

**TREC-2008 LEGAL TRACK – INTERACTIVE TASK**  
**Topic-Specific Guidelines – Topic 102**  
**Updated: 10/26/08**

**1. Introduction – The Purpose and Use of this Document**

This document is intended to clarify the intent and scope of Topic 102 featured in the TREC-2008 Legal Track’s Interactive Task. The document is a summarization of the guidance that the Topic Authority for Topic 102 gave to the participating teams in the course of their work on the task. It is intended to guide the volunteer assessors in their review of documents contained in the evaluation samples.

The Interactive Task tests how effective participating teams are at replicating a Topic Authority’s conception of relevance across a test population of documents.<sup>1</sup> In creating a sample on the basis of which the teams can be evaluated, it is vital that the documents in the sample be reviewed in accordance with the Topic Authority’s conception of relevance. The criteria specified here represent the Topic Authority’s conception of relevance and are the criteria by which assessors should judge the relevance of the documents they review.

While the criteria specified in this document will go some distance down the path of clarifying the scope of the topic, it is to be expected that assessors will, in the course of their review, encounter documents that prompt questions that are not addressed by the criteria already developed. In such instances, the assessors are asked to submit their questions to Bruce Hedin, who, after consulting with the Topic Authority, will report to all assessors assigned to the topic the Topic Authority’s response.

Please note that this document is intended to provide topic-specific guidance for determining relevance. Guidance on general procedures for conducting the assessment exercise is provided in a companion document (the “How To’ Guide for Assessors”). Assessors with any questions, procedural or topic-specific, should not hesitate to email their questions to Bruce Hedin.

**2. Statement and General Characterization of the Topic**

The document request that is the basis for Topic 102 is stated as follows (see Complaint I).

Documents referring to marketing or advertising restrictions proposed for inclusion in, or actually included in, the Master Settlement Agreement (“MSA”), including, but not limited to, restrictions on advertising on billboards, stadiums, arenas, shopping malls, buses, taxis, or any other outdoor advertising.

This request targets documents that discuss or refer to bans or restrictions on certain marketing and advertising practices that were included, or proposed for inclusion, in the MSA. The marketing and advertising practices covered by the request are those specified in the MSA, as well as any other marketing or advertising practices restrictions on which were discussed in the context of the MSA. Relevant advertising and marketing practices are not limited to those related to outdoor advertising. Documents responsive to the request will include both reference to a target practice and reference to a restriction on the practice, but the latter reference may be either explicit or implicit.

**3. Guidelines for Determining Relevance**

**3.1. In-Scope Marketing & Advertising Practices.** Advertising and marketing practices within the scope of the topic are the following (specified in sections III.a-j of the MSA).

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<sup>1</sup> For purposes of this document, the words “relevant” and “responsive” are interchangeable.

- 3.1.1. Marketing or Advertising that Targets Youth
- 3.1.2. Use of Cartoons
- 3.1.3. Tobacco Brand Name Sponsorships
- 3.1.4. Outdoor Advertising and Transit Advertisements
- 3.1.5. Payments Related to Tobacco Products and Media
- 3.1.6. Tobacco Brand Name Merchandise
- 3.1.7. Youth Access to Free Samples
- 3.1.8. Gifts to Underage Persons Based on Proofs of Purchase
- 3.1.9. Third-Party Use of Brand Names
- 3.1.10. Non-Tobacco Brand Names

Other practices specified in the MSA but not on the above list, e.g., those related to pack size (III.k) or those related to corporate culture commitments related to youth access and consumption (III.l), are not within the scope of the topic.

**3.2. Definitions.** Definitions of key elements of the topic are as specified in Section II of the MSA, and assessors are instructed to consult the MSA for clarification of the definition of these elements. For example, “youth,” “outdoor advertising,” and “transit advertisements” are defined as follows.

- **Youth** – any person or persons under 18 years of age. (MSA II.bbb)
- **Outdoor Advertising** – (1) billboards, (2) signs and placards in arenas, stadiums, shopping malls and Video Game Arcades (whether any of the foregoing are open air or enclosed) (but not including any such sign or placard located in an Adult-Only Facility), and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward. Provided, however, that the term "Outdoor Advertising" does not mean (1) an advertisement on the outside of a Tobacco Product manufacturing facility; (2) an individual advertisement that does not occupy an area larger than 14 square feet (and that neither is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet, nor functions solely as a segment of a larger advertising unit or series), and that is placed (A) on the outside of any retail establishment that sells Tobacco Products (other than solely through a vending machine), (B) outside (but on the property of) any such establishment, or (C) on the inside surface of a window facing outward in any such establishment; (3) an advertisement inside a retail establishment that sells Tobacco Products (other than solely through a vending machine) that is not placed on the inside surface of a window facing outward; or (4) an outdoor advertisement at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event). (MSA II.ii)
- **Transit Advertisements** – advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any similar location. Notwithstanding the foregoing, the term "Transit Advertisements" does not include (1) any advertisement placed in, on or outside the premises of any retail establishment that sells Tobacco Products (other than solely through a vending machine) (except if such individual advertisement (A) occupies an

area larger than 14 square feet; (B) is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet; or (C) functions solely as a segment of a larger advertising unit or series); or (2) advertising at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event). (MSA II.xx)

For definitions of concepts not covered in the MSA, assessors should also consult the mock complaint and request for production.

