

Complaint

IN THE MATTER OF

LORILLARD, DOCKET NO. C-2180
PHILIP MORRIS INC., DOCKET NO. C-2181
AMERICAN BRANDS, INC., DOCKET NO. C-2182
BROWN AND WILLIAMSON TOBACCO CORPORATION,
DOCKET NO. C-2183
R. J. REYNOLDS TOBACCO COMPANY, DOCKET NO. C-2184
LIGGETT & MYERS INCORPORATED, DOCKET NO. C-2185

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Complaints, Mar. 30, 1972—Decisions, Mar. 30, 1972

Consent orders requiring six major cigarette manufacturers and distributors to include in all their cigarette advertisements a clear and conspicuous disclosure of the statement: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health." The orders further provide the manner in which the statement shall be presented in newspapers, magazines, and other periodical advertising, on billboards, on all point-of-sale promotional materials, and on all point-of-sale materials. The orders are not applicable to signs on factories, plants and warehouses, in financial reports, and in trade publications not circulating to consumers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Lorillard, a Division of Loew's Theatres, Inc., Philip Morris Inc., a corporation, American Brands, Inc., a corporation, Brown and Williamson Tobacco Corporation, a corporation, R. J. Reynolds Tobacco Company, a corporation, and Liggett & Myers Incorporated, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that proceedings by it in respect thereof would be in the public interest, hereby issues its complaints stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lorillard, a Division of Loew's Theatres, Inc., a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 East 42nd Street, in the city of New York, State of New York.

Respondent Philip Morris Inc., a corporation, is a corporation organized, existing and doing business under and by virtue of the

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laws of the State of Virginia, with its principal office and place of business located at 100 Park Avenue, in the city of New York, State of New York.

Respondent American Brands, Inc., a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 245 Park Avenue, in the city of New York, State of New York.

Respondent Brown and Williamson Tobacco Corporation, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1600 West Hill, in the city of Louisville, State of Kentucky.

Respondent R.J. Reynolds Tobacco Company, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 401 North Main Street, in the city of Winston-Salem, State of North Carolina.

Respondent Liggett & Myers Incorporated, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 630 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondents now, and for some time last past have been engaged in the manufacturing, advertising, sale and distribution of cigarettes.

PAR. 3. In the course and conduct of their business as aforesaid, respondents Brown and Williamson Tobacco Corporation, Lorillard, R.J. Reynolds Tobacco Company, Liggett & Myers Incorporated, Philip Morris Inc. and American Brands, Inc., now transport and cause their said cigarettes, when sold, to be transported, and for some time last past have transported and have caused said cigarettes to be transported, from their places of business in the States of Kentucky, North Carolina and Virginia, and elsewhere, to purchasers in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times herein have maintained, a substantial course of trade in said cigarettes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the further course and conduct of business as aforesaid, respondents at all times mentioned herein have been and are now in substantial competition in commerce with other corporations in

the sale of cigarettes of the same general kind and nature as those sold by respondents.

PAR. 5. In the further course and conduct of the business as aforesaid, and for the purpose of inducing the sale of their said cigarettes, respondents have employed and now employ extensive advertising in many and various national and regional media.

PAR. 6. In the further course and conduct of their business as aforesaid, respondents have represented and are now representing in advertisements, directly and by implication, that smoking of cigarettes is a desirable practice. In respondents' said advertisements for their cigarettes, respondents have failed to make clear and conspicuous disclosures that cigarette smoking is dangerous to health.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents have received information from various sources by which they knew or had reason to believe that the smoking of cigarettes is dangerous to health. Notwithstanding their possession of such knowledge or reason to believe, respondents continued and are now continuing to advertise said cigarettes without making clear and conspicuous disclosures to the public in their advertisements that cigarette smoking is dangerous to health.

PAR. 8. By advertising cigarettes to the public without making clear and conspicuous disclosures in said cigarette advertisements that cigarette smoking is dangerous to health, respondents represent, directly or by implication, that their cigarettes are not dangerous to health.

Therefore, the advertisements referred to in Paragraphs 6, 7 and 8 above are false and misleading and the acts and practices referred to in said paragraphs are deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. The advertising of cigarettes without making clear and conspicuous disclosures in said advertisements that cigarette smoking is dangerous to health is in itself an unfair practice.

Therefore, the advertisements referred to in Paragraphs 6, 7, 8, and 9 above are unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. The use by respondents of the said false and misleading advertisements and unfair and deceptive acts have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the smoking of the said cigarettes manufactured by respondents are not dangerous to health, and into the purchase

of substantial quantities of cigarettes manufactured by respondents by reason of said erroneous and mistaken belief.

PAR. 11. The Congress of the United States, having determined to establish a comprehensive program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, has enacted the Public Health Cigarette Smoking Act of 1969. Section 4 of that Act provides:

It shall be unlawful for any person to manufacture, import, or package for sale or distribution within the United States any cigarettes the package of which fails to bear the following statement: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health."

