

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(CITY OF ST. LOUIS)

FILED
NOV - 1 2007

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

DAYNA CRAFT, JASON STONE, DEBORAH LARSEN)
WENDY ALPER-PRESSMAN, Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiffs,)

v.)

PHILIP MORRIS COMPANIES, INC., a corporation,)
and PHILIP MORRIS INCORPORATED,)
a corporation,)

Defendants.)

Cause No. 002-00406-02

Division 6

PLAINTIFFS' FIRST AMENDED CLASS ACTION PETITION

COMES NOW Plaintiffs, on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, and for her First Amended Class Action Petition states:

1. Plaintiff DAYNA CRAFT is, and was at all relevant times, a resident of the State of Missouri.

2. Plaintiff JASON STONE is, and was at all relevant times, a resident of the State of Missouri.

3. Plaintiff DEBORAH LARSEN is, and was at all relevant times, a resident of the State of Missouri.

4. Plaintiff WENDY ALPER-PRESSMAN is, and was at all relevant times, a resident of the State of Missouri.

5. Defendant PHILIP MORRIS COMPANIES, INC. ("Philip Morris") is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, NY. Defendant Philip Morris was succeeded by Altria, Inc..

6. At all times relevant hereto, PHILIP MORRIS, through its wholly owned subsidiary PHILIP MORRIS INCORPORATED, engaged in the business of manufacturing, promoting, marketing, distributing and selling Marlboro Lights brand cigarettes. PHILIP MORRIS transacts business in the City of St. Louis and throughout the State of Missouri, and in all states throughout the United States and at all relevant times manufactured, promoted, marketed, distributed and/or sold cigarettes in Missouri and in all states throughout the United States. Defendant Philip Morris has significant contacts with the City of St. Louis, Missouri and the activities complained of herein occurred, in whole or in part, in the City of St. Louis, Missouri and the State of Missouri.

7. Defendant PHILIP MORRIS INCORPORATED ("PMI" or the "subsidiary") is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, NY. PMI is a wholly owned subsidiary of PHILIP MORRIS. Defendant PMI was succeeded as Philip Morris USA, located at 6601 West Broad Street, Richmond, VA 23230. At all times relevant hereto, PMI engaged in the business of manufacturing, promoting, marketing, distributing and selling Marlboro Lights brand cigarettes. PMI transacts business in the City of St. Louis, Missouri, and at all times relevant hereto manufactured, promoted, marketed, distributed and/or sold cigarettes in Missouri and in all states throughout the United States. Defendant PMI has significant contacts with the City of St. Louis, Missouri and the State of Missouri and the activities complained of herein occurred, in whole or in part, in the City of St. Louis, Missouri and the State of Missouri.

8. This court has jurisdiction over the subject matter hereto and the parties hereto pursuant to §§ 407.025 and 506.500 RSMo.

9. Venue is proper in this court pursuant to §§ 407.025.1 and 508.040 RSMo.

10. Defendants manufacture so-called “lowered tar and nicotine” or “light” filtered cigarettes under the brand name Marlboro Lights. Defendants distribute and sell Marlboro Lights in the City of St. Louis, Missouri and throughout the State of Missouri.

11. At all relevant times, Defendants sold and packaged Marlboro Lights as “light” and as having decreased tar and nicotine.

12. While marketing and promoting decreased tar and nicotine deliveries, Defendants controlled the tar and nicotine delivery of Marlboro Lights cigarettes under machine testing conditions to achieve apparent support for their representations that their Marlboro Lights cigarettes are “light” and deliver to smokers decreased tar and nicotine and that their Marlboro Lights cigarettes contain and deliver “lowered tar and nicotine.”

13. Defendants’ representation that Marlboro Lights cigarettes are lower in tar and nicotine than their regular cigarettes is deceptive and misleading and constitutes unfair business practices.

14. Not only do consumers fail to receive lower levels of tar and nicotine from Marlboro Lights as compared to regular Marlboros, but the smoke delivered by Marlboro Lights is more mutagenic (causing genetic and chromosomal damage) per milligram of tar than their “regular” cigarettes. The smoke from Marlboro Lights is also higher in specific toxicity than the smoke from regular Marlboros.

