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January 11, 2012

Submitted Electronically via www.regulations.gov

Division of Dockets Management (HFA - 305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Docket No. FDA-2011-N-0467; Regulatory Information Number 0910-AG43; Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products; Advance notice of proposed rulemaking, Request for Comments and Information

To Whom It May Concern:

Lorillard Tobacco Company (“Lorillard”) welcomes the opportunity to comment on the above-referenced docket and Federal Register notice published September 9, 2011 (76 Fed. Reg. 55835). Lorillard manufactures Newport, the best-selling brand of menthol cigarettes in the United States.¹

I. Lorillard Does Not Engage in Non-Face-to-Face Sale and Distribution of Tobacco Products

Lorillard does not sell or distribute its cigarettes to adult smokers through non-face-to-face exchanges. The company sells its cigarettes to wholesale distributors who, in turn, provide the

¹ Lorillard’s comments are not organized as responses to FDA’s specific questions, but as a general matter, address portions of questions 11, 12, and 13, found in part II.B of the advanced notice of proposed rulemaking, which include the following: (11) “What forms of advertising, promotion, and marketing are used to promote the sale of tobacco products through non-face-to-face exchanges?”; (12) “How are the Internet, e-mail, direct mail, telephone, smartphones, and other communication technologies used to direct tobacco product advertising, marketing, and promotion messages to specific recipients?”; and (13) “What technologies, procedures or other methods are currently being used by the tobacco industry (including, but not limited to, manufacturers, importers, distributors, and retailers) to restrict or minimize a minor’s exposure to the forms of advertising, promotion, and marketing of tobacco products described in questions 11 and 12 of section II.B of this document?”. The comments summarize Lorillard’s key practices in these areas, and include relevant examples. The comments do not include a comprehensive discussion of Lorillard’s advertising, promotion, and marketing activities.

product to retailers. Consumers then purchase cigarettes directly from retailers. Lorillard relies on these retailers to fully comply with all applicable federal, state, and local laws with respect to the sale of its products, including requiring photo ID with date of birth for persons under 27 years of age and prohibiting sales to persons under 18 (or older as required by applicable state or local laws).

II. Advertising, Promotion, and Marketing of Tobacco Products

A. Background

Lorillard fully supports FDA's goal of preventing youth access to cigarettes and reducing youth exposure to cigarette advertising. As such, the company does not engage in any advertising, promotion, or marketing activities intended to encourage the sale of cigarettes to youth through non-face-to-face exchanges, or otherwise. In fact, *all* of Lorillard's advertising, promotion, and marketing activities are directed to adult smokers, not minors or nonsmokers of any age. Lorillard has adopted a comprehensive and multi-layered approach to limit youth exposure to its advertising, promotion, and marketing activities. Lorillard's strategy includes the implementation of policies that are, in some cases, more stringent than what is required by applicable federal, state, and local laws.² Lorillard's core guidelines, restrictions, prohibitions and requirements, which govern the company's marketing activities are set out in Lorillard's Corporate Principles on Marketing, Promotion and Youth Smoking, which are publicly available on the corporate website.

B. A Shift from Print Media Advertising has Substantially Reduced the Unintended Exposure of Minors to Cigarette Advertising

Over the last ten to fifteen years, Lorillard has made dramatic and significant changes to its general approach to advertising, promotion, and marketing activities. These broader changes have substantially reduced youth exposure to such activities. Specifically, from approximately 1971 to the late-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 the unintended exposure of Lorillard cigarette ads to minors and nonsmokers.

This general shift from print media advertising has decreased the likelihood of any unintended youth exposure. Retail price promotions, for instance, which make up most of Lorillard's marketing budget, are only available to adult smokers who engage in a purchase transaction at a point of sale. Direct marketing, a form of age-verified consumer communication, enables the

² For example, Lorillard's marketing activities are intended for persons 21 years of age and older, instead of 18 (or 19, the age of majority in some states). In addition, Lorillard only intends these activities for current smokers.

company to engage with consensual, age-verified adult smokers (21 or older) who are direct marketing participants, most often offering such consumers coupons. The marketing tools used by Lorillard are indisputably lawful and are routinely used by numerous consumer product companies that market to adults. Moreover, Lorillard implements *additional safeguards*³ to reduce the exposure of minors and nonsmokers to its cigarette advertising, marketing, and promotion.

C. Lorillard's Compliance with Existing Restrictions on Advertising, Marketing, and Promotion Reduces the Unintentional Exposure of Minors to These Activities

In addition to Lorillard's general shift from a strategy focusing on print media advertising to one that emphasizes retail price promotions, Lorillard fully complies with existing restrictions on various marketing methods. For example, Lorillard does not engage in any of the activities listed below.

- *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 35 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:* 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 ten years ago, in early 2002.

D. Lorillard's Ads Only Appear in Magazines Targeted to Adults

As discussed above, Lorillard's focus has shifted away from print media advertising. Lorillard does, however, still advertise its products in certain magazines.⁴ In an effort to substantially

³ These safeguards are discussed in sections D and E, below.

⁴ Although Lorillard's ads in magazines are intended for consumers, this advertising is distinguished from "direct marketing" for the purposes of this comment insofar as Lorillard does not direct the ads to specified individuals.

reduce unintentional exposure of minors to these advertisements, all of Lorillard's magazine ads appear in publications targeted to adults. Further, the content of the ad imagery is also targeted to adults.

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, *or* (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 the 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).

E. Lorillard's Direct Marketing Activities are Restricted to Specific, Age-Verified Adult Smokers, 21 and Older

We strongly believe that direct marketing activities, restricted to age-verified adult smokers, are an appropriate means of communication with adult smokers of tobacco products, which must remain available to tobacco products manufacturers.

