



United States of America
FEDERAL TRADE COMMISSION
Washington, DC 20580

Division of Advertising Practices
Bureau of Consumer Protection

May 9, 2017

Mark S. Brown, Esq.
King & Spalding LLP
1700 Pennsylvania Ave., NW
Suite 200
Washington, DC 20006-47078

Re: Request for Informal Staff Guidance Regarding Santa Fe Natural Tobacco Company's Consent Order (FTC Dkt. No. C-3952)

Dear Mr. Brown:

The Division of Advertising Practices has reviewed your letter submitted on behalf of RAI Services Company ("RAI") and Santa Fe Natural Tobacco Company ("Santa Fe"), dated March 9, 2017, requesting informal staff guidance concerning the Federal Trade Commission's consent order with Santa Fe ("Consent Order").¹ The consent order requires, among other things, a disclosure that "No additives in our tobacco does NOT mean a safer cigarette" in any cigarette advertisement that, through the use of phrases such as "no additives," "no chemicals," "additive free," "chemical-free," "chemical-additive free," "100% tobacco," "pure tobacco," or substantially similar terms, represents that a tobacco product has no additives or chemicals ("cigarette disclosure").²

This request for guidance was precipitated by a Memorandum of Understanding that RAI/Santa Fe entered into with the U.S. Food and Drug Administration's ("FDA") Center for Tobacco Products in January 2017. Under the Memorandum of Understanding, RAI/Santa Fe, agreed, among other things, to remove the phrase "Additive Free" and the term "natural" from

¹ Your letter attaches the Santa Fe agreement, which was accepted for public comment on April 27, 2000. On June 16, 2000, the Commission made final that agreement and issued its Decision and Order (FTC Dkt. No. C-3952). See <https://www.ftc.gov/enforcement/cases-proceedings/992-3026/santa-fe-natural-tobacco-company-inc>.

² The Consent Order also requires a triggered disclosure in connection with advertising and packaging for herbal smoking products, and other remedies. This letter addresses only the requirements for the cigarette disclosure and does not provide guidance on other provisions of the Consent Order.

all Natural American Spirit cigarette product labels, labeling, advertising, and promotional materials, except that Santa Fe may retain the use of the term “Natural” in the “Natural American Spirit” brand name and trademarks.³ The Memorandum of Understanding permits Santa Fe to use the phrases “Tobacco Ingredients: Tobacco & Water” or “Tobacco Filler Ingredients: Tobacco & Water” if it chooses to do so.

RAI and Santa Fe request staff guidance on two issues. First, they seek staff guidance as to whether use of the phrases “Tobacco Ingredients: Tobacco & Water” or “Tobacco Filler Ingredients: Tobacco & Water” triggers the cigarette disclosure required in the FTC’s Consent Order. As stated above, the Consent Order’s cigarette disclosure is triggered whenever a covered Santa Fe advertisement uses the specific terms identified in the order or any substantially similar term that represents, directly or by implication, that a tobacco product has no additives or chemicals. It is well-established that whether a claim is reasonably conveyed in an advertisement requires an examination of the entire advertisement and an assessment of the overall net impression(s) conveyed. *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 490 (D.C. Cir. 2015). *Accord ECM Biofilms, Inc. v. FTC*, No. 15-4339, U.S. App. LEXIS 4609, at **14-15 (6th Cir. Mar. 16, 2017). Thus, determining whether use of the two referenced phrases would constitute “substantially similar terms” that trigger the cigarette disclosure in the Consent Order would require an evaluation of specific advertisements in their entirety, and not simply an evaluation of specific words or phrases. For that reason, we cannot definitively opine whether use of the phrases “Tobacco Ingredients: Tobacco & Water” or “Tobacco Filler Ingredients: Tobacco & Water” would trigger the cigarette disclosure required in the FTC’s Consent Order.⁴

Looking solely at the phrases, however, raises concerns that, depending on the context, consumers could reasonably interpret advertisements containing the phrases at issue to mean that Santa Fe Natural American Spirit cigarettes contain no additives or chemicals. In particular, the phrases are very similar to “100% tobacco” and “pure tobacco” – each of which specifically triggers the cigarette disclosure. In addition, advertisements permitted under the Memorandum of Understanding would continue to use the term “Natural” as part of the “Natural American Spirit” brand name, potentially adding to an impression that the advertised cigarette contains no additives or chemicals.

