

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS USA, INC.,
f/k/a PHILIP MORRIS INC., et al.,

Defendants.

Civil No. 99-CV-02496 (GK)

REDACTED FOR PUBLIC FILING

SUBMITTED PURSUANT TO ORDER #471

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1 I. PERSONAL BACKGROUND

2 Q: Mr. Lindsley, please state your name.

3 A: Victor Lindsley.

4 Q: By whom are you employed?

5 A: Lorillard Tobacco Company.

6 Q: What is your current position at Lorillard?

7 A: Senior Group Brand Director at Lorillard Tobacco Company.

8 Q: What are your responsibilities in that position?

9 A: I direct the Brand Marketing Team that develops and carries out the marketing plans for
10 Newport cigarettes.

11 Q: How long have you worked for Lorillard?

12 A: Since 1981.

13 Q: What jobs have you had with Lorillard?

14 A: **1981-82.** Out-of-home field representative, responsible for buying and evaluating
15 billboard advertising.

16 **1982-84.** Assistant brand manager for Newport, assisting in the day-to-day execution of
17 the Newport marketing plan and serving as liaison with our advertising agency.

18 **1984-85.** Associate Brand Manager for Newport, responsible for more significant
19 projects than in my prior position, including assisting in the development of Newport's
20 annual marketing plan.

21 **1985-87.** Brand Manager for Newport, responsible for the development of Newport's
22 marketing plan.

23 **1987-89.** Brand Manager for Kent, True and Harley-Davidson. I had the same
24 responsibility for these brands as I had had for Newport in my prior position.

25 **1989-90.** Senior Brand Manager. This was a promotion, but my responsibilities did not
26 change.

27 **1990-2001.** Group Brand Director for Newport, Kent and True, responsible for directing
28 the marketing plans and brand marketing teams for Lorillard's full-price brands. In

1 addition, from late 1998 until early 2002, I was involved with the implementation of
2 Lorillard's Youth Smoking Prevention Program.

3 **2001-present.** Senior Group Brand Director for Newport. I am currently responsible for
4 directing the brand marketing team that forms the marketing plans for Newport
5 cigarettes.

6 **Q: Do you have knowledge and understanding of the history of Lorillard's brands and**
7 **an understanding of Lorillard's marketing of its cigarettes including the regulations and**
8 **company policies which govern the marketing of its cigarettes?**

9 A: Yes.

10 **Q: Have you ever been deposed in a Lorillard case?**

11 A: Yes.

12 **Q: In how many cases?**

13 A: Including this one, 10 cases.

14 **Q: Have you ever testified in a trial?**

15 A: No. This is the first time.

16 **II. LORILLARD'S CIGARETTE BRANDS**

17 **Q: How does Lorillard rank in size compared to the other major manufacturers?**

18 A: Lorillard is the smallest of the large cigarette manufacturers, behind Philip Morris and
19 Reynolds American. Before R.J. Reynolds and Brown & Williamson merged, we were fourth.

20 **Q: Referring you to JD-024279, which is the Maxwell Report from February 2004,**
21 **what were the market shares of the major companies in 2003?**

22 A: Here are the market shares in 2003 for the four largest companies:

23 Philip Morris: 50.4%

24 R.J. Reynolds: 21.5%

25 Brown & Williamson: 10.5%

1 Lorillard: 9.3%

2 **Q: Are the Maxwell Reports generally used and relied upon by persons in your**
3 **occupation?**

4 A: Yes.

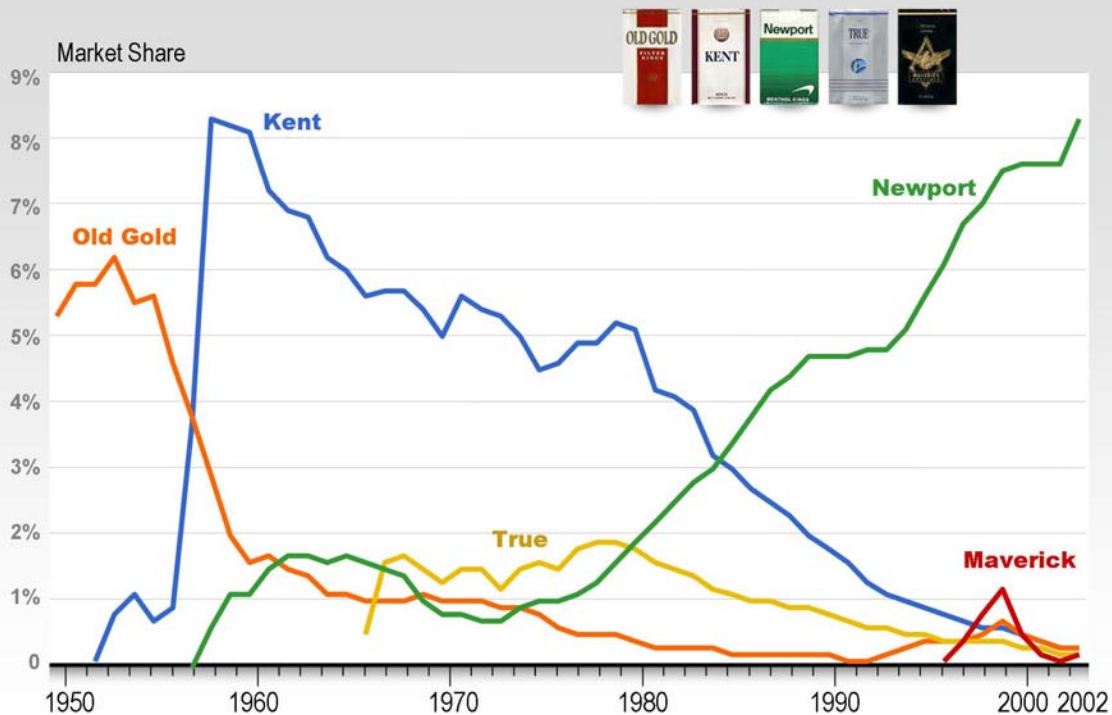
5 **Q: What are Lorillard's brands currently?**

6 A: Our major brand is Newport, with close to 90% of our sales. We also manufacture Kent,
7 Old Gold, True, Maverick, Max and Satin.

8 **Q: Please look at JDEM-020174, which is copied on the next page and which contains**
9 **data from the Maxwell Reports since 1950; based on your experience at Lorillard, are that**
10 **graph and table of the market share of Lorillard and its major brands consistent with your**
11 **understanding?**

12 A: Yes, they are.

Market Share of Lorillard Brands 1950-2002



Source: Maxwell Reports, 1950-2002

JDEM-020174

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1950				5.3		5.5
1951				5.8		5.9
1952	0.1			5.9		6.2
1953	0.8			6.2		7.2
1954	1.1			5.5		6.7
1955	0.7			5.6		6.4
1956	0.9			4.6		5.4
1957	3.7			3.8		7.7
1958	8.3		0.6	2.9		11.9
1959	8.2		1.1	2.0		11.6
1960	8.1		1.1	1.6		11.0
1961	7.2		1.5	1.7		10.6
1962	6.9		1.7	1.5		10.9

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1977	4.9	1.8	1.1	0.5		8.8
1978	4.9	1.9	1.3	0.5		9.1
1979	5.2	1.9	1.6	0.5		9.7
1980	5.1	1.8	1.9	0.4		9.7
1981	4.5	1.6	2.2	0.3		9.2
1982	4.2	1.5	2.5	0.3		8.7
1983	3.9	1.4	2.8	0.3		9.2
1984	3.2	1.2	3.0	0.3		8.2
1985	3.0	1.1	3.4	0.2		8.1
1986	2.7	1.0	3.8	0.2		8.1
1987	2.5	1.0	4.2	0.2		8.2
1988	2.3	0.9	4.4	0.2		8.2
1989	2.0	0.9	4.7	0.2		8.0

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1963	6.8		1.7	1.4		10.4
1964	6.2		1.6	1.1		9.4
1965	6.0		1.7	1.1		9.2
1966	5.6	0.5	1.6	1.0		9.3
1967	5.7	1.6	1.5	1.0		10.0
1968	5.7	1.7	1.4	1.0		10.2
1969	5.4	1.5	1.0	1.1		9.1
1970	5.0	1.3	0.8	1.0		8.4
1971	5.6	1.5	0.8	1.0		9.1
1972	5.4	1.5	0.7	1.0		8.7
1973	5.3	1.2	0.7	0.9		8.4
1974	5.0	1.5	0.9	0.9		8.5
1975	4.5	1.6	1.0	0.8		8.2
1976	4.6	1.5	1.0	0.6		8.0

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1990	1.8	0.8	4.7	0.2		7.7
1991	1.6	0.7	4.7	0.1		7.3
1992	1.3	0.6	4.8	0.1		7.2
1993	1.1	0.6	4.8	0.2		7.1
1994	1.0	0.5	5.1	0.3		7.5
1995	0.9	0.5	5.6	0.4		8.0
1996	0.8	0.4	6.1	0.4		8.4
1997	0.7	0.4	6.7	0.4	0.4	8.8
1998	0.6	0.4	7.0	0.5	0.8	9.4
1999	0.6	0.4	7.5	0.7	1.2	10.4
2000	0.5	0.3	7.6	0.5	0.5	9.4
2001	0.4	0.3	7.6	0.4	0.2	8.9
2002	0.3	0.2	7.6	0.3	0.1	8.6
2003	0.3	0.2	8.3	0.2	0.2	9.2

A. Brief History of Newport

Q: What is Newport?

A: Newport is a menthol brand, with full flavor, medium and light offerings. We also offer Newport Stripes, available in menthol and non-menthol, and Newport Slims.

Q: Where does Newport rank nationally among the other brands?

A: It currently ranks second in sales among all cigarette brands and first among menthol cigarettes.

Q: Has Newport always been No. 2 among all cigarette brands?

A: Not at all. It didn't become No. 2 until the mid-1990's.

Q: In your work at Lorillard, have you learned about the history of Lorillard and its brands from the time before you started with Lorillard?

A: Yes, I have learned some of that history.

Q: What is Newport's early history?

A: Newport was introduced in 1957 and rose incrementally, but, as shown in the graph above, in 1966 it started a six-year, 50% decline in market share.

Q: What did Lorillard do about the decline?

A: In 1972, Lorillard reformulated the brand.

Q: How did it do that?

A: It modified Newport's taste to place its tobacco-menthol balance midway between the leading menthols, Kool and Salem, re-designed the package, and introduced a new advertising campaign based on a consumer communications platform of "Pleasure." The following year that campaign took on the slogan, "Alive With Pleasure!" and the tagline, "After all, if smoking isn't a pleasure, why bother?" Lorillard still uses this "Pleasure" theme today as its platform for communicating to consumers. We currently use the slogan "Newport Pleasure!"

Q: What happened after the brand was overhauled?

A: Newport's sales slowly began to rebound, and its market share has climbed steadily ever since. At least since I have been with the company, the market shares of Kool and Salem have fallen.

B. Brief History of Lorillard's Other Brands

Q: Earlier you mentioned other brands of Lorillard's. How do these compare with Newport?

A: Our other brands are much smaller today, and they have been declining for many years.

- Kent, on the market since 1952, has three line extensions in two taste segments, lights and ultra-lights. Those line extensions are Kent, Kent Golden Lights and Kent III. Kent's market share has dropped every year since 1979.
- Old Gold, with Full Flavor Filter, Lights, Ultra-Lights, and Non-Filter, has been available since before the filter era, and has been in general decline since the late 1950s.

- True is an ultra low-tar brand. It was introduced in 1966 and has fallen since 1979. It has both a regular and menthol version.
- Maverick, with full flavor and lights versions, is a more recent brand. It was introduced in 1996 as the successor to Harley-Davidson, which was dropped at that time. Maverick peaked in 1999 and has declined since.

Q: Do the brands other than Newport currently receive any marketing support?

A: Old Gold and Maverick get some retail support such as price discounting and point-of-sale. No Lorillard brand other than Newport receives media advertising or direct mail support.

III. OVERVIEW OF TESTIMONY

Q: Mr. Lindsley, do you plan to offer testimony concerning allegations made by the Government in this case pertaining to whether Lorillard markets to underage individuals and non-smokers?

A: Yes.

Q: Are there legal, regulatory, and internal standards that govern how and to whom Lorillard markets its cigarettes?

A: Yes.

Q: What are they?

A: These standards include the following:

- FTC Cigarette Advertising Guides. (U.S. Ex. 61239.)
- The industry's 1965 Cigarette Advertising Code. (JD-080032.)
- The industry's Code of Cigarette Sampling Practices of 1981. (JD-060906.)
- The industry's Cigarette Advertising and Promotion Code of 1990. (JE- 20344.)
- MSA (U.S. Ex. 64359.)
- Lorillard's Corporate Principles On Marketing, Promotion and Youth Smoking of 1999. (U.S. Ex. 55455.)

- 1 • Lorillard's Corporate Principles On Marketing, Promotion and Youth Smoking of
2 2003. (JD-025068.)
- 3 • Lorillard's policies regarding magazine advertisement placement. (E.g., JE-022143.)
- 4 • Lorillard's Corporate Principles On Marketing, Promotion and Youth Smoking of
5 2005. (JD-25152.)

6 In addition, since I have been with the company, the requirements of the various standards
7 have been incorporated in our written marketing procedures. This written manual has had
8 various names; today it is called the Lorillard Marketing Regulation Manual. JE-067506. In
9 2000, Lorillard supplemented that manual with the Lorillard Promotion Marketing Manual,
10 JD-020592, to cover requirements applicable to promotion marketing.

11 **Q: During your time with Lorillard, has Lorillard complied with these standards in the**
12 **marketing of its cigarettes?**

13 A: To my knowledge, yes, we have.

14 **Q: Are there additional standards to which Lorillard must comply?**

15 A: Yes. In addition to these standards, Lorillard must also comply with a large variety of
16 state and local laws and regulations pertaining to matters like sampling, contests, price
17 promotions, and advertising.

18 **Q: When you started with Lorillard in 1981, what was its policy regarding magazine**
19 **placement of cigarette advertising?**

20 A: We followed the Cigarette Advertising Code, which prohibited advertising in
21 publications "directed primarily to persons under twenty-one years of age." (JD-080032 at
22 0657.)

23 **Q: Was that requirement changed by the MSA?**

24 A: No.

25 **Q: Has Lorillard's magazine placement policy changed since the MSA?**

1 A: Yes. In 2001, we decided not to advertise in any magazine with a youth readership (ages
2 12-17) over 18%, as measured either by Simmons Market Research Bureau or MRI. As of the
3 beginning of this year, Lorillard restricted its magazine advertising further. We now advertise
4 only in magazines with less than 15% or 2 million youth readers, whether or not they are
5 measured by Simmons or MRI. Magazines that are not measured by Simmons or MRI must
6 show us a full demographic profile indicating that they meet the same criteria. I will describe
7 these restrictions further when I discuss our magazine advertising.

8 **Q: How does Lorillard make sure that all appropriate personnel know its marketing**
9 **standards and follow them?**

10 A: One way is that, for as long as I have been with the company, Lorillard has issued the
11 Lorillard Marketing Regulation Manual and its predecessors to all people involved in developing
12 and executing marketing plans, including the outside agency responsible for Newport
13 advertising. They are distributed to appropriate personnel with instructions to abide by them.
14 There have been other communications of these standards as well.

15 **Q: Referring you to JD-020675, can you identify that?**

16 A: Yes. That is a letter from 1991 in which Andrew Tisch, then Lorillard's Chief Executive
17 Officer, sent the new Cigarette Advertising and Promotion Code to Lorillard's officers, nearly 50
18 employees of five departments, our entire sales force and our three outside advertising agencies.
19 Mr. Tisch said: "Your obligation is to assure that everyone, who is in any way engaged in
20 advancing the Lorillard marketing effort, is familiar with and adheres to its intent and its spirit."

21 **Q: Were you one of the recipients of Mr. Tisch's letter?**

22 A: Yes, I was.

23 **Q: Q: What are the Lorillard Corporate Principles?**

1 A: A: In 1999, Lorillard combined the principles of the voluntary Cigarette Advertising
2 and Promotion Code and provisions pertaining to marketing practices of the Master Settlement
3 Agreement to form its Corporate Principles On Marketing, Promotion and Youth Smoking.

4 **Q: Have Lorillard's Corporate Principles been provided to Lorillard's employees?**

5 A: Yes. The Corporate Principles have been published in our internal magazine *The*
6 *Informer*, and also provided to employees in a pamphlet version. In addition, they are included
7 in the new-hire packet provided to new employees.

8 **Q: Referring you to JD-020586, JE-025844, and JD-025153, can you identify them?**

9 A: Yes, those are the copies of *The Informer* that contained the 1999, 2003 and 2005
10 Corporate Principles. Each of them also contained a letter to all employees from our CEO,
11 Martin Orlowsky, describing how important the company considers them.

12 **Q: Referring you to JD-025152, what is that?**

13 A: It is the pamphlet version of the 2005 Corporate Principles that was distributed to all
14 Lorillard employees.

15 **Q: Referring you to JD-024501, what is that?**

16 A: It is a copy of the new-hire packet we gave to all new employees in 2004, containing the
17 Corporate Principles. The current new-hire packet contains the 2005 Corporate Principles.

18 **Q: Referring you to JD-020593, can you identify that?**

19 A: It is an e-mail from Randy Spell, Executive Vice President of Marketing and Sales, in
20 2003 to the five department heads who report to him to make sure that every employee in their
21 departments "got [the Corporate Principles booklet], has had an opportunity to read it, and [has]
22 an understanding of its content." JD-020593. Mr. Spell made it clear that the employees needed
23 to "understand and abide by" the Principles. "The more people that understand and insure

1 compliance,” he wrote, “the better we can all do at upholding these policies, procedures and
2 principles.” Mr. Spell sent a similar letter regarding the 2005 Corporate Principles.

3 **Q: The Government claims that Lorillard advertises and promotes Newport in an**
4 **attempt to obtain replacement smokers, meaning nonsmokers who replace smokers who**
5 **either quit or die. Does Lorillard do that?**

6 A: No.

7 **Q: Why then do you advertise and promote Newport?**

8 A: We advertise and promote Newport for three reasons: To maintain the loyalty of
9 Newport smokers (*i.e.*, “franchise smokers”), to get people who smoke other brands (*i.e.*,
10 “competitive smokers”) to try Newport and switch to it, and to increase our share of the
11 purchases of adult smokers who have a Lorillard brand as part of their occasional brand
12 purchases.