### **3.3. Additional Guiding Principles**

- On covered practices. The request covers all marketing and advertising practices included under 3.1 above; the request is not limited to practices related to outdoor advertising. Documents referring to marketing or advertising generally or to marketing or advertising practices that are neither included under 3.1 above nor otherwise specified in the MSA may be responsive, but only if the reference occurs in the context of a discussion of proposed or enacted MSA restrictions.
- On explicit reference to the MSA. A responsive document does not have to include (explicit or implicit) reference to the MSA. A responsive document will include explicit reference to an in-scope marketing/advertising practice as well as explicit or implicit reference to a restriction on the practice.
- On non-MSA restrictions. Documents referring to restrictions on any of the in-scope marketing/advertising practices are responsive to the request.
- On copies of the MSA. Copies of the MSA, both final versions and draft versions, are responsive to the request.
- On references to the MSA. A reference to the MSA that is not also accompanied by a reference to a restriction on a relevant marketing or advertising practice is not responsive.
- On date restrictions. There are no date restrictions that apply to this topic. Assess a document as responsive (or not) regardless of its date.
- As explained in the "How-To" guide, the Topic Authority, in this exercise, plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh his/her obligations under the document request, as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is the topic definition provided in this document. While assessors may find, in some instances, that the definition includes some documents that are not "interesting" or "meaningful" for the associated litigation, assessors should keep in mind that the Topic Authority has defined the topic in this way so as to minimize risk of challenge or sanction. Assessors should adhere to the guidelines in this document even when the guidelines call for counting a substantively uninteresting document as relevant.

## **4. Example Excerpts and Documents**

**4.1. Excerpts.** The following excerpts illustrate the kinds of subject matter that are, and are not, relevant to Topic 102.

### **4.1.1. Responsive.**

**4.1.1.1.** A restatement of the advertising & marketing restrictions from the MSA.

## ADVERTISING AND MARKETING RESTRICTIONS

The MSA imposes a series of restrictions on advertising, marketing, and promotional activities of the participating cigarette manufacturers (both directly and through third parties) within the settling states. Some of these restrictions, summarized below, are subject to further exceptions or qualifications specified in the MSA. "Targeting." The MSA bars the manufacturers from "targeting" youths (defined in the MSA as persons under 18 years of age) in their advertising, marketing, and promotional activities, and from taking any action the primary purpose of which is to influence youths to smoke.

### 4.1.1.2. A reference to the MSA in connection with the restriction language.

As part of their settlement with the States, the tobacco manufacturers have agreed to severe restrictions on the marketing of tobacco products. These restrictions include, for example, a complete ban on outdoor and public transit advertising and the use of cartoon characters.

### 4.1.1.3. Discussion of restrictions that are included in the MSA, without reference to the source of the restriction.

In an effort to curb tobacco marketing aimed at youth, the tobacco industry will not use human images or cartoon characters in advertisements. The industry will also be banned from advertising on billboards or on the Internet and will no longer be allowed to place tobacco products in movies or television.

### 4.1.1.4. Discussion of general "marketing" restrictions without reference to a specific restriction or to the source of the restrictions.

For a number of years reports of the asserted harmful health effects of cigarette smoking have engendered significant adverse publicity for the cigarette industry, have caused a decline in the social acceptability of cigarette smoking and have resulted in the implementation of numerous restrictions on the marketing, advertising and use of cigarettes.

### 4.1.1.5. Discussion of restrictions that are the same as or similar to MSA restrictions, but explicitly attributed to a different source.

Proposed Food and Drug Administration Regulations for the tobacco industry of 7 August 1995, includes a ban on the sale of or giving away of brand name promotional goods to children, restricts advertising in publications which have more than 15% of their readership under 18, bans outdoor advertising within 1,000 feet of schools and playgrounds and bans brand name sponsorship of sport /entertainment events.

**4.1.1.6.** A recitation of the terms of the MSA marketing & advertising restrictions.

What does the Master Settlement Agreement (MSA) say?

“No Participating Manufacturer may provide ... without sufficient proof that such person is an Adult, any item in exchange for the purchase of Tobacco Products, or the furnishing of credits, proofs-of-purchase, or coupons with respect to such a purchase.... A driver's license or other government-issued identification (or legible photocopy thereof), the validity of which is certified by the person to whom the item is provided, shall by itself be deemed to be a sufficient form of proof of age...”.

**4.1.1.7.** A general reference to marketing & advertising “issues” addressed in the MSA, without explicit restriction language.

Philip Morris U.S.A., along with other tobacco companies, reached an unprecedented agreement with 46 states to deal with issues of common concern regarding the advertising and marketing of cigarettes. The agreement, called the Master Settlement Agreement or 'MSA, also settled litigation brought against the companies by the states for reimbursement of Medicaid costs.

**4.1.1.8.** A violation of the MSA.

Please send me examples of Marlboro outdoor advertisements in violation of MSA.

**4.1.1.9.** Acknowledgement that something is explicitly not an MSA marketing restriction.

He now wants to talk to someone about bar nights. He realizes they are not part of MSA and all he really wants to know is if we will put more energy into these types of events since they are age-restricted venues. (His editor is asking).

**4.1.1.10.** A restriction proposed explicitly for eventual inclusion in the MSA.

Curtailement of Advertising

With the specific consent of the tobacco companies participating in the Proposed Resolution and a voluntary waiver of their first amendment rights, significant restrictions on tobacco advertising would be mandated. The Proposed Resolution would, among many other things, prohibit any use of human images and cartoon characters -- such as Joe Camel and the Marlboro Man -- in all tobacco product advertising.

**4.1.1.11.** A proposed restriction similar to an MSA restriction (example 1).

We announced our support of a treaty that member states could consider for ratification, focusing on a comprehensive agenda that includes youth smoking prevention measures, public smoking restrictions, marketing restrictions, provisions designed to combat cigarette smuggling and counterfeiting, the provision of consistent information to consumers about smoking and health, cigarette ingredients and constituents and the development of reduced risk products.

