

February 7, 1964

Memorandum to: Mr. Pratt

cc: Mr. Monsarrat
Mr. Devine
Mr. Hylan
Mr. Meyer
Mr. Zimbert
Miss Jones

As we discussed, I called some of the agencies handling cigarette accounts and found that in several instances television network orders have actually been placed without the reservation of any escape clause. In these instances, the agencies feel that they will have discussions with the network prior to placing a formal contract and attempt to work out some language to cover the situation. However, they have not made this a condition of their order, and they do not expect to obtain any real escape clause.

In 2 other instances, network television orders have not yet been placed, but the agencies involved do not expect to condition their orders on any contractual relief.

In effect, the people that I contacted feel that the networks could not grant any contractual relief. Of course, if cigarette advertising becomes illegal, or if it is prohibited in specified time periods, all concerned believe that the advertiser would be relieved of the contractual obligations.

On the other hand, if the problem relates to restrictions that limit the effectiveness of our advertising, all concerned feel that this is a risk that the advertiser will have to take and rely on his ability to negotiate out and obtain relief at the time the actual regulations are in effect.

As covered in my memo of February 4 to Mr. Monsarrat, we have already been told by all 3 networks that they will not grant any contractual relief in the event restrictions are imposed on the content of our advertising. Therefore, we feel that the following clause represents the maximum protection that can be obtained from the networks:

If governmental regulations and/or industry rules prohibit cigarette advertising on television or during the time period or program ordered hereunder, both the network and the advertiser shall be relieved of any further obligation hereunder as of the effective date of such rules and regulations, and neither the network nor the advertiser shall be deemed in breach of this contract, and the termination of this contract as of the effective date of such rules or regulations shall not in any way increase the cost of the advertising broadcast prior to that date, and for purposes of calculating all discounts, all advertising ordered hereunder shall be deemed to have been broadcast.

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If, as the result of governmental regulations and/or industry rules, product claims and advertising platforms usable by tobacco manufacturers in their cigarette advertising are substantially limited, or such advertisers are required to include in their advertising or on their cigarette labels statements to the effect that use of tobacco products is, or may be, dangerous to health, and as a result thereof, the value of such advertising may be substantially reduced, you and we shall negotiate in good faith to effect the termination and/or reduction of the order placed hereby, and it is understood that if under such circumstances you grant relief to any other cigarette advertiser, you shall grant equivalent relief to us.

As stated in my memo of February 4, I do feel that there is a remote possibility that an outright escape clause might be negotiated with ABC at the time a large order is placed. If such negotiations are attempted, some objective test, such as the 25% loss of sales mentioned in my memo, will have to be agreed upon.

TBW
LJ

Thornton B. Wierum/js