

WORK PRODUCT - Prepared at the Request of David R. Hardy, Esq.

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JONES V. B&W
B&W ADVERTISING AND PRODUCT CHANGES

1. The KOOL brand was introduced in 1933 with copy, during that year and in 1934, claiming that menthol kept the throat cooler - plus, "They're a better smoke for you" because the smoke was said to be "actually cooler." The smoker felt a lift. Cool as an ocean breeze. They soothed the throat. Gave throat comfort instead of claims. "The Best Throat Guard."

Adding menthol to tobacco does not change the temperature of smoke. There is a subjective sense of coolness, but no physical coolness results. The temperature of the smoke remains the same whether or not menthol is added to the leaf. The "actual coolness" referred to in this early advertising could, then, have been only that of the smoker's sensation.

2. In 1935, "stuffy head" and "parched throat" copy was used for KOOL. Smokers were invited to "smoke deep." Cool as a mint julep. "Play safe and switch today." "The beneficial head-clearing quality of menthol has made it a favored ingredient in cold remedies for years." So in 1936 with "You've but one throat to last a lifetime." At the same time, KOOL started an amedical or humorous disavowal campaign - We Cure Tobacco, Not People - which ran through 1937; however, it appears that this disavowal copy appeared only in medical and dental journals.

Back in the mid-1930's, many popular medications for the treatment and relief of colds and respiratory problems included and featured menthol. Back then, even many doctors, we believe, assumed menthol at least relieved persons suffering from respiratory problems.

Brown & Williamson commissioned the Yale study of menthol vapors to determine that menthol added to leaf was not injurious. Today we know that menthol has no such curative properties, and in fact the U.S. Pharmacopoeia now states that menthol has an effect opposite to that implied to KOOL advertising. As noted below, B&W subsequently accepted an FTC agreement which denied any remedial significance. There was, and is, no question, however, that menthol gives a soothing sensation of relief.

3. In the 1930's and 1940's, the sales curve of the KOOL brand, as well as consumer surveys, indicated that many smokers used KOOLS primarily when afflicted with common colds. (The KOOL sales curve was always up in the winter and down in the summer.)

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While Brown & Williamson sought a steadier market, the Company also took advantage of the association of menthol with cold remedies in promoting the brand.

At the same time, beginning as far back as 1935, advertising directed particularly at the medical profession underscored the pleasurable sensation in smoking KOOLS and denied any specific remedial properties.

4. Between 1936 and 1942, of paper-filtered VICEROY it was claimed that the smoker gets a smoke "smoother, milder, better for you simply because it is filtered! No tobacco crumbs get in your mouth. VICEROY's filter neatly checks the throat-irritants in tobacco..." "With VICEROYS your smoke comes clean. No tobacco in mouth or teeth."

There is nothing in our records to indicate what "irritants" were being checked or removed or how the smoke was "being cleaned." It appears that at the time a paper filter was thought to be effective and, of course, it did remove smoke constituents as evidenced by the discoloration of the filter itself. The filter also served as a mouthpiece to restrict particles of tobacco.

With today's sophisticated chemistry, it appears that this old paper filter was in fact no more effective than tobacco itself. Perhaps less effective. It is probable that this was not known prior to World War II, and it seems certain that these very limited filtration claims were made in good faith.

5. Between 1938 and 1941, KOOL copy repeated the clear head theme, urged steady KOOL smoking, said that KOOLS had a way with the throat, asked smokers to swear off hots and to play safe with KOOLS. The copy read: "Doctors prescribe menthol for its beneficial head-clearing quality. Play safe and smoke KOOLS - there's menthol in 'em - just the right amount to refresh your mouth, take the rasp out of your throat, and clear your head..."

With that, the FTC opened an investigation (File No. 1-14737), citing ads on (a) the head-clearing quality of menthol, (b) the extra protection during cold weather, (c) easier on the throat, (d) nose and throat feel clean and clear, (e) menthol cools smoke, etc. This investigation resulted in an agreement of April 2, 1942, which recited that according to reliable scientific authority KOOLS (a) won't keep the head clear, (b) aren't a remedy for or protection against colds in winter, (c) aren't easier on the throat, (d) don't leave the nose and throat cleaner or clearer, and (e) don't soothe mucous membranes. B&W agreed to discontinue use of such claims as "play safe," "be on guard," "extra protection," "excellent safeguard," "cold remedy," etc.

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The Law Department file on this proceeding does not indicate that the FTC made any significant investigation as to the truth of these claims. It does indicate the too familiar circumstance of the FTC threatening to make a public press release complaint unless B&W knuckled under to the required stipulation of the facts and the Consent Order. B&W contended that the claims it had been using meant no more than that menthol produced subjective senses of coolness and relief, but the Commission was adamant in its position that B&W must accept the stipulation as proposed as the price of avoiding formal and public complaint.

This may be useful in that, in agreement with the Government, any claim of medicinal effect went out way back in 1942, but note that there was a further FTC involvement on KOOL in 1956.

6. In 1942, following that agreement, KOOL copy switched to "Switch from HOTS to KOOLS." KOOLS still made the throat feel cool and refreshed. 1,571 of 2,000 smokers interviewed found KOOLS felt cooler, throats felt clearer. Medical men were said to know the reason. "Got a cold?" copy was used, but related to "Taste gone dead?".

As above, we believe that some years ago many doctors thought menthol had ameliorating properties, and following the FTC Order our claims were generally couched in terms of feeling cooler, clearer, etc., rather than suggesting any actual physical result; there was, however, some "backsliding" on which the FTC called our hand in 1956 as noted below.

No one now in B&W Advertising remembers how the "feel cooler" survey was run.

7. VICEROY emphasis remained on checking out resins, tars and throat irritants; the VICEROY 1943 theme was "...filtering the flavor and aroma of the world's finest tobaccos into the smoothest of blends and checking OUT resins, tars and throat irritants that can spoil the EVENNESS of smoking enjoyment!"

There remained indecision for many years after this, as evidenced in the Pritchard, Green and Lartique depositions, as to what "tar" meant. We believe that resins are not to be differentiated from tar, but rather that they are what was thought of as tar. Similarly, it is doubted that throat irritation and irritants meant any more than that some of the particulate matter, i.e., tars, had been removed.

Who "invented" tars as possible undesirable? In its January 1950 article entitled "How Harmful Are Cigarettes?", Reader's Digest published a bibliography of medical and health comments which had, at that time, been made on cigarettes and smoking. All of the publications referred to, with one possible exception, are medical

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journals of one sort or another. However, articles on smoking and health appeared in popular publications as early as 1900. Reader's Digest commented on the smoking and health problem as far back as 1935. A Reader's Digest article of 1929 on cigarette advertising referred to the OLD GOLD "not a cough in a carload" and the LUCKY STRIKE "no throat irritation - no coughs" campaigns. Reader's Digest articles in the late 1930's and early 1940's frequently referred to resins, tars, nicotine, smoker's throat, nervous nicotinitis, and bronchial cough, all in relation to unhealthy conditions of the throat, heart and lungs attributed to cigarette smoking.

Brown & Williamson didn't invent "tar and nicotine." However, for many years, Brown & Williamson featured filtration (reduction) of tar and nicotine in an appeal to any smoker who may have been concerned - and to smokers who preferred a lighter smoke. B&W developed and sold cigarette filtration. Filtration produced what smokers found to be a smoother milder smoke. Filtered cigarettes which accounted for less than 2% of total sales in 1952, now account for more than 75%.