³ A copy of the Memorandum of Agreement is attached to your March 9, 2017 letter. In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), which gives FDA broad authority over cigarettes and other tobacco products. It is under that authority that RAI/Santa Fe entered into the Memorandum of Agreement with FDA. We did not analyze and provide no guidance concerning RAI/Santa Fe’s compliance with the Tobacco Control Act or any provision therein.

⁴ In accordance with Section 1.1 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 1.1, we do not ordinarily provide advice if an informed opinion cannot be made or could be made only after extensive investigation, clinical study, testing or collateral inquiry.

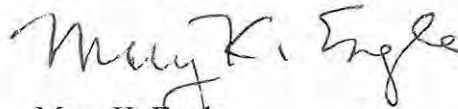
Mark S. Brown, Esq.
Page 3
May 9, 2017

The second issue that RAI/Santa Fe seek staff guidance on is whether they can replace the Consent Order's required disclosure with the following disclosure: "Natural American Spirit cigarettes are not safer than other cigarettes." The Memorandum of Understanding states that FDA does not object to this disclosure. Although this disclosure differs from that set out in the Consent Order, both disclosures convey the core message that Santa Fe cigarettes are not safer than other cigarettes. Thus, FTC staff would not recommend an enforcement action with respect to the mandated language of the cigarette disclosure if RAI/Santa Fe used the requested disclosure rather than the specific language set out in the Consent Order as long as the disclosure was displayed clearly and prominently as set forth in the Consent Order.

The views expressed in this letter are those of FTC staff. They have not been reviewed, approved, or adopted by the Commission or any individual Commissioner. They are not binding upon the Commission, and the views are given without prejudice to the right of the Commission to later rescind the guidance and, when appropriate, to commence an enforcement proceeding. In addition, the views expressed in this letter are restricted to the facts described above. FTC staff retains the right to reconsider its advice and, with notice to the requesting parties, rescind or revoke its guidance if it would be in the public interest to do so.

Pursuant to Section 1.4 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.4, this response, along with your request for staff guidance, will be placed on the public record.

Very truly yours,



Mary K. Engle
Associate Director for Advertising Practices

cc: Ann Simoneau, J.D.
Director, Office of Compliance and Enforcement
Center for Tobacco Products
U.S. Food and Drug Administration

KING & SPALDING

King & Spalding LLP
1700 Pennsylvania Ave, NW
Suite 200
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737
www.kslaw.com

Mark S. Brown
Partner
Direct Dial: +1 202 626 5443
Direct Fax: +1 202 626 3737
mbrown@kslaw.com

March 9, 2017

Via Electronic Mail

Rosemary Rosso
Division of Advertising Practices
Federal Trade Commission
Constitution Center
5th Floor, Suite 5610 (Annex J)
400 7th Street, SW
Washington, DC 20024

Re: **Request for Informal Staff Guidance Regarding 2017 Agreement Between Santa Fe Natural Tobacco Company and U.S. Food & Drug Administration**

Dear Ms. Rosso:

As you know from our letter dated January 31, 2017, and from our recent discussions, we represent RAI Services Company and Santa Fe Natural Tobacco Company (hereinafter "Santa Fe") in connection with an agreement between Santa Fe and the U.S. Food & Drug Administration ("FDA") concerning the removal of the phrase "Additive Free" from all Natural American Spirit cigarette product labels, labeling, advertising, and promotional materials. Santa Fe expressly reserved the right, in the agreement with FDA, to include the statement "Tobacco Ingredients: Tobacco & Water" or "Tobacco Filler Ingredients: Tobacco & Water."

