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Division of Dockets Management (HFA305)
 Food and Drug Administration
 5630 Fishers Lane, Room 1061
 Rockville, MD 20852

RE: Docket No. FDA-2010-N-0207

To Whom It May Concern:

The undersigned organizations welcome the opportunity to respond to the Food and Drug Administration (FDA) Center for Tobacco Products' (CTP) request for input on the important issue of tobacco industry marketing and promotion to youth and racial and ethnic minority communities. This issue is critical given the industry's long history of marketing to these groups, and the toll tobacco takes on these communities. Minorities bear a disproportionate rate of tobacco-related disease. It is also imperative that there be strong enforcement of advertising and promotion restrictions to protect the public health.

In its first question, the FDA asks for information on how advertising and promotion of tobacco products may affect tobacco use among racial and ethnic minority populations, in order that the FDA may determine what steps to take, if any, regarding the sale, distribution, advertising and promotion of tobacco products to protect public health. To place this in context, we will begin by providing key information on the impact of tobacco and a brief summary of the history of tobacco advertising and marketing.

Youth and Minority Smoking Rates and Health Consequences

In the last 40 years, adult smoking rates have declined, but, since 2003 that decline has started to level off. In the U.S., the overall adult smoking rate is 20.6%.¹ Smoking rates among various racial and ethnic groups vary, but are nonetheless too high. For example:

- 21.3% of all African American adults smoke² and 9.5% of African American high school students smoke³

- 15.8 % of all Hispanic adults smoke⁴ and 18.0% of Hispanic high school students smoke⁵
- Just under 10% of all Asian Americans smoke⁶ and 7.3 % of Asian American high school students smoke⁷
- American Indians and Alaskan native adults smoke cigarettes at the highest rate at 32.4%.⁸

Every day in the United States, about 1,200 people die prematurely from cigarette smoking and exposure to tobacco smoke.⁹ Tobacco is associated with a range of diseases and conditions from cancer to heart disease to debilitating respiratory conditions. However, despite smoking at approximately the same rate as whites, African Americans bear the greatest health burden from smoking of any ethnic or racial group in the United States.¹⁰ African Americans are more likely to develop cancer than members of any other racial or ethnic group.¹¹ In particular, the incidence of lung cancer among black men is 22% higher than among white men, and black male mortality rates from lung cancer are 29% higher than white male rates.¹² Heart disease, another condition related to tobacco use, claimed nearly 100,000 African American lives in 2007,¹³ and more than 38,000 Hispanic lives in 2007.¹⁴ Stroke is the third leading cause of death overall in the US, and among African Americans, stroke is the third leading cause of death¹⁵ and the fourth leading cause of death among Hispanics.¹⁶ Asian Americans smoke at lower rates than other racial and ethnic groups in the US. However, the leading causes of death in the Asian American community, namely cancer, heart disease and stroke, are associated with smoking.¹⁷

It has been calculated that 80% of smokers begin before the age of 18 and 90% before the age of 20.¹⁸ In 2006 and 2009, respectively 6.3% of middle school students and 19.5% of high school students were current cigarette smokers.^{19 20} Everyday, approximately 3,900 youth try smoking for the first time²¹ and approximately 1,000 youth become daily smokers.²² Twenty-two and a half percent of white high school students smoke, while 18.0% of Hispanic high school students smoke, 9.5% of African American and 7.3% of Asian American high school students smoke.^{23 24} Among middle school students, 6.5% of Whites, 5.5% of African Americans, nearly 7% of Hispanics and almost 3% of Asian Americans smoke.²⁵ These youth face stark health consequences, considering one half of lifetime smokers will die prematurely as a result of smoking.²⁶

History of tobacco advertising and promotion to youth and racial and ethnic minority populations

The tobacco industry has been very successful in marketing its products, investing billions in advertising and promotion programs. In 2006, the tobacco industry spent \$12.5 billion on cigarette advertising and promotion alone.²⁷ Exposure to tobacco marketing influences potential new users to try tobacco and become long-term, addicted users.²⁸ Indeed, in 2008, the National Cancer Institute (NCI) published a Monograph compiling the evidence on tobacco marketing and its influence in tobacco use, and found that “the evidence base indicates a causal relationship between tobacco advertising and increased levels of tobacco initiation and continued consumption”.²⁹ In recent years, a high proportion of industry promotional dollars has been devoted to price discounts.³⁰ As

numerous studies have shown, price has a greater effect on youth smokers than among the general population. Price reduction strategies thus increase youth smoking disproportionately.

