

UNDERTAKING TO INCLUDE FEDERAL TRADE COMMISSION
PUBLISHED REPORTS ON "TAR" AND NICOTINE
IN CIGARETTE ADVERTISING

The undersigned company, a manufacturer of varieties of cigarettes which are presently advertised, or which may be advertised in the future, undertakes that beginning January 2, 1971, in connection with the sale, offering for sale, or distribution of cigarettes in commerce in the United States, it will disclose clearly and prominently in its advertising, as defined in this undertaking, of any variety of cigarettes that is advertised, the average values for "tar" and nicotine of that variety contained in the published Federal Trade Commission test results for the advertised variety in milligrams of "tar" and nicotine as specified in this Undertaking.

1. The term "advertising" shall mean paid consumer directed commercial messages (a) placed by the undersigned cigarette company in newspapers, magazines, and other periodicals which are published and distributed in the United States or distributed primarily to members or units of the Armed Forces of the United States located outside of the United States, or (b) appearing on billboards (as defined in Appendix A attached hereto) in the United States, or (c) printed on handbills and in direct mail circulars which are distributed to consumers in the United States by the company.

Comment: It is necessary to define advertising in some more specific way in order that each company will know precisely what is included within its undertaking. The definition of advertising employed is sufficiently broad to include all items which can be considered "advertisements" as that term is understood by laymen, and for which it is practical to include "tar" and nicotine disclosures without unduly confusing consumers. Certain promotional items which contain

cigarette advertisements, such as ashtrays, cigarette lighters, and pencils imprinted with cigarette advertising, have been excluded because these items are semi-permanent and may last for a number of years. There is no practical way to change "tar" and nicotine figures included on such items to reflect changes in the "tar" and nicotine content of the variety of cigarette mentioned on the item. If these products were included in the definition of advertising, this would lead to the presence of old, stale, and unduly inaccurate figures being presented to consumers. That result would not be in the public interest. Moreover, such items which are excluded from this definition of advertising represent only a very minor portion of the total dollar expenditures for advertising and promotion.

2. The disclosure undertaken to be included shall be in the case of "tar" to the nearest whole milligram as reported by the Commission in its published table of "tar" values rounded off to the nearest whole milligram, and in the case of nicotine to the nearest 1/10 milligram as reported by the Commission in its table of nicotine values rounded off to the nearest 1/10 milligram. The disclosure shall include the "tar" and nicotine data from the Federal Trade Commission test results most recently published in the Federal Register, provided, however, that in order to meet the general and ordinary deadlines for submission of advertising copy established by the medium by or in which the advertisement is to appear, the undersigned company may use the "tar" and nicotine data from the published Commission test results covering the test prior to the most recently published test, in lieu of the most recently published test results, .

(a) in all advertising in newspapers, magazines, and other periodicals for which the closing date on which an advertiser must, according to the regular schedule of that newspaper, magazine, or other periodical, deliver in final form to the

printer, or as to spectacular-type to the production house, or to the publisher of the advertising materials to be published, is less than 30 working days after publication of the most recently published Commission test results in the Federal Register;

(b) in all advertising printed on handbills and in direct mail circulars which is delivered in final form to the printer less than 30 working days after publication of the most recently published Commission test results in the Federal Register; and

(c) in all advertising appearing on billboards which is delivered in final form to the printer, or is painted or assembled, less than 30 working days after publication of the most recently published Commission test results in the Federal Register.

In the case of all billboards, the undersigned company shall use its best efforts to have "tar" and nicotine figures appearing on billboards based upon published Commission results as recent as practically possible.

