

**Response to FDA Request for Information Regarding  
Youth Smoking, and Advertising and  
Promotion of Cigarettes  
(Docket ID: FDA-2010-N-0295)**

**August 2, 2010**

**Lorillard Tobacco Company  
714 Green Valley Road  
Greensboro, NC 27404-0529**

**Available for Public Disclosure Without Redaction**

## INTRODUCTION

On June 30, 2010, a Web-based public meeting (June 30 Public Meeting) was held to “Discuss Issues Related to the Development of an Enforcement Action Plan: Request for Data, Information and Views” relating to enforcement “on promotion and advertising of menthol and other cigarettes to youth, including youth in minority communities.” Submissions from interested parties were requested on or before August 2, 2010 (Fed. Reg. Vol. 75, No. 117, pp. 34750-34751).

At the June 30 Public Meeting, several presentations were made, including presentations by Corinne G. Husten, MD, MPH, Senior Medical Advisor, Center for Tobacco Products, FDA, titled “Marketing of Menthol and Other Cigarettes to Youth and to Minority Youth” (Husten Presentation); Amber Thornton Bullock, MPH, CHES, Executive Vice President for Program Development, Legacy, titled “Presentation to FDA Center for Tobacco Products Public Meeting on Promotion and Advertising of Menthol and Other Cigarettes to Youth, Including Youth in Minority Communities” (Bullock Presentation); LaTanisha C. Wright, National States Director, National African American Tobacco Prevention Network (Wright Presentation); and Nicole Pope, Tobacco Control Program Manager, The Urban League of Rhode Island, titled “Mapping Tobacco Marketing: Who’s Targeting You?” (Pope Presentation). Lorillard Tobacco Company (Lorillard) believes that the Husten Presentation, the Bullock Presentation and the Pope Presentation deserve comment because these presentations, in particular, failed to include important information relevant to the issues presented, and/or contained assertions which are false as to Lorillard. Lorillard is unable to comment on the Wright Presentation because it was difficult to follow due to technical problems with transmission.

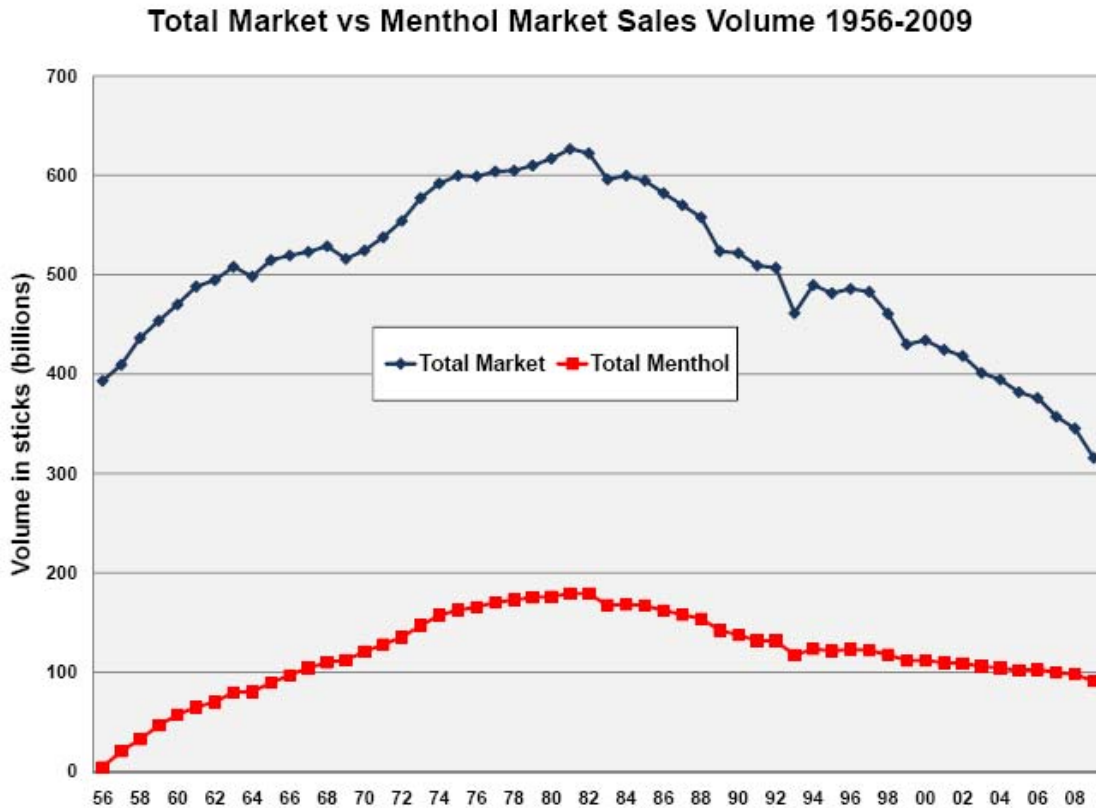
On July 26, 2010, Lorillard submitted a response to the FDA’s request for comments on “Tobacco Product Advertising and Promotion to Youth and Racial and Ethnic Minority Populations” (July 26 Submission). Much of the information presented in the July 26 Submission is relevant to the issues in this submission as well. Lorillard appreciates the opportunity to submit the following information.

Lorillard manufactures Newport, the best-selling brand of menthol cigarettes in the United States.

### **Cigarette Sales Continue a Thirty-Year Pattern of Significant Decline**

Cigarette sales peaked in the United States almost thirty years ago, in 1981 (*See* Figure 1 – Total Market vs Menthol Market Sales Volume 1956–2009). At that time, the adult smoking rate was about 33% (down from 42% in 1965) (CDC MMWR (1994)). Since then, overall cigarette sales have fallen 49.6%; adult smoking rates have declined almost 40%; and from 1998–2008, smoking among 10<sup>th</sup> and 12<sup>th</sup> graders declined 63% and 49%, respectively (NHIS (2009); ALA (2010)). Per capita cigarette consumption has steadily declined since the early 1960s; in 2006, per capita cigarette consumption was reduced to the level last experienced in 1936 before World War II, almost seventy-five years ago (ALA (2010)).

**Figure 1 – Total Market vs Menthol Market Sales Volume 1956–2009**



Youth and adult smoking rates are at their lowest levels in more than thirty years (*See* discussion below). The cigarette industry faces unprecedented federal and state regulation, mandating extreme health warnings and substantially restricting cigarette marketing activities. State and local laws increasingly prohibit smoking in public places and offices. Taxation on cigarettes is at an historic high. Given these and other factors, there can be no doubt that cigarette sales, including menthol sales, will continue to decline.

**The Menthol Segment is No Different – Menthol Sales Continue to Decline**

Menthol cigarette sales also peaked in the early 1980s (*See* Figure 1 – Total Market vs Menthol Market Sales Volume 1956–2009). Since 1981, menthol cigarette sales have fallen by 88 billion cigarettes or 49.2%; and since 2000, menthol cigarette sales have decline by almost 21 billion cigarettes. The Bullock Presentation (slide 8) *incorrectly* states, “Despite a 22% decrease in overall packs of cigarettes sold (2000-2005), menthol sales remained the same.” (The source of this information was not disclosed.) It is true that overall cigarettes sales are declining, but this trend is also true for menthol cigarettes. From 2000-2005, all cigarette sales declined by 12%, while menthol cigarette sales declined by 9%.

Over the last thirty–five years, the menthol segment of the overall cigarette market has comprised between 25% to almost 29% of the overall cigarette market.<sup>1</sup> The menthol segment began its growth in the 1950s and steadily gained popularity through the next two decades until reaching a nine–year period from 1977–1985, when the menthol segment comprised about 28% to 29% of the overall market. By the mid-1990s, the menthol segment had declined to 25%. The menthol segment fluctuated only slightly from 1991 – 1998, staying at about 25% of the overall cigarette market. By 2009, the menthol segment had gradually returned to about 29% of the overall cigarette market, reaching the level from thirty years ago.

In sum, two points deserve emphasis. First, the recent slight increase in the menthol segment is nothing new, and does not portend an upward fluctuation beyond historic norms. Second, and more importantly, the slight increase in the menthol segment merely reflects a small change in the percentage of menthol cigarettes sold compared to nonmenthol. This does *not* reflect an increase in the volume of menthol cigarette sales. Menthol cigarette sales volume has been *consistently shrinking* for almost thirty years. Since its peak in 1981, menthol cigarette sales have fallen by 88 billion cigarettes. Since 2000, menthol sales have fallen by 21 billion cigarettes, despite the menthol segment share slightly trending up by 3%.

### ***The Proliferation of Menthol Brands Is Not Correlated With Sales***

Menthol cigarette sales are not correlated with the number of menthol brands available to consumers. In the early 1980s, when menthol sales peaked, there were fewer cigarette brands containing menthol as a characterizing flavor than are on the market today. Today, there are more cigarette brands (both menthol and nonmenthol) in general on the market, likely resulting from the settlement agreements between the four large cigarette manufacturers and the states’ attorneys generals that resulted in many new cigarette manufacturers entering the marketplace. These new cigarette manufacturers often introduced several styles, including menthol styles, for their brands in hopes of gaining a larger presence of the declining cigarette market. Despite the increase in brands on the market, menthol cigarette sales have declined by 49% over the last thirty years.

### **Menthol Brand Preference**

There have been significant brand–specific market share changes over time. The market shares for Kool and Salem – dominant leaders of the menthol segment throughout the 1950s, 1960s and 1970s – have declined 62% and 81%, respectively, over the last forty years. Marlboro Menthol gained popularity in the mid–1990s and became the second best selling menthol brand in 2003. Newport did not become the best–selling menthol brand until 1993. In 2009, the top four menthol brands accounted for 67% of the menthol cigarette volume. This is also true for the four top nonmenthol brands, which also accounted for 67% of the nonmenthol cigarette volume. Within the Newport brand family, Newport full flavor accounts for 92% of all Newport brand family sales.

