

# PHILIP MORRIS U.S.A.

Corporate Affairs  
120 Park Avenue  
New York, New York 10017  
(212) 880-5000

## **PHILIP MORRIS INC. STATEMENT ON FDA'S MOTION TO DISMISS COURT CHALLENGE OF ITS ASSERTED JURISDICTION OVER CIGARETTES**

New York, October 6, 1995

The FDA's request that a federal judge throw out the tobacco industry's challenge of the agency's unprecedented usurpation of Congressional authority has no merit and is nothing more than an effort to avoid judicial review of the FDA's grab for regulatory power. If successful, the agency will not have won on the merits but will have gained unnecessary delay in the resolution of an important public issue.

In their motion, the government's lawyers have taken the position that the FDA has not actually decided that it has authority to regulate cigarettes, a position that is utterly inconsistent with recent public statements by both President Clinton and Commissioner David A. Kessler.

Our Constitution is based on the understanding that Congress makes the laws, the executive branch carries out those laws, and the courts review the actions of the other two branches of government. The FDA, however, wants to ignore Congress, make its own law and shield itself from the scrutiny of a court. This it cannot do.

If the FDA is successful in having this case dismissed, the issue will not go away. As the agency well knows, the case will inevitably return to the Court, and the issues will be the same.

If the FDA is successful, it will mean only that an issue that should be decided now will be put off for another day.

Philip Morris Inc. is confident that this case will demonstrate that the FDA's regulatory effort ultimately has nothing to do with youth and everything to do with an abuse of regulatory power.

2045555228