13 **Q: What efforts do you make to limit the reach of your advertising to adults?**

14 A: I will answer this more fully later when I explain our marketing process, but, briefly, we
15 don’t target kids, we follow all the standards that I have mentioned, we use adult imagery in our
16 ads, and we seek to limit our direct mail program to smokers who are at least 21.

17 **Q: Isn’t it still possible that your ads will reach some people under the age of 18?**

18 A: Of course. We can’t keep all kids from seeing our ads, just as we can’t keep them from
19 seeing cigarettes or people smoking cigarettes. So long as cigarettes are a legal product and we
20 have the right to advertise them to adult consumers, kids will be aware of smoking and there will
21 be some spillover of our advertising messages to them. But, as I have already stated and as I will
22 explain more fully later, we have imposed a long list of restrictions to focus our marketing
23 efforts on our intended audience, adult smokers, and to limit their exposure to kids.

1 **Q: Has the FTC ever taken any action against Newport's advertising or marketing?**

2 A: Not to my knowledge.

3 **Q: Since you signed the MSA, has NAAG or the attorney general of any state instituted**
4 **an enforcement action against Lorillard for violation or alleged violation of the MSA?**

5 A: Not to my knowledge.

6 **Q: Have you ever met with or communicated with any of your counterparts at the**
7 **other tobacco companies?**

8 A: No.

9 **Q: Do you know who any of them are?**

10 A: No.

11 **Q: To your knowledge, do any Lorillard employees communicate with other tobacco**
12 **companies regarding your cigarette marketing?**

13 A: Not to my knowledge.

14 **IV. THE GOVERNMENT'S EXPERTS ARE WRONG ABOUT LORILLARD'S**
15 **BRAND PLANS**

16 **Q: Mr. Lindsley, Drs. Dolan and Krugman relied on some Lorillard's planning**
17 **documents to support their opinions that Lorillard markets to youth. Do the Newport**
18 **Brand Plans reflect an intention to market to youth?**

19 A: No. In fact, they show the opposite, that our marketing focus is adult smokers.

20 **Q: I will ask you to explain in a moment, but first please tell the Court your role in the**
21 **preparation of Lorillard's Brand Plans?**

22 A: My responsibilities as Senior Group Brand Director are to coordinate and supervise the
23 preparation, execution and evaluation of the annual Newport Brand Plan.

24 **Q: Would you briefly describe the Newport Brand Plan?**

1 A: It is our annual marketing roadmap. It describes the “state of the brand” and sets out the
2 marketing objectives and strategies for the year. The Brand Plan has two parts, the Strategic
3 Plan and the Tactical Plan. In addition, some Brand Plans may be supported by separate media,
4 promotional or direct-marketing plans that describe more detailed executional elements.

5 **Q: For how long have you been involved with the Newport Brand Plan?**

6 A: When I started at Lorillard 24 years ago, I was responsible for executing one portion of
7 the Newport Brand Plan. Since then, except for three years in the late 1980’s, I have been
8 continually involved with Newport’s Brand Plan. My responsibilities have included involvement
9 in every aspect of the Brand Plan, and since I became Group Brand Director in 1990, I have
10 overseen and supervised its development, preparation, execution, evaluation and modification.

11 **Q: What is the role of the Brand Plan in marketing Newport?**

12 A: As I said, it is our marketing roadmap. It includes our goals for the brand, our strategies
13 to reach those goals, and the executional elements to carry out those strategies. We continually
14 review it and revise it throughout the year based on changing circumstances. The Brand Plan is a
15 living, breathing document, used by all of our personnel involved in marketing activities, not just
16 those in the Brand Marketing Department, but everyone who is responsible for execution of our
17 marketing strategies.

18 **Q: What departments at Lorillard use the Brand Plan?**

19 A: Nearly all of them, not just Brand Marketing, but also Sales General, Sales Planning,
20 Merchandising, Marketing Services, Promotions, Database Marketing, Marketing Planning and
21 Information (the research department), Product Development, Production, Legal and Finance. It
22 is also used by our outside advertising agency.

23 **Q: Do the Brand Plans include Newport’s Positioning Statement?**

1 A: Yes, either under this name or a different name.

2 **Q: What is the Positioning Statement?**

3 A: The Positioning Statement typically describes the brand's position in the category in
4 which it competes and the demographic group that will receive emphasis that year. That group
5 may or may not also be the brand's core franchise. In Newport's case, it usually is.

6 **Q: Would you identify JD-021072, please?**

7 A: That is the 2002 Newport Brand Plan.

8 **Q: Did you prepare this Brand Plan?**

9 A: I oversaw and coordinated its preparation.

10 **Q: Would you read the Brand Positioning Statement in this Brand Plan?**

11 A: **REDACTED**

12

13 **Q: When you referred to smokers 21-34 years old, is that the same thing as Newport's**
14 **target?**

15 A: No. Newport's target is menthol smokers age 21 and over. Many of our marketing
16 tactics, such as our direct mail program, were directed to any smoker 21 years old or older. The
17 segment we emphasized in this Brand Plan, however, was the 21-34 year-old group.

18 **Q: Have 18-20 year-olds ever been included in the group to which Lorillard advertised**
19 **or promoted?**

20 A: Yes.

21 **Q: When?**

22 A: Prior to the preparation of the 2000 Brand Plan which began in 1999.

1 **Q: To your knowledge, during the time when 18-20 year-olds were included in the**
2 **group to which Lorillard advertised or promoted, did it ever publicly state that it did not**
3 **advertise or promote to anyone under the age of 21?**

4 A: Not to my knowledge.

5 **Q: Was advertising and promoting to 18-20 year-olds prior to 1999 contrary to**
6 **Lorillard's business standards that you mentioned earlier?**

7 A: No. So long as we comply with the limitations in place regarding this age group – such
8 as the requirement in the Cigarette Advertising Code that we not place ads in publications
9 primarily directed at persons under 21 – we may market to 18-20 year-olds. But, as I mentioned
10 above, we voluntarily withdrew from actively marketing to anyone under 21, even though 18-20
11 year-olds can legally smoke in most markets.

12 **Q: When did you withdraw from actively marketing to anyone under 21?**

13 A: In 1999, when we began drafting the 2000 Brand Plan.

14 **Q: Why did you do that?**

15 A: We wanted to strengthen the buffer range between the youngest people to whom we
16 market and persons who are too young to smoke legally. By 1999, there wasn't much that we
17 were doing in that age category, and we eliminated it altogether.

18 **Q: Has Lorillard ever targeted anyone under the age of 18?**

19 A: No. Since I have been at Lorillard, we have not targeted anyone under 18 in any of our
20 brand marketing activities. To my knowledge, Lorillard has never done so.

21 **Q: Why not?**

22 A: Because we firmly believe that smoking is an adult custom and that kids under 18 should
23 not smoke cigarettes.

1 **Q: Has Lorillard targeted non-smokers?**

2 A: No.

3 **Q: Why not?**

4 A: It was Lorillard's practice not to market to non-smokers before I arrived. It would be a
5 waste of time, money, and effort to market any product to someone who has chosen not to use
6 that product. If an adult has chosen not to smoke, there is no reason for us to market to them.

7 **Q: Earlier you said that you advertise and promote Newport to maintain the loyalty of**
8 **Newport smokers and to get competitive smokers to try Newport.**

9 **Are those goals reflected in your Brand Plans?**

10 A: They certainly are.

11 **Q: Referring again to the 2002 Newport Brand Plan, JD-021072, can you show where**
12 **those goals are reflected?**

13 A: Yes. The 2002 Newport Brand Plan contains repeated descriptions of opportunities to
14 take business from our competitors and the importance of maintaining our own consumer base.
15 For example, it sets forth the following "key issues":

16 **REDACTED**

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1 **Q: Did any of this involve targeting adolescents or non-smokers?**

2 A: Not at all. We were trying to defend our business from our competitors, take business
3 from them, and use promotional programs to defend and grow the brand.

4 **Q: Mr. Lindsley, from a practical standpoint, would it be feasible for your written**
5 **Brand Plan to specify a target age group of people over the age of 18 or 21, or to describe**
6 **strategies related to franchise and competitive adult smokers, while you were actually**
7 **intending to target nonsmokers or underage individuals?**

8 A: No. The Brand Plan contains every marketing strategy and tactic for the brand. As I
9 mentioned, it is used by many, many people in our company, as well as by our outside
10 advertising agency. We couldn't possibly have one set of strategies and tactics in the Brand Plan
11 and another unwritten one that we somehow conveyed to hundreds of employees and
12 consultants.

13 **Q: Dr. Krugman testified that a reference to the age group of 18-24 year-olds in the**
14 **1994 Newport Brand Review, U.S. Ex. 74,442, violated the 1965 Cigarette Advertising Code**
15 **because it included individuals under 21. (Krugman written direct, 177:7-178:3.)**

16 **Do you agree?**

17 A: No. The Code did not prohibit the inclusion of 18-20 year-olds in a brand's target group.
18 It did contain certain age-related restrictions on media advertising, such as not advertising in
19 magazines "primarily directed to" persons under 21.

20 **Q: Directing your attention to U.S. Ex. 21,113 at 5051, is that the media plan for 1994?**

21 A: Yes, it is.

22 **Q: Does the media plan describe the target audience, the age group that received**
23 **primary emphasis for Newport's media strategy?**

1 A: Yes, it does.

2 **Q: Would you tell the Court what that age group was during that year for your media**
3 **activities?**

4 A: It was 21-34 year-olds, but not 18-20 year olds.

5 **Q: Dr. Dolan testified that the Brand Positioning Statement in a 1992 document, U.S.**
6 **Ex. 22,352, targeted underage individuals because it described Newport as “[t]he leading**
7 **entry level, full flavor cigarette brand in the freshness segment” and because the document**
8 **recommended incentives aimed at “entry-level and competitive users.” He testified that**
9 **Lorillard understood that “‘entry’ people were predominantly teenagers.” (Dolan written**
10 **direct at 73:19-74:11.)**

11 **Do you agree?**

12 A: No.

13 **Q: What was this document and what was your role in it?**

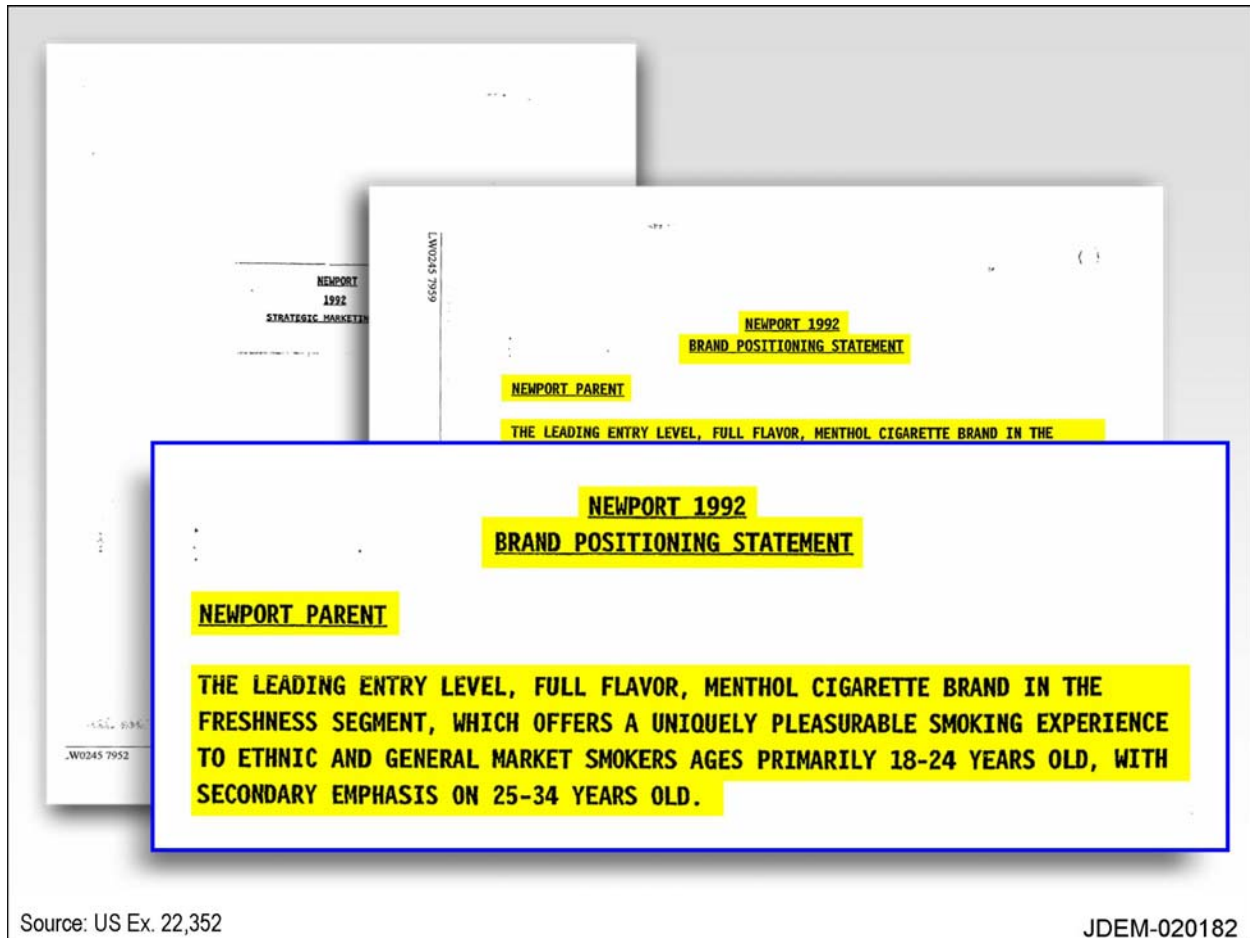
14 A: This was the 1992 Newport Strategic Marketing Plan. I coordinated its preparation.

15 **Q: Why do you disagree with Dr. Dolan’s interpretation.**

16 A: What we meant by “entry level smokers” is an adult who has chosen to smoke but has
17 never smoked a menthol before. In fact, Lorillard has generated sales among Marlboro non-
18 menthol smokers who switched to Newport menthol. They are entry level smokers to us.
19 Moreover, Dr. Dolan only partially quoted the Brand Positioning Statement and left out the
20 relevant age ranges. The Brand Positioning Statement stated in full: “The leading entry level,
21 full flavor, menthol cigarette brand in the freshness segment, which offers a uniquely pleasurable
22 smoking experience to ethnic and general market smokers ages primarily 18-24 years old, with

secondary emphasis on 25-34 years old.” U.S. Ex. 22,352 at 92011125. As the document indicates, we were talking about legal age smokers.

Q: Is that passage reproduced below in JDEM-020182?



A: Yes, it is.

Q: Dr. Dolan stated that a 1993 document entitled, “Kent Key Business Issues,” U.S. Ex. 74,520, which he attributed to Brown & Williamson, “tied Kent’s ‘long term rate of decline’ to ‘Product Positioning and brand image not strong enough to attract new smokers.’” (Dolan written direct, 79:11-14; discussion of document continuing at 79:15-18.)

First of all, has Kent always been a Lorillard brand?

1 A: Yes, it has.

2 **Q: Is this a Lorillard document?**

3 A: Yes, it is.

4 **Q: Were you Group Brand Director for Kent at the time of this document in 1993?**

5 A: Yes, I was.

6 **Q: Were you trying to target underage individuals or non-smokers at that time?**

7 A: No.

8 **Q: Does this document reflect an intention to target underage individuals or non-**

9 **smokers with Kent?**

10 A: No. This passage simply reflected Kent's position as a declining brand. Kent had an

11 older brand demographic and was not attracting competitive smokers. This document reflected

12 an effort to reposition the product so that it would be more competitive by introducing a new line

13 extension called "Kent International" to be geared younger than Kent. But even that

14 repositioning was still aimed at 25-49 year-old smokers. (8309.)

15 **Q: Referring you to JD-025154 at 6460, does this document indicate the average age of**

16 **Kent smokers at that time?**

17 A: Yes. This is our Cigarette Tracking Study Fact Book, and it indicates that in 1992 the

18 median age of Kent smokers was 54.9.

19 **Q: To sum up, do any of your Brand Plans contain any strategies or tactics designed to**

20 **persuade nonsmokers to smoke or to attract adolescents to your brand?**

21 A: They do not.

1 A: Newport's imagery and message have been consistent for more than 30 years. Newport
2 ads portray adults having fun with each other in spontaneous and lifestyle-relevant situations.
3 The ads also use a signature green background with Dayglo orange type.