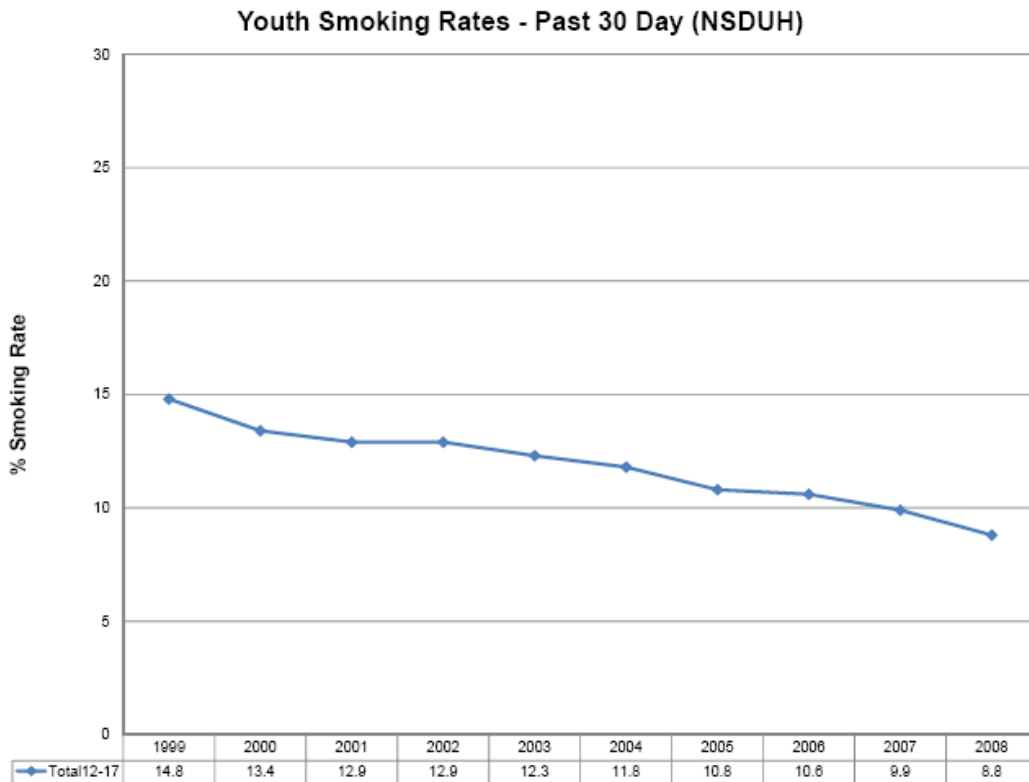
---

<sup>1</sup>Data reported in Figure 1 for total cigarette market sales volume and menthol cigarette market sales volume was derived from Maxwell reports (1956-1978), and from data provided to Lorillard, as a subscriber, by Management Science Associates, Inc. (MSAI) of Pittsburgh Pennsylvania (1979-2009). Both sources are based on manufacturer shipments to wholesalers, and serve as the industry standard for shipment information.

## Youth Smoking Rates Have Declined Substantially

Youth smoking rates are at an historic low. Data from the National Survey on Drug Use and Health (NSDUH)<sup>2</sup> shows that from 1999-2008; 30-day (1 cigarette in last 30 days) youth smoking rates decreased 40% (NSDUH (2009)). Likewise, data from Monitoring the Future (MTF) shows that youth smoking rates decreased 55% from 1997-2009 (MTF (2009)).

**Figure 2 – 30-Day Youth Smoking Rates**



It is also noteworthy that *daily* (1 or more cigarettes per day over the last 30 days) youth smoking rates have likewise declined. Recent data from MTF shows that (1) daily youth smoking rates are *about one-half* the 30-day smoking rates, and (2) since the mid-1990s, daily youth smoking rates have declined at a faster rate (63% decline for daily youth smoking rates vs 55% decline for 30-day youth smoking rates) (MTF (2009)). In short, the data shows that substantially fewer youth are experimenting with cigarettes and even fewer are becoming regular smokers.

Lorillard notes that the dramatic declines in youth smoking rates over the last 10-15 years coincide with significant improvements in retailer enforcement of minimum age cigarette purchase laws. During the time that youth smoking rates decreased 40-50%, rates for retailer violations (i.e., cigarettes sold to persons under the legal age) decreased from 40% in 1997 to 11% in 2009. In 1992, Congress enacted the Synar Amendment as part of the Substance Abuse

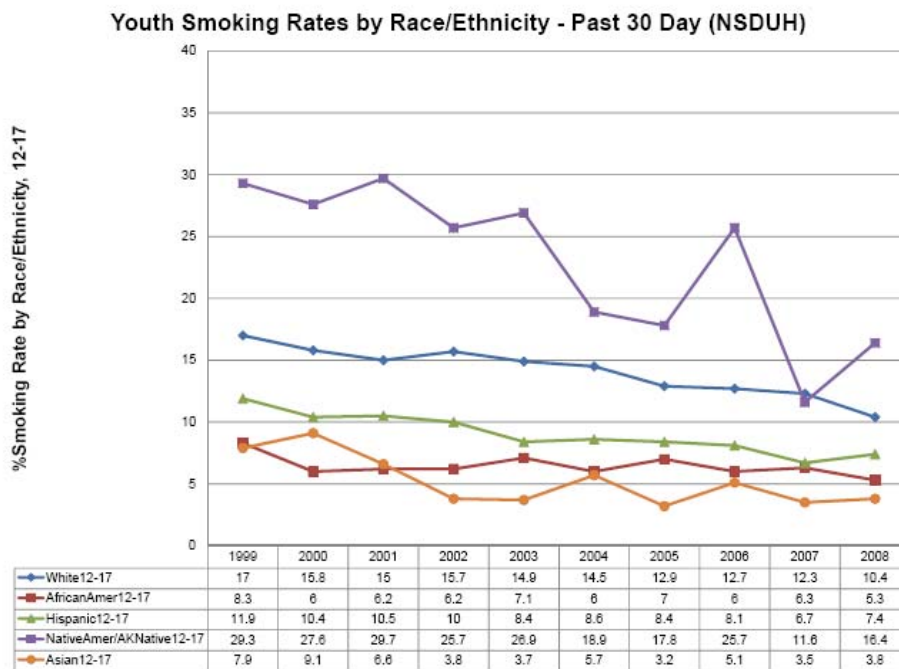
<sup>2</sup> NSDUH was formerly called the National Household Survey on Drug Abuse (NHSDA)

and Mental Health Services Administration, which required states to enact and enforce laws prohibiting tobacco sales to youth and achieve a retail violation rate of less than 20 percent by 2003, or risk losing 40 percent of federal block grant funding (Pub. 1. No. 102-321 § 1926). Before the Synar Amendment, retailer violations in many states ranged from 60 to 90 percent (*See Synar Reports 2006*). In 2009, every state in the nation was reportedly in compliance with the Synar requirements (*See Synar Reports 2009*). Interestingly, the following was stated in the Pope Presentation: “Children in RI buy or smoke about 2.2 million packs of cigarettes each year ... Among those who did try to buy cigarettes in the past 30 days, no on[e] refused to sell them cigarettes because of age: Middle School: 75.5% High School: 68.1%.” This statement is at odds with the Rhode Island Synar compliance report, where in 2009 Rhode Island’s reported failure rate was at 11%, nearly half the federal target rate of 20%. If the Pope Presentation’s statement is accurate, Rhode Island is unlikely to be in compliance with the Synar requirements.

With regard to youth smoking rates among various ethnic/racial groups, government data reflects the following (*See Figure 3 below*):

- Smoking rates for African-American youth are almost 50% lower than White youth.
- Smoking rates for Hispanic youth are 29% lower than White youth.
- From 1999–2008, there have been significant declines in youth smoking for each major ethnic/racial group: African-American – 36%; Hispanic – 38%; Asian – 52%; Native American/Alaskan Native – 44%; and White – 39%.

**Figure 3 – Racial/Ethnic Youth Smoking Rates**



African-American adolescents identifying themselves as smokers (including both recent initiates reporting smoking histories of less than 12 months duration, as well as those reporting smoking for over 12 months) represent a substantially smaller percentage of the adolescent population than do adolescents of European-American identity (NSDUH (2007)). African-American youth have reported themselves to be smoking at about half the rate reported by European-American youth for many years now. The notion that African-American youth are particularly responsive to menthol cigarette advertising or are initiating smoking at an exceptionally high rate is simply not borne out by the NSDUH survey findings (NSDUH (2007)). African-American smokers who reported themselves to have smoked within the last month and who were identified as presumptive recent smoking initiates were in fact less likely to have reported a preference for menthol cigarettes than their longer-term smoking counterparts (NSDUH (2009)).

## **Smoker Demographics**

### *Overall Cigarette Market*

Recent data from NSDUH shows that the overall cigarette market (smokers 18 and older) comprises 54% male and 46% female smokers. With regard to race/ethnicity, the great majority of smokers are White, 72%; 12% are African-American; and 11% are Hispanic (NSDUH (2008)).

### *Nonmenthol Smokers*

According to data reported by NSDUH, the nonmenthol segment is about the same as the overall market in terms of gender, 55% male and 45% female. As to race/ethnicity, nonmenthol smokers are predominantly White, 82%; 11% are Hispanic; about 2% are African-American; and 2% Asian (NSDUH (2008)).

### *Menthol Smokers*

The majority of menthol smokers are also White. The most recent data from NSDUH reflects that adult menthol smokers comprise 52% female and 48% male; 53% are White; 32% African-American; 11% Hispanic; about 2% are Asian; and less than 1% are Native American (NSDUH (2008)). While it is reported that approximately three-fourths of African-Americans that smoke prefer menthol cigarettes, it is important to note that there are twice as many White menthol smokers as there are African-American menthol smokers (CDC (2006); CDC (2007)).

