

CCF

# Liggett & Myers Tobacco Company



## Memorandum

Date: February 5, 1979

To: J. H. Greer  
From: J. D. Mold  
Subject: \_\_\_\_\_

CCF

Dr. Norman has reviewed the attached draft of proposed comments to be filed with the Federal Trade Commission by Mr. Allan Topol of Covington & Burling and has made the following comments for your consideration.

Please note that they request your response by the end of today, February 5.

If you have any questions, please contact Dr. Norman directly.

*JDM*  
J.D.M.

/mdn

CC: R. L. Kersey  
V. Norman

CCF ✓  
FTC

p 3. The FIRST reason essentially sums up the most important points of the argument.

1. The machine has not been adequately described to judge it. We are speculating what it might or might not do but with the information at hand we do not really know.

2. The only way to prove its adequacy is to test it cooperatively.

There is some redundancy in the rest of the arguments which probably arose because the various commentators made the same arguments using different phraseology.

Generally speaking, we think this letter ought to contain the kinds of arguments that will cause the FTC to stop and think and not the kinds that they can dismiss quickly. The letter, as written contains some of each.

The following specific points were noted:

p 4, l 6; p 6, l 1 and p 6 P 2...

We do not think that the statement that puff-by-puff analysis increases the error greatly or increases it at all is statistically supportable. It might be a good idea to get an opinion on this from a statistician at TITL.

p 4, l 8. "response time and accuracy of NDIR"

The NDIR is not an instantly responding instrument, however, in our experience it does respond quite fast. It is difficult to tell in FTC's scheme of things just what is required of the instrument.

p 5. SECOND reason. We cannot reject the machine on the conceptual basis just because it analyzes puff-by-puff. It is a cumbersome way of doing it, but if this is what the FTC chose to do one cannot argue with it as long as it yields acceptable data.

p 7, P 2. Considering the current capabilities of computerized data handling this is not a valid point.

p 7, P 3. Generally, this is not true, NDIR can handle even the lowest encountered concentrations in smoke with ease. It is true for the reasons outlined in P 4, p 7 since FTC smokes low and high yielders of carbon monoxide simultaneously, unless they have built a range switching capability into their procedure. Again, we do not know.

p 9, P 1, P 2 and P 3. The machine may be complicated and suffer from all the listed shortcomings, but that is FTC's problem. If that is the way they chose to do it that is their prerogative as long as they produce acceptable data.

p 10, last P and top of p 11. This is a non sequitur. The CORESTA study showed that choice of the method (i.e. GC or NDIR) affects results, i.e., GC and NDIR gave somewhat different results. The study also showed that the other three parameters mentioned had an effect as well.

p 11, last P. This paragraph is not at all pertinent to the issue and should be left out.

p 12, last P. It would be better to say that a result of  $5.1 \pm 0.8$  mg/cig permits one only to say that the number is in the 4-6 mg/cig range.

The following typographical error was noted:

p 8, 2. ...should read... later puffs.