

Concurring Statement of Commissioner Leibowitz  
Regarding Rescission of Guidance on Cigarette Testing Methodology

Our action today ensures that tobacco companies may not wrap their misleading tar and nicotine ratings in a cloak of government sponsorship. Simply put, the FTC will not be a smokescreen for tobacco companies' shameful marketing practices.

For far too long, tobacco companies have advertised cigarettes using "light" and "low tar" descriptors based on machine-tested tar and nicotine results while knowing that the cigarettes, when actually smoked by people, would not deliver lower tar or nicotine.<sup>1</sup>

And for far too long, the tobacco industry has attempted to use the FTC imprimatur to imply government endorsement of the tar and nicotine ratings.<sup>2</sup> The implication that this agency had mandated disclosure of the ratings furthered the misconception that the descriptors – and the ratings themselves – said something meaningful about the absolute or relative health characteristics of the cigarettes.<sup>3</sup> To the contrary, the FTC has never required disclosure of tar and nicotine yields, nor authorized the use of descriptors.<sup>4</sup>

There's another benefit to our action today. Efforts to educate consumers about the facts behind cigarette ratings – i.e., that the ratings can't predict the amount of tar and nicotine a smoker gets from any particular cigarette, in part because smokers compensate for the lower tar and nicotine yield by inhaling more deeply and smoking longer<sup>5</sup> – will no longer have to battle a contrary message on cigarette advertisements that may have led to consumer confusion about what the ratings really mean.

After today, there should be no confusion: there is no such thing as a safe – or even a *safer* – cigarette.

Endnotes

1. In the U.S. Department of Justice lawsuit against the major tobacco companies under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), U.S. District Court Judge Kessler ruled that the tobacco company defendants had "falsely marketed and promoted low tar/light cigarettes as less harmful than full-flavor cigarettes in order to keep people smoking and sustain corporate revenues" and that they "internally recognized that low tar cigarettes are not less harmful than full-flavor cigarettes." *United States v. Philip Morris USA*, 449 F. Supp. 2d 1, 430, 456 (D.D.C. 2006); *see also id.* at 430-561. The case is now on appeal.

2. For example, in defending against a class action lawsuit against manufacturers of "light" and "low-tar" cigarettes, Philip Morris wrongly asserted that the FTC "has required tobacco companies to disclose tar and nicotine yields in cigarette advertising using a government-mandated testing methodology and has authorized them to use descriptors as shorthand references to those numerical test results." Brief for Petitioner Philip Morris at 2, *Altria v. Good*, No. 07-562 (U.S. Mar. 31, 2008).

3. Tobacco company research conducted literally decades ago – which was never presented to the Commission – indicated that lower tested yields did not entail a reduction in smoke intake. Brief for the United States as Amicus Curiae Supporting Respondents at 9, *Altria v. Good*, No. 07-562 (U.S. June 18, 2008). *See also id.* at 9-11 (setting forth instances where tobacco companies failed to disclose to the Commission, or affirmatively downplayed, effects of compensation); *Philip Morris*, 449 F. Supp. 2d at 431 (“Defendants did not disclose the full extent and depth of their knowledge and understanding of smoker compensation to the public health community or to government regulators.”).

4. *See* Brief for the United States as Amicus Curiae Supporting Respondents at 15, *Altria v. Good*, No. 07-562 (U.S. June 18, 2008).

5. *E.g.*, FTC Consumer Alert, *Up in Smoke: The Truth About Tar and Nicotine Ratings*, [www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt069.pdf](http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt069.pdf) (May 2000).