15. Defendants engaged in a common course of unfair practices and/or deceptive and unlawful conduct in connection with the manufacture, distribution, promotion, marketing and sale of Marlboro Lights cigarettes by:

- a. Falsely and/or misleadingly representing that their Marlboro Lights product is “light” and/or delivers “lowered tar and nicotine” and is less harmful to smokers in comparison to regular Marlboro cigarettes;
- b. Describing the Marlboro Light product as “Light” and “lowered tar and nicotine” when the changes in cigarette design and composition between Marlboro Lights and regular Marlboros do not lower the tar and nicotine received by the consumer;
- c. Intentionally manipulating Marlboro Lights cigarettes in order to maximize nicotine (and concomitant tar) delivery while falsely and/or deceptively claiming lowered tar and nicotine;
- d. Employing techniques that purportedly reduce machine-measured levels of tar and nicotine in Marlboro Lights cigarettes, while actually increasing the harmful biological effects, including specific constituent toxicity levels and mutagenicity (a measure of genetic and chromosomal damage) caused by the tar ingested by the consumer.

16. Through longstanding fraudulent conduct, Defendants willfully deceived consumers regarding the nature and effect of Marlboro Lights.

17. Plaintiff DAYNA CRAFT has purchased and consumed (on average) approximately one pack of Marlboro Lights cigarettes per day for approximately 8 years. Plaintiff was without knowledge of the conduct by Defendants alleged in this Complaint, or of any facts from which it might reasonably be concluded that Defendants were so acting, or which would have lead to the discovery of such action, until approximately early 2000.

18. Plaintiff JASON STONE purchased and consumed (on average) approximately one pack of Marlboro Lights cigarettes per day during the period 1998 to 2001.

19. Plaintiff DEBORAH LARSEN purchased and consumed (on average) approximately one-and-a-half packs of Marlboro Lights cigarettes per day during the period 1979 to 2002.

20. Plaintiff WENDY ALPER-PRESSMAN purchased and consumed (on average) approximately one-and-a-half packs of Marlboro Lights cigarettes per day during the period 1982 to 1999.

Class Action Allegations

21. Pursuant to § 407.025 *et seq.*, of the Revised Statutes of Missouri, the Court has certified the following class:

All residents of Missouri who purchased and consumed Defendants' Marlboro Lights cigarettes, in Missouri, at any time between the five years immediately preceding the filing of the Petition in this suit through the date the Court originally certified this suit as a class action (December 31, 2003), but who do not have a claim for personal injury resulting from the purchase or consumption of cigarettes.

Excluded from the class are any individual or directors or officers of the Defendant corporation, or their affiliate corporations. Also excluded is any trial judge who may preside over this action.

22. Damages sought by this class do not include any claims for personal injury, and claims for personal injury are expressly not a part of this lawsuit.

23. Plaintiffs are members of the Class and will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of other members of the Class. Plaintiffs have retained attorneys who are experienced in Class action litigation.

24. Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are hundreds of thousands of members of the Class.

25. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. Whether Defendants misrepresented the actual tar and nicotine delivery to consumers of their Marlboro Lights cigarettes they manufactured, marketed, and/or distributed as “lights” and “lowered tar and nicotine”;
- b. Whether the Defendants misrepresented Marlboro Lights as less harmful than their regular cigarettes;
- c. Whether the Defendants violated the Missouri Merchandising Practices Act through their course of unfair and/or deceptive conduct as alleged herein;
- d. Whether the Defendants’ conduct in violation of the Missouri Merchandising Practices Act was willful and wanton;
- e. Whether the Class has been damaged and, if so, the extent of such damages.

26. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the Class; and
- b. Adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

27. The class action method is appropriate for the fair and efficient prosecution of this action.

28. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the

claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising as a result of the previously described conduct of Defendants.

29. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

Missouri Merchandising Practices Act

30. This Count is brought pursuant to the Missouri Merchandising Practices Act, § 407.010, *et seq.*

31. At all times relevant hereto, Plaintiffs, members of the Class, and Defendants PHILIP MORRIS COMPANIES, INC. and PHILIP MORRIS INCORPORATED were persons within the meaning of § 407.010(5) RSMo.

32. At all times relevant hereto, Plaintiffs and members of the Class were purchasers within the meaning of § 407.025.1 RSMo.

33. At all times material hereto, Defendants PHILIP MORRIS COMPANIES, INC. and PHILIP MORRIS INCORPORATED conducted trade or commerce within the meaning of § 407.010(7) RSMo.

