

Appendix I

Additional Domestic and Foreign Misconduct by BAT and RAI's Wholly-Owned Subsidiary RJ Reynolds Tobacco

I. In 2006, a US federal court found that BAT and RJ Reynolds Tobacco Company, a wholly-owned subsidiary of Reynolds American (RAI), unlawfully conspired with other U.S. tobacco companies to defraud the American people about their deadly products.

As U.S. District Judge Gladys Kessler concluded, “Defendants have marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.” *Importantly, the Court found that that these companies were likely to continue their unlawful conduct in the future.*

In 2011, the Court held that BAT was no longer subject to the Court’s jurisdiction due to a change in US law regarding a federal civil racketeering law’s reach into foreign conduct. While BAT is no longer subject to remedies set out in the Court’s 2006 Final Order, the findings of liability by the Court still stand. Relying on acts carried out by BAT, RJR Tobacco Company and the other tobacco defendants, the Court found that these cigarette firms:

- *Coordinated global efforts to create a united front against smoking and health issues for the purpose of furthering their collective economic interests.*
 - The Court relied in part on notes prepared by BAT’s counsel during a 1983 inter-industry meeting stating, “[I]n BAT’s view, the biggest single threat facing the industry, in both this country and elsewhere, is the issue of smoking and health. Because of this, we believe that the industry must be united in its universal stand on this issue and that no member company should seek to exploit the smoking and health issue for its own commercial advantage...”¹
- *Fraudulently denied that smoking is addictive for approximately 40 years.*
 - The Court found that BAT “had reached the internal corporate conclusion that smoking was an addiction produced by nicotine” as early as 1962,² yet continued to publicly deny its internal knowledge for decades including to the US FDA as late as 1996.³ The Court noted a 1992 BAT internal marketing document that described favorable attributes of cigarettes over other drugs such as “marijuana, amphetamines and alcohol,” including that cigarettes are “a fast, highly pharmacologically effective and cheap ‘drug’” with a “relatively cheap and efficient delivery system,” concluding that because smokers are always left craving more, “all we [BATCo] would want then is a larger bag to carry the money to the bank.”⁴
 - The Court relied on an August 2, 1994 *New York Times* article that reported a RJR Tobacco scientist “contest[ed] the consensus view of nicotine as addictive” and stated that he “could not differentiate ‘crack smoking from coffee drinking, glue sniffing from jogging, heroin from carrots, and cocaine from colas.’”⁵
- *Suppressed and concealed vital information about their products from the public and public health authorities for 50 years to avoid regulation and protect against smoking and health litigation.*
 - The Court found that “[M]embers of the BAT Group...destroyed documents, routed them from one country or BAT facility to another...and constantly exhorted their many employees to avoid putting anything in writing. All these activities were taken for one overriding purpose -- to prevent disclosure of evidence in litigation.”⁶
 - The Court found that “RJR’s lawyers -- both inside and outside counsel – had significant influence on the actual research conducted by the company. A 1985 ‘fact memorandum’ from RJR’s outside counsel, Jones, Day, Reavis & Pogue, described RJR’s research and development activities. The Law Department and R&D Management exerted control to ‘prevent the distribution or production of

certain reports,' including a 1953 literature survey by Claude Teague that 'indicted' cigarette smoking. Another company scientist, Jim Fredrickson, who was working on identifying nitrosamines (carcinogens) in smoke in approximately 1965-67, was told 'not to prepare a final report on his research but merely to record the work in his laboratory notebooks.'"⁷

- Deceived the public and public health authorities about the harmful effects of secondhand smoke exposure to protect against public smoking restrictions.
 - The Court found that BAT specifically recognized that smoking restrictions could risk losing "starting smokers"⁸ and both RJR Tobacco and BAT publicly denied that secondhand smoke caused disease as late as 2006; the year the Court's opinion was released.
- Falsely denied the devastating health effects of smoking.
 - The Court found, "[E]ach and every one of these Defendants repeatedly, consistently, vigorously -- and falsely -- denied the existence of any adverse health effects from smoking."⁹
- Deceived consumers and public health authorities about the nature of so-called "low tar" cigarettes; claiming that such products may provide smokers a health benefit when knowing internally that they do not.
 - The Court found, "BATCo's research documents establish that the company has long known and intended that its advertisements and marketing for low tar cigarettes, featuring claims of lowered tar and nicotine and 'light' and 'ultra light' brand descriptors, contributed to and reinforced consumers' mistaken belief that low tar cigarettes are better for their health, and caused consumers to smoke them for this reason."¹⁰
 - The Court relied on an August 1981 report prepared for RJR by the Beaumont Organization and stated that the memo "advised that ultra low tar brands, such as Now, Carlton, Cambridge and Barclay, can cause smokers who seek to eliminate the 'danger' of smoking to keep smoking, because these smokers believe the ultra low tar brands 'reduce the alleged health risks' of smoking 'to an acceptable -- minimal -- level.'"¹¹
- Falsely denied that they marketed to young people.
 - The Court found specifically that BAT and RJR Tobacco have "made numerous false and misleading statements about youth smoking and marketing."^{12 13}

