeting youth:

In view of the need to reverse the preference for Marlboros among younger smokers, I wonder whether comic strip type copy might get a much higher readership among younger people than any other type of copy. It would certainly seem worth testing a heavy dose of this type of copy in a test market to get a research reading on the percentage of readership and copy recall.

Exhibit 8 at 5. (Emphasis added.)

The knowledge gained by RJR through its use of Joe Camel in France demonstrated the cartoon character's tremendous appeal to the children RJR called "Young Adult Smokers." Ultimately, RJR's French subsidiary was convicted criminally for violating French laws banning certain types of advertising. See Exhibit 47, memorandum regarding RJRT France "`Funny CAMEL' Program" (December 17, 1979). As evidenced in this December 1979 memorandum to E.A. Horrigan (the Chairman of the Board), RJR was well apprised of this governmental conviction and the possibility that similar action could be taken in the United States. This memorandum explicitly states:

The "Funny CAMEL" program in France, the resulting suit by the Government, the final court decision in January, and the ultimate actions taken by Area I and French Management could someday be of extreme importance to RJR -- both in the United States and other countries.

Therefore, this is to suggest that a concise summary be prepared covering this entire situation that would subsequently be issued to RJR Senior Management, Legal, and key Marketing management.

Basis [sic] the results and future action, we would have on record a good case history, which could be beneficial to all of us at RJR in the event that we are faced with situations in the United States or other key countries similar to RJRT France.

Exhibit 47. (Emphasis added.)

In the mid-80s, RJR revived the idea of the French Camel for an American Camel promotion. Perhaps still smarting from the French criminal prosecution, RJR's International Division cautioned the Americans that they might be biting off more than they really wanted to chew if they used the French Camel:

This is to advise that we have no problem with TC [Tobacco Company] using the design of the "funny" Camel used in the past in France for T shirts and lighter premiums. We also appreciate your consulting with TI [Tobacco International] before proceeding.

I have requested our Paris office to provide some background information for you. However, I must caution that this design was used in France during a time when an attempt was being made to "youthen" the brand; the entire advertising and promotional campaign used at the time was geared to this end, with the "funny" Camel playing a key role in the advertising. Indeed the design did help to achieve this end, but at a time when the younger franchise became associated with such activities as the university riots and car burnings on the left bank. When societal values returned to a more normal and status-quo basis, the Camel brand went out with the militaristic and rebellious views of the franchise. And

so for this reason, there is implicit a potential danger in using the design . . . [t]o put it bluntly, we do not want to see this design internationally.

Exhibit 45, "`Funny' French Camel Design." (Emphasis added.)

The knowledge learned from Joe Camel's run in France convinced RJR that the cartoon Camel could accomplish the same task for its domestic market.

B. While Joe Camel Was Being Used In France During The 1970s, RJR Was Perfecting The Best Way To Addict Teens To Its Brands

With startling candor, Dr. Claude Teague set forth the plain facts about the addictive nature of nicotine in his chilling 1972 internal memorandum discussing the "Crucial Role" of nicotine. Exhibit 48, "The Nature of the Tobacco Business and the Crucial Role of Nicotine Therein" (April 14, 1972). In Dr. Teague's words, cigarettes are "a vehicle for delivery of nicotine":

Nicotine is known to be a habit-forming alkaloid, hence the confirmed user of tobacco products is primarily seeking the physiological "satisfaction" derived from nicotine -- and perhaps other active compounds. His choice of product and pattern of usage are primarily determined by his individual nicotine dosage requirements and secondarily by a variety of other considerations including flavor and irritancy of the product, social patterns and needs, physical and manipulative gratifications, convenience, cost, health considerations and the like. Thus a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive form.

Exhibit 48 at 2. (Emphasis added.)

Dr. Teague emphasized that: "Happily for the tobacco industry, nicotine is both habituating and unique in its variety of

physiological actions" Exhibit 48 at 3. (Emphasis added.) Ruminating about the addictive qualities of nicotine led Dr. Teague next to comment upon the central paradox which any tobacco company must solve: how to get people hooked on nicotine in the first place, since there is nothing remotely enticing about nicotine to people who have not yet been hooked. He wrote:

Before proceeding too far in the direction of design of dosage form for nicotine, it may be well to consider another aspect of our business; that is the factors which induce a pre-smoker or non-smoker to become a habituated smoker. Paradoxically, the things which keep a confirmed smoker habituated and "satisfied," i.e., nicotine and secondary physical and manipulative gratifications, are unknown and/or largely unexplained to the non-smoker. He does not start smoking to obtain undefined physiological gratifications or reliefs, and certainly he does not start to smoke to satisfy a non-existent craving for nicotine. Rather, he appears to start to smoke for purely psychological reasons -- to emulate a valued image, to conform, to experiment, to defy, to be daring, to have something to do with his hands, and the like. Only after experiencing smoking for some period of time do the physiological "satisfactions" and habituation become apparent and needed. Indeed, the first smoking experiences are often unpleasant until a tolerance for nicotine has been developed. This leaves us, then, in the position of attempting to design and promote the same product to two different types of market with two different sets of motivations, needs and expectations.

Exhibit 48 at 4. (Emphasis added.)

In the end though, Dr. Teague could not really solve this central paradox in 1972, other than to observe that advertising must appeal to the non-smoker with "wholly irrational reasons" to try to convince him to try smoking. Exhibit 48 at 5. By 1973,

however, Dr. Teague had advanced much further in thinking about the specific factors that influence "pre-smokers" to take up smoking:

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

* * *

Table I attempts to define some of the more important effects expected or derived from cigarette smoking by pre-smokers, "learning" smokers and confirmed smokers. . . . [T]here are sharp, perhaps exploitable, differences between pre-smokers, "learners" and confirmed smokers in terms of what they expect or derive from smoking. Let us examine these differences.

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.

Exhibit 2 at 1-2, "Some Thoughts About New Brands of Cigarettes for the Youth Market." (Emphasis added.)

Building on this paradigm of the "pre-smoker," the "learner," and the "confirmed smoker," Dr. Teague identified four psychological appeals best calculated to entice the "pre-smoker" to smoke. In so doing, he acknowledged that the "pre-smoker" he hopes to hook on cigarettes is typically underage:

These are the expected or derived gratifications which influence a pre-smoker to try smoking and which sustain the beginning smoker during the largely physically awkward and unpleasant "learning to smoke" phase. These effects also largely determine which brand the pre-smoker will experiment and learn with.

A. Group Identification -- Pre-smokers learn to smoke to identify with and participate in shared experiences of a group of associates. If the majority of one's closest associates smoke cigarettes, then there is strong psychological pressure, particularly on the young person, to identify with the group, follow the crowd, and avoid being out of phase with the group's value system even though, paradoxically the group value system may esteem individuality. This provides a large incentive to begin smoking. If this be true, then the same effect strongly influences the brand chosen, it likely being the popular, "in" brand used by ones close associates.

Thus a new brand aimed at the young smoker must somehow become the "in" brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing individuality and "doing one's own thing."

B. Stress and Boredom Relief -- The teens and early twenties are periods of intense psychological stress, restlessness and

boredom. Many socially awkward situations are encountered. The minute or two required to stop and light a cigarette, ask for a light, find an ash tray, and the like provide something to do during periods of awkwardness or boredom, and afford a little "time-out period" when confronting a stressful situation. Smoking also gives one something to do with the hands, eyes, etc. and something to talk about in a situation where otherwise one might simply have nothing to do or say.

This desirable attribute of smoking should be strongly emphasized in promoting a new youth brand.

C. Self-Image Enhancement -- 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. . . .

D. Experimentation -- There is a strong drive in most people, particularly the young, to try new things and experiences. This drive no doubt leads many pre-smokers to experiment with smoking, simply because it is there and they want to know more about it.

Exhibit 2 at 6-7. (Emphasis added.)

While RJR claims that Dr. Teague was a scientist, and not a marketer, Dr. Teague attended meetings with both in-house and outside marketing personnel, and his marketing concepts have been repeatedly adopted and implemented by RJR. For example, in June 1974, Dr. Teague, along with RJR internal marketing people and

outside advertising people from Tatham-Laird & Kudner, Inc., met to discuss cigarettes designed for the beginning smoker. Exhibit 49 at 1, advertising report regarding "Cigarettes Designed for Beginning Smokers" (June 11, 1974). The "Conference Report" on this meeting identifies RJR's developments in the area of creating a cigarette for "beginning" smokers, explaining the need for such a cigarette: "The idea is based on the fact that smoking to the initiate is a fairly traumatic experience." Exhibit 49 at 1.^{25/} The report states:

1. Cigarette Designed for Beginning Smokers

This cigarette would be low in irritation and possibly contain an added flavor to make it easier for those who have never smoked before to acquire the taste for it more quickly. It would not necessarily be low in tar and nicotine content. The taste would be somewhat bland; there would be minimal after taste/build-up -- which would tend to cut down on the "motorman's glove" morning-after mouth taste. This cigarette could possibly be menthol.

Exhibit 49 at 1.

In addition to direct interaction with RJR marketers, Dr. Teague's ideas were advanced and expanded by other RJR marketing personnel. The 1974 "Confidential" report commissioned by RJR from

^{25/} Language intended to hide RJR's true design -- to help children and teenagers learn to smoke -- baldly postulates that cigarettes designed for the "initiate" smoker could not be positioned "against youth." Exhibit 49 at 1. However, because the number of adult "initiates" is virtually non-existent (there is less than a 5% chance that a person older than 24 will begin to smoke) compared to the number of children and teenage "initiates" (approximately 90%), the true market for this product is easy to ascertain.

William Esty confirmed Dr. Teague's identification of conformance, support and self-image enhancement as three of the primary psychological factors leading people to smoke initially. Exhibit 29 at RJM 053056-053057. William Esty also added three other factors: showing off, rebelling against authority and emulating a role model. Exhibit 29 at RJM 053057. Similarly, Dr. Teague's concepts were again repeated and expanded in the 1974 Tredennick memorandum, "What Causes Smokers to Select Their First Brand of Cigarette?" Exhibit 30 at 2-3. This memorandum summarized RJR's knowledge as to "the age at which people generally start smoking, their initial reasons for smoking, the brands they initially select for regular use and their reasons for selecting that brand." Exhibit 30 at 1. Like Dr. Teague and William Esty, Tredennick found that the reasons people start smoking are "conformance, support, enjoyment, and to show off." Exhibit 30 at 2. He observed that in 1974, a young smoker was much more "likely to select Marlboro and Kool" than those brands' share of the total market would suggest. Exhibit 30 at 4. He concluded that through their advertising campaigns, these two brands had succeeded in projecting a beguiling user image that was well-calculated to appeal to influential leaders of young groups. Exhibit 30 at 6.

During our interview of Tredennick, he informed us that this memorandum had been prepared at the direct request of Paul Sticht, the CEO of RJR's then-parent corporation, RJR Industries.

Tredennick explained that Sticht was not a "tobacco man," but rather had been hired from the outside to take over the leadership of RJR Industries. Tredennick also informed us that the topics addressed in his 1974 memorandum were common knowledge at RJR, and stated his extreme surprise that the CEO had requested he put these fundamental truths in writing rather than simply communicating them orally.

C. Two Years Prior To Its Domestic Launch, RJR Conducted A Focus Group Where It Learned That 18-24 Year-Olds Thought Joe Camel Was Aimed At An Even Younger Audience

Despite RJR International's dire warning of "implicit potential danger in using the design," RJR embraced the cartoon camel as the savior of the Camel brand. However, taking no chances, RJR researched Joe Camel's appeal to America's youth before launching the campaign in the United States. From late 1984 through early 1985, RJR tested the Joe Camel image against several other possible campaigns in six focus groups which we understand included age mixes of 18-20 year-olds and 18-24 year-olds. A "Confidential Marketing Research Report" summarized the results of these focus groups, noting that the image appealed to persons younger than 18 years of age:

2. "French Camels"

These ads were well received due to the fun/humor aspects of the cartoons. More than any other theme, the "French Camels" appeared to attract the respondents' attention. The main drawbacks of these executions were that: one, they may be appealing to an even younger age group and

two, there is some confusion as to the meaning behind them (some focus group members were hard-pressed to explain the purpose of the ads).

Exhibit 50 at RJM 030971, marketing research report regarding "Camel Younger Adult Smoker Focus Groups" (February 1, 1985). (Emphasis added.)

Having been warned by its French subsidiary and by focus groups of American smokers aged 18-24 that the now infamous cartoon camel appealed to youth, RJR nevertheless used the French Camel in a March 1985 test-market promotion for T-shirts and lighters. The 1985 promotion was an overwhelming success: "Redemption of the T-shirt promotion was nearly three times higher than CAMEL's average participation in FSI coupons." Exhibit 5 at 2, Camel "White Paper." Indeed, the French Camel promotion was so successful that RJR decided to use the cartoon camel to reposition the Camel brand as a cigarette with a strong appeal to youth.

Obviously, the Americans at RJR were undeterred by the French qualms about use of Joe Camel, or the fact that Americans aged 18-24 thought that the Joe Camel image was too young. In America, as in France, RJR used the cartoon Camel to "youthen the brand." The result was nine years of American advertisements that very successfully targeted underage smokers, until the Mangini litigation convinced RJR to pull the ads and cease this insidious marketing campaign.

D. Just One Year Prior To The Launch Of The Domestic Joe Camel Campaign, RJR, Through Its Canadian Subsidiary, Commissioned A Study On 15-17 Year-Olds

In 1987, just one year prior to the Joe Camel campaign's domestic launch, RJR's Canadian subsidiary, RJR MacDonald, Inc., commissioned a highly detailed report entitled "Youth Target 1987." Exhibit 51. The Youth Target report studied in great detail the smoking habits and vulnerabilities of 15-17 year-olds, as well as 18-24 year-olds. According to its forward:

YOUTH TARGET 1987 is the first of a planned series of research studies into the lifestyles and value systems of young men and women in the 15 - 24 age range. As such, it represents the benchmark against which changes or trends will be identified.

The purpose of the research is to provide marketers and policymakers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and the programs directed at youth.

Exhibit 51 at Foreword. (Emphasis added.)

Review of the Youth Target study will chill any parent to the bone. Taking direct aim at 15-17 year-olds, RJR focussed its sights with amazing and frightening precision on the young people it hoped to hook on its products. The Youth Target study segregated teens into seven categories, with such colorful sobriquets as "Big City Independents," "Tomorrow's Leaders," "Transitional Adults," "Quiet Conformers," "T.G.I.F. Group," "Insecure Moralists," and "Small Town Traditionalists." See Exhibit 51 at 8-27. The Youth Target study analyzed these

categories to determine which segments were most likely to smoke and investigated what each group found appealing. Each type of 15-17 year-old was evaluated for such detailed smoking behaviors as "incidence of smoking factory-made cigarettes," "daily cigarette consumption," "type of cigarette usually smoked," and "brand family smoked." Exhibit 51 at 35-48. Worse still, these same children were analyzed for "activities and interests" and "ownership of items," for use in assessing the vulnerability of each type of child to the blandishments of RJR. Exhibit 51 at 50-73. The study found that the "T.G.I.F. Group" was "the largest group, almost one-third of youth," and that the T.G.I.F. Group members "are the most prominent supporters of smoking." Exhibit 51 at 21.

Importantly, the Youth Target study concluded that "[u]nderstanding this [T.G.I.F.] group, because of its size, is quite important to the identification of broadscale marketing activities and dissemination of policies." Exhibit 51 at 21. It determined that for the T.G.I.F. segment, "[h]eavy metal and hard rock are common music choices. AC/DC may characterize their preference." Exhibit 51 at 21.^{26/} The Youth Target study concluded that within the T.G.I.F. segment, "[t]he more eardrum assailing music -- heavy rock and metal, for example -- is the province of

^{26/} Its also reported that this segment's typical attitudes include, among other things: "I do not like to save for a rainy day," "I do not think my life is (much of a) success," "cigarette smoking is socially acceptable," and "marijuana and hashish are not (that) dangerous." Exhibit 51 at 21.

the youngest group." Exhibit 51 at 52. Conversely, the Youth Target study found that:

Lifestyle segmentation shows the squeaky clean Tomorrow's Leaders to be low consumers when they do smoke but the TGIF group, Transitional Adults and Insecure Moralists to be heavier consumers. The latter group typically needs a crutch and perhaps smoking offers some positive reinforcement to the uncertainties of life.

Exhibit 51 at 42.