8. In 1943, 1944 and 1945, the KOOL switch theme continued. Colds were mentioned, but in terms of taste and the feeling coming of smoking KOOLS. "Throat raw as a side of beef?" "Switch from hots to KOOLS for good." The 2,000-man survey was repeated.

At the same time, KOOLS - in ads to the medical and dental professions - were fun to smoke - not curatives for diseases.

9. In 1946 and 1947, KOOL comforted the throat. Tests showed KOOLS tasted 30% cooler. Willie the Penquin was in.

B&W Advertising recalls that a test was conducted by the Russell M. Seeds Agency; smokers were asked to inhale a KOOL and then breathe in air at various temperatures. Thus when the smoker felt that the air he breathed in approximated the feeling of a KOOL, the temperature of that air (as compared to room temperature) was noted. The result was that smokers found that the smoke from KOOLS felt 30% cooler than normal room temperature. No data has been retained on these tests. As noted above, adding menthol doesn't in fact affect temperature at all.

10. In 1946-48, VICEROY claimed dentists endorsed the product.

B&W Advertising recalls that during the mid-1940's a postcard survey of dentists was run in "about half a dozen states." The mailing said: "Many dentists smoke VICEROY and recommend them to their patients. If you smoke VICEROY and would like a carton

to distribute to your patients, please sign and return the enclosed postcard." Each dentist returning the postcard was sent a carton of Sample 4's and was added to the number of dentists endorsing VICEROY.

While not statistically a scientific survey method in today's understanding, use of this approach back in the 1940's wasn't unique to B&W - or to tobacco products for that matter.

11. In 1948, KOOL didn't make the smoker choke and helped the smoker get through colds and coughs.

No one in B&W Advertising remembers having any medical backup for these claims. Advertising conjectures that B&W was merely telling smokers that KOOLS delivered the desired smoking pleasure even when head, throat and nasal passages are congested.

The Bates Agency does not remember any medical backup for these claims nor can they find any such data in their files. They say that all such ads were subjective, that is, the smoker would feel the coolness of KOOLS.

While in the Jones case the plaintiff contended on deposition that he switched to KOOLS because of the impression gained that the brand was better for one to smoke when troubled with colds and congestive problems, and while KOOL advertising over the earlier years did (per above) use that theme, none of all that advertising relates in any way to such health considerations as lung cancer, emphysema, heart disease, etc. If a plaintiff were persuaded to switch to KOOL because of claims pertaining to colds, congestion, etc., still there was nothing in most of this copy which could have persuaded him that KOOLS were more healthful for any other reason. The basic fact being exploited (certainly before the addition of a filter to KOOL cigarettes in 1956),
was the "menthol effect,"
which clearly formed the basis for whatever health orientation a plaintiff might claim.

12. Also in 1949, LIFE (then unfiltered) was safer for throats because of its "hl" factor and because less tars reached the lungs. "Safer for throat because only LIFE contains this 'hl' factor to restrict throat irritants, giving you far less throat irritants than ordinary cigarettes! Safer for lungs because less tars in the smoke means less tars in your lungs! Also LIFE is better for your health! Smoke all you want. Inhale all you want. You get more kick out of LIFE."

We have been unable to locate specific records which might sustain the claim that LIFE produced less tars. It seems improbable that whatever humectant was then used could have made a significant difference in this respect.

In 1950 (so presumably in 1949), CAMEL, LUCKY STRIKE, CHESTERFIELD, PHILIP MORRIS, PALL MALL and OLD GOLD accounted for over 90% of total U.S. cigarette sales. Again we have no records on LIFE's tar delivery vis-a-vis these brands at this time.

There is indication in the R&D files that as early as 1938 B&W was using outside laboratory facilities to run certain tests on the smoke delivery of its products and that of competitive products as well. While measurement procedures had not then been refined or standardized, this does evidence that B&W was making some effort to get at data useful to product planning, to quality control, and to substantiate advertising claims.

The FTC investigated this LIFE advertising (File No. 1-23239) securing B&W's agreement to a stipulation that (a) LIFE, according to certain scientific authority produced by the FTC, was no safer or better for health or more satisfying than other cigarettes, (b) LIFE and its smoke didn't contain less irritating tars than other cigarettes, and (c) LIFE couldn't be smoked to the full extent of anyone's desire without irritation and ill effects. B&W agreed that it would stop advertising that LIFE and other brands of the same composition and construction and smoke therefrom are safer or better for health or emit less irritating tars or that they can be smoked without irritation or ill effect. This agreement was dated May 29, 1950.

Notwithstanding these stipulations, which were doubtless entered under the usual duress of FTC threats, it seems probable that the non-filtered LIFE product then so advertised was on the low tar delivery side. Best recollection is that we were selecting low tar tobaccos for the LIFE brand, and the fact is that tobacco itself was at that stage a better filter than the type of paper filter being used on VICEROY and other filter cigarettes.

As VICEROY's era of strident health-oriented claims lay ahead, presumably a filtered cigarette was judged to be different in composition and construction. The FTC hasn't questioned that.

13. In 1950, VICEROY copy said that Reader's Digest tells why filtered smoke is better for health. The 10-page Digest article in fact said that smoking is harmful. In but one paragraph, it added that filters cut down on nicotine. (The article then cautioned, however, that "with a filter one is likely to smoke a cigarette until it is shorter - and that extra length is the nicotine-filled butt.") That is the sole basis for VICEROY's Reader's Digest claim.

Obviously this claim was a considerable stretch on B&W's part. Because we had an advance copy of the article, the Company was able to have point-of-purchase material placed in retail outlets concurrently with this issue of the Digest, making the claim that the Digest tells why filtered smoke is better for health.

14. VICEROY advertising continued for some time to use the line that "The nicotine and tars trapped by this VICEROY filter cannot reach your throat or lungs." While that claim says no more than the obvious, it might be thought misleading by some; however, in many instances such advertising carried a footnote reading: "No filter can remove all nicotine and tars, nor does VICEROY make this claim." This footnote appeared in small print at the bottom of most ads using this claim. A specimen of an ad including this claim is on the following page.

15. In 1952, LIFE (still unfiltered) advertised that no other cigarette provided the new 86mm length, called filter length, to cut down on T&N. The pitch was to smoke new longer LIFE only as far as ordinary cigarettes. LIFE filtered better than popular king-size brands. At this time, popular king-size brands were 85mm. In 1952, as in 1950 (see above), the same six brands dominated the market. (LIFE was a millimeter longer.) R&D has retained no T&N data on this claim.

16. In the late 1940's, Brown & Williamson undertook the development of a filtering agent which would remove more tar and nicotine than the crepe paper filter then in use. The interest of duPont, Eastman Kodak, and others was solicited in the development of a new synthetic cigarette filtering material. In result, Eastman Kodak, working with Brown & Williamson, undertook the development of a new filtering material. This joint development effort produced a cellulose acetate tow which, to this day, remains the principal filter material used by cigarette manufacturers worldwide. Once the cellulose acetate tow was developed and its filtering efficiency established, there remained the major problem of how to form filters from it in high-speed cigarette manufacturing machines. In collaboration with Eastman and the Molins Machine Company, Limited of the U.K., B&W developed the high-speed filter fabrication processes essential to the practical application of this new and improved filtering material. This was accomplished in 1951, and the new filter was introduced on the VICEROY brand in 1952 as the HEALTH-GUARD filter.

