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Paper

**Tobacco Advertising & Promotion: The Need for a
Coordinated Global Response**

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EXECUTIVE SUMMARY

Globally, the tobacco industry spends billions of dollars each year on advertising. Recently disclosed industry documents reveal that the companies have carefully studied the habits, tastes and desires of their potential customers and then used that research to develop products and marketing campaigns aimed at them. Tobacco companies promote cigarettes through every conceivable medium, including radio, television, magazines and newspapers, billboards and, recently, the internet. As more and more countries impose total or partial bans on tobacco advertising, the industry has been adept at finding creative new ways to publicize their brands, especially with young people. Such “indirect advertising” methods include sponsoring sporting events and teams; promoting rock concerts and discos; placing their brand logos on t-shirts, rucksacks and other merchandise popular with children; and giving away free cigarettes and brand merchandise in areas where young people gather, such as rock concerts, discos and shopping malls.

Through both its direct and indirect advertising, the tobacco industry associates cigarette smoking with athletic prowess, sexual attractiveness, professional success, adult sophistication, independence, adventure and self-fulfillment. This constant barrage of misleading messages appeals to young people and encourages them to take up a behaviour harmful to their health.

The overwhelming majority of independent, peer-reviewed studies show that tobacco advertising not only leads to an increase in consumption but that young people, the source of replacement smokers, are heavily influenced by that advertising. The tobacco industry continues to vigorously fight effective advertising restrictions, often covertly, and questions these peer-reviewed studies. It asserts that the purpose of tobacco advertising is to encourage current adult smokers to switch brands. This claim is examined and, based on the economic evidence, dismissed.

Given the tobacco industry’s ability to circumvent and undermine national restrictions on advertising through such methods as sports sponsorship and satellite television, international agreement is needed on a global ban on advertising. The proposed framework Convention on Tobacco Control provides the best vehicle for accomplishing this.

The tobacco pandemic is a communicated disease. It is communicated through advertising, through the example of smokers and through the smoke to which non-smokers – especially children - are exposed. Our job is to immunize people against this pandemic.

-- Gro Harlem Brundtland, Director-General, World Health Organization, 1999¹

1. INTRODUCTION

In the most general sense, advertising and promotion is intended to attract attention to and thus stimulate demand for the advertised product. Economist Henry Saffer, a noted expert on the economics of advertising, defines advertising as “the use of media to create positive product imagery or positive product associations or to connect the product with desirable personal traits, activities or outcomes. Promotion, also called marketing, can be defined as the mix of all activities which are designed to increase sales.”²

Using the talents and creativity of their own staff, as well as outside public relations firms and advertising agencies, tobacco companies use every available medium to promote their product. Recently disclosed industry documents show that the companies have carefully studied the habits, tastes and desires of their potential customers. These include current smokers and people who have quit, as well as women, children and other sub-groups with historically low smoking rates. That research has then been used to develop products and marketing campaigns aimed at these groups. Says Richard Pollay, a marketing professor and well-known expert on tobacco industry advertising, “They tap experts, pre-test ad copy locally, and monitor it all very carefully. They don’t want to go in on a whim.”³

Images, slogans and sometimes music is combined to create advertising messages. Different techniques are used to reach the target audience, such as humor, exotic or unusual imagery, repetition or even so-called ‘slice-of-life’ settings (meant to depict real life situations).⁴ Cigarette advertising is not designed to convey information about the physical characteristics of the product, but rather to “create a fantasy of sophistication, pleasure and social success. This becomes the product ‘personality’ which the advertisers expect will appeal to specific segments of the market. In developing countries this imagery can be designed to associate the product with a glamorous fantasy of U.S. or European lifestyles. The relatively small expenditure on tobacco provides a link to this fantasy lifestyle.”⁵

2. GLOBAL ADVERTISING EXPENDITURES

Currently, there are no reliable estimates on how much the tobacco industry spends on advertising globally. At the national level, few countries require that tobacco companies divulge the amounts they spend on direct and indirect advertising, making a global estimate extremely difficult. Some data does exist on the industry level, but is not disaggregated and the sources are of varying quality. Most figures on ad spending come from the financial press, which in turn gets it from a variety of sources including polling firms, accounting agencies and industry associations. Ad spending varies from country to country depending on the degree of market penetration, level of investment and how strict national laws are regarding tobacco advertising.

The trade publication *Advertising Age* estimates that in 1996 U.S.-based multinational Philip Morris (the world’s largest multinational cigarette company, with global tobacco sales of over \$36 billion) was the world’s ninth largest advertiser, spending \$3.1 billion advertising its tobacco and food products. British American Tobacco (BAT) meanwhile (the world’s second largest cigarette company that year with global tobacco sales of over \$26 billion) was the world’s 45th largest advertiser, spending \$459 million on advertising, almost all of it on cigarettes.⁶ A 1998 survey by the publication found that cigarette companies were among the top ten advertisers in 18 out of 66 countries surveyed. The figures are for advertising spending, and do not reflect money spent by the industry on lobbying and public relations, some of which is also intended to promote their brands.⁷ In Russia, according to press reports, foreign cigarette companies are the largest advertisers on TV and radio, accounting for as much as 40% of all advertising in the country,⁸ while the two leading cigarette companies in Argentina spend \$125 million in marketing and advertising per year.⁹ A 1996 Coopers and Lybrand report prepared for advertising agencies in Hong Kong estimates that tobacco companies spent an estimated \$63 million on all forms of advertising and promotion in the territory in 1995.¹⁰

Advertising Expenditure in the United States

The United States is one of the few countries that requires the industry to disclose the amount it spends on advertising and promotion. Under the Federal Cigarette Marketing and Labeling Act passed by Congress in 1967 tobacco companies are required to report all domestic advertising expenditures, broken down by category. In 1997, the tobacco industry spent over \$5.66 billion in the United States on advertising and promotional expenditures, or more than \$15 million per day .¹¹ What’s more, advertising expenditures in the United States have skyrocketed in the past 30 years, even while the number of smokers has declined. Between 1965 and 1997, the number of smokers declined by 4 percent yet advertising expenditures rose by over 2,000 percent.

Table 1:
U.S. Cigarette Consumption Decreases While Advertising Expenditures Skyrocket

Year	# of smokers (millions)	Ad spending (millions of dollars)
1965	50	\$263
1974	49	\$307
1983	54	\$1,901
1993	46	\$6,035
1997	48	\$5,660

(Sources: U.S. National Institute of Health, “Surveillance for Selected Tobacco-Use Behaviors--United States, 1900-1995,”: http://www.cdc.gov/tobacco/tab_3.htm; U.S. Centers for Disease Control, “Cigarette Smoking Among Adults---United States, 1997 Fact Sheet,” and U.S. Federal Trade Commission, FTC Report to Congress for 1997

There has also been a shift in these expenditures in recent years. In 1980, 63 percent of the tobacco industry's expenditures (\$709 million) were on print and outdoor advertising, and 20 percent (\$248 million) on promotional allowances and specialty items. By 1997, however, only 10 percent of advertising expenditures (\$576 million) went to print and outdoor ads, while 53 percent (nearly \$3 billion) was spent on promotional allowances and specialty items (see Table 2). This shift can be attributed in part to the increased focus on youth through the distribution of promotional gear attractive to young people (such as caps and t-shirts). It also reflects the industry's preparations for making the kinds of concessions that it did during settlement talks in the United States in 1998 and its anticipation of what kind of advertising restrictions might come into force in the future.¹²

Table 2:

**U.S. Cigarette Advertising & Promotional
 Expenditures By Category, 1970-1997**
 (millions of dollars)
 (% - percent of total ad spending)

TYPE OF ADVERTISING	1970	1980	1990	1997
Newspapers	\$14 (4%)	\$304 (25%)	\$71 (2%)	\$17 (0.3%)
Magazines	\$50 (14%)	\$266 (21%)	\$328 (8%)	\$237 (4%)
Outdoor	\$7.3 (2%)	\$193 (16%)	\$376 (9%)	\$295 (5%)
Transit	\$5.4 (2%)	\$26 (2%)	\$61 (2%)	\$26 (0.5%)
Point of Sale	\$12 (3%)	\$80 (6%)	\$304 (8%)	\$305 (5%)
Promotional Allowances	\$34 (9%)	\$179 (14%)	\$1,021 (26%)	\$2,438 (43%)
Sampling Distribution	\$12 (3%)	\$50 (4%)	\$101 (3%)	\$22 (0.4%)
Specialty Item Distribution	\$6 (3%)	\$69 (6%)	\$307 (8%)	\$513 (10%)
Public Entertainment	\$0.5 (0.2%)	\$17 (1%)	\$125 (3%)	\$195 (3%)
All Others ⁱ	\$221 (61%)	\$57 (5%)	\$63 (2%)	\$50 (1%)
Direct Mail	--	--	\$52 (1%)	\$37 (0.7%)
Coupons & Retail Value Added			\$1,184 (30%)	\$1,553 (27%)
Internet ⁱⁱ				\$0.2 (0.0%)
TOTAL¹	\$361 (100%)	\$1,242 (100%)	\$3,992 (100%)	\$5,660 (100%)

ⁱ For 1970, includes television and radio advertising expenditures of \$207.3 million and \$12.5 million respectively. Such broadcasting was banned after January 1, 1971. The Federal Trade Commission included expenditures for direct mail, endorsements, testimonials and audio-visual in the "All Others" category to avoid disclosure of individual company data. In 1986, direct mail and "endorsements and testimonials" became separate reporting categories. Audio-visual expenditures remain in the "All Others" category.

ⁱⁱ 1996 was the first year that the FTC required separate reporting for internet advertising.

(Source: U.S. Federal Trade Commission, “FTC Report to Congress for 1997 Pursuant to the Federal Cigarette Labeling and Advertising Act”:<http://www.ftc.gov/os/1999/9907/1997cigarettereport.pdf>)

3. DOES ADVERTISING LEAD TO INCREASED CIGARETTE CONSUMPTION?

From a public health perspective, cigarette advertising and promotion is of concern if it leads to increased consumption. In the face of tobacco industry denials, a number of recent studies have shown a strong causal link between advertising and increased smoking rates, particularly among young people. The 1989 U.S. Surgeon General’s report identified four direct mechanisms through which tobacco advertising may affect consumption:

- ❑ Advertising and promotion could encourage children or young adults to experiment with tobacco products and initiate regular use.
- ❑ Advertising and promotion could increase tobacco users’ daily consumption of tobacco products by serving as a cue to tobacco use.
- ❑ Advertising and promotion could reduce current tobacco users' motivation to quit.
- ❑ Advertising and promotion could encourage former smokers to resume smoking.

