

A novel tobacco lawsuit dismissed

It contended that blacks' rights were violated when firms targeted them for the sale of menthol cigarettes.

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INQUIRER STAFF WRITER

A federal judge yesterday dismissed a novel lawsuit filed last year that contended the tobacco industry violated the civil rights of African Americans by targeting black communities for the sale of what it called more dangerous menthol cigarettes.

U.S. District Judge John R. Padova ruled that federal civil rights laws do not bar tobacco product manufacturers from targeting a specific group of potential consumers — in this case African Americans — in their advertising and marketing campaigns.

Padova wrote that the plaintiffs "have cited no case law, and the court can find no basis for creating a cause of action ... to fit this case. Holding that [tobacco companies] could limit plaintiffs' freedom ... simply by targeting plaintiffs with intensive advertising that caused [them] to choose ... dangerously defective mentholated tobacco products would require a radical departure from the jurisprudence of [federal civil rights laws], a departure this court is not prepared to make."

Stephen A. Sheller, a Center City attorney specializing in tobacco litigation, who was involved in filing the lawsuit, said he and his clients would study the opinion further before deciding whether to appeal.

'Not surprised'

"In a way I'm not surprised, because we knew that this was a novel theory of law," Sheller said. "It's unfortunate that there is no remedy the courts are willing to give to a targeted group whose members are being sold a product we believe may be even more dangerous than regular cigarettes."

Michael York, a Washington, D.C., lawyer for Philip Morris Inc., said, "It's a great opinion, and we're very gratified when the court looks at the law and the facts and comes to the right decision." Philip Morris was the lead defendant among 12 tobacco companies or industry groups named in the suit.

The proposed class-action suit was filed last October by the Rev. Jesse Brown, a Lutheran pastor and acting executive director of the national Association of African Americans for Positive Imagery, which has fought for most of this decade the marketing of fortified tobacco and alcohol products to the nation's black communities.

Pastor Brown could not be reached for comment yesterday.

The lawsuit contended that menthol cigarettes are more dangerous than other types because when burned, the menthol compounds create additional toxic substances. Some government studies also have suggested that menthol's soothing effect makes it easier for people to smoke longer and inhale more deeply, the suit said.

Suit: 45-year target

The lawsuit said that for 45 years the tobacco industry had targeted black communities through newspaper and billboard advertising for its menthol and higher tar and nicotine brands.

The result of this targeting, the lawsuit said, is that while African Americans comprise about 10 percent of all U.S. smokers, they represent about 30 percent of menthol smokers and are 30 percent more likely to die of smoking-related illnesses than whites.

What made this lawsuit unusual was that, unlike most antismoking legal action under product-liability or personal-injury law, the African American lawsuit was founded on the original Civil Rights Acts of 1866 and 1870, passed to prevent the victimization of former slaves during Reconstruction.

Civil rights consultants had said that there was legal precedent for extending the laws' protections to the realm of commerce and contracts and thus, possibly, to bar companies from targeting African Americans with dangerous products.

Sheller acknowledged that if an appeal were filed, its chances of success would be murky. The U.S. Court of Appeals for the Third Circuit last year affirmed the dismissal of a proposed class-action suit to provide lifelong medical monitoring for more than two million Pennsylvania smokers.

And in March, the Third Circuit affirmed the dismissal of a suit against tobacco firms by seven Pennsylvania union health and welfare funds seeking reimbursement for medical claims paid for members suffering from smoking-related diseases.