

IN THE MATTER OF
R.J. REYNOLDS TOBACCO COMPANY

FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9285. Complaint, May 28, 1997—Final Order, Jan. 26, 1999

This final order, among other things, dismisses the complaint against the respondent, for its Joe Camel cigarette advertising campaign, on the grounds that the relief sought in the proceeding has now been achieved through a multistate tobacco settlement and revisions of the U.S. Dept. of Health and Human Services' data collection protocol.

Participants

For the Commission: *Rosemary Rosso, David Shonka, C. Lee Peeler, Gerard Butters, Joseph Mulholland, Russ Porter and Genevieve Fu.*

For the respondent: *Guy Blynn*, in-house counsel, Winston-Salem, N.C. and *Judith Oldham, Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that R.J. Reynolds Tobacco Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent R.J. Reynolds Tobacco Company is a New Jersey corporation, with its office and principal place of business located at 401 North Main Street, P.O.B. 2959, Winston-Salem, North Carolina.

2. Respondent has advertised, promoted, offered for sale, sold, and distributed cigarettes and other tobacco products.

3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Beginning sometime before 1987, Reynolds identified the need to attract "first usual brand" and/or "presmokers" and/or "learning" smokers to its brands in order to maintain or increase its market share. By 1984, some Reynolds employees recommended that the company establish a formal program to attract "first usual brand" smokers.

5. Beginning in or around 1987, respondent disseminated or caused to be disseminated advertisements and promotions for its Camel brand cigarettes, including, but not necessarily limited to, the attached Exhibits A through F. The ads and promotions have as their central theme a cartoon camel sometimes referred to as "Old Joe," "Smooth Character" or as "Joe Camel" (hereinafter "Joe Camel"), and other similar cartoon characters.

6. The purpose of the Joe Camel campaign was to reposition the Camel brand to make it attractive to younger smokers. At least one of the targets of the campaign was "first usual brand" smokers.

7. The Joe Camel campaign was successful in repositioning the Camel brand to make it attractive to younger smokers. In fact, the campaign was successful in appealing to many children and adolescents under the age of 18, or under the age at which cigarettes may lawfully be sold to consumers.

8. The Joe Camel campaign induced many of these children and adolescents under the age of 18 to smoke Camel cigarettes or increased the risk that they would do so. For many of these children and adolescents, the decision to smoke Camel cigarettes was a decision to begin smoking; for others, the decision to smoke Camel cigarettes was a decision to continue smoking. As a result, the Joe Camel campaign caused or was likely to have caused these children and adolescents to initiate or continue smoking cigarettes.

9. In fact, after the initiation of the Joe Camel campaign, the percentage of smokers under the age of 18 who smoked Camel cigarettes became larger than the percentage of all adult smokers aged 18 and older who smoked Camel cigarettes.

10. Reynolds knew or should have known:

a. That because of the themes and techniques it used in the Joe Camel advertising and promotional campaign, that campaign would have a substantial appeal to children and adolescents below the age of 18, as well as to smokers over the age of 18; or

b. That many smokers initiate smoking and become regular smokers before the age of 18, and that by targeting "first usual brand" and/or "presmokers" and/or "learning" smokers, the Joe Camel campaign would cause many children and adolescents below the age of 18 to smoke Camel cigarettes.

11. Consumers who smoke cigarettes risk addiction (*i.e.*, nicotine dependency) and a number of immediate and long term adverse health effects including, but not limited to, coronary heart disease, lung and laryngeal cancer, oral cancer, esophageal cancer, chronic obstructive pulmonary disease, and low-birth-weight babies.

12. Many children and adolescents do not adequately comprehend the nature of the risk or the seriousness of nicotine addiction, or the other dangerous health effects of smoking cigarettes.

13. R.J. Reynolds' actions, as set forth in paragraphs 4, 5, 7, 8, 9 and 10 have caused or were likely to cause substantial and ongoing injury to the health and safety of children and adolescents under the age of 18 that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers.

14. Since at least 1988, most states and the District of Columbia have enacted laws that make it illegal to sell cigarettes to persons under the age of 18, in order to protect children and adolescents from the significant adverse consequences of cigarette smoking. In 1992, Congress passed a federal statute that provided that, as a condition of receiving grant funds for substance abuse programs, states must enact and enforce laws prohibiting the sale or distribution of tobacco products to persons under the age of 18.

15. The acts and practices of respondent as alleged in this complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Azcuenaga and Commissioner Starek dissenting.

Complaint

127 F.T.C.

EXHIBIT A

Beach Pamphlet
Smooth Moves

**WHEN ONLY A
SMOOTH MOVE
WILL DO...**



EXHIBIT A

You'll find one in every pack of Camel!
SMOOTH MOVES

The cool way to handle any situation. Smooth Characters have SMOOTH MOVES!

SMOOTH MOVES
 Straight from the Camel's mouth.

SMOOTH MOVES
 Straight from the Camel's mouth.

SMOOTH TURKISH & DOMESTIC BLEND

SEE BACK PAGE FOR FREE PACK!

SURGEON GENERAL'S WARNING. Cigarette Smoke Contains Carbon Monoxide.

Complaint

127 F.T.C.

EXHIBIT A

CAMEL

smooth character.

MOVES

How to impress someone at the beach

proof advice

#325

SMOOTH MOVE #334

FREE PACK OFFER ON BACK PAGE!

1. Put your hands on your hips and look at the camera. The more the camera zooms in, the better.
2. If you're outdoors, get a towel with you to sit on.
3. If you're indoors, get a towel with you to sit on.
4. Always have plenty of Camel cigarettes with you.

LOOK FOR MORE SMOOTH MOVES COMING YOUR WAY SOON.

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Complaint

EXHIBIT A

**How to get a FREE pack
even if you don't like to
redeem coupons.**

SMOOTH MOVE #437



1. Ask your best friend to redeem it.
2. Ask a kind-looking stranger to redeem it.
3. Ask a good-looking stranger to redeem it.
4. Offer each a Camel and start a warm, wonderful friendship.

SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.

LIGHTS 9 mg "tar", 0.7 mg nicotine, LIGHTS HARD PACK 10 mg "tar", 0.7 mg nicotine, LIGHTS 100's 12 mg "tar", 0.9 mg nicotine, FILTERS 16 mg "tar", 1.0 mg nicotine, FILTERS HARD PACK 17 mg "tar", 1.1 mg nicotine, FILTERS 100's 16 mg "tar", 1.2 mg nicotine, REGULAR 21 mg "tar", 1.4 mg nicotine, av. per cigarette by FTC method

P0206

MANUFACTURERS COUPON EXPIRES 8-31-93



12300 10100

**FREE Pack
Of Camel!**

When You Buy 1. Any Style.