II. In May 2015, a Canadian court also found that BAT's operating company in Canada colluded with other tobacco firms to deceive consumers. The Court found that the cigarette companies "colluded among themselves in order to impede the public from learning of health-related information about smoking,"¹⁴ "earned billions of dollars at the expense of the lungs, the throats and the general well-being of their customers,"¹⁵ and carried out conduct that was "particularly reprehensible."¹⁶ After a 17-year legal battle, the Quebec Superior Court ordered the defendant tobacco companies to pay \$15 billion in damages to about 1 million smokers in Quebec. BAT's company's respective liability is 67% (\$10.5 billion). The tobacco companies have appealed the ruling.

III. Despite consistent claims to the contrary, BAT and RAI continue to target youth. BAT continues to target children in the world's poorest countries and RJR Tobacco's advertising in the U.S. continues to reach American teenagers.

- A July 2016 media report exposes BAT for targeting children in Burma by “offering and advertising ‘kiddie packs’ of four cigarettes, promoting and selling cigarettes near schools, and sponsoring youth-aimed music events including free lighters and packs.”¹⁷
- A 2016 regional Africa survey exposes aggressive marketing tactics of tobacco companies including BAT to target children as young as six years by displaying cigarettes next to candy and snacks at kiosks directly outside the gates of primary and secondary schools. The survey of nearly 80 elementary and secondary schools was conducted by the African Tobacco Control Alliance across 5 countries.¹⁸
- RJR Tobacco is the seller of two of the top cigarette brands favored by youth ages 12-17 – Camels and Newports.¹⁹ Among African-American youth who reported smoking in the past 30 days, Newport was the brand they used most often.²⁰
- Reynolds has long marketed Camel cigarettes to kids, most egregiously with the Joe Camel cartoon character. From 1988 to 1997, Reynolds targeted kids with the hip cartoon character, which significantly boosted the brand's market share among youth smokers and became nearly as recognizable to six-year-olds as Mickey Mouse. Reynolds ended the campaign in 1997 in the face of lawsuits, government investigations and public outrage. Under a 2004 settlement of a 2001 case alleging that the company's placement of cigarette ads in magazines with large numbers of teen readers violated the Master Settlement Agreement's prohibition on targeting youth, R.J. Reynolds agreed to restrictions on its advertising in magazines with large teen readerships and paid \$17.25 million in civil penalties and costs.²¹ Amidst controversy over other ads targeting youth, R.J. Reynolds in late 2007 announced that it would suspend its cigarette advertising in magazines.²² Only five years later, in 2013, ads for R.J. Reynolds' Camel Crush cigarettes appeared in at least 24 magazines, including several with large teen readerships. Publicly available data from GfK MRI, a consumer research firm, showed a total teen readership (12-17 years old) of 12.9 million for just nine of the magazines involved—*Entertainment Weekly*, *ESPN the Magazine*, *Sports Illustrated*, *Rolling Stone*, *People*, *Glamour*, *InStyle*, *US Weekly* and *Vogue*. The total teen readership for all 24 magazines would be millions more.²³
- RAI acquired the Newport brand in its 2015 merger with Lorillard. Lorillard had a long history of targeting the African-American community, including youth. During the two years after the Master Settlement Agreement (MSA) in November 1998, the average annual expenditures for Newport in magazines with high youth readership increased 13.2 percent (from \$5.3 to \$6.0 million).²⁴ RAI has continued marketing the Newport brand so that it reaches youth. In September 2016, RJR Tobacco ran an ad for the brand in *People* magazine, a magazine with a large youth readership. The ad featured three friends smiling and laughing with packs of Newport cigarettes in the foreground and promoted a website linking Newport cigarettes with “pleasure,” as Lorillard had done for many years.²⁵ In 2016, it also ran an ad showing a multi-ethnic group of young, hip people playing music in other magazines with appeal to young people like *ESPN Magazine*, *Rolling Stone*, and *Sports Illustrated*.²⁶

VI. BAT, RJR Tobacco and other tobacco firms have been involved in cigarette smuggling for decades.

- In 2014, BAT was fined £650,000 by U.K. tax authorities for oversupplying tobacco products to low-tax EU countries, which could then be transited back to the high-tax U.K. market without paying the appropriate tax.²⁷
- In April 2010, RJR Tobacco paid the Canadian government \$325 million in a litigation settlement brought by the government alleging that RJR Tobacco exported cigarettes from Canada to the United States knowing that its products would then be smuggled back to Canada and not be taxed.²⁸
- There is overwhelming evidence that BAT and other tobacco companies were involved in cigarette smuggling globally throughout the 1990s – in Africa, Asia, Canada, Europe, Latin America, Middle East, and the U.S. – principally with the purpose of evading tax and entering new markets.²⁹ Internal documents released as part of the settlement between the State of Minnesota and BAT (among other cigarette firms) disclose that BAT knowingly supplied cigarettes to distributors who would then ship products via illicit channels, which was integral to BAT's business plans in certain markets.³⁰
- Evidence of BAT and other tobacco companies' links to organized crime international money laundering schemes has also been made public³¹ and was at the heart of the EU's racketeering lawsuit against RJR Tobacco filed in a U.S. court.³² After 15 years of litigation, in June 2016, the U.S. Supreme Court ruled that RJR Tobacco could not be sued under the federal racketeering law for foreign conduct.

