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Loi sur le tabac

Compilation of Selected Evidence Regarding the Impact of Tobacco Advertising and Promotion

A Submission to Parliamentarians
for Use During Consideration of Bill C-42,
An Act to amend the Tobacco Act

CANADIAN CANCER SOCIETY | SOCIÉTÉ CANADIENNE DU CANCER

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164. World Health Assembly, "An international framework convention for tobacco control" Resolution WHA49.17, May 25, 1996.

165. World Health Organization, "Sport and the Arts Without Tobacco: Play It Tobacco Free!" World No-Tobacco Day Advisory Kit, 1996, and accompanying documents.

Summary of Evidence

As documented in this summary and in the full submission, there is ample evidence to conclude that tobacco advertising and promotion (including informational advertising, sponsorships and brand stretching) increase tobacco consumption, and that there is sufficient justification for a legislated ban on all forms of direct and indirect tobacco advertising and promotion.

Tab

2. [These ads show that similar lifestyle images have been used both in direct tobacco advertising and in tobacco sponsorship advertising.]

   Info-tabac, examples of tobacco advertising and tobacco sponsorship advertising

Reports/Rapports

3. While the federal ban on tobacco advertising is a positive step, further measures are needed. The ARF supports a ban on use of tobacco names, trademarks, colors and logos in all advertising of events, products or organizations sponsored by tobacco companies.

   Addiction Research Foundation, "Preventing Smoking: Tobacco Control Policies. Best Advice From the Addiction Research Foundation." July 1995, p. 5.

4. The commission is of the view that banning tobacco advertising is very important. Many young British Columbians start smoking each year and will die from it. We think it is important that nothing be permitted that would encourage people to smoke.
   Therefore, the commission recommends that:
   16.a. the provincial government pass legislation similar to the Tobacco Products Control Act.; and
   b. if the legislation is found to be contrary to the Canadian Charter of Rights and Freedoms, the province resort to Section 33(1) of the Charter to ensure that the prohibition against tobacco advertising is maintained.

   British Columbia Royal Commission on Health Care and Costs, "Closer to Home: The Report of the British Columbia Royal Commission on Health Care and Costs" 1991, p.C-70.

5. La promotion des produits du tabac revêt plusieurs formes: publicité, commandite, emballage attrayant, exposition massive des produits dans les points de vente, etc. ... Toutes ces activités promotionnelles entretiennent, entre autres, la " normalité" du tabagisme. Une stratégie de lutte contre le tabagisme ne peut donc ignorer cet important aspect des stratégies de mise en marché de l'industrie du tabac.(p.72)

   ...

   Mesures en matière de lutte contre le tabagisme au niveau national

   ...

   Que le gouvernement du Québec prenne les initiatives appropriées afin que les activités de promotion des produits du tabac soient éliminées ou réduites au minimum, cela n'excluant en rien une collaboration avec le fédéral dans ce domaine.(p.73)

   Comité consultatif sur le cancer, "Programme québécois de lutte contre le cancer; Pour lutter efficacement contre le cancer, formons équipe" Octobre 1997, pp.72-73.

6. Policy Recommendations

The images typically associated with advertising and promotion convey the message that tobacco use is a desirable, socially approved, safe and healthful, and widely practiced behaviour among young adults, whom children and youths want to emulate. As a result, tobacco advertising and promotion undoubtedly contribute to the multiple and convergent psychosocial influences that lead children and youths to begin using these products and to become addicted to them.

... The message should be unequivocal -- tobacco use is unhealthy and socially disapproved. In the context of this emergent social norm, the contradictory messages now conveyed by the tobacco industry can no longer be tolerated. The Committee therefore recommends a step-by-step plan to eliminate these commercial messages from the various media of mass communication. Realizing that implementation of this recommendation will require careful planning and a period of transition, the Committee proposes a sequential process for phasing in the necessary restrictions.

Lynch, B.S., Bonnie, R.J., eds., Committee on Preventing Nicotine Addiction in Children and Youths, Institute of Medicine, *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths* (Washington, D.C.: National Academy Press, 1994), p.131.

7. Conclusions

1. Cigar use began to increase in the United States after promotional activities for cigars increased beginning in 1992.
2. Promotional activities for cigars have increased the visibility of cigar consumption, normalized cigar use, and broken down barriers to cigar use.

National Cancer Institute, *Cigars: Health Effects and Trends*, Smoking and Tobacco Control Monograph 9, 1998, p.217.

8. There is substantial evidence that young people are aware of, and respond to, cigarette advertising. (p.9)

...

Advertisements present images that appeal to youth and are seen and remembered by them.(p.9)

...

In sum, both qualitative and quantitative studies examining the effects of advertising on adolescents suggest that the content of advertisements influence attitudes, beliefs and values related to tobacco. They do so by portraying benefits of smoking that resonate with the issues and concerns of adolescents; namely, peer bonding, social approval, independence/autonomy, self-image, body image, adventure seeking and normative behaviour.(p.13)

...

Evidence for the effects of marketing on youth smoking behaviour can be found across numerous research studies representing a wide range of methods, including survey research, longitudinal studies, historical and econometric analyses.(p.25)

...

Although no one study or method in this body of research provides definitive conclusions, the cumulative evidence across these varied methods and research questions support strongly the conclusion that marketing plays a significant role in youth smoking behaviour, both in terms of initial

experimentation and brand preference. (p.26)

...

It is the conclusion of the National Cancer Institute of Canada's project team that tobacco marketing in Canada does influence tobacco initiation in youth under the age of sixteen, and older. The weight of evidence supports three general conclusions:

- a total ban on tobacco marketing would significantly reduce messages targeted at youth which promote initiation of tobacco youth.
- a total ban on tobacco marketing would significantly contribute to a reduction in the prevalence of tobacco use among youth.
- a total ban is the only reasonable policy from a population health perspective, given the complex, contextual nature of marketing influence, and the likelihood that partial bans will simply result in a shift of emphasis to alternative methods of marketing.(p.34)

National Cancer Institute of Canada, Centre for Behavioural Research and Program Evaluation, "Tobacco Marketing and Youth: Examination of Youth Attitudes and Behaviour to Tobacco Industry Advertising and Sponsorship" March 31, 1996. Prepared for Health Canada, pp.9, 13, 25, 26, 34.

9. The need for congressional action regarding FDA's efforts to restrict tobacco advertising, promotion, and marketing is particularly urgent. ... Advertising and promotion constraints may not have dramatic short-term effects, but they are integral parts of all successful tobacco control efforts in states and foreign countries and must be part of any long-term U.S. national tobacco control program.

National Cancer Policy Board, *Taking Action to Reduce Tobacco Use* (Washington, D.C.: National Academy Press, 1998), p.8.

10. The task Force calls for the provincial government to ban the use of tobacco product names, trademarks, colours and logos in all tobacco sponsorship advertising.

Ontario Task Force on the Primary Prevention of Cancer, "Recommendations for the Primary Prevention of Cancer; Report of the Ontario Task Force on the Primary Prevention of Cancer" March 1995, p.1.

11. Smoking in young people is reinforced and maintained by a number of factors in the immediate and wider social environment, particularly the availability of cigarettes to young people and tobacco advertising. A ban on tobacco advertising would have a significant impact on the uptake of tobacco by young people in the UK.

Royal College of Physicians of London, *Smoking and the Young: A report of a working party of the Royal College of Physicians* (London: Lavenham Press Ltd., 1992), p.74.

12. Implement the federal Tobacco Control Blueprint.

In December 1995, Health Canada produced a comprehensive plan - the Tobacco Control Blueprint. It includes many significant proposals: a ban on advertising; restrictions on tobacco sponsorship and promotion; packaging and labelling requirements; limits on access for young people; product regulation; and others. So far, these are just words. It's time to make them actions!

Schabas, R. "Tobacco. Sounding the Alarm. Report of the Chief Medical Officer of Health"

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Ontario Ministry of Health, 1996, p.14.

13. Price, advertising and promotion influence cigarette consumption.

...

All forms of tobacco advertising, promotion and identifiable sponsorship should be banned.

Scientific Committee on Tobacco and Health (U.K.) *Report of the Scientific Committee on Tobacco and Health.* (London: H.M.S.O., February 1998).

14. The Committee believes that, on the basis of the evidence received from a wide range of groups and of studies that show sponsorship by tobacco manufacturers acts as cigarette advertising to children, there should be no special exemption permitting tobacco advertising at sporting and cultural events of international significance. The Committee further believes this recommendation should be phased in by the year 2000.

Senate Community Affairs References Committee (Australia), "The Tobacco Industry and the Costs of Tobacco-Related Illness: Report of the Senate Community Affairs Reference Committee" December 1995, p.38.

15. [P]lain or generic packaging is a reasonable component of the evolving national strategy to reduce tobacco consumption. ...(p.28)

In the interest of the health of Canadians, as suggested by the evidence available to the Committee to date and in the absence of evidence to the contrary, the Committee affirms that plain or generic packaging could be a reasonable step in the overall strategy to reduce tobacco consumption.(p.29)

Standing Committee on Health, House of Commons, "Towards zero consumption: Generic packaging of tobacco products" June 1994, p.28, 29.

16. It is clearly contrary to the public interest for the use of a harmful product to be actively promoted even though a ban on production and sales would be unacceptable.(p.30)

...

[Y]oung people can hardly be expected to believe that governments really consider cigarette smoking to be hazardous if they allow unlimited cigarette promotion. Further, large numbers of smokers wish to stop smoking or stay stopped and anything that could be done to support their resolve and reduce the pressures to smoke, which are part of our society, would be desirable.(p.31)

...

Your Committee recommends that cigarette advertising and all other promotion of cigarette sales be progressively eliminated.(p.32)

...

[A]ny type of cigarette promotion implies that the use of cigarettes is desirable and presumably harmless, and a priori, adds to the cultural acceptability of smoking.(p.33)

Standing Committee on Health, Welfare and Social Affairs, House of Commons, "Report of the Standing Committee on Health, Welfare and Social Affairs on tobacco and cigarette smoking", 1969, pp.30, 31, 32, 33.

Tab

17. It is recommended that the Ontario Government initiate discussions to encourage the federal government to take action prohibiting promotion of tobacco.
It is further recommended that, within areas over which it has jurisdiction, the Ontario government should prohibit all forms of tobacco promotion ...
There is a significant likelihood that advertising and other tobacco promotion serve to increase the overall consumption of tobacco in Ontario.

Task Force on Smoking, "Smoking and Health in Ontario: A Need for Balance. Report of the Task Force on Smoking Submitted to the Ontario Council of Health" May, 1982, pp.13-14.

18. [W]e must conclude that, in the face of evidence that has now been accumulated, the Government can no longer maintain its position that a further tightening of tobacco advertising controls is unlikely to contribute to a reduction of the prevalence of smoking in the UK.(p.xvii)

...

We recommend that the Government support the Directive [of the European Union].(p.xviii)

United Kingdom, House of Commons Health Committee, "Second Report: The European Commission's Proposed Directive on the Advertising of Tobacco Products" (London: H.M.S.O., 1992), pp.xvii, xviii.

19. There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms concluded that the collective empirical, experiential and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption.

Reducing the Health Consequences of Smoking: 25 Years of Progress. A Report of the Surgeon General, 1989, pp.512-513

20. Advertising tends to increase consumption of cigarettes, although the relationship is difficult to quantify precisely. Advertising restrictions are generally associated with declines in consumption and, hence, are an important component of tobacco-control programs.

Smoking and Health in the Americas. A 1992 Report of the Surgeon General, in Collaboration with the Pan American Health Organization, 1992, p.136.

21. Even though the tobacco industry asserts that the sole purpose of advertising and promotional activities is to maintain and potentially increase market shares of adult consumers, it appears that some young people are recruited to smoking by brand advertising.(p.194)

...

Conclusions

1. Young people continue to be a strategically important market for the tobacco industry.
2. Young people are currently exposed to cigarette messages through print media (including outdoor billboards) and through promotional activities, such as sponsorship of sporting events and public

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entertainment, point-of-sale displays, and distribution of specialty items.
3. Cigarette advertising uses images rather than information to portray the attractiveness and function of smoking. Human models and cartoon characters in cigarette advertising convey independence, healthfulness, adventure-seeking, and youthful activities -- themes correlated with psychosocial factors that appeal to young people.
4. Cigarette advertisements capitalize on the disparity between an ideal and actual self-image and imply that smoking may close the gap.
5. Cigarette advertising appears to affect young people's perceptions of the pervasiveness, image, and function of smoking. Since misperceptions in these areas constitute psychological risk factors for the initiation of smoking, cigarette advertising appears to increase young people's risk of smoking.(p.195)

Preventing Tobacco Use Among Young People: A Report of the Surgeon General, 1994, pp.194-195.

22. Advertising is an important influence on tobacco use initiation and maintenance, as documented in *Preventing tobacco use among young people* (USDHHS 1994). Cigarette advertising and promotion may stimulate cigarette consumption by (1) encouraging children and adolescents to experiment with and initiate regular use of cigarettes, (2) deterring current smokers from quitting, (3) prompting former smokers to begin smoking again, and (4) increasing smokers' daily cigarette consumption by serving as an external cue to smoke (CDC 1990a). In addition, cigarette advertising appears to influence the perceptions of youths and adults about the pervasiveness of cigarette smoking and the images they hold of smokers (USDHHS 1989, 1994). Cigarette advertising also may contribute to the perception that smoking is a socially acceptable, safe behaviour and may produce new perceptions about the functions of cigarette smoking in social situations. All of these perceptions have been shown to be risk factors for the initiation of cigarette smoking (Lynch and Bonnie 1994; USDHHS 1994; *Federal Register* 1996).

Tobacco Use Among U.S. Racial/Ethnic Minority Groups - African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders and Hispanics: A Report of the Surgeon General, 1998, p.220.

23. We believe that limiting the advertising, marketing and promotion of tobacco products directed to children can be an appropriate and necessary part of a comprehensive approach to reducing youth tobacco use. Such limitations can serve as an important complement to other strategies, such as access restrictions and public education, to reduce underage tobacco use.
The FTC further believes that any effort to restrict tobacco advertising to young people must be sufficiently broad to be effective. The FTC each year issues a report on the advertising and promotional expenditures of U.S. cigarette manufacturers. Those reports show that after cigarette manufacturers were prohibited from advertising on television and radio in 1969 (a prohibition that was intended, in part, to protect children), they put tens of millions of dollars into print advertising to sell their products. In more recent years, the cigarette manufacturers have shifted an increasing amount of money away from traditional advertising and into sponsorships and so-called "trinkets and trash" -- T-shirts, caps, and other logo-adorned merchandise -- that some believe are very attractive to young people. To prevent simply another such shift in marketing strategy, a set of advertising and marketing restrictions that addresses the many different ways in which tobacco may be marketed and

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advertised to minors is necessary.

U.S. Federal Trade Commission, "Prepared Statement of the Federal Trade Commission on Advertising, Marketing and Antitrust Issues in the Global Tobacco Settlement Presented By Robert Pitofsky, Chairman, Before the Committee on Commerce, Science and Transportation, United States Senate" March 3, 1998.

24. ... [T]he apparent focus on the possible causal role of cigarette and smokeless tobacco advertising in young people's *initial* decision to smoke or to use smokeless tobacco is overly narrow. Human behavior cannot be modeled so simplistically. In point of fact, tobacco advertising has an effect on young people's tobacco use behaviour if it affects initiation, maintenance, or attempts at quitting.

The evidence that FDA has gathered in this proceeding establishes that cigarette and smokeless tobacco advertising does have such an effect. While not all the evidence in the record supports this conclusion, there is more than adequate evidence, that when considered together, supports a conclusion that advertising, with knowledge of the industry, does affect the smoking behavior and tobacco use of people under the age of 18. This behavior includes the decision whether to start using cigarette or smokeless tobacco, whether to continue or to increase one's consumption, when and where it is proper to use tobacco and whether to quit. This evidence includes:

Expert opinion - The American Psychological Association provided expert opinion, with specific citation to numerous studies to show that tobacco advertising plays directly to the factors that are central to children and adolescents and thus plays an important role in their decision to use tobacco. ...

Advertising theory - Basic advertising and consumer psychology theory, statements from advertising experts and general consumer testing show that advertising that is multi-media, that uses color and that employs more pictures, characters or cartoons as opposed to text is more robust and can be better processed, understood and remembered by children and adolescents, who have less information processing ability than adults. ...

Studies and Surveys - Studies show that children are exposed to substantial and unavoidable advertising, that exposure to tobacco advertising leads to favourable beliefs about tobacco use, that advertising plays a role in leading young people to overestimate the prevalence of tobacco use, and that these factors are related to young people's tobacco initiation and use. ...

Empirical Studies - Studies conducted on sales data have shown that advertising did increase one segment of the tobacco market (low tar cigarettes), that advertising in New Zealand had the effect of increasing tobacco sales to young people, and that a large multi-country survey showed that advertising tends to increase consumption of tobacco products. ...

Anecdotal Evidence and Various Advertising Campaigns Successful With Young People - Studies show that the buying behavior of young people is influenced by advertising, that they smoke the most advertised brands, that children ages 3 to 6 can recognize a cartoon character associated with smoking at the same rate as the recognize Ronald McDonald, that various ad campaigns (Camel cigarettes, Reg cigarettes, products designed for women and smokeless tobacco advertising aimed at new users) that appeared to be targeted to young people did have an effect upon young people's purchases and use of tobacco, and that young people report that they got their information about a tobacco brand from billboards, magazines, in store advertising and on teeshirts. ...

Industry Statements - Statements in documents created by R.J. Reynolds' researchers, by Philip Morris advertising people, by executives of US Tobacco and by people in and doing work for

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various Canadian tobacco companies indicate that young people are an important and often crucial segment of the tobacco market.

Consensus Reports - The IOM and 1994 Surgeon General Report concluded on the basis of an exhaustive review of the evidence that advertising affects young people's perceptions of the pervasiveness, image and function of smoking, that misperceptions in these areas constitute psychosocial risk factors for the initiation of tobacco use and thus advertising appears to influence young people's risk of tobacco use. ...

Thus the evidence in this proceeding demonstrates that cigarette and smokeless tobacco advertising plays a material role in the decision of children and adolescents under the age of 18 to engage in tobacco use behavior. It therefore establishes that the harm from this advertising is real.(pp.44488-44489)

...

Some items, when used or worn by young people, also create a new advertising medium -- the "walking billboard" -- which can come into schools or other locations where advertising is usually prohibited. (p.44521)

...

[T]he agency recognizes that the tobacco industry has exploited loopholes in partial bans of advertising to move its imagery to different media. When advertising has been banned or severely restricted, the attractive imagery can be and has been replicated on nontobacco items that go anywhere, are seen everywhere, and are permanent, durable, and unavoidable. By transferring the imagery to nontobacco items, the companies have "thwarted" the attempts to reduce the appeal of tobacco products to children.(p.44524)

...

Because they penetrate the young persons' world, they are very effective in creating the sense that tobacco use is widely accepted, which ... is extremely important to children and adolescents. (p.44525)

...

FDA finds that all nontobacco items that bear cigarette or smokeless tobacco brand logos are capable of playing a significant role in a young person's decision to engage in tobacco use. (p.44526)

...

FDA has concluded that nontobacco items (identified with a tobacco brand), either sold, given away or provided for proof of purchase are an instrumental form of advertising in affecting young people's attitudes towards and use of tobacco. Moreover, banning this form of advertising is essential to reduce tobacco consumption by young people. (p. 44527)

...

The effect of sponsored events on the young people who attend or see these events is enormous. Advertising affects young people's opinion of tobacco products, first, by creating attractive and exciting images that can serve as a "badge" or identification, second, by utilizing multiple and prolonged exposure in a variety of media, thereby creating an impression of prevalence and normalcy about tobacco use, and finally by associating the product with varied positive events and images. The sponsorship of events by tobacco companies uniquely achieves all three objectives.

Sponsorship creates an association between the exciting, glamorous or fun event with the sponsoring entity. Whether at the live gate, or on television, young people will repeatedly see and begin to associate the event, which they are enjoying, with the imagery and appeal of the product. All of the attendant concerns of hero worship of the sports figures and glamorization of the product by identification with the event are present, wether there are thousands or hundreds of thousands of

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young people in attendance. Race car drivers are extremely popular with young people and often are looked up to as heros. According to one promoter of NASCAR properties, "We've found that boys look to NASCAR drivers the same way they do heros, such as firemen, policemen, professional fighters, or astronauts."

Furthermore, sponsorship events present a prolonged period of time in which to expose the audience, including young people, to the imagery. Sponsorship events do not provide people with a momentary glimpse at the imagery, but from 1 to 2 or 3 hours of constant attractive imagery. The audience has more than enough time to associate the images of the sporting event or the concert with the product. (p.44528-29)

...

The agency finds that the evidence regarding the effect of advertising and sponsorship on children's smoking behavior is persuasive and more than sufficient to justify this regulation. ... The evidence demonstrates that sponsorship of sporting events by tobacco companies can lead young people to associate brand names with certain life styles or activities and can affect their purchasing decisions. (p.44530)

U.S. Food and Drug Administration, 21 CFR Part 801 et al., Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents; Final Rule, *Federal Register* Vol. 61, No.168, August 28, 1996, pp.44488-44489, 44521, 44524, 44525, 44527, 44528-44529.

25. Successful complete or almost complete bans on tobacco advertising are characterized by:
- general prohibition (with limited exceptions mentioned below) of all use of names of tobacco products, trademarks, and logos in all advertising, whether for tobacco products or non-tobacco goods and services, or for sporting or cultural events, institutions, organizations or participants;
- general prohibition of the use of tobacco product trade names, trademarks, and logos, except on tobacco products themselves;
- prohibition of the use of games, contests and prizes and the free distribution of cigarettes by tobacco importers, manufacturers, wholesalers, and retailers or their agents;
- exemption from the general prohibitions of only specific and limited forms of advertising, e.g. signs of specifically limited size, number, and content at points of purchase for tobacco products.

World Health Organization, *Tobacco or health: A global status report*, (Geneva: World Health Organization, 1997), pp. 54-55.

Conference Proceedings/Conférences

26. All African countries should review their tobacco control legislation with the goal of banning all advertising and sponsorship by the tobacco industry.

All-Africa Conference on Tobacco or Health, "Final Conference Recommendations for Tobacco Control in Africa" In: Yach, D., Harrison, S., eds., *Proceedings of the All-Africa Conference on Tobacco or Health*, Harare, Zimbabwe, 14-17 November 1993, p.177.

27. The workshop asks the ICCA to endorse the objectives and recommendations set out in the World Health Organization 1979 Expert Committee report *Controlling the Smoking Epidemic* - which calls

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for, among other things, an end to all forms of tobacco promotion.

Edwards, P., Skirrow, J., eds., "Strategies for a Smoke-free World: Recommendations of the International Workshop on Smoking and Health to the International Council on Alcohol and Addictions, Calgary, Alberta, Canada, 1985" (Edmonton: Alberta Alcohol and Drug Abuse Commission, 1986), p.3.

28. Banning sports sponsorships and other promotions and the tobacco industry's use of healthy, sexy, athletic models and cartoon figures in advertising should result in a decrease in tobacco use, especially among youth.(p.iv)

...

The data demonstrating that marketing and advertising of tobacco products does play a role in tobacco use comes from many disciplines and from many sources.(p.66)

...

The group restates its long-term commitment to eliminate exploitation by the tobacco industry through advertising and marketing.

a. It is America's best interest to take into account the dynamic nature of the industry and for any ban to be broad enough to cover traditional forms of advertising and more recent trends like sponsorship, product placement, utilitarian items, etc. and learn from other countries where the industry has circumvented a ban.(p.71)

Houston, T., ed., "Tobacco Use: An American Crisis. Final Conference Report and Recommendations From America's Health Community." Washington, D.C., 9-12 January 1993 (Chicago: American Medical Association, 1993), pp.iv, 66, 71.

29. To make it possible for every person in Europe to enjoy the rights set out in the charter, the Conference participants recommended ten strategies to be followed.

...

3. Outlaw the advertising and promotion of tobacco products and sponsorship by the tobacco industry.

"It Can Be Done: A Smoke-free Europe; Report of the First European Conference on Tobacco Policy," Madrid, Spain, 7-11 November 1988. WHO Regional Publications, European Series, No. 30, p.11.

30. This conference resolves that:

1. All nations implement the International Strategy for Tobacco Control.(p.1017)

...

AN INTERNATIONAL STRATEGY FOR TOBACCO CONTROL

Since measures to deal with the tobacco problem must be comprehensive and long term, the following individual actions should form the basis of such a strategy.

1. Legislation to ban all direct and indirect advertising and promotion of tobacco products.
2. Legislation to protect young people from tobacco promotion and sales.(p.1018)

Ninth World Conference on Tobacco and Health, "Resolutions of the Ninth World Conference on Tobacco and Health", Paris, France, 1994, In: Slama, K., ed., *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York:

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Plenum Press, 1995), pp.1017-1018.

31. Finally, the Conference recognises that the key issues are: (p.238)

...

- legislating to ban all direct and indirect advertising and promotion of tobacco products (p.239)

Smokefree Europe: Conference on Tobacco or Health, "Smokefree Europe Conference Resolution on the European Tobacco Strategy" In: Waller, M., Lipponen, S., eds., *Smokefree Europe: A Forum for Networks,* Smokefree Europe: Conference on Tobacco or Health, Helsinki, Finland, 2-4 October 1996, pp.238-240, pp.239-240.

32. The conference recommends:
The WHO and governments to formulate an International Framework Convention to include protocols for comprehensive tobacco control programmes and the recommendations from previous World Conferences, and with the capability to be made broader and more restrictive over time.

Tenth World Conference on Tobacco or Health, "Resolutions of the 10th World Conference on Tobacco or Health" In: Slama, K. *Tobacco Control and Prevention: A Guide for Low Income Countries* (Paris: International Union Against Tuberculosis and Lung Disease, 1998), pp.117-120, p.117.

33. Conference Resolutions

...

That the Government of Canada amend the Tobacco Products Control Act to prohibit tobacco sponsorship advertising

Tobacco-Free Canada: First National Conference on Tobacco or Health, Ottawa, Ontario, 20-22 October 1993, Conference Resolutions, p.3.

Statistics/Statistiques

34. [This item indicates that, according to internal RJR-Macdonald data, the prevalence of adult smoking was 31.0% in 1988 (prior to the Tobacco Products Control Ac)t, and 26.9% in 1993, representing a decline of 13.2%. Prevalence increased following the 1994 tobacco tax rollback. Among 19-24 year olds, the youngest age group measured, prevalence decreased from 33.4% in 1988 to 28.3% in 1993, a decline of 15.3%.]

Newman, L., Wilson, S. (RJR-Macdonald Inc.), memorandum to Kauffeld, R. (RJR-Macdonald Inc.), 4 June 1997, "Subject: Market Incidence and Usage", accompanied by an enlarged graph.

35. [Imperial Tobacco data indicate that the prevalence among adults fell from 34.8% in 1988 to 29.0% in 1993, the last year for which data is available. This represents a decline of 16.7%.]

Graph, Smoking Prevalence (Age 15+) 1988-1993, data tables, and underlying data sources: Imperial Tobacco Ltd. "The Canadian Tobacco Market at a Glance" 1989; Imasco Ltd.,

Tab

various annual reports.

36. [Although the industry claims that smoking levels were unchanged during the period that the Tobacco Products Control Act was in force, this claim is disproved by their own internal prevalence data, cited above, and by annual sales and import data from Statistics Canada. Estimated per capita consumption (age 15+) fell from 2869 in 1995 to 2172 in 1995, a decline of 24.3%. These figures include estimates of contraband. And although the industry claimed that imports would increase as a result of the TPCA, manufactured cigarette imports actually fell from 31 per capita in 1988 to 16 per capita in 1995, a decrease of 48%.]

Graphs, Per Capita Consumption Age 15+ 1988-1997, Per Capita Manufactured Cigarette Imports 1988-1997, data tables, and underlying data sources: Statistics Canada, *Production and disposition of tobacco products,* Catalogue 32-022, December issues, 1988-1997. Statistics Canada, *Imports by Commodity*, Catalogue 65-007, December issues, 1988-1997; Statistics Canada, *Exports by Commodity*, Catalogue 65-004, December issues, 1988-1997. Statistics Canada, *Revised Intercensal Population and Family Estimates, July 1, 1971-1991*, Catalogue 91-537. Statistics Canada, *Annual Demographic Statistics*, annual issues 1993-1997, Catalogue No. 91-213.

37. [This item indicates that 10-17 year olds comprise 11% of the population. This suggests that a requirement that advertising be placed in publications having 15% or less youth readership is more than reasonable, and indeed overly cautious. As it stands under the Tobacco Act, tobacco advertising, including sponsorship advertising, can be placed in publications read by a higher percentage of teenagers than of adults. (Children aged 0-9 years cannot be expected to read publications in any great numbers.)]

Statistics Canada, 1996 Census, table showing segmented population for males, females, and total for persons aged 1-30.

Studies and Literature/Études et littérature

38. Sports sponsorships can offer cost-effective exposure for a product, associate a company or product name with a specific event, and provide companies with high visibility activities, particularly if the events are national or international in scope. All of this contributes to the bottom-line performance.

Abratt, R., Grobler, P.S. "The Evaluation of Sports Sponsorships" *International Journal of Advertising* 1989;8:351-362, pp.352-353.

39. Sponsorship of sport by tobacco companies is a method of advertising cigarettes and other tobacco products. It provides them, at a very low cost (about £9mn) substantial television and other publicity which they could not otherwise obtain either at all (because of the ban on tobacco advertising on television) or for anything like that price.

Action on Smoking and Health, "Tobacco Sponsorship of Sport," March 1994, pp.10.

Tab

40. This brief summarises the arguments in favour of a ban on all tobacco promotion and advertising and answers the most common counter-arguments. ... A ban is justified on health grounds...

...

No-one claims that advertising is the only determinant of tobacco consumption or smoking prevalence: to do so would be absurd. It is equally absurd, however, to claim (as the industry does) that advertising does not expand (or slow the contraction of) the market and that it does not in fact assist in the recruitment of new smokers.

Action on Smoking and Health, "Tobacco Advertising: The case for a ban", 5th ed., January 1996, p.1.

41. Brand-stretching, that is, the use of tobacco brand names on non-tobacco merchandise or services, has been used by the tobacco industry for many years as a means of promoting cigarettes when faced with a ban on direct tobacco advertising. The examples which follow show the extent to which the tobacco industry will go in order to circumvent restrictions on tobacco promotion.

Action on Smoking and Health, "ASH Briefing on 'Brand-stretching'" February 1998, p.1.

42. Marketing to Children. The companies deny that they target the young. The documents reveal the obvious - that the market of young smokers is of central importance to the industry. Many documents reveals the companies' pre-occupation with teenagers and younger children - and the lengths they have gone to in order to influence smoking behaviour in this age group.
...Advertising. The industry maintains that advertising is used only to fight for brand share and that it does not increase total consumption - academic research shows otherwise. The documents show that advertising is crucial in nurturing the motivation to smoke by creating or projecting the positive values, such as independence, machismo, glamour or intelligence, erroneously associated with the product.

Action on Smoking and Health, "Tobacco Explained: The truth about the tobacco industry...in its own words" 25 June 1998, p.i.

43. Cigarette advertising and promotion contribute to a social environment that supports smoking and convinces many to start.(p.166)

...

Ad messages reduce the effectiveness of health warnings. ... By portraying smoking as a common, harmless practice, advertising masks tobacco's addictive nature as well as the lethal effects of its use.(p.167)

...

Cigarette advertising exploits the fears and frustrations of disadvantaged people. Ads targeted at women associate smoking with romance, social acceptability, sexual attractiveness, and independence; ads targeted at the poor and oppressed associate smoking with prosperity, success, social liberation,and independence.(p.168)

...

Sponsorship of sporting and cultural events gives the tobacco industry a legitimacy it does not deserve. Sports promotions deceptively link smoking with health and athletic ability.(p.170)

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Advocacy Institute, "Truth and the Consequences of Cigarette Advertising: An Advocate's Guide to Arguments in Support of Banning Cigarette Advertising and Promotions; Developed by the Advocacy Institute for the American Cancer Society and the UICC" In: *Building a Tobacco-Free World. 8th World Conference on Tobacco and Health*, 30 March - 3 April 1992, Buenos Aires, Argentina, American Cancer Society, pp.159-191, pp.166, 167, 168, 169.

44. Interviews were conducted with 848 Glasgow children aged between 11 and 14 years. There were consistent differences between smokers and non-smokers. Smokers tended to be more adept at recalling, recognizing and identifying cigarette advertisements. This suggests they tend to pay more attention to cigarette advertising. Smokers also tended to be generally more appreciative of cigarette advertising. Moreover, this greater awareness and appreciation of cigarette advertising was independent of other important predictors of under-age smoking, such as smoking by peers, siblings and parents. These findings, taken in conjunction with previous research, indicate that cigarette advertising is reinforcing under-age smoking.

Aitken, P.P., Eadie, D.R. "Reinforcing effects of cigarette advertising on under-age smoking" *British Journal of Addiction*, 1990;85(3):399-412, p.399.

45. Six hundred and forty Glasgow children, initially aged between 11 and 14 years, were interviewed twice, with approximately one year between interviews. Children whose intentions to smoke when older became more positive between the two interviews tended to be more aware of cigarette advertising at the time of the first interview (compared with children whose intentions to smoke were negative at both interviews). Children whose intentions to smoke became more negative between the interviews tended to be less appreciative of cigarette advertisements at the time of the first interview (compared with children whose intentions to smoke were positive at both interviews). Since both groups differed from their respective contrast groups before their declared intentions changed, these findings support the view that cigarette advertising has predisposing as well as reinforcing effects on children's attitudes and behaviour with respect to smoking.

Aitken, P.P., Eadie, D.R., Hastings, G.B., Haywood, A.J. "Predisposing effects of cigarette advertising on children's intentions to smoke when older" *British Journal of Addiction*, 1991;86(4):383-390, p.383.

46. It seems that some 12-year olds and most 14- and 16-year olds perceive cigarette advertisements much in the way that young adults do, therefore advertising campaigns targeted at older teenagers and young adults are likely to present qualities which younger teenagers find attractive.

Aitken, P.P., Leathar, D.S., O'Hagan, F.J. "Children's Perceptions of Advertisements for Cigarettes" *Social Science and Medicine*, 1985;21(7):785-797, p.785.

47. Cigarette brand imagery is often presented in advertisements for other products or services. Recent research sponsored by the Cancer Research Campaign suggests that many primary school children may identify such advertisements as advertising cigarettes, and perceive exciting and attractive imagery in this kind of advertising material.

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Aitken, P.P., Leathar, D.S., O'Hagan, F.J. "Brand Stretching Advertisements for Cigarettes: Impact on Children" *Health Education Journal* 1985;44(4):201-202, p.201.

48. First, more than half the secondary school children and about a third of the 10 and 11-year olds were able to name cigarette brands and sponsored sports. This shows the power of sports sponsorship in putting cigarette brand names and associated sports imagery into children's memories.
... [I]t seems that television sports sponsorship by cigarette manufacturers acts as advertising and therefore circumvents the law banning cigarette advertising on television.
Thirdly, and perhaps even more important, the research described here indicates that associations between cigarette brand names (or their visual cues) and exciting sponsored sports can be elicited or triggered by simple advertisements. That such associations can be elicited even in young primary school children indicates the insidious nature of cigarette brand sponsorship of sports.

Aitken, P.P., Leathar, D.S., Squair, S.I. "Children's awareness of cigarette brand sponsorship of sports and games in the UK" *Health Education Research*, 1986;1(3):203-211, pp.210-211.

49. Children who approved of cigarette advertising were twice as likely to become smokers as children who disapproved.

...

Children who disapproved of cigarette advertising were more likely to quit than those who approved of it.(p.61)

...

Predisposing factors are those which are anteceded to smoking behaviour and which provide the initial motivation for it. ... [A]pproval of advertising was an important predisposing factor. Furthermore, children who held favourable attitudes to smoking and cigarette advertising were greater risk of adopting or maintaining smoking behaviour than those whose attitudes were more disapproving.
Reinforcing factors are related to the maintenance of the behaviour. Most of the predisposing factors we identified also have a role in reinforcement. We found that attitudes to cigarette advertising and smoking changed over the study period so that they remained congruent with smoking behaviour. This suggests to us that these attitudes form part of the reinforcement process.(p.64)

...

[W]ell-enforced legislation is needed to ban the sale of cigarettes to children as well as banning all advertising of cigarettes. These strategies should be supplemented by carefully tailored health education programmes. These three measures should lead to reduction in childhood smoking because they would provide a broad attack on the predisposing, reinforcing and enabling aspects of this unhealthy behaviour.(p.65)

Alexander, H.M., Calcott, R., Dobson, A.J., Hardes, G.R., Lloyd, D.M., O'Connell, D.L., Leeder, S.R. "Cigarette Smoking and Drug Use in Schoolchildren: IV. Factors Associated with Changes in Smoking Behaviour" *International Journal of Epidemiology*, 1983;12(1):59-66, pp. 61, 64, 65.

50. There is a strong association between an awareness of and involvement with tobacco promotions and

Tab

being susceptible to tobacco use or a user of tobacco products.

Altman, D.G., Levine, D.W., Coeytaux, R., Slade, J., Jaffe, R. "Tobacco Promotion and Susceptibility to Tobacco Use among Adolescents Aged 12 through 17 Years in a Nationally Representative Sample" *American Journal of Public Health*, 1996;86(11):1590-1593, p.1590.

51. There should be a ban on all tobacco and alcohol advertising in all media. This ban should include all "passive" advertising in sponsored sports events (ie, banners, logos, etc.).

American Academy of Pediatrics, Committee on Communications "Children, Adolescents, and Advertising" *Pediatrics*, 1995;95(2):295-297, p.296.

52. [M]easures that reduce youths' overall exposure to tobacco advertisements (and to the positive imagery presented in the remaining ads) would be expected to contribute to reductions in underage smoking rates.

American Psychological Association, American Psychological Association Submission to the U.S. Food and Drug Administration on the proposed rule to restrict the sale and distribution of cigarettes and smokeless tobacco, December 28, 1995, p.12.

53. Faced with increasing public awareness in many countries of the serious health effects of smoking, and increasing government action directed at reducing smoking, the tobacco industry has responded by developing new strategies aimed at sustaining current markets and developing new markets around the world.

Amos, A., "Cigarette advertising and marketing strategies" *Tobacco Control*,1992;1(1):3-4, p. 3.

54. [T]he children's perceived responses to cigarette advertising showed the strongest and most consistent evidence of an effect on the uptake of smoking by children who were initially non-smokers. Moreover, in contrast to the effect of the educational programme, this association became stronger over time.(p.121)

...

Taken together with the results of other research, we believe that there now is no room for doubt, if there ever really was, that cigarette advertising has an important effect on uptake of smoking by children.(p.123)

Armstrong, B.K., de Klerk, N.H., Shean, R.E., Dunn, D.A., Dolin, P.J. "Influences of education and advertising on the uptake of smoking by children." *Medical Journal of Australia*, 1990;152(3):117-124, pp.121, 123.

55. Nearly half believed that the Joe Camel advertisement makes smoking more appealing, and 40% believed that the Marlboro Man advertisement makes smoking more appealing. Adolescent smokers were more likely than non-smokers to believe that the advertisements for Camel and Marlboro make smoking more appealing.

Tab

Conclusions - The advertisements most popular among adolescents are for two of the brands they are most likely to smoke - Marlboro and Camel. The results of the study are consistent with the view that certain cigarette advertisements enhance the appeal of smoking to many adolescents.(p.129) ...[I]n the interest of reducing smoking among adolescents, cigarette advertising and promotion should be banned or restricted to adult-only venues.

Arnett, J.J., Terhanian, G. "Adolescents' responses to cigarette advertisements: links between exposure, liking and the appeal of smoking" *Tobacco Control*, 1998;7(2):129-133; pp.129, 133.

56. Common sense tells us that the billions of dollars spent to make smoking romantic, mature, successful, [and] the thing that "beautiful" and healthy people do will attract some people, especially young people, to take up smoking who might not otherwise have done so and will influence some smokers who might have quit to keep on smoking.

Shouldn't the industry that promotes this lethal product be responsible for proving that cigarette advertising does not induce anyone to smoke or keep anyone from quitting?(p.35)

...

It is common sense that any advertising or promotion that makes the smoking of a particular brand attractive makes smoking attractive.(p.36)

Ashton, L.P. "Countering Tobacco Marketing, Advertising and Promotion" In: *Building a Tobacco-Free World. 8th World Conference on Tobacco and Health*, 30 March - 3 April 1992, Buenos Aires, Argentina, American Cancer Society, pp.34-37, pp.35, 36.

57. A cautious conclusion would be that the advertising ban as from 1975, with the concomitant publicity throughout the legislative process, *has* had an impact on consumption and young people's smoking, and in combination with the continued educational efforts was a causal factor in the new trend.

In June 1997 the former Health Minister Professor Gudmund Hernes, Ph D, made the following statement: ...

"there is no doubt that the Norwegian advertising ban has had a clear and substantial influence on total consumption in general, and smoking rates among school children in particular."

Bjartveit, K., Lund, K.E. "The Norwegian ban on advertising of tobacco products: has it worked?" (Oslo: Norwegian Cancer Society, Norwegian Health Association, June 1998), p.12.

58. Exposure of the Marlboro Logotype during the 1989 Marlboro Grand Prix Telecast

...

Total no of times Marlboro seen or mentioned	5933
Total length of broadcast (min)	93.62
Total time Marlboro seen (min)	46.17
Percent of time Marlboro seen	49.32

Blum, A. "The Marlboro Grand Prix: Circumvention of the Television Ban on Tobacco Advertising" *New England Journal of Medicine*, 1991;324(13):913-917, p. 915.

Tab

59. Adolescents with high exposure to cigarette advertising were significantly more likely to be smokers, according to several measures of smoking behaviour, that were those with low exposure to cigarette advertising.

Botvin, G.J., Goldberg, C.J., Botvin, E.M., Dusenbury, L. "Smoking Behaviour of Adolescents Exposed to Cigarette Advertising" *Public Health Reports*, 1993;108(2):217-224, p.217.

60. The complete ban of tobacco advertising is a necessary component of an effective and comprehensive tobacco control policy. There is ample evidence that advertising can increase tobacco consumption in a variety of ways.
Sponsorship promotions are akin to lifestyle advertising, and their elimination is easily justifiable from a constitutional point of view given the Supreme Court of Canada's decision in *RJR-MacDonald v. Canada (Attorney General)*.

...

The ban on the use of tabacco trademarks on non-tobacco goods and services, contained in the *Blueprint*, is a crucial component of a comprehensive tobacco control policy. Failure to include such a provision would open up massive promotional opportunities for tobacc companies.

Canadian Cancer Society, "Taking Action on Tobacco: A Submission to the Office of Tobacco Control, Health Canada, Respecting *Tobacco Control: A Blueprint to Protect the Health of Canadians*" January, 1996, pp.2-3.

61. There is ample evidence that tobacco advertising increases consumption, including improtant evidence that has arisen since the trial respecting the *Tobacco Products Control Act*. The evidence includes academic studies, logic, anecdotal reports, corporate documents, industry admissions, expert opinion, conference materials, and international materials. Much of this evidence has been documented elsewhere.

Canadian Cancer Society, "Response to Tobacco Industry Arguments Against Bill C-71, the *Tobacco Act*" February 1997, p.10.

62. [This report documents many Canadian tobacco company violations of the industry's own voluntary marketing code. On a number of occasions, after having been found in violation, the industry weakened the code to allow the offending marketing practice(s) to continue.]

Canadian Cancer Society, "Compilation of Complaints made under the Tobacco Industry Voluntary Packaging and Advertising Code, and Responses to Complaints" 1997.

63. The CMA supports a total ban on the promotion of tobacco; this includes advertising in all forms and the sale of non-tobacco products displaying tobacco brand names, logos or colours. It also supports a ban on all tobacco-brand marketing associated with the sponsorship of sports, cultural and other events.

Canadian Medical Association, "CMA Policy Summary: Tobacco and Health" *Canadian Medical Association Journal*, 1997;156(2):240A-240C, p.240A.

Tab

64. The logic of banning tobacco billboards adjacent to schools is even more absurd. Here, it is being suggested that a child sighting such a billboard 195 metres from a school might be influenced by its message, but the same child sighting the same advertisement 205 metres from a school would somehow be immune from its persuasions.

Chapman, S. "The ethics of tobacco advertising and advertising bans" *British Medical Bulletin*, 1996;52(1):121-131, p.130.

65. Smokers were nearly twice as likely to correctly identify edited cigarette advertisements and slogans than were non-smokers.

Chapman, S., Fitzgerald, B., "Brand Preference and Advertising Recall in Adolescent Smokers: Some Implications for Health Promotion" *American Journal of Public Health*, 1982;72(5):491-494, p.491.

66. - All major health, medical and consumer groups have identified a ban on all forms of tobacco advertising as an essential component of a comprehensive smoking control programme.
- Tobacco advertising promotes the idea that smoking is acceptable, desirable and glamorous.
- It undermines the credibility of government health education campaigns against smoking.
- It stops the flow of full information about the health risks of smoking because many magazines and newspapers do not wish to offend their tobacco advertisers.

Chapman, C., White, P., Aitken, P.P. *Pushing Smoke: Tobacco advertising and promotion*, (Copenhagen: World Health Organization Regional Office for Europe and the Commission for the European Communities, 1988), p.3.

67. It is suggested that children are receiving the positive messages from cigarette advertisements even as young as the impressionable age of nine years when they are most likely to try their first cigarette, although the advertisements are supposedly not intended for them. They may see these messages as generic to smoking and the positive impressions they gain from them could be one of the important influences in their decision to smoke.

Charlton, A. "Children's advertisement-awareness related to their views on smoking" *Health Education Journal*, 1986;45(2):75-78, p.75.

68. [This study found that boys whose favourite sport to watch on television was car racing are almost twice as likely to smoke, and are also twice as likely to remember the names of leading car racing sponsors, Marlboro and Camel, than boys who do not follow car racing.]
Any ban on tobacco advertising must include all sponsored sport.

Charlton, A., While, D., Kelly, S. "Boys' smoking and cigarette-brand-sponsored motor racing" *The Lancet* 1997;350(9089):1474.

69. [P]eer approval and exposure to tobacco advertising were also both significant predictors for use and susceptibility. Extending the ban of tobacco marketing practices to all mass media may be necessary if smokeless tobacco use is to be reduced.

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Choi, W.S., Farkas, A.J., Rosbrook, B., Elder, J.P., Pierce, J.P. "Does advertising promote smokeless tobacco use among adolescent boys? Evidence from California" *Tobacco Control*, 1995;4(suppl 1):S57-S63, p.S57.

70. [This item identifies 712 organizations in Quebec which have endorsed a tobacco control position statement including to "prohibit all types of tobacco promotions, including sponsorship." These organizations include medical associations and institutions, members of the public health network, hospitals, clinics, medical centres, foundations, health and anti-tobacco organizations, education and youth groups, municipalities, and others.]

Coalition québécoise pour le contrôle du tabac, "Position" and "Organizations Who Have Endorsed the Position of the Coalition" October 29, 1998.

71. Despite claims by the tobacco industry that promotional items are intended solely for smokers at least 21 years of age, millions of young people, both smokers and non-smokers, possess and use such items. This popular form of advertising lacks warning labels and familiarises minors with tobacco products.

Coeytaux, R.R., Altman, D.G., Slade, J. "Tobacco promotions in the hands of youth" *Tobacco Control*, 1995;4(3):253-257, p.253.

72. Between 1970 and 1985, the use of the moist snuff increased by 30% among all Americans, but eightfold in the 17- to 19-year-old group. Such an increase did not occur by accident, but rather as the result of a carefully crafted marketing strategy by tobacco companies, which used extensive point-of-purchase displays, wide distribution on free samples, and sponsorship of touring sports and cultural events.(pp.351-352)

...

Tobacco companies also recognize the powerful influence sport has on shaping youthful behavor. They have exploited sport to pass the nation's tobacco epidemic on to each new generation, recruiting young people to replace those who have quit or died from tobacco use. The harmful effects of tobacco are camouflaged against the backdrop and thrill of athletic victory. All of this must end.(p.353)

Connolly, G.N. "Snuffing Tobacco Out of Sport" *American Journal of Public Health*, 1992;82(3):351-353, pp.351-352, 353.

73. There are several reasons why allowing sponsorships by tobacco companies (especially sponsorship of sports) undermine attempts to curb tobacco consumption: (1) sponsorships function like advertising, (2) sports sponsorship reach the youth market very effectively, (3) sponsorships associate smoking with healthy, popular activities and images, and (4) the international nature of sponsored events may allow exemption from national sponsorship bans.

Cornwell, T.B., "The Use of Sponsorship-Linked Marketing by Tobacco Firms: International Public Policy Issues" *Journal of Consumer Affairs*, 1997;31(2):238-254, p. 243.

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74. To what extent do youth recognize sponsored event advertising as advertising for tobacco products? To what extent to they recognize it as advertising for an event or activity?(p.6)

...

Less than one percent of young people mentioned the event being advertised by these posters. A significant proportion, however, interpreted the posters as advertisements for cigarettes. Fifty-three said Player's Ltd. Racing ad was about cigarettes and 12% said the du Maurier Jazz Festival ad was about cigarettes. The brand name was mentioned equally as frequently. In fact, it was common for students to mention the brand name and cigarettes in the same line (e.g. Player's cigarettes, du Maurier cigarettes).(p.9)

...

Even with the restrictions on direct advertising of tobacco products in Canada that were in place over the time of this study, youth perceived that tobacco *product* advertising was occurring, through the advertising of events sponsored by tobacco companies, notably Player's Ltd. Racing and the du Maurier Jazz Festival. This is particularly true for Player's, with colours, font and even shapes making fairly blatant connections to the cigarette package itself. That over one half of students associated the Player's Ltd. Racing ad with cigarettes, despite the fact that the poster did not have the word "Player's " on it indicated the high degree of success that Player's has had in maintaining a profile for their company and their product, despite the ban on advertising cigarettes. Given that the purpose of the advertising ban was to eliminate cigarette advertising, these results indicate the Player's, and to a lesser extent, du Maurier, have successfully circumvented the spirit of the law.(p.16)

d'Avernas, J.R., Northup, D., Foster, M.K., Burton, D., Ferrence, R., Pollard, J., Rootman, I., Flay, B.R., "Cigarette Packaging and Event Marketing Increases the Attractiveness of Smoking: A Study of Youth". Ontario Tobacco Research Unit, Working Paper Series #28, Toronto, 1997, pp. 6, 9, 16.

75. [E]vidence indicating that cigarette advertising and promotion increase total consumption, especially among youth, has accumulated steadily.(p.2)

...

The reason for the industry's failure to support a federal ban on tobacco advertising must be that the underlying premise is wrong - that is, the companies must indeed perceive an industry-wide benefit to advertising and promotion. The benefit - the maintenance or expansion of the cigarette market - serves a vital need for an industry that is loosing more than 400,000 of its consumers each year to smoking-attributable deaths.

...

the common-sense notion that advertising must have effects beyond loyalty and brand switching.(p.3)

Davis, R.M. "The effects of tobacco advertising: Brand loyalty, brand switching, or market expansion?" *American Journal of Preventive Medicine*, 1996;12(1):2-3, pp.2,3.

76. In light of the conclusive evidence identifying smoking as a major health hazard with no redeeming health aspect, the federal government has developed a policy designed to discourage, in the strongest possible terms, the sponsorship of amateur sport by the tobacco industry.
Therefore, effective immediately, all national amateur sport bodies funded in part by the federal

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government will be required to desist from associating in any new or renewed sponsorship arrangements with the tobacco products industry. The federal government will withhold all funds from national amateur sport organizations associating in any sponsorship, promotional or other financial support arrangements (e.g. advertising) with the tobacco products industry for events or programs predominantly involving amateur athletes.

Department of Canadian Heritage, Sport Canada "Federal Government Policy on Tobacco Sponsorship of National Sport Organizations" Originally issued March 1985, p.2.

77. Children are influenced by tobacco promotions even before they understand the purpose of advertising. Adolescence is a time of vulnerability when youths must struggle to form an identity, to become independent of their parents, and to establish themselves with their peers. Tobacco advertising exploits the vulnerabilities of youths by offering tobacco as the key to the desired self-image, as a badge of independence, and as the key to acceptance by their peers. Research demonstrates that children's attitudes and behavior regarding tobacco are influenced by advertising. In addition to promoting brand switching, tobacco advertising increases the number of youths who smoke or use spitting tobacco.(p.87)

...

A complete ban on all advertising and promotion of tobacco is warranted to protect children from exploitation at the hands of tobacco advertisers.(p.90)

DiFranza, J. "The Effects of Tobacco Advertising on Children" In: Slama, K., ed., *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health* (New York: Plenum Press, 1995), 87-90, pp.87, 90.

78. Old Joe Camel cartoon advertisements are far more successful at marketing Camel cigarettes to children than to adults. This finding is consistent with tobacco industry documents that indicate that a major function is consistent with tobacco industry documents that indicate that a major function of tobacco advertising is to promote and maintain tobacco addiction among children.(p.3149)

...

Our study provides further evidence that tobacco advertising promotes and maintains nicotine addiction among children and adolescents. A total ban of tobacco advertising and promotions, as part of an effort to protect children from the dangers of tobacco, can be based on sound scientific reasoning.(p.3152)

DiFranza, J.R., Richards, J.W., Jr., Paulman, P.M., Wolf-Gillespie, N., Fletcher, C., Jaffe, R.D., Murray, D. "RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children" *Journal of the American Medical Association*, 1991;266(22):3149-3153, pp. 3149, 3152.

79. The intention to expand the market is clearly evident from the introduction of brands aimed at young women and children.

European Bureau for Action on Smoking Prevention, "Report on Tobacco Advertising: "Give Children a Chance", Brussels, March 1991, p.2.

80. [This European Community law -- affecting 15 member countries -- deals with the advertising,

Tab

sponsorship and marketing of tobacco products.]

European Community, 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 products.

81. Our results support the hypothesis that tobacco marketing may be a stronger current influence in encouraging adolescents to initiate the smoking uptake process than exposure to peer or family smokers or sociodemographic variables including perceived school performance.

Evans, N., Farkas, A., Gilpin, E., Berry, C., Pierce, J.P. "Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibiliy to Smoking" *Journal of the National Cancer Institute*, 1995;87(20):1538-1545, p.1538.

82. Tobacco companies conduct marketing campaigns that effectively capture teenage attention and stimulate desire for their promotional items. These marketing strategies may function to move young teenagers from non-smoking status toward regular use of tobacco. Our results demonstrate that there is a clear association between tobacco marketing practices and youngsters' susceptibility to smoke. The findings, along with other research, provide compelling support for regulating the manner in which tobacco products are marketed, protect young people from the tobacco industry's to reach them.

Feighery, E., Borzekowski, D.L.G., Schooler, C., Flora, J. "Seeing, wanting, owning: the relationship between receptivity to tobacco marketing and smoking susceptibility in young people" *Tobacco Control*, 1998;7(2):123-128, p.123.

83. The recognition rates of The Disney Channel logo and Old Joe (the cartoon character promoting Camel cigarettes) were highest in their respective product categories. Recognition rates increased with age. Approximately 30% of 3-year-old children correctly matched Old Joe with a picture of a cigarette compared to 91.3% of 6-year-old children.

Conclusion. - Very young children see, understand, and remember advertising.

Fischer, P.M., Schwartz, M.P., Richards, J.W., Goldstein, A.O., Rojas, T.H. "Brand Logo Recognition by Children Aged 3 to 6 Years. Mickey Mouse and Old Joe the Camel" *Journal of the American Medical Association*, 1991;266(22):3145-3148, p.3145.

84. After reviewing the mountain of evidence developed by independent researchers and reinforced by internal industry documents, one can not help but conclude that the time for policymakers to take action is now.

Giglio, J. "How tobacco company advertising influences minors to use tobacco: A summary of independent research and internal industry documents" Washington, D.C.: American Cancer Society, 1996, p.18.

85. Although other influences cannot be ruled out, we suspect that the expanded tobacco marketing budget, with its increased emphasis on tactics that may be particularly pertinent to young people,

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affected adolescent initiation rates.

Gilpin, E.A., Pierce, J.P. "Trends in adolescent smoking initiation in the United States: is tobacco marketing an influence?" *Tobacco Control,* 1997;6(2):122-127, p.122.