RETAILER YOU MUST FILL IN NORMAL RETAIL PRICE (100 NOT INCLUDE SALES TAXES)

90704

Complaint

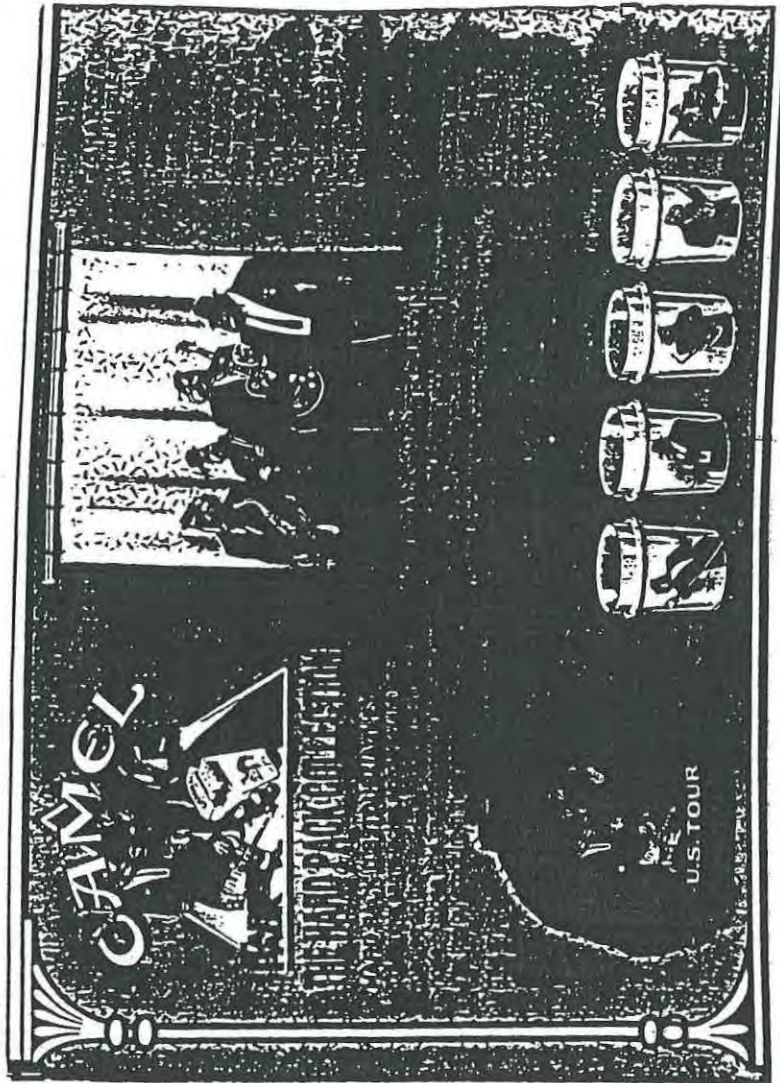
127 F.T.C.

EXHIBIT B

Catalogue #1



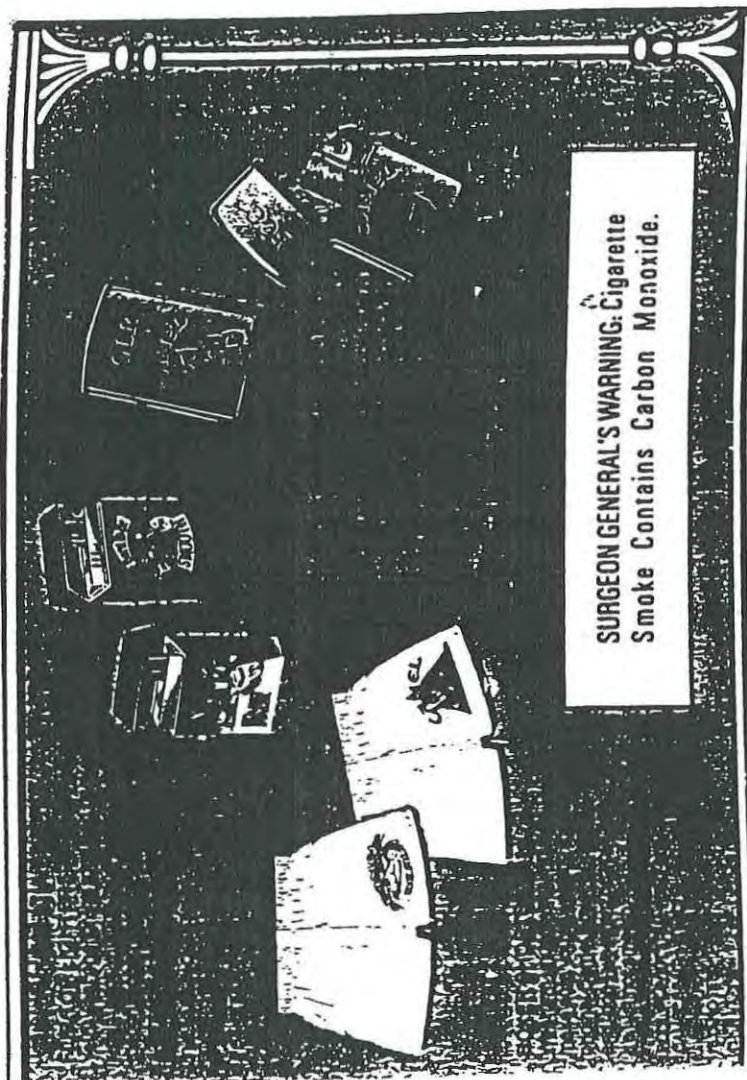
EXHIBIT B

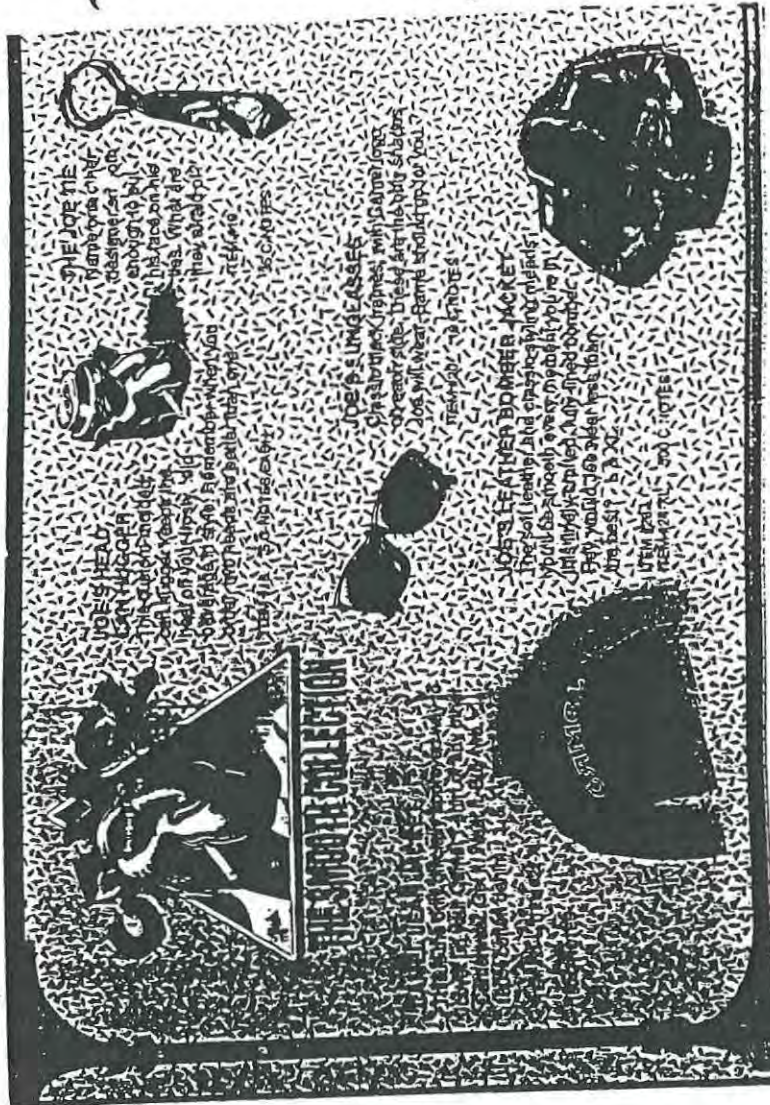


Complaint

127 F.T.C.

EXHIBIT B





Complaint

127 F.T.C.

EXHIBIT B



ORDER FORM

In order to receive
your Smooth stuff,
please do the following:

1. Complete this Original Order form
(next page) by indicating quantity
of items requested and amount
of Camel Cash enclosed. Circle
size desired where needed.

