FILED
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Clerk of the Superior Court
JUL 12 2002
By: K SANDOVAL Deputy
COPY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General of the State of California, Plaintiffs, v. R.J. REYNOLDS TOBACCO COMPANY, Defendants.	Case No.: GIC 764118 **FINAL STATEMENT OF DECISION**

I. INTRODUCTION

The instant action was brought by the Attorney General of the State of California charging R. J. Reynolds Tobacco Company (RJR) with violating the Master Settlement Agreement (MSA), which was entered into by RJR and the State of California (among others states) in November 1998. The Attorney General contends that RJR violated the MSA by indirectly targeting "Youth" ("any person or persons under 18 years of age") in its tobacco advertising campaigns. The MSA expressly states that one of its primary objectives is "to reduce Youth smoking" and contains an express provision regarding tobacco advertising, the "Prohibition On Youth

Targeting" ("the Provision"), the interpretation of which is essential to deciding the issue of RJR's alleged breach.

In interpreting the meaning of the Prohibition, the Court applies common rules of contract interpretation and construes the Provision in light of the MSA as a whole (including its goal of reducing Youth smoking), the structure of the Provision, and its express language, particularly, the meaning of the critical clause "[n]o Participating Manufacturer may take <u>any action, directly or indirectly, to target Youth</u>" (emphasis supplied). The Court concludes that the Prohibition, precludes settling tobacco manufacturers from taking any action that exposes Youth to tobacco advertisement to virtually the same degree as if Youth had been directly targeted.

The evidence reveals that after it entered into the MSA, RJR made absolutely no changes to its advertising campaigns, failed to include the goal of reducing Youth exposure to tobacco advertising in its marketing plans and failed to take any actions to track whether or not it was meeting its professed goal of reducing Youth smoking. Further, while RJR made some changes to its marketing strategies in subsequent years, the changes were minimal and had little, if any, impact in reducing Youth exposure to its tobacco advertising. As a result, since the MSA was signed, RJR has exposed Youth to its tobacco advertising at levels very similar to those of targeted groups of adult smokers.

In sum, after hearing and carefully considering all the evidence, this Court finds that RJR violated the MSA by indirectly targeting Youth in its tobacco advertising.

Accordingly, and under the terms of the MSA and the Consent Decree, which allows the Attorney General to seek monetary sanctions for violation of the Consent Decree, the Court hereby penalizes RJR in the amount of $20 million and also orders RJR to take certain actions to comply with the terms of the MSA prohibiting Youth targeting in its print advertising.

II. FINDINGS OF FACT

A. The MSA and the Consent Decree

In November 1998, the Attorney General of California and the attorneys general of nearly every other state entered into a landmark Master Settlement Agreement (MSA) with the major cigarette manufacturers resolving a large number of lawsuits brought by the states against the tobacco companies. The lawsuits sought damages caused to the states based on a number of claims, including targeting Youth in marketing and advertising. All the major tobacco companies, including R. J. Reynolds Tobacco Company (RJR), signed the agreement.

Section I of the MSA contains various recitals including the following:

> WHEREAS, the Settling States that have commenced litigation have sought to obtain equitable relief and damages under state laws, including consumer protection and/or antitrust laws, in order to further the Settling States' policies regarding public health, including policies adopted to achieve a significant reduction in smoking by Youth; (emphasis supplied)
>
> . . .
>
> WHEREAS, the Settling States and the Participating Manufacturers are committed to reducing underage tobacco use by discouraging such use and by preventing Youth access to Tobacco Products; (emphasis supplied.)
>
> . . .
>
> WHEREAS, the undersigned Settling State officials believe that entry into this Agreement and uniform consent decrees with the tobacco industry is necessary in order to further the Settling States' policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States (emphasis supplied.); and

> WHEREAS, the Settling States and the Participating Manufacturers . . . have agreed to settle their respective lawsuits and potential claims pursuant to terms which will achieve for the Settling States and their citizens significant funding for the advancement of public health, the implementation of important tobacco-related public health measures, including the enforcement of the mandates and restrictions related to such measures, as well as funding for a national Foundation dedicated to significantly reducing the use of Tobacco Products by Youth; (emphasis supplied)

(Exhibit 153)

Section II consists of definitions of terms used in the agreement. Included in Section II was a definition of the term "Youth." "Youth" is defined as "any person or persons under 18 years of age."

