

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

GREGORY CURTIS, JONI KAY HANZAL Court File No: PI 01-18042
JOSEPHINE LEONARD, RANDY HOSKINS,
Individually, and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

PHILIP MORRIS COMPANIES INC.,
and PHILIP MORRIS INCORPORATED,

PLAINTIFFS' SECOND
AMENDED COMPLAINT
AND DEMAND FOR
JURY TRIAL

Defendants.

COME NOW Plaintiffs: Gregory Curtis, Joni Kay Hanzal, Josephine Leonard, and Randy Hoskins, on behalf of themselves and all other similarly situated, by and through their undersigned attorneys, and for their Second Amended Class Action Complaint state:

1. This is a class action for economic damages, and declaratory and injunctive relief, under the Minnesota Consumer Protection Statutes; the Unfair Discrimination and Competition Act, §§ 325D.03-07.69, the Unlawful Trade Practices Act, §§ 325D.09-16, the Deceptive Trade Practices Act, §§325D.43-.48, the Minnesota False Statement in Advertisement statute, 325F.67, the Prevention of Consumer Fraud Act §§ 325F.68-.70, and the common law, brought on behalf of individuals who purchased, in Minnesota, Marlboro Lights “low-tar,” filtered cigarettes manufactured, distributed and/or sold by defendants Philip Morris Companies Inc. and Philip Morris Incorporated (hereinafter “Defendants”).

2. Plaintiffs bring this action in their individual capacities and on behalf of all others similarly situated.

3. Plaintiff Gregory C. Curtis is a resident of the city of Hopkins, Minnesota. Mr. Curtis was at all relevant times, a citizen of the State of Minnesota.

4. Plaintiff Joni Kay Hanzal is a resident of the City of Champlin, Minnesota. Ms. Hanzal was at all relevant times, a citizen of the State of Minnesota.

5. Plaintiff Josephine Leonard is a resident of the City of Oakdale, Minnesota. At all relevant times, Ms. Leonard was a citizen of the State of Minnesota.

6. Plaintiff Randy L. Hoskins is a resident of the City of Brooklyn Park, Minnesota. At all relevant times, Mr. Hoskins was a citizen of the State of Minnesota.

7. Defendant Philip Morris Companies Inc. (“Philip Morris”) is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, N.Y. 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 light cigarettes. Philip Morris conducts business in Minnesota, and at all relevant times manufactured, promoted, marketed, distributed and sold cigarettes in interstate commerce and in Minnesota.

8. Defendant Philip Morris Incorporated (“PMI” or “the subsidiary”) is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, N.Y. PMI is a wholly owned subsidiary of Philip Morris. At all items relevant hereto, PMI engaged in the business of manufacturing, promoting, marketing, distributing and selling Marlboro Lights brand light cigarettes. PMI engaged in the business of manufacturing, promoting, marketing, distributing and selling Marlboro Lights brand

light cigarettes. PMI conducts business in Minnesota, and at all relevant times manufactured, promoted, marketed, distributed and sold cigarettes in interstate commerce and in Minnesota. CT Corporation Systems, Inc. located at 405 2nd Avenue South, Minneapolis, MN 55415 is Philip Morris' registered agent for service of process in the State of Minnesota.

9. This court has jurisdiction over the subject matter hereto and the parties hereto pursuant to Minn. Stat. § 543.19.

10. Venue is proper in this court pursuant to Minn. Stat. § 542.01 and § 542.09.

11. Each Plaintiff's damages are less than \$75,000.00

12. Defendant manufacture so-called "lowered tar" filtered cigarettes under the brand names Marlboro Lights. Defendants distribute and sell Marlboro Lights in Hennepin County Minnesota and throughout the State of Minnesota.

13. At all relevant times, Defendants sold and packaged Marlboro Lights as "light" and as having decreased tar and nicotine.

14. While marketing and promoting decreased tar and nicotine deliveries, Defendants designed Marlboro Lights cigarettes to register lower levels of tar and nicotine to the "Cambridge" or "Ogg" testing apparatus-the testing machine used by the tobacco industry to "measure" tar and nicotine levels in cigarettes-than would be delivered to the consumers of the product. 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 contain "lowered tar and nicotine."

15. Defendants' representations that Marlboro Lights cigarettes are "light" and deliver lower tar and nicotine than regular cigarettes are deceptive and misleading and constitute unfair business practices.