The Surgeon General’s report also discussed some of the indirect mechanisms through which advertising can increase consumption. The “ubiquity and familiarity of tobacco advertising and promotion,” the report noted, “may contribute to an environment in which tobacco use is perceived by users to be socially acceptable, or at least less socially objectionable and less hazardous than it is in fact.” The report concluded that while no single study would or could prove a direct and irrefutable link, the “collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotion activities do stimulate cigarette consumption.”¹³

The Evidence

A 1992 review conducted by the British Department of Health analyzed 19 studies of cigarette advertising, including seven from the United States, seven from the United Kingdom, two from New Zealand and one each from Australia and what was then West Germany. Thirteen of the studies found that increased spending on cigarette advertising was associated with increased consumption, one study showed a negative association, and five showed both positive and negative associations. Taken together, however:

the studies point to a more decisive result. Because the studies differ in specification and data, a range of results is always to be expected. If, however, advertising genuinely has no effect on consumption, it would also be expected that the number of studies reporting positive and negative results would be much the same; in other words, some studies would show that advertising increases consumption, but others that advertising reduces consumption. In practice this symmetry is not observed; the great majority

ⁱ Individual and total amounts have been rounded to the nearest million; percentages have also been rounded.

*of results point in the same direction -- towards a positive impact. The balance of evidence thus supports the conclusion that advertising does have a positive effect on consumption.*¹⁴

Other in-depth studies that have been done on the topic support this conclusion:

- ❑ A 1989 study by the government of New Zealand looked at data from 33 countries and concluded: “Advertising is directly related to the number of cigarettes smoked; increased advertising means more cigarettes smoked, and less advertising means fewer smoked.”¹⁵
- ❑ A 1996 study by the University of Cape Town’s Economics of Tobacco Control Project, using econometric analysis, found that for every one percent increase in the growth of advertising expenditure, consumer demand for cigarettes rises between 0.18 and 0.24 percent.¹⁶

The Tobacco Industry’s Response

In recent years, tobacco industry representatives have sought to cast doubt on these and other findings. As evidence, they point to the few studies analyzed in the British government report which concluded either that advertising has no effect on consumption or only a small effect. But, as the World Bank pointed out in its recent report on tobacco, these studies may be misleading.

First of all, economic theory suggests that as advertising for a product increases, consumers will respond less and less to each additional increment of advertising up until the point when an additional increment of advertising has no impact at all. In the tobacco industry, advertising expenditures are already high compared to most industries -- 6 percent of sales revenue, or around 50 percent higher than in the average industry. Therefore additional consumption from increased advertising would be difficult to detect. This does not mean that consumption would be as high without advertising but rather that the impact of a marginal increase is negligible. Secondly, much of the data that record the relationship between advertising and consumption is usually highly aggregated, not industry or media specific, and often cover large populations. Although studies conducted using less aggregated data have found more evidence of a positive relationship between advertising and consumption, these studies are extremely expensive and time consuming to carry out and thus quite rare. Given these difficulties, some researchers have focused on studying the impact of advertising bans on consumption (see Section 8).¹⁷

The tobacco industry also argues that the tobacco market is a “mature” market (where demand is basically stable) and thus that advertising is only intended to convince adult smokers to switch brands. In a recently published article in an East African newspaper, BAT explained this theory. “In a mature market,” it wrote, “cigarettes, petrol or soap powder advertising is not about increasing the number of smokers, drivers or people owning washing machines. Advertising can only shift market shares between brands.”¹⁸ Or, as the head of Godfrey Phillips India (partially owned by Philip Morris) said in a recent speech, “cigarette advertising merely effects demand within the product category by strengthening the brand loyalty or creating brand switches but is

not aimed to increase total consumption through non-tobacco buyers.”¹⁹ However a closer look at the realities of the cigarette market show this to be an unsupportable position.

Studies have shown that less than 10 percent of switch brands in any given year and that much of that switching occurs within brand families (e.g. from Marlboros to Marlboro Lights).²⁰ In the United States, with some 10 percent of 48 million smokers switching brands in 1998, a total investment of \$5.66 billion in advertising would represent an expenditure of \$1,179 per switcher. If each switcher actually changed companies (unlikely in such a concentrated market, where smokers often trade down within the same brand), this would represent a potential gain of \$535 per switcher (this is calculated by multiplying the average number of cigarettes smoked per day by 365 days a year by the average wholesale price per pack after excise taxes are removed).²¹ After deducting advertising expenses, however, the company would actually lose \$644 for every new customer it attracted. For those customers who didn’t change companies, meanwhile, the company would lose the entire \$1,179.

As Tye et al. have noted, if the companies were being truthful about why they advertised, it would make economic sense for them, both individually and collectively, to cease advertising and promotion altogether. Instead, they have fought advertising restrictions – both in the United States and abroad -- at every step of the way. The exception was the industry’s support for banning cigarette advertising on television during the late 1960s in the United States in recognition of the impact that mandatory anti-smoking messages were having, showing that the industry does not oppose bans on “principle.” Therefore, “the only reasonable interpretation of the industry’s position is that it believes that advertising and promotion do attract new smokers and discourage current smokers from quitting.”²²

In its less guarded moments, the tobacco industry itself admits to trying to boost consumption. In the words of a Philip Morris marketing plan for China from the early 1990s, “We will maintain [Marlboro’s] extensive media mix, with particular focus on wide-reach media like television *to stimulate consumer demand*” (emphasis added).²³ Or, as the head of the Indian Tobacco Company (partially owned by BAT) put it, “Our primary aim is to expand the market for cigarettes. We have the responsibility, being market leader, to do so.”²⁴

Clearly worried about the impact of advertising bans on sales, the tobacco industry is now coming up with new lines of argument. Reacting to the Polish Parliament’s recent decision to ban all tobacco advertisements and promotions by the end of 2001, the industry has stated that the ban would be counter-productive, warning that the companies would divert money from advertising into funding price wars, making cigarettes more accessible to the poor.²⁵

Advertising Executives Agree: Cigarette Advertising Increases Consumption

On the one hand, the tobacco industry consistently argues that advertising bans will cause enormous economic losses. On the other hand, they deny that advertising increases consumption. Clearly, they cannot have it both ways. Those who are involved in the advertising industry overwhelmingly agree with scientific findings linking cigarette advertising with increased consumption, particularly among young people. A recent survey of 300 advertising executives in U.S. ad agencies with billings of over \$10 million a year revealed that 78 percent believe that

cigarette advertising makes smoking more appealing or socially acceptable to children. Seventy-one percent believed that tobacco advertising changes behavior and increases smoking among young people, while 59 percent believe that a goal of tobacco advertising is marketing to teenagers who do not already smoke.²⁶ An article in the *Journal of the American Medical Association* quotes the former president and chairman of the board of the world's second largest advertising agency as saying:

*In recent years the cigarette industry has been artfully maintaining that cigarette advertising has nothing to do with total sales. Take my word for it, this is complete and utter nonsense. The advertisers know it is nonsense, the industry knows it is nonsense, and I suspect, the public knows it is nonsense. I am always amused by the suggestion that advertising, a function which has been shown to increase consumption with virtually every other product, somehow miraculously fails to work for tobacco products. The industry only advances this argument to try to undermine efforts to restrict tobacco promotion.*²⁷

The overwhelming amount of independent, peer-reviewed research on the subject points to a strong link between advertising and increased cigarette consumption which explains why the industry spends billions of dollars a year advertising and why it so fiercely resists efforts to restrict or eliminate it.

4. DOES ADVERTISING INFLUENCE YOUNG PEOPLE TO START SMOKING?

With millions of their customers either dying from tobacco-related illnesses or quitting, it is obviously crucial for the success of the tobacco industry to keep recruiting new smokers. A 1984 internal memorandum from R.J. Reynoldsⁱ makes the point quite clearly: “Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years.... Younger adult smokers are the only source of replacement smokers.... If younger adults turn away from smoking, the industry must decline, just as a population which does not give birth will eventually dwindle.”²⁸ Since studies show that the overwhelming majority of smokers begin before the age of 18 (90 percent in the United States²⁹), the logic of the industry dictates that it must somehow reach young people. Advertising and promotion is their main vehicle to accomplish this.

Recently disclosed industry documents paint a clear picture of the tobacco industry's deliberate targeting of young people. Numerous documents describe studies undertaken on behalf of the industry studying children's habits and analyzing the factors which lead young people to take up smoking. As a 1981 Philip Morris research report put it, “Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens... The smoking patterns of teenagers are particularly important to Philip Morris.”³⁰

ⁱ In March 1999, Japan Tobacco purchased R.J. Reynolds International. The company has said that it has no intention to change marketing practices.

Studies Show That Tobacco Advertising Influences Children to Smoke

Cigarette advertising has a powerful effect among young people. Studies have shown tobacco promotional activities are causally related to the onset of smoking in adolescents and that exposure to cigarette advertising is predictive of smoking among adolescents. Research has also shown that following the introduction of brand advertisements that appeal to young people, the prevalence of use of those brands, and even prevalence of smoking altogether, increases:

- ❑ According to a 1995 study published in the *Journal of the National Cancer Institute*, advertising is more likely to influence teenagers to smoke than even peer pressure,³¹ while a 1996 study in the *Journal of Marketing* found that teenagers are three times as sensitive as adults to cigarette advertising.³²
- ❑ A survey conducted in the United States showed that 86 percent of children who smoked prefer Marlboro, Camel and Newport which are the three most heavily advertised brands. Only about one-third of adult smokers (the supposed target of this advertising) preferred those brands. Marlboro for example -- which is the most heavily advertised brand in the United States -- is used by almost 60 percent of youth smokers, but only about 25 percent of adult smokers.³³
- ❑ A study in the *Journal of the American Medical Association* found that 91 percent of six year old children surveyed identified the Joe Camel cartoon character as being associated with cigarettes, about the same percentage as recognized Mickey Mouse.³⁴
- ❑ After the initiation of the Virginia Slims advertising campaign by Philip Morris in the late 1960s in the United States, smoking among adolescent girls increased sharply.³⁵

The pervasiveness of cigarette advertising causes young people to overestimate smoking prevalence among both their peers and adults. Furthermore, the depiction of healthy people in beautiful outdoor settings and the linking of cigarettes with athletic and sexual achievement leads young people to underestimate the risks of smoking. An analysis of the content of cigarette advertising shows that it “largely consists of pictures of health and images of independence, which are known by the industry to resonate with adolescent needs for autonomy and freedom from authority.”³⁶

Yet even if it were true that cigarette advertising did not specifically target children, it would be impossible for them to avoid being exposed to it. There is no magic curtain around children which shields them from the influence of tobacco advertising. As the U.S Institute of Medicine has said, “the sheer amount of expenditures for advertising and promotion assures that young people will be exposed to these messages on a massive scale. It is clear that society’s efforts to discourage young people from smoking are obstructed -- and perhaps fatally undermined -- by the industry’s efforts to portray their dangerous products in a positive light.”³⁷

Box 1: Why Do Young People Smoke?