Lorillard has taken extraordinary measures to ensure that all Lorillard brand advertising, promotion, or marketing that occurs through direct mail, internet, and e-mail only encompasses persons: (1) who are adult smokers, 21 and older, and (2) who deliberately choose to receive information from Lorillard.

In order to accomplish this task, Lorillard only communicates with adult smokers, 21 or older. Lorillard maintains a direct marketing database that only includes age certified *and* verified adults who are at least 21 years old, smokers, and wish to receive advertising and promotional materials from Lorillard. Lorillard only communicates with adult smokers from this database through direct mail, e-mail, and branded website access. Each person in the database must have all of 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. Lorillard also uses a separate "suppression" database as a screening tool to ensure that underage or

otherwise unqualified persons do not 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).

Lorillard employs a multi-layered approach to ensure that only adult smokers are included in its database. Every method of joining Lorillard's adult smoker database requires a signature block, whereby the person explicitly certifies that he/she is a smoker, 21 or older. Further, the person must certify that he/she wants to receive cigarette promotional materials. Finally, *every* smoker must also be age-verified before becoming eligible to receive: (1) direct mailings (e.g., coupons or Lorillard's *P.S. Pleasure Scene* magazine), (2) access to Lorillard's website, and (3) e-mail from Lorillard.

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

1. Direct Mail

Direct mail is utilized by Lorillard because it allows the company to communicate directly with adult smokers that have been verified as 21 or over *and* have chosen to participate in direct marketing programs. Furthermore, direct mail is not communicated to minors or non-smokers, and thus it avoids exposing minors and nonsmokers to cigarette advertising. All direct mail pieces that Lorillard sends include a specified, age-verified person as the named addressee. Lorillard's direct mail activities primarily focus on the delivery of: (1) retail price promotions (e.g., coupons) and (2) its *P.S. Pleasure Scene* magazine.

Coupons are delivered primarily to Newport smokers who have coupon redemption history; however, not all Newport smokers in Lorillard's direct marketing database are sent coupons. Competitive brand adult smokers are also sent coupons, but this is secondary to Lorillard's efforts to maintain brand loyalty among existing Newport smokers. Lorillard began distributing the *P.S. Pleasure Scene* magazine in 2003. It is only sent to adult smokers, 21 and older, who are in Lorillard's direct marketing database who have chosen Newport as their regular cigarette brand, and have some history of Newport coupon redemption. None of the content of the magazine is directed at persons under 21.

2. Internet

There are numerous technologies available to restrict minors' access to branded websites. Lorillard only uses one access-controlled branded website for consumer communication purposes, located at www.newport-pleasure.com. Lorillard utilizes several methods to prevent unauthorized minors access to its Newport website. The website, as such, is not indiscriminately advertised on the internet.

The primary objectives of the website are to increase brand awareness and build customer loyalty. Access to the site is restricted to persons who complete a password protected member login process *each time* he/she visits the site. This login process requires entry of both a Newport Customer ID and password, which are given only to smokers that have been age-verified, as described above, to be 21 years of age or older.

First time visitors to the site must initially register for website access. This registration process requires individuals to first “verify that [he/she] is a smoker 21 years of age or older”⁵ by entering their address, their date of birth and the last four digits of their social security number. If, based on the information entered, the individual appears to be under 21 years of age, the user receives a message that the site is only accessible to smokers, age 21 and over and is not allowed to complete the registration process. If, based on the information entered, the user is over 21, they must certify they are a smoker, at least 21 years of age, and want to receive cigarette coupons and/or other promotional offers in the mail in order to complete the registration process. Of course, the user can, at any time, abandon the registration process. Any age-verified adult smoker from the database can opt out of the database. In lieu of online age verification, users also have the option of sending Lorillard a copy of their government-issued ID so its promotion and fulfillment vendor can complete the age-verification process. This certification includes a statement that they “understand that giving false information to qualify for these offers may violate the law.” This language is designed to further discourage youth from attempting to improperly register for access to the site.

Lorillard does not engage in advertising, promotion, and marketing via social media websites such as Facebook, Twitter, and YouTube.

3. E-Mail

Consistent with Lorillard’s policy on website access, branded e-mail is only sent to adult smokers who have been verified as being at least 21 years old. E-mail messages are only sent to those consumers who confirm that they want to be contacted via e-mail and the consumer is always given the opportunity to be taken off of the e-mail list.

F. Lorillard’s Advertising Content Is Designed for Adults

Finally, to the extent minors are unintentionally exposed to Lorillard’s print or other advertising, the ad content and imagery is designed to be directed to adults. For example, Newport ads show *adults* having fun together in a variety of spontaneous and life-style relevant situations. To ensure that the imagery of Newport ads is targeted to adult smokers, and not minors, Lorillard carefully adheres to the following requirements.

⁵ Although Lorillard’s website uses the term “verify,” this attestation by registrants is distinct from Lorillard’s certification process and formal age verification process as outlined above. Age verification occurs subsequent to this attestation.


- 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. For many years prior, Lorillard's consumer research was limited to adult smokers, 18 and older.

III. Conclusion

We hope that the information provided in this submission will assist FDA to strike the right balance in further regulating non-face-to-face sales and advertising of tobacco products in a manner which allows robust competition among market participants, and ensures that tobacco product information will be communicated to adults through different media. We are available to meet with the relevant departments within the Center for Tobacco Products should there be a need for more detailed explanations.

Sincerely,



Neil L. Wilcox