16. Not only do consumers receive higher levels of tar and nicotine than the testing apparatus registers, but the smoke produced by Marlboro Lights is more mutagenic (causing genetic and chromosomal damage) per milligram of tar than "regular" cigarettes.

17. Defendants engaged in a common course of unfair business 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 product is "light" and/or delivers lowered tar and nicotine in comparison to regular cigarettes;
- b. Describing the product as light when the so-called lowered tar and nicotine deliveries depended on deceptive changes in cigarettes design and composition that dilute the tar and nicotine content of smoke per puff as measured by the industry standard testing apparatus, but not when used by the consumer;
- c. Intentionally manipulating the design and content of Marlboro Lights cigarettes in order to maximize nicotine delivery while falsely and/or deceptively claiming lowered tar and nicotine. These manipulations include, but are not limited to, the modification of tobacco blend, weight, rod length, and circumference; the use of reconstituted tobacco sheets and/or expanded tobacco; and the increase of smoke pH levels by chemical processing and additives, such as ammonia, which resulted in the delivery of greater amounts

of tar and nicotine when smoked under actual conditions than Defendants represent by use of the “light” description;

- 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 mutagenicity (genetic and chromosomal damage) caused by the tar ingested by the consumer per milligram of nicotine.

18. Through longstanding fraudulent and unfair conduct, Defendants willfully deceived consumers, including the Plaintiffs named herein, regarding the nature and effect of their “light” cigarettes.

19. Plaintiff Gregory C. Curtis has purchased and consumed, on average approximately one pack a day of Marlboro Lights cigarettes in the State of Minnesota for a period of approximately six years. Plaintiff Curtis 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.

20. Plaintiff Joni Kay Hanzal has purchased for personal consumption on an average approximately 1 ½ packs per day of Marlboro Lights cigarettes in the State of Minnesota for a period of approximately 26 years. Plaintiff Hanzal 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.

21. Plaintiff Josephine Leonard has purchased for personal consumption on an average approximately one pack per day of Marlboro Lights cigarettes in the State of

Minnesota for a period of approximately 4 years. Plaintiff Leonard 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.

22. Plaintiff Randy L. Hoskins has purchased for personal consumption on an average approximately one pack per day of Marlboro Lights cigarettes in the State of Minnesota for a period of approximately 20 years. Plaintiff Hoskins 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.

23. Defendants have unfairly and unjustly profited from the deceptive and misleading representations regarding their so-called “light” cigarettes.

CLASS ACTIONS ALLEGATIONS

24 This action is brought pursuant to Rule 23.01 of the Minnesota Rules of Civil Procedure.

25. Plaintiffs bring this action on their own behalf and on behalf of all other residents of Minnesota. Without prejudice to later expansion, the Class that Plaintiffs seek to represent consists of:

All persons who purchased Defendants’ Marlboro Lights cigarettes in Minnesota for personal consumption from the first date Defendants sold Marlboro Lights in Minnesota through the date of the certification of the class.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers , directors, agents, servants of employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

26. The class period commences on the first date that Defendants placed their Marlboro Lights into the stream of commerce, and runs until the date of certification (the “Class Period”).

27. Plaintiffs are members of the Class and they 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.

28. Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are thousands of members of the Class whose identities can be ascertained from the records and files of Defendants and from other sources.

29. 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 “light cigarettes they manufactured, marketed, and/or distributed;
- b. Whether Defendants intentionally designed “light” cigarettes to register misleading tar and nicotine measurements on the testing apparatus utilized by the tobacco industry while delivering significantly higher quantities of tar and nicotine to human smokers;
- c. Whether the Defendants violated Minnesota Consumer Protection Statutes; specifically, The Prevention of Consumer Fraud Act, the Unlawful Trade Practices Act, the False Statement in Advertising statute, the Deceptive Trade

Practices Act, and the common law through their common course of deceptive conduct as alleged herein;

- d. Whether and to what extent the Defendants were unjustly enriched at the expense of the Class members.
- e. Whether Plaintiffs and the Class have been damaged and, if so, the extent of such damages and/or the nature of the equitable relief, economic damages, statutory damages or exemplary damages which the Class is entitled to plead and prove, and
- f. Whether Plaintiffs and the Class are entitled to the injunctive relief sought in this Complaint.

30. 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.

31. The Class Action is superior to other available methods for the fair and efficient adjudication of this action.

32. Individual litigation of all claims, which might be asserted 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 out of the conduct of Defendants.

33. The recovery in separate actions, in view of the expense of the litigation, may be insufficient in amount to support separate actions, and therefore a class action affords aggrieved individuals an opportunity for redress.

