WHO Framework Convention on Tobacco Control

Position Statement of the German Advertising Federation

The German Advertising Federation (Zentrale der deutschen Werbewirtschaft, or ZAW) is the umbrella organization of the German advertising industry. It currently has 40 member organizations whose own membership comprises firms that prepare, conduct, design and broker commercial advertising. On the one hand, ZAW regards itself as a ‘round table’ for the formulation of joint policies and for reconciling the interests of all parties in the business of advertising. On the other, ZAW also represents the German advertising industry in all fundamental issues. ZAW’s core tasks include combating unwarranted and inadmissible restrictions on advertising. In this area, ZAW not only takes a reactive and combative role, but also provides information and takes preventive action.

The World Health Organization (WHO) is currently preparing a relating to international law binding Framework Convention on Tobacco Control (FCTC). The draft FCTC impinges on the interests of the German advertising industry by calling for a total ban on tobacco advertising. Under the WHO proposals, all conceivable forms of direct and indirect advertising for tobacco products and of tobacco sponsoring are to be banned by law (Document A/FCTC/WG 2/4 of 15 February 2000). The proposed ban also extends to non-commercial communication.

The German Advertising Federation resolutely opposes WHO’s endeavours to put an end to market communication by tobacco producers world-wide. The action plan developed by WHO completely ignores the facts when it comes to the question of a causal link between advertising and consumption.

At the heart of WHO’s call for a total ban of tobacco advertising is the - unsubstantiated - allegation that advertising helps promote tobacco use. Through this postulated mechanism, it is argued, young people are moved first to experiment with and later to become habitual users of tobacco products; smokers are moved to
consume tobacco in greater quantities, and attempts to give up smoking are undermined.

Conversely, experience with advertising restrictions and bans allegedly shows that these help reduce tobacco use; further, it is asserted that control of tobacco advertising by self-regulation on the part of producers has failed.

A number of academic publications investigate the link between advertising and youth smoking as posited by WHO. None of the studies has been able to prove that advertising prompts young people to try and later to keep using tobacco. Also, proving that advertising increases smoking is not the same as proving that an advertising ban would reduce it. In a social order founded on freedom and competition, any move to ban advertising must be carefully examined as to whether it would achieve its intended purpose. Politically motivated allegations and pleadings based upon system defects and empirically poor research methods are utterly lacking in persuasive power.

Yet numerous studies do exist that deal scientifically with the individual motivation of youth smokers. According to these studies, the deciding factors are tobacco use by parents and siblings at home and by friends, acquaintances and colleagues at school, work and meeting places such as discos. It is here that the social and other preconditions for smoking are to be found. It factors such as childish curiosity and imitation of adult behaviour, youthful protest against patronization, emancipatory demands for adult rights and peer pressure that prompt the decision to smoke.¹

Besides social psychology issues, consumption figures from WHO member states show that advertising bans have no effect on actual tobacco consumption, in particular among young people. Norway, for example, has had an absolute ban on tobacco advertising since 1975; despite this, the proportion of the 11-15 age group considered under the terms of the study as ‘regular smokers’ (at least one cigarette per week) is around 13 per cent.

Spain, on the other hand, has introduced only minor restrictions on tobacco advertising, yet the proportion of regular smokers among children and young people is significantly below the comparison figures for Norway and Australia, where tobacco advertising is far more strictly regulated.

In Germany, the proportion of the 12-25 age group who have never smoked is continuously rising. According to official statistics, this share is now 42 per cent, compared with 22 per cent as recently as 1976. These facts are noteworthy considering that tobacco advertising is permitted in Germany, albeit subject to certain restrictions. At the same time, two additional facts spur the discussion on advertising bans:

Tobacco advertising has been banned for decades in the People’s Republic of China, yet 300 million Chinese smoke.

Tobacco advertising was forbidden in the former planned economies. Yet the use of tobacco products there was in some cases significantly higher than in Western countries – as was the nicotine and tar content of the products. For example, filter cigarettes have a market share of 94 per cent in Germany, but only 30 per cent in Russia – papirossi not included.

This fact led the German Government to conclude: “The cigarette industry – doubtless rightly – points out that advertising has contributed not insignificantly towards a shift in smoking habits. Without any doubt, the observed developments are associated with a lessening of the health risk to smokers” (Bundestags-Drucksache 7/3597).

The true function of advertising lies in competitive rivalry between brands and qualities. It induces buyer preferences for one brand over another.

It is even possible to argue that an advertising ban might be disadvantageous on health policy grounds. As a result of such a ban, the tobacco industry might reduce its massive expenditure on research to reduce harmful substances in tobacco products: if results can no longer be made public by promotional means, the will to do that research may dwindle.

Political crusades against the tobacco industry and smoking can be counterproductive. Thus, the number of young smokers in the U.S.A. rose by a third between 1991 and 1997 (study by CBC, the U.S. Center for Disease Control).

A total advertising ban would also be unconstitutional. Germany’s Konstituion Law enshrines the rights to free choice of occupation (Article 12(1)), property (Article 14(1)) and freedom of expression, which includes
advertising (Article 5(1) sentence 1). The right to free expression is also confirmed by the European Convention on Human Rights (ECHR) (Article 10(1) ECHR).

WHO’s plans to ban communication on tobacco products in the non-commercial sector – i.e., between private citizens – demonstrates how far removed from reality are the authors of the WHO Framework Convention.

The industry is well aware of its responsibilities in advertising tobacco products: almost everywhere, there are voluntary codes of conduct for self-imposed restriction of tobacco advertising to answer political concerns. Much of these qualitative and quantitative restrictions relate to the youth sector.

More detailed evidence demonstrating the ineffectiveness of a total ban on tobacco advertising – evidence we have only been able to outline here – is available on request. We call upon WHO to give thorough consideration to the available econometric findings and social psychology materials, taking into account in particular the methodological critiques of specific studies that have been openly sponsored by public bodies.

Against the background of these facts, a total ban on tobacco advertising would be disproportionate and hence unjust. It would rob smokers of access to information on less and less harmful tobacco products, harm above all small and medium-size companies on the producer side, deprive the media of revenue it needs to finance its function in the common democratic order, and disregard the self-regulatory mechanisms of the industry.

We request that WHO discuss these issues in full and offer our participation in the discussion process.

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