A misguided debate has arisen about whether tobacco advertising and promotion “causes” young people to smoke -- misguided because single-source causation is too simple an explanation for any social phenomenon. The more important issue is what effect tobacco promotion might have. Current research suggests that pervasive tobacco promotion has two major effects: it creates the perception that more people smoke than actually do, and it provides a conduit between actual self-image and ideal self-image -- in other words, smoking is made to look “cool.” Whether causal or not, these effects foster the uptake of smoking, initiating for many young people a dismal and relentless chain of events.

Children around the world are receiving contradictory messages concerning tobacco. Although a global consensus to prevent young people from smoking exists, in many countries smoking is considered normal social behaviour, tobacco products are inexpensive and easily accessible, and tobacco advertising is prolific. Young people tend to correlate smoking with independence and an appearance of confidence, an image that is intensively projected in tobacco advertising and promotional activities, and reinforced by adults who smoke.

Some young people who are regularly exposed to tobacco messages from an early age come to believe that tobacco provides certain benefits that will help them through adolescence. The risks of tobacco use, which are perceived to be remote, are outweighed by immediate psychological benefits. Young people tend to underestimate the addictiveness of tobacco and the difficulties associated with quitting. Yet, they soon find that the addiction to nicotine remains long after any psychological benefits are gone.

(Adapted from: U.S. Department of Health and Human Services, Preventing Tobacco Use Among Young People: A Report of the Surgeon General, 1994)

Box 2: In Its Own Words: Tobacco Industry Targeting of Young People

“The teenage years are also important because those are the years during which most smokers begin to smoke, the years in which initial brand selections are made, and the period in the life cycle in which conformity to peer group norms is greatest.”

-- Philip Morris memo, “The Decline in the Rate of Growth of Marlboro Red”, 1975

“Evidence is now available to indicate that the 14-18 year old group is an increasing segment of the smoking population. RJR-T must soon establish a successful new brand in this market if our position in the industry is to be maintained in the long term.”

-- “Planned Assumptions and Forecast for the Period 1977-1986,” R.J. Reynolds Tobacco Company, 15 March 1976

“Project 16 was designed to...learn everything there was to learn about how smoking begins, how high school students feel about being smokers, and how they foresee their use of tobacco in the future.”

— “Ads for teenagers must be denoted by lack of artificiality, and a sense of honesty”

— “Serious efforts to learn to smoke occur between ages 12 and 13 in most cases.”

— “The adolescent seeks to display his new urge for independence with a symbol, and cigarettes are such a symbol since they are associated with adulthood and at the same time adults seek to deny them to the young.”

-- Kwechansky Marketing Research Inc, Report for Imperial Tobacco Limited, Subject: “Project 16”, 18 October 1977

“They represent tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume for at least the next 25 years.”

-- J.W. Hind, R.J. Reynolds Tobacco, internal memorandum, 23 January 1975

“It is hypothesized that very young starter smokers choose Export ‘A’ because it provides them with an instant badge of masculinity, appeals to their rebellious nature and establishes their position amongst their peers.”

-- Export Family Strategy Document, 22 March 1982, R.J.R.-Macdonald Inc.

“We must find ways to appeal to the young....The cigar and pipe market has an ‘old’ image. Cigarettes will follow as something ‘my father and grandfather did’ unless we are careful.”

-- Imperial Tobacco Group, 1984 presentation

“FUBYAS (First Usual Brand Young Adult Smokers) tend to live in a movie: They know the roles, they know the script, they know the costumes, they know the props. We want to supply one of the props -- their brand of cigarettes.”

-- 1987 R.J. Reynolds research report, “Youth Target 1987”

“In marketing to younger adult smokers, the critical reaction is ‘Hey, they’re talking to me’....Avoid the hard sell. Feel free to be a little irreverent about the brand. Pat, institutional ads lack appeal. Be closer to the edge. Don’t chase a trend that has already happened....Don’t be phony....Today, not tomorrow. Staying young, not in the rut. On the edge, not the middle ground. See things through their eyes, not ours.”

-- 1994 R.J. Reynolds research report, “Are Younger Adult Smokers Important?”

“It was felt that the literate youth of today, being very image-oriented, would require a brand of cigarettes...which was completely unconventional, which set new standards encouraging their rebellion, not necessarily just against parents certainly against the market norm. It would respond to the person’s individuality with the possibility of being an alternative to drugs. It was felt that the cigarette should incorporate some sort of “kick” of a similar nature to the Coca-Cola “kick”, giving the cigarette a physiological effect. A possible route for this would be to incorporate the AMTECH technology, using ammonia to generate nicotine enhancement during PH distortion to liberate nicotine.”

-- Undated memo from the files of BAT discussing “Project Kestrel,” a proposal to develop a new cigarette brand designed specifically for young people

5. DIRECT ADVERTISING

The tobacco industry spends billions of dollars each year promoting its brands in every conceivable marketing medium. In response to government attempts to regulate the content, placement and timing of advertisements, the industry has proven adept at finding loopholes in even the most rigorous national legislation. The following sections give an overview of the breadth of tobacco industry advertising.

Newspapers & Magazines

Cigarette companies spend millions of dollars each year advertising in newspapers and magazines. Aside from publicizing cigarette brands, this type of advertising also serves other purposes. For example, newspapers and magazines heavily reliant on tobacco advertising may be reluctant to take editorial positions critical of the tobacco companies or launch investigations into smoking and health issues (see Section 8). This is one reason that a number of prominent U.S. newspapers have recently announced that they will no longer accept tobacco advertising.³⁸

Even if governments ban tobacco advertising in newspapers and magazines, the tobacco companies find ways around these restrictions. In Thailand, for example, which has a strict ban on all tobacco advertising, there is an exemption for imported international publications because the government cannot regulate materials produced outside of the country. International news magazines come into the country full of glossy tobacco advertising with no health warnings, and there is little the government can do about it. This type of incidental advertising could only be dealt with through a worldwide ban on tobacco advertising. Only

In Turkey, which has a strict ban on cigarette advertising in newspapers and magazines, Philip Morris prints “Price Announcements” in local newspapers which often “announce” that prices have not changed.³⁹ Recently, the tobacco companies have begun to publish their own magazines with youth-oriented entertainment and art themes. In Kiev, capital of Ukraine, R.J. Reynolds publishes the “Kiev Camel Fun Guide” which lists entertainment in the capital geared towards young people.⁴⁰ In Sri Lanka, BAT publishes the *Golden Tone News*, a weekly English-language supplement covering the pop music scene in Sri Lanka.⁴¹

Television & Radio

In those countries which still allow tobacco advertising on television and radio, the industry has taken full advantage. Yet even in countries with bans on such advertising, the advent of global satellite and cable television, and the increasing power of transmitters, has enabled the tobacco companies to flood these countries with tobacco advertising. Only a comprehensive, worldwide ban on tobacco advertising and promotion could curb such abuses.

Young people are also exposed to positive portrayals of tobacco use not only via direct promotional activities, but through popular culture as well. Since positive attitudes towards tobacco use are predictive of subsequent use by children, sympathetic portrayals of tobacco use in the mass media which legitimize, normalize, trivialize or glamorize this behaviour may play a significant role in the development of children’s attitudes to smoking.⁴² Numerous studies have documented the increasing portrayal of tobacco use in film, television, music videos and cartoons.⁴³ These studies indicate that:

- ❑ the rates of smoking in television and film are higher than is prevalent in real life;⁴⁴
- ❑ that portrayals of smoking are increasing, especially of women;
- ❑ smokers continue to be portrayed as successful;⁴⁵ and
- ❑ that cigarettes are being used increasingly by primary characters in key scenes to portray positive male traits or rebellious characters.⁴⁶

For years, U.S. tobacco companies paid to have their cigarette brands displayed in Hollywood movies and television shows. Although the companies have agreed to end the practice, the movies and television shows are rebroadcast repeatedly, so that “long after tobacco advertising has disappeared from other forms of media, exposure will continue....giving the message that smoking is tough, cool or glamorous.”⁴⁷

The tobacco industry’s use of television and radio includes both direct advertising, as well as the rebroadcast of sporting and entertainment events:

- ❑ BAT has launched a multi-million dollar ad campaign in Brazil for its Hollywood brand cigarette as part of its “No-Limits” marketing strategy. The campaign was unveiled in April 1999 with the nation-wide broadcast of a two-minute commercial showing a Formula 1 sports car racing around the globe.⁴⁸
- ❑ R.J. Reynolds has sponsored and videotaped lavish parties in Ukraine showing “affluent, fashion-conscious young sophisticates dancing, drinking champagne and smoking in a nightclub adorned with Camel posters, featuring a skimpily clad Camel girls’ dance group,” says the *Washington Post*. Desperate for free programming, the state-owned television company later ran the tape numerous times on prime-time television.⁴⁹
- ❑ In Sri Lanka, BAT manages to skirt a ban on cigarette advertising on the radio by underwriting a “Golden Tones Contest” on the English-language radio station that has a large teen audience. Announcements remind people that they will win prizes like key-rings, caps, and t-shirts and end by saying, “Look in your newspaper for details” (cigarette advertising is still allowed in newspapers). The company also launched their Benson & Hedges brand on a televised cricket match from Australia where the national team were playing. By doing this, the company avoided violating Sri Lanka’s ban on domestic cigarette advertising.⁵⁰
- ❑ BAT’s Dunhill brand takes out full page newspaper ads in Malaysia touting its tape-delayed broadcast of the Academy Awards.⁵¹