34. Plaintiffs anticipate there will be no difficulty in the management of this litigation.

35. Plaintiffs have retained attorneys who are experienced in Class action litigation.

COUNT I.
THE PREVENTION OF CONSUMER FRAUD ACT
MINN. STAT. §§ 325f.68-.70

36. Plaintiffs re-allege and incorporate by reference paragraphs 1-35 as if fully set forth herein and further allege:

37. This claim is brought pursuant to Minn. Stat. § 8.31 SUBD 3A., and Minnesota's Prevention of Consumer Fraud Act. Minnesota's Prevention of Consumer Fraud Act prohibits the act, use or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice, with the intent that others rely thereon on in connection with the sale of any merchandise.

38. At all times relevant hereto, Plaintiffs and the Class entered into consumer transactions with Defendants by purchasing Marlboro Light cigarettes.

39. At all times relevant herein, Defendants were "persons" in the business of "selling" "merchandise" within the meaning of 325F.68 subd.s 2-4.

40. Beginning on 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 intended to induce the Plaintiffs and members of the Class to purchase Defendants' Marlboro Lights cigarettes in violation of Minnesota's law and engaged in Consumer Fraud as defined under Minn. Stat. §§325F.68-.70 through one or more of the following unfair and/or deceptive acts and/or practices:

- a. Falsely and/or misleadingly representing that their product is "light" and/or delivers "lowered tar and nicotine" in comparison to regular cigarettes;
- b. By failing to disclose that the design and composition of Marlboro Lights are intended to deliver lowered tar and nicotine levels under machine testing conditions and to deliver higher tar and nicotine levels to consumers who smoke Marlboro Lights, thereby rendering the "light" product descriptor deceptive and misleading;
- c. Manipulating the design of their Marlboro Lights cigarettes, including but not limited to, modifying the tobacco blend, weight, rod length and circumference; using reconstituted tobacco sheets and/or expanded tobacco; increasing smoke pH levels by chemical processing and additives, such as ammonia, in such a way that resulted in delivery of greater amounts of tar and nicotine when smoked under actual conditions than Defendants represent by use of the "light" product descriptor.
- d. By failing to disclose to consumers that the techniques Defendants employ purportedly to reduce the levels of tar in Marlboro Lights 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;
- e. By Manipulating the nicotine levels in their light cigarettes;
- f. By failing to inform consumers of the Defendants' manipulation of the nicotine levels in Marlboro Lights by the addition of chemicals, among other things, or the effects of such manipulation or Defendants' reasons for such manipulation.

- g. By placing vent holes on the filter of light cigarettes in a location where they are covered or blocked by the smoker's lips and/or fingers under normal use, thereby negating the claim of lowered tar and nicotine;
- h. By failing to mark the vent holes or to make them visible to the naked eye, or otherwise to disclose their existence and location, so that smokers could attempt to smoke the cigarettes in a manner that would allow them to obtain the claimed reductions in tar and nicotine, notwithstanding the fact that the Defendants are aware that the claimed "lowered tar and nicotine" cannot be achieved if the holes are covered;
- i. By failing to disclose to consumers that smoking Defendants' cigarettes with the vent holes blocked results in the smoker receiving an increased amount of tar and nicotine that may be as much as, or more than, the amounts of those substances the smoker would receive from a "regular" cigarette;

41. Plaintiffs and the Class have been harmed by Defendants unlawful violations of this section and are therefore entitled to relief in the form of damages, costs and disbursements, including costs of investigation and reasonable attorney's fees and are entitled to equitable relief as determined by this court.

COUNT II
MINNESOTA UNLAWFUL TRADE PRACTICES ACT
MINN. STAT. §§ 325d.09-.16

42. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 41 as if fully set forth herein and further allege:

43. This claim is brought pursuant to Minnesota's Unlawful Trade Practices Act, §§325D.09-.16 and Minn. Stat. 8.31, Subd. 1.

44. Minnesota's Unlawful Trade Practices Act prohibits persons from misleading consumers as to the quality or ingredients of a product (§325D.09) and prohibits a person, in connection with the sale of merchandise, to knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of the merchandise. (§325D.13).

45. At all times relevant herein, Defendant is defined as a “person” as under Minn. Stat. § 325D.10 (a)

46. At all times relevant herein Defendant’s transactions are defined as “sale” to consumers under Minn. Stat. 325 D.10 (c)

47. At all times relevant herein, Defendants are engaged in the sale of cigarettes to consumers, which is considered the “Sale of Merchandise” as defined in Minn. Stat. 325 (d).