## **Consumer Perception – Menthol Cigarettes Are Not Perceived as Less Hazardous**

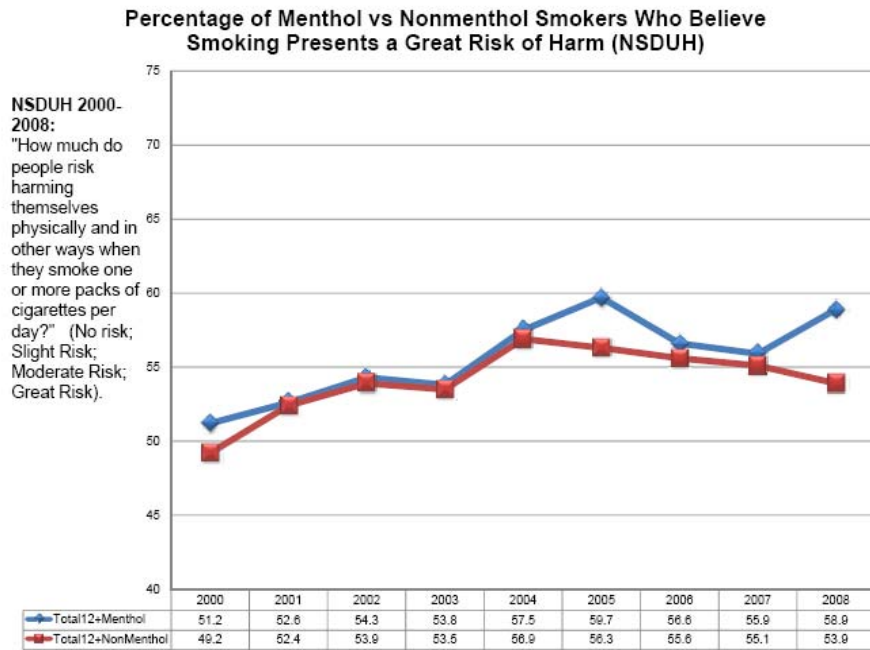
Published scientific research does not indicate that smokers have a perception that menthol cigarettes are less hazardous than nonmenthol cigarettes. This research shows that smokers generally perceive menthol cigarettes as equally, if not more, hazardous than nonmenthol cigarettes. In a study published in 2004, Bansal *et al.* asked survey respondents to indicate their level of agreement with a number of statements regarding the risk perception associated with menthol cigarettes including “menthol cigarettes are safer than regular cigarettes” (Bansal *et al.* (2004)). The research results showed a greater awareness that menthol cigarettes were as dangerous to health as nonmenthol cigarettes (Bansal *et al.* (2004)).

Very recent publications also found that smokers do not perceive menthol cigarettes as less hazardous than nonmenthol cigarettes. In June 2010, Wackowski *et al.* published a study analyzing data from the 2005 New Jersey Adult Tobacco Survey, which asked participants to compare how risky menthol cigarettes were versus nonmenthol cigarettes (Wackowski *et al.* (2010)). Wackowski found few menthol smokers (2.4%) and few smokers overall (4.0%) perceive menthol cigarettes to be less risky than nonmenthol cigarettes (Wackowski *et al.* (2010)). To the contrary, a considerable proportion of menthol smokers (30.2%) and all respondents (25.9%) believed menthol cigarettes to be *more risky* than nonmenthol cigarettes (Wackowski *et al.* (2010)).

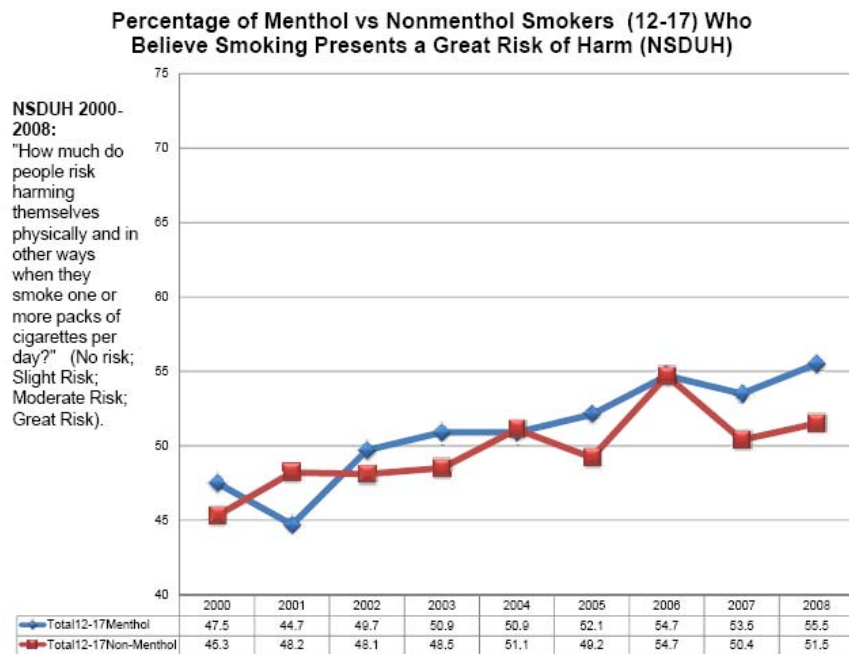
Recent government data also demonstrates that menthol cigarette smokers perceive a greater risk of harm from smoking than nonmenthol cigarette smokers. From 2000 to 2008, as part of the NSDUH, consumers were asked, “How much do people risk harming themselves physically and in other ways when they smoke one or more packs of cigarettes per day? A: No risk; Slight Risk; Moderate Risk; or Great Risk.” (NSDUH (2000–2008)).

Responses to this question by menthol and nonmenthol smokers showed that menthol smokers perceive an equal or slightly greater health risk of smoking than nonmenthol smokers. Moreover, the perception that smoking presents a great risk of harm increased for both menthol smokers and nonmenthol smokers from 2000 to 2008 (*See* Figure 4 – Percentage of Menthol vs Nonmenthol Smokers Who Believe Smoking Presents a Great Risk of Harm (NSDUH (2000-2008))). The same perception is true among adolescent smokers (*See* Figure 5 - Percentage of Menthol vs Nonmenthol Smokers (12-17) Who Believe Smoking Presents a Great Risk of Harm (NSDUH (2000-2008))).

**Figure 4 – Percentage of Menthol vs Nonmenthol Smokers Who Believe Smoking Presents a Great Risk of Harm (NSDUH)**

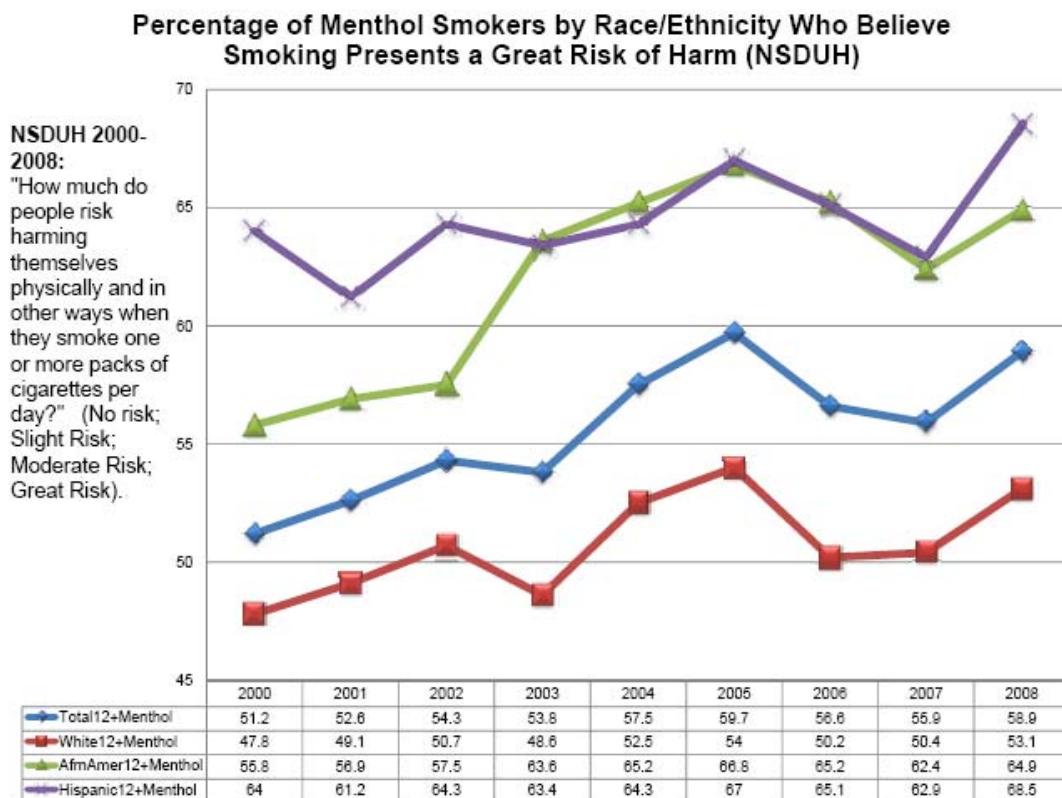


**Figure 5 – Percentage of Menthol vs Nonmenthol Smokers (Age 12-17) Who Believe Smoking Presents a Great Risk of Harm (NSDUH)**



NSDUH data also shows that Hispanic and African-American menthol smokers perceive a greater risk of harm from smoking than White menthol smokers. Moreover, the perception that smoking presents a great risk of harm increased for Hispanic, African-American and White menthol smokers from 2000 to 2008 (See Figure 6 – Percentage of Menthol Smokers by Race/Ethnicity Who Believe Smoking Presents a Great Risk of Harm (NSDUH (2000-2008))).

**Figure 6 – Percentage of Menthol Smokers by Race/Ethnicity Who Believe Smoking Presents a Great Risk of Harm (NSDUH)**



Other published survey data on this issue going back 25 years is consistent with NSDUH. The 1986 Adult Use of Tobacco Survey (AUTS) reported that menthol smokers’ beliefs about the health effects of smoking differed little from the beliefs of nonmenthol smokers (AUTS (1986)). Data from the 1987 National Health Interview Study (NHIS) similarly indicated few differences between menthol and nonmenthol smokers’ risk beliefs and further showed that menthol smokers were more likely than nonmenthol smokers to agree that smoking causes various ailments (NHIS (1987)).

### Overview of Lorillard’s Marketing Activities

There have been a number of inaccurate statements and accusations made by public health representatives and others regarding “cigarette industry” and Lorillard marketing activities. Too often there has been a fundamental disconnect between accusations and the objective truth.

Lorillard respectfully suggests that it is critical for the FDA to have a clear and accurate understanding of the marketing strategies and tactics used by Lorillard, as well as the marketing tools *not used* by Lorillard. As discussed in detail below, Lorillard's advertising and promotional activities are carefully directed to adult smokers, not youth or nonsmokers of any age. Moreover, Lorillard has made significant changes which have substantially reduced youth exposure to Lorillard cigarette advertising.

Various presentations during the June 30 Public Meeting (e.g., the Husten and Bullock Presentations) included a variety of statements regarding cigarette marketing activities. These presentations suggested that Lorillard has predominately focused Newport advertising and promotional activities on African-American and Hispanic smokers, and that Newport marketing activities have been targeted to youth. As shown below, *there is no factual support for these statements and accusations.*

The cigarette market is *highly* competitive. Lorillard advertises and promotes its cigarettes to adult smokers for two reasons: (1) to maintain the loyalty of adult Lorillard brand smokers who choose to continue to smoke; and (2) to persuade adult smokers of competitive brands to try, and switch to, a Lorillard brand.