2. Fill out the back panel of the order
form completely. YOU MUST INCLUDE
YOUR SIGNATURE, BIRTHDATE AND
SHIPPING ADDRESS.

Mail this order form and Camel Cash to:

CAMEL CASH
P.O. BOX 5665
NORWODD, MN
55883-5665

EXHIBIT B

Before ordering please read the instructions on the cover of this order form.
Offer restricted to smokers 21 years of age or older.

Please print clearly.

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Pg #	Item #	Item Description	Size (circle one)	Quantity Ordered	# of C-Notes Each	Total C-Notes
2	01, 02	Hard Pack U.S. Tour Jacket	L XL		140	
2	03	Hard Pack Shower Curtain			75	
2	04	5 Hard Pack Tumblers Set			40	
2	05	Hard Pack Tumbler - Joe			8	
2	06	Hard Pack Tumbler - Max			8	
2	07	Hard Pack Tumbler - Floyd			8	
2	08	Hard Pack Tumbler - Bustah			8	
2	09	Hard Pack Tumbler - Eddie			8	
3	10	Flip Top Lighter - Hard Pack			5	
3	11	Flip Top Lighter - Born To Be Smooth			5	
3	12, 13	Boxer Shorts - Pool Player Joe	L XL		15	
3	14, 15	Boxer Shorts - Camel Beach	L XL		15	
3	16	Zippo Brass Lighter - "Personalized/Tuxedo Joe			33	
3	17	Zippo Brass Lighter - "Personalized/Original Camel			33	
4	18	Joe's Head Can Hugger			5	
4	19	Joe Camel Tie			35	
4	20	Joe's Sunglasses			10	
4	21, 22	Camel Jean Jacket	L XL		150	
4	23, 24	Joe's Leather Bomber Jacket	L XL		500	
5	25	Neon Camel Sign			600	
5	26	Motorcycle Joe Duffle			36	
5	27	Inflatable Air Mattress w/Radio			75	
5	28	Camel Director's Chair - "Personalized/1st Name			100	
5	29	Camel Beach Flip Flops			15	
6	30	Camel Watch - Tuxedo Joe			25	
6	31	Camel Watch - Camel Cash Joe			25	
6	32	16 oz Etched Glass Mug - Original Camel			15	
6	33	16 oz Etched Glass Mug - Born To Be Smooth			15	
6	34	16 oz Etched Glass Mug - Pool Player Joe			15	
6	35	Baseball Cap - Camel Beach	1 size		10	
6	36	Baseball Cap - Pool Player Joe	1 size		10	
7	37	Beach Towel - Pool Player Joe			20	
7	38	Beach Towel - Camel Beach			20	
7	39	Beach Towel - Hard Pack			20	
7	40, 41	Short Sleeve T-Shirt - Born To Be Smooth	L XL		8	
7	42, 43	Long Sleeve T-Shirt - Born To Be Smooth	L XL		12	
7	44, 45	Short Sleeve T-Shirt - Joe Breaks Through	L XL		8	
7	46, 47	Long Sleeve T-Shirt - Joe Breaks Through	L XL		12	
7	48, 49	Short Sleeve T-Shirt - Camel Cash	L XL		8	
7	50, 51	Long Sleeve T-Shirt - Camel Cash	L XL		12	
7	52	Camel Fleece Shorts - Pool Player Joe	1 size		34	
7	53	Camel Fleece Shorts - Joe Camel	1 size		34	
TOTAL					TOTAL	

*Fill in for Personalized Smooth Stuff Zippo Lighter (Initials 3 letters max.) _____

Director's Chair (Name 12 letters max.) _____

Complaint

127 F.T.C.

EXHIBIT B

Offer restricted to smokers 21 years of age or older.

Please print clearly.

All Camel C-Notes run out April 1977. All orders must be postmarked by May 31 1977. Offer good only in U.S.A., void where restricted or prohibited by law. Offer good while supplies last. Supplies are limited so act quickly. All promotional costs paid for by manufacturer. Please allow 10 weeks for shipment. This complete order form must accompany your request. No orders or testimonials of Camel C-Notes will be accepted. No clubs, groups or organizations may participate. Limit 20 items per family, household or address.

Name _____

Address _____ Phone # _____
area code

City _____ State _____ Zip _____

What is your birthdate? _____/_____/_____
(required) month day year Sex ☐ M ☐ F My usual Brand is _____
required

I certify that I am a smoker, that I am 21 years of age or older and that I want to receive free cigarettes, coupons, premiums, or offers in the mail. I understand that giving false information in order to accept these offers may constitute a violation of law.

Signature (required) _____

**SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.**

© 1991 (2) R.J. REYNOLDS TOBACCO CO

EXHIBIT B

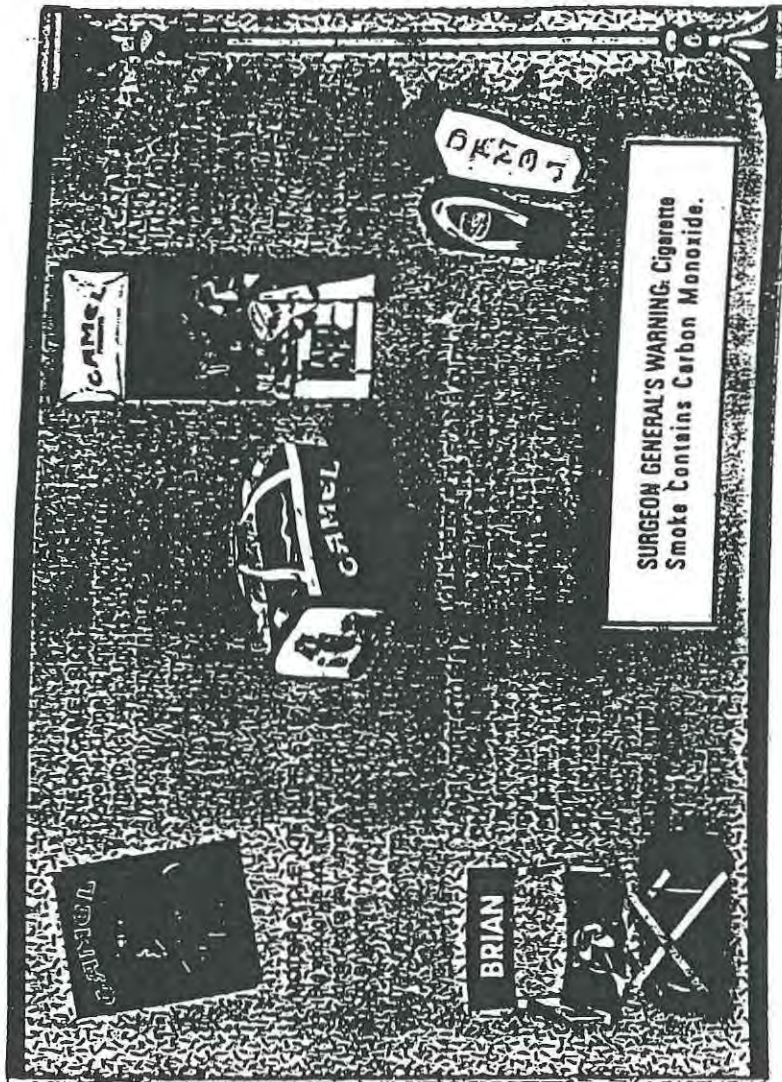


EXHIBIT B

THE CAMEL CUSTOM SHOP

JOE'S BASEBALL CAP:
Official cap of Camel League Baseball, also approved for any outdoor activity where sunlight gets in your eyes or sand gets in your shoes. Adjustable to fit any adult head, except that of your boss.