**4.1.1.12.** A proposed restriction similar to an MSA restriction (example 2).

Decisive action must be taken to limit the corrosive influences of these practices, including enactment of a prohibition on all tobacco advertising and promotional practices, including brand name sponsorship of events such as sporting events, rock concerts, and jazz festivals.

**4.1.1.13.** A discussion of potential bans, restrictions or prohibitions (example 1).

THE MARKETING ENVIRONMENT IS LIKELY TO BECOME MORE RESTRICTIVE DURING THE PLAN PERIOD, INCLUDING POTENTIAL BANS ON OUTDOOR AND EVENT SPONSORSHIP. THIS NECESSITATES CREATING ALTERNATIVE AVENUES OF REACHING THE CONSUMER. DEVELOPING A SMOKER NAME DATABASE WILL ENABLE US TO EFFECTIVELY REACH A LARGE NUMBER OF SMOKERS.

**4.1.1.14.** A discussion of potential bans, restrictions or prohibitions (example 2).

If Congress wants to reduce youth smoking prevalence, the best way to accomplish this goal is to restrict advertising and marketing by the tobacco industry.

**4.1.2. Not Responsive.**

**4.1.2.1.** Compliance with the MSA.

Attached is the approved response to questions about Winston Racing Nation compliance with the MSA.

**4.2. Example Documents.** The following documents (identified by Document ID) have been assessed as responsive by the Topic Authority. These documents can be viewed by going to Legacy Tobacco Documents Library webpage (<http://legacy.library.ucsf.edu/>) and searching for the appropriate Document ID.

- aah36c00
- cnj08c00
- cpg03c00
- gra62d00
- hyj93a00
- mgf32c00
- mjx86c00
- mte31c00
- urx82c00
- wfj82a00

## **5. Further Questions and Clarifications**

### **5.1. What is the starting date for relevant documents? Seems like some time before the beginning date of the time period for the class action, but how long before is unclear.**

There is no designated starting date for the document request. If the document is relevant to the request, it should be produced regardless of date.

### **5.2. If a document seems to be relevant, and there are several copies of the same document with additional material attached and the additional material is not relevant, is the document still relevant or is having produced the document once sufficient? We assume that if the additional is also relevant, then both the original document and the copy with (relevant) addition are relevant.**

Produce each instance found of an identified relevant document, even if additional material attached (as described in your question) is not relevant. Your assumption stated above is correct.

### **5.3. Is topic 102 limited to outdoor advertising? The question is on the outdoor part of the term not the advertising part of the term.**

Topic 102 is not limited to outdoor advertising, but should be interpreted to include any type of marketing or advertising.

### **5.4. Do multiple copies of the same document have to be produced for each document ID number they have?**

Yes – produce each instance found of an identified document.

### **5.5. Is a document which addresses advertising but not the MSA relevant or not?**

Documents that discuss advertising or marketing restrictions should be considered relevant regardless of whether they mention the MSA.

### **5.6. How do we interpret the Safe Harbor Provision paragraph? Is it difficult to claim that defendants violated forward looking statements and why?**

This provision is not relevant to the document request. Documents responsive to the topic should be provided without regard to the Safe Harbor provision.

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**1. Introduction – The Purpose and Use of this Document**

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The Interactive Task tests how effective participating teams are at replicating a Topic Authority’s conception of relevance across a test population of documents.<sup>1</sup> In creating a sample on the basis of which the teams can be evaluated, it is vital that the documents in the sample be reviewed in accordance with the Topic Authority’s conception of relevance. The criteria specified here represent the Topic Authority’s conception of relevance and are the criteria by which assessors should judge the relevance of the documents they review.

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Please note that this document is intended to provide topic-specific guidance for determining relevance. Guidance on general procedures for conducting the assessment exercise is provided in a companion document (the “How To’ Guide for Assessors”). Assessors with any questions, procedural or topic-specific, should not hesitate to email their questions to Bruce Hedin.<sup>2</sup>

**2. Statement and General Characterization of the Topic**

The document request that is the basis for Topic 103 is stated as follows (see Complaint I).

All documents which describe, refer to, report on, or mention any “in-store,” “on-counter,” “point of sale,” or other retail marketing campaigns for cigarettes.

This request targets documents that discuss retail marketing campaigns for cigarettes. This includes discussions of campaigns by name; discussions of specific retail-focused marketing and promotional activities, such as coupons, special offers or giveaways; and discussions of programmatic or targeted marketing efforts aimed at specific geographic, demographic, or other groups.

**3. Guidelines for Determining Relevance**

**3.1. Relevant Subject Matter.** Documents that discuss, or are evidence of, the following activities or subject matter are to be considered relevant for the purposes of this exercise.<sup>3</sup>

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<sup>1</sup> For purposes of this document, the words “relevant” and “responsive” are interchangeable.

<sup>2</sup> Email: bhedin@h5.com.

<sup>3</sup> Note that, in the following, lists specified under higher-level nodes (e.g., under 3.1.4, the list beginning with 3.1.4.1) are intended to illustrate specific instances of the activity or subject matter identified in the parent node and are not intended to be exhaustive; activities or subject matter of a type with those contained on the list could also be responsive.