Lorillard does *not* advertise or promote its cigarettes in an attempt to encourage youth (or nonsmokers of any age) to begin smoking, or to discourage smokers from quitting. As discussed above, cigarette sales have decreased almost 50% over the last thirty years, and youth smoking rates have declined 40% to 50% during the last decade. Beyond these irrefutable facts and obvious implications, the scientific literature demonstrates that cigarette advertising does not impact overall cigarette consumption. For example, one meta-study concludes that “[m]ost US studies of cigarette demand report small and insignificant advertising elasticities, which refutes the view that advertising has an important spillover effect on aggregate demand and smoking behaviors” (Nelson (2006)). Another meta-study that analyzed all previous research on the correlation between advertising bans and demand for cigarettes concludes that “cigarette advertising bans do not have a significant effect on cigarette consumption” and that “advertising restrictions do not . . . appear to be salient in a consumer’s decision to smoke cigarettes” (Capella (2008)). This study observed that its results were consistent with product life cycle (PLC) principles regarding the general effectiveness of advertising and noted that “[i]t is clear that cigarettes have reached the mature stage, and possibly even the decline stage of the PLC,” and that advertising in mature markets “ha[s] a relatively minor impact on product category sales” (Capella (2008)). In other words, cigarette advertising influences brand selection, but does not increase demand.

Over the last ten to fifteen years, there have been dramatic and substantial changes in how Lorillard markets its cigarettes. Prior to the mid-1990s, most of Lorillard's marketing expenditures went toward print media advertising (e.g., billboard, newspaper, magazine and transit ads). Although lawful, these marketing activities were criticized by the public health community based on concerns that youth were being overly exposed to cigarette advertising. In response to these concerns and other market and legal developments, Lorillard has drastically reduced its spending on print advertising, thus substantially reducing exposure of Lorillard cigarette ads to youth and nonsmokers. For example, Lorillard's advertising expenditures in 1998 (as reported to the FTC) totaled about \$77 million (including billboards, newspapers,

magazines, transit, and retail point of sale). In 2008, Lorillard's spending on print ads (as reported to the FTC) was about \$19.7 million, a decrease of about 74%.

The major components of Lorillard's marketing plan are (1) retail price promotions, (2) direct marketing, (3) magazine ads, and (4) retail point of sale advertising. Retail price promotions account for over 90% of Lorillard's total marketing budget, with direct marketing accounting for approximately half of the remaining budget -- and the largest component of direct marketing expenditures is associated with providing coupons to direct marketing participants. The marketing tools used by Lorillard are indisputably lawful and are routinely used by numerous consumer product companies which market to adults. Moreover, Lorillard implements *additional safeguards* to reduce exposure of its cigarette ads to youth and nonsmokers. A detailed discussion of Lorillard's marketing activities and the marketing tools *not used* by Lorillard is provided below.

### **Marketing Tools *NOT* Used by Lorillard**

For more than fifty years, cigarette advertising and promotion have been subject to ever increasing and substantial prohibitions, restrictions and requirements imposed by Congress, federal agencies, and state and local authorities. Today, no other legal consumer product is subject to more onerous marketing restrictions and requirements than cigarettes. Set out below are the marketing tools which are *not used* by Lorillard.

- *TV and radio ads:* Two of the most effective and widely used advertising media, TV and radio, became illegal for cigarette advertising in 1971.
- *Product placement in TV shows and movies:* For more than thirty-five years, Lorillard has consistently abided by a policy which prohibits the placement of Lorillard cigarette brands in movies and TV shows. The 1998 Master Settlement Agreement (MSA) prohibits cigarette companies from placing their products in movies or TV shows.
- *Promotional merchandise:* The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) imposes a complete ban on the distribution of any promotional merchandise. All Lorillard brand name promotional items (e.g., t-shirts and caps with a Newport logo) were eliminated over ten years ago (as mandated by the MSA).
- *Outdoor advertising:* Billboard ads, transit ads, and stadium/arena ads were banned in 1998 (Lorillard uses outdoor retail point of sale advertising only at tobacco retail locations with signs limited to less than fourteen square feet).
- *Cigarette sampling:* The Tobacco Control Act imposes a total ban on cigarette sampling. In 1998, Lorillard adopted a policy which restricted its cigarette sampling to adult-only, 21 and older, facilities. The last time Lorillard conducted cigarette sampling was eight years ago, in early 2002.

## Retail Price Promotions

For at least the last ten years, the great majority (over 90%) of Lorillard's marketing expenditures have gone toward retail price promotions. The reason for this is straightforward: the cost of cigarettes has risen dramatically. Much of the increased cost is due to substantially higher local, state and federal cigarette taxes. For example, due to changes in the federal excise tax in 2009 and the most recent New York state excise tax increase in 2010, New York City smokers pay \$7.82 per pack in federal, state, and local excise and sales taxes.

The area of retail price promotions is a good example of how cigarette marketing is unfairly criticized. There has been much rhetoric regarding the increase in retail price promotion spending by the tobacco industry, often based on the assertion that price promotions are somehow aimed at encouraging kids to smoke. Such assertions irresponsibly ignore the following indisputable facts: (1) retail price promotions are lawful and constitute a common marketing tool used by many consumer product companies; (2) Lorillard's retail price promotions are only legally available to adult smokers; and (3) Lorillard relies upon retailers to fully comply with state-specific minimum age laws – just as state law enforcement officials and the public health community have an expectation that retailers will not sell cigarettes to persons below the legal smoking age. Lorillard further notes that some characterize the money spent on retail price promotions as “advertising” in order to leave the incorrect impression that tobacco companies are spending more on advertising than in the past. While retail price promotions are a marketing expenditure, they are not advertising. Lorillard spends less than 10% of its marketing expenditures on activities that constitute advertising.

Another criticism is that menthol retail price promotions are disproportionately directed to racial/ethnic minorities. With regard to Lorillard, this assertion is categorically false. *Lorillard's decisions regarding the availability and amount of retail price promotions are not, in any way, based on race/ethnicity.*

Newport's retail price promotion strategies are based primarily on geographic segmentation on a statewide basis. Different levels of retail price promotions are provided depending on (1) state-specific sales data relative to Newport development, (2) the relative amount of the state cigarette tax rate, (3) state-specific sales data relative to competitive menthol brands, and (4) competitive activity relative to retail price promotions. The states which receive the highest levels of retail price promotions are those with the highest Newport share development and the highest tax rates. Not all states participate in retail price promotions.

The following examples from 2009 illustrate that Lorillard's retail price promotion strategies are not based on race/ethnicity, and are not disproportionately directed to African-Americans, Hispanics and other minority groups.<sup>3</sup>

- Louisiana ranks 3rd among all states with regard to the percentage of African-Americans in the overall state population (32% African-American population). In

---

<sup>3</sup> U.S. Census Bureau, Population Estimates Program – Population by State, July 1, 2009. African-American state populations - “Black or African American alone or in combination with one or more other races.” See <http://factfinder.census.gov>.

sharp contrast, less than 1% of Newport's price promotion expenditures went to Louisiana.

- Regarding Alaska natives, Lorillard has not offered any Newport price promotions in Alaska since 2003.
- California is, by far, the most populous state and ranks 2nd among all states for the percentage of both Hispanic (37%) and Asian (12%) populations. And California ranks fifth highest among all states for the greatest number of African-Americans in the state population. In 2009, only 3% of Newport's price promotion spending went to California.
- Beyond California, there are only four other states which have an Hispanic population which comprises 25% or more of the entire state population - New Mexico (45%), Texas (37%), Arizona (30%) and Nevada (26%). In 2009, Lorillard had no Newport price promotion spending in New Mexico; the spending in Arizona and Nevada was less than 0.1% of Newport's total price promotion spending; and only about 3% went to Texas.
- Arkansas has an above average African-American population (16%). For Newport price promotion purposes, Arkansas is in a category of states which, by far, receive the least amount of price promotion spending. Lorillard's price promotion spending in Arkansas was less than 0.1% of total Newport price promotion expenditures.
- Connecticut, Massachusetts and Rhode Island are among the states which receive the highest per-pack Newport price promotions for the longest durations. Each of these states are below average with respect to African-American population.
- Texas has the third largest African-American population, comprising 7.4% of the entire U.S. African-American population. Less than 3% of Newport's price promotions went to Texas retailers in 2009.

Within a given state, price promotions differ among retailers. Historically, Lorillard offered greater price discounts to those retailers which had a promotional agreement with Lorillard. Only one-third of all retailers that sell cigarettes have a promotional agreement with Lorillard; these are generally retailers located in areas where there is relatively strong Newport or menthol category sales development.

Newport maintains the highest average price of the four highest selling cigarette brands in the U.S (based on independent surveys and price analyses), despite Lorillard spending over 90% of its marketing expenditures on Newport retail price promotions.

## **Direct Marketing**

### ***Overview re: Scope and Purpose of Lorillard's Direct Marketing Activities***

The principal goal of Lorillard's direct marketing program is to encourage brand loyalty among adult Newport smokers; and to a lesser extent, the program is used to encourage competitive

brand adult smokers to try, and hopefully switch to, Newport. Lorillard uses two primary direct marketing tools to achieve these objectives: (1) distribution of coupons; and (2) distribution of the *P.S. Pleasure Scene* magazine. Direct marketing is utilized by Lorillard because it allows Lorillard to communicate directly with adult smokers that have been verified as 21 or over and have chosen to participate in the direct marketing program. Furthermore, direct marketing avoids exposure of cigarette advertising to youth and nonsmokers.

Coupons are delivered primarily to Newport smokers who have the requisite coupon redemption history; not all Newport smokers on Lorillard's direct marketing database are sent coupons. Competitive brand smokers are also sent coupons, but this is secondary to Lorillard's efforts to maintain brand loyalty among existing Newport smokers. Lorillard's strategy regarding distribution of coupons has nothing to do with smoker race/ethnicity or gender.

Lorillard began distributing the *Pleasure Scene* magazine in 2003. The *Pleasure Scene* magazine is only sent to adult smokers, 21 and older, who have chosen Newport as their regular cigarette brand, and who have some history of Newport coupon redemption. Among those Newport smokers, age is the only-demographic factor which plays a role in the distribution of the magazine. Three different versions of the *Pleasure Scene* magazine are distributed to different age groups (21-34, 35-49, and 50+); the editorial content is tailored to the interests of each age group.

There are no distribution, editorial or other distinctions made based on gender, race/ethnicity, income, education or geographic location. *In fact, Lorillard does not collect race/ethnicity information for the adult smokers on its direct marketing database.* And Lorillard's direct marketing activities are not based on any analysis of zip code demographics.