48. Defendants knowingly, in connection with the sale of cigarettes misrepresented the true quality and ingredients of the cigarettes, by the following:

- a. Defendants knew smoking consumers were concerned about their health when they were willing to switch from regular to low tar cigarettes.
- b. Defendants were concerned that a cigarette that delivered lowered nicotine to a consumer would make it easier for a dedicated smoker to quit.
- c. Defendants advertised a light cigarette that represented health benefits as compared to a regular cigarette, but sold a light cigarette that was as dangerous if not more so than the regular cigarette.
- d. Defendants embarked on and carried out a scheme of marketing and selling light cigarettes by falsely and deceptively advertising that the cigarettes were “lights,” or contained “Lowered Tar and Nicotine.”
- e. Defendants failed to inform consumers that the tar in their light cigarette smoke contains higher levels of harmful toxins than the tar in regular cigarette smoke.
- f. Defendants failed to inform consumers that the tobacco in their Marlboro Lights was manipulated through the addition of chemicals, and through other methods, and that such manipulation was conducted in order to maximize nicotine delivery and thereby increase sales.

49. As a result of Defendants unlawful violation of this section, Plaintiffs and the Class have been damaged, by among other things, failing to receive the qualities and benefits a product represented to them as a low tar and low nicotine cigarette.

50. Plaintiffs and the Class have been harmed by Defendants unlawful violations of this section and are therefore entitled to relief in the form of damages, costs, and disbursements, including costs of investigation and reasonable attorney's fees and are entitled to equitable relief as determined by this court.

COUNT III
MINNESOTA DECEPTIVE TRADE PRACTICES ACT
MINN. STAT. §§ 325d.43-.48

51. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 50 as if fully set forth herein and further allege:

52. This claim is brought pursuant to Minnesota's Deceptive Trade Practices Act. Minn. Stat. §325 D.43-.48 and Minn. Stat. §8.31 Subd. 1.

53. Minnesota's Deceptive Trade Practices Act prohibits deceptive conduct in the course of Business, including:

- a. Misrepresenting goods that have ingredients, benefits or uses that they do not have. 325D.44, Subd.(1)(5).
- b. Misrepresenting goods that have a particular standard, quality which they do not. 325D.44, Subd.(1)(7).
- c. Advertising goods with the intent not to sell them as advertised, 325D.44, Subd. (1)(9).
- d. Engages in any other conduct, which similarly creates a likelihood of confusion or of misunderstanding §325D.44, Subd.(1)(13).

54. Defendant knowingly and intentionally engaged in deceptive trade practices by the following:

- a. representing both in advertisement and on a cigarette package that light cigarettes delivered less quantities of tar and nicotine to consumers, and thereby conferring a health benefit to consumers as compared to non-light cigarettes.
- b. Knowingly representing that the levels of tar that a “light” cigarette delivers to a consumer was of a particular standard, quality or grade, when in fact the defendants knew the representation to be false.
- c. Knowingly and intentionally selling cigarettes in Minnesota advertised as light cigarettes, representing them as having lower tar and nicotine, when they intend to sell cigarettes that actually deliver the same if not higher quality of the dangerous ingredients to consumers than regular cigarettes.

55. That the plaintiffs and the Class have suffered damages do to the Defendants violation of this section and will continue to do so unless the defendants are enjoined from continuing their deceptive trade practices under this statute.

56. Plaintiffs are entitled to equitable relief under this section and any other relief as the court determines to be reasonable.

COUNT IV
MINNESOTA FALSE STATEMENT IN ADVERTISEMENT
MINN. STAT. 325F.67

57. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 56 as if fully set forth herein and further allege:

58. This claim is brought pursuant to Minn. Stat. §8.31, Subd. 3a, and Minnesota’s False Statement in Advertisement Minn. Stat. 325F.67

59. Minnesota's false advertising statute prohibits advertisements containing untrue, deceptive or misleading representations with the intent:

- a. to sell or in any way dispose of merchandise to increase consumption of merchandise.
- b. Or to induce the public in any manner to enter into any obligation relating to [merchandise]

60. Defendant knowingly and intentionally, for the purposes of inducing Plaintiffs and the Class to purchase "light" cigarettes, engaged in the dissemination of false advertising in violation of this section in the following ways:

- a. By publishing advertising that promoted light cigarettes as a less harmful alternative to regular cigarettes.
- b. By publishing advertising that enumerated the milligrams of tar and nicotine contained in a brand of Marlboro Light cigarettes that was literally false.
- c. By designing cigarette packages containing the word "lights" and listing an amount of milligrams tar and nicotine on the package, which was lower than normal cigarettes, knowing that the numbers and the term "light" placed on the packages were literally false.
- d. By indirectly and directly advertising and making false claims that their light cigarettes, when smoked under normal use, contained lower tar and nicotine than regular cigarettes.