Billboards and Other Forms of Outdoor Advertising

In many countries, cigarette advertising on billboards is ubiquitous. In China, foreign cigarette companies have sidestepped the government’s ban on tobacco advertising by leaving out the word “cigarette” from their billboards. Huge billboards are now erected in Chinese cities simply celebrating the pleasures of the “Marlboro World.”⁵² In Russia, billboards for the West brand of cigarettes shows a scantily-clad flight attendant with the slogan “Anything Is Possible”,⁵³ while in Ukraine, tobacco billboards call on consumers to “Taste the Freedom” and “Test the West.”⁵⁴

The tobacco industry is also developing novel new ways to conduct outdoor advertising:

- ❑ In Spain, BAT became the first company to advertise on people's private cars. A firm called Logocar has compiled a database of drivers interested in receiving payment in return for their car being completely covered in a vinyl sheet bearing logos and advertising messages. The database includes details of the car, driver's profession and weekly driving pattern. In 1997, BAT paid \$260,000 to cover 75 cars for three months to publicize its Pall Mall brand.⁵⁵
- ❑ In the Hungarian capital of Budapest, R.J. Reynolds paid for a year's supply of light bulbs for the city's traffic lights in exchange for adding the Camel logo to the yellow lights.⁵⁶
- ❑ In Kandy, Sri Lanka's second largest city, BAT paid to paint the logo of one of its most popular brands on the front wall of a prestigious girls high school and the scoreboard of an exclusive boys high school.⁵⁷

Point-of-Sale

Point of sale advertising is that which is displayed in stores that sell cigarettes. Cigarette companies supply vendors with promotional materials including posters and display cases and in effect turn part of the store into a cigarette ad:

- ❑ In Turkey, Philip Morris salesmen deliver cigarettes directly to stores. Dressed up like American cowboys and driving vans painted like Marlboro packs, they fan out across the country distributing free display cases, posters and neon signs. By turning these retail outlets into advertising venues, the company has succeeded in plastering its brand names in even the most remote corners of the country.⁵⁸
- ❑ In Thailand, foreign tobacco companies have taken advantage of lax enforcement of point-of-sale laws by massively increasing their investments in this area. They provide shop-keepers with free cabinets with brand colors and stickers, ensuring "neat, eye-catching displays for the cigarettes."⁵⁹

6. INDIRECT ADVERTISING

As more and more governments clamp down on direct forms of tobacco advertising, such as television and radio commercials, the industry has been putting more resources into indirect advertising.

Promotional Items & Contests

Tobacco companies put their cigarette logos on t-shirts, hats, rucksacks and other consumer items popular with children. Such practices circumvent advertising restrictions and turn the wearers into walking billboards. The companies also sponsor youth-oriented contests which often require the purchase of cigarettes in order to enter:

- ❑ In China, Philip Morris sponsors giveaways where consumers can trade in empty packs of cigarettes for rucksacks, lighters and other paraphernalia emblazoned with the Marlboro logo. The company has been caught mailing promotional materials to minors even though it claims the giveaways are only for smokers over the age of 18.⁶⁰
- ❑ In Argentina, playing cards were inserted into packs of Camels which could be redeemed for posters, boxer shorts, and, for ten lucky winners, Harley-Davidson motorcycles. Following the introduction of these promotional efforts, sales of Camel cigarettes in Argentina shot up by 50 percent.⁶¹
- ❑ In Venezuela, BAT recently launched the “You Decide” campaign, touting the right of young people to make their own “lifestyle” decisions, such as what kind of music to listen to. Using the tagline “The decision is always yours,” the underlying message is that youth should also make up their own minds about smoking. According to a BAT representative, music was chosen as a main theme because of its universal appeal to young people and because it signifies freedom of expression. The \$1 million campaign includes in-pack coupons that can be exchanged for records and CDs. The company has also set up computers in shopping malls where kids can play video games and answer trivia questions to win prizes like T-shirts, baseball caps and watches. Cigarette samples, meanwhile, will be distributed by 140 “Lucky Strike girls”.⁶²
- ❑ In Malaysia, R.J. Reynolds sponsors movie ticket giveaways for such popular U.S. films as *My Best Friend’s Wedding* and *Air Force One*.⁶³
- ❑ In Uzbekistan, BAT has run a promotional campaign for its new Khan brand in which the customer who finds a “golden cigarette” in their packet wins an automobile, those who find a silver cigarette win televisions and the those who find a bronze one win a walkman.⁶⁴
- ❑ In Togo, the cigarette companies have launched advertising campaigns in which “truckloads of beautiful girls distribute T-shirts, lighters, ashtrays, matches, umbrellas and an impressive number of cartons of cigarettes in the country’s main towns and sometimes, even in villages.” Says sociologist Sylviane Ahyi, “There’s a better distribution of cigarettes than of drugs or bread.”⁶⁵

Sampling

In many countries, the companies give away free cigarette samples and branded gear in areas where young people gather, such as at shopping malls, rock concerts and discos. Giving away an addictive product costs them little, and ensures them a steady stream of new customers:

- ❑ Three times a week BAT sponsors a fancy disco in Beijing to advertise its 555 brand. The *Washington Post* reports that “slender Chinese women in blue tops, miniskirts and boots all emblazoned with the 555 logo greet people at the door, handing out free cigarettes. Customers crowd the smoke-filled dance floor, writhing to rock music below two huge banners with the 555 logo that proclaim: ‘Be free from worldly cares.’”⁶⁶

- ❑ In Sri Lanka, BAT hires young women to drive around the country in bright red “Gold Leaf” cars and jeeps, giving out free cigarettes and promotional items on college campuses, shopping malls and other places where young people gather.⁶⁷
- ❑ In Turkey, Philip Morris and R.J. Reynolds appear to have targeted high school students directly. A high school student was quoted in the *Wall Street Journal* as saying that representatives from the two companies used to regularly hand out samples near his school. At one time, he says, he got five free packs a day, every day for a week. “When they were launching a new brand, they came so often! They were always here, standing in the middle of the street distributing cigarettes.”⁶⁸

The Internet & “Virtual” Sponsorship

The newest advertising medium, the internet, has begun to attract the attention of the tobacco industry. Cigarette brand logos for Camel, Lucky Strike and West (among others) have appeared as sponsorships on the web. R.J. Reynolds is sponsoring electronic pages of “techno” music, while BAT promotes the sales of t-shirts, toasters and other products carrying its “Lucky Strike Originals” logo. Reemtsma, the German tobacco company, has web pages where you can have a “virtual visit” with Russian cosmonauts, see concerts or participate in on-line debates. Their pages show a pack of West cigarettes with the slogan “Taste it!” All of the pages include things deemed “cool” by teenagers.⁶⁹

The existence of new technologies allows tobacco companies to circumvent national laws against cigarette advertising on television. So-called “virtual advertising” allows companies to superimpose advertising on imaginary billboards and playing surfaces at sporting events or even insert their product into an existing film or television show (the organizers of the Sydney Olympics have decided to prohibit broadcasts of the Games from employing the technique, although its ability to enforce this mandate will be limited).⁷⁰

Adventure Holidays & Contests

The tobacco companies sponsor adventure holidays and contests which not only helps them circumvent advertising bans but helps link smoking with outdoor adventure and fun:

- ❑ In Russia, Philip Morris organizes “Adventure Team” events where entrants participate in such sports as horse riding, Jeep driving and parachuting. In 1999 the company distributed almost a quarter million entry forms in discos, cinemas, bars and restaurants. Those chosen from competitions in seven major Russian cities will go to a “Marlboro sports camp”, with three finalists selected for a competition in the United States.⁷¹
- ❑ In Ukraine, Philip Morris sponsored a “Win a Trip to America” contest where participants were asked to send in three empty packs of Philip Morris brand cigarettes. The top prize was a free trip to the United States for two. There were also 9,000 additional prizes including watches, t-shirts and travel bags emblazoned with the Marlboro logo or the L&M brand logo in the form of an American flag.⁷² A Ukrainian journalist is quoted in the *Financial Times* as saying that her 14 year-old sister was

approached on the street and asked to fill out an entry form, even though she was in her school uniform. Philip Morris later sent her a Marlboro travel bag.⁷³

- ❑ In Poland, Reemtsma ran a “West in Space” promotion in which contestants vied to win a trip to a special “space camp” in Russia. The company placed entry forms in leading magazines and promoted the contest on 2,000 billboards and a website. According to a local marketing magazine, the company also “organized a training for promoters, who then dressed in spaceman uniforms and handed out 30,000 participation forms in Poland’s 14 largest cities.”⁷⁴
- ❑ In Senegal, Marlboro sponsors musical events and a national sweepstakes with prizes including automobiles, while an L&M sweepstake has offered a free trip to the United States.⁷⁵

Sports Sponsorship

Tobacco companies spend hundreds of millions of dollars sponsoring sporting events and teams. Sponsorships help publicize their brand names and creates a link in the minds of young people between cigarettes and health and athletic prowess. Many sporting events sponsored by tobacco companies are broadcast internationally, undermining national advertising bans:

- ❑ The Indian Tobacco Company recently paid \$16 million to rename the World Cup of Cricket the Wills World Cup and put its cigarette logo on all of the players’ uniforms.⁷⁶
- ❑ In April 1999, Dunhill announced a five-year, \$14.4 million sponsorship deal with the Vietnam Football Federation.⁷⁷
- ❑ BAT sponsors the Chinese national basketball league, now named the “Hilton league” after its popular cigarette brand, while another BAT brand, Salem 555, backs the Hong Kong-Beijing car rally. Marlboro, 555 and Hilton are the three most popular brands in China.⁷⁸
- ❑ In Hong Kong, R.J. Reynolds’ Salem brand sponsors tennis tournaments featuring Michael Chang, an idol to many teenagers, while the U.S. Open tennis tournament has been carried on Malaysian television as the “Salem Tennis Open.”⁷⁹ The company also has sponsored tennis tournaments in Malaysia in which U.S. tennis stars Michael Chang, Jimmy Connors, John McEnroe and Pat Cash have appeared.⁸⁰
- ❑ In South Africa, Rothmans sponsors football tournaments and the most popular horse race in the country, the “Rothmans July”. In 1995, the company was embroiled in controversy when its “Cape Town to Rio” yacht race banned the entry of a Swedish yacht sponsored by Nicorette (the nicotine gum company). It was later admitted that the yacht was barred because its advertising message was competing with that of Rothmans.⁸¹

