

The FDA Should Ban Menthol as a Characterizing Flavor in Tobacco Products.

The Family Smoking Prevention and Tobacco Control Act requires the Food and Drug Administration (FDA) to study how menthol cigarettes impact the public health, including their use by children, African-Americans, Hispanics, and other racial and ethnic minorities. Legacy urges the FDA to address menthol as a top priority and believes that there will be ample reasons to ban menthol cigarettes.

First, and most importantly, menthols are a starter product for youth. Derived from the peppermint plant, menthol provides a minty flavor and cooling sensation in cigarettes, covering up the tobacco taste and reducing the throat irritation associated with smoking.¹ Menthols are also perceived to be easier to inhale than on-mentholated products.² Research and examination of industry documents indicate that the tobacco industry has both targeted youth and young adults for the use of menthols and manipulated menthol content of cigarettes to facilitate initiation and dependence among young people.³ For all these reasons, menthols lure young people into taking up a deadly addiction. Newer and younger smokers use menthol cigarettes at dramatically higher rates than older, established smokers. One analysis of 2002 data found that 62% of middle school students who had been smoking less than a year smoked menthols, compared with a rate of 42% among all adolescent smokers.⁴ Among smokers of all ages, menthol use is higher among those who started smoking in the past year (44.6 percent) than among longer-term smokers (31.%) according to a recent study by the Substance Abuse and Mental Health Services Administration (SAMHSA).⁵

Second, menthols have been a key part of the tobacco industry's fraudulent health reassurance campaign. Menthols have long been marketed as having medicinal benefits—from early and explicit advertising messages encouraging smokers to switch to a menthol brand to “combat a cough” to more subtle messaging today.⁶ Menthol packaging often mimics the look of cold medicine, and menthol advertisements often use code words like “smooth” and “refreshes” and the colors of blue and green.⁷ All of these techniques send the subtle—and false—message that menthol has some health or medicinal benefits when used in tobacco products. The truth is that there is no evidence that menthol cigarettes are safer than any other cigarette.⁸ Indeed, the court's 2006 decision in the federal government's racketeering suit against the major tobacco companies establishes that menthol products were part of the industry's fraudulent effort to promote low tar/light cigarettes as less harmful and also part of its broader, fraudulent health reassurance message.⁹

Third, menthols have been targeted to communities of color, which often bear a disproportionate burden of tobacco-related disease. Research studies and tobacco industry documents demonstrate the tobacco industry's history of marketing menthol cigarettes to minority racial and ethnic groups, including African Americans and Hispanics.¹⁰ For example, one study found that, between 1998 and 2002, *Ebony* was 10 times more likely than *People* to contain ads for menthols, while the Spanish version of *People* was more than twice as likely to contain ads for menthol cigarettes as the English language *People*.¹¹ Research suggests that target marketing specifically to African Americans began as far back as the 1940s.¹² Today, the vast majority of African American smokers of all ages smoke menthols.¹³ The highest menthol rate is among black young adult smokers ages 26-34, 90% of whom smoke menthols.¹⁴ In addition, 88% of African-American middle school smokers and 87% of African American high school smokers smoke menthols.¹⁵ New SAMHSA data reveals that smokers of other racial and ethnic groups disproportionately smoke menthols, including Native Hawaiian and

other Pacific Islanders (53.2%), Hispanic/Latinos (32.3%), and Asian Americans (31.2%), compared with White smokers (23.8%).¹⁶ Among youth, 63% of Hispanic middle school smokers and 52% of Hispanic high school smokers smoke menthols, compared with 53% of white middle school smokers and 37% of white high school smokers, according to an analysis of 2002 data.¹⁷

In considering the menthol issue, Legacy encourages the FDA to take appropriate measures to ensure that a ban does not result in any unintended consequences. We

recognize that such consequences could result from precipitously removing from the market a product to which millions of people are addicted. Such actions should include:

- a timetable for implementation that allows the FDA to develop a proactive media campaign to educate consumers regarding the context and rationale for the ban prior to the ban's effective date;
- an evidence-based youth prevention campaign;
- a smoking cessation public education campaign designed to reach menthol smokers, specifically including the millions of racial and ethnic minority menthol smokers, and help motivate them to quit rather than simply switch to using non-mentholated tobacco products;
- increased funding for culturally-relevant cessation services;
- community-based and other targeted outreach to ensure underserved populations are receiving campaign messages and cessation services; and
- increased enforcement to prevent the development of a black market for menthols.