86. In 1994, young adults (18-24 years) were the most likely to *possess* a promotional item (27.5 ± 4.1, ± 95% confidence limit). However, willingness to *use* an item was highest among those ages 15-17 years (35.4 ± 3.4%) and was also high among those ages 12-14 years (24.4 ± 2.7%). Among youth, ownership or willingness to use promotional items was more likely for boys, whites, those reporting below average school performance, and those smoking or susceptible to smoking. Youth ownership of promotional items increased from 1993 to 1994, as did the frequency of their obtaining items from coupons.
Conclusions. Promotional marketing undertaken by the tobacco industry was effective in capturing the interest of adolescents, although actual acquisition was highest among young adults.

Gilpin, E.A., Pierce, J.P., Rosbrook, B. "Are Adolescents Receptive to Current Sales Promotion Practices of the Tobacco Industry?" *Preventive Medicine*, 1997;26(1):14-21, p.14.

87. A dose-response relationship was found between smoking level and cigarette advertisement recognition, with regular smokers recognizing 61.6% of advertisements, compared with only 33.2% for non-smokers.

Goldstein, A.O., Fischer, P.M., Richards, J.W., Creten, D., "Relationship Between High School Student Smoking and Recognition of Cigarette Advertisements" *Journal of Pediatrics*, 1987;110(3):488-491, p.488.

88. Promotional activities make it difficult for recent quitters. As an example of the interdependencies among wide-ranging determinants of the smoking career, consider the response of a recent quitter coming across a cigarette advertisement in a magazine. He or she may find within the ad a number of symbols closely associated with his or her own recent smoking habits. The symbols and the conditioned responses to them may serve as a strong cues for smoking, enhanced by biologic potency of nicotine as an unconditioned stimulus.

Haire-Joshu, D., Morgan, G., Fisher, E.B., Jr. "Determinants of Cigarette Smoking" *Clinics in Chest Medicine,* 1991;12(4):711-725, p.714.

89. [This item describes legislative restrictions on tobacco advertising in European countries.]

Harkin, A.M., Anderson, P., Goos, C. *Smoking, drinking and drug taking in the European Region* (Copenhagen: World Health Organization Regional Office for Europe, 1997).

90. An extensive range of evidence now points to the conclusion that advertising does encourage smoking, especially among the young.

Hastings, G.B., Aitken, P.P. "Tobacco advertising and children's smoking: a review of the evidence" *European Journal of Marketing* 1995;29(11):6-17, p.14.

Tab

91. In summary, the evidence shows:
- tobacco advertising *is* getting through to children
- by the industry's own logic, tobacco advertising *is* making children more effective consumers of tobacco
- tobacco advertising *is* reinforcing the habit amongst children who already smoke
- tobacco advertising *is* encouraging children to start smoking
- 'indirect' promotions such as 'brand stretching' and sponsorship also get through to children

It should be recognized that a ban will significantly reduce the pressure on children to smoke. ... [I]t is clear that without cigarette advertising fewer children would become, and remain, smokers and fewer would ultimately die of smoking related diseases.

Hastings, G.B., Aitken, P.P., MacKintosh, A.M., "From the Billboard to the Playground. A résumé of the academic research on the influence of advertising on children's smoking" Centre for Social Marketing, Department of Marketing, University of Strathclyde, Glasgow, United Kingdom, August 1991, p.9.

92. Children were familiar with cigarette advertising and in particular the Reg campaign. Although younger children struggled to understand the creative content of the adverts, older and smoking children could understand and appreciate the humour. They considered Reg to be amusing and could relate to the type of joke used in the advert. In addition Reg's flippant attitude towards serious issues appealed to the children. While adults aged 18-24 understood the campaign they did not identify with it, and 35-55 year olds (the campaign's supposed target) were unappreciative of the campaign. Conclusions - The Reg campaign was getting through to children more effectively than it was to adults and held most appeal for teenagers, particularly 14-15 year old smokers.

Hastings, G.B., Ryan, H., Teer, P., MacKintosh, A.M. "Cigarette Advertising and Children's Smoking: Why Reg was Withdrawn" *British Medical Journal*, 1994;309:933-937, p.933.

93. Forty-nine percent of all youth aged 10-14 and 51% of those aged 15-19 report seeing advertisements for events sponsored by tobacco corporations.(p.1)

...

Eighty-five percent of smokers and 83% of non-smokers agree that these "billboards and signs are a way of advertising particular brands of cigarettes". Finally, 43% of smokers and 58% of non-smokers agree that these billboards and signs are a way of encouraging people to smoke.(pp.1-2)

Health Canada, "Youth Smoking Survey 1994", Fact Sheet No. 10, pp.1-2. See also Health Canada, "Youth Smoking Survey 1994, Technical Report", 1996.

94. Tobacco-sponsored sports events on BBC TV are undermining the work of the Health Education Authority, and the BBC itself, in trying to prepare young people to evaluate the risks that smoking presents to them. When tobacco-sponsored sport says in the most seductive way that smoking is a route to success, glamour and the most attractive values of life, how can health education compete?

Health Education Authority, "Tobacco and the BBC: A review of how BBC TV promotes cigarettes through tobacco-sponsored sport" 1992, p.17.

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95. This study examined the effects of a tobacco sponsorship advertisement on young males and found that a single exposure to the advertisement reinforced existing behaviour among smokers, created more favourable attitudes to smoking among non-smokers, increased non-smokers' brand awareness and influenced their brand preference.

Hoek, J., Gendall, P., Stockdale, M. "Some Effects of Tobacco Sponsorship Advertisements on Young Males" *International Journal of Advertising*, 1993;12:25-35, p.25.

96. The wide exposure events enjoy in both electronic and print media provides sponsors with vast publicity opportunities. For many companies, the cost of purchasing the TV and print exposure their sponsorships garner would be unaffordable.
For example, for the cost of a 30-second spot on the Super Bowl telecast, a company can sponsor a team on the NASCAR Winston Cup circuit, which delivers more than 30 hours of TV coverage.
...Brands with huge ad budgets and high unaided recall do not need sponsorship to generate visibility. Instead, they often sponsor for the lifestyle association the sponsored property represents.
They are looking to the event to have a rub-off effect on their image and ultimately their sales.

IEG, Inc. "IEG's Complete Guide to Sponsorship: Everything you need to know about sports, arts, event, entertainment and cause marketing" 1996, p.10.

97. Regulations and Restrictions Affecting the Tobacco Industry
General
The advertising, sale and consumption of cigarettes and other tobacco products in many countries including the UK has been subject to regulatory pressure from governments, health officials and anti-smoking groups, principally due to claims that cigarette smoking and tobacco products are harmful to health.
These actions have resulted in a number of substantial restrictions on the marketing, advertising and consumption of cigarettes, which have been introduced by regulation or voluntary agreements. In addition, activities by anti-smoking groups have been designed to curtail cigarette sales and to diminish the social acceptability of smoking. Legislation imposing restrictions on smoking in public places has also been enacted in a number of countries and some employers have initiated restrictions or bans on smoking in the workplace.(pp.18-19)
...
Effect on volumes
The Directors believe that the various restrictions and regulations, together with the substantial increases in excise taxes on smoking tobacco products, have had, and are likely to have a detrimental effect on market size. Future profitability will depend on Imperial Tobacco's continuing ability to maintain brand margins, adapt production capability, increase efficiencies, launch new products and expand internationally.
There can be no assurance that the governments in countries where Imperial Tobacco operates or plans to operate will not adopt additional or more restrictive legislation or regulations that further limit the ability of tobacco companies, including Imperial Tobacco, to develop, market or sell their products. In particular, the UK Labour Party has indicated that, if it were elected, it would intend to initiate a ban on tobacco advertising.(p.20)

Imperial Tobacco Group p.l.c. "Introduction to the Official List" 1996, pp.18-19, 20.

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98. The IOC refuses to give its patronage to any advertising activity by the tobacco or alcohol industry. Since the Olympic Winter Games in Calgary (Canada) in 1988, every edition of the Olympic Games, including the XVIII Olympic Winter Games in Nagano, have been declared "Smoke-free" in collaboration with the organizing committees.

International Olympic Committee, "Health and sport" *Olympic Review*, XXVI-20, April-May 1998, 52.

99. The International Union Against Cancer in common with the World Health Organization and leading health authorities throughout the world urge all countries to ban all forms of advertising and promotion including sponsorship and other forms of indirect advertising.

International Union Against Cancer (UICC); "The Case for Banning Advertising and Promotion" UICC Tobacco Control Fact Sheet, March 1993, p.3.

100. When legislation exists, the tobacco industry will do all it can to get round it.

Joosens, L., "Strategy of the Tobacco Industry Concerning Legislation on Tobacco Advertising in Some Western European Countries" In: Forbes, W.F., Frecker, R.C., Nostbakken, D., eds., *Proceedings of the Fifth World Conference on Smoking and Health*, Winnipeg, Canada, 10-15 July 1983 (Ottawa: Canadian Council on Smoking and Health, 1985), vol.1, pp.549-554, p.552.

101. The purpose of this legislation was to avoid the Marlboro cowboy or the Camel traveller images and to break the link tobacco products have acquired with attractive values such as friendship, love, adventure, success, etc. However, the cowboy and the traveller reappeared in advertisements for matches, lighters, etc. In some cases the tobacco industry used the same picture before and after the legislation: what has been an advertisement for cigarettes, became an advertisement for lighters ... Nearly all Belgians (95%) are considering the advertisement for Marlboro lighters as advertisement for Marlboro cigarettes, according to industry surveys.

Joosens, L. "Success and Failure of the Legislative Action Against Smoking in Belgium" In: Aoki, M., et al., eds. *Smoking and Health 1987: Proceedings of the 6th World Conference on Smoking and Health, Tokyo, Japan, 9-12 November 1987* (Amsterdam: Elsevier Science Publishers, B.V. (Biomedical Division), 1987), p.469.

102. Cigarette brands popular among young adolescents are more likely than adults brands to advertise in magazines with high youth readerships.(p.516)

...

Based on the documentation in this and other studies of widespread and heavy exposure of youths to cigarette advertising in magazines, public health considerations argue that cigarette advertising in all magazines should be eliminated.(p.520)

King, C., Siegel, M., Celebucki, C., Connolly, G.N. "Adolescent Exposure to Cigarette Advertising in Magazines: An Evaluation of Brand-Specific Advertising in Relation to Youth Readership" *Journal of the American Medical Association*, 1998;279(7):516-520, p 516, 520.

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103. All considered, we have found that the advertisements appearing in A-Magasinet for "Camel Boots" constituted an infringement of the advertising ban of the Tobacco Act. A-Magasinet has been informed accordingly by the Ministry of Social Affairs and the advertising of Camel Boots has ceased.

Kjonstad, A. "The Tobacco Industry and the Ban on Advertising" In: Forbes, W.F., Frecker, R.C., Nostbakken, D., eds., "Proceedings of the Fifth World Conference on Smoking and Health" Winnipeg, Canada, 10-15 July 1983, (Ottawa: Canadian Council on Smoking and Health, 1985), vol. 1, pp.567-573, p.570.

104. This study examined relationships between cigarette advertising and smoking experimentation. Using environmental and psychological measure of advertising exposure, it was demonstrated that adolescents who experimented with cigarettes were better able to recognize advertised products than those who had not, a selective exposure effect. Conversely, subjects who were better at recognizing advertised brands were more likely to have experimented with cigarettes, an effect due to their exposure to cigarette advertising.(p.287)

...

It appears that exposure to smoking advertisements does affect the likelihood that young people will smoke.(p.296)

Klitzner, M., Gruenewald, P.J., Bamberger, E. "Cigarette advertising and adolescent experimentation with smoking" *British Journal of Addiction*, 1991;86(3):287-298, pp. 287, 296.

105. On several occasions during my tenure as Surgeon General, I endorsed proposals that would ban all tobacco advertising and promotion. I certainly support the proposal to restrict tobacco advertising as a reasonable compromise, although I would continue to endorse a total advertising ban as a long-term goal.

Koop, C.E. "A Parting Shot at Tobacco" *Journal of the American Medical Association*, 1989;262(20):2894-2895, p.2894.

106. Smoking among young people is an important public health problem. Although the causes are multifactorial, in Hong Kong environmental tobacco advertising is an important risk factor that can be removed by banning all forms of tobacco promotion to young people.

Lam, T.H., Chung, S.F., Betson, C.L., Wong, C.M., Hedley, A.J. "Tobacco Advertisements: One of the Strongest Risk Factors for Smoking in Hong Kong Students" *American Journal of Preventive Medicine*, 1998;14(3):217-223, p.217.

107. TV sports sponsorship by tobacco manufactures acts as cigarette advertising to children and therefore circumvents the law banning cigarette advertisements on TV.

Ledwith, F. "Does Tobacco Sports Sponsorship on Television Act as Advertising to Children?" *Health Education Journal*, 1984;43(4):85-88, p.85.

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108. [In this agreement, arising out of litigation by state governments against tobacco companies, tobacco companies voluntarily agreed to restrictions on tobacco advertising, tobacco sponsorships and the use of tobacco logos on non-tobacco goods.]

Master Settlement Agreement (U.S.), Nov. 23, 1998.

109. As there is ample evidence of the harmful effects of cigarette advertising on children's attitudes and behaviour, the first step is to ban all forms of tobacco advertising and sponsorship.

Mélihan-Cheinin, P., Hirsch, A. "Effects of Smoke-Free Environments, Advertising Bans and Price Increases" In: Bolliger, C.T., Fagerström, K.-O., eds., *The Tobacco Epidemic, Progress in Respiratory Research*, 1997;28:230-246, p.236.

110. Cigarette advertising is a major factor in influencing children, it is readily available to them and some advertisements seem positively to be directed towards the young. The image which children perceive from the advertisement is very strong and affects non-smoking children equally as it does smokers. More attention clearly needs to be paid to the overwhelming evidence of the effect of advertising and pressure put on governments to ban or at least limit the advertising of cigarettes where children are likely to be influenced by them.

Mindell, J. "Review: Direct Tobacco Advertising and its Impact on Children" *Journal of Smoking-Related Diseases*, 1992:3(3):275-284, p.275.

111. All tobacco sponsorship for international sporting events held in Australia will be phased out by 2006.

Minister for Health and Family Services (Australia), "All Tobacco Sponsorship To Go by 2006", Media release, The Hon. Dr. Michael Wooldridge -- Minister for Health and Family Services, 22 September 1998, p.1.

112. Experience with tobacco industry self-regulation of tobacco product advertising and promotion, whether through voluntary codes or voluntary agreements, has proved to be less restrictive then legislative approaches. While the threat of more stringent legislation has often moved the industry to voluntarily become more restrictive, the industry proposals seek the minimum restrictions it deems would be acceptable in the current context.(p.25)

...

The case that voluntary codes or agreements are appropriate for tobacco product advertising and promotion cannot be made. It therefore must be concluded that governments should use carefully drafted and comprehensive legislation, which is then enforced, if they wish to seriously restrict advertising and promotion to achieve their health objectives.(p.26)

Mitchell, B. "Restricting Advertising and Promotion of Tobacco Products: An Overview of Voluntary Agreements as an Alternative to Legislation" Ontario Tobacco Research Unit, Working Papers Series # 34, Toronto, 1998, pp. 25, 26.

113. [This document cites internal industry documents discussing advertising targeted to youth, and

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advertising countering health concerns.]

Myers, M.L., Iscoe, C., Jennings, C., Lenox, W., Minsky, E., Sacks, A. "Federal Trade Commission Staff Report on the Cigarette Advertising Investigation" May 1981, excerpt published 1988, 3.6 *Tobacco Products Litigation Reporter* 8.59 - 8.67.

114. Sponsorships create a comfort level for the decision to smoke, implicity suggesting that significant organizations and influential role models are comfortable with their association with tobacco products and with the risks they entail.

Non-Smokers' Rights Association, "What the Tobacco Manufacturers Do Not Want You to Know About Tobacco Sponsorship of the Arts... Corporate Philanthropy? Or selling addiction?" 1996, p.7.

115. Our data suggest to us that intervention in the field of cigarette advertising may be the most direct and effective means of reducing the prevalence of smoking in children. After the smoking behaviour of the child's friends, approval of cigarette advertising was the strongest correlate of childhood smoking.

O'Connell, D.L., Alexander, H.M., Dobson, A.J., Lloyd, D.M., Hardes, G.R., Springthorpe, H.J., Leeder, S.R. "Cigarette Smoking and Drug Use in Schoolchildren. II Factors Associated With Smoking," *International Journal of Epidemiology*, 1981;10(3):223-231, p.230.

116. The history of tobacco marketing portrays a strong relationship between cigarette advertising targeted to women and the rise in the prevalence of women smoking. ... [T]he tobacco industry understood and capitalized on the women's liberation movement to sell cigarettes as symbols of freedom and emancipation...

O'Keefe, A.M., Pollay, R.W. "Deadly Targeting of Women in Promoting Cigarettes" *Journal of the American Medical Women's Association*, 1996;51(1-2):67-69, p.67.

117. [This study examined primary school children, mean age 10.3.] Brand recognition ranged from 53% (Salem name) to 95% (Marlboro name and Salem logo). [E]ver smokers ... were more successful than never smokers in identifying cigarette brands. ... Smoking is a paediatric health problem in Hong Kong; tobacco advertisements are widely recognised by young children and associated with smoking experience. A total ban on environmental advertising is needed as part of a comprehensive policy for the prevention of smoking-related disease in Hong Kong.

Peters, J., Betson, C.L., Hedley, A.J., Lam, T.-H., Ong, S.-G., Wong, C.-M., Fielding, R. "Recognition of cigarette brand names and logos by young children in Hong Kong" *Tobacco Control*, 1995;4(2):150-155, p.150.

118. "[W]e are willing to accept these restrictions in order to find the common ground. We are willing to accept these restrictions so something can be done now," Parrish said.
The plan also would ban tobacco product brand names, logos, characters and selling messages on

non-tobacco-related items such as hats or T-shirts; ban tobacco product sponsorship of events with significant youth audiences; create tobacco-free ad zones by banning all outdoor tobacco product advertising within 1,00 feet of any playground or elementary or secondary school, including outward-facing window display advertising; ban tobacco product advertising in or on trains, buses, subways and taxis, and in terminals, stations, platforms or stops for these vehicles; and guarantee that there would be no tobacco product advertising in youth-oriented publications.

Philip Morris U.S.A., "Philip Morris U.S.A. Calls for Federal Legislation to Stop Underage Smoking; Company Outlines Comprehensive Blueprint for Immediate Action", news release, 15 May 1996, p.2. See also related documents.

119. [T]his longitudinal study adds a crucial piece of evidence to the contention that tobacco industry advertising and promotional activities are causally associated with young people starting to smoke. The 5 criteria for assessing causality of a suspected agent from epidemiological studies are that (1) it must clearly precede the hypothesized effect; (2) the association should be strong; (3) consistent, and (4) specific; and (5) it should be expected from theory. From this study it is clear that the effect of advertising precedes the development of susceptibility to smoking. The effect is strong and specific, with at least 34% of experimentation with cigarettes attributed to these activities. The association is consistent with other studies. Finally, such a causal effect is expected from theoretical consideration of how persuasive communications work.

Pierce, J.P., Choi, W.S., Gilpin, E.A., Farkas, A.J., Berry, C.C., "Tobacco Industry Promotion of Cigarettes and Adolescent Smoking" *Journal of the American Medical Association,* 1998;279(7):511-515, p.515.

120. [This article validates susceptibility to smoking as a predictor of adolescents taking up smoking.]

Pierce, J.P., Choi, W.S., Gilpin E.A., Farkas, A.J., Merritt, R.K. "Validation of Susceptibility as a Predictor of Which Adolescents Take Up Smoking in the United States" *Health Pscychology*, 1996;15(5):355-61.

121. Adolescents who are receptive to tobacco advertising are more likely than adolescents who are not receptive to be susceptible to smoke in the future.

Tobacco advertising and marketing practices are an important and independent predictor of smoking uptake. The effect of tobacco marketing on susceptibility is at least as large as the effect of exposure to peers or family members who smoke.

Pierce, J.P., Evans, N., Farkas, A.J., Cavin, S.W., Berry, C., Kramer, M., Kealey, S., Rosbrook, B., Choi, W., Kaplan, R.M. *Tobacco Use in California. An Evaluation of the Tobacco Control Program, 1989-1993* (La Jolla, Calif: University of California, San Diego, 1994), p.101.

122. Summary of Findings

1. Tobacco advertising reaches the very young. Audience awareness of cigarette advertising for the most popular brands is already well established in young adolescence. More that 90% of 12- to 13-

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year-old children could nominate a brand that was advertised. The cigarette brands most frequently recalled were Camel and Marlboro.(p.119)

...

4. Evidence suggests that tobacco advertising may encourage teenagers to smoke by associating smoking with benefits that they want. Adolescents across age groups were overwhelmingly in agreement that tobacco advertising promotes specific benefits of smoking. The more cigarette advertisements adolescents recalled, the more likely adolescents were to believe that advertising promotes the benefits suggested in the survey.

5. Cigarette advertising appears to be a powerful independent source of information about the benefits of smoking for adolescents, beyond the information they receive from smokers they know. Cigarette advertising was especially associated with attributions that smoking was beneficial for increasing confidence in social settings and in weight control. Having a smoker in the social environment was especially associated with the attribution that relaxation was a benefit of smoking.(p.120)

Pierce, J.P., Farkas, A., Evans, N., Berry, C., Choi, W., Rosbrook, B., Johnson, M., Bal, D.G. *Tobacco Use in California 1992. A Focus on Preventing Uptake in Adolescents.* (Sacramento, CA: California Department of Health Services, 1993), pp. 119-120.

123. This article presents evidence for sex-specific temporal associations between major cigarette marketing campaigns and increases in youth smoking initiation using national survey data for 1910-1977.(p.500)

...

Tobacco marketing builds adolescent demand, and, hence, urgent public policy action is needed to extend the broadcast advertising ban to all tobacco marketing practices, including print and billboard advertising, sponsorships, sale or give-away of promotional merchandise, and point-of-sale advertising displays.

Pierce, J.P., Gilpin, E.A. "A Historical Analysis of Tobacco Marketing and the Uptake of Smoking by Youth in the United States: 1890-1977" *Health Psychology*, 1995;14(6):500-508, pp.500, 507.

124. Perception of advertising is higher among young smokers; market-share patterns across age and sex groups follow the perceived advertising patterns; and changes in market share resulting from advertising occur mainly in younger smokers. Cigarette advertising encourages youth to smoke and should be banned.

Pierce, J.P., Gilpin, E., Burns, D.M., Whalen, E., Rosbrook, B., Shopland, D., Johnson, M. (1991). "Does Tobacco Advertising Target Young People to Start Smoking? Evidence from California" *Journal of the American Medical Association*, 1991;266(22):3154-3158, p.3154.

125. 34% of adolescent experimentation with cigarettes in California can be attributed to tobacco industry advertising and promotional activities. In 1996, over 200,000 California adolescents experimented with smoking; 68,000 did so because of tobacco industry advertising and promotions.

Pierce, J.P., Gilpin, E.A., Emery, S.L., Farkas, A.J., Zhu, S.H., Choi, W.S., Berry, C.C.,

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Distefan, J.M., White, M.M., Soroko, S.; Navarro, A. *Tobacco Control in California: Who's Winning the War? An Evaluation of the Tobacco Control Program, 1989-1996* (La Jolla, CA.: University of California, San Diego, 1998), p.I-v.

126. In girls younger than 18 years, smoking initiation increased abruptly around 1967, when tobacco advertising aimed at selling specific brands to women was introduced.

Pierce, J.P., Lee L., Gilpin, E.A. "Smoking Initiation by Adolescent Girls, 1944 Through 1988. An Association with Targeted Advertising" *Journal of the American Medical Association*, 1994;271(8):608-611, p.608.

127. Content analysis of 394 Canadian cigarette ads from 1987 finds that, despite full legislation freedom to be informative, there is very little information manifest in ads. The healthiness of the product and the associated life styles of its consumers is displayed in several ways, typically visuals of bold and lively behaviour in pure and pristine environments, sometimes with descriptors like "light" or "ultra-mild." More than two thirds of the ads manifest healthfulness in one or more of these ways.(p.74)

...

Canadian cigarette advertising in 1987 contained absolutely no information about the price or special deals, nor any information about research or surveys on cigarette qualities and performance, nor any information about the filter attributes or performance, nor any information about the additives used, nor any voluntary information about the health consequences of smoking.(p.78)

Pollay, R.W., "Information and Imagery in Contemporary Canadian Cigarette Ads" In: Stout, P., ed., *Proceedings of the American Academy of Advertising*, (Austin, Texas: University of Texas, 1990), pp.74-79, pp. 74, 78.

128. Publicity has long played a key role in promoting the public acceptance of cigarettes. Its role has changed in response to the 'health scare' of the 1950s, from the recruitment of new (women) smokers to the retention of existing (concerned) smokers and supporting legal and political battles.

Pollay, R.W. "Propaganda, Puffing and the Public Interest" *Public Relations Review*, 1990;16:(3):39-54, p.39.

129. Content analysis shows that the bulk of cigarette advertising in both the US and Canada displays healthfulness through a variety of symbolic means.

Pollay, R.W. "Signs and Symbols in American Cigarette Advertising: A Historical Analysis of the Use of 'Pictures of Health' " In: Hartvig-Larsen, H., Mick, D.G., Alsted, C., eds., *Marketing & Semiotics: Selected Papers from the Copenhagen Symposium* (Copenhagen: Handelshojskolens Forlag, 1991), pp.160-176, p.160.

130. The amount of cigarette sponsorship in prime time slots [on U.S. television in 1963] was significantly correlated with the delivered proportions of teenagers, not adults.

Pollay, R.W. "Exposure of US youth to cigarette television advertising in the 1960s" *Tobacco Control*, 1994; 3(2):130-133, p.130.

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131. A descriptive history reveals the strategic interest in the young manifested by the cigarette industry from 1920 to the present. The tobacco and advertising trade presses, FTC records and recently disclosed corporate documents display and discuss the targeting of adolescents and collegians. They also document the rationale and results of media choices, the use of cartoons, and especially the use of images of independence to appeal to the psychological need of adolescents.

Pollay, R.W. "Targeting Tactics in Selling Smoke: Youthful Aspects of 20th Century Cigarette Advertising" *Journal of Marketing Theory and Practice*, 1995;3(1):1-22, p.1.

132. [This article reports on an ad for BUZ cigarettes featuring two mostly naked, semi-covered women.]

Pollay, R.W. "The BUZ in Canada without an ad ban" *Tobacco Control*, 1995;4(4):397-398.

133. Conclusions:

1. Cigarette marketing targeting women has a history spanning more than seven decades, beginning in the 1920s.
2. Cigarette marketing targeting women over the years has been consistently predominated by a durable theme in associating cigarettes with fashion, status and stylishness.
3. Cigarette marketing targeting women over the years has been consistently predominated by a durable theme in associating cigarettes with slimness and weight control. More recently, this has been extended to associating cigarette brands with the concept of "superslim".
4. Cigarette marketing targeting women has often appealed to a consumer attitude of rebelliousness, as displayed by the flappers of the 1920s, the "rebellious, but unliberated" Virginia Slim, the "Slim 'n Sassy" Misty smoker, and the "fun-loving rebel" in Dakota's brand image.
5. Cigarette marketing targeting women now focuses on increasingly precise narrow segments of women, defined by lifestyle patterns, values and attitudes, and labelled with key traits or predispositions, e.g. "virile females" and "the vulnerables".
6. Cigarette marketing targeting women is now shaped by extensive consumer research influencing many aspects of the marketing mix: product forms, packaging design and colours, advertising imagery, and lifestyle research to choose promotional events.
7. Some cigarette marketing targeting women now relies on promotional events, not just media advertising, because these are "tightly targeted, extremely impactful".
8. Women have proven to be responsive to cigarette marketing. While not all brands seeking their trade can succeed simultaneously, substantial success was realized by associating cigarettes with slimness beginning in the 1920s, and by the Virginia Slims campaign of the late 1960s. In addition, women were the first to embrace product innovations such as king-size cigarettes, menthol, charcoal, and recessed filters.

Pollay, R.W. "You've Come the Wrong Way, Baby! Chapters in the Continuing Saga of Cigarette Advertising Targeting Women" Working Paper 95.5, History of Advertising Archives, October 1995, pp.20-21.

134. The cigarette industry has not voluntarily employed its advertising to inform consumers in a

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consistent and meaningful way about any of the following (1) the technologies employed in fabricating the products, (2) the constituents added in the manufacturing processes, (3) the residues and contaminants that may be present in the combustible column, (4) the constituents of smoke that may be hazardous, (5) the addictiveness of nicotine, or (6) the health risks to which its regular consumers are inevitably exposed. Their advertising for reduced yield products, instead, has relied on pictures of health and unnecessarily vague images of intelligence, and has misled consumers into believing filtered products in general, and low tar products in specific, to be safe(r) than other forms without knowing exactly why.

Pollay, R.W. "Advertising/Marketing of Low Yield Cigarettes: Themes, Messages and Miscommunication" Testimony to Commonwealth of Massachusetts, Department of Public Health Hearing (Jan. 30, 31, 1997) Re: 105 CMR 660.000 Cigarette and Smokeless Tobacco Products: Reports of Added Constituents and Nicotine Ratings, Working Paper 97.2, History of Advertising Archives, p.7.

135. The tobacco industry promotes friendly "experts" and uses public relations tactics to produce uncertainty around research results that threaten it. This inhibits public policies responsive to these research findings. These tactics, long used against medical science, are now being used to counter the studies challenging to the myth that cigarette advertising is of no import. ... The vast preponderance of evidence indicates that cigarette advertising plays a meaningful role in influencing the perceptions, attitudes, and smoking behavior of youth. Denials of these effects, without brand new and compelling evidence, are highly suspect.

Pollay, R.W., "Hacks, Flacks, and Counter-attacks: Cigarette Advertising, Sponsored Research, and Controversies" *Journal of Social Issues*, 1997;53(1):53-74, p.53.

136. The Export A striking images attract attention and associate positive lifestyles images with the brand names, logos and other trade mark or graphic signifiers. These associations, particularly with repetition, serve influence the opinions, attitudes, perceptions and beliefs of viewers, whether young or old, smokers or not. It is these factors that bias consumers' judgements and increase the likelihood of smoking ...
These sponsorship ads establish these brand images no less effectively than traditional merchandise advertising.

Pollay, R. "Export A Ads are Extremely Expert, Eh?" *Filter Tips*, August 1998, pp.8-9.

137. Contrary to vehement industry denials, the targeting of youth is amply evidenced in corporate documents produced during the trial about Canada's cigarette advertising ban. Extensive and sophisticated research identified target segments, starting at age 15, and guided the advertising aimed at them, while recognizing addiction among adolescents. Images of independence and freedom from authority were used by competing firms to appeal to the psychological needs of young starters. Careful crafting ensured that images were not too immature, lest the brand consequently be rejected, and the activities not too aerobic, lest this precipitate cognitive counter-arguing. "Positive lifestyle imagery" was used as a matter of policy to enhance the social acceptability of smoking. The importance of images of independence to attract Canadian youths is compared to the American experience with brands like Marlboro.

Tab

Pollay, R.W., Lavack, A.M. "The Targeting of Youths by Cigarette Marketers: Archival Evidence on Trial", In: McAlister, L., Rothschild, M.L., eds., *Advances in Consumer Research*, 1993;20, 266-271, p.266.

138. Cigarette brand shares of advertising voice are found to be significantly related to realized market shares, with advertising sensitivity being about three times larger among teenagers than among adults. This result is robust to various analytic assumptions and converges with strategic analysis, consumer behaviour theory and research, econometric metanalyses, historical research, and corporate documents. The authors argue that cigarette competition between firms is predominated by the battle of brands for market share among the young, and assertions to the contrary, without supporting evidence, should be treated with scholarly skepticism.

Pollay, R.W., Siddarth, S., Siegel, M., Haddix, A., Merritt, R.K., Giovino, G.A., Eriksen, M.P. "The Last Straw? Cigarette Advertising and Realized Market Shares Among Youths and Adults, 1979-1993." *Journal of Marketing*, 1996;60:1-16, p.1.

139. [A] sizeable percentage of adolescents unexposed to smokers in their social environment nonetheless believe that cigarette smoking has benefits. Tobacco advertising is a likely source of such beliefs.

Prokhorov, A.V., Farkas, A., Gilpin, E., Johnson, M., Bal, D., Pierce, J.P. "Perception of benefits to smoking cigarettes in adolescents unexposed to smokers in their social environment" *European Journal of Public Health* 1995;5(4):281-285, p.284.

140. [In this proposed settlement, arising out of litigation by U.S. state governments against tobacco companies, tobacco companies voluntarily agreed to a ban on sponsorships, to a ban on the use of tobacco trademarks on non-tobacco goods, to a ban on outdoor advertising, and to other marketing restrictions.]

Proposed Tobacco Industry Settlement (U.S.), June 20, 1997, In: 1997, 12.3 *Tobacco Products Litigation Reporter* 3.203-3.233.

141. The code has served as the basis of the industry's efforts to avoid further local, state, and federal regulatory oversight of its marketing activities. A historical review of cigarette advertising since 1964 indicates that the voluntary code's major provisions have been regularly violated in the spirit and the letter. ... The historical evidence indicates that self-regulation of cigarette advertising and promotion by the tobacco industry has been repeatedly given trials and has not worked.

Richards, J.W., Jr., Tye, J.B., Fischer, P.M. "The tobacco industry's code of advertising in the United States: myth and reality" *Tobacco Control*, 1996;5(4):295-311, p.295.

142. Tobacco sales promotion seems both to promote and to reinforce smoking among young people.

Rimpelä, M.K., Aaro, L.E., Rimpelä, A.H. "The effects of tobacco sales promotion on initiation of smoking - experiences from Finland and Norway" *Scandinavian Journal of Social Medicine*, 1993;49(suppl):5-23, p.5.

Tab

143. Just as providing a safe water supply eliminates the need for each family to boil its water, so laws banning the advertising and promotion of tobacco alter the environment in which young people grow up and free them from the pressure to smoke.

Roemer, R. *Legislative Strategies for a Smoke-free Europe*, (Copenhagen: World Health Organization Regional Office for Europe and the Commission for the European Communities, 1988), p.3.

144. Experience with different types of legislation restricting tobacco advertising and promotion leads to several conclusions:

1. Legislation is essential. Voluntary agreements with the industry fail to restrict the promotion of tobacco products. ...
2. Partial bans on tobacco advertising are not effective in controlling tobacco consumption. ...
3. A total ban on both advertising and sponsorship is essential if tobacco consumption is to be reduced significantly and quickly.

Roemer, R. *Legislative Action to Combat the World Tobacco Epidemic*, 2d ed. (Geneva: World Health Organization, 1993), pp. 42-43.

The Forty-third World Health Assembly,

...

Encouraged by:

...

(c) recent information demonstrating the effectiveness of tobacco control strategies, and in particular:

...

- comprehensive bans and other legislative restrictive measures to control effectively direct and indirect advertising, promotion and sponsorship concerning tobacco

...

1. URGES all Member States:

...

(2) to consider including in their tobacco control strategies plans for legislation or other effective measures at the appropriate government level providing for:

...

(c) progressive restrictions and concerted action to eliminate eventually all direct and indirect advertising, promotion and sponsorship concerning tobacco

World Health Assembly Resolution WHA43.16, May 1990, In: Roemer, R. *Legislative Action to Combat the World Tobacco Epidemic*, 2d ed. (Geneva: World Health Organization, 1993), pp.263-264.

145. All these data indicate that tobacco advertising primarily reaches young people. Adolescents seem to be more familiar with such advertising and are also more likely to appreciate its brand-stretching messages.

...

It seems that the Belgian legislation, which was intended to protect adolescents from image-oriented advertising, has had little effect, since brand-stretching products have adequately replaced cigarettes. Almost all the young people perceive the advertising messages for the Marlboro lighter and the Belga

metal box as cigarette advertising. Many of them also associate specific profiles with the different brands, which suggests that image-oriented publicity has continued to be effective. Even Barclay, a brand that was launched on the Belgian market only after the restrictive legislation was in effect, could be assigned a brand image by the majority of the adolescents (compared with 48 percent of the adults).

Rombouts, K., Fauconnier, G. "What is Learnt Early is Learnt Well? A Study of the Influence of Tobacco Advertising on Adolescents" *European Journal of Communication*, 1988;3:303-322, pp.319.

146. Do youth misinterpret advertising of tobacco-company sponsored events as advertising for tobacco products? YES
Do youth associate the sponsorship activities with images, activities and events that are appealing and desirable? YES

Rootman, I., Flay, B.R., Northup, D., Foster, M.K., Burton, D., Ferrence, R., Raphael, D., Single, E., Donovan, R., d'Avernas, J. "A study on Youth Smoking, Plain Packaging, Health Warnings, Event Marketing and Price Reductions" Key Findings. Figures. 1995. University of Toronto, University of Illinois at Chicago, York University, Ontario Tobacco Research Unit, Addiction Research Foundation, p.5.

147. These results, coupled with previous research, indicate that although withdrawal induces general cognitive deficits, abstinent smokers selectively attend to, and remember, smoking stimuli. Such a bias may have ramifications for cessation efforts.(p.447)

...

Reductions of exposure to smoking cues during withdrawal ought to decrease the influences of smoking stimuli that might lead to relapse.(p.450)

Rosenblatt, M.R., Jarvik, M.E., Olmstead, R.E., Iwamoto-Schaap, P.N. "Memory for Cigarette Advertisements Enhanced by Smoking Abstinence" *Experimental and Clinical Psychopharmacology*, 1996;4(4):447-450, pp.447, 450.

148. [T]here is ample evidence that tobacco advertising affects children.

...

Tobacco advertising has to be banned. There is no question.

Roussos, C. "Banning tobacco advertisements: is there a question?" *European Respiratory Journal*, 1998;11:517-519, pp.518-519.

149. Cigarette promotional items are owned by one third of students in these rural northern New England schools. These items are highly visible in the public school setting, and their ownership is strongly associated with initiation and maintenance of smoking behavior. These data lend support to a ban on CPIs to be included in US Food and Drug Administration regulations to prevent tobacco use among US youth.

Sargent, J.D., Dalton, M.A., Beach, M., Bernhardt, A., Pullin, D., Stevens, M. "Cigarette Promotional Items in Public Schools" *Archives of Pediatric and Adolescent Medicine*,

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1997;151:1189-1196, p.1189.

150. Eighty-eight percent of these 13-year-olds reported exposure to cigarette marketing: the majority often saw ads in magazines, on billboards, and at stores and events, and one quarter owned cigarette promotional items. After social influences to smoke were controlled for, exposure to cigarette marketing was related to self-reported smoking behaviour. Likelihood of experimenting with smoking was 2.2 times greater among those who owned promotional items and 2.8 times greater among those who had received mail from a tobacco company. Seeing cigarette advertisements in magazines increased this likelihood by 21%, and seeing tobacco marketing in stores increased it by 38%.

Schooler, C., Feighery, E., Flora, J.A. "Seventh Graders' Self-Reported Exposure to Cigarette Marketing and Its Relationship to Their Smoking Behaviour" *American Journal of Public Health*, 1996;86(9):1216-1221, p.1216.

151. [A survey of 300 advertising executives found that 63% agreed that a goal of tobacco advertising was to market to adult nonsmokers; 59% agreed that a goal was to market to teenage nonsmokers; 82% agreed that tobacco advertising reaches children and teenagers in significant numbers; 78% agreed that tobacco advertising makes smoking more appealing or socially acceptable to children and teenagers; 71% agreed that tobacco advertising changes behavior and increases smoking among children and teenagers.]

Shepardson Stern & Kaminsky, "Advertising Agency Survey" 1996; Campaign for Tobacco-Free Kids, "New Survey Finds Majority in Advertising Industry Say Cigarette Ads Affect Kids, Favor Restrictions", (news release) December 18, 1996.

152. [T]he total profit derived from the 3.1 million company switchers in 1986 was on the order of $362 million. Clearly, brand switching alone does not justify the $2.4 billion spent on cigarette advertising and promotion in 1986.(p.15)

...

This analysis suggests that brand switching alone cannot be the sole effect of cigarette advertising.(p.16)

Siegel, M., Nelson, D. E., Peddicord, J.P.., Merritt, R.K., Giovino, G.A., Eriksen, M.P. "The Extent of Cigarette Brand and Company Switching: Results from the Adult Use-of-Tobacco Survey," *American Journal of Preventive Medicine*, 1996;12(1):14-16, pp.15,16.

153. Despite a ban on advertising cigarettes and moist snuff products in electronic media in the US, advertising for these products regularly occurs through signage, uniforms, decals, and other sources at sporting events which are covered by broadcast and cable television.

Slade, J. "Tobacco Product Advertising During Motorsports Broadcasts: A Quantitative Assessment" pp.925-927, In: Slama, K., ed., *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health*, (New York: Plenum Press, 1995), pp.925-927, p. 925.

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154. If advertising and promotion increase cigarette consumption, then less than two million new or retained smokers - 5.5 percent of smokers who start each year or try to quit (most failing) - alone would justify the annual promotional expenditure of $2 billion. A preponderance of quantitative studies of cigarette advertising suggest a causal relationship with consumption. Other studies show that children are influenced by cigarette advertising. Additionally, there are many individual examples of targeted marketing campaigns being followed by increased consumption within the target market. The evidence supports the hypothesis that cigarette advertising and promotion increase and sustain cigarette consumption. If brand share were the only function of advertising and promotion, as the cigarette manufactures insist, the industry would lobby vigorously for an ad ban.

Tye, J.B., Warner, K., Glantz, S.A. "Tobacco Advertising and Consumption: Evidence of a Causal Relationship" *Journal of Public Health Policy*, 1987;492-508, pp.507-508.

155. A directive banning all direct and indirect tobacco advertising in the 15 nations of the European Union (EU) would constitute a major advance in the protection of child rights to health and development, UNICEF Executive Director Carol Bellamy said today.

...

"[W]e view broad restrictions on advertising as a significant step in protecting children from the ravages of tobacco, "Ms. Bellamy said. "Not only would such a ban help save countless lives in the region -- it could lend momentum to the broader campaign for worldwide restrictions on the promotion and sale of tobacco products, particularly to children in developing countries".

United Nations Children's Fund (UNICEF), "UNICEF backs European plan to ban tobacco ads", news release, November 7, 1997.

156. Despite a high level of knowledge about the adverse effects of tobacco, cricket sponsorship by tobacco companies increased children's likelihood of experimentation with tobacco by creating false associations between smoking and sport. Many children believed that the cricketers smoked.

Vaidya, S.G., Naik, U.D., Vaidya, J.S. "Effect of sports sponsorship by tobacco companies on children's experimentation with tobacco" *British Medical Journal*, 1996;313(7054):400.

157. There is a strong association between having a brand preference and smoking among primary and secondary school students. Although not all adolescent cigarette smokers have a preferred brand, preference tends to increase with use in a dose-response fashion. This study provides descriptive evidence of the association of brand preference and use, and suggests that brand preference may represent an important "within-drug" stage and may play an important role in cigarette use initiation and maintenance.

Volk, R.J., Edwards, D.W., Lewis, R.A., Schulenberg, J. "Smoking and Preference for Brand of Cigarette Among Adolescents" *Journal of Substance Abuse*, 1996;8(3):347-359, p.358.

158. The evidence suggests that attributing a singular or exclusive role to advertising and promotion is inappropriate. The brand share function is undoubtedly a major one. Yet the logical and empirical case for concluding that advertising and promotion encourage cigarette consumption, including initiation of the habit, substantially dominates the case against this proposition. The formal

Tab

analytical evidence on the direct effects of advertising leaves room for uncertainty, but the preponderance of evidence of all types supports the existence of a relationship between promotion and cigarette consumption. The evidence of the indirect effects - the suppression and distortion of media coverage of tobacco, and the consequent impact on the public's knowledge and smoking behavor - leaves little room for doubt.

Warner, K.E. *Selling Smoke: Cigarette Advertising and Public Health* (Washington, D.C.: American Public Health Association, 1986), p.84.

159. Our findings provide strong statical support for the belief that magazines in the United States have restricted their coverage of the dangers of smoking out of fear of economic reprisals by cigarette manufacturers. The degree of restriction appears to be a function of the magazine's degree of dependence on revenues from cigarette advertising. Our results are also consistent with the widespread perception that the restriction of coverage associated with the acceptance of cigarette advertising is particularly important in the case of women's magazines.

Warner, K.E., Goldenhar, L.M., McLaughlin, C.G. "Cigarette Advertising and Magazine Coverage of the Hazards of Smoking: A Statistical Analysis" *New England Journal of Medicine*, 1992;326(5):305-309, pp. 307-308.

160. In increasing numbers, Americans will seek to satisfy nicotine addictions through the use of novel nicotine-delivery products devoid of several of the poisons that make cigarettes so deadly. ... However, a series of technological, economic, political, regulatory, and social developments augurs a strange-bedfellows competition in which these industries will vie for shares of a new multibillion dollar long-term nicotine-maintenance market. Regulatory options range from encouraging competition to banning all nicotine-delivery devices. A more realistic approach discourages use of the most dangerous products, while making less hazardous products readily available to adults.

Warner, K.E., Slade, J., Sweanor, D.T. "The Emerging Market for Long-Term Nicotine Maintenance" *Journal of the American Medical Association*, 1997;278(13):1087-1092, p.1087.

161. Awareness of certain brands of cigarette was linked to an increased risk of onset of smoking in 11 to 13 year olds, especially girls. Awareness of the most advertised brands was a strong predictor of smoking, while awareness of other brands, probably known from other sources, was a less likely predictor. Children appear to take in the messages of cigarette advertising and interpret them as generic to smoking rather than brand specific.

While, D., Kelly, S., Huang, W., Charlton, A. "Cigarette advertising and onset of smoking in children: questionnaire survey" *British Medical Journal*, 1996;313:398-399, p.399.

162. On balance, there is no doubt that advertising has some effect on influencing uptake of smoking among children, and on this basis, should be discontinued. The most compelling industry defence of advertising - that to deny them the 'right' of advertising denies the consumer important product information is factuous, given the dearth of useful product information typically provided by tobacco advertising, particularly sponsorship.

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Winstanley, M., Woodward, S., Walker, N. *Tobacco in Australia: Fact and Issues, 1995.* (Carlton South, Victoria, Australia: Victorian Smoking and Health Program, 1995), p.299.

163. In the limited area encompassed by the cities of Ottawa and Hull, point-of-sale advertising for *Player's Ltd. Racing* and the *Matinée Ltd. Fashion Foundation* generated about 280 million exposures - the equivalent of more than 2 exposures per resident each day -- for just over $100,000. In the larger Ottawa/Hull region (including Nepean, Gloucester, Kanata, etc.), other forms of advertising generated more than 16 million exposures at a cost exceeding $2.5 million.

Woods, R. "Tobacco Sponsorship Advertising in the Ottawa/Hull Region" Prepared on behalf of the Canadian Council on Smoking and Health" December, 1993, p.iii.

164. [In this resolution, the World Health Assembly, the parent body of the World Health Organization, called for the development of an international framework convention for tobacco control. (Other WHO pronouncements indicate that this could include a ban on tobacco advertising and promotion.) The WHA also urged member states to implement comprehensive tobacco control strategies, including a ban on all forms of tobacco promotion, reiterating previous WHA resolutions.]

World Health Assembly, "An international framework convention for tobacco control" Resolution WHA49.17, May 25, 1996.

165. WHO and its co-sponsors of World No-Tobacco Day, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Olympic Committee (IOC) join forces in calling for all nations to end sponsorships which in any way associate tobacco products with sporting and cultural activities.

World Health Organization, "Sport and the Arts Without Tobacco: Play It Tobacco Free!" World No-Tobacco Day Advisory Kit, 1996, and accompanying documents. (Quotation is from news release.)

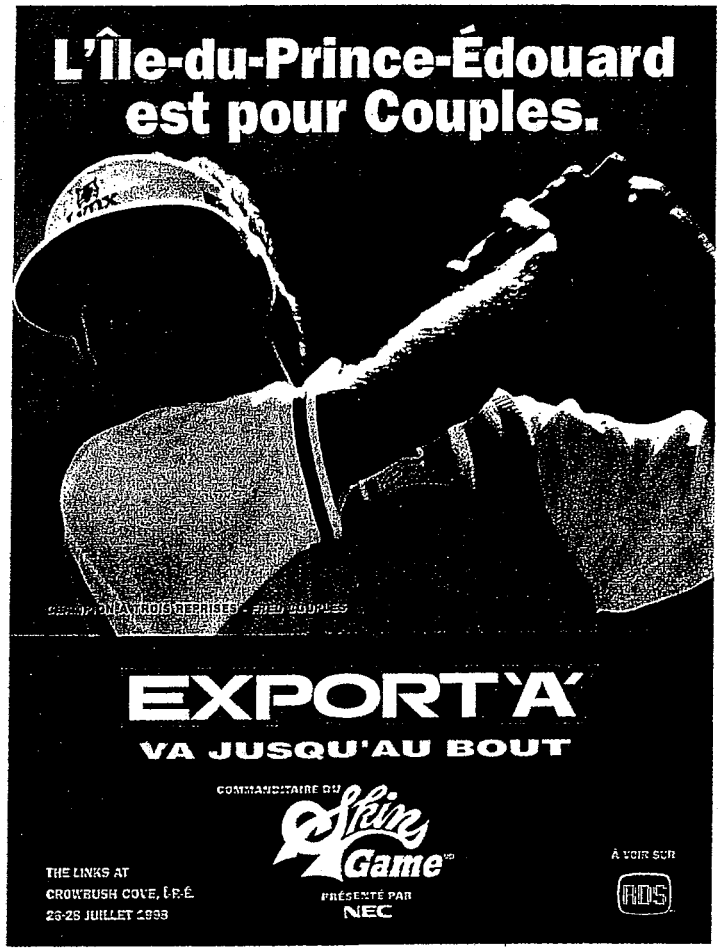
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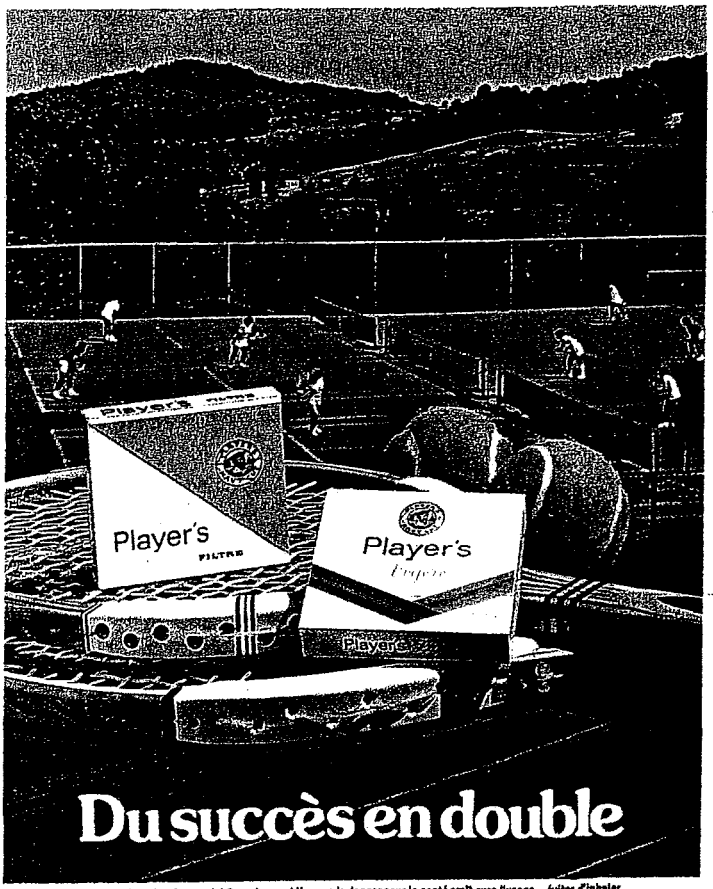


Avis : Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage – éviter d'inhaler.
Moyenne par cigarette : Craven "A" : King Size : "goudron" 12 mg., nic. 1.0 mg. Régulière : "goudron" 9 mg., nic. 0.6 mg.
Craven "A" Légère : King Size : "goudron" 10 mg., nic. 1.0 mg. Régulière : "goudron" 7 mg. nic. 0.6 mg.

1988



1998



AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage – éviter d'inhaler.
Moyenne par cigarette – Player's Filtre, format rég.: "Goudron" 17 mg, Nicotine 1.2 mg; King Size: "Goudron" 17 mg, Nicotine 1.1 mg.
Player's Légère, King Size: "Goudron" 16 mg, Nicotine 1.1 mg; format rég.: "Goudron" 14 mg, Nicotine 0.9 mg.

1980



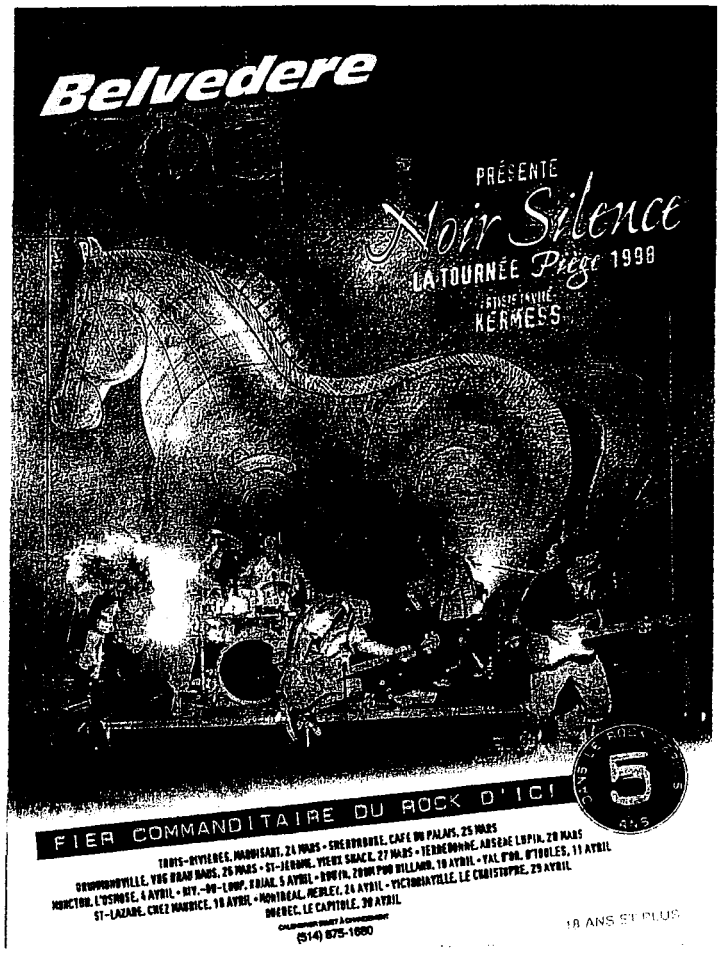
1998

Crédit : Info-tabac

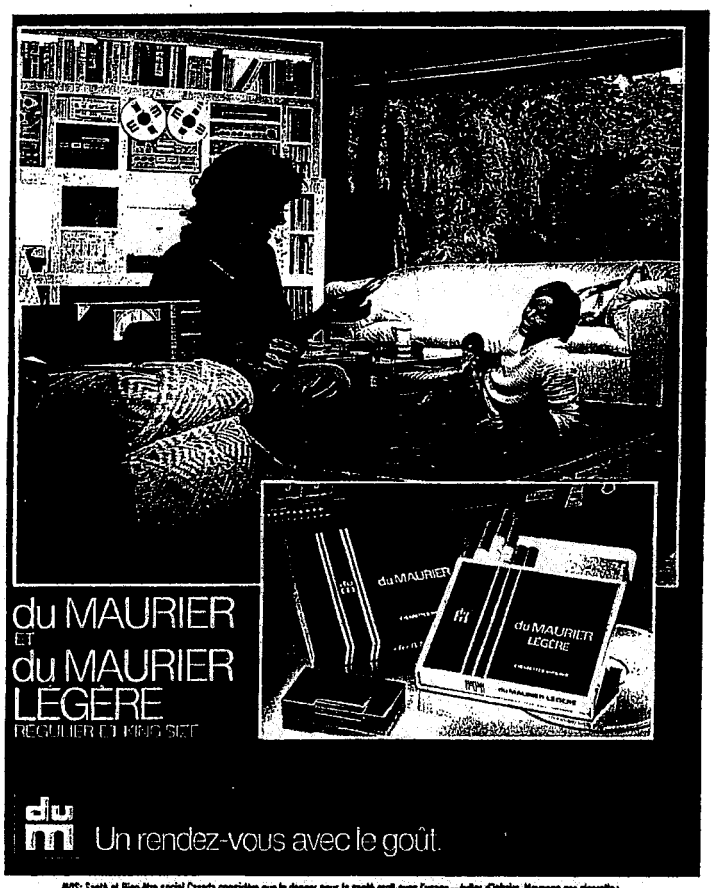


AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage — Inviter d'inhaler.
Moyenne par cigarette — Belvedere Régulier et King Size: «goudron» 15 mg, nicotine 1.1 mg.
Belvedere Extra Douce Régulier: «goudron» 10 mg, nicotine 0.8 mg; King Size: «goudron» 10 mg, nicotine 0.9 mg.