Marketing to youth: Tobacco advertising is replete with themes that appeal to youth. In its 1994 report, the Institute of Medicine (IOM) concluded that “tobacco advertising and promotion undoubtedly contribute to the multiple and convergent psychological influences that lead children and youths to begin using these products and to become addicted to them.”³¹ We have included in the Appendix to this document some relevant examples on pages 2-4.

NCI Monograph No.19 also found that tobacco industry marketing and advertising increases initiation among youth and reduces cessation among youth and adults. Monograph No. 19 highlighted the following studies as well:

- A study published in the December 2006 issue of *Archives of Pediatrics and Adolescent Medicine* found that exposure to tobacco marketing more than doubles the odds that children under 18 will become tobacco users. The researchers also found that pro-tobacco marketing and media depictions lead children who already smoke to smoke more heavily, increasing the odds of progression to heavier use by 42%.³²
- A 2002 study in the *Archives of Pediatrics and Adolescent Medicine* found that tobacco advertising had a significant impact on each step of the progression from non-smoking to established regular smoking. The biggest impact was on influencing youth originally not-susceptible to smoking to become susceptible to smoking.³³
- A longitudinal study of teenagers in the *Journal of the American Medical Association* showed that tobacco industry promotional activities influenced previously non-susceptible non-smokers to become susceptible to or experiment with smoking.³⁴

More recently, in 2007, R.J. Reynolds launched a new brand of cigarettes, Camel No. 9, which was promoted in top fashion and entertainment magazines. After this short-lived, but very effective campaign, the percentage of teen girls who reported having a favorite cigarette advertisement increased by 10 percentage points, with Camel accounting for nearly all of this increase, while no similar increase was found among teen males during the same period.³⁵ Research demonstrates that if a young person can identify a favorite cigarette brand or campaign, they are 50% more likely to initiate smoking.³⁶

In addition, in 2006, the U.S. District Court for the District of Columbia found the major tobacco companies guilty of racketeering, in part based on the industry’s targeting of youth. On June 28, 2010, the U.S. Supreme Court declined to hear an appeal of that decision, leaving in place the trial court’s judgment of liability against the industry along with its extensive findings of fact that documented the industry’s current and historical misconduct. In addition to finding that the companies perpetrated a decades-long fraud about the health effects of their products, the District Court found that the companies:

...intentionally marketed to young people under the age of twenty-one in order to recruit 'replacement smokers' to ensure the economic future of the tobacco industry... [and] admitted that stimulating youth smoking initiation and retaining and increasing their share of the youth market is crucial to the success of their businesses... and for that reason create marketing campaigns designed to increase youth consumption.³⁷

The District Court also found that:

- "Cigarette marketing, which includes both advertising and promotion, is designed to play a key role in the process of recruiting young, new smokers by exposing young people to massive amounts of imagery associating positive qualities with cigarette smoking. Research in psychology and cognitive neuroscience demonstrates how powerful such imagery can be, particularly for young people, in suppressing perception of risk and encouraging behavior";
- "[T]he weight of all available evidence, including survey data, scientific studies and experiments, and behavioral and econometric studies, support the conclusion that cigarette marketing is a substantial contributing factor in the smoking behavior of young people, including the decision to begin smoking and the decision to continue smoking";
- "While cigarette industry advertising and sales promotion strategies have changed quickly over the years in response to different types of regulation, cigarette products still maintain a very high profile in terms of images and messages reaching teenagers. By making their cigarette products and messages ubiquitous, the tobacco companies normalize smoking and make smoking an acceptable behavior among adolescents."
- "In sum, the ubiquity of [the companies'] marketing increases young peoples' perceptions of the prevalence of smoking ('everyone is doing it'), normalizes smoking, and connects positive imagery (sex appeal, popularity, peer approval, success, and independence) with smoking, all of which work together to encourage youth smoking initiation and continued consumption."³⁸