Under the terms of Santa Fe's April 27, 2000 Consent Order with the FTC (File No. 992-3026; Attachment A), Santa Fe agreed to include the disclosure "No additives in our tobacco does NOT mean a safer cigarette" (for cigarettes) or "No additives in our tobacco does not mean safer" (for tobacco products other than cigarettes) on any advertisement that "through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, represents that a tobacco product has no additives or chemicals." (Emphasis supplied).

In the time since Santa Fe entered into the April 2000 Consent Order with the FTC, Congress enacted the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"). The Tobacco Control Act gives FDA broad authority over tobacco products, but provides

Rosemary Rosso
March 9, 2017
Page 2

for concurrent, overlapping jurisdiction between FDA and the FTC with regard to regulation of advertising practices. *See* 21 U.S.C. § 387n.

Under the Tobacco Control Act, manufacturers must obtain clearance from FDA to market tobacco products as “modified risk tobacco products.” The term “modified risk tobacco product” is defined as any tobacco product that is “sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.” 21 U.S.C. § 387k(b)(1). Whether a product is “sold or distributed for use to reduce harm or the risk of tobacco-related disease” is determined, in part, based on the product’s label, labeling, and advertising. It is under this authority that Santa Fe entered into the January 2017 agreement with FDA.

To assure that Santa Fe continues to meet its obligations under the 2000 Consent Order, it now seeks an informal, written opinion from the FTC’s Division of Advertising Practices on the following two questions:

(1) Are the phrases “Tobacco Ingredients: Tobacco & Water” or “Tobacco Filler Ingredients: Tobacco & Water” “substantially similar terms” under the 2000 Consent Order such that their use triggers the disclosure requirement of the 2000 Consent Order?

(2) If “Tobacco Ingredients: Tobacco & Water” or “Tobacco Filler Ingredients: Tobacco & Water” are deemed substantially similar terms, would the FTC either permit or not otherwise object to Santa Fe replacing the disclosures required under the 2000 Santa Fe Consent Order with the following disclosure: “Natural American Spirit cigarettes are not safer than other cigarettes.”

We thank you for your attention to this matter, and look forward to a productive dialogue. If you require any additional information, please contact me at (202) 626-5443 or mbrown@kslaw.com.

Sincerely,



Mark S. Brown

Attachments:

A: April 27, 2000 FTC Consent Decree
B: January 23, 2017 FDA Memorandum of Agreement

cc: Ann Simoneau (w/attachments)
Ele Ibarra-Pratt (w/attachments)
Mitch Neuhausuer (w/attachments)



Mitchell A. Neuhauser
Vice President and
Assistant General Counsel - Regulatory
401 N. Main Street
P.O. Box 464
Winston-Salem, NC 27102

Telephone: 336-741-7500
Fax: 336-728-8987
neuhaum@rjt.com

CONFIDENTIAL, NOT FOR PUBLIC DISCLOSURE

Via UPS Overnight

January 23, 2017

Ann Simoneau, J.D.
Office of Compliance and Enforcement
FDA Center for Tobacco Products
c/o Document Control Center
Building 71, Room G335
10903 New Hampshire Avenue
Silver Spring, Maryland 20993-0002

Dear Ms. Simoneau:

Enclosed please find an executed original Memorandum of Agreement. I have also e-mailed a copy to Eli Ibarra-Pratt as you have requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell A. Neuhauser", is written over a light blue horizontal line.

Mitchell A. Neuhauser

cc: Eli Ibarra-Pratt

Confidential – Not for Public Disclosure

Memorandum of Agreement Between
The United States Food and Drug Administration's (FDA) Center for Tobacco Products (CTP) and RAI
Services Company (RAIS)/Santa Fe Natural Tobacco Company, Inc. (Santa Fe),
(Dated: January 19, 2017)

The parties, the FDA's Center for Tobacco Products (CTP) and RAI Services Company (RAIS)/Santa Fe Natural Tobacco Company, Inc. (Santa Fe), have been engaged in discussions to resolve the issues raised in CTP's Warning Letter dated August 27, 2015. Per those discussions, CTP and Santa Fe agree to the following steps and conditions:

1. Santa Fe will remove the phrase "Additive Free" from all Natural American Spirit cigarette product labels, labeling, advertising, and promotional materials.
2. Santa Fe will remove the term "natural" from all Natural American Spirit cigarette product labels, labeling, advertising, and promotional materials, except as provided in Paragraph Three (3) below.

