

## Statement of Commissioner Mary L. Azcuenaga

in R.J. Reynolds Tobacco Co.

Docket No. 9285

Today, the Commission issues a complaint against R.J. Reynolds Tobacco Company ("Reynolds") alleging that Reynolds' "Joe Camel" advertising campaign constitutes an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act. The actions alleged in the complaint are serious, and intuition suggests reason to believe they are true. Intuition alone, however, is not a sufficient basis for issuing a complaint under the statute. The Commission is an agency of limited jurisdiction and is authorized to bring a case only if certain elements of the law are satisfied.<sup>(1)</sup> Not having found reason to believe that the evidence supports each of those elements, I must dissent.<sup>(2)</sup>

The issues underlying the complaint issued today differ little from those considered by the Commission in its 1993-94 inquiry into the same advertising campaign.<sup>(3)</sup> That inquiry was closed by a majority vote of the Commission without law enforcement action. I have decided to take the unusual step of writing to explain my position on the current decision despite the adjudicative status of the case. I emphasize that although as a matter of law I am unable to vote to issue a complaint, I would be free at a later stage in the proceeding to find a violation of law if the record in the upcoming adjudication so demonstrates.

When the Commission voted in 1994 to close its investigation of Joe Camel, the Commission majority issued a Joint Statement (copy attached). The Commission said then, and it is equally true now:

Although it may seem intuitive to some that the Joe Camel advertising campaign would lead more children to smoke or lead children to smoke more, the evidence to support that intuition is not there. Our responsibility as commissioners is not to make decisions based on intuition but to evaluate the evidence and determine whether there is reason to believe that a proposed respondent violated the law.

The Statement continued:

If intuition and concern for children's health were a sufficient basis under the law for bringing a case, we have no doubt that a unanimous Commission would have taken that action long ago. The dispositive issue here, however, was whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children, not whether smoking has an effect on children or whether the health of children is important.

Like my colleagues, I always am willing to revisit past decisions in light of new evidence, particularly if that evidence might provide a basis for Commission action to protect the health of children. In my view, the serious health issues concerning smoking by children mandate our utmost attention to any new information that might support a case against advertising that can be shown to cause or increase smoking among children.

I have carefully considered the totality of the available evidence, including new material that has been presented to the Commission, and have concluded that the new information does not strengthen the case the Commission rejected in 1994. As in 1994, the available evidence does not

support the specific legal requirements of a complaint under Section 5 of the Federal Trade Commission Act.

Attachment

JOINT STATEMENT OF COMMISSIONERS MARY L. AZCUENAGA, DEBORAH K. OWEN, AND ROSCOE B. STAREK, III,

in R.J. Reynolds, File No. 932-3162

Today, the Commission closes its investigation of the Joe Camel advertising campaign after voting not to issue a complaint. Although it is unusual to comment on our reasons for taking such action, we have decided to explain our decision in light of the statements of our dissenting colleagues and the widespread public interest the matter has generated.

Although it may seem intuitive to some that the Joe Camel advertising campaign would lead more children to smoke or lead children to smoke more, the evidence to support that intuition is not there. Our responsibility as commissioners is not to make decisions based on intuition but to evaluate the evidence and determine whether there is reason to believe that a proposed respondent violated the law. The Commission has spent a great deal of time and effort reviewing the difficult factual and legal questions raised by this case, including a comprehensive review of relevant studies and statistics. Because the evidence in the record does not provide reason to believe that the law has been violated, we cannot issue a complaint.

If intuition and concern for children's health were a sufficient basis under the law for bringing a case, we have no doubt that a unanimous Commission would have taken that action long ago. The dispositive issue here, however, was whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children, not whether smoking has an effect on children or whether the health of children is important. Indeed, our concern about the health of children led us to consider every possible avenue to a lawsuit before reaching today's decision.

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1. 15 U.S.C. § 45(b) and (n).

2. Unlike my colleague, Commissioner Starek, I would find that the case is in the public interest, but I concur in the first paragraph of his dissenting statement.

3. File No. 932 3162.