Youth are especially vulnerable to this marketing because, as the Court found:

"Underage smokers and potential smokers are particularly vulnerable to cigarette marketing because they are not capable of making a fully informed decision whether to start or continue smoking for a variety of reasons, including the fact that they underestimate personal risks and lack the judgment which can only be developed through experience. Youth also fail to appreciate the risks and consequences of addiction."³⁹

Marketing to racial and ethnic minorities: For decades, tobacco companies have specifically targeted minority communities – in particular African Americans – with messages symbols, artists and events that appeal to those communities. Some examples of these campaigns include:

- In 1989, R.J. Reynolds announced plans to test-market a new menthol brand called *Uptown* to African Americans in Philadelphia.⁴⁰ A public outcry resulted in the plans being shelved.
- In 1995, “X” cigarettes were test-marketed in Boston following the release of Spike Lee’s film *Malcolm X*. Public opposition caused the marketer, Stowebridge Brooke Distributors, to remove them from stores.
- In 2004, Brown & Williamson launched a new campaign for its flagship menthol brand called KOOL MIXX, an alleged “celebration” of hip-hop music and culture aimed squarely at black youth.⁴¹ Criticism from public health groups and lawsuits by a number of state attorneys general succeeded in getting Brown & Williamson to cease the campaign, including sale of “Kool Mixx” promotional cigarette packs and the underground disc jockey competitions that help market it.

A troubling pattern emerges from these examples. Cigarette companies have undertaken aggressive advertising campaigns targeted at minority populations, reap the benefit from them for a time, and then withdrawn them in response to lawsuits or public outcry. We have included some examples of advertising targeted to minorities on pages 5-9 in the Appendix of this document.

Further, there is strong evidence that tobacco companies not only create advertising specifically targeted to minority communities, but that they advertise disproportionately in communities with large minority populations. One study found that there were 2.6 times more tobacco advertisements per person in areas with an African American majority population compared to white-majority areas.⁴² Studies in cities from Boston, MA to Oklahoma County, OK, to Los Angeles, California have found higher tobacco advertising density in minority communities than in mostly white communities.^{43 44 45} This is particularly disturbing considering, as discussed above, tobacco industry advertising is associated with increased consumption of tobacco.⁴⁶

Point-of-sale advertising: Advertising in or just outside retail stores – or point-of-sale advertising – plays a large role in the marketing plans for the tobacco companies. Studies have found that there is more exterior tobacco advertising in retail outlets in predominantly minority, low-income communities than in non-minority, higher income communities.⁴⁷ In fact, a study published in the 2010 July/August issue of the *American Journal of Health Promotion* compared characteristics of storefront tobacco advertisements in a low-income, minority community and a high-income, nonminority community and found that the low-income, minority community had more tobacco retailers and advertisements were more likely to be larger and promote menthol products.⁴⁸ Convenience stores and gas stations are significant tobacco retailers. These are also the places that kids and youth go to buy candy, sodas and ice cream, and are then exposed to tobacco advertising. This kind of advertising hits its mark – both for youth and minorities – as is shown by a 2007 study that reported that the more cigarette marketing teens are exposed to in retail stores, the more likely they are to smoke.^{49 50 51}
^{52 53} In fact, according to a new study slated to appear in the August 2010 issue of *Pediatrics*, students who regularly visited convenience stores, gas stations and small

grocery stores were at least twice as likely to try smoking as those who visited infrequently.⁵⁴

