

**PHILIP MORRIS COMPANIES INC.**

INTER-OFFICE CORRESPONDENCE

PRIVILEGED AND CONFIDENTIAL

120 PARK AVENUE, NEW YORK, N.Y. 10017-5592

TO: Messrs. H. Maxwell  
R. W. Murray  
FROM: Murray H. Bring *MB*  
SUBJECT: PROJECT RAINBOW

DATE: January 24, 1991

**RECEIVED**

JAN 24 1991

R. W. MURRAY  
PM COMPANIES INC.

This memorandum and the attachment are being sent to you in anticipation of our meeting on February 4 to discuss Project Rainbow. The working group, consisting of Messrs. Campbell, Goldberg, Greenberg, Smith and myself, has had two meetings, and we have developed a consensus about how we should proceed. A proposed plan of action is set forth in the attached memorandum that has been prepared by David Greenberg.

Essentially, we have agreed to recommend to you that we initiate steps to explore with appropriate Congressional leaders the possibility of achieving a legislative compromise in this Session which would, with our acquiescence, impose significant future restrictions on cigarette advertising and event promotions, in return for which Congress would, in the same legislation, reaffirm the preemption of alleged tort claims related to smoking. We would also anticipate a five-year period of "legislative peace" with respect to marketing issues. This recommendation is conditioned on our first being able to persuade Reynolds to join us in this effort. Accordingly, if you concur, the next step in the process should be for us to contact Reynolds at a very high level (e.g., Maxwell to Gerstner), to determine whether they are prepared to cooperate with us in this undertaking.

For reasons detailed in Greenberg's memorandum, time is of the essence, since the strategy, if it is to be successful, would require passage of the legislation prior to an anticipated Supreme Court decision on preemption toward the end of this year, assuming that the Court agrees to review the Cipollone case. (If the Court should deny review in Cipollone, the time pressure would be relieved, and we would probably be focusing on a two-year legislative time frame. We should know whether the Court will review Cipollone by mid-March. However, because we cannot afford to waste approximately two months until the Court acts, we should make the contact with Reynolds as quickly as possible, assuming you decide that we should go forward at all.)

By way of background, the following is a brief summary of the principal conclusions we have reached thus far:

2023027865

Messrs. H. Maxwell  
R. W. Murray  
January 24, 1991  
Page - 2 -

I Underlying Considerations

- 1 agree.  
- Election  
- Congress Out  
- Recession  
- What in Gulf*
- What makes  
us think  
this?*
- 1 agree.*
- Agree*
- A. Although the social and political environment with respect to smoking is still hostile, the situation does not appear to be quite as bleak as it did a year ago when consideration of Project Rainbow was initiated. Nevertheless, we recognize that we are facing a volatile situation and that the environment could deteriorate more rapidly almost any time.
- B. The industry probably has more political leverage than we previously thought with respect to some of the concessions we are considering. Some concessions that may not be very important to us are probably quite important to our antagonists (e.g., bans on vending machines and sampling). Therefore, we may be able to achieve a compromise without offering the most we are willing to concede.
- C. Image advertising and some event promotions are extremely important to our marketing plans and capabilities; they may be more important to us than to our competitors. Accordingly, we should be willing to make significant concessions in these areas only if we get something equally significant in return, such as a reaffirmation of preemption.
- D. We must assess any possible concession in terms of the international implications it may have.

II. Possible Objectives of Project Rainbow

We have identified four possible objectives of Project Rainbow; they are listed below in descending order of importance and priority:

- A. Reaffirmation of Preemption -- We believe that this is the most important objective and the only one which would justify making significant advertising and promotion concessions. David Greenberg believes that we stand at least a 50/50 chance of accomplishing this objective if we move quickly and are prepared, along with Reynolds, to make major concessions.

2023027866

Messrs. H. Maxwell  
R. W. Murray  
January 24, 1991  
Page - 3 -

- ✓
- B. To forestall legislative action that would be at least as bad or worse than the concessions we are contemplating. -- Clearly, if we felt it was inevitable that Congress is likely to pass an ad ban or other major restrictions on advertising in the future, then, it would make sense to seek a legislative compromise now while we still have bargaining power and leverage. However, David Greenberg does not believe that Congress is likely to adopt an ad ban or impose other onerous advertising limitations within the next few years. Accordingly, this objective is presently of limited importance.
- ✓
- C. To secure a competitive advantage. -- It is difficult to assess whether a legislative compromise involving significant restrictions on advertising and promotions is likely to provide Philip Morris with a competitive advantage. That might be the case if we thought that Congress might impose those restrictions in any event before we had fully implemented a competitive strategy designed to combat the threat from Camel and to bolster the growth of Marlboro. However, Bill Campbell believes that we should be able to implement such a strategy within the time frame that David Greenberg thinks Congress is likely to take such action. Moreover, if it were obvious that the concessions we are proposing would result in a significant competitive advantage for Philip Morris, then, it is extremely unlikely that Reynolds would be willing to join with us in the project. Accordingly, we do not believe that this objective would justify undertaking this project.
- D. To reduce the level of criticism directed toward Philip Morris and the rest of the industry. -- We do not believe that a legislative compromise involving significant advertising and promotion restrictions is likely to make us more popular either in Congress or in the country generally. However, the elimination or severe restriction of cigarette advertising would diminish one of the principal focal points of our antagonists' criticism. This could lead to a diminution of the attacks against us and of the level of hostile rhetoric. However, we believe that any such result is too speculative to warrant, by itself, the initiation of Project Rainbow.

*Eliminate  
completely the  
results of the  
71 package.*

2023027867

Messrs. H. Maxwell  
R. W. Murray  
January 24, 1991  
Page - 4 -

*1 agree*  
Accordingly, we conclude that the only objective which is specific and tangible enough to justify our going forward is the first objective of trying to obtain a reaffirmation of preemption.

### III. Recommendation

Attached to David Greenberg's memorandum is an appendix which sets forth three possible scenarios, including a description of the specific concessions that will likely be required under each scenario. The working group has reached a consensus as to the concessions we should be willing to make in return for a reaffirmation of preemption and a five-year period of "legislative peace" with respect to advertising and marketing restrictions. The working group is not unanimous in its recommendation. One member, Guy Smith, believes it would be a mistake for us to offer any concessions that are not absolutely necessary at this time. In addition, Bill Campbell has some concerns about agreeing to major concessions that might hamper our marketing efforts. Nevertheless, he and the other members of the working group are prepared to recommend all of the concessions set forth on the attachment, including a total ban on advertising and event promotions -- provided that any ban be phased in over a five-year period.

*Let's also see how to check to.*  
It will not be possible to determine whether a compromise can be achieved, and on what basis, until discussions with key congressional leaders are initiated. However, because it may be necessary early in those discussions to advise Congressmen such as Dingle and Rose of how far we are prepared to go, we are all of the opinion that we should not embark on this exercise unless a firm decision is made by you that we would be willing to make major concessions, including a total ad ban if that is necessary to achieve our objective.

In any event, the entire working group is of the opinion that, once we have decided whether we are prepared to go forward, we should take the next step promptly of contacting Reynolds and determining whether they are willing to join with us.

#### Attachments

cc: W. Campbell  
M. Goldberg  
D. Greenberg  
G. Smith

*Explain why it is necessary to go to RFR. I'm not arguing but what exactly is the reason. Doing it to gether with RFR complicates things. Also RFR will probably be very reluctant to give up advertising.*

2023027868