### ***Lorillard's Direct Marketing Program is Restricted to Adult Smokers***

Lorillard has taken extraordinary measures to ensure that its direct marketing program only encompasses persons (1) who are adult smokers, 21 and older, and (2) who deliberately choose to receive information from Lorillard.

Lorillard maintains a database of age certified and verified adults who are at least 21 years old, a smoker, and wish to receive advertising and promotional materials from Lorillard. Each person in the database must have the following information: (1) an age verification indicator (verifying that the person is a smoker and at least 21); (2) a valid address; (3) permission from the smoker to be contacted (opt-in provision); and (4) no records indicating that the smoker has asked to be removed.<sup>4</sup>

While every method of joining Lorillard's database requires a signature block, whereby the person explicitly certifies that he/she is a smoker, 21 or older, and wants to receive cigarette promotional materials, every smoker must be age-verified before becoming eligible to receive mailings from Lorillard (e.g., coupons or the *Pleasure Scene* magazine). Age verification may

---

<sup>4</sup> Lorillard also uses a separate "Suppression" database as a screening tool to ensure that no underage or otherwise unqualified persons receive mailings from Lorillard. The Suppression database includes, for example, all individuals who have requested removal, and any persons who Lorillard has determined, via its age verification process, to be less than 21 (despite their representation that they are 21 or over).

be accomplished in one of two ways: (1) smokers can provide a copy of their government-issued ID, demonstrating that they are 21 or older; or (2) Lorillard can verify their age through an age-verification service, such as Experian or Aristotle, the largest and most well-known services that verify ages by checking public records.

## **Magazine Advertising**

### ***Lorillard's Ads Only Appear in Magazines Targeted to Adults***

The Bullock Presentation made the assertion that Newport cigarettes are “advertised in magazines with high youth readership.” (See slide 21.) This slide implies that Newport ads are currently placed in magazines directed toward youth. This assertion is false. These types of inaccurate and false statements suggest that the FDA cannot reasonably rely upon Legacy to provide an objective and accurate assessment of the pertinent facts.

In 2001, Lorillard adopted a policy which prohibited advertising in any magazine with youth readership over 18% (as measured by Simmons or MRI). For magazines not measured for youth readership, Lorillard analyzed the positioning statement of the magazine, its target audience and subscriber base demographics, as well as editorial content and a list of advertisers. Adopting this policy required Lorillard to stop advertising Newport in only two of the 28 magazines in which it had advertised in 2000.

In 2005, Lorillard further restricted its magazine advertising to appear only in magazines with *less than* (a) 15% youth readership, *and* (b) two million youth readers. For magazines not measured for youth readership by MRI or Simmons, Lorillard requires a full demographic profile from the magazine, and applies the same 15% or two million rule. Adopting the 15% or two million rule required Lorillard to stop advertising Newport in only two of the 25 magazines used in 2004.

Since 2005, Lorillard has also advertised in a few limited distribution issues (i.e., “select binding”) of magazines that do not satisfy the 15% or two million rule. However these limited distribution issues are only distributed to subscribers 21 and older and Newport ads are not included in those magazines available on newsstands or those sent to libraries or public office buildings (e.g., waiting room areas).

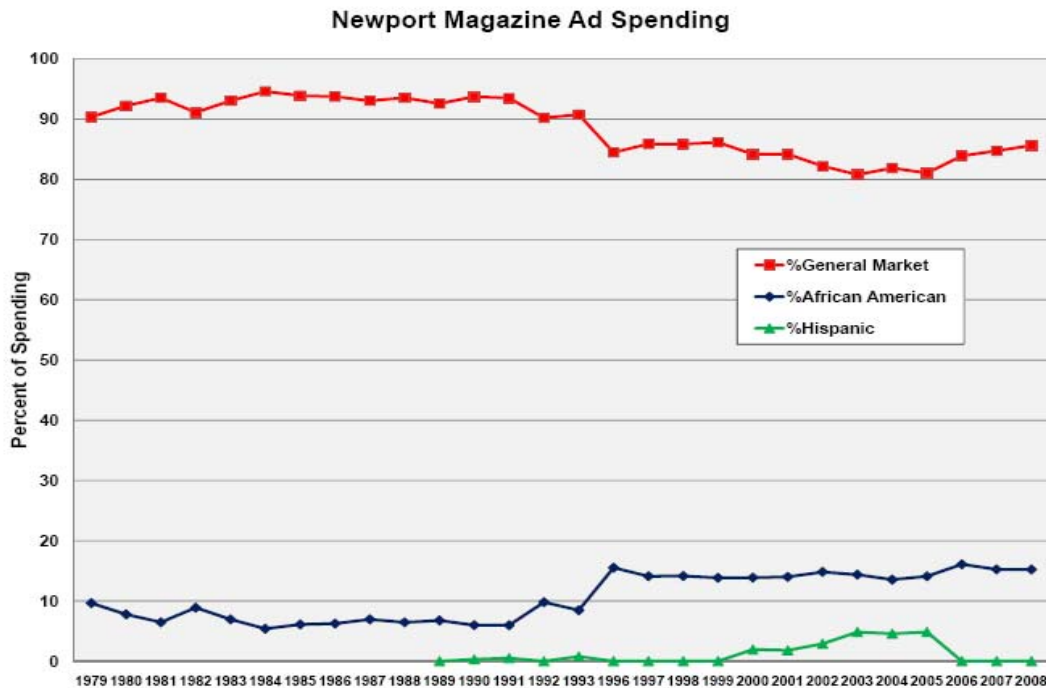
### ***Newport Ads Are, and Have Been, Predominantly Directed to the General Market***

As noted above, both the Husten and Bullock Presentations attempt to create the impression that Lorillard has predominantly focused its Newport print advertising on African-American and Hispanic smokers. This contention has *no factual support*.

Figure 7 shows the percentage of Newport magazine expenditures which have gone toward general market magazines compared to magazines directed primarily to African-Americans and Hispanics. Over the last thirty years, an average of 88% of Newport’s magazine ad spending has been in general market magazines, and only 11% has gone toward magazines directed primarily to African-Americans. Over the last five years, there have been *zero* Newport ads placed in Spanish language magazines. And during the last fifteen years, Newport ads were placed in

Spanish language magazines for just six years, 2000 – 2005. During those six years, *less than 5%* of Newport’s total magazine spending went toward Spanish language magazines.

**Figure 7 - Newport Magazine Ad Spending**



The Husten and Bullock Presentations both rely on a study by Landrine, *et al.*, which notes that *Ebony* magazine and the Spanish version of *People* magazine were more likely to contain ads for menthol cigarettes as compared to the general market *People* magazine. (Bullock Presentation, slide 31; Husten Presentation, slides 29, 33.) This is another example of cherry-picking and distorting the facts, in an apparent attempt to create the false impression that Lorillard disproportionately targets Newport ads to African-Americans and Hispanics.

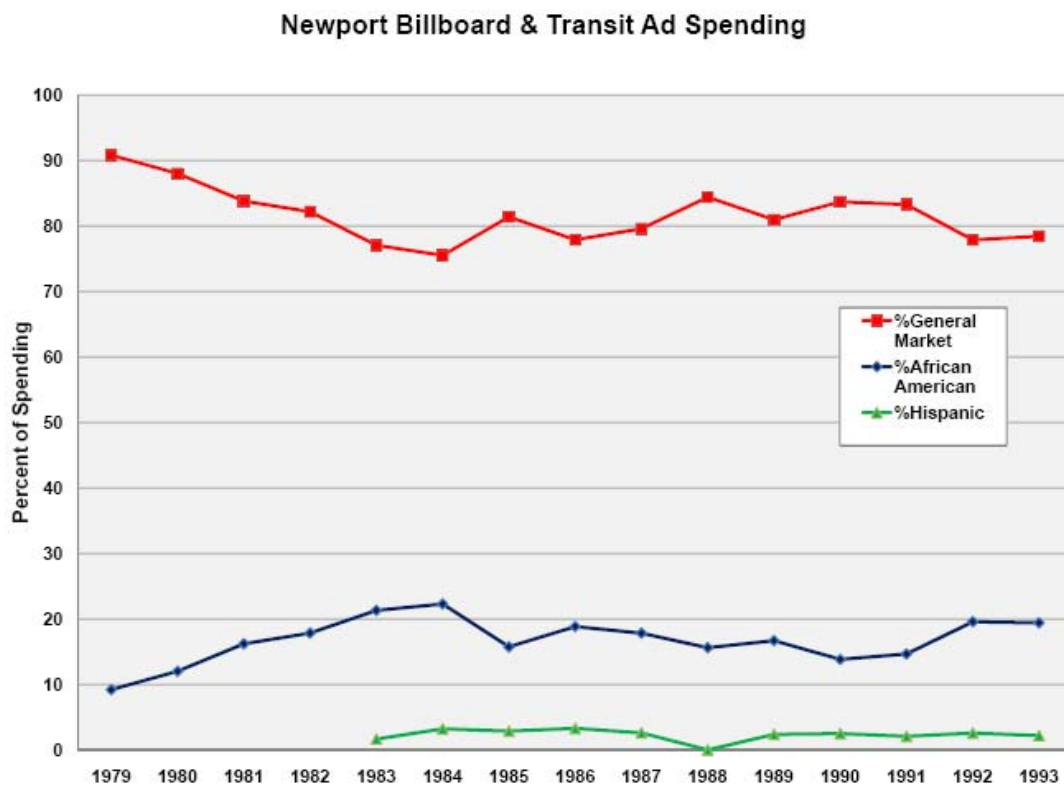
Decisions regarding whether to place cigarette ads in a given magazine, and the number of ads that are placed in each magazine for a given year, depend on a variety of factors. As noted above, for many years, the great majority of Newport magazine ad spending has gone to general market magazines -- only a small portion has been used to place ads in magazines read primarily by African-Americans and Hispanics.

Over the last five years, Newport ads were placed in sixteen different general market magazines, compared to only five different magazines directed primarily to African-Americans. And there were *almost three times more* Newport ads placed in general market magazines than magazines directed primarily to African-Americans. As noted above, since 2006, there have been *zero* Newport ads placed in Spanish language magazines. With regard to the Landrine, *et al.* article, Lorillard notes that from 1994 to present, Lorillard placed slightly more Newport ads in *People* magazine (general market edition) than *Ebony*. There were no Newport ads placed in *People* for

2002; this was the only year that was the focus of the Landrine, *et al.* analysis. This illustrates the pitfalls which are inherent in cherry-picking just a few magazines for a single year.