It also appears that tobacco industry price-subsidizing promotions and other increased marketing at retail outlets can dampen or overcome the ability of tobacco tax increases to reduce smoking initiation, and are used for that purpose by the major cigarette companies.⁵⁵ Indeed, promotional offers on cigarettes are used by all categories of smokers – especially young adults, women and African Americans – with 35 percent of smokers using promotional offers every time they saw one.⁵⁶

In recent years, according to the Federal Trade Commission Reports on Cigarette Advertising, point of sale marketing has experienced rapid growth. In 2006, tobacco companies spent more than \$242 million on point-of-sale advertising, a 33.1% increase from the previous year.⁵⁷ Moreover, a number of studies have documented the pervasive influence of tobacco product manufacturers on the extent and character of the marketing of tobacco products at retail outlets.⁵⁸

Recently, several studies have documented the rise of this kind of advertising and have noted that this type of advertising tends to be disproportionately located in socially and economically disadvantaged neighborhoods, and that smoking rates are higher in areas with higher densities of tobacco retailers than in areas with lower tobacco retailer densities.^{59 60 61 62 63} In particular, there is evidence that tobacco-selling retailer density near schools is higher in minority or lower-income communities;⁶⁴ and a higher density of such retailers near schools has been found to increase experimental smoking among high school students.^{65*}

Effectiveness of countermarketing: Despite these stark facts about the effectiveness of tobacco marketing, there is some positive news. NCI's Monograph No. 19 also found that rigorous anti-tobacco advertising and public education can have a protective effect against tobacco industry marketing. From the Federal Communications Commission's Fairness Doctrine to Legacy's **truth**® campaign to state and local anti-tobacco programs, studies show that well-designed, evidence-based communications can have a counter-effect on tobacco industry marketing. For example, in its first four years, the **truth**® campaign was shown to have prevented 450,000 youth from initiating smoking.⁶⁶ And, when compared to youth exposed to tobacco industry sponsored campaigns, such as Phillip Morris' "Think, Don't Smoke" campaign, youth exposed to **truth**® were more likely to hold anti-tobacco attitudes and beliefs. Further, those who recalled the "Think Don't Smoke" ads were more likely to be open to smoking than those who recalled the **truth**® ads.⁶⁷ Media events such as the Great American Smokeout also have a positive effect in raising awareness about the health consequences of smoking, and work to encourage smokers to quit.⁶⁸ FDA must ensure that it not only enforces restrictions on

* On the positive side, consumers seem to be aware that the advertising exists, and that it might actually play a role in initiation and keeping people smoking. For example, according to data from the 2009 Social Climate of Tobacco Control Survey, 73.4% of white Americans and 82% of African Americans believe that cigarette advertising increases the chance that a child will start smoking.

tobacco advertising and promotion, but at the same time encourages evidence-based counter marketing and support for state and local tobacco control programs.

Action Plan for Enforcement of Regulations

Reversing the long-standing effects of industry promotion practices on youth and minority tobacco use will require the creation and implementation of a comprehensive, science-based, and enforceable action plan. The action plan must include specific activities and programs to ensure enforcement of the range of advertising and marketing restrictions in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) now in effect. FDA should look beyond traditional enforcement mechanisms and structures, and set up a system working with other agencies, state and local governments and non-governmental organizations to ensure adherence to marketing restrictions.

Collaboration and Coordination: As the FDA begins to exert its new authority, we believe it is vital to establish collaborations with other federal agencies, state and local governments, and non-governmental organizations when appropriate, for regulation to reach its maximum effectiveness.

The Tobacco Control Act requires the Secretary to work with state and local governments in two specific areas: 1) prevention of tobacco products sales to youth, and 2) new authority granted to state and local governments regarding marketing restrictions. State and local governments need to know when a new regulation has been issued and when and if they have the authority to enforce a regulation, including a process for reporting back to the FDA when a regulation has been ignored or violated. Additionally, the non-governmental tobacco control community has been exceptionally successful at implementing effective tobacco control policies, monitoring the industry, and providing scientific expertise when needed over the last several decades. By engaging the tobacco control community on enforcement and other regulatory issues, the FDA would be able to act more quickly to prevent the tobacco industry from evading regulatory requirements.