34. The Missouri Merchandising Practices Act, § 407.020.1 *et seq.*, provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce ... in or from the state of Missouri, is declared to be an unlawful practice. ... Any act, use or employment declared unlawful by this subsection

violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

35. Beginning the first date that Defendants placed their Marlboro Lights cigarettes into the stream of commerce and continuing through the present, Defendants, individually and/or jointly, by and through their employees, agents and/or brokers, engaged in misrepresentations, unlawful schemes and courses of conduct that induced Plaintiff and members of the Class to purchase Defendants' Marlboro Lights cigarettes through one or more of the following unfair and/or deceptive acts and/or practices:

- a. Falsely and/or misleadingly representing that their Marlboro Lights product is "light" cigarette that is less harmful and/or delivers "lowered tar and nicotine" in comparison to regular Marlboro cigarettes;
- b. Designing cigarettes to register lowered tar and nicotine levels under machine testing conditions while actually delivering higher levels of these compounds when smoked by consumers, thereby rendering the "light" and "lowered tar and nicotine" product descriptors deceptive and misleading;
- c. Employing techniques that purportedly reduce machine-measured levels of tar in its Marlboro Lights cigarettes, including increased air dilution through the use of ventilation holes in or near the filter, but which actually increase the mutagenicity (genetic and chromosomal damage) of tar delivered to the consumer and thereby increase the levels of harmful toxins per milligram of nicotine by the consumer;
- d. Representing that Marlboro Lights deliver "lowered tar and nicotine" to Plaintiff and members of the Class while knowing that Marlboro Lights cigarettes actually increase the harmful mutagenicity (genetic and chromosomal damage) and specific levels of toxicity of tar delivered to the consumer and increases the levels of harmful toxins per milligram of tar by the consumer; and/or
- h. Representing Marlboro Lights as "light" cigarette and thus implicitly representing that they deliver and contain lower levels of harmful tar (and explicitly representing Marlboro Lights as "lowered tar and nicotine") because that representation was a misleading and deceptive representation when made while also concealing from Plaintiff and members of the Class

that each milligram of tar from Marlboro Lights cigarettes actually increases the mutagenicity (genetic and chromosomal damage) and specific toxicity of the tar delivered to the consumer and increases the levels of most of the harmful toxins delivered to the consumer.

36. The facts which Defendants misrepresented as alleged in the preceding paragraphs were material to Plaintiffs and the Class Members decisions about whether to purchase Marlboro Lights cigarettes, in that they concerned facts that would have been important to a reasonable consumer in making a decision whether to purchase Marlboro Lights cigarettes

37. Defendants' conduct as alleged herein was unfair in that: (1) it offended public policy; (2) it was immoral, unethical, oppressive, or unscrupulous; and/or (3) it caused substantial economic injury to consumers, namely Plaintiffs and members of the Class.

38. Defendants' unfair and/or deceptive acts and/or practices alleged in the preceding paragraphs occurred in connection with Defendants' conduct of trade and commerce in Missouri.

39. Defendants intended for Plaintiffs and members of the Class to purchase Defendants' Marlboro Lights cigarettes in reliance upon Defendants' unfair and/or deceptive acts and/or practices in the marketing and sale of their Marlboro Lights cigarettes.

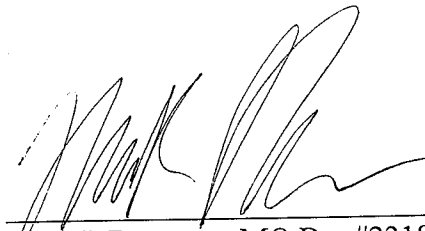
40. Defendants' unfair and/or deceptive acts and/or practices were committed with willful and wanton disregard for whether or not Plaintiffs and members of the Class would actually receive less tar and nicotine than they would have from a regular cigarette.

41. Defendants' unfair and/or deceptive acts and/or practices violate the Missouri Merchandising Practices Act. § 407.020.1 RSMo.

42. As a direct and proximate result of Defendants' violation of the Missouri Merchandising Practices Act § 407.020.1 RSMo, Plaintiff and members of the Class were

damaged in an amount to be proven at trial, but less than \$75,000 per plaintiff or Class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against Defendants PHILIP MORRIS COMPANIES, INC. and PHILIP MORRIS INCORPORATED and award Plaintiffs and members of the Class compensatory damages, punitive damages, costs of suit, and attorneys' fees in an amount less than \$75,000 per plaintiff or class member.



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon the counsel of record listed below by facsimile and by enclosing same in an envelope, with postage fully prepaid, and deposited in a U.S. Mail Box this 1st day of November, 2007.

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