Section III is entitled "PERMANENT RELIEF." The very first proscription enumerated is the "Prohibition on Youth Targeting." This provision states:

> Prohibition on Youth Targeting. No Participating Manufacturer may take any action, directly or indirectly, to target Youth within any Settling State in the advertising, promotion or marketing of Tobacco Products; or take any action, the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within any Settling State.

In December 1998, the parties also executed a Consent Decree and Final Judgment, ("Consent Decree"), which the Court granted.

A few selected prohibitions including the Prohibition on Youth Targeting were incorporated into the Consent Decree in Section V, which entitles the signing parties to equitable relief.

The parties agree that the Consent Decree entitles the Attorney General to seek an order for monetary sanctions for violation of the Consent Decree. (See Consent Decree Section VI (A) at p. 10, and also Reporter's Transcript of teleconference

hearing held on June 4th, 2002.) Under the Consent Decree, the Court retains discretion not to enter an order for monetary sanctions, civil contempt or criminal sanctions for violation of the provisions of the Consent Decree.

The Consent Decree also provides in Section VI (D) that:

> In any proceeding which results in a finding that a Participating Manufacturer violated the Consent Decree and Final Judgment, the Participating Manufacturer . . . found to be in violation shall pay the State's costs and attorneys' fees incurred by the State of California in such proceeding.

Section XV of the MSA is entitled "VOLUNTARY ACT OF THE PARTIES" and provides that:

> The Settling States and the Participating Manufacturers acknowledge and agree that this Agreement is voluntarily entered into by each Settling State and each Participating Manufacturer as the result of arm's-length negotiations, and each Settling State and each Participating Manufacturer was represented by counsel in deciding to enter into this Agreement. Each Participating Manufacturer further acknowledges that it understands that certain provisions of this Agreement may require it to act or refrain from acting in a manner that could otherwise give rise to state or federal constitutional challenges and that, by voluntarily consenting to this Agreement, it . . . waives for purposes of performance of this Agreement any and all claims that the provisions of this Agreement violate the state or federal constitutions. Provided however, that nothing in the foregoing shall constitute a waiver as to the entry of any court order (or any interpretation thereof) that would operate to limit the exercise of any constitutional right except to the extent of the restrictions, limitations or obligations expressly agreed to in this Agreement or the Consent Decree.

B. RJR and its Conduct after the MSA

R.J. Reynolds Tobacco Holdings, Inc. was incorporated as a holding company in 1970 and is listed on the New York Stock Exchange as RJR. RJR's wholly owned subsidiary is R.J. Reynolds Tobacco Company, referred to as RJR Tobacco (RJR). RJR is the second largest cigarette manufacturer in the United States. RJR's largest selling cigarette brands, Camel, Winston, Salem and Doral, were four of the top ten best selling cigarette brands in the United States in 2001. Other RJR brands included Vantage, More, Now, Monarch and Best Value.

RJR's net sales were $7,468,000,000 in 1999, $8,058,000,000 in 2000 and $8,585,000,000 in 2001. Profits were $195,000,000 in 1999, $352,000,000 in 2000 and $444,000,000 in 2001. On December 31, 2001, RJR Tobacco Holdings, Inc., had $2,227,000,000 in cash and short-term investments on hand.

After the MSA was signed in 1998, and until June of 2000, RJR did not alter its conduct with respect to Youth advertising. RJR simply followed its previous pattern of avoiding advertising in magazines that had a majority of readers under the age of 21. According to Ms. Patricia Ittermann, Vice President of RJR in charge of media planning, as a result of the MSA, no changes were made in print media policies in these years.

RJR avoided doing any media research to determine the extent to which their print advertising reached Youth. In the so-called Beasley Pledge of February 9th, 1998, Ms. Lynn J. Beasley, then Vice President of Marketing at RJR and now President of RJR, stated that "[a]s marketers, we will continue to do no tracking research in which we obtain information from persons who are under the age of 18." She also stated that "[i]n planning and executing our marketing activity, we will strive to avoid interaction with those under the age of 18." Every employee in the RJR marketing department had to sign the Pledge and adhere to the policy.