Not surprisingly, as the Joe Camel campaign progressed, it featured youthful characters riding motorcycles, sporting leather jackets and hanging out in a bar called "Joe's Place" where Joe and Josephine Camels play pool and listen to a rock band named the "Hard Pack" -- all specifically designed to encourage children to smoke Camel cigarettes:



SURGEON GENERAL'S WARNING: P



PACK



The Youth Target study was not the first underage market research commissioned by RJR's Canadian subsidiary. Two drafts of a "Vantage 1980 Media Plan" include references to underage smokers as young as 13 years old. A November 5, 1979 draft -- using figures from an RJR-Macdonald "mail panel study" -- includes an exhibit entitled "Vantage Media Cost Efficiency Comparison." Exhibit 52 at RJR 229045, report regarding "RJR-MacDonald, Inc. Vantage 1980 Media Plan" (September 12, 1979, revised November 3, 1979). This exhibit contains a note stating that based upon the mail panel study, "smokers account for 24% of all Adults 15+." Exhibit 52 at RJR 229045. A second exhibit in the media plan, entitled "Poster Coverage Against Various Target Groups," includes category references for "Adults 13+," "Men 13+," and "Women 13+" among the "various target groups," i.e., 13 year-olds. Exhibit 52 at RJR 229046. The later version of the Vantage Media Plan, although deleting thirteen year-olds from half of its poster coverage "target groups," still listed them in its number index. Exhibit 53 at RJR 228953, report regarding "RJR-MacDonald, Inc. Vantage 1980 Media Plan" (September 12, 1979, revised February 20, 1980).^{27/}

^{27/} Interestingly, both documents discuss finding a loophole in the British Columbia law prohibiting the use of outdoor advertising:

The British Columbia government has legislated that tobacco advertisers cannot use outdoor in British Columbia. This includes bulletins, posters,

Another RJR-Macdonald internal marketing report discusses "very young starter smokers" -- in other words kids. Exhibit 54 at RJR 207243, "Export Family Strategy Document" (March 22, 1982). This document, discussing "strategy" for Export (RJR's leading Canadian brand) says this about why "very young starter smokers" begin to smoke:

It is hypothesized that very young starter smokers choose Export "A" because it provides them with an instant badge of masculinity, appeals to their rebellious nature and establishes their position amongst their peers. As they mature, they gain more confidence through experience (move from the educational environment into the work force) acquire other symbols of their masculinity (cars, clothing, etc.) and strive for social and peer group acceptance.

Exhibit 54 at RJR 207243. (Emphasis added.)

Moreover, RJR knew that the results obtained from the Youth Target study and the RJR-Macdonald mail panel data were equally applicable in the United States. During the same time as the Youth Target report, RJR conducted a similar analysis of teenage sub-groups, examining the means by which peer pressure could be created among influential young trendsetters in those groups.

backlights, mall posters, transit and any other outdoor vehicles such as advertising at sporting events and in airports. It appears, however, that there may be a loophole in the legislation which will allow advertising at point of sale. This may allow us to put junior posters on the sides of buildings which sell tobacco products.

Exhibit 52 at RJR 229005; Exhibit 53 at RJR 228928. Handwritten notes on the earlier version state, "Good! When will we know?" Exhibit 52 at RJR 229005.

Exhibit 55, presentation regarding "Are Younger Adult Smokers Important?" (mid-80s). Ostensibly looking at 18-20 year-olds, the 1984 "Are Younger Adult Smokers Important?" presentation first detailed the success of other brands (specifically Jack Daniels) which successfully repositioned a product to reach a younger audience.^{28/} Exhibit 55. It then described five sub-groups of teenagers, which in the mid-80s (when the report was written), were unmistakably cliques found in junior and senior high schools across the United States, and are remarkably similar to those identified in the Youth Target study. The sub-groups identified by RJR

^{28/} RJR was impressed with the transformation of Jack Daniels from a brand set which had "capitalize[d] on middle-aged men's nostalgia for 'mom's apple pie'" into a hip brand for young adults. Exhibit 55 at RJR 478685. This document refers to Jack Daniels as "the Marlboro of Bourbons" based upon its ability to attract young adults. Exhibit 55 at RJR 478682. It then examined how Jack Daniels made its successful transformation. The first method was a focused concentration on media spending to attract its younger adult target: "[Jack Daniels] puts more 'pages' in Rolling Stone than any other book" and by putting ads in other magazines which "other bourbons rarely touch (e.g. Games, Discover)." Exhibit 55 at RJR 478690. Heavy use of promotional items was the second factor playing a key role in Jack Daniels' repositioning. The presentation concluded:

There are major opportunities to use nontraditional channels to effectively reach the 18-20 smoker market -- to reach them, speak in their own language including the right symbols and cues, and be relevant. This is the heart of the Jack Daniels and Budweiser success stories and no cigarette company is doing it -- at least not right!

Exhibit 55 at RJR 478771.

include: "Goody Goodies," "Preps/GQ's/Discos," "Rockers/Party Parties," "Punkers" and "Burnouts." Exhibit 55 at RJR 478757.

The social subgroups were ranked from extremely conformist ("Goody Goodies") to extremely nonconformist ("Burnouts"). Exhibit 55 at RJR 478757. Suggestive of the subgroups found in teen films such as "The Breakfast Club" and "Fast Times at Ridgemont High," RJR expressed a keen interest in penetrating this high school market by creating peer pressure to eventually make RJR the universal brand of choice among teenagers and young adults. To reach young smokers, the report noted:

In marketing to younger adult smokers, the critical reaction is "Hey, they're talking to me." This suggests that viable positionings and executional themes must more than just "appeal" to YAS, they must appeal to YAS in a way that "differentiates" them from all other groups and differentiates our brand from all others in a meaningful way.

Exhibit 55 at RJR 478772.

Comparing the conclusions reached in the "Are Younger Adult Smokers Important?" report to those found in the Youth Target report is telling. Both reports categorized teenagers into distinct groups in order to identify which subgroup would most effectively start a trend among all the various peer groups. Like the Youth Target study, the "Are Younger Smokers Important?" report noted that "[a]ll [FUBYAS] groups tend to admire the most non-conforming groups." Compare Exhibit 55 at RJR 478763 to Exhibit 51 at 21. Where the Youth Target report concluded that the most

likely teenage market was the "T.G.I.F." group who likes ear drum assailing music, the "Are Younger Adult Smokers Important?" report concludes that the "Rocker/Party Parties," "Punkers," and "Burnouts," are the most likely replacement market. Compare Exhibit 55 at RJR 478772 to Exhibit 51 at 52. The "Are Younger Adult Smokers Important?" report concludes that although "you would not target a brand to Punkers, one might consider a new brand idea in light of whether or not there is at least one group where the brand could first `seed.'" Exhibit 55 at RJR 478768. Similarly, where the Youth Target report determined that "Tomorrow's Leaders," "Quiet Conformers," and "Small Town Traditionalists" were not likely to take up smoking, the Are Younger Adult Smokers Important report concluded that "Goody Goodies" "Preps/GQ's/Discos" were not likely to take up smoking.^{29/} Compare Exhibit 55 at RJR 478772 to Exhibit 51 at 42.

In addition to the similarities between these U.S. and Canadian reports, the concept of "group sociability positioning" was discussed at an October 28, 1982 meeting between various staff from RJR, RJR International, RJR-Macdonald and RJR's Puerto Rican unit. See Exhibit 56 at 1, memorandum regarding "Group Sociability

^{29/} These reports demonstrate why anti-smoking campaigns featuring "nerdy" and "uncool" children are not effective in reaching those teens most likely to take up smoking. If a teenager admires the most non-conforming group, these campaigns would only reinforce the image that only "uncool" kids are non-smokers.

Positioning Discussions -- October 28, in Winston-Salem" (November 9, 1982). At this meeting, it was reported that a brand's "positioning" appeals to young adults regardless of the countries examined. Exhibit 56 at 1. In other words, the knowledge gained from the Canadian Youth Target Report on 15-24 year-olds was equally applicable to America's teens. Specifically, the memorandum states:

The group sociability positioning seems to have been successful in appealing to young adults regardless of the country examined. It also has appealed to both male and female young adults which indicates its breadth. Once established, brands using this position have demonstrated the ability to grow among almost all segments allowing them to acquire major portions of the market (i.e., Belmont in Venezuela, Hollywood in Brazil and Players in Canada).

Exhibit 56 at 1. (Emphasis added.)

The "group sociability positioning" discussed at this meeting is precisely what Dr. Teague identified in 1973 as the first of four factors to entice the "pre-smoker" to smoke. Regarding "group identification," Dr. Teague wrote:

Pre-smokers learn to smoke to identify with and participate in shared experiences of a group of associates. If the majority of one's closest associates smoke cigarettes, then there is strong psychological pressure, particularly on the young person, to identify with the group, follow the crowd, and avoid being out of phase with the group's value system even though, paradoxically the group value system may esteem individuality. This provides a large incentive to begin smoking. . . .

Thus a new brand aimed at the young smoker must somehow become the "in" brand and its promotion should emphasize togetherness, belonging and group acceptance,

while at the same time emphasizing individuality and "doing one's own thing."

Exhibit 2 at 6, "Some Thoughts About New Brands of Cigarettes for the Youth Market."

A glance at the level of detail in the Youth Target study, the RJR-Macdonald mail panel data, the 1982 Export Family Strategy Document and the "Are Younger Adult Smokers Important?" document leaves little doubt of the extent of RJR's investment in gathering all the information necessary to target children with precision. Truly, no one knows teens better than RJR.

E. Despite RJR's Claim That Peer Pressure Is To Blame, RJR's Internal Documents Demonstrate That Advertising Can And Does Get Kids To Smoke Cigarettes

RJR has dogmatically maintained that peer pressure is the largest factor in a teenager's decision to smoke, asserting that advertising is completely ineffective at getting a non-smoker, let alone a non-smoking teenager, to take up smoking. Putting aside the fact that RJR's own advertising agency disagrees with this assertion -- during deposition, the Vice-President in charge of the Joe Camel account testified that he could design advertising that would get children to begin smoking cigarettes -- these protestations were summarily rejected by the district court in Penn Adver. v. Mayor of Baltimore, 862 F. Supp. 1402, 1410 (D. Md. 1994). The court observed:

This Court holds that it remains appropriate in the wake of Edenfield to accept the judicially-recognized

proposition that advertising increases consumption. Furthermore, if advertising increases consumption among the general population, it is also reasonable to accept the proposition that advertising increases consumption among youths. If anything, this statement may be more applicable to the youthful population than to the adult population due to the impressionable nature of youngsters.

862 F. Supp at 1410. (Emphasis added.)

Interestingly, RJR's own internal documents demonstrate the frivolity of RJR's mantra that peer pressure, not the Joe Camel campaign, is exclusively to blame for the increase in underage smoking. Indeed, according to RJR marketers, it was Marlboro's aggressive advertising that single-handedly supplanted Winston as the number one cigarette brand:

3. In connection with our marketing discussion, the following points seem pertinent:

(a) The Reynolds marketing group feels that the favorable share trend for Marlboro as compared to Winston is due almost entirely to the fact that Marlboro has hit upon a highly successful advertising copy approach.

Exhibit 8 at 4-5, "Cigarette Product Formulation." (Emphasis added.)

Contrary to its public position, RJR knows that peer influence does not operate automatically to the exclusion of advertising, as RJR would have the public believe. RJR's internal marketing documents explain that the Joe Camel campaign deliberately exploited teens' vulnerability to peer influence as part of its advertising strategy to get them to buy Camel cigarettes. Indeed,

the "CAMEL Marketing Strategy," as explained by Young & Rubicam (RJR's advertising agency) was "[t]o build preference by leveraging CAMEL's appeal among 18-34 adult smokers, particularly those with an `irreverent, less serious' mind set, gradually breaking down the pervasive peer acceptance of Marlboro." Exhibit 57 at RJM 007174, "Camel Advertising Overview" (December 4, 1980). In other words, RJR used Camel's appeal with 18-24 year-old smokers -- those persons whom teens aspire to be -- to build preference with teens and generate peer pressure favoring Camel rather than Marlboro. RJR intended to create the very peer pressure that it claims leads to teen smoking by positioning Camel as the brand smoked by teenagers' trendsetting "cool" peers.

Indeed, the co-developer of the Joe Camel campaign (Rick T. Caufield), in a memorandum to the Vice-President of Marketing David Iauco, seeking executive approval of the strategic direction the new Joe Camel campaign was about to take, explained that this is exactly what Joe Camel was designed to accomplish. Joe Camel would be directed toward using "peer acceptance/influence" to "motivate the target audience to take up cigarettes." See Exhibit 58 at 1, memorandum regarding "CAMEL New Advertising Campaign Development" (March 12, 1986). Caufield articulated the Joe Camel "advertising objective" as:

Overall, CAMEL advertising will be directed toward using peer acceptance/influence to provide the motivation for target smokers to select CAMEL. Specifically, advertising will be developed with the objective of

convincing target smokers that by selecting CAMEL as their usual brand they will project an image that will enhance their acceptance among their peers.

Exhibit 58 at 1. (Emphasis added.)

Just prior to the 75th Anniversary Joe Camel T-shirt promotion, the RJR report "Are Younger Adult Smokers Important?" examined the means by which peer pressure could be created among influential young trendsetters in those groups. Exhibit 55. Ostensibly looking at 18-20 year olds, the "Are Younger Adult Smokers Important?" report discussed differentiations within the First Usual Brand Young Adult Smoker (FUBYAS) peer groups:

The segments that FUBYAS know are their social groups. These are large, loosely knit BUT HIGHLY LABELED sub-societies FROM WHICH FUBYAS DRAW THEIR IDENTITY, i.e., by BELONGING to the group and using the group TO BE DIFFERENT from other younger adults.

Exhibit 55 at RJR 478754. This is the very thing that Dr. Teague had determined ten years earlier when he explained that "a new brand aimed at the young smoker must somehow become the 'in' brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing individuality and 'doing one's own thing.'" See Exhibit 2 at 6.

Finally, the "Are Younger Adult Smokers Important?" report describes how the FUBYAS subgroups are regimented and defined by role playing. Any successful marketing campaign aimed at these groups would hinge upon providing a necessary item for their particular role:

With regard to "Social Group" participation, FUBYAS tend to live in a MOVIE . . . They know the roles . . . [t]hey know the script . . . [t]hey know the costumes . . . [t]hey know the props. We want to supply one of the props -- their brand of cigarettes.

Exhibit 55 at RJR 478760. It describes how RJR sought to create the very peer pressure which it claims encourages youngsters and teenagers to smoke:

Different groups have credibility to start certain types of trends Fads & Trends help satisfy FUBYAS needs: [t]o belong to the group . . . [t]o be different via the group . . . [f]or excitement in being in on a trend . . . [f]or success in showing you're in on a trend.

Exhibit 55 at RJR 478765.

This same point -- advertising can get kids to smoke -- was made in greater detail in the 1986 Camel "White Paper." The "White Paper" explained that Joe Camel's test marketing "resulted in dramatic share growth of more than ten smoker share points" among its target market. Exhibit 5 at 2. The report explained that: "CAMEL has an opportunity to capture the younger adult smoker market as evidenced by the high responsiveness that it has already demonstrated in the marketplace among younger adult smokers." Exhibit 5 at 1. Indeed, the Joe Camel image was tremendously successful as the 1985 Joe Camel T-shirt promotion drew a response three times greater than expected:

! Redemption of the T-shirt offer was nearly three times higher than CAMEL's average participation in FSI coupons. The profile of participants included 70% of adult smokers 34 years old and under and

extremely high redemption of 40% among target competitive smokers.

Exhibit 5 at 2. Finally, the "White Paper" concluded that the results of the test marketing "would suggest an opportunity to provide a more relevant and motivating targeted image via new advertising" Exhibit 5 at 2. (Emphasis added.)

In 1990, Young & Rubicam echoed the statements made in the Camel "White Paper." In the "Historical Overview" section of its "Camel Advertising Overview," Young & Rubicam explains that RJR was substantially underdeveloped as against the Marlboro brand. Exhibit 57 at RJM 007173, "Camel Advertising Overview." Recognizing the powerful ability of advertising to grow smoker share, Young & Rubicam explained:

- RJR has identified CAMEL as the Brand best able to build share against this segment
- The successful 75th Birthday "event" and introduction of Joe provided the first evidence that CAMEL could deliver against this objective
- The subsequent "evolution" of Joe continues to build the Brand's vitality, increasing CAMEL's momentum as reflected in both awareness and share-of-smoker data.

Exhibit 57 at RJM 007173. (Emphasis added.) In other words, advertising, especially Joe Camel advertising, entices people to smoke Camel cigarettes.

These and many other documents demonstrate that RJR has long acted with the conviction that Dr. Teague got it right when he observed that the only way to get kids to take up smoking is to use

the "wholly irrational" appeal of advertising to persuade them to do something they would otherwise be unlikely to do. As Dr. Teague explained, smoking has no rational attraction to someone who is not yet hooked on nicotine.

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.

Exhibit 2 at 2.