1986

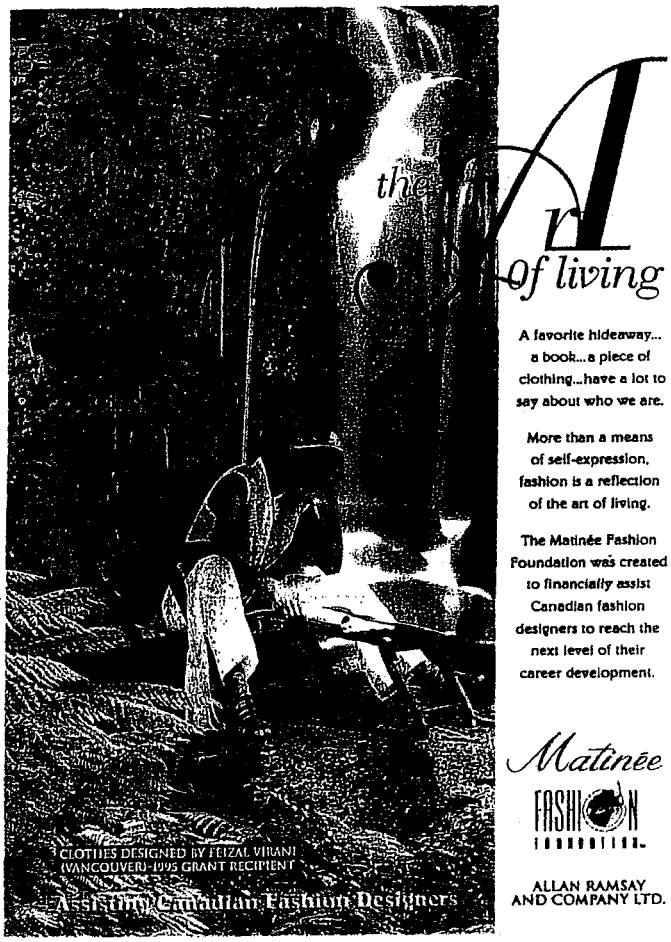


1998



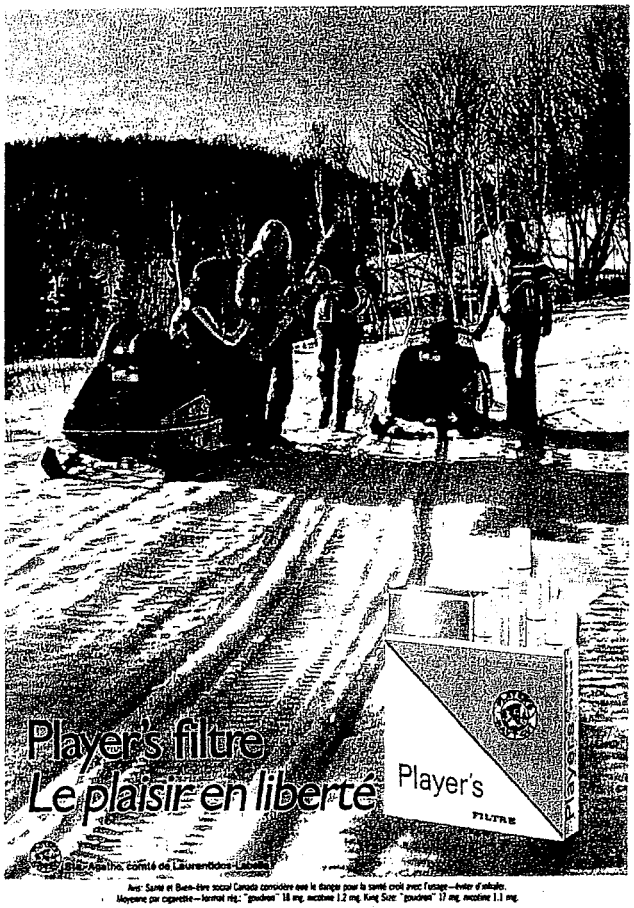
AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage — Inviter d'inhaler. Moyenne par cigarette :
du Maurier Légère: Format Régulier: "goudron" 9 mg, nicotine 0.8 mg; King Size: "goudron" 11 mg, nicotine 1.0 mg. du Maurier: Format Régulier:
"goudron" 13 mg, nicotine 1.0 mg; King Size: "goudron" 16 mg, nicotine 1.2 mg.

1986

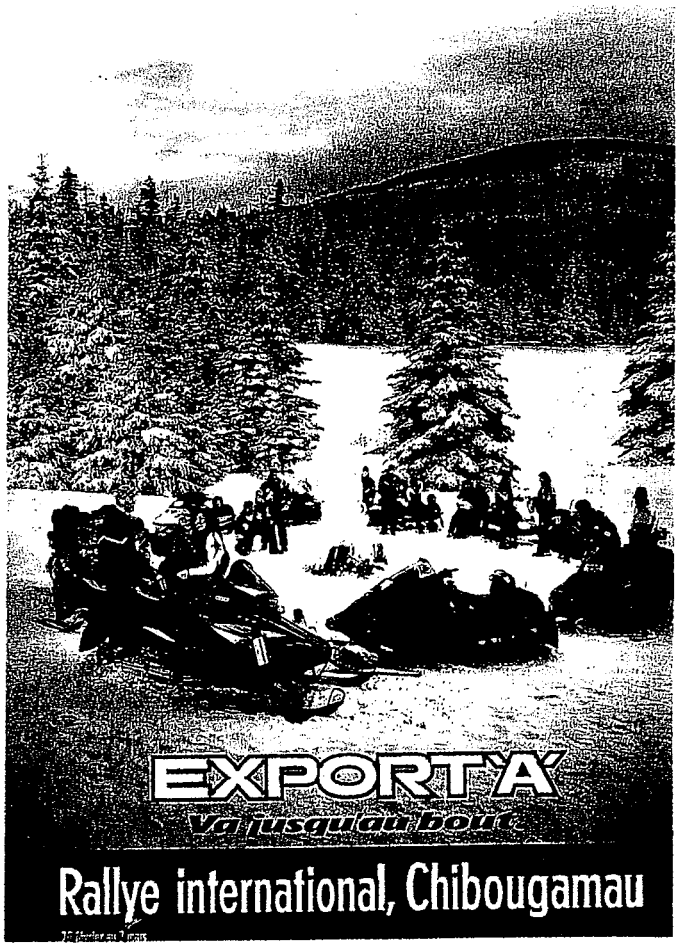


1997

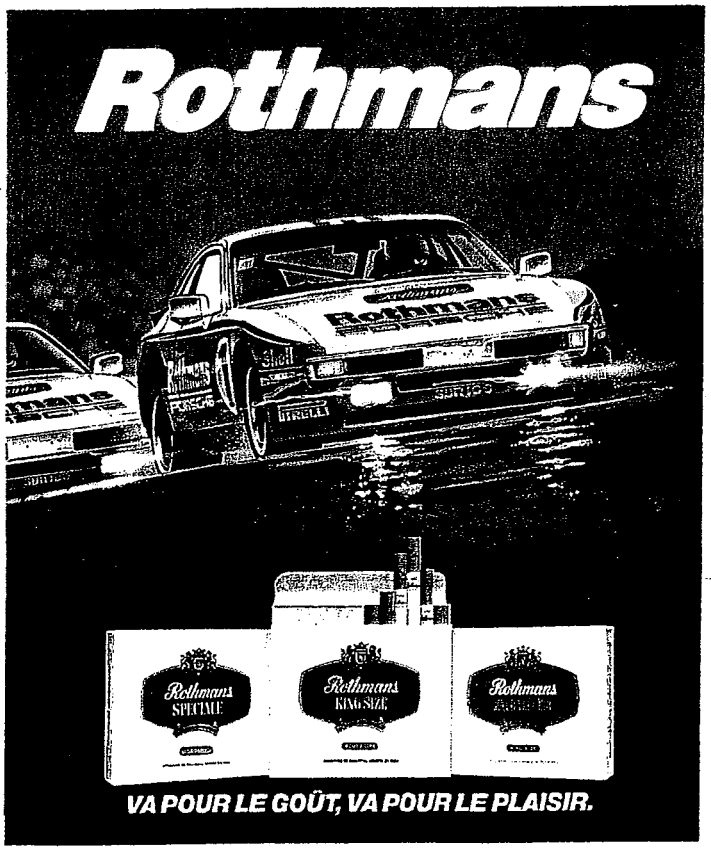
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1980

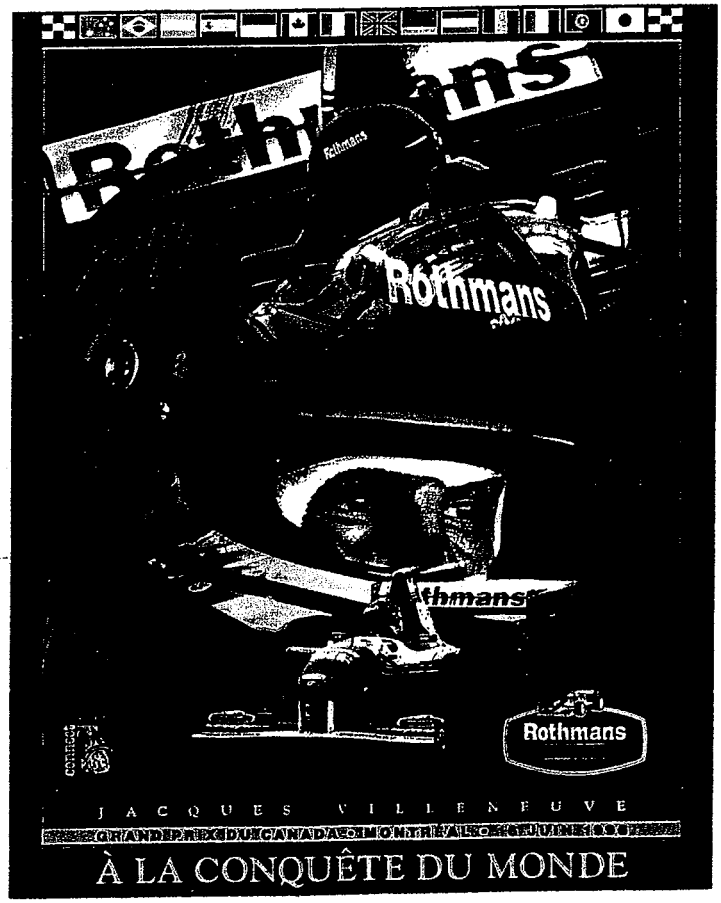


1997



Avis: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage-éviter d'inhaler.
Moyenne par cigarette- Rothmans King Size Filtre: "goudron" 16 mg, nic. 1.1 mg;
Rothmans Spéciale Légère-King Size: "goudron" 12 mg, nic. 0.9 mg. Rothmans Extra Légère-King Size: "goudron" 8 mg, nic. 0.8 mg.

1988



1996

Crédit : Info-tabac

BEST ADVICE
From the Addiction Research Foundation

Preventing Smoking: Tobacco Control Policies

Version française disponible

ARF Addiction Research Foundation / Fondation de la recherche sur la toxicomanie
33 Russell St., Toronto, Ontario M5S 2S1, Canada • *An Agency of the Province of Ontario*

According to the Ontario Tobacco Research Unit, tobacco kills at least 40,000 Canadians every year. That's more than 20 per cent of all deaths, and three times the number who die from alcohol, illicit drugs, car accidents, suicide, murder and AIDS combined. A 1994 World Health Organization report predicts that tobacco will kill up to one-half of all regular smokers.

Each year, 45,000 new cases of cancer are diagnosed in Ontario. Twenty-seven per cent of all deaths in the province are caused by the disease, and more than $1 billion a year is spent on cancer treatment. Tobacco accounts for one in four fatal cancers. It causes at least 80 per cent of all lung cancer and is an important cause of cancer of the larynx, lip, tongue, esophagus, pancreas and bladder.

Tobacco is also a major cause of heart disease, stroke and respiratory disease. It contributes to peripheral vascular disease, peptic ulcer and fetal damage. Second-hand smoke, or environmental tobacco smoke (ETS), has been linked to childhood asthma and Sudden Infant Death Syndrome.

Despite the grim facts and the ongoing efforts of public health agencies, governments and lobby groups, 30 per cent of Canadians continue to smoke. The U.S. Surgeon General's 1988 report states that "cigarettes and other forms of tobacco are just as addicting as heroin and cocaine..."

A COMPREHENSIVE STRATEGY

The Addiction Research Foundation believes tobacco consumption and its costs to society - in both human terms and financial ones - can be reduced through a comprehensive tobacco control strategy. In the past, Canada has been a world leader in legislation and other initiatives to reduce the harm caused by tobacco use. However, substantial reductions in tobacco taxes in February 1994 have reversed the long-term trend toward reduced consumption by Canadians.

Following the tax cuts, production and sales of tobacco products rose dramatically, according to Statistics Canada. In 1994, 55.5 billion cigarettes were produced in Canada, an increase of 20 per cent from 1993. A 1994 ARF survey found the long-term decline in smoking in Ontario had reversed. Smoking among adults had increased from 22 per cent in 1993 to 28 per cent in 1995.

Between 1990 and 1994, rates of smoking fell more quickly in provinces that did not match the federal tax cuts with additional provincial reductions, according to Health Canada. In the provinces where cigarettes were cheapest - Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island - per capita smoking declined about four per cent. In other provinces, the rate fell about 20 per cent. This is the first time cigarette prices have been substantially different across the country, and these statistics are considered the strongest proof to date that raising prices by raising taxes is an essential component of a comprehensive strategy to reduce consumption.

Legislation is another key area, especially with respect to consumption by minors. The 1994 Ontario Tobacco Control Act has been described as the toughest tobacco-control law in North America. It raised the legal age for buying cigarettes to 19, banned cigarette vending machines and raised the fine for selling tobacco to minors. Smoking was banned from laundromats, banks, stores, bus shelters and video arcades with more than five machines. Pharmacies, hospitals and other health care facilities were prohibited from selling cigarettes. New, more prominent signs were required to designate smoking and non-smoking areas.

The ARF views this legislation as an important step forward. However, additional measures are necessary. In particular, tobacco promotion should be further restricted. Currently, a loophole in the Federal Tobacco Control Act enables tobacco companies to promote their products - despite a ban on advertising - through sponsorship of the arts, sports events and other non-traditional promotion strategies.

POLICY RECOMMENDATIONS

The Foundation believes the most effective strategy for reducing the negative impact of tobacco is a co-ordinated one, comprising taxation, legislation, enforcement, health promotion and prevention initiatives. Specific policies the ARF recommends for achieving these goals are outlined below.

1. Designation of tobacco as a hazardous product.
The ARF believes tobacco should be included in the Canadian Hazardous Products Act. Not only would this send a message to Canadians about the harmfulness of this substance, but it would also facilitate additional preventive measures such as plain packaging, larger warnings on packages and an increased opportunity for shifting the financial costs of smoking on to tobacco producers, by increased taxation at the point of production and manufacture.

2. Increased taxation.
By and large, demand for tobacco responds to price changes like any other commodity - when prices rise, consumption falls. Younger smokers are the most price-sensitive, because they typically have little money. Raising prices by raising taxes can prevent children and youth from smoking, or reduce the amount they smoke. One analysis of Canadian data estimated that a 10 per cent increase in the price of cigarettes over and above inflation would likely result in a 17 per cent drop in cigarettes consumed per capita by 15- to 19-year-olds.

Thus, tax cuts are a major step backward for public health. To reduce smoking, federal and provincial taxes should be raised to their former peak levels, and increased regularly at or above the inflation rate.

3. Restriction of access to tobacco.
The ARF believes public access to tobacco should be restricted, possibly by the establishment of an Ontario Tobacco Control Board. Sales outlets would require licences to sell these products, reducing tobacco's widespread availability as well as providing opportunities for point-of-purchase public health campaigns.

Reducing availability would also make it easier to enforce the ban on selling tobacco to minors, as discussed below. Stores that stopped selling cigarettes would likely experience fewer robberies and increased staff safety as a result. The board could also control the export of tobacco products.

In its March 1995 report, the Ontario Task Force on the Primary Prevention of Cancer recommended additional functions for such an agency, including regulating the promotional activities of the tobacco industry, enforcing cost-recovery of tobacco-related health costs, encouraging collaborative information and educational strategies, and assisting health professionals and institutions in their efforts to prevent smoking and help smokers quit. The Task Force recommended that the control board carry out Ministry of Health policy and report directly to the ministry.

4. Enforcement of sales-to-minors legislation.
Selling tobacco to children has been illegal for many years. While the Ontario Tobacco Control Act has raised the age for purchasing tobacco to 19 and specified acceptable proof of age, the effectiveness of these measures depends on the degree to which they are enforced. The ARF supports rigorous enforcement of this legislation, as well as ongoing retailer education.

5. Measures to prevent exposure to second-hand smoke in the workplace and public places.
Second-hand smoke, also known as environmental tobacco smoke (ETS), was identified as a cause of lung cancer and other tobacco-related diseases by the U.S. Surgeon General in 1986. In 1993, the U.S. Environmental Protection Agency (EPA) classified ETS as a Class A carcinogen, the most certain category of cancer-causing substances. The EPA and the U.S. Department of Health and Human Services have concluded that ETS causes lung-cancer in nonsmokers and impairs the respiratory health of infants and children.

While many laws, bylaws and other measures have been put in place to reduce people's exposure to ETS in the workplace and elsewhere, the ARF believes further measures should be taken. Specifically, stronger legislation by municipalities is needed to ban tobacco use in public areas. No smoking should be allowed in workplaces or public areas - including bars and restaurants - unless separately ventilated areas are provided specifically for smokers.

In a 1994 ARF survey, 90 per cent of Ontario residents, and 85 per cent of smokers surveyed, said they supported bans on smoking in the workplace.

6. Measures to protect children from second-hand smoke.
Additional strategies to protect children from ETS in homes, vehicles and elsewhere must also be developed. Children who are exposed to smoke not only suffer negative health effects, but are more likely to become smokers.

According to Health Canada's 1994 *Survey on Smoking in Canada*, the presence of children in the home does not appear to influence whether or not adults smoke there. Thirty-nine per cent of adults who lived in a home with children under the age of 15 said one or more members of the household were regular smokers. Thirty-eight per cent of adults who lived with children under age six reported one or more regular smokers in the home.

The ARF believes more health promotion and prevention activities are needed to raise awareness and change attitudes about exposing children to ETS.

7. Restricting tobacco promotion.
Many public health experts believe campaigns aimed at reducing tobacco use are undermined by tobacco companies' promotion of their products, including sponsorship of events, packaging and other marketing strategies.

While the federal ban on tobacco advertising is a positive step, further measures are needed. The ARF supports a ban on use of tobacco names, trademarks, colors and logos in all advertising of events, products or organizations sponsored by tobacco companies.

Furthermore, the ARF supports the recommendation of the federal government's Standing Committee on Health that plain packaging of tobacco products merits further investigation, and possible legislation. Plain packaging is believed to reduce incentives to smoke, especially among young people. A resolution calling on all countries to promote plain packaging was adopted at the Ninth World Conference on Tobacco and Health in 1994.

A 1994 ARF survey found that public support for plain packaging legislation is at an all-time high, with 72 per cent of Ontario residents supporting it, up from 46 per cent in 1991.

8. Investigation of tobacco industry practices.
Some evidence suggests that tobacco companies may have engaged in questionable and unethical practices in the past, and possibly today as well.

Specifically, tobacco companies have been accused of suppressing scientific evidence linking tobacco to illness, adding nicotine (an addictive drug) to cigarettes during production, using advertising to promote smoking among lower-income groups, young women, children and other vulnerable groups, and exporting tobacco products to Third World nations, often promoted with advertising targeted at minors.

The ARF supports the recommendation of the Ontario Task Force on the Primary Prevention of Cancer that the federal government consider establishing a royal commission to investigate the practices of the tobacco industry.

9. Recovery of tobacco-related health care costs.
Tobacco-related illness costs the Canadian government an estimated $9.5 billion a year. In the U.S., several states are taking legal action against tobacco companies to recover tobacco-related health care costs.

The ARF believes the Ontario government should consider taking similar action, or developing other strategies to make tobacco companies accountable for the cost of damage caused by their products.

10. Counselling by health professionals.
Research has shown that encouragement and counselling by physicians and other health professionals can be an important factor in successfully quitting smoking.

According to the Ontario Task Force on the Primary Prevention of Cancer, many health professionals do not feel comfortable counselling patients about tobacco and ETS, in part because they feel they lack knowledge and experience.

The ARF agrees with the Task Force that health professionals including nurses, pharmacists, dentists, community health workers and others, should be trained and encouraged to counsel their patients on how to quit smoking, as well as the negative health effects of tobacco use and ETS.

CONCLUSION

The 1994 Ontario Chief Medical Officer of Health's annual report called tobacco use "the most important public health problem facing our province today."

The ARF believes Ontario should adopt an aggressive, integrated strategy of tobacco control to reduce the harmful effects of tobacco use, especially among children and youth.

In implementing the recommended initiatives, collaboration with key stakeholders and community partners is essential. Their participation is vital to the dissemination of scientific information, promotion of healthy practices and attitudes, and raising awareness of the health effects and addictive properties of tobacco.

The increase in smoking since the 1994 tax cuts is a challenge to governments at all levels to institute policies that will reverse this alarming trend. Every rise in tobacco consumption increases the social costs of tobacco use, including both the high economic costs as well as the toll in terms of pain, suffering and death.

While tobacco producers are working to create new products such as smokeless tobacco, and cigars are enjoying a new vogue in certain groups, Canadians must be reminded that all tobacco use and all ETS is dangerous to their health and the health of their children.

By implementing a comprehensive tobacco control strategy, Ontario can help protect its residents from the effects and expense of tobacco-related illness, as well as setting a world standard for tobacco policy.

July 1995

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THE REPORT OF THE BRITISH COLUMBIA ROYAL COMMISSION ON HEALTH CARE AND COSTS

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Paul Williamson .....Commission Counsel
Patrick Lewis .....Editor
G. Dewey Evans .....Director of Research
Irma T. Mattes .....Director of Administration
Cathy Stooshnov .....Executive Assistant
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SUBSTANCE ABUSE

In British Columbia:

- 24 of every 100,000 women die of lung cancer every year and the rates will increase in the future
- 30 percent of all cancer deaths are attributable to smoking
- 30 percent of domestic homicides involve alcohol
- 45 percent of all drownings and 70 percent of accidental poisonings are alcohol-related
- 60 - 80 percent of all spinal cord injuries are substance-abuse-related.

If you see somebody stoned from alcohol,
I'll bet you that half the people will laugh at him,
reeling down the street.
If you knew that he was stoned because of cocaine,
or heroin,
or something, you would gasp and say,
"How awful!"
They're both stoned.
But... alcohol is accepted.
Society uses it...
If we could cut down on the legal drugs,
we'd do a great deal - liver,
heart, disease, cancer,
a whole lot of other things would be improved.

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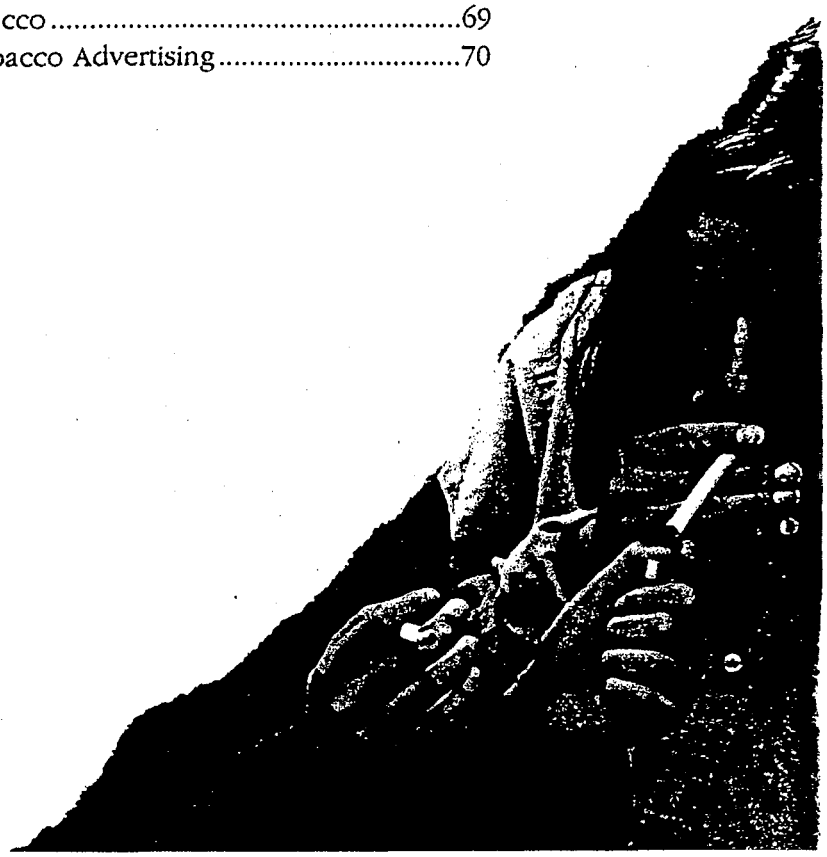
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14. **a system of graduated licensing be initiated for novice drivers, including:**
    a. **curfews;**
    b. **zero blood alcohol tolerance;**
    c. **passenger restrictions;**
    d. **speed restrictions; and**
    e. **improved training and testing.**

Tobacco

This commission supports the government's recent increase in taxes for tobacco products. Tobacco is a drug. The consequences of its use affect all of society, particularly through the cost of health care.

While not all lung cancer is attributable to smoking, a very high proportion is. As a general rule, tobacco is thought to be responsible for 30 percent of all cancer deaths.

From 1985-87 in BC, the average annual lung cancer death rate for men (45/100,000) was the third lowest in Canada (59/100,000). But women in BC had the highest rate (24/100,000). The lung cancer death rate overtook the rate for breast cancer in women in 1987. The increasing trend in lung cancer death rates for women will continue due to the fact that BC had the highest prevalence of smoking among women 20 years ago. Since then, smoking has decreased for both men and women but the decline has been greatest among men, down 43 percent, compared with a drop of only 19 percent for women.

The National Clearinghouse on Tobacco and Health collects information on a number of prevention programs and smoking cessation programs directed at teens. These programs could be offered through the regional programs of the ADC.

Therefore, the commission recommends that:

15. **the provincial government**
    a. **license the sale of tobacco products and**
        i. **revoke a licence if the licence holder sells tobacco to a minor; and**
        ii. **suspend a license if there is a breach of any other regulation; and**
    b. **not permit pharmacies to sell tobacco;**
    c. **increase the legal age for buying and using tobacco products to age 19;**
    d. **ban tobacco vending machines;**
    e. **prohibit the sale of cigarettes in packets of less than 20;**
    f. **require that wherever tobacco is sold, there be a sign prominently displayed that states, "Smoking tobacco is a major cause of death in BC and a major cause of injury to babies";**
    g. **prohibit the use of tobacco by adults and children on all elementary and secondary school property;**
    h. **require that the owner or operator of every establishment with an enclosed area that offers food or beverages to the public ensure that at least one half of that area is free of tobacco smoke and that all of the seats in that area are designated for non-smokers;**

Tobacco causes 30% of cancer deaths, 25% of heart disease deaths, 15% of stroke, 60% of chronic obstructive pulmonary disease, 10% of hospital days, 6% of physician visits, 8% of motor vehicle accidents - something that is not very well recognized - 40% of fire deaths, 100% of the deaths from second-hand smoke - which amount to only 38 per year in this Province or about that - 20% of low birth weight infants and, between 15 to 30% of all deaths of Canadians, depending on how you estimate it.

PRO-103

i. **ban smoking in all areas of any institution that receives any form of government funding except specified areas for geriatric patients and residents and persons receiving *palliative care; and**

j. **impose a tax on the promotion of tobacco products including the use of the name of a tobacco product in the promotion of any event, equal to 100 percent of the cost of that promotion. All of the tax revenue so collected shall be used for anti-smoking advertising campaigns to be run by a volunteer organization.**

• *Tobacco Advertising*

We are aware that the federal legislation governing tobacco advertising has been struck down as being a matter for provincial governments and as being contrary to the Canadian Charter of Rights and Freedoms. The commission is of the view that banning tobacco advertising is very important. Many young British Columbians start smoking each year and will die from it. We think it is important that nothing be permitted that would encourage people to smoke.

Therefore, the commission recommends that:

16. a. **the provincial government pass legislation similar to the Tobacco Products Control Act.; and**

b. **if the legislation is found to be contrary to the Canadian Charter of Rights and Freedoms, the province resort to Section 33(1) of the Charter to ensure that the prohibition against tobacco advertising is maintained.**

Programme québécois
de lutte contre le cancer

Pour lutter efficacement contre le cancer, formons équipe

Comité consultatif sur le cancer
Octobre 1997

Gouvernement du Québec
**Ministère de la Santé et
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Liste des collaborateurs

Comité consultatif sur le cancer

Mario ALBERTON
Yves ARCHAMBAULT
Joseph AYOUB
Nicole BEAUCHESNE
Maurice BEAULIEU
Pearl BERG
Andrée BERNARD
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Uy TRAN
Linda VAILLANT
Julien VEILLEUX
Lucien TESSIER, secrétaire

Ont également siégé au Comité consultatif
Michèle BÉRUBÉ
Jean BOIVIN
Pierrette BOUDREAU
Colette CLAING
Pierre CLICHE
Anne LAUZON
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Mireille LEMASSON
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Sous-comité Prévention et promotion

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Laurent MARCOUX, président
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Gilles W. GRENIER
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Patrick LEVALLOIS
Benoit LÉVESQUE
Blandine PIQUET-GAUTHIER
Marc RHAINDS

GROUPE DE TRAVAIL SUR LE TABAGISME
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Jean VIALLET
Uy TRAN

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Bruno MAYNARD

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Raymond BOURDAGES
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Dominique DORION
Louis GUERTIN
Joseph HAZAN
Jean ROY
Georges SHENOUDA
Lucien TESSIER

Sous-comité Données statistiques

Michel BEAUPRÉ
Lucie BOISSONNEAULT
Jacques BRISSON, président
Patricia CARIS
Luc CÔTÉ
Luc DESCHÊNES
Lucien TESSIER
Uy TRAN

Groupe de travail interdirectionnel

Yves ARCHAMBAULT
Maurice BEAULIEU
Lucie BOISSONNEAULT
André BOLDUC
Jacques BRISSON
Patricia CARIS
Luc CÔTÉ
Luc DESCHÊNES, président
Monique GIRARD
François SIMARD
Lucien TESSIER
Lysette TRAHAN
Uy TRAN
René TREMBLAY

Autres collaborateurs

Marie-Dominique BEAULIEU
Michel BEAUPRÉ
Marc BERLINGUET
Jean-François BOIVIN
Daniel BOLDUC
Francine BUSSIÈRE
André DASCAL
Louise DESJARDINS
Micheline DOUVILLE
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Danielle MÉNARD
Balfour M. MOUNT
Roger PAQUET
Gilles PELLETIER
Christian PHANEUF
Lise ST-CYR

qui se rapportent à des cibles bien choisies et qui reposent sur des interventions pertinentes et efficaces;

- le principe d'équité commande un objectif de réduction des inégalités entre les membres de la collectivité et entre les groupes, particulièrement les inégalités socio-économiques.

Afin de traduire concrètement dans l'action les principes qui précèdent, nous avons retenu certains paramètres pour effectuer des choix de cibles ou de stratégies. L'information étant plus complète pour certains facteurs que pour d'autres, le travail a été réalisé en fonction des connaissances actuelles. Nous n'avons retenu, pour les fins du programme, que les facteurs de risque ou déterminants ne faisant pas déjà l'objet d'une programmation particulière et récurrente sur le plan national.

C'est donc en ayant ces paramètres à l'esprit que nous avons d'abord retenu comme priorité d'intervention immédiate les cibles suivantes : la consommation de tabac, l'alimentation ainsi que l'exposition à l'amiante et aux rayons ultraviolets présents dans l'environnement.

Les cibles pour l'intervention

La consommation des produits du tabac

Les objectifs de santé

Les effets de la consommation des produits du tabac sont maintenant bien connus et cette consommation constitue sans contredit la plus grande cause évitable de problèmes de santé.

Plus de 4 000 produits chimiques se dégagent de la fumée du tabac, dont plus d'une quarantaine sont cancérigènes. On estime qu'environ 30 % des cancers seraient attribuables au tabagisme. Ces cancers liés au tabagisme sont en hausse et ce phénomène contribue puissamment à la hausse des cancers au Québec depuis 1950. Si le tabagisme n'existait pas, les cancers du poumon, de la trachée et des bronches seraient rares. Dans les faits, ce sont les cancers les plus fréquents et les plus étroitement associés au tabagisme. Au moins 85 % des cas y sont attribuables.

Plusieurs autres types de cancer ont été associés à la consommation de tabac. Parmi les 500 Québécois et Québécoises qui ont été emportés en 1995 par les tumeurs des voies aéro-digestives supérieures (bouche, pharynx, larynx, œsophage), au moins la moitié l'ont été à cause de leur consommation de tabac. Par ailleurs, le tiers des décès dus aux cancers du pancréas, du rein et de la vessie lui sont associés directement.

La consommation de tabac au Québec

La cigarette constitue le principal produit de consommation de l'industrie du tabac. En 1992-1993, plus du tiers des Québécois âgés de 15 ans et plus fumaient la cigarette. Les non-fumeurs se subdivisaient presque en parts égales entre ceux qui n'ont jamais fumé (32 %) et les anciens fumeurs (34 %). Le pourcentage de fumeurs habituels est un peu plus élevé chez les hommes que chez les femmes et les fumeurs se retrouvent en plus grand nombre chez

Les objectifs de santé en matière de tabagisme

- **Que, d'ici l'an 2002, la population québécoise âgée de 15 ans ou plus composée de fumeurs habituels ou occasionnels passe de 35,4 % (pourcentage de 1994) à 28 %[3].**
- **Que, d'ici l'an 2002, on augmente à 75 % la proportion des milieux de travail exempts de la fumée de tabac ambiante, à 75 % dans les lieux publics en général, et à 100 % dans les lieux publics fréquentés par les enfants.**

3. Gouvernement du Québec, *Priorités nationales de santé publique, 1997-2002*, MSSS, Québec, 1997.

les personnes âgées de 25 à 44 ans. L'usage du tabac diminue au fur et à mesure que la scolarité et le revenu augmentent. On observe également des différences entre les régions du Québec; le plus fort taux est observé dans Lanaudière (35,6 %), alors que le taux le plus faible revient à la région de Québec (27 %).



Après un bref recul du tabagisme, la tendance semble s'être renversée depuis 1993. Entre 1991 et 1994, on a observé une hausse du tabagisme chez les hommes (de 33 % à 38 %). Le phénomène de hausse de la consommation de cigarettes s'est cependant surtout manifesté chez les jeunes, alors que, au secondaire, le taux de tabagisme des élèves est passé de 19 % en 1991 à 34 % en 1996. Cette augmentation fut beaucoup plus forte chez les filles, ces dernières étant proportionnellement plus nombreuses à fumer que les garçons[4].

La consommation de tabac comme toxicomanie

Le fait qu'autant de Québécoises et de Québécois deviennent ou demeurent des fumeurs habituels malgré un dossier aussi incriminant pour le tabac se comprend difficilement. Deux facteurs expliquent en partie ce problème : d'une part, la nicotine présente dans le tabac engendre rapidement la dépendance; d'autre part, la réglementation quant à sa production, à sa distribution et à sa promotion est presque inexistante.

On sait que la majorité des fumeurs aimeraient cesser de fumer et préféreraient n'avoir jamais fumé. Selon un sondage récemment réalisé au Québec, plus de trois fumeurs sur quatre ont déjà essayé sans succès d'abandonner le tabac. Pour un succès optimal, les thérapies de remplacement de la nicotine devront être intégrées systématiquement dans l'approche proposée aux personnes présentant une dépendance au produit, afin de s'attaquer précisément au facteur clé de la consommation.

La fumée du tabac dans l'air ambiant

La fumée du tabac affecte les non-fumeurs qui y sont exposés. En 1992, l'Environmental Protection Agency des États-Unis a classé la fumée de tabac dans l'environnement comme cancérigène de catégorie A, signifiant ainsi qu'elle peut causer le cancer chez les non-fumeurs. Ainsi, au Québec, près d'une centaine de personnes non-fumeuses décéderaient chaque année d'un cancer du poumon causé par la fumée de tabac dans l'air ambiant.

Comment atteindre nos objectifs ?

Fondamentalement, l'approche à l'égard de la consommation de tabac doit viser à la débanaliser, la dénormaliser, en changer la signification symbolique et à assurer que le tabac soit réellement reconnu pour ce qu'il est, c'est-à-dire un produit qui rend les personnes dépendantes et tue au-delà de 40 000 personnes au Canada chaque année.

Pour ce faire, une approche globale est nécessaire, une approche qui rejoindra les trois grands champs d'intervention, à savoir la protection contre la fumée de tabac dans l'air ambiant, la cessation et, en priorité, la prévention de la consommation. On devra faire appel à plusieurs stratégies complémentaires : la législation, les communications de masse, les programmes éducatifs, la diffusion de l'information, le développement des connaissances, les services de traitement, l'action communautaire.

Actions au niveau national

La taxation

La taxation des produits du tabac en augmente le prix et influence fortement la consommation du tabac, particulièrement chez les jeunes.

On estime en effet qu'une hausse de 10 % du prix à la consommation réduit de 4 % la consommation des produits du tabac; chez les adolescents, cette chute est pratiquement du double. Comme l'efficacité d'une telle mesure risque cependant d'être annulée par la contrebande des produits du tabac, toute hausse des taxes doit se faire graduellement. Néanmoins, le niveau de taxation visé devrait être voisin de celui qui avait cours avant la baisse dramatique

4. C. Bellerose et autres, Santé Québec, *Et la santé, ça va ? 1992-1993*, et enquête 1996 de la firme Everest pour le compte du MSSS.

des taxes survenue au moment de la lutte contre la contrebande.

La réduction de l'accessibilité aux produits du tabac

L'interdiction de la vente des produits du tabac aux jeunes est une mesure répandue. Toutes les provinces canadiennes, sauf l'Alberta et le Québec, ont légiféré dans ce domaine. Actuellement, au Québec, la loi fédérale sur la vente du tabac aux jeunes interdit de fournir des produits du tabac à des jeunes âgés de moins de 18 ans, dans le cadre d'une activité commerciale. L'obligation de vendre des cigarettes en paquet contenant au moins vingt cigarettes découle également de la loi fédérale sur la vente de tabac aux jeunes. La distribution gratuite de cigarettes à des fins commerciales est, il va sans dire, également interdite. L'élimination des présentoirs en libre service dans les points de vente et des machines distributrices automatiques, au moins dans les lieux accessibles aux jeunes, permet aussi d'éloigner le tabac des jeunes.

La protection des non-fumeurs

La réglementation du tabagisme dans les lieux publics et les milieux de travail est l'une des mesures antitabagiques les plus répandues dans le monde. La connaissance de l'effet de la fumée de tabac dans l'air ambiant sur la santé a accéléré la croissance des mesures en ce sens.

Au Québec, la Loi sur la protection des non-fumeurs dans certains lieux publics est en vigueur depuis 1987. Cette loi ne couvre cependant pas tous les lieux publics, dont les centres commerciaux et les restaurants qui ne sont pas visés, et les mécanismes de surveillance de son application sont jugés faibles. Une loi fédérale, la Loi sur la santé des non-fumeurs, touche certains lieux sous juridiction fédérale (transports, radiotélédiffusion, etc.). Par ailleurs, aucune loi ne vise les milieux de travail en général. Ainsi, en 1994, 30 % des Québécois travaillaient dans des milieux où il n'y avait aucune restriction de fumer, alors que seulement 25 % d'entre eux pouvaient jouir d'un milieu de travail complètement sans fumée, ce qui représente les taux les plus faibles au Canada. Enfin, il importe de se préoccuper de l'exposition des enfants à la fumée de tabac dans certains lieux privés tels le domicile ou les véhicules automobiles.

Désignation du tabac comme produit dangereux

Afin de mieux prendre en considération la nature du produit et d'ajouter des outils utiles pour contrer le tabagisme, par exemple, des avertissements en plus gros caractères sur les paquets de cigarettes et autres produits du tabac, l'emballage neutre, la possibilité d'imposer des taxes sur la fabrication du tabac ainsi que de limiter la concentration de substances contenues dans la cigarette ou d'autres produits du tabac, doivent être envisagés.

L'interdiction de la promotion des produits du tabac

La promotion des produits du tabac revêt plusieurs formes : publicité, commandite, emballage attrayant, exposition massive des produits dans les points de vente, etc. La mise en marché de friandises imitant les produits du tabac est une autre façon de vendre le tabagisme à d'éventuels consommateurs des « vrais » produits du tabac. Toutes ces activités promotionnelles entretiennent, entre autres, la « normalité » du tabagisme. Une stratégie de lutte contre le tabagisme ne peut donc ignorer cet important aspect des stratégies de mise en marché de l'industrie du tabac.

L'intervention législative contre la promotion des produits du tabac a, jusqu'à maintenant, été pilotée par le gouvernement fédéral.

Les communications

L'histoire et la nature du problème, couplées aux efforts de marketing énergiques de l'industrie du tabac, nécessitent une approche combative en matière de communication auprès de la population. Cette approche devrait mettre l'accent sur l'évolution du problème et sur les mesures pour le contrer. Des communications orientées en ce sens permettraient de mieux faire connaître le problème, d'en faire une priorité nationale, et mettraient en juste perspective les façons et les moyens d'en modifier positivement l'évolution. Notons que les communications sont considérées ici dans un sens très large et englobent les campagnes médiatiques de masse, les événements spéciaux comme la Semaine québécoise sans fumer et la Journée mondiale sans tabac, l'affichage obligatoire d'information-santé aux points de vente des produits du tabac, les avertissements sur les emballages de ces produits, les relations publiques, la documentation.

Mesures en matière de lutte contre le tabagisme au niveau national

- Que la **taxation** soit retenue comme une stratégie centrale en vue du contrôle du tabagisme.
- Qu'une proportion des revenus engendrés par le prélèvement de cette taxe soit précisée et affectée au financement des activités de prévention du cancer.
- Que des mesures supplémentaires soient prévues pour contrer les activités de contrebande et que des représentations auprès des provinces et des États *voisins* soient faites afin que des mesures semblables puissent être adoptées.
- Que des mesures de **réduction de l'accessibilité** des produits du tabac soient appliquées au Québec, par l'application des mesures légales pertinentes, ou par la création d'une loi québécoise dans ce domaine.
- Que soit interdite la vente des produits du tabac sans fumée afin d'éviter une hausse de la consommation de ces produits, comme cela a été le cas récemment aux États-Unis.
- Que la portée de la loi actuelle sur la protection des non-fumeurs contre la fumée de tabac dans l'environnement soit élargie **afin de mieux protéger les non-fumeurs contre la fumée de tabac dans l'environnement.**
- Que les activités de sensibilisation des parents à l'égard des effets sur la santé de la fumée secondaire soient renforcées, et ce, en vue d'une meilleure protection des enfants.
- Que le gouvernement québécois collabore avec le gouvernement fédéral et les autres provinces afin d'**assujettir le tabac à la Loi sur les produits dangereux** ou à une réglementation tout aussi sévère.
- Que le gouvernement du Québec prenne les initiatives appropriées **afin que les activités de promotion des produits du tabac soient éliminées** ou réduites au minimum, cela n'excluant en rien une collaboration avec le fédéral dans ce domaine.
- En matière de **communications**, qu'une approche variée et soutenue dans le temps, par opposition à des activités ponctuelles et de durée limitée, permette de rejoindre plus adéquatement la population et stimule de façon plus efficace la réflexion quant à la décision de commencer ou de poursuivre la consommation des produits du tabac. Cette action devrait autant que possible se faire en collaboration avec le gouvernement fédéral qui intervient aussi dans ce champ d'action.
- Que soit **interdite la vente des produits du tabac** dans les locaux et sur les terrains des organismes ou établissements publics.
- Que soit **interdit le financement** des organismes de santé ou leur fondation **par les compagnies de tabac.**
- Que, à l'instar de la Banque mondiale, le gouvernement du Québec **ne subventionne pas l'industrie du tabac** directement ou indirectement.
- Que le gouvernement du Québec **ne s'associe pas** à quelque projet ou événement parrainé, ne serait-ce qu'en partie, par l'industrie du tabac.

Actions aux niveaux régional et local

Les programmes de prévention

L'initiation à la consommation des produits du tabac se fait très tôt et la dépendance se crée rapidement, d'où l'importance primordiale des programmes de prévention. Ces programmes doivent viser les enfants dès la fin du deuxième cycle du primaire, en plus des élèves du premier cycle du secondaire. La réforme des programmes d'études[5] actuellement réalisée par le ministère de l'Éducation devrait introduire un contenu éducatif pertinent en matière de prévention du tabagisme.

Ces programmes ne doivent pas se limiter à de l'information sur la nocivité du produit; un contenu visant aussi le développement de l'estime de soi et de la capacité de résister à l'influence et à la pression des camarades, un facteur déterminant dans l'amorce de la consommation, doit être préparé de façon prioritaire. En conformité avec notre recommandation antérieure à l'égard des milieux de vie sans fumée, il importe que ces programmes soient par la suite implantés dans les établissements scolaires où les pratiques de consommation sont congruentes avec le message véhiculé auprès des jeunes.

Les programmes de cessation

Plus des trois quarts des personnes consommant des cigarettes souhaitent arrêter et plus du tiers essaient de le faire chaque année. Le taux global annuel de cessation au Québec est faible, mais, le temps aidant,

5. Gouvernement du Québec, *Réaffirmer l'école*, rapport du Groupe de travail sur la réforme du curriculum, MEQ, Québec.

Mesures en matière de lutte contre le tabagisme aux niveaux régional et local

- Qu'à l'intérieur d'un contexte général d'écoles sans fumée, des programmes efficaces de **prévention de la consommation** soient obligatoires pour les élèves du primaire et du premier cycle du secondaire.
- Que chaque région du Québec se dote d'un réseau de services capables de répondre adéquatement aux **besoins de soutien** des fumeurs qui veulent cesser de fumer.
- Que des outils, des guides et des activités de **formation continue** appropriés soient mis à la disposition des divers intervenants en vue d'assurer la meilleure qualité des services offerts.

on retrouve aujourd'hui près de la moitié des non-fumeurs qui sont en fait des anciens fumeurs.

Quant aux bénéfices de la cessation, ils sont sans équivoque. On note en effet une réduction significative du risque par rapport à l'ensemble des problèmes de santé causés par le tabagisme; de façon générale, les anciens fumeurs vivent plus longtemps que les fumeurs habituels, et les bénéfices sont présents même pour ceux qui cessent à un âge avancé. Chez les anciens fumeurs, le déclin du risque de décès comparé à celui des fumeurs habituels commence immédiatement après la cessation et continue à décroître sur une période de dix à quinze ans pour finalement rejoindre le niveau de risque des non-fumeurs.

Des guides individuels, des services cliniques spécialisés dans le counselling individuel, des thérapies de remplacement de la nicotine, des thérapies de groupe, de même que la formation des professionnels au soutien à la cessation apparaissent comme les services essentiels à offrir.



La consommation de [illegible] contre le cancer [illegible]

En résumé, sur le plan de la prévention du cancer, les interventions en matière de consommation des produits du tabac sont les plus prometteuses. Cependant, de l'énergie doit être appliquée immédiatement à l'implantation des recommandations formulées. Il s'agit là d'un travail de longue haleine, compte tenu de l'historique et de la nature du problème.

L'alimentation

Les objectifs de santé

La nutrition représente en importance la seconde cause modifiable du cancer dans les pays industrialisés. Une meilleure nutrition contribuera également à réduire l'incidence de nombreuses autres maladies chroniques, dont les maladies cardiovasculaires, les accidents vasculaires cérébraux et le diabète. Les personnes se nourrissant adéquatement sont généralement en meilleure santé et moins vulnérables aux maladies.

Les objectifs de santé en matière d'alimentation

- Que, d'ici l'an 2002, 90 % de la population québécoise consomme quotidiennement cinq portions ou plus de fruits et de légumes.
- Que, d'ici l'an 2002, 90 % de la population québécoise consomme quotidiennement six portions de produits céréaliers ou plus.
- Que, d'ici l'an 2002, l'on réduise l'apport en gras alimentaire à une moyenne de 30 % des calories ou moins.

GROWING UP TOBACCO FREE

PREVENTING NICOTINE ADDICTION IN CHILDREN AND YOUTHS

Barbara S. Lynch and Richard J. Bonnie, *Editors*

Committee on Preventing Nicotine Addiction
in Children and Youths

Division of Biobehavioral Sciences and Mental Disorders

Institute of Medicine

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This report has been reviewed by a group other than the authors according to procedures approved by a Report Review Committee consisting of members of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

The Institute of Medicine was chartered in 1970 by the National Academy of Sciences to enlist distinguished members of the appropriate professions in the examination of policy matters pertaining to the health of the public. In this, the Institute acts under both the Academy's 1863 congressional charter responsibility to be an adviser to the federal government and its own initiative in identifying issues of medical care, research, and education. Dr. Kenneth I. Shine is president of the Institute of Medicine.

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The serpent has been a symbol of long life, healing, and knowledge among almost all cultures and religions since the beginning of recorded history. The image adopted as a logotype by the Institute of Medicine is based on a relief carving from ancient Greece, now held by the Staatlichemuseen in Berlin.

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COMMITTEE ON PREVENTING NICOTINE ADDICTION IN CHILDREN AND YOUTHS

Paul R. Torrens, M.D., M.P.H. (Chair)
Professor of Health Services Administration
Department of Health Services
School of Public Health
University of California, Los Angeles

Albert Bandura, Ph.D.
David Starr Jordan Professor of Social Science in Psychology
Department of Psychology
Stanford University

Neal L. Benowitz, M.D.
Professor and Chief
Division of Clinical Pharmacology
Departments of Medicine, Pharmacy, and Psychiatry
School of Medicine
University of California, San Francisco

Richard J. Bonnie, LL.B.
John S. Battle Professor of Law
Director, Institute of Law, Psychiatry, and Public Policy
University of Virginia School of Law

K. Michael Cummings, Ph.D., M.P.H.
Director, Smoking Control Program
Department of Cancer Control and Epidemiology
Roswell Park Cancer Institute
Buffalo, New York

Donald R. Dexter, Jr., D.M.D.
Executive Director
Klamath Tribal Health and Family Services
Klamath, Oregon

Ellen R. Gritz, Ph.D.
Professor and Chair
Department of Behavioral Science
M.D. Anderson Cancer Center
University of Texas, Houston

Gerardo Marín, Ph.D.
Professor of Psychology and Associate Dean
College of Arts and Sciences
University of San Francisco

Mark Nichter, Ph.D., M.P.H.
Professor
Department of Anthropology
University of Arizona, Tucson

Peggy O'Hara, Ph.D.
Associate Professor and Director of Graduate Programs in Public Health
Department of Epidemiology and Public Health
University of Miami School of Medicine

Cheryl L. Perry, Ph.D.
Professor
Division of Epidemiology
School of Public Health
University of Minnesota

Thomas C. Schelling, Ph.D.
Distinguished Professor of Economics
and Public Affairs
School of Public Affairs
University of Maryland at
College Park

Herbert Severson, Ph.D.
Research Scientist
Oregon Research Institute and
Associate Professor
School of Psychology
University of Oregon

Sarah Moody Thomas, Ph.D.
Associate Director for Community
Education and Applications
Stanley S. Scott Cancer Center
Louisiana State University Medical
Center

Institute of Medicine Staff
Barbara S. Lynch, Ph.D., Study
Director
Robert Cook-Deegan, M.D., Director,
Division of Biomedical Sciences
and Mental Disorders
Sharon Russell, Project Assistant



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4 TOBACCO ADVERTISING AND PROMOTION

INTRODUCTION: MAINTAINING THE MARKET

Every day, children and youths in the United States are exposed to a wide array of persuasive, carefully crafted commercial messages encouraging the use of tobacco products. In 1991 the tobacco industry spent $4.6 billion—more than $12.6 million a day, $8,750 a minute—on advertising and promoting* cigarette consumption, and over $100 million on advertising and promoting smokeless tobacco products.[1] During the past 15 years, the tobacco industry has nearly quadrupled** its marketing expenditures, at a time when tobacco consumption has been declining. Each day, approximately 3,500 Americans quit smoking and an additional 1,200 tobacco customers and former customers die of smoking-related illness; therefore, maintaining current levels of tobacco use and revenues requires that approximately 5,000 new smokers be recruited every day (about 2 million a year).[2] Children and youths constitute the most likely source of new smokers. The 1991 National Household Surveys on Drug Abuse data reveal that the large majority (89%) of persons ages 30-39 who ever smoked daily tried their first cigarette by age 18, and 62% by age 16; over three quarters (77%) were smoking daily before age 20.[3] At least 3 million

*As used in this report, "advertising" refers to expenditures for advertisements in newspapers and magazines and on billboards and transit systems; "promotions" refers to all other expenditures to promote tobacco consumption, especially point-of-sale displays, distribution of samples and specialty items, sponsorship of public entertainment, direct mail, coupons, and retail value-added products.

**All figures have been converted from nominal to real dollars with a base of 1991, the year for which the most recent data are available from the Federal Trade Commission.

American teenagers smoke regularly and 3 million people who regularly use smokeless tobacco are under age 21.[4]

Three trends have caused a growing number of public health professionals to call attention to the role of marketing (advertising and other promotional approaches) in making tobacco use attractive to children and youths and in encouraging them to use cigarettes and smokeless tobacco. First, boys and girls are beginning to use tobacco at ever younger ages. The average age at which boys and girls initiate smoking has declined over the past 4 decades by 2.4 years overall for whites, 1.3 years overall for African Americans, and 5.4 and 4.6 years for white girls and African-American girls, respectively.[5] The trend for girls to begin smoking at an earlier age began between 1955 and 1966,[6] and the likelihood of becoming a daily smoker at an earlier age increased sharply in the early to mid-1970s both for boys and girls.[7] During the same period, a second alarming trend in tobacco use has been noted: more and more, youths began using smokeless tobacco products. Half of the nation's 6 million smokeless tobacco users are under the age of 21, and several national surveys show an increase in prevalence, especially among boys.[8] A third trend, which has occurred over the past 10 years, entails a slowing down of the rate at which smoking prevalence by youths had been decreasing. Between 1977 and 1981, daily smoking among high school seniors dropped a total of about 9% (from 29% to 20%), an average of 2.25 percentage points per year. Yet during the following 11 years, 1981 to 1992 (during which time the tobacco industry more than doubled its advertising and promotion expenditures) smoking by high school seniors fell by only a total of about 3% (to 17.2%), or only 0.26 percentage points per year. Among college students, from 1980 to 1992, the decrease in daily smoking was about the same as for high school seniors, except that for 1989-1992 there was a slight upward trend in prevalence of cigarette use.[9] Notably, during this same period (1981-1991), the per capita cigarette consumption fell 28% among adults.[10]

What factors have contributed to stable smoking rates and to increased rates of smokeless tobacco use among children and youths, but have proven to be less effective in sustaining tobacco use by adults? Public health advocates suggest that youths have a heightened sensitivity to image advertising and promotion themes at a time in their lives when they are struggling to define their own identities. Adolescence is characterized by three major types of developmental challenges: (a) physical maturation, (b) cultural pressures to begin the transition to adult roles and emotional independence from parents, and (c) establishment of a coherent self-concept and values.[11] Cigarette advertisements are often evocative and play off these challenges in addition to being positioned to appeal to specific groups defined by social class and ethnic identity. Early adolescence (ages 11-14) in particular may be a time of increased susceptibility to the appeal of image advertising and promotions. The possible effects of marketing techniques on youths are considered below, following a brief review of shifting trends in the appropriation of tobacco marketing dollars.