¹ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 392. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf

² U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 999. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

³ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 1197. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

⁴ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 1076. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

⁵ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 1172. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

⁶ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 3997. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

⁷ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 3871. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

⁸ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 3415. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

⁹ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 824. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

¹⁰ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 2557. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

¹¹ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 2319. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.

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- ¹² U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 3266. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.
- ¹³ U.S. District Court. U.S. vs. Philip Morris USA, Inc., et. al., 99-CV-02396GK, Final Opinion (2006). Para. 3281. Available from: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/FinalOpinion_full_version.pdf.
- ¹⁴ Quebec Superior Court Justice Brian Riordan. *Létourneau & Blais v. JTM, ITL & RBH* Para 449. Available at: <http://www.canlii.org/en/qc/qccs/doc/2015/2015qccs2382/2015qccs2382.pdf>.
- ¹⁵ Quebec Superior Court Justice Brian Riordan. *Létourneau & Blais v. JTM, ITL & RBH* Para 1037. Available at: <http://www.canlii.org/en/qc/qccs/doc/2015/2015qccs2382/2015qccs2382.pdf>.
- ¹⁶ Quebec Superior Court Justice Brian Riordan. *Létourneau & Blais v. JTM, ITL & RBH* Para 1038. Available at: <http://www.canlii.org/en/qc/qccs/doc/2015/2015qccs2382/2015qccs2382.pdf>.
- ¹⁷ The Sunday Times. Tobacco giant accused of tricks to hook children. Joshua Carroll. 7/14/2016. Online: <http://www.thetimes.co.uk/edition/world/tobacco-giant-accused-of-tricks-to-hook-children-hghj27pdh>.
- ¹⁸ ATCA. <http://atca-africa.org/en/new-report-shows-how-tobacco-companies-target-african-kids-in-schools>.
- ¹⁹ Among youth 12-17 who smoked cigarettes in the past 30 days, 20.1% said they used Newports and 12% said they used Camels, United States Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health, 2014. ICPSR36361-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2016-03-22. <http://doi.org/10.3886/ICPSR36361.v1>
- ²⁰ United States Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health, 2014. ICPSR36361-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2016-03-22. <http://doi.org/10.3886/ICPSR36361.v1>
- ²¹ *People v. RJ Reynolds Print Ads Case No. GIC 764118*, August 23, 2002, <http://caag.state.ca.us/tobacco/pdf/judgment.pdf>
- ²² Peters, M, "Reynolds Suspending Campaign," *The Courant*, December 18, 2007, http://articles.courant.com/2007-12-18/business/0712170481_1_rj-rolling-stone-camel-farm
- ²³ GfK Mediamark Research & Intelligence, LLC, 2012 readership data for *Entertainment Weekly, ESPN The Magazine, Glamour, In Style, People, Rolling Stone, Sports Illustrated, US Weekly, Vogue*.
- ²⁴ King, C, et al., "The Master Settlement Agreement with the tobacco industry and cigarette advertising in magazines," *New England Journal of Medicine* 345(7):504-11, August 2001.
- ²⁵ Trinkets and Trash, Newport cigarette ad in *People*, September 19, 2016, available at: <https://trinketsandtrash.org/detail.php?artifactid=11660&page=3>
- ²⁶ Trinkets and Trash, Newport ad in *ESPN Magazine, Rolling Stone, Sports Illustrated*, <https://trinketsandtrash.org/detail.php?artifactid=10833&page=3>
- ²⁷ BAT fined for oversupplying tobacco in low-tax European jurisdictions. Jamie Doward. 11/15/14. Online: <https://www.theguardian.com/business/2014/nov/16/bat-fined-for-oversupplying-tobacco-in-low-tax-european-jurisdictions>.
- ²⁸ CBC News. Tobacco firms to pay \$550M over smuggling. 4/13/2010. Online: <http://www.cbc.ca/news/canada/tobacco-firms-to-pay-550m-over-smuggling-1.902510>.
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³¹ International Consortium of Investigative Journalists. In Latin America, Big Tobacco partners with money launderers, smugglers. 2001. Available at: <https://www.icij.org/node/460/latin-america-big-tobacco-partners-money-launderers-smugglers>.

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