- 3.1.1. Specific cigarette retail marketing campaigns.<sup>4</sup>
- 3.1.2. Cigarette retail marketing activities explicitly associated with campaigns.<sup>5</sup>
- 3.1.3. Sales promotions for cigarettes.
  - 3.1.3.1. Point of sale (“POS”) promotions
  - 3.1.3.2. Discounted price offers
  - 3.1.3.3. Special offers
  - 3.1.3.4. Merchandise offers or giveaways
  - 3.1.3.5. Contest entries
- 3.1.4. Cigarette retail marketing explicitly targeted at market segments.
  - 3.1.4.1. Demographic groups
  - 3.1.4.2. Geographic region
  - 3.1.4.3. TV, radio, print, or other advertising
- 3.1.5. Goals for retail marketing of a specific cigarette brand.
  - 3.1.6.1. Affect brand awareness
  - 3.1.6.2. Affect brand market share
  - 3.1.6.3. Affect brand’s competitive advantage
  - 3.1.6.4. Affect brand positioning
  - 3.1.6.5. Affect brand purchasing behavior of consumers

**3.2. Definitions.** Key elements of the topic are defined as follows (assessors should also consult the definitions included in the mock complaint and request for production for further definitions).

- **Campaign** – an actual or proposed systematic course of activity, coordinated effort, program, plan, policy, etc., pursuant to which retail marketing activities are undertaken.
- **Retail Marketing** – the promotion of a product aimed at attracting and keeping customers or at generating or maximizing a competitive advantage over competitors. Examples of retail marketing include, but are not limited to, advertising, promotions, merchandising, sponsorships, events, packaging and labeling, deliberate distribution or placement of products, or discounted pricing.
- **Sales Promotions** – all retail marketing activities that offer an incentive to the consumer to purchase a product.

**3.3. Additional Guiding Principles**

- On date restrictions. There are no date restrictions that apply to this topic. Assess a document as responsive (or not) regardless of its date.

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<sup>4</sup> “Specific” is used in this section to indicate that an actual instance of a relevant object or activity needs to be discussed. For example, Section 3.1.5 requires discussion of “a specific cigarette brand”. For this provision, a discussion of a company’s “brands” in general would not be sufficient; rather, an indication of an individual brand, such as Marlboro, would be required. Specific retail marketing campaigns can be identified either by a specific campaign name, or by a slogan, a central image, character, or concept, with accompanying “campaign” language.

<sup>5</sup> “Explicit” is used in this section to indicate that the relevant practice or association must be linguistically manifested within the document. For example, many marketing activities can be inferred to be associated with a campaign. However, to be relevant under 3.1.2 (“Cigarette retail marketing activities explicitly associated with a campaign”), the association between the marketing activity and the campaign must be discussed in the document. A retail marketing activity alone would not be enough.

- On tobacco products other than cigarettes. The request is focused on campaigns for cigarettes (and not for other tobacco products). Campaigns, e.g., for cigars or smokeless tobacco should not be considered responsive.
- As explained in the "How-To" guide, the Topic Authority, in this exercise, plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh his/her obligations under the document request, as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is the topic definition provided in this document. While assessors may find, in some instances, that the definition of responsiveness includes some documents that do not appear to bear on the allegations in the Complaint, assessors should keep in mind that the Topic Authority has defined the topic somewhat broadly so as to minimize risk of challenge or sanction. Assessors should adhere to the guidelines in this document even if the guidelines call for counting a document as relevant when it does not appear to be relevant to the litigation (for example, a document circulated internally at a cigarette manufacturer discussing the merits of a proposed new regulation on the distribution of free cigarette samples in the vicinity of a high school).

#### 4. Example Excerpts and Documents

**4.1. Excerpts.** The following excerpts illustrate the kinds of subject matter that are, and are not, relevant to Topic 103.

**4.1.1.** Illustrating specific cigarette retail marketing campaigns (see 3.1.1 above).

##### 4.1.1.1. Responsive

Even though Parliament is a not a national brand, I'm sure you're familiar with its campaign "Out of the Clear Blue" which is being used to support the introduction of the full flavor packings.

"No Bull" includes billboards and POS materials.

##### 4.1.1.2. Not Responsive

"Basic!"  
Feeling smart for saving money on the great taste of Basic? Try your hand at our brain twister above. And here's a clue; Keep it Basic.

**4.1.2.** Illustrating cigarette retail marketing activities explicitly associated with campaigns (see 3.1.2 above).

##### 4.1.2.1. Responsive

Retailer placement of DSD materials expected to be placed by first week of October.  
- First kit (automatically direct store delivered from Winston-Salem) is scheduled to arrive in store the week of 9/21/19 for placement by retailer by the first week in October. It contains: 1 catalog display, 50 catalogs, 1 laminate, 2 wobblers, 2 one-sided posters, and 2 starbursts. It will also contain a letter/instruction sheet for retailers.

**4.1.2.2. Not Responsive**

As I mentioned, the following individual called to request that a Market Place Graphics poster be placed adjacent to his retail store:

Mr. Bob Poke  
Old Tyme Smokes  
2561 Countryside Blvd.

Completed review of positioning of RJRT magazine advertising for the year 1984. Results show that 71% of all ads were placed in preferred positions. This represents an increase from 61% in 1983 and exceeds our goal of 65%.

**4.1.3. Illustrating sales promotions for cigarettes (see 3.1.3 above).**

**4.1.3.1. Responsive**

**BONUS OFFER**  
Send us an empty pack of any cigarette brand along with your name, address and phone number and we'll send you a coupon.

Mail to:  
**BONUS COUPON OFFER**  
P.O. Box 2890, Hillside, NJ 07205

**NEWPORT**  
**TUBE SOCKS PROMOTION**  
**CONSUMER OFFER: Free Pair of Tube Socks with the purchase of NEWPORT.**

**4.1.4. Illustrating cigarette retail marketing explicitly targeted at market segments (see 3.1.4 above).**

**4.1.4.1. Responsive**

Attached is the proposed media plan for the Raleigh trucker assault program. Those publications not recommended were rejected primarily because of their coverage of executives of trucking firms. Our target in this effort is the long-haul truck driver.

CAMEL will expand its use of national magazines to 38 titles with the addition of 6 new titles versus 1988.

