

Dissenting Statement of Commissioner Roscoe B. Starek, III

in R.J. Reynolds Tobacco Co., Docket No. 9285

I am very concerned about the harm that cigarette smoking poses to children, but I also take seriously the statutory limits on the Commission's authority to pursue enforcement actions against allegedly unfair practices. The evidence before us now, including the evidence obtained since the Commission considered this matter in 1994, does not convince me that there is reason to believe that the law has been violated. The issue in this case is whether the Joe Camel advertising campaign causes or is likely to cause children to begin or to continue smoking. As was true three years ago, intuition and concern for children's health are not the equivalent of -- and should not be substituted for -- evidence sufficient to find reason to believe that there is a likely causal connection between the Joe Camel advertising campaign and smoking by children.

Moreover, it simply is not in the public interest to bring this case now. Before committing a vast amount of scarce agency resources to this litigation, the Commission should await the resolution of the appeal of the federal district court decision striking down the Food and Drug Administration's tobacco advertising restrictions and the outcome of widely-reported settlement discussions between tobacco companies and numerous states. Either of these developments might result in advertising restraints that would largely duplicate any remedies the Commission might obtain.

Accordingly, I dissent from the majority's determination to issue a complaint.