61. Plaintiffs and the Class have been harmed by Defendants unlawful violations of this section and are therefore entitled to relief in the form of damages, costs and disbursements, including costs of investigation and reasonable attorney's fees and are entitled to equitable relief as determined by this court.

COUNT V
COMMON LAW MISREPRESENTATION AND FRAUD

62. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 61 as if fully set forth herein and further allege:

63. The Defendants knowingly and intentionally engaged in fraud and misrepresentation in its acts and omissions of material facts in its advertisements to the consumer in the state of Minnesota including Plaintiffs and the Class for the purpose of inducing consumers to purchase “low tar and nicotine” cigarettes.

64. The Defendants, with the intent to deceive, spent significant sums of money in directly and indirectly advertising a “lowered nicotine and tar” and light “cigarette” for the purposes of and with the intention that, the Plaintiffs and the Class rely on representations that the advertised cigarettes were healthier as they delivered less harmful substances to consumers such as Plaintiffs and the Class.

65. In spite of the representations, defendants did not intend to sell a healthier cigarette or one that delivered less tar and nicotine to consumers, including Plaintiff and the Class.

66. Defendants’ omissions and practices substantially induced Plaintiffs and the Class to purchase purportedly “light” cigarettes, knowing that consumers would not obtained the purported “lowered tar and nicotine” qualities of light cigarettes under normal patterns of use.

67. Defendants’ practices further resulted in Plaintiffs and the Class purchasing light cigarettes without knowledge and understanding of the true nature of Defendants’

product or that Defendants manipulated tobacco chemistry in their light cigarettes for the purposes of continuing to sell their product, and to increase their own ill-gotten profits.

68. The monies paid by Plaintiffs and the Class to Defendants in the purchase of Marlboro Lights conferred substantial benefits upon Defendants. Defendants knew of and appreciated the benefits conferred upon them by Plaintiffs and the Class. The Defendants received and retained these benefits.

69. The Plaintiffs and the Class had no knowledge of the false representations of the Defendant.

70. The Plaintiffs and the Class reasonably and justifiably relied upon the false representations of the Defendants.

71. As a direct and proximate result of Plaintiffs and the Class's reliance on Defendants misrepresentation, Plaintiff and the Class suffered damage attributable to the misrepresentations. Under these circumstances, it would be inequitable and unjust for Defendants to retain the benefits conferred by Plaintiffs and the Class. Defendants therefore should be required to disgorge their ill-gotten gains to Plaintiffs and the Class.

COUNT VI **UNJUST ENRICHMENT**

72. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 71 as if fully set forth herein and further allege:

73. As stated more particularly above, Defendants embarked on and carried out a scheme of marketing and selling light cigarettes by falsely and deceptively advertising that the cigarettes were lights, or contained lowered Tar and Nicotine. Defendants failed to inform consumers that the tar in their light cigarette smoke contains higher levels of harmful

toxins than the tar in regular cigarette smoke. In addition, Defendants failed to inform consumers that the tobacco in their Marlboro Lights was manipulated through the addition of chemicals, and through other methods, and that such manipulation was conducted in order to maximize nicotine delivery and thereby increase sales.

74. Defendants' omissions and practices resulted in Plaintiffs and the Class purchasing purportedly "light" cigarettes, but failing to obtain the purported "lowered tar and nicotine" qualities of light cigarettes under normal patterns of use.

75. Defendants' practices further resulted in Plaintiffs and the Class purchasing light cigarettes without understanding the true nature of Defendants' product or that Defendants manipulated the tobacco in their light cigarettes to increase their own ill-gotten profits.

76. The monies paid by Plaintiffs and the Class to Defendants in the purchase of Marlboro Lights conferred substantial benefits upon Defendants. Defendants' knew of and appreciated the benefits conferred upon them by Plaintiffs and the Class and accepted and retained these benefits.