CAMEL BEACH, ITEM #35
POOL PLAYER, ITEM #36
10¢ NOTES

ETCHED GLASS 16 OZ. MUGS
The manager at The Gas's ordered too many of these, so Joe decided to offer 'em to you. It's the only glassware smooth enough to be Camel.

BORN TO BE SMOOTH
ITEM #33
15¢ NOTES

CAMEL WATCHES
It's always time for a Camel. Only question is, "Which one?" You pick.

TUXEDO JOE, ITEM #30
CAMEL OASH JOE, ITEM #31
25¢ NOTES

BEACH TOWELS
When they won't give you space to stretch out at the beach, just yell "Shark!" You'll find room soon. Then mark your spot with the smooth Camel Beach Towel of your choice 80" x 60".

POOL PLAYER, ITEM #37
CAMEL BEACH, ITEM #38
HARD PACK, ITEM #39
20¢ NOTES

POOL PLAYER, ITEM #34
ORIGINAL CAMEL, ITEM #32







Complaint

EXHIBIT B

T-SHIRTS
You won't find genuine Camelwear in no shopping mall shirt shack. It's only here. Pick the design you want from below, then wear it everywhere, all the time. 100% cotton, 100% smooth. Breast pocket. Long sleeve or short sleeve. L & XL.

SHORT SLEEVE: 50 NOTES
LONG SLEEVE: 125 NOTES

BORN TO BE SMOOTH
Short Sleeve, L: ITEM #40
Short Sleeve, XL: ITEM #41
Long Sleeve, L: ITEM #42
Long Sleeve, XL: ITEM #43

JOE BREAKS THROUGH
Short Sleeve, L: ITEM #44
Short Sleeve, XL: ITEM #45
Long Sleeve, L: ITEM #46
Long Sleeve, XL: ITEM #47

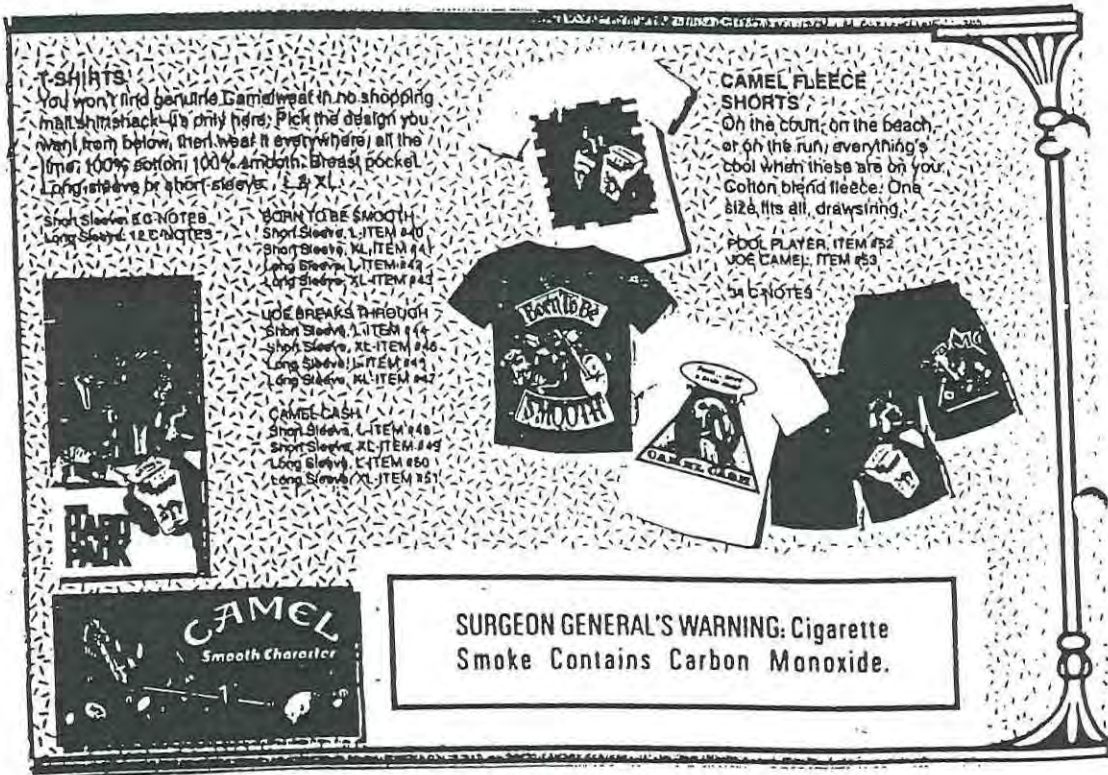
CAMEL CASH
Short Sleeve, L: ITEM #48
Short Sleeve, XL: ITEM #49
Long Sleeve, L: ITEM #50
Long Sleeve, XL: ITEM #51

CAMEL FLEECE SHORTS
On the town, on the beach, or on the run, everything's cool when these are on your. Cotton blend fleece. One size, fits all, drawstring.

POOL PLAYER: ITEM #52
JOE CAMEL: ITEM #53
54 C: NOTES

CAMEL
Smooth Character

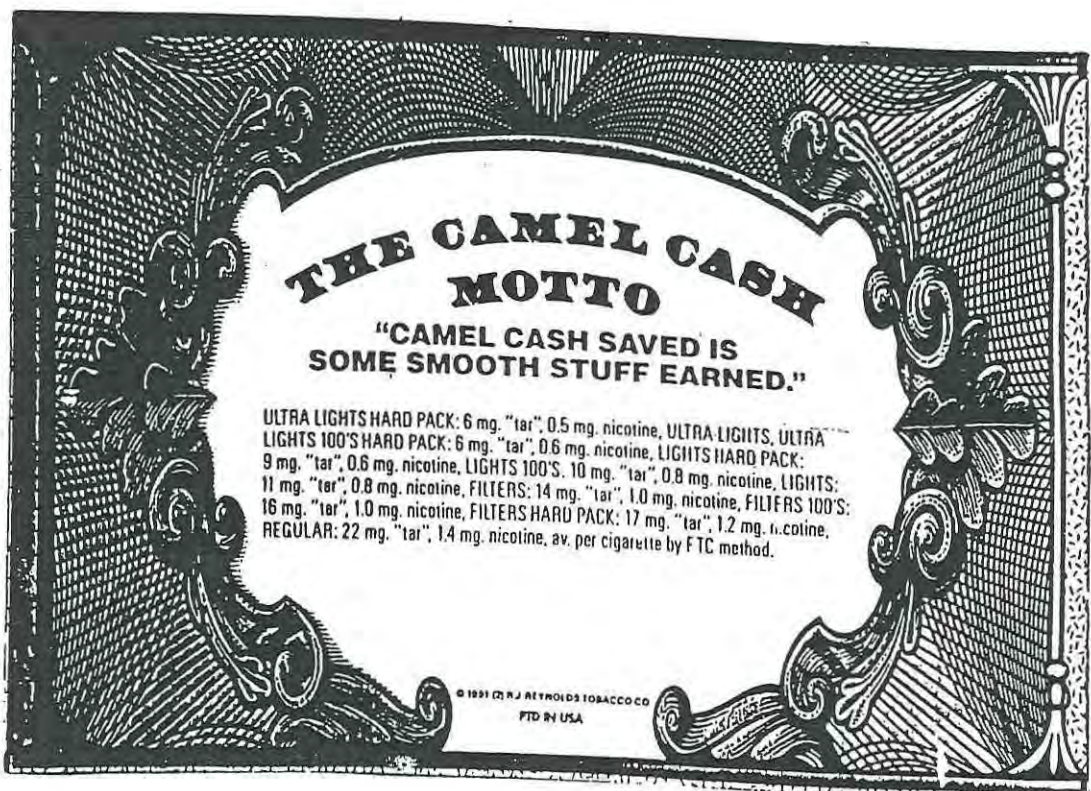
SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.



