

Confidential

M E M O R A N D U M

[Prepared at the Request of Mr. Toms]

January 23, 1964

January 17 Meeting

There was a discussion of the invitation of the N.A.B. to attend a meeting of its Code Committee. Mr. Allen reported that he had spoken to Mr. Collins and indicated that he probably would not attend. Collins stated that the invitation was sent out without his knowledge; that perhaps it was untimely, but that if anyone should appear from the industry it should be someone in authority. It was the consensus of all who spoke that they would not attend the meeting although several indicated that they might consider sending a representative of their advertising agency. Mr. Yeaman stated that the agency people would not be welcome and that some one in authority who can speak for the companies would have to be present.

Mr. Temko reported that the Television Review Board of the N.A.B. can only recommend action to the Board and that whatever action may be taken could not be put into effect for some time.

There was discussion of the recent publication of an article in the trade journal concerning the possibility that the N.A.B. may be a long established link between industry and the public. This article has been discussed on television. A transcript was to be circulated to the executives--which has been taken care of prior to dictation of this memorandum.

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There was a brief discussion of a poll taken with respect to public reaction to the Surgeon General's Report. A copy thereof is attached hereto.

Mr. Cramer reported that the F.T.C. had met all day January 16 and that early publication of probable rules procedures could be expected.

Discussion followed with respect to the likelihood of labeling being imposed upon the industry. It was the consensus of all who spoke that this was probably inevitable and, after lengthy discussion, it was felt that Congressional action would be preferable, particularly if it preempted the field and rendered unlikely the possibility of numerous state laws being enacted. It was agreed that F.T.C. action in this field would not help us along the lines of preemption but might be of practical significance. The Ad Hoc Committee was directed to prepare a form of bill for Congressional action which would preempt the field. The bill would then be examined by the various executives. Such a bill is in the process of drafting.

On the question of preemption it was recognized that some Southern Congressmen might oppose the bill on the issue of states' rights, but this did not appear to be a cause of great concern because of the important position of the industry in the Southern states and the difference between what we have in mind and civil rights legislation.

There was some discussion as to how best to have any bill introduced in Congress.

The Ad Hoc Committee was charged with the responsibility of preparing a proposed form of bill as indicated above and were directed to confine it to cigarettes and to attempt to preclude a caution in advertising copy.

Next discussed was the advertising on television prior to a stated hour of the day. Mr. Temko advised that the F.T.C. cannot make such a regulation and has no power so to do. Its jurisdiction is limited to prevention of false and misleading advertising and deceptive trade practices. He doubted that the F.C.C. would undertake such a rule and the N.A.B. might insist on it as well.

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January 20 Meeting

The Special Lawyers Committee met and the following were discussed.

It was recommended that The Tobacco Institute not distribute any new health material without clearing first with the Special Lawyers Committee in the first instance.

Mr. Temko stated his need for comments on the Surgeon General's Report so that local distributors can testify at local hearings. This has since been undertaken by the Ad Hoc Committee.

There followed discussion of the F.T.C. release of January 18. It was thought best not to make a collateral attack on the jurisdiction of the F.T.C. at the outset, but to preserve our rights in this respect for the future. Everyone agreed that it would be advantageous if the F.T.C. schedule of hearings could somehow be postponed.

The initial drafts of a proposed bill, now outdated, were discussed. The Committee felt that management should be advised that even if there is a caution notice required on each package, it still might be a jury question as to whether the warning was sufficiently broad to cover risks which may be considered involved in smoking. In other words, a label is no guarantee against litigation. However, it was felt that the defense of assumption of risk, as a result of the Surgeon General's Committee Report, was enhanced.

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Addenda

On January 23 there was a meeting of various members of the Special Committee to discuss an outline of material for possible inclusion in Mr. Allen's statement to be made to the F.T.C. Numerous comments were made with respect to the outline and Mr. Temko is revising it prior to circulation among the Executive Committee. The following comments however should be noted.