The use by respondents of the said deceptive acts and practices as set forth in Paragraph Eight, and the said unfair acts and practices as set forth in Paragraph Nine, negates and overcomes any tendency or capacity which a warning on the cigarette package itself may have to impress on the public the dangers to health which accompany the smoking of respondents' said cigarettes.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DISSENTING STATEMENT OF COMMISSIONER JONES

I dissent to the Commission's acceptance of these consent agreements because of their provisions respecting the clear and conspicuous disclosure requirements of the Warning. The Commission had no proper empirical or clinical basis on which to support the instant order provisions and hence had no reason to believe that the required disclosures would in fact be clear and conspicuous to the casual readers of the magazines in which these advertisements are intended to appear.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaints charging each of the respondents named in the captions hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notices of said determination and copies of the complaints the Commission intended to issue, together with proposed forms of orders; and

The respondents and counsel for the Commission having thereafter executed agreements containing consent orders, an admission by respondents of all the jurisdictional facts that the signing of said agreements are for settlement purposes only and do not constitute an admission by respondents that the law has been violated as alleged in such complaints, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreements and having accepted same, and the agreements containing consent orders having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaints in the form contemplated by said agreements, makes the following jurisdictional findings, and enters the following orders:

1. Respondent Lorillard, a division of Loew's Theatres, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 East 42nd Street, in the city of New York, State of New York.

Respondent Philip Morris Inc., a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 100 Park Avenue, in the city of New York, State of New York.

Respondent American Brands, Inc., a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 245 Park Avenue, in the city of New York, State of New York.

Respondent Brown and Williamson Tobacco Corporation, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1600 West Hill, in the city of Louisville, State of Kentucky.

Respondent R.J. Reynolds Tobacco Company, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 401 North Main Street, in the city of Winston-Salem, State of North Carolina.

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Respondent Liggett & Myers Incorporated, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 630 Fifth Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That each respondent named in the caption herein, its successors and assigns and respondents' 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 cigarettes unless respondents make in all advertisements of such cigarettes 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 purpose of these orders, 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 purpose of these orders, 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 purpose of these orders, 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.
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.
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.
16-point type-----	In newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches.

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 $\frac{1}{4}$ -point where 10-point type is used in the warning statement; $\frac{1}{2}$ -point where 12-point type is used in the warning statement; $\frac{3}{4}$ -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 advertise-

ment, 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 $\frac{3}{4}$ inches, on those of a size 2- through 5-sheets the type size shall be not less than $\frac{1}{2}$ 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 (Fdy) or a similar font.

E. On all point-of-sale promotional materials exhibited to cigarette purchasers, which have a surface containing an ad-

vertising display area of more than 36 square inches, the warning statement within 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, -7. In determining the size of the advertising display area in point-of-sale 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 in accordance with Section C. 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 leaflets, direct-mail circulars, paperback book inserts, and programs shall contain the warning statement within its rectangle 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.

G. Sections C, D, E, and F of these order shall become effective sixty (60) days after they are 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 these orders shall become effective; (b) to advertising appearing on billboards for which copy must, according to the earliest practical date for replacement, be de-

livered in final form to the printer or painted or assembled on such billboards less than forty-five (45) days after the date on which these orders 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 these orders shall become effective; (c) to advertising printed on non-point-of-sale leaflets, direct-mail circulars, paperback book inserts, and programs which are delivered in final form to the printer less than forty-five (45) days after the date on which these orders, 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 these orders 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 these orders shall become effective.

H. These orders 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.

II

It is further ordered, That the respondent corporations shall forthwith distribute copies of these orders to each of their operating divisions or departments.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of these orders.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of these orders, file with the Commission reports, in writing, setting forth in detail the manner and form in which they have complied with these orders to cease and desist.

Commissioner Jones' statement is attached.

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IN THE MATTER OF

H & R ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket. C-2186. Complaint, March 31, 1972—Decision, March 31, 1972.*

Consent order requiring a Seattle, Wash., school offering courses in computer card key punch training to cease misrepresenting that its inquiries are for the purpose of offering employment to qualified applicants, that the salaries of its graduates will be above average, that respondents have been retained by companies to train key punch operators, and minimizing the time required to obtain a certificate.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that H & R Enterprises, Inc., a corporation and Walter B. Harrison, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H & R Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office located at 902 Lloyd Building, Seattle, Washington.

Respondent Walter B. Harrison is an individual and an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents have been engaging in the advertising, offering for sale and sale of courses of instruction in computer card key punch training. Said courses have been given at schools owned and operated by respondents under the name Key-Punch Academy in the city of Seattle, Washington and under the name Career Training Center in Portland, Oregon, and Spokane and Tacoma, Washington.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have caused the interstate movement of advertising scripts and radio and television continuity and films among and