Complaint

127 F.T.C.

EXHIBIT B

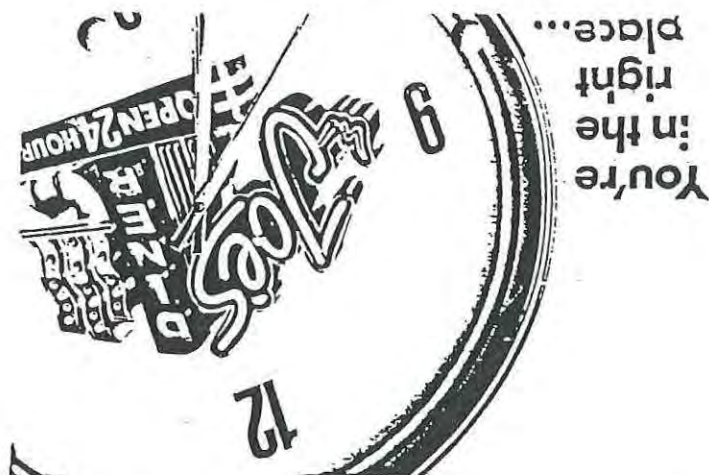


49

Complaint

EXHIBIT C

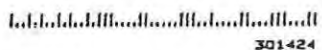
Direct Mail



Camel Cash Headquarters
P.O. Box 3200
Winston-Salem, NC 27102



PRESORTED



Complaint

127 F.T.C.

EXHIBIT C

Salt & Pepper Shakers
#09 in The Catalog

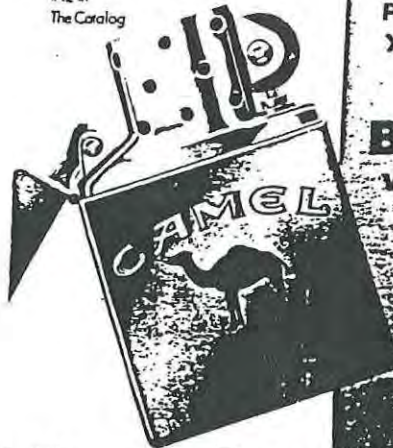


Get Camel Cash!

We'll send you ten Camel Cash C-Notes good toward anything in the Camel Cash Catalog.

Brought to you by Camel Lights

Outdoor Zippo®
#12 in The Catalog



Get The Catalog!

We'll send you the new Camel Cash Catalog - packed with smooth stuff you can get from Camel.

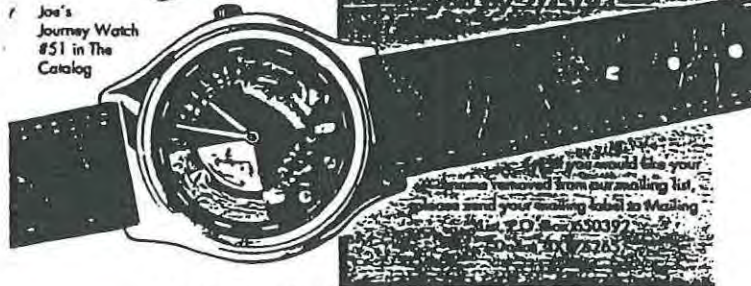
Get Big Savings!

We'll send you valuable coupons good for big savings on Camel.

Get Moving!

There's one small catch. We have to hear from you by 5/15/71.

Joe's Journey Watch
#51 in The Catalog



11 mg. "tar", 0.8 mg. nicotine av. per cigarette by FTC method.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

EXHIBIT D

Magazine Ad

© 1988 R.J. REYNOLDS TOBACCO CO

Smooth character

16 mg "tar", 1.0 mg. nicotine av. per cigarette by FTC method

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

Complaint

127 F.T.C.

EXHIBIT E

Magazine Ad



EXHIBIT E



Complaint

127 F.T.C.

EXHIBIT F

Magazine Ad

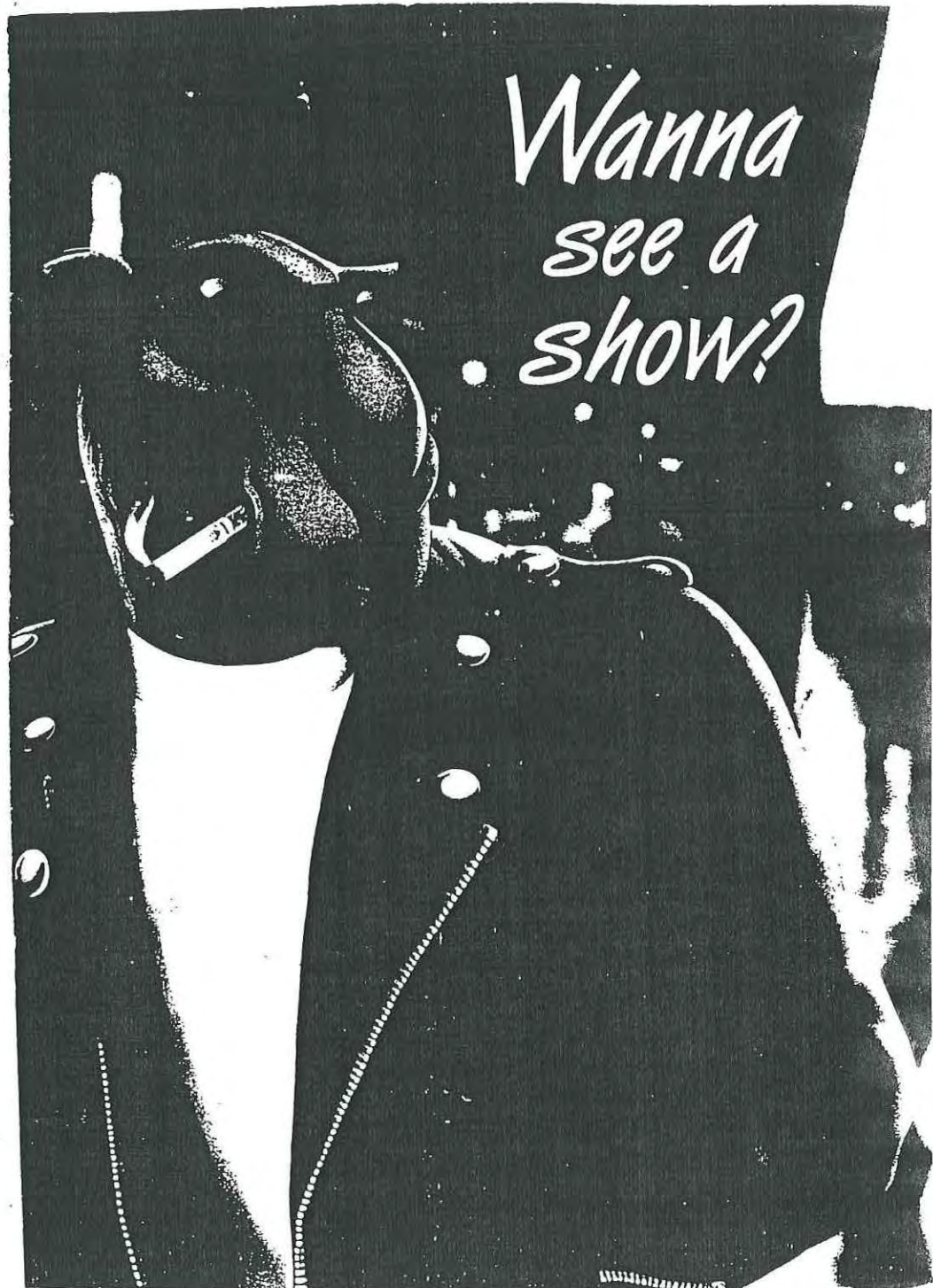


EXHIBIT F



*Go ahead,
it's on me.*

Save \$25
on Ticketmaster® tickets
with Camel Cash.