**4.1.4.2. Not Responsive**

Our advertising is targeted at smokers and is intended to encourage switching from competitive brands.

THE ADVERTISING THAT WE RUN FOR MOST OF OUR BRANDS IS PROBABLY REGARDED AS RELATIVELY LOW KEY. IT'S SELDOM GOING TO INSPIRE SOMEONE TO RUSH OUT TO THE CORNER GROCERY TO BUY A PACK, BUT OUR PRESENCE AND OUR

CONSISTENT MESSAGE ARE THERE, AND IF WE HAVE PRESENTED A PERSONALITY THAT IS BASICALLY APPEALING AND COMFORTABLY MOTIVATING, ONE DAY YOU'LL TRY US.

**4.1.5.** Illustrating goals for retail marketing of a specific cigarette brand (see 3.1.5 above).

**4.1.5.1.** Responsive

NOW's primary goal in 1981 is to maintain its lowest tar positioning and awareness in the face of the major competitive activity anticipated in the "Ultra Low Tar with Taste" Category.

**4.1.5.2.** Not Responsive

LUKE'S TEST MARKET PERFORMANCE  
JULY  
Brand Share: .24%  
BY JULY  
Goal: ..42%

**4.2. Example Documents.** The following documents (identified by Document ID) have been assessed by the Topic Authority. These documents can be viewed by going to Legacy Tobacco Documents Library webpage (<http://legacy.library.ucsf.edu/>) and searching for the appropriate Document ID.

**4.2.1.** Responsive

- aaa41d00
- caw92a00
- hyj76d00
- ift91d00
- kgy15a00
- nrk03a00
- qjd44d00
- qxu09a00
- wla15d00

**4.2.1.** Not Responsive

- kqa60c00
- vpc16e00
- vqm13c00

**5. Team Questions and Clarifications**

**5.1. Is there a time period during which documents could be relevant? We're thinking that 1 Jan 1992 to 1 Sept 2002 appear to limiting dates, but the starting date could be pushed earlier by some amount.**

By its terms, the Request for Production seeks "all responsive documents," without a date restrictor. Therefore, I would produce all documents in the document population responsive to Topic 103 without regard to date.

**5.2. We understand that a relevant document should at least mention “retail marketing campaigns for cigarettes,” and marketing efforts done in stores, on counters, or at points of sale are some specific methods of retail marketing campaigns. In other words, there may exist other methods of retail marketing campaigns. Are we correct?**

I do not believe that a relevant document has to specifically mention one or more of the words “retail marketing campaign for cigarettes,” in order to be responsive. For example, if there was a proposal that discussed giving free “Mickey Mouse Smokes” t-shirts away to adolescent smokers get them to purchase cigarettes, or a plan for distribution of free cigarette samples at a concert event, or free cigarette coupons in Dallas Race Car Magazine for a particular month, all of these would likely constitute retail marketing campaigns. Yes, there may exist many other methods of retail marketing campaigns.

**5.3. Will mailing small samples of cigarettes to a selected group of consumers by a tobacco company fall into the category of “retail marketing campaigns?” What other retail marketing campaigns could you suggest for us if we’re allowed to ask so?**

Yes. I would say that in addition to the above things, other programmatic efforts aimed at targeting a particular demographic group would constitute marketing campaigns, as would promotions, two-fers, freebies, etc.

**5.4. Does the word “cigarettes” in the topic specifically mean cigarettes or is it broad enough to include other kinds of tobacco products?**

Cigarettes specifically means cigarettes. I would not consider campaigns for cigars or smokeless tobacco to be responsive.

**5.5. I understand that “retail marketing” is a pretty commonly seen term. However, is there anything unique about retail marketing/advertising in the tobacco industry? I know that advertising of cigarettes on TV in this country is not allowed. It seems to me that almost all the activities of marketing/advertising cigarettes that I can think of fall into the category of “retail marketing/advertising.” Could you please give me some counter-examples of cigarette marketing/advertising that are not **\*\*retail\*\*** marketing/advertising? Does the word retail in this topic imply that cigarette consumers must be directly involved in such retail marketing activities?**

There could be cases (and I have seen examples in the document population) where a cigarette manufacturer discusses retail marketing activities with its retail partner, that do not mention the consumer, for example, “To be a member of our Retail Partners Program, your store has to be such and such size, and you have to have such and such counter space and display areas available.” I do not think these types of communications would be responsive, although they might use the words “retail” and “marketing.” On the other hand, if the communication said “Next week we will be sending you the October promotional materials for the Two-Packs-for-Price-of-One Program, please make sure you put them on the display counter by Tuesday,” that would be responsive. I think the communication would need to refer or relate or imply some distribution to customers and a particular program or campaign to be responsive. That could even be something like “The signs must be set at a height of 4 feet or below, so our adolescent purchasers can see them.” If the communication is between the tobacco company and the store and does not relate or refer to consumers or to a specific program, it would probably not be responsive even though it might discuss retail marketing activities such as rack space.

**5.6. If a document is a cigarette retail advertisement, is it responsive? For example, it might be a poster that will be set up in a retail store, but the document does not say anything about the marketing activity?**

A cigarette retail advertisement may be responsive to Topic 103, but does not always have to be. For example, we know that “Marlboro Man” and “Joe Camel” were big marketing campaigns, so that any advertisements related to them would likely be responsive. A document discussing a plan to run an ad in Dallas Racecar Drivers Magazine each month for the fourth quarter of 2002 and attaching a copy of the ad would likely reflect a marketing campaign. I think that either the ad itself would need to reflect a particular (known) campaign, or the ad would need to appear in some context that suggested or implied that it was part of a campaign to be responsive. I am not sure that every ad alone by itself reflects a campaign.