SHIFTING TRENDS IN TOBACCO MARKETING

Tobacco advertising and promotions are clearly on the rise in the United States. In 1991, expenditures ($4.65 billion) on advertising and promotion of tobacco products were almost four times the amount ($1.22 billion) invested in 1980 (figure 4-1). From 1990 to 1991 alone, expenditures increased 13%.[12] The current annual expenditures amount to $18 for every man, woman, and child in the United States. Promotional activities take many forms and are the fastest growing mode of product marketing; they have been found to be effective in leading consumers to act once exposed to advertising.[13]

The tobacco industry's *distribution* of marketing expenditures over the past 2 decades represents a major shift in marketing trends; overall, the ratio of promotional expenditures to advertising expenditures has reversed. Whereas in

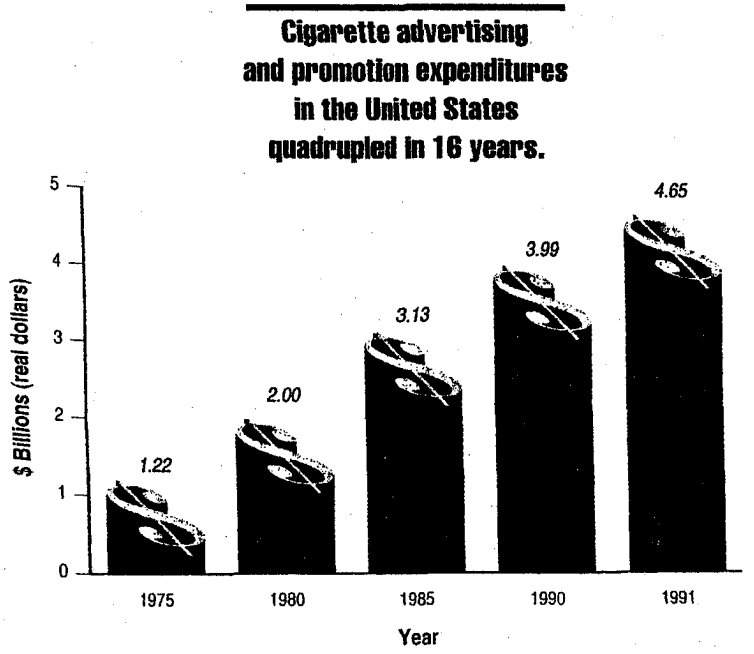


FIGURE 4-1 Source: Federal Trade Commission. *Report to Congress for 1991: Pursuant to the Federal Cigarette Labeling and Advertising Act.* Washington, D.C.: Federal Trade Commission, 1994.

1970 advertisements represented 82%* of total spending on tobacco marketing. they were down to 67% in 1980, 21% in 1990, and 17% in 1991. Although advertising expenditures per se have decreased, overall spending on marketing (advertising plus promotional activities) has increased. Of the $4.6 billion spent annually on tobacco marketing, about $700 million is spent on advertising. The remaining $4 billion is spent on a variety of promotional activities designed to: (a) place cigarettes and chewing tobacco in the hands of prospective users, (b) position cigarettes and chewing tobacco in prominent locations in shops and other points of sale where they will be psychologically appealing and physically available to customers, and (c) create good will for the tobacco industry among the public, community leaders, and politicians.

Promoting Tobacco Use to Consumers

The goal of marketing is to increase the appeal and acceptability of a product as well as to make the product available to the potential consumer. Tobacco marketing strategies (a) establish attitudinal predispositions that lead nonusers to experiment with tobacco products and interpret their experience as positive and rewarding, (b) foster the perception that consumption of tobacco products in general and in particular contexts (places, times) is normative, (c) minimize concern about the potential risks associated with tobacco use, propagating the perception that there are "safe" smoking options, and (d) reassure smokers and users of smokeless tobacco that possible risks are worth the benefits received from tobacco use. Marketing strategies promote both brand-specific and aggregate tobacco use. The impression that tobacco use is desirable and normative is conveyed through image advertising and promotions that make tobacco products highly visible in public spaces—if not by their presence, then by proxy in the forms of brand trademarks, insignia, logos, and items associated with preestablished brand images (for example, adventure scenarios). The major forms of marketing are highlighted below.

1. Retail value-added promotions and specialty items. Dramatically on the rise are retail value-added promotions such as multiple packs (buy one, get one free), cents-off coupons, and a free key chain or lighter blister-packed to a cigarette pack. Value-added promotions and coupons constituted the largest marketing expenditure (40% of total marketing expenditures) by the tobacco industry in 1991. Promotional items have special appeal to youths. Since youths have less disposable income and are more price-sensitive than adults, promotions such as discount buy-one-get-one-free schemes may be especially attractive to them. Coupons are easily accessible to youths through direct-mail promotions. (See figure 4-2 for expenditure data for this section.)

*The 1970 figure includes radio and television advertising. Broadcast advertising was banned after January 1, 1971.

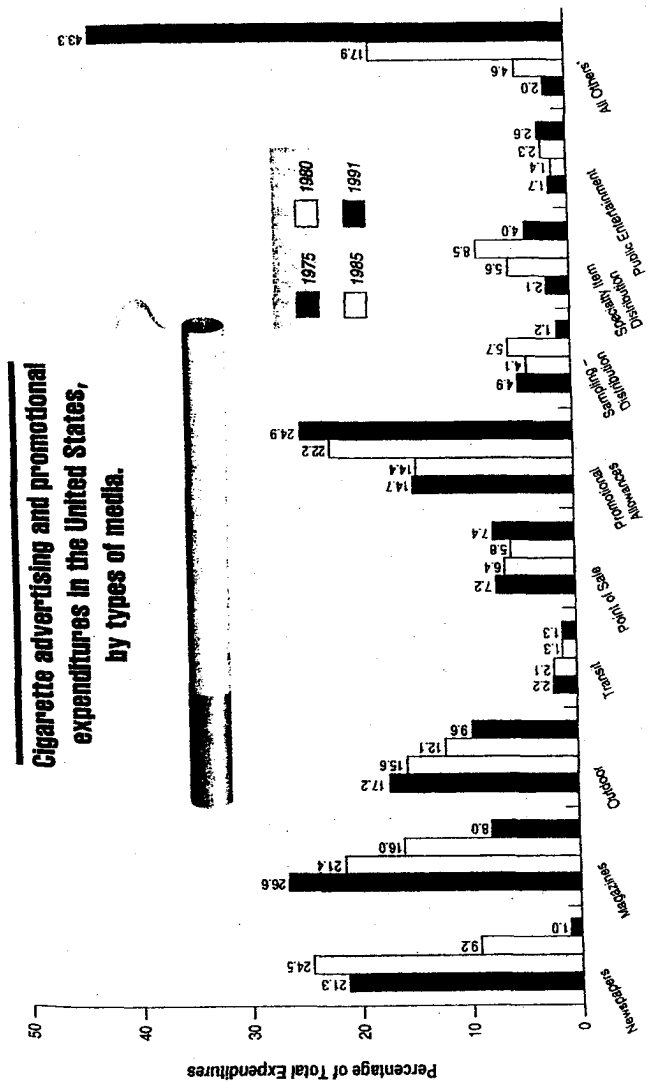


FIGURE 4-2 Note: "All Others" = Coupons and retail value-added items, direct mail, and audio-visuals. Source: Federal Trade Commission. *Report to Congress for 1991 Pursuant to the Federal Cigarette Labeling and Advertising Act.* Washington, D.C.: Federal Trade Commission. 1994.

Attractive specialty items—such as T-shirts, caps, calendars, and sporting goods—are distributed by the tobacco industry through the mail and at promotional events. These items, which sport a logo or brand name, become walking advertisements capable of penetrating areas of a child's world that might be off-limits to other forms of advertising. The ubiquity of such speciality items conveys the impression that tobacco use is the norm. Spending for specialty items accounted for 4% of expenditures in 1991. A 1992 Gallup survey found that half of all adolescent smokers and one-quarter of adolescent nonsmokers owned at least one promotional item from a tobacco company.[14] Similar data were reported in a survey of almost 8,000 ninth graders in Erie County, New York: 65% of regular smokers, 48% of occasional smokers, and 28% of nonsmokers reported owning clothing with a cigarette brand logo.[15] Although most youths seem to find logo clothing appealing, some high school students in focus groups (conducted under the auspices of the Committee) found them "tacky" and would not consider wearing them. Notably, however, these same teens save Marlboro Miles and Camel Cash coupons in order to acquire other types of goods. In a 1993 survey of 1,047 respondents ages 12-17, ownership of an average of 3.2 tobacco promotional items was reported by 10.6% of the sample. While 68.2% of current smokers reported participating in promotional campaigns, 28.4% of *non*smoking teens were also active participants. These promotional items carry no warning labels and provide free advertising.[16]

> *"My brother gets the Camel Cash. He's got stacks and stacks of them to get hats or whatever."*
>
> —adolescent in focus group

2. *Promotional allowances* constitute the second largest tobacco marketing expenditure—25% of all marketing-related expenditures. Through this form of promotion, tobacco companies pay retailers for shelf space, engage in cooperative advertising with retailers, and offer trade promotions to wholesalers, etc. Retailers are rewarded for stocking a wide variety of brands, even brands with low market demand. For example, a convenience store owner who sells 2,000 packs per week may be motivated to stock over 180 different brand packings (some having only 0.1% market share) in order to be eligible to receive incentive payments, which might be as high as $8,000 per year for a moderate-size retailer.[17]

As a result of trade incentives, cigarettes and other tobacco products are displayed prominently where adults as well as youths of all ages can see them. Self-service displays are an important source of tobacco products for minors.[18] Cigarettes are commonly displayed near checkout counters, and flavored chewing tobacco has been reported to be displayed near candy racks in convenience shops. A survey in California of stores near high schools found chewing tobacco next to candy and snacks in 42% of the stores.[19] In addition to catching the eye of a potential buyer who may not consciously be in the market for a tobacco

product, the positioning of tobacco with other commodities conveys subtle associational meanings. For example, when placed near liquor, as they often are, cigarettes come to be associated with adult status as well as with products promoted to shift one's consciousness away from the stress, strains, anxieties, and boredom of routine existence, as a means of providing some temporary release and relief.

3. *Point-of-sale advertising* showcases particular brands of cigarettes in shops to stimulate impulse purchases. Since the 1971 ban on broadcast advertising, tobacco companies have made marketing through distribution a major function of their sales forces, which numbered more than 9,000 industry wide in the early 1980s.[20] This marketing technique places the tobacco products in convenient, visible racks, usually self-service, and in point-of-purchase displays. Point-of-sale promotions tend to involve the retailer, as well as the consumer, in a brand product. Support of brands through point-of-sale advertising helps to bolster the legitimacy of a brand in the eyes of retailers who make stocking decisions.[21] Point-of-sale materials are coordinated with national advertising campaigns to tie retailers in with the image-building for the product. In this sense, point-of-sale advertising both influences product distribution and directly induces consumption.[22] Point-of-sale advertising in retail establishments has been increasing and in 1991 represented 7.4% of advertising and promotional expenditures.

4. *Magazine and newspaper advertising* accounted for about 7% of marketing expenditures in 1991, when expenditures on *newspaper* ads reached an all-time low of 1.0%, a large drop since the 1980 high of 24.5%. *Magazine* ads were down to 6% of marketing dollars in 1991, from 21.4% in 1980. Nevertheless, expenditures on tobacco advertising in the print media do continue to be substantial and the decreases are not occurring at the same rate across all market segments; for example, while the number of ads per magazine issue has declined in men's and women's magazines, it has remained relatively stable in those magazines having substantial African-American and youth readerships.[23] In addition, advertisements are often combined with interactive promotional items that appeal to children and youths. For example, many magazine advertisements feature giveaway, non-cigarette utility items (calendars, lighters, T-shirts, and "action products") associated with "cash coupon" catalogue offers. Magazines often inform potential customers to be on the lookout for additional information about these offers at point-of-sale locations.

> *"They advertise a lot. Every magazine I have—there's an ad for Camels, Marlboros, Newports."*
>
> —high school girl in focus group

5. The tobacco industry was the number one spender for *outdoor advertising* in 1989;[24] of the approximately 3 million billboards in the United States, 30% were allocated to tobacco and alcohol products.[25] Advertising through the use of outdoor billboards and transit system signs accounted for 9.6% of all tobacco marketing expenditures in 1991. The industry has saturated African-American neighborhoods with cigarette billboards. Studies reveal that the intensity of cigarette billboard advertising is 2.6 times greater in African-American than in white neighborhoods in Columbia, South Carolina,[26] and 3.8 times greater in Baltimore.[27] Despite supposed industry standards to the contrary, billboards advertising tobacco products can be found next to homes, schools, churches, parks, playgrounds, health centers, stadiums, shopping centers, and along rural and city streets. More permanent than magazine advertising, and seen over and over again by youths, billboard ads expose children repeatedly to pro-tobacco messages and give the erroneous impression that smoking is pervasive and normative.

6. *Sponsorship of sporting events and public entertainment* associates tobacco with (a) all-American cultural events, such as music concerts and art exhibits, where fundamental social values are celebrated, and (b) high-risk sporting events, such as rodeos and car racing, where risks are socially approved and taken by individuals who brave the odds. The tobacco industry sponsors opera and ballet performances, and concerts of rock, rap, country and western, blues, jazz, and classical music, making tobacco products highly visible to diverse populations and strengthening the association between cigarettes, artistic expression, entertainment, glamour, and individuality.

Expenditures on the promotion of sports and sporting events are growing. The 1994 surgeon general's report has called special attention to sponsorship of sporting events associated with a company's brand name and/or logo, noting that this constitutes one of the most effective means of *covert* advertising. Even during events that are not sponsored by the tobacco industry, tobacco products are permanently displayed: tobacco billboards are the dominant form of advertisement in many major professional stadiums. Youths attend such sporting events, and watch them on television; many seek to emulate sports superstars, such as baseball players, who visibly chew and spit tobacco during these sports events, thereby actually demonstrating the use of the products on the billboards. Each 3-second exposure of a billboard in a ballpark has a marketing impact similar to a 10-second TV commercial.[28]A widely cited example of just how much product exposure is realized through covert advertising during sporting events is the 1989 Marlboro Grand Prix: when the event was televised, the Marlboro logo could be seen for 46 of the 94 total minutes of this sport event's broadcast time.[29] In the 1987 NASCAR Stock Race Circuit the Winston logo appeared for a total of 6 hours and 22 minutes—nonpaid covert advertising on the air valued at $7.5 million.[30] In 1992, 354 motorsports broadcasts were quantitatively measured for estimates of product exposure value. The programs had a

total viewing audience of 915 million, 7% of whom were children and teens, and an overall tobacco product exposure value of $68 million ($41 million for Winston, $12 million for Marlboro, $7 million for Skoal, $4 million for Camel, and $4 million for others).[31] Studies have found that youths accurately associate sporting events with tobacco brands.[32]

7. *Distribution of free samples of cigarettes* in public places, for "adults only," was at its highest percentage (about 7%) of total marketing dollars in the early 1970s, and has stayed about 2% since the late 1980s. Monitoring of who is given free samples has been poor, and tobacco companies who contract-out sample distribution have taken no responsibility for cited violations in which minors have been given samples.

8. Expenditures for *direct-mail promotions* are on the rise; $65 million was spent in 1991, an increase of 22% over 1990. All five major cigarette companies actively compile mailing lists of customers, largely from coupons, which ask for name, address, usual brand, etc; from promotion redemptions; from the return of "smoker surveys" in magazines; and from the return of more general consumer information questionnaires. The forms sometimes ask detailed questions about brand use and about demographic characteristics. Brown & Williamson, Lorrilard, and American Brands use their lists occasionally to send out coupons. R. J. Reynolds Tobacco Company (RJR), Philip Morris Tobacco Company, and United States Tobacco Company (UST) have made more substantial use of their mailing lists. UST sends its listees a slick quarterly magazine, *Heartland*, which puts Skoal and Copenhagen in a pleasant context and contains various offers. RJR and Philip Morris mount regular mailings promoting a variety of brands, depending on the characteristics of the persons on the lists. RJR promotes Camel and discount brands, and sometimes sends out coupons good for any top-of-the-line RJR cigarette product. Philip Morris has distinct mail programs for Marlboro, Virginia Slims, Merit, and Benson & Hedges. Individuals on the Camel lists have received at least six mailings in the past year apart from any coupon redemptions.

These direct-mail efforts are large undertakings. Philip Morris, in a letter to its retailers dated July 20, 1993, indicated that it had 26 million people on its mailing lists. While a large number of teenagers may be included on these mailing lists, the tobacco companies has no mechanism for purging minors from their lists. Slade and colleagues conducted a nationally representative, random-digit dial survey of 1,047 respondents aged 12 to 17 to assess participation in promotional activities.[33] They found that 7.6% of the sample had received mail from a tobacco company. Extrapolating this figure to the entire 12- to 17-year-old population, they estimate that 1.6 million teens are on tobacco industry mailing lists.

Direct mail may be a form of promotion that tobacco companies will pursue

more aggressively if restrictions on conventional advertising are adopted. The expenditure data show a continuing trend toward advertising and promotional practices that are not required to carry health warnings.

Inhibiting Opposition to Tobacco Use

The tobacco industry's spending on advertising inhibits dissemination of anti-tobacco messages. *Billboard companies* allegedly have expressed reluctance to rent space for antismoking ads because they are well paid to saturate African-American neighborhoods with smoking ads and believe that they cannot afford to lose tobacco conglomerate accounts. *Magazines* that receive sizable revenues for advertising tobacco are less likely to run articles that discuss the negative aspects of tobacco use than magazines not dependent on tobacco industry revenue.[34] When articles are run that could potentially shed a negative light on tobacco use, they are toned down through editing.[35] This practice, termed "latent censorship," gives the public a distorted view of the dangers of smoking. For example, during the first 7 years after cigarette ads were banned on television (in 1971), the only two magazines (*Reader's Digest* and *The New Yorker*) that carried accurate articles on the link between tobacco and disease refused to accept cigarette ads.[36] A study of tobacco advertising in 99 magazines between 1959 through 1969 and 1973 through 1986 noted and confirmed a tendency toward latent censorship in women's magazines regarding the health effects of smoking as a result of their large amount of advertising income: "Magazines that did not carry advertisements for cigarettes were more than 40% more likely to cover the hazards of smoking than were magazines that carried cigarette advertisements. . . . women's magazines that did not carry cigarette advertisements were 2.3 times more likely to cover the risks of smoking."

Magazines for African Americans have earned revenues from tobacco ads since at least 1950. A study of patterns of tobacco advertising in magazines from 1950 to 1965 found that African Americans were at first subject to less, then to more, advertising than whites.[37] The greatest concentration of tobacco company advertising is in African-American publications such as *Jet, Essence*, and *Ebony*, but many small, local publications and other media serving the African-American community have found it extremely difficult to find other means of financial support, and might not survive without tobacco advertisements.

A similar effect of "latent censorship" results when revenue for advertising comes from one of the numerous companies that belong to tobacco industry conglomerates (for example, Nabisco, General Foods, Kraft). In 1988, after the ad agency Saatchi and Saatchi prepared ads touting the no-smoking policy of its client Northwest Airlines, RJR/Nabisco cancelled an $80 million annual contract with that agency for advertising food products.[38] A study of advertising executives found that they do fear economic reprisals from tobacco conglomerates should they print articles unfavorable to the tobacco industry.[39]

THE TOBACCO MARKET AND MARKET SEGMENTATION

Tobacco has been aggressively marketed to the American public through a number of different channels and interactive modalities in order to foster demand for particular brands of tobacco products, create a more permissive environment in which to engage in tobacco use, and establish tobacco use as a norm of acceptable social behavior if not a "habit" to be emulated. Ever sensitive to social and cultural differences, the tobacco industry has gone to great pains to position tobacco products through market segmentation. Tobacco products are marketed to appeal to specific market niches; to existing smokers as well as potential smokers.

Tobacco: A Mature and a Growth Market

The tobacco industry claims that its primary, if not sole, purposes for advertising and promoting tobacco products are to (a) provide information to tobacco consumers regarding product choice, (b) capture brand share from competitors, and (c) maintain product loyalty in a mature market. Identifying a market as "mature" bears close examination for what the term both reveals and conceals. Some, but not all, products are categorized by marketing experts as constituting either a "mature" or "growth" market. In mature markets, awareness of a product is nearly universal and demand is relatively stable. Most of the market segment is already using the product, rises in product use are not dramatic, and expansion results from getting consumers to use a product more often or in new ways. In growth markets, new market segments are identified, new users are a source of significant market expansion, and rises in product use are significant.[40]

The cigarette market simultaneously displays characteristics of being both a mature and a growth market. The industry calls attention to the fact that cigarette sales have been fairly consistent over the last decade; however, it is clear that per capita consumption has decreased, and that the tobacco industry loses 2 million smokers a year—those who quit and those who die (about 44 million and 9 million, respectively, since 1964).[41] Consequently, market expansion must be occurring to maintain total tobacco sales at a consistent level. Adults are not a likely population for that market expansion because few new smokers are adults. Furthermore, for three decades the trend among adults has been to quit smoking. In fact, most new smokers are youths: 77% of daily smokers are daily smokers by age 20.

Market Segmentation to Reach Youths

Considerable research on the part of the tobacco industry has resulted in the positioning of specific brands in different market segments. This entails vigilant

monitoring of changing responses to brand images and consumption patterns among specific populations in a competitive market. Particular market niches are targeted for intensive advertising activities. Capturing a share of the starters market, which is predominantly under age 20, is important to tobacco companies because of the amount of brand loyalty and switching within brand families. Several studies have been specially commissioned by the tobacco industry to study the youth market,[42] although the tobacco industry has claimed that it does not target underage youth in its advertising campaigns. Youths constitute not only a market segment in their own right but also a subgroup of market segments defined in relation to gender, socioeconomic status, ethnicity, etc. Research suggests that, regardless of intent, marketing pitches aimed at young adults ages 20-25 are also appealing to youths of the same class, gender, and ethnic group. For example, the tobacco industry heavily advertises in magazines that appeal to youthful readerships, for example *Spin, Rolling Stone, Cycle World, Mademoiselle, Glamour*, and *New Woman*.[43] A consideration of the impact of advertising on children and youths therefore demands an understanding of those subpopulations targeted by the industry as market growth segments: women, the less educated, and ethnic groups. A method for identifying which market segments are specially targeted by the tobacco industry would entail trend surveillance of two elements of tobacco advertising and promotion: (1) where the ads are being placed and therefore who is likely to see the ads, and (2) to whom the context and message of the ads appeal.

An example of research that has considered the power of image messages in reinforcing tobacco use is a study by Pierce and colleagues that found an association between trends in female smoking initiation and the sales of leading cigarette brands targeted to women through image advertisements from 1944 through the mid-1980s. Age-specific rates of smoking initiation for boys and girls ages 10-20 were constructed from National Health Interview Survey data. The analysis revealed gender-specific relationships with the tobacco advertising campaigns that targeted women and were launched in 1967. Specifically, in girls under 18, smoking initiation increased abruptly around 1967 and peaked around 1973, at about the same time that sales of such brands as Virginia Slims peaked. The increase was especially marked among girls who never attended college (1.7-fold higher). The trend did not apply to women 18-20 years old, nor to men. The investigators concluded that "tobacco advertising has a temporal and specific relationship to smoking uptake in girls younger than the legal age to purchase cigarettes."[44]

THE APPEAL OF TOBACCO ADS TO CHILDREN AND YOUTHS

The recent success of the Old Joe Camel campaign, introduced in 1987, has rekindled a longstanding debate on what role advertising plays in

predisposing youths to use tobacco, and to use specific brands of tobacco products. Choices to smoke are often spontaneous and based on psychological and social processes of identification, individuation, and differentiation. The effect of advertising is complex, and measuring the relative magnitude of any one type of influence on human behavior in isolation from other influences is difficult. Nevertheless, research data suggest that adolescents are more responsive than adults to advertisements. Surveys conducted between 1976 and 1990 among seventh to twelfth graders suggest an association between an explosive growth in the use of Camel cigarettes and the Old Joe Camel campaign. A study of this age group in 1990 found that 32.8% of children who smoked reported smoking Camel cigarettes.[45] While there is some debate about the underage market for Camel cigarettes before the campaign, that market was very small.[46] Furthermore, the study found that the market share for Camels decreased abruptly with age. Camel was the brand choice of 24.5% and 21.7% of boys and girls, respectively, ages 12-17, but of only 12.7% and 5.0% of youths ages 18-24. Thus, it would seem that, whether or not youths are a targeted market segment, advertisements present images that appeal to children and youths and are seen and remembered by them. Concern has been expressed that while smoking advertisements may not have had an immediate effect on smoking uptake, they may increase susceptibility to smoking, which over time translates into behavior.[47]

> *"Camel's cartoons are for the younger kids. Joe Camel's a cool person—a model."*
>
> —adolescent in a focus group

Psychosocial Mechanisms Through Which Advertising Influences the Behavior of Children and Youths

Advertising may influence consumer behavior in two broad ways—either cognitively or affectively. A cognitive influence convinces an individual that there are benefits to be derived from purchasing (or consuming) a particular product. These benefits may be related to (a) a specific need or desire that an individual maintains, or (b) an ideal image that the individual would like to adopt and convey to others. An affective response to a product is fostered by psychological conditioning: an advertisement sets up a positive evocative response.[48] The affective appeal of an advertisement is often unconscious and automatic, apparent when individuals identify a particular advertisement as their "favorite."[49] Both advertising pitches are used to encourage potential consumers to smoke or chew tobacco as well as to buy a particular brand of cigarettes.

Psychologists have described specific mechanisms by which advertising makes tobacco use appear attractive to smokers and potential smokers. Ajzen and Fishbein's *theory of reasoned action* postulates, in brief, that intentions to perform a particular act are predicted both by a person's attitude toward the act

and by normative beliefs about it, concordant with "what others think."[50] Ajzen and Fishbein argue that personal attitudinal factors are probably more important in decisions that adults make concerning smoking, whereas social normative factors are more important in the decisions of children. Other psychologists have suggested that children understand the intent of image advertising at a young age.[51] According to the theory of reasoned action, advertising can function either as a direct normative influence by shaping a child's image of what it means to be a smoker or as an indirect normative influence by increasing peer pressure associated with the emulation of role models provided by cigarette advertising. In his exhaustive 1976 review of the literature, Fishbein noted: "there can be little question that cigarette ads attempt to create a positive image of the 'smoker.'" He concluded that "our review suggests that cigarette advertising does affect cigarette consumption."[52]

Bandura's *social cognitive theory* emphasizes the central role played by modeling influences in shaping human thinking, values, and patterns of behavior.[53] Through modeling, one learns behavior and develops preferences as well as a sense of what is normative. The process of social modeling exerts its effects in several different ways.

One way in which the power of modeling is substantially increased is by showing that the modeled behavior produces desired benefits. In image advertising, smoking is portrayed as an expression of independence, individualism, and social sophistication. It engages the consumer in a fantasy and invites the consumer to participate in a promise "that the product can do something for you that you cannot do for yourself."[54] A self-image that the target audience already desires is reinforced.[55] For example, smoking is associated with a strong masculine self-conception. It is depicted as relieving stress, and as winning the admiration of wholesome, fun-loving peers. The models in cigarette ads appear healthy and happy, in stark contrast to the negative health consequences of smoking. Adolescents who evaluate positively the attributes of models used in cigarette advertising strongly overestimate the prevalence of smokers and give less thought to long-term consequences of risky behavior.[56] Associating the names and logos of tobacco products with sporting and musical events serves as yet another vehicle for framing tobacco use around images.

Another way in which social modeling exerts itself is through belief of personal efficacy. According to social cognitive theory, behavior is regulated, in large part, by belief of personal efficacy to exercise control over events and the consequences expected to flow from one's behavior. After people develop a dependence on smoking, their beliefs about personal efficacy affect every phase of their efforts to quit the habit. Such beliefs influence whether they even try to quit smoking, whether they can enlist the motivation and perseverance needed to succeed should they choose to do so, and whether they are vulnerable to relapse after they have given up the smoking habit.[57]

Adolescence is marked by cognitive developmental stages that in turn affect

one's concept of self. Early adolescence has been characterized as a period of heightened self-awareness as well as preoccupation with one's self-image. Elkind and Bowen described the notion of the imaginary audience, wherein young adolescents feel that they are always on a stage with imaginary others monitoring and evaluating their appearance and activity.[58] Indeed, studies have shown that adolescents whose actual self-concepts are consistent with their perceptions of "stereotypic" smokers (derived from advertisements) are more likely to smoke.[59] Among nonsmokers, teens who admire the attributes depicted by smokers in ads are also more likely to intend to smoke in the future.[60] In order to acquire selected attributes of model smokers, adolescents may be motivated to use tobacco, even when they view smoking as negative.[61]

Social psychologists have found that the tendency to choose behaviors that are consistent with self-concept is stronger when one's self-concept is threatened.[62] Smoking experimentation commonly occurs at transition points in adolescence when there is a threat to a teen's emerging self-concept: "Teenagers are typically less secure in their identities than most groups in the population, and their age-appropriate task is in part to experiment with different adult identities. They are more subject to social pressure and more attuned to advertising than most groups in the population."[63] For example, Imperial Tobacco Limited's Project Sting tested "overtly masculine imagery, targeted at young males." Young males were seen as "going through a stage where they are seeking to express their independence and individuality under constant pressure of being accepted by their peers. . . . 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."[64] Advertisers recommended that ads be designed for the company's Player's brand that showed someone "free to choose friends, music, clothes, own activities, to be alone if he wishes"; who can manage alone and "be close to nature" with "nobody to interfere, no boss/parents; someone self reliant enough to experience solitude without loneliness."[65] The theme of independence is appealing to those teens that exhibit a proclivity toward "destructive deviance" (low self-esteem, reactant nonconformity) and "constructive deviance" (high self-esteem, autonomy, independence).[66] Most research on tobacco use among teen subgroups has found the highest levels of tobacco use among "dirts" (problem prone) and "skaters" (skateboarders)[67] but one study found that 28% of "hot shots" (academic and social leaders) currently smoked (and 62% of "dirts" currently smoked).[68] What these data suggest is that a wide range of youths are attracted to tobacco advertisements that play up the theme of independence.

Themes and Images

Considerable psychographic research underlies tobacco ad designs.[69] Image advertising tends to appeal to youths.[70] Notably, each of the three brands

(Marlboro, Newport, Camel) most popular among youths maximizes a considerable amount of image-based advertising.[71] Even children ages 6-10 are able to identify the images and slogans associated with popular brands of cigarettes.[72] The symbols of the most popular cigarettes among youths, a cowboy and a camel cartoon character, are more likely to appeal to children than to adults.[73] In addition to the theme of independence noted above, five other themes are pervasive in tobacco ads: that tobacco use is a rite of passage to adulthood, that successful people use tobacco, that tobacco use is relaxing in social situations, that tobacco use is normative, and that tobacco use is safe.

1. "Tobacco use is a rite of passage to adulthood." Advertising associates smoking with a passage from childhood to adulthood through sets of images and messages. Smoking is portrayed as a marker of social status (adulthood) and of pleasure appreciated by popular young adults whom teens wish to emulate. Market research has found that teens are more attracted to young adult models in advertisements than to other teens.[74] "Adult themes"—adventure, rugged individualism, independence, sophistication, glamour, and sex—appeal to youths, a fact well established by research of the youth market.[75] Indeed, the popularity of the Marlboro cowboy dispels the myth that in order to appeal to young people as potential smokers, the ad must show young people.[76]

2. "Successful, popular people use tobacco." Advertisements effectively associate smoking with sophistication in social and sexual relations. Tobacco image advertisements are appealing to those who are young and impressionable, who would like to acquire the attributes of the models in the ads. The brands most successful with teenagers commonly employ evocative images in their advertising, whether in the form of models or cartoon characters that depict success, sophistication, and self-reliance.[77] Quality of life is an attribute often depicted in smoking ads. Tobacco industry support of cultural events further conveys the impression that smoking is socially acceptable to successful people who patronize the arts and have a high quality of life.

3. "Tobacco use is relaxing in social situations." Advertisements position cigarettes and other forms of tobacco as products facilitating peer acceptance. Associating cigarettes with a sense of carefree belonging is reassuring to adolescents at a time of identity construction when social relations are extremely important and teens often feel awkward in social situations. In addition to gaining social approval, ads depict cigarettes as a means of initiating social exchanges and sharing in a relaxed social environment.[78]

4. "Tobacco use is the norm." By associating tobacco use with commonplace activities, events, social spaces, or mind-sets, advertising reassures users that smoking and chewing are normal, pervasive, and socially acceptable. Advertising links tobacco consumption to routine social activities and transition points in the daily work-play cycle. For example, cigarettes are depicted as going with a coffee break, an after-work drink, and time off. The sheer volume

of tobacco advertising contributes to the false impression that smoking is normative in a wide variety of contexts.[79]

5. "Tobacco use is safe and healthful." Tobacco-related imagery saturates the public world, leading many potential consumers to believe that its use must be less dangerous than health messages make it out to be. In ads, tobacco use is associated with healthy, outdoor activities, leaving the impression that tobacco use is not only safe but the choice of healthy, vigorous people. Healthiness has been a manifest theme in cigarette ads for at least 60 years. Images of healthy smokers offer reassurance to would-be quitters. Such imagery undermines the effects of public health programs to inform the public of the hazards of tobacco use and to discourage youths from initiating smoking.

Cigarette advertising has persistently used images and language to reassure smokers and would-be smokers that one can engage in "healthy smoking." Cigarettes have been described over the years as being "mild," " light," "fresh," "smooth," "clean," "pure," "soft," and "natural." The history of cigarette advertising is punctuated by a steady stream of "news" announcements about scientific discoveries and modern materials reducing the hazards and increasing the pleasures of smoking. The public has been exposed to "miracle tip filters," descriptions of "20,000 filter traps," and filters made of activated charcoal, "selectrate," "millicel," "cellulose acetate," or "micronite," described as "effective," "complete," "superior," etc.[80] The inferred, perhaps implied, benefit of such filtration systems is reduction if not elimination of cancer-causing agents and other established health risks. Whereas filtered cigarettes constituted 58% of the market in 1963, they accounted for 96% of the market in 1991, having risen steadily since the first surgeon general's report.[81] Currently, low-smoke cigarettes are being introduced into the market. Philip Morris Superslim ads call attention to 70% less smoke from the lit end of their product, a message likely to be interpreted by many smokers in terms of lower health risks. The association between low smoke and health is conjoined to an association between thinness and health and beauty ideals. An ad for Carlton is provocative in establishing its purported health benefits by juxtaposing ten packs of this lower-tar/nicotine cigarette to one pack of Marlboro and Camel with the line: "10 packs of Carlton has less than 1 pack of these brands."

Analysis of the forms and styles of cigarette ads over the years reveals the industry's responsiveness to consumer health concerns tied to public health messages. The means of projecting healthiness has changed in response to regulatory efforts as well as insights from psychology-based consumer research. The most dramatic change occurred in the late 1950s and early 1960s. Until then, most health claims were made in direct verbal assertions, such as "more doctors recommend" . . . "not a cough in a carload" . . . "Scientific studies prove . . ." In the late 1950s, motivation researchers informed the industry that such ads drew attention to health problems, cautioning that a more oblique approach to the

health issue would be beneficial. The new strategy replaced verbal statements with visual images in which healthiness was communicated through people and settings that were the very "pictures of health."[82]

A recent trend has been to appropriate the rhetoric of smoking cessation programs. For its low-tar brand Merit, Philip Morris launched an advertising campaign that features such rhetoric in slogans like "you can do it," subtly conveying the message that switching to low-tar cigarettes is a major health accomplishment associated with personal agency. In reality, once addicted, most smokers adjust their smoking habits to maintain their consumption of nicotine at an optimal psychophysiological level irrespective of the brand of cigarette smoked (see chapter 2).[83]

Ads playing up one's ability to down-switch to the lower-tar/nicotine brands gloss over the difficulties in giving up smoking once one is addicted to nicotine. Data from the Monitoring the Future Study reveal that the proportion of high school seniors who perceive "great risk" of physical harm from pack-a-day smoking has risen less than 6% since 1980 (to 69.5% in 1993).[84] Several studies have found that teenagers who smoke underestimate their chances of becoming addicted to nicotine and overestimate their ability to quit smoking at will.[85] Low-tar/nicotine cigarettes appeal to a growing segment of the youth market. Advertising and promotional activities that tend to convey a message that healthy smoking is feasible undermine smoking prevention messages aimed at youth.

The five themes described above appear not only in tobacco ads, but also in other ads and media images that foster tobacco use. For example, there are no restrictions on how smoking may be portrayed in ads for non-tobacco products in youth magazines. A study by the Health Education Authority in the United Kingdom found that in youth fashion and style magazines, many non-advertisement-driven scenes depict a glamorous model smoking.[86] *Rolling Stone* and other popular magazines for youths have featured interviews with stars of the popular teen television program, *Beverly Hills 90210*, who are all pictured with cigarettes dangling from their mouths. Recently, several major print advertisers whose products have nothing to do with tobacco have featured models who smoke; for example, Guess Jeans ran an ad in the October 1992 issue of *Esquire* showing their newest model in a sexy pose, holding a cigarette with a dangling ash. Pictures of popular people smoking who are not associated with a particular brand may be more likely to attract the attention of teens, than ads pitching name brands.[87] They are an indirect endorsement of smoking. The media have associated smoking with glamour, style, sophistication, sex appeal, street credibility, rebellion, independence, etc. Research is needed on the extent to which indirect promotion of tobacco use contributes to its appeal and may be countered by educational programs that teach youth to critically assess the enticement of commercial and noncommercial appeals.[88]

CRITICAL ASSESSMENT OF STUDIES ON ADVERTISING RECALL, ADVERTISING EXPENDITURES, AND TOBACCO CONSUMPTION

The surgeon general's report released in March of 1994, *Preventing Tobacco Use Among Young People*, thoroughly reviews the research literature on the impact of tobacco advertising and promotional activities on tobacco consumption by youths, and provides an historical account of cigarette advertising that highlights changes and continuity in cigarette advertising and promotional activities of tobacco and its likely impact on youths. The surgeon general's report summarizes the review in five conclusions:

1. Young people continue to be a strategically important market for the tobacco industry.
2. Young people are currently exposed to cigarette messages through print media (including outdoor billboards) and through promotional activities, such as sponsorship of sporting events and public entertainment, point-of-sale displays, and distribution of specialty items.
3. Cigarette advertising uses images rather than information to portray the attractiveness and function of smoking. Human models and cartoon characters in cigarette advertising convey independence, healthfulness, adventure-seeking, and youth activities—themes correlated with psychosocial factors that appeal to young people.
4. Cigarette advertisements capitalize on the disparity between an ideal and actual self-image and imply that smoking may close the gap.
5. Cigarette advertising appears to affect young people's perceptions of the pervasiveness, image, and function of smoking. Since misperceptions in these areas constitute psychosocial risk factors for the initiation of smoking, cigarette advertising appears to increase young people's risk of smoking.[89]

Readers who are interested in the details of the studies leading to those conclusions should refer to the surgeon general's report. The Committee does not repeat that review here, but instead focuses on methodological approaches to advertising research.

Studies of Advertising Recall

Several studies have shown a positive correlation between adolescents' ability to recall a particular advertisement, logo, or brand insignia and smoking intent, initiation, or level of smoking.[90] The key variable in such studies is *exposure* to cigarette ads. The concept of exposure has been applied in myriad ways, from environmental exposure to attention, physical exposure to psychological engagement.[91] Advertisement recall studies have consistently found that young people who maintain an interest in smoking retain more information from

cigarette ads. In some cases this correlation has been used to imply that there is a causal link between consumption and exposure to advertising, as well as between recognition of ads and smoking behavior. This leap in the interpretation of the data is questionable. What can be said is that experimentation with cigarettes does affect the extent to which individuals recognize information presented in cigarette advertisements and that this may influence smoking-related behavior over time in a variety of ways.[92] For example, attentiveness to ads may reinforce smoking behavior by providing the smoker "evidence" of the values and benefits of smoking, such as reassurance that popular people use tobacco. What is not known at present is whether youths already interested in smoking become more attentive to advertisements or whether advertisements lead youths to become more interested in smoking. This is analogous to the issue of whether "peer pressure" leads youths to smoke or whether youths interested in smoking gravitate to peer groups (friends) who smoke. Studies of advertising recall, assessed independently of other data on smoking behavior, are insufficient to determine the direction of influence.

Econometric Studies of the Relationship Between Advertising and Consumption

Econometric studies of the relationship between advertising and tobacco use are prominent in debates between public health advocates and the tobacco industry. Econometric studies provide insights into the effects of general advertising trends, but are too imprecise to support firm conclusions about advertising's impact on the behavior of specific populations over time. It is unrealistic to expect that studies correlating trends in tobacco consumption with aggregate expenditures on advertising can provide meaningful insight about the influence of advertising on tobacco use by children and youths. The results, therefore, from numerous econometric studies do not provide a consistent picture regarding the impact of tobacco advertising on consumption. The mixed conclusions drawn from these studies should not be interpreted as evidence that advertising has little or no influence on tobacco use. Econometric methods are better suited to assessing the impact of governmental policies intended to restrict tobacco advertising or significantly increase the price of tobacco products, but even these studies are incapable of providing definitive information about how different population groups (for example, youths and ethnic groups) are likely to respond to advertising restrictions.

Studies of the Effects of Advertising Bans

Several studies have concluded that advertising bans have significantly reduced smoking prevalence in the population as a whole. In 1993 the Chief Economic Advisor of the Department of Health of the Government of Great

Britain reviewed the existing data and noted that advertising tends to increase consumption of tobacco products and that bans on tobacco advertising tend to decrease tobacco use beyond what would have occurred in the absence of such a ban. Focusing on the four countries with the most complete data—Norway, Finland, Canada, and New Zealand—the British report found that in all four countries, bans or restrictions on advertising resulted in an overall decrease in consumption.

The strongest evidence to date on the effect that legal restrictions of promotional activities have on tobacco consumption is drawn from a study of trends in 33 countries between 1970 to 1986, commissioned by the government of New Zealand. The 33 countries studied (24 free-market economies and 9 centrally planned East European economies) provide over 400 calendar years of observation of different tobacco prices, personal incomes, and advertising restrictions, including tobacco advertising bans. The methodology of this study was rigorous and examined adult tobacco consumption, accounting for income and tobacco price effects as well as health education effects. The overall finding of this study was that: ". . . the greater a government's degree of control over tobacco promotion, the greater the annual average fall in tobacco consumption and in the rate of decrease of smoking among young people."[93] Highlights of the report include the following (also see tables 4-1 and 4-2):

- "Total advertising bans for health reasons are, on average, accompanied by falls in tobacco consumption four times faster than in partial ban countries."
- "In countries where tobacco has been promoted virtually unrestricted in all media, consumption has markedly increased (+1.7% per year)."
- "In countries where advertising has been totally banned or severely restricted, the percentage of young people who smoke has decreased more rapidly than in countries where tobacco promotion has been less restricted."
- "When the results of this study of promotion/consumption trends in 33 countries between 1970 and 1986 are put alongside the evidence from econometric studies . . . it seems more likely than not that, other factors remaining unchanged, the elimination of tobacco promotion *causes* a reduction in tobacco consumption and smoking prevalence to a level below what it would have been otherwise."[94]

The report also concluded that comprehensive policies to reduce tobacco consumption are more effective than any single measure, for example:

- "Tobacco consumption increases when tobacco promotion is permitted and real price is allowed to fall; consumption declines markedly when promotion is totally banned and prices [are] raised."[95]

The three features deemed essential for an effective government policy to reduce the health consequences of tobacco use were (1) programs to educate the public

TABLE 4-1 Annual average rates of change in the percentage of adults smoking according to tobacco advertising restriction in force, 20 advanced economy countries, 1970-1986

Country (year of ban)	Surveyed Age group	Surveyed Years Begin	Surveyed Years End	% Smokers Begin	% Smokers End	Annual % change Per country	Annual % change Per group
Enforced tobacco advertising ban							
Iceland (1972)	18-69	1985-1986		40.0	36.2	-9.5	Group
Finland (1978)[a]	15-64	1978-1986		25.8	25.5	-0.1	average
Norway (1975)	16-74	1973-1986		41.5	34.5	-1.1	-3.6
Portugal (1983)	na	1983-1984		na	23.5	na	
Tobacco promotion in few media							
Belgium	15+	1980-1987		41.5	32.0	-3.3	Group
France	15+	1976-1983		44	39.0	-1.6	average
Italy (enforced ban)	14+	1980-1983		34.9	31.1	-3.6	-2.5
New Zealand	15+	1976-1986		35.0	30.0	-1.4	
Singapore[b]	15+	1977-1984		23.0	19.0	-2.5	
Sweden[b]	16+	1976-1985		38.5	29.6	-2.6	
Tobacco promotion in most media							
Australia[b]	16+	1972-1983		38.0	33.5	-1.1	
Austria	15+	1972-1981		28.0	27.0	-0.4	
Belgium	15+	1970-1979		20.2	21.3	-0.6	
Canada	15+	1970-1986		45.0	32.0	-1.8	
Denmark	15+	1970-1979		57.9	48.9	-1.7	
France	15+	1970-1976		53.1	46.7	-2.0	
Ireland	15+	1973-1982		43.0	35.0	-2.1	
Netherlands	15+	1970-1986		58.5	38.0	-2.2	
Switzerland	15+	1972-1981		34.6	37.5	+0.9	
United Kingdom	16+	1972-1986		46.0	33.0	-2.0	
United States	17+	1970-1986		36.6	26.5	-1.7	
West Germany	15+	1970-1984		41.7	36.0	-1.0	
Tobacco promotion in all media							
Greece	15+	1985		na	21.5	na	
Japan	20+	1970-1986		46.6	37.6	-1.2	
Spain	15+	1970-1987		na	40.5	na	

[a]Average of two surveys.
[b]Male and female percentage averaged.

Sources: The following were cited by the Toxic Substances Board. *Health or Tobacco: An End to Tobacco Advertising and Promotion.* Wellington, New Zealand: Department of Health, 1989; Rothwell, K. and R. Masironi. *Cigarette Smoking in Developed Countries Outside Europe.* WHO, 1987; Rothwell, K., R. Masironi, and D. O'Byrne. *Smoking in Europe.* WHO, 1987.

TABLE 4-2 Annual average rates of change in the percentage of young people who smoke daily according to tobacco advertising restrictions in force, 18 advanced economy countries, 1970–1986

Country	Surveyed Age group	Surveyed Years Begin	Surveyed Years End	% Smokers Begin	% Smokers End	Annual % change Survey	Annual % change Per country	Annual % change Per group
Tobacco promotion banned for health reasons								
Iceland	12-16	1974-1986		23	9	-5.1		
Iceland	17-18	1974-1986		34	29	-1.3	-3.0	
Iceland	19-20	1974-1986		41	29	-2.5		
Italy	15-18	1972		51	na	na		Group
Finland	16	1973-1985		35.5	26.5	2.6		average
Finland	18	1973-1985		47	29	-3.2		-2.7
Norway	16-24	1974-1986		41	28.5	-2.5	-2.5	
Portugal	20-24	1983		46	na		na	
	15-24	na		87	45		na	
Tobacco promotion in few media								
Belgium	17	1975-1981		44.5	28.5	-6.0	-3.0	
Belgium	18-24	1982-1984		44	44	0		
France	14-16	1976-1984		29	25.5	-1.5	-1.95	
France	18-24	1976-1983		66	55	-2.4		Group
Italy	15-24	1987			32.5		na	average
New Zealand	15-19	1976-1987		30	27.5	-0.8	-0.08	-2.7
Singapore	15-19	1984		na	4.8	na	na	
Sweden	16	1974-1984		38	19	-5.0	-5.15	
Sweden	16-24	1977-1986		41	21.5	-5.3		
Tobacco promotion in most media								
Australia	16-19	1974-1986		33.8	29.6	-1.0		
Austria	14-29	1972-1981		30.0	35.0	+1.8		
Canada	15-19	1972-1983		31.7	20.3	-3.3		Group
Denmark	17-19	1974-1980		38.1	33.0	-2.2		average
FR Germany	14-19	1976-1984		40.5	27.5	-4.0		-1.9
Ireland	18	1970-1980		39	36	-0.8	-2.4	
	16-24	1973-1982		48	31	-3.9		
Netherlands	15-19	1970-1986		56	22	-3.8		
Switzerland	15-24	1981			36.5	na		
United States	17-18	1968-1979		24.5	22.5	-0.7		
United Kingdom	16-19	1972-1986		41	30	-1.9		
Tobacco promotion in all media								Group
Japan	20-29	1970-1986		45	43.3	-0.2		average
Spain	15-24	1981-1987		53.5	55	+0.5		+0.1

NOTE: In all countries the rate given represents both sexes. In most countries female and male rates were averaged.

Sources: The following were cited by the Toxic Substances Board. *Health or Tobacco: An End to Tobacco Advertising and Promotion.* Wellington, New Zealand: Department of Health, 1989, Appendix 5; *International Digest of Health Legislation.* WHO; Aoki, M., S. Hisamichi, and S. Tominaga, eds. *Smoking and Health, 1987.* Elsevier Science Publishers. BV, 1988; *Smoking in Europe.* WHO, 1987; *Smoking in Developed Countries Outside Europe.* WHO, 1987.

about the dangers of tobacco use, (2) an increase in tobacco prices, and (3) a total ban on tobacco promotion.[96]

Currently, 18 countries have total bans on tobacco advertisements. Advertisement bans have been instituted as part of more comprehensive tobacco control efforts in Canada and New Zealand. In these countrires, ad bans have been complemented by aggressive antismoking activities and tax increases on tobacco. The rate of decline in Canada after implementation of an advertising ban was double that reported prior to the ban, and in New Zealand an ad ban was associated with an 11.3% decrease in smoking during a 6-month period. An assessment of the independent effect of each antismoking measure would be difficult, perhaps impossible, but the effect of the combination is clear.[97]

An important reason for calling attention to comprehensive approaches to reduce tobacco use is that single-factor approaches might have paradoxical effects on tobacco consumption. For example, *restrictions of advertising that are accompanied by a reduction in counter-advertising efforts may thwart prevention efforts.* In 1971, in the United States, the tobacco industry voluntarily removed from radio and television all cigarette advertising. Following this act, per capita cigarette consumption, which had been declining since the 1964 surgeon general's report, leveled off and then increased. This unexpected trend may be related to the fact that as the cigarette ads were removed from the airwaves, so too were the cigarette counter-ads in the form of public service announcements (PSAs). The PSAs, developed by the Public Health Service in the late 1960s, were designed to increase the public's knowledge about the dangers of smoking, and were pretested accordingly. These public service antismoking messages, which had appeared from July 1967 to January 1971 along with cigarette ads as a result of the FCC's Fairness Doctrine, apparently had been far more effective in reducing smoking than the pro-smoking ads in increasing it.[98] For this reason it was in the tobacco industry's best interest to remove ads from radio and television, and to shift marketing dollars to promotionals and giveaways.

RATIONALE FOR RESTRICTIONS

Over the decades, tobacco advertising and promotional efforts that reach children and youths have not diminished unless social or legal pressure was brought to bear on the tobacco industry or the advertising media. Criticism of the tobacco industry was widespread and strong in 1963, a year in which the average teenager viewed 100 cigarette commercials a month, and the average child viewed 70 due to airing of ads during programs commonly watched by youths. In 1965, in response, the tobacco industry adopted a voluntary code of conduct.[99] The voluntary code notwithstanding, a later analysis, in 1968, by the FTC revealed that the average teenager was exposed to 60 full-length cigarette commercials a month.[100]

The tobacco industry's self-regulatory code covered four areas of behavior:

advertising appealing to the young, advertising containing health representations, the provision of samples, and the distribution of promotional items to the young.[101] Notably, guidelines for following the code are lacking. For example, a specific stipulation of the voluntary code is that models used in ads should not appear to be younger than 25 years of age. Interpretation of what a model of 25 looks like is open to question. One study of cigarette ads found that 17% of models in cigarette ads were perceived (by persons 13 years old and older) to be younger than 25 years, that certain brands tend to employ younger-looking models, and that these models appeal to a broad audience.[102] In the wake of criticism, both from antismoking activists and from the advertising profession itself, that the Joe Camel campaign is especially appealing to those under 25, Philip Morris and R. J. Reynolds have responded by creating national advertising campaigns built around their commitment to "educate children" about smoking. The campaign is framed around smoking as an adult behavior and therefore the need for children to wait until they are of legal age before making decisions about smoking. A booklet entitled *Tobacco: Helping Youth Say No* has been widely distributed to governors, school boards, community groups, and parents who request it. The booklet makes no reference to the health and addictive effects of tobacco use. The educational impact of the campaign on youths has not been evaluated.

Another code stipulation states, "Cigarette *advertising* shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation."[103] Nevertheless, ads routinely use imagery associated with athletics and physical activity, thereby linking smoking and vitality; Marlboro's Adventure Team of whitewater rafters, dirt bikers, and other adventure enthusiasts is a case in point. As currently framed, advertising and promotion of so-called "light" or "low-tar" cigarettes fail to convey accurate information regarding the hazards of smoking, and instead tend to foster the illusion of a "healthful" smoking alternative. Whether or not these product innovations reduce harm from smoking, they do address the marketing objective of reducing consumer concern; they are tools in a public relations approach to minimizing a major public health problem.[104] Furthermore, under self-regulation, many health issues are not presented to the public, issues such as the addictiveness of tobacco; risk of cancer, heart disease, and stroke; effects on nonsmokers; and risk from tobacco smoke constituents such as benzene and arsenic.

Public health groups contend that the industry's voluntary code is often inadequate in content and is inadequately enforced. They have therefore pressed for Congress to restrict tobacco promotion and advertising, arguing that the advertising and promotion of tobacco products on the scale and in the manner described in this chapter tend to increase the overall prevalence of tobacco consumption as well as increase the initiation of smoking by youths. In response, the tobacco industry argues that, among smokers, advertising and promotion affect market share, not the level of consumption. Moreover, the industry denies

that advertising and promotion causally affect the decisions of young people to begin smoking.

Many of the participants in this ongoing debate seem to assume that a definitive finding of causality is a necessary predicate for legislative action restricting tobacco promotion and advertising. In the Committee's view, however, requiring definitive proof of causality on issues of this nature would unjustifiably stymie sensible public health regulation. Indeed, the history of public health successes, from vaccination to cholera prevention and injury control, suggest that detailed causal understanding is apt to *follow* an intervention, rather than be a precondition for it. If youth smoking fell *after* advertising and promotion were eliminated, this would corroborate a hypothesis for which there is already ample, suggestive evidence—that such advertising and promotion is an important factor in the initiation of tobacco use by youths. This seems to be the lesson from the experiences reviewed in the New Zealand report.

The inability to conduct case control studies in an environment free of tobacco marketing makes it impossible to discern the independent causal effect of advertising and promotion on tobacco consumption. It is difficult to disentangle the actual impact of marketing expenditures from the other social and cultural factors that affect tobacco use. Moreover, the influence of any of these environmental variables is mediated by, and interacts with, so many other variables affecting perceptions of and attitudes toward tobacco use that any statistical association between levels of promotional expenditures and levels of tobacco use is difficult to interpret. This is not to say that the relationship is *not* a causal one, only that any causal effect is inevitably obscured by layers of other factors, and that it is virtually impossible to quantify the causal effect in any definitive way. Indeed, when one takes into account the inherent difficulty of discerning a causal influence, the substantial convergent evidence that advertising and promotion increases tobacco use by youths is impressive and, in the Committee's view, provides a strong basis for legal regulation.

Having said this, the Committee does not think that the argument for restricting the advertising and promotion of tobacco products must rest on a definitive or unequivocal finding that such activities causally influence levels of consumption. It is enough that the advertising and promotional activities described above in this chapter have the natural tendency to encourage initiation and maintenance of smoking by children and adolescents. There can be no doubt that the tobacco companies aim to portray smoking in a favorable light and to communicate messages that link use of tobacco products to positive feelings, images, and experiences. Even if the primary objective of those marketing expenditures is to preserve or expand market share among existing smokers, youngsters are routinely exposed to messages that encourage them to smoke.