In their 2007 report, *Ending the Tobacco Problem*, the Institute of Medicine (IOM) outlined specific goals for transforming the regulatory landscape. These goals should be fundamental in the action plan:

- The retail environment for tobacco sales should be transformed to promote the public health
- New models for regulating the retail market should be explored
- Tobacco advertising should be restricted
- Targeting of youth by tobacco manufactures for any purpose should be banned
- Youth exposure to smoking in movies and other media should be reduced
- Surveillance and evaluation should be enhanced.⁶⁹

“Meaningful enforcement is needed to demonstrate that the public commitment to reducing tobacco use in the critical early years of smoking initiation is not half-hearted.”⁷⁰

Overall, we encourage FDA to implement creative enforcement strategies focused on filling the remaining gaps not addressed by current regulations. Innovative approaches to fully implement existing enforcement provisions are clearly needed to ensure that advertising and marketing restrictions are being followed from the retail store to the internet.

Packaging: FDA should also take action to ensure packaging regulations and restrictions are closely monitored and enforced. The ultimate goal of warning labels and other packaging strategies is to communicate the risks of tobacco use to the public directly and conclusively. Enforcement must include regular evaluation of the effectiveness of graphic labels. It is also important to monitor the messages, verbal and non-verbal, communicated by the industry through its packages.

Online advertising and social media: Online advertising is emerging as a new and important arena for promoting tobacco products—and a potentially effective alternative to avoid restrictions applicable to traditional advertising and promotion. Developing an effective program to monitor such promotion must be a priority. Some tobacco company websites, or websites that promote tobacco products, but are not necessarily sponsored by tobacco companies, are more stringent than others at requiring age verification before allowing users to enter their sites. While some require internet users to provide verifiable personal information (such as name, date of birth and social security number),⁷¹ others use the “honor system” and require only certification that someone is over 18.⁷² Some websites don’t require any age verification.⁷³

Social networking sites are also an area of concern. A recent study of British American Tobacco (BAT) company employees and their Facebook activities, showed that some BAT employees placed BAT products, events, and advertising on their Facebook pages, which possibly violates the World Health Organization (WHO) FCTC advertising and promotion restrictions in certain countries.⁷⁴ Tobacco companies also have a presence on MySpace and YouTube, where anyone can watch old television tobacco advertisements.^{75 76 77} In addition, “virtual world” games are another area of concern. In at least one, called Gaia, players of any age can virtually purchase cigarettes and smoke[†].⁷⁸ Please see pages 9-11 of the Appendix for visual images of these online sources. Again, these may not be official industry pages or sites, but due to the accessibility of these sites, this is an area that we recommend FDA examine and monitor closely.

Licensing and Monitoring: Following established recommendations of the IOM,⁷⁹ enhanced licensing and monitoring will make significant strides towards ensuring that retail outlets are compliant. FDA should work with local and state authorities to conduct periodic compliance checks of all regulations. In addition, strong administrative and/or civil law penalties should be put in place for non-compliance.

[†] Players must register, and during the play of the game, they have the option to purchase cigarettes

Counter-advertising: The action plan should include specific activities that directly combat industry efforts to take advantage of new marketing and promotion schemes and loopholes in existing regulations. From a national media campaign, to partnering with states and local communities, messages should be targeted directly at the same youth, ethnic minority and other sub-populations that are the focus of specific industry marketing.