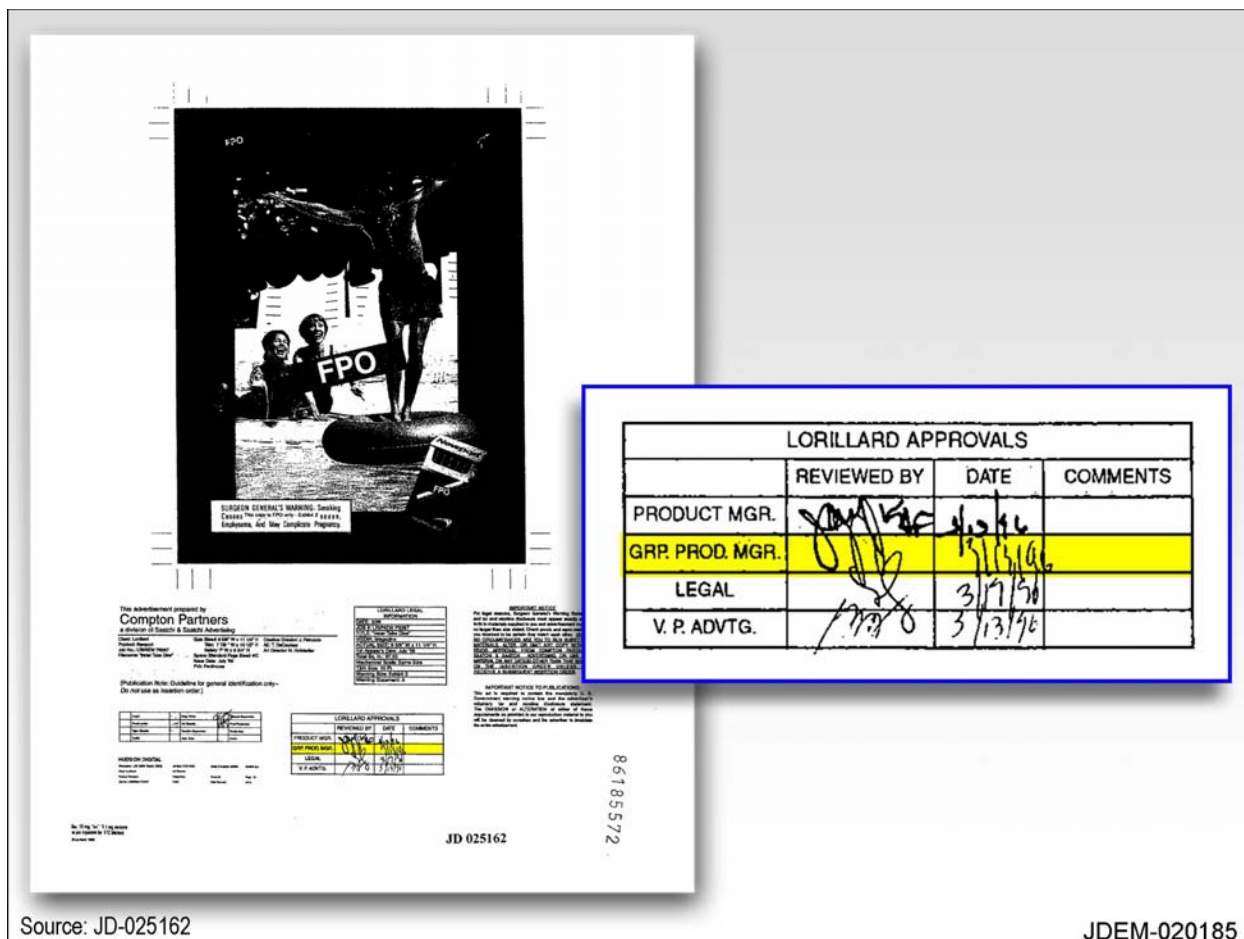
4 **Q: How are your advertisements generated?**

5 A: We ask our advertising agency to develop ideas for the ads, using the relevant regulations
6 and guidelines, as well as the current brand plan. Our Brand Marketing Department reviews
7 those ideas, and the agency then conducts a photo shoot for the ideas we have approved. After
8 the photo shoot is conducted, the outcome is presented to Lorillard's senior management for
9 approval. The ad does not proceed to production until representatives of the advertising agency,
10 the Brand Marketing Department, senior management and the Legal Department have all signed
11 off on the ad's "mechanical."

12 **Q: What is a mechanical?**

13 A: A scaled version of the approved ad, with all the specifications for production.

14 **Q: Referring you to JDEM-020185, which has been copied on the next page, what is**
15 **this?**



A: This is a mechanical for a Newport ad called “Inner Tube Dive” that we approved in 1998, except that the original was in color. It contains initials of the agency’s representatives on the lower left, certifying that the ad is fully compliant with our standards. It also contains signatures by Lorillard personnel in the lower right-hand corner, indicating that we had approved it for production. Although you may not be able to tell from this copy, my initials “VL” are on the second line.

Q: What other Lorillard signatures are contained on the mechanical.

A: They appear to be the initials of Judy Young, brand manager; Kurt Fauerback, assistant brand manager; Jim Cherry of the legal department; and George Telford, vice-president of advertising.

1 **Q: What type of advertisement was this?**

2 A: A magazine ad.

3 **Q: Is there a similar approval process for point-of-sale ads and direct mail materials?**

4 A: Yes.

5 **Q: How if at all is the Cigarette Advertising and Promotion Code considered when you**
6 **evaluate the ads?**

7 A: That is the most important consideration in evaluating the proposed ad for everyone
8 involved, both at Lorillard and at the agency. If the ad doesn't comply with the Code, it doesn't
9 run.

10 **Q: Does the Ad Code say anything about how old models must be?**

11 A: Yes. The models in the ad must be, and appear to be, 25 years old or older.

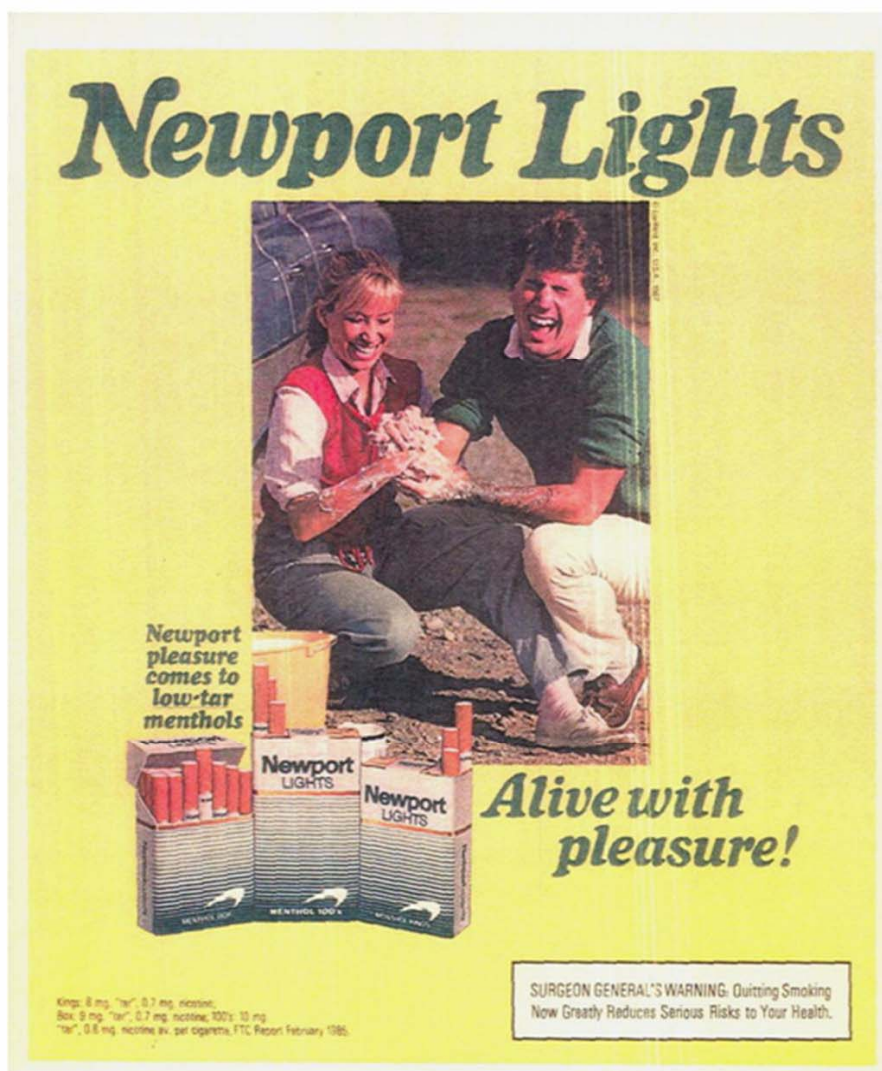
12 **Q: How do you assure that you comply with this provision?**

13 A: The agency obtains a copy of a government-issued ID from every model it uses. It also
14 sends us "head shots" (i.e., photographs) of the models. If any member of our brand marketing
15 team thinks a model looks too young, we won't use them. That doesn't happen often because the
16 agency is well aware of the restrictions.

17 **Q: Government experts relied on a study in which people were asked to judge the ages**
18 **of models in various magazine ads that ran in October 1987. Mazis, "Perceived Age and**
19 **Attractiveness of Models in Cigarette Advertisements," U.S. Ex. 64,268. According to that**
20 **article, the respondents on average judged the age of the female model in one of the**
21 **Lorillard ads examined in the study to be 24.5.**

22 **Referring you to JDEM-020169, which is a copy of a Newport Lights ad from the**
23 **October 8, 1987 Rolling Stone, do you recognize that ad?**

- 1 A: Yes. We called it "Car Wash."
- 2 Q: Did you have a role in the creation of that ad?
- 3 A: Yes. I was Newport Brand Manager at the time.
- 4 Q: Is the ad copied below?
- 5 A: Yes, it is.
- 6



JDEM-020169

- 7
- 8 Q: Did you believe the female model appeared to be under 25?

1 A: Not at all. I believed, and still do, that she clearly appeared to be at least 25. So,
2 apparently, did everyone at the advertising agency and at Lorillard who reviewed the ad. If we
3 had thought otherwise, we would have replaced her.

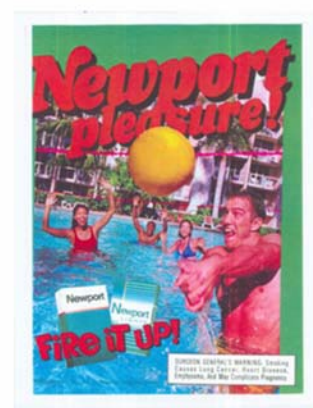
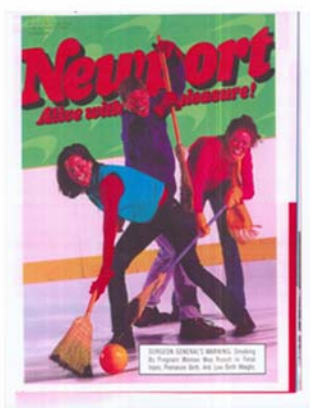
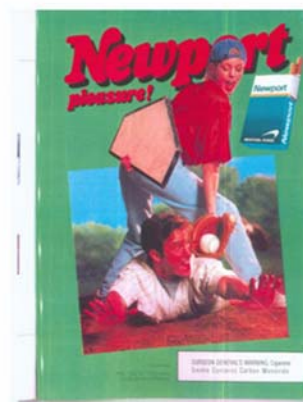
4 **Q: Dr. Biglan complained about sports activities in your ads. He depicted a few of your**
5 **ads and stated, “Lorillard has clearly not felt constrained by the Code from associating**
6 **diverse athletic activities and all of the healthful and fun attributes of those activities with**
7 **smoking Newport.” (Biglan written direct, 231:5-7; advertisements appearing at 229-230).**

8 **Did you feel constrained by the Code in running those ads?**

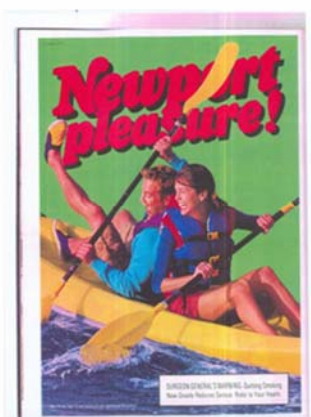
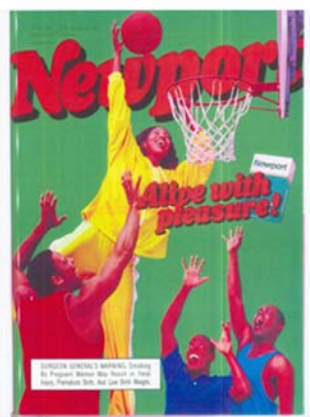
9 A: We felt constrained by the Code in that the Code places restrictions on us and we follow
10 those restrictions. But our ads don’t violate the Code. We are not constrained from showing
11 healthy people in our advertising. The Code bars the depiction of smokers “participating in, or
12 obviously having just participated in, physical activity requiring stamina or athletic conditioning
13 beyond that of normal recreation.” (U.S. Exhibit 21,228 at 8611; U.S. Exhibit 20,519 at 7700.)
14 Our ads show recreational sports. They don’t show competitive athletics that require physical
15 conditioning beyond normal recreation.

16 **Q: Would you look at the ads copied on the next few pages as JDEM-020170. They**
17 **include the ads depicted in Dr. Biglan’s testimony that ran during your time at Lorillard,**
18 **as well as other ads that ran during that time. Would you describe them?**

19 A: They are examples of Newport ads since 1981 that show people engaged in recreational
20 sports. The ads all show ordinary people having fun with each other while engaged in recreation.
21 They are the kind of things people do on the weekend or on vacation. Where they are engaged in
22 an organized game, there is often a twist, as in the ad with the oversized football or the one
23 where the catcher tags out the runner while she is snatching home plate out of his reach.

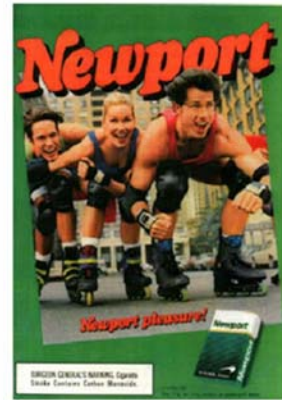
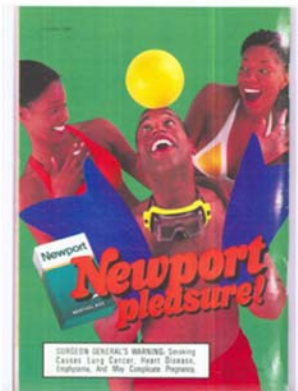
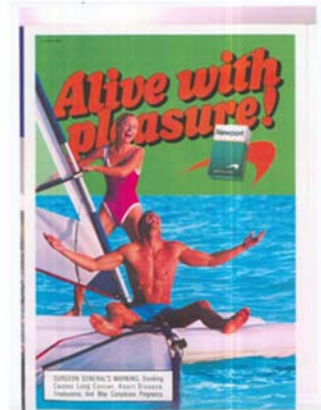
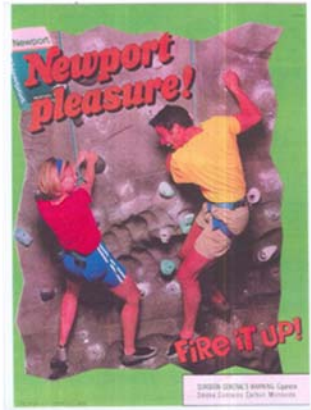


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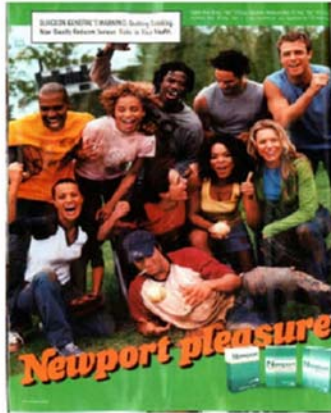


2

1



2



JDEM-020170

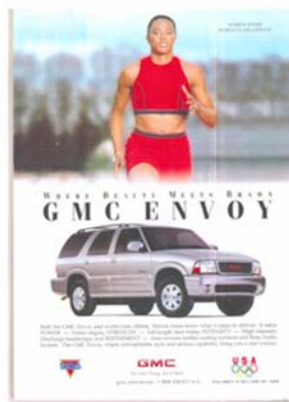
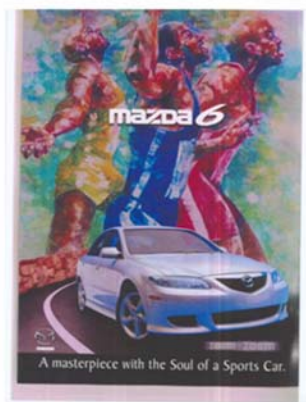
1

2 **Q: Is it unusual for ads for adult products to show people engaged in sports?**

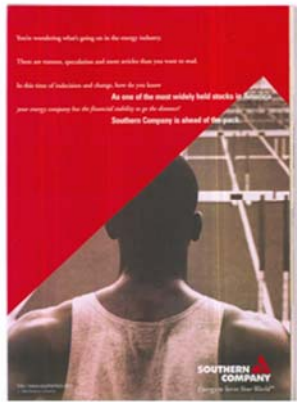
3 **A:** Not in my experience.

4 **Q: Would you describe the ads below and on the next page, JDEM-020171?**

5 **A:** Those ads show competitive athletics, such as an ad for GMC Envoy with a sprinter, and
 6 an ad for T-Mobile with a competitive skier. These ads provide a clear contrast with ours and,
 7 frankly, give you an idea of what our ads might look like if we did violate the Code.



8



JDEM-020171

Q: Mr. Lindsley, also on the subject of sports, Dr. Biglan asserted that a 1987 baseball hat promotion “communicated that smoking Newport goes with playing baseball.” (Biglan, written direct 228:1-7.)

Did you intend this hat giveaway to make that communication?

A: No. Many companies distribute baseball hats. They do so because people like wearing baseball hats, not to communicate that their products “go with playing baseball.” We weren’t doing that either. We used branded promotions with baseball hats, along with other “wearables” like t-shirts and socks, to retain the loyalty of our franchise consumers and to try to attract competitive smokers. It was a reflection of the lifestyle of our target consumers, not a message about a characteristic of our product.

Q: Who could participate in these promotions?

A: Adult smokers.

Q: Do you still have promotions like these?

A: No. Since the MSA, we no longer distribute any branded premium items.

(b) The “Newport Pleasure” theme

Q: Dr. Biglan stated that, in his opinion, “Lorillard has consistently associated smoking Newport with themes and images that are important to adolescents” (Biglan written

1 direct, 209:9-10.) He listed the following themes: Popularity and social acceptance, fun
2 and excitement, athleticism and relaxation. He stated: “Lorillard successfully
3 communicates to adolescents that they can achieve the social success most teenagers greatly
4 desire and that they can have fun—even pleasure—by becoming Newport smokers. They
5 can also view themselves as happy, healthy, and athletically talented people—and other
6 teenagers who see these advertisements will view them the same way.” (Biglan written
7 direct, 232:15-20.)

8 Does that testimony accurately describe what you are trying to communicate with
9 Lorillard’s advertising?

10 A: No.

11 Q: Why not?

12 A: We do not communicate Newport’s themes to adolescents. Newport advertising is for
13 adult smokers, pure and simple. The concepts that Dr. Biglan identified of popularity, social
14 acceptance, fun, excitement, athleticism and relaxation are basic human desires for people of
15 almost all ages. The situations in which we show them are oriented to our core demographic, 21-
16 34 years old, and are executed within the guidelines we follow. During my 24 years with
17 Lorillard, I do not recall reviewing any market research in which any adult smoker said that an
18 activity we portrayed in an ad was inappropriate to the lifestyle of people his or her age.

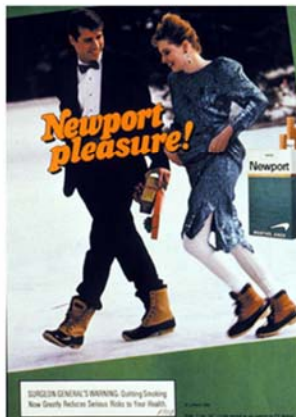
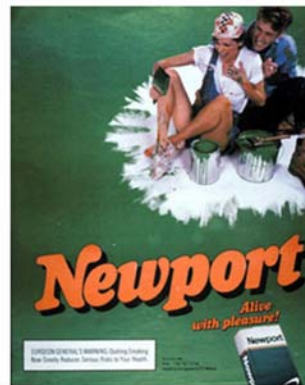
19 Q: What is Newport’s overall strategy with its ads?