Santa Fe may, if it chooses to do so, use the statement "Tobacco Ingredients: Tobacco & Water" or "Tobacco Filler Ingredients: Tobacco & Water" on product labels, labeling, advertising, and promotional materials. The use of the phrases "Tobacco Ingredients: Tobacco and Water" and "Tobacco Filler Ingredients: Tobacco and Water" is not required under this Agreement, but Santa Fe wishes to retain the option of using these statements.

If Santa Fe chooses to use the statement "Tobacco Ingredients: Tobacco & Water" or "Tobacco Filler Ingredients: Tobacco & Water" on product labels, labeling, advertising, and promotional materials, Santa Fe agrees to initiate discussions with the FTC and FDA within 30 days of signing this Agreement in order to address, and reach a mutually agreeable resolution regarding, whether, under the Consent Decree entered in 2000 between FTC and Santa Fe regarding Santa Fe's advertising of Natural American Spirit cigarettes, FTC would require a disclosure with use of the statements "Tobacco Ingredients: Tobacco & Water" or "Tobacco Filler Ingredients: Tobacco & Water." CTP's position is that no disclosure would be needed for either of the tobacco ingredients statements in the preceding paragraph. However, CTP would not object to Santa Fe's use of the disclosure "Natural American Spirit cigarettes are not safer than other cigarettes" on product packaging, labels, labeling, advertising and promotional materials. Santa Fe agrees to work diligently with FTC and FDA to reach resolution on this issue.

CTP recognizes that Santa Fe will need to coordinate with its vendors to print and implement new product labeling and advertising. However, CTP expects that this process would be completed and that changes to the labels, labeling, advertising, and promotional materials would be implemented within seven (7) months from the date Santa Fe receives in writing the agreement reached between FTC and FDA regarding the necessity, and, if applicable, wording, of a disclosure, and the process for effectuating it, as a result of the discussions among Santa Fe, FTC, and FDA. Following the seven (7) month deadline, Santa Fe will not utilize the terms "additive free" or "natural" except as allowed under Paragraph 3 of this Agreement on the labels, labeling, advertising, or promotional materials for Natural American Spirit cigarette products. Santa Fe need not, however, remove or recall products or product labels, labeling, advertising, or promotional materials utilizing the terms "additive free" or "natural" that were introduced into the market (e.g., through distribution to wholesalers, distributors, retailers, or consumers) prior to the seven (7) month deadline.

3. Santa Fe may retain use of the term "Natural" in the "Natural American Spirit" brand name and trademarks.
4. To the extent any premarket authorization requirements of section 905(j) and 910 of the FD&C Act apply, CTP will not enforce them with respect to the changes specified in Paragraphs 1 and 2 above.
5. If Santa Fe seeks labeling review from FTC for the changes described in the Agreement, Santa Fe will submit a letter to CTP's Office of Compliance and Enforcement to inform CTP of such review once the FTC has completed its review. In addition, Santa Fe will promptly notify CTP's Office of Compliance and Enforcement in writing and provide exemplars of its revised packaging, labels,


Confidential – Not for Public Disclosure

labeling, advertising, and promotional materials that reflect the removal of "additive free" and "natural" claims, and related changes, in accordance with this Agreement. Thereafter, any subsequent changes to packaging, labels, labeling, advertising, and promotional materials shall be communicated in conformance with Section 905(i) of the FD&C Act.