I'm not just talkin' concerts. With these
\$25 gift certificates, you could save on tickets
to just about any Ticketmaster® event.
And it only takes 100 Camel Cash C-Notes
to get one. Where is this rockin' deal?
Just flip the page, and you'll find it in the
Camel Cash Rockin' Road Trip.



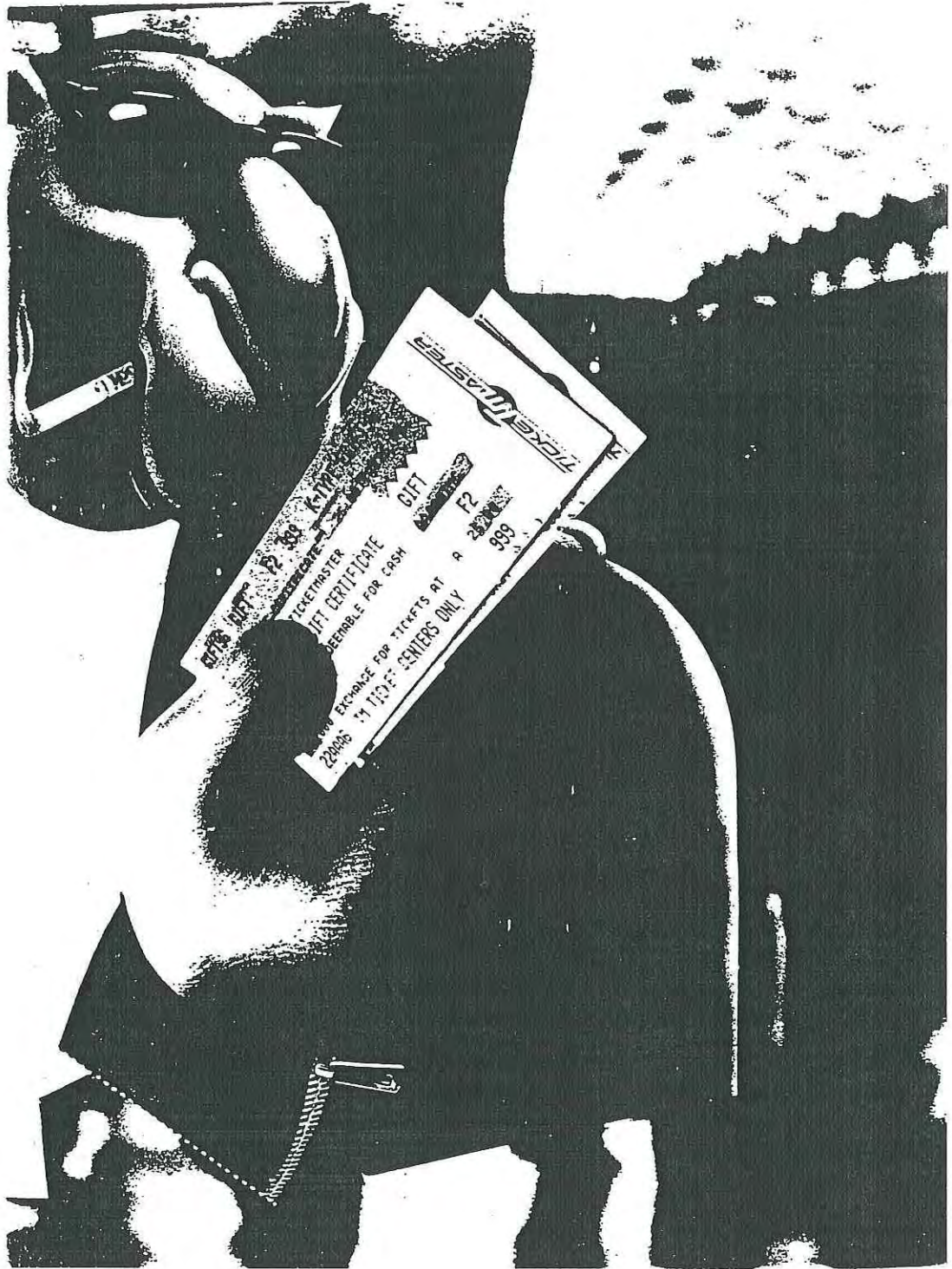
CERTIFICATES ARE NONREFUNDABLE, NONTRANSFERABLE AND NOT REDEEMABLE FOR CASH.
RESTRICTED TO SMOKERS 21 YEARS OF AGE OR OLDER.
ANY EVENT SUBJECT TO AVAILABILITY. SEE CAMEL CASH ROCKIN' ROAD TRIP FOR DETAILS.

**SURGEON GENERAL'S WARNING: Smoking
By Pregnant Women May Result in Fetal
Injury, Premature Birth, And Low Birth Weight.**

Complaint

127 F.T.C.

EXHIBIT F



49

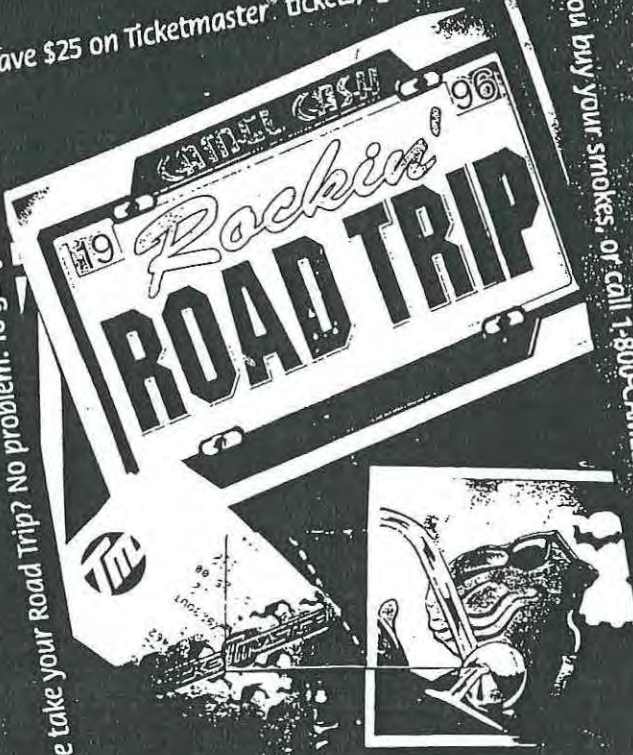
Complaint

EXHIBIT F

Take a Rockin' Road Trip.

save \$25 on Ticketmaster® tickets, go to wherever
you buy your smokes, or call 1-800-CAMEL-CASH (that's 1-800-226-3522).

Someone take your Road Trip? No problem. To get your own and



Rockin' Ticketmaster® Offer Inside.

© 1996 R.J. REYNOLDS TOBACCO CO.

**OFFER RESTRICTED TO SMOKERS
21 YEARS OF AGE OR OLDER.**

11 mg. "tar", 0.9 mg. nicotine
av. per cigarette by FTC method.