On November 4, 1999, state attorneys general met with RJR and voiced concern about Youth targeting in magazine advertising placement.

On December 10, 1999, Mr. Guy M. Blynn, General Counsel for RJR, wrote a letter to the National Association of Attorneys General Tobacco Committee addressing RJR's compliance with the MSA. With regard to print advertising, Mr. Blynn stated that "[w]e are unwilling to preclude ourselves from advertising in publications which have more than a certain number of 'readers' who are under the age of 18 when that number is less than 50 percent of 'readers.' This would preclude us from one or more of the most popular publications, even if this 'readership' overwhelmingly was adult --- a result which would damage us competitively and unacceptably oust us from one of the remaining media through which we can communicate with adults who smoke. . . ."

According to the United States census for the year 2000, Youth age 12 to 17 made up about 10.4 percent of the United States population.

In January 2000, Brown & Williamson (B & W) announced a 15 percent Youth readership policy, that is, that B & W would not place tobacco advertising in any publication having more than 15 percent Youth readership.

In February 2001, California's Attorney General served RJR with a notice of intent to sue.

In May 2000, Philip Morris articulated a policy that Phillip Morris would not place tobacco ads in any publication having more than 15 percent Youth readership or more than 2,000,000 Youth readers.

In June 2000, RJR announced a 33 1/3 percent Youth readership policy. The only tangible consequence of this change was that the magazine Vibe was removed from the approved list of publications.

In 2000, there was a decline in the amount of print advertising, money spent by Philip Morris and B & W and in the amount of Youth exposure to their print advertising, but this was not true of RJR.

On March 19th, 2001, the California Attorney General sued RJR for Youth targeting in magazine advertising placement in the instant case. The Attorney

General alleged that in 1999, 2000 and 2001, RJR's advertising placement practices in national consumer magazines violated the MSA by targeting Youth.

On March 19th, 2001, RJR announced a policy to limit advertising in magazines having less than a 25 percent Youth readership. As a result of this change in policy, RJR dropped one publication that it was using for advertising, Spin, and removed three other publications that were not being utilized from the list of approved publications. In determining the percentage of Youth readers ages 12 through 17, RJR accepts Mediamark Research, Inc. (MRI) and Simmons research (see below) as conclusive.

Since signing the MSA, RJR has spent over $200 million on magazine advertising.

III. Evidence of RJR's Violation of the MSA

A. The Statistical Data

In 1999, 2000, and 2001, RJR utilized the services of its media planner, Long Haymes Carr, to devise media plans for its nationwide magazine advertising. Long Haymes Carr and RJR used MRI data to measure the quantitative effectiveness and demographic composition of the audience it reaches in its print media campaign. To a lesser extent, RJR used an alternative measuring survey called Simmons for the same quantitative data. MRI is the most widely used and accepted service for measuring magazine audience. MRI is to magazine audience measurement what Arbitron is to radio audience measurement and Nielsen is to TV audience measurement. In other words, MRI is the standard magazine audience measurement survey in the United States, which experts agree is the best available source of such information.

RJR and Long Haymes Carr used MRI to measure reach, which is the percentage of the targeted demographic group that is exposed to at least one magazine in the advertising schedule, and frequency, which is the average number of times persons reached are exposed to that advertising. Target rating points (TRPs),

also referred to as gross rating points, are also measured. TRPs are calculated by multiplying the reach times the frequency.

B. Accuracy of the Statistical Data

Both the MRI Youth and adult surveys are conducted in accordance with appropriate and generally accepted methods and procedures followed by social scientists and statisticians. There is no non-response bias in the data. Other possible sources of bias, including bias in the selection of the sample, in weighing of the sample, differences in the form of the question and conforming bias are minimal or nonexistent. The only bias which cannot be eliminated is memory bias. From a statistical standpoint, all other possible biases can be eliminated. In other words, the data from both the Youth and adult MRI studies are valid and reliable.

With respect to the entire advertising schedule, the margins of error are small relative to the reach and frequency being estimated, and consequently those values are reliable. On the Youth studies, the margin of error is small and the reliability is large.