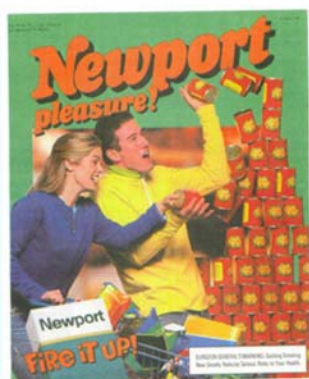
20 A: Our campaign is lifestyle-based. Newport’s creative strategy is to communicate relevant
21 lifestyle activities to the adult smoker. We do this through adult images of fun, camaraderie, and
22 socialization. The general theme of this campaign is that adults can have fun with “Newport

Pleasure.” Newport Pleasure is a reflection of the product’s taste and the lifestyle of our consumer group.

Q: Let me ask you about certain groups of ads since you have been with the company. Would you describe the ads that have been copied below and on the next page in JDEM-020172?

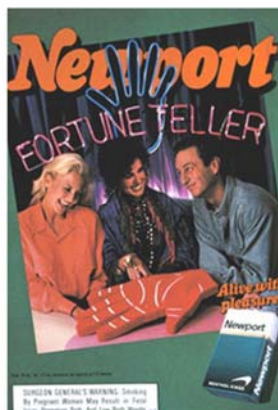
A: Those are ads that each depict a man and woman enjoying everyday activities but with a twist – washing a pair of tennis shoes in the dishwasher, painting themselves into a corner, moving a doghouse with the dog still in it, and the like.





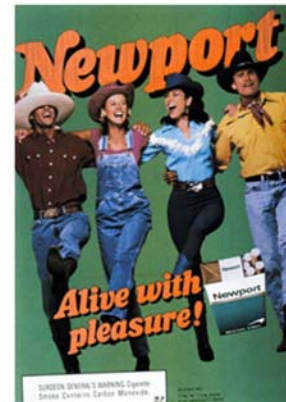
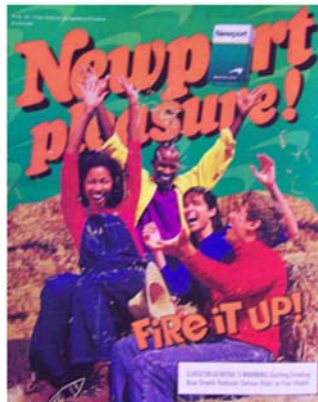
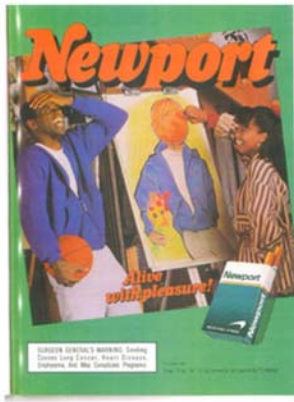
JDEM-020172

- 1
- 2 Now showing you JDEM-020173, which has been copied below, can you describe those ads?
- 3 A: These are other examples of Newport ads. They show groups of men and women, out of
- 4 the home, enjoying each other and the activities they are engaged in.

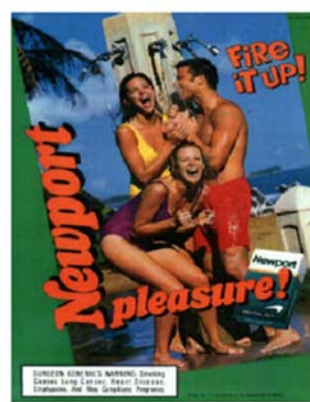
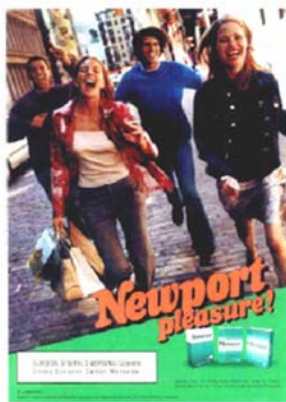


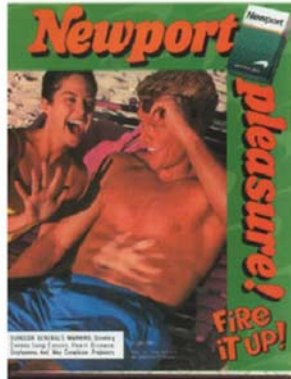
5

1



2





JDEM-020173

1

2 **Q: Are the Newport ads an unusual approach for an adult product?**

3 **A:** No. Many products use lifestyle marketing.

4 **Q: I would now like to ask you about a few documents mentioned by Dr. Biglan.**
 5 **(Biglan written direct, 221:14-223:3.) To support his claim that you use “fun and**
 6 **excitement” to appeal to adolescents, he cited four documents. First, let me ask you about**
 7 **three of them, U.S. Ex. 55,927, 67,673 and 74,423. Would you identify them?**

8 **A:** U.S. Ex. 55,927 and 74,423 are focus group reports dated October 1981 and January
 9 1994 respectively. U.S. Ex. 67,673 is a research study from September 1988.

10 **Q: Do any of these reports mention adolescents?**

1 A: No. They all refer to research with persons 18 or over.

2 **Q: What is U.S. Ex. 57,155?**

3 A: It is a proposal to us on promotional concepts by McCracken Brooks from November
4 1993.

5 **Q: Did the proposal refer to adolescents?**

6 A: No, it didn't.

7 **Q: Did Lorillard accept the proposal?**

8 A: No.

9 (c) Newport's "peer" appeal

10 **Q: Dr. Krugman testified that Lorillard uses the concept of peers to market to teens.**
11 **He stated that "the tobacco companies understand the power and influence of peers and**
12 **employ it in their advertising and promotion. The tobacco companies know that teenagers**
13 **are peer oriented, and they recognize the importance of peers in the initiation of smoking."**
14 **Krugman written direct, 85:14-17.) Regarding Lorillard, he stated: "Lorillard makes a**
15 **very direct appeal to the peer group." (Id. at 90:11.)**

16 **Do you use a "peer" appeal to target teenagers?**

17 A: No, we don't. All people, not just teenagers, have peers. We use the word "peer" in its
18 ordinary meaning to refer to people in the same social group. In this case, the peer group
19 consists of young adult smokers, ages 21-34.

20 **Q: When did Lorillard first describe Newport as a "peer brand?"**

21 A: As I recall, I coined the description and first used it in the 1994 Brand Plan.

22 **Q: What did you mean by that description?**

1 A: It was a reflection of Newport's long-time market position as a brand for adults who like
2 to have fun with friends. We adopted the term because of market research in which adult
3 smokers told us things like "Newport will appeal to my friends" or "these are people I hang
4 with" or "I would recommend it to my friends."

5 **Q: Referring you again to the 2002 Brand Plan, JD-021072, can you explain to the**
6 **Court how you used the "peer" concept?**

7 A: **REDACTED**

8
9
10
11 **Q: Is that page reproduced on the next page as JDEM-020183?**

1 **REDACTED**

2 A: Yes, it is.

3 **Q: When you said “their lifestyles,” who did you mean?**

4 A: I meant just what I said, adult smokers 21-34. They most certainly have their own peers
5 and their own lifestyles, which involve socializing with those peers. Those are the lifestyles and
6 the social situations that we portray in our advertising.

7 (d) **The consistent nature of Newport’s imagery**

8 **Q: Has Newport been consistent in its ads?**

9 A: Yes. Newport has used the same type of advertising for more than 30 years, with the
10 same pleasure theme, the same types of scenes and the same color scheme.

1 **Q: Dr. Krugman agreed that “Newport has had the same campaign for the Alive With**
2 **Pleasure Campaign ... with very similar themes for 30-some years, and that also is a form**
3 **of reminder advertising that people can readily associate those colors and that type of**
4 **advertising, the picture of the pack and it reminds them, yes, Newport, without having to**
5 **think a lot about it” (12/15/04 Tr. tr. at 8630.)**

6 **Do you agree with Dr. Krugman?**

7 A: Yes, I do. That is precisely why we have used such consistent advertising.

8 **2. Magazine placement**

9 **Q: I would now like to ask you about your magazine placement. Dr. Krugman**
10 **testified: “Specifically, the tobacco companies knowingly reached 12 to 17 year olds with**
11 **their magazine advertisements – particularly those for Marlboro, Newport, and Camel.”**
12 **(Krugman written direct, 115:21-23.)**

13 **With respect to Newport, do you agree with Dr. Krugman?**

14 A: No.

15 **Q: Why not?**

16 A: Reaching 12 to 17 year olds has nothing to do with our magazine placement decisions.
17 Lorillard selects magazines to obtain the greatest reach of adult menthol smokers within its target
18 demographic for its advertising dollars, while not using magazines with an undue exposure to
19 underage individuals. To accomplish this goal, we carefully analyze readership and cost
20 information provided by our advertising agency that indicates the number and percentage of
21 adult menthol smokers in different age brackets who read each magazine.

22 **Q: Earlier, you mentioned the policy regarding magazine placement that was in place**
23 **when you joined Lorillard. How did Lorillard interpret that policy?**

1 A: The Code limited us to magazines primarily directed to persons 21 and over. In applying
2 that standard, we considered the type of publication, its editorial content, readership information
3 to the extent it was available, and the other type of advertising routinely present in the
4 publication.

5 **Q: Earlier you also said that Lorillard changed its magazine placement policy in 2001.**
6 **Would you elaborate on the change?**

7 A: Yes. As I mentioned before, in that year we implemented an “18% policy,” under which
8 we refrained from advertising in any magazine measured with more than 18% readership by 12-
9 17 year-olds. We made that decision after discussing the issue with representatives of state
10 Attorneys General and articulated it in a letter that our CEO, Martin Orlowsky, sent to Attorney
11 General Gregoire of Washington.

12 **Q: Referring you to JE-022143, is this that letter?**

13 A: Yes. It is a letter that Mr. Orlowsky sent to Ms. Gregoire on February 9, 2001.

14 **Q: Did you drop any magazines as a result of that policy?**

15 A: Yes, we dropped three magazines, *Sports Illustrated* and *Rolling Stone* immediately and
16 *ESPN: The Magazine* as soon as research showed it exceeded our 18% limit.

17 **Q: Did the youth readership of *Sports Illustrated* later fall below that limit?**

18 A: Yes, it did.

19 **Q: Did you resume advertising in *Sports Illustrated* as a result?**

20 A: Not immediately. However, we went to the publisher and asked if they could provide a
21 restricted edition that would not be distributed to persons under 18. The publisher then offered
22 us an edition not sent either to public places like schools, libraries doctors’ offices, or

1 newsstands, or to homes where they had information that someone under 21 lived. We felt that
2 that arrangement minimized exposure to minors even more than the 18% rule.

3 **Q: Do any other magazines provide you with selective distribution?**

4 A: Yes, *Ebony* and *Jet*. They carry our ads only in selective-distribution editions sent to
5 subscribers 21 and over. Again, they do not go to public places.

6 **Q: How did you apply the 18% rule?**

7 A: We applied it to all magazines with youth readership measured by Simmons or MRI. For
8 other magazines, we looked at the publisher's statement of its positioning, its demographic
9 target, its subscriber base by age and gender if available, as well as its editorial content and list of
10 advertisers.

11 **Q: Referring you to JD-022695, can you identify that?**

12 A: Yes. It is a volume that we maintained with information provided us by magazine
13 publishers. We used that information to make our placement decisions.

14 **Q: Now I would like to turn to your current policy. Dr. Krugman testified that "[i]n**
15 **some recently published studies, authors define a 'youth-oriented' magazine as one which**
16 **had a readership greater than 2 million teenagers age 12 to 17 or one whose readership of**
17 **teenagers age 12 to 17 was more than 15[%]."** (Krugman written direct, 124:1-3.)

18 **Is that the standard now used by Lorillard?**

19 A: Essentially, yes. Lorillard will not advertise in magazines having at least 15% or 2
20 million 12-17 year-old readers.

21 **Q: When did that policy go into effect?**

22 A: At the beginning of this year.

23 **Q: Is that only for magazines measured by Simmons or MRI?**

1 A: No. Magazines that are not measured by Simmons or MRI must provide a full
2 demographic profile showing that they meet the same standard.

3 **Q: Did you have to drop any magazines because of the new policy?**

4 A: We had to drop only one magazine. That was *People*, which had more than 2 million
5 youth readers. We dropped it even though its percentage of youth readers was only 8% or 10%,
6 depending on whether you use MRI or Simmons.

7 **Q: What happens if a magazine's youth readership is over the limit and then drops**
8 **below it, as happened with *Sports Illustrated*. Will you get back in?**

9 A: We haven't done that, and it is unlikely that we will unless the magazine offers a
10 restricted edition as *Sports Illustrated* did. I don't feel comfortable jumping in and out of a
11 magazine because of a fluctuation in survey results.

12 **Q: Dr. Biglan testified that Lorillard selects magazines to associate Newport with**
13 **"themes and topics that are of great interest to adolescents who are concerned about**
14 **popularity. ...For example, the content of celebrity magazines helps Lorillard communicate**
15 **that the Newport smoker is popular." (Biglan written direct at 218:3-5, 14-15.) He cited**
16 **as an example an ad in an August 23, 1999 *People*.**

17 **Is this a reason why Lorillard advertised in magazines like *People*?**

18 A: No. We select magazines on the basis that I mentioned above, the most economical way
19 of reaching adult menthol smokers in our target demographic, while limiting exposure to minors.
20 We select from a broad range of magazines in different readership categories in an attempt to
21 reach more segments of our target demographic.

1 **3. Point-of-sale advertising**

2 **Q: Let's turn to a different form of advertising. Dr. Krugman stated: "The tobacco**
3 **companies' current marketing at retail is ubiquitous and reaches many teenagers. ... The**
4 **tobacco companies' retail marketing purposefully creates brand image and brand equity**
5 **using the same imagery that the tobacco companies previously used for many years in**
6 **magazines, on billboards, and on television." (Krugman written direct, 48:19-49:2.) He**
7 **also said that this supposed ubiquity was purposeful. (Krugman written direct, 47:20-21.)**

8 **Do you agree?**

9 **A: No.**

10 **Q: Why not?**

11 **A: I do not consider our retail advertising to be "ubiquitous," and we do not intend it to be.**
12 **We place advertising in retail locations that sell cigarettes to let adult consumers know about the**
13 **price and availability of Newport and, to a lesser extent, Maverick and Old Gold. By far, the**
14 **majority of our retail advertising is limited to our brand name and the price, and lacks the kind of**
15 **imagery previously seen on our billboards, which was similar to our magazine ads.**

16 **Q: Referring you to U.S. Ex. 17,481 from Dr. Krugman's testimony, can you describe**
17 **the Newport sign in this store?**

18 **A: Yes. The Newport sign simply says, "Newport pleasure!" and lists the price of a pack of**
19 **Newport. This is an example of what I mean about retail advertising being ordinarily limited to**
20 **price and brand availability.**

21 **Q: Has the amount of money Lorillard spends on point-of-sale advertising increased in**
22 **recent years?**

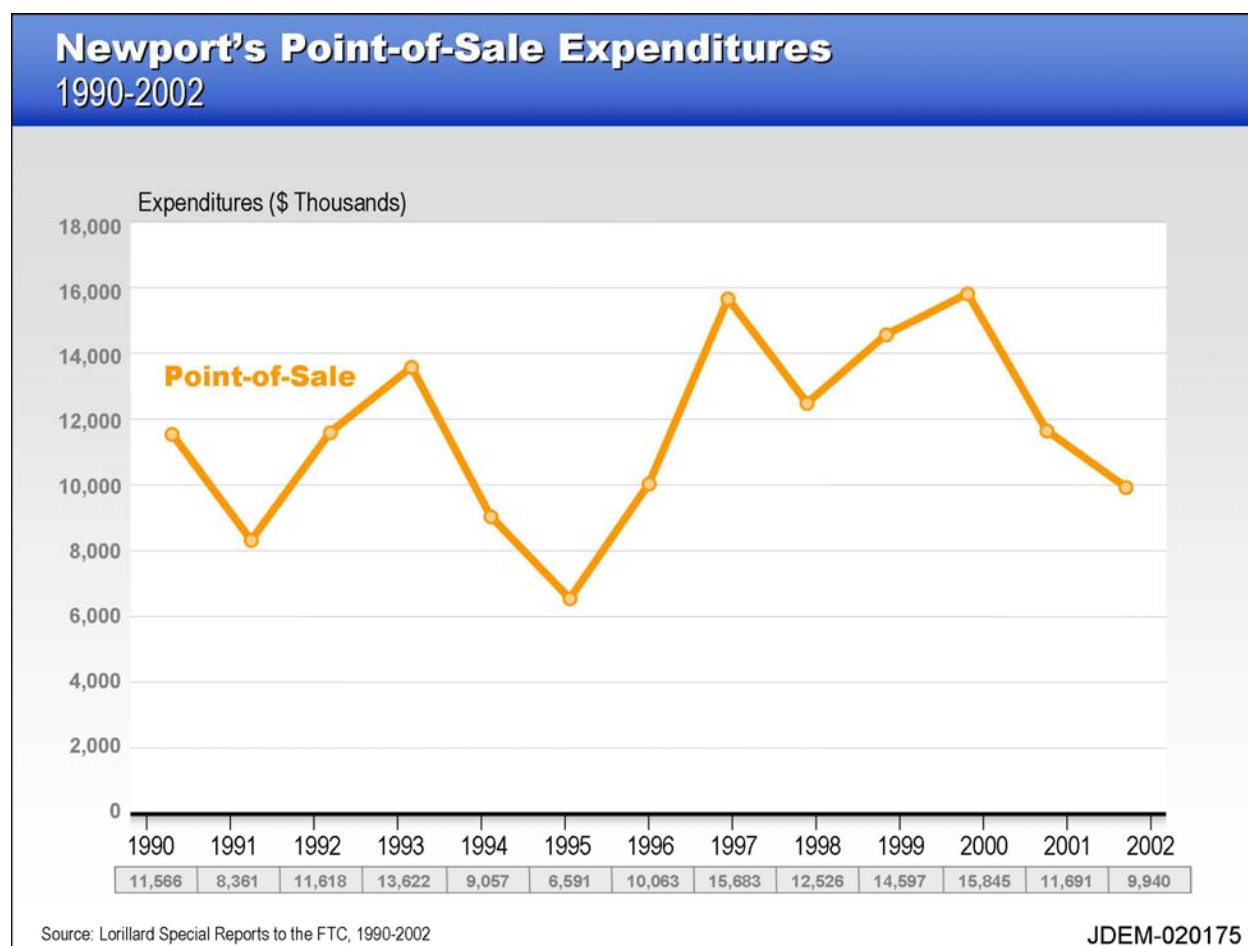
A: The amount of money we spend on point-of-sale advertising varies from year to year, but it has not seen a substantial increase in recent years.

