

- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the acceptance, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

6. The Commission has not made in this proceeding any decision, adjudication or determination of any issue of law or fact presented by the complaint. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that (1) the law has been violated as alleged in the said copy of the complaint hereto attached, (2) the Commission has the authority to require an affirmative statement with respect to any relationship between smoking and health in any cigarette advertising; or (3) the statement required by the order contained in the agreement is necessary or correct. It is understood that neither this settlement agreement nor compliance with the consent order shall constitute or in any way be deemed an admission in any administrative or judicial proceeding or in any private litigation. Except for the jurisdictional facts admitted in paragraph 3 above, proposed respondent denies all the allegations contained in said complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provision of 2.34(b) of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint in the form and substance of the complaint hereto attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other

orders; provided however, that no part of the order is severable, and upon any reopening, the entire order shall be reopened. It is understood that the complaint being settled by this agreement containing the following consent order may be used by the Federal Trade Commission or any court enforcing the order in construing the terms of the order. It is further understood that the complaint or any allegations in the complaint shall not constitute an admission by respondent in any other official action, report or statement by the Federal Trade Commission, and that neither the complaint nor any allegations in the complaint shall be considered as an admission by the respondent in any other judicial or administrative proceeding or action.

8. Respondent has read the complaint and order contemplated hereby, and it understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty of up to \$5,000 for each violation of the order after it becomes final.

ORDER

I.

IT IS ORDERED that respondent Brown and Williamson Tobacco Corporation, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of cigarettes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising any such cigarette unless respondent makes in all advertisements of such cigarette a clear and conspicuous disclosure of the statement prescribed in Section 4 of the Public Health Cigarette Smoking Act of 1969 (Public Law 91-222) which reads:

"Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health."

A. For the purposes of this Order, the term "cigarette" shall mean (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

B. For the purposes of this Order, the term "advertisement" shall mean all advertising in newspapers, magazines, and other periodicals published and distributed in the United States and other periodicals distributed primarily to members or units of the Armed Forces of the United States located abroad, and advertisements appearing on billboards placed or located within the United States and in other materials as specified in Sections D, E, and F.

C. For the purposes of this Order, the term "clear and conspicuous disclosure" shall mean that

1. The language of the warning statement shall be precisely as prescribed by Congress in Section 4 of the Public Health Cigarette Smoking Act of 1969.

2. The warning statement shall be set in two horizontal lines parallel with the base of the advertisement, separated by leading equivalent to the lower case "x-height", excluding the ascending and descending letters, of the particular type size. In any case where the width of an advertisement in any printed medium is too narrow because of the columnar format, the warning statement may appear in three lines provided there is full compliance with all other requirements in this definition.

3. The warning statement in newspaper, magazine, and other periodical advertisements shall appear in Univers 47 (Fdy) type style. The type size to be employed shall be the following:

10-point type.....in newspaper, magazine, and other periodical advertisements of a trim size not larger than 65 square inches. (Examples: T.V. Guide, Popular Mechanics)

12-point type.....in newspaper, magazine, and other periodical advertisements of a trim size larger than 65 square inches but not larger than 110 square inches. (Example: Time)

14-point type.....in newspaper, magazine, and other periodical advertisements of a trim size larger than 110 square inches but not larger than 180 square inches. (Example: Life)

16-point type.....in newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. (Example: Full page non-tabloid newspapers)

A double full-page or a multiple full-page advertisement in any non-tabloid newspaper shall contain a separate warning statement in 16-point type on each page. A double full-page or multiple full-page advertisement in any tabloid newspaper, magazine or other periodical shall not be required to contain more than one warning statement but the type size requirement shall be determined by the total aggregated size of the entire advertisement. An advertisement which occupies one full page and part of another page in any newspaper, magazine or other periodical shall not be required to contain more than one warning statement, but the type size requirement shall be determined by the total aggregated size of the entire advertisement, and the warning statement shall appear on the full page on which the advertisement appears. An advertisement which occupies part of each of two or more pages in any newspaper, magazine or other periodical shall not be required to contain more than one warning statement, but the type size requirement shall be determined by the total aggregated size of the entire advertisement, and the warning statement shall appear on that page which contains the greater (or greatest) part of the advertisement.

4. Every warning statement shall be set in a ruled rectangle. The size of the rectangle shall be determined by providing at both ends and at both top and bottom a space between the type block and the enclosing rule not less than the following spaces: where 10-point type is used in the warning statement, the rule shall be 8-points away from the type block; where 12-point type is used in the warning statement, the rule shall be 10-points away from the type block; where 14-point type is used in the warning statement, the rule shall be 12-points away from the type block; and where 16-point type is used in the warning statement, the rule shall be 14-points away from the type block. The width of the rule enclosing the rectangle shall be 1/4-point where 10-point type is used in the warning statement; 1/2-point where 12-point type is used in the warning statement; 3/4-point where 14-point type is used in the warning statement; and 1-point where 16-point type is used in the warning statement.