RJR uses MRI data, both Youth and adult versions, and uses MRI data liberally to measure its success in targeting various segments of the adult market.

Lastly, during trial, RJR did not object to the introduction of nationwide MRI data as not reflecting correctly on the State of California. Further, RJR did not present any substantial evidence that the MRI results for California would be any different than that for the Nation as a whole. Therefore, based on the properly admitted evidence, there is no reasonable basis for concluding that the nationwide data does not apply to California.

C. Evidence Relating to Targeting

The majority of RJR's media plans directly target younger adult smokers ages 21 to 34. For example, the Camel media plan targets smokers age 21 to 24 as the core target and adult smokers age 21 to 34 (see Exhibit 38). RJR and Long Haymes Carr liberally use MRI data to measure the effectiveness of this print advertising.

According to an examination based on MRI's data between 1997 and 2001, the delivery of print media advertising by RJR to its stated target audience of young adult smokers and to Youth age 12 to 17 is essentially the same.

For the year 1999, the reach and frequency numbers for adult smokers and Youth age 12 to 17 were virtually the same. Reach for adult smokers age 21 to 34 was 97.9 percent and reach for Youth smokers age 12 to 17 was 97.1 percent. Frequency for smokers age 21 to 34 was 62.7 and for Youth was 68.2. Target rating points for adult smokers 21 to 34 were 6140 and for Youth 6626. Based on these figures in 1999, the year after the MSA was signed, 97.1 percent of Youth across the country, including California, were exposed to RJR ads 68.2 times. In addition, in 1999, RJR's Camel advertisement in teen-measured magazines reached 88.5 percent of teens 22.7 times. These same adds reached 88 percent of young adult smokers 16.8 times. Thus, more teens were reached than members of the targeted group of young adult smokers.

Using MRI data based on 38 magazines which measure market exposure to Youth, Youth exposure to Camel advertising did not drop after the MSA but actually went up a bit. For the year 2000, looking at Camel advertising, 89 percent of the ads were placed in magazines whose Youth composition exceeded their percentage in the adult population.

Similarly for the year 2000, looking at the Youth-measured magazines, 96.3 percent of adult smokers were reached and 95.2 percent of Youth were reached. The frequency was 54.2 times for adult smokers and 54.7 times for Youth. The target rating points for adult smokers 21 to 34 were 5218 and for Youth 5202. Essentially, RJR advertising for its target audience of young adult smokers reached Youth at about the same frequency as adult smokers.

On March 19, 2001, RJR announced a policy whereby RJR would not advertise in any magazine having a Youth readership of over 25 percent according to either MRI or Simmons data.

For the year 2001, RJR spent less on print advertising than in the previous several years. The TRP delivery numbers for adult smokers age 21 to 34 of 1571 were not substantially different than the Youth number of 1392. RJR print media advertising reached 85.5 percent of Youth 16.3 times on average.

Various experts, including media researcher Stuart Gray and University of Southern California marketing professor Michael Kamins, who is an expert in consumer survey research, credibly opined from the standpoint of their expert training and experience that there are two kinds of targeting. The first kind of targeting, direct targeting, occurs where the advertiser intends to deliberately target members of a particular group. The second type of targeting, indirect targeting, occurs when there is no demonstrable evidence of intent to target, but nevertheless a group other than the group directly targeted is reached in a measurable way similar to the group directly targeted. Thus, indirect targeting can be established by examining the reach and frequency of advertising, even where proof of intent to target is absent. Because RJR was reaching Youth at the same level in its advertising as targeted adult smokers, RJR indirectly targeted Youth.

RJR advertised in many magazines that had huge Youth readerships, such as Sports Illustrated, which has about 5,000,000 Youth readers. Further, RJR advertised in many magazines read by Youth at disproportionately higher levels than adult smokers and also, in magazines read by a higher percentage of Youth than by young adult smokers. RJR had access to data from MRI and Simmons which would have revealed that the reach and frequency of RJR advertising for Youth was about the same as for targeted groups of adult smokers, but RJR did not examine this data.