Q: Do you report point-of-sale expenditures to the FTC every year?

A: Yes, we do.

Q: Referring you to JDEM-020175 below, which shows Newport's point-of-sale expenditures, as reported to the FTC from 1990-2002, can you tell the Court what this indicates?

A: It shows just what I stated, that our expenditures for point-of-sale advertising fluctuate from year-to-year but have not shown a large increase in recent years.



1 **Q: A moment ago you said that you do not consider your point-of-sale advertising**
2 **ubiquitous; would you explain why not?**

3 A: I just testified that our point-of-sale ads are generally limited to brand name and price. In
4 addition, we do not have displays or point-of-sale advertising in every store that sells cigarettes.

5 **Q: In how many stores that sell cigarettes does Lorillard place point-of-sale**
6 **advertising?**

7 A: We place point-of-sale advertising in a relatively small portion of the 600,000 stores that
8 sell cigarettes in this country. Almost all of the stores in which we place point-of-sale
9 advertising are ones with which we have merchandising or promotional contracts. As of January
10 of this year we had merchandising (Excel) contracts with only 81,625 stores. We had
11 promotional (non-Excel) with 31,472. Thus, about 80% of all stores selling cigarettes in this
12 country do not have a Lorillard advertisement.

13 **Q: Do you select the stores in which you place point-of-sale advertising with the goal of**
14 **making your POS advertising ubiquitous to teenagers?**

15 A: No. We don't research consumers going in and out of stores and do not know how many
16 teens enter the stores in which we have point-of-display advertising. As I mentioned, they are
17 stores with merchandising or promotional contracts. We offer those contracts to stores that have
18 a certain quantity of weekly sales of Newport. The store owner decides whether to accept the
19 contract.

20 **Q: How does your point-of-sale advertising compare to the situation a few years ago?**

21 A: Our opportunities for point-of-sale advertising are much more limited today than in the
22 past.

23 **Q: Where in the stores is your point-of-sale advertising displayed?**

1 A: That is up to the retailer. These days, it is usually in a confined area.

2 **Q: Do you supply items like clocks or neon signs with a Lorillard cigarette brand**
3 **name?**

4 A: No. We used to, but we don't anymore.

5 **Q: Are there Lorillard signs facing outdoors?**

6 A: There are, but they are limited to the brand name, price, and maybe a picture of a pack.

7 **B. Price Promotions**

8 **Q: Dr. Chaloupka stated: "Defendants know that teenage smoking is particularly price**
9 **sensitive; and Defendants use this knowledge in developing and implementing their price-**
10 **related marketing strategies." (Chaloupka written direct, 32:6-8.)**

11 **Is this true for Lorillard?**

12 A: No. During my time at Lorillard, we have never studied underage persons and we have
13 never used knowledge about minors to make pricing decisions.

14 **Q: Does Lorillard believe that minors are more price sensitive than adults?**

15 A: No.

16 **Q: I would like to ask you about the two Lorillard documents on which Dr. Chaloupka**
17 **relied. First, referring you to U.S. Ex. 22,724, would you identify it?**

18 A: It is a report entitled, "A Study of the Effect of Pricing Changes in Michigan Two
19 Months after Tax Increase," by SE Surveys Inc., dated August 1994.

20 **Q: Have you seen this document before?**

21 A: To my knowledge, I first saw it in connection with my preparation in this case.

22 **Q: Have you reviewed it?**

23 A: Yes.

1 **Q: Did this document involve underage individuals?**

2 A: No. It pertained only to individuals 18 and older and didn't break them down by age.

3 **Q: The other exhibit is U.S. Ex. 55,569. Would you identify it?**

4 A: It is a 1992 memorandum by our research department regarding price sensitivity by age.

5 **Q: Dr. Chaloupka testified that this document “shows that Lorillard, based on its**
6 **internal tracking data, was aware of the greater price sensitivity of younger smokers.”**
7 **(Chaloupka written direct, 112.)**

8 Before I ask you if this document shows that Lorillard was aware of the greater
9 price sensitivity of younger smokers, let me ask you: When this document was written,
10 were you the Brand Director for Newport?

11 A: Yes.

12 **Q: Did you see this document at or around the time it was written?**

13 A: Not that I recall. I believe I first saw it when I was preparing for this testimony.

14 **Q: Who were the recipients of this document?**

15 A: At the time of this document, they were all individuals in our market research
16 department, not individuals involved in brand marketing.

17 **Q: Were the research results shown in this document ever used in the marketing of**
18 **Newport?**

19 A: No.

20 **Q: Does this document mention underage individuals?**

21 A: No. It relates exclusively to legal age smokers.

22 **Q: Now, let me ask you: Does this document indicate that Lorillard was aware of a**
23 **greater price sensitivity of younger smokers?**

1 A: No.

2 **Q: Why not?**

3 A: This is a report that appears to be about the results of two *experimental* questions that
4 were asked in our 1991 National Cigarette Tracking Study. I am not aware of these questions
5 being asked again.

6 **Q: Up until that point did you use many price promotions for Newport?**

7 A: No, but price promotions were becoming a more important part of our marketing
8 program.

9 **Q: Did you use many price promotions for Newport after that point?**

10 A: Yes, but their reach was limited.

11 **Q: Why was their reach limited?**

12 A: Until 1999, our discounts were limited to coupons, which our sales force physically
13 placed on the packs and cartons in the stores. That method restricted discounts to only five-to-
14 ten percent of our sales.

15 **Q: What changed in 1999?**

16 A: In that year, we started our buy-down program because of rising retail prices and
17 competitive pricing activity.

18 **Q: What is a buy-down program?**

19 A: It is a program in which we reimburse the retailer for selling Newport at a certain
20 discounted price. It enables us to engage in much more widespread discounting than coupons.
21 We discounted up to 50% of our volume under the program initially, and now nearly 80%.

22 **Q: In recent years how has price compared to your other marketing vehicles?**

23 A: It has been the main thrust of our marketing activity.

1 **Q: Why does Lorillard use price promotions?**

2 A: For one reason only, to compete more effectively. Our competitors use price promotions,
3 and we have to use them to stay competitive.

4 **Q: How does the volume of Newport's discounting compare to its competitors?**

5 A: The percentage of Newport's volume that is discounted is actually less than that of our
6 key major competitors, Kool and Marlboro Menthol.

7 **Q: Have you researched the effect of your price promotions on different age groups?**

8 A: Yes, we have researched adults of different age groups. We have never researched the
9 effect of price promotions on underage individuals.

10 **Q: What have you found about the impact of price on different age groups of adults?**

11 A: We have found that price is a more important factor for older smokers. For example,
12 purchasers of discount cigarettes are disproportionately older. This has been well-known for a
13 long time, and our 2002 Market Composition study confirmed that it is still the case.

14 **Q: Referring you to JD-022391, what is that?**

15 A: That is a report on our 2002 Market Composition Study.

16 **Q: What did it indicate about the impact of price on different age groups?**

17 A: The study found that a greater percentage of older smokers choose discount brands than
18 younger smokers. A table on page 2125 shows that only 12% of smokers of discount brands
19 were 21-34 compared to 34% of smokers of full price brands. On the other hand, 50% of
20 discount smokers were 50 and over, compared to only 30% of full-price smokers. In the middle,
21 about the same percentage of smokers of the two classes were 35-49.

22 **Q: Referring you to JDEM-020176, which is copied on the next page, does that show**
23 **the results to which you just referred?**

Demographic Profile by Price Class of Regular Brand

Age	Total Resp. (2508)	Full Price (1899)	Discount (562)
21-34	28%	34%	12%
21-24	10%	12%	3%
25-34	18%	22%	9%
35-49	35%	36%	38%
50 or older	37%	30%	50%
Mean Age	44.8	42.3	49.5

Source: JD-022391

JDEM-020176

A: Yes.

Q: Have you researched coupon use among different age groups of Newport smokers?

A: Yes, we have. We track coupon users through our direct marketing database, in which we have the ages of all participants.

Q: What have you found?

A: We found that older adults use Newport coupons to a much greater extent than younger adults.

1 **C. Direct Marketing**

2 **Q: You just referred to your direct marketing program. For how long have you had it?**

3 A: We began using direct mail on a very limited basis in the early 1990s. It became a major
4 focus for us with the creation of our Database Marketing Department in 2001.

5 **Q: Why did it become a major focus for you?**

6 A: It became a major focus because direct marketing allows us to communicate directly with
7 adult smokers.

8 **Q: Dr. Dolan testified, based on a stipulation between Lorillard and the government,**
9 **that in 2002 Lorillard sent 9 million mailings to 3.2 million people whose ages you did not**
10 **“really know for sure.” (Dolan written direct, 148:18-149:4.)**

11 **Have you reviewed the stipulation? (U.S. Ex. 90,002.)**

12 A: Yes.

13 **Q: Earlier, you said that you limit direct marketing to people who are 21 and over.**
14 **What steps do you take to limit this marketing tool so that it is not directed at underage**
15 **individuals?**

16 A: Any person placed on our database, called “Epiphany,” must sign a certification that he
17 or she is at least 21, is a smoker, and wishes to receive mail from us. As with other aspects of
18 marketing, we use a limit of 21 to provide a buffer from the legal age even though the MSA
19 allows us to send premium items to any legal-age smoker. Also, since the MSA, we require age-
20 verification before sending premium items. Specifically, we require a government-issued ID or
21 independent age-verification by a service called “Aristotle.”

22 **Q: What is Aristotle?**

1 A: It is the largest and most well-known service that verifies ages. It does so by checking
2 the names against public records.

3 **Q: Do you send mailings to people whose age you don't really know for sure, as Dr.**
4 **Dolan said?**

5 A: I don't know what "don't really know for sure" means, but I do know we have tried to
6 weed out underage individuals.

7 **Q: Please explain how you did that.**

8 A: In 2002, we tried to match all 4.8 million qualified individuals in our database against the
9 under-21-year-olds in two public databases (Donnelly and KnowledgeBase) and identified 2,570,
10 or less than 1/10th of 1%, as potentially under 21. We wrote to all 2,570 and asked for a
11 Government ID to stay in the program. Those who didn't send one were placed on a
12 "Suppression" database so that they would not receive mailings. Since then, all new participants
13 are run through the two sources, and the same procedure is followed.

14 **Q: Have any underage individuals tried to get onto your database?**

15 A: Yes, they have.

16 **Q: Have any of them successfully gotten onto your database?**

17 A: Yes.

18 **Q: What happens if you learn that a participant is under 21?**

19 A: We remove them from "Epiphany" and place them on "Suppression."

20 **Q: How do you learn that someone on your database is underage?**

21 A: I mentioned that we run checks periodically. In addition, occasionally we receive calls
22 from parents. Also, sometimes an individual who is under the age of 21 and who has been on the
23 database will send in an ID when he turns 21 so that he can receive premium items. If that

1 happens, we know the person has obtained access to the program improperly, and we put his
2 name on “Suppression.”

3 **Q: What if someone no longer wants to be part of the program?**

4 A: Every mailing contains a toll-free number for people to call to request removal. If they
5 do, we place them on “Suppression.”

6 **Q: Do you track the ages of customers who redeem premium items from your direct**
7 **mail program?**

8 A: Yes. As we do with coupons, we track customers who redeem premium items.

9 **Q: Do they tend to be older or younger?**

10 A: They tend to be older adults.

11 **Q: Referring you to JD-022474, p. 1232, what does that indicate about the ages of**
12 **people who redeem premium items?**

13 A: **REDACTED**

16 **Q: Is it true that all of your mailings are associated with the Newport brand?**

17 A: Yes.

18 **Q: Why is that?**

19 A: The reason is that Newport is the only Lorillard brand that has demonstrated the ability to
20 maintain franchise smokers and attract competitive smokers.

21 **Q: Let me ask you about U.S. Ex. 22,208, a 1990 document. The government**
22 **introduced this document and says that it shows that “one of the ‘Uses of Database**

1 **Marketing’ was ‘Overcoming the loss of some media – print media with high under 21**
2 **readership.’” (U.S. Findings of Fact, Paragraph 3768.)**

3 **Would you describe this document?**

4 A: This was a presentation to us in 1990 by two outside consultants, who were trying to
5 encourage us to use database marketing.

6 **Q: Were you part of the presentation?**

7 A: I don’t recall being there, and I didn’t see the document at the time.

8 **Q: Did Lorillard adopt this proposal?**

9 A: Not to my knowledge. We had a few mailings in the 1990’s, but we didn’t have a direct
10 marketing program like we have today.

11 **Q: Based on your experience at Lorillard, what was the meaning of the comment**
12 **quoted by the government, ‘Overcoming the loss of some media – print media with high**
13 **under 21 readership.’”**

14 A: These presenters were apparently anticipating that we would be withdrawing from some
15 of the magazines we were using at the time and would need a vehicle to replace them. On the
16 same page as this comment, they mention that one advantage of database marketing is that it
17 would go directly and exclusively to smokers with no wasted circulation and that it would be
18 unseen by nonsmokers. That is, in fact, one of the advantages of our direct marketing program.

19 **D. Sampling**

20 **Q: Dr. Krugman testified: “Cigarette product sampling ... [has] regularly reached**
21 **teenagers.” (Krugman written direct, 107:4-5.)**

22 **Is this true for Lorillard?**

1 A: No. In fact, we haven't provided any free samples for several years. With the increasing
2 importance of price competition, we found that our sampling programs were inefficient ways to
3 get people to try our products.

4 **Q: When Lorillard was sampling, were there any age restrictions?**

5 A: Yes. Sampling under the Code was limited to adult smokers 21 years-old and older, and,
6 in recent years, to adults facilities such as bars that were restricted to persons aged 21 and over;
7 even then, we verified the ages of all recipients with a Government ID.

8 **Q: How did you try to make sure that the people giving out the samples followed the**
9 **rules?**

10 A: We trained the samplers in the rules they were to follow, and we included those rules in
11 our contracts with them. We also conducted on-site checking for compliance.

12 **E. Sponsorships**

13 **Q: Dr. Krugman testified: "Tobacco companies rely on sponsorships to develop**
14 **customer relationships and foster positive brand images." (Krugman Written Direct at**
15 **108:4-5).**

16 **Does Lorillard have any brand sponsorships?**

17 A: No. Although we are allowed one sponsorship under the MSA, Lorillard does not have
18 any and has not had one for nearly a decade.

19 **Q: Has Newport ever had any sponsorships?**

20 A: Yes. From 1990-96, Newport sponsored a race car in the minor league Toyota Atlantic
21 and Indy Lights leagues.

1 **F. Product Placement**

2 **Q: Dr. Krugman testified that “the tobacco companies used product placement in**
3 **movies to promote their cigarette brands.” (Krugman written direct, 114:8-9.)**

4 **Is that true for Lorillard?**

5 A: No.

6 **Q: Why not?**

7 A: We are barred by the MSA from paying for product placement. Not only that, but for as
8 long as I have been at Lorillard, we have denied permission to use our brands when asked and
9 strenuously objected when we learn that someone used them without asking.

10 **Q: Referring you to JD-020619, JD-020632, JD-022903, JD-020633, JD-020634,**
11 **JD-020635, JE-025842, JE-025843, JE-025838, JE-025837, JE-025847 and JD-022606,**
12 **would you identify them?**

13 A: They are examples of correspondence regarding the actual or requested use of our
14 cigarette brands in entertainment vehicles since I have been with Lorillard.

15 **Q: Please describe those instances.**

16 A: On November 12, 1984, we denied a request to use our cigarettes in Twentieth Century
17 Fox movies. More recently, we denied requests in 1996 to supply True cigarettes in the movie
18 “Myth America,” in 1988 to use Lorillard products in films produced by Obit Productions and
19 Sweetheart Productions, in 1999 to use the phrase “Alive with Pleasure” in a production called
20 “Susanna,” and in 2001 to use Newport in the pilot for the TV series “Monk.”

21 In the case of “Monk,” we later learned that the producers used Newport in a series
22 episode anyway. Our CEO, Mr. Orlowsky, wrote Susan Lyne, president of ABC Entertainment,
23 on November 4, 2002 in protest. He asked that “future references to our products do not make it

1 to air” and that the reference to Newport be deleted from the episode in question.
2 Unfortunately, an ABC Entertainment lawyer wrote back denying the request.

3 A similar unauthorized use of Newport occurred on the series “Friends.” On May 3,
4 2001, Mr. Orlowsky wrote Jeff Zucker, president of NBC Entertainment, that he was “quite
5 upset that your producers would allow such a blatant portrayal of our products to be broadcast,
6 period.” He pointed out: “In 1998, we voluntarily agreed to refrain from product placement in
7 movies and television, a practice we already had abandoned years ago.” He also asked that the
8 references to Newport Lights be purged from future airings of the episode. On June 4, 2001,
9 only a month later, Mr. Orlowsky made another request of Mr. Zucker to remove a Lorillard
10 cigarette reference from an NBC program, this time in the series “Frasier.”

11 Mr. Orlowsky has sent similar letters to the president of CBS Entertainment objecting to
12 the use of Newport in the series “Big Brother 2” and to the CEO of Warner Brothers
13 complaining about the portrayal of Newport in the film *City by the Sea*.

14 **Q: Is there anything you can do to prevent the use of your products in entertainment**
15 **vehicles?**

16 A: Unfortunately, no. But we will continue to deny permission to producers who ask us and
17 to protest if they use our products without permission.

18 **G. Market Research**

19 **Q: Dr. Biglan stated: “Lorillard monitored cigarette smoking among teenagers long**
20 **after the industry claimed not to be marketing to teenagers. It analyzed the ages at which**
21 **teenagers started smoking Newport” (Biglan written direct, 209:14-17.)**

22 **Is this true?**

1 A: It is untrue for as long as I have been at Lorillard. We have never monitored cigarette
2 smoking among teenagers, except that until 1999 we included 18 and 19 year old smokers in
3 some of our studies.