¹ Krelake JM, Wayne GF, Connolly GN. The menthol smoker: Tobacco industry research on consumer sensory perception of menthol cigarettes and its role in smoking behavior. *Nicotine & Tobacco Research* 2008;10(4): 705-715; Giovino GA, Sidney S, Gfroerer JC, O'Malley PM, Allen JA, Richter PA, Cummings, KM. Epidemiology of menthol use. *Nicotine & Tobacco Research* 2004;6(1): S67-S81.

² Giovino GA, Sidney S, Gfroerer JC, O'Malley PM, Allen JA, Richter PA, Cummings, KM. Epidemiology of menthol use. *Nicotine & Tobacco Research* 2004;6(1): S67-S81.

³ National Cancer Institute, Tobacco Control Research Branch, *Research Topics: Menthol and Tobacco* available at http://dcccps.nci.nih.gov/tcrb/research_topic-menthol.html (last visited Nov. 25, 2009).

⁴ Hersey JC, Ng SW, Nonnemaker JM, Mowery P, Thomas KY, Vilsaint M, et al. Are menthol cigarettes a starter product for youth? *Nicotine & Tobacco Research* 2006;8(3):403-413.

⁵ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (November 19, 2009). *The NSDUH Report: Use of Menthol Cigarettes*. Rockville, MD.

⁶ Stanford School of Medicine, Lane Library, *Not a Cough in a Carload: Images from the Tobacco Industry Campaign to Hide the Hazards of Smoking* available at <http://tobacco.stanford.edu> (last visited Nov. 18, 2009).

⁷ See *id.*

⁸ National Cancer Institute, Tobacco Control Research Branch, *Research Topics: Menthol and Tobacco* available at http://dcccps.nci.nih.gov/tcrb/research_topic-menthol.html (last visited Nov. 25, 2009).

⁹ *United States v. Philip Morris*, 449 F. Supp. 2d 1, 496-630 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C.Cir. 2009).

¹⁰ National Cancer Institute, Tobacco Control Research Branch, *Research Topics: Menthol and Tobacco* available at http://dcccps.nci.nih.gov/tcrb/research_topic-menthol.html (last visited Nov. 25, 2009).

¹¹ Landrine H, Klonoff EA, Fernandez S, Hickman N, Kashima K, Parekh B, et al. Cigarette advertising in Black, Latino and White magazines, 1998-2002: an exploratory investigation. *Ethnic Disparities* 2005;15(1):63-7.

¹² National Cancer Institute, Tobacco Control Research Branch, *Research Topics: Menthol and Tobacco* available at http://dcccps.nci.nih.gov/tcrb/research_topic-menthol.html (last visited Nov. 25, 2009).

¹³ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (September 20, 2007). *The NSDUH Report: Cigarette Use Among Blacks: 2005 and 2006*. Rockville, MD.

¹⁴ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (September 20, 2007). *The NSDUH Report: Cigarette Use Among Blacks: 2005 and 2006*. Rockville, MD.

¹⁵ Hersey JC, Ng SW, Nonnemaker JM, Mowery P, Thomas KY, Vilsaint M, et al. Are menthol cigarettes a starter product for youth? *Nicotine & Tobacco Research* 2006;8(3):403-413.

¹⁶ Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (November 19, 2009). *The NSDUH Report: Use of Menthol Cigarettes*. Rockville, MD.

¹⁷ Hersey JC, Ng SW, Nonnemaker JM, Mowery P, Thomas KY, Vilsaint M, et al. Are menthol cigarettes a starter product for youth? *Nicotine & Tobacco Research* 2006;8(3):403-413.