Commenting upon proposed Rule 1 of the F.T.C. (caution notices) it was felt that requirement of such a notice is unprecedented in the F.T.C.; that the tenor of the Surgeon General's Report with respect to statistical evidence is one of risk in the general population and that reference to "mortality" and "death rates" would be unfortunate as being directed to the individual. It was thought that every effort should be made to tone down the caution notices as being inflammatory in their present form. I again raised the suggestion that the caution notice might be in terms of "According to U.S.P.H.S. Document No. 1103....." on the theory that reference to the Report would indicate to the reader that he is being warned of whatever risks the Surgeon General's Committee found. This has the advantage of making the warning commensurate with the Committee's judgment as to any risk involved.

Referring to proposed Rule 2, there is no definition

of "advertisement". It would not seem practical to have warning notices on change trays, match folders and point of sale advertising. Further, proposed Rule 2(a) speaks of good health or physical well-being. It is not clear whether "physical well-being" is deemed equivalent to "good health" and it is felt that the former should be deleted and the Rule should permit references to taste, enjoyment, flavor.

With respect to proposed Rule 2(c) it was thought that the F.T.C. could claim on the basis of the proposal that any mention of a filter would be a health claim, and that therefore the rule could preclude any reference to mouthpiece or filter cigarettes. If this were true, of course, the question would arise whether one could advertise filters in any respect.

Further with respect to Rule 2(c), Example 3 under "Comments" on the rule does not seem to tally with Rule 2(c)(2). The Rule itself would indicate that if one makes a specific claim respecting health consequences of smoking a particular brand, it would have to have reliable evidence to back it up and also state on the package all facts material to the health consequences. In the example, however, it would appear that the advertiser would not have to state all relevant facts as to the health consequences if he did have the back-up material. This latter seems to be the intent of the F.T.C., because there seems to be little reason for having a caution without such comment as well.

In terms of the evidence to prove accuracy and significance of claims as to health consequences of a particular brand, it was felt that claims as to tar or nicotine content, for instance, cannot be proved to be significant since most experts claim that the difference between a high or low tar content cigarette is medically insignificant.

It seemed to be the consensus of opinion with respect to the proposed rules that we should not concede in any respect that the F.T.C. has jurisdiction broader than that provided by statute (deceptive trade practices, false and misleading advertisements, etc.)

Discussing proposed Rule 3 briefly, the Surgeon General's Committee found nicotine content to be of no consequence. Therefore, there should be no reason to include it in the rule. Furthermore we do not believe that the F.T.C. has the right to establish testing procedures or standards. Furthermore their present consideration of using a Cambridge filter would not appear to meet the need, if need exists, because it only measures tar and nicotine content. Finally, it is to be noted that Rule 3 provides that any advertising claim as to the amount of ingredients must conform with Rule 2 which brings us back to the comments under Rule 2 which I have set forth above.

FPH

1. Overall there is not a dramatic shift in attitudes and behavior testimony before and after. What change there is is negative.

People are substantially concerned about the connection between smoking and health both before and after.

2. Asked to choose (question 18) people overwhelmingly (7 out of 10) place the chief responsibility for action on this issue upon the individual.

3. The chief role seen for government is in the area of education.

Before and after, a substantial majority (over two-thirds) agree that a government requirement on labeling to warn of health problems is needed for cigarettes.

4. The chief role seen for the industry is research and development aimed at reducing the health hazards in cigarettes.

5. Public awareness of the Surgeon General's report is unusually high. On Monday 76% knew about it.

Of those who heard about the report, about 1 in 3 were aware of the industry's reaction.

Of this group, one-half said that the industry stated that more research is needed. Another one-third said the industry denied the government's findings.

6. The biggest attitude change occurred in the statement on lung cancer. This went up from 34% agree to 52% agree. There was no change on the relationship to heart problems.

7. As to smoking behavior testimony generally, these data suggest a 10% drop in people who call themselves cigarette smokers. This will get further examination.

T. W. H. /