The Husten Presentation also included statements regarding billboard ads (slides 30, 33). Lorillard is prohibited from using billboard and transit ads, *and has not done so for more than ten years.* However, in response to the statements in the Husten Presentation, an historical analysis is instructive. Figure 8 shows that, from 1979 through 1993, an average of 82% of Newport billboard and transit expenditures were directed to the general market, and 17% were directed primarily to African-American adult smokers.

**Figure 8 - Newport Billboard & Transit Ad Spending**



Newport marketing expenditures have not been disproportionately weighted toward African-American smokers or any other racial/ethnic group or gender.

## Newport Ad Content

### *Newport's Ad Imagery is Directed to Adults*

The ad campaign for Newport, known as the “Pleasure” campaign, has remained fundamentally the same since the early 1970s. Newport ads show young adults having fun together in a variety of spontaneous and life-style relevant situations. Lorillard uses the same Newport ad campaign for all adult smokers, regardless of race/ethnicity. For many years, there has been relatively little

text on Newport ads; most ads use the tagline “Newport Pleasure” or simply “Pleasure” with the trademark green and orange Newport color scheme and script style.<sup>5</sup>

To ensure that the imagery of Newport ads is appropriate for adult smokers, and not youth, Lorillard carefully adheres to the following requirements.

- All models in Lorillard ads must be at least 25, and they must look 25 or older. Each model used in a Lorillard ad is required to provide proof of age (via copy of a driver’s license).
- No ads may use athletes, celebrities or any other person who would have special appeal to persons under 21.
- Cartoon characters are prohibited.
- Lorillard ads cannot suggest that smoking is essential to success, distinction, social prominence, sexual attraction, attractiveness, or good health.
- Lorillard’s ads do not and will not depict as a smoker anyone who is or has been well known as an athlete, nor does it or will it show any smoker participating in, or obviously just having participated in, a physical activity requiring stamina or athletic conditioning beyond that of normal recreation.
- For over ten years, all of Lorillard’s consumer research (including marketing and product research) has been restricted to adult smokers, 21 and older. Prior to that, Lorillard’s consumer research was limited to adult smokers, 18 and older.

Of course, the Surgeon General’s warnings are required on every Lorillard ad; these warnings will be significantly strengthened pursuant to the Tobacco Control Act. Lorillard also notes that the 1998 Master Settlement Agreement flatly prohibits any cigarette marketing activity targeted directly or indirectly to persons under the legal smoking age. At no time has any state attorney general taken the position that any Lorillard ad was claimed to violate this far-reaching provision of the MSA.

In 1992, the Gallup organization conducted a nationwide survey of youth (12 -17) to measure awareness of various advertising campaigns and slogans. By this time, the Newport “pleasure” ad campaign had been ongoing for about twenty years. The survey results showed that a *very small* percentage of teens, only 5.1%, associated the “Alive with Pleasure” advertising slogan with Newport cigarettes. (Gallup (1992)).

There has been criticism of menthol cigarette ads which associate cigarettes with the “hip hop” or “rap” music culture. The concern is that such advertising themes and related imagery appeal to youth. Newport has *never* used advertising themes or imagery which associates Newport with “hip hop” or “rap” music culture.

---

<sup>5</sup> Lorillard has not used the “Alive With Pleasure” tagline for about ten years.

### ***Newport Ads Do Not Contain Health Claims***

Lorillard is also aware of accusations that menthol ads contain health claims; these accusations are generally based on ads which have not been published for several decades. In this regard, Lorillard notes that the Cigarette Advertising Guides, promulgated by the Federal Trade Commission (FTC) in 1955, prohibit both explicit and implicit health claims in cigarette ads. For more than forty years, there has not been a single instance where the FTC requested that Lorillard change any Newport advertising based on the contention that a Newport ad contained a health claim in contravention of the Guides.

Notwithstanding Lorillard's compliance with the regulations and laws that govern cigarette marketing activities, there are assertions that tobacco companies use various terms in cigarette ads in an effort to implicitly communicate that menthol cigarettes are less hazardous than nonmenthol cigarettes; for example, such terms include "smooth," "fresh," "refreshing," and "mild." Interestingly, these terms, particularly "smooth," "fresh" and "mild" have been or are also used in advertising for nonmenthol cigarettes. But more importantly, such terms are only intended to communicate taste, flavor and satisfaction. In fact, these are terms that smokers use to describe preferred cigarette taste characteristics. As discussed above, research shows that menthol smokers do *not* have the perception that menthol cigarettes are less hazardous than nonmenthol cigarettes. This strongly suggests that menthol smokers are not being misled by menthol cigarette ads. Lorillard further notes that all packs and nearly all ads for all Lorillard cigarette brands contain the following warning to smokers: "These cigarettes do not present a reduced risk of harm compared to other cigarettes." Of course, this is in addition to the Surgeon General's warning on every pack and every advertisement. And finally, the significantly heightened warnings required by the Tobacco Control Act should completely resolve any remaining concerns on this topic.

### **Retail Point of Sale Advertising**

Other than age-restricted direct marketing and advertising in magazines targeted to adults, Lorillard's remaining advertising materials are primarily point of sale signs and displays. Lorillard places advertising at select retail locations to let adult smokers know about the price and availability of Lorillard brand cigarettes.

Since the mid-to-late 1990s, cigarette advertising and merchandising practices at retail have changed dramatically, and Lorillard has decreased its point of sale advertising in terms of the number of pieces and types used, their size, and the amount of information they contain. Prior to that time, most cigarettes were placed on self-service displays, with the preferred placement being on the counter at the point of sale. Branded premium items were sometimes distributed with cigarette packages as a means to encourage brand loyalty and switching by smokers of competitive brands. The use of cigarette brand imagery was also much more prevalent, and was displayed on a wide variety of promotional pieces, such as clocks, neon signs, and other in-store items.

Today, Lorillard point of sale materials are for the most part limited to the Newport brand name, slogan, price, and the pack of cigarettes. Also, virtually all cigarette merchandising today is limited to space behind the sales counter. As a result, cigarette retail has shifted from a primarily

self-service model to a non-self-service model, dramatically reducing the space available to display point of sale materials. The availability of Lorillard point of sale materials is *not* dependent on geography or demographics (including race/ethnicity). Newport point of sale materials are made available to retailers which meet specified Newport or menthol category sales levels. Lorillard does not require any retailer to use “outdoor” point of sale. Effective June 22, 2010, the Tobacco Control Act prohibits all cigarette retailers, other than those that prohibit minors from entering their stores at all times, from selling cigarettes through self-service displays.

Lorillard further notes that, over the last ten years, many of the largest retail chains, including Wal-Mart, Walgreens, CVS, and many others, have entered into agreements with state attorneys general to limit youth access to tobacco. These agreements generally require that cigarette displays and advertising be limited to one area of the store, and that the retailer undertake numerous other measures to ensure that cigarettes are not accessible to minors.

### **Menthol Cigarettes Do Not Increase Youth Smoking**

As discussed above, youth smoking rates are at an historic low, decreasing 40% from 1999. The majority of smoking adolescents aged 12-17, as well as young adults aged 18-25, and adult smokers aged 26 and older, all continue to report a preference for nonmenthol cigarette brands (NSDUH (2009)). In studies that have examined the risk factors for youth smoking initiation, demographic, social, personal and environmental factors have been associated with youth smoking. Menthol cigarettes, however, are not listed as a factor in youth smoking initiation. Despite these conclusions, some researchers have hypothesized that menthol in cigarettes may facilitate smoking initiation. This hypothesis has arisen from reviews of simple surveys of brand preference among youth (typically 12-17 years old). Such survey instruments typically ask respondents to identify a cigarette brand or style most recently smoked or most frequently smoked rather than the identity of the cigarette smoked in the respondents’ first smoking experience (*i.e.*, at smoking initiation). It is important to distinguish a true smoking initiation event (*i.e.*, a previously non-smoking individual’s first experience in smoking all or a portion of a first cigarette) from a conscious purchasing decision or a distinct reported preference for a given brand, even if that preference is reported for early years of smoking (*e.g.*, ages 12-17).

Examination of study-to-study and year-to-year data on menthol preference reflects some degree of variability and inconsistency, likely attributable to differences in populations surveyed, form of the questions asked, and variability and instability of brand choice. The populations surveyed and the survey questionnaires often differ from year-to-year even within the same survey (*See, e.g.*, NSDUH, National Health and Nutrition Examination Survey (NHANES), Tobacco Use Supplement to the Current Population Survey (TUS-CPS)). Comparisons of menthol cigarette preference across years, even within the same survey, may be inadequate and, therefore inappropriate, to determine trends in menthol preference. For example, NSDUH has been conducted since 1971. The survey methodology changed in 1994 and 1999 and again in 2002. A menthol use question has been asked by NSDUH from only 2000 to 2009. The wording of the question, however, changed in 2004. As a result of these changes, among others, the ability of these surveys to provide long-term, longitudinal analysis of year-to-year trends is compromised. In addition, the number of respondents replying varies dramatically from question-to-question

and even within a single year's survey and may not consistently provide enough information to permit a sound statistical analysis of the data reported.

Most important, not a single one of the major U.S. survey instruments to date, including NHANES, NSDUH, TUS-CPS, National Youth Tobacco Survey (NYTS), use questions that explicitly ask respondents about the brands or menthol/nonmenthol brand style of the respondents' first smoked cigarette. Rather, the major survey instruments ask a variety of brand preference information for most recent (generally last 30 days) smoking experience or brand/style usually smoked. NSDUH (2004-2009), for example, queried: "*Were the cigarettes you smoked during the past 30 days menthol*" and permitted only a "Yes" or "No" answer. This contrasts dramatically with the question about the type of cigarette smoked, which asked: "*During the past 30 days, what type of cigarette did you smoke **most often***" [emphasis in original] and the permitted answers were "*Lights,*" "*Ultra Lights,*" "*Mediums,*" or "*Full Flavor.*" Responses to the menthol question are subject to misinterpretation because respondents could answer "Yes" to the menthol question even if the respondents smoked only one menthol cigarette during the past 30 days, while the cigarettes smoked "**most often**" were nonmenthol.