**SURGEON GENERAL'S WARNING: Smoking
By Pregnant Women May Result in Fetal
Injury, Premature Birth, And Low Birth Weight.**

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

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

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

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

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

The Statement continued:

If intuition and concern for children's health were a sufficient basis under the law for bringing a case, we have no doubt that a unanimous Commission would have

¹ 15 U.S.C. 45(b) and (n).

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

³ File No. 932 3162.

taken that action long ago. The dispositive issue here, however, was whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children, not whether smoking has an effect on children or whether the health of children is important.

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

I have carefully considered the totality of the available evidence, including new material that has been presented to the Commission, and have concluded that the new information does not strengthen the case the Commission rejected in 1994. As in 1994, the available evidence does not support the specific legal requirements of a complaint under Section 5 of the Federal Trade Commission Act.

ATTACHMENT

JOINT STATEMENT OF COMMISSIONERS

MARY L. AZCUENAGA, DEBORAH K. OWEN, AND ROSCOE B. STAREK, III

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

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

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

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I am very concerned about the harm that cigarette smoking poses to children, but I also take seriously the statutory limits on the Commission's authority to pursue enforcement actions against allegedly unfair practices. The evidence before us now, including the evidence obtained since the Commission considered this matter in 1994, does not convince me that there is reason to believe that the law has been violated. The issue in this case is whether the Joe Camel advertising campaign causes or is likely to cause children to begin or to continue smoking. As was true three years ago, intuition and concern for children's health are not the equivalent of – and should not be substituted for – evidence sufficient to find reason to believe that there is a likely causal connection between the Joe Camel advertising campaign and smoking by children.

Moreover, it simply is not in the public interest to bring this case now. Before committing a vast amount of scarce agency resources to this litigation, the Commission should await the resolution of the appeal of the federal district court decision striking down the Food and Drug Administration's tobacco advertising restrictions and the outcome of widely-reported settlement discussions between tobacco companies and numerous states. Either of these developments might result in advertising restraints that would largely duplicate any remedies the Commission might obtain.

Accordingly, I dissent from the majority's determination to issue a complaint.

FINAL ORDER

ORDER DISMISSING COMPLAINT

On November 24, 1998, complaint counsel filed a motion to dismiss this matter on the grounds that the relief sought in this proceeding has now been achieved through a recent settlement between the major tobacco companies (including respondent) and the attorneys general for 46 state and 5 other jurisdictions¹ and a modification of the annual survey on tobacco, alcohol, and drug use that is conducted by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services. The Administrative Law Judge ("ALJ"), by order dated December 2, 1998, certified this motion to the Commission, and, by order dated December 7, 1998, stayed further action in the adjudication before him, pending the Commission's review of complaint counsel's motion to dismiss. Respondent's answer, directed to the ALJ on December 4, states that it agrees that this matter should be dismissed but urges the ALJ to recommend that the Commission dismiss with prejudice.² Respondent also asked the ALJ to take action respecting placement on the public record of certain materials received in discovery from the Robert Wood Johnson Foundation ("Foundation") and Dr. John P. Pierce. In a statement filed with the Commission, the Foundation requested the Commission to order *in camera* treatment for its submissions and to order related relief.

Upon consideration of the submission of the parties, the Commission hereby dismisses the complaint without prejudice and denies the Foundation's request for relief respecting materials it submitted in discovery. By Order dated December 29, 1998, the ALJ has denied respondent's motion for action respecting discovery materials.

¹ Master Settlement Agreement Between Settling State Officials and Participating Manufacturers (Nov. 23, 1998)(available as of December 15, 1998 at <http://www.naag.org/settle.html>)(hereafter the "November 23 Master Settlement Agreement").

² Respondent attached to its response its Motion to Dismiss on the grounds that complaint counsel failed to satisfy its evidentiary burden, filed November 23, 1998. This motion was not certified to the Commission by the ALJ and is, accordingly, not before the Commission.

DISCUSSION

Complaint Counsel's Motion to Dismiss

The Commission's notice order accompanying the complaint set out three key areas of relief: (1) a prohibition of advertisements to children of Camel brand cigarettes through the use of themes or images relating to "Joe Camel" or associated figures; (2) dissemination of public education messages discouraging persons under 18 from smoking; and (3) collection, maintenance, and making data available to the Commission concerning sales of each brand of respondent's cigarettes to persons under 18 and each brand's share of smokers under 18.

With respect to the first area of relief, the November 23 Master Settlement Agreement specifically bans the use of all cartoon characters, including Joe Camel, in the advertising, promotion, packaging, and labeling of any tobacco product. As for the second, the settlement requires the tobacco companies to help finance a national public education fund designed to carry out on a nationwide basis sustained advertising and education programs to counter underage usage of tobacco products and to educate consumers about the causes and prevention of diseases associated with the use of tobacco products.³ Finally, the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services is revising the protocol for its annual national household survey on drug abuse to add specific questions to elicit brand share of smokers under 18.⁴

Accordingly, the most important elements of the relief set out in the Commission's notice order should be accomplished without the need for further litigation in this case. Therefore, the public interest warrants dismissal of the complaint.

³ The November 23 Master Settlement Agreement anticipates that each state will seek state court approval of the settlement.

⁴ See Department of Health & Human Servs., Substance Abuse & Mental Health Servs., Agency Information Collection Activities: Submission for OMB Review; Comment Request, 63 Fed. Reg. 44,866 (1998) (noting that annual survey will be revised to include information on usual brands, including Reynolds' brands, smoked by persons 12 and over). In the past, this survey has been used to determine the prevalence of use of tobacco, alcohol, and illegal drugs among persons 12 and over.

Respondent's Request for Dismissal With Prejudice

In its response, which was filed after the ALJ certified complaint counsel's motion to dismiss to the Commission, respondent requested that the ALJ make certain recommendations to the Commission to the effect that the complaint should be dismissed with prejudice.⁵ Respondent also asked the ALJ to forward to the Commission the motion to dismiss that respondent filed with the ALJ at the close of complaint counsel's case-in-chief. That motion asked the ALJ to determine that complaint counsel had failed to meet its evidentiary burden on causation. Respondent claimed that forwarding its motion to the Commission would "inform it of the strong nature of Reynolds' defenses -- and the concomitant advisability of a public interest dismissal" and thus would support respondent's request for a dismissal with prejudice. Respondent's Response to Complaint Counsel's Motion to Dismiss, at 4.

Rule 3.22(a) of the Commission's Rules of Practice contemplates that the ALJ will rule in the first instance on most motions; Rule 3.22(e) also authorizes the ALJ to defer ruling on a motion to dismiss for failure to meet an evidentiary burden until immediately after all evidence has been received and the hearing record is closed. The ALJ is also required to certify a motion to dismiss on public interest grounds to the Commission.⁶ Finally, Rule 3.22(a) authorizes the ALJ to accompany such a certification with "any recommendation that he or she may deem appropriate."

Here, consistent with his authority under Rule 3.22(e), the ALJ has not ruled on respondent's motion to dismiss. As for complaint counsel's motion to dismiss, the ALJ has properly certified this motion to the Commission and has declined to make the recommendations requested by respondent. The ALJ did, however, state in his December 7 Order Staying Proceedings that:

⁵ Respondent requested that the ALJ recommend, among others, that "[t]his dismissal should be with prejudice. Subjecting Reynolds to the continued specter of litigation in this matter in light of the termination of the [Joe Camel] campaign, the length of the investigation and adjudication, and complaint counsel's failure to establish causation would be unreasonable and unfair." Recommendations Concerning Complaint Counsel's Motion to Dismiss, *R.J. Reynolds Co.*, Docket No. 9285 (Dec. 4, 1998) (attached to Respondent's Response to Complaint Counsel's Motion to Dismiss).

