

**PHILIP MORRIS COMPANIES INC. INTER-OFFICE CORRESPONDENCE**  
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**To:** Kathleen Linehan **Date:** July 25, 1994  
**From:** David Nicoli *DPN*  
**Subject:** Codification of Restrictions On the FTC's "Unfairness"  
Authority Over Commercial Advertising

We succeeded last week in incorporating significant protections for PM operating company advertising in a conference report approved by House and Senate negotiators that would reauthorize the Federal Trade Commission (FTC) for the first time since 1980.

Specifically, the legislation would codify for the first time in the FTC's history a specific definition of "unfairness" -- one sought by the PM operating company general counsels -- that would significantly restrict the FTC's ability to prevail against our advertising in any actions brought pursuant to its "unfairness" authority. Moreover, since approximately twenty states interpret the "unfairness" provisions of their "little" FTC Acts consistently with the Federal Act, the legislation would also materially improve our ability to prevail against "unfairness" actions brought against our advertising by many State Attorneys General.

PM took the leadership role in both the advertising community and on Capitol Hill in bringing this conference report about, which is expected to be approved by the Congress and signed into law by the President.

The importance of the codification of a definition of "unfairness" to PM and the rest of the advertising community is readily apparent when one examines how activist FTC Commissioners in the recent past have taken advantage of the absence of any congressional guidance on the issue. Specifically, when the term "unfair" was undefined in the FTC Act, various Commissioners determined that concededly truthful advertising which violated their notions of "public policy" or was otherwise "immoral, unethical, oppressive or unscrupulous" was subject to regulatory action. The FTC's use of this highly subjective "unfairness" authority reached its zenith when it attempted to ban all children's advertising on television in the late 1970's. And members of anti-smoking and anti-drinking groups have been urging the resurrection of this undefined and potentially abusive authority in the last few years.

We will continue to follow the progress of the conference report through the Congress. In the meantime, please let me know if you have any further questions.

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