IAA SUBMISSION TO THE PUBLIC HEARINGS ON
THE WHO'S PROPOSED FRAMEWORK CONVENTION
ON TOBACCOCONTROL (FCTC)

12-13 October, 2000, Geneva

The purpose of this submission is to raise the concerns of the International Advertising Association (IAA) regarding the global ban on tobacco advertising, as outlined in the WHO’s proposed Framework Convention on Tobacco Control (FCTC).

The IAA has been operating for six decades and is the only global partnership in the marketing communications field -- advertisers, advertising agencies, the media and related industries and services. We are a truly international Association, with members and Chapters in 99 countries.

One of the main missions of the IAA and of its members is to promote the critical role and benefits of advertising as a vital force in all successful free-market economies and to advance and protect the cause of freedom of commercial speech and consumer choice, with advertising self-regulation being an integral part of that.

This lies at the heart of the IAA’s position against unwarranted restrictions and bans on the advertising and consumer freedom of choice of all product and service categories -- whether those are tobacco, alcohol, foods and beverages, pharmaceuticals, toys, the Internet or any other kind.

This means that in relation to this proposed Framework Convention, the IAA's interest has nothing to do with the promotion of smoking per se, but it has everything to do with the protection of the freedom of commercial speech and of consumer choice for products that are legal to produce, distribute and offer for sale.

The IAA also believes that imposition of regulations on the marketing of products and services and attempts to restrict the flow of information allowing consumers to make their own reasoned choices, should not be left to unelected national and international agencies and non-governmental organizations. That properly rests within the sovereign mandate of democratically-elected representatives of the people concerned.

National constitutions which guarantee freedom of expression, of commercial speech, of the press and similar privileges are fundamental to the free market economy. The IAA has published a study of 50 constitutions of countries that make up well over 90% of the world advertising expenditures in media and other forms. Freedom of expression is guaranteed in all of those.
And at the 1993 World Conference on Human Rights in Vienna, 171 countries reaffirmed their commitment to the Universal Declaration of Human Rights of the United Nations. Its Article 19 specifically recognizes the worldwide right to advertise and the right to choose:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Advertising is an integral part of all free-market economies. It enables consumers to compare brands and understand what is distinctive and innovative about different products, giving them the power to make informed purchase decisions.

It is enlightening to track the attitudes of consumers and measure the degree and extent to which the facts about the value of advertising and its contributions are perceived.

The research house Gallup International has carried out studies for the IAA through over 90,000 interviews in 70 countries – a minimum of 500 countries per country. The research records the degree of consumers' agreement with statements about advertising. For example:

Advertising has an important role to play in the health of a modern economy

Total Agreeing 89%

Advertising provides a wider choice of products and services and reduces my search time

Total Agreeing 88%

Advertising helps to improve the quality of goods and services by causing companies to compete more directly with one another

Total Agreeing 87%

Without advertising, newspapers and magazines and TV would be more costly or unavailable in such a wide variety.

Total Agreeing 91%

If a product is legal to sell, it should also be legal to advertise.

Total Agreeing 93%

Among the various forms of speech, commercial speech or advertising is often treated as being of less intrinsic value. But, Dr John Gray, the world-renowned political philosopher and Fellow of Jesus College, Oxford, argues convincingly that there is no difference between commercial speech and religious, political or artistic speech.

This is, he says, because none are purely informative and they all have a practical, persuasive aim. Therefore, there is no reason why commercial speech should be singled out for special treatment, such as restrictions or even bans.
Consumers have the right to decide for themselves about advertised products that are legally manufactured and sold. And there is absolutely no logic, says Gray, in a position which supports freedom of the flow of products in the marketplace, while at the same time restricting freedom of the flow of information to consumers about those very same products.

Distinguished commentator Dr. John E. Calfee, Senior Fellow at the Brookings Institution and Adjunct Scholar at the American Enterprise Institute, Washington D.C. has said:

"Advertising bans have been tried over and over again around the world with no verified effects either on smoking or the abuse of alcohol. It is time for public debate to move beyond simplistic approaches and recognize that such bans cannot reduce the problems they are intended to solve -- as both everyday experience and scholarly research demonstrate.

"To attack advertising simply reduces consumer information, but it is easier than designing real solutions to difficult social problems. To devote energy to new restraints on advertising is to take energy away from efforts that may provide a genuine benefit."

The IAA believes in the universal freedom to advertise all products and services which are legally produced and traded. The IAA further believes that the freedom to advertise legal products is indivisible, and that restrictions applied to one group of products will inevitably lead to the erosion of the freedom to advertise other products.

Consumer protection laws and the machinery for their enforcement, which provide a sensible protection of the public against false or misleading advertising claims are clearly appropriate. No responsible industry would object to them.

But when manufacturers of legal products are banned from advertising in certain media -- or even from advertising at all -- a completely different situation arises. It is the start of a process of restriction on the free flow of commercial information, a form of censorship which strikes at the very basis of a free-market economy and an open society.

For these reasons, the IAA considers a call for a ban on tobacco advertising an affront to commercial free speech of a product which is legally available in every country in the world.

The IAA strongly and respectfully urges governments and agencies such as the World Health Organization to preserve the freedom of advertising and thus the rightful freedom of consumer choice, with the advertising interests working with them, employing self-regulation arrangements within the appropriate legal framework.

Submitted on behalf of the International Advertising Association.

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