Today, of course, RJR executives go to hilarious lengths to distance themselves from the all-too-candid remarks of Dr. Teague about scouring "high school books" in order to pitch their cigarettes to the proper audience. But the advertising specialists hired to execute the Joe Camel campaign knew that what RJR wanted was the same thing Dr. Teague wanted -- kids.

IV. MARKETING EXPERTS AND CONSULTANTS ARE CONVINCED THAT THE JOE CAMEL CAMPAIGN WAS INTENTIONALLY DESIGNED TO TARGET MINORS

In addition to reviewing several million pages of internal documents produced by RJR and its advertising agencies, we reviewed dozens of studies conducted by marketing experts knowledgeable about teenage tobacco usage who investigated cigarette marketing

and its affects on children, including research expressly discussing the Joe Camel campaign. Having undertaken this exercise, we are convinced that RJR and its advertising agencies intentionally and illegally targeted 14-17 year-olds with the Joe Camel campaign. We are also convinced that the Joe Camel campaign was effective in achieving this purpose.

A. The Pervasiveness Of Joe Camel Advertising And Promotions Is An Important Ingredient In Joe Camel's Success With The Child Market

Research indicates that young people are exposed to substantial and unavoidable advertising and promotion, even though cigarette advertisements have been banned from radio and television.^{30/} Indeed, next to automobiles, cigarettes are the most advertised and promoted consumer products in the United States.^{31/} Advertising and promotional expenditures account for more than 10% of the total revenue generated by the tobacco industry in the United States.^{32/} Of the \$4-6 billion spent annually, more than

^{30/} See, e.g., Fischer P.M., M.P. Schwartz, J.W. Richards, A.O. Goldstein and T.H. Rojas, "Brand Logo Recognition by Children Aged 3 to 6 Years. Mickey Mouse and Old Joe Camel," 266 JAMA 1345 (1991); and Mizerski R., K. Straughn and J. Feldman, "The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children," presented at Marketing and Public Policy Conference (1994).

^{31/} Centers for Disease Control, "Cigarette Advertising -- United States, 1988," 39 Morbidity and Mortality Weekly Report 261 (1990).

^{32/} Federal Trade Commission, Report to Congress for 1990: Pursuant to the Federal Cigarette Labeling and Advertising Act, Washington, DC: Federal Trade Commission (1992).

75% of these funds are allocated for promotions.^{33/} Of the remaining 25%, nearly half is spent on outdoor advertising -- billboards and transit posters and point of sale posters.^{34/} The importance of spending such vast sums is not news to RJR who knows that the best way to attract young new smokers is to flood the air with advertisements:

4. I believe it is a mistake to permit Marlboro to spend as much for advertising and promotion as Winston. While I cannot prove it, all of my experience would indicate that a brand which has the largest market share should consistently spend more for advertising and promotion than brands with smaller shares and that this should particularly be true when one of the smaller share brands is rapidly gaining share. I think it would be good insurance for Reynolds to spend at least \$10,000,000 annually more on Winston than Marlboro is spending.

Exhibit 8 at 6, "Cigarette Product Formulation." (Emphasis added.)

Such vast sums are spent on advertising and promotion because advertising that is repeated frequently and in as many different media as possible is most likely to ensure that its message is received by the maximum number of consumers.^{35/} Each separate advertising venue, in and of itself, does not produce the entire

^{33/} Federal Trade Commission, Report to Congress for 1990: Pursuant to the Federal Cigarette Labeling and Advertising Act, Washington, DC: Federal Trade Commission (1992).

^{34/} Federal Trade Commission, Report to Congress for 1990: Pursuant to the Federal Cigarette Labeling and Advertising Act, Washington, DC: Federal Trade Commission (1992).

^{35/} Flynn B.S., J.K. Worden, R.H. Secker-Walker, G.J. Badger, B.M. Geller and M.C. Costanza, "Prevention of Cigarette Smoking Through Mass Media Intervention and School Programs," 82 American Journal of Public Health 827 (1992).

effect. Taken together, the effect of each advertising exposure is magnified beyond each discrete exposure to create the impression that cigarette use is widespread and widely accepted. Every presentation adds to and builds upon the imagery and appeal created for a product category or a particular brand.^{36/} Due to the pervasiveness of cigarette advertisements, people, particularly the youth, overestimate the prevalence of smoking.^{37/} Similarly, those who smoke tend to overestimate smoking prevalence.^{38/} However, while consumers overestimate the effect that advertising has on the market in general, they routinely underestimate its effect upon them and their own purchasing choices.^{39/} Overestimating the

^{36/} Food and Drug Administration, "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents," 61 Fed. Reg. 44396, 44467 (August 28, 1996).

^{37/} Johnson C.A., "Untested and Erroneous Assumption Underlying Antismoking Programs" In: Promoting Adolescent Health: A Dialogue On Research And Practice, New York: Academic Press (1982); Chassin L., C.C. Presson, S.J. Sherman, E. Corty and R.W. Olshavsk, "Predicting the Onset of Cigarette Smoking in Adolescents: A Longitudinal Study," 14 Journal of Applied Social Psychology 224 (1984).

^{38/} Sherman S.J., C.C. Presson, L. Chassin, E. Corty and R. Olshavsky, "The False Consensus Effect in Estimates of Smoking Prevalence Underlying Mechanisms," 9 Personality and Social Psychology Bulletin 197 (1983); McCarthy W.J. and E.R. Gritz, "Teenagers, Cigarette Smoking and Reactions to Selected Cigarette Ads," Paper presented at the Western Psychological Association Meeting: Los Angeles, California, April 6, 1984.

^{39/} Gunther A.C. and E. Thorsen, "Perceived Persuasive Effects of Product Commercials and Public Service Announcements: Third Person Effects in New Domains," 19 Communication Research 574 (1992).

prevalence of smoking has been found to be one of the strongest predictors of the decision to take up smoking.^{40/} This aspect in the words of one expert is "the No. 1 factor in building confidence . . . the plain old fashioned matter of friendly familiarity."^{41/} The FDA determined that despite the author's criticism of its use of this term, the phrase "friendly familiarity" accurately describes the effect of massive marketing that uses a variety of media and saturates potential consumers with information and imagery.^{42/} Indeed, researchers have found that "the ubiquitous display of messages promoting tobacco use clearly fosters an environment in which experimentation by youth is expected, if not implicitly encouraged."^{43/}

^{40/} Chassin L., C.C. Presson, S.J. Sherman, E. Corty and R.W. Olshavsk, "Predicting the Onset of Cigarette Smoking in Adolescents: A Longitudinal Study," 14 Journal of Applied Social Psychology 224 (1984); Collins L.M., S. Sussman, J. Mestel-Rauch, C.W. Dent, C.A. Johnson, W.B. Hansen, et al., "Psychosocial Predictors of Young Adolescent Cigarette Smoking: A Sixteen-Month, Three-Wave Longitudinal Study," 17 Journal of Applied Social Psychology 554 (1987); S. Sussman, C.W. Dent, J. Mestel-Rauch, C.A. Johnson, W.B. Hansen and B.R. Flay, "Adolescent Nonsmokers, Triers and Regular Smokers' Estimates of Cigarette Smoking Prevalence: When Do Overestimations Occur and By Whom?" 18 Journal of Applied Social Psychology 537 (1988).

^{41/} Burnett L., Communications of an Advertising Man, Chicago (1961).

^{42/} 61 Fed. Reg. at 44475.

^{43/} Bonnie R.J. and B.S. Lynch, "Time to Up the Ante in the War on Smoking," 11 Issues in Science and Technology 33 (1994).

RJR well knows the importance of saturating the market with its advertisements and was extremely successful in achieving this goal. A "Camel Advertising Overview" discussing Joe Camel's "Evolutionary Principles," "Strategies" and "Objectives," reports that the Joe Camel campaign had "set the stage for an exciting 1991" because the work to date had "reinforce[d] . . . Brand ubiquity." Exhibit 57 at RJM 007177. Explaining Joe Camel's "Evolutionary Principles," this overview describes RJR's flooding the air with Joe's cartoon image:

CAMEL is the brand for the `90s and, wherever CAMEL's message is, it is there in a big way. If a market is covered, it is covered ubiquitously. If we run a one-shot ad or a local promotion, the execution must be so provocative and unexpected that it transcends its medium.

Exhibit 57 at RJM 007178. (Partial emphasis added.)

Even brief exposure to tobacco advertising can cause some young people to have more favorable beliefs about smoking.^{44/} There is considerable evidence that young people are exposed to tobacco ads, that those who smoke are especially likely to be aware of cigarette advertising, and that liking of cigarette advertising among young people is predictive of smoking behavior.^{45/} As such,

^{44/} Pechmann C. and S. Ratneshwar, "The Effects of Antismoking and Cigarette Advertising on Young Adolescents' Perceptions of Peers who Smoke," 12 Journal of Consumer Research 25 (1993); see also Hock J., P. Gendall and M. Stockdale, "Some Effects of Tobacco Sponsorship Advertisements on Young Males," 12 International Journal of Advertising 25 (1993).

^{45/} 61 Fed. Reg. at 44475.

it is not surprising that the California Department of Health Services concluded that Camel was particularly effective at reaching 12- to 13-year-olds:

Among 12- to 13-year-olds, almost two-thirds nominated both Marlboro and Camel as advertised brands. A much smaller 13% nominated Virginia Slims as a brand that they knew was advertised, followed by Winston, Salem and Newport, all with small percentages. This pattern remained essentially the same among older age groups, with slightly higher recall rates. Based on these data we estimated that Camel has achieved 96% of its total penetration among 13-year-old teenagers, Marlboro has achieved 82%, and Virginia Slims 69%.^{46/}

B. Advertising's Role In The Overall Marketing Scheme

Brand specific advertising can be used to generate market share by creating a demand in new users of a product category.^{47/} It can also be used to generate market share by convincing those who are already consumers of a product category to "switch" from one brand to another.^{48/} A secondary benefit of brand specific advertising is increased demand for the overall product category.^{49/} Because 90% of all persons who take up smoking do so before the age

^{46/} Pierce J.P., E. Gilpin, D.M. Burns, E. Whalen, B. Rosebrook and D. Shopland, California Department of Health Services, Tobacco Use in California 1992: A Focus on Preventing Uptake in Adolescents, p. 111 (1993) ("1992 California Study"). (Emphasis added.)

^{47/} Ray M.L., Advertising and Communication Management, Englewood Cliffs, NJ: Prentice Hall (1982).

^{48/} McCarthy E.J. and W.D. Perreault, Basic Marketing: A Managerial Approach, 8th ed. Homewood, IL: Irwin (1984).

^{49/} Ray M.L., Advertising and Communication Management, Englewood Cliffs (NJ): Prentice Hall (1982).

of 18 and virtually no-one begins smoking after age 24, generally creating increased demand in smoking is beneficial to RJR. By creating a new smoker, albeit one who currently smokes a competitor's brand, RJR at least has an opportunity to attract that smoker through "switching" tactics. While "switching" is very difficult to achieve, if that person had never taken up smoking RJR would have no chance of getting his business as virtually no one starts smoking after age 24.

To accomplish these tasks, advertising creates a matrix of attributes for a product or product category and beliefs about the product and its possessor.^{50/} Advertising communicates information about the product in order to create a structure of attitudes and beliefs in the consumer that will foster interest in purchasing the product.^{51/} According to the "elaboration, likelihood model of persuasion," persuasive communications, such as advertisements, can persuade people either: (1) by the "central route," or (2) by the "peripheral route."^{52/}

^{50/} 61 Fed. Reg. at 44467.

^{51/} Ray M.L., Advertising and Communication Management, Englewood Cliffs, NJ: Prentice Hall (1982); Kotler P., Marketing Management: Analysis, Planning, Implementation, and Control, 7th ed. Englewood Cliffs, NJ: Prentice Hall (1991).

^{52/} Petty R.E. and J.T. Cacioppo, Communication and Persuasion: Central and Peripheral Routes to Attitude Change, Springer-Verlag, New York, p. 3 (1986).

The "central route" refers to the process by which a person reads the messages or information contained in the advertisement, thinks carefully about it, and is influenced by the strength of its arguments.^{53/} The "peripheral route" is a process in which individuals are more likely to pay attention and be persuaded by peripheral cues such as attractive models, color and scenery, which are unrelated to the primary parts of the message.^{54/} Stated differently, advertising communications can be factual in nature (e.g., product price, product ingredients or product features), or suggestive in nature (e.g., images of the types of people who might use the product or associations of the product with certain settings or emotions). Children typically process tobacco advertising via the peripheral route.^{55/}

RJR and its advertisers are well aware of these basic marketing tenets. RJR designed its Joe Camel advertisements so they would be simplistic and easy to understand. Indeed, research conducted by Young & Rubicam demonstrated that an important element of Joe Camel's success was its ability to walk the line between

^{53/} Petty R.E. and J.T. Cacloppo, Communication and Persuasion: Central and Peripheral Routes to Attitude Change, Springer-Verlag, New York, p. 3 (1986).

^{54/} Petty R.E. and J.T. Cacloppo, Communication and Persuasion: Central and Peripheral Routes to Attitude Change, Springer-Verlag, New York, p. 3 (1986).

^{55/} Petty R.E. and J.T. Cacloppo, Communication and Persuasion: Central and Peripheral Routes to Attitude Change, Springer-Verlag, New York, p. 3 (1986).

"simplistic and easy to understand" and "still entertaining/interesting enough to keep their attention." Exhibit 59 at RJW 017770, memorandum regarding "CAMEL Creative Exploratory Focus Group" (November 27, 1989). In other words, the Joe Camel campaign is a "low involvement" campaign -- the nature of which is effective at reaching children.

1. Contrary To RJR's Claims, The Joe Camel Campaign Is Principally Designed To Attract New Users, Not To Obtain "Switchers"

Advertising designed to attract new users is markedly different than advertising designed to promote "switching" gains. In order to effectively attract new cigarette users, the advertising used must make the new user feel that the product can satisfy his un-met or un-satisfied physical or psychological needs.^{56/} Alternatively, the advertising must make the new user feel a previously unacknowledged need for the product.^{57/} This advertising tactic is known as "image" advertising or "transformational" advertising.^{58/} Image advertising is less effective at attempting to build market share through switching gains. The principal way to promote brand switching is through advertising

^{56/} Ray M.L., Advertising and Communication Management, Englewood Cliffs, NJ: Prentice Hall (1982).

^{57/} Ray M.L., Advertising and Communication Management, Englewood Cliffs, NJ: Prentice Hall (1982).

^{58/} Puto C.P. and W.D. Wells, "Informational and Transformational Advertising: The Differential Effects of Time" In: Advances in Consumer Research, vol. 11 (1983).

which communicates information to the existing user about the superior performance of the new brand -- e.g., lower price, better value or better characteristics.^{59/} Such informational campaigns have been demonstrated to capture competitive advantage with respect to the "inveterate smoker" but do little to expand the market by attracting new smokers.^{60/}

Throughout the Mangini litigation, RJR vociferously asserted that the Joe Camel campaign was solely designed to build market share through "switching gains." Indeed, President and CEO James W. Johnston testified to Congress: "I have a huge opportunity. The opportunity to grow my company is by taking [Philip Morris'] smokers away from [them] and switching them to my brands"^{61/} We know differently. Johnston's statements contravene 40 years of research conducted by RJR on this issue. As Burrows explained in her comprehensive 1984 report "Younger Adult Smokers: Strategies and Opportunities," it is impossible to grow market share through switching: "any brand/company which is underdeveloped among 18-year-olds must achieve net switching gains just to break even." Exhibit 32 at 3. (Emphasis in original.) Burrows expanded on her

^{59/} McCarthy E.J. and W.D. Perreault, Basic Marketing: A Managerial Approach, 8th ed. Homewood, IL: Irwin (1984).

^{60/} Martineau P., Motivation in Advertising: Motives That Make People Buy, New York: McGraw-Hill (1957).

^{61/} Testimony of James W. Johnston before the House of Representatives Committee on Energy and Commerce, Subcommittee on Health and the Environment at p. 729 (April 14, 1994).

concerns explaining that it is attracting new "Younger Adult Smokers" and not switching that drives Marlboro's growth, and that:

Although a competitor could slow this momentum by attracting switchers, the "first brand" would hold the high ground of brand loyalty in such a battle.

Exhibit 32 at 4.

Moreover, the Joe Camel campaign is not a "switching" campaign because, as with most cigarette advertising, the Joe Camel campaign provides little, if any, new information. Instead, Joe Camel is an image campaign concentrating on peripheral cues. It was designed to attract, and did attract, new smokers -- 90% of whom are younger than 18. According to its own advertising agency's internal documents, by 1990 the Joe Camel campaign had "helped realize tangible increases as a FUBOC [first usual brand of choice], as reflected in recent SOS [share of smokers] numbers." Exhibit 57 at RJM 007177, "Camel Advertising Overview."