Tobacco advertising is characterized by images and themes that are especially appealing to adolescents, and some are appealing to children. In addition, a large proportion of promotional expenditures associate use of tobacco with

activities and products that are attractive to children and youths. 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.[105]

In sum, portraying a deadly addiction as a healthful and sensual experience tugs against the nation's efforts to promote a tobacco-free norm and to discourage tobacco use by children and youths. This warrants legislation restricting the features of advertising and promotion that make tobacco use attractive to youths. The question is not, "Are advertising and promotion *the* causes of youth initiation?" but rather, "Does the preponderance of evidence suggest that features of advertising and promotion tend to encourage youths to smoke?" The answer is yes and this is a sufficient basis for action, even in the absence of a precise and definitive causal chain.

RECOMMENDATIONS

Policy Recommendations

The images typically associated with advertising and promotion convey the message that tobacco use is a desirable, socially approved, safe and healthful, and widely practiced behavior among young adults, whom children and youths want to emulate. As a result, tobacco advertising and promotion undoubtedly contribute to the multiple and convergent psychosocial influences that lead children and youths to begin using these products and to become addicted to them.

As already noted, the Committee believes that American society, through all organized social institutions, should take aggressive measures to discourage the use of tobacco products by children and youths. The message should be unequivocal—tobacco use is unhealthy and socially disapproved. In the context of this emergent social norm, the contradictory messages now conveyed by the tobacco industry can no longer be tolerated. The Committee therefore recommends a step-by-step plan to eliminate these commercial messages from the various media of mass communication. Realizing that implementation of this recommendation will require careful planning and a period of transition, the Committee proposes a sequential process for phasing in the necessary restrictions.

First, Congress should repeal the federal law preempting state regulation of tobacco promotion and advertising that occurs entirely within the states' borders. This should be accomplished by the end of 1995. The repeal will have the effect of stimulating local interest in tobacco regulation and community participation in reviewing tobacco data and in drafting legislation aimed

at promotion, distribution, and use of tobacco products. Concordant with federal guidelines, a wide range of national experiments will take place, providing data on the effect of various programs.

State and local regulation of cigarette advertising to a large extent has been foreclosed by federal law, which expressly prohibits states and localities from imposing "any requirement or prohibition based on smoking and health . . . with respect to the advertising and promotion of any cigarettes" that meet federal labeling requirements.[106] To the extent that state and local regulation of tobacco advertising or promotion aims to promote public health objectives, it is curtailed by this sweeping federal preemption. It can be argued, however, that state and local governments retain the authority to ban advertising likely to reach a large audience of children because such action aims mainly to minimize violations of laws against youth access and is, therefore, not "based on smoking and health." Relying on this argument, transportation systems in the cities of Boston, Denver, Portland, New York, Seattle, and San Francisco, and in the state of Utah, have eliminated tobacco advertising on their vehicles.[107] Whether those actions are lawful remains unclear.

The communication and tobacco industries have legitimate interests in avoiding diverse and often incompatible state-by-state regulation of advertising and promotional activities occurring in national media. However, state and local governments should be free to circumscribe advertising and promotion that occur exclusively within the geographic boundaries of a single state in order to protect and promote the health and welfare of its citizens, subject only to the command of the first amendment. Therefore, Congress should modify the preemption provision so that the states have clear authority to restrict or ban advertising and promotion at the point of sale, on public transportation systems and vehicles, on billboards, in public arenas or sports facilities, or other locations located entirely within a state's boundaries.

Second, after state regulatory authority has been clarified and restored, states and localities should severely restrict the advertising and promotion of tobacco products on billboards and other outdoor media, on vehicles, in facilities of public transportation, in public arenas and sports facilities, and at the point of sale. States and localities should either ban tobacco advertising and promotion altogether or should restrict such messages to a "tombstone" format. Tombstone advertising would limit commercial messages to information about the product and would forbid the use of images and pictures. This approach is designed to eliminate all the images that imply that tobacco use is beneficial and make it attractive, and that encourage young people to use tobacco products. The most common concept of tombstone advertising would allow only text in an advertisement. A broader concept of tombstone advertising would permit the use of slogans, scenes, or colors in tobacco advertisements or on tobacco packaging. Specific decisions regarding the type of information that would be permitted should be made by a regulatory authority.

Third, Congress should enact comprehensive legislation establishing a timetable for gradual implementation of a plan for restricting tobacco advertising and promotion in interstate commerce. Essential components of this plan, which should be enacted by the end of 1996 and should become fully effective by the year 2000, include:

(a) restricting to a tombstone format the advertising of tobacco products in print media, including magazines and newspapers, or in other visual media, including videotape, videodisc, video arcade game, or film;

(b) banning the commercial use of the registered brand name of a tobacco product, trademark, or logo, or other recognizable symbol for such a product in any movie, music video, television show, play, video arcade game, or other form of entertainment, or on any other product; and

(c) banning the use of the registered brand name of a tobacco product, a trademark or logo, or other recognizable symbol for such a product, in any public place, or in any medium of mass communication for the purpose of publicizing, revealing, or documenting sponsorship of, or contribution to, any athletic, artistic, or other public event.

These proposals represent *essential* components of the regulatory plan. By recommending these steps, the Committee does not mean to exclude other restrictions or to disapprove more restrictive steps, such as banning advertising altogether. The Committee has endorsed the tombstone format because this approach is necessary to eliminate those features of advertising that tend to encourage tobacco use by children and youths. No less restrictive approach would accomplish the legislative objective. The Committee is confident that state and federal legislation implementing these recommendations will substantially further the nation's compelling interest in preventing tobacco use by children and youths and that such legislation would survive constitutional challenges brought by the affected media or by the tobacco industry.[108]

Research Recommendations

The Committee recommends:

Research should be conducted that attends to ethnic, gender, and social class differences; that is sensitive to youths' responses to advertising and promotional messages; and that assesses the success as well as the failure of advertising campaigns. The research question to date has primarily been, "What does advertising do to people?" Research should now ask, "What do people do with advertising (and counter-advertising)?"[109]

As a result of the types of research methods used and the research questions asked, much of the literature on tobacco use and advertising attributes little agency to the public in general and to youths in particular; the public is consid-

ered to be rather passive and easily manipulated. While there is some truth to this view, it hardly expresses a complete picture of this complex, interactive phenomenon. Required are longitudinal and ethnographic accounts of tobacco use that are responsive to local context, studies that are notably absent in the smoking literature. In need of consideration are the ways in which:

(a) advertising provides resources (images) for teen subgroup identity construction and social statement;

(b) advertising is responsive to existing and emergent social uses of smoking among various subgroups,

(c) tobacco use takes on meaning in response to anti-tobacco-use messages (generated by the tobacco industry as well as by public health advocates), that is, messages that are moralistic or focus attention on adult status, and

(d) imagery of tobacco use is appropriated and transformed by teens themselves.

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SMOKING AND TOBACCO CONTROL

MONOGRAPH 9

Cigars

Health Effects and Trends

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
National Institutes of Health

high rates of cigar use, with 6-7 percent of girls in high school reporting they smoked cigars in the past 30 days. Similar findings are reported in other studies.

This high rate of cigar use among adolescents raises significant public health questions and has serious implications for public health programming. Will these high rates of cigar use continue as these youth move into adulthood? Will nicotine addiction develop in these adolescent users and thereby influence their inhalation and consumption patterns? Will cigar smoking transition large numbers of youth into regular cigarette use later in life? If regular cigar use develops, will quitting prove as difficult for cigars as it is for cigarettes?

It is premature to label cigar use as the next tobacco epidemic in the making; but we would be wise to remember that a similar problem of smokeless tobacco use confronted us in the late 1970's, and it was a number of years before the public health community became concerned. Now, 20 years later, consumption of smokeless tobacco, especially moist snuff, has reached record levels — 60 million pounds last year, and shows no sign of waning. The vast majority of all snuff users are younger-age adults and adolescents, a pattern not dissimilar to the current pattern of cigar use.

This monograph provides us with a snapshot of a rapidly changing pattern of behavior with important potential public health consequences. I commend the authors for providing the nation with clear and invaluable information about this disturbing change in tobacco use.

Richard D. Klausner, M.D.
Director
National Cancer Institute

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The Senior Scientific Editor for this monograph was **David M. Burns**, M.D., Professor of Medicine, School of Medicine, University of California San Diego, San Diego, California. The Consulting Scientific Editors were **Dietrich Hoffmann**, Ph.D., Associate Director, American Health Foundation, Valhalla, New York and **K. Michael Cummings**, Ph.D., M.P.H., Senior Research Scientist, Roswell Park Cancer Institute, Buffalo, New York. The Managing Editor for this monograph was **Richard H. Amacher**, Project Director, KBM Group Inc., Silver Spring, Maryland.

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Chapter 1.	**Cigar Smoking: Overview and Current State of the Science**	David M. Burns, M.D. Professor of Medicine School of Medicine University of California San Diego San Diego, CA
Chapter 2.	**Trends in Cigar Consumption and Smoking Prevalence**	Karen K. Gerlach, Ph.D., M.P.H. Epidemiologist Office on Smoking and Health Centers for Disease Control and Prevention Atlanta, GA K. Michael Cummings, Ph.D., M.P.H. Senior Research Scientist Department of Cancer Control and Epidemiology Roswell Park Cancer Institute Buffalo, NY Andrew Hyland, M.A. Data Analyst Department of Cancer Control and Epidemiology Roswell Park Cancer Institute Buffalo, NY Elizabeth A. Gilpin, M.S. Senior Statistician Cancer Prevention and Control University of California San Diego La Jolla, CA

Michael D. Johnson, Ph.D.
Chief
Data Analysis and Evaluation Unit
California Department of Health Services
Tobacco Control Section
Sacramento, CA

John P. Pierce, Ph.D.
Professor and Associate Director
Cancer Prevention and Control
Sam M. Walton Professor for Cancer Research
University of California San Diego
La Jolla, CA

Chapter 3. Chemistry and Toxicology

Dietrich Hoffmann, Ph.D.
Associate Director
American Health Foundation
Valhalla, NY

Ilse Hoffmann, B.S.
Research Coordinator
American Health Foundation
Valhalla, NY

Chapter 4. Disease Consequences of Cigar Smoking

Thomas G. Shanks, M.P.H., M.S.
Principal Statistician
University of California San Diego
San Diego, CA

David M. Burns, M.D.
Professor of Medicine
School of Medicine
University of California San Diego
San Diego, CA

Chapter 5. Indoor Air Pollution from Cigar Smoke

James L. Repace, M.S.
Repace Associates
Bowie, MD
U.S. EPA Office of Radiation and Indoor Air (Retired)

Wayne R. Ott, Ph.D.
Visiting Scholar
Department of Statistics
Consulting Professor
Department of Civil and Environmental Engineering
Stanford University
Stanford, CA

Neil Klepeis, M.S.
School of Public Health
Environmental Health Sciences
University of California, Berkeley
Berkeley, CA

Chapter 6. Pharmacology and Abuse Potential of Cigars

Reginald V. Fant, Ph.D.
Pinney Associates, Inc.
Bethesda, MD

Jack E. Henningfield, Ph.D.
Vice President
Research and Health Policy
Pinney Associates, Inc.
Bethesda, MD
Associate Professor
Department of Psychiatry and Behavioral Sciences
Johns Hopkins University
School of Medicine
Baltimore, MD

Chapter 7. Marketing and Promotion of Cigars

John Slade, M.D.
Professor of Clinical Medicine
University of Medicine and Dentistry of New Jersey
Robert Wood Johnson Medical School
Saint Peter's Medical Center
New Brunswick, NJ

Chapter 8. Policies Regulating Cigars

Gregory N. Connolly, D.M.D., M.P.H.
Director of the Massachusetts Tobacco Control Program
Massachusetts Department of Public Health
Boston, MA

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Anthony Alberg, Ph.D., M.P.H.
Assistant Scientist
Johns Hopkins University
Baltimore, MD

Dileep G. Bal, M.D.
Chief
Cancer Control Branch
California Department of Health Services
Sacramento, CA

Steve Bayard, Ph.D.
Director
Office of Risk Assessment
Health Standards Program
OSHA, Department of Labor
Washington, DC

Neal L. Benowitz, M.D.
Professor of Medicine
Chief
Division of Clinical Pharmacology and Experimental Therapeutics
University of California San Francisco
San Francisco, CA

Lois Biener, Ph.D.
Senior Research Fellow
Center for Survey Research
University of Massachusetts Boston
Boston, MA

Michele Bloch, M.D., Ph.D.
Chair
Tobacco Control and Prevention Subcommittee
American Medical Women's Association
Alexandria, VA

Tom Capehart, M.S.
Agricultural Economist
Economic Research Service
United States Department of Agriculture
Washington, DC

Michael Eriksen, Sc.D.
Director
Office on Smoking and Health
National Center for Chronic Disease Prevention and Health Promotion
Centers for Disease Control and Prevention
Atlanta, GA

Lawrence Garfinkel, M.A.
Consultant
American Cancer Society
New York, NY

Ellen Gritz, Ph.D.
Professor and Chair of the Department of Behavioral Science
University of Texas
MD Anderson Cancer Center
Houston, TX

S. Katharine Hammond, Ph.D., CIH
Associate Professor of Environmental Health Sciences
School of Public Health
University of California
Berkeley, CA

Thomas P. Houston, M.D.
Director
Department of Preventative Medicine and Environmental Health
American Medical Association
Chicago, IL

John Hughes, M.D.
Professor
Department of Psychiatry
Ira Allen School
University of Vermont
Burlington, VT

Murray J. Kaiserman, Ph.D.
Acting Director
Office of Tobacco Control
Health Protection Branch
Ottawa, Ontario
CANADA

C. Everett Koop, M.D.
Bethesda, MD
U. S. Surgeon General (1981-1989)

Claude Lenfant, M.D.
Director
National Heart, Lung, and Blood Institute
National Institutes of Health
Bethesda, MD

Alan I. Leshner, Ph.D.
Director
National Institute on Drug Abuse
National Institutes of Health
Rockville, MD

John L. Pauly, Ph.D.
Cancer Research Scientist V
Department of Molecular Immunology
Roswell Park Cancer Institute
Buffalo, New York

John Pinney, B.A.
President
Pinney Associates, Inc.
Bethesda, MD

Richard W. Pollay, Ph.D., M.B.A.
Professor of Marketing
Faculty of Commerce
University of British Columbia
Vancouver, British Columbia
CANADA

Bill Rickert, Ph.D.
President
Labstat Incorporated
Kitchener, Ontario
Associate Professor
Department of Statistics
University of Waterloo
Waterloo, Ontario
CANADA

Nancy A. Rigotti, M.D.
Director
Tobacco Research and Treatment Center
General Internal Medicine Unit
Massachusetts General Hospital
Boston, MA

Jonathan M. Samet, M.D., M.S.
Professor and Chairman
Department of Epidemiology
School of Hygiene and Public Health
Johns Hopkins University
Baltimore, MD

Jesse L. Steinfeld, M.D.
San Diego, CA
U. S. Surgeon General (1969-1973)

Michael J. Thun, M.D.
Vice President
Epidemiology and Surveillance Research
American Cancer Society
Atlanta, GA

Kenneth E. Warner, Ph.D.
Richard D. Remington Collegiate Professor of Public Health
Department of Health Management and Policy
School of Public Health
The University of Michigan
Ann Arbor, MI

Jeffrey Wasserman, Ph.D.
Consultant
The RAND Corporation
Santa Monica, CA

Judith Wilkenfeld, J.D.
Special Advisor to the Commissioner
Food and Drug Administration
Rockville, MD

Ernst L. Wynder, M.D.
President
American Health Foundation
New York, NY

Mitchell R. Zeller, J.D.
Associate Commissioner
Food and Drug Administration
Rockville, MD

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KBM Group, Inc., Silver Spring, MD

Shelia Russell McCullers, M.S., Information Coordinator/Assistant Managing Editor

Thomas H. Gough, B.A., Technical Editor

Barbara A. Hatfield, A.A.,Copy Editor/Research Assistant

Keith W. Stanger, A.A., Graphics Designer

Heidi Volf, B.A., Copy Editor/Research Assistant

Carleen H. Wallington, M.S., Copy Editor/Research Assistant

Tobacco Control Policies Project, University of California San Diego, San Diego, CA

Christy M. Anderson, B.S., Statistician

Maureen Arnn, B.S., Project Assistant

Robert W. Davingnon, M.S., Production Editor

Victoria L. Dirac, B.A., Project Assistant

Kathryn B. Gower, B.A., Statistical Assistant

Jacqueline M. Major, M.S., Statistician

Melissa L. Sage, B.A., Project Assistant

Jerry W. Vaughn, B.S., Programmer/Analyst

Kristina M. Webb, Project Assistant

HOW THIS MONOGRAPH WAS PREPARED

This volume is the ninth in the series of Smoking and Tobacco Control monographs published by the National Cancer Institute (NCI) since their inception in 1991. One of the major reasons for establishing the monograph series was to provide a mechanism for the rapid, systematic, and timely dissemination of information important to the research and public health communities about emerging issues in smoking and tobacco use control. While the focus of the monographs has primarily centered on topics related to public health interventions, this volume is somewhat of a departure in that it is the first comprehensive examination of what we know about current trends in cigar use and resultant health implications.

CIGARS: Health Effects and Trends, is being published, in part, because of the growing and sustained interest in cigars as reflected by the countless inquiries received over the past two years about the topic by NCI's Office of Cancer Communications.

Prior to 1994, smoking of cigars had declined by 60 percent in the United States, a downward trend which started in the mid-1960's. Surveys conducted from the mid-1950's through the early 1990's confirmed that cigar smoking was declining. The public health community assumed, incorrectly it now appears, that cigar smoking would continue to decline in popularity and did not warrant further investigation. But starting in the early 1990's, the downward trend in cigar use began to reverse; and between 1993 and 1997, cigar consumption increased almost 50 percent with consumption of large, premium cigars increasing nearly 250 percent.

Public interest, spurred by new magazines devoted entirely to cigars and cigar smoking, and the social environment that cigar smoking purportedly involves, was enough to rapidly increase the consumption of cigars. Unfortunately, the public has been led to believe that cigar smoking is far less of a threat to an individual's health than cigarette smoking simply because it is a cigar. The present monograph is an attempt to dispel this misconception and put the risks of cigar smoking into their proper context.

The Smoking Tobacco and Control Program (STCP) staff continually monitors the consumption of all forms of tobacco products, and consequently, the recent interest and increased consumption of cigars was considered important enough to the nation's health to prepare a health oriented publication regarding cigar smoking.

Once the decision was made by the STCP Coordinator to look into the matter of cigar smoking, a broad outline was developed showing the major chapters or topics to be covered in the monograph. A three-person scientific editorial team was established, consisting of the Senior Scientific Editor, David M. Burns, Professor of Medicine, University of California San Diego, California, and two Consulting Scientific Editors, Dietrich Hoffmann, Associate Director, American Health Foundation, Valhalla, New York, and K. Michael Cummings, Senior Research Scientist, Roswell Park Cancer Institute, Buffalo, New York. After a more detailed outline was developed, potential authors were identified and contacted to determine their willingness to write individual chapters or sections of the monograph.

A one-day meeting was convened in the Washington, D.C. area in February 1997 involving the entire monograph team. Each lead author presented an overview of his/her assignment, including how they proposed approaching their particular chapter, potential sources to be used, the need for primary or secondary data analysis, and gaps or overlaps in coverage. Discussions and recommendations followed each presentation.

PEER REVIEW

Preliminary draft chapters were delivered to the NCI approximately 4 months following the initial meeting in Washington. The senior scientific editor, in consultation with the other science editors, reviewed all chapter drafts for scientific and technical content and advised authors if revisions were needed. All chapter drafts were distributed to two or more outside experts knowledgeable in the subject area of the chapter. All review comments received were considered and a new iteration of the monograph was generated. The revised version of the entire monograph was sent to a select list of 12 senior level reviewers as well as to a number of Public Health Service agency heads, for review and comments. All comments received from this review cycle were also integrated and a third version of the volume was generated. A total of 30 outside experts participated in the peer review.

CIGARS: Health Effects and Trends was the work of dozens of individuals, and is organized into 8 chapters:

Chapter 1. Cigar smoking: Overview and current state of the science.

Chapter 2: Trends in cigar consumption and smoking prevalence.

Chapter 3: Chemistry and toxicology.

Chapter 4: Disease consequences of cigar smoking.

Chapter 5: Indoor air pollution from cigar smoke.

Chapter 6: Pharmacology and abuse potential of cigars.

Chapter 7: Marketing and promotion of cigars.

Chapter 8: Policies regulating cigars.

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Marketing and Promotion of Cigars

John Slade

INTRODUCTION This chapter examines the recent commercial history of cigars in the United States. Sales patterns, advertising, and apparent promotional activities are explored. Most of the discussion of marketing activities is descriptive, since few quantitative data are available. There is almost no publicly available information on how the increased visibility that cigars have achieved since about 1992 has been financed. Accordingly, what are described in this chapter as promotional activities are not necessarily the result of activities by commercial interests. They are, though, activities that have probably contributed to the promotion of cigar consumption.

SALES PATTERNS Figure 1 charts the mean retail price of cigars from 1976 through 1996, adjusted for inflation. The inflation adjusted price of small cigars fell steadily over the period, losing 52 percent of their initial average price by 1996. Inflation adjusted prices for cigarillos ended the period about where they had begun despite a prolonged dip during the 1980's. Large cigars showed generally steady overall prices with some year to year fluctuations in the 70's and 80's, but 1994 and 1995 were two consecutive years of substantial increases in mean price, probably reflecting the relative growth of the premium segment.

In a prospectus for the initial public offering of 5.4 million shares of company stock, Consolidated Cigar Holdings Inc. pointed to several factors which it believes have contributed to the increase in cigar sales in recent years.

> The Company believes that the growing cigar market and increased demand for cigars continue to offer the Company substantial growth opportunities. Recently, cigar smoking has gained popularity in the United States, resulting in a significant increase in consumption and retail sales of cigars, particularly for premium cigars. Management believes that this increase in cigar consumption and retail sales is the result of a number of factors, including: (i) the increase in the number of adults over the age of 50 (a demographic group believed to smoke more cigars than any other demographic segment) and (ii) the emergence of an expanding base of younger affluent adults who have recently started smoking cigars and who tend to smoke premium cigars. The Company believes the increase in cigar smoking is in large part attributable to a positive and improving image of cigar smoking resulting from increased publicity, including the success of *Cigar Aficionado* magazine, the increased visibility of use by celebrities and the proliferation of "Cigar Smokers" dinners and other special events for cigar smokers. (Consolidated Cigar Holdings Inc., 1996, p. 3)

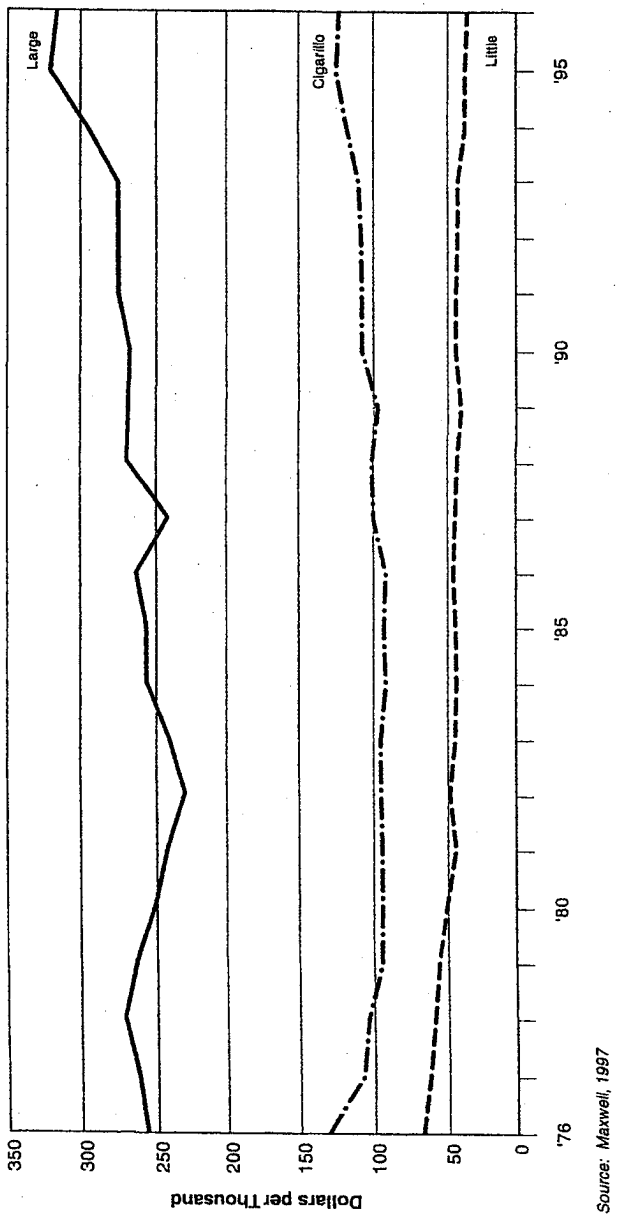


Figure 1
Mean retail Price of Various Size Cigars, U.S. 1976-1996, Corrected for CPI (1982-1984 = 100)

Source: Maxwell, 1997

Similarly, the CEO and the President of Culbro have stated,

> The emergence and rise in popularity of cigar dinners, cigar clubs, cigar bars and successful magazines such as Cigar Aficionado lend additional credence to the link that now exists between premium cigars and affluent consumers. (Culbro Corporation, 1996, p. 2)

The marketing of cigars has emphasized premium cigars; however, when market shares of different brands are examined, inexpensive brands of machine-made cigars actually dominate the cigar market (Table 1). The leading brand is a machine-made variety of little cigars, Swisher Sweets, which had a 19 percent market share in 1996. In contrast, the heavily advertised premium brand Macanudo has only a 0.8 percent share. (General Cigar is building Macanudo into a major name brand with a coordinated campaign of advertising, sportswear, and ventures such as Club Macanudo (Smoke Signals, 1997; Culbro Corporation, 1996).) Table 2 lists premium brands of the largest U.S. cigar companies.

While there is a plethora of brands, styles, and sizes of cigars, only a few companies sell most of them (Table 3). Just five companies, Swisher International, Havatampa, Consolidated Cigar, Middleton, and Culbro (General Cigar), control 95 percent of the market in the United States. Except for Havatampa, which only sells machine-made cigars, each of the major companies sells both premium and non-premium brands. In addition to the major companies, a welter of small companies manufacture and import premium cigars.

The market for little cigars is even more concentrated, with just three companies, Swisher International, Consolidated Cigar, and Tobacco Exporters International, controlling 86 percent of the market (Table 4). Swisher alone, with its Swisher Sweets little cigars, has a 42 percent share. Table 4 also lists the major brands of little cigar now on the market.

Many companies which manufacture or import cigars are involved in other aspects of the tobacco business. Table 5 lists cigar companies which also sell other tobacco products.

The recent rise in cigar sales has led to increased value of cigar companies as investments. Several have made public share offerings and both popular and trade magazines have offered information about these potential investments (Wall Street Report, 1997; Luz, 1997; Finora, 1997).

There has been a marked increase in the number of smoke shops since 1992 (Flying High, 1997). The number of retail specialty tobacco outlets has increased from 2,358 in 1992 to 4,948 in 1996. A sign that this increase has drawn in many small businessmen who have not previously been involved in the trade is the publication of an extensive article in a trade magazine about the function of sales representatives (Scott, 1997).

Table 1
Market share large cigars and cigarillos, United States, 1996, millions and percent

Brand	Company	Units	Percent
Swisher Sweets	Swisher Int'l	601	9.4
Phillies	Havatampa Inc	462	15.0
Havatampa	Havatampa Inc	258	8.3
White Owl	General Cigar	184	6.0
Dutch Masters	Consolidated	138	4.5
Garcia y Vega	General Cigar	138	4.5
Antonio y Cleopatra	Consolidated	124	4.0
King Edward	Swisher Int'l	105	3.4
Muriel	Consolidated	100	3.2
Backwoods	Consolidated	98	3.2
Robert Burns	General Cigar	87	2.8
El Producto	Consolidated	53	1.7
William Penn	General Cigar	44	1.4
Tijuana Smalls	General Cigar	34	1.1
Macanudo	**General Cigar**	**26**	**0.8**
Universal	Swisher Int'l	24	0.8
La Corona	Consolidated	13	0.4
Bering	**Swisher Int'l**	**10**	**0.3**
Partagas	**General Cigar**	**9**	**0.3**
Roi-Tan	Consolidated	7	0.2
Canaria d'Oro	**General Cigar**	**2**	**0.1**
Other, non-premium		340	11.0
Other, premium		**233**	**7.5**
Total		3,090	99.9

Premium brands in bold face.
Note: A premium cigar is hand-made, is comprised entirely of natural, long filler tobacco, and has a retail price of more than $1.00.
Sources: Data on premium cigars and market share, Maxwell, 1997. Data on total U.S. consumption, USDA, 1997.

ADVERTISING Only a small amount of conventional advertising appears for cigars. Measured media spending increased from $1.1 million in 1994 to $4.0 million in the first nine months of 1996 (Table 6). Most advertising for cigars appears in magazines; 39 magazines carried cigar advertising in this 3-year period. As of December 1996, the price for a one time insertion of a full-page, four-color advertisement in *Cigar Aficionado* was $18,360 while a similar ad in *Smoke* cost $7,950.

Cigar advertising employs a variety of themes. Cigars are presented as lavish, even outrageous, yet affordable luxuries and indulgences. Other ads depict a rich history and tradition of cigar making or appeal to nostalgia in

Table 2
Premium brands of the major cigar companies

Company	Premium brands
Consolidated Cigar	H. Upmann
	Montecristo
	Don Diego
	Te-Amo
	Santa Damiana
	Royal Jamacia
	Primo Del Rey
	Montecruz
General Cigar	Macanudo
	Partagas
	Punch
	Hoyo de Monterrey
	Cohiba
	Excalibur
	Ramon Allones
	Temple Hall
	El Rey Del Mundo
	Canaria D'Oro
	Cifuentes
	Bolivar
	Belinda
	Bances
Swisher Int'l	Bering
	Pléiades

Table 3
Large cigars and cigarillos, United States, 1996. Market share, company by company, millions and percent

Company	Units	Percent
Swisher Int'l, Inc.	758	24.5
Havatampa	720	23.3
Consolidated Cigar	634	20.5
Culbro (General Cigar)	527	17.1
Middleton	310	10.0
M & N Standard Cigar	47	1.5
House of Windsor	30	1.0
Others	64	2.1
Total	3,090	100.0

Sources: Data on market share, Maxwell, 1997. Data on total U.S. consumption, USDA, 1997.

Table 4
Little cigars, United States, 1996. Market share and Leading Brands, company by company, Millions and percent

Company	Units	Percent
Swisher Int'l Inc. Swisher Sweets Little	632	42.4
Consolidated Dutch Treats	340	22.8
Tobacco Exporters Int'l Winchester	316	21.2
Havatampa, Inc. Omega Between the Acts Madison Hav-a-tampa	139	9.3
Lane Limited Captain Black	76	5.1
House of Windsor Little Nippers	1	0.1
Change in Inventory	(14)	(0.9)
Total	1,490	100.0

Source: Maxwell, 1997.

Table 5
Cigar companies that also manufacture tobacco products that are regulated by the Food and Drug Administration

Company	Regulated Products
Commonwealth Brands	Cigarettes Cigarette tobacco
Consolidated Cigar	Cigarette tobacco
Finck Cigar	Smokeless tobacco
Lane Limited	Cigarette tobacco
Red Lion International	Cigarette tobacco Smokeless tobacco
Nat Sherman	Cigarettes
Pinkerton Group	Smokeless tobacco
Swisher International, Inc.	Smokeless tobacco
UST	Smokeless tobacco

Sources: Smoke 2(1):40-41, Winter 96/97; Tobacco Reporter, 1996; UST Annual Report. Smokeless tobacco includes oral snuff.

Table 6
Measured media spending for cigars, United States 1994, 1995, 1996 (first 9 months for '96), $000's

Company	1994	1995	1996 (9 months)
CULBRO CORP. (General Cigar)			
General Cigar	60	42	n/a
Garcia Y Vega	n/a	n/a	24
Macanudo	234	1,503	1,597
Partagas	375	689	134
DAVIDOFF OF GENEVA, INC.			
Davidoff Cigars	128	249	230
MACANDREWS & FORBES HOLDINGS (Consolidated Cigar)			
Don Diego	n/s	83	406
H Upmann	96	187	366
Te-Amo	193	104	303
RICHEMONT AG			
Dunhill	n/a	30	173
Winchester Little Cigars	107	54	150
SWISHER INTERNATIONAL INC.			
Swisher Sweets Little Cigars	n/a	121	296
THOMPSON CIGAR CO.			
Thompson Cigars	n/a	277	n/a
TRIPLE C ACQUISITION CORP.			
Consolidated Cigars	n/a	111	287
Total	1,193	3,450	3,966

Source: Leading National Brands, 1997.

other ways; for instance, by evoking a romantic vision of pre-revolutionary Cuba. Many ads create a personal link with the company owners, founders, or the artisans and the farmers who create the product and its raw material.

Some advertising seeks to expand the market for cigars by legitimizing new users and new settings for use. The former is illustrated by the ads which invite women to smoke cigars. An example of the latter is an ad for a brand sold by U.S. Tobacco International, Don Tomás (U.S. Tobacco International, 1997). The ad shows a man dressed in a terry cloth robe, holding a coffee cup, smoking a cigar. The ad copy reads,

> What time of day should you light up a cigar? We know people who wouldn't think of having their first cup of caffe latte without firing up a good cigar. Then there are the traditionalists who wait until the after dinner single malt is served to light up their handmade Don Tomás Presidentes. When you really get down to it, as long as the label says Don Tomás you're in for a treat, day or night.(p.253)

Just by asking the question, U.S. Tobacco International legitimizes an expansion of when cigars are smoked, especially by people who think of themselves as not being bound by tradition. Smoking cigars with morning coffee is not in exchange for consumption later in the day. Like promoting soft drinks as a breakfast beverage, it is a marketing tactic which is aimed at expanding the market.

Sexuality permeates many of the ads (Figure 2), and it can be especially blatant in ads from some of the smaller companies. An ad for a 3.5 inch-long cigarillo shows an attractive couple having a good time, each holding the product. The copy reads, "For the women who say size doesn't matter, and the men who actually believe them" (*Caribbean Cigar*, 1997, p. 33).

Some ads work at a more sophisticated level. An ad for Macanudo, which is part of a "campaign aimed at younger adult smokers" (Culbro Corporation, 1996, p. 5), shows an attractive woman and a handsome older man, both holding cigars and looking directly at the camera. The headline reads, "And they thought you'd have nothing in common." The copy creates suggestions of professional tension and competition between the two, but their cigars create an affirming bond that is "to be shared like wit. To be savored like wisdom" (*Cigar Aficionado*, May/June 1997a, p. 9).

Figure 2
Sexuality in cigar advertisements

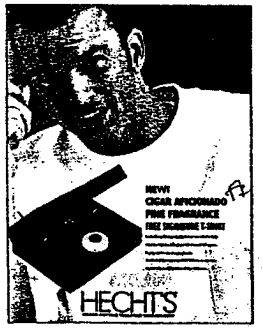


PROMOTION By far the most important ways cigars have been presented to the public have been through various promotional activities.

Lifestyle magazines The resurgence of cigar use in the United States has been closely associated with the glossy lifestyle magazine, *Cigar Aficionado*, published by Marvin R. Shanken. Launched in the Fall of 1992, the magazine was targeted for what Shanken asserted was an increasing number of men who enjoy smoking expensive cigars (Shriver, 1992). The publication has grown from 130 pages per issue to more than 400 and has increased its publication frequency from four to six times annually. Its circulation has grown from 40,000 (Conrad, 1996) to 400,119 (*New York Times*, 1997. Each issue promotes cigar use as part of successful, indulgent living through interviews with celebrities, sports stars, and others. Reviews of expensive cigars are offered as well as lavish descriptions of cigar accessories such as lighters and humidors. The editorial context is how to live life to the fullest in a style reminiscent of Esquire, GQ or Playboy. While advertising for cigars and their perquisites are prominent, sellers of upscale clothing, luxury cars, expensive watches, jewelry, premium liquor, casinos, other resorts, and perfume also feature their goods and services in this publication. Each issue has an article about gambling.

Cigar Aficionado has launched a line of clothing and accessories named for the magazine. A *Cigar Aficionado* branded fragrance for men was promoted in time for holiday shopping (*Washington Post Magazine*, 1998) (Figure 3)

Figure 3
***Cigar Aficionado* fine fragrance**



Source: Washington Post Magazine, 1998

Most cover stories feature profiles of prominent people whose cigar use is illustrated on the cover and described in the accompanying article (Table 7) (Figure 4).

Articles romanticize cigar smoking Actor James Woods (Figure 5) told his interviewer, "When you smoke a cigar, time stops. And you can sort out your thoughts. Contemplate. You can just kind of hold it and puff it and just drift down the stream of your thoughts for an hour or so. Thank God for cigars. At least there is one place where I can be quiet for a moment and actually be alone with my thoughts" (*Cigar Aficionado*, 1997b, p.147, 149). There are also frequent defiant comments about cigars in reaction to what are depicted as puritanical or radical emblems in the culture. Woods remarked, "Cigar smoking is the kind of thing a feminist would whine about. . . .And that's a good thing" (*Cigar Aficionado*, 1997, p.144).

A feature story on Claudia Schiffer (Figure 6) opens with an indignant blast at dissipation and drug use in the modeling profession:

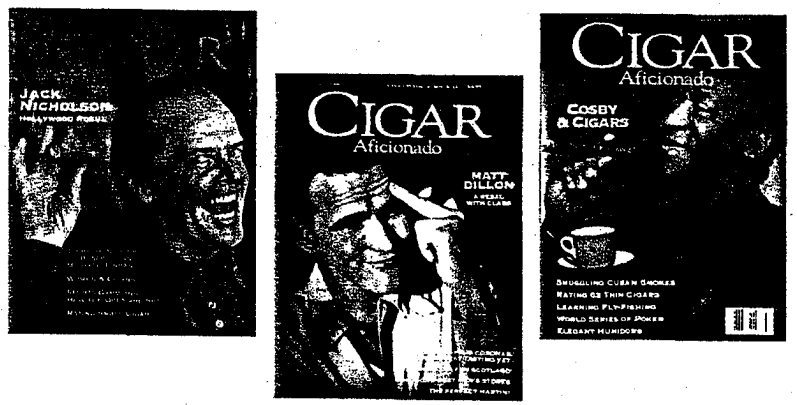
Table 7
Persons Featured on Covers of *Cigar Aficionado* and *Smoke*, 1993 - Winter 1998

	Year	Persons
Cigar Aficionado	1993	Groucho Marx Winston Churchill
	1994	Rush Limbaugh Fidel Castro Bill Cosby George Burns
	1995	Ron Perelman Jack Nicholson Linda Evangelista Tom Selleck
	1996	Matt Dillon Arnold Schwartzenegger Demi Moore Danny Devito
	1997	Wayne Gretzky Janet Jones James Woods Claudia Schiffer Michael Richards
	1998	Denzel Washington
Smoke	1996	Pierce Brosnan Tom Arnold Red Hot Chili Peppers Mel Gibson
	1997	Elle Macpherson Jeff Goldblum Carmen Electra

Claudia Schiffer is talking tough. There's a problem in the world of fashion these days, she says — the fact that too often models have to look like junkies just to be cool. "I think fashion should be promoting beauty and health," she says. "That doesn't happen if the model looks anorexic, unhealthy, tired, if the photography makes her look as if she's on drugs or been out partying all night. That kind of thing can end up hurting young women or girls who feel they have to imitate the models they see in the magazines. That's not what fashion is about. For me, fashion is about beauty." (Rothstein, 1997, p. 170)

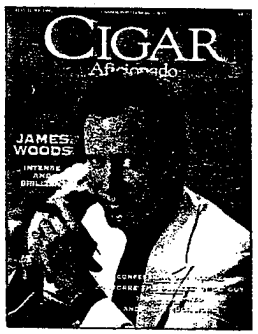
The article and magazine cover include seven large photos of the supermodel cum cigar in alluring poses (Rothstein, 1997). The contrast being drawn between drug use and dissipation on the one hand and cigar use on the other could not be more clear.

Figure 4
Jack Nicholson, Matt Dillon, and Bill Cosby



Source: Cigar Aficionado, Summer 1995, Spring 1996, and Autumn 1994.

Figure 5
James Woods

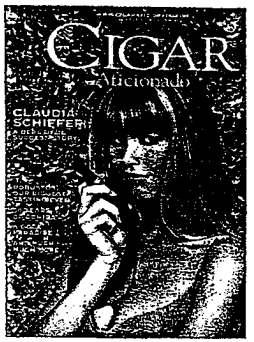


Source: Cigar Aficionado, May/June 1997

The magazine has created a following. Readers send in photographs of themselves and their cigar-related activities. Several pages have been devoted to photos of readers showing off cigar-related vanity license plates (*Photo Gallery*, 1997a; *Photo Gallery*, 1997b).

From time to time, the publisher takes on criticisms of cigar use in the editorial he writes for each issue, taking the Environmental Protection Agency (EPA) report on environmental tobacco smoke and the proposed Occupational Safety and Health Administration (OSHA) rule on tobacco smoke in the work place to task (Shanken, 1993; Shanken, 1997c), issuing a call to action against the "new Prohibition" in another (Shanken, 1994), and expressing sharp disagreement with critics of cigar use as indulging in "scare tactics" in another (Shanken, 1997a). Within days of the announcement from the Centers for Disease Control that surveys show that kids now frequently use cigars (Kaufman et al.,

Figure 6
Claudia Schiffer

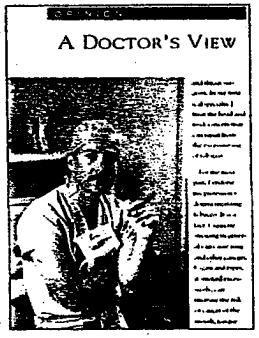


Source: Cigar Aficionado, August 1997

1997), posted a column on the magazine's web page proclaiming that cigars are for adults only and not for teenagers (Shanken, 1997b). He has blasted the American Cancer Society for publishing public service ads about cigars and Brooks Brothers for stopping the use of cigars as props for models in its advertising (Shanken, 1997d).

The posture taken is that the occasional, non-inhaled, moderate use of cigars is OK even though potentially serious problems can sometimes arise when cigar use is outside of these parameters. The studied reassurance the magazine offers has been reinforced by a column written by a cigar-loving Ear, Nose, and Throat (ENT) surgeon, who was photographed in surgical scrubs holding a cigar (Pearlman, 1993) (Figure 7). A similar image was evoked in a photograph which illustrated an article on cosmetics and cosmetic surgery for men. A plastic surgeon posed in a white lab coat, holding a cigar (Wolfson, 1997) (Figure 8).

Figure 7
Ear, nose, and throat surgeon



Source: Cigar Aficionado, Spring 1993

Figure 8
Cosmetic surgeon



Source: Cigar Aficionado, March/April 1997

The periodical has not only been sanctioned by physicians, it has been blessed by a person of the cloth. In its second issue, the magazine published a letter from an anonymous member of the clergy, who praised the new publication and reflected on the importance of a cigar in composing sermons. "In moderation, ten a week or so, cigar smoking, I declare, is not a sin. Gentlemen, you have my blessings. Those who do like the art and transcendental experience of smoking a fine cigar need not worry of divine retribution. I think God understands" (An inspired preacher, 1992).

By 1996, the success of *Cigar Aficionado* spawned imitation from a tobacco trade publisher, Lockwood, in the form of *Smoke*, whose subtitle is "Cigars, pipes and life's other burning desires." It, too, has seen an increase in pages, from 182 in the premier issue to 464 in the Summer 1997 issue. *Smoke*, which seems targeted at a somewhat younger, more hip audience, has a similar mix of cigar features and general lifestyle articles. Its covers also feature celebrities smoking cigars (Table 7) (Figure 9). Another similar magzine, *Cigar Monthly*, has featured various cover stories (Figure 10).

These three publications have been imitated in France (French Toast, 1996). In keeping with the style of its American cousins, the cover of the March 1997 issue of L'Amateur de Cigare features General Charles de Gaulle with a cigar.

Figure 9
Mel Gibson, Carmen Electra, Jeff Goldblum, and Elle Macpherson



Source: Smoke, Anniversary Issue Winter 1996-1997, 2nd Anniversary Issue Winter 1997, Summer 1997, and Spring 1997

Figure 10
***Cigar Monthly* cover stories**



Source: Cigar Monthly, April 1995, November 1995, March 1996, July 1996, 1997

The hedonistic themes these magazines explore are captured in the concluding exchange from an interview published in *Smoke* with actress Kim Cattrall (Cattrall, 1996).

Q. What do you think all the buzz is about cigars?

A. It's a very large phallic symbol that men like to play with — and women like to watch them. I understand the attraction. Just holding one, there's sort of a power related there.

Cigar-centered Dining and Entertainment

The current era of fancy cigar dinners and other entertainments focused on cigars seems to have begun around 1988 (Luz, 1997).

From its own beginnings four years later, *Cigar Aficionado* sponsored gala affairs and dinner parties at expensive restaurants featuring cigars, wines, and celebrity guests. Similar events, which build word of mouth advertising, have become widespread, and the magazine publicizes restaurants that offer "smoker nights." In a 1992 issue, there was a list of 32 domestic and 4 foreign restaurants and cigar clubs that offered such events (Smoker Nights, 1992); by Spring 1997, the number of listings had grown to 591 entries in the United States and 70 listings from outside the country (Smoker Nights, 1997). Magazine subscribers receive formal invitations to events sponsored by the magazine, and the magazine regularly features photographs from these events in its pages. The popularity and acceptability of these events is illustrated by the fact that a restaurant at Walt Disney World has hosted cigar dinners (Scott, 1996a).

Sometimes, these events are linked to charitable causes. In New Jersey, cigar nights have provided fund-raising settings for the Women's Center of Monmouth County, the Make-A-Wish Foundation of New Jersey, the Easter Seal Society of New Jersey, and the Cerebral Palsy Association of Middlesex County (Henderson, 1996; Henderson, 1997a; Henderson, 1997b; Robert Kucharski, personal communication, June 5, 1997). An event called "Celebrity Smoke '97," sponsored by Smoke, was produced by Celebrity Fund-raisers, Inc. and benefitted a charity called The Miami Project (Celebrity Smoke '97, 1997). A $1,000-per-ticket cigar dinner and viewing of the film "Napoleon" (accompanied by a 65 piece orchestra) is to benefit the Culinary Institute of America at Greystone and the North Beach Homeless Project of San Francisco (Coppola and Shanken, 1997).

In October 1994, *Cigar Aficionado* sponsored a dinner in Paris called the "Dinner of the Century" (Nights to Remember, 1994). Formal invitations for the event indicated that a portion of the ticket price would be donated to the United Nations Children's Fund (UNICEF). When the director of UNICEF was informed of this unsolicited and unwanted association, an attorney for UNICEF put the organizers on notice that they were to stop using the name of the children's fund in association with the dinner. Instead, a donation was made to CaP Cure, a charity for prostate cancer research (Ron Davis, personal communication, October 1994).

Adding a charitable dimension to these events may add a sense of mainstream mission, purpose, and respectability to what may simultaneously be regarded as daring, flaunting of convention, and even somewhat underground. Not only is a cigar dinner fun for itself and more so for being a bit of a slap at puritanical attitudes, it can also be for a good cause.

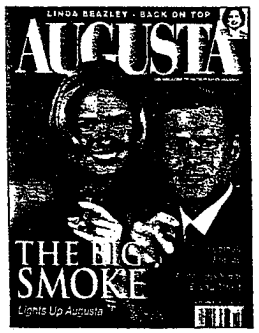
Scott, writing in a trade magazine for retail tobacco shops, has described how to organize a cigar dinner.

> Cigar dinners, if planned and executed well, are an excellent way to build your business. They work best as a promotional tool, just like advertising. The nice thing about them, as a business builder, is they can be operated at a break-even level. What other advertising medium do you use that costs you nothing? The dealer who thinks he can make a profit on cigar dinners, however, will probably find his dinners, non-competitively priced, won't yield the results he wants. (Scott, 1996a, p.44)

> Ed Kotoch, owner of the Tobacco Road stores in Las Vegas, says, "Instead, think of a cigar event as a way to get to know your customers better, especially the ones who just breeze in and out of your store; or to meet your customers' cigar-smoking friends whom they bring to the dinner; or to say 'thank you' to a few selected and valued customers." (Scott, 1996a, p. 44)

The article offers detailed advice on planning, organizing, and conducting these events. A balanced blend of entertainment, food, wine and cigars is to be sought. Cautioning against seeking venues in restaurants owned by non-smokers, Scott advises making sure that ventilation is adequate and even providing additional air filters because, he notes, "cigars put out a lot of smoke" (Scott, 1996a, p. 46). In selecting cigars for the evening, he suggests a mix of full-bodied and mild cigars. He especially suggests providing a selection of smaller, mild cigars for women so that they can more easily participate in the revelry. For a ticket price of $75-$90, Scott suggests a budget of $20-$25 for food, $5 for tips, $15 for cigars, $10 for a gift, $15-$20 for drinks, $5 for invitations, and complimentary tickets for the dinner speaker and the people who represent the cigar and beverage distributors.

Figure 11
Augusta



Source: Augusta, September 1997

Entertainments such as these serve to further embed cigar use in the culture, socialize people to the use of cigars, and teach novices how to use them. The luxurious settings foster the high-class image with which the cigar industry seeks to associate itself. In *Augusta*, Georgia, Mike Smith, proprietor of Cigar Affairs, hosts cigar dinners, such as the Spring Big Smoke (Barshafsky, 1997) (Figure 11).

Sanctioned social clubs organized around cigars have appeared on a number of major college campuses (Barry, 1997).

Smoking clubs appeared in many communities in the mid-1990s. Among the most elaborate are cigar bars identified with Macanudo brand cigars, the Club Macanudo in Chicago and in New York (Club Macanudo, 1997). At the New York club, which offers patrons a cigar school for initiates, a large painting of the bar hangs in the dining room. The painting features Culbro executives Edgar M. Cullman, Sr. and his son, Edgar M. Cullman, Jr., as well as Marvin Shanken surrounded by famous people who smoked cigars. Winston Churchill and John F. Kennedy are joined by Madonna, Whoopi Goldberg, Michael Jordan, Julie Andrews, Linda Evangelista, Richard Pryor, Jack Nicholson, Robert deNiro, Orson Wells, and Bruce Willis. Patrons are offered menus for both food and cigars. Culbro products are featured in great variety with prices ranging up to $40, but there are also a few offerings of lesser quality from other major purveyors. Among the holders of humidors at the Club are a number of New York-based magazines, including *Esquire, Vanity Fair, Business Week, Sports Illustrated, U.S. News and World Report,* and *Golf Digest.*

Retail establishments devoted to smoking seem in part a reaction to the elimination of smoking from more and more indoor spaces. The fashion brings to mind the early history of smoking in 17th century England where customers would leave their pipes at the local tobacco shop. They would come to the shop not just to purchase tobacco but to smoke as well.

Newspaper stories about cigars

The resurgence in popularity of cigars has been covered, and in part fueled by, articles in newspapers. Among the twenty daily newspapers indexed by the Dialog data base, there were 325 articles over the seven-year period 1990 - 1996 that dealt with news about cigars or feature stories about their increasing popularity in the culture. Coverage of cigars was fairly constant for the first 5 years of the period, and then showed an abrupt upswing (Table 8). Uncritical stories describing this as a social or as a fashion phenomenon have been common in newspapers as well as on television magazine shows. Much of this coverage was stimulated by a public-relations effort by cigar manufactures intended to promote positive stories in the news media linking cigar use to luxury and power (Klein, 1998).

A highly successful race horse named Cigar (Figure 12) appeared on the sports pages beginning in May 1995 with a victory at Pimlico. The horse was featured in 103 stories in these same twenty newspapers in 1995 and in 212 stories the following year.

Women and cigars

Cigar smoking by women has been one of the sub-themes of cigar publicity. Celebrity women and their cigars have frequently been featured in the cigar magazines (Figure 13). Madonna smoked a cigar on the David Letterman show in 1994 (Conrad, 1996). Feature stories in newspapers, popular news magazines, and on television have highlighted this as a new trend (Figure 14). A recent book describes and explains cigar smoking for women (Edmark, 1995), and a retail trade magazine has published an article on how to "capitalize on the marketing differences the gender gap provides" (Ashley, 1997b, p. 162). These phenomena increase the visibility not only of women smoking cigars, but of cigar use itself.

Table 8
News and features about cigars. Twenty daily newspapers Indexed by Dialog 1990-1996

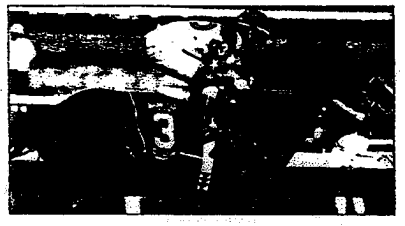
Year	Number of articles
1990	23
1991	19
1992	20
1993	36
1994	24
1995	81
1996	122
Total	325

Source: Dialog

Internet advertising and promotion

Cigars are featured on the world wide web at many sites (Mason, 1996). There are online catalogs for ordering as well as links that provide background information and ratings. Both cigar lifestyle magazines maintain elaborate sites. One site sponsored "Operation Cigar Lift" for U.S. troops stationed in Bosnia in 1996 (*Smoke Signals,* 1996).

Figure 12
The race horse, Cigar



Source: Cigar Aficionado, Winter 1996/1997

Figure 13
Demi Moore



Source: Cigar Aficionado, Autumn 1996

Ashley has described the ins and outs of setting up and running a web site for people in the retail cigar business (Ashley, 1997a). He describes how selling on the Internet has transformed the way a number of retailers operate, with some now providing frequent updates of their inventories online. Websites for cigars may receive tens of thousands of visits monthly. The sites operated by manufacturers not only provide information and images about specific brands but also link customers with retailers who carry the products. There are discussion groups and news groups as well on

Figure 14
Jenny McCarthy



Source: Newsweek, July 21, 1997

these sites. Sites also can offer search capabilities to people looking for particular products or product characteristics.

Catalogs and cigar-related items

Cigars have long been available by mail order, but the resurgence in popularity of expensive cigars has prompted the introduction of new specialty catalogs for cigar users such as one called *The Cigar Enthusiast.* Accessories for cigars have begun appearing in more established upscale catalogs such as those from Herrington, Frontgate, Huntington Clothiers, and Hammacher Schlemmer.

The cigar craze has nourished the cottage industry that produces cigar accessories such as lighters, cutters, ashtrays, and humidors. Oddities such as devices which provide a place to put a lit cigar on a golf course while the user takes a shot have appeared on the market. A "breath cleanser" for cigar smokers is being sold (Cigar Clear, 1996). New cigar-themed clothing companies, selling silk screened whimsy or classical cigar art (based on cigar box paintings and cigar bands) have appeared: The Five Cent Cigar Co., Smoke Rings, and The Original Cigar Clothing Company. The Nat Sherman Catalog (Figure 15) offers a variety of cigar accessories (Figure 16)

Figure 15
The Nat Sherman Catalog



Source: Nat Sherman Catalog, 1998

Books (Hacker, 1996; Shanken, 1996), videos (Dees, 1996), lithographs (Mazur, 1996), and even compact discs related to cigars (Schmorr, 1996) have appeared on the market. One of these books includes a curiously lighthearted chapter on health effects (titled "But will they stunt your growth?") which emphasizes the supposed advantage of cigar tobacco having fewer additives and the fact that inhalation is optional with cigars (because nicotine absorption from cigar smoke, unlike that from cigarette smoke, does not depend on inhalation) (Scott, 1996b).

Figure 16
Cigar accessories – The Nat Sherman Catalog



Source: Nat Sherman Catalog, 1998

Dunhill has long offered high-end men's clothing and accessories in association with its core tobacco products business.