6. Within thirty (30) days after CTP receives exemplars of Santa Fe's revised packaging, labeling, advertising, and promotional materials pursuant to Paragraph 5, CTP shall determine whether the exemplars are in compliance with the applicable requirements of the FD&C Act and notify Santa Fe in writing of its determination.
7. By accepting the terms of this Agreement, Santa Fe does not admit any liability or wrongdoing.

If Santa Fe agrees to the conditions outlined above, CTP will commit to not initiating enforcement action against Santa Fe related to the August 27, 2015 Warning Letter during the seven (7) month timeframe set forth in Paragraph 2 for Santa Fe to complete and implement changes to the product packaging, labels, labeling, advertising and promotional materials. The parties may agree to extend these dates by written agreement. CTP's Office of Compliance and Enforcement requests periodic updates as to Santa Fe's progress towards meeting the terms of this Agreement.

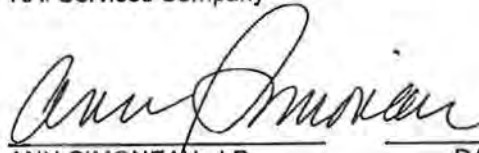
This Agreement applies only to the specific products and claims described in this letter. It is Santa Fe's responsibility to ensure that its other tobacco products and all related labeling and/or advertising comply with each applicable provision of the FD&C Act and FDA's implementing regulations.



MITCHELL A. NEUHAUSER
Vice President
Assistant General Counsel-Regulatory
RAI Services Company



DATE



ANN SIMONEAU, J.D.
Director
Office of Compliance and Enforcement
Center for Tobacco Products
Food and Drug Administration



DATE

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of
SANTA FE NATURAL TOBACCO COMPANY, INC., a corporation.)

FILE NO. 992-3026
AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Santa Fe Natural Tobacco Company, Inc., a corporation ("proposed respondent"). Proposed respondent is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Santa Fe Natural Tobacco Company, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation with its principal office or place of business at 1368 Cerrillos Road, Santa Fe, NM 87505-3507.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and decision and order to

proposed respondent's address as stated in the agreement by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondent" shall mean Santa Fe Natural Tobacco Company, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. "Advertisement" shall mean any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of any product, including but not limited to a statement, illustration or depiction in or on a brochure, newspaper, magazine, free standing insert, pamphlet, leaflet, circular, mailer, book insert, letter, coupon, catalog, poster, chart, billboard, transit advertisement, point of purchase display, specialty or utilitarian item, sponsorship material, package insert, film, slide, or the Internet or other computer network or system.
5. "Tobacco product" shall mean cigarettes, cigars, cigarillos, little cigars, smokeless tobacco, cigarette tobacco, pipe tobacco, and any other product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.
6. "Herbal smoking product" shall mean cigarettes, cigars, cigarillos, little cigars and any other product made or derived from plant material other than tobacco, that is intended for human smoking, including any component, part, or accessory of an herbal smoking product.
7. "Clearly and prominently" shall mean:
 - a. With regard to advertisements for tobacco and herbal smoking products, in black type on a solid white background, or in white type on a solid red background, or in any other color combination that would provide an equivalent or greater degree of print contrast as objectively determined by densitometer or comparable

measurements of the type and the background color. The color of the ruled rectangle shall be the same color as that of the type; and

- b. (i) With regard to advertisements for tobacco products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than 40% of the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than 50% of the width of the rule required for the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than 40% of the area required for health warnings for tobacco cigarettes by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than 50% of the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- (ii) With regard to advertisements for herbal smoking products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than the width of the rule required for the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than the area required for health warnings for tobacco cigarettes by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- c. In the same type style and type size as that required for health warnings for tobacco cigarettes pursuant to 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the type style and type size of the disclosure shall be the same as the type style and type size required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- d. In a clear and prominent location but not immediately next to other written or textual matter or any rectangular designs, elements, or similar geometric forms, including but not limited to any warning statement required under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 *et seq.*, or the Comprehensive Smokeless Tobacco Health Education Act, 15 U.S.C. § 4401 *et seq.* In addition, the disclosure shall not be positioned in the margin of a print advertisement. A disclosure shall be deemed "not immediately next to" other geometric or textual matter if the distance between the disclosure and the other matter is as great as the distance between the outside left edge of the rule of the rectangle enclosing the health warning required by 15 U. S. C. § 1333 and the top left point of the letter "S" in the word "SURGEON" in that health warning; and

