THE UNITED STATES ISN'T SWEDEN:

Why UST's Efforts To Make Comparative Health Claims, In The Continued Absence of FDA Regulation of All Tobacco Products, Won't Work And Threatens Public Health

The United States Smokeless Tobacco Company (UST) has sought authority to make comparative health claims that smokeless tobacco is a "reduced risk alternative" to cigarette smoking.[1] This is the same company that, on February 5, 2002, in a letter to the U.S. Federal Trade Commission (FTC) seeking permission to make comparative health claims, concluded that, "… *it is USSTC's position that smokeless tobacco has not been shown to be a cause of any human disease* [emphasis added]."[2] UST subsequently withdrew its petition for an advisory opinion from FTC and has lobbied Congress for similar authority. UST then reiterated its position on the risks associated with smokeless tobacco in its *2005 Annual Report* where it stated, "*In light of the scientific research taken as a whole, the Company does not believe that smokeless tobacco has been shown to be a cause of any human disease*…[emphasis added]"[3]

These statements by UST – which appear to suggest that it is their corporate opinion that smokeless tobacco is a safe product, not just a "safer" or "reduced risk" product compared to smoking - combined with its expressed desire to make comparative health statements about smokeless tobacco products relative to smoking, point to the compelling need for effective regulation of all tobacco products and associated health and marketing claims.

In arguing for its case with the FTC and before Congress, UST has pointed to the experience in Sweden with a type of smokeless tobacco product known as "snus" ("snus" means smokeless tobacco in Swedish) to make its case for U.S. approval for UST to make comparative health claims in the advertising and marketing of its products. The use of data from Sweden to make the case for comparative health claims is problematic for several reasons:

- Smokeless tobacco products sold in the United States and Sweden are substantially different.
- The regulation of smokeless tobacco products in the U.S. and Sweden differs dramatically.
- The marketing and advertising for smokeless tobacco products are substantially different in the two countries.

The products are different

Smokeless products sold in Sweden are manufactured according to Sweden's laws governing food[4] and must meet additional industry established quality indicators (known as the Gothiatek system[5]) involving ingredients and measurements for harmful elements such as tobacco specific nitrosamines (TSNAs) and other toxins and carcinogens. Products that have been subjected to this process have been demonstrated to be lower in TSNA levels (e.g., some Swedish brands have been found to possess only 2 percent of the TSNA levels of their U.S. counterparts) and maintain these low levels over time.[6] In contrast, products sold in the United States have no uniform manufacturing code and have been shown to contain significantly higher levels of carcinogenic substances, including TSNAs, which, unlike their Swedish counterparts, have been found to increase over time.[7] As a result, ***U.S. smokeless tobacco products have been found to pose serious health risks and are a known cause of cancer***.[8]

Regulation is different

Sweden has a rigorous system of controls over the manufacture, shipping and storage of smokeless tobacco.[9] As a result, both the Swedish health care authorities and consumers know how products such as snus are made, what is in the product, and how it is shipped to and stored by retailers. In comparison, ***there is no regulation of smokeless tobacco products in the United States.***

Marketing and advertising is different

Sweden does not permit the marketing and advertising of snus or any other tobacco product.[10] In contrast, ***there are very few restrictions on advertising of smokeless tobacco products in the United States***. While FTC advertising rules prohibit ads that are false and misleading, this has not prevented ads from appearing that appeal to children (e.g., Rooster). Further, there is no independent,

regulatory authority with expertise in public health (e.g., the U.S. Food and Drug Administration) reviewing marketing and advertising by UST or other smokeless manufacturers to ensure that reduced risk claims do not result in more users of smokeless tobacco, fewer people making quit attempts, and more young people initiating the use of smokeless. In fact, despite the restrictions placed on youth advertising by the Smokeless Tobacco Master Settlement Agreement (STMSA) in 1998, UST has continued to heavily advertise in youth-oriented magazines. For the period 1997-2001, UST's expenditures in youth magazines increased from $3.6 million to $9.4 million, a 161% increase.[11]

Absent Effective FDA Tobacco Product Regulation, UST Should Not Be Permitted to Make Comparative Health Claims

UST should not be allowed to make comparative health claims about its products in the absence of an appropriate regulatory scheme that can provide for review and approval of the claim. The government, not the manufacturer, should decide what claims are appropriate and how and under what circumstances they can be made. Effective tobacco product **regulation** by the U.S. Food and Drug Administration must include the ability to set product performance standards for toxins and carcinogens in smokeless tobacco products and must regulate the ability and circumstances under which a health claim can be made in association with a specific product.