Comment: All advertisements must be submitted in advance of their publication date by some period of time, usually called the lead time, which varies from periodical to periodical. This lead time is several weeks for some periodicals and several months for others. Necessarily, when the Commission publishes a new report of test results on January 1 it is physically impossible for the figures included in that report to appear in January and February advertisements in some periodicals. This provision has been included in order to make this undertaking capable of practical implementation in the light of requirements dictated by the mechanics of publishing and advertising. Any workable solution to this problem must inescapably utilize ascertainable dates when definable acts must take place. The stated provision does this. It utilizes publication in the Federal Register

of Commission results as a starting date, it is definitely ascertainable, and it employs dates such as closing date and delivery in final form to the printer in order that it can be precisely determined when the time period terminates. These dates of delivery to the printer and closing date were selected, rather than the date of the appearance of the periodical in homes or on newsstands, or the date on the cover of a periodical, because the dates specified are the times at which control over the advertising passes from the hands of the cigarette company. Otherwise, adherence to this undertaking might turn on whether a publisher issued its periodical according to its regular schedule or for any reason did so at a later publication date.

In employing the date of publication of the Commission results in the Federal Register, it is recognized that the undersigned company cannot as a practical matter require the Commission to publish its results in the Federal Register. It is anticipated, however, that the Commission will accept the responsibility regularly to publish its results in the Federal Register.

3. Upon acceptance of this undertaking, the undersigned company agrees that it will within 10 days furnish to the Federal Trade Commission a list of all varieties of cigarettes which it manufactures or distributes and which are sold in at least one retail outlet in the United States, and that it will revise that list from time to time to reflect changes in the list of the varieties manufactured or distributed by it and sold in at least one retail outlet in the United States. In the event that the Federal Trade Commission in its pick-up of cigarettes for testing fails to pick up an adequate sample for testing of any variety included on the company's current list, the company undertakes to supply to the Commission, if requested by the Commission, cigarettes of that variety in an amount and by selection procedures which are mutually acceptable to the Commission and to it. The company shall not be required to include on its list pursuant to this paragraph varieties not being advertised but being sold for

purposes of trademark protection. In the event that the Federal Trade Commission shall fail to test and to publish "tar" and nicotine results for one or more varieties of cigarettes included on the company's list, despite the fact that the Commission has tested and published results of other varieties of cigarettes on the company's list, or on any other cigarette company's list, the undersigned company may, until such time as Commission results are supplied, utilize in its advertising the results of its own "tar" and nicotine tests on that variety, conducted in accordance with the Federal Trade Commission methodology, under the same conditions as it would have used the results supplied by the Commission. In the event that the company uses its own test results pursuant to this paragraph, it undertakes immediately after such figures are used in its advertising to supply to the Commission copies of all of the detailed laboratory data on such tests.

Comment: Cigarette companies sometimes market certain varieties in only a few localities, or in relatively small quantities. Under the current system of Commission pick-up of market samples, a situation might occur in which the Commission failed to pick up any cigarettes of a variety or a sufficient number to permit testing. The stated provision is intended to create a mechanism to insure that the Commission may test all varieties of cigarettes being marketed in order that the cigarette companies will be able to include Commission test results in their advertising. No company will have control over the Commission testing, and it is of course possible that the Commission may, for some reason, fail to test cigarettes of one or more varieties. It is not reasonable that such a failure on the part of the Commission should effectively preclude advertising of that variety because of the absence of Commission "tar" and nicotine figures. To avoid this possibility, the company concerned may use its own test results. It is to be emphasized, however, that it is extremely unlikely as a practical matter that the Commission would ever fail to test one or more varieties and that the company would be permitted to use its own results. Nevertheless the provision is included to deal with this contingency, which could possibly occur.