- e. For audiovisual or audio advertisements, including but not limited to advertisements on videotapes, cassettes, discs, or the Internet; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the disclosure shall appear on the screen at the end of the advertisement in the format described above for a length of time and in such a manner that it is easily legible and shall be announced simultaneously at the end of the advertisement in a manner that is clearly audible.

Provided, however, that in any advertisement that does not contain a visual component, the disclosure need not appear in visual format, and in any advertisement that does not contain an audio component, the disclosure need not be announced in audio format.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Natural American Spirit tobacco cigarettes or any other tobacco product in or affecting commerce, shall display in advertisements as specified below, clearly and prominently, the following disclosures (including the line breaks, punctuation, bold font and capitalization illustrated):

In cigarette advertisements:

No additives in our tobacco
does **NOT** mean a safer cigarette.

In advertisements for any other tobacco product:

No additives in our tobacco
does **NOT** mean safer.

These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order, in any advertisement that, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, represents that a tobacco product has no additives or chemicals.

Provided, that the above disclosures shall not be required in any cigarette advertisement that is not required to bear a health warning pursuant to 15 U.S.C. § 1333.

Provided further, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such cigarette or other tobacco product poses materially lower health risks than other cigarettes or other products of the same type.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. *Provided, however,* that this provision shall not prohibit respondent from truthfully representing, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, that a tobacco product has no additives or chemicals, where such representation is accompanied by the disclosure mandated by this provision.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any herbal smoking product in or affecting commerce, shall display in advertisements and on packaging as specified below, clearly and prominently, the following disclosure (including the line breaks, punctuation and capitalization illustrated):

In advertisements and on packaging for herbal cigarettes:

Herbal cigarettes are dangerous to your health.
They produce tar and carbon monoxide.

In advertisements and on packaging for other herbal smoking products:

Smoking this product is dangerous to your health.
It produces tar and carbon monoxide.

These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order, in any advertisement and on any package that, through the use of such phrases as "no tobacco," "tobacco-free," "herbal," or substantially similar terms, represents that an herbal smoking product has no tobacco.

Provided, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such herbal smoking products do not pose any material health risks.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. *Provided, however*, that this provision shall not prohibit respondent from truthfully representing, through the use of such phrases as "no tobacco," "tobacco-free," "herbal," or substantially similar terms, that an herbal smoking product has no tobacco, where such representation is accompanied by the disclosure mandated by this provision.

III.

IT IS FURTHER ORDERED that respondent shall:

A. Provide, within forty-five (45) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A to each retailer, distributor, or other purchaser for resale to whom respondent has supplied Natural American Spirit tobacco cigarettes since January 1, 1998. Respondent shall send the notice by first class mail. The mailing shall not include any other documents.

B. Discontinue dealing with any retailer, distributor, or other purchaser for resale once respondent has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has continued to use or disseminate any of respondent's advertisements for any of respondent's tobacco products that:

1. represents, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, that the tobacco products have no additives or chemicals; and

2. does not include the disclosure specified in Part I of this order

unless, upon notification by respondent, such retailer, distributor, or other purchaser for resale immediately ceases using or disseminating such advertisements. If, after such notification, respondent obtains actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has not permanently ceased using or disseminating such advertisements, respondent must immediately and indefinitely, discontinue dealing with such retailer, distributor, or other purchaser for resale, until such time as respondent has obtained written assurance and verified that such retailer, distributor, or other purchaser for resale has permanently ceased using or disseminating such advertisements.