Although some studies have hypothesized that menthol in cigarettes can "mask the harshness and discomfort of inhaling smoke" Kreslake *et al.* (2008), DiFranza *et al.* (2004) were the first to have reported an investigation of the recollections by smoking public school students of their subjective responses to their first lifetime cigarette as well as the menthol or nonmenthol identity of that cigarette. Cigarette mentholation was not found to be associated with either adverse or pleasurable recollection of the first lifetime cigarette, nor with increasing dependence scores on the Hooked on Nicotine Checklist over the 3-year course of the study. DiFranza *et al.* (2004) also reported that, in "[c]omparisons of reported symptoms in reaction to first inhaled cigarette according to gender, brand, strength and mentholation," menthol cigarettes were higher in irritation than nonmenthol cigarettes, although this finding was not statistically significant. The data reported in DiFranza *et al.* (2004) does not support speculation that menthol facilitates smoking initiation or cigarette dependence among youth.

A variety of observational/cross-sectional survey data is available to inform speculation concerning menthol cigarette brand preferences and attitudes of persons who report histories of only a few years of smoking. The recent smoking initiates described in most surveys are primarily adolescents who have not yet attained the age to legally buy cigarettes. These persons typically obtain their first, initiating cigarette from friends, family members or other irregular sources (Colvin and Mermelstein (2010)). These adolescents who cannot purchase cigarettes legally also might be anticipated to obtain cigarettes and report brand preferences irregularly. Colvin and Mermelstein (2010) reported:

*Only commercial sources of cigarettes differentiated between adolescents who smoked at 24 months and those who did not ...; adolescents who did not endorse commercial sources at baseline were 2.4 times more likely not to smoke at 24 months than those who got cigarettes commercially. These results suggest that purchasing cigarettes is a strong marker of future escalation and smoking. Adolescents who did not directly purchase cigarettes were more likely to refrain from future smoking. Obtaining cigarettes through social means, family, and stealing were not associated future smoking behaviors.*

Brand or style of the cigarette with which a young smoker initiates may bear no fixed or predictable relationship to a future preferred brand that may be legally purchased. Not surprising, the reported brands most commonly obtained and smoked by underage smokers are also the brands that are most popular with adult smokers. Because only one of the top three brands reported to be most popular among adolescents is a menthol brand (NSDUH (2005)), it might reasonably be anticipated that random brand experimentation among smoking youth with irregular access to cigarettes would, on average, lead to more switching away from that menthol brand than to it.

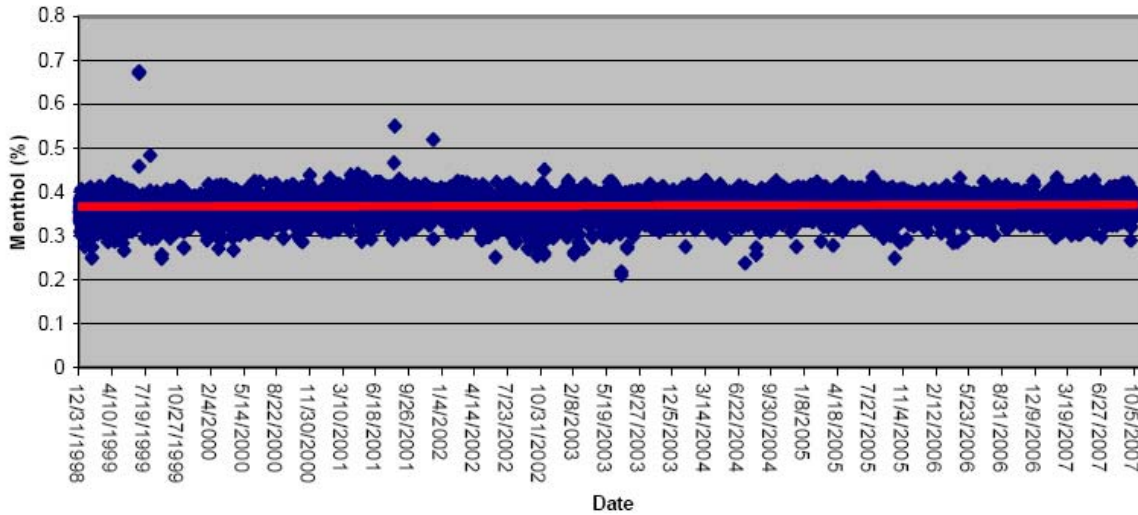
Both the Bullock Presentation and the Husten Presentation attributed an increase in youth smoking to menthol cigarettes. The Bullock Presentation stated that “[f]or years, the tobacco industry has manipulated the level of menthol in cigarettes.” And that “[l]ow levels of menthol for young ‘starters’” are used in cigarette brands, including Newport. The Bullock Presentation also stated that “[h]igher levels of menthol for ‘experienced’ smokers – to keep up with their need for a stronger sensation as they become more acclimated” are used in Salem and Marlboro. The Bullock Presentation offered no citation for these allegations. The Husten Presentation repeated the allegations, citing a study by Kreslake *et al.* (2008).

One of the allegations made in Kreslake *et al.* was that cigarette brands reported to be preferred by younger smokers have lower levels of menthol than do brands reported to be preferred by older smokers, and further that cigarette manufacturers had lowered menthol levels as a general strategy to attract youthful smokers in recent years. Lorillard has publicly and without reservation denied this assertion advanced by Kreslake and coauthors.

As Figure 9 demonstrates, the pack menthol levels of Newport cigarettes have not varied for years. No standard or consensus method presently exists for the analysis of menthol in either tobacco or in smoke or smoke preparations such as mainstream smoke particulate matter. Lorillard internally developed, refined and validated methods for the sampling and analysis of the menthol content in tobacco or in finished products. Lorillard applies these methods in daily quality assurance sampling of the menthol products it manufactures. As examples, Lorillard provides in Figure 9 daily production quality assurance measurements of menthol in the cigarette (also called pack menthol) for Newport cigarettes.

**Figure 9 - Newport Menthol Level (1999-2007).**

**Newport Full Flavor 1999-2007  
Production Quality Assurance Pack Menthol Level**



In Kreslake *et al.* (2008), the authors conclude in Table 1 that Lorillard reduced Newport menthol content by 16% because their single 2007 analysis of 0.32% cigarette tobacco menthol (from a convenience sampling at a retail store in the Boston area) was lower than a “baseline” value of 0.38% that they had found in a single internal Lorillard document dating from the year 2000 (authors’ reference 73).

The menthol analysis reported in the authors’ reference for the Newport Kings test product was performed in September 2000 in support of a taste panel evaluation. No such single analysis of this test product or of any other cigarette can be legitimately taken as a scientifically and statistically representative characterization of the menthol level for a product having an annual production volume of billions of units.

The basis for the authors’ claim that Newport’s menthol levels had been reduced between the years 2000 and 2007 was a single menthol analysis performed on an uncharacterized 2007 sample of “Newport King Size” cigarettes by a contract laboratory.

- No information was provided on the size, lot number, authenticity or representativeness of this sample in the paper, nor is there any statistical expression of variability for the menthol in the cigarette sampled or in smoke analyses.
- Neither the cigarette sampling nor the laboratory analyses of tobacco menthol content were conducted by validated methods.

- These two menthol values for Newport represent analyses performed by different methods years apart by two different laboratories, and are presented without qualification or any statistical treatment.
- The pack menthol data, provided above in Figure 1, show that either of the paper's two Newport tobacco menthol values may be plausible for a given single sample of the unchanging product, yet neither is representative of a year's production nor nearly sufficient for determination of a trend over years.
- A straight line drawn between two disparate values does not constitute a scientifically-valid trend analysis.
- The actual trend line for menthol in Newport over the time interval mentioned in the paper can only be described as unequivocally flat with an extraordinarily high degree of statistical confidence and low variability.

The Kreslake paper also cites internal Brown & Williamson (B&W) and RJ Reynolds Tobacco Company (RJR) documents, to support an allegation that Newport maintained low menthol levels in contrast to Kool and Salem during the 1970s and early 1980s, and that its historical success among younger adults can be attributed to its lower menthol content. By the time Newport was reformulated in the early 1970s, both its sales and market share had been declining since the mid-1960s. During its reformulation, Newport was positioned in taste between Kool and Salem, and did not have the lowest menthol level of the three brands. B&W documents cited by the Kreslake authors demonstrate the consistency of Newport's menthol level, as opposed to any attempts to alter the level, even when competitors (namely Kool and Salem) were doing so.

Kreslake *et al.* (2008) also alleged that menthol use among adolescents increased between 2000 and 2002, with the highest use among "younger, newer smokers," and suggested that menthol cigarettes may be a "starter product" for adolescents, citing a 2006 publication by Hersey *et al.* Hersey, *et al.* reported an 18.5% increase in regular menthol use among 12-17 year olds (40% in 2000 and 47.4% in 2002), a statistically significant increase (51.6% to 59.6%) among middle school students; and a statistically non-significant increase (36.9% to 43.6%) among high school students. Although, the National Youth Tobacco Survey (NYTS) study used in Hersey *et al.* as the source for menthol adolescent use rates shows increase from 2000 to 2002, it also shows a decrease for 2004, which is not mentioned by Kreslake. Further, Kreslake *et al.* does not discuss the more recent data which shows a significant (greater than 10%) decline in overall youth menthol smoking rates from 2002 to 2006.

Hersey *et al.* (2006), cited by Kreslake, evaluated the data from the 2000 and 2002 NYTS and suggested that although overall youth smoking prevalence had declined, menthol cigarette usage had increased among participants reporting initiation of smoking in the past 12 months. Hersey *et al.* acknowledges limitations associated with brand/type "misclassification" by study participants which is not discussed in the Kreslake paper. The majority of initiating smokers (over 60%), however, were excluded from this analysis because of misclassification of cigarette type. In addition, according to analyses presented by RJR at the July 15-16 meetings of the Tobacco Products Scientific Advisory Committee (available at [www.fda.gov](http://www.fda.gov)), the NYTS data

conflicts with the data from three other national surveys: National Health and Nutrition Examination Survey (NHANES); National Health Interview Survey (NHIS) and NSDUH. NYTS was conducted in a group setting and that setting may have affected responses. NYTS reported the only increase, based on age, of menthol versus nonmenthol smoking. As recognized by Hersey *et al.*, there are inconsistencies and contradictions in the data which materially undermine the reliability of the NYTS data on this issue. None of these limitations were discussed in the Kreslake paper.

The Kreslake paper also states that in 2006, 43.8% of current smokers aged 12-17 reported that they used menthol cigarettes, citing NSDUH (2006). The authors further state that national survey data showed that significantly more adolescents and young adults than older persons smoked menthol cigarettes, although the internal Brown & Williamson document cited for this point does not contain any data with regard to “adolescents” and the lowest age bracket mentioned begins with 21 years.