4. In the event that the undersigned company manufactures or distributes a new variety of cigarettes, or a variety not available in at least one retail outlet in the United States at the time of a Federal Trade Commission market pick-up, it may at any time supply to the Commission, for the determination of "tar" and nicotine content in accordance with its methodology, cigarettes of that variety in an amount and by selection procedures which are mutually acceptable to the Commission and to it, provided, however, to maintain competition and to avoid premature disclosure of the existence, nature, or name of any theretofore unadvertised new variety of cigarettes, the new variety or varieties may be supplied on a confidential basis pursuant to Section 4.10(a)(2) of the Commission Rules of Practice, may be coded, or may be submitted to the Commission by an agent in a manner that the name of the company will not be disclosed. Immediately after receiving a report of results from the Commission pursuant to this paragraph, the company may utilize the reported results in advertising. In the event that the Commission fails to supply to the company results on a variety of cigarettes submitted for testing pursuant to this paragraph within 30 working days after receiving those cigarettes, the company may, until such time as the Commission's results are supplied, utilize in its advertising the results of its own "tar" and nicotine tests on that variety, conducted in accordance with the Commission methodology, under the same conditions as it would have used the results supplied by the Commission, provided, however, that if the company uses its own test results pursuant to this paragraph, it undertakes immediately after it begins utilizing such results in its advertising to supply to the

Commission copies of all of the detailed original laboratory data on such tests. If the company employs coding in connection with the testing of any variety of cigarettes by the Commission pursuant to this paragraph, it undertakes, immediately after the sale of that variety of cigarettes at any retail outlet in the United States, to supply to the Commission a sample of cigarettes of that variety in the form that they are marketed.

Comment: Cigarette companies sometimes begin marketing totally new varieties of cigarettes to respond to various consumer demands and other marketing factors. The effective marketing of such new varieties requires that "tar" and nicotine figures for such varieties be obtained in some prompt and orderly way which will not interfere with the maintenance of information believed by the cigarette company to be a trade secret and commercially valuable. This paragraph is intended to provide an effective procedure in that situation. As in paragraph 3, the company option to use its own test results will exist only in the unlikely event that the Commission does not supply test results within the specified period.

5. In the event that there is any change in formulation in any variety of the undersigned company's cigarettes from that previously tested by the Commission, which results in the "tar" or nicotine content of that variety being larger or smaller by an amount in excess of 20 percent of the figure most recently published by the Commission, the undersigned company undertakes, immediately after that change, to supply to the Commission for testing of "tar" and nicotine content in accordance with the Commission methodology, cigarettes of that variety in an amount and by selection procedures which are mutually acceptable to the Commission and to it. Immediately after receiving a report from the Commission of the results of tests conducted pursuant to this paragraph, the company undertakes to utilize the reported results in advertising. The company may advertise the variety pending the outcome

*under same terms
+ conditions*

of the Commission testing; and if the company elects to follow this procedure in the case of a variety with a "tar" or nicotine change, it undertakes appropriately to identify that variety to consumers after such change. The company need not disclose to the Commission the change in formulation that was made in the particular variety, or any other confidential information. In the event that the Commission fails to supply to the company results on any variety of cigarettes submitted for testing pursuant to this paragraph within 30 working days after receiving those cigarettes, the company may, until such time as the Commission's results are supplied, utilize in its advertising the results of its own "tar" and nicotine tests on such variety, conducted in accordance with the Commission methodology, under the same conditions as it would have used the results supplied by the Commission, provided, however, that if the company uses its own test results pursuant to this paragraph, it undertakes immediately after it begins utilizing those results in its advertising to supply to the Commission copies of all of the detailed original laboratory data on such tests.

Comment: The "tar" and nicotine content of many varieties of cigarettes changes from time to time. Sometimes these changes are relatively small and at other times these changes represent a substantial percentage of the preceding "tar" and nicotine figures. Some of these changes are the result of a decision of a cigarette company to alter cigarette design or formulation, as, for example, with a longer filter. Other changes are the result of variations in tobacco crops, which cannot be controlled by the cigarette company. It is necessary to provide some procedure to be used in connection with these changes when they are significant in order to make available to consumers test results which are more current than those earlier published.

limited to these

6. The undersigned company undertakes that the "tar" and nicotine content of any advertised variety or varieties will in the case of a variety tested by the

Commission pursuant to a Commission market pick-up and published by the Commission be disclosed in the following language:

_____ mg. "tar", _____ mg. nicotine
av. per cigarette. FTC Report No. _____

The "tar" and nicotine content of the advertised variety or varieties will, in the case of a variety tested by the Commission pursuant to the provisions of paragraphs 4 or 5, be disclosed in the following language:

_____ mg. "tar", _____ mg. nicotine
av. per cigarette by FTC tests

The "tar" and nicotine content of the advertised variety or varieties will in the case of a variety tested by the company itself pursuant to paragraphs 3, 4, or 5 be disclosed in the following language:

_____ mg. "tar", _____ mg. nicotine
av. per cigarette by FTC testing
method

Comment: The legends set forth are intended to supply sufficient information to explain the source and nature of the "tar" and nicotine figures disclosed without confusing the consumer. An abbreviation for the word average is included to make it clear that the FTC figures are not based on testing individual cigarettes, but are instead averages of the averages obtained by smoking five cigarettes on each of twenty ports. In the first legend, relating to a market pick-up, FTC reports identified by number are employed rather than dates because the existence of a date with the additional numbers would be more confusing to consumers than merely report numbers. This is particularly true because the only value of the date or report number is to permit consumers to distinguish between different sets of figures in terms of which published result is more recent. This distinction can be more easily made on the basis of report numbers. In view of the previous FTC testing, it is recommended that the report numbers to be covered by this undertaking might begin with No. Ten, and that the report numbers be similarly indicated in words to avoid confusion with the recorded "tar" and nicotine values in arabic numerals.

7. In the event that the Commission fails to test cigarettes pursuant to a market pick-up and to publish the results of its tests at least seven months after

publication of the results from the previous Commission test pursuant to a market pick-up, then the obligations in this undertaking to include "tar" and nicotine figures in advertising shall be suspended subject to full resumption in accordance with this undertaking when the Commission thereafter publishes new test results.

Comment: This entire undertaking is predicated upon the continued testing by the Federal Trade Commission at regular and periodic intervals of approximately 4-6 months. Obviously if the Commission should, for some reason, totally discontinue its testing operations, or fail to conduct and publish new test results at least seven months after an earlier test has been published, then it would be highly misleading to consumers if the undersigned company continued to use the old, out-dated figures obtained in an earlier Commission test. In the event that seven months have passed and the Commission has not published new results, the Commission may thereafter publish new results and the full undertaking will be revived.

8. This undertaking is made by the undersigned company on the understanding that the Commission's test results and the original laboratory data covering the testing of any variety of its cigarettes by the Commission is fully subject to the Public Information Act. In accordance with that statute, the Federal Trade Commission is expected, upon request in accordance with its terms, to supply to the undersigned company copies of those original laboratory data covering its testing of all cigarettes which are tested. If a review of that data by the undersigned company or by any agent of the company in its opinion discloses calculation errors or any other testing errors, the undersigned company undertakes to disclose them to the Commission for determination as to whether the published test results should be promptly corrected. If the Commission determines that any corrections should be made, then the corrected figures when

published will be utilized in all advertisements under the same conditions as the company has undertaken with respect to new figures included in the results of a Commission market pick-up pursuant to paragraph 2. Nothing in this undertaking shall preclude the undersigned company from seeking any judicial or administrative remedy in accordance with Section 10 of the Administrative Procedure Act to obtain correction of any test results either prior to or following publication in the Federal Register.

Comment: Under this undertaking, the company will be utilizing, almost exclusively, in its advertising, test results of the Federal Trade Commission. It is essential that some procedure be provided by which errors in the test results, such as simple calculation errors, can be corrected if clearly demonstrated. The most desirable way to achieve this objective would be for the Commission to supply its data to the companies a reasonable period prior to the publication of its results. In this way any errors discovered could be called to the attention of the Commission. Ideally, to facilitate this undertaking and to assure that erroneous results are not included in advertising, the Commission might undertake to supply its laboratory data approximately 30 days in advance of publishing it in order that it may promptly be examined and any calculation or other testing errors immediately be brought to the Commission's attention. Inasmuch as the undertaking is unilateral, there is no commitment by the Commission to do so, nor is there any requirement that the Commission correct erroneous results if an error is disclosed and it concludes that a sufficient demonstration of any error has not been made.