Virtually alone among the major cigar companies, General Cigar has borrowed other marketing techniques prominent in the cigarette industry for some of its mass-market cigars as well (Coeytaux, Altman and Slade, 1995; Altman, Levine, Coeytaux, Slade and Jaffe, 1996). General Cigar has run a series of promotions for its White Owl and Garcia y Vega brands which involve returning proofs of purchase for branded t-shirts and other premiums. It has even developed a small catalog for the Garcia y Vega brand. Moreover, General Cigar has launched a line of expensive sportswear geared to its premium brands (Culbro Corporation, 1996). It also plans a branded line of cigar smoking accessories (Smoke Signals, 1997). The president of the parent company, Edgar M. Cullman, Jr., is quoted in the annual report as saying, "General Cigar's brand extensions in new classic sportswear set the stage for our lifestyle-driven company of tomorrow" (Culbro Corporation, 1996, p. 8).

There have been other sporadic, small efforts at promoting mass-market cigars, but generally, the makers of these products have not devoted large amounts of money to their promotion in recent years. Swisher International briefly supported a NASCAR race team for Swisher Sweets, and the makers of the little cigar Winchester published booklets of football and baseball statistics and schedules in 1995 that were distributed through some retail outlets.

Sportswear for Macanudo does not imitate the understated elegance of Dunhill. Instead, Culbro features the Macanudo name prominently on each article of clothing, so the caps, sports shirts, jackets, and sweatshirts are themselves advertisements for the brand in much the same manner that cigarette companies promote their brands through promotional items.

Among the ways General Cigar seeks to promote Macanudo is through furniture. The William Allen Company of High Point, North Carolina offers two stuffed armchairs retailing for about $2,500 each which feature the Macanudo crest design on the upholstery. A leather chair has the crest on a kidney pillow and the seat deck, while a mohair chair has it on the seat cushion (William Allen, 1997). On introducing these products to a furniture store, the Allen salesman passes out cigars and offers a $700 Macanudo smoking jacket for sale as well.

Borrowed glory

Cigars have become a common prop, on magazine covers (Mott, 1992) (Figure 17), in fashion photography, for men's accessories such as ties, and among popular musicians, movie stars and other celebrities. A popular history recounts many of the famous names, past and present, associated with cigars (Conrad, 1996).

Figure 17
The New Yorker



Source: The New Yorker, September 23, 1996

The cigar may be intended to be provocative or to project "power, authority and self-confidence" (Mott, 1992, p. 46). When the Chicago Bulls won the NBA championship in 1996, Michael Jordan and Dennis Rodman celebrated with cigars, and their smoking was widely seen on television. George Dessart of the American Cancer Society criticized these sports stars, saying, "By displaying these cigars at the moment they were the most visible athletes in the world, Michael Jordan and the Chicago Bulls served as the worst type of role model for millions of children worldwide. After all, if Michael Jordan and the Chicago Bulls smoke, it must be cool and it can't be that bad for you" (Campaign for Tobacco-Free Kids, 1996).

At least some of the gratuitous public cigar display so evident in recent years may be because of commercial sponsorship. In the 50's and 60's, celebrities such as Ernie Kovacs, Danny Thomas, and Sid Caesar did commercials for Dutch Masters,[1] and Edie Adams cooed "Pick me up and smoke me sometime" for Muriel (Kiersh, 1997, p. 105). George Burns smoked another machine-made brand from Consolidated Cigar, El Producto Queens, exclusively for many years. Each month, he received 300 of the stogies from the manufacturer for free. While it is not known if he also received an honorarium or a sponsorship fee in addition to the free cigars, he repeatedly refused to even try any other brand (Kiersh, 1997). Consolidated Cigar is trying to capitalize on this long-standing association by creating a special series of El Producto cigars it is calling the "George Burns Collection" (Kiersh, 1997). It is not known if this venture involves the payment of a licensing fee to the Burns estate, but such considerations are common for other products.

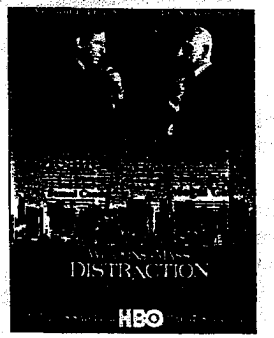
Figure 18
First Wife's Club



Source: Fairfax County TV Guide

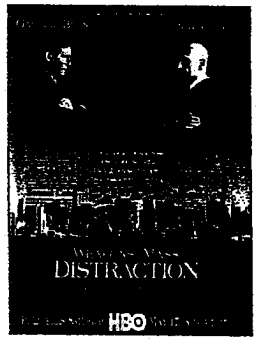
Cigars and the Movies Cigars have become a common prop in movies (*Independence Day*, 1996; *Batman and Robin*, 1997). In at least one case, though, the cigars featured in advertising were not apparent in the movie itself. Ads for the 1996 movie *The First Wives Club* (Paramount) showed Goldie Hawn, Diane Keaton and Bette Midler with stogies (Figure 18) while in both the movie itself and the book on which the movie was based, these characters never used cigars (Thomas, 1996). When the HBO movie *Weapons of Mass Distraction* was advertised in *Cigar Aficionado*, the characters held cigars (*Cigar Aficionado*, 1997c) (Figure 19). When the same movie was advertised in *The New Yorker*, the characters' hands were empty (*New Yorker*, May 19, 1997) (Figure 20). Cigar manufactures paid Hollywood brokers to feature their products in movies including *Independence Day* (Klein, 1998).

Figure 19
Weapons of Mass Distraction–with cigars



Source: Cigar Aficionado, May/ June 1997

Figure 20
Weapons of Mass Distraction–without cigars



Source: The New Yorker, May 1997

[1] This brand evokes memories of Rembrandt's contemporaries even though tobacco was mainly consumed in pipes throughout the low countries at that time.

AVAILABILITY Inexpensive cigars are mostly sold as self-service items in grocery stores, convenience stores and pharmacies. The growth of the premium cigar trade has been accompanied by an increase in outlets for expensive cigars beyond tobacconists and other specialized retailers. Major manufacturers are seeking to expand traditional outlets for premium cigars to include hotel shops, wine shops, restaurants, and upscale specialty and department stores (Smoke Signals, 1997). Vending machines for premium cigars are commercially available and have begun to appear in some locations (Trendwatch, 1997).

DISCUSSION Cigar use began to increase after promotional activities for cigars stepped up beginning in 1992. The cigar market was stagnant (Chapter 2) before *Cigar Aficionado* was launched, even though Marvin Shanken has said he launched the magazine in response to an increase in use of premium cigars. In a prospectus, Consolidated Cigar Holdings attributes the increase in cigar consumption largely to the magazine, to the use of cigars by celebrities (Figure 21), and to the proliferation of social events that feature cigars (Consolidated Cigar Holdings, 1996). These efforts have increased the visibility of cigar consumption, have normalized cigar use, and have

Figure 21
Groucho Marx, Denzel Washington, Michael Richards, and George Burns



Source: Cigar Aficionado, Spring 1993, February 1998, October 1997, Winter 1994

broken down barriers for cigars. Among the barriers that seem to have been broken has been use by kids (Kaufman et al., 1997). These efforts have a familiar ring. Public relations techniques to normalize and popularize cigarette use in general and among women in particular were used by cigarette makers earlier in the century (Kluger, 1996).

While nearly all promotional energy for cigars has been focused on premium versions, fully 83 percent of the unit growth in the consumption of large cigars and cigarillos has been for inexpensive, non-premium, machine-made brands. Advertising for specific premium brands, which is directed at expanding the market serves the dual role of promoting both cigars and a particular brand (Montego y Cia. 1997; U.S. Tobacco International, 1997). Moreover, despite disclaimers to the contrary (Shanken, 1997b), an inevitable effect of fostering a somewhat outrageous fashion among adults is that its appeal to kids will grow.

Measured marketing expenditures for cigars was only $4 million for the first 9 months of 1996, yet the industry had more than $1.2 billion in sales.

To the extent that they exist at all, the unmeasured marketing expenditures may be devoted to activities such as planting feature stories about cigars in newspapers and television, securing celebrity endorsements of cigar smoking, promoting cigar dinners, financing the expansion of retail tobacco shops, and of restaurants, clubs and bars that encourage cigar smoking, achieving placements in popular entertainment and in fashion magazines, and facilitating the development of communications channels, such as magazines, books and web sites.

It may be that individual cigar companies are working by themselves or in concert to facilitate at least some of these public relations activities, because the bulk of the industry is concentrated in only a few companies (Table 3). Efforts to boost cigar use in general will mainly benefit those companies that are already well positioned.

The more sophisticated companies, especially Culbro (General Cigar) and Consolidated Cigar, seem to be taking integrated marketing approaches to building franchises for their major brands. Although the use of sex and celebrity to sell cigarettes has been forbidden by the cigarette industry's voluntary code since 1965, these appeals are regular features of cigar marketing.

Additional information is needed to better characterize marketing efforts for cigars. Specifically, there should be:

- Continued efforts to describe advertising and promotional efforts for cigars as well as to understand the dynamics of the market and the companies involved in it,
- Compilation of marketing expenditures for cigars as the Federal Trade Commission already does for cigarettes and smokeless tobacco products,
- A survey of prominent people who have been publicly associated with cigar use to learn about the extent to which they have received sponsorship fees or any other consideration from commercial cigar interests,
- Research to learn how different segments of the public understand cigars, especially in relationship to cigarettes. One possibility is that since cigars are often experienced as being more acutely noxious than cigarettes, the increased acceptability of their use may undermine public perceptions of the harmfulness of cigarettes. The public may also have misconceptions about the role of nicotine in cigar use. In other words, apart from the direct toxicity of cigars, does the cigar craze undermine public health efforts to control the cigarette epidemic?
- Research to learn which brands of cigar are popular with the young and how marketing, price, and availability affect brand choice for this group, and
- Research to learn the extent to which advertising and promotion for cigars, including things as commonplace as cigar bands, reaches and affects kids.

CONCLUSIONS

1. Cigar use began to increase in the United States after promotional activities for cigars increased beginning in 1992.
2. Promotional activities for cigars have increased the visibility of cigar consumption, normalized cigar use, and broken down barriers to cigar use.
3. Although the use of sex and celebrity to sell cigarettes has been forbidden by the cigarette industry's voluntary code since 1965, these appeals are a regular feature of cigar marketing.

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TOBACCO MARKETING AND YOUTH:

EXAMINATION OF YOUTH ATTITUDES AND BEHAVIOUR TO TOBACCO INDUSTRY ADVERTISING AND SPONSORSHIP

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Prepared for

Health Canada

by

National Cancer Institute of Canada
Centre for Behavioural Research
and Program Evaluation

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1.0 APPROACH

1.1 PROJECT OVERVIEW

The National Cancer Institute of Canada's Centre for Behavioural Research and Program Evaluation undertook a research review and consensus project to answer two fundamental questions:

- Does tobacco marketing influence smoking prevalence among youth age 21 or less?
- How does that influence work?

Age 21 was chosen to ensure consideration of the full age range during which virtually all adults begin smoking. Within the range, our review aimed to pinpoint influences on specific subgroups (eg. youth under the age of sixteen).

The project was designed to build on previous reviews, particularly very recent U.S. reviews addressing much of the same literature. Specifically, we built on the conclusions reached by the 1994 U.S. Surgeon General's review of preventing tobacco use among young people, the 1994 U.S. Institute of Medicine's review of nicotine addiction in children and youth, and the 1995 U.S. Department of Health and Human Services Federal Drug Administration's proposals for restricting sale and distribution of cigarettes and smokeless tobacco products to children and adolescents. This building process examined the research studies cited to support the conclusions and recommendations of these reports, searched for additional studies completed since these reviews, and considered the relevance of all these studies for tobacco marketing in Canada.

The project used three concurrent processes to conduct our review and develop recommendations:

- leadership by a National Cancer Institute of Canada "Core Team", responsible for a critical appraisal and synthesis of existing research on tobacco marketing and youth, and the design of future research options.

- collaboration with an Advisory Network of leading experts from four countries (Canada, U.S., Britain, and Australia), to refine the critical appraisal and reach consensus on both current knowledge and future research questions and priorities. The collaboration was broadened to include liaison with the U.S. Office of Smoking and Health, both with respect to the Surgeon-General's reviews in process and to current Center for Disease Control-funded projects.

  Appendix 1 presents the list of experts serving on the Advisory Network. Their cooperation and contributions are gratefully acknowledged.

- consultation with the Health Canada Reaction Panel to ensure relevance of this project for Canada's tobacco control strategy.

Important achievements of the project include:

1. recruitment of an outstanding international expert Advisory Network, including a broad range of disciplinary expertise in tobacco marketing research. In addition, the Network included experts in marketing, and developmental, social and educational psychology more broadly.

2. consensus on a conceptual framework for understanding research on tobacco marketing and youth, and for identifying future research priorities.

3. review and critical appraisal of current research addressing the two research questions posed for this project.

4. an annotated bibliography summarizing the methodology and results of key studies.

5. specification of priority future research questions, based on extensive consultation with our international expert Advisory Network.

6. recommendations for top priority qualitative and quantitative research to be conducted in the near future.

1.2 SCIENTIFIC PERSPECTIVE

The National Cancer Institute of Canada undertook this project knowing that the nature of tobacco marketing research precluded "definitive" answers to the research questions posed. There are at least three fundamental reasons why conclusive research is an unrealistic and unreasonable expectation:

- True experiments are unethical and impractical. We cannot ethically expose some youth to advertisements and not expose others, as a true experiment requires. In theory, we could conduct an experiment in which some households or communities receive electronic and print media while others do not. This kind of quasi-experiment has been used with other marketing questions. However, it is neither practical nor sufficiently

comprehensive given the complex marketing mix typical for the tobacco industry.

- Marketing's influence is complex. Specifically, as elaborated below in discussion of the Conceptual Framework, marketing has whatever effects it has on youth in the context of the broader society we live in and the developmental tasks adolescents must master as part of growing up. Research cannot "isolate" the effects of marketing because they are woven into the fabric of adolescent experience.

- The pace of knowledge development is relatively slow. While we are undergoing a period in history of unprecedented change, many well-designed research studies take years to complete. By the time we have answers to our original research questions, the realities of society and the patterns of adolescent tobacco onset have changed. For example, the images to which youth respond change quickly, and the tobacco marketing industry always will be better able to keep abreast of these changes than will either regulators or traditional scientific methods.

- There is a fourth challenge we faced in our review. It could be solved in principle, but in practice must be managed rather than resolved. The validity of research conducted outside of Canada must be carefully assessed to determine its relevance to Canadian youth and policy.

These (first three) scientific circumstances are analogous to the question of "Does tobacco use affect health (cause cancer, heart disease, etc.)?" When this issue was first raised by the Canadian and U.S. governments in the early 1960s, we faced a similar dilemma. Much definitive research was either unethical or impractical. Causality was complex and not amenable to research methods of the era. The time frame was a significant challenge because many of the disease outcomes of smoking would not be seen until twenty to thirty years later. Nevertheless, the seriousness of the health concerns required strong public health measures. The burden of proof was shifted to require evidence that tobacco was not harmful to health. Research in the intervening years has indeed provided overwhelming evidence that tobacco use is harmful. Policy development around tobacco marketing and youth is in a similar position today.

Given the impossibility of providing "definitive" proof, we adopted a three step logic:

1. Develop a comprehensive conceptual framework which is both grounded in well-accepted theory and research, and agreed to by a large, diverse, and well-accepted group of international experts.

2. Define realistic scientific standards. We established the following six criteria for judging quality:

   - sample size (greater than 250 vs. less than or equal to 250).
   - representative sample (random versus convenience).

- design perspective (prospective vs. archival or time series).
- design method (longitudinal vs. cross-sectional).
- analysis (multivariate vs. univariate).
- theory (theory based vs. atheoretical).

3. Test current research against these standards. Evidence was judged for overall strength in terms of the number of these criteria satisfied (one point each): high (5 or 6 points), medium (3 or 4 points), or low (1 or 2 points).

Throughout the following review and the appended Annotated Bibliography, this comparison of realistic standards to quality of evidence provides the benchmark for our conclusions and recommendations.

1.3 WORKPLAN

Section 1.1 noted the three concurrent processes we used throughout the project. Simply, they were combined in the following series of steps:

1. Recruit the Advisory Network.
2. Conduct telephone interviews with the Network members to identify preliminary research questions for the project.
3. Develop a preliminary conceptual framework which accounted for both the research literature we had identified and the questions posed by the panel.
4. Develop an exercise which was faxed to the Network to refine both the framework and the questions.
5. Consult with the U.S. Office of Smoking and Health and U.S. Centre for Disease Control projects, to identify key literature.
6. Search for additional literature, particularly very recent studies, and conduct a critical review and annotation of key studies.
7. Meet with senior Health Canada staff to review progress.
8. Consult with the Advisory Network again via fax, to confirm refinements of the conceptual framework, conclusions reached from our review, and the relative priority of future research questions.
9. With input from the Advisory Network, finalize the framework, conclusions, annotations, and recommendations for future research.

1.4 CONCEPTUAL FRAMEWORK

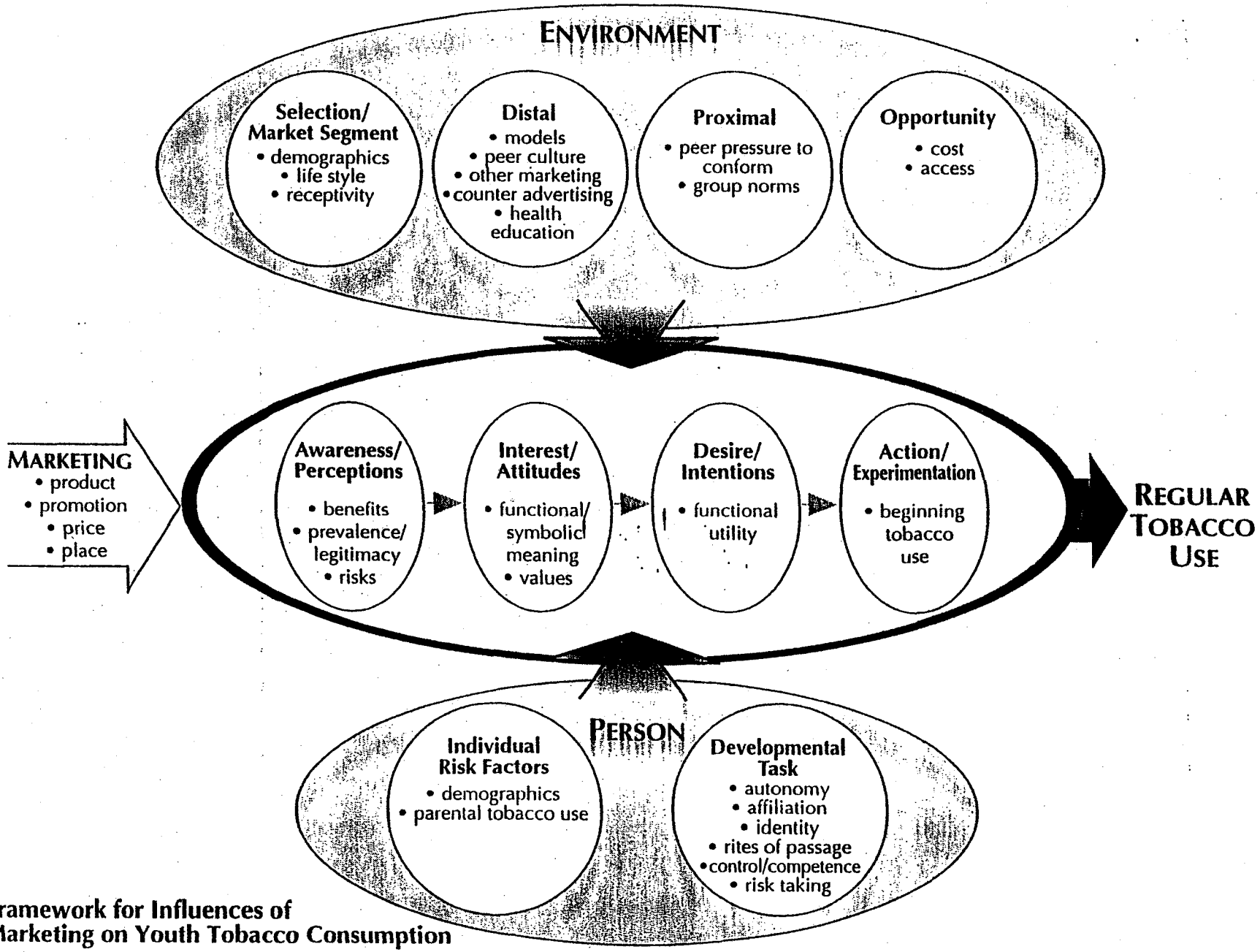
The following Figure provides a conceptual framework for understanding how the influences of marketing affect youth tobacco consumption. Several features are important to note:

- **Theory-Grounded.** The marketing process moving from left to right through the middle of the framework is consistent both with widely-used marketing models (Awareness-Interest-Desire-Action or AIDA, Sommers, et al., 1992) and with the information processing (McGuire, 1989) and attitude-behaviour change theories (Azjen, & Fishbein, 1980) most commonly used by psychologists to understand the effects of marketing.

- **Marketing and Tobacco Initiation.** The framework specifically addresses the question of whether tobacco marketing influences beginning tobacco use. Regular tobacco use is shown as a later stage. Our review was designed to answer the question of how tobacco marketing influences experimentation (versus brand choice).

- **Marketing-In-Context.** Marketing interacts with both what's going on in the person and in the environment to produce whatever effects it has. The person-environment relationship is one of reciprocal influence (Bandura, 1986): the environment shapes the individual, *and* the individual shapes her or his environment.

- **Pervasive Influence.** The Figure lists all person and environment factors identified by current research to influence some aspect of the tobacco marketing or initiation process. *The framework does not specify which variables influence a specific stage in the marketing process.*



Framework for Influences of Marketing on Youth Tobacco Consumption

Instead, the framework suggests that these person-environment factors may have influence at any or all stages in the marketing process. There are two reasons for proposing pervasive influence:

- this degree of "definitiveness" in many cases is an unrealistic expectation: tobacco initiation is influenced by too many factors to expect science to isolate each specific link in the chain.
- as noted below, the marketing process is not really a linear "chain".

❖ **Interdependence.** Marketing and information processing theories typically describe the process as relatively linear. Each step leads to the next. Thus, for example, perceptions of risk influence attitudes towards tobacco, which in turn determine to some degree both the utility from tobacco use which youth expect, and their intentions about whether or not to use tobacco. There is extensive research to support the validity of models which assume some degree of linearity.

It is the strong consensus of our Advisory Network that tobacco marketing influences youth in non-linear ways as well. Thus, for example, there is evidence that youth's early experience with tobacco use serves to confirm the expected utilities suggested by marketing (eg. smokers look "cool"), and thus to further strengthen attitudes supporting tobacco use. To suggest these feedback loops, the arrows in the chain of marketing effects are shown shaded to suggest only partial linearity and to highlight the interdependence of factors and stages.

❖ **Comprehensive Marketing.** The framework does not attempt to separate the influences of different aspects of marketing. Issues of product, promotion, price, and place all are included, as are the effects of different forms of marketing (advertising, sponsorship, incentives, etc.)

1.5 MARKETING MIX IN CANADA

The various marketing elements have been classified by the marketing industry into the "4 P's": 1) **product** design and development, branding and packaging, 2) **place** which includes the channels used in moving the product from manufacturer to buyer, 3) **price** of the product, and 4) **promotion** or personal selling, advertising, public relations, and sales promotion. Although product packaging in Canada is discussed in this literature review, research on the effects of tobacco marketing upon youth has focused primarily upon promotion which is defined as "persuasive communication designed to send marketing related messages to a selected target audience." The basic elements of promotion mix used in tobacco marketing include advertising, sales promotion, and public relations such as event sponsorship (Wells, Burnett, & Moriarty, 1992).

"Lifestyle" or "image" advertising is one of the primary tactics used to market tobacco. Marketing messages are crafted to show the product in situations depicting independence, virility, fun, and other positive self-image traits. Over time, through multiple exposures, the consumer develops a mental picture or "image" that associates tobacco use with these desirable situations.

> As used popularly, lifestyle refers to the varieties of consumer behaviours, as manifest by patterns of choices in fashions, hairstyles, adornments, recreation, sexual preferences, occupational roles, religion, politics, transportation, food, etc. Lifestyle advertising is the association of products and brands with these behaviours and/or traits, or the symbols of those behaviours or traits . . . Many textbooks on advertising do not use the terminology of "lifestyle advertising", preferring other terminology such as "image advertising" or "transformational advertising", as contrasted with information advertising (Wells, et al., 1989). Transformational advertising builds a "product personality and image" in order to "make the experience (of consumption) richer, warmer, and more enjoyable" (Wells, et al., 1989). Lifestyle portrayals and associations can easily be accomplished by objects and settings, with the people absent and only implied, or if present dominated by props and staging, for example rock tickets on the seat of a motorcycle." (Pollay, 1995).

Marketing approaches used in Canada and the U.S. have important similarities in that they "promote both brand-specific and aggregate tobacco use" (Health Canada, 1995). However, the Canadian tobacco industry differs from the U.S. in at least two important ways. First, the size of the industry in the U.S. is significantly larger. In Canada there are only three primary tobacco product firms (i.e., Imperial, RJ Reynolds-MacDonald, and Rothman, Benson-Hedges). In the U.S., Phillip-Morris and RJ Reynolds dominate the market, however, there are at least four additional major players. This structural characteristic results in larger U.S. brand proliferation and a more competitive environment than found in Canada. In the U.S. there seem to be more price wars and discount pricing, and considerable more price diversity. U.S. tobacco firms spend more dollars on a per capita basis than their Canadian counterparts.

Until recently the Tobacco Products Control Act prohibited any advertising of tobacco products in Canada, sale of single cigarettes, the giving away of free samples, and placed some restrictions on sponsorship. This has led to a marketing mix in Canada that differs from the U.S. where such legislation does not exist. Competition in Canada has focused on non-price aspects of the marketing mix such as packaging, brand imagery, sponsorship, and point-of-sale promotion. These methods use an indirect "lifestyle" approach by promoting positive messages about using tobacco which fit with the desired self-image of targeted consumers (Health Canada, 1995). As compared to the U.S., marketing in Canada has emphasized promotion of the product in indirect ways through sponsorship of sporting and cultural events. As summarized by the University of Toronto, Centre for Health Promotion (1993) "when restrictions are placed on a strategy within a category of the marketing mix (as represented by the four P's), as has occurred for promotion of tobacco products, other strategies within that category are put in place to compensate" (p. 29).

2.0 RESEARCH REVIEW

2.1 HOW DOES TOBACCO MARKETING INFLUENCE YOUTH TO INITIATE TOBACCO USE?

There is substantial evidence that young people are aware of, and respond to, cigarette advertising. The U.S. Surgeon General's 1994 comprehensive review of the tobacco marketing literature concluded that advertising and promotional activities influence key risk factors for tobacco use among adolescents. The U.S. Food and Drug Administration's (1995) review of available tobacco industry documents concludes that "cigarette manufacturers know that young people are vital to their markets and that they need to develop advertising and other promotional activities that appeal to young people". (p.41332).

Advertisements present images that appeal to youth and are seen and remembered by them (Institute of Medicine [IOM], 1994). Images are used in tobacco marketing, rather than information, to portray the attractiveness and function of smoking. The human models and cartoon-like characters used in advertising convey independence and strong self-concept, healthfulness, social acceptance, adventure-seeking, attractive role models, and youthful activities, thus appealing to youth and tapping into areas relevant to important developmental tasks (IOM, 1994; USDHHS, 1994; USFDA, 1995).

Having a low self-image, attributing positive meaning or benefits to smoking, and perceiving smoking as prevalent and normative are strong predictors of intention and initiation of smoking. As we will demonstrate, tobacco marketing efforts capitalize upon these areas to promote their product. In this review we ascribe to the same rationale used in both the U.S. IOM Report (1994) and U.S. Surgeon General's (1994) report that if tobacco marketing affect these factors, then they are also highly likely to affect smoking initiation.

The years during adolescent development have proven to be a consistent predictor of smoking initiation (USDHHS, 1994). Ages 11 through 15 are the peak age range for first trial and experimentation with tobacco. Experts in tobacco prevention show that tobacco use in adolescence is related to the developmental issues experienced during this period, as well as the socially constructed meaning of tobacco. Three primary developmental challenges occur in the adolescent years: 1) physical maturation and the establishment of intimate relationships, 2) transition to adult roles and responsibilities, and to emotional independence from parents, and 3) establishment of a sense of self and a set of values that guide future behaviour (Hooker, 1991). Experimenting with tobacco occurs at transition points in adolescence when individual self-concept is emerging. One of the important tasks during this period is to experiment with different adult identities. Adolescents are more attuned to advertising and more subject to social influences than other age groups (Schudson, 1993). Advertising influences behaviour both cognitively and affectively by suggesting that there are benefits to using the product and by setting up a positive attitude about the product (IOM, 1994). The affective appeal of an advertisement is often neither conscious nor immediately apparent. It is image based and is intended to be

transformational and associational in nature. It is through repeated exposure over time rather than any single exposure that learning occurs.

To address *how* tobacco marketing influences youth we referred to the literature related to predictors of tobacco-use and related it to studies that address the messages contained in marketing efforts and the attitudinal responses of youth to these messages.

2.1.1 Normative Behaviour

Adolescents who believe that a large proportion of peers are smoking may be influenced more easily than if they know that, in actuality, only a small proportion smoke cigarettes. A number of studies have found that adolescents who make relatively high estimates of smoking rates among peers are more likely to smoke (Gerber, & Newman, 1989; Collins, et al., 1987; Chassin, et al., 1984; Chassin, Presson, & Sherman, 1990; Botvin, et al., 1992). By associating tobacco use with routine events and social situations tobacco marketing messages suggest that it is socially acceptable and common behaviour. The 1994 U.S. Surgeon General's Report concludes that young people overestimate the prevalence of cigarette smoking and that advertising's persuasiveness plays a role in this misconception. Mazis and Ringold (1992) found that when adolescents judged the age and attractiveness of 65 different models in 50 cigarette ads, they identified 17% of the models as being significantly younger than 25 years old.

Results from a questionnaire given to 602 adolescents in grades 7 and 8 (Botvin, 1993) indicated that advertising exposure and whether a friend(s) smoked, predicted smoking status or intention to smoke. The author notes that these findings are consistent with theory concerning the power of attractive models in promoting behaviours such as smoking, which are repeatedly presented thus facilitating the acquisition of a desired characteristic or goal, in particular social approval.

2.1.2 Independence and Autonomy

Data suggest that a wide range of youths are attracted to tobacco advertisements that communicate an image of independence (IOM, 1994). Advertisers use positive lifestyle imagery to enhance the social acceptability of smoking. Pollay and Lavack (1993) report Canadian marketing strategies gleaned from previously unavailable studies conducted by Imperial Tobacco Ltd. (ITL) and RJ Reynolds-MacDonald Inc. This information was used in the court challenge to the 1988 Canadian Tobacco Product Control Act to severely limit tobacco marketing activities. In their review of tobacco industry documents, Pollay and Lavack (1993) describe strategies that focus upon: modelling young people and behaviour, images of independence, pictures of health, and minimization of counter-arguments. For example, they report survey research using 1,022 subjects that identified personality and psychological needs of youth between the ages of 15 and 24. In ITL's research on "overtly masculine imagery, targeted at young males", young males were described as "going through a state where they are seeking to express their independence and individuality under constant

pressure of being accepted by their peers...very young starter smokers choose Export A (cigarette brand) because it provides them with an instant badge of masculinity, appeals to their rebellious nature, and establishes their position amongst their peers." In ITL's 1985 Project Stereo, it was recommended that cigarette ads show an individual who was "free to choose friends, music, clothes, own activities, to be alone if he wishes; who can manage alone and "be close to nature" with "nobody to interfere, no boss/parents; someone self reliant enough to experience solitude without loneliness."

2.1.3 Self-Image

There is evidence that youth smoke because they hope to convey a positive image (Chassin, et al., 1981, Barton, et al., 1982; Belk, 1984, 1988; Levy, 1986; Solomon, 1983). It has been suggested that the relationship between advertising and smoking behaviour is mediated by ads that associate positive images (e.g, independence, self-confidence) with smoking behaviour. In the recent Canadian survey of 1,200 teens (Goldberg, et al., 1995), respondents perceived a significant difference in the image of the teenager smoker who smokes (no specified brand) and one who smokes either du Maurier or Matinee, thus suggesting that cigarette brands are associated with strong and distinct images.

In a study of English adolescents (Potts, Gillies, & Herbert, 1986), more smokers than nonsmokers reported that cigarette ads were exciting, interesting, eye-catching, glamorous, and witty. A more recent survey of young adults (mean age of 22.5) found that smokers rated cigarette ads significantly higher on nine traits: adventurous, liking, relaxing, enjoyment, glamorous, romantic, product quality, ad effectiveness, and fun (Zinser, Kloosterman, & Williams, 1991). Former smokers rated "liking", "enjoyment", "product quality" and "ad effectiveness" as significantly lower. The authors conclude that results replicate earlier findings that there is a relationship between smoking status and attitudes toward advertisements.

In one of the few pieces of research conducted in Canada, Covell, Dion, and Dion (1994) surveyed 75 adolescents, ages 12–16, who were recruited for the study while visiting the Ontario Science Centre in Toronto. Only 3 per cent of all participants reported current use of tobacco, 10 per cent of the adolescents reported they had tried smoking, and 81 per cent of their parents had smoked in the past. Each adolescent and one parent of each adolescent participant rated 24 advertisements on their appeal and persuasiveness. Their ratings indicated that adolescent girls liked image-oriented more than quality-oriented advertisements, while boys preferred quality-oriented advertisements. Adults, both male and female, rated image-oriented advertisements as being more appealing and persuasive. The preference for image-oriented advertisements among adolescent girls corroborates previous work by Covell (1992). The authors conclude that girls, but not boys, find advertisements that associate the product with an attractive social image as most appealing. The absence of a gender difference among adults suggests that this difference is most prevalent during a particular developmental phase in girls. Given national data that suggest girls are beginning to smoke at an earlier age, that more girls than boys smoke, and that teenage girls are the most resistant group in Canada to anti-smoking

measures, these results suggest there is serious cause for concern (Covell, Dion, & Dion, 1994).

An Australian study (Ho, 1994) examined how adolescent smokers evaluated six image-enhancement themes commonly found in cigarette advertisements. Findings indicated that respondents generally did not rate cigarette advertising themes positively. They did not consider smoking to be attractive, fun, stylish or a sign of independence. However, results suggest that reaction to these themes is dependent on the adolescent's motive for smoking. For male adolescent smokers, positive endorsement of advertisements was predicted by motives related to addiction and habit. For female adolescent smokers, positive endorsement of advertisements was predicted by a social acceptance motive.

Using data from the 1993 California Tobacco Survey (n=3,536), Evans et al., (1995) evaluated the influence of tobacco advertising and promotion and exposure to smokers on never smoking adolescents' (12 -17 years old) susceptibility to smoking. To ascertain whether adolescents attend to and interpret the messages communicated by tobacco advertising, all adolescent never smokers who had seen a tobacco advertisement (88%) were asked whether any of the following nine messages were contained in advertising: 1) smoking is enjoyable, 2) it helps people to relax, 3) it helps people feel comfortable in social situations, 4) it is a pleasurable pastime, 5) it helps people stay thin, 6) it helps reduce stress, 7) it helps people when they are bored, 8) the "in" crowd are smokers, 9) successful people smoke. All nine messages were identified as being contained within advertisements. Overall, 84% of participants agreed that advertisements promote at least one benefit of smoking. Adolescents were most likely to agree that cigarette advertisements depict smoking as enjoyable (72%), as helping people to feel comfortable in social situations (67%), and as being relaxing (66%). Only 16% of adolescents did not perceive that cigarette advertising promotes at least one benefit of smoking. In a randomized study designed to evaluate the effect of advertising on perceptions of smokers, Pechmann & Raineshwar (1994) found that participants who had viewed cigarette ads did not change their evaluative judgments of smokers, however, they had more positive thoughts about smokers' maturity and glamour than measured at pretesting.

Tobacco advertising seems to contribute to children and adolescents' attitudes toward smoking. In a study of British youth, between the ages of 9-10 and 12-13, those who had a favourite cigarette advertisement were more likely to have positive beliefs about smoking as compared to their peers who did not have a favourite advertisement. Such beliefs included, "smoking gives you confidence" and "smoking keeps your weight down" (Charlton, 1986). These findings occurred among youth who reported never smoking and among those who said they had tried smoking. The researcher points out that although the advertisements were not explicitly intended for youth, they seem to foster a positive attitude toward smoking. Based on results from a pre-post test survey administered four months apart, Charlton & Blair (1989) found that among those variables that predicted smoking among girls, two related to advertising: identifying at least one cigarette brand (product awareness) and having a

positive view of smoking ("smoking is fun", "smoking calms your nerves", "people of my age smoke to look grown up").

It appears that tobacco billboards target consumers with persuasive messages using social cues (Schooler, Basil, & Altman, 1996). Between 1985–87 all billboards located in San Francisco were photographed and analyzed for social cues including the presence of people, similarity of models to the predominant ethnicity of the neighbourhood, the association of billboard images with romance, sociability, friendship, and recreation, and attractiveness of models to the ethnicity of the neighbourhood, depict rewards such as romance, and use models with attractive characteristics, especially sex appeal.

2.1.4 Other

A qualitative study examining the appeal of Embassy Regal "Reg" campaign to young people in Australia (Hastings, et al., 1994) found that the campaign appealed most to youth between the ages of 14-15. They enjoyed its humour and mockery of serious issues, including smoking. Based on their group interviews with 117 children and adults (10-55 years of age), the authors concluded that youths clearly identified with the advertisements, and this identification likely transferred to the brand. Regal was one of only two brands that they smoked and found acceptable.

In sum, both qualitative and quantitative studies examining the effects of advertising on adolescents suggest that the content of advertisements influence attitudes, beliefs, and values related to tobacco. They do so by portraying benefits of smoking that resonate with the issues and concerns of adolescents; namely, peer bonding, social approval, independence/ autonomy, self-image, body image, adventure-seeking, and normative behaviour.

2.2 DOES TOBACCO MARKETING INFLUENCE YOUTH?

A variety of research methodologies have been used to study the effects of tobacco promotion on youth. Rimpela et al. (1993) emphasize that the "effect of tobacco advertising has become the subject of critical scientific research only recently. The first empirical reports were published in the early 1980's and only a few teams have focussed their work on that theme". These authors conclude that the research that has been done to date provides for both theoretical and empirical evidence for a causal relationship:

> *"tobacco sales promotion seems to promote and reinforce smoking by the young....In fact, the dynamic tobacco market among children may even be the main target of tobacco sales promotion" (p.13).*

Other sources maintain that given the body of research evidence available today, there does appear to be a causal relationship between tobacco sales promotion and the smoking habits of young people. Those supporting this position include the 1994 Surgeon General's Report and the Institute of Medicine's report (1994) which both found there to be sufficient evidence to conclude that tobacco

promotion plays a significant contributory role in a young person's decision to use tobacco products.

Tobacco industry spokesmen claim there is not convincing evidence for a relationship between tobacco advertising and cigarette consumption. This ongoing dialogue between the tobacco industry and the academic community has led to a "dialogue of the deaf" (Rimpela, et al., 1993), whereby:

> *"tobacco industry spokesmen ask for direct demonstration of the effect and give no merit to indirect evidence. On the other hand, many of the health motivated researchers, referring to the complexity of the social and individual processes, state that there is no way to demonstrate a direct connection between advertising and smoking of children....the answer to the question about causality has to be based on indirect evidence and logical reasoning."*

The following review of current research thus examines some of this indirect evidence.

2.2.1 Recall and Recognition Studies

There is a significant amount of research that has been done that shows that young people are aware of, and respond to tobacco advertising. As cited in the 1994 Surgeon General's Report this research includes: a 1992 Gallup survey showed that 87% of the 1,125 adolescents surveyed nationwide recalled seeing one or more tobacco advertisements; and that over 90% of 12-13 year olds could name brand they had seen advertised (Pierce, 1993). The Surgeon General's report (1994) also examines a study by Chapman and Fitzgerald (1982) which found that children who reported smoking in the last two weeks were almost two times more likely to correctly identify the advertisements and complete edited slogans than were children reporting they had not smoked during that period. A study by Aitken, Leather, and O'Hagan (1985) conducted in Glasgow also found that large proportions of children were aware of tobacco advertisements. Aitken et al., (1987) found in a subsequent study that 83% of the 6-7 year olds and 91% of the 16-17 year olds recalled seeing certain ads. Goldstein et al., (1987) found in a survey of high school students that regular smokers recognized 61.6% of the tobacco ads while non-smokers only recognized 33%.

In Canada, despite the advertising ban, youth awareness of tobacco advertising is still significant. The 1994 Youth Smoking Survey (Health Canada, 1996) found that 49% of all youth aged 10-14 and 51% of those aged 15-19 report seeing advertisements for events sponsored by tobacco corporations, with a higher percentage of these ads seen by males. Youth recognition and response to the particular cigarette ads have also been studied. Pierce et al. (1991) analyzed data from the California Tobacco Survey which found that the percentage of respondents who named Camel as the most advertised brand was inversely related to age, with 23% of 16-17 year olds, to 20% for 18-25 year olds, to 10 % for those aged 45 and older. A study by Fischer et al. (1991) found that even very young children were aware of the Joe Camel campaign. The recognition rate for Old Joe ranged form 30% for three-year-olds to 91% for six-year-olds.

By age six, Old Joe was as well recognized as the silhouette of Mickey Mouse (the logo for the Disney Channel).

2.2.2 Effects of Advertising on Attitudes, Intentions and Behaviour of Youth

A study by Botvin, Goldberg, Botvin and Dusenbury (1993) explored the relationship between the exposure of adolescents to cigarette advertising and their smoking behaviour. A survey questionnaire was given to 602 junior high school students. The findings indicated that adolescents with high exposure to cigarette advertising were significantly more likely to be smokers than those with low exposure to cigarette advertising.

A recent study conducted by Pierce and Gilpin (1995) in California provides additional evidence that awareness of tobacco advertising and promotion among youth plays a role in adolescent smoking uptake. This study evaluated the influence of tobacco marketing and exposure to smokers on never-smoking adolescents' susceptibility to smoking. Data on 3,536 adolescent never-smokers were used from the 1993 California Tobacco Survey, which included questions on smoking history and inclinations. This study found receptivity to tobacco marketing and exposure to peers and family who smoke to be independently associated with susceptibility to smoking for never-smoking adolescents. The effects of receptivity to tobacco marketing were found to be stronger than those of exposure to smokers:

> *Tobacco marketing may be a stronger current influence in encouraging adolescents to initiate the smoking uptake process than demographic characteristics, perceived school performance, or exposure to other smokers in the peer or family network.*

A recent study by Unger, Johnson, and Rohrbach (1995) also provides some evidence regarding the direction of causality. In this study, 386 eighth-grade students in southern California completed ratings of advertisements as well as questionnaires with smoking and alcohol use measures. This study found that "susceptible non-users" (adolescents who have not made a firm commitment not to use a substance) liked the tobacco advertisements significantly more than non susceptible non-smokers and at a level comparable to that of the tobacco users: "the results of this study indicate that susceptible non-smoking adolescents are similar to current cigarette smokers in their reactions to cigarette advertisements". The authors state that these results may be interpreted as consistent with the hypothesis "that advertising influences vulnerable adolescents to experiment with substances".

The evidence regarding the association between youth awareness of advertising and smoking intentions and behaviours is strong, however, the issue of the direction of causality must be raised since the study methods have been survey research using cross-sectional data and not experimental studies. The issue is: whether smoking causes a person to become more sensitized to advertising; or whether exposure to advertisements leads to the smoking behaviour.

Klitzner, Gurenwald and Bamberger (1991) addressed this issue of the direction of causality in their study of 295 students in the United States. Using statistical modeling, this study found evidence that causality flowed in both directions.

Findings showed that experimentation with cigarettes affected the extent of recognition of information presented in the cigarette ads (selective exposure effects). In addition to these findings, "it appears that exposure to smoking advertisements does affect the likelihood that young people will smoke". Those who were better at recognizing advertised brands were more likely to have experimented with cigarettes, an effect due to their exposure to advertising.

Longitudinal studies are necessary to determine whether exposure to tobacco advertising influences later experimentation with tobacco use. Four longitudinal studies conducted in Australia and the U.K. provide additional evidence regarding the effects of advertising. Alexander et al. (1983) conducted a longitudinal school-based randomized trial with 5,686 students in New South Wales, Australia. The study found that children, aged 10-12 years old, who reported approval of cigarette advertising were twice as likely to initiate smoking over a one year time period than children who disapproved. Charlton & Blair (1989) conducted pre and post test questionnaires with 12 and 13 year olds in northern England to identify factors which influenced youth to experiment with smoking. The study found that for girls, four variables were significant predictors of smoking. These predictors were: having at least one parent who smoked, having positive views on smoking, cigarette brand awareness, and having a best friend who smoked. For boys, no variable consistently correlated with the uptake of smoking.

In a third longitudinal study, Armstrong et al. (1990) conducted a randomized controlled trial of a school-based educational program for the prevention of smoking in grade 7 children. Students (N=1,028) from 45 schools in Western Australia completed baseline and follow-up questionnaires at one and two years after participating in the educational program. The study found that adolescents who perceived that they were influenced by cigarette advertising were more likely to initiate smoking than those who did not: "the children's perceived response to cigarette advertising showed the strongest and most consistent evidence of an effect on the uptake of smoking by children who initially were non-smokers" (p.117).

Finally, a study of 640 Glasgow school children (Aitken, et al., 1991) examined intentions to smoke and recognition of cigarette advertising. At one year follow-up, those children who were more inclined to smoke between the time of the two interviews, tended to have been more aware of advertising at the first interview. The study concluded that cigarette advertising has predisposing, as well as reinforcing effects on children's attitudes towards smoking and their smoking intentions.

2.2.3 Analyses of Tobacco Marketing Campaigns and the Uptake of Smoking by Youth

The tobacco industry maintains that the sole purpose of tobacco promotion is to maintain and increase market shares of adult consumers. There is evidence, however, that brand advertising recruits young people to begin smoking. Epidemiological data has shown that adolescents consistently smoke the most

advertised brands of cigarettes (McCarthy, & Gritz, 1984; Baker, et al. 1987; DiFranza, et al., 1991).

A number of historical analyses of marketing campaigns and the subsequent uptake of smoking in youth have also demonstrated how the prevalence of use of certain brands (and of smoking altogether) increases following the introduction of advertisements for certain brands with appeals for young people. For example, an associated increase was seen for smokeless tobacco use amongst male adolescents following a major marketing campaign in the 1970's which focussed on "beginners" (Tye, Warner, & Glantz, 1987).

Recently, Pierce, Lee, & Gilpin (1994) conducted a study which identified trends in smoking initiation among 10-20 year olds which reflected the impact of specific targeting of tobacco advertising to women. Age of initiation of smoking data were collected from the U.S. National Health Interview Survey. These data were used to construct age-specific rates of smoking initiation for males and females from 1944 to the mid-1980's. The sample size for this study was 102,626. For women ages 18 to 20, initiation rates peaked in the early 1960's. For girls under 18, there was an abrupt increase smoking initiation around 1967. This was the same time that large-scale marketing of brands specifically aimed at women began. The initiation rates for females under 18 peaked around 1973, the same time that the sales of these brands peaked. In contrast, initiation rates amongst males did not show these patterns. Initiation rates for 18 to 20 year old males decreased during the middle to late 1960's. For boys younger than 16, little change in initiation rates was seen over the study period. The authors conclude that "the tobacco advertising campaigns targeting women, which were launched in 1967, were associated with a major increase in smoking uptake that was specific to females younger than the legal age for purchasing cigarettes" (p.608). Additional historical analysis (Pierce, & Gilpin, 1995) showed that smoking uptake in under-aged girls tripled during the period from 1926 to 1939, with the majority of the increase occurring during the Lucky Stripe campaign. This campaign used the slogan "Reach for a Lucky Instead of a Sweet" and targeted women's fears of gaining weight.

Hastings et al. (1994) conducted a study in Britain which examined a tobacco marketing campaign featuring a humorous character named "Reg". During the period in which this brand was advertised, smoking by 11-15 year olds in northern England increased from 8% to 10%. In southern England, where the ads did not appear, the smoking rate remained stable at 7%. The campaign was considered to have disproportionate appeal to children and the government requested that the campaign be withdrawn in accordance with the voluntary code held by the industry. The campaign was withdrawn as it contravened the code governing tobacco advertising which states that advertising must not appeal to children more than it does to adults. The campaign may also have had a direct impact on youth smoking.

2.2.4 Studies of Market Share and Brand Preference

In Canada, there have been no published studies specific to market share of tobacco products among young Canadians although there has been some work on brand awareness and preference among youth (Goldberg, 1995).

The 1994 Youth Smoking Survey (Health Canada, 1996) found young smokers to be very loyal to a particular brand with 86% of 15-19 year olds usually smoking the same brand. Daily smokers were found to be more loyal (90%) than non-daily smokers (74%). Despite high levels of brand loyalty, the study found that significant numbers of youth reported switching brands in the past year. For 15-19 year olds, 34% of males and 32% of females reported switching brands; for 10-14 year olds, 57% of males and 54% of females reported brand switching in the past year. Brand loyalty was also demonstrated by the brands smoked by youth: "Thirty-six percent of males and 34% of females smoked brand family C; 16% of males and 12% of females smoked brand family H; and 40% of males and 47% of females smoked brand family I". Rootman and Flay (1995) in their "Study on Youth Smoking" found that 88% of smokers in grades 7 and 9 in Ontario smoke either duMaurier (64%) or Player's (24%) cigarettes.

In the United States, there has been additional recent work on market share and brand preference among youth. One of the most recent and compelling studies has been Pollay et al.'s (1996) econometric study which provides further evidence that teen smoking behaviour is related to brand advertising: "it is the first study to examine the relationship between the intensity of brand-level cigarette advertising and the separate effects on brand market shares realized among adults and youth (Pollay, et al., 1996). This study included analysis of market shares among adults and teenagers for five years (1989-1993) for nine U.S. cigarette brands as well as time-series advertising expenditures and brand consumption levels compared to econometric studies done previously which used aggregate advertising and sales data. Results of this study indicate that 1) brand choices among youth are significantly related to cigarette advertising and 2) the relationship between brand choices and brand advertising is significantly stronger among teenagers than among adults: "cigarette brand shares of advertising voice are found to be significantly related to realized market shares, with advertising sensitivity about three times larger among teenagers than among adults (Pollay, et al., 1996)".

Previous studies which found similar results include a study by DiFranza et al. (1991) which found a substantial increase in the market share for Camels among persons less than 18 years following the increase in the marketing of that brand. Pierce, Lee, & Gilpin (1994) found in their study, conducted for the State of California, that 23.1% of the under 18 market in California purchased Camel as their brand. This represented a 230% increase from 1986, prior to the introduction of "Joe Camel".

A national analysis of changes in cigarette brand preferences of adolescent smokers was conducted for the period 1989-1993 (CDC, 1994). This study used data from U.S. CDC's Teenage Attitudes and Practices Surveys (conducted in 1989 and 1993). In 1993, it was found that for current smokers aged 12-18 years, Marlboro, Camel and Newport were the most frequently purchased brands for 86% of the adolescents. These three brands were also the most heavily

advertised brands in 1993. Nationwide, Marlboro was the most commonly purchased brand, Camel most commonly purchased in the West, and Newport in the Northeast. Substantial brand preference changes occurred from 1989 to 1993. There was a 13% decrease in the percentage of adolescents purchasing Marlboro, a 64% increase in the percentage purchasing Camel, and a 55% increase in the percentage purchasing Newport.

2.2.5 Studies of the Effects of Advertising Bans

In a number of countries, concerns about the potential influence of advertising on consumption has prompted nationwide bans on tobacco advertising. In 1975, Norway banned all tobacco advertising, sponsorship, and indirect tobacco advertising. In 1977, Finland banned all forms of advertising. Canada introduced its ban in 1989 on all tobacco advertising, sponsorship and indirect Canadian advertising of Canadian origin. New Zealand introduced its ban of advertising in print media originating in New Zealand, advertisements on posters and sponsorship of sports in 1990 (USDHHS, 1994). There has been evidence from some of these countries suggesting that such bans have had significant effects on consumption (FDA, 1995; Institute of Medicine, 1994; USDHHS, 1994). These studies have focussed on total cigarette consumption as the data did not allow for providing definitive information on how different subgroups (for example, youth) respond to advertising restrictions.

A study conducted by the Chief Economic Advisor of the Department of Health of the Government of Great Britain found that advertising tends to increase consumption of tobacco and that restrictions on advertising tend to decrease tobacco use beyond what would have occurred without regulation (Smee, 1992). This study consisted of an in-depth analysis of data from Norway, Finland, Canada and New Zealand, countries which had varying degrees of tobacco advertising restrictions and for which data was available. This study found that in 2 years following the introduction of the 1989 Canada's Tobacco Products Control Act, consumption was reduced 2.8% more than would have been expected had there been no advertising restrictions.

A study commissioned by the government of New Zealand (New Zealand Toxic Substances Board, 1989) examined the effect that restrictions of tobacco promotion had on tobacco consumption by looking at the trends in 33 countries between 1970 and 1986. According to the Institute of Medicine (1994) Report, the methodology of this study was "rigorous . . . accounting for income and tobacco price effects as well as health education effects (p.125)". The overall finding of this study was that "the greater a government's degree of control over tobacco promotion, the greater the annual average fall in tobacco consumption and in the rate of decrease of smoking among young people (p.125)."

An additional study conducted by Laugesen and Meads (1991) confirmed the findings of the New Zealand Board's study. This study found lower tobacco consumption levels to be associated with higher levels of restrictions on tobacco promotion. This study received criticism with regards to data and analysis (Mullins, 1992). The authors of the study responded to these criticisms with a

revised analysis which they report to confirm their original conclusions (Laugesen & Meads, 1992).

The evidence to date supports the notion that decreases in tobacco consumption are associated with tobacco promotion bans. Studying the effectiveness of legislative restriction on promotion from the tobacco industry to potential consumers is complex, especially when advertising restrictions often evolve in an ad hoc fashion, and information about the quantity and quality of tobacco industry sales promotion is often limited (Rimpela, et al, 1993). Despite the difficulties in obtaining direct evidence of the impact of tobacco sales promotion on smoking by the young, lead agencies and researchers support the idea of nationwide bans on tobacco advertising (American Psychological Association, 1995; USFDA, 1995; IOM, 1994; Pierce, & Gilpin, 1995; USDHHS, 1994).

2.2.6 Promotional Marketing and Youth

As restrictions on the promotion of tobacco products have been much more stringent in Canada than in the United States, Canadian tobacco companies have focussed on promoting the product through the sponsorship of sporting and cultural events with the formation of shell companies such as Player's Ltd. and du Maurier Ltd.

The 1994 Youth Smoking Survey (Health Canada, 1996) found the level of awareness by Canadian youth of events and activities sponsored by the tobacco industry to be significant. This survey consisted of data collection from 10-14 year olds in classrooms across Canada. Data for youth ages 15-19 were collected as a supplement to the Labour Force Survey. The total sample of the Youth Smoking Survey consisted of approximately 23,700 interviews.

This survey found that 49% of youth aged 10-14 and 51% of youth aged 15-19 report seeing advertisements for tobacco-sponsored events. A higher percentage of males than females, and a higher percentage of smokers than non-smokers reported sponsored events: 63% report seeing on television, 48% on billboards, 44% in newspapers and magazines, 27% in in-store displays and 25% in buses and bus shelters. While 50% of the total population aged 10-19 report seeing ads, only 40% of the total population could name any particular event. The 1994 Youth Smoking Survey also showed that youth generally believed that the purpose of billboards and signs advertising tobacco industry sponsored events was to advertise particular brands of cigarettes (85% of smokers and 83% of non-smokers). There were differences between smokers and non-smokers in that 60% of smokers agreed that "these billboards are a way of encouraging sports and culture in general" compared to only 45% of non-smokers.

A study on youth smoking (Rootman, & Flay, 1995) conducted in Ontario and Chicago, Illinois of 2,132 students in 71 classrooms found that youth misinterpret advertising of tobacco-company sponsored events as advertising for tobacco products: "53% mentioned that the Player's racing poster was about cigarettes and only 4% recognized it as being about Player's racing; 12% indicated that the du Maurier Jazz Festival poster was about cigarettes and only 2% recognized it as an advertisement for a jazz festival (p.5)".