The NSDUH data regarding youth menthol smoking rates is flawed and unreliable. The Kreslake paper does not mention any of the significant limitations that plague the NSDUH data on this issue. The data developed using the National Survey on Drug Use and Health (NSDUH) is scientifically inappropriate to draw definitive conclusions regarding menthol cigarette use. The NSDUH data are simply not sufficient to reach a reliable conclusion that youth are disproportionately smoking menthol cigarettes. The NSDUH question regarding menthol use (whether the cigarettes they smoked during the last 30 days were menthol) is fundamentally flawed and thus not a reliable basis on which to identify youth menthol smokers. It is uncontroverted that beginning smokers routinely experiment with various cigarette brands and types, and they get their cigarettes from a variety of sources without having developed a brand/category preference. Thus, it is not at all surprising that many beginning smokers would have smoked at least one or a few menthol cigarettes during a 30 day period. The survey design creates the likely scenario that youth smokers who predominantly smoked nonmenthol cigarettes, but also smoked at least one menthol cigarette during the preceding month, are incorrectly classified as menthol smokers.

The Kreslake paper also fails to disclose that the NSDUH data from 2000-2003 when the menthol smoking question was worded differently (“During the past 30 days, did you smoke menthol or regular cigarettes most often?”) may have been the cause of a dramatic increase (19%) in the alleged youth menthol smoking rate beginning in 2004, when the more imprecise question began to be used.

Kreslake *et al.* did not include a discussion of the data from NHANES or NHIS. For NHANES, NHIS and NSDUH, menthol cigarette use is associated with an older smoking initiation age. This older smoking initiation age for menthol cigarettes continued even after adjustment for a combination of current age, sex and race/ethnicity. The weight of the scientific evidence shows that menthol in cigarettes does not affect age of smoking initiation.

“Table 1” of the Kreslake paper indicates Newport’s target groups were “younger smokers,” citing the 2006 NSDUH as well as B&W and RJR documents. Lorillard’s internal documents demonstrate that Newport’s target market has never included persons below the age of 18, and has predominantly included only smokers 21+. Further, Newport is the most popular menthol cigarette for virtually all age groups of adult smokers.

<b>2008 NSDUH Brand Smoked Most Often, Past 30 days</b>	<b>18-25</b>	<b>26-34</b>	<b>35-49</b>	<b>50-64</b>	<b>65+</b>
Kool	3.0%	2.2%	2.9%	4.5%	3.7%
Newport	18.9%	17.2%	11.2%	7.2%	2.8%
Salem	0.2%	0.5%	1.8%	3.0%	0.9%

The very real distinction between reported youth smoking incidence/brand preference survey data and the markedly fewer youth who continue beyond youthful experimentation to become smokers (true initiators) was very recently referred to by Dr. Lawrence Deyton in his 2010 New England Journal of Medicine *Perspective*: “...Each day, roughly 3900 Americans 12 to 17 years of age start smoking cigarettes; 1000 of them become regular users.” If, in fact, only about one in four self-reported youthful smokers are true smoking initiators, then surveys such as NSDUH (2009) in all likelihood grossly overestimate the acquisition of smoking, even as youth smoking rates are at or near an all-time historical low.

Dr. Deyton’s distinction between true initiation of long-term smoking by approximately 25% of adolescents who may report themselves to have recently smoked a cigarette in survey studies demonstrates the fragility of assertions that one cigarette type or another may meaningfully differ in its likelihood to lead to chronic smoking. As Hersey *et al.* (2006) cautioned, such conclusions require longitudinal studies which have not been pursued and reported to date. Other research (DiFranza (2004)) is not consistent with the assertion that a youthful first-smoking experience with a menthol cigarette is more likely to lead to continued smoking (true smoking initiation) than is a nonmenthol cigarette experience. In the absence of scientific data to substantiate the hypothesis that menthol in cigarettes is causally related to chronic smoking into adulthood, speculation based on brand preference surveys of smokers of any age is entirely insufficient to support a sound science-based conclusion in regard to any causal association between menthol and the likelihood of chronic smoking initiation. This may particularly be true for initiation by persons under the legal age because cigarettes smoked are more likely to be those to which youth have access, rather than a true brand preference. In addition, underage mixed smoking of both menthol and nonmenthol cigarettes is likely and cannot be accounted for by the survey questions asked.

Data also indicate that youth smoking rates are generally lower in states with higher menthol market share. Nationwide evidence that smoking experimentation with menthol cigarettes by adolescents is no more likely to lead to chronic smoking than is similar experimentation with nonmenthol cigarettes is seen in data on state-by-state youth smoking rates compiled by the Campaign for Tobacco-Free Kids (CTFK). A comparison of these data for the most recent year available (2009) with menthol cigarettes’ sales volumes as reported by Management Science Associates, Inc. (MSAI) for this same year reveals that there is absolutely no positive relationship between the popularity of menthol cigarettes and youth smoking. In fact, a modest,

but statistically significant *inverse* relationship exists between menthol cigarette sales and youth smoking for all 50 States. The state-specific menthol share-of-market values captures the availability of cigarettes that may be illegally sold to adolescents at retail as well as those cigarettes that may be acquired from their older friends or family members who legally purchase cigarettes.

## CONCLUSION

Cigarettes sales continue a thirty-year pattern of significant decline. Cigarette sales in the United States reached a peak almost thirty years ago in 1981. Since then, overall cigarette sales have fallen almost 50%. Sales in the menthol segment of the cigarette market are no different and have also fallen almost 50%. Since the mid-to-late 1990s, youth smoking rates have declined significantly as well and are at historic lows. Importantly, African-American youth smokers report themselves to be smoking at about half the rate reported by European-American youth. The majority of both adult and youth smokers prefer nonmenthol cigarettes. The weight of the evidence shows that menthol cigarettes do not facilitate youth smoking. Smokers do not perceive menthol cigarettes as less hazardous than nonmenthol cigarettes. Lorillard marketing activities are directed to adult smokers. Lorillard has taken significant steps since the late 1990s to dramatically reduce exposure of youth and non-smokers to its cigarette advertising. Lorillard's retail price promotions and direct marketing activities are directed exclusively to adult smokers and are not based race/ethnicity.

## REFERENCES

American Lung Association Research and Program Services Epidemiology and Statistics Unit. Trends in Tobacco Use. February 2010.

Bansal, M.A, Cummings, K.M., Hyland, A, Bauer, J.E., Hastrup, J.L., Steger, C, 2004. Do smokers want to know more about the cigarettes they smoke? Results from the EDUCATE study. *Nicotine Tob Res*, 6(Suppl 3):S289-302.

Campaign for Tobacco-Free Kids. Key state-specific tobacco-related data & rankings, (2007), available at [www.tobaccofreekids.org](http://www.tobaccofreekids.org).

Capella, M. L. et al., (2008). The Effect of Cigarette Advertising Bans on Consumption: A Meta-Analysis, 37 *J. of Advertising* 7, 13.

Centers for Disease Control and Prevention. CDC Surveillance Summaries, November 18, 1994. *MMWR* 1994;43 (No. SS-3).

Centers for Disease Control and Prevention, Health Behaviors of Adults: United States, 2002-04, National Center for Health Statistics. *Vital Health Stat* 10(230). 2006 available at [http://www.cdc.gov/nchs/data/series/sr\\_10/sr10\\_230.pdf](http://www.cdc.gov/nchs/data/series/sr_10/sr10_230.pdf)

Centers for Disease Control and Prevention, Adult Cigarette Smoking in the United States: Current Estimates, 2007, available at [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/adult\\_data/cig\\_smoking/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm)

Colvin P. and Mermelstein, R., 2010. Adolescents' Sources of Cigarettes and Future Smoking Behavior. POS1-20 (Abstract). Society for Research on Nicotine and Tobacco, 16th Annual Meeting, February 24-27, 2010.

Department of Health and Human Services (DHHS), 1986 Adult Use of Tobacco Survey (AUTS) 1989.

Department of Health and Human Services (DHHS), National Center for Health Statistics. National Health Interview Survey (NHIS) 1987.

Deyton, L., Sharfstein, J., Hamburg, M., Tobacco Product Regulation — A Public Health Approach, *New England Journal of Medicine*, 362:1753-1756, May 13, 2010, Perspective.

DiFranza, J.R., Savageau, J.A., Fletcher, K., Ockene, J.K., Rigotti, N.A., McNeill, A.D., Coleman, M., Wood, C., 2004. Recollections and repercussions of the first inhaled cigarette. *Addictive Behaviors* 29, 261–272.

George H. Gallup International Institute. Teen-age attitudes and behavior concerning tobacco: report of the findings. Princeton, New Jersey: George H. Gallup International Institute, 1992.

Hersey, J.C., Ng, S.W., Nonnemaker, J.M., Mowery, P., Thomas, K.Y., Vilsaint, M.C., Allen, J.A., Haviland, M.L., 2006. Are menthol cigarettes a starter product for youth? *Nicotine and Tobacco Research* 8 (3), 403–413.

Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2010). *Monitoring the Future national results on adolescent drug use: Overview of key findings, 2009* (NIH Publication No. 10-7583). Bethesda, MD: National Institute on Drug Abuse.

Kreslake, J.M., Wayne, G.F., Alpert, H.R, Koh, H.K., Connolly, G.N., 2008. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *American Journal of Public Health*, 98(9):1685-1692.

Lorillard data (2009) on menthol cigarette market share by state was obtained from internal documents .

Pleis, J.R, Lucas, J.W., Ward, B.W., 2009. Summary health statistics for U.S. adults: National Health Interview Survey, 2008. National Center for Health Statistics. *Vital Health Stat* 10(242).

National Household Survey on Drug Abuse (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 1999.

National Household Survey on Drug Abuse (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2000.

National Household Survey on Drug Abuse (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA),2001.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2002.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2003.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2004.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2005.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2006.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2007.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2008.

National Survey on Drug Use and Health (NSDUH) sponsored by Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), 2009.

Nelson, J. P., 2006. Cigarette Advertising Regulation: A Meta-Analysis, *Int'l Rev. of L. & Econ.* 195, 217.

Wackowski, O.A, Delnevo, C.D., Lewis, M.J., 2010. Risk perceptions of menthol cigarettes compared with nonmenthol cigarettes among New Jersey adults. *Nicotine Tab Res*, (Epub ahead of print).

U.S. Census Bureau: Population Estimates Program. Available at <http://factfinder.census.gov/>.

U.S. Department of Health and Human Services, FFY 2006 Annual Synar Reports, Youth Tobacco Sales.

U.S. Department of Health and Human Services, FFY 2009 Annual Synar Reports, Youth Tobacco Sales.