RJR's stated policy since signing the MSA has been to avoid targeting Youth in its advertising, yet this goal is absent from its media plans. Further, RJR does not attempt to measure the success of this goal, which RJR could accomplish through use of data that is readily available, and which it uses to measure other media-related goals. In the current business environment, capable managers, such as those

at RJR, routinely set goals and measure whether the goals set are achieved. Yet unlike other media-related goals, RJR does not incorporate the goal of avoiding Youth in its advertising into its media plan and does not attempt to measure achievement of this goal, despite its professed commitment, as expressly stated in the MSA and in policy statements of RJR, to reduce Youth smoking.

It is possible to develop and implement media plans and measure the success of media plans whose purpose is to reduce Youth exposure to cigarette advertising while still having significant exposure to adult smokers. The actual practice of other tobacco companies, such as Philip Morris, demonstrates that it is possible to reduce Youth exposure in print media advertising to levels below those for targeted adult smokers while maintaining significant exposure to adult smokers.

Minimizing exposure to certain groups to be avoided is possible given the unique character of magazine advertising which allows advertising to identify and hone into a specific demographic groups based on age, income and lifestyle. Thus, media planner Sue McCullough developed media schedules which achieved effective exposure through print advertising to 87 to 92 percent of adult smokers while at the same time demonstrating significant reduction to Youth exposure.

IV. Legal Conclusions and Findings

A. Construction of Prohibition on Youth Targeting

In interpreting the MSA and consent decrees, ordinary rules of contract interpretation apply (see *Pardee Construction Company v. City of Camarillo* (1984) 37 Cal.3d 465, 471). In construing a contract, the whole of a contract is to be taken together so as to give effect to every part. If reasonably practicable, each clause should be used to help interpret the other (Civ. Code § 1641). If the terms of a contract are clear and explicit, the intent of a contract governs its interpretation (Civ. Code § 1638). Further, in this case, the MSA itself and the Consent Decree prohibit admitting evidence of settlement discussions or negotiations preceding the agreement. (Section XVIII(f) of the MSA)

In light of the issues in this case, the provision entitled "Prohibition on Youth Targeting" is critical and must be construed in the context of the MSA as a whole. In this regard, it is important to emphasize that the recitals stress the primary importance of reducing tobacco use by Youth and that preeminent in the Permanent Relief Section is the Prohibition of Youth Targeting (the "Prohibition").

The Prohibition contains two parts separated by a disjunctive "or." The first part states that "[n]o Participating Manufacturer may take any action, directly or indirectly, to target Youth within any Setting State in the advertising, promotion or marketing of tobacco products. . . ." The second part states that "[[n]o participating manufacturer may] take any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within any Settling State." The second part therefore proscribes any other action (besides advertisement) when its primary purpose "is to initiate, maintain or increase the incidence of Youth smoking within any settling state."

Therefore, when read together and in the context of the entire MSA, one must conclude that the first part is basically an advertising prohibition that has no limitations as to purpose or primary purpose "in initiat[ing], maintain[ing] or increasing] the incidence of Youth smoking," since this language was not included in the first part, but only in the second part. Accordingly, with regard to the advertising prohibition, it does not matter whether the participating manufacturer had any purpose or primary purpose to increase the incidence of Youth smoking in designing and implementing its advertising campaign.

In short, the advertising prohibition is clear as well as broad: "No manufacturer [regardless of purpose or intent] may take any action, directly or indirectly, to target Youth within the settling states ...."

This next critical language is the clause "directly or indirectly," which, as noted earlier, must be given effect in light of the language and construction of the Prohibition itself as well as the entire contract, whose objective is the reduction of

Youth smoking. The term "indirectly" was inserted for a reason and given its proximity to the phrase "any action," and the phrase that follows, specifically, "in the advertising, promotion or marketing of Tobacco Products," the most logical and linguistically sound construction is that it refers to "any action" taken with regard to the advertisement of Tobacco Products. Further, since there is no "purpose" or "intent" limitation in the advertisement prohibition, which contains the term "indirect," one must conclude that "indirectly" refers to any tobacco advertising actions that result in Youth exposure to virtually the same degree as if Youth had been directly targeted.

