

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 99-2496 (GK)
and	:	
	:	
TOBACCO-FREE KIDS ACTION FUND,	:	
AMERICAN CANCER SOCIETY,	:	
AMERICAN HEART ASSOCIATION,	:	
AMERICAN LUNG ASSOCIATION,	:	
AMERICANS FOR NONSMOKERS' RIGHTS,	:	
and NATIONAL AFRICAN AMERICAN	:	
TOBACCO PREVENTION NETWORK,	:	
	:	
Intervenors,	:	
	:	
v.	:	
	:	
PHILIP MORRIS USA, INC.,	:	
(f/k/a Philip Morris, Inc.), <i>et al.</i> ,	:	
	:	
Defendants.	:	

FINAL OPINION

Defendants have not adopted or implemented any of these four strategies. Id. at 386:7-398:16, 401:12-411:8; Chaloupka WD, 30:15-32:20.

3159. In contrast to these four proven strategies, Defendants have adopted YSP Programs focusing on: (a) school-based and community prevention programs; (b) media campaigns; and (c) programs targeting parents. Personnel assigned to these YSP Programs by Defendants are often given impressive sounding titles but lack experience or skills relevant to the task of preventing youth smoking and face an inherent conflict of interest.

3160. Philip Morris continues to increase its marketing expenditures in grossly disproportionate amounts to its spending on youth smoking prevention. Philip Morris's 2003 Financial Forecast Budget includes a budget of \$110 million for youth smoking prevention, \$8.9 million greater than its 2002 spending, "primarily due to increased spending for adult cessation programs." In contrast, in that year, Philip Morris spent more than \$7.1 billion on sales incentives and product promotions. PM3000172220-2256 at 2234-2235, 2242 (US 88646) (Confidential).

3161. School-based programs, which generally take place in classrooms for grades seven through nine, focus on sensitizing young people to influences that encourage smoking and teaching them skills to resist such influences. One of the largest programs is Life Skills Training, funded by Philip Morris and B&W. RJR implemented a similar Right Decisions, Right Now Program. Although Philip Morris, RJR, and B&W have each supported the implementation of school-based youth smoking prevention programs, they are often not effective because of the failure to implement the program as rigorously as the research study justifying it calls for. Lorillard also funded a school based program, "Making it H.I.P. Not to Smoke" which consisted of scholarship programs and other

cash awards. A randomized control trial on the Lorillard program found that it did not deter adolescent smoking. Biglan WD, 382:18-396:17.

3162. Of greater concern is the fact that Philip Morris, RJR, Lorillard, and B&W direct their youth smoking prevention efforts towards early adolescents and ignore older adolescents. About 1,250 young people per day become established smokers (defined as smoking more than 100 cigarettes lifetime) at ages fifteen through seventeen, while about 725 per day become established smokers at ages eleven through fourteen. Thus, nearly two thirds of adolescents who smoke become established smokers in the later age range of fifteen through seventeen. Biglan WD, 403:1-5. The Philip Morris media campaign targeted youth ten to fourteen years old. Levy WD, 71:17-72:4. Lorillard targets ten to fifteen year olds. Watson PD, United States v. Philip Morris, 4/2/02, 160:22-162:11. RJR targets twelve to fifteen year olds. 520877431-7484 (US 87873). Several of B&W's activities target children and early adolescents. Biglan WD, 401:18-402:9.

3163. Defendants also support community programs to reduce teenage access to cigarettes. For example, Defendants support the We Card Program, a form of merchant education, to reduce illegal sales of tobacco to young people at the retail, convenience store level. We Card offers "free training seminars, in-store signage, and educational materials and incorporates an online catalogue which lists signage and training materials available for purchase. Studies show that vigorous enforcement does lead to a reduction in illegal sales. (no bates) (US 73411).