**5.7. There are many documents in the collections that are complaint letters from consumers to tobacco companies because, e.g., a consumer was unhappy with the way some cigarette coupons were distributed (too few coupons or the process was too complex). Are such documents relevant to the topic??**

If they refer to a specific program or promotion or campaign, they would certainly be responsive, for example, “The print on the coupon you published in Dallas Racecar Magazine in January was too small and I wanted two free packs instead of one,” would be responsive. Without seeing these, it is hard to give you a blanket response, but I would probably consider these as responsive unless they were extremely general in nature.

**5.8. We have a question about those scanned coupons in the collection. For example, a \$5 off per carton coupon with an expiration date, is it responsive or not?**

Technically, if it did not mention the promotion or campaign at all, it might not be, but for the purposes of this exercise I would consider these responsive because they imply a specific marketing campaign that led to the generation of the coupon especially if it has an expiration date.

**5.9. If a document talks only about government/company rules/regulations/restrictions of distributing free cigarette samples but not the specific distribution activities/campaigns, should it still be considered responsive?**

As a general matter, if the document was generated by the government and discusses rules or regulations relating to free samples of cigarettes, I would not consider this alone to be responsive to the Topic 103 request for documents relating to retail marketing campaigns. If the document was generated by a cigarette manufacturer and said that in connection with providing free samples of Merit or Pall Mall, we must follow the attached rules, I think it would be responsive. If the document was sent internally at Philip Morris to the entire Marketing Department and said “Attached are the new government rules regarding free cigarette samples,” I would probably err on the side of deeming that responsive.

**5.10. Are we correct that any documents that only talk about the general rules, regulations, codes, etc. concerning retail marketing of cigarette without referring to any specific retail marketing/advertising campaign, activity, or effort should be treated as non-relevant?**

I do not think a document has to identify a specific campaign by name to be responsive, for example, it need not say “Marlboro Man” on it. If it described activities that are generally understood to be part of a cigarette retail marketing campaign, that would be sufficient, for

example, freebies, promotions, two-for-ones, etc. As a practical matter, I do not think the document request (Topic 103) was directed at capturing government rules about marketing activities, but as a technical matter, if the documents discuss rules pertaining to things generally understood to be part of retail marketing campaign, I would produce them anyway. I would probably produce a document about the size of a poster at a point of sale, or where samples of cigarettes could be distributed. They do relate to known retail marketing activities, even if they don't refer to them specifically. And while the plaintiff probably is not particularly interested in these documents, I would probably produce them because I did not care and because I would not want to have to explain to the judge why I withheld them when they refer to things generally understood to be retail marketing activities.

## **6. Assessor Questions and Clarifications**

### **6.1. Would focus group test results count as a marketing campaign? I'm assuming not, but want to make sure.**

THEY COULD, FOR EXAMPLE, IF THE DOCUMENT REFERRED TO A SPECIFIC CAMPAIGN, SUCH AS A FOCUS GROUP TO SEE HOW 30 YEAR OLD WOMEN IN DALLAS REACT TO "MARLBORO MAN" ADS, BUT NOT IF IT WAS A FOCUS GROUP ON HOW MINTY THE SAME WOMEN LIKE THEIR KOOLS.

### **6.2. What about in-store marketing that is Anti-Teen smoking? Is this a "retail" campaign?**

IT COULD BE. CAN YOU SHOW ME AN EXAMPLE OF SUCH A DOCUMENT?

=> Anti-Teen smoking campaign: [bhu72e00](#).

I WOULD DEFINITELY MARK THIS DOCUMENT AS RESPONSIVE. FOR EXAMPLE, IT REFERS SPECIFICALLY TO POP DISPLAYS AND SIGNAGE (pp.1, 8), DEVELOPING MECHANISMS TO MONITOR RETAIL SALES AGE COMPLIANCE AND DEMONSTRATE A REDUCTION IN SALES TO MINORS (p.6), FRESHENING EXISTING MATERIALS / DEVELOPING NEW MATERIALS AND RETAIL MASTERS LINKAGE (pp. 7, 8). IT REFLECTS A RETAIL MARKETING CAMPAIGN. THAT CAMPAIGN MAY BE TO REDUCE TEENAGE SMOKING, BUT TOPIC 103 BY ITS TERMS IS NOT LIMITED TO RETAIL CAMPAIGNS TO INCREASE SMOKING.

### **6.3. Is discussion of sponsorships (of events or sporting teams like NASCAR) relevant?**

IT COULD BE DEPENDING ON THE LEVEL OF DETAIL AND THE NATURE OF THE DISCUSSION. IT WOULD BE HELPFUL IF YOU SHOWED ME A SPECIFIC DOCUMENT.

I RECALL SEEING ONE DOCUMENT THAT JUST SAID SOMETHING LIKE "PHILIP MORRIS NO LONGER SPONSORS TENNIS MATCHES." THAT WOULD NOT BE RESPONSIVE, BUT A DOCUMENT THAT DESCRIBED A PLAN TO SPONSOR A SERIES OF NASCAR EVENTS TO INCREASE PENETRATION IN THE DALLAS MARKET WOULD BE RESPONSIVE.

=> Promotions/Special Events: [aei61d00](#); [dnr04c00](#).

[aei61d00](#) IS JUST BARELY (BORDERLINE) RESPONSIVE. PP. 17-18 IS WHAT TIPS ME MORE INTO THE RESPONSIVE CATEGORY THAN THE UNRESPONSIVE

CATEGORY, BUT I WOULD NOT HAVE BEEN DEVASTATED IF SOMEONE HAD MARKED THIS UNRESPONSIVE.