This interpretation is supported by the expert testimony of witness Stuart Gray, an expert in media research, and University of Southern California business Professor of Marketing, Michael Kamins. Further, not surprisingly, these witnesses reached the same conclusion not based on an interpretation of the MSA but on their training and experience in their respective disciplines, media planning and marketing.

This construction is also supported by the subsequent conduct of the tobacco companies that signed the MSA. In construing the meaning of a contract, courts may look to acts of the parties subsequent to the execution of the contract and before any controversy has arisen. This rule of practical construction is predicated on a common sense concept that "[a]ctions speak louder than words." Words are a direct but imperfect medium to convey thoughts and intentions. When the parties to a contract enter into it and demonstrate by their conduct that they knew what they were talking about, the court should enforce their intent. (*Crestview Cemetery Association v. Dieden* (1960) 54 Cal.2d 744, 754; see also, *Doll v. Maravilas* (1947) 82 Cal.App.2d 943, 949)

The evidence establishes that other tobacco companies which signed the MSA, such as Philip Morris and B & W, reduced their advertising exposure to Youth after signing the MSA by not advertising in publications having more than 15 percent total

Youth readership, and Philip Morris, in addition, decided not to advertise in publications with more than 2,000,000 Youth readership. The conduct of these other tobacco companies that signed the MSA provides strong circumstantial evidence that they believed that dramatic steps to reduce Youth exposure to tobacco advertising had to be taken to comply with the requirements of the MSA. In contrast, RJR did nothing in 1999 and 2000 to reduce Youth exposure, and did very little in 2001. Further, it did so only after being given notice of the intent to file this action, and worse still, RJR actually waited until the very day the action was filed to take insufficient remedial action.

Lastly, the Court construes Section XV, "VOLUNTARY ACT OF THE PARTIES," to mean that the parties expressly and knowingly waived any First Amendment defense to an enforcement action, such as the instant one, so long as the Court's order is consistent with the "restrictions, limitations or obligations expressly agreed to in this Agreement [the MSA] or the Consent Decree."

B. RJR Violated the MSA

The MRI data convincingly establishes that even though RJR advertising for the most part directly targeted young adult smokers for the years from 1998 through 2001, Youth were reached as often and with about the same frequency as young adult smokers. Thus, although Youth may not have been directly targeted, the empirical data established that RJR indirectly targeted Youth, thereby violating the MSA.

Further, the evidence establishes that RJR stated that it did not target Youth. Yet despite access to data by which Youth exposure could readily have been compared to adult smoker exposure, RJR intentionally avoided examining this data which would have indicated whether or not RJR was succeeding in its stated intention of avoiding Youth exposure to tobacco advertising. RJR's failure to measure whether or not its stated goal of minimizing Youth exposure was met casts doubt on RJR's intent to abide by the terms of the MSA and its expressly stated purpose of

avoiding targeting Youth. In a corporate world where most goals are set and then measured, it strains credibility that RJR seriously set avoidance of Youth exposure as a goal, and yet, unlike any other goals it set for its performance, refused to measure the attainment of this goal. In fact, an examination of the data RJR had available to it would have shown that in 1999 its advertising reached 97.1 percent of Youth 68.2 times, that in 2000, it reached 95.2 percent of Youth 54.7 times on average, and that in 2001 it reached 85.5 percent of Youth 16.3 times on average. These figures were in fact quite similar to the figures for targeted adult smokers in those periods.

At various times between 1999 and 2001, RJR's policy allowed it to advertise in magazines which had up to 50 percent, up to 33 1/3 percent or up to 25 percent Youth readership. RJR President Lynn Beasley, a very dynamic and talented individual, professed not to know that only approximately 10 percent of U.S. population was made up of teenagers. Nevertheless, it is reasonable to infer given the evidence that knowledgeable and talented marketing people at RJR knew this fact. In any event, RJR's policy between1999 and 2001 allowed RJR to advertise in magazines where Youth represented 2 ½ to 5 times their proportion of the population. During the period between 1998 and 2001, RJR devoted a substantial portion of its advertising to magazines having a disproportionately high share of Youth readers including rock entertainment music magazines such as Spin, Vibe and Rolling Stone, and motor magazines such as Hot Rod and Car and Driver. Under these circumstances, it is reasonable to conclude that RJR, even without examining all the data it had at its disposal, realized or should have realized that *it* was reaching Youth at levels at least as great as adults in its print advertising and that it was indirectly targeting Youth in its print media advertising.