⁶ See Rule 3.22(a); *Century 21 Commodore Plaza, Inc.*, 95 FTC 808, 818 (1980); *Herbert R. Gibson, Sr.*, 90 FTC 275 (1977).

[t]o recommend . . . that the complaint be dismissed on the merits would require more than a quick decision on the submitted papers. I am not convinced that the link between the Camel advertising campaign and increased smoking among children must be demonstrated, as argued by respondent, *only* by a definitive, statistically significant scientific study. Furthermore, there may well be reliable evidence in the record of this case on this issue, in the 2,000 exhibits that have been received thus far, or in the testimony of the expert witnesses.⁷

Further, in dismissing this complaint, the Commission is not reaching a decision on the merits. Respondent's motion to dismiss is not before the Commission for decision, and respondent does not appear to ask the Commission to enter a ruling on the merits.⁸ Indeed, a ruling on the merits would require the Commission to remand this matter to the ALJ, resulting in a possible resumption of the trial.⁹ We understand that neither complaint counsel nor respondent intends that result.

The Commission has consistently refrained from dismissing a complaint with prejudice absent a substantive ruling. Without such a ruling by the ALJ or the Commission, it is not appropriate to foreclose the possibility of further litigation where unanticipated problems might develop with one or more of the relevant remedies.¹⁰

⁷ (Emphasis in original) (footnote omitted). We decline to provide an advisory opinion on what is legally required to prove that the Joe Camel campaign caused or was likely to have caused children to begin or continue smoking. However, we do agree with the ALJ that proving a link between advertising and youth smoking might be accomplished by means other than a definitive, statistically significant scientific study. Because we are not ruling on the merits of this matter, we express no opinion on whether the record does or does not contain the necessary, relevant evidence.

⁸ Respondent does argue that closure to the prosecution of Reynolds "can be accomplished by recognizing the arguments advanced in Reynolds' pending Motion for Dismissal as additional rationales for terminating this proceeding," Respondent's Response to Complaint Counsel's Motion to Dismiss, at 2. We view this discussion of possible outcomes to fall short of a request for an explicit ruling on the merits of Reynolds' motion.

⁹ We view the ALJ's Order Staying Proceedings as indicative of his lack of willingness to decide Respondent's Motion to Dismiss at this time and, as discussed *supra*, the ALJ is authorized by Rule 3.22(e) to defer ruling on such a motion to dismiss until immediately after all evidence has been received and the hearing record is closed.

¹⁰ The Commission is not persuaded that any future litigation challenging the Joe Camel campaign would violate any of Respondent's Due Process or other legal rights. The doctrine of *res judicata*, which bars a subsequent action only if there is a final judgment on the merits in the earlier action, would not apply. As described above, no such judgment was rendered here by the ALJ or the Commission. *See, e.g., United States v. Cunan*, 156 F.3d 110 (1st Cir. 1998). In addition, the Double Jeopardy Clause of the Fifth Amendment "protects only against the imposition of multiple *criminal* punishments for the same offense." *Hudson v. United States*, 118 S. Ct. 488, 493 (1997)(emphasis in the original). Nor can we conclude that any passage of time between the dismissal of the instant complaint and the possible commencement of a new proceeding would deprive respondent of an opportunity to present an effective defense. In any event, a future Commission would undoubtedly give careful consideration, as part of its determination that a case is in the public interest, to any claims respondent might make that it was unfairly prejudiced by the passage of time.

We, therefore, conclude that the complaint should be dismissed without prejudice.

Requests Relating to Third Party Submissions

Respondent's Response to Complaint Counsel's Motion to Dismiss initially requested that the ALJ hold open the public record to permit respondent "to place in evidence certain documents submitted in discovery from" the Foundation and Dr. Pierce. After opposing statements were filed by the Foundation and Dr. Pierce,¹¹ respondent filed a submission with the ALJ explaining that its response had only requested (and, notwithstanding the stay, continued to request) that the ALJ issue an order establishing a schedule for a briefing and hearing on the disclosure issue. By order dated December 29, 1998, the ALJ declined to issue such an order.

The Foundation's statement in opposition to respondent's request, which was filed with the Commission, asked the Commission to rule on its prior motion to the ALJ. That motion sought *in camera* treatment for Foundation documents. The statement also asked, as related relief, that respondent "be required to (i) submit a certification that it has fully complied with the terms of the protective order with regard to the Foundation's peer review materials [and] (ii) provide to the Foundation all copies of all agreements executed in accordance with paragraph 11 of the protective order."¹²

Rather than delaying the disposition of this matter by remanding the Foundation's requests to the ALJ, the Commission has considered and hereby denies them. There is no basis for granting the Foundation's request for *in camera* treatment because, in light of this Order dismissing the complaint, the documents are not to be used in litigation. In addition, paragraph 11 of the ALJ's July 18, 1997 protective order prohibits respondent from disclosing the documents

¹¹ The Foundation and Dr. Pierce, along with the Commonwealth of Massachusetts, had previously filed oppositions before the ALJ to Respondent's Notice of Disclosure of confidential documents submitted by the Foundation and Dr. Pierce.

¹² The paragraph 11 agreements are those executed by certain recipients of confidential materials obtained by RJR.

The Foundation also sought other related relief, including a requirement that respondent "... (iii) identify all persons to whom the Foundation's peer review materials have been disseminated or disclosed; (iv) describe with particularity any dissemination or disclosure of the peer review materials not authorized by or in accordance with the terms of the protective order; and (v) retrieve and return to the Foundation all copies of the peer review materials disseminated or disclosed contrary to the protective order's terms."

outside of this litigation and paragraph 14 requires respondent to return the documents upon dismissal of the proceeding. Paragraph 11 itself already entitles the Foundation to copies of the paragraph 11 agreements at issue here.¹³ The Foundation has not offered sufficient justification for the other related relief sought by its motion.

Accordingly, *It is ordered*, That the Complaint is dismissed without prejudice. *It is further ordered*, That the Foundation's motion for *in camera* treatment and related relief is denied.

¹³ The protective order, by its own terms, continues to bind the parties' communication and use of confidential materials after conclusion of the action. See paragraph 16.

IN THE MATTER OF
FIRST AMERICAN REAL ESTATE SOLUTIONS, LLC

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FAIR CREDIT REPORTING ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3849. Complaint, Jan. 27, 1999--Decision, Jan. 27, 1999

This consent order, among other things, requires the respondent, a provider of consumer credit reports, to investigate information in the respondent's credit reports that consumers dispute and then either record the current status of the disputed information or delete it from the file. Within five business days after receiving a consumer dispute, the respondent must notify the furnisher of the information that the information is being disputed. The respondent must also maintain reasonable procedures to prevent the reappearance of information that has been deleted in future credit reports issued by respondent. In addition, the consent order requires that the respondent provide written notice to the consumer of the results of the reinvestigation of any disputed item and extend to the consumer the right to request that the respondent provide to any person designated by the consumer either a notice that the disputed item has been corrected or deleted, or a copy of the consumer's dispute statement.

Participants

For the Commission: *Thomas E. Kane, David Medine and Margaret Patterson.*

For the respondent: *Michael Meltzer, Miller, Nash, Wiener, Hager & Carlsen, Portland, OR.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that certain prior practices of First American CREDCO, Inc., a corporation, violated the provisions of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681-1681u, as amended, as well as the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. First American CREDCO, Inc. is incorporated in the State of Washington and has its principal office or place of business at 5625 Ruffin Road, Suite 200, San Diego, California.
2. As of November 30, 1997, the consumer reporting business of First American CREDCO, Inc. was reorganized as an operating