3164. One of Lorillard's Corporate Principles provides that "Lorillard strongly supports the enforcement of laws which requires retailers to check the age of potential purchasers of cigarettes." Milstein TT, 1/7/05, 9382:5-10. However, Lorillard's expenditures for the We Card Program decreased significantly in 1999 and 2000 over its pre-MSA funding level; they decreased from \$9.5

million in 1996 to \$6.1 million in 1997 and then to \$5.05 million in 1998. In 1999, the total program spending decreased to \$4.2 million. This reduction in funding significantly limited distribution of We Card materials and training sessions. Id. at 9327:6-9331:14; 2085092888-2894 (US 89180).

3165. There is no evidence that any Defendant has evaluated whether tobacco outlets participating in the We Card Program were actually not selling tobacco to young people or whether the program reduced the overall adolescent smoking prevalence rate. Biglan WD, 439:11-443:26. In fact, according to the Philip Morris commissioned 2003 TABS (Teenage Attitude and Behavior Survey), almost 70% of adolescent eleven to seventeen year old smokers who had bought cigarettes in the previous month purchased their cigarettes directly from the retail clerk where the clerk handed them the pack of cigarettes. Specifically, 43.8% of these eleven to fourteen year-olds, and 72.9% of these fifteen to seventeen year old smokers purchased their cigarettes from a retail clerk who handed them cigarettes. Willard TT, 4/12/05, 18694:9-18697:7; UCX0280450-0807 (US 93349).

3166. Defendants also utilize media campaigns in their youth smoking prevention programs. Lorillard, RJR and Philip Morris have run televised national youth smoking prevention media campaigns. Lorillard ran the “Tobacco is Whacko -- If You’re a Teen” campaign, which included both print and broadcast advertising. Philip Morris has run the “Think. Don’t Smoke.” campaign, which began in 1998. RJR ran print ads as part of its “Right Decisions. Right Now” campaign.

3167. A study of seven different types of anti-smoking messages on adolescents’ (seventh and tenth graders) intentions to smoke found that three types of messages were effective: (a) ads emphasizing the deleterious effects of smoking on families; (b) ads portraying young smokers as unable to achieve popularity, sophistication, or success; and (c) ads depicting attractive individuals

refusing to smoke. Basically, to be effective with adolescents, ads must communicate that smoking is socially unacceptable. (no bates) (US 73411).

3168. Instead, both Lorillard's and Philip Morris's media campaigns promote the message that smoking is an adult decision. Emphasizing that smoking is an adult activity underscores the desirability of engaging in adult behavior for adolescents who are particularly motivated to appear mature. Biglan WD, 409:20-21, 433:15-22. Most of Lorillard's and Philip Morris's youth smoking prevention advertisements do not promote the social disapproval of youthful smoking which available research indicates is critical to their effectiveness. Id. at 403:21-412:8.

3169. Although they have conducted focus groups on public reactions to the campaigns, no Defendant has evaluated whether its media campaigns are actually effective in reducing adolescent smoking or intentions to smoke. Id. at 403:21-412:8.

3170. On October 26, 1998, Fox Broadcasting Company reviewed Philip Morris's first round of Youth Smoking Prevention ("YSP") ads and rejected them for failing to send a strong enough anti-smoking message to children. Szymanczyk TT, 4/07/05, 18256:9-18258:20, 18262:3-19; 2069512311-2311 (JD 053821).

3171. On April 13, 2001, California Attorney General Lockyer wrote a letter to Denise Keane, Philip Morris Senior Vice President and General Counsel, requesting immediate discontinuation of the "Think, Don't Smoke" campaign on the basis of research demonstrating that its message was ineffective and in fact diluted the effective anti-smoking messages of the states and the American Legacy Foundation which was created pursuant to the MSA. Philip Morris continued to air the "Think, Don't Smoke" advertisements for nine months after receiving this letter. Szymanczyk TT, 4/07/05, 18264:3-18272:17.