17. VICEROY copy in 1952 and 1953 said that the new HEALTH-GUARD filter made VICEROY better for health than any other cigarette. These claims appear clearly to have been based on test data compiled for B&W by the Grosvenor Laboratories, a report from Grosvenor dated May 22, 1952 underscoring the change in the VICEROY filter with resultant reduction in tar delivery per cigarette of approximately 40% and a nicotine reduction of approximately 16%.

Scientists were said, in VICEROY advertising, to have proof that VICEROY removed more tar and nicotine than any leading king-size cigarette. (In 1952 PALL MALL, CHESTERFIELD and TAREYTON had king-size cigarettes on the market.) A specimen of an ad including this claim follows.

Smoke from other leading filters (only filtered PARLIAMENT sold over a billion, filtered KENT and MARLBORO less) delivered up to 110% more nicotine than VICEROY. VICEROY thus gave more health protection.

The HEALTH-GUARD filter was 18% longer than old style filters. (The new VICEROY cellulose acetate filter was 13mm in length as against 11mm for the old VICEROY paper filter, and the only other filter then on the market was the even shorter PARLIAMENT cotton filter.) VICEROY was thus safer for the lungs than any other king-size or leading filter. VICEROY took out more harmful irritants. Typical advertising copy read:

"1. It's VICEROY'S Amazing New HEALTH-GUARD FILTER
- 18% longer than Old-Style Filters!

"2. PLUS KING-SIZE LENGTH! VICEROYS Now Are 21%
Longer - to Filter the Smoke Still Further!"

"No Wonder this amazing new cigarette is safer for
throat, safer for lungs, than any other king-size
cigarette! For it's a king-size with a filter!
The first in cigarette history!

"AND NO WONDER it's safer for throat, safer for lungs,
than any leading filter cigarette. For the filter
itself is longer! There's more of it, to take out
more harmful irritants!"

"FOR THE FIRST TIME, the advantages of king-size -
and the advantages of filter-tip cigarettes - have
been combined into one! So for double-barreled health
protection...get king-size, filter-tipped VICEROYS
today!"

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VICEROY offered less tar, less nicotine - a lighter smoke. VICEROY brought filtration to smokers - and to the cigarette industry. Filtered VICEROY advertised that it was better for health - better for lungs - than non-filtered cigarettes. While there is no scientific evidence that the level of tar and nicotine inhalation is significant to health, no one contends that unfiltered smoke is preferable to filtered smoke. B&W pioneered the cellulose acetate filter in 1952 and has pursued filtration research ever since. (There is, today, something of a dilemma in that B&W now takes the position that it has not been established that the amount of tar and nicotine delivered in mainstream smoke is of health significance. This position is now taken by all cigarette manufacturers in the filings protesting the Federal Trade Commission's tar and nicotine findings.)

18. In 1952 VICEROY copy talked of 20,000 filter traps.

The 20,000 filter traps in VICEROY's filter were the 20,000 individual fibers in the makeup of the filter. At this period, the more fibers there were in a filter, the more surface area, that in turn directly related to the amount of T&N removed from the smoke.

At this time and for some years (until Eastman Kodak licensed Celanese) Eastman was the sole source of supply for cellulose acetate filter material. Because B&W had, at the outset, worked with Eastman in the development of the cellulose acetate filter, we enjoyed some benefit in the initial release of improved Eastman filter materials. In 1952 and for some time thereafter, only B&W was able to purchase the new and finer filtering material from Eastman. This gave us a solid basis for such claims.

VICEROY and comparative T&N data may have been run through the 1950's, but these are now unavailable in R&D files.

The number of strands, and thus traps, was in fact significant in terms of T&N removal and we believe that at that time--through the 1950's--other filtering techniques to accomplish the same result were not available. We believe that KENT cigarettes got down to, and perhaps somewhat below, the VICEROY T&N delivery level in the mid-1950's through use of an asbestos filtering material. (As the asbestos filter was not made of separate strands of material, it could not have been measured in terms of traps in the same way that cellulose acetate filters were. We don't know how many "traps" there may be in the asbestos filter; we had at that time no means of ascertaining how many traps there were in the KENT filter and apparently the manufacturer, Lorillard, didn't either because it saw fit to make no competitive claims in comparable terms.)

19. In 1952 VICEROY also advertised that a leading doctor recommended the brand. (No one in Brown & Williamson or the Bates Agency knows who the doctor was. So far as available records indicate, this "doctor ad" was used only in the October 20, 1952,

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issue of Time and the November 1952 issue of Gourmet, but there is no way to be certain that other use wasn't made of it, and Time circulates widely.) Of the ad, it can be said that there was some developing opinion that filtered smoke was preferable to non-filtered smoke. The ad did not claim general medical endorsement.

20. In 1952 KOOLS guaranteed the smoker would "feel the difference" within 24 hours of smoking.

B&W Advertising says that a smoker switching to KOOLS automatically "feels the difference," that is, he experiences the subjective sensation of coolness as he inhales. As for feeling that difference "within 24 hours," they say the "difference" would actually be felt subjective sensation.

21. Unfiltered KOOL also contended, in 1952, that it was an established medical fact that for steady smoking no other cigarette was better for the lungs than KOOL.

Apparently this is no more than a weasel or parody claim. We can find no backup in the files for it and no T&N data on KOOL, other B&W, or competitive cigarettes at this time. Note, per above, that we were concurrently advertising VICEROY as safer for the lungs than any other king-size or leading filter. R&D thinks that the VICEROY king-size filter at this time would have delivered substantially less T&N than the 70mm unfiltered KOOL. These concurrent VICEROY and KOOL claims are flatly inconsistent and resist rationalization. So far as the records indicate, this KOOL copy was used only in New England newspapers.

This apparent limited geographic use of this KOOL copy ties with the fact that KOOL sales (and VICEROY too) have always been relatively weak in New England and particularly in Boston.

We presume that some local rumor about menthol or other competitive activity must have led to this very limited and localized KOOL advertising, but the most thorough checking produces no explanatory record or recollection. As these New England ads seem to have no pertinence to pending litigation, further efforts to unravel reasons for use of this KOOL copy will be deferred.

22. In 1953-54, VICEROY claimed that Brand A (70mm non-filtered) gave smokers 78.5% more tar and nicotine, Brand B (king-size non-filtered) gave 70.4% more, and Brand C (70mm filter tip) 57.4% more. (Note that tar and nicotine are used in the conjunctive.) This data came from tests run by the W. M. Grosvenor Laboratories, Inc. (We do not know whether Brand A was a CAMEL, LUCKY STRIKE, CHESTERFIELD, RALEIGH, or other cigarette. Brand B was probably PALL MALL, though it could have been our own LIFE. Brand C, we believe, must have been PARLIAMENT. The only alternative, apparently, would have been our own previous VICEROY.)

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Ads based on this testing were carried in various medical and dental journals, a specimen following on the next page. Following that, however, apparently popular magazines were used, the same ad being reproduced as "A Report of Doctors - Published in Leading Medical Journals." It appears that one issue of each of LIFE, Saturday Evening Post, and LOOK were used.

23. The records on the old Grosvenor studies are incomplete, and we do not now find any specific substantiation of the "110% more nicotine" claim. The Grosvenor data on the new VICEROY filter indicated substantial reductions in tar and nicotine. (We have no way of knowing whether one of Grosvenor's comparisons was that of the old with the new VICEROY. We do know that tar delivery of the new VICEROY was down substantially and that nicotine delivery was perforce down substantially. So far as the scrapbook indicates, the "110% more nicotine" claim was made only in very fine print on which no plaintiff is likely to have focused.)