Dnr04c00 IS RESPONSIVE. IT SPECIFICALLY REFERS TO SIGNAGE, SAMPLING, BANNERS, ETC. ALL OF WHICH CONNOTE A RETAIL MARKETING CAMPAIGN.

- 6.4. Document aml25d00 has lots of demographic info and makes reference to marketing without implicating a particular campaign. I have marked it irrelevant. Was this correct?**

THAT IS INCORRECT. I WOULD CONSIDER THIS DOCUMENT TO BE RESPONSIVE.

THE DOCUMENT DOES NOT HAVE TO REFERENCE A PARTICULAR CAMPAIGN BY NAME. IT SHOWS SUFFICIENT NEXUS TO AN INTENTION TO MARKET A PARTICULAR SEGMENT OF THE POPULATION THAT I WOULD INCLUDE IT.

- 6.5. Document aod89e00 references coupons, but could easily be for non-retail campaign. Erring on the side of inclusiveness, I have marked it relevant. Was this correct?**

YES.

- 6.6. Really on the fence about Document bjd68c00. I've marked relevant but not very specific info at all.**

I WOULD HAVE MARKED THIS RESPONSIVE. IT SAYS ENOUGH TO SUGGEST IT IS RELEVANT AND I HAVE DEFINED THE TOPIC PRETTY BROADLY.

- 6.7. Single reference to Joe Camel in Document cgl76c00 (on p. 37, in context of discussion of the MSA). I've marked relevant, but questionable.**

I WOULD NOT HAVE MARKED THIS DOCUMENT RESPONSIVE. WHILE IT DOES REFERENCE "JOE CAMEL" THE DOCUMENT IT NOT ABOUT RETAIL MARKETING CAMPAIGNS, BUT RATHER A DESCRIPTION OF THE MSA ADVERTISING RESTRICTIONS.

- 6.8. gyr05d00 doesn't reference a specific campaign, but the concert seems to be a campaign of its own. There are some demographic references. Marked relevant (inclusiveness rule); is this correct?**

I WOULD AGREE. IT IS JUST BARELY (BORDERLINE) RESPONSIVE.

- 6.9. tnv85d00 is a tough call. This would seem to fall into 3.1.4.1, since there's an explicit demographic group targeted. The problem is that the marketing motive isn't explicit. I think it can be inferred with enough certainty that I've marked it relevant; is this correct?**

I AGREE THIS IS A VERY TOUGH CALL. IT DOES REFER TO THE "CAMEL WORLD CAMPAIGN" IN THE FIRST PARAGRAPH OF THE FIRST PAGE AND THE "CAMEL CAMPAIGN" IN THE SECOND PARAGRAPH OF THE SECOND PAGE. I DON'T KNOW IF THOSE ARE RETAIL MARKETING CAMPAIGNS, BUT IF SO, THE DOCUMENT WOULD BE RESPONSIVE BY VIRTUE OF ITS REFERENCE TO A

SPECIFIC KNOWN CAMPAIGN. IF THE REVIEWER HAS A REASON TO BELIEVE THAT "CAMEL WORLD CAMPAIGN" OR "CAMEL CAMPAIGN" ARE RETAIL MARKETING CAMPAIGNS BASED ON OTHER DOCUMENTS HE OR SHE HAS SEEN, I WOULD DEFINITELY MARK THIS AS RESPONSIVE. OTHERWISE, I AGREE WITH HIM OR HER THAT IT WOULD BE THE REASONABLE INFERENCE TO ASSUME THAT THEY REFER TO MARKETING CAMPAIGNS AND MARK THE DOCUMENT AS RESPONSIVE, BUT AGAIN, I WOULD NOT HAVE BEEN COMPLETELY DEVASTATED IF THE REVIEWER HAD MARKED THIS AS UNRESPONSIVE, SINCE IT IS BORDERLINE.

- 6.10. Would a document that discussed or reported on the content of discussions at a hearing before Congress (or any other government body) be responsive:**
- (a) if the discussions referred to a specific marketing/advertising campaign?**
  - (b) if the discussions referred generally to marketing efforts and strategies but did not refer to a specific campaign?**

This is somewhat difficult to answer in the abstract without seeing exemplars, but here goes:

As to (a), I believe that this type of document referring to a specific, known marketing campaign would likely be responsive.

As to (b), that is much harder to respond to in the abstract. If it talked about point-of-sale signage for cigarettes or cigarette coupons or cigarette samples, it might very well be responsive. These are activities that generally pertain to cigarette marketing campaigns, but I would really need to see the document because if it was just about ads in general, it probably would not be responsive.

**TREC-2008 LEGAL TRACK – INTERACTIVE TASK**  
**Topic-Specific Guidelines – Topic 104**  
**Updated: 10/26/08**

**1. Introduction – The Purpose and Use of this Document**

This document is intended to clarify the intent and scope of Topic 104 featured in the TREC-2008 Legal Track’s Interactive Task. The document is a summarization of the guidance that the Topic Authority for Topic 104 gave to the participating teams in the course of their work on the task. It is intended to guide the volunteer assessors in their review of documents contained in the evaluation samples.

The Interactive Task tests how effective participating teams are at replicating a Topic Authority’s conception of relevance across a test population of documents.<sup>1</sup> In creating a sample on the basis of which the teams can be evaluated, it is vital that the documents in the sample be reviewed in accordance with the Topic Authority’s conception of relevance. The criteria specified here represent the Topic Authority’s conception of relevance and are the criteria by which assessors should judge the relevance of the documents they review.

While the criteria specified in this document will go some distance down the path of clarifying the scope of the topic, it is to be expected that assessors will, in the course of their review, encounter documents that prompt questions that are not addressed by the criteria already developed. In such instances, the assessors are asked to submit their questions to Bruce Hedin, who, after consulting with the Topic Authority, will report to all assessors assigned to the topic the Topic Authority’s response.

