

Court overturns tobacco company victory over FDA on menthols

January 15 2016, by Matthew Perrone

A federal appeals court has ruled that tobacco companies had no basis to challenge a Food and Drug Administration report on menthol cigarettes, which the industry alleged was written by experts with conflicts of interest.

The decision by a three-judge panel overturns a lower court ruling that barred the FDA from using the report and ordered the agency to reform its committee of tobacco advisers.

The 2011 report from the agency's Tobacco Products Scientific Advisory Committee concluded that menthol flavoring leads to increased smoking rates, particularly among teens, African Americans and those with low incomes. The report said removing the flavoring would make it easier for some smokers to quit.

Cigarette makers Lorillard Inc. and Reynolds American Inc. sued the agency, alleging conflicts of interest by several members who had previously testified against tobacco companies in court.

But Judge Stephen Williams, writing for the court, states that the companies had no legal basis to challenge the makeup of the committee. Williams rejected company arguments that they could be damaged by the apparent conflicts as "too remote and uncertain." The opinion was issued Friday in the U.S. Court of Appeals for the District of Columbia Circuit.

Despite the victory for the federal government, the ruling may have limited impact on the FDA or its panel. Last year the FDA announced that four members of its tobacco products advisory panel had either resigned or were removed, following the previous court ruling against the agency.

In 2013, the FDA conducted its own review of menthol cigarettes, concluding they pose a greater public health risk than regular cigarettes. But it did not make a recommendation on whether to limit or ban them.

Reynolds American acquired Lorillard last year in a deal worth \$25 billion. Reynolds, which is based in Winston-Salem, North Carolina, now sells Lorillard's top-selling menthol brand, Newport cigarettes.

A spokesman for Reynolds declined to comment, noting "this is pending litigation."

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