Motor Sports

As more and more countries begin to outlaw tobacco sponsorship of sporting teams, the companies are putting an increasing amount of money into motor sports, particularly in Asia.⁸² Says Barrie Gill, Chief Executive of Championship Sports Specialists Ltd, a sports sponsorship company, motor racing is “the ideal sport for sponsorship. It’s got glamour and world wide television coverage. It’s a ten month activity involving sixteen races in fourteen countries with drivers from sixteen nationalities. After football it’s the Number One multinational sport. It’s got total global exposure, total global hospitality, total media coverage and 600 million people watching it on TV every fortnight....It’s macho, it’s excitement, it’s colour, it’s international, it’s glamour....They’re there to get visibility. They’re there to sell cigarettes.”⁸³

- The “Asia Marlboro” road-racing competition is featured prominently on Chinese TV, allowing Philip Morris to circumvent Chinese law banning cigarette advertising.⁸⁴ The company pays \$1 million annually to sponsor the Zhuhai International Car Race.⁸⁵
- Reemtsma’s global marketing strategy includes sponsorship of Formula One racing, sponsoring the “West McLaren Mercedes” racing team.⁸⁶

Sports Sponsorship Effects Children, Studies Show

Studies have shown that tobacco sponsorship of sporting events affects children. A study in the *British Medical Journal* concluded that cigarette company sponsorship of the India-New Zealand cricket series in 1995 had a significant impact on children who watched it on television. The study concluded that the advertising created the impression among the 1,948 children aged 13-16 years who participated in the survey that “smoking gives more strength, improves batting and fielding and ultimately increases the chance of winning.” Another survey by the Australian Medical Association found that 87 percent of young people in Western Australia believe cricket players promote cigarettes. Benson & Hedges has sponsored Australian cricket for 20 years.⁸⁷

Entertainment Sponsorship

The tobacco industry companies sponsors concerts featuring well-known Western musicians popular with young people:

- In South Africa, Rembrandt has sponsored concerts by Tina Turner, Bon Jovi and Def Leppard.⁸⁸
- As part of its “Salem Cool Planet” series, R.J. Reynolds brings musical acts like Samantha Cole, Savage Garden and Deep Purple to Malaysia.⁸⁹
- Philip Morris has sponsored the “Philip Morris Superband Series” in Thailand which included a concert by Tony Bennett and the McCoy Tyner Trio while R.J. Reynolds has sponsored the “Ambassadors of Opera” series in Bangkok.⁹⁰

Club Sponsorship

Tobacco companies have begun to directly sponsor discos and “raves” that draw throngs of young people:

- Philip Morris sponsored an elaborate travelling disco in Russia. At one stop, in the Siberian city of Novosibirsk, it cost 5 empty packs of Marlboros to enter, but only 3 if you were a student. According to an American who filmed the disco, “You showed your packs at the gate. You couldn’t say ‘I don’t smoke. Can I pay to get in?’ You had to have the cigarettes. They advertised it consistently for a month. It was on the radio. There were flyers on light poles. Every night there were hundreds of people, sometimes a thousand on weekends.”⁹¹ R.J. Reynolds reportedly practices the same technique in Taiwan.⁹²
- In Sri Lanka, BAT sponsors lavish discos at which young, attractive women work the crowd, handing out cigarettes and encouraging customers to smoke them. Numerous door prizes are given away: key rings, shirts, caps, etc. While young Sri Lankans groove to the latest dance music, a laser light writes “Benson & Hedges” on the walls.⁹³

“Brand Stretching”

Tobacco companies are now moving beyond traditional promotional items to the marketing of other products with a shared brand name, such as Marlboro Classics clothing, Salem Power Station music stores and Benson & Hedges coffees and coffee shops. These new marketing ventures are designed to keep promoting tobacco brand names even when direct tobacco advertising is banned:

- Internal R.J. Reynolds International documents state that ‘Salem Attitude’, a chain of clothing stores in China, Hong Kong and Malaysia, was established to “extend the trademark beyond tobacco category restrictions....The Salem Attitude image campaign will survive marketing restrictions.”⁹⁴
- In Malaysia, Kent Tours, Peter Stuyvestant Travel and Benson & Hedges are three of the top ten advertisers.⁹⁵ An R.J. Reynolds subsidiary licenses the Camel name to makers of “adventure gear” clothing, now one of the country’s best-selling lines of clothing, while records and CDs are sold at the “Salem Power Station.”⁹⁶
- Camel Trophy Adventure Wear and Marlboro Classic clothing lines are sold in Thai department stores and separate Camel Trophy shops, even though it is illegal to advertise products that have tobacco brand names. Many of these clothes are sold at a huge discount. R.J. Reynolds has given away thousands of Camel bumper stickers, sun visors and seat covers which adorn vehicles all over the country.⁹⁷
- The Indian Tobacco Company (ITC) promotes its brand names through vacation tours, such as “GoldFlake Golden Getaways” and advertises Wills diaries and calendars on television. The company has even set up a 27-hole “Classic Golf Resort” and entered into an agreement with a U.S. clothing manufacturer to produce sports gear and fashion apparel.⁹⁸ Godfrey Phillips’ Four Square cricket gear is advertised during televised cricket matches, while BAT hawks Kent Leisure Tours. Some of these products are not

even sold in India. Rather, the purpose is to familiarize the Indian public with the trademark names.⁹⁹

- ❑ BAT has been testing ways to skirt the European Union advertising ban by pushing their cigarette brand names through a line of coffee products. Starting with a trial run in Malaysia, BAT is hoping to open up a string of “Benson & Hedges” coffee shops around the world. BAT set up World Investment Company for the express purpose of developing consumer products which use its cigarette brand names. At the coffee shops, customers are waited on by staff adorned with logos of the Benson & Hedges gold colored cigarette package and are served Benson & Hedges Quality Blend Coffee. Says the manager of one of the shops in Kuala Lumpur, “Of course this is all about keeping the Benson & Hedges brand name to the front. We advertise the Benson & Hedges Bistro on television and in the newspapers. The idea is to be smoker-friendly. Smokers associate a coffee with a cigarette. They are both drugs of a type.” Although the EU ban is supposed to ban all forms of “indirect advertising,” the tobacco companies believe that enterprises which are profitable in their own right cannot be stopped from using the trademark names. The head of corporate communications at BAT says that these products “should not be caught by any marketing restrictions because we are not selling cigarettes with them.” The coffee shops are just one of a number of spin-off brands developed by BAT. Others include the Kent travel agency, John Player whiskey and Lucky Strike Clothing.¹⁰⁰

Cigarette Packs as Advertisements

The cigarette package itself is a form of advertisement. Tobacco packages – which can be seen throughout the day by potential smokers as well as would-be quitters -- are carefully designed to appeal to the target audience. According to Canada’s National Clearinghouse on Tobacco and Health, “displays of tobacco products are prevalent in pharmacies, corner stores, supermarkets, and wherever else tobacco is sold. Cigarette packages are seen every time they are purchased, pulled from someone’s purse or pocket, left on a bar or restaurant table, or held by an actor in a movie.”¹⁰¹

- ❑ BAT has begun to put its racing logo and the image of a Formula 1 car on packages of its State Express 555 brand in Asia, a theme that “could be used in other promotions, such as placing a racing car in certain airport duty-free stores.”¹⁰²
- ❑ In Thailand, Japan Tobacco introduced cigarette packs with pictures of Thai Buddhist shrines. Following protests at the Japanese Embassy, the photos quickly were withdrawn.¹⁰³

Publicity Through Public Affairs

In recent years, the tobacco industry has increased its public relations work designed to show that the industry is a responsible member of the community. In the United States, it has launched a \$100 million advertising blitz highlighting its philanthropic work, such as donating money to anti-hunger programs donations, shelters for battered women or (deeply flawed) youth smoking prevention programs. Unfortunately, these are little more than public relations gimmicks, designed to ease public and governmental pressures:

- In Thailand, cigarette companies have gotten around the tobacco ad ban by sponsoring the arts. Philip Morris sponsors a regional arts competition called the “Philip Morris ASEAN Arts Award,” where large cash prizes are awarded.¹⁰⁴ The companies also get free advertising by giving charitable donation to such groups as the Population and Development Association of Thailand.¹⁰⁵
- In the Ukraine, Philip Morris organizes a “Person of the Year” competition, co-sponsored by leading television stations and newspapers, that is heavily advertised.¹⁰⁶

7. CURRENT STATE OF ADVERTISING RESTRICTIONS

The level of restrictions on tobacco advertising and sponsorship vary widely from country to country. Some countries – including Australia, Finland, France, Italy, New Zealand, Portugal, Singapore, Thailand and Turkey -- have banned all tobacco advertising, promotion and sponsorship, while others have almost no restrictions. The following chart from a 1997 tobacco industry publication summarizes the state of restrictions on cigarette advertising and promotion:

Table 3:

Restrictions on Advertising and Promotion
(Number of countries and types of restrictions)

	Cinema	Posters	Press	Radio	TV	Point Of Sale	Sampling	Sponsorships
Banned	66	48	45	91	104	21	34	13
Restricted	42	50	59	32	33	46	35	61
Proposals*	13	20	19	12	11	19	11	14
No Restrictions	62	73	68	48	34	97	87	86
No information	8	7	6	7	7	14	22	17
Warning Required	29	47	55	22	18	35		

* Includes proposals affecting restrictions already in force

(Source: TDC International Tobacco Documentation Centre, Smoking Issues Status Book: Global Overview, June 1997)

Thailand’s and the European Union’s ban on tobacco advertising have been cited as model pieces of legislation because they are comprehensive and leave little room for the industry to maneuver:

European Union

In June 1998, the European Union (EU) agreed to phase out all direct and indirect tobacco advertising by the year 2006 (see Annex I for full text). The key points are as follows:

- ❑ All EU member states must introduce national legislation banning tobacco advertising no later than July 2001.
- ❑ All print advertisements must cease within one further year, although tobacco trade publications may still carry tobacco advertising and third-country publications, not specifically intended for the European Union market, can continue to be imported into the EU.
- ❑ Tobacco sponsorship, except of events or activities organized at a global level, must cease within two further years. Tobacco sponsorship of such events, such as Formula One motor racing, must end by October 2006. During this time, overall sponsorship is supposed to be reduced and there should be voluntary restraints on publicity for these events.¹⁰⁷

Thailand

Thailand's Tobacco Products Control Act was passed by the National Assembly in 1992 and is rightly seen as a model piece of legislation for controlling tobacco advertising and promotion (see Annex II for the full text). The Act prohibits:

- ❑ all cigarette advertising in all media (except live telecasts and magazines from abroad);
- ❑ the distribution of free samples, coupons and promotional items;
- ❑ the exchange of cigarette packs for gifts or entrance into events;
- ❑ the advertising of products with tobacco brand names or logos; and

the production, import, sale or advertising of any products that imitate tobacco products or tobacco packages.