3172. Lorillard utilized the slogan "Tobacco Is Whacko -- If You're a Teen" in its youth smoking prevention media campaign. According to a February 2000 Lorillard report on the results of focus groups that were done with ten to fifteen year olds to get their reactions to Lorillard's youth smoking prevention advertisements:

- Respondents remembered the tag line, but had negative responses to it.
- They complained that it was very young (younger than they are) and "cheesy."
- They particularly disliked the if you're a teen part of "Tobacco is Whacko -- If You're a Teen." They complained that this singled them out and that they believe it should apply to all ages.

94691840-1858 (US 87874); Biglan WD, 409:5-18.

3173. Despite these results, Lorillard continued to use the slogan. Victor Lindsley, Lorillard's group brand director who was involved in developing the company's youth smoking prevention media campaign, by email dated April 4, 2000, indicated to General Counsel Milstein that he was "very uncomfortable" about the tag line. In response, Milstein stated that Martin Orlowsky, Lorillard's President's "only comment to me [Milstein] was that he [Orlowsky] did not want to hear again about the tag line ever, and that I [ Milstein] should not be influenced by the creative complainers." Lorillard did not remove this unpopular tag line until 2001. Milstein TT, 1/10/05, 9399:25-9410:6; 97011359-1359 (US 89287); 99282955-2955 (US 89288).

3174. Philip Morris, Lorillard, B&W, and RJR have also directed a variety of communications concerning youth smoking prevention to parents, including television advertisements, brochures, and workshops. Biglan WD, 412:9-436:3. Philip Morris started out with

television ads and now distributes youth smoking prevention brochures to approximately one million parents who are on the Philip Morris mailing list. Levy WD, 74:4-6, 87:10-89:20. The RJR website describes, and includes the text of, three youth smoking prevention brochures intended for parents. 520877431-7484 (US 87873); Biglan WD, 433:1-434:6. As part of its "Take 10" campaign, Lorillard has placed youth smoking prevention print advertisements directed at parents in a number of magazines. The advertisements emphasize that by the teenage years, young people are often alienated from their parents and encourage parents to talk to their children. Id. at 424:14-425:23. B&W has information for parents and an available video on its website.

3175. Beginning in June 2003, Philip Morris USA began to run television commercials directing viewers to its website, where it addresses smoking and disease, addiction, quitting, and talking to kids about smoking. (no bates) (JD 053158). While some of the ads may grab the viewers' attention, the fact remains that those ads have never been evaluated to see if they are actually achieving their intended results, namely, impacting youth smoking incidence. The fact that parents or other adult viewers may find the ads persuasive casts no light on whether the seventeen to twenty-one year olds do.

3176. The evidence is mixed on whether such efforts to mobilize parents actually affect adolescent smoking prevalence. For example, one study randomly assigned parents to receive or not receive a set of four messages designed to encourage parents to set rules about tobacco use. There was no evidence that the messages deterred smoking. Moreover, research has found that flooding a community with pamphlets urging parents to talk to their children about not using tobacco had no discernible effect. Biglan WD, 412:9-413:19.

3177. Youth smoking prevention campaigns targeting parents should be routinely evaluated in terms of: (a) their efficacy in getting parents to talk to their children about not using tobacco or otherwise set limits around smoking; and (b) their actual impact on youth smoking. Defendants have not undertaken any such evaluations. Id. at 434:19-435:5, 416:17-19, 427:15-16, 430:3-4, 434:9-10.

3178. Despite the fact that most smokers want to quit, RJR advises parents who smoke that, "[i]f you are like most smokers, you smoke because you enjoy it." The B&W website advises, "[t]ell your children that laws exist to enforce smoking as a choice made by informed adults." VXA 1240104-0567 (US 64316).

3179. Defendants never recommend that parents inform their children that smoking kills more than 400,000 people each year, involves an addiction that most smokers desire to end, and will harm those around the smoker. Nor do Defendants ever suggest that parents, as role models for their children, stop smoking.