Finally, in Dunagin v. Oxford, 718 F.2d 738, 748 (5th Cir. 1983), the court rejected similar claims raised about advertisements for alcohol. The advertiser's expert, a professor in sociology specializing in alcoholism, testified that advertising merely affected brand loyalty and market share, but did not increase overall consumption or consumption of individual consumers. 718 F.2d at 748. In rejecting the industry's argument, the court concluded: "We simply do not believe that the liquor industry spends a billion dollars a year on advertising solely to

acquire an added market share at the expense of competitors." 718

F.2d at 750. The court explained its reasoning:

It is beyond our ability to understand why huge sums of money would be devoted to the promotion of sales of liquor without expected results, or continue without realized results. No doubt competitors want to retain and expand their share of the market, but what businessperson stops short with competitive comparisons? It is total sales, profits, that pay the advertiser; and dollars go into advertising only if they produce sales. Money talks: it talks to the young and the old about what counts in the marketplace of our society, and it talks here in support of Mississippi's concerns.

718 F.2d at 749.

2. The Importance Of Imagery In Advertising
Directed At Teens

Smoking is a pediatric disease. Children face a daunting range of hazards when confronted with the decision about whether to start smoking, yet they are generally ill-equipped and lack the necessary maturity to make such a decision.^{62/} The 1992 study by the California Department of Health Services determined that "approximately 40% of California adolescents were susceptible to smoking in 1992."^{63/} This is where advertising becomes so influential.

^{62/} U.S. Department of Health and Human Services, Reducing the Health Consequences of Smoking -- 25 Years of Progress, a Report of the Surgeon General, pp. 212-16 (1989) ("1989 Surgeon General Report").

^{63/} 1992 California Study at 3.

a. Image Advertising Is More Effective With
Teens Than Information Advertising
Because Teens Pay Less Attention To
Factual Information

The most important aspect of cigarette advertising is the imagery used and the psychological motivations communicated to the consumer. Evidence from social psychology and marketing research shows that image-based advertising is particularly effective with young people, and that the information conveyed by imagery is likely to be more significant to young people than information conveyed by other means in the advertisement.^{64/} For children, the motivation and ability to "elaborate" upon the arguments (pay attention to and think about the factual information) contained in cigarette advertising is relatively low, making them more susceptible to influence from peripheral cues such as color and imagery.^{65/} According to the American Psychological Association, children generally have less information-processing ability than adults, and are less able, or willing, to pay attention to the factual information in the advertisements.^{66/} This group has explained that young people do not evaluate advertising messages

^{64/} 61 Fed. Reg. at 44468.

^{65/} 61 Fed. Reg. at 44468.

^{66/} See American Psychological Association comment, discussed at 61 Fed. Reg. at 44468.

directly through logical analysis, they do so indirectly with their emotions.^{67/}

Imagery enhances the ability of advertising to communicate more quickly in "low involvement" situations and in quick exposure contexts.^{68/} Low involvement conditions are those that occur when a reader skims a magazine advertisement rather than carefully searching an advertisement for information about price, taste, relative "safety" of the product or product improvement.^{69/} Those unmotivated or unable to carefully consider the arguments in a message -- such as teenagers -- are only likely to be persuaded through imagery.^{70/} Pictorial information is remembered much better than verbal information, as pictures perform a function of "organizing" the qualities of the product as depicted with an image.^{71/} Generally, as the pictures or images in an advertisement

^{67/} See American Psychological Association comment, discussed at 61 Fed. Reg. at 44468.

^{68/} Lutz K.A and R.J. Lutz, "Effects of Interactive Imagery on Learning: Applications to Advertising," 62 Journal of Applied Psychology 493 (1977); Hendon D.W., "How Mechanical Factors Affect Ad Perception," 13 Journal of Advertising Research 39 (1973); Holbrook M.B. and D.R. Lehmann, "Form Versus Content in Predicting Starch Scores," 20 Journal of Advertising Research 53 (1980); Twedt D.W., "A Multiple Factor Analysis of Advertising Readership," 36 Journal of Applied Psychology 207 (1952).

^{69/} 61 Fed. Reg. at 44467.

^{70/} 61 Fed. Reg. at 44468.

^{71/} Lutz K.A and R.J. Lutz, "Effects of Interactive Imagery on Learning: Applications to Advertising," 62 Journal of Applied Psychology 493 (1977); Hendon D.W., "How Mechanical Factors

increase (both in number and the proportion of the advertisement occupied by the image), the advertisement is more likely to be recognized, and the brand name more likely to be remembered.^{72/} In most cases, pictorial or image advertising is a more robust and flexible communications medium and can be used to communicate with the functionally illiterate or the young person in a hurry.^{73/}

Color, like image, is an important component of advertising. It is used to promote a "feeling" and a message -- i.e., blue is cool, red is hot, green is menthol.^{74/} Advertising that is diverse, image-laden and colorful is particularly effective in attracting

Affect Ad Perception," 13 Journal of Advertising Research 39 (1973); Holbrook M.B. and D.R. Lehmann, "Form Versus Content in Predicting Starch Scores," 20 Journal of Advertising Research 53 (1980); Twedt D.W., "A Multiple Factor Analysis of Advertising Readership," 36 Journal of Applied Psychology 207 (1952).

^{72/} Lutz K.A and R.J. Lutz, "Effects of Interactive Imagery on Learning: Applications to Advertising," 62 Journal of Applied Psychology 493 (1977); Hendon D.W., "How Mechanical Factors Affect Ad Perception," 13 Journal of Advertising Research 39 (1973); Holbrook M.B. and D.R. Lehmann, "Form Versus Content in Predicting Starch Scores," 20 Journal of Advertising Research 53 (1980); Twedt D.W., "A Multiple Factor Analysis of Advertising Readership," 36 Journal of Applied Psychology 207 (1952).

^{73/} Lutz K.A and R.J. Lutz, "Effects of Interactive Imagery on Learning: Applications to Advertising," 62 Journal of Applied Psychology 493 (1977); Hendon D.W., "How Mechanical Factors Affect Ad Perception," 13 Journal of Advertising Research 39 (1973); Holbrook M.B. and D.R. Lehmann, "Form Versus Content in Predicting Starch Scores," 20 Journal of Advertising Research 53 (1980); Twedt D.W., "A Multiple Factor Analysis of Advertising Readership," 36 Journal of Applied Psychology 207 (1952).

^{74/} 61 Fed. Reg. at 44467.

attention in a cluttered advertising environment.^{75/} Studies have shown that four-color advertisements significantly increase attention and recall relative to two color or black-and-white-advertisements.^{76/} The importance of color in advertising becomes more salient when it is considered that most consumer behavior occurs in conditions of "low involvement."^{77/} Not surprisingly, the Joe Camel campaign uses a multi-color format rather than black and white. Indeed, as Young & Rubicam explains in determining the "parameters" to be used "to appeal most to our target prospects: . . . -- [t]hey seem drawn by the bright colors, fun, and irreverent tonality." Exhibit 59 at RJW 017770, "Camel Creative Exploratory Focus Groups." (Emphasis added.)

Finally, perceived source credibility plays an important role in the decision-making process.^{78/} Children are particularly susceptible to the influence of others regarding the decision to start smoking or to use smokeless tobacco. For minors, the "source" of the persuasive message in tobacco advertising is conveyed by the imagery presented in the advertisement.^{79/} In other

^{75/} 61 Fed. Reg. at 44467.

^{76/} Hanssens D. and B. Weitz, "The Effectiveness of Industrial Print Advertisements Across Categories," 17 Journal of Marketing Research 294 (1980).

^{77/} 61 Fed. Reg. at 44467.

^{78/} 61 Fed. Reg. at 44468.

^{79/} 61 Fed. Reg. at 44468.

words, since the minor does not know the writer personally, he attributes source credibility to the advertisement itself.^{80/} To the extent that characters featured in tobacco advertising, such as Joe Camel or the Marlboro Man appear credible and appealing, they are perceived as credible sources, and can influence children regarding the decision to smoke.^{81/}

This is exactly what RJR sought to accomplish with Joe Camel. The importance of portraying Joe Camel as a hero was made in the "Camel Advertising Overview." Exhibit 57. This overview explains that the "Heroic Camel" executions of 1989 "made several key contributions" including, "it turned Joe into a cult media hero." Exhibit 57 at RJM 007176. Similarly, Young & Rubicam explains, in addition to the "bright colors," the "central focus" of the campaign was to portray Joe Camel as a "hero," to be admired. Exhibit 59 at RJW 017770, "Camel Creative Exploratory Focus Groups." Specifically, Young & Rubicam explains a parameter appealing to RJR's "target prospects" as: "Old Joe as the central focus of the advertising . . . the hero." Exhibit 59 at RJW 017770. As Young & Rubicam explained:

Joe is the hero in all of CAMEL's communications. But he's not a spokesman, a salesman, or a shill. He is the larger-than-life personification of all that we, in our moments of playful fantasy, aspire to be. Always the winner, on top of the situation, beating the system, and

^{80/} 61 Fed. Reg. at 44468.

^{81/} 61 Fed. Reg. at 44468.

covering the scene, whatever he does he does with a style and joie de vivre all his own. The twinkle in his eye and that "cat that ate the canary" expression on his face say it all.

Exhibit 57 at RJM 007180, "Camel Advertising Overview." (Emphasis added.)

RJR knows that children look up to and believe their heroes. In this case, Joe Camel is telling them that if they want to be cool, they need to smoke Joe's cigarettes. In the words of Dr. Teague:

If one values, for example, an adventurous, sophisticated, adult 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.

Exhibit 2 at 7, "Some Thoughts About New Brands of Cigarettes for the Youth Market."

- b. Advertising Themes Of Rebelliousness, Independence, Individuality And Fun Are The Best Themes To Motivate Teenagers To Try Cigarettes

People under the age of 18 are still forming attitudes and beliefs about tobacco use, and see smoking as a coping mechanism, a badge of maturity, a way to enter a new peer group, or as a means to display independence.^{82/} Not surprisingly, the most successful teenage brands, such as Camel, are those offering imagery rich with

^{82/} 61 Fed. Reg. 41314, 41329.

connotations of independence, freedom from authority and self reliance.^{83/} As explained by Dr. Richard Pollay of the University of British Columbia, these images are important to teens because they are "going through a stage where they are seeking to express their independence and individuality under constant pressure of being accepted by their peers."^{84/} According to the American Psychological Association, adolescents are particularly susceptible to cigarette advertising because they are searching for autonomy and social acceptance, and working toward an identity of their own.^{85/} Research has shown that:

[T]he psychological satisfactions are . . . the best material for advertising themes and appeals, because they carry their own reassurance. They are emotional supports which have developed in American society to make smoking seem reasonable, justifiable, and highly desirable. They obviously cannot be thrown in people's faces in their bare essence; but when they are implied, when they are communicated, they are understandable and satisfying.^{86/}

^{83/} Pollay R.W., The Functions and Management of Cigarette Advertising, Vancouver (Canada): Faculty of Commerce, University of British Columbia, History of Advertising Archives, Working Paper, 1989b.

^{84/} Pollay R.W., The Functions and Management of Cigarette Advertising, Vancouver (Canada): Faculty of Commerce, University of British Columbia, History of Advertising Archives, Working Paper, 1989b.

^{85/} See American Psychological Association comment discussed at 61 Fed. Reg. at 44468.

^{86/} Martineau P, Motivation in Advertising: Motives That Make People Buy, New York: McGraw-Hill (1957).

Other research has reached the same conclusion. King et. al., discussed the importance of the "independence theme" in cigarette advertisements.^{87/} In his research, Dr. King determined that the most frequently pictured activities to reach young men were "individualism," "work," "recreation" and "adventure."^{88/} Another study found that of 9th- and 10th-grade students, those whose reported ideal self-image which matched the perceived image of smokers, typically reported that they intended to smoke.^{89/} These students reported that they perceived the image of a smoker to be "tough," "foolish," "act big," "disobedient" and "interested in the opposite sex."^{90/} These impressions, which create an image of the brand, and sometimes an image of the brand's user, are very influential to children and adolescents. For these reasons, RJR designed the Joe Camel campaign so as to "rely on clearly aspirational appeals (the me I want to be versus the me I am) to

^{87/} King K.W., L.N. Reid, Y.S. Moon and D.J. Ringold, "Changes in the Visual Imagery of Cigarette Ads, 1954-1986," 10 Journal of Public Policy & Marketing 63 (1991).

^{88/} King K.W., L.N. Reid, Y.S. Moon and D.J. Ringold, "Changes in the Visual Imagery of Cigarette Ads, 1954-1986," 10 Journal of Public Policy & Marketing 63 (1991).

^{89/} Chassin L., C.C. Presson, S.J. Sherman, E. Corty and R.W. Olshavsk, "Self-images and Cigarette Smoking in Adolescence," 7 Personality and Social Psychology Bulletin 670 (1981).

^{90/} Chassin L., C.C. Presson, S.J. Sherman, E. Corty and R.W. Olshavsk, "Self-images and Cigarette Smoking in Adolescence," 7 Personality and Social Psychology Bulletin 670 (1981).

provide the motivation for target smokers to select CAMEL." Exhibit 58 at 2, "CAMEL New Advertising Campaign Development." Such results show the importance of themes such as "rebellion," "freedom" and "escape" being communicated to the audience.

Not surprisingly, these are the very images sought to be communicated by the Joe Camel campaign. Indeed, the co-developer of the Joe Camel campaign stated its "rationale" as: "Aspiration to be perceived as cool/a member of the in-group is one of the strongest influences affecting the behavior of young adult smokers." Exhibit 58 at 4. He stated that the campaign's "objective" was:

[T]o leverage the non-conformist, self-confident mindset historically attributed to CAMEL users so that the brand becomes a relevant, appealing choice for today's younger adult smokers.

Exhibit 58 at 3.^{91/}

Similarly, in discussing the Joe Camel "Leader of the Pack" executional approach, Young & Rubicam summarized Joe Camel's allure. It concluded:

Of all the executional approaches, "Leader of the Pack" was the consistent favorite across all groups. It combined the elements favored in the current campaign -- Camel as hero, bright colors, simple yet involving scenarios -- but also added a stronger sense of Joe being more involved in the action/adventure. There was also an element of Joe as the rebel.

^{91/} As detailed herein, the terms "Young Adult Smokers" and "Younger Adult Smokers" are euphemisms for persons aged 14-24.

Exhibit 59 at RJW 017768, "Camel Creative Exploratory Focus Groups." (Emphasis added.)

The same dichotomy identified by Teague, Tredennick and the Youth Target study -- group acceptance while maintaining individuality -- was built into the Joe Camel campaign. Essentially, Joe Camel was being developed as a "motivational" tool to portray an image of rebelliousness, self-confidence and non-conformity in order to convince new smokers that by smoking Camel cigarettes they will be accepted "among their peers." Exhibit 58 at 1-2, "CAMEL New Advertising Campaign Development." Joe Camel was designed to tell new smokers that by smoking Camels, they will be a "non-conformist," smoking a "one-of-a-kind brand," yet accepted among their peers. Exhibit 58 at 4.

There is no doubt that Joe Camel was effective at communicating these messages to kids. In 1994, the Surgeon General explained that the Joe Camel campaign exploited the malleable attitudes of children by convincing kids that they are joining the "5-S club -- that they're slim, they're sexy, they're sociable, they're sophisticated, and successful."^{92/} Youths with a relatively low self-image (*i.e.*, who view themselves as not being smart, healthy or tough), or who are becoming interested in the opposite

^{92/} Statement by U.S. Surgeon General regarding U.S. Department of Health and Human Services, Preventing Tobacco Use Among Young People, a Report of the Surgeon General (1994). See Federal News Service (February 24, 1994).

sex, are drawn to smoking as a way of enhancing their low self-image.^{93/} They are drawn to smoking because advertising tells them that the attributes portrayed will be gained if they smoke.^{94/} Similarly, the California Department of Health Services has concluded:

Tobacco advertising reaches most of the adolescent population and markedly increases their susceptibility to smoke. Tobacco advertising appears to have this effect by convincing young children/adolescents that there are benefits to smoking, particularly for handling social interactions.^{95/}

Finally, an executive from Griffin Bacal, one of the largest advertising agencies in New York, explained how visual imagery worked with young people:

Pictures sell. Visuals count . . . even those visuals that seemingly have nothing to do with the product sale. . . . [including locations, sets, props, wardrobe, colors, numbers, sexes and ages of people in the ads] . . . Kids want to be like each other. Group acceptance, and living the life of the gang, is critical. . . . Similarly, kids define themselves by the product choices they make and share. Be sure your advertising makes the "world" accessible and "invites" the viewer to join.^{96/}

^{93/} U.S. Department of Health and Human Services, Preventing Tobacco Use Among Young People, a Report of the Surgeon General, p. 8 (1994).

