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July 13, 1977

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TO: Committee of Counsel

Enclosed is a memorandum discussing the litigation instituted by the Federal Trade Commission challenging various advertisements relating to the cholesterol-heart disease controversy. These advertisements were run by the National Commission on Egg Nutrition. This litigation was mentioned at the last meeting of the Executive Committee, and Ernie Pepples asked that a memorandum about this litigation be circulated for your consideration prior to the meeting to be held on July 20.

The memorandum concludes that, if the issue is put to it, the FTC is likely administratively to decide that the First Amendment would not bar FTC action, either by complaint or by a proposed Trade Regulation Rule, with respect to any Tobacco Institute advertisement on the smoking and health issue which the FTC believes is false or deceptive, or an unfair practice. With adequate additions, and necessarily dependent upon the copy that is developed, that conclusion does not mean that judicial challenge would be unsuccessful.

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Enc.

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