Industry Efforts To Defeat Effective Advertising Restrictions

Because of the importance of advertising and promotion to the tobacco industry's ability to attract new customers, it can be counted on to try to defeat effective measures to restrict such activities. To undercut political support for strong marketing restrictions, tobacco companies will often offer to adopt voluntary codes of conduct which appear to offer significant concessions. However, these proposals are usually designed for public relations purposes, are rarely followed, and, once political pressure is reduced, are typically forgotten.

In country after country, the industry has mounted sophisticated campaigns, often working through trade associations representing advertising agencies, newspapers and other media outlets. Recently revealed internal documents detail the tobacco industry's efforts to defeat marketing restrictions:

- ❑ In the New Zealand, the Tobacco Institute paid a marketing professor to appear before a Parliamentary select committee to argue against a proposed ad ban. The Institute hoped to play down its involvement in bringing the professor to New Zealand. "Please understand," the Institute wrote in a letter to him, "that though this institute has made all

the various arrangements with you, your visit...will formally be at the initiation of, and in support, of the Newspaper Publishers' Association.”¹⁰⁸

- ❑ In Argentina, Philip Morris defeated a Parliamentary effort to ban all tobacco advertising and promotion by secretly orchestrating a campaign by advertising agencies, media owners and sports figures. “Industry’s objective was to create an atmosphere in which presidential veto would be politically acceptable,” according to a recently disclosed case study by Philip Morris. The result was a flood of articles and editorials in the country’s newspapers and magazines, and, ultimately, a presidential veto of the ban. “When a crisis situation emerges, such as the Argentine Congress’ approval of tobacco advertising ban,” concluded the study, “a rapid response is essential. A contingency plan which clearly defines the role and responsibilities of each affected party is a prerequisite to effective, broad based counteraction.”¹⁰⁹
- ❑ In 1996, the Ukraine government proposed a strict ban on tobacco advertising. Philip Morris hired the Leo Burnett advertising agency to pull together a coalition of cigarette companies and advertisers to fight the proposals, convincing them to donate billboard space, as well as radio and TV time. The coalition lobbied parliament, using slick information packets produced clandestinely by Philip Morris. On the cover was an image of crushed tobacco leaves forming the figure of \$400 million – “That’s the amount that Ukraine’s economy will lose in the next five years as the result of a ban on tobacco advertising,” it said. The packet was supposedly produced by the “Association of Independent Advisors on the Question of Reviving the Ukrainian Tobacco Sector.” There was, in fact, no such association. A spokesman for Philip Morris International later acknowledged the company’s authorship of the materials. The \$400 million estimate played a huge role in defeating the advertising law, said the staff director of the Ukrainian parliament’s health committee. In the end, parliament rescinded most of the meaningful advertising restrictions.¹¹⁰
- ❑ In the Philippines, Philip Morris hired the Leo Burnett advertising agency (creator of the Marlboro Man) to defeat government anti-smoking programs and cast doubt over the link between smoking and cancer. The agency takes credit for helping to “neutralize” a government ad campaign to reduce cigarette consumption by children which used a cartoon character named “Yosi Kadiri” (slang for ‘cigarettes are disgusting’) with bloodshot eyes and yellow teeth. The agency helped orchestrate a campaign to get the ads pulled by mounting a letter writing campaign and encouraging cigarette companies to threaten to withhold advertising if the anti-smoking campaign continued.¹¹¹

This sort of threat is not uncommon. According to the World Health Organization, “tobacco advertising revenues discourage the media from reporting the risks of smoking,” which is of particular concern in developing countries, where people are not always fully aware of the harm caused by smoking.¹¹² A 1992 study in the *New England Journal of Medicine* showed that coverage of the health risks of smoking in magazines was negatively related to the proportion of advertising revenues derived from tobacco advertising.¹¹³ The industry itself even admits to such bully tactics. A 1985 Philip Morris memo suggests using the company’s “considerable clout with the media” to dampen anti-smoking sentiment. “The media like the money they make from our

advertisements,” says the memo, “and they are an ally that we can and should exploit.....we should make a concerted effort in our principal markets to influence the media to write articles or editorials positive to the industry position on the various aspects of the smoking controversy.”¹¹⁴

8. CAN ADVERTISING BANS REDUCE CONSUMPTION?

A number of countries have taken steps to implement partial bans on advertising restrict some tobacco marketing activities, with little or no impact on overall consumption levels, according to a number of studies that have been carried out in recent years:

- ❑ A 1999 study published by the U.S. National Bureau for Economic Research examined data from 102 countries and found that partial bans were ineffective in reducing tobacco consumption. The study compared tobacco consumption trends between those countries which had relatively complete bans on advertising with those that did not have such bans. It found that per capita cigarette consumption in countries with comprehensive bans declined by about 8 percent while consumption rates in countries without bans declined by only about 1 percent. Furthermore, the rate of decline in smoking was much steeper in those countries with relatively comprehensive bans.¹¹⁵
- ❑ A study commissioned by the government of New Zealand, meanwhile, looked at 33 countries with varying levels of restrictions on advertising. In countries with little or no restrictions on advertising, per capita tobacco consumption increased at an annual average rate of 1.7 percent. In countries with partial bans, per capita consumption decreased by 0.4 percent annually, while in countries which had banned advertising of any kind consumption fell at an annual average rate of 1.6 percent. The study also found steeper declines in youth smoking rates in those countries that had banned or severely restricted advertising.¹¹⁶
- ❑ A report from the International Union Against Cancer looked at data from four countries where advertising bans had been introduced (Finland, France, New Zealand and Norway). The study found that per capita consumption of cigarettes dropped by between 14 percent and 37 percent after the implementation of the ban. Smoking prevalence among young people declined in three of the four countries and remained stable in the fourth.¹¹⁷

Table 4:

Advertising Bans Lead to Reductions in Consumption

Country	Date of Ban	Drop in Consumption until 1996
Norway	1 July 1995	-26%
Finland	1 March 1978	-37%
New Zealand	17 December 1990	-21%
France	1 January 1993	-14%

(Source: Luk Joosens, "Questions and Answers: Why Ban Tobacco Advertising in the European Union," International Union Against Cancer, February 1998)

Based on the strength of these studies, the World Bank recently concluded that "bans on advertising and promotion prove effective, but only if they are comprehensive, covering all media and all uses of brand names and logos." Such bans, if adopted globally, could reduce worldwide demand by around 7 percent and thus avert five million tobacco-related deaths. However if governments only ban tobacco advertising in one or two media, the industry will simply shift its advertising expenditures, with no effect on overall consumption.¹¹⁸

9. DO ADVERTISING BANS & FREEDOM OF SPEECH CONFLICT?

In their efforts to defeat proposals to ban advertising, the tobacco industry often invokes its right to "freedom of speech", arguing that it should not be prohibited from communicating with adult smokers, the supposed target of its advertising campaigns. The companies further argue that any product that is legal to sell should be legal to advertise. Yet in most countries there are numerous precedents for prohibiting the promotion of certain harmful products. Around the world, governments have regularly banned or restricted marketing for other legal products, such as pharmaceuticals or alcohol.

In addition, the nature of cigarettes and cigarette promotion make it a special case. Cigarettes are highly addictive, cause an immense amount of death and disease, and kill half of all regular users. Furthermore, cigarette advertising is inherently deceptive because it attempts to hide that toll behind visions of independence, athleticism and sexual appeal and is often targeted at youth. Since in most countries it is illegal to sell cigarettes to children, it would then be sensible to restrict tobacco advertising which is not only misleading but has been demonstrated time and again to appeal to children. In interpreting Article 17 of the Convention on the Rights of the Child, the Committee on the Rights of the Child has recognized that freedom of expression of the media is not incompatible with the prohibition of material injurious to the child's well-being.¹¹⁹

The public health basis for banning tobacco advertising is quite solid and some courts have recognized this. In France, for example, the French Constitutional Council upheld the country's ban tobacco advertising in 1991 "as it is based on the requirement of public health protection and does not interfere with the freedom to trade."¹²⁰ In the United States, public health advocates believe that marketing restrictions can withstand constitutional challenges. "Unlike political speech," says the Campaign for Tobacco Free Kids, "advertising can be restricted in order to advance a substantial governmental interest. The Supreme Court has previously recognized that protecting the health of children is a substantial governmental interest, one that can lawfully be protected."¹²¹

10. ECONOMIC IMPACTS OF ADVERTISING RESTRICTIONS

BOX 3: Advertising and Civil Liberties

Any state intervention in the communications between individuals or organisations raises civil liberties questions. But tobacco is a highly unusual special case, with very serious health implications. This justifies intervention to control the marketing of the product. The civil liberties arguments in favour of a comprehensive ban on tobacco promotion can be grouped under four headings:

Precedent And Unique Status Of Tobacco: There is not a universal right to promote any legal product. The fact that tobacco is not more heavily regulated is an anomaly rooted in history, rather than in rational choices that would be made today. In terms of its health danger and pharmacological effects, tobacco is clearly equivalent to or more dangerous than the vast majority of pharmaceuticals. Tobacco is also a uniquely dangerous product. By any comparative food and drug safety standards, or any other criteria, it would certainly be impossible to introduce a product with similar characteristics of addictiveness and danger to health today. Given this unique and special status in which tobacco inhabits a legal twilight, society has the right to demand restrictions on its promotion and other aspects of the tobacco business.