^{94/} U.S. Department of Health and Human Services, Preventing Tobacco Use Among Young People, a Report of the Surgeon General, pp. 175-84 (1994).

^{95/} 1992 California Study at 3.

^{96/} Kurnit P., "10 Tips From Top Agency-Exec Explains How Griffin Bacal Scores with Kids," Advertising Age Supplement, February 10, 1992, at pp. 19-20.

In summary, the significant meaning of Joe Camel ads comes from the illustration. The copy is secondary. The Joe Camel campaign effectively reaches new teenage smokers by using images, and not words, to portray a lifestyle that is very attractive to teens. The image advertising employed by RJR has transformed the Camel brand, and thus Camel smokers, by providing a distinct identity.

c. The Cartoon Nature Of The Joe Camel Ads
Make The Campaign Particularly Appealing
To Children

RJR utilized a cartoon format because cartoon characters are known to be extremely appealing to children, as evidenced by the hours of Saturday morning cartoons religiously watched by children throughout the United States. Indeed, a 1973 internal RJR document demonstrates that RJR knew the dramatic impact cartoon advertising has on kids: "In view of the need to reverse the preference for Marlboro among younger smokers, I wonder whether comic strip type copy might get a much higher readership among younger people than any other type of copy." Exhibit 8 at 5, "Cigarette Product Formulation."

To see just how effective cartoon advertising is with children, one need only look at the success enjoyed by other advertising campaigns selling children's products through cartoon characters, such as Tony the Tiger, Trix the Rabbit and the Keebler Elves. One recent study investigated 7th and 8th graders'

preference among cigarette advertisements picturing the cartoon advertisements (Joe Camel), human models and copy only.^{97/} Students preferred the advertisements using the cartoon Joe Camel over the advertisements utilizing human figures or tombstone advertising.^{98/} These students reported that Joe Camel had the attributes of being "cool" and being "fun."^{99/} Moreover, the positive attributes they ascribed to the cigarette advertisements were also described as attributes of the their ideal self-images.^{100/} Confirming the results of the earlier research,^{101/} this study reported that buying preferences among those students who smoked paralleled the reported ad appeal.^{102/}

^{97/} Huang P.P., D. Burton, H.L. Howe and D.M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisement Among Adolescents," 1 Tobacco Control 249 (1992).

^{98/} Huang P.P., D. Burton, H.L. Howe and D.M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisement Among Adolescents," 1 Tobacco Control 249 (1992).

^{99/} Huang P.P., D. Burton, H.L. Howe and D.M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisement Among Adolescents," 1 Tobacco Control 249 (1992).

^{100/} Huang P.P., D. Burton, H.L. Howe and D.M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisement Among Adolescents," 1 Tobacco Control 249 (1992).

^{101/} King K.W., L.N. Reid, Y.S. Moon and D.J. Ringold, "Changes in the Visual Imagery of Cigarette Ads, 1954-1986," 10 Journal of Public Policy & Marketing 63 (1991).

^{102/} Huang P.P., D. Burton, H.L. Howe and D.M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisement Among Adolescents," 1 Tobacco Control 249 (1992).

Similarly, the 1992 California Study reported that in all under-age groups, children preferred Joe Camel advertisements to Marlboro advertisements: in the 12- to 13-year age group, nearly four times as many children picked Camel as their favorite advertisement compared to Marlboro; among 14- to 15-year-olds, twice as many preferred Camel to Marlboro; among 16- to 17-year-olds, 69% preferred Camel to Marlboro.^{103/} The 1992 California Study concluded that "[s]alient advertising promotes future smoking. Having a favorite brand of advertisement doubled the proportion of adolescents over the age of 14 who were susceptible to smoking. It also had a marked effect on the susceptibility of 12- to 13-year-old children."^{104/} This conclusion was confirmed and augmented in a subsequent 1994 California Study, which determined:

[H]aving a favorite cigarette advertisement is inversely related to the respondent's age. For each age group from 12 to 25 years, more than half of respondents were able to name a favorite cigarette ad. After age 25, the proportion of respondents with a favorite ad decreased dramatically and linearly to approximately 22% of adults older than 60 years. Two thirds of 16-year-old adolescents nominated a favorite advertisement, the highest level of any group.^{105/}

^{103/} 1992 California Study at 113.

^{104/} 1992 California Study at 8.

^{105/} Pierce J.P., N. Evans, A.J. Farkas, S.W. Cavin, C. Berry, M. Kramer, S. Kealy, B. Rosebrook, W. Choi and R.M. Kaplan, California Department of Health Services, Tobacco Use in California: An Evaluation of the Tobacco Control Program, 1989-1993, p. 85. (1994) ("1994 California Study").

Again, this knowledge is not new to RJR or its advertisers. In discussing Joe Camel's appeal to its "target prospects," Young & Rubicam noted that "[t]hey enjoy the fantasy aspect which lets their imaginations run free . . . the cartoon-like rendering of the ads, adds to this dimension. Exhibit 59 at RJW 017770, "Camel Creative Exploratory Focus Groups." (Emphasis added.) Earlier in this internal memorandum, Young & Rubicam explored a new advertising approach which it described as "Roger Rabbit (real photography with animation)." Exhibit 59 at RJW 017768. However, Young & Rubicam recommended that the simple cartoon nature of the Joe Camel campaign not be changed:

The "Roger Rabbit" campaign direction was the least favorable among these prospects Participants missed the storyline, felt it was too static and still/not enough action. In addition they believed that the characters and situations often overwhelmed Joe. The juxtaposition of the real photography and cartoon Joe while sophisticated, made the participants feel the ads were trying to make Joe too real. Therefore, versus the cartoon approach, it left too little to the viewer's imagination and felt too contrived.

Exhibit 59 at RJW 017770. (Emphasis added.)

Another marketing proposal submitted to RJR early in the Joe Camel campaign again emphasized the importance of cartoon characters in effectively marketing cigarettes to children. On December 9, 1988, Flanigan Enterprises sent a chilling marketing proposal to Richard A. Kampe (President, RJR Tobacco Development

Co.), and RJR's top marketing people.^{106/} Exhibit 60. Understanding RJR's critical need to attract new young smokers if it was to survive, the proposal states:

Imagine a five-year old child, who will be a future customer of your cigarettes in the next few years. How can your company begin to attract/tap into this next generation? As a creative strategic marketing company, Flanigan Enterprises has developed a concept that will be innovative, have a repeatable advertising effect in the home, and be a new source of revenues for R. J. Reynolds.

The young children of this country have a curious desire to be instantly entertained, educated and expand their horizons. The parents of these children (yuppies with discretionary incomes) want the best for their children and are willing to pay if quality and reliability are present. These parents place a premium on high-technology and modern advances to ensure their children are keeping pace with today's dynamic rapidly changing environment.

The concept is a simple one -- Flanigan Enterprises is proposing a children's video be made to advertise the Camel product. This can be done through a series of full-cell animation (Disney style) videos directed towards the youth of today. Children love cartoons and these can be incorporated into the purchasing of cartons/packets of Camel cigarettes.

The Camel symbol can be transformed into a moving, talking, animated cartoon for children. It can also include the actual footage of visiting live camels in the zoo and in their native environment. Children love to

^{106/} Interestingly, Flanigan knew exactly who to send its proposal to, among others: E.A. Horrigan, Jr. (Chairman and CEO, RJR), F.H. Christopher, Jr. (Director of Marketing Research, RJR), J.T. Winebrenner (Senior Vice-President of Marketing, RJRTI), Lawrence W. Hall (Vice-President of Marketing, RJR), Ellen N. Monohan (Vice-President of Planning, RJR USA) and G.W. Mckenna (Vice-President of Marketing, RJR Development Co.). Exhibit 60 at 2. In addition, there was a post-it note forwarding the proposal to David Fishel (Vice President of Public Relations for RJR). Exhibit 60 at 51361 2438.

watch animals (repeatability) and this video can incorporate an education/entertainment theme. How often are smokers told, "It is a bad example for the children in our home to see you smoke." Here is a positive way to enhance the image of R. J. Reynolds in the home -- to engrain a positive image of the company to the children and non-smoker while linking the video to purchase of cigarettes.

This video concept can generate revenues from:

1. Sale of the animation tape to national rental distributors. In other words, the videotape can be placed in all the local video rental neighborhood outlets across the country. These outlets are looking for children's movies/stories to fill a need.
2. Sale of the animation/live footage tape can be sold to the special niche market you already have -- the parents who are smokers. Only a positive enhanced image can be gained with good will response from the non-smoking spouse. ***Imagine all the repeatable advertising for Camel going into homes across this country that produces revenue!***
3. Sale of the animation tape can be marketed into children's toy stores/outlets. This can only enhance the Camel image while adding to the revenue-generating process.

Exhibit 60 at 1-2, proposal regarding "Tapping into the Next Generation" (December 9, 1988). (Emphasis added.)

Although RJR can claim that it never accepted the Flanigan proposal, the proposal confirmed to RJR that using cartoon characters in its marketing was certain to attract children. As every marketer knows, one of the best ways to effectively advertise to children is to use cartoons.

C. The Magazines RJR Selected To Run Joe Camel Advertisements Were Known To Be Widely Read By Teens

Magazine advertising is important because this medium can be used to selectively target specific market segments. According to one internal document, the most effective way to reach young males was to place advertisements in sports related publications:

(b) The best use of advertising media presents an interesting problem especially in view of the apparent need for reaching younger people as effectively as Marlboro seems to be doing. Obviously maximum use should be made of magazines which are known to be read by younger people. However, these have limitations in circulation. The necessary reach can probably be had only through optimum methods of using newspapers and billboards. I would guess that young men give primary attention to sport pages and comic pages in the newspapers.

Exhibit 8 at 5, "Cigarette Product Formulation." (Emphasis added.)

Fourteen years later, the Youth Target study reached the same conclusion. The Youth Target study determined that Player cigarettes were favored by the 15-24 year-old T.G.I.F. Group. Exhibit 51 at 47, Youth Target. It explained that "Export [R.J.R MacDonald's leading Canadian youth brand] and Sports Illustrated go together, similar to TV sports. This is probably the area where the most serious challenge to Players could be mounted." Exhibit 51 at 60. (Emphasis added.)

Not surprisingly, RJR spends millions more dollars to advertise the Joe Camel campaign in sports magazines and car magazines, including Sports Illustrated, Inside Sports, Car and

Driver and Road and Track than it does in other magazines, in order to target minors and encourage them to smoke Camel cigarettes. RJR also placed Joe Camel advertisements in other magazines having large underage readerships, such as Details, Rolling Stone, Spin, Games Magazine, Cosmopolitan, Mademoiselle, Glamour, The Cable Guide, Redbook and Vogue. Indeed, the only apparent link between the magazines in which Joe Camel advertisements were placed is that they all have a significant underage readership.

Finally, another factor indicating that Joe Camel magazine advertisements were directed at youths is RJR's use of a "pop-up" format. When the magazine is opened, Joe Camel and his cronies stand-up. This same "pop-up" format is well-known to appeal to children, as evidenced by its prevalence in children's books.

D. Outdoor Advertising Is A Very Effective Medium For Reaching The Youth Market

Outdoor advertising was vital to the success of Joe Camel. In 1988, cigarettes ranked first among products advertised in outdoor media.^{107/} Outdoor advertising was important, at least in part, due to its cost effectiveness. Because billboard and point of sale advertising is more permanent than magazine ads, outdoor advertising has an extremely low cost per exposure. Their permanence allows multiple exposures for all age groups who are

^{107/} Centers for Disease Control, "Cigarette Advertising -- United States, 1988," 39 Morbidity and Mortality Weekly Report 261 (1990).

going to school, to work, to stores or anywhere else.^{108/} Outdoor advertising is also important because it allows the industry to target its advertising at the neighborhood level, as well as by ethnic segmentation.^{109/} Because outdoor advertising is a "low-involvement" medium, image campaigns like Joe Camel are particularly useful in communicating subjective values to attract and maintain customers.

All billboards, regardless of placement, are seen by significant numbers of children.^{110/} It has been repeatedly demonstrated that billboard advertising is important in creating cigarette brand awareness among children. Indeed, in an "Executive Summary" entitled "Operating in a Restricted Environment" discussing, among other things, RJR's strategy for handling the "antis," RJR admitted that it was difficult to defend against charges that outdoor advertising is the most effective method to target youth. RJR conceded:

Outdoor advertising continues to bear the brunt of anti-smoker criticism as regards [to] unrestricted exposure to

^{108/} Schooler C. and M.D. Basil, "Alcohol and Cigarette Advertising on Billboards: Targeting the Social Cues," Paper presented at the International Communication Association Conference, Dublin, Ireland, June 1990.

^{109/} Schooler C. and M.D. Basil, "Alcohol and Cigarette Advertising on Billboards: Targeting the Social Cues," Paper presented at the International Communication Association Conference, Dublin, Ireland, June 1990.

^{110/} 61 Fed. Reg. at 44505.

youth, and in fact, it is the medium that we are least able to defend in these terms.

Exhibit 61 at RJM 072025, executive summary regarding "Operating in a Restricted Environment" (early 90s). (Emphasis added.)

The 1992 California Study found "that through the creative use of billboard advertising and other devices, the tobacco industry has succeeded in achieving high levels of penetration even in the very young."^{111/} For example, the results of one survey conducted for Advertising Age showed that 46 percent of children 8 to 13 years old said they most often saw cigarette advertising on billboards.^{112/} It stated that 34 percent of children 14 to 18 years old cited billboards as the predominant advertising medium for tobacco products.^{113/} Even the Roper Study that was commissioned by RJR in testing children's recognition of advertising characters and slogans determined that 51% of children 10 to 17 years of age responded that they had seen Joe Camel on billboards.^{114/} That amount of recall shows that billboards represent a very effective advertising medium and belies the industry's assertion that

^{111/} 1992 California Study at 63.

^{112/} Levin G., "Poll Shows Camel Ads are Effective With Kids: Preteens Best Recognize Brand," Advertising Age, April 27, 1992, at p. 12.

^{113/} Levin G., "Poll Shows Camel Ads are Effective With Kids: Preteens Best Recognize Brand," Advertising Age, April 27, 1992, at p. 12.

^{114/} See infra, Exhibit 79, "Advertising Character and Slogan Survey" ("Roper Study") at 10, 22.

billboards are not an effective source of advertising information for children.

In the words of billboard marketers, "(`Outdoor: It's not a medium, it's a large'). `You can't zap it. You can't ignore it . . . It asks little time, but leaves a long impression.'"^{115/} This same publication notes, "`Outdoor is right up there. Day and night. Lurking. Waiting for another ambush.'"^{116/}

E. RJR Used Point Of Sale Marketing To Target Teens

Another method RJR employed in targeting children was to identify convenience stores near high schools and double its efforts to ensure that these stores prominently displayed Camel signage, promotions and product.

1. RJR Identified Convenience Stores And Other Locations Where Teens "Hang Out" And Made Sure That The Joe Camel Image Was Prominently Displayed

An important aspect of the Joe Camel campaign was RJR's "Permanent Younger Adult OOH [out of home] Plan." Exhibit 62, document regarding "Permanent Younger Adult OOH Plan" (undated). The "Overall Objectives" of this plan were to "[a]ssure continuous OOH [out of home] presence for highest potential brands, utilizing locations, units and creative executions that are uniquely and single mindedly relevant to younger adult smokers." Exhibit 62 at

^{115/} 61 Fed. Reg. at 44505.

^{116/} Comment to 21 C.F.R. Part 801 et al. See 61 Fed. Reg. at 44505.

RJW 022177. (Partial emphasis added.) Locations frequented by teens were called a "Younger Adult Showing," which RJR described as:

- ! Wherever younger-adult smokers "hang out" or, for other reasons, gather on a regular basis, e.g.,
 - Near venues where rock concerts are regularly held.
 - Along cruising strips/streets with heavy concentrations of fast food restaurants and convenience stores.
 - Near technical colleges, military bases, video game arcades, basketball courts, motocross tracks, major record stores, etc.

Exhibit 62 at RJW 022179. (Emphasis added.)

RJR recognized that with respect to "younger adults" -- 14-17 year-olds -- "[t]raditional OOH selection parameters do not necessarily apply!" Exhibit 62 at RJW 022179. Unlike with older consumers, "[h]igh 'daily effective circulation' not critical -- maybe YAS only in area on weekends -- that's OK!" Exhibit 62 at RJW 022179. (Emphasis added.) Clearly, assuring "continuous" presence in locations such as "rock concerts," "cruising strips," "video arcades," "basketball courts" and "record stores" where the target audience is only present on the "weekends" -- because this target audience is in school during the week -- has but one purpose. The purpose is to ensure that Joe Camel advertisements reach RJR's target audience -- kids.