5. The warning statement shall be printed in black against a solid white background within the rectangle, and the enclosing rule shall be printed in black.

6. The warning statement in its rectangle in any newspaper, magazine, or other periodical advertisement shall be a separate element in each advertisement and shall not contain or include any part of any picture, design, illustration or text within the advertisement. The warning statement in its rectangle shall not be contained or included as an integral part of any specific pictorial design or illustration; in particular, it shall not be made a constituent part of a reproduction of the package of cigarettes. The warning statement in its rectangle may be printed or superimposed upon any pictorial background portion of any advertisement.

7. The warning statement in its rectangle in any newspaper, magazine, or other periodical advertisement may be positioned anywhere within the trim area of the advertisement, but shall not be positioned in the margin of any advertisement. The rectangle shall not be positioned immediately next to, or immediately contiguous to, any rectangular designs, elements, or similar geometric forms (other than a picture of the cigarette package) or immediately contiguous to any textual matter appearing in the advertisement.

8. Blurring or illegibility of the warning statement in its rectangle occurring for reasons beyond the control of the respondent shall not be in violation of this Order.

D. On billboards of a size 24-sheets and larger, the type size of the warning statement shall be not less than 2 inches in height, and the rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6, and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. On billboards of a size 6-, 7-, and 8-sheets the type size shall be not less than 3/4 inches, on those of a size 2- through 5-sheets the type size shall be not less than 1/2 inch, and the rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6, and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. On 1-sheet billboards the type size shall be not less than 24-points, and the

rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6 and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. On all public transit side cards of any shape the type size shall be not less than 18 points, and the rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6, and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. All public transit end cards shall comply with the minimum requirements for 1-sheet billboards. The type style on any billboard or transit card shall be Univers 47 (Fcy) or a similar font.

E. On all point-of-sale promotional materials exhibited to cigarette purchasers, which have a surface containing an advertising display area of more than 36 square inches, the warning statement with its rectangle shall be included in a type size proportional to the type size specified in the nearest page size category for newspaper, magazine, and other periodical advertisements, as specified in Subsections C-1, -2, -3, -4, -5 -6, and -7. In determining the size of the advertising display area in promotional materials consisting of two or more pages, the total advertising display area of each page on which any printed or graphic material appears shall be aggregated, and where the aggregate of the advertising display area, on which any printed or graphic material appears, exceeds 36 square inches, the warning statement within its rectangle shall be placed on one of those pages and proportionalized to the size of that page. The warning statement shall not be required on any non-media advertising and promotional materials offered or given to consumers; nor shall the warning statement be required on any promotional materials which are not for public display or public consumer exposure, and are distributed to cigarette wholesalers, dealers, and merchants.

F. All advertising contained in non-point-of-sale mailings, paperback book inserts, and programs shall contain the warning statement in its rectangle in a type proportional to the type size specified in the nearest page size category for newspaper, magazine, and other periodical advertisements, as specified in Subsections C-1, -2, -3, -4 -5, -6, and -7.

G. Sections C, D, E, and F of this Order shall become effective sixty (60) days after it is finally issued, but to meet the general and ordinary deadlines for submission of advertising copy established by the medium by or in which the advertisement is to appear, the requirements of Sections C, D, E, and F shall not be applicable (a) to newspaper, magazine, or other periodical advertising for which the closing date on which an advertiser must, according to the regular schedule of that newspaper, magazine, or other periodical, deliver the advertising material in final form to the printer, to the publisher, or as to spectacolor-type, to the production house, is less than forty-five (45) days after the date on which this Order shall become effective; (b) to advertising appearing on billboards for which copy must, according to the earliest practical date for replacement, be delivered in final form to the printer or painted or assembled on such billboards less than forty-five (45) days after the date on which this Order shall become effective, but in any event, as to advertising appearing on billboards Sections C, D, E, and F shall become applicable one hundred eighty (180) days from the date this Order shall become effective; (c) to advertising printed on non-point-of-sale leaflets, direct mail circulars, paperback book inserts, and programs which is delivered in final form to the printer less than forty-five (45) days after the date on which this Order shall become effective, but in any event, as to advertising printed on non-point-of-sale leaflets, direct mail circulars, paperback book inserts, and programs, Sections C, D, E, and F shall become applicable one hundred forty (140) days from the date of this Order shall become effective; or (d) to point-of-sale promotional materials exhibited to cigarette purchasers, which have a surface containing an advertising display area of more than 36 square inches, delivered in final form to the printer less than forty-five (45) days from the date this Order shall become effective.

H. This Order shall not be applicable to signs on factories, plants, warehouses, and other facilities related to the manufacture or factory storage of cigarettes, to corporate or financial reports, or to employment advertising, or to advertising in tobacco trade publications not circulated to consumers.