Please note that this document is intended to provide topic-specific guidance for determining relevance. Guidance on general procedures for conducting the assessment exercise is provided in a companion document (the “How To’ Guide for Assessors”). Assessors with any questions, procedural or topic-specific, should not hesitate to email their questions to Bruce Hedin.

**2. Statement and General Characterization of the Topic**

The document request that is the basis for Topic 104 is stated as follows (see Complaint I).

All documents discussing or referencing payments to foreign government officials, including but not limited to expressly mentioning “bribery” and/or “payoffs.”

This request targets documents that discuss, or are evidence of, payments by a defendant company, or an agent of a defendant company, to a foreign government official. Payments for both legitimate and illegitimate purposes are within the scope of the request; in-scope payments are not restricted to those that represent, or could be thought to represent, bribery.

**3. Guidelines for Determining Relevance**

**3.1. Definitions.** Key elements of the topic are defined as follows (assessors should also consult the definitions included in the mock complaint and request for production for further definitions).

- **Payment** – a transfer of money from one party to another; non-monetary transfers (gifts, services, etc.) are not within the scope of payments that are relevant to this request.
- **Foreign Official** – an official of a recognized state other than the U.S.; officials of multinational organizations (e.g., WHO) are not within the scope of foreign officials relevant to the request.

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<sup>1</sup> For purposes of this document, the words “relevant” and “responsive” are interchangeable.

- **Government Official** – an official discharging core executive, legislative, or judicial functions of government; officers of state-owned or state-sponsored entities (e.g., a state-owned monopoly or a state-funded research institute) are not considered within the scope of government officials relevant to the request.

### 3.2. Guiding Principles

- On legitimate/illegitimate payments. The actual or apparent legitimacy (or illegitimacy) of a payment has no bearing on whether a payment is responsive to the request. All payments to foreign government officials, both legitimate (e.g., taxes, tariffs, licensing fees, etc.) and illegitimate, are within the scope of the request, and documents referring to them should be considered responsive.
- On payments. The only payments within the scope of the topic are monetary payments. Transactions involving the transfer of non-monetary considerations, gifts, or services are not within the scope of the request, and documents referring to them should not be considered responsive.
- On source of payment. The source of a payment must be a defendant company or one of its agents. A “defendant” is defined as specified in the Request for Production: “for the purpose of the TREC 2008 legal track, the term ‘defendant’ includes the named company above as well as all other companies whose records are found in the IIT CDIP v. 1.0/TREC Legal Track collection database (‘TREC legal database’).”
- On foreign officials. The only officials within the scope of the topic are officials of recognized states other than the U.S. Officials of multinational organizations are not within the scope of the topic, and documents referring to payments to them should not be considered responsive.
- On government officials. Government officials discharging core executive, legislative, or judicial functions of government are within the scope of the request. Officers of state-owned or state-sponsored entities (e.g., a state-owned monopoly or a state-funded research institute) are not considered within the scope of the request, and documents referring to payments to them should not be considered responsive. Note, however, that payments to non-governmental intermediaries that are intended for eventual conveyance (via the intermediary) to a government official proper are within the scope of the request.
- On *de minimis* restrictions. There are no *de minimis* restrictions on the topic. Any payment, no matter how small, to any government official, no matter what position in the organizational hierarchy, is within the scope of the request, and documents referring to such payments should be considered responsive.
- On date restrictions. Documents that demonstrably originate prior to January 1, 1992 are not within the scope of the request and should not be considered responsive; all others are in-scope. If a document does not contain a valid indication of date of origin (whether in the metadata or in the text of the document), and is otherwise responsive, it should be counted as responsive.
- As explained in the "How-To" guide, the Topic Authority, in this exercise, plays the part of a senior attorney overseeing a large document production. An attorney in that role must weigh his/her obligations under the document request, as well as the risks of having the completeness and accuracy of the production challenged in court. The outcome of these considerations is the topic definition provided in this document. While assessors may find, in some instances, that the definition includes some documents that are not “interesting” or “meaningful” for the associated litigation, assessors should keep in mind

that the Topic Authority has defined the topic in this way so as to minimize risk of challenge or sanction. Assessors should adhere to the guidelines in this document even when the guidelines call for counting a substantively uninteresting document as relevant.

#### **4. Team Questions and Clarifications**

**4.1. We are the defendant, so we are working as if we own the 6.9 million documents from CDIP (Illinois Institute of Technology corpus) and that is the entire collection to search from. Is that correct?**

Correct.

**4.2. We should ignore references to certain facts in the complaint such as “New Searchland”, “Echinoderm” etc. Is that correct?**

Correct.

**4.3. We are not sure what to do with specific time periods such as January 1, 2002, June 17, 2002 and the time period January 1, 1992 – September 1, 2002 etc. What guidance can give on these points?**

I do not believe specific dates will necessarily have any relevance. Time periods can be used to limit the scope of the search.

**4.4. The complaint makes reference to the Foreign Corrupt Practices Act. Would knowledge of the provisions of this act be helpful in determining a document’s responsiveness the request?**

Knowledge of the provisions of this act is not required for assessing relevance to the request.

#### **5. Assessor Questions and Clarifications**

**5.1. For Topic 104, are we concerned only with 'actual' transactions? Or are we also concerned with statements of general company policies? For example, would documents that reference 'not bribing or making payments to company officials' as appropriate standards for employees, but that do not refer to any actual action or transaction, be considered relevant for Topic 104?**

Documents that reference 'not bribing or making payments to company officials' as appropriate standards for employees, but that do not refer to any actual action or transaction, should be considered relevant for Topic 104.