Evidence from the United States also supports the conclusion that significant numbers of youth are being exposed to this type of marketing. The 1994 Surgeon General's Report describes some of this evidence. Davis and Jason (1988) found that although cigarette manufacturers argue that samples are not intended for nonusers or minors, there is little evidence that distribution is controlled. A 1992 Gallup poll survey of 1,125 adolescents nationwide, found that approximately one half of adolescent smokers reported receiving promotional items from tobacco companies, as had one in four of nonsmoking adolescents.

Two earlier studies also support observations that sponsorship activities do reach youth (Aitken, Leathar, & Squair, 1986; Ledwith, 1984). These two studies both found that young people were able to identify sponsored sports and the

sponsoring cigarette brand. More recently, DiFranza, et al. (1994) found in their interviews with 721 youths that children related their brand selection as being influenced by "print advertising, free sampling, promotional items, package design, and the implied health benefits of reduced-tar brands (p.334)".

Two more recent studies have examined the extent to which minors in the United States are exposed to and participate in tobacco promotion campaigns. In a random telephone survey of 1,047 minors and 290 young adults, Coeytaux, Altman, and Slade (1995) found the 83.5% of the minors surveyed were aware of at least one promotional campaign, 35% of the minors surveyed had participated in tobacco promotion campaigns, and 11% reported owning promotional items. (This result is lower than the 30% rate of ownership found the 1992 Gallup survey). Coeytaux, Altman, and Slade conclude that millions of young people in the United States, both smokers and non-smokers, possess and use such items, and that this type of advertising familiarized minors with tobacco products.

A study by Richards, et al., (1995) in the United States, examined awareness and participation of adolescents in the "Camel Cash" campaign of 1992. A total of 616 high school students were surveyed. The findings included that 39% of the respondents had heard of Camel Cash and 8.6% had collected Camel Cash. Both awareness and participation were highest among current smokers, followed by experimenters and then by never-smokers. A total of 32 students had purchased Camels specifically to get Camel Cash. The authors point out that the need to collect a large number of Camel Cash dollars in order to redeem prizes creates an incentive for young people to smoke more. As well, "the popularity of promotional items among non-smoking children and teenagers raises the possibility that non-smokers might buy their first pack of cigarettes solely to obtain a promotional item" (p.259).

Although research in the area of promotional marketing is new and relatively limited, it shows that levels of awareness among youth of tobacco promotional activities are significant. The participation of youth in tobacco sponsored events and promotions have been documented in the United States. Tobacco promotional marketing strategies will be an important area to monitor, both in terms of its proliferation as well as its effects on youth.

2.2.7 Plain Packaging and Youth Attitudes

The packaging of cigarettes has been an important marketing strategy in Canada, especially when previous legal restrictions on advertising and promotion placed limitations on marketing approaches. A series of six studies provide important preliminary evidence as to whether Canadian teens perceive packaging as influencing them and what they think about plain packaging (Goldberg, et al., 1995). Five studies used results from two surveys: a national survey of teens (n=1200) and a second survey of Vancouver teens who smoked (N=400). These studies addressed research questions concerning the impact of plain and generic packaging on the following intervening variables: awareness, recall, recognition, knowledge, beliefs, attitudes and images. The sixth analyzed industry effects and employed a historical analysis of precedents of tobacco industry activities. The major conclusions drawn from the survey data are that plain and generic packaging of tobacco products would likely decrease the incidence of smoking uptake by teens and increase smoking cessation. Findings from the industry effects study indicate that plain and generic packaging "would have a significant impact on the tobacco industry which would lead to significant effects on the industry's corporate strategies and competitive actions"(p.15).

The joint Ontario and Chicago Study (Rootman, & Flay, 1995) consisted of focus group discussions (a total of 52 focus groups) and a classroom survey (N=2,132 students). This study found that youth were generally aware of health warnings on packages with Canadian warnings being more effective at getting the attention of young smokers: "in the Chicago sample, the health warning was mentioned only 6% of the time compared to 83% of the time in the Ontario sample (p.6)". The plain packaging was found to project less imagery than regular packaging: "85% of Ontario students said the plain packaging was *more boring;* 78% said it was *uglier.* Sixty-four percent said *cool kids* would smoke cigarettes from the regular package. Some of the conclusions from this study are highlighted below:

- plain packaging would render ineffective one of the few tools that tobacco companies in Canada used to build an image for their products under the Tobacco Products Control Act.
- the evidence is strong that plain packaging of cigarettes would reduce the positive imagery associated with smoking particular brands for many young people.
- plain packaging also makes the package look more serious, which may mean the health warning on it is taken more seriously.

- one quarter of Grade 7 and 9 students in the survey said that young smokers would smoke less and one-third said that young non-smokers would be less likely to start, if all cigarettes were sold in plain packages. (p.10)

The findings from Rootman & Flay (1995) reinforced the findings from Goldberg et al., 1995 that plain packaging likely would decrease the number of youth starting and continuing smoking. As well, plain packages would eliminate the link that young people make between tobacco company-sponsored event advertising and cigarettes, by removing the associations of colour, fonts and logos which connect event advertising to specific brands of cigarettes.

2.3 RESEARCH SUMMARY

Our scientific conclusions are detailed in the tables following this section.

There is a substantial amount of research evidence that tobacco advertisements present positive images that are appealing to youth, and that youth smoke because they hope to convey a positive image. These conclusions are derived from self-report surveys, individual and group interview data, and ratings of advertisements. The majority of research is quantitative and has been based in the U.S. Over the past five years, there has been some research conducted with Canadian youth. Based on the results from these studies, there is no reason to believe that Canadian youth differ from U.S. youth in their perceptions and reactions to image advertising.

Evidence for the effects of marketing on youth smoking behaviour can be found across numerous research studies representing a wide range of methods, including survey research, longitudinal studies, historical and econometric analyses. The research evidence is strong that youth are aware of and recognize tobacco marketing. There is strong associational evidence that youth awareness and perceptions about advertising are linked with smoking intentions and behaviour. There is moderate evidence regarding the direction of flow of causality. Two studies (Aitken, et al., 1991; Klitzner, et al., 1991) suggest that marketing influences are both predisposing and reinforcing of smoking behaviour, ie. that causality flows in both directions. There is also strong evidence that marketing practices are associated with youth smoking behaviour. Historical, marketing trend analyses have shown targeted ad campaigns to be associated with increases in smoking behaviour among youth. There is also strong evidence that brand marketing is associated with disproportionate market share among the young. The evidence from cross national econometric studies associating nationwide bans with decreases in tobacco consumption is moderate. There has been some criticism regarding study methods and it is difficult to determine the effects of restrictions specifically on youth consumption. Finally, tobacco industry use of promotional marketing strategies has grown substantially in recent years. There is moderate evidence that youth are being exposed to promotional marketing in large numbers. This is a new area of research for which additional study is required, especially in the Canadian context.

Although no one study or method in this body of research provides definitive conclusions, the cumulative evidence across these varied methods and research questions supports strongly the conclusion that marketing plays a significant role in youth smoking behaviour, both in terms of initial experimentation and brand preference.

DOES TOBACCO MARKETING INFLUENCE SMOKING PREVALENCE AMONG YOUTH AGED 21 OR LESS?

CONCLUSIONS

Youth are aware of and recognize tobacco marketing.	Gallup, 1992 Surgeon General Report, 1994 Pierce, 1993 Chapman & Fitzgerald, 1982 Aitken et al., 1985, 1987 Health Canada, 1996 Goldberg et al., 1995 Rootman & Flay, 1995	Strong evidence.
Youth awareness of advertising (includes: exposure, recognition and perceptions) is associated with smoking intentions and behaviour.	**Association evidence only:** Goldstein, 1987 Pierce, 1991 Fischer, 1991 Botvin et al., 1993 Aitken & Eadie, 1990 Evans et al., 1995 Unger, Johnston & Rohrbach, 1995 **Studies addressing the direction causality of advertising effects:** Aitken et al., 1991 Alexander et al., 1983 Armstrong et al., 1990 Charlton & Blair, 1989 Klitzner, Gurenwald & Bamberger, 1991	Strong evidence. Moderate evidence.

Marketing Practices are associated with youth smoking behaviour.		
• Adolescents smoke the most advertised brands	McCarthy & Gritz, 1984 Baker et al., 1987 DiFranza et al., 1991 CDC, 1994	Strong evidence.
• Brand marketing is associated with disproportionate market share in the young.	DiFranza, 1991 Pierce, 1994 CDC, 1994 Pollay, 1996	Strong evidence.
• Targeted ad campaigns are associated with increases in smoking among youth.	Tye, Warner & Glanz, 1987 Pierce & Gilpin, 1994, 1995 Hastings et al., 1994	Strong evidence.
Nationwide bans are associated with decreases in tobacco consumption.	Smee, 1992 Laugusen & Meads, 1991 New Zealand Toxic Substances Board, 1989	Moderate evidence.
Effects of Promotional Marketing		
• Youth are exposed to and participate in tobacco promotion campaigns.	Coeytaux, Altman & Slade, 1995 Richards, et al., 1995	Moderate evidence.
• Youth brand selection is associated with promotional marketing strategies	DiFranza et al., 1994	Weak evidence - new area of research.

HOW DOES TOBACCO MARKETING INFLUENCE YOUTH?

CONCLUSIONS

Youth smoke because they hope to convey a positive image.	Chassin et al., 1982 Barton et al., 1982 Belk, 1984, 1988 Levy, 1986 Solomon, 1983	Strong evidence.
Tobacco advertisements present positive images that are appealing to youth.	Pollay & Lavack, 1993 (qualitative) Potts, Gillies & Herbert, 1986 Zinser, Kloosterman & Williams, 1991 Evans et al., 1995 Charlton, 1986 Charlton & Blair, 1989 Goldberg et al., 1995 Hastings et al., 1994 Ho, 1994 IOM, 1994 Pechmann & Raineshwar, 1994 Schooler et al, 1996 USDHHS, 1994 USFDA, 1995	Strong evidence.
Adolescents are more attuned to advertising and more subject to social influences than other age groups.	Schudson, 1993 Pollay et al., 1996	Strong evidence, particularly Pollay study.

Adolescent girls prefer image oriented more than quality-oriented tobacco advertisements. Boys prefer quality-oriented more than image-oriented advertisements.	Covell, Dion and Dion, 1994 Covell, 1992	Moderate evidence, more research needed.
Adolescents judge age of models in cigarette ads as being younger than 25 years old.	Mazis et al., 1992	Moderate, single study.
Adolescent smoker responses to advertisements differ according to motive for smoking	Ho, 1994	Moderate, single study.

3.0 FUTURE RESEARCH PRIORITIES

3.1 LONG TERM RESEARCH AGENDA

The Advisory Network identified several priorities for research that addresses tobacco marketing to youth.

- The greatest priority is a mix of qualitative and quantitative research to better understand how marketing influences youth. Issues include the effects of different kinds of marketing, and questions of the interplay between marketing and psychosocial developmental needs (ie. self-esteem, autonomy, peer affiliation, etc.).

  This priority reflected the major feature of the conceptual framework supported by the Advisory Network: the effects of marketing cannot be understood in isolation, so research needs to study the complex interplay of personal and environmental factors, while focusing on specific, pivotal research questions such as how marketing images attract youth. There is a clear need to understand how different kinds of marketing (especially advertising versus promotion) produce different effects.

- The two most highly recommended questions are quite specific:

  - In the absence of tobacco marketing, is there less tobacco use uptake by youth?
  - What is the effectiveness of counter-marketing campaigns?

  Two additional research questions were recommended:

  - To what extent does U.S. advertising infiltrate and influence Canadian youth?
  - What are the longitudinal effects of marketing on youth as they mature, and as their experience with tobacco use changes?

- The Advisory Network did not encourage further research on regulatory aspects of tobacco strategy (eg. plain packaging, health warnings). The Network may simply feel that necessary research already has been done.

Given these questions, we recommend the following research priorities:

1. **Effects of An Absence of Marketing.** Cross-country econometric studies to study the relationships between level and type of tobacco marketing and uptake among youth.

2. **Image Counter-marketing.** Counter-marketing campaign applied research to develop and test image based strategies, and population *monitoring of youth tobacco uptake* to determine campaign impacts.

3. **Marketing In Context.** A program of qualitative and quantitative research to deepen understanding of the complex interplay of marketing,

environmental, and personal factors which influence the initiation process. A first step in this program of research is detailed below as an initial qualitative study. Ongoing research is required both to deepen understanding, thus enabling continuous refinement of policies and programs, and to maintain a current understanding as marketing practices change.

4. **Age-Specific Effects.** Longitudinal survey research to systematically study, in the Canadian youth population, the full set of marketing, environmental, and personal factors as they change with age and marketing practices.

5. **U.S. Marketing and Canadian Youth.** A focused program of qualitative and quantitative studies to examine the influence of U.S. tobacco marketing on Canadian youth.

3.2 IMMEDIATE RESEARCH AGENDA

The Advisory Network provided good consensus on the top priority for a qualitative study, as summarized by the research proposed in the following study outline.

Purpose

The proposed focus group study is designed to understand current meanings of tobacco marketing approaches for Canadian youth.

Design

Focus groups conducted across the country, balanced by smoking history, age (10-12, 13-15, 16-18, and 19-21 years), gender, socioeconomic status, ethnocultural group, region, and urban-rural variables. Smoking intentions can be used as an additional variable for data analysis and interpretation. Focus groups should be structured to include relative strangers so that existing cliques and group dynamics do not bias responses unduly. Focus group leadership is a key consideration: with leaders being either slightly older, well trained youth, or particularly gifted adult focus group leaders known to be effective with adolescents.

Preliminary research would provide a content analysis of several types of marketing to which youth respond. This research could be used to develop discussion aids for the focus groups (eg. word lists and collages, analogies such as a "car" to discuss image, communication strategy concept statements, a brief one-page survey early or midway through the discussion to focus attention on future areas for the conversation).

Groups should last 45-60 minutes (90 minutes maximum for older youth) in a youth-oriented environment away from institutions run by adults (ie schools, churches). Groups should be no larger than 7 or 8. Ground rules need to be established (eg. all ideas are good ideas, confidentiality). Warm-up activities are important to help youth feel comfortable. There need to be carefully selected incentives to ensure enthusiastic youth participation.

Questions should be designed to address several, inter-related issues:

- what are the meanings and images youth perceive in tobacco marketing?
- how do these meanings correspond to the important values, developmental tasks, and functional meanings/utilities of youth at each age?
- how do marketing and other person-environment factors interact to promote "friendly familiarity"?
- how do marketing and "peer pressure" interact?
- how do different kinds of marketing interact to influence experimentation?
- how do youth participate in different kinds of marketing, particularly promotion and event sponsorship?

Preliminary Focus Group Questions

1. What tobacco ads can you remember?
   (probe recall of specific ads)
2. Do you see other kinds of tobacco marketing?
   (probe recall of specific types of marketing, level of participation)
3. What are these ads and marketing saying to you? What ideas about using tobacco do they make you think of?
4. How do these messages relate to other important things going on in your life or the lives of your friends?
   (probe developmental tasks/personal needs, peer culture, functional use)
5. What kind of advertisements might make it less likely you would use tobacco?

These latter two questions are cognitively complex, and will challenge younger adolescents. They may need to be broken down into simpler component questions to collect the necessary information.

The basic form of these five questions will provide the required information. The precise wording of the questions and other procedural details must be refined in a pretesting protocol before the focus group study itself is conducted.

The proposed focus groups are an essential first step in what we see as the single most important priority for future research: an international, collaborative project which combines both qualitative and quantitative methods to provide long-term monitoring of social-environmental factors influencing tobacco use. An international study (e.g. all English-speaking, developed countries) is critical, to provide heterogeneity of social-environmental influences at the same time point, and to monitor differences in tobacco use behaviour over time as influences change.

4.0 CONCLUSIONS AND RECOMMENDATIONS

It is the conclusion of the National Cancer Institute of Canada's project team that tobacco marketing in Canada does influence tobacco initiation in youth under the age of sixteen, and older. The weight of evidence supports three general conclusions:

- a total ban on tobacco marketing would significantly reduce messages targeted at youth which promote initiation of tobacco youth.
- a total ban on tobacco marketing would significantly contribute to a reduction in the prevalence of tobacco use among youth.
- a total ban is the only reasonable policy from a population health perspective, given the complex, contextual nature of marketing influence, and the likelihood that partial bans will simply result in a shift of emphasis to alternative methods of marketing.

We offer the following recommendations for future research.

Recommendation 1

Canada should collaborate with the U.S. in research and policy planning.

There is a unique window of opportunity with similar research and policy development in the two countries. This project was able to take advantage of a U.S. Centre for Disease Control-funded project at Columbia University which was reviewing essentially the same literature. Our focus on the need to bring together marketing and behavioural science research was complemented by their mandate to develop sophisticated counter-advertising strategies with marketing experts. Similarly, we were able to collaborate with Office of Smoking and Health officials given the very similar policy priorities of the two governments.

The second major reason for recommending collaboration is that the effectiveness of Canadian policy regarding tobacco marketing and youth would be significantly enhanced to the extent that media policy is coordinated between the two countries.

It will be important in designing collaborative research to ensure that the unique features of Canada's marketing context are translated into the design, methodology, and conclusions. Each country has a unique mix of socio-environmental factors which interact with tobacco marketing to influence youth.

Recommendation 2

Canada should convene a joint meeting of Canadian and U.S. experts working on tobacco marketing and youth strategy.

The tight timeframe for the current project required a clear focus on specific research questions. Before proceeding to future research or policy development, it is only prudent to involve a wider range of experts and perspectives in a consensus conference. Specifically, we recommend that representatives from the Advisory Network assembled to support the National Cancer Institute of Canada project, and the Columbia University

project, come together after the Columbia consultation process is complete (June, 1996).

The workshop should:

- reach consensus on conclusions reached by the two projects.
- reach consensus on current tobacco marketing and youth trends.
- pinpoint current international research and policy opportunities and priorities.

Recommendation 3

One or more of the Canadian agencies with a tobacco control mandate should commission national focus group research to understand the meanings of tobacco marketing for youth.

As detailed above, the study design should focus on two imperatives:

- the need for current data to guide program and policy development.
- the need for well-designed studies which study tobacco marketing in the broader context of adolescent development and social influence.

Recommendation 4

Canadian tobacco research agencies should conduct or commission studies of past and current tobacco marketing practices in Canada.

One very useful source of information on how tobacco marketing affects youth comes from the study of actual marketing. The proposed research should have several key features:

- comparable frameworks for studying meanings and images should be used for both the proposed focus groups and marketing practices studies.
- strong methodology should link changes in marketing practices over time to changes in youth smoking behaviour.
- the marketing practices methodology should be

designed for future use tracking the impact of changes in tobacco marketing policy and practice.

Recommendation 5

Canadian agencies funding tobacco prevention research should develop a cooperative three to five year research agenda.

The Advisory Network recommended a mix of qualitative and quantitative studies. Their recommendations provide important input to the process of developing a sustained research program focused on tobacco marketing and youth.

Recommendation 6

Recommendation 3 should be extended to begin development of an international, longitudinal study of marketing effects.

One or more Canadian tobacco research agencies should take the lead in a collaborative project which combines both qualitative and quantitative methods to provide long-term monitoring of social-environmental factors influencing tobacco use. An international study (eg. involving all English-speaking, developed countries) is critical, to provide heterogeneity of social-environmental influences at the same time point, and to monitor differences in tobacco use behaviour over time as influences change.

Prospective studies such as these provide the best research and development behavioural science tool for the future evolution of tobacco marketing policy.

Recommendation 7

Canada should collaborate in cross-national studies of the historical relationships between tobacco marketing and tobacco consumption.

It was the opinion of the Advisory Network that, until the prospective research in Recommendation 6 has progressed sufficiently, the strongest available research methodology is cross-national studies of marketing

tobacco use relationships, to document the impact marketing has on prevalence and rate.

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APPENDIX I: ADVISORY NETWORK

Health Canada
Youth & Tobacco Marketing Project

Core Team

Dr. Allan Best
The Organization Development Group
Wilson Banwell

Dr. Roy Cameron
Centre for Behavioural Research and
Program Evaluation

Dr. Chris Lovato
Institute of Health Promotion Research
University of British Columbia

Mr. Steve Manske
Health Behaviour Research Group
University of Waterloo

Ms. Lise Olsen
Institute of Health Promotion Research
University of British Columbia

Advisory Network

Canada

Dr. Steve Brown
Department of Statistics
University of Waterloo
(Statistics)

Ms. Josie d'Avernas
RBJ Health Management Associates
(Health Promotion)

Dr. Jeffrey Derevensky
Department of Educational &
Counselling Psychology
McGill University
(Developmental Psychology)

Dr. Larry Green
Institute of Health Promotion Research
University of British Columbia
(Health Education)

Dr. Bryan Hiebert
Educational Psychology
University of Calgary
(Educational Psychology)

Dr. Stephen Kline
Department of Communications
Simon Fraser University
(Communications)

Dr. Larry Peters
Institute of Health Promotion Research
University of British Columbia
(Survey Research)

Dr. Rick Pollay
Commerce Department
University of British Columbia
(Marketing)

Dr. Mark Zanna
Department of Psychology
University of Waterloo
(Social Psychology)

Advisory Network- cont'd

Australia

Dr. Simon Chapman
Department of Community Medicine
University of Sydney
(Public Health)

Dr. David Hill
Center for Behavioural Research
in Cancer
Anti-Smoking Council of Victoria
(Health Behaviour)

U.K.

Dr. Amanda Amos
Department of Community Medicine
The University of Edinburgh
(Public Health)

Dr. Gerard Hastings
Centre for Social Marketing
University of Strathclyde
(Social Marketing)

U.S.

Dr. David Altman
School of Public Health Sciences
Bowman Gray University
(Health Promotion)

Dr. Laurie Chassin
Psychology Department
Arizona State University
(Developmental Psychology)

Dr. Renée Cherow-O'Leary
Consultant in New York City
(Communications & Public Policy)

Dr. Greg Connolly
Tobacco Control Department
Massachusetts Department of
Public Health
(Public Health)

Dr. Brian Flay
Prevention Research Centre
The University of Illinois at Chicago
(Health Program Evaluation)

Judy Harrigan
Harrigan Bodick Inc.
(Developmental Psychology,
Marketing Research)

Dr. Howard Leventhal
Institute of Health
Rutgers University
(Health Psychology)

Dr. Edward Litchenstein
Oregon Research Institute
(Health Psychology)

Dr. Cheryl Perry
Department of Epidemiology
University of Minnesota
(Curriculum Design)

Dr. John Pierce
Cancer Prevention and Control Program
University of California
(Tobacco Control)

Dr. Larry Wallack
School of Public Health
University of California at Berkeley
(Marketing)

Dr. Kenneth Warner
Department of Health Management
& Policy
University of Michigan
(Economics)

APPENDIX II: ANNOTATED BIBLIOGRAPHY

Reference

Evans, N., Farkas, A., Gilpin, E., Berry, C., & Pierce, J. P. (1995). Influence of tobacco marketing and exposure to smokers on adolescent susceptibility to smoking. *Journal of the National Cancer Institute, 87,* 1538-1545.

Key Findings

- receptivity to tobacco marketing and exposure to peers and family who smoke are independently associated with susceptibility to smoking for never-smoking adolescents; the effects of receptivity to tobacco marketing are stronger than those of exposure to smokers
- 84% of never-smoking adolescents indicated that tobacco advertisements promote at least one benefit of smoking

Purpose & Type of Study

- purpose: to evaluate the relative influence of marketing of tobacco and exposure to smokers on never-smoking adolescents' susceptibility to smoking.
- type: survey

Description of Participants & Time Frame

- subset of adolescents who were classified as never smokers on the California Tobacco Survey, n=3536
- 51.3% female, 12-17 years old, 54.2% non-Hispanic white (26.2% Hispanic, 6.7% Black)
- California Tobacco Survey was representative of the California population of adolescents – present analysis representative of the sub-population of never smokers
- survey data from 1993

Methods of Research

- logistic regression on survey data
- indices of receptivity to tobacco advertising and exposure to family and peer smoking assessed for their independent ability to predict susceptibility to smoking, controlling for sociodemographic variables (age, sex, and race/ethnicity), and school performance
- susceptibility to smoking defined by responses to survey items about the possibility of deciding to try a cigarette soon or smoking one offered by a friend
- quality of study: high

Results

- both exposure to smokers and receptivity to tobacco marketing were independently associated with susceptibility to smoking
- the effects of exposure to smokers and receptivity to tobacco marketing were additive – there was no interaction between them
- those exposed to both family and peer smoking are 1.89 times more likely to be susceptible to smoking and those who score high on the Receptivity to Tobacco Index are 3.91 times more likely to be susceptible
- 84% agreed that cigarette advertisements promote at least one benefit of smoking with the message that smoking is enjoyable (72.8%) and smoking makes people feel comfortable in social situations (67.5%) receiving the most recognition
- 60% of 12-13 year old never smokers named a favourite cigarette advertisement; 40% specified which brand they would buy; 15.2% indicated they would be willing to use products promoting tobacco products

Conclusions/ Comments

- tobacco marketing is independent of and may be a stronger influence on never smokers than family and peer smoking or demographic characteristics

Reference

Laugesen, M. & Meads, C. (1991). Tobacco advertising restrictions, price, income and tobacco consumption in OECD countries, 1960-1986. *British Journal of Addiction, 86* , 1343-1354.

Key Findings

- advertising restrictions are significantly effective in lowering tobacco consumption per capita in OECD countries

Purpose & Type of Study

- purpose: determine if advertising restrictions/bans lower tobacco consumption per capita in Organization for Economic Cooperation and Development (OECD) countries
- type: pooled cross-section time-series analysis

Description of Participants & Time Frame

- 22 countries of the OECD (including Canada)
- 1960-1986

Methods of Research

- multivariate analysis
- tobacco product consumption per adult (15 years and older) was related to the following explanatory variables: (a) advertising restriction score (an index of the number and nature of restrictions ascertained from published legislation and information from health agencies) (b) real price of tobacco products (c) effective personal income (d) percentage of the population > 65 years (e) percentage of females in the workforce (f) ratio of manufactured cigarettes to total tobacco consumed, and (g) time
- quality of study: medium

Results

- since 1973 advertising restrictions have had a significantly negative impact on per capita tobacco consumption in OECD countries
- from 1960-1971 advertising restrictions were not associated with decreased consumption

Conclusions/ Comments

- advertising restrictions can be increasingly effective over time
- if taxes were raised in all countries such that the real price of tobacco became equal to that of the country with the highest real price, and a total ban on tobacco promotion were put in place, tobacco consumption across all OECD countries would fall by 40%

Reference

Charlton, A. & Blair, V. (1989). Predicting the onset of smoking in boys and girls. *Social Science Medicine, 19,* 813-818.

Key Findings

- females aged 12-13 are influenced to experiment with smoking by awareness of cigarette brands, holding positive views on smoking, parental smoking, and having a best friend who smokes
- no variables measured in the study predicted 12-13 year old male smoking initiation

Purpose & Type of Study

- purpose: identify factors which influence male and female youth respectively to experiment with smoking
- type: prospective, longitudinal, pre-post-test survey

Description of Participants & Time Frame

- random sample of 29 state secondary schools in northern England
- all second year pupils completed surveys - current analysis on those who reported never smoking at pretest n=1,390 (65% of original sample)
- 53.5% female, aged 12-13 years
- pre 1989 (year not given)

Methods of Research

- logistic regression
- pretest non-smokers responses to 9 measures were used to predict uptake of smoking four months later
- variables included: (a) health effects knowledge (b) cigarette brand awareness (c) favourite advertisements (d) parental smoking (e) smoking by best friend (f) group – received anti-tobacco lessons or not (g) holds positive views on smoking (h) holds negative views on smoking (i) viewing of tobacco sponsored sports
- quality of study: high

Results

- for males, no variable predicted uptake of or experimentation with smoking though having a best friend who smoked was most frequently associated
- for females, four variables were significant predictors of smoking: (a) naming at least one cigarette brand, (b) having at least one parent who smoked (c) holding positive views on smoking, and (d) having a best friend who smoked

Conclusions/ Comments

- for females, tobacco advertising may be the source for both cigarette brand awareness and positive views on smoking
- positive views on smoking included the beliefs that smoking calms nerves and keeps weight down

Reference

Centers for Disease Control and Prevention (1994). Changes in the cigarette brand preferences of adolescent smokers – United States, 1989-1993. *Journal of the American Medical Association*, 272,843-844.

Key Findings

- in 1993, in the U.S., the three most purchased cigarette brands by adolescents were Marlboro, Camel, and Newport; these were also the three most advertised brands
- changes in adolescent preferences for Marlboro and Camel cigarettes between 1989 and 1993 seem more reflective of changes in advertising expenditures than of changes in overall market share

Purpose & Type of Study

- purpose: evaluate brand preference changes for adolescent smokers using data from the Teenage Attitudes and Practices Surveys (TAPS, TAPS-II)
- type: cross-sectional, archival

Description of Participants & Time Frame

- current analysis on all 12-18 year olds who completed either survey (TAPS, n=9135, TAPS-II, n=7311), n=16,446
- representative sample of American households weighted for national estimates
- data presented for black, white, and Hispanic adolescents
- TAPS was conducted in 1989, TAPS-II in 1993

Methods of Research

- data on knowledge, attitudes, and practices regarding tobacco were collected via telephone interviews
- descriptive statistics weighted to provide national estimates
- quality of study: medium

Results

- in 1993, 86% of adolescent smokers purchased Marlboro, Camel, or Newport cigarettes; these three brands accounted for 35% of overall market share for the same year
- from 1989 to 1993 there were substantial changes in brand preference among adolescents: 13% decrease in the number of adolescents purchasing Marlboro, 64% increase for Camel, and 55% increase for Newport

Conclusions/ Comments

- in 1993, Marlboro, Camel and Newport were ranked 1st, 2nd, and 3rd respectively in both purchases by adolescents and in amount of advertising but were ranked 1st, 6th, and 7th respectively for overall market share
- changes in adolescent brand preference imitate changes in brand-specific advertising expenditures for two brands: Marlboro advertising decreased from 1989 to 1993 by 24.5% (to $75 million) while Camel advertising increased by 37.2% (to $43 million)
- increase in preference for Newport cigarettes does not reflect the decrease of 28.6% (to $35 million) in advertising expenditures, though this may have been obscured by regional differences

Reference

Pierce, J. P. & Gilpin, E. A. (1995). A historical analysis of tobacco marketing and the uptake of smoking by youth in the United States: 1890-1977. *Health Psychology, 14,* 500-508.

Key Findings

- historically significant increases in rates of initiation of smoking in gender- and age-specific groups can be shown to be coincident with major tobacco marketing campaigns

Purpose & Type of Study

- purpose: investigate historical evidence for the effect of major tobacco marketing campaigns on age- and gender- specific rates of smoking initiation
- type: archival, cross-sectional

Description of Participants & Time Frame

- surveys from which data were drawn for this analysis were representative of the U.S. civilian, non-institutionalized, population aged 20 years and greater, n=165,876
- 5 distinct time periods analyzed: pre 1910, 1910-1925, 1926-1939, 1940-1967, 1968-1977

Methods of Research

- incidence of smoking data determined from national surveys (Current Population Survey, National Health Interview Surveys) of adults which included an age of initiation question
- male and female initiation rates plotted for each two year interval (1910/11 - 1976/77)
- periodwise regression analysis
- results related to major tobacco marketing campaigns
- quality of study: medium

Results

- 17% of males born before 1890 initiated smoking prior to 18 years of age compared to less than 0.5% of females; tobacco advertising during this time period focused on males
- throughout the period between 1910-1925, the initiation rate for males aged 14-21 steadily increased at a significantly faster rate compared to females of the same ages; in 1912 Camel brand cigarettes launched a major marketing campaign aimed at males
- females aged 14-21 showed significant increases in rates of initiation for the time period 1926-1939 (rates for girls under the legal age to purchase cigarettes tripled) while male rates showed no increases; in the mid-1920's Chesterfield and Lucky Strike introduced marketing campaigns which were the first to be targeted to females
- during 1968-1977, females aged 14-17 continued to initiate smoking at an increasing rate while rates for males and females over age 18 decreased; this time period is characterized by large-scale marketing campaigns targeted to women which may have influenced younger females and increasing public education regarding the health effects of tobacco which may have effected males and females older than 18

Conclusions/ Comments

- changes in rates of smoking initiation among gender- and age- specific groups can be related to tobacco marketing campaigns

Reference

Pierce, J.P., Lee, L., & Gilpin, E.A. (1994). Smoking initiation by adolescent girls, 1944 through 1988: An association with targeted advertising. *Journal of the American Medical Association, 271,* 608-611.

Key Findings

- dramatic increases in smoking initiation rates in young females were associated with the launch of female targeted ads and brands
- the association is specific to females

Purpose & Type of Study

- purpose: to identify trends in smoking initiation among youths aged 10-20 and the possible association with tobacco marketing campaigns targeted to women
- type: archival, cross-sectional, secondary analysis of survey data (National Health Interview Surveys)

Description of Participants & Time Frame

- surveys from which data were drawn were representative of the noninstitutionalized population in the United States, n=102,626
- survey years 1970, 1978, 1979, 1980, 1987, and 1988
- respondents aged 20-50 years at time of survey

Methods of Research

- based on the age at which respondents reported starting to smoke, individual smoking status was calculated for each calendar year from 1944 to 1988
- initiation rate for each age and gender group was determined from 10-20 years of age for 1944 to 1988
- quality of study: medium

Results

- smoking initiation rates for 18-20 year old females remained stable or rose slightly from 1944 until the mid 1960's when they started to steadily decline through 1988
- initiation rates for females 10-17 were low and largely stable from 1944-1967, after 1967 rates rose rapidly for all 11-17 year old females until they leveled off in 1974 (e.g. 110% increase for 12 year olds)
- the overall initiation rates for males were higher than for females until 1975
- during 1967-1973 for males aged 15-17 there were slightly increased initiation rates (e.g. 20% for 15 year olds)
- initiation rates for males 18-20 years old decreased during the middle to late 1960's

Conclusions/ Comments

- the tobacco industry introduced and began to advertise two women's brands of cigarettes in 1967 - this is the same year in which a major uptake of smoking specific to females under age 18 was observed
- this increase in initiation rates for the years following 1967 is not seen for females 18 and older which may indicate that the marketing campaigns were only effective for younger females

- the lack of increase in 18-20 year old females might be explained by this age group due to a protective effect of maturity for members who were college bound
- advertising for males was maintained from 1967-1973 - only small rate increases were seen in this group
- by 1974 per capita cigarette consumption declined consistently, perhaps a lagged effect of an electronic media advertisement ban

Reference

Mazis, M. B., Ringold, D. J., Perry, E. S., & Denman, D. W. (1992). Perceived age and attractiveness of models in cigarette advertisements. *Journal of Marketing, 56,* 22-37.

Key Findings

- 17% of models in cigarette advertisements were judged to be younger than 25 years of age
- models who are perceived to be younger are more likely to be featured in advertisements in publications with younger readership

Purpose & Type of Study

- purpose: to measure consumer perception of the ages of models in cigarette ads; examine whether there is a relationship between perceived age of model, brand characteristics, and media factors; and assess potential impact of advertisements which may be targeted to youth
- type: cross-sectional survey

Description of Participants & Time Frame

- a quota sample with an equal number of male and female participants in each of 7 age categories, n=561
- recruitment and testing took place in a shopping mall in a suburban area of a large east coast U.S. city
- the sample was representative of the U.S. population in percentage of smokers, racial composition, gender, and age but not representative in education or income (sample higher on both)
- advertisements were from periodicals published in October, 1987 (year of study not given)

Methods of Research

- 50 cigarette advertisements from 65 publications were chosen according to a set of criterion which included that models' faces had to be clearly visible; the ads promoted 12 different brands of cigarettes
- respondents were asked to estimate the age of the model(s) in each advertisement and judge their attractiveness
- responses were associated with respondent age, brand related factors (e.g., tar level), and audience related factors (e.g. mean age of audience of publication) in a multivariate analysis
- quality of study: medium

Results

- a positive and significant relationship was found between perceived age of models and the average median audience age; young looking models tend to be featured in media that are read by young audiences
- 17% of models were judged to be significantly younger than age 25 (the industry's advertising code specifies that models who are or appear younger than 25 should not be used in ads)
- certain brands (Lucky Strike, Kool Milds, Virginia Slims) tended to have models perceived to be younger
- younger models were rated as equally attractive by both older and younger respondents; older models were rated as less attractive by younger respondents compared to older ones

Conclusions/ Comments

- findings are consistent with the charge that tobacco companies target their advertisements to youth – advertisements for menthol brands (which are known to be preferred by younger smokers) feature younger models compared to regular brands and younger models are more often in publications read by younger audiences

Reference

Covell, K., Dion, K. L., & Dion, K. K. (1994). Gender differences in evaluations of tobacco and alcohol advertisements. *Canadian Journal of Behavioural Science, 26,* 404-420.

Key Findings

- females, aged 12-16, have a stronger preference for and rate as more persuasive, lifestyle tobacco advertisements compared with quality advertisements; male adolescents and adults do not express this extra preference for lifestyle advertisements
- this increased preference may make adolescent females more vulnerable to lifestyle advertisements – they may internalize the positive messages about smoking more readily than other groups

Purpose & Type of Study

- purpose: to examine preferences and ratings of persuasiveness for tobacco and alcohol advertisements for gender and/or age differences
- type: cross-sectional survey

Description of Participants & Time Frame

- convenience sample of visitors to the Ontario Science Centre; n=75 adolescents, 75 parents (one parent of each of the adolescent respondents)
- adolescent respondents: aged 12-16, 54.7% female
- adult respondents: 52% female, primarily middle class
- only 1 adolescent and 5 adults reported current use of tobacco
- 1994 or earlier (year not given)

Methods of Research

- multivariate analysis
- theoretical basis in several developmental theories, particularly Elkind's stage theory
- respondents rated tobacco and alcohol advertisements on their appeal and perceived persuasiveness
- two types of advertisements were presented: those that promote the product's image and those that promote the product's qualities
- quality of study: medium

Results

- both adolescents and adults liked the image advertisements more than the quality advertisements; they also perceived that the lifestyle advertisements would be more persuasive to most people than the quality advertisements
- adolescent females showed a stronger preference for image advertising compared to quality advertising than adolescent males and adults; adolescent females also gave higher ratings to the persuasiveness of lifestyle advertisements compared to quality advertisements than adolescent males and adults

Conclusions/ Comments

- lifestyle advertising may encourage positive attitudes about smoking in adolescent females; positive attitudes in turn may contribute to smoking initiation
- conclusions are tentative because relationships are correlational and study is reliant on a small convenience sample

Reference

Botvin, G. J., Goldberg, C. J., Botvin, E. M., & Dusenbury, L. (1993). Smoking behavior of adolescents exposed to cigarette advertising. *Public Health Reports, 108,* 217-224.

Key Findings

- exposure to cigarette advertisements in popular periodicals is significantly correlated with reported smoking behaviour in grades 7 and 8 students
- adolescents who are highly exposed to cigarette advertisements are almost 2 times more likely to be smokers than adolescents who have lower exposure

Purpose & Type of Study

- purpose: explore the relationship between exposure to tobacco advertisements in popular periodicals and smoking habits in adolescents
- type: cross-sectional survey

Description of Participants & Time Frame

- non-random sample of grade 7 & 8 students from four middle-class suburban schools in the United States, n=602
- 48% male, 82% white, 72% gr. 8, 75% from 2 parent families
- survey conducted in the spring, 1986

Methods of Research

- multivariate analysis
- students completed an in-class survey measuring smoking behaviour, intention to smoke in 2 years, exposure to cigarette advertising (including overall exposure to periodicals containing a high number of cigarette ads and level of exposure to ads within each periodical), social influence of family and peer smoking, smoking-related knowledge, assertiveness, and locus of control
- based on focus group responses, 23 periodicals and 5 newspapers with high youth readership and a high number of cigarette ads; respondents indicated which of these periodicals they read (including browsing, looking through, or picking up), and how many cigarette advertisements they attend to in each
- quality of study: medium

Results

- adolescents who reported smoking more than a pack of cigarettes per week had the highest exposure to cigarette ads
- the two most important predictors of smoking behaviour and intention were exposure to cigarette advertisements and friends' smoking status
- other predictors of intention: external locus of control, low assertiveness, smoking status of older siblings, and living in a single parent home
- adolescents with high exposure to cigarette ads were: 1.44 times as likely to have tried smoking; 1.93 times as likely to be current smokers; and, 1.52 times as likely to report intending to smoke in the future compared to those with low exposure

Conclusions/ Comments

- social learning theory, specifically the power of attractive models, helps to interpret these results: slim, attractive, sophisticated, intelligent, and/or independent models (i.e., ideal self images) in advertisements can provide incentives for adolescents to initiate smoking
- conclusions tentative because correlational

Reference

Potts, H., Gillies, P., & Herbert, M. (1986). Adolescent smoking and opinion of cigarette advertisements. *Health Education Research, 1,* 195-201.

Key Findings

- 15-16 year old regular smokers are significantly more likely to rate cigarette advertisements as exciting, interesting, and eye-catching than non-smoking 15-16 year olds

Purpose & Type of Study

- purpose: investigate the possibility of an association between opinions regarding cigarette advertisements and smoking behaviour in youth
- type: cross-sectional survey

Description of Participants & Time Frame

- non-random sample of 15-16 year old students from 3 schools in Nottingham, England, n=258
- 46.9% female
- questionnaire administered in Oct./Nov. 1984

Methods of Research

- univariate analysis
- students completed an anonymous survey
- included items: smoking behaviour; ratings of 6 current cigarette advertisements on 7 pairs of descriptors (e.g., dull-exciting, interesting-boring, dreary-glamorous)
- regular smoking defined as more than 1 cigarette per week
- quality of study: low

Results

- regular smokers were significantly more likely to rate cigarette advertisements as exciting, interesting, and eye-catching than were non-smokers (includes never smoked, tried once, ex-smokers, and infrequent smokers)
- the advertisements for the two most popular brands of cigarettes were also more likely to be considered witty by regular smokers than by non-smokers
- findings consistent for males and females

Conclusions/ Comments

- 15-16 year olds who report regular smoking are more likely to find cigarette advertisements to be emotionally appealing than non-smokers
- cigarette advertisements may reinforce an image of self that is successful, attractive, and/or glamorous in youth who are regular smokers

Reference

Richards, J. W., DiFranza, J. R., Fletcher, C., & Fischer, P. M. (1995). RJ Reynolds' "Camel Cash": Another way to reach kids. *Tobacco Control, 4,* 258-260.

Key Findings

- RJ Reynolds' promotional program, *Camel Cash,* is known to and participated in by youth in the United States
- almost a quarter of youth 13-18 years of age, who are regular smokers, report collecting *Camel Cash*

Purpose & Type of Study

- purpose: determine levels of adolescent' knowledge of and participation in a tobacco marketing promotion program (*Camel Cash* – individuals collect coupons they receive with the purchase of Camel cigarettes, to be redeemed for promotional items)
- type: cross-sectional survey

Description of Participants & Time Frame

- non-random convenience sample of grade 9-12 students in two high schools in two U.S. cities, n=616
- 98% response rate
- 13-18 year olds, 55.7% female, 19% regular smokers, 42% never smokers
- survey conducted in final two weeks of the 1991/92 school year

Methods of Research

- univariate analysis
- 11 item questionnaire containing items regarding: demographic characteristics, smoking status, knowledge of the *Camel Cash* promotion, participation in the promotion, and level of participation
- quality of study: low

Results

- 39.1% of respondents were aware of the promotion; 69.2% of current smokers, 38.3% of experimental smokers, and 26.3% of never smokers
- 24.8% of current smokers reported collecting Camel Cash (8% of experimental smokers and 1.5% of never smokers also reported collecting)

Conclusions/ Comments

- the increasing popularity of Camel cigarettes among American youth may be due in part *Camel Cash*
- the need to collect a substantial number of coupons to be eligible to redeem products may provide incentive for youth to move through the stages from never smoking to experimenting to regular smoking to addiction

Reference

Coeytaux, R. R., Altman, D. G., & Slade, J. (1995). Tobacco promotions in the hands of youth. *Tobacco Control, 4*, 253-257.

Key Findings

- estimates 7.4 million youth under the age of 18 (35%) in the U.S. have participated in tobacco promotional campaigns – 2.2 million (10.6%) have owned at least one promotional item
- 83.5% of youths under the age of 18 in the U.S. are aware of at least one tobacco promotional campaign

Purpose & Type of Study

- purpose: determine the extent to which youths are exposed to and participate in tobacco promotion campaigns
- type: cross-sectional survey

Description of Participants & Time Frame

- random digit dial telephone survey of households in the U.S. with at least one member aged 12-24 years, n=1337 (12-17 year olds=1047, 18-24 year olds=290)
- 62% response rate of eligible households
- 50% female, 78% Caucasian, 17% had smoked in the previous month, 46% of households included at least one regular smoker
- interviews conducted in July/August, 1993

Methods of Research

- univariate analysis
- telephone interviews conducted to determine awareness/participation in tobacco promotion campaigns
- respondents who owned tobacco promotional items, had collected coupons which could be redeemed for promotional items, or who had a catalogue of promotional items were classified as participants in a promotion campaign
- quality of study: medium

Results

- 35% of minors (< age 18) reported participation in tobacco promotion campaigns; or an estimated 7.4 million American adolescents
- 10.6% of minors reported owning at least one promotional item (an average of 3.2 items per adolescent owner); or an estimated 2.2 million American adolescents owning 7.1 million promotional items
- 83.5% of minors were aware of at least one promotional campaign
- minors who report using tobacco in the previous month, were 3 times more likely to own a promotional item than non-users
- among young adults, 18-24 years: 50.7% reported participating in a tobacco promotion campaign, 30% reported owning a promotional item, and 83.8% were aware of promotion campaigns

Conclusions/ Comments

- tobacco promotional items are reaching youth in the United States regardless of age and smoking status
- familiarity of tobacco brand logos may help to create an environment in which smoking seems to be the norm – this may encourage tobacco use among youth

Reference

Armstrong, B. K., de Klerk, N. H., Shean, R. E., Dunn, D. A., & Dolin, P. J. (1990). Influence of education and advertising on the uptake of smoking by children. *The Medical Journal of Australia, 152,* 117-124.

Key Findings

- adolescents who perceived that they were influenced by cigarette advertising were more likely to initiate smoking than those who did not
- girls who thought they were influenced by cigarette advertisements showed an increase of 15% in smoking prevalence over the group who did not feel influenced; for boys the increase in prevalence was 15.3%

Purpose & Type of Study

- purpose: evaluate the effects of an educational program (1 and 2 year follow-up reported) and analyze other factors affecting smoking behaviour in adolescents
- type: longitudinal school-based randomized controlled trial

Description of Participants & Time Frame

- students from 45 schools in Western Australia who had completed baseline and two follow-up questionnaires, and who had reported non-smoking status at baseline, n=1028
- students in year 7 at study outset (modal age 12), 51.5% female
- participants' schools had been randomized to a control group, a peer-led intervention group (i.e., students led the education program), or a teacher-led intervention group
- baseline questionnaire completed in June, 1981; follow-up questionnaires in December, 1982 and December, 1983

Methods of Research

- multivariate logistic regression analysis
- students completed a questionnaire before, 1- and 2-years after participating in an educational program designed to prevent smoking uptake (the control group did not participate in the educational program but did complete all questionnaires)
- questionnaires included items regarding respondent's smoking behaviour, parental and sibling smoking, friends' smoking, and knowledge and attitudes about smoking behaviour; included a question regarding perceived response to cigarette advertisements (i.e., How much do cigarette advertisements make you think you would like to smoke a cigarette?)
- analysis predicted smoking initiation between baseline and follow-up
- quality of study: high

Results

- perceived response to cigarette advertising was the strongest and most consistent factor in predicting smoking initiation over a 2 year period – more predictive power than the education program, family or peer smoking, intention to smoke, and attitudes regarding smoking

Conclusions/ Comments

- educational programs may be less effective than they could be because of the overwhelming counter-effects of tobacco advertisements
- a more effective way than educational programs to reduce smoking initiation amongst adolescence may be to eliminate tobacco advertisements

Reference

Alexander, H. M., Callcott, R., Dobson, A. J., Hardes, G. R., Lloyd, D. M., O'Connell, D. L., & Leeder, S. R. (1983). Cigarette smoking and drug use in schoolchildren: IV – Factors associated with changes in smoking behaviour. *International Journal of Epidemiology, 12,* 59-66.

Key Findings

- children, aged 10-12 years old, who approved of cigarette advertising were twice as likely to have started smoking one year later compared to children who disapproved
- children, aged 10-12 years old, who smoked and reported disapproval of cigarette advertising were more likely to quit smoking over a one year time period than those who approved

Purpose & Type of Study

- purpose: understand the relationship and relative importance of personal and social factors to smoking in 10-12 year olds
- type: longitudinal school-based randomized controlled trial

Description of Participants & Time Frame

- students in New South Wales Australia, n=5686
- 10-12 years of age at baseline
- baseline questionnaire completed in 1979, follow-up questionnaire in 1980

Methods of Research

- multivariate analysis (logistic regression)
- students completed questionnaires before and after half of them (intervention group) participated in an educational program to prevent smoking
- questionnaires included items regarding smoking behaviour, smoking by friends and family, knowledge about the effects of tobacco, and attitudes to smoking and cigarette advertising
- a logistic regression was performed to determine the relative importance of factors in initiating or quitting smoking between the baseline and follow-up questionnaires
- quality of study: high

Results

- children who reported that they approved of cigarette advertising were twice as likely to become smokers compared to those who disapproved; children who were ambivalent about cigarette advertising fell in between
- children who disapproved of cigarette advertisements were more likely to quit smoking than those who approved
- the most important factors in predicting smoking onset were: being older, having friends who smoke, having siblings who smoke, approval of cigarette advertisements, and having a relatively large amount of spending money
- the most important predictors of smoking cessation were: non-smoking siblings, being younger, disapproving of cigarette advertisements, and having little spending money

Conclusions/ Comments

- Precede/Proceed theory classifies influences on smoking onset as: predisposing, reinforcing, or enabling – this evidence suggests that approval of cigarette advertisements is both a predisposing factor (those who approved were more likely to initiate smoking) and a reinforcing factor (those who approved were less likely to quit smoking)

Reference

Klitzner, M., Gruenewald, P. J., & Bamberger, E. (1991). Cigarette advertising and adolescent experimentation with smoking. *British Journal of Addiction, 86,* 287-298.

Key Findings

- adolescents who have experimented with smoking are better able to identify *product category* for cigarette advertisements stripped of identifying information than adolescents who have never smoked
- adolescents who are better at identifying specific *brands* of cigarettes from advertisements stripped of identifying information, are more likely to have experimented with smoking

Purpose & Type of Study

- purpose: clarify the relationship between exposure to cigarette advertisements and experimentation with smoking in youth
- type: cross-sectional survey

Description of Participants & Time Frame

- students randomly selected from school census lists in 3 separate school districts in the east coast area of the U.S., n=295
- equal number from each of the following grade groups: 5/6, 7-9, 10-12
- 50% male; 25% black, 66% white, 9% other racial groups; 41% reported having tried smoking at least once
- interviews were conducted in November/December, 1987

Methods of Research

- model for multivariate regression analysis assumes (1) experimentation leads to selective exposure (youth attend to and retain ad information) (2) exposure to ads (depending on extent of cognitive processing) leads to experimenting
- while the data were cross-sectional, statistical modelling permitted conclusions regarding whether or not data were consistent with the model
- students identified, 60 print advertisements for cigarettes, alcohol, and perfume (ads had been stripped of brand and product identifiers) at three levels: a) overall ad recognition (had they ever seen before), b) product recognition (which of three product categories), and c) brand recognition
- ad presentation was counterbalanced and ads were randomly selected from a universe of 650
- information was also collected regarding smoking behaviour, and total magazine exposure (a checklist of publications, indicating which they had looked at occasionally and which they read regularly)
- quality of study: medium

Results

- students who had experimented with cigarettes were better able to identify advertisements for the product cigarettes (but product recognition didn't predict experimentation)
- students who correctly identified advertisements for specific cigarette brands were more at risk for smoking experimentation (but smoking didn't predict brand recognition)

Conclusions/ Comments

- evidence that youths who retain specific brand information from cigarette ads are more at risk for smoking experimentation may indicate an association with depth of processing of ads and smoking behaviour

Reference

Unger, J. B., Johnson, C. A., & Rohrbach, L. A. (1995). Recognition and liking of tobacco and alcohol advertisements among adolescents: Relationships with susceptibility to substance use. *Preventive Medicine, 24,* 461-466.

Key Findings

- non-smoking adolescents who report a willingness to use tobacco in the future like cigarette advertisements at a rate comparable to adolescents who smoke; both groups rate liking significantly higher than non-smoking adolescents who report future intentions to *not* smoke

Purpose & Type of Study

- purpose: investigate recognition and liking of cigarette and alcohol advertisements by adolescents at various levels of substance use and susceptibility to substance use
- type: cross-sectional survey

Description of Participants & Time Frame

- convenience sample of students in 8th grade in Southern California, n=386
- 54% female; 13-16 years old; 36% Latino-American, 32% African-American, 13% European-American, 6% Asian-American and 14% other racial groups
- survey conducted in 1993

Methods of Research

- multivariate analysis
- students rated recognition and liking for cigarette and alcohol advertisements selected from popular magazines published in January/February, 1993 - all verbal references to brand and product were removed
- students classified according to substance use: nonsusceptible nonusers (have never used and do not intend to use in the future), susceptible nonusers (have never used but think future use is a possibility), and users (have tried the substance)
- quality of study: medium

Results

- smokers recognized significantly more brand names for cigarette advertisements than non-smokers
- susceptible non-smokers reported liking cigarette advertisements at a rate that was significantly greater than nonsusceptible non-smokers and at a comparable rate to smokers

Conclusions/ Comments

- susceptible non-smokers react to cigarette advertisements in a similar way to current smokers
- results are consistent with the idea that advertising influences vulnerable adolescents to experiment with smoking
- conclusions are tentative because they are based on correlational evidence

Reference

Hastings, G. B., Ryan, H., Teer, P., & MacKintosh, A. M. (1994). Cigarette advertising and children's smoking: Why Reg was withdrawn. *British Medical Journal, 309*, 933-937.

Key Findings

- the 'Reg' campaign for Regal brand cigarettes in several regions of the United Kingdom was withdrawn after evidence revealed that it appealed more to adolescents, especially 11-15 year olds, than to adults

Note: this article describes four distinct studies which each contributed evidence that taken together was sufficient enough to allow the U.K.'s Advertising Standards Authority to withdraw the 'Reg' advertising campaign for Regal brand cigarettes. The campaign was found to contravene the code governing cigarette advertising which states that ads must be more appealing to adults than to children.

Purpose & Type of Study

- purpose: to determine if a Regal brand cigarette advertising campaign appealed more to youth than to adults
- type: I. three cross-sectional surveys, and II. qualitative discussion groups

Description of Participants & Time Frame

- I. surveys: (a) nationally (England) representative sample of students aged 11-15, n=5451 (b) quota samples from Northern England, Scotland, and Wales (the areas where the Reg campaign was run) (b1) children aged 5-10, n=437 (b2) youth and adults, aged 15-65, n=814
- II. qualitative study: varied age groups (10-11, 12-13, 14-15, 18-24, 35-55) participated in 18 discussion groups, n=117
- surveys conducted in 1993, discussion groups held in March and April, 1993

Methods of Research

- I. surveys varied in specific content but all contained measures of smoking behaviour, attitudes, and perceptions of cigarette advertising - one was self completed in classrooms, two were structured interviews
- II. qualitative: small informal discussion groups of 6-8 people; groups for younger children included games about advertising and lasted about 5 hours

Results

- 91% of 11-15 year olds recognized 'Reg' advertisements compared to 55% of 9-10 year olds and 52% of 35-55 year olds
- 34% of adults reported that they did not understand the intended humour in the advertisements compared to 15% of 11-15 year olds
- qualitative research revealed that 'Reg' appealed to youth because the campaign was non-directive (i.e., not preachy, offering suggestions rather than directives), empathetic to youthful views, and humorous

Conclusions/ Comments

- young adolescents, especially smokers, liked the 'Reg' advertisements while adults did not find the ads appealing; this was despite the tobacco company's claim that adults were the target group for this campaign

Reference

Charlton, A. (1986). Children's advertisement-awareness related to their views on smoking. *Health Education Journal, 45,* 75-78.