Surveillance and Evaluation: Increased surveillance and evaluation of tobacco use, tobacco product marketing and sales is needed not only at the state and national level, but at the local level, as well, especially to better understand tobacco use among youth and minorities, related tobacco product marketing, and the effectiveness of existing marketing restrictions and other measures meant to reduce tobacco use among minorities and youth. Accordingly, the action plan should encourage state tobacco control agencies to work with non-governmental organizations to conduct surveillance of tobacco sales and use and determine compliance with advertising and marketing laws. In addition, FDA, in cooperation with HHS and/or other federal agencies, should establish systems for collecting and analyzing data on tobacco purchases, promotion, counter-advertising and enforcement of youth-access restrictions. This will provide rich information for assessing and improving tobacco control efforts.

Indeed, federal data collection on tobacco product sales, marketing and use needs to be expanded considerably to provide FDA with the information it needs to make informed decisions in the future and to make necessary data available to for subsequent analysis and research that will further inform FDA's activities. Among other possibilities, FDA should, for example, work with other federal agencies to try to accomplish the following, which are based on existing or recent federal data collection efforts:

- Include the additional questions that were in the Tobacco Use Supplement to the 2003 Current Population Studies survey in all future CPS surveys and make the findings from those questions readily available to researchers and the public;
- Include the optional module of questions relating to tobacco products other than cigarettes as a core section of the CDC administered and supported Behavioral Risk Surveillance System surveys in each state, and include questions in the core sections on tobacco use to determine how many cigarettes or the quantity of other tobacco products the average adult and average youth smoker or tobacco user consumes each day or each year;
- Revive the collection and public dissemination of data relating to tobacco products and their use that was previously done by the Department of Agriculture's Economic Research Service, including the tobacco use, tobacco product prices, tobacco product marketing and other relevant data previously made available on the USDA ERS *Tobacco Briefing Room* website;

The FDA should either urge the Federal Trade Commission (FTC) to improve the scope and content of the periodic reports on tobacco product manufacturer sales and related marketing expenditures or FDA should collect this information from manufacturers and ensure that the reports are issued no later than 12 to 16 months of the end of the specific year they cover; and, in particular, make sure that reports are regularly issued on all major tobacco products (including cigars) and that each report not only provides the information provided in past reports but also:

- Offers the provided data on not only a nationwide but a state-by-state basis;
- Provides data on marketing expenditures and types of expenditures in urban versus rural areas, minority versus non-minority areas, and the like;
- Provides additional breakdowns of the provided information on the manufacturers' promotional allowances to retailers and distributors by different types of promotional allowances and different types of retailers;
- Provides similar breakdowns for the different types of retail value-added promotional expenditures;
- Includes data on a company-specific and brand-specific basis (to the extent that would not disclose truly proprietary business information or trade secrets);
- Presents data not only by type of tobacco product but by significant sub-categories and sub-types -- e.g., totals for all cigarettes with subtotals for light cigarettes, premium cigarettes, generic or low-cost cigarettes, menthol cigarettes, and any "reduced-risk" cigarettes; totals for all smokeless tobacco with subtotals for conventional moist snuff, snus, "reduced-risk", etc.
- Provides similar subtotals for flavored vs. non-flavored versions of smokeless tobacco products;
- Includes data on the average prices charged by the manufacturers for their different types and sub-types of tobacco products and on any price changes made during the covered period;
- Provides subtotals on each of the marketing and promotional expenditures relating specifically to adult-only establishments, venues, and publications versus venues accessible by youth.

In addition, FDA should – on its own or working with other federal agencies and offices – take other steps to make sure that other data directly relevant to better understanding youth and minority tobacco use, tobacco industry marketing that reaches and affects youth and minorities, and existing efforts to restrict that marketing or otherwise prevent and reduce tobacco use among youth and minorities is regularly collected and

disseminated, and to ensure that relevant related research will be done and disseminated by experts unaffiliated with the tobacco industry.

Menthol: Under the Tobacco Control Act, the Advisory Committee is required to provide the Secretary with a report and recommendations “on the impact of the use of menthol in cigarettes on the public health, including such use among children, African-Americans, Hispanics, and other racial and ethnic minorities” within the first year of its existence. Addressing menthol in cigarettes in the Action Plan is critical to reducing youth initiation of smoking and, equally important, could substantially decrease the unequal health burden experienced by certain populations, including African-Americans, because of aggressive industry marketing.