4 **Q: Based on your experience at Lorillard, did the company monitor cigarette smoking**
5 **among teenagers before you arrived in 1981?**

6 A: No, it didn't, except for 18 to 19 year-olds in some studies.

7 **1. Documents Relied Upon By The Government**

8 **Q: I would like to ask you about the three documents Dr. Biglan cites in support of his**
9 **allegation, U.S. Ex. 20,065, U.S. Ex. 55,927, and U.S. Ex. 22,357.**

10 **Have you reviewed them?**

11 A: Yes, I have.

12 **Q: I will ask you about the individual documents in a moment. But first, taken as a**
13 **group and based on your experience at Lorillard, do they constitute monitoring of cigarette**
14 **smoking among teenagers?**

15 A: No, they don't.

16 **Q: Why not?**

17 A: Three documents during a 30-year marketing campaign couldn't possibly constitute
18 monitoring. Monitoring is tracking with the same type of research over a period of time. It is
19 what we regularly do with adult smokers. We don't do it with adolescents.

20 **Q: Do any of these documents contain sufficient information about teenage smokers to**
21 **support rational business decisions?**

22 A: No, they don't.

1 **Q: Let's talk about the individual exhibits, and I will ask you why they don't. The most**
2 **recent was U.S. Ex. 20,065. Would you describe it?**

3 A: Yes. This is a November 1981 memo by Laurie Moroz containing a table showing the
4 number of smokers by age group, including 13-17 year-olds.

5 **Q: Who was Laurie Moroz?**

6 A: She was in our market research department.

7 **Q: Were you with Lorillard when this document was written?**

8 A: I had just started in September of that year.

9 **Q: Did you ever see this document in connection with your work in brand marketing?**

10 A: No. My only experience with this document is being shown it in litigation.

11 **Q: Based on your experience at Lorillard, would the information about 13-17 year-olds**
12 **in this memo have helped the company target them if it had wanted to?**

13 A: No. The document merely contained the *number* of 13-17 year-old smokers. It lacked
14 the key information necessary to market to any group, such as the brands they are smoking, their
15 smoking behavior, and key lifestyle information.

16 **Q: Does the memo indicate that Lorillard researched 13-17 year-olds?**

17 A: No, it doesn't. The information about this age group apparently came from government
18 studies, not research by Lorillard.

19 **Q: Does the document indicate why the information was obtained?**

20 A: No.

21 **Q: Do you know why it was obtained?**

22 A: No.

1 **Q: The only other research document that Dr. Biglan cited that overlapped with your**
2 **tenure at Lorillard is a 1981 document, U.S. Ex. 55,927. Would you describe it?**

3 A: It is a focus group report by an outside consultant. There were only 32 interviewees, and
4 they were all 18 or older.

5 **Q: Did you ever see this document in connection with your work in brand marketing?**

6 A: No.

7 **Q: Based on your experience at Lorillard, is research like what was reported in this**
8 **document projectable to the general population?**

9 A: No, it isn't. That is what distinguishes a focus group, which we call "qualitative
10 research," from a survey, which we call "quantitative research." Such a small sample is not
11 "projectable" to the general population.

12 **Q: If focus group research is not "projectable" to the general population, why does**
13 **Lorillard conduct it?**

14 A: We use it to give directional insight to a concept or creative application. For example,
15 based on what we learn, we might give further direction to our creative people. If we feel
16 comfortable with the results of the research, we may go on to do a projectable, quantitative
17 study.

18 **Q: Were there references in this document to adolescent smoking practices?**

19 A: On pages 6995-6996, there were discussions about when these 32 people started to smoke
20 and why they chose their first brands (generally the brand of a relative or peers).

21 **Q: Was there any information in this document that would have enabled Lorillard to**
22 **develop a marketing program aimed at adolescents even if you had wanted to?**

1 A: No. As I just said, you need product information, information on smoking behavior and
2 key lifestyle information to develop a marketing program aimed at a particular group. That is the
3 kind of information we obtain on adult smokers, but not on adolescents.

4 **Q: To your knowledge, did Lorillard follow this research up with a quantitative study?**

5 A: No.

6 **Q: The third Lorillard document that Dr. Biglan cited to support his opinion about**
7 **monitoring of teenage smoking is U.S. Ex. 22,357. Would you describe it please?**

8 A: That is a memo from August 1978 in which a local sales manager named Achey wrote to
9 Curtis Judge, company president, that “the base of our business is the high school student.”

10 **Q: Who was Mr. Achey?**

11 A: He was a local sales manager in New Jersey.

12 **Q: Based on your experience at Lorillard, do local sales managers have any part in**
13 **making marketing decisions?**

14 A: No. Marketing recommendations are made by brand marketing personnel. Marketing
15 decisions are made by senior management

16 **Q: Is there anything in this memo that indicates that Lorillard was actively conducting**
17 **research among people under 18?**

18 A: No, there isn't. Mr. Achey was simply reporting on the market conditions that he
19 observed.

20 **Q: What was the legal smoking age in New Jersey at the time?**

21 A: It was 16.

22 **Q: Does this memo provide any monitoring or analysis of when teenagers start smoking**
23 **Newport?**

1 A: No.

2 **Q: Did Lorillard use the information that Mr. Achey provided in the marketing of**
3 **Newport?**

4 A: Not to my knowledge.

5 **Q: Referring you to U.S. Ex. 89,089, is this Mr. Judge's response to Mr. Achey?**

6 A: Yes, it is.

7 **Q: What did Mr. Judge say in response?**

8 A: Mr. Judge noted that, according to Lorillard's research, "the movement to Newport
9 comes after the entry period" because of dissatisfaction with other brands. (Emphasis in
10 original.) He also rejected Mr. Achey's recommendation to introduce a non-menthol version of
11 Newport, which was the primary reason for Mr. Achey's memo.

12 **Q: Now let me turn to Dr. Slovic. He cited a different research document. He stated**
13 **(64:17-21):**

14 **Furthermore, U.S. Exhibit 67536, a December, 1978 report prepared for Lorillard**
15 **by Unisearch, entitled "A Qualitative Investigation of Old Gold Filters," in**
16 **discussing brand selection of 10-14 year olds and 14-17 year olds, comments that**
17 **"Smoking doesn't seem to need all that great a rationale: youth immortal. Contrast**
18 **with previous - older groups." (U.S. Exhibit 67536 at Bates 85073125).**

19
20 **Before I ask if this document reflects the researching of adolescents, let me ask if**
21 **you have ever seen it before?**

22 A: I don't recall having seen it before preparing for my trial testimony in this case.

23 **Q: Referring you to JD-025155 is this a more legible copy of the document?**

24 A: Yes.

25 **Q: Based on your experience at Lorillard, does this document reflect the researching of**
26 **adolescents?**

1 A: No.

2 **Q: Why not?**

3 A: It was another report of a focus group and, as such, it wasn't projectable to the population
4 at large. The portion of the document that Dr. Slovic quoted was crossed out and a handwritten
5 note next to it indicates that this information likely came from adults talking about their past
6 experiences.

7 **Q: What does that handwritten note say?**

8 A: "Not clear that we were talking to young adults remembering."

9 **Q: Is the information about adolescents in this document consistent with your**
10 **experience at Lorillard?**

11 A: No. In my experience since 1981, the company has not obtained information like this.

12 **Q: Would this information have enabled Lorillard to develop a marketing plan**
13 **directed to adolescents if it had wanted to.**

14 A: No.

15 **Q: Why not?**

16 A: For several reasons. It is a focus group study and has the limitations of a focus group
17 study. It is only one piece of information and contains no trending information that would allow
18 a marketer to make decisions about how to target a particular demographic group.

19 **Q: In your experience at Lorillard, did the company ever use this information or any**
20 **other information on underage individuals in the marketing of Old Gold Filters.**

21 A: No.

22 **Q: What is the basis for your answer?**

1 A: First, Lorillard never marketed to adolescents. But more specifically, so far as I am
2 aware the target demographic for Old Gold Filters has been 25+.

3 **Q: Referring you to JD-025156 can you identify that?**

4 A: Yes. That is the Old Gold Filters Brand Plan dated October 1979, a year after the
5 Unisearch focus group report that you just showed me.

6 **Q: Referring you to pages 3832 and 3839, what does this document indicate about the**
7 **target age range for Old Gold Filters?**

8 A: It was 25-49.

9 **Q: Let me ask you about other research the government has cited. The government**
10 **introduced your 1993 document, “NEWPORT America’s #1 Menthol,” U.S. Ex. 22,350, in**
11 **which you said that Lorillard was “armed with consumer research” when it overhauled**
12 **Newport in the early 1970s. The government has suggested that the research to which you**
13 **referred was a 1969 study presented to Lorillard by Eastman Chemical Co. in 1972 that**
14 **included 12-24 year-olds. (U.S. Ex. 85,200, U.S. Ex. 85,201.)**

15 **Did your 1993 document refer to that study?**

16 A: No. I was not referring to the Eastman study. I had not seen it at that time.

17 **Q: When did you first see it?**

18 A: I saw it when I was preparing for testimony.

19 **Q: Have you ever used the Eastman study in connection with marketing Newport or**
20 **any other brand?**

21 A: No, I haven’t.

22 **Q: Let’s discuss your 1993 document which the government cited, U.S. Ex. 22,350;**
23 **what is it?**

1 A: It is the text of an article I wrote for Lorillard's internal magazine *The Informer* to report
2 that Newport had become the top-selling menthol cigarette in America. I stated that at the time
3 of the 1972 changeover, "armed with consumer research, a great tasting menthol product, an
4 innovative marketing plan, and a dedicated and resourceful Sales Force, NEWPORT began its
5 remarkable run for the top."

6 **Q: What research were you referring to in your article?**

7 A: The research to which I was referring was conducted with consumers regarding the
8 various aspects of Newport that were being overhauled, including the tobacco blend, the color of
9 the filter paper (cork or white), the package and the advertising campaign.

10 **Q: Does the Eastman report contain any information regarding those elements?**

11 A: No. It doesn't mention Newport or any of those elements, namely the reformulated
12 product, the new blend, the redesigned package, the cork tip or the advertising copy.

13 **Q: Do you recognize Eastman Chemical as a company that offers market research
14 services?**

15 A: No.

16 **Q: Has Lorillard ever contracted with Eastman Chemical to conduct market research?**

17 A: Not to my knowledge.

18 **Q: Does the report contain an indication of the reason it was done?**

19 A: The report indicates that its purpose was to project future consumption. The Introduction
20 to Volume 1 of the Report indicates that "an evaluation of the future pattern of cigarette sales"
21 was the reason for the study. (0437.) Similarly, the section dealing with smoking initiation
22 states, "An analysis of future smoking patterns requires a review of the tendency of people to
23 start to smoke." (0454.)

1 2. **Lorillard's Research of Adult Smokers**

2 **Q: Now let me turn to Lorillard's research of adult smokers. Why does Lorillard**
3 **conduct research on adult smokers?**

4 A: Research about adult smokers is vital to us because you can't market a product unless
5 you know your consumers. As I have said, you need to know what an adult smoker smokes,
6 their product likes and dislikes, information about their smoking behavior, and relevant lifestyle
7 information.

8 **Q: Let me ask about research on how adult consumers like your products. Is that**
9 **important to Lorillard?**

10 A: Yes. It has been critical to our success for as long as I have been here to make sure that
11 Newport continues to be the best-tasting menthol cigarette.

12 **Q: How is that research performed?**

13 A: We perform it through taste panels and in-home product testing to monitor whether
14 Newport continues to be preferred over competitive menthol brands. We are continually running
15 taste panels. They consist of a representative sample of adult smokers, who evaluate our brands
16 and competitive brands over time. In-home testing is conducted among a more select group of
17 adult smokers, such as Newport smokers in a test to insure that Newport's taste continues to be
18 preferred to that of Kool.

19 **Q: Why do you conduct research on your products?**

20 A: Because it is critical to know how smokers rate the taste of our products.

21 **Q: What is the age range of people you research?**

22 A: It is 21+ for all research.

23 **Q: For how long has it been 21+?**

1 A: Since 1999.

2 **Q: Before that, what was the age range of people you researched?**

3 A: 18+.

4 **Q: Has any of your research been conducted on individuals under the age of 18?**

5 A: Not since I have been with Lorillard and not to my knowledge before that.

6 **VI. IMPORTANCE OF SWITCHERS AND MULTIPLE BRAND USERS**

7 **Q: Now I would like to turn to the subject of brand switching. Dr. Krugman testified**
8 **that the amount of brand switching among smokers was only 4-9% a year and that “this**
9 **small percentage of the market does not and cannot justify the level of expenditures on**
10 **marketing defendants spend every year.” (Tr. tr. 14273:4-6; 12-14.) Is he correct?**

11 A: No.

12 **Q: Why not?**

13 A: In our attempt to build our brand, we pay attention not just to switchers, but to our
14 franchise smokers to make sure they don’t become switchers. That consideration has become
15 especially important as Newport has grown. We also recognize the importance of smokers who
16 smoke more than one brand.

17 **Q: How much is one share point in the cigarette industry worth?**

18 A: It is worth hundreds of millions of dollars.

19 **Q: Does that make your marketing worthwhile?**

20 A: Of course it does, both to sustain share, as well as to grow share.

1 **A. Switchers and Would-Be Switchers**

2 **Q: How do you study switching?**

3 A: We used to do it with formal switching studies. Today we study switching by watching
4 sales performance trends between smoker segments in the industry, as well as through custom
5 research studies.

6 **Q: Why do you study switching?**

7 A: We study switching to understand the dynamics in our industry and to identify growth
8 opportunities for our brands.

9 **Q: Referring you to JDEM-020166, what is that?**

10 A: That is a list of 13 formal Lorillard switching studies since I started with the company in
11 1981.

12 **Q: What information did you get from the switching studies?**

13 A: The studies told us who smoked what brands and who switched. That let us know which
14 competitive brands and which competitive adult smokers were vulnerable. It also told us the
15 competitive brands from which we got our new business and what brands our smokers were
16 switching to.

17 **Q: Referring you to JD-021824, what is that?**

18 A: It is a report of a switching study in 1981 that told us that the largest sources of business
19 for Newport were smokers of Kool, Salem and Marlboro, in that order.

20 **Q: What did you do with the information you got from the switching studies?**

21 A: We analyzed it very carefully and used that information to help develop marketing
22 strategies. For example, knowing the competitive brands most vulnerable to Newport, cross-

1 referenced with sales performance trends, allowed us to develop Newport's geographic
2 segmentation.

3 **Q: Referring you to JDEM-020167, what is that?**

4 A: That is a list of reports generated by the 1986 switching study. It shows that our staff
5 prepared 41 separate reports from that study.

6 **Q: For how long did Lorillard conduct individual switching studies?**

7 A: Until the early 1990s.

8 **Q: Why were they stopped?**

9 A: My understanding is that Lorillard stopped conducting switching studies because to
10 provide meaningful results requires a panel of smokers that mimics the marketplace, with a
11 statistically sufficient number of smokers for each brand; that became very hard to obtain as the
12 number of brands increased and the sales volume for many brands declined.

13 **Q: Did you continue to monitor switching after you stopped the formal switching**
14 **studies?**

15 A: Yes. We used other data to monitor switching.

16 **Q: Do you still monitor switching?**

17 A: Yes, we do. As I said earlier, we monitor sales trends of different adult smoker segments.
18 We also monitor switching trends in our direct marketing program, and we conducted a "market
19 composition" study in 2002 that looked at switching.

20 **Q: Is JD-022391 a report of that study?**

21 A: Yes, it is.

22 **Q: What does it show about switching?**

1 A: On page 2166, it shows that we asked the respondents whether they switched brands
2 more often now than in the past. Less than half said that they couldn't answer that question
3 because they "[d]o not switch brands." This means that about half of smokers *do* switch brands.

4 **Q: Has switching changed in recent years?**

5 A: Yes. I believe that it has increased as a result of high retail prices. Switching today is a
6 different phenomenon than it was in 1990. In the early 1990s, it was based more on product-
7 taste performance. Now it is more price-driven.

8 **Q: Is switching still important to Lorillard?**

9 A: It is, but in a different way. Our main concern, as Newport has grown, has become
10 keeping our own smokers rather than attracting competitive smokers.

11 **Q: How do you use switching information today?**

12 A: I can actually use it in a more targeted way than I could in the days of the switching
13 studies. With our direct marketing program, I can use the switching information to develop
14 executional programs that directly target individual smokers.

15 **B. Smokers of Multiple Brands**

16 **Q: Do many people smoke more than one brand?**

17 A: Yes. Our research has given us information on what we term smokers' "brand sets."

18 **Q: Has Lorillard researched multiple brand use over the years?**

19 A: Yes.

20 **Q: Why?**

21 A: Because if Newport is part of a smoker's "brand set," we will benefit if that smoker
22 smokes more Newport than his or her other brands.

23 **Q: Referring you to JDEM-020188, what is that?**

1 A: It is a list of 24 Lorillard studies since I have been at Lorillard that included information
2 about smokers of multiple brands.

3 **Q: Do you currently research smokers of multiple brands?**

4 A: Yes. We do so through our direct marketing program and in our research on other
5 promotions.

6 **Q: How, if at all, has the practice of smoking more than one brand changed over the**
7 **years?**

8 A: It has increased.

9 **Q: How do you know that?**

10 A: We know it through our direct marketing program in which we ask people to identify the
11 brands that they smoke.

12 **Q: Referring you again to JD-022391, the report of your 2002 Market Composition**
13 **study, what did you find out about the use of multiple brands in that study?**

14 A: That study found that 56% of adult smokers could name a second-choice brand, which is
15 a brand they would choose if their usual brand was unavailable. (2190.) In addition, 23%
16 identified an occasional brand, meaning a brand they smoked occasionally in addition to their
17 first and second choices. (2196.)