In addition, UST's request of the FTC and Congress is based on the assumption that cigarette smokers will switch to smokeless tobacco. However, there is little evidence that U.S. cigarette smokers become smokeless users; and UST has presented no research about how to attract existing smokers to switch to smokeless tobacco.[12] Absent a complete switch from cigarettes to smokeless, a comparative health claim is relatively meaningless and appears only to be a marketing ploy to attract new users and prevent current users, who are concerned about their health, from quitting. Until we have effective FDA regulation in place and it can be demonstrated that current cigarette smokers in the United States would in fact switch to smokeless tobacco, comparative health claims by UST or any other smokeless manufacturer should not be allowed.

Campaign for Tobacco Free Kids, May 16, 2006 / Ann Boonn

More Campaign factsheets on smokeless tobacco are available at http://www.tobaccofreekids.org/research/factsheets/index.php?CategoryID=33.

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[1] Letter to Secretary Donald S. Clark, U.S. Federal Trade Commission, dated February 5, 2002, from Daniel C. Schwartz, Partner, Bryan Cave LLP, http://www.ussmokeless.com/UST%20FTC%20Letter%20Final.PDF.

[2] Letter to Secretary Donald S. Clark, U.S. Federal Trade Commission, dated February 5, 2002, from Daniel C. Schwartz, Partner, Bryan Cave LLP, http://www.ussmokeless.com/UST%20FTC%20Letter%20Final.PDF..

[3] UST website (accessed May 8, 2006), *2005 Annual Report & 2006 Proxy UST*, see http://ccbn.mobular.net/ccbn/7/1301/1391/print/print.pdf.

[4] See Swedish Food Regulations at http://www.slv.se/engdefault.asp (website accessed April 16, 2003).

[5] Website describing Gothiatek system accessed March 24, 2003, http://www.gothiatek.com/index.asp?content_id=45&language=English.

[6] Brunnemann KD, Qi J, Hoffmann D, *Aging of Oral Moist Snuff and the Yields of Tobacco-Specific N-Nitrosamines (TSNA): Progress Report*, American Health Foundation, Valhalla, NY 10595, Prepared for the Massachusetts Tobacco Control Program, Department of Public Health, June 22, 2001, http://www.smokeless.de/news/24_09_02_nitrosamine_berichte_dr_brunnemann/docs/Aging_of_Oral_Moist_Snuff.pdf.

[7] Brunnemann KD, Qi J, Hoffmann D, *Aging of Oral Moist Snuff and the Yields of Tobacco-Specific N-Nitrosamines (TSNA): Progress Report*, American Health Foundation, Valhalla, NY 10595, Prepared for the Massachusetts Tobacco Control Program, Department of Public Health, June 22, 2001, http://www.smokeless.de/news/24_09_02_nitrosamine_berichte_dr_brunnemann/docs/Aging_of_Oral_Moist_Snuff.pdf.

[8] U.S. Department of Health and Human Services (HHS), *The Health Consequences of Using Smokeless Tobacco: A Report of the Advisory Committee to the Surgeon General*, Bethesda, MD, NIH Publication No. 86-2874, April 1986, http://profiles.nlm.nih.gov/NN/B/B/F/C/; National Institutes of Health, National Cancer Institute, *Smoking and Tobacco Control Monograph 2: Smokeless Tobacco or Health: An International Perspective*, September 1992, http://cancercontrol.cancer.gov/tcrb/monographs/2/index.html; National Toxicology Program, Public Health Service, HHS, *10th Report on Carcinogens: Revised December 2002*, December 2002, http://ehp.niehs.nih.gov/roc/tenth/profiles/s176toba.pdf; World Health Organization Scientific Advisory Committee on Tobacco Product Regulation, Scientific Advisory Committee on Tobacco Product Regulation Recommendation on Smokeless Tobacco Products, 2003.

[9] Data from Swedish website established by the Swedish Cancer Society, the National Institute of Public Health, the Heart-Lung Foundation and Doctors against Tobacco, http://www.tobaksfakta.org/default.aspx?id=4119.

[10] Data from Swedish website established by the Swedish Cancer Society, the National Institute of Public Health, the Heart-Lung Foundation and Doctors against Tobacco, http://www.tobaksfakta.org/default.aspx?id=4119.

[11] *Smokeless Tobacco Advertising Expenditures Before and After the Smokeless Tobacco Master Settlement Agreement: A Report of the Massachusetts Department of Public Health*, May 2002, http://tobaccofreekids.org/pressoffice/release503/smokeless.pdf.

[12] Tomar, SL, "Snuff Use and Smoking In U.S. Men: Implications for Harm Reduction," *American Journal of Preventive Medicine* 23(3), 2002.