24. In 1953 our advertising said that the VICEROY HEALTH-GUARD filter crowned 20 years of B&W research.

The length of the VICEROY cellulose acetate filter was increased in early 1953 from 11mm to 13mm to cut T&N delivery. No further significant change was made in the VICEROY cellulose acetate filter until 1958.

The crepe paper filter was introduced in VICEROY cigarettes in 1936 or earlier, and it is known that B&W did early development work on crepe paper filters in collaboration with the Smith Paper Company (then owned by Pocahontas Corporation, a B.A.T. subsidiary), with Peterson Parchment, and with others. While in those earlier days development work was handled primarily by the Manufacturing Department, B&W, as a pioneer in the cigarette filter field, continued filter refinement and improvement over the years both through the efforts of its own Manufacturing and R&D Departments and through work with the major suppliers of filtration materials, who themselves had substantial R&D facilities.

Litigation counsel are of the view that we cannot expect to impress either judge or jury with testimony bearing on our good faith pioneering development of cigarette filters. Usefully, some of the history may be necessary in response to interrogatories or questions upon deposition or on trial, and some of the historical detail is included here as the only basis available to explain or substantiate various claims made from time to time. In view of litigation counsel's opinion, it is not included in the thought that we might gain "brownie points" with judge or jury as the farsighted cigarette maker which brought safer smoking to the public.

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25. In 1953 KOOLS soothed the throat and refreshed the lungs.

This copy appeared in the third year in which Vardy allegedly smoked KOOLS. The copy writer was apparently referring to subjective feeling or sensation of the smoker. This was not intended to be either technical or medical copy.

26. LIFE with a cellulose acetate filter was marketed in January 1953. We seem to have no T&N data on this LIFE, and there appears to have been no significant advertising.

27. In 1954 VICEROY advertising said that the brand had 20,000 filter traps, providing double the filtering action of competitive cigarettes, and in 1955 VICEROY advertising said that the brand had twice as many filters as either of the next two largest selling filter brands, apparently WINSTON and L&M at the time.

At that time, a finer filter tow, which is the basis of these claims, was being used only by Brown & Williamson. The claims are, in that sense, solid.

"Double filtering action" was claimed on the basis that the cigarette itself filtered, as did the added filter. Thus any filtered cigarette could have made that general claim, though only VICEROY could then claim twice as many filter traps.

Through this period VICEROY continued to have relatively low tar and nicotine delivery. The advertising didn't claim that VICEROY was any healthier than other brands; it simply claimed superior filtration competence.

If the smoker thought it desirable to smoke a brand with lower range tar and nicotine delivery, VICEROY was offered as such a cigarette. It was sold that way.

28. In 1955 VICEROY had twice as many filters as the next two largest selling filter brands. (WINSTON and L&M seem to have been the next two largest selling, KENT the third.)

WINSTON was using a filter material of 8.0 dpf/70,000 total denier which provided less than 10,000 filter traps. We believe the same was true of the L&M product at that time. KENT continued, at that time, its use of an asbestos filter, switching to a cellulose acetate filter in 1956. When KENT switched to use of cellulose acetate, it used 18,000 traps, somewhat less than VICEROY.

29. In 1955 the VICEROY filter was also said to be "made from a pure natural substance--cellulose--found in delicious fruits and other edibles." And "No other filter like VICEROY! No cotton! No

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asbestos! No charcoal! No foreign substances of any kind! Made from pure cellulose...snow white...natural."

While the foregoing claims don't make much sense, plainly they were aimed at the troublesome widespread rumor that the VICEROY filter was made of spun glass, fragments of which were said to come through in the smokestream. This was simply an advertising effort to counteract that untrue rumor.

30. There was then (1954-56) also copy on endorsement of VICEROY by doctors, dentists, and nurses. This was based again on postcard surveys of these professional groups.

The advertising represented that many of these respondents thought filtered smoke preferable. There was no claim or representation that smoking VICEROY was either good or bad for the smoker.

These endorsements tied into the fact that VICEROY delivered less tar and nicotine than most other leading cigarettes.

This "endorsement" advertising appeared only in medical and dental journals. It was directed at professional people, capable of critical judgments - not at smokers generally.

31. In 1955 it was claimed that "VICEROYS filter out what you don't want in for richer, smoother flavor!" Apparently this theme was used only in railroad menu inserts, and the copy was flavor qualified.

This advertising didn't bother to say what was taken OUT or what the smoker didn't want IN, but the inference could be drawn, particularly in view of past VICEROY copy, that reduction of T&N was both desirable and accomplished. We seem to find no records of T&N testing at this time, but there is reason to assume that VICEROY continued lowest in T&N delivery, save for KENT.

32. In March 1955 LIFE was restricted to trademark sales. LIFE was again widely marketed in September 1959 with a 20mm paper filter.

33. In 1956 the FTC took the position that even copy about feeling soothed and relaxed contravened the 1942 FTC agreement. Brown & Williamson denied that, but we nonetheless agreed to stop talking about even throat feelings. An FTC "press release complaint" was, of course, the threat - never mind the "right" or "wrong" which might come of a protracted proceeding. (The courts have since put the brakes on such tactics, but that was no help in 1956.)

Shouldn't the position on this be that we have always acceded to the Government's requests and restrictions in advertising the KOOL brand - which doesn't mean that we agree with its position? It is

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unfortunate that the FTC intervention of 1956 pertained to KOOL advertising during the years in which Vardy allegedly took to smoking KOOLS. However, we made no medical claims for KOOL, save for the unfortunate claim of 1952 that no other brand was any better for the lungs. Per above, it is hoped that that claim didn't get into the Cleveland area.

34. VICEROY stayed on old themes in 1956, but KOOL cellulose acetate filters (introduced as an 80mm version in August 1956) now afforded "All the benefits of KOOL, plus all the benefits of smoking."

As KOOL used the same filter as VICEROY, there should be no problem in this claim. We have no records indicating whether or not KOOL T&N delivery with the VICEROY filter was comparable to VICEROY levels, but as heavier leaf tobaccos were being used in KOOL at this time, it seems probable that KOOL's T&N delivery somewhat exceeded that of VICEROY. Nevertheless, with the incorporation of the filter on KOOL, the tar and nicotine delivery was somewhat reduced over that of the non-filter KOOL--even though the total cigarette length was increased.

35. During the years 1956-1960, KOOL copy also said:

"Smoking too much? You've got the hot cigarette habit. I stopped it by smoking KOOLS. Filter KOOLS taste clean and fresh and light."

"Snow fresh filter KOOL. America's most refreshing cigarette...as cool and green as a breath of fresh air. Mild, mild menthol...With every puff your mouth feels clean, your throat refreshed. Switch from hots to KOOLS."

"Tried regular cigarettes? Tried other menthol? Now come up, all the way up to the menthol magic of KOOL. You feel a new smoothness deep in your throat. Only KOOL gives you real menthol magic."

36. In 1957 VICEROY still talked about twice as many filters, 20,000 traps, maximum filtration, and a new Filter-of-the-Future that does for you exactly what you want it to. (WINSTON was then the largest selling filter, followed by L&M, VICEROY, KENT, SALEM, OLD GOLD and TAREYTON, in that order, ranging from 3 to 40 billion.)

At this time, VICEROY still had more traps than other cellulose acetate filters. We believe, however, that at this time KENT and L&M came up to about 18,000 traps and OLD GOLD to about 15,000, WINSTON and SALEM holding to 10,000. The cellulose acetate portion of the TAREYTON filter had relatively few traps and the paper/charcoal segment wasn't amenable to trap measurement of this sort.