Several internal RJR memoranda describe how RJR located YAS venues. One memorandum headed "VERY IMPORTANT, PLEASE READ CAREFULLY!!!," Division Manager J.P. McMahon asked his "Sales Reps" to identify stores, frequented by "young adult shoppers" that are located near high schools, colleges or other areas frequented by such individuals.^{117/} Exhibit 63 at RJW 000024, memorandum regarding "Young Adult Market" (January 10, 1990). Specifically, Division Manager McMahon wrote:

I need all of you to study the attached scroll list of monthly accounts in your assignment that are presently doing more than 100 CPW [cartons per week] for purposes of denoting stores that are heavily frequented by young adult shoppers. These stores can be in close proximity to colleges, high schools or areas where there are a large number of young adults frequent the store.

Exhibit 63. (Emphasis added.)

While RJR tried to distance itself from McMahon with a formal reprimand, McMahon's letter is fully consistent with RJR's "Permanent Younger Adult OOH [out of home] Plan," to create "[c]ontinuous, high impact visibility in the most YAS-oriented media available." Exhibit 62 at RJW 022176. Moreover, McMahon explained his actions by stating that this memorandum simply

^{117/} Over the following pages we identify and extensively quote several ex-RJR employees by name and confirm the information provided to the public at large. In this paper it has not been, for privacy reasons, our practice to identify those we have spoken with on an informal basis. We have done so here because these people were extensively interviewed on 60 Minutes and/or by the author of Smokescreen: The Truth Behind the Tobacco Industry Cover-up (Philip J. Hilts, 1996).

reflected the enthusiasm generated during a Sales Managers' meeting held in Atlanta. Exhibit 64 at RJW 000015, memorandum regarding "Corrective Action Dated April 11, 1990" (May 1, 1990). Contrary to RJR's attempt to portray this memorandum as an isolated incident by a renegade employee, McMahon's conduct was directed by RJR executive management. Indeed, several Florida sales representatives objected to these very tactics being employed by RJR to no avail. Terrance Sullivan, a sales representative under McMahon, stated in an interview: "We were targeting kids, and I said at the time it was unethical and may be illegal, but I was told that it was just company policy." Sullivan was subsequently fired by the Company and has instituted a wrongful dismissal suit.

Mike Shaw, another Florida salesman at RJR, confirmed that the Company's YAS program was intended to target kids. In an interview, this 20-year RJR veteran stated: "At just about every meeting I ever attended, the question came up, how can we get our share of the convenience store business where Philip Morris was doing so well. The convenience stores are where kids buy their cigarettes, one pack or two at a time." Shaw went on to state that "we wanted to get into that market, and used the promotional items, tee shirts, baseball caps, and one hot item were lighters, knowing full well the people we were giving these away to was kids half the time."

Moreover, identical conduct was undertaken in Oklahoma by Division Manager R.G. Warlick. See Exhibit 65 at RJM 059431, memorandum regarding "Young Adult Market Account Grouping" (April 5, 1990). Division Manager Warlick wrote to all "Area Sales Representatives," "Sales Representatives" and "Chain Service Representatives" asking them to resubmit their "list of Y.A.S. accounts" and identify "[a]ll package action calls [locations which sell cigarettes by the pack rather than the carton, i.e., convenience stores] located across from, adjacent to are [sic] in the general vicinity of the High Schools or College Campus. (under 30 years of age)" Exhibit 65 at RJM 059431. (Emphasis added.)

In discussing the McMahon and Warlick letters, Shaw stated: "We actually would do exactly what those letters said. . . . Kids is what we're talking about; most are not adults. These are kids." In describing how RJR targeted convenience stores with high teenage traffic, Shaw stated "if you got a high school on a block, and at the end of the block you got a Seven-11, that's one YAS outlet. The criteria you would use was simple. The stores were the ones where the kids hang out." In discussing the policy of flooding convenient stores having high teenage traffic with promotional items, Shaw explained that this policy was intended to be verbal, and not written down. Specifically, Shaw stated: "The managers weren't supposed to write it down. These two guys who wrote it in their memoranda were just a little more stupid than the others.

They were told to do something and they did it." Finally, Shaw stated that after the McMahon memorandum appeared in the press, each division office was issued a shredder and many of the documents about the program were destroyed.

Similarly, in discussing RJR's assertion that McMahon and Warlick misunderstood the Company's policy, Gary Belcher (a Chain Store Account Manager in South Florida) responded that he was at the same sales meetings and has read the memoranda. Belcher stated: "I find nothing inconsistent in the memoranda with what went on in that meeting." The Young Adult Smokers "campaign took a more aggressive posture than any I had ever seen. It was more overt. The purpose and intent was clearer than ever." Belcher described the plan as identifying stores that were "young people's hangouts" in order to heavily concentrate promotions there. In his words, he was told to "make sure you never run out there, make sure there's always a chance buy a 'deal pack' of some kind there." Significantly, Belcher confirmed that once the McMahon memorandum leaked to the press, documents were recalled and shredded. When asked whether the YAS program was ever terminated, he stated that while the program had been renamed, it went on as before.

One final piece of evidence demonstrating that McMahon's and Warlick's memorandum were not aberrations, but instead came from the executive level of the Company, comes from RJR sales representative Terrance Sullivan. Sullivan recalled attending a

regional sales meeting where someone from the audience asked who the young people were who were being targeted, were they junior high school kids, or even younger? The RJR headquarters executive who answered this question stated: "They got lips? We want 'em."

2. Once Convenience Stores And Other Locations
Where Teens "Hang Out" Were Identified, RJR
Employed Techniques To Ensure That The Joe
Camel Image Was Seen By Teenagers

A 1983 report memorializes an idea generation session between RJR and the aptly named 13-30 Corporation. Exhibit 66, report regarding "13-30 Corporation R.J. Reynolds Session" (June 29, 1983). The purpose of the meeting was to develop concepts for media vehicles for use in or around convenience stores to satisfy the needs of RJR, convenience store customers and convenience store owners. Exhibit 66 at RJR 468292. The document first identifies several images associated with convenience stores ("Youth Oriented," "Hang-Out" and "Video Games"), with convenience store customers ("Younger," "Children With Them," "Late at Night - Younger" and "Kids on Friday Night Buying Evening 6-Packs"), and with convenience store purchasers ("Young, Single" and "People with Less Spending Money"), Exhibit 66 at RJR 468293-468296. It then identifies various "Beginning Ideas" for generating cigarette sales at convenience stores. Exhibit 66 at RJR 468298-468302. Ideas aimed specifically at children are included such as having an "[a]ctivity booklet appealing to young people -- things to do," "[n]eighborhood game -- ongoing," "[d]evelop a 'Free-phone Center'

with a timer," "[d]evelop an outside, curb service capability. All in one vending machine -- don't have to go in." Exhibit 66 at RJR 468298, RJR 468300. This way kids could buy cigarettes without having to get past the store clerk.

Even more outrageous ideas were generated from this session, including to "[d]evelop a bike rack for kids with bikes - create ad space." Exhibit 66 at RJR 468302. (Emphasis added.) The very next idea discusses "[h]ow to deal with concept of illegal advertising to minors." Exhibit 66 at RJR 468302. Other outrageous ideas generated at this meeting specifically aim at children. It was suggested that RJR: "Hook up cigarettes with other youth purchases," and "[h]ow to have a video game token given away with purchase [of cigarettes]." Exhibit 66 at RJR 468310. (Emphasis added.) Aimed at the young MTV generation, an additional idea was to "[c]reate a music channel that is closed circuited into [convenience store] that is on target to youth market." Exhibit 66 at RJR 468315. Finally, under the heading "Additional Ideas to Personal Youth Analogy," the first idea is one which clearly contradicts RJR's position that it does not attempt to market its products to high school students: "Some kind of game or contest, untried via proof of purchase - with a weekly winner. Could be video game - high school sports quiz." Exhibit 66 at RJR 468318. (Emphasis added.) The intent of the marketers at this meeting is all too clear.

An October 1989 internal memorandum succinctly explains why point of sale advertising at convenience stores frequented by teens is so effective:

Not everyone over the age 16 smokes cigarettes.
Not everyone who smokes, smokes Reynolds brands.

However, almost everyone over the age of 16 owns or operates some type of motor vehicle. (Motorcycle, car, truck, etc.)

This means gas, tires, oil, lube jobs etc.

If Reynolds could make some kind of deal with one of the major oil companies, I feel it could change our sales percentages.

By putting some sort of coupon or token in each package or carton of cigarettes. Example (X number of coupons = Y gallons of gas).

This savings would benefit young people with part time jobs

Exhibit 67, interoffice memorandum regarding "Suggestion" (October 9, 1989). (Emphasis added.)

F. The Role Of Promotions In Marketing Cigarettes

A second broad component of an overall marketing campaign is promotional efforts. While advertising is used to create a desire or interest in smoking, promotional efforts are then used to get the consumer to act on those desires.^{118/} It serves to convey images that are recalled later when an event prompts the consumer to think

^{118/} Kotler P., Marketing Management: Analysis, Planning, Implementation, and Control, 7th ed. Englewood Cliffs, NJ: Prentice Hall (1991).

about a purchase.^{119/} Use of promotions is the fastest-growing category in the product marketing area.^{120/} Of the \$4-6 billion spent annually on cigarette advertising and promotion, more than 75% of these funds are currently spent on promotions.^{121/} Promotional spending is at this high level because promotion activities build on the consumer's attitudinal predisposition and leads him to act.^{122/} Indeed, the actual purchase of a product is often achieved by the use of a specific promotion.^{123/}

Again, the concepts discussed above were and are well known to RJR. In the words of RJR promotions marketer, the "objective" of RJR's promotional efforts is to:

^{119/} 61 Fed. Reg. at 44467.

^{120/} Kotler P., Marketing Management: Analysis, Planning, Implementation, and Control, 7th ed. Englewood Cliffs, NJ: Prentice Hall (1991).

^{121/} Federal Trade Commission, Report to Congress for 1990: Pursuant to the Federal Cigarette Labeling and Advertising Act, Washington, DC: Federal Trade Commission (1992).

^{122/} Popper E.T., Sampling and Couponing Promotional Activity in the Domestic Cigarette Market: A Report to the Office on Smoking and Health, US Department of Health and Human Services, Office on Smoking and Health, Interagency Task Force on Smoking and Health, Washington, DC (June 4, 1986); Davis R.M. and L.A. Jason, "The Distribution of Free Cigarette Samples to Minors," 4 American Journal of Preventive Medicine 21 (1988).

^{123/} Popper E.T., Sampling and Couponing Promotional Activity in the Domestic Cigarette Market: A Report to the Office on Smoking and Health, US Department of Health and Human Services, Office on Smoking and Health, Interagency Task Force on Smoking and Health, Washington, DC (June 4, 1986); Davis R.M. and L.A. Jason, "The Distribution of Free Cigarette Samples to Minors," 4 American Journal of Preventive Medicine 21 (1988).

Develop a targeted promotion concept that:

- Increases trial/retrial/conversion rates among competitive smokers.
- Builds promotion equity.
- Provides a mechanism for measurement of results.
- Supports the brand's personality and reinforces brand positioning.
- Provides smokers with a compelling reason to buy CAMEL cigarettes.

Exhibit 68 at RJR 129784, proposal regarding "CAMEL BRAND a Targeted Marketing Opportunity" (November 28, 1990).

Similarly, the "Are Younger Adult Smokers Important?" report recognized the importance of promotional items used by other campaigns to reposition a product: "Promotional merchandise, especially clothing, is a major element in [Jack Daniels'] marketing program." Exhibit 55 at RJR 478691. The report discussed how items can be marketed through a "general store" concept which RJR ultimately utilized by offering Camel Cash that could be redeemed for merchandise. Clearly, RJR was cognizant that such merchandise could be used to entice children by turning them, and their peers, into walking billboards:

[Jack Daniels] is an example of a viable positioning, executed in a "non-standard" but authentic and unpretentious way, which reaches [young adult] consumers not only through their books, but by converting [young adults] into walking billboards.

Exhibit 55 at RJR 478692. (Emphasis added.)

Recent data has confirmed that children and teens are more price sensitive than adults.^{124/} This recent data goes on to explain that pricing has an immediate and direct impact on cigarette sales to minors.^{125/} Reducing the cost of cigarettes makes it affordable for minors to try smoking. Promotions, like cigarette lighters, T-shirts or hats, reduce cost sensitivity by increasing, or giving the appearance of increasing, the value of the purchase.^{126/} Accordingly, cigarette marketers, including RJR, use several different types of promotions to attract new smokers and develop brand loyalty. Of course, successful campaigns like Joe Camel require effective advertising and promotion working in concert. Similarly, coupons actually reduce cost-sensitivity by lowering the price of the product.^{127/}

^{124/} Kessler D.A., J.P. Wilerfeld, L.J. Thompson, "The Food and Drug Administration's Rule on Tobacco: Blending Science and Law," 99 Pediatrics 884 (June 1997).

^{125/} Kessler D.A., J.P. Wilerfeld, L.J. Thompson, "The Food and Drug Administration's Rule on Tobacco: Blending Science and Law," 99 Pediatrics 884 (June 1997).

^{126/} Popper E.T., Sampling and Couponing Promotional Activity in the Domestic Cigarette Market: A Report to the Office on Smoking and Health, US Department of Health and Human Services, Office on Smoking and Health, Interagency Task Force on Smoking and Health, Washington, DC (June 4, 1986); Davis R.M., L.A. Jason, "The Distribution of Free Cigarette Samples to Minors," 4 American Journal of Preventive Medicine 21 (1988).

^{127/} Popper E.T., Sampling and Couponing Promotional Activity in the Domestic Cigarette Market: A Report to the Office on Smoking and Health, US Department of Health and Human Services, Office on Smoking and Health, Interagency Task Force on Smoking and Health, Washington, DC (June 4, 1986); Davis R.M.,

Indeed, RJR and its promotion supplier, Total Marketing, expressly recognize the importance of promotional items that appeal to teenagers. Exhibit 69, proposal regarding "CAMEL BRAND Promotion Opportunities" (May 4, 1990). Under the heading "Attitudinal and Lifestyle Considerations," this report explains that "[t]arget smokers are approaching adulthood, hence they are sensitive to peer group perceptions regarding their maturity and masculinity." Exhibit 69 at RJR 129789. (Emphasis added.) It states that the "key interests" of Camel's target "include girls, cars, music, sports and dancing -- all of which . . . can be accomplished on a limited budget." Exhibit 69 at RJR 129789. With respect to price sensitivity, this document explains that:

Given their age and environmental/economic conditions, target young adult smokers have limited disposable incomes. Therefore, they try to get as much as they can for their dollar spent.

Exhibit 69 at RJR 129789.

In addition, the "Key Issues Positions Papers" demonstrates RJR's knowledge of this important concept. Exhibit 42 at RJR 469238. In identifying "price elasticity" as a "key issue," this document explains that increasing the cost of cigarettes will negatively impact RJR because, "[c]urrent smokers/new smokers will be forced/kept out of the market on pure economic reasons." Exhibit 42 at RJR 469238. It explains that if new smokers are kept

L.A. Jason, "The Distribution of Free Cigarette Samples to Minors," 4 American Journal of Preventive Medicine 21 (1988).

out of the market, "[c]orporate profit margins will be jeopardized to remain within inelastic range" and that "[a]bsolute sales/profit will fall below long-term goals." Exhibit 42 at RJR 469238.

Finally, Burrows wrote two memoranda analyzing 1981 studies researching teenagers' price sensitivity as it affects cigarette purchase patterns published by the National Bureau of Economic Research ("NBER").^{128/} Burrows prefaced her report by explaining that: "Teenagers and younger adult males are highly price sensitive." Exhibit 70 at RJM 061035, memorandum regarding "NBER Models of Price Sensitivity by Age/Sex" (September 20, 1982). The NBER studies revealed to RJR that if the \$.08 cent federal excise tax on tobacco were doubled and passed on to consumers, total cigarette consumption would fall. Exhibit 31 at RJM 047531, "Estimated Change in Industry Trend Following Federal Excise Tax Increase." One author of the NBER study stated:

"There is hardly any sensitivity at all of adult smokers to price," commented Douglas Coate, one of the authors. But he and his colleague, Eugene Lewit, did find a significant price sensitivity "as we got down to teenagers and young adults," Mr. Coate said. For them the elasticity approached one, meaning that a 10 percent price rise would cut demand by the same amount. In the long run, 15 percent fewer young males would start smoking, the economists estimated^{129/}

^{128/} Lewit E.M., D. Coate and M. Grossman, "The Effects of Government Regulation on Teenage Smoking," Journal of Law and Economics (December 1981); Lewit E.M. and D. Coate, "The Potential for Using Excise Taxes to Reduce Smoking," 1 Journal of Health Economics 121 (1982).

^{129/} Robert D. Hershey, Jr., "A Taxing Cigarette Problem"

It was the potential reduction of the number of teen smokers and the inevitable impact on RJR's profits which concerned Burrows, who focused on the price sensitivity of smokers aged 12-17 in her series of memoranda. In her September 20, 1982 memorandum, Burrows wrote to Philip E. Galyan of RJR's Forecasting Group regarding the "Estimated Change in Industry Trend Following Federal Excise Tax Increase." Exhibit 31 at RJM 047531. Burrows noted that a "major implication" of the NBER models was that "[i]ncidence among 12-17 year-olds (male and female) has a price elasticity of -1.19. If prices were 10% higher, 12-17 incidence would be 11.9% lower." Exhibit 31 at RJM 047531. (Emphasis added.) Knowing that the only source of replacement smokers are children selecting their first brand because "[i]f a man has never smoked by age 18, the odds are three-to-one he never will, and that by age 24, the odds are twenty-to-one" (Exhibit 31 at RJM 047532), Burrows concluded:

In terms of immediate impact, the effect of price on males 35+ is most important. Half (50%) of the total drop in industry volume is attributable to males 35+, compared to 24% from younger adult males, and 7% from teenagers. (Calculated in Attachment A)

But, the loss of younger adult males and teenagers is more important to the long term, drying up the supply of new smokers to replace the old. This is not a fixed loss to the industry: its importance increases with time. In ten years, increased rate per day would have been expected to raise this group's consumption by more than 50%.

Exhibit 70 at RJM 061036. (Emphasis added; footnote omitted.)

New York Times, January 18, 1982, at D2. (Emphasis added.)

Quite simply, an increase in price would reduce RJR's prospects in attracting the necessary teenage smokers. Accordingly, RJR is in a race against time to attract the necessary teen smokers in the 12-17 year-old age window. A price increase of 10% percent would shut the door by effectively pricing out at least ten percent of the new teen smokers of the market. To place these statistics in perspective, Burrows explained:

If these new smokers had averaged only ten cigarettes a day, they would have accounted for 605 million cigarettes in 1983 or about .1% of Industry.

Some of these people may later choose to start smoking. However, for those 17-25, the odds are against it. If we estimate that only half of the new smokers 17-25 are permanently lost, the loss to Industry by 1987 would still amount to .1%.

Exhibit 31 at RJM 047533, "Estimated Change in Industry Trend Following Federal Excise Tax Increase."

Burrows' conclusions about the importance of the possible impact of increased cost of cigarettes on attracting new young smokers was conveyed to the highest levels of RJR. A September 20, 1982 memorandum from the RJR group director of marketing services to, among others James W. Johnston (board member and Executive Vice-President of Sales and Marketing), summarized Burrows' conclusions about the NBER data. This memorandum states:

Our Forecasting Group has determined that younger adult smokers, particularly younger adult male smokers, tend to be very price sensitive. The effect of a price increase on younger adult male smokers could be three to four times greater than on smokers in general, in terms of negative impact on volume.

This has obvious implications to the growth of Marlboro, as well as implications to our own Project VB.

Exhibit 71 at RJM 051656. (Emphasis added.)

Finally, even a quick perusal of the types of promotional items given away demonstrates their attractiveness to teens: Blank "Camel Cassette Tape[s]" that can be used to "record a friend's album or CD" or to "record music off the radio" (Exhibit 69 at RJR 129791); Camel "customized cassette tape or CD" including songs which "maximize[] Camel target consumer appeal (Exhibit 69 at RJR 129794); a "Camel Walkman Case" (Exhibit 69 at RJR 129796); "Camel Cassette Carrier" (Exhibit 69 at RJR 129797); "Camel `Cassette' Mini Headphones" (Exhibit 69 at RJR 129797). In addition to music oriented promotions, RJR offered games enjoyed by youngsters such as: "The Camel Pocket Game" including miniature, magnetized versions of "Chess/Checkers, Dominoes, Parchisi, Backgammon, Scrabble, etc. The choices are unlimited." (Exhibit 69 at RJR 129799); and "Camel Sliders" a "table-top game" where the "object is to get closest to the target" similar to other children's "slider" tabletop games like paper triangle footballs and three-penny hockey (Exhibit 69 at RJR 129800).

Who spends their time taping music, listening to walkmans and playing games? The answer is clearly children.

G. The Use Of Event Sponsorship To Reach The Youth Market

1. Sponsorship Of Sporting Events Is An Effective Method Of Advertising To Teenagers

Sports sponsorship is another way that RJR used the Joe Camel campaign to successfully market its cigarettes to minors. In light of the restricted number of venues where cigarette advertising may be posted, sponsorship events are a very cost effective mechanism for reaching youth.^{130/} Sports sponsorship provides RJR with access for its advertising to reach a youth market, given the heavy concentrations of young people in the audience.^{131/} Sponsored events that typically last for 2 to 3 hours ensure that those attending the event or viewing it at home on television are exposed for a sustained period of time.^{132/} Moreover, sponsorship of public events, such as monster truck racing, moto-cross and NASCAR racing allowed RJR to circumvent the bans against broadcast advertising.

The presence of tobacco advertisements at sporting events not only reaches teens, it also boosts credibility and familiarity of the product, particularly in youngsters. Sponsorship events create

^{130/} Buchanan D.R. and J. Lev, Beer and Fast Cars: How Brewers Target Blue-Collar Youth Through Motor Sport Sponsorships, Washington, DC: AAA Foundation for Traffic Safety (1990).

^{131/} Buchanan D.R. and J. Lev, Beer and Fast Cars: How Brewers Target Blue-Collar Youth Through Motor Sport Sponsorships, Washington, DC: AAA Foundation for Traffic Safety (1990).

^{132/} 61 Fed. Reg. at 44467.

an association between tobacco and event enthusiasts.^{133/} For young people, brand name sports sponsorship produces memorable associations between the sport and the tobacco product and brand name. As explained above, young people pay attention to and rely on peripheral cues such as the color and the imagery of advertising for some of their information about products. Tobacco sponsorship creates powerful images of fun and excitement to add to the "information" mix.^{134/} Finally, as a result of brand sponsorship, cigarette smoking impliedly receives an endorsement from the race car drivers.^{135/} These conclusions are supported by an independent study investigating minors aged 10 through 17, and their awareness of cigarette advertising at sponsored events.^{136/} The study determined that more than 50% of youths aged 12 and older correctly associated at least one sponsored sport with the sponsoring cigarette company and brand.

^{133/} 61 Fed. Reg. at 44530.

^{134/} Connecting the Camel brand name and the Joe Camel image with such events is an advertising association that can also act to limit opposition to cigarettes among fans. Blum A., "The Marlboro Grand Prix, Circumvention of the Television Ban on Tobacco Advertising," 324 New England Journal of Medicine 913 (1991).

^{135/} Ledwith F., "Does Tobacco Sports Sponsorship on Television Act as Advertising to Children?" 43 Health Education Journal 85 (1984).

^{136/} Aitken P.P., D.S. Leather and S.I. Squair, "Children's Awareness of Cigarette Brand Sponsorship of Sports and Games in the UK" 1 Health Education Research 203 (1986).

RJR leads the industry in sports marketing. Joe Camel was featured at sporting events, including monster truck races, motocross events and auto races -- places where parents bring their children to spend enjoyable recreational time together.^{137/}

2. In Addition To Sporting Events, RJR Also Sponsored Local Cultural Events In Order To Market Its Cigarettes To Teens

RJR did not limit its event sponsorship to sporting events. A 1989 document entitled "Diez Y Seis Fiesta Event Summary" describes the Diez Y Seis Fiesta held in Denver. Exhibit 72 at RJR 062083, event summary regarding "Diez Y Seis Fiesta" (1989). This family festival provided an excellent venue for RJR to advertise its Camel cigarettes at an event certain to be attended by Hispanic children. Indeed, this document reports that, "[t]he day began at 11:00 with a Catholic mass held on one of the stages. The other festivities began after the mass and included kiddie rides, vendor booths and live entertainment on both stages." Exhibit 72 at RJR 062083. (Emphasis added.) The event summary describes the success of the Camel booth and the visibility of the Camel colors and logo:

The Camel booth was the most popular and a constant line existed all day as people waited to play the basketball game. Samplers distributed 275 caps, 480 playing cards, and 596 mugs as prizes. . . . The Camel booth was also the most visible with its banners and yellow flags clearly standing out in the crowd.

* * *

^{137/} In 1990, the tobacco industry spent over \$125 million on sports marketing.

People of all ages came to the festival and many were in family groups.

Camel was definitely the strongest presence at the event. Camel hats could spotted everywhere throughout the crowd.

Exhibit 72 at RJR 062083. (Emphasis added.)

The Hispanic market was not the only ethnic market which RJR targeted. RJR also targeted the Black and Jewish markets: "Since 1965 R. J. Reynolds has spent \$5,260,000 tailoring advertising to the Negro, Spanish-Language, and Jewish special markets." Exhibit 73 at RJM 060587, "A Study of Ethnic Markets" (September 1969). Perhaps the most troubling statement made in this ethnic study is stated in the discussion about the "Negro market":

Newly-acquired pride and self-confidence are changing his buying habits. Advertising must be structured to appeal to this pride, keeping in mind that this is a segment of the population which is only beginning to emerge out of economic doldrums. General media messages are aimed at the white masses who have "arrived" at a comfortable economic level. Negro masses are only at a point in time when economic security is a possibility. They have only begun to feel the freedom of economic security. Quality rates as a cherished attribute. Negroes buy the best Scotch as long as the money lasts, most marketers agree.

Exhibit 73 at RJM 060646. (Partial emphasis added.)

H. RJR's Advertising And Marketing People Know Joe Camel's Real Target

That RJR's advertisers understood that Joe Camel's target was kids is evident from the types of proposals submitted in connection with the Joe Camel campaign, some of which were implemented by RJR.

A "Smooth Moves Tip" -- titled "Dream" -- clearly indicates who its target audience is:

It's hunting season.

You've come to a clearing in the woods.

Instead of spotting White Tail deer, you see dozens of nude young nymphs basking in the sun. Bras & panties hang in the bushes around you. That's right! It's "Camp Wannanack for Girls!" Just as you start to party, "your Mom yells "WAKE UP! YOU'RE LATE AGAIN!"

WHAT DO YOU DO?

Play dead.

Hug your rifle and go back to sleep.

Spin your head, and throw up pea soup.

Light up a Camel, quit your job & become a Forest Ranger.

Exhibit 74 at RJW 003867-003869, "Smooth Moves Tips" (undated). (Emphasis added.) Of course, this proposed ad clearly targeted kids, because the only people woken up by their moms are the people who read "high school history books."

Other Joe Camel marketing ideas similarly reveal that RJR's advertisers believed Joe Camel's target audience was children. A 1982 memorandum from RJR's Marketing Development Department to the Camel and Winston brand groups attempts to come up with some innovative ideas for these brands to help in the Marlboro attack. Exhibit 75 at RJR 500165-500168, memorandum regarding "Idea Generation" (July 12, 1982). The document depicts the following

line of reasoning which is unmistakably aimed at promoting Camel cigarettes to children:

How can CAMEL be a step ahead of Marlboro

- promotions that quickly react to today's young adult market
- CAMEL Hunt on Atari; or in arcades.

Exhibit 75 at RJR 500167. (Emphasis added.)

An interesting interoffice memorandum dated August 24, 1987 seeks approval to implement certain programs in recognition of Camel's 75th anniversary. Exhibit 76, memorandum regarding "Camel's 75th Anniversary" (August 24, 1987). One program involved an "art contest" inviting children to draw Joe Camel, with the 12 best drawings being featured in RJR's newsletter/magazine Caravan:

1. Kid's renderings of Old Joe. I'd like to run an item in the Oct. or Nov. Caravan inviting children and grandchildren of employees and retirees to send in their rendering of what Old Joe looks like. We'd pick 12 and run one each month in 1988. Each budding artist would receive a share of stock or, if that's too complicated a process, a Savings Bond. . . .

Exhibit 76. (Emphasis added.)

This same memorandum adds another suggestion to put the Camel logo and image in front of children:

Another idea bounced around with some of the staff is the possibility of arranging for one of the nights the Barnum & Bailey circus is in town being RJR night. The company could buy the tickets and give them away to employees (in a drawing, if necessary). If the circus would go along with it, one employee would be picked as the honorary ringmaster for the night, and the leading act would be, you guessed it, the camels, all wearing Camel 75 blankets.

Exhibit 76.

A 1989 brainstorming session generated over one hundred different suggestions/ideas. Exhibit 77 at RJR 055495-055504, report regarding "1989 Marketing Plan" (1989). Many of the recommendations were obviously meant to appeal to very young individuals. Number 33 on the list reads: "How to make Camel stories (fun, like children's stories) w/ a moral." Exhibit 77 at RJR 055497. Number 57 suggests building a theme around Friday night suggesting a building block for that theme as something every junior high or high school student loves about Friday night -- "no homework." Exhibit 77 at RJR 055499. Finally, number 81 suggests "[s]how what Camel looked like in the 20s, etc., WWI, WWII," offering the analogy: "like Mickey Mouse, always adult but changes `look' over time." Exhibit 77 at RJR 055501. RJR's target is thus someone who likes children's stories and Mickey Mouse, and who has no homework on the weekends. Yet another egregious example is found in a proposal suggesting that RJR give skateboards and Joe Camel dolls away as premium items. Exhibit 78 at RJW 016276.

While many of these proposals were never used by RJR -- presumably because they were simply too blatant in their targeting of children -- the mere fact that RJR's employees, professional marketers and advertising companies would even propose such ideas speaks volumes about the clear understanding conveyed by RJR that Joe Camel's purpose was to get kids to smoke. These and many other

documents demonstrate that RJR has long acted with the conviction that Dr. Teague got it right back in 1973 when he observed that the only way to get kids to take up smoking is to use the "wholly irrational" appeal of advertising to persuade them to do something they would otherwise be unlikely to do. For, as Dr. Teague explained, smoking has no rational attraction to someone who is not yet hooked on nicotine. Today, of course, RJR executives go to hilarious lengths to distance themselves from the all-too-candid remarks of Dr. Teague about scouring "high school books" in order to pitch their cigarettes to the proper audience. But the advertising specialists who were hired to execute the Joe Camel campaign knew that what RJR wanted was the same thing Dr. Teague wanted -- kids.

V. THE JOE CAMEL CAMPAIGN WAS TREMENDOUSLY SUCCESSFUL IN ADDICTING TEENS TO CIGARETTES

The best way to measure an advertising campaign's effectiveness in reaching its target audience is to determine if sales increased. Within just three years of its launch, the Joe Camel cartoon character had an astounding influence on children's smoking behavior. Because of the Joe Camel campaign, Camel cigarettes became the brand of choice among minors in California. Among those who buy cigarettes, children are twice as likely as adults to identify Camel as "their" brand. Upon implementation of the Joe Camel campaign, the brand's popularity with teenagers surged 33- to 66-fold as determined by various studies. A 1991

study estimated that RJR's share of the illegal teen market soared from .05% in 1988 to 33% in 1991, and that teen smokers accounted for \$476 million of Camel sales in 1991 compared with just \$6 million garnered before the Camel campaign.^{138/} A 1992 study found that the illegal teen market-share for Camel cigarettes was 16% -- and growing.^{139/} While RJR disputes the amount of increase, it concedes that underage sales of Camel cigarettes increased to 13 percent as a result of the Joe Camel campaign.

In addition, according to the 1994 California Study, California's multi-million dollar anti-smoking television ad campaign had sharply cut smoking by adults and by teenagers until the advent of the Joe Camel campaign, at which time the downward trend for teenagers reversed. In the wake of Joe Camel, while the number of California adults who smoke continued to steadily decline to all-time lows,^{140/} smoking by teenagers remained unchanged at 8-9%.^{141/} The 1994 California Study explained:

Smoking prevalence among 16- to 18-year-olds declined fairly steadily from 1975 through 1981 and underwent a

^{138/} DiFranza J.R., J.W. Richards, P.M. Paulman, N. Wolf-Gillespie, C. Fletcher, R.D. Jaffe, et al., "RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children," 266 JAMA 3149 (December 11, 1991) ("1991 DiFranza Study").

^{139/} The George H. Gallup International Institute, Teen-age Attitudes and Behavior Concerning Tobacco, p. 18 (September 1992).

^{140/} 1994 California Study at 59.

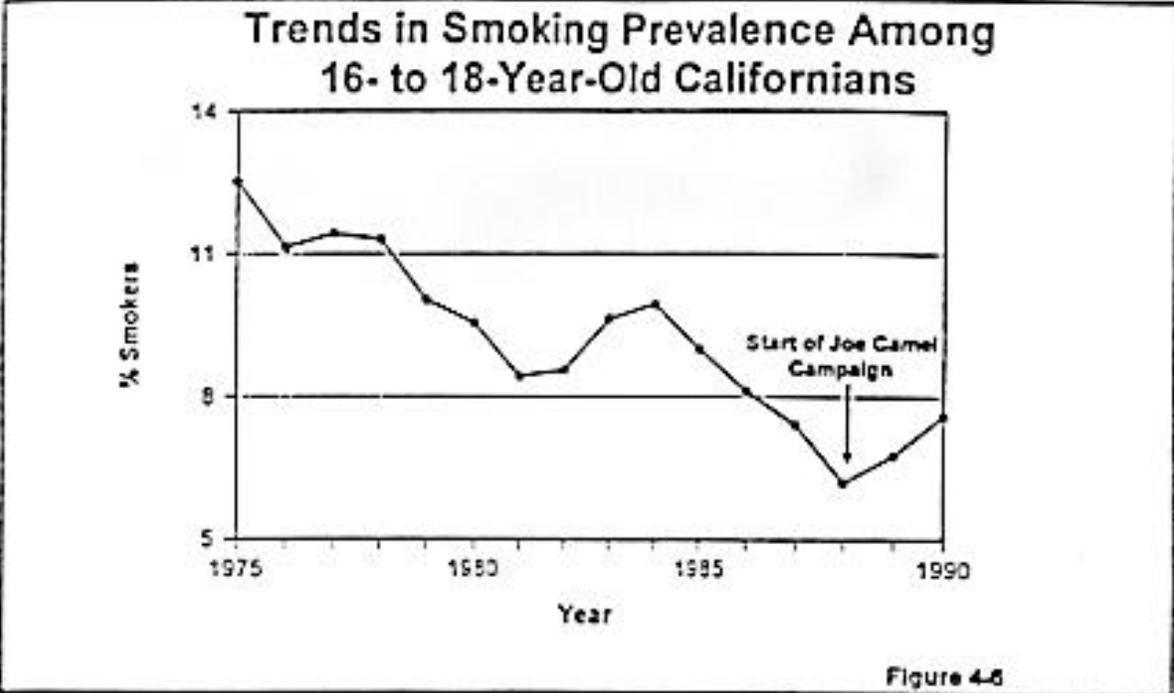
^{141/} 1994 California Study at 52.

second period of continuous decline between 1984 and 1988. During the latter period, prevalence declined at an average rate of 1 percentage point per year. After 1988, this declining trend was abruptly reversed and smoking prevalence among California adolescents began to increase rapidly at an average of 0.7 percentage points per year.^{142/}

This was the first study to demonstrate that the increase in teen-age smoking was tied to the Joe Camel advertising campaign. The 1994 California Study concluded: "Smoking prevalence among 16- to 18-year-old Californians appeared to be increasing sharply following the introduction of the 'Joe Camel' tobacco advertising campaign."^{143/} It graphically demonstrates the smoking trends among 16 to 18 year-old Californians before and after the Joe Camel campaign:

^{142/} 1994 California Study at 51.

^{143/} 1994 California Study at 59.



1994 California Study at 52.

That the Joe Camel campaign effectively encouraged teens to smoke is accepted by all but RJR. A 1990-91 study by the California Department of Health Services determined that Camel was recognized as the most advertised brand among the youngest group of adolescents surveyed, 12 to 13 year-olds.^{144/} It reported that the recognition of Camel was greatest "among those adolescents who were contemplating smoking but had not yet experimented with cigarettes."^{145/} The 1990-91 California Study explained:

Tobacco advertising, particularly the Camel cigarette advertising campaign using cartoon characters, was differentially recognized by younger adolescents. The recognition of cigarette brand advertising was closely related to the brand of cigarettes purchased by adolescent smokers, suggesting that tobacco advertising may promote smoking initiation among adolescents.^{146/}

Ultimately, the 1990-91 California Study concluded that:

These data indicate that tobacco advertising is preferentially seen by the young, but that all tobacco advertising campaigns are not the same in their appeal to youth. The smooth character cartoon advertising campaign for Camel cigarettes clearly targets the youngest group of adolescents as well as those who have not yet begun to smoke. These data, when combined with the high

^{144/} Burns D. and J.P. Pierce, California Department of Health Services, Tobacco Use in California, p. 109 (1992) ("1990-91 California Study").

^{145/} 1990-91 California Study at 109.

^{146/} 1990-91 California Study at 4.

proportion of young smokers who buy Camel cigarettes, strongly suggest that tobacco advertising is a major force in promoting young people to take up smoking.^{147/}

Similarly, a national survey by BKG Youth, a research and marketing company, directed to 8 to 13 year-olds and 14 to 18 year-olds, concluded that the Joe Camel cigarette advertising campaign is highly effective in reaching young people, especially kids under 13.^{148/} Likewise, a 1992 Gallup Report studying brand recall, found that Camel is the brand that most often comes to mind first among both teen smokers and non-smokers (36% each).^{149/} In the words of one researcher:

Old Joe Camel cartoon advertisements are far more successful at marketing Camel cigarettes to children than to adults. This finding is consistent with tobacco industry documents that indicate that a major function of tobacco advertising is to promote and maintain tobacco addiction among children.^{150/}

Even Advertising Age, a publication which consistently urges that "any proposal to ban tobacco advertising be rejected as a violation of the First Amendment," has publicly stated:

RJR denied the campaign encourages kids to smoke.

RJR is wrong, and is courting disaster with these ads. While we join RJR's skepticism about the JAMA

^{147/} 1990-91 California Study at 109. (Emphasis added.)

^{148/} Gary Levin, "Poll Shows Camel Ads are Effective with Kids; Preteens Best Recognizing Brand," Advertising Age, April 27, 1992, at p. 12.

^{149/} 1992 Gallup Report at 61.

^{150/} 1991 DiFranza Study.

studies' statistics, the company has crossed the divider between its legal right to advertise and its unique social responsibility to the general public.

Many other campaigns for cigarettes try to position smoking as glamorous, sexy and hip. Most feature adult models in adult settings. But the Old Joe ads are decidedly different. Sprightly cartoon ads like the ones featuring Old Joe may appeal to young adults but, unfortunately, they also attract children's attention; as a result, Old Joe subtly encourages youngsters to smoke.^{151/}

VI. THE RESULTS OF RJR'S OWN ROPER POLL DEMONSTRATE JOE CAMEL'S EFFECTIVENESS IN REACHING CHILDREN

In the face of the overwhelming evidence discussed above, in November 1993 RJR released a study it had commissioned entitled "Advertising Character and Slogan Survey, November 1993," conducted by Roper Starch (the "Roper Study"). Exhibit 79. Even this study -- which was paid for and revised by RJR -- supports the findings of the various independent studies described above. In its final, watered down form, the Roper Study states that:

There would seem to be no question about the memorability of trade characters as an advertising device to reach young people. Of those characters included in this survey, all but one enjoy very high levels of claimed awareness and of identification with the product categories advertised.

Joe Camel is no exception -- nor, however, is he the best known of the characters studied.

Exhibit 79 at vi. (Emphasis added.)

^{151/} "Old Joe Must Go," Advertising Age, January 13, 1992, at p. 16. (Emphasis added.)

Significantly, Roper Starch's original, un-edited conclusion dramatically differed from the version that was revised and ultimately released by RJR. See Exhibit 80, original unedited version of "Advertising Character and Slogan Survey" (November 1993). The true conclusion of this RJR study is that trade characters such as Joe Camel are unquestionably effective in reaching children:

There would seem to be no question about the effectiveness of trade characters as an advertising device to reach young people. Of those characters included in this survey, all but one enjoy very high levels of claimed awareness and of identification with the product categories advertised.

Joe Camel is no exception -- nor, however, is he the best known of the characters studied.

Exhibit 80 at vi. (Emphasis added.)

Indeed, in its final form, the Roper Study found that 2% of America's youth answered the open question of how they would describe Joe Camel by stating he "`tries to get kids to smoke.'" Exhibit 79 at vi. According to 1990-1993 census data, this means that as determined by the Roper Study, approximately 1.4 million of America's youth think that Joe Camel is trying to get them to smoke. The Roper Study also concluded that 35% of the children involved accorded Joe Camel "the youthfully positive attribute of `coolness.'" Exhibit 79 at 14. That means that according to RJR's own study, 23 million children in America think that Joe Camel -- and thus smoking Camels -- is "cool." With respect to advertising

slogans for Camel cigarettes, the Roper Study found that of the 11 most typical responses, the vast majority attributed "coolness" or "smoothness" with the Joe Camel advertising campaign:

Examples of the incorrect slogan responses for Camel cigarettes are . . .

Joe the Camel	<u>Be like the Camel</u>
<u>Cool Joe Camel</u>	<u>Be cool man</u>
<u>Joe Cool</u>	Great tasting, cheaper now
I'd walk a mile for a camel	

Partially correct slogan responses for Camel cigarettes are . . .

<u>Smooth</u>	<u>Cool smooth</u>
<u>The smooth one</u>	<u>Smooth Cool Joe</u>

Exhibit 79 at 6. (Emphasis added.)

These typical responses indicate that children perceive the Joe Camel advertising campaign to be making the statement: "Be like the camel and smoke Camel cigarettes and you will be cool." This message echoes Dr. Teague's proposal for a new advertising campaign aimed at kids:

Ideally, the name chosen should have a double meaning; that is, one desirable connotation in "straight" language and another in the jargon of youth. A current example may be Kool, which reads on "cool" cat in youth jargon, and also literally connotes a refreshing physical sensation. Another way of approaching the name or image would be to choose one which evokes different but desirable responses from different age groups. Thus the Marlboro western theme suggests independence, clean air, open spaces and freedom to the youth group, while at the same time suggesting the "good old days," hard work, white hats over black hats, and the like to the older generation. . . .

A careful study of the current youth jargon, together with a review of currently used high school

American history books and like sources for valued things might be a good start at finding a good brand name and image theme.

Exhibit 2 at 10, "Some Thoughts About New Brands of Cigarettes For the Youth Market." (Emphasis added.)

Finally, confirming the conclusions of the Surgeon General and the California Department of Health Services, the Roper Study found that the Joe Camel campaign resulted in higher than normal unassisted recall of the product that was being advertised in comparison to products that are extensively advertised on children's television shows: "Joe Camel is identified correctly as advertising cigarettes by 95% of those youth who claim awareness of the character." Exhibit 79 at 11, Roper Study. (Emphasis added.) This percentage was higher than youths who knew that Ronald McDonald sold hamburgers (93%) or that the Jolly Green Giant sold vegetables (92%). Exhibit 79 at 12.

VII. IN ADDITION TO THE GENERAL PUBLIC, RJR DECEIVED CONGRESS

Astonishingly, RJR denies that the Joe Camel campaign targets kids while claiming never to have investigated the issue. Despite overwhelming evidence to the contrary, Maura Payne, a spokeswoman for RJR, claims the Company does not have information on sales of cigarettes to children: "`We purposely exclude it' from market research, Payne said. `We don't want to know what would motivate

children to smoke.'"^{152/} Similarly, in April 1994, RJR's president and CEO, James W. Johnston, swore under oath to Congress that RJR never surveyed persons younger than 18: "Now, I want to be very clear. We do not survey anyone under the age of 18."^{153/} As evidenced above, RJR's denials ring hollow.

The position taken by RJR echoes similar denials made to Congress in the late 70s. In response to inquiries by the Subcommittee On Health & The Environment, a representative of the Tobacco Institute, "confirmed" that none of its tobacco company members -- which includes RJR -- had ever looked at underage smoking. Exhibit 81, letter regarding confirmation that no tobacco company conducted research "Directed at Children" (March 6, 1978). Due to its brevity, the Tobacco Institute's response is quoted in its entirety:

Dear Mr. Chairman:

Certain inquiries were made by the Subcommittee during my testimony on February 15 (see Transcript p. 117, l. 23, through p. 119, l. 9). I am writing to confirm that I am unaware of any consumer study conducted by any of our member companies with regard to children nor of any cigarette advertising campaign directed at children, whether male or female. I have communicated with each of our cigarette manufacturing members and advised them of

^{152/} Paul Raeburn, "Studies Suggest Advertising Causes Children to Smoke," San Francisco Examiner, December 11, 1991, at A-3.

^{153/} Testimony of James W. Johnston before the House of Representatives, Committee on Energy and Commerce, Subcommittee on Health and the Environment at p. 732 (April 14, 1994).

the Subcommittee's request for such material, should any exist.

Exhibit 81.

Obviously, RJR was less than forthcoming. As RJR's internal documents show, since at least the 50s, RJR has studied underage smoking and the evidence is irrefutable that RJR targeted our youth.

VIII. RECOMMENDATIONS

Repeated studies, conducted both within and outside the United States, have determined that adolescents consistently smoke the most advertised brands.^{154/} All media collectively along with the amount of exposure time to young people, increases the effectiveness of the advertiser's message.^{155/} Advertisements placed in magazines and sporting and other events sponsored by the tobacco industry have a dramatic affect on children. Similarly, billboards, regardless of placement, are seen by significant numbers of children. Moreover, billboards near schools or playgrounds expose children to unavoidable advertising messages for

^{154/} McCarthy W.J. and E.R. Gritz, "Teenagers, Cigarette Smoking and Reactions to Selected Cigarette Ads," Paper presented at the Western Psychological Association Meeting: Los Angeles, California, April 6, 1984; Baker W., P. Homel, B. Flaherty and P. Trebilco, The 1986 Survey of Drug Use by Secondary School Students in New South Wales, Sydney (Australia): New South Wales Drug and Alcohol Authority, (1987); DiFranza J.R., J.W. Richards, P.M. Paulman, N. Wolf-Gillespie, C. Fletcher, R.D. Jaffe, et al., "RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children," 266 JAMA 3149 (1991).

^{155/} 61 Fed. Reg. at 44467.

a more prolonged period of time than billboards they pass on the highway.^{156/} The trend toward the use of many media as a coordinated effort to communicate an advertising message supports the need for a comprehensive approach to mitigating the effects of tobacco advertising.

One effective way to inhibit new teen smoking is to prohibit the industry from any advertising that might reach our children. Because exposure to cigarette advertising and promotions creates persuasion, reducing that exposure will impede that process.^{157/} It clearly makes sense that, as a means to protect children from tobacco advertising, tobacco advertisements should be prohibited from magazines and billboards, as well as other outdoor advertisements such as gas stations and convenience stores, sporting and cultural events.

In addition, based on established learning about the price sensitivity of teenagers we know that teens have a limited amount of money that they can spend on cigarette products. Thus, severe monetary sanctions should be imposed against tobacco companies if youth smoking rates do not quickly decline. In order to provide an economic disincentive, these penalties should be imposed on a

^{156/} 61 Fed. Reg. at 44467.

^{157/} Lavidge R.J. and G.A. Steiner, "A Model for Predictive Measurements of Advertising Effectiveness," 25 Journal of Marketing 59 (1961); McGuire W.J., "Persistence of the Resistance to Persuasion Induced by Various Types of Prior Belief Defenses," 64 Journal of Abnormal and Social Psychology 241 (1962).

company by company basis rather than industry wide, such as proposed in "NO Tobacco for Kids," H.R. 1772, 105th Cong. (1997). In this matter, the economic dynamics driving the companies to attract kids to their products will be replaced by a new economic incentive not to addict kids. Such monetary sanctions will have the affect of driving up the price of cigarettes popular with kids, which as the industry and the experts agree, is the most effective way to discourage potential new young smokers not to take up this life long addiction.

Finally, a strong anti-youth smoking advertising and media campaign should be implemented copying many of the attributes so successfully employed by RJR in its Joe Camel campaign. This anti-smoking message should be pitched to the "Punkers," the "Rockers," the "Non-Conformists" and the "T.G.I.Fs." Once this critical market segment is convinced that smoking is not "cool" peer pressure will ensure that the children of the future do not become addicted to the tobacco industry's deadly products. Anti-smoking messages aimed at the "Goody Goodies" and "Tomorrow's Leaders" are not likely to reduce teen smoking, and may well have the opposite effect. As RJR's market research reveals, "[s]queaky clean looks good to us, but it is likely to be seen by them as NOT speaking to them [FUBYAS], NOT understanding, NOT relevant to their lifestyle." Exhibit 32 at 48, "Younger Adult Smokers."

IX. CONCLUSION

RJR's view that advertising does not affect consumption is contradicted by industry experience, logic and evidence. It is not credible that the tobacco industry spends more than \$6 billion annually merely to maintain brand share and to try to switch current smokers. As stated by one well-known advertising executive, this argument defies common sense:

I am always amused by the suggestion that advertising, a function that has been shown to increase consumption of virtually every other product, somehow miraculously fails to work for tobacco products.^{158/}

^{158/} Foote E., "Advertising and Tobacco," 245 JAMA 1667 (1981).