There is additional evidence based on expert testimony which also supports the conclusion that RJR was indirectly targeting Youth in its print advertising. The consensus of most media experts who testified at trial is that if a specific age group, in this case young adults, was targeted, the other age groups closest to the age group

targeted would also likely be reached in higher proportion than groups more removed from the targeted group. Moreover, a substantial portion of RJR's advertisements appeared in publications where Youth comprise a disproportionately higher share of readers than adult smokers. The totality of this evidence leads to the logical conclusion that it was or should have been apparent to the skillful and bright people who managed RJR's multimillion-dollar sophisticated print advertising campaign that Youth were exposed to tobacco advertising at levels substantially similar to targeted adult smokers.

The evidence also establishes that RJR saw itself losing market share, especially to Philip Morris, and believed it had to be more aggressive than the other tobacco companies in its advertising so as not to lose any more market share even though the likely effect of these efforts was to cause significant exposure to Youth. To achieve its marketing goals, in the most direct manner, RJR willingly engaged in an aggressive print advertising campaign to maximize exposure to targeted groups such as Young adult smokers, simply choosing to ignore the foreseeable consequence of significant Youth exposure. In 2001, a high-level RJR executive announced that RJR understands that the MSA seeks to dramatically reduce tobacco advertising to Youth while allowing limited communications with adult smokers. (Exhibit 66) Nevertheless, RJR conducted itself in a manner inconsistent with its understanding of the mandate of the MSA by pursuing an extensive advertising campaign aimed at young adult smokers without taking any action to dramatically reduce exposure to Youth.

Taking all of the evidence presented into account, it appears likely that RJR studiously avoided analyzing the reach and frequency of its Youth advertising to kids 12 to 17 and comparing it to the reach and frequency of its smoking adult targeted groups because RJR knew the likely result of such analysis. In any event, the same evidence provides strong circumstantial support for what the MRI data conclusively establishes, that is, that RJR succeeded in exposing Youth at essentially the same

levels as it targeted young adult smokers and violated the provisions of the MSA proscribing "any action, directly or indirectly, to target Youth . . . in [its] advertising. . . ."

V. Ruling

Based on the evidence presented, this Court determines that RJR has violated Section III(a) of the MSA, the "Prohibition on Youth Targeting."

Therefore, pursuant to Section VII (c)(3) and Section VII (c)(4) of the MSA, and pursuant to Section VI of the Consent Decree, the Court issues the following enforcement order:

RJR is restrained from continued violations of Section III (a) of the MSA by exposing Youth to its advertising at levels similar to the levels of adult smokers.

In order to ensure future compliance with the MSA, RJR is ordered to do the following:

1. Adopt, adhere to, and incorporate as part of its media strategy, reasonable measures designed to reduce Youth exposure to RJR tobacco advertising to a level significantly lower than the level of exposure to targeted groups of adult smokers.
2. Employ reliable means such as MRI and Simmons data, to measure RJR's success in achieving this goal in order to demonstrate that actual Youth exposure to print media tobacco advertising is significantly less than exposure to targeted groups of adult smokers.

Based on the evidence presented in this case, and pursuant to Section VII (c)(4) of the MSA, this Court orders RJR to pay sanctions in the amount of $20,000,000 to the plaintiff by July 1, 2002, and to pay reasonable attorneys' fees in an amount to be determined by the Court through a noticed motion.

The Court further notes that this Order does not operate to limit the exercise of any constitutional right, rather it interprets and clarifies the

meaning of "restrictions, limitations or obligations expressly agreed to . . . [in the MSA] or the Consent Decree," particularly the Prohibition on Youth Targeting.

The Attorney General is directed to prepare a judgment in compliance with this order and to circulate a proposed judgment for RJR's approval as to form before submission to this Court.

IT IS SO ORDERED.

Dated: July __, 2002

RONALD S. PRAGER
Judge of the Superior Court