Key Findings

- children, aged 9-10 and 12-13, who identified a favourite cigarette advertisement, were significantly more likely to agree with positive statements about smoking (e.g., smoking keeps your weight down) than were children who did not have a favourite ad – this pattern of results was consistent for both smokers and non-smokers

Purpose & Type of Study

- purpose: examine relationship of children's preference for cigarette advertisements with smoking behaviour and opinions
- type: cross-sectional survey

Description of Participants & Time Frame

- students from a random selection of schools in the north of England, n=1981
- two age groups: 9-10 year olds (42.9%), 12-13 year olds
- 52.9% male
- survey conducted in November, 1984

Methods of Research

- students completed a brief survey measuring: smoking behaviour, opinions on smoking, brand knowledge, favourite cigarette advertisements, and reasons for brand choice (smokers)
- respondents asked to agree or disagree with the following statements: smoking gives you confidence, smoking calms your nerves, smoking looks tough, smoking makes you feel grown up, and smoking keeps your weight down
- quality of study: low/medium

Results

- significantly more smokers named a favourite cigarette advertisement than did non-smokers
- children who smoke did not usually smoke the brand in their favourite advertisement – most smokers did not specify brand loyalty
- children who had ever tried smoking were more likely to agree with the positive statements about smoking; within each of the smoking status groups (i.e., never smoked, ever smoked) those who reported a favourite cigarette ad were more likely to agree with the statements
- for almost all of the individual positive statements about smoking, children with favourite ads were almost 2 times as likely as those without to agree

Conclusions/ Comments

- children who were sufficiently attracted to cigarette advertising to have a favourite ad adopted the positive messages about smoking in the ads
- conclusions tentative as they rely on correlational data

Reference

Pierce, J. P., Gilpin, E., Burns, D. M., Whalen, E., Rosbrook, B., Shopland, D., & Johnson, M. (1991). Does tobacco advertising target young people to start smoking? Evidence from California. *Journal of the American Medical Association, 266*, 3154-3158.

Key Findings

- perception of Camel cigarettes as the most advertised brand is inversely related to age in Californians, with younger respondents more likely to list Camel as the most advertised brand
- Camel's market share decreases dramatically with age – a significantly greater proportion of smokers 12-17 report smoking Camel cigarettes than smokers 18 and older; evidence seems to suggest that this pattern reflects the appeal to youth of the Joe Camel advertising campaign

Purpose & Type of Study

- purpose: examine whether perceived intensity of advertising and brand preference are related to age and whether market share of young smokers increased in response to targeted advertising
- type: archival, cross-sectional surveys

Description of Participants & Time Frame

- data drawn from the California Tobacco Survey (1990): a random-digit telephone survey which was weighted to represent the California population by age, sex, county-region, education, and race ethnicity, n=24,296 adults, and 5040 teens aged 12-17
- U.S. national survey data from the Adult Use of Tobacco Survey (1986) used for comparison purposes; n=13,031

Methods of Research

- analysis based on survey questions regarding smoking status, cigarette brand usually smoked, and cigarette brand perceived to be the most advertised
- quality of study: medium

Results

- the most advertised brands according to respondents are Marlboro (33.6% of adults, 41.8% of teens) and Camel (13.7% of adults, 28.5% of teens); they were also purchased most often and together account for 79.9% of sales to males and 85% of sales to females, aged 12-17
- market share decreases with age for Marlboro and Camel cigarettes
- gradual decline for Marlboro after 24 years of age; for Camel there is a sharp decline in market share after 12-17 years of age
- the same pattern of results is reflected for recognition of advertising across age groups
- comparing data from the 1986 national survey to the 1990 Californian reveals that both Marlboro and Camel increased in market share in this time period; data suggests that while Marlboro's gains are consistent across age groups, Camel's gains appear to have come largely from smokers under the age of 18

Conclusions/ Comments

- these data add to the evidence that cigarette ads affect smoking behaviour of young people, especially minors
- data suggest an association between brands identified as most highly advertised and market share for the same brands

Reference

Pollay, R. W., Siddarth, S., Siegal, M. Haddix, A., Merritt, R. K., Giovino, G. A., & Eriksen, M. P. (1996, in press). The last straw? Cigarette advertising and realized market shares among youths and adults, 1979-1993. *Journal of Marketing, 60,* 1ff.

Key Findings

- past and present cigarette advertising in the U.S. is significantly related to youth smoking behaviour, specifically brand preference
- teens are about 3 times more sensitive to advertising than adults

Purpose & Type of Study

- purpose: examine the relationship between tobacco advertising intensity and market share in order to explore the validity of the tobacco industry's assertion that advertising is used to win over adult smokers from competing brands and is not intended to encourage uptake in youth or otherwise stimulate primary demand
- type: econometric, market share analysis

Description of Participants & Time Frame

- market shares among adults and teenagers for five years between 1979 and 1993 (specifically, '79, '86, '89, '92, '93) for nine cigarette brands
- market share data for adults derived from consumer report sales figures
- market share data for teenagers gathered from 5 national probability sample surveys
- advertising expenditures for each of the nine brands for each year from 1974-1993 (includes magazine, newspaper, Sunday supplement, and outdoor ads but excludes sponsorship and other promotional activities)

Methods of Research

- multivariate regression analysis which controlled for the lag time effects of advertising impact and the effects of brand loyalty
- associated market share data of adults and teens with advertising expenditures for nine brands of cigarettes at five different time points using a variety of assumptions to discount alternative hypotheses
- quality of study: high

Results

- there is a substantial relationship between brand market shares among youth and past and present cigarette brand advertisements
- advertising sensitivity is about 3 times as great among teens compared to adults
- advertising impact on teens is *not* due to indirect effects of teens imitating adult brand choices; teen brand preference is independent of adult preference
- pattern of results remained the same under a variety of analytic conditions; these findings are very robust

Conclusions/ Comments

- greater sensitivity among teenagers is due in part to a) scale – a higher number of teens concentrate on highly advertised brands, and b) dynamics – teen brand choice patterns respond to changes in advertising intensity
- results are incompatible with the tobacco industry's contention that advertising serves only to effect brand switching in adult smokers
- regulating cigarette advertising may be an effective policy intervention to influence the smoking behaviour of adolescents

Reference

Schooler, C., Basil, M. D., & Altman, D. G. (1996). Alcohol and cigarette advertising on billboards: Targeting with social cues. *Health Communication, 8,* 109-129.

Key Findings

- cigarette and alcohol billboard advertisements are more likely than billboards for other products to: depict people, match ethnicity of models with target audience, use social cues such as anticipated rewards, and use attractive models
- results support a social modelling model of advertising

Purpose & Type of Study

- purpose: examine if there is support for a social cognitive theory based model of cigarette advertising: that more social modelling of rewards, similarity and attractiveness will occur in tobacco and alcohol billboards
- type: billboard survey

Description of Participants & Time Frame

- all neighborhood commercial district billboards (901) in the San Francisco area were photographed between May, 1985 and September, 1987

Methods of Research

- information was collected on the location, size, and advertising content (language, number and ethnicity of models, product being promoted, and brand where the product was tobacco or alcohol) of each of the billboards
- billboard content was coded to detect the following social cues: (1) the presence of people (all other cues dependent on this one, therefore most of analysis was based 31% of boards that satisfied this criterion) (2) similarity - the ethnicity of models was compared to the predominant ethnicity of the neighbourhood in which the ad was displayed (3) reward - whether or not the ad associated reward(s) with product use (specifically: romance, sociability & friendship, recreation & vacationing, sportiness & active lifestyles, and/or adventure or risk), and (4) attractiveness - whether or not models displayed attractive characteristic(s) (specifically: rugged individualism or machismo, sophistication or high fashion, sex appeal, fame or expertise, and/or friendliness)
- inter-rater reliabilities ranged from .85 -.97
- quality of study: high

Results

- cigarette and alcohol billboard ads were more likely than ads for all other products to: depict people (59% vs. 16%); match ethnicity of models to the ethnicity of the neighbourhood (40% tobacco, 24% alcohol, 7% all other); depict rewards (90% vs. 68%); and use models with attractive characteristics (86% vs. 66%)
- rewards most often depicted on cigarette billboards were most likely to depict were sportiness & active lifestyles, vacationing or recreation, and adventure & risk; alcohol billboards were more likely to depict romance & sociability
- the most prevalent attractiveness cue for both cigarette and alcohol ads was sex appeal; cigarette ads also used models high in rugged individualism & machismo

Conclusions/ Comments

- alcohol and tobacco billboards target consumers with social cues
- the social aspects of tobacco and alcohol use are highly relevant product attributes for advertisements
- the general use of social cues is consistent with social cognitive theory

Reference

McCracken, G. (1992). *"Got a smoke?" A cultural account of tobacco in the lives of contemporary teens. The Ethnographic Interviews.* A Research Report to the Ontario Ministry of Health's Tobacco Strategy. Toronto.

Key Findings

This ethnographic study examined smoking from the adolescent's point of view. It indicated that teens have a well-organized smoking culture and that smoking is used for self-identity, much like music. Smoking gives teens access to 8 types of cultural meaning (e.g., gender, group stereotype) and to 21 pragmatic functions (e.g., nourish self-esteem, claim toughness, coolness), similar to those used in advertising.

Purpose & Type of Study

- purpose: to determine meanings adolescents attach to smoking, how teens use those meanings and how to reposition smoking to discourage them from starting (or continuing)
- type: ethnographic (as such, quantitative tools of assessment of study quality do not apply)

Description of Participants & Time Frame

- 30 teens aged 10 -18 representing smokers and non-smokers, males and females, urban-rural, different social groups, etc.
- interviews conducted in 1992

Methods of Research

- in-depth interviews
- considered smoking from the teenager's point of view (an insider's view) and uses the language and concepts of teens
- argues the cultural (ethnographic) approach is more appropriate than traditional study of smoking
- assumes teens actively construct an identity for self out of cultural meanings (e.g., gender, age, lifestyle); teens find cultural meaning from sources like music, fashion, clothing and smoking; smoking has a variety of meanings, and helps define self
- quality of study: cannot determine using criteria set

Results

- teen smoking has its own language (into which they are initiated), lore (passed orally) and rituals (e.g., around exchange of cigarettes) to demonstrate composure on the part of the teen
- smoking (and particular brands) serve symbolic functions. Most teens distinguish between brands as more suited for masculine-feminine, younger-older (determined in part by pack colors and size), high or low status (but don't use this as a reason to smoke), nationality (e.g., American brands linked to toughness). In addition, smoking itself is related to sexuality, mood and stereotype (non-smokers also have stereotypes e.g., out of it).
- Smoking serves 21 pragmatic functions including: mood management, self-nourishment (taking care of yourself), adulthood, toughness, coolness, sophistication, passport (to excitement), Prometheus (stealing power from parents), self-dramatization (to help determine how to act when hanging out), knowable / controllable world, time management, differentiation (from parents, younger kids, school), imitation of older kids, rewarding yourself, punishing yourself, self-stigmatization (to beat others to the punch), building boundaries, building bonds, mastery zone

Conclusions / Comments

- ads tap into many of the meanings and functions smoking has for teens
- communications strategies should show the meanings necessary for identity can be found elsewhere, discredit the meanings that remain in smoking, use the voice of teens, explode the logic of teen smoking, show that smokers are not in control, no such thing as a social smoker, make fun of self-dramatizing aspects of smoking, emphasize how smoking diminishes the social person

Reference

Pollay, R.W. & Lavack, A.M. (1993). The targeting of youths by cigarette marketers: Archival evidence on trial. In M. McAlister & M.L. Rothschild (eds.) *Advances in Consumer Research. 20,* Provo, UT: Association for Consumer Research, 266-271.

Key Findings

A review of tobacco industry documents indicated under age youth were targeted with advertising, designed to appeal to independence and freedom from authority. Furthermore, ads carefully used images that would not be rejected later because they were too immature, nor too aerobic which might cause counter-arguing. Advertisers, as policy, used positive lifestyle imagery to enhance the social acceptability of smoking.

Purpose & Type of Study

- purpose: to review tobacco industry documents for evidence of targeting youth
- type: review of archived documents

Description of Participants & Time Frame

- documents from two tobacco firms were made public as part of the firms' challenge of the constitutionality of the 1988 Tobacco Product Control Act. Attorney General documents from the trial are also included.
- time frame: industry documents from 1971-1988 and from the trial in 1990.

Methods of Research

- uses many quotations from industry documents to illustrate industry knowledge and use of marketing tactics directed specifically at under-age market
- quality: established criteria do not apply

Results

- strategic issues for tobacco marketers: young smokers are "the major opportunity group" especially since annual brand switching is 10% or less; support of the "continued social acceptability of smoking"; and, "advertising (of smoking) becomes disproportionately important . . . as compared to other mass consumer products"
- considerable industry research has focus on starters, their awareness of addictiveness and feelings of addiction as teens and how the industry can exploit risks starters are willing to take and rationalizations they make
- research has segmented youth into up to seven marketing groupings
- ads target the young by using young looking models (18-25) but not so young they were not seen as symbols of adulthood
- ads further target youth using images of independence (of various types), pictures of health (although none requiring too much exertion) and images that minimize counter-arguing (e.g., a windsurfer sitting on beach "apparently" after finishing surfing)

Conclusions / Comments

- the paper presents convincing evidence from tobacco company files of the extensive and careful research done to develop the youth starter market
- the images of independence and health portrayed in tobacco ads are intended to capture starters and promote the social acceptability of smoking

Reference

Pechmann, C. & Ratneshwar, S. (1994). The effects of antismoking and cigarette advertising on young adolescents' perceptions of peers who smoke. *Journal of Consumer Research*, 21, 236-251.

Key Findings

- an experimental study of non-smoking youth exposed to anti-smoking ads found the ads reinforced pre-existing negative evaluations of smokers
- exposure to cigarette ads did not affect scale ratings, but did result in more favourable thoughts about the smoker.

Purpose & Type of Study

- purpose: to evaluate the effect of advertising (smoking and anti-smoking) on perceptions of smokers
- type: experimental (randomized controlled trial)

Description of Participants & Time Frame

- 304 seventh grade students 12-13 years old from 4 southern California school districts; 41% male; 44% Caucasian, 24% Asian, 15% Hispanic, 8% African-American; 3% smokers
- time frame; 1991

Methods of Research

- random assignment to treatment condition in a 3 (type of ad: smoking, anti-smoking, unrelated) by 2 (target of perception evaluation: smoker, control) factorial design
- part 1: participants scanned a 22-page magazine mock-up with 4 pages of "stimulus ads" ostensibly to evaluate the magazine; ads were a) national cigarette ads, b) anti smoking ads or c) ads for Reeboks, etc.
- part 2: the same participants, in an "unrelated" study (different experimenters) gave personal impressions of descriptions of teens presented on computer screen; students were randomly presented with either a control target (watches TV, goes to mall, rides bike) or smoker target (as above plus smokes cigarettes); participants rated the target on 12 traits, listed thoughts about the target, and completed recall and recognition tasks
- hypotheses: teens exposed to anti-smoking ads will a) judge smoker more negatively b) produce more negative inferences on a smoker label c) give more negative valence thoughts on trait information for smokers; no hypotheses concerning the smoking ads
- quality of study: high

Results

- participants viewing the *control ads* judged smokers as having less common sense and less personal appeal (but not less glamorous or mature)
- participants viewing *anti-smoking ads* judged smokers lower on common sense and personal appeal and judged them to be less mature and glamorous
- participants viewing the *cigarette ads* did not change preexisting conceptions of smokers (i.e., null effect) although they did result in more positive thoughts about smoker's maturity & glamour; explanation: ads changed thoughts but not judgments about the smoker and more exposure was needed

Conclusions / Comments

- antismoking advertising with health and psychosocial themes should reinforce in-school health information and reduce social acceptability of smoking
- while cigarette ads did not result in positive judgments, further research is needed with nonsmoking teens who enter the situation with neutral or positive conceptions of smokers (the current participants were quite negative)
- need more examination of how ads affect individuals' prior beliefs (here they reinforced them, but there might be circumstances where they cause a reexamination of the beliefs)

Reference

Zinser, O., Kloosterman, R., & Williams, A. (1991). Perceptions of cigarette advertisements by college student smokers, former smokers, and non smokers. *Journal of Social Behaviour and Personality, 6,* 355-366.

Key Findings

- attitude toward cigarette advertisements differs among smokers, former smokers, and non-smokers; smokers rate cigarette ads more favourably than non-smokers and former smokers.
- smokers, non-smokers, and former smokers all agree that cigarette ads influence teenagers to start smoking; non-smokers and former smokers express stronger agreement

Purpose & Type of Study

- purpose: investigate the relationship between smoking status (smoker, former smoker, non-smoker) and attitude towards cigarette advertising
- type: cross sectional survey

Description of Participants & Time Frame

- American university students, n=536
- 63.6 % female; median age 19; 54.7% non-smokers, 26.9% former smokers, 18.5% current smokers
- pre 1991 (year not given)

Methods of Research

- in small groups participants rated slides of 5 cigarette advertisements and 10 non-cigarette advertisements on: action, adventure, liking of ad, relaxing, enjoyable, glamorous, product quality, ad effectiveness, and fun; ad selection was non-random, designed to provide a variety of cigarette ads with a comparable set of non-cigarette ads
- participants completed 5 items on attitudes to cigarette ads with a comparable set of non-cigarette ads
- participants completed 5 items on attitudes to cigarette ads for which they rated their agreement (e.g., "Cigarette advertisements tend to encourage smokers to light-up")
- multivariate analysis (MANOVA)
- quality of study: medium

Results

- smokers rated cigarette ads significantly higher than non-smokers for liking, product quality and ad effectiveness
- both smokers and non-smokers tended to rate non-cigarette ads the same; smokers rated both cigarette and non-cigarette ads the same while non-smokers tended to give lower rating to cigarette ads
- both non-smokers and smokers agree in an absolute sense that cigarette ads influence teenagers to start smoking and influence brand choice; but non-smokers and former smokers expressed stronger agreement than smokers

Conclusions / Comments

- smokers and non-smokers varied in their perceptions of cigarette ads but no in their perceptions of non-cigarette ads
- explanation 1: smokers identified with the images presented in cigarette ads and this influenced their smoking initiation and helps to maintain their smoking status and liking of the ads
- explanation 2: cognitive dissonance theory suggests that the smokers' greater liking for the cigarette ads indicates a post-decision change; increasing approval ratings provides greater consistency of attitude and behaviour; this theory would also explain former smokers' reversions to lower ratings of the ads

Reference

Ho, R. (1994). Cigarette advertising and cigarette health warnings: What role do adolescents' motives for smoking play in their assessment? *Australian Psychologist, 29,* 49-56.

Key Findings

- while adolescent smokers' assessments of cigarette advertisement themes are generally not positive, ratings are influenced by their motives for smoking

Purpose & Type of Study

- purpose: investigate adolescent smokers' assessments of cigarette advertisement themes and health warnings in relation to their motives for smoking
- type: cross sectional survey

Description of Participants & Time Frame

- 129 students from 6 high schools in Darwin, Australia who were classified as current regular smokers (at least one cigarette/day for the last month) (from a larger sample of 884)
- 51.2 % female, 14-19 years old
- pre 1994 (year not given)

Methods of Research

- respondents completed a 25-item smoking inventory designed to identify motives for smoking; principal components analysis identified 16 items loading on 3 independent motives for smoking: social acceptance, pleasure, and addictive/habitual needs
- respondents rated their agreement with six statements which were designed to reflect common themes found in cigarette advertisements (e.g., "Smoking is stylish")
- respondents rated four health warnings which appear on tobacco products (e.g., "Smoking causes lung cancer") on the likelihood that: (a) the warning deters people in general from taking up smoking, (b) it would influence the respondent to quit in the near future, and (c) smoking leads to the health problem specified
- multiple regression analyses were performed to determine if the three motives for smoking are related to assessments of the ads and warnings
- quality of study: medium

Results

- the more adolescent males perceived their motive for smoking to be addiction, the more they agreed with the advertising themes that smoking reflects: independence, success, distinction, and is stylish (4 of 6 themes)
- the more adolescent females perceived that their smoking is motivated by social acceptance, the more they agreed with the themes that smoking: makes them more attractive, popular, and sexy; reflects independence; professional success; distinction; and is stylish (5 of 6 themes)
- the more females perceived that they smoke for pleasure: the more accepting they were of the theme that smoking is fun; and the less they agreed with all three of the statements regarding health warnings
- within each gender, no other motivations for smoking correlated with reactions to ad themes/health warnings

Conclusions / Comments

- health education programs may be more effective in countering the effects of advertising if they recognize and respond to the different motives for smoking

TAKING ACTION TO REDUCE TOBACCO USE

National Cancer Policy Board

Institute of Medicine and
Commission on Life Sciences, National Research Council

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NOTICE: The project that is the subject of this report was approved by the Governing Board of the National Research Council, whose members are drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The members of the National Cancer Policy Board, which is responsible for the report, were chosen for their special competences and with regard for appropriate balance.

This report has been reviewed by individuals chosen for their diverse perspectives and technical expertise, in accordance with procedures approved by the NRC's Report Review Committee. The purpose of this independent review is to provide candid and critical comments that will assist the authors as well as the NRC and IOM in making the published report as sound as possible and to ensure that the report meets institutional standards for objectivity and evidence. The content of the review comments and draft manuscript remain confidential to protect the integrity of the deliberative process. We wish to thank the following individuals for their participation in the review of this report: Harvey Fineberg, *Coordinator*, Harvard University; Virginia Weldon, *Monitor*, Monsanto Corporation; Neal Benowitz, University of California, San Francisco; Frank Chaloupka, University of Illinois, Chicago; Jack Henningfield, Pinney Associates and Johns Hopkins University; Thomas Houston, American Medical Association; Michael Pertschuk, The Advocacy Institute; and Kenneth Warner, The University of Michigan.

While the individuals listed above have provided many constructive comments and suggestions, responsibility for the final content of this report rests solely with the National Cancer Policy Board, the NRC and IOM.

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FRANCES VISCO, President, National Breast Cancer Coalition, Philadelphia

ROBERT YOUNG, President, Fox Chase Cancer Center, Philadelphia

---

* Member, Institute of Medicine.

† Member, National Academy of Sciences.

Special Contributor

RICHARD J. BONNIE, John S. Battle Professor of Law, and Director, Institute of Law, Psychiatry, and Public Policy, University of Virginia School of Law

Study Staff

ROBERT MULLAN COOK-DEEGAN, Director
STACEY PATMORE, Senior Project Assistant
KATHLEEN McCORMALLY, Research Assistant and Summer Intern
CATHARYN LIVERMAN, Program Officer

IOM Staff

MICHAEL STOTO, Senior Staff Officer, Division of Health Promotion and Disease Prevention
JANE DURCH, Program Officer, Division of Health Promotion and Disease Prevention
CLAUDIA CARL, Reports and Information Office
MICHAEL EDINGTON, Reports and Information Office

Incentives to reduce youth tobacco use will be most powerful if penalties for failure to achieve goals fall hardest on those firms making brands attractive to underage users. If youth tobacco initiation goals are not met, financial penalties should be targeted to manufacturers, based on brands used disproportionately by youths.[21] The board recommends that payments triggered by failure to reach public health goals should be structured into any federal legislation. A flat excise tax, based on the weight of the tobacco content, does not provide this incentive because each firm retains the incentive to lure young smokers, thus building a future market, yet penalties are distributed evenly across all tobacco products.

Even states with active tobacco control campaigns have seen increases in tobacco use among young people in recent years, although at rates lower than the national average.[22] These states, however, have not seen tax increases of the magnitude now contemplated. Effects of Alaska's tax increase to $1 per pack that went into effect in October, Hawaii's two-step increase scheduled to reach $1 per pack in June, and New Jersey's recently doubled tobacco tax (to $0.80 per pack) should generate data soon, but those increases are still only half the increment recommended by the board. If an initial tax increase (or settlement payment) of $2 per pack (and the equivalent for other tobacco products) fails to reduce use among youths to target levels, payments from firms making brands popular among should be increased to induce further price increases.

STRENGTHEN FEDERAL REGULATION

FDA must continue to regulate tobacco products, and the U.S. Congress must strengthen and clarify FDA's role.

In 1994, IOM recommended that the U.S. Congress enact a comprehensive regulatory statute delegating to an appropriate agency "the necessary authority to regulate tobacco products, for the dual purpose of discouraging consumption and reducing the morbidity and mortality associated with use of tobacco products." The report recommended that the agency be authorized to regulate the design and constituents of tobacco products, and specifically discussed the possibility of setting and gradually reducing ceilings on the nicotine content of tobacco products. FDA was noted as one agency that could exercise the recommended authority. The board believes subsequent events have demonstrated that FDA is the logical lead for tobacco regulation.

A year after the release of the IOM report, FDA formally proposed to regulate tobacco products using its existing authority under the Food, Drug, and Cosmetics Act. The agency enacted final regulations in 1996. FDA's Tobacco Rule regulates the advertising and marketing of tobacco products and the distribution of these products to minors, but it does not address the design and constituents of tobacco products. If the courts uphold FDA's assertion of jurisdiction over tobacco products, the agency will have broad authority to move beyond the current rule to regulate the design and content of tobacco products as well.

The courts may or may not ratify FDA's jurisdiction over tobacco products. On April 25, 1997, Federal District Court Judge William Osteen upheld FDA's assertion of jurisdiction, but he struck down certain provisions. That ruling is now on appeal to the Fourth U.S. Circuit Court of Appeals. The case is likely to be reviewed by the U.S. Supreme Court. This process might take several years, and the outcome cannot be predicted with confidence. Moreover, even if FDA's jurisdiction over tobacco products is upheld, its scope of authority under existing law is likely to remain uncertain. Although the district court upheld the agency's regulation of distribution to minors, for example, it held that the act did not empower the agency to regulate the advertising and marketing of tobacco products.

In light of the indeterminacy of FDA's existing legal authority—and the imperfect fit between the unique challenges of tobacco control and the regulatory regime set up under the Food, Drug, and Cosmetics Act—national policy would be clearer if Congress were to enact a specific regulatory statute for tobacco products, as recommended in the 1994 IOM report. Congressional action would avoid wasteful and unnecessary litigation and would establish a strong political and legal foundation for future regulatory initiatives. Congress must also appropriate funding to FDA commensurate with its authority. The settlement proposes that FDA regulatory authority expand beyond the terms of the settlement only if FDA can establish that such measures will not create a black market. Proving that something that already exists in many countries will not occur here is an unreasonable burden and would hamstring FDA before it is clear whether the current regulations and new measures proposed in the settlement will achieve their goals. Moreover, it is also premature to foreclose any regulatory authority until there has been full public disclosure of information about the health risks and addictive potential of tobacco products. Congress, FDA, and the public need time to review information currently held by private firms and their attorneys before making irrevocable choices about regulatory strategy and regulatory authority.

The need for congressional action regarding FDA's efforts to restrict tobacco advertising, promotion, and marketing is particularly urgent. Most FDA provisions restricting advertising and promotion are in abeyance pending the federal appeals court decision, and there will be further delay if the case goes to the U.S. Supreme Court. Advertising and promotion constraints may not have dramatic short-term effects, but they are integral parts of all successful tobacco control efforts in states and foreign countries and must be part of any long-term U.S. national tobacco control program. The 1994 IOM report recommended comprehensive regulation of advertising and promotion that tends to encourage young people to use tobacco products. Recommendations included restricting advertisements to text-only format and bans on promotional campaigns attractive to youths. Although the FDA regulation implements many of these ideas, the federal district court ruled that the agency does not have the statutory authority to regulate tobacco advertising and marketing, without even reaching the industry's argument that these regulations violate the First Amendment to the Constitution. Even if the agency's jurisdiction to regulate youth access to tobacco products is upheld, FDA's scope of authority over advertising and marketing will be in litigation for many years. Congressional action to implement IOM's 1994 recommendations would expedite the nation's tobacco control agenda by many years.

RECOMMENDATIONS

FOR THE PRIMARY PREVENTION

CANCER

March 1995

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Executive Summary

Cancer is one of the leading causes of mortality in Ontario, accounting for over 20,000 deaths per year. Approximately 27% of all deaths in Ontario are attributable to cancer. The degree of pain and suffering associated with cancer, both physical and emotional, places an enormous burden on patients and their families. The financial cost of cancer is also substantial. Ontario spends over $1 billion dollars annually on cancer treatment alone, in addition to which there are substantial indirect costs and other social costs.

The incidence of cancer in Ontario and elsewhere is on the rise, a phenomenon in part attributable to an aging population. However, the incidence of the disease, and the attendant personal, social and economic costs, can ultimately be reduced, as many forms of cancer are preventable.

In recognition of the importance of preventive measures for reducing the cancer burden in Ontario, a Task Force on the Primary Prevention of Cancer was appointed by the Ontario Minister of Health in February 1994. The purpose of the Task Force was to advise the Minister with respect to the development of an action-based, effective and feasible plan detailing recommendations for the primary prevention of cancer.

The Task Force recognizes that many of the eventual benefits of cancer prevention may be delayed, and that there may be substantial barriers to immediate action. Yet we urge action now. Our knowledge of the causes of cancer may be imperfect, but we have no excuse for delaying action in response to our current knowledge.

The Task Force trusts that the following recommendations will assist the Ontario government in implementing appropriate and effective approaches to cancer prevention. It is the hope of the Task Force that its recommendations will be addressed through a comprehensive, coordinated approach which, in addition to reducing the incidence of cancer, can be expected to promote the health and well-being of Ontario residents of this generation, and of generations to follow.

Tobacco

- To minimize increases in tobacco-related cancer mortality arising from the reductions on tobacco taxes, the Task Force strongly urges the Ontario government to work with its federal and provincial counterparts to restore tobacco taxation rates to their former peak levels. Subsequent tobacco tax increases should be set above the rate of inflation.
- The Task Force recommends the continued rigorous enforcement of sales to minors legislation coupled with retailer education programs in order to maximize the health impacts of the Ontario Tobacco Control Act.
- In light of the evidence on the cancer risks posed by environmental tobacco smoke (ETS), the Task Force calls upon the province to give increased priority to the reduction/elimination of ETS exposure.

Specific measures that the government could adopt to reduce/eliminate ETS exposure include:

  - work with municipal governments to strengthen legislation banning tobacco use in public areas. Smoking in these venues should be restricted to separately ventilated areas;
  - work with employers and relevant ministries to strengthen legislation banning tobacco use in the workplace. As is the case with public areas, smoking in workplaces should be restricted to separately ventilated areas;
  - develop strategies to protect children from exposure to ETS.

- To broaden the possible scope of preventive efforts, the Task Force urges the Ontario government to work with its provincial and federal counterparts to include tobacco in the Canadian Hazardous Products Act.
- The Task Force calls for the provincial government to ban the use of tobacco product names, trademarks, colours and logos in all tobacco sponsorship advertising.
- The Task Force urges the provincial government to work with others to seek innovative ways to reduce the

incentive for sports and cultural groups to accept sponsorship from the tobacco industry.

- The Task Force urges the province to hold the tobacco industry accountable for the economic costs of tobacco-induced illness. The federal and provincial governments should investigate the utility of initiating legal action or recovery mechanisms against tobacco manufacturers.

The Task Force:

- recommends that the Ontario government consider establishing a Royal Commission to investigate the practices of the tobacco industry;
- calls upon the Ontario government to establish an Ontario Tobacco Control Board or agency, with the following mandate:
    - carry out ministry policy, and report directly to the Ministry of Health;
    - licence or control access to tobacco products;
    - regulate promotional activities of the tobacco industry;
    - enforce cost-recovery of tobacco-related health costs;
    - investigate and control unethical practices of the tobacco industry;
    - establish intersectoral collaboration for information and educational strategies;
    - assist health professionals and institutions in counselling smoking cessation and prevention;
    - control the export of tobacco products.
- To ensure effective intersectoral collaboration, the task force recommends the adoption of the following policies:
    - ensure that current scientific information on the health effects of tobacco and strategies to prevent tobacco use (including information on the efficacy of various approaches) is available to health professionals, advocacy groups and the general public in formats appropriate for their respective needs and levels of comprehension;
    - increase collaborative efforts with Regional Cancer Networks, Public Health Units, Community Health Centres, the Canadian Cancer Society, the Ontario Public Health Association and other relevant non-goverment organizations to mobilize community forces in the fight against tobacco, and to reinforce educational appeals and advocacy efforts emphasizing the addictive nature of tobacco and its harmful consequences.
- In order to effectively promote the adoption of smoking cessation and ETS counselling by health professionals, the provincial government should secure collaboration with key stakeholder groups to ensure:
    - promotion of the concept of smoking cessation and reduction of ETS;
    - replenishment of educational materials for cessation support and ETS reduction;
    - provision of training and recognition for all health care professionals in smoking cessation and ETS counselling;
    - funding of accessible workplace smoking-cessation programs.

Dietary Risk Factors

- The Task Force recommends that the government promote intersectoral collaboration between government and industry, including the agri-food industry, food retailers, and food services, to ensure the concerted implementation, monitoring and evaluation of policies promoting healthy eating habits.
- The Task Force recommends that the provincial government review its policies governing the production, storage and distribution of food products to ensure that all Ontario residents have access to a high-quality supply of nutritious food.

In light of the evidence on the cancer risks posed by environmental tobacco smoke (ETS), the Task Force calls upon the province to give increased priority to the reduction/elimination of ETS exposure.

Specific measures that the government could adopt to reduce/eliminate ETS exposure include:

- **work with municipal governments to strengthen legislation banning tobacco use in public areas. Smoking in these venues should be restricted to separately ventilated areas;**
- **work with employers and relevant ministries to strengthen legislation banning tobacco use in the workplace. As is the case with public areas, smoking in workplaces should be restricted to separately ventilated areas;**
- **develop strategies to protect children from exposure to ETS.**

Specific areas that need to be considered in the latter strategies are the home and in vehicles.

Designation of Tobacco as a Hazardous Product

The designation of tobacco as a hazardous product would enable the adoption of additional smoking prevention measures, including plain packaging, larger package warnings and an opportunity to tax tobacco at the point of production and manufacture.

To broaden the possible scope of preventive efforts, the Task Force urges the Ontario government to work with its provincial and federal counterparts to include tobacco in the Canadian Hazardous Products Act.

Promotional Efforts by the Tobacco Industry

The Task Force strongly supports restrictions on tobacco advertising at the federal and provincial levels. There is, however, concern that the impact of these restrictions are undermined by the publicity the tobacco industry garners from its sponsorship of special events and other marketing initiatives, many of which feature the logos of cigarette brands in their marketing campaigns.

The Task Force calls for the provincial government to ban the use of tobacco product names, trademarks, colours and logos in all tobacco sponsorship advertising.

A mechanism that has worked in the State of Victoria, Australia, is to remove the incentive for sports organizations and cultural groups to accept sponsorship from the tobacco industry. Thus, the Victoria Health Promotion Foundation was formed, funded by taxes on tobacco, with the mandate to support such organizations. In Canada, government should accept the responsibility to replace tobacco industry support for the arts and sports, conditional on the supported organization agreeing to refuse tobacco industry sponsorship. Government could work with cancer and other health interests to pool resources to provide such support, preferably by using some of the revenue from tobacco taxation. The eventual return could help reduce the cost of health care, while increasing the quality of life for Ontarians.

The Task Force urges the provincial government to work with others to seek innovative ways to reduce the incentive for sports and cultural groups to accept sponsorship from the tobacco industry.

Cost-Recovery Mechanisms for Tobacco-Related Illness

Tobacco-related illness and disability place a tremendous economic burden on society: at present, tobacco-related disease costs the Canadian government about $9.5 billion per year. There is growing concern that the tobacco industry, which continues to enjoy large profit margins on the sale of cigarettes and other tobacco products, is not assuming its fair share of these costs.

Smoking and the Young

A report of a working party of the Royal College of Physicians

1992

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Members of the Working Party on Smoking and the Young

Margaret Turner-Warwick DBE DM PhD FRCP President

Stewart W Clarke MD FRCP (Chairman) *Consultant Physician, Royal Free Hospital, London*

Ashley A Woodcock MD FRCP (Honorary Secretary) *Consultant Respiratory Physician, Wythenshawe Hospital, Manchester*

Beulah R Bewley MD FRCP FFPHM *Senior Lecturer in Public Health Medicine, St George's Hospital Medical School, London*

John C Catford DM FRCP FFPHM *Professor of Health Promotion, University of Wales College of Medicine, Cardiff*

Kevin S Channer MD MRCP(UK) *Consultant Physician and Cardiologist, Royal Hallamshire Hospital, Sheffield*

Anne Charlton PhD *Director, CRC Education and Child Studies Research Group, University of Manchester*

Jonathan M Couriel FRCP *Consultant in Paediatrics and Paediatric Respiratory Medicine, Booth Hall Children's Hospital, Manchester*

Jane Dunmore *Director, Parents against Tobacco*

Pamela A Gillies PhD *Senior Lecturer in Public Health, University of Nottingham*

Ann D McNeill PhD *Programme Manager, Smoking Education, Health Education Authority*

P John Rees MD FRCP *Consultant Physician and Senior Lecturer in Medicine, Guy's Hospital, London*

Donald J Reid MA *Director, Programmes Management Division, Health Education Authority*

David Simpson OBE HonMFPHM *Director, International Agency on Tobacco and Health*

Sarah L Stewart-Brown PhD MRCP(UK) MFPHM *Consultant in Public Health Medicine, Worcester and District Health Authority*

John O Warner MD FRCP *Professor of Child Health, University of Southampton*

Jane EM Watkeys MFPHM *Director of Community Child Health Services, Bloomsbury and Islington Health Authority*

Observer

Felicity AH Harvey MB DCM (*Department of Health*)

In attendance

Bernard Lloyd FCCA (*College Secretary*)

Elaine M Stephenson BA (*Working Party Secretary*)

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The working party is grateful to the following who gave evidence:

Nicholas J Wald FRCP FFPHM (*Professor of Environmental and Preventive Medicine, St Bartholomew's Hospital Medical College, London*)

Martin Jarvis MPhil (*Senior Lecturer, Addiction Research Unit, Institute of Psychiatry, London*)

Joy Townsend MSc (*MRC Epidemiology and Medical Care Unit, Northwick Park Hospital, Middlesex*)

common agriculture policy of the European Community subsidises tobacco production by some £988 million per annum. This policy, which was intended to maintain farmers' incomes and adapt production to demand, has spiralled out of control. In fact, the EC is now the world's largest importer of raw tobacco, while exporting greatly increased crops of virtually unmarketable varieties to countries in Central and Eastern Europe, North Africa and the Middle East. The EC spends only about £7 million per annum on the Europe Against Cancer programme.[61]

Tobacco promotion

In this section, the term promotion is used to cover all forms of advertising, including sponsorship and the development of lines of other goods and services carrying cigarette brand names. Since manufactured cigarettes so dominate the UK market, figures and examples deal exclusively with cigarette promotion.

The main purpose of cigarette promotion is to deliver to a target group of smokers or potential smokers a message which will encourage them to make repeated purchases of the brand. The main effects of advertising are not instantaneous, but probably occur after a long time lag. Much cigarette advertising theory involves the concept of 'myth', meaning the use of a story, theme or type of character that appeals to a group of people by embodying their cultural ideals or by giving expression to their emotions.

A classic myth used in some cigarette advertising is the cowboy—free, independent, self-sufficient and not bullied by authority; a more modern version is the motor racing driver, with his courage, daring and virility. Embodying such figures in cigarette promotional material may satisfy the target group by acknowledging and reflecting some of their self-perceived qualities or by answering their fantasies. When purchasing a particular brand, therefore, they are to some extent identifying themselves as a particular type of person. Exhaustive research enables cigarette advertisers to identify the myths and the settings which most appeal to their targets, and to develop distinctive names, colours and logos for their brands which are persistently associated with those qualities. A constant stream of messages from the resulting advertisements, promotional activities and pack designs helps them to recruit new smokers; and it reinforces brand loyalty among their existing customers, offering reassurance to counter any doubts, such as health worries.

All cigarettes are intrinsically the same: tubes of paper with chopped dried leaves inside which, when ignited, produce smoke containing

several thousand chemicals, many of them highly toxic. By any reasonable assessment, therefore, there are no significant, positive qualities which can be associated truthfully with the most dangerous consumer product the world has ever known, one which is not only highly addictive to many users, but which causes more premature deaths than all other known, avoidable causes put together and for which there is no safe level of consumption. Indeed, the cigarette is unique in being the only consumer product which is highly dangerous simply when used as intended by the manufacturers. The emergence and dissemination of knowledge about the unparalleled dangers of smoking has given the cigarette advertiser an additional task: to try to negate health messages about smoking.

Since the publication of the first report of the Royal College of Physicians on smoking and health,[62] there has been increasing demand for all forms of tobacco promotion to be banned. This has come not just from the medical and health professions, with over thirty organisations now calling for a ban,[63] but from many other organisations and individuals as well. Among the general public, 71% of UK adults now favour banning all cigarette advertising.[64]

Governments and Ministers of all sides are subjected to massive political lobbying by the tobacco industry. A number of Members of Parliament are paid by the tobacco and advertising industries to represent their interests in Parliament. Other Members of Parliament side with the tobacco industry simply for reasons of political belief. Health Ministers not supported by clear Cabinet policy have made ineffective efforts to curb tobacco promotion when faced with lobbying on such a scale. This has resulted in weak voluntary agreements with the tobacco companies which should more accurately be described as negotiated agreements. These involve a promise by the companies to abide by a certain set of rules for a fixed period of time in return for a promise by the Government to take no further action during that time. The complexities of the voluntary agreements mean that members of the public are rarely sufficiently knowledgeable to make successful complaints about breaches of the agreement. The agreements are in fact so permissive that breaches are few and usually accidental.

Children

One of the factors which influences smoking in children is advertising. The tobacco industry asserts that it does not want children to smoke and that cigarette advertising is aimed at adult smokers to encourage brand switching.[65] Nevertheless, children are very aware of cigarette advertisements; they like them, and can interpret at least some of the

messages.[66] The advertisers' aims of associating individual cigarette brands with special logos, colours and typefaces to circumvent advertising restrictions, seems to work well: when shown an advertisement for 'JPS Grand Prix Holidays' which did not carry a health warning, 91% of 12 to 16-year-olds said it advertised cigarettes.[67]

Non-smoking children with favourite cigarette advertisements have been shown to hold more positive views about smoking than those with no favourite advertisement,[68] and children aged 12 who approve of cigarette advertising are twice as likely to become smokers within a year as children who disapprove of it.[69] In addition, cigarette advertising has been found to encourage smoking in teenagers by reinforcing the adolescent's image of him- or herself as successful, witty, exciting and/or glamorous.[70] Although the voluntary agreement protects young readers from cigarette advertising in their own publications, many young people read their parents' magazines,[71] as well as being exposed to cigarette promotion through television coverage of sponsored events, billboards and many other media. The success of advertising to children is illustrated by a study which showed the four currently most heavily advertised brands were the four most popular brands for children (Benson & Hedges, Embassy, Silk Cut, Marlboro) but not all of them for adults (MORI-HEA Survey). Adults tend to stay loyal to brands which were heavily promoted in their youth (eg John Player Special). Similar results have been found elsewhere, eg in the USA.[72]

Although cigarette commercials do not appear on television in the United Kingdom, children still think they see them, either by mistaking cigar, pipe tobacco or anti-smoking advertisements (the two former categories were banned in 1991 under EC regulations), or in films, soap operas or sports sponsorship publicity. Glamour, sophistication, slimness and relief from tension are all portrayed.[73,74] 'Fashion' may have an important role to play in promoting smoking in youth.

The voluntary agreement system is supposed to protect children by prohibiting advertisements showing images such as lively, healthy, successful, young people smoking, but children are still exposed to large amounts of promotion linking smoking with these positive images through the sponsorship of sports and other activities. The agreement also prevents cigarette advertisements from appearing in magazines with a female readership of 200,000 or more, of whom at least one quarter are aged between 15 and 24 years, but the sponsorship of fashion events, promotional activities at discos and placement of cigarettes in films and other advertisements effectively circumvent this provision. For example, Philip Morris paid $42,000 to have Marlboro featured in 'Superman II'—patently a young person's film. In the film, contrary to the comic-book characterisation, Lois Lane smokes incessantly.[75]

Regulation: the current UK position

The tobacco industry resists advertising bans more vigorously than any other measures; and conversely, it always seeks to praise the 'voluntary agreement' system when threatened with a ban. This in itself is perhaps the strongest evidence for the effectiveness of a ban in reducing consumption. The main shortcomings of 'voluntary agreements' are that they tend to be highly selective in nature, omitting many types of promotional activity. They involve different government departments, some pulling in opposite directions from others. The agreement is adjudicated by a committee half of which comprises tobacco industry representatives and is therefore interpreted very laxly. In the circumstances, the companies have little to lose by pushing their interpretations to the limits—and sometimes beyond. The many rounds of meetings with ministers, officials and advertising industry bodies mean that negotiations for new agreements can take a matter of years, allowing plenty of time for the companies to plan how to circumvent the restrictions about to be agreed. The Department of Health, as one of the parties to the agreement, is effectively neutralised. Instead of playing for health and initiating policy changes, the Department is forced into the position of referee between health on the one side and the tobacco industry on the other.

Sports sponsorship

The most outrageous and deplorable example of circumvention of the voluntary agreement on cigarette advertising is the existence of massive cigarette brand promotions by means of sports sponsorship. Clauses in the agreement between the manufacturers and the Department of Health specifically prohibit advertisements associating cigarettes with success in sport. Other clauses prohibit association with certain qualities often found in sports, such as motor racing, for example courage, daring or virility, or with heroes of the young or with young people themselves. To get round these restrictions, the cigarette companies sponsor sporting and cultural events, especially those which are shown on television (eg motor racing, snooker, cricket); or events which attract a young audience (eg discos). In the words of one cigarette company's head of motor racing activities: 'What we wanted was to promote a particular image of adventure, of courage, of virility.'[76]

Tobacco industry secrecy prevents an accurate and up-to-date figure

for total expenditure on cigarette promotion. Regular advertising totals over £67m per annum[77] and sports sponsorship of £5.3m per annum[78] have been declared, but this excludes substantial sums spent 'below the line', including large-scale advertising campaigns purporting to promote sporting events sponsored by a cigarette brand, but clearly intended primarily to advertise the brand itself. The amount spent on sponsorship does not fully represent the massive exposure achieved in circumvention of the voluntary agreement, being so much cheaper than the cost of purchasing equivalent exposure by means of regular television advertising. On average, television coverage of cigarette-sponsored sporting events amounts to an hour per day, virtually all of it on the BBC channels.

Sports sponsorship is not only the most widespread and blatant way the advertising agreement is breached, but it is actually recognised officially and enshrined in its own 'voluntary agreement', this time between the tobacco manufacturers and the Minister for Sport. This underlines the importance of developing an overall government policy on smoking, rather than a Department of Health policy which may cut across the interests of other government Departments.

Banning tobacco promotion

Nineteen countries now have total bans on all forms of tobacco promotion and many more have partial bans.[79] In several states of Australia, for example, most forms of tobacco promotion are banned and an extra tax has been levied on cigarettes to generate a special fund which pays for health promotion, medical and health research and funding for sports and cultural events. This is an incentive to break the domination of tobacco sponsorship and to enable such events to promote healthy messages instead of smoking. Legislation has been announced which will ban all forms of promotion in all Australian states.

Advertising a dangerous product for which there is considerable uptake among young people is clearly unethical. However, there is in addition good evidence that tobacco promotion bans do help reduce smoking. In a study examining tobacco consumption in 22 OECD countries between 1960 and 1986, it was found that since 1973 tobacco advertising restrictions had increasingly been associated with lower consumption.[80]

Norway introduced a ban on tobacco advertising as long ago as 1975 on a purely ethical basis. The prevalence of smoking in children had been increasing steadily over the previous two decades, but after the ban it decreased steadily, even at a time when the real price of cigarettes was falling (17% in 1975 down to 10% in 1990 of 13–15-year-olds).[81]

Canada introduced a wide range of measures including an advertising ban in January 1989 at a time when overall tobacco consumption had been falling steadily since 1982. After the ban was introduced, the rate of decline in consumption doubled from an average 3.6% per annum to 7.6% in 1989 and 6.7% in 1990. In 1990, the real tobacco price increased by 8.9% compared to an average annual price rise for 1983 to 1988 of 8.6%, and thus it is unlikely to be responsible for the increased rate of decline in tobacco consumption.[82]

New Zealand introduced an advertising ban as part of a model Tobacco Act in December 1990, over a period when there was little change in the real price of tobacco. (New Zealand tobacco tax is adjusted twice yearly in parallel with the retail price index). Immediately prior to the advertising ban, spending on cigarette advertising rose by 14% and was associated with an increase in consumption of 4%, and of prevalence from 26.8% to 27.5% in adults at a time when the real price of tobacco actually increased by 4%. Following the introduction of the advertising ban, tobacco consumption was 11.3% lower in the first 6 months of 1991 (after the ban) compared with the first 6 months of 1990, despite there being no other relevant changes to affect consumption. Almost one in 11 smokers gave up smoking after the introduction of the model Tobacco Act.[82] (For an example of a model tobacco policy, see Appendix 4.)

Following the New Zealand data, the UK Department of Health, which had previously accepted the tobacco industry line that the evidence was inconclusive, was reported in early 1992 to have accepted an internal report concluding that a ban on tobacco promotion would help reduce smoking.[83]

A draft Directive on Tobacco Advertising produced by the Commission of the European Community, and passed by the European Parliament in February 1991, proposing a complete ban on all forms of tobacco promotion, has been resisted by the tobacco industry with the aid of a number of Member States' governments, including the British government. Similar Directives on health warnings and on tar reduction have already been passed, breaking the mould of voluntary arrangements for tobacco control policy in Britain.

Conclusions

Influence of friends and parents

- Parents', teachers' and friends' smoking, friends' approval of smoking, perception of what friends think about smoking and

holding a positive attitude towards smoking are all key influences in the uptake of smoking in childhood and adolescence.

Social factors

- Smoking appears to perform an important 'social' function for young people and provides a readily accessible and relatively inexpensive means of social barter and bonding. Young people are well aware of the health hazards of smoking; however, they perceive that benefits in social terms outweigh the perceived potential health problems.

Availability and advertising

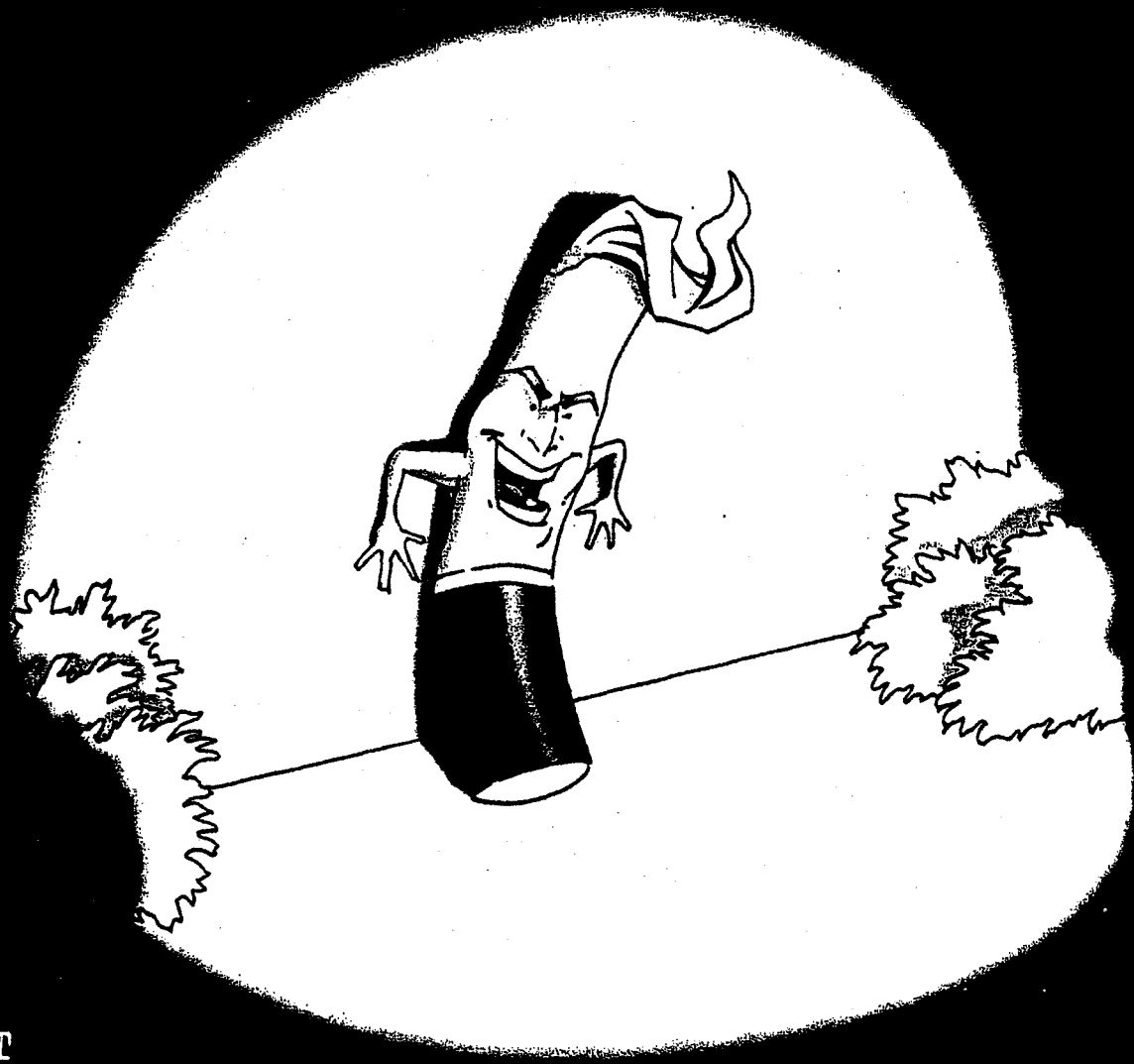
- Smoking in young people is reinforced and maintained by a number of factors in the immediate and wider social environment, particularly the availability of cigarettes to young people and tobacco advertising. A ban on tobacco advertising would have a significant impact on the uptake of tobacco by young people in the UK.

Restriction of smoking

- Ensuring the establishment of non-smoking as the norm in society and the removal of the omnipresence of tobacco promotion appear to be crucial to the prevention and cessation of smoking in the longer term.

OPPORTUNITIES FOR HEALTH

TOBACCO
Sounding the Alarm



REPORT
OF THE
CHIEF
MEDICAL OFFICER
OF HEALTH

Ontario

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Two factors contributed to this dramatic change. The cost of cigarettes dropped substantially, making addiction more accessible – especially to young people. And the marketing and promotion of tobacco became more sophisticated, making smoking seem more attractive.

Tobacco consumption and price

Tobacco use is strongly influenced by the cost of the product. This is particularly true among young people. Typically teenagers do not have much money, so the higher the price, the less tobacco they can afford. Also, because many teenagers are only experimenting with tobacco and are not yet addicted, they can easily cut down if the price rises. Adult smoking rates change with price too, but usually to a lesser extent than rates for young people.

The real price of cigarettes (adjusted for inflation) increased sharply in Ontario through the 1980s due to frequent increases in tobacco taxes. The price increases made a substantial contribution to the overall drop in smoking rates. Most Canadians came to view tobacco levies as a "health" tax, not a "sin" tax. Canada had one of highest tobacco tax rates in the world, and many countries regarded it as a model in the fight against tobacco.

All this changed in the early 1990s. Cigarette smuggling boomed, with most of the contraband consisting of Canadian cigarettes being exported to American border towns and then brought back illegally. This smuggling lowered the street cost of cigarettes.

An export tax on Canadian tobacco products, which showed promise in reducing smuggling, was revoked in the face of intense political lobbying by the tobacco industry. Other government efforts to stop smuggling were either inadequate or ineffectual.

In 1994 the federal government conceded to this lawlessness and effectively removed its taxes on cigarettes. The Ontario government had little choice but to follow.

The result has been an increase in smoking rates. The true cost will be paid by our children, in cancer and heart disease, and by our grandchildren, in infant deaths and childhood asthma.

Tobacco promoted heavily

Tobacco use doesn't just happen. It is actively and openly promoted by an industry that knows it needs a steady supply of new tobacco addicts to replace those who die and those who break their addiction. The industry spends many, many millions of dollars each year promoting its products.

The recent decision by the Supreme Court of Canada effectively removed all legal restrictions on tobacco advertising in this