C. For five (5) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

(1) copies of all notification letters sent to retailers, distributors, or other purchasers for resale pursuant to subparagraph A of this part; and

(2) copies of all communications with retailers, distributors, or other purchasers for resale pursuant to subparagraph B of this part.

IV.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and packaging containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns, shall deliver a copy of this order, in either paper or electronic form, to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall secure from each such person either 1) a signed and dated statement acknowledging receipt of the order; or 2) a dated, electronic acknowledgment indicating that the person has read, downloaded or printed the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order or a record, in either electronic or paper form, of each electronic acknowledgment of receipt of the order.

VI.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to the sale of any of its tobacco products or herbal smoking products for which the composition or formula has been changed in such a manner as may affect compliance obligations arising under this order, including but not limited to the addition of any additives to any variety of such products. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not effect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate

between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2000

SANTA FE NATURAL TOBACCO COMPANY, INC.

By: _____
Robin Sommers
President

C. Randall Nuckolls
Long Aldridge & Norman, LLP
Attorney for Respondent

Michael Ostheimer
Shira Modell
Counsel for the Federal Trade Commission

APPROVED:

C. Lee Peeler
Associate Director
Division of Advertising Practices

Joan Z. Bernstein
Director
Bureau of Consumer Protection

ATTACHMENT A

[To be printed on Santa Fe Natural Tobacco Company, Inc. letterhead]

[date]

Dear [retailer, distributor, or other purchaser for resale]:

This letter is to inform you that Santa Fe Natural Tobacco Company, Inc. recently reached a settlement agreement with the Federal Trade Commission ("FTC") concerning certain past advertising for Natural American Spirit cigarettes. The FTC has been reviewing "no additive" claims for cigarettes and other tobacco products as a result of concerns that such representations might mislead consumers to believe that tobacco products without additives are safer than tobacco products containing additives. As part of this review, the FTC conducted an investigation of past advertising for Natural American Spirit cigarettes and alleged that certain of our past advertising was misleading. Although we do not admit the FTC's allegations, we have agreed to notify our distributors, retailers and others who sell our cigarettes to consumers that we will be adding a new disclosure statement to certain advertisements making a "no additive" claim and that they should discontinue the use of certain old advertising materials not containing the new disclosure language.

The FTC Agreement

The FTC claimed that because we state that the tobacco used in Natural American Spirit cigarettes contains no additives or chemicals, we made implied, unsubstantiated claims that smoking our cigarettes is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives or chemicals. Beginning in late 1997, we voluntarily began placing the statement "To our knowledge there is no research indicating cigarettes containing additive-free tobacco are safer than cigarettes with tobacco containing additives" in certain ads for Natural American Spirit tobacco cigarettes. Since early 1998, we have also included the statement "We make no representation expressed or implied that these cigarettes are any less hazardous than any other cigarettes" on the packaging of Natural American Spirit cigarettes. We have now agreed to revise our disclosure in certain advertisements for Natural American Spirit tobacco cigarettes to state the following:

**No additives in our tobacco
does NOT mean a safer cigarette.**

Our Notification Obligations

In addition to agreeing to revise our disclosure statement, we have also agreed to request that you discontinue using, relying on or distributing certain old Natural American Spirit advertisements or promotional materials in your possession that do not contain the new disclosure statement. Certain existing point of sale items may continue to be used without the new disclosure statement while other items will need to be discontinued or removed unless a sticker is applied containing the new disclosure statement. In the near future, we will provide instructions for dealing with these existing items and we will be sending you new Natural American Spirit promotional materials. If you are a distributor, we also ask that you make this information available to your Natural American Spirit dealers who may have existing materials so that they can take similar action. The FTC agreement requires us to cease doing business with even our most loyal customers in the event they continue using noncompliant materials, so please help us make this transition in an orderly and prompt fashion.

If you have any questions, you may call us at (xxx) xxx-xxxx. We apologize for any inconvenience this may cause you and thank you for your assistance.

Sincerely,

Robin Sommers, President
Santa Fe Natural Tobacco Company, Inc.