18 **VII. OTHER DOCUMENTS INTRODUCED BY THE GOVERNMENT**

19 **Q: Mr. Lindsley, I would like to ask you about other documents that the government**
20 **has introduced in this case. The first one is U.S. Ex. 31,998. The government has alleged**
21 **that this document shows that at a 1978 Lorillard field sales representatives seminar, there**
22 **were ideas discussed like “sponsoring youth sports teams; advertising featuring black**
23 **athletes; tie-ins with pro sports teams; sports posters and bumper stickers; give-away sweat**

1 **bands; tie-ins with record companies; scholarships for underprivileged youth; ‘Tie-in with**
2 **any company who help black . . . Target group age 16+;’ and sponsoring Miss Black**
3 **Teenager contests.” (U.S. Proposed Findings of Fact, Paragraph 3753.)**

4 **Have you ever seen this document before?**

5 A: Only in preparation for this testimony.

6 **Q: From your review of this document, can you tell who attended the “field sales**
7 **representatives seminar” the government mentioned?**

8 A: No. Also, it is not clear to me that this was a field sales representatives seminar.

9 **Q: Referring you to the list of ideas on the last two pages of this document, can you tell**
10 **who generated those ideas or where they came from?**

11 A: No, I cannot.

12 **Q: Let me ask you about the ideas to which the government refers. Did Lorillard ever**
13 **sponsor youth sports teams, advertise featuring black athletes, have a tie-in with pro sports**
14 **teams, or adopt any of the other ideas that the government mentions?**

15 A: Not to my knowledge.

16 **Q: The government also introduced U.S. Ex. 56,890, and alleges that this 1982**
17 **document contains a proposal that “Video Game Imagery [be] incorporated in pack design**
18 **(youth appeal). E.g., the widespread video game craze has certain fundamental features**
19 **which we could be the first to exploit. Names such as PAC, SPACE INVADERS, TRON**
20 **and their imagery can imaginatively show up on cigarette packs with repeat motifs . . . and**
21 **patterns, and their bright imagery can have lasting appeal. Can extend concept to SPACE**
22 **IMAGERY, (Galaxy Cosmos, Universe) (Perini and Bell).” (U.S. Findings of Fact,**
23 **Paragraph 3761.)**

1 **Have you ever seen this document before?**

2 A: Not until I prepared for this testimony.

3 **Q: Would you describe this document, U.S. Ex. 56,890?**

4 A: It is a report of an idea session of the Tobacco Science Group. There were ideas related
5 to cigarette design, along with a few marketing ideas, such as the ones you just asked me about.

6 **Q: What is the Tobacco Science Group at Lorillard?**

7 A: I don't really know. I am not familiar with it in connection with brand marketing.

8 **Q: Did Lorillard ever apply any of these marketing ideas, such as using the names of**
9 **video games on cigarette packs?**

10 A: No.

11 **Q: Whose decision is it at Lorillard to make changes in cigarette pack designs.**

12 A: Ultimately, senior management, but the changes would be developed by the Brand
13 Marketing Department.

14 **Q: To your knowledge, did Lorillard's Brand Marketing Department ever consider an**
15 **idea to incorporate video game imagery into pack design?**

16 A: No.

17 **Q: Finally, I would like to ask you about some documents related to the Harley-**
18 **Davidson brand. The government has introduced documents regarding this brand and**
19 **alleges that Lorillard introduced the brand even though Harley-Davidson Inc. complained**
20 **in 1993 that it had appeal to youth.**

21 **Were you involved with this brand?**

22 A: Yes. I was its Brand Manager and Senior Brand Manager from 1987-90.

23 **Q: Would you briefly describe the background of this brand?**

1 A: In the mid-1980's, we licensed the name Harley-Davidson for a new cigarette aimed at
2 blue collar adult smokers. As with our other brands, we researched the brand only with adult
3 smokers.

4 **Q: Did Harley-Davidson Inc. ever raise a concern about possible youth appeal?**

5 A: Yes, but not until August 1993.

6 **Q: Referring you to U.S. Ex. 54,404, would you identify that?**

7 A: It is a letter from Timothy Hoelter, general counsel of Harley-Davidson Inc., to Ronald
8 Goldbrenner, Lorillard's Associate General Counsel, dated August 17, 1993. He raised two
9 concerns about Lorillard's proposed advertising campaign. One was its possible youth appeal.
10 The other was the concern about the effect on the Harley-Davidson image of marketing the
11 cigarette as a discount brand.

12 **Q: What did he say about Lorillard's positioning of the cigarette as a discount brand?**

13 A: He expressed "concern about positioning Harley-Davidson cigarettes in a way that says,
14 in effect, 'buy Harley-Davidson cigarettes because they're cheap.'" He complained that that
15 "could redefine the Harley-Davidson image in a way that conflicts with the brand image we have
16 worked so hard to create and sustain."

17 **Q: Did Harley-Davidson Inc. ever tell Lorillard about market research that would**
18 **suggest that the proposed Harley-Davidson campaign might have youth appeal?**

19 A: Yes.

20 **Q: Referring you to U.S. Ex. 21,760, what is that?**

21 A: That is a letter from Mr. Hoelter to Mr. Goldbrenner dated August 27, 1993.

22 **Q: What did he say about that market research?**

1 A: He said that Harley-Davidson, Inc. had “engaged a market research firm specializing in
2 child research to advise us about whether Lorillard’s proposed promotional campaign will appeal
3 to underaged children.” He went on to say, “Their work so far suggests the campaign will appeal
4 to underaged children.”

5 **Q: Did Lorillard ask Harley-Davidson Inc. to provide it with that market research?**

6 A: Yes, we did.

7 **Q: Referring you to U.S. Ex. 57,194, would you identify that, please?**

8 A: That is a letter from Mr. Goldbrenner to Mr. Hoelter dated August 30, 1993, in which he
9 requested that Harley-Davidson Inc. forward a copy of the test results and methodology.

10 **Q: Did it do so?**

11 A: No, not to my knowledge.

12 **Q: Did Lorillard intend its campaign for Harley-Davidson cigarettes to appeal to**
13 **children?**

14 A: No.

15 **Q: Did Lorillard change its plan to market Harley-Davidson as a discount brand?**

16 A: Yes. We ultimately marketed it as a full-price brand.

17 **Q: What happened to the Harley-Davidson cigarette brand?**

18 A: It failed and was withdrawn in 1996.

19 **Q: Did Lorillard ever receive the market research that Harley said showed the brand**
20 **had appeal to youth?**

21 A: No, not to my knowledge.

22 **Q: Have you ever seen that research?**

23 A: No, I haven’t.

1 **VIII. THE AMOUNT OF NEWPORT SPENDING ON MARKETING**

2 **Q:** Several of the plaintiffs' experts claim that Newport is one of the *most* heavily
3 advertised and promoted cigarette brands and connect that alleged fact to Newport's
4 popularity with adolescents. Dr. Krugman said that Marlboro, Newport and Camel were
5 the three leaders in advertising and promotion according to a study in the early 1990s, and
6 he claimed that it was even more true now. (Tr. tr. 8434:23-8435:6.) Dr. Eriksen testified
7 that Newport was one of the three most advertised brands in 1993. (Tr. tr. 11437:8-15, Tr.
8 tr. 11515:7-18.) Dr. Chaloupka called Newport "one of the most heavily promoted
9 brands." (Tr. tr. 8241:22-9242:6.)

10 Are these allegations true as to Newport?
11

12 A: No.

13 **A. Advertising Expenditures**

14 **Q:** Would you explain that, and please start with advertising.

15 A: As price competition has become more important, the amount of our advertising has
16 declined. According to our annual FTC reports, Newport's advertising expenditures, including
17 magazines, newspapers, outdoor, transit and point-of-sale, went from \$86.0 million in 1990 to
18 \$26.4 million in 2002. At the same time, Newport's market share steadily increased.

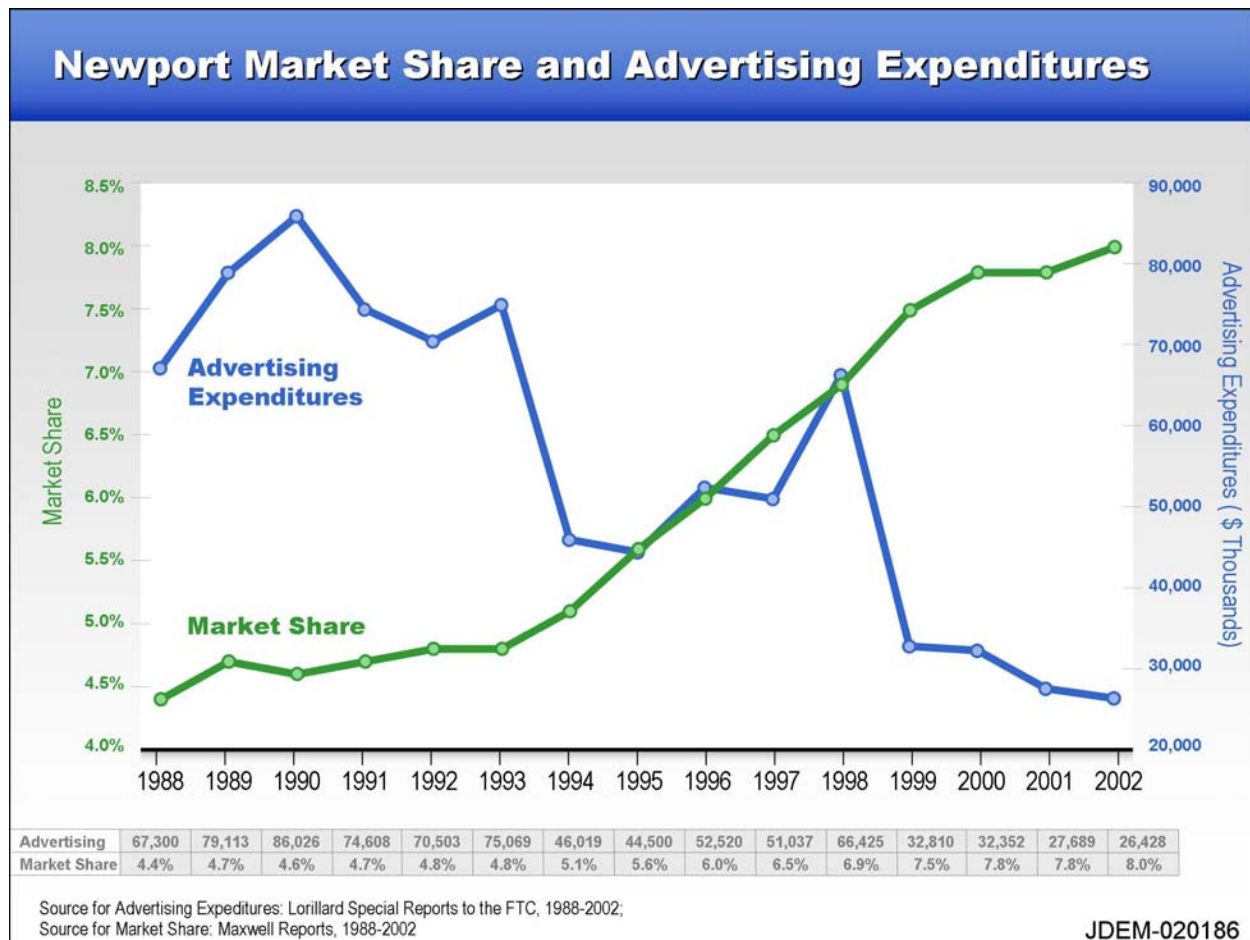
19 **Q:** Is the amount that Newport spends on different categories of marketing, such as
20 advertising, reported annually to the FTC?

21 A: Yes.

22 **Q:** Please look at JDEM-020186, the graph that is set forth on the next page. It shows
23 the amount of Newport's advertising and its market share from 1988 to 2002. The amount
24 of advertising is taken from Lorillard's FTC reports and includes magazines, newspapers,
25 outdoor, transit and point-of-sale. Newport's market share is taken from the chart you

presented earlier. Can you tell us what this indicates about the relationship between the amount of your advertising and your market share?

A: Yes. It shows the rise in Newport's market share and the fall in its advertising expenditures since the late 1980s.

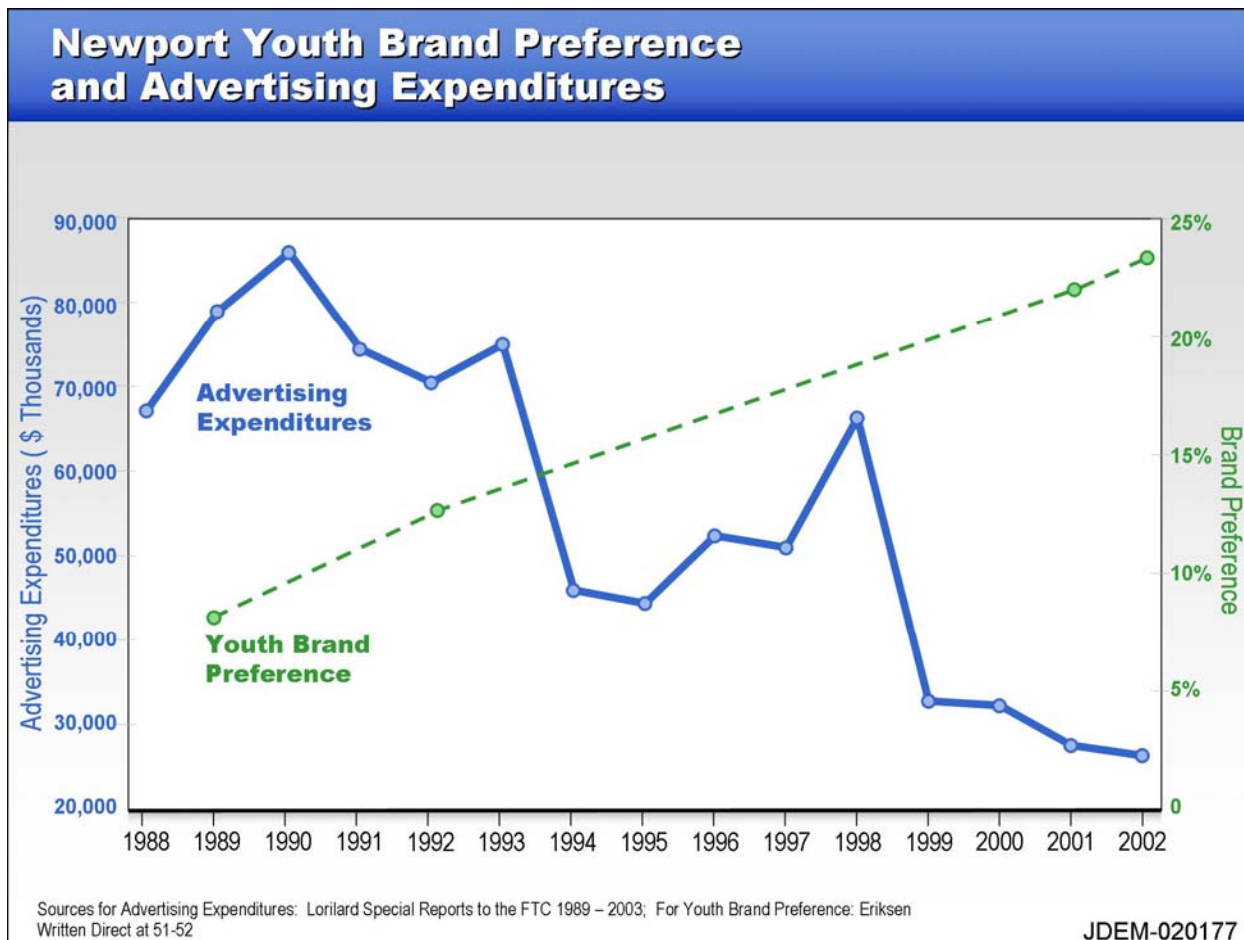


Q: What was the effect of the MSA on the amount Lorillard spent on Newport advertising?

A: Outdoor and transit advertising were prohibited by the MSA at the end of 1998. At that time we limited our ads to magazines and point-of-sale. You can see that our advertising expenditures fell sharply after 1998.

1 Q: Please look at the following graph, JDEM-020177. This time the amount of
2 advertising is plotted against youth brand preference for Newport, according to Dr.
3 Eriksen's testimony. What does this show about their relationship?

4 A: Again, they are going in opposite directions. The preference of adolescents for Newport
5 is shown to be increasing, while the amount of money we spent on advertising was decreasing.



6
7 Q: As I mentioned, Dr. Eriksen testified that Newport was one of the three most heavily
8 advertised brands. The government produced a trial exhibit that compiled the magazine
9 advertising spending of all cigarette brands from 1993 to 2002. (U.S. Ex. 73,965.)
10 Newport's ranking is shown in the following table, JDEM-020179.

Newport's Ranking in Magazine Advertising Spending

Year	Rank
1993	5
1994	13
1995	13
1996	12
1997	11
1998	11
1999	14
2000	9
2001	8
2002	7
2003 (first five months)	8

Source: U.S. Ex. 73,965

JDEM-020179

What does this indicate in terms of how heavily advertised Newport was?

A: During those years, Newport was never in the Top 3 in magazine spending. Until 1999, that doesn't reflect all advertising, since the industry also advertised on billboards. After that point, however, media spending was limited to magazines. (There is very little cigarette advertising in newspapers.)

Q: How did Newport rank in magazine ad spending after the MSA went into effect?

A: Based on these figures, Newport's ranking was as high as 7th and as low as 14th.

Q: Mr. Lindsley, what does the term "share of voice" mean in your work?

A: It is one brand's percentage of all advertising expenditures in the industry.

Q: Dr. Krugman compiled total industry spending on magazine advertising from 1993-2002 from the companies' FTC reports. (Krugman written direct, 122.) Please look at the table set forth below, JDEM-020180. That shows for those years total industry spending on magazine advertising according to Dr. Krugman, Newport's magazine advertising spending according to Lorillard's FTC Reports, Newport's percentage of industry magazine spending, and Newport's market share according to the Maxwell Reports.

Newport's Magazine Advertising "Share of Voice" and Market Share

Year	Total	Newport	Newport Share of Voice	Newport Market Share
1993	\$235,000,000	\$14,860,000	6.32%	4.80%
1994	\$252,000,000	\$6,877,000	2.73%	5.10%
1995	\$249,000,000	\$7,339,000	2.95%	5.60%
1996	\$243,000,000	\$5,829,000	2.40%	6.00%
1997	\$237,000,000	\$5,410,000	2.28%	6.50%
1998	\$280,000,000	\$6,639,000	2.36%	6.90%
1999	\$377,000,000	\$7,665,000	2.03%	7.50%
2000	\$295,000,000	\$12,017,000	4.07%	7.80%
2001	\$173,000,000	\$12,863,000	7.44%	7.80%
2002	\$107,000,000	\$14,210,000	13.28%	8.00%
Average	\$260,222,222	\$8,833,222	4.59%	6.60%

Sources: "Total": Krugman Written Direct at 122; "Newport": Lorillard Special Reports to the FTC 1993-2002; "Newport Share of Voice": "Newport" as percentage of "Total"; "Market Share": Maxwell Reports 1993-2002

JDEM-020180

What does this table indicate?