The Right To Know The Truth: Most individuals, even now, do not make smoking decisions based on the full facts and the tobacco companies do little to convey accurate information about their products. The promotion of tobacco in a favourable light is inherently deceptive as it stresses a life affirming role for tobacco. Most governments spend money to educate the public about the hazards of smoking, yet these efforts are undermined by tobacco advertising campaigns. Banning tobacco promotion avoids an ‘arms race’ between publicly funded anti-tobacco spending and commercial pro-tobacco spending and therefore represents prudent use of public funds.

Addiction As An Assault On Individual Liberty: Addiction complicates and confounds civil liberties arguments in favour of tobacco promotion, because it denies the user free choice by creating a chemically-based compulsion to continue and increase consumption of nicotine after the original decision to smoke was made. Sixty-nine percent of smokers say they want to quit. Tobacco promotional offers may be designed to weaken their will and to retain them as smokers.

Harms to Others: Every smoker has an impact on the people around them and it is impossible to prevent the promotion of smoking to individuals having an effect on others. Children are exposed to tobacco promotional materials, even if that material is not specifically targeted at them. Given that smoking has been marketed as an aspirational rite of passage into adulthood, it should be expected that children would seek out such material. Tobacco marketing and promotion also helps to keep adult role models smoking and helps shape these role models by offering them merchandise and access to an affirmative smoking culture which the child is then exposed to. Children are also hurt by passive smoking in the home, despite industry denials. These innocent people deserve some protection, and one of the very few options open to change smoking behaviour inside the home is to ban the promotion of tobacco products.

Adapted from “Banning Tobacco Promotion: Ethical and Civil Liberties Issues,” ASH Paper #2, November 1997 (<http://www.ash.org.uk/papers/ethics.html>).

Concern about the economic impact of an ad ban has been a major obstacle to implementing them. Tobacco companies consistently predict that ad bans will have severe economic impacts on advertisers, the media and the economy as a whole. In most cases, however, tobacco advertising constitutes a small percentage of total advertising revenue, minimizing the economic impact on media outlets currently accepting tobacco ads:

- ❑ Hong Kong imposed a total ban on tobacco advertising on television and radio in 1990. By 1996, advertising revenue at the two main television stations had increased more than 500 percent.¹²²
- ❑ Thailand introduced a total ad ban in 1992, yet overall ad spending increased by 42 percent between 1993 and 1995.¹²³
- ❑ A study by the British Society for the Study of Addiction and the Centre for Health Economics at the University of York concluded that a total ban on tobacco advertising in Britain would actually create an additional 15,000 jobs as people diverted money from the tobacco expenditures to industries which were more labor intensive.¹²⁴

While banning tobacco company sponsorship of sports and entertainment may entail some hardship, there are alternative ways of financing such activities, including the use of tobacco taxes. In a number of states in Australia, for example, a portion of tobacco taxes has been used to create foundations to fund athletic, entertainment and cultural activities, often in excess of what was previously available from the tobacco industry.¹²⁵

11. POLICY RECOMMENDATIONS

Countries wishing to reduce the harm caused by tobacco will want to adopt a comprehensive package of tobacco control measures, including a total ban on tobacco advertising and promotion. WHO recommends that countries “prohibit all tobacco advertising and promotions, including free samples and other giveaways, sale of non-tobacco products that carry a tobacco brand name, point of sale advertising and tobacco company sponsorship of sporting and cultural events.”¹²⁶ Member states have also backed such a prohibition. In 1990, the World Health Assembly adopted WHA Resolution 43.16 which specifically called on governments to include in their tobacco control programs “progressive restrictions and concerted action to eliminate eventually all direct and indirect advertising, promotion and sponsorship concerning tobacco.” The World Bank, meanwhile, believes that “enough is known already to implement these measures without delay.”¹²⁷

A ban on tobacco advertising and promotion should cover both direct and indirect advertising and should include all types of media (print, broadcast, etc.) The ban should include all of the types of advertising described in Sections 5 & 6 of this paper (radio and television ads, billboards, point-of-sale, sports and entertainment sponsorship, etc.). However given the proven ability of the tobacco industry to find loopholes in complex legislation, it is best to keep such regulations firm and simple. For example, it should not try to specify all of the types of advertising that are prohibited because the industry will simply come up with new categories. Rather, it should specify what is permitted. Every other commercial communication whose aim or effect is to promote tobacco products should be banned. Tobacco companies and their executives should also be held directly accountable for violations of these restrictions.¹²⁸

Countries should also avoid entering into voluntary agreements with the tobacco industry. Time and again the industry has proven that it is incapable of self-regulation, and only offers voluntary advertising restraints in the hopes of forestalling effective legislation. During efforts to pass

advertising restrictions, governments should be aware that the industry will often organize front groups supposedly representing civil society, to oppose these proposals. Groups lobbying on such legislation should be expected to disclose their source of funds and interest in the legislation.

Before comprehensive legislation is implemented, governments may want to take some steps to discourage tobacco companies from trying to “front-load” advertising in anticipation of future bans. One such method would be to make advertising a non-deductible business expense. In many countries, tobacco companies save millions of dollars through tax deductions for advertising expenses. Removing that deduction would be a powerful incentive for the industry to limit its promotional activities. Countries should also require that tobacco companies publicly disclose all expenditures on advertising, promotion and political lobbying and make those figures widely available.

The Need for an International Framework Convention

Although WHA Resolution 43.16 was adopted by consent, few countries have taken steps to enact it domestically. Furthermore, even those countries which have completely banned tobacco advertising and promotion find themselves bombarded with tobacco advertising through foreign publications, broadcasts of sporting events from other countries on satellite and cable television, and, recently, through advertising on the internet. Only a worldwide ban on tobacco advertising and sponsorship can end these types of practices. Because of the importance of advertising in increasing tobacco consumption and prevalence, such a ban should be one of the first priorities in negotiations over the WHO Framework Convention on Tobacco Control. Whether as a separate protocol or an integral part of the Framework Convention itself, such a ban could help governments come to grips with an issue that simply cannot be solved at the national level alone.

Annex I

DIRECTIVE 98/43/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 July 1998

on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products¹²⁹

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57(2), Article 66 and Article 100a thereof,

Having regard to the proposal from the Commission,ⁱ

Having regard to the opinion of the Economic and Social Committee,ⁱⁱ

Acting in accordance with the procedure laid down in Article 189b of the Treaty,ⁱⁱⁱ

(1) Whereas there are differences between the Member States' laws, regulations and administrative provisions on the advertising and sponsorship of tobacco products; whereas such advertising and sponsorship transcend the borders of the Member States and the differences in question are likely to give rise to barriers to the movement between Member States of the products which serve as the media for such advertising and sponsorship and to freedom to provide services in this area, as well as distort competition, thereby impeding the functioning of the internal market;

(2) Whereas those barriers should be eliminated and, to this end, the rules relating to the advertising and sponsoring of tobacco products should be approximated, whilst leaving Member States the possibility of introducing, under certain conditions, such requirements as they consider necessary in order to guarantee the protection of the health of individuals;

(3) Whereas, in accordance with Article 100a (3) of the Treaty, the Commission is obliged, in its proposals under paragraph 1 concerning health, safety, environmental protection and consumer protection, to take as a base a high level of protection;

(4) Whereas this Directive must therefore take due account of the health protection of individuals, in particular in relation to young people, for whom advertising plays an important role in tobacco promotion;

(5) Whereas in order to ensure the proper functioning of the internal market the Council adopted, on the basis of Article 100a, Directive 89/622/EEC^{iv} and Directive 90/239/EECⁱ concerning the labelling of tobacco products and the maximum tar yield of cigarettes, respectively;

ⁱ OJ C 129, 21.5.1992, p. 5.

ⁱⁱ OJ C 313, 30.11.1992, p. 27.

ⁱⁱⁱ Opinion of the European Parliament of 11 February 1992 (OJ C 67, 16.3.1992, p. 35), confirmed under the Article 189b procedure on 3 December 1993, Council Common Position of 12 February 1998 (OJ C 91, 26.3.1998, p. 34) and Decision of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998). Council Decision of 22 June 1998.

^{iv} OJ L 359, 8.12.1989, p. 1. Directive as amended by Directive 92/41/EEC (OJ L 158, 11.6.1992, p. 30).

(6) Whereas advertising relating to medicinal products for human use is covered by Directive 92/28/EECⁱⁱ; whereas advertising relating to products intended for use in overcoming addiction to tobacco does not fall within the scope of this Directive;

(7) Whereas this Directive will not apply to communications intended exclusively for professionals in the tobacco trade, the presentation of tobacco products offered for sale and the indication of their prices, and, depending on sales structures, advertising directed at purchasers at tobacco sales outlets and the sale of third-country publications which do not satisfy the conditions laid down in this Directive, provided, however, that they comply with Community law and the Community's obligations at international level; whereas it is for the Member States, where necessary, to take appropriate measures in these areas;

(8) Whereas, given the interdependence between the various forms of advertising — oral, written, printed, on radio or television or at the cinema — and in order to prevent any risk of distorting competition or circumventing rules and regulations, this Directive must cover all forms and means of advertising apart from television advertising already covered by Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activitiesⁱⁱⁱ;

(9) Whereas all forms of indirect advertising and sponsorship, and likewise free distribution, have the same effects as direct advertising, and whereas they should, without prejudice to the fundamental principle of freedom of expression, be regulated, including indirect forms of advertising which, while not mentioning the tobacco product directly, use brand names, trade marks, emblems or other distinctive features associated with tobacco products; whereas, however, Member States may defer application of these provisions to allow time for commercial practices to be adjusted and sponsorship of tobacco products to be replaced by other suitable forms of support;

(10) Whereas, without prejudice to the regulation of the advertising of tobacco products, Member States remain free to allow the continued use, under certain conditions, for the advertising of products or services other than tobacco products, of a brand name which was already in use in good faith both for such products or services and for tobacco products before this Directive entered into force;

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

Article 2

For the purposes of this Directive, the following definitions shall apply:

ⁱ OJ L 137, 30.5.1990, p. 36.

ⁱⁱ OJ L 113, 30.4.1992, p. 13.

