

presented where a lawful business is advertising a lawful product and, in the absence of any health claim in the commercial or affirmative discussion of the health issue, there is no viewpoint to oppose. But this argument misconceives the nature of the controversial issue. Mr. Banzhaf's complaint was that the cigarette commercials over WCBS-TV presented the point of view that smoking is "socially acceptable and desirable, manly, and a necessary part of a rich full life." Our ruling points out that:

The advertisements in question clearly promote the use of the particular cigarette as attractive and enjoyable. Indeed, they understandably have no other purpose. But we believe that a station which presents such advertisements has the duty of informing its audience of the other side of this controversial issue of public importance—that however enjoyable, such smoking may be a hazard to the smoker's health.

Petitioners point to no example of a cigarette commercial that does not portray the use of the particular cigarette as attractive and enjoyable as well as encourage people to smoke, and we find it difficult to conceive of one.

37. Further, we are unable to accept the argument that in the absence of any express health claim in the commercial or affirmative discussion of the health issue, there is no viewpoint to oppose. The June 30, 1967 FTC Report amply documents its conclusion that cigarette commercials today still contain the two principal elements if found to exist in 1964—a portrayal of the desirability of smoking and assurances of the relative safety of smoking (pp. 15-16). The FTC states that desirability is portrayed in terms of the satisfaction engendered by smoking and by associating smoking with attractive people and enjoyable events and experiences, and that by so doing the impression is conveyed that smoking carries relatively little risk (*ibid.*).¹⁴ The Report supports this conclusion, more than adequately in our view, by a comprehensive review and analysis of the advertising submitted by a large number of cigarette companies and monitored by the Commission (FTC Report, pp. 15-23). Numerous examples are given of the "satisfaction" theme (pp. 15-16);¹⁵ the "associative" theme (pp. 16-17);¹⁶ "appeals directed to vanity" (pp. 17-18);¹⁷ subtle methods of "assuaging anxiety" about any health hazard (pp. 19-21);¹⁸ the "loyalty"

¹⁴ The FTC Report states (p. 17) that an estimated 58 percent of the public feel that current cigarette advertising leaves the impression that smoking is a healthy thing to do.

¹⁵ The Report states that portrayal of satisfaction, particularly oral satisfaction, continues to be an important element of cigarette advertising. Taste or flavor of cigarettes is most often described in terms of "mildness" (Tareyton filters, Montclair menthols, Camel regulars, Carlton filters, Lucky Strike filters, Pall Mall filters, and Chesterfield kings); "smoothness" (Tareyton filters, Pall Mall kings, Newport menthols, and Lucky Strike menthols); "real," "true," "rich," or "great" tobacco flavor or taste (Raleigh filters, Newport menthols, Viceroy filters, Salem menthols, and Philip Morris filters). Invariably, the taste of menthol cigarettes is either cool, fresh and/or refreshing ("coolest flavor," Lucky Strike Green; "forest-fresh taste * * * cooler tasting," Pall Mall; "as fresh as you like it," Philip Morris; "most refreshing coolness," Kool; "fresher," Newport; "fresh fresh taste," Chesterfield). The FTC comments (p. 16): "The impression forms that 'menthol taste' relieves smoking irritation, albeit 'smoking irritation' is never expressly stated."

¹⁶ The Report states (p. 16) that associating cigarette smoking with persons, activities, places, and things likely to be admired, respected, or emulated, i.e., endowing cigarette smoking with a positive associative image, continues unabated in current advertising. For example, outdoor activity of an athletic nature such as sailboating "suggests that the smoking depicted in the foreground, is not conducive to rousingly good health, is certainly not incompatible with it" (FTC Rept., p. 17). In addition, social events should in which the viewer is brought into the "wholesome, jolly company of cigarette smokers" (*ibid.*). E.g., "singing aboard the old paddle wheel steamer (with Pall Mall kings); * * * picnicking (with Camel filters); and coffee klatching (with Winston filters)."

¹⁷ The Report gives as examples of appeals to vanity (pp. 17-18):

"Be discriminating: 'Particular about taste * * * I'm particular' (Pall Mall kings); 'They like the style of this cigarette' (Parliament filters). Be exclusive: * * * 'exclusive plastic pack' (Philip Morris filters and menthols); 'There's no other cigarette' (Lark filters). * * * 'the smokers who know' (Camel filters). Be a success: 'taste rich, good, rewarding' (Viceroy filters); 'This man was born rich' (Camel filters). Be a social success: 'Come up to the taste of Kool' (Kool menthols); 'find something better' (Old Gold filters). Be independent: 'break away from the crowd * * * the cigarette for independent people' (Old Gold filters); 'stands out from the crowd' (Salem menthols). Associate with important people: 'Chairmen are never bored with them' (Benson & Hedges filter); the charter boat skipper who has 'got a good ship, a good crew and a good breeze' (Camel regulars)."

¹⁸ The Report states that as a result of extensive promotion during 1957-59, the belief appears to be widely held that filter cigarettes are less hazardous to health than regular cigarettes (p. 19). Comparatively overt attempts to allay health anxieties have been made by manufacturers of charcoal filter cigarettes by pictorial details of filters creating the impression that they prevent passage of tars and gaseous effusions (Tareyton, Lucky Strike, Tennyson, Cold Harbor, King Sano, Tempo, Duke, and Lark). Rept., p. 20. Other "very low key" advertising enhances the impression of relative safety by adding suitable adjectives to the word "filter": "recessed filters" (Benson & Hedges and Parliaments), "white filters" (Yorks), "menthol filters" (Springs) and "filters with coconut shell charcoal" (Philip Morris). *Ibid.*