A: It indicates that after 1993, Newport's magazine advertising share of voice was consistently less than its market share until 2002. What happened then is that Philip Morris dramatically reduced its advertising in magazines, so Newport's share of voice went up. But,

1 from 1994 through 1999, while Newport's market share was rising from 5.1% to 7.5%, nearly a
2 50% increase, it never accounted for as much as 3% of total industry expenditures,. Overall, it
3 averaged a market share of 6.6% but a share of voice of only 4.6%, even with the recent decline
4 of Philip Morris' advertising.

5 **B. Total Marketing Expenditures**

6 **Q: Let's talk now about overall marketing expenditures. First, does advertising make**
7 **up only a small portion of the marketing expenditures you report to the FTC?**

8 **A: Yes.**

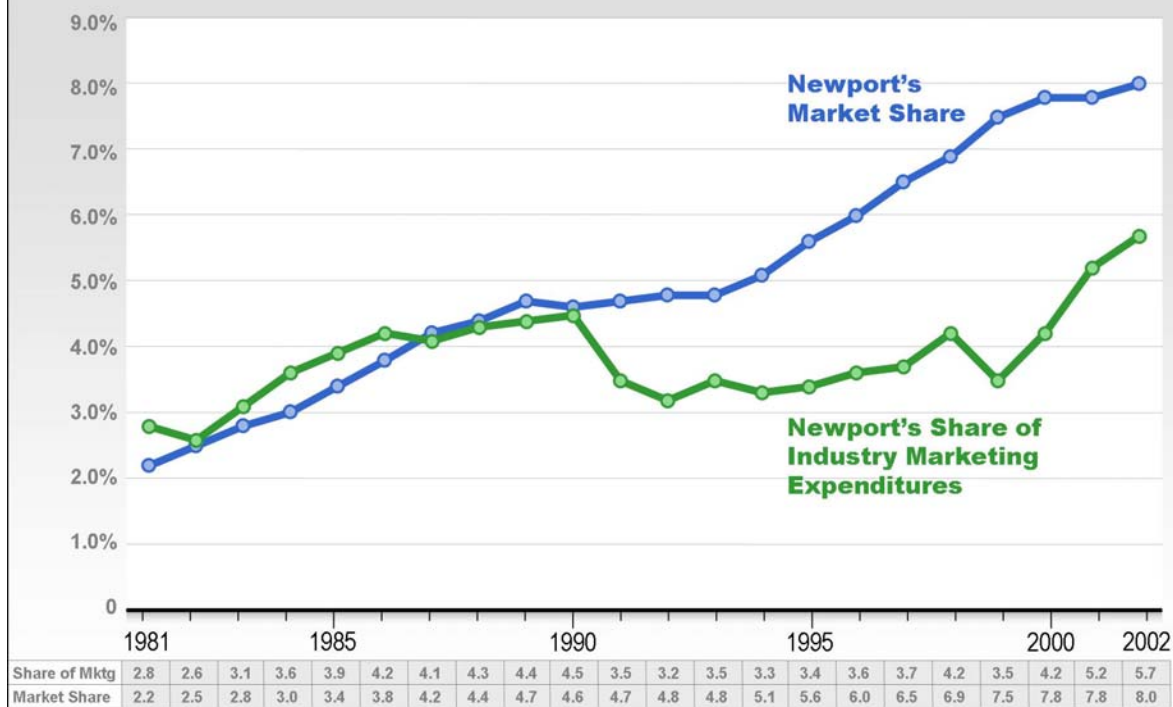
9 **Q: Dr. Langenfeld testified that "The vast majority of the cigarette advertising and**
10 **promotion expenditures published by the FTC are actually just price cuts." (Langenfeld**
11 **written direct, 84:14-16.)**

12 **Is that true for what Lorillard reports?**

13 **A: Yes. As I mentioned before, the main thrust of our marketing today is discounting.**

14 **Q: Dr. Krugman compiled the total industry marketing expenditures as filed with the**
15 **FTC from the 1960s through 2002. (Krugman written direct at 27-28.) Referring you to**
16 **JDEM-020181, which is copied on the next page, it shows Newport's percentage of total**
17 **industry marketing expenditures, based on Lorillard's FTC reports and Dr. Krugman's**
18 **testimony, along with Newport's market share from 1981, when you started with Lorillard,**
19 **until 2002, according to the Maxwell Reports.**

Newport's Share of Total Industry Marketing vs. Market Share



Source for Share of Industry Marketing Expenditures: Krugman Written Direct at 27-28; Lorillard Special Reports to the FTC, 1981-2002
Source for Market Share: Maxwell Reports 1981-2002

JDEM-020181

What does this graph indicate to you based on your experience with Lorillard?

A: This graph shows that our share of marketing expenditures roughly followed our market share until 1990. Then, our share of marketing expenditures dropped, and it has been well below our market share ever since.

Q: Mr. Lindsley, the graph shows that your share of industry expenditures increased after 1999 even though it was still below your market share; what caused that jump?

A: That was the period when pricing became so important. The more cigarettes you sell, the more you spend on promotions such as retail price discounts. As the second largest selling brand in the industry, spending on price promotions would be expected to be high compared to other

1 brands. But, as you can see, Newport's share of the industry's expenditures is still well below
2 our market share.

3 **Q: Then what explains Newport's success with adult smokers?**

4 A: Newport has the tobacco and menthol taste that most menthol smokers prefer. Promotion
5 and advertising are important, but the single biggest reason for our success is the product itself.

6 **Q: Let's briefly talk about the marketing of Lorillard's other brands. Why can't**
7 **Lorillard be as successful in marketing those brands as it is with Newport?**

8 A: Lorillard has in Newport a product with a taste to which a significant number of menthol
9 smokers respond. That taste fulfills a consumer want in the marketplace. Lorillard's other
10 brands haven't found a significant number of consumers who respond to the taste of those brands
11 as menthol smokers respond to Newport. As a result, the opportunity to build those brands is
12 limited and not worth the marketing investment. In fact, there have been times in the past when
13 Lorillard did invest more heavily in those brands without any corresponding improvement in
14 their market performance.

15 **I have no further questions, Mr. Lindsley.**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No. 99-CV-2496 (GK)
)
) Next Scheduled Court Appearance
PHILIP MORRIS USA INC. (f/k/a) Trial (ongoing)
PHILIP MORRIS INCORPORATED), et al.,)
)
Defendants.)

**JOINT DEFENDANTS' NOTICE OF ERRATA TO THE WRITTEN DIRECT
TESTIMONY AND LISTED EXHIBITS
OF VICTOR LINDSLEY FILED ON MARCH 21, 2005**

With this Notice, Joint Defendants submit the following errata to the written testimony of Victor Lindsley which was filed with this Court on March 21, 2005. These errata consist of the witness' corrections to his testimony and the demonstratives. Revised versions of corrected demonstrative exhibits are attached at Tab 1.

Written Direct

Page:Line	Current Text	Corrected Text
23:03	"1998, except that the original was in color."	"1996, except that the original was in color."
46:06	"There are, but they are limited to the brand name, price, and maybe a picture of a pack."	"There are, but they are generally limited to the brand name, price, and maybe a picture of a pack."
46:21	"To my knowledge, I first saw it in connection with my preparation in this case."	"I vaguely recall having seen it."
46:23	"Yes."	"Yes, in preparation for this testimony."
77:05	JDEM-020186 is replicated here.	JDEM-020186A is a corrected version of the demonstrative.
80:07	JDEM-020180 is replicated here.	JDEM-020180A is a corrected version of the demonstrative.

Page:Line	Current Text	Corrected Text
81:03	“averaged a market share of 6.6% but a share of voice of only 4.6%, even with the recent decline”	“averaged a market share of 6.56% but a share of voice of only 3.83%, even with the recent decline”
82:01	JDEM-020181 is replicated here.	JDEM-020181A is a corrected version of the demonstrative.

List of Exhibits

Two exhibit numbers on page 9 of the list of exhibits contained typographical errors. JDEM-0022168 should have been JDEM-020168 and JDEM-0020187 should have been JDEM-020187.

Dated: March 21, 2005

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TAB 1

**TO JOINT DEFENDANTS' NOTICE OF ERRATA
TO THE WRITTEN DIRECT TESTIMONY
OF VICTOR LINDSLEY FILED ON MARCH 21, 2005**

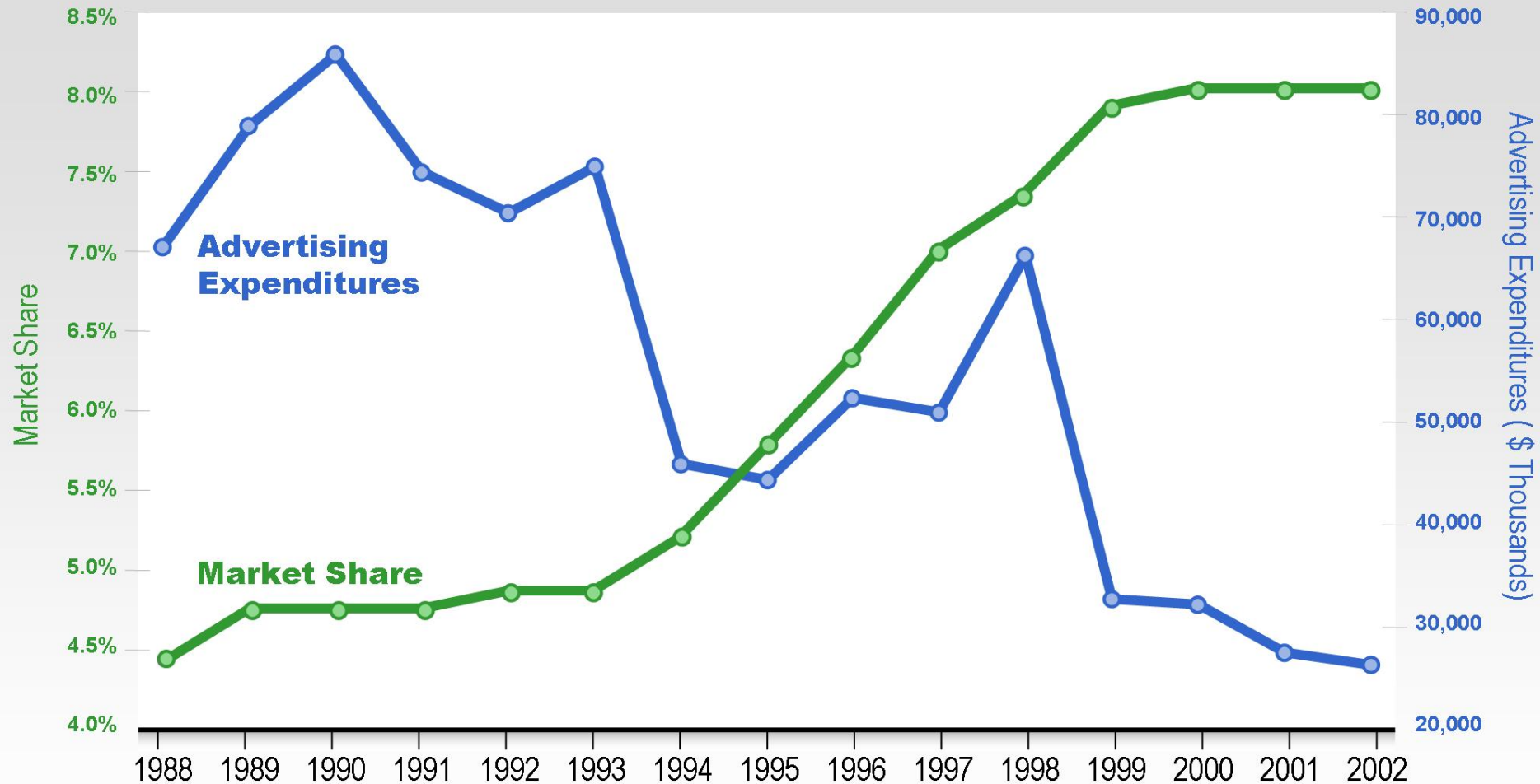
Newport's Magazine Advertising "Share of Voice" and Market Share

Year	Total	Newport	Newport Share of Voice	Newport Market Share
1993	\$235,000,000	\$14,860,000	6.32%	4.80%
1994	\$252,000,000	\$6,877,000	2.73%	5.10%
1995	\$249,000,000	\$7,339,000	2.95%	5.60%
1996	\$243,000,000	\$5,829,000	2.40%	6.10%
1997	\$237,000,000	\$5,410,000	2.28%	6.70%
1998	\$280,000,000	\$6,639,000	2.37%	7.00%
1999	\$377,000,000	\$7,665,000	2.03%	7.50%
2000	\$295,000,000	\$12,017,000	4.07%	7.60%
2001	\$173,000,000	\$12,863,000	7.44%	7.60%
2002	\$107,000,000	\$14,210,000	13.28%	7.60%
Average	\$244,800,000	\$9,370,900	3.83%	6.56%

Sources: "Total": Krugman Written Direct at 122; "Newport": Lorillard Special Reports to the FTC 1993-2002; "Newport Share of Voice": "Newport" as percentage of "Total"; "Market Share": Maxwell Reports 1993-2002

JDEM-020180A

Newport Market Share and Advertising Expenditures

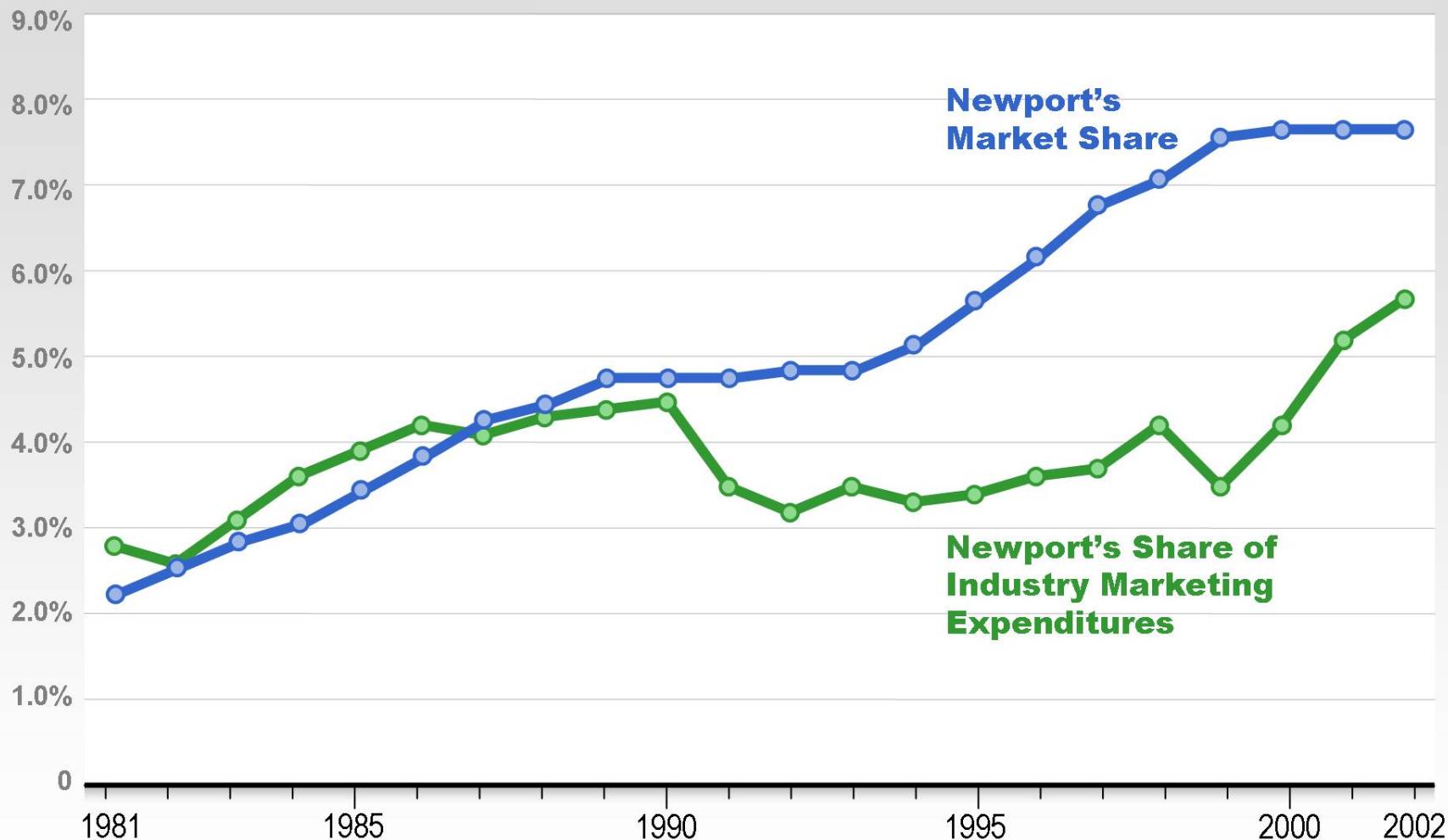


Advertising	67,300	79,113	86,026	74,608	70,503	75,069	46,019	44,500	52,520	51,037	66,425	32,810	32,352	27,689	26,428
Market Share	4.4%	4.7%	4.7%	4.7%	4.8%	4.8%	5.1%	5.6%	6.1%	6.7%	7.0%	7.5%	7.6%	7.6%	7.6%

Source for Advertising Expenditures: Lorillard Special Reports to the FTC, 1988-2002;
 Source for Market Share: Maxwell Reports, 1988-2002

JDEM-020186A

Newport's Share of Total Industry Marketing vs. Market Share



Share of Mktg	2.8	2.6	3.1	3.6	3.9	4.2	4.1	4.3	4.4	4.5	3.5	3.2	3.5	3.3	3.4	3.6	3.7	4.2	3.5	4.2	5.2	5.7
Market Share	2.2	2.5	2.8	3.0	3.4	3.8	4.2	4.4	4.7	4.7	4.7	4.8	4.8	5.1	5.6	6.1	6.7	7.0	7.5	7.6	7.6	7.6

Source for Share of Industry Marketing Expenditures: Krugman Written Direct at 27-28; Lorillard Special Reports to the FTC, 1981-2002

Source for Market Share: Maxwell Reports 1981-2002

JDEM-020181A