ⁱⁱⁱ OJ L 298, 17.10.1989, p. 23. Directive as last amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

1. 'tobacco products': all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco;
2. 'advertising': any form of commercial communication with the aim or the direct or indirect effect of promoting a tobacco product, including advertising which, while not specifically mentioning the tobacco product, tries to circumvent the advertising ban by using brand names, trade marks, emblems or other distinctive features of tobacco products;
3. 'sponsorship': any public or private contribution to an event or activity with the aim or the direct or indirect effect of promoting a tobacco product;
4. 'tobacco sales outlet': any place where tobacco products are offered for sale.

Article 3

1. Without prejudice to Directive 89/552/EEC, all forms of advertising and sponsorship shall be banned in the Community.

2. Paragraph 1 shall not prevent the Member States from allowing a brand name already used in good faith both for tobacco products and for other goods or services traded or offered by a given undertaking or by different undertakings prior to 30 July 1998 to be used for the advertising of those other goods or services.

However, this brand name may not be used except in a manner clearly distinct from that used for the tobacco product, without any further distinguishing mark already used for a tobacco product.

3.

- a. (a) Member States shall ensure that no tobacco product bears the brand name, trade mark, emblem or other distinctive feature of any other product or service, unless the tobacco product has already been traded under that brand name, trade mark, emblem or other distinctive feature on the date referred to in Article 6(1);
- b. (b) the ban provided for in paragraph 1 may not be circumvented, in respect of any product or service placed or offered on the market as from the date laid down in Article 6(1), by the use of brand names, trade marks, emblems and other distinguishing features already used for a tobacco product. To this end, the brand name, trade mark, emblem and any other distinguishing feature of the product or service must be presented in a manner clearly distinct from that used for the tobacco product.

4. Any free distribution having the purpose or the direct or indirect effect of promoting a tobacco product shall be banned.

5. This Directive shall not apply to:

- communications intended exclusively for professionals in the tobacco trade,
- the presentation of tobacco products offered for sale and the indication of their prices at tobacco sales outlets,

- advertising aimed at purchasers in establishments specialising in the sale of tobacco products and on their shop-fronts or, in the case of establishments selling a variety of articles or services, at locations reserved for the sale of tobacco products, and at sales outlets which, in Greece, are subject to a special system under which licences are granted for social reasons ('periptera'),
- the sale of publications containing advertising for tobacco products which are published and printed in third countries, where those publications are not principally intended for the Community market.

Article 4

Member States shall ensure that adequate and effective means exist of ensuring and monitoring the implementation of national measures adopted pursuant to this Directive. These means may include provisions whereby persons or organisations with a legitimate interest under national law in the withdrawal of advertising which is incompatible with this Directive may take legal proceedings against such advertising or bring such advertising to the attention of an administrative body competent to give a ruling on complaints or to institute the appropriate legal proceedings.

Article 5

This Directive shall not preclude Member States from laying down, in accordance with the Treaty, such stricter requirements concerning the advertising or sponsorship of tobacco products as they deem necessary to guarantee the health protection of individuals.

Article 6

1. Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive not later than 30 July 2001. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field covered by this Directive.

3. Member States may defer the implementation of Article 3(1) for:

- one year in respect of the press,
- years in respect of sponsorship.

In exceptional cases and for duly justified reasons, Member States may continue to authorise the existing sponsorship of events or activities organised at world level for a further period of three years ending not later than 1 October 2006, provided that:

- the sums devoted to such sponsorship decrease over the transitional period,
- voluntary-restraint measures are introduced in order to reduce the visibility of advertising at the events or activities concerned.

Article 7

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee not later than 30 July 2001, and subsequently every two years, a report on the

implementation of this Directive, with particular reference to the implementation and effects of Article 3(2) and (3) and Article 6(3). Where appropriate, it shall submit proposals for the adaptation of this Directive to suit developments identified in the report. Such adaptation shall not affect the periods provided for in Article 6(3).

Article 8

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 6 July 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

R. EDLINGER

Annex II

THAILAND: TOBACCO PRODUCTS CONTROL ACT B.E.2535¹³⁰

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to promulgate the law on control of tobacco products;

Be it therefore enacted by the King, by and with the advice and consent of the National Assembly acting as the Parliament as follows:

Section 1 This Act is called the “Tobacco Product Control Act B.E.2535”.

Section 2 This Act shall enter into force after the period of one hundred and twenty days as from the date of publication in the Government Gazette.

Section 3 In this Act:

“Tobacco product” means the tobacco under the law on tobacco and any other product composed of tobacco leaves or nicotiana tabacum plant to be used either by smoking, sucking, sniffing, munching, eating, blowing or spraying into the mouth or nose or by other means in order to obtain the same result.

“Package” means a pack, carton or other packages used to wrap or contain the tobacco products.

“Advertising” means an act undertaken by any means to allow the public to see, hear or know the statement for commercial interest.

“Authority” means the Minister taking charge of this Act.

Section 4 No person shall be allowed to dispose of, sell, exchange or give the tobacco products to a person whom in know to the former that the buyer or receiver does not attain eighteen full years of age.

Section 5 No person shall be allowed to sell the tobacco products by vending machines.

Section 6 No person shall be allow to do any of the following acts:

- (1) To sell goods or render services with the distribution, addition, gift of tobacco products or exchange with the tobacco products as the case may be,
- (2) To sell the tobacco products with the distribution, addition, gift of or exchange with other goods or services,
- (3) To give or offer the right to attend the games, shows, services or any other benefit as a consideration to the buyer of tobacco products or a person bringing the package of tobacco products for exchange or redemption therefore.

Section 7 No person shall be allowed to distribute the tobacco products as a sample of the tobacco products so as to proliferate such tobacco products or to persuade the public to consume such tobacco products except for a customary gift.

Section 8 No person shall be allowed to advertise the tobacco products or expose the name or mark of the tobacco products in the printed materials, via radio broadcast, television or any other

advertiseable thing or to use the name or mark of the tobacco products in the shows, games, services or any other activity the objective of which is to let the public understand that the name or mark belongs to the tobacco products.

The provisions of paragraph 1 does not apply to the live broadcast from abroad via radio or television and the advertisement of the tobacco products in the printed matters printed outside the Kingdom without the objective to dispose of specifically in the Kingdom.

Section 9 No person shall be allowed to advertise the goods using the name or mark of the tobacco products as a mark of such goods in such a manner as to make such a mark to be understood as that of the tobacco products.

Section 10 No person shall be allowed to manufacture, import for sale or general distribution or advertise any other goods having such an appearance as to be understood as an imitation of such tobacco products as cigarettes of cigars under the law on tobacco or of the package of the said products.

Section 11 The tobacco products to be sold shall have the composition in accordance with the standards prescribed in the Ministerial Rules.

The manufacturer or importer of tobacco products shall have a duty to inform the Ministry of Public Health of the particulars of composition of the tobacco products in accordance with the criteria, procedures and conditions prescribed in the Ministerial Rules.

In case where the composition of any product does not comply with the standards prescribed in paragraph one, the Minister shall have the power to order the prohibition of sale or import of such tobacco product.

Section 12 The manufacture or importer of the tobacco products must exhibit the labels on the packages of tobacco products before moving out of the manufacturing site or before importation into the Kingdom as the case may be.

The criteria, procedures and conditions of exhibition of such labels and the statements there in shall be in accordance with those published in the Government Gazette by the Minister.

Section 13 No person shall be allowed to sell the tobacco products without exhibition of the labels as provided for in Section 12 on the packages of such tobacco products.

Section 14 In performing the duties under this Act, the authority shall have the power to

- (1) enter any place during sunrise and sunset or working hours of such place or enter any vehicle which in order to search in case where there in reasonable ground to suspect that the offenses hereunder have been committed;
- (2) take reasonable quantity of the tobacco products as a sample for inspection;
- (3) issue an inquiring letter or summon any person for interrogation or submission of the accounts, documents, evidence or other items required for consideration.

In performing the duties under paragraph one, the persons concerned shall reasonably accord facilitation therefore.

Section 15 In performing the duties under this Act, the authority shall present the identity card to the persons concerned.

Such identity cards of the authority shall be in accordance with the form prescribed in the Ministerial Rules.

Section 16 In performing the duties under this Act, the authority shall be the officers under the Penal Code.

Section 17 Any person violating Section 4 or Section 5 shall be subject to an imprisonment not exceeding one month or a fine not exceeding two thousand baht or both.

Section 18 Any person violating Section 6, Section 7, Section 9 or Section 10 shall be subject to a fine not exceeding twenty thousand bath.

Section 19 Any person violating Section 8 paragraph one shall be subject to a fine not exceeding two hundred thousand baht.

Section 20 Any manufacturer or importer failing to inform the particulars or informing incomplete particulars or informing false particulars or selling or importing the tobacco products in violation of Section 11 shall be subject to an imprisonment not exceeding six months or a fine not exceeding one hundred thousand baht or both.

Section 21 Any manufacturer or importer violating Section 12 shall be subject to a fine not exceeding one hundred thousand baht.

Section 22 Any person violating Section 13 shall be subject to a fine not exceeding twenty thousand baht.

Section 23 Any person obstructing or failing to accord facilitation to the authority in performing the duties under Section 14 shall be subject to an imprisonment not exceeding one month or a fine not exceeding ten thousand baht or both.

Section 24 In case where the violation of Section 4, Section 5, Section 6, Section 7, Section 8 paragraph one, Section 9, Section 10 or Section 13 is the manufacturer or importer, the violator shall be subject to the penalty twice that provided for such offenses.

Section 25 In case where the offender who is subject to the penalty hereunder is a juristic person, the managing director or a person responsible for the operation of such juristic person shall also be subject to the penalty provided for by law for such offenses unless it is proved that the action of such juristic person is committed without the knowledge or approval of such managing director of responsible person.

Section 26 The Minister of the Ministry of Public Health shall take charge of this Act and shall have the power to appoint the authority and to prescribe the Ministerial Rules for the execution of this Act.

Countersigned by
The Honourable Anand Punyarachan
Prime Minister

Notes: The reason for the promulgation of this Act is that at present it is recognized among the physicians that the tobacco products cause fatal diseases to the consumers as well as affect the fetus in case where the consumers are pregnant and also have adverse effect on the persons nearby. However, at present there exists no law to exclusively control the tobacco products thereby proliferating the advertisement and promotion of the sale of tobacco products by various means especially among the juveniles who are the significant resources of the nation which creates a serious obstacle for the prevention of diseases caused by the consumption of tobacco products and for the maintenance of health of the public. It is therefore necessary to promulgate this Act.ⁱ

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