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The VICEROY copy in 1957 was taste-qualified for the most part, and 1957 was the last year in which we claimed twice as many filter traps. Presumably the claim was then dropped because other cellulose acetate filters were coming closer to (or surpassing) the VICEROY count.

37. In 1958 the VICEROY filter was lengthened and a finer tow was introduced to cut tar and nicotine delivery further. The advertising theme switched to VICEROY giving the smoker more of what he switched to a filter for - on the whole, an accurate claim. Given our advertising history, this must be understood as meaning substantial tar and nicotine removal.

38. In 1958 the VICEROY "Thinking Man" theme was introduced. "A Thinking Man's Filter and a Smoking Man's Taste"--in many variations. "Thinking Man" copy continued into 1961, when its use was discontinued because it proved ineffective against the advertising of competitive filter brands which were then leaving VICEROY far behind.

The "Thinking Man" theme used such copy as:

a. "VICEROY gives you the maximum filtration for the smoothest smoke of any cigarette, more taste, too, the finest tobacco taste of all. Maximum filtration for the smoothest smoke--and finest tobacco taste, more of what you change to a filter for."

b. "The fact is that thinking men and women don't let themselves get pushed and pulled by all those filter claims. They know what they want in a filter cigarette. And they know only VICEROY gives it to them. A thinking man's filter, a smoking man's taste. Makes sense."

c. "When you think for yourself, you can't be misled. That's why I smoke VICEROY. I checked on the filter and picked the one with the best filter for the finest taste, VICEROY."

VICEROY sales were weak at the time, particularly vis-a-vis the newer filtered WINSTON (a product of RJR) which had been built solely on taste advertising ("WINSTON Taste Gook Like a Cigarette Should"). Brown & Williamson's purpose was in fact to modulate the filter theme and to stress the balance VICEROY was accomplishing between reasonable filtration and satisfactory taste. (Any witness likely to get involved in "Thinking Man" copy might have in mind two or three of the humorous stories which developed about this theme.)

"Thinking Man" copy proved ineffective to arrest VICEROY's declining sales position, and it was abandoned in 1961.

39. In early 1958, both the VICEROY and KOOL filters were lengthened from 15 to 17mm and a smaller dpf tow was substituted to further cut T&N. Company and agency records do not indicate to what extent T&N delivery was cut by this filter change.

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40. In 1958-59 KOOL suggested switches from hots to KOOLS to avoid dry, rough and raspy throat conditions (with no further objection from the FTC), and the brand claimed the world's most tested filter. This was the VICEROY filter, which certainly long led the field in filter development.

In April 1959, the KOOL cellulose acetate filter material was changed to reduce T&N delivery. The KOOL filter at this time was similar to the VICEROY filter, the thrust of the claim being that B&W's cellulose acetate filter, rather than the particular KOOL filter then used, was the most tested, whatever that means.

41. Brown & Williamson had - without much success - marketed the LIFE cigarette for some years, and in 1959 a new LIFE filter (Millecel) was introduced. LIFE copy then read--

"YOUR FILTER CIGARETTE NO LONGER FILTERS BEST Yes, the Filter Cigarette You Are Now Smoking No Longer Gives You the Best Filtration. Today, there's a New Filter Discovery!

NEW LIFE FILTERS BEST BY FAR!

ONLY NEW LIFE BRINGS YOU AMAZING NEW MILLECEL FILTER

Here's the discovery that revolutionizes filter smoking--Life's New Millecel Filter! Millions of super-filtering cells that achieve filtration never before possible . . . far better filtration than the brand that used to filter best."

Early in 1959 a program was initiated in cooperation with the Peter J. Schweitzer Company to develop a new, more effective paper filter with many traps. This became the MILLECEL filter, which was then and remains the most efficient filter for T&N per millimeter length ever developed. The MILLECEL paper used in LIFE is a unique paper. We know of no effort either to count or scientifically to calculate the actual number of cells in this new filter. Upon microscopic observation, the number of fibers in this material would appear to run into millions.

In an R&D memorandum dated August 14, 1959, B&W R&D tests of the higher-filtration brands showed: LIFE 8.6 mg tar, SPRING 8.9 mg tar, SANO 12.3 mg tar, SPUD 12.2 mg tar, and KENT 13.5 mg tar, these being the higher filtration brands at that time.

42. In 1959 LIFE advertising used (a) a filter absorption drip test comparison to prove that LIFE filters best and (b) comparative copy based on figures on file with the U.S. Government to the same point. (The drip test attempted to show that LIFE filtered better than the previously most effective filter cigarette. That was in fact L&M's new DUKE cigarette, according to L&M's advertising and our own tests.)

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On December 11, 1959, the FTC issued a complaint charging that these LIFE ads were false, misleading and deceptive in that the drip test didn't prove less T&N and that the Government had made no such finding and given no such implicit endorsement.

There ensued the agreement of January 28, 1960, which became a Commission Order interdicting use of such pictorial demonstrations when they don't in fact prove T&N absorption and representations that the Government has found any B&W cigarette to be lower in T&N content than any other filter cigarette. (The latter prohibition was relaxed by Order of February 26, 1968.)

In this instance, B&W did not admit violation of the law as charged. The FTC had requested each of the major cigarette manufacturers to test tar and nicotine delivery of a number of specified brands, the testing technique being specified. B&W simply produced in print advertising the table based on its own test results as filed with the Government, these showing that LIFE, at that time, had lower T&N than any of the other brands tested, the list including such then high-filtration brands as DUKE, SPRING and KENT.

The drip test, using a liquid dye, was intended to and did accurately reflect the relative absorption of the DUKE and LIFE filters of a water solution containing tar and nicotine.

While this LIFE/FTC episode might be useful in showing governmental blocking of efforts to publicize low T&N delivery, it must be in mind that we used a lot of other "health" copy which wasn't interdicted; we haven't come to use of T&N figures now that they are condoned; and the FTC squabble involves charges of misleading copy.

43. In early 1960, an attempt was made to market the LIFE cigarette with slits in the cigarette paper near the mouthpiece. LIFE's tar delivery was thereby reduced to 4.9 mg, thus continuing to have the lowest tar delivery of any cigarette on the market. The slit-paper LIFE did not find consumer acceptance, however. Notwithstanding subsequent discontinuing of slitting, LIFE continued to deliver less tar than any other brand.

44. In 1960 the VICEROY filter was called "Deep Weave."

The Deep Weave filter was the result of a joint development between B&W and Eastman. The fibers in the tow were interwoven, labeled "interlaced." Further crimping was added to the filter tow, giving the individual fibers a wavy effect. This made it possible to use a smaller individual fiber size which, in turn, increased the surface area, making a more efficient filter. During 1960, the tar delivery of VICEROY with the Deep Weave filter was reduced from 12.4 mg to 11.3 mg--still well above LIFE.

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45. In late 1961, changes were made in the VICEROY filter so as to increase somewhat the T&N delivery. This change was made because VICEROY sales were slipping, each of WINSTON, SALEM, L&M and MARLBORO filters providing more T&N than VICEROY and selling at a substantially higher rate. While at that time KENT delivered less T&N than VICEROY and substantially exceeded VICEROY sales, KENT was the exception, still riding the crest of Reader's Digest endorsements. In 1961 the sales of WINSTON, SALEM, L&M and MARLBORO filters totaled 149.9 billion, whereas VICEROY had slipped from a high of 24.5 billion in 1957 to 17.9 billion in 1961. In 1957, total sales of filtered WINSTON, SALEM, L&M and MARLBORO totaled only 97.6 billion.