In order to reduce youth initiation and decrease health disparities, it is critical that the Advisory Committee review the issue of menthol comprehensively and scientifically, including an evaluation of the appropriateness of eliminating menthol in cigarettes, and that the FDA quickly initiate rulemaking on the recommendations made by the Advisory Committee.

Impact and use of menthol in cigarettes among children, African-Americans, Hispanics and other racial and ethnic minorities

Menthol has been put into cigarettes as a flavoring at least since the 1920s, but many of the menthol brands that we know today, including Salem and Newport, were introduced in the mid-1950s.^{80 81} According to the most recent data, by 2006, menthol cigarettes comprised 20% of the market.⁸² According to one study, despite a 22% decrease in overall packs of cigarettes sold from 2000-2005, menthol sales remained stable.⁸³

Youth and Menthol: When looking at smoking rates and cigarette preference across all ages, menthol cigarettes have a prominent role:

- Among smokers aged 26 and older, 31.5% of smokers smoked menthols in 2008
- Among smokers aged 18-25, 40.8% of smokers smoked menthols in 2008
- Among smokers aged 12-17, 47.7% of smokers smoked menthols in 2008⁸⁴

The large percentage of youth smokers smoking menthols is striking, particularly with respect to minority youth. Newport cigarettes (a menthol brand), is one of the top two brands smoked most often by young people.⁸⁵ Even though there was an overall decrease in youth smoking rates between 2000 and 2002, during the same period, youth menthol cigarette use increased by 18.5%.⁸⁶

Menthol flavor covers up the harsh taste of tobacco. The tobacco industry’s own documents confirm that menthol cigarettes are a good starter product. One Brown and Williamson document from 1987 quotes: “Menthol brands have been said to be good starter products because new smokers appear to know that menthol covers up some of the tobacco taste and they already know what menthol tastes like, vis-à-vis candy. The level of the menthol in the product is, however, critical.”⁸⁷ (See page 12 of the Appendix.)

The tobacco industry has manipulated the level of menthol in cigarettes for years. The industry uses lower levels of menthol for young “starters” – just enough to mask the tobacco flavor, and increases the menthol level for “experienced” smokers, in order to keep up with their need for a stronger sensation as they become more acclimated to the product.⁸⁸

As with advertising for regular, cigarettes, the industry’s marketing for mentholated brands uses messages that appeal to youth. Please see pages 13-14 in the appendix for some examples of menthol advertisements with such messages.

Minorities and Menthol: The tobacco industry has a long history of promoting menthol cigarettes to minorities and it shows. The menthol smoking rates among minority communities are disproportionately high.

- From 2004 to 2008, 82.6% of African American smokers aged 12 or older smoked menthols, compared to just 23.8% of white smokers of the same age category. Similarly, higher rates of menthol use were observed among the Hispanic and Asian American smokers aged 12 or older (32.3% and 31.2%, respectively)⁸⁹

The tobacco industry is well aware of this, as is demonstrated by a review of industry documents. For example, one tobacco industry document reveals that Newport’s target audience was, “[y]oung adult smokers, especially in inner-city areas.”⁹⁰ Another document reports that among young blacks Kool is “the starting brand” and it “virtually owns the market”.⁹¹ One Lorillard sales seminar document from 1978 reveals a laundry list of ways to target their menthol brand Newport to the African American community, including “tie-in with any company who help black[s] – ‘we help them, they help us.’ Target group age 16+”⁹² More recently, at least one study has found that mentholated brands are marketed disproportionately in low-income, urban communities.⁹³ In addition, expenditures for magazine advertising of mentholated cigarettes, popular with African Americans, increased from 13 percent of total ad expenditures in 1998 to 76 percent in 2006.⁹⁴ Another study found that between 1998-2002, *Ebony* was 9.8 times more likely than *People* to contain ads for menthols, and the Spanish-language version of *People* was 2.6 times more likely to contain menthol ads than the English-language version.⁹⁵