9. If the Commission changes its testing methodology from that specified in the Federal Register Notice of November 4, 1966 (31 F.R. 14278) and the Federal Register Notice of August 1, 1967 (32 F.R. 11178), the undersigned company undertakes to determine whether the new procedures are scientifically sound and adequate to insure that accurate results within the limits of the sample size and available testing methods will be made available to the public. The company undertakes further to present to the

Commission its conclusions and recommendations with respect to any changes in testing methodology or sample size which are made by the Commission. If within 40 days the Commission determines to utilize changed testing methodology to which the undersigned company has presented objections, the company may upon notice to the Commission terminate this undertaking.

Comment: It is unreasonable to ask any company to undertake to publish Commission results which can be based upon any reduced sample size or changed testing methodology, regardless of its scientific validity, which the Commission for any reason may adopt in the future.

10. The undersigned company further undertakes that in the event of any alleged failure by it to comply with any provision of this undertaking that the determination of the fact of such violation may be submitted to a panel of three arbitrators to be selected and established by the American Arbitration Association to be composed of individuals knowledgeable in the field of advertising or media publication but not connected either directly or indirectly with any cigarette manufacturer or advertising agency serving any cigarette company. Any complaint in writing charging a violation of this undertaking may be filed by any member of the public, or by any other cigarette manufacturer or distributor, with the American Arbitration Association, and shall be promptly referred to the panel. The panel shall in due course determine the facts, after affording both any complaining party and the undersigned company the opportunity to present evidence relating to the charged violation, including the opportunity to establish that any failure to comply with this undertaking was due to unintentional error, or to the error of third parties, or to any other mitigating circumstances, or that

such failure was discovered and corrected by the undersigned company prior to the filing of the complaint. The panel may take such circumstances into account in determining its award. Copies of the written complaint, any documentary submissions, and any record, and the award, shall be furnished to the Federal Trade Commission. The undersigned company further obligates itself, on any single award made by the panel in an amount not exceeding \$, to pay the amount of such award to the Council for Tobacco Research--USA, to be devoted to research.

11. This undertaking shall become effective upon the submission to and approval by the Federal Trade Commission of identical Voluntary Undertakings by cigarette manufacturers producing not less than percent of the total production of cigarettes during the calendar year 1969.

In submitting this undertaking, the undersigned company is not agreeing that the undertaking may be deemed to constitute any admission on its part that "tar" and nicotine have any significance in relation to human health, or any admission that the Federal Trade Commission is authorized by its organic statute, as amended, to promulgate a Trade Regulation Rule having any administrative or juridical effect, or that this undertaking has any relevance to or may be included as a statement or for any other purpose in any public hearing held on the Federal Trade Commission Proposal of August 8, 1970, or as any admission that the failure affirmatively to disclose in its advertising the "tar" and nicotine results that the Federal Trade Commission may from time to time

determine according to its own methodology constitutes a violation of Section 5 of the Federal Trade Commission Act. This undertaking is made solely for the purpose of avoiding prolonged litigation as referred to in the Federal Trade Commission Press Release of October 1, 1970, inviting the submission of a Voluntary Undertaking for the disclosure in advertising of Federal Trade Commission published test results in accordance with the provisions of the undertaking.

Appendix A

"Billboards" shall mean:

(1) Paid media billboard advertising messages on the following permanent or moving structures exposed to the general public:

- 2-30 Sheet Billboards;
- Painted Billboards;
- Spectacular Billboards.

(2) Paid advertising messages on the following permanent or moving structures or transportation vehicles exposed to the general public:

- Trucks;
- Public Transit Vehicles;
- Transit Station Platforms;
- Transportation Terminals.