Also in late 1961, the T&N delivery of KOOL was similarly increased somewhat as KOOL sales were running at a rate of only 14.1 billion, whereas SALEM in six years had moved to the leading menthol position with 1961 sales of 41.5 billion.

46. Abandoning the "Thinking Man" theme in 1961, VICEROY advertising turned to the "both ends" theme, as "VICEROY's got it end to end, special filter, special blend." When that copy proved ineffective to arrest VICEROY's declining position, the copy switched, in 1962, to emphasis on VICEROY having "the taste that's right." "Smoke all seven of the leading filter brands and you will agree...some taste too strong...some taste too light...but VICEROY's got the taste that's right." This basic theme continued in VICEROY advertising into 1966.

47. In 1962 polyethylene glycol was added to VICEROY and in 1963 to KOOL, RALEIGH, BELAIR and LIFE to minimize phenol delivery.

In 1963 Wynder published a study based on animal tests in which he concluded that phenol was a co-carcinogen. This study got considerable publicity and led to the "phenol crisis" of 1962. In response several manufacturers, including B&W introduced additives on filters to minimize phenol delivery. B&W continues to use additives for phenol removal. We have never advertised removal of phenols. Phenols were removable without affecting taste.

Changes in filter making equipment at this time increased the effectiveness of B&W filters, but there was not a significant resultant change in T&N delivery because the leaf tobacco then in use had a higher T&N content.

48. Whether or not to volunteer information on our use of polyethylene glycol to minimize phenol delivery isn't an easy question. Certainly today intelligent plaintiff's counsel can be expected to get into the gas phase and some of its awful-sounding constituents. Our basic position on that must be that we spend millions in research, first, to use today's ever-increasingly sophisticated

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chemistry and research tools to learn what cigarette smoke is; second, to get quantitative fixes on these constituents (varying, of course, with a myriad of smoking factors, about which little is known); and, third, to devise practical and acceptable means of varying the smokestream content if and when there is solid scientific and medical finding that that would be useful.

Presumably, however, there is as much basis for reducing delivery of hydrogen cyanide, acrolein, formaldehyde, benzopyrene and isoprene as there is of phenol. And we can reduce these other constituents - but, on the basis of test panel findings, not yet with satisfactory resulting taste. What of carbon monoxide and nitrogen oxides, no less indicted, which we can't yet remove?

Why do we ask Celanese to mouse skin-paint SM-II? Why are we developing a mouse inhalation machine? Why is BAT "far out" in this sort of research? These and like questions must be considered in the context of a cancer suit.

We don't believe there's thing one wrong with cigarettes. Even unfiltered cigarettes. There is no clinical proof, and the epidemiological studies prove nothing. Yet over the years we were a leading proponent of filtration - millions upon millions spent in evidence of that.

No one has proven that more or less smoking - or more or less of all the "bad" constituents - makes any difference. Yet, of course, there's concern - governmental, public, and our own. We pioneered filtration. With our parent, we have long been in the van of sophisticated cigarette research. We chartered CTR. We finance its independent research. We finance ANA research. We want first the facts - and then the answers. Our quest is unending and unstinted.

Yet there's no point in offering a cigarette no one wants. Even the Government recognizes that. LIFE is our case in point. Minimal-filter WINSTON taking over from more effective-filter VICEROY is in point, too.

49. Between 1960 and 1964, KOOL copy said:

"Smokers...Come up, come all the way up to the menthol magic of KOOL. No other menthol cigarette has it. Only KOOL gives you real menthol magic...deep down in your throat. Has your throat been telling you it's time for a change? Have you tried what you thought was a real menthol cigarette? Come up to the real menthol magic of KOOL. Only KOOL has it."

As noted above, menthol does the throat no good; it produces no more than a subjective reaction of coolness and smoothness.

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50. In January 1962, the pressure drop of KOOL was increased to further reduce T&N delivery. As the tobacco section of KOOLS was producing more T&N, there was no significant net delivery effect in these filter changes. KOOL T&N delivery moved up gradually as KOOL sales stayed more or less level, while sales of the newer and competitive RJR mentholated brand (SALEM) continued to increase sharply.

51. In March 1963, the VICEROY cellulose acetate material was changed to 3.0 dpf/47,000 total denier to further increase pressure drop and reduce T&N; but in August 1963 we switched to 3.3 dpf/44,000 total denier to increase T&N delivery. As a result, the T&N delivery of VICEROY was increased fractionally above that of WINSTON and MARLBORO. (VICEROY sales in 1963 were running only about 19 billion against 69 billion for WINSTON and 25 billion for MARLBORO.)

52. The pressure drop of the LIFE filter was again increased in August 1963 to further cut T&N delivery. As the tobacco section was producing more T&N, there was no significant net delivery effect in this filter change.

53. In 1963 LIFE said that millions have read the report of the latest impartial tests and proclaimed LIFE to be the finest filter cigarette.

This advertising referred to the Reader's Digest article of August 1963 in which LIFE was listed as being lowest in T&N with 5.2 mg of tar and 0.3 mg of nicotine.

54. In 1963 B&W put triple-filter AVALON on test markets in California and Chicago. The mouthpiece section of this triple filter was made of cellulose acetate. The center section was a black-colored acetate with an 18% loading of carbon granules. The remaining filter section was a gray paper with a 5% potassium carbonate treatment.

Each section of the AVALON filter was designed to perform a specific filtration task. The paper section with potassium carbonate removed hydrogen cyanide.

At this time, Arthur D. Little had published a study which professed to show that hydrogen cyanide repressed cilia activity. Whether the Little report was valid and accurate and, if so, whether retardation of cilia activity is a significant health factor, we didn't profess to know. The AVALON filter was intended to remove gas phase materials which at the time were considered suspect by some medical writers.

The center section of the AVALON filter was designed to remove HCN, acetaldehyde, isoprene and acrolein from the gas phase.

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The third or mouthpiece section removed phenol.

All three sections accomplished T&N removal.

Hundreds of variations of this multiple filter product were designed and tested, and testing in these areas continues today. The AVALON cigarette used in these test markets removed acrolein, HCN, and phenol, but was not very effective in the removal of acetaldehyde and isoprene.

The tar level of AVALON got down to 10 mg and nicotine to 1 mg. VICEROY, KOOL, WINSTON and SALEM were in the 14 to 15 mg tar range and nicotine of all four brands about 1.3 mg.

At this time LIFE, as well as competitive high-filtration brands were delivering only about 5 mg tar and commensurately lower nicotine.

In 1963 and 1964, the three-part filter of AVALON was featured in advertising as employing three distinct filter units, "to refine harsh flavor, to absorb hot taste and to smooth the smoke." The MILLECEL was "Science's Newest Filtering Material." (The MILLECEL filter was the highly effective paper filter which was developed for and was already being used on LIFE cigarettes. It had been in use for about five years but still remained both the newest and the most effective filtering material.)

B&W spent \$1.6 million advertising AVALON in the test market period of approximately 14 months during 1963 and 1964, this equivalent to promotional expenditure at the rate of about \$18 million on the national market. Total AVALON sales during 1963 were 76 million; during 1964, 84 million. Sales remained so low that the brand was discontinued.