Further, menthol advertising in high-minority areas has been higher than in wealthier, majority-white neighborhoods. One study conducted before the Master Settlement Agreement’s ban on billboards (but not all outdoor advertisements) found that in one city, Black neighborhoods were significantly more likely to have ads for menthols than other neighborhoods.⁹⁶ Another study found that 29% of point-of-sale advertisements in predominantly African American or Latino neighborhoods were for menthols versus 10% in non-minority neighborhoods.⁹⁷ Please see pages 15-18 of the Appendix to view images of menthol advertising targeted at minorities.

We thank FDA for considering these comments and we look forward to working with the agency as it moves forward on decisions regarding marketing to youth and minorities.

Respectfully submitted,

American Cancer Society Cancer Action Network
American Heart Association
American Lung Association
Campaign for Tobacco-Free Kids
Legacy
American Academy of Family Physicians
American Academy of Nurse Practitioners
American Academy of Otolaryngology – Head and Neck Surgery
American Association for Respiratory Care
American College of Preventive Medicine
American Dental Hygienists' Association
American School Health Association
American Thoracic Society
Association of Black Cardiologists
National African American Tobacco Prevention Network
National Association of County and City Health Officials (NACCHO)
National Latino Tobacco Control Network
Society for Cardiovascular Angiography and Interventions

¹ CDC. Cigarette Smoking Among Adults and Trends in Smoking Cessation--United States, 2008. *MMWR*. 2009; 58(44):1227-1232

² CDC. Cigarette Smoking Among Adults and Trends in Smoking Cessation--United States, 2008. *MMWR*. 2009; 58(44):1227-1232.

³ Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance, United States 2009. *Surveillance Summaries*, June 4, 2010. *MMWR* 2010;59(No. SS-5).

⁴ CDC. Cigarette Smoking Among Adults and Trends in Smoking Cessation--United States, 2008. *MMWR*. 2009; 58(44):1227-1232.

⁵ Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance, United States 2009. *Surveillance Summaries*, June 4, 2010. *MMWR* 2010;59(No. SS-5).

⁶ CDC. Cigarette Smoking Among Adults and Trends in Smoking Cessation--United States, 2008. *MMWR*. 2009; 58(44):1227-1232

⁷ CDC. National Youth Tobacco Survey, 2006. Available at:
http://www.cdc.gov/tobacco/data_statistics/surveys/nyts/pdfs/table_2_06.pdf

⁸ CDC. Cigarette Smoking Among Adults and Trends in Smoking Cessation--United States, 2008. *MMWR*. 2009; 58(44):1227-1232

⁹ CDC. Smoking-attributable mortality, years of potential life lost, and productivity losses—United States, 2000-2004. *MMWR* 2008; 57 (45): 1226-8.

¹⁰ U.S. Department of Health and Human Services. Tobacco Use Among U.S. Racial/Ethnic Minority Groups—African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1998.

¹¹ American Cancer Society. *Cancer Facts and Figures 2010*. Atlanta: American Cancer Society; 2010.

¹² American Cancer Society. *Cancer Facts and Figures 2010*. Atlanta: American Cancer Society; 2010.

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- ¹³ Zu JQ, Kochanek, Murphy SL, Tejada-Vera B. Deaths: Final Data for 2007. National vital statistics reports web release; vol 58 no 19. Hyattsville, Maryland: National Center for Health Statistics. Released May 2010.
- ¹⁴ Zu JQ, Kochanek, Murphy SL, Tejada-Vera B. Deaths: Final Data for 2007. National vital statistics reports web release; vol 58 no 19. Hyattsville, Maryland: National Center for Health Statistics. Released May 2010.
- ¹⁵ WISQARS Leading Causes of Death Reports, 1999 - 2007, Available at: <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>
- ¹⁶ WISQARS Leading Causes of Death Reports, 1999 - 2007, Available at: <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>
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