77. Under these circumstances, it would be inequitable and unjust for Defendants to retain the benefits conferred by Plaintiffs and the Class. Defendants therefore should disgorge their ill-gotten gains to Plaintiffs and the Class.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and each member of the Class have been damaged, and are entitled to damages in an amount to be proven at trial, of more than \$50,000 but less than \$74,999.00 per plaintiff or class member, including compensatory damages, attorneys' fees and costs and thereby request the following relief.

1) Certification of this action as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure and designation of named Plaintiffs as the representatives of the Class;

2) A judgment that Defendants' acts, practices and conduct have violated Minnesota Consumer Protection Statutes awarding actual damages or statutory damages;

3) An order-enjoining Defendants from continuing to violate Minnesota consumer Protection Laws through the acts and practices complained of herein;

4) Equitable relief consisting of restitution of all purchase costs Plaintiffs and the members of the class have incurred for Marlboro Lights cigarettes, and disgorgement of all earnings, profits, compensation and benefits obtained by Defendants;

5) Injunctive relief consisting of full disgorgement of the profits Defendants received as a result of their deceptive practices against persons who purchased Marlboro Lights in the State of Minnesota.

6) Prejudgment and post-judgment interest as provided by law;

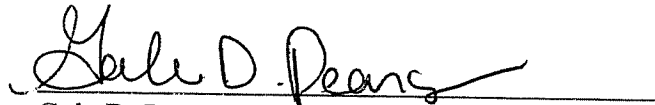
7) Attorneys' fees, expenses and costs of this action as provided by law; and

8) Such further relief as this Court deems necessary, just and proper.

Plaintiffs' on behalf of themselves and all others similarly situated hereby demand trial by jury.

BY THEIR ATTORNEYS

DATED: November 1, 2002



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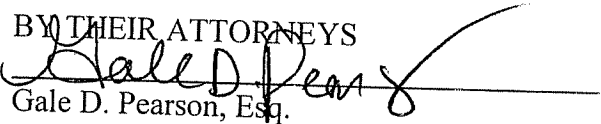
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ACKNOWLEDGMENT
(Minn. Stat. § 549.211. Sanctions in civil actions)

The underlying signatory hereby certifies that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances that the pleading (1) is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonable based on a lack of information or belief. The parties acknowledge that sanctions may be imposed under Minn. Stat. § 549.211.

DATED: November 1, 2002

BY THEIR ATTORNEYS



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DUPLICATE
ORIGINAL FILED WITH COURT

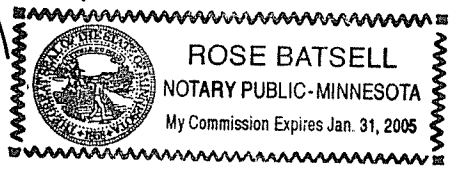
STATE OF MINNESOTA
COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

METRO LEGAL SERVICES

Greg DeGrace, being duly sworn, on oath says: that on the 1st day of November, 2002, at 3:55 p.m. (s)he served the attached Plaintiffs' Second Amended Complaint and Demand for Jury Trial upon Edward B. Magarian, Esq., therein named, personally at 50 South 6th Street, #1500, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Deidre Belfrey, receptionist, an expressly authorized agent for service for said Edward B. Magarian, Esq., a true and correct copy thereof.





Subscribed and sworn to before me,
November 4, 2002.



Notary Public

Charge \$17.00

Re: Curtis

**DUPLICATE
ORIGINAL FILED WITH COURT**

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

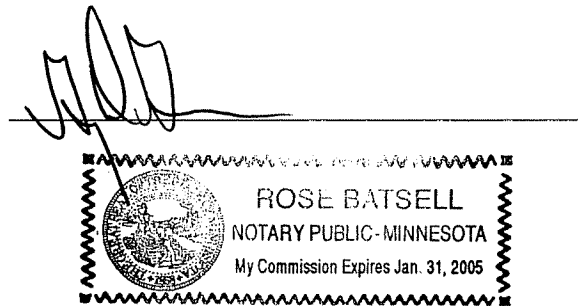
AFFIDAVIT OF SERVICE

METRO LEGAL SERVICES

Greg DeGrace, being duly sworn, on oath says: that on the 1st day of November, 2002, at 3:52 p.m. (s)he served the attached Plaintiffs' Second Amended Complaint and Demand for Jury Trial upon David R. Graham, Esq., therein named, personally at 2900 Plaza VIII, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Dre Green, clerk, an expressly authorized agent for said service for said David R. Graham, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
November 6, 2002.

Rose Batsell
Notary Public



Charge \$17.00

Re: Curtis