In fact the story of the AVALON marketing experience isn't likely to serve any useful purpose. The work that went into the product of this multi-purpose filter was, as indicated, but part of the continuing effort to accomplish selective gas phase removal, should any reason for that be established or seem important to health authorities or the smoking public. The AVALON brand was placed rather hurriedly on the market. Its T&N removal was only mid-range, and we are not in a position to say that the gas phase removal of the AVALON triple filter was either very effective or particularly significant. Furthermore, the Company doesn't believe that anything needs removing from cigarettes anyway. At the time (in 1963) publications of Arthur D. Little (who was under contract to L&N) indicated that hydrogen cyanide, acetaldehyde, isoprene and acrolein apparently suppressed cilia activity. But Brown & Williamson doesn't accept such findings as significant, and there has been little publicity on cilia suppression since 1965. Brown & Williamson R&D continues work in the area, however, because of such current reports as those of the Leuchtenbergers.

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RJR was, at the same time, marketing charcoal-filtered TENPO which was far more effective in gas phase removal. TEMPO with an effective charcoal filter did not sell well either.

55. In 1964 the Surgeon General's Report on Smoking and Health was issued. This report was not based on any new research. The Surgeon General's committee, through staff assistants, did no more than review and seek to correlate previous studies, and practically all of those were merely statistical studies. There had also been some mouse skin-painting work at that time, but its pertinence was then - and now remains - doubtful.

Most of the statistical studies on which the Surgeon General relied, have since been sharply criticized by eminent statisticians for the inadequacy of methods and techniques and the inconclusiveness of results even on statistical grounds. The fact is that medical science didn't know then - and doesn't know now - what causes any cancer. More and somewhat better statistical studies have since been completed by various agencies, but the facts still remain that no one knows what causes lung cancer and any number of non-smokers develop cancer of the lung.

56. In 1964 VICEROY said that the "Deep Weave" filter was scientifically designed for taste.

Starting in 1964, with VICEROY sales still weak in contrast to WINSTON, MARLBORO and other competitive brands, the Company decided to keep VICEROY's tar delivery at about mid-range of the major filter brands. (This was basically a marketing decision to improve VICEROY's taste vis-a-vis its principal competition, yet to hold T&N delivery at a level hopefully acceptable to filter smokers concerned with published comparative data, whether by Consumer Reports, Reader's Digest or later the FTC.) This was done and has since been accomplished from time to time through adjustments in the pressure drop of the filter, paper changes, blend changes, etc., as necessary or useful to maintain the VICEROY taste level in this middle position of the larger selling filters.

Starting back in 1962 and continuing today, the nicotine delivery level of VICEROY has been somewhat higher than that of the leading competitive filters. This higher nicotine delivery was intentional. Whether higher nicotine delivery was helpful or harmful to sales is now under review.

57. From 1962 through 1966, KOOL--for the same marketing reasons--was intended to delivery slightly more tar than SALEM, but beginning in 1967 it has delivered fractionally less tar than SALEM. The decision to keep the tar delivery of KOOL somewhat under that of SALEM was made in 1966.

From 1962 into 1968, KOOL delivered somewhat more nicotine than SALEM.

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58. The Cigarette Advertising Code became effective January 1, 1965. As a member of the Code, B&W's advertising was subjected to careful screening to assure, among other things, that no health claims were made. While the "health" sections of the Code were removed in 1968, B&W--like RJR and PM--has continued to follow a no-health-claims policy.

59. The LIFE cigarette, with its effective paper filter for many years maintained a very low tar delivery. In the period 1965-1966, various changes were made in the LIFE filters.

First, an acetate filter was substituted for the more effective paper filter. This increased the tar delivery from about 5 mg to about 12 mg.

Next, the pressure drop of the acetate filter was increased a bit, minimally reducing T&N delivery.

In September 1966, a dual filter was substituted (part cellulose acetate and part paper) which brought the tar delivery level down to about 10 mg - still double that of the single paper filter used for many years.

With this, LIFE's tar delivery was brought in line with that of TRUE and other then popular cigarettes delivering less tar than the major middle-range brands. No significant advertising promotion was put behind LIFE during the period of these changes and they had no significant effect on sales, which remained minimal.

There is the problem throughout the LIFE story that we haven't put any significant promotion behind the product for many years.

60. Between 1964 and 1968, KOOL said:

"Your cigarette's not tasting cool enough 'til you come up to KOOLS. With rich tobaccos, KOOL's white filter, extra coolness, too. Taste extra coolness as you smoke, let KOOLS come through for you."

"Come up to the KOOL taste. The coolest taste in any cigarette. Get KOOL's white filter, rich tobaccos, too. Taste extra coolness. Let KOOLS come through for you. Come up to the KOOL taste. The taste to stay with every time you smoke."

61. In 1966 VICEROY claimed use of flavor fresheners.

"Flavor fresheners" seem to be an advertising concept. There was no change in VICEROY or use of any new additive which would support such a claim. VICEROY cigarettes remain essentially unchanged since 1962.

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62. As of January 1, 1966, all packages and cartons of cigarettes manufactured in the United States bore a notice, as required by Federal law, reading "Caution: Cigarette Smoking May Be Hazardous to Your Health." This Congressional action followed extensive propagandizing and pressure by some bureaus in the Government for various restrictions on cigarette merchandising.

63. In 1967 and 1968 VICEROY advertising featured the "Right Any Time of Day" and "The Good Taste Never Quits" themes--innocuous copy.

64. In 1968 the VICEROY filter length was increased from 20 to 21mm and otherwise modified, this resulting in a reduction of wet TPM delivery by two or three mgs. At this stage, TPM (total particulate matter) measurements had come into vogue rather than the old tar measurements. This resulted from the switchabout of the FTC position on publication of T&N data and its decision to use a TPM measurement rather than a tar measurement. (This was essentially a refinement of measuring technique.)

Nicotine was also reduced somewhat. These adjustments were made in keeping with the policy of holding VICEROY T&N deliveries in line with those of its larger selling competitors.

At about the same time, similar changes were made in the KOOL filter for the same reason.

PATENT POSITION

Further to R&D work, Brown & Williamson holds many patents in the tobacco products field. Of these, six may be of interest to plaintiff's counsel:

a) Patent No. 3,320,961, issued in 1967, treats the filter with sodium phosphate, claiming that this reduces acids, tars, nictines, and phenols. To that, Brown & Williamson, through other means, long ago minimized phenol delivery and controls T&N delivery in keeping with the public's preferences.

While it has not been scientifically established that any particular level of T&N is more or less healthier than another, Brown & Williamson has long been a leader in the filtration field. We have tried various additives for the control of various acids in the smokestream, and continue full-scale experimentation in gas-phase control.

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There is not yet a practical means of acid control which leaves a salable cigarette.

This patent, like a number of other developments, stemmed from the continuing efforts of BAT and B&W research to find means of removing or decreasing various smoke ingredients against the day when one or some of them may be found to be harmful to health in the smoking context.

b) Patent No. 3,340,879, issued in 1967, pertains to means of removal of phenol. As indicated, Brown & Williamson has for some years held phenol delivery to a minimum.

c) Patent No. 3,327,718, issued in 1967, is an invention for removing nitrogen dioxide from cigarette smoke by means of a zeolite filter. So far it hasn't proven feasible to use zeolite in a salable cigarette produced in volume. Again this is a product of continuing research to enable us to control mainstream smoke in keeping with future scientific dictates.

d) Patent No. 3,353,542, issued in 1967, is an invention which, it is claimed, may also be useful in the catalytic decomposition of...constituents of smoke. This development is still under study.

e) Patent No. 3,353,544, also issued in 1967, is an invention relating to reduction of T&N and various gas phase components of mainstream smoke. This invention is pertinent to use of a charcoal-type filter should its scientific worth be established in terms of health. Charcoal filters have not, so far, found substantial consumer favor because of the sharp change in taste imparted.

f) Patent No. 3,403,690, granted in 1968, covers another means of removing acids from mainstream smoke. Tests to date indicate that the additive required produces a very unpleasant taste.

The six patents noted are all of recent date and each of them are BAT inventions assigned to B&W.

There are four health-oriented patent applications pending, again all BAT inventions. Plaintiff's counsel has no access to these, however, through the Patent Office.

Several patent applications based on Brown & Williamson's recent R&D work are now in preparation, some of them health-oriented.

Finally, Brown & Williamson has abandoned some patent applications before issue. These, too, are unavailable to the plaintiff through the Patent Office.

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SPEECHES BY B&W OFFICIALS

1. The Brown & Williamson position on smoking and health has been stated by its President and others in these terms:

Crume - 1963 - (Michigan Tobacco & Candy Distributors & Vendors Assoc. in Detroit)

"Our industry has reacted in its traditionally responsible manner. It has energetically turned to research, in the belief that science rather than propoganda will find the answers to questions about tobacco and health."

"In its search for truth, the tobacco industry will continue to support scientific studies for whatever period necessary to solve the many complex factors concerning the issue of tobacco and health."

Finch - 1965 - (Burley & Dark Leaf Export Association in Gatlinburg, Tennessee)

"From the scientific and medical communities, there came forth an impressive group of researchers and specialists who testified in Congress as to the unsoundness of the assemptions made by our adversaries. As eminent men of science, they pointed out the absolute lack of laboratory and clinical evidence to support those assumptions. How can the search for truth be continued if smoking is to be condemned on the basis of purely statistical correlations? Look at the public record of those hearings, and you will find a substantial body of medical and scientific testimony and statements that trumpet the call for more reason, sounder judgments, and more facts through research."

"But I tell you this with all firmness and sincerity: we are more interested in the truth--whatever it is--than our enemies appear to be. The search for truth about the whole question of tobacco and health must continue unabated and at all possible speed."

Finch - 1966 - (Flue-Cured Tobacco Cooperative Stabilization Corp. in Raleigh, North Carolina)

"Yet, despite these expressions of scientific doubt, our enemies continue to draw or advocate certain statistical correlations between the use of tobacco and human diseases. Doesn't it seem very odd indeed that these critics fail to recognize the absence of clinical or laboratory proof of such association--that they choose to ignore even the Surgeon General's own caution to the effect that vastly more research is needed to explain this statistical correlation!"

"Let's state one thing boldly for all to hear: We believe ourselves to be in an honorable business, whose products have given solace and comfort for hundreds of years. If those products are damaging to human health, we want to know the truth. But--we

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will settle for nothing less than the truth. Statistics alone will not do. We demand scientific truth as the result of laboratory and clinical research."

Crume - 1966 - (Louisville Rotary Club)

"We just aren't willing to cease business because of an assemblage of statistical information and correlations that link certain diseases with cigarette smoking. Prior to 1964 and since that date, the only 'proof' that cigarette smoking is a causal factor in lung cancer or other diseases is based on statistical association--and every businessman knows how dangerous it is to make decisions on statistics alone."

"...I repeat that to date no hard, scientific evidence to point an irrefutable finger at cigarette smoking has been found. We have tried and they have tried, but the statistics have not been supported by laboratory facts. This is not just our contention. A sizable group of highly reputable medical and scientific men is very dubious of the significance of mere statistical correlations."

Yeaman - 1966 - (Virginia State Chamber of Commerce in Richmond)

"The burden of the attack is the charge that cigarette smoking is in some undisclosed and unknown way causally related to human health."

"Working from seven basic statistical studies, whose validity has been questioned by reputable scientists, our critics have drawn certain statistical correlations between the use of tobacco and human diseases. There is not a businessman here who doesn't know that you can prove very nearly any thesis you like from statistical correlation."

"Now despite this statistical correlation, there is no clinical or laboratory proof of association between the use of tobacco and diseases. Mind you, there are those who say that there is such clinical proof, but the Report of the Surgeon General's Committee said, in effect, that there was not such clinical or laboratory proof and that vastly more research was needed to explain this statistical correlation. More than 30 of this country's most eminent men of medicine and science have testified before Congress that the charge against tobacco remains unproved."

"Let me assure you: The tobacco industry will not be supine to statistical attack but when the day comes, if it ever does, when it is known that tobacco products contribute directly to human diseases, the vast resources of the tobacco industry will instantly be devoted to its correction."

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Crume - 1967 - (Rotary Club, Frankfort, Kentucky)

"...the fact remains--no clear cut evidence--no convincing proof has been found that the use of tobacco is injurious to the health of any adult unless he already has some respiratory or heart condition or some other malady which obviously restricts his activities and requires special attention."

"It is our business to make the very best product possible to meet the demands of the consuming public."

"The tobacco industry simply wants to preserve the right of the adult consumer to make a free choice in enjoying the pleasures and comforts of smoking. That is our goal and we expect to achieve it."

Yeaman - 1967 - (Tobacco Growers Information Committee in Raleigh, North Carolina)

"What is the truth? It is simply that no one--and I mean no one--knows whether cigarette smoking causes any human disease. All the statistics that can be amassed cannot prove a cause-and-effect relationship. Figures may prompt suspicion, but they are not proof."

"Of all the examples of outright statistical nonsense, a recent public health service report really captures the booby prize. ...it claims to show an association between smoking and a variety of chronic and acute illnesses. The fact is that it is based largely on self-diagnosis and second-hand information. It is devoid of ascertained medical facts and abounds with many obvious errors and misrepresentations."

"The word 'bamboozled' is a particularly apt description of what a host of studies, by means of anti-smoking propaganda, have done to the general public--and, even worse, to a large segment of the medical community. Statistics, through repetitious claims and ballyhoo, have now assumed the face of scientific fact."

"I say this whole thing has gone far enough! Medical science has got to be brought back into the picture through basic research. Unwarranted attacks on tobacco have got to cease. Self-serving bureaucracy must not be tolerated. The people deserve the truth, and must be given it."

Yeaman - 1968 - (Television documentary "Tobacco & Health: The Economy & the Controversy broadcast by WAVE-TV in Louisville, Kentucky)

"We are doing all we can through scientific research and other means to find out the truth, because we want to have the most acceptable products possible. In the meantime, we simply are not willing to let anti-smoking propaganda assume the role of scientific facts. And I might say that so far the facts do not support the position of our critics."

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ADDENDUM

B&W's basic litigation position must be that there is no evidence showing cigarettes to be harmful to human health. We have promoted cigarette filtration over the years in response to an increasing segment of the market which prefers a filtered product for reduction of tar and nicotine. We nonetheless hold that there is no proof that the quantum of tar and nicotine or that of any other constituent of mainstream smoke is injurious to health.

With the increasing concern and propaganda about smoking and health, B&W has for some years contributed millions of dollars to the American Medical Association and to the Council for Tobacco Research to support the quest for facts about smoking and health.

B&W does not itself engage in medical research. We do extensive research work in the areas of (a) constituency of tobacco smoke, (b) filtration of smoke, and (c) organoleptic properties. Filtration research is directed at control of the constituents of mainstream smoke, and the purpose is to provide mechanics for selective removal of various constituents in the event medical science establishes that as desirable. Research in the area of organoleptic properties is directed in part at the preservation of a satisfying product notwithstanding such selective filtration as may become advised.

B&W has commissioned limited work in the biologic (mouse testing) and ciliastasis areas by way of tracking the considerable work done by others.

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