3180. Defendants have failed to staff their YSP programs with individuals with experience or background in smoking prevention, prevention generally, or even youth issues. While it is understandable, as Defendants suggest, that YSP programs must be led by long-time employees with corporate credibility, that is no excuse for the total failure to hire persons with skills relevant to identifying and developing effective, empirically validated programs to prevent youth smoking. For example, Carolyn Levy, former Director of Youth Smoking Prevention at Philip Morris and a former research scientist, had no experience or background in prevention or youth smoking or youth issues and was unaware of even the basic prevention journals relied upon by prevention experts. Her successor and the current Senior Vice President for Youth Smoking Prevention, Howard Willard,



had served previously as Senior Vice President of Quality and Compliance for Philip Morris, with no background in youth smoking prevention. Levy WD, 55:16-19, 57:14-59:24, 63:13-64:19.

3181. Neither Claudia Newton, B&W Tobacco Corporation's Vice President, Corporate Responsibility and Youth Smoking Prevention, nor Theresa Burch, the head of B&W Tobacco Corporation's youth smoking prevention programs, had any experience in youth smoking prevention. Newton PD, United States v. Philip Morris, 4/17/02, 70:23-71:2, 78:10-81:12, 192:24-193:9.

3182. Brennan Dawson, the longtime industry spokeswoman for the Tobacco Institute, had been B&W's Vice President for External Affairs (which includes YSP) and MSA Section III(1) designee, after Claudia Newton. Dawson had no college degree, no formal educational background in science or medicine, and no experience with youth smoking prevention or teen behavioral research prior to taking the position. Dawson WD, 4:10-20.

3183. Steven Watson, Vice President of External Affairs for Lorillard, prior to joining Lorillard with responsibility for the oversight of Lorillard's Youth Smoking Prevention Program, had never done any research on risk perception or any work that required him to develop programs for youth. Nor was he asked if he had such experience when he was interviewing for the position at Lorillard. Watson PD, United States v. Philip Morris, 4/2/02, 24:18-26:1. Interestingly, Watson did not even apply for the position of Vice President of External Affairs, but was contacted by Lorillard regarding the position. Id. at 21:6-19.

3184. Internal documents suggest that Defendants designed their YSP programs for public relations rather than efficacy in youth smoking prevention. A 1991 discussion paper from the Tobacco Institute explained that a "youth program" is important to the industry because it will:

support the Institute's objective of discouraging unfair and counterproductive federal, state, and local restrictions on cigarette advertising, by: (a) providing on-going and persuasive evidence that the industry is actively discouraging youth smoking and independent verification that the industry's efforts are valid; (b) Reinforcing the belief that peer pressure -- not advertising -- is the cause of youth smoking [and] (c) Seizing the political center and forcing the anti-smokers to an extreme.

TIMN0164421-4424 at 4423 (US 34445\*) (emphasis in original).

3185. A 1995 Philip Morris document stated: "If we can frame proactive legislation or other kinds of action on the Youth Access issue . . . we will be protecting our industry on into the future."

Additionally, the document stated:

[I]f we don't do something fast to project that sense of industry responsibility regarding the youth access issue, we are going to be looking at severe marketing restrictions in a very short time. Those restrictions will pave the way for equally severe legislation or regulation on where adults are allowed to smoke.

2044046017-6022 at 6021-6022 (US 66716).

**7. Despite the Overwhelming Evidence to the Contrary, Defendants' Public Statements and Official Corporate Policies Deny that Their Marketing Targets Youth or Affects Youth Smoking Incidence**

**a. Defendants Claim They Restrict Their Marketing to People Twenty-one and Older**

3186. All Defendants have made numerous public statements that they do not market to persons under twenty-one. From 1964 to 1991, all Defendants voluntarily agreed to abide by the industry's Advertising Code which prohibited marketing to persons under twenty-one. After 1991, when the Code was revised, all Defendants, at different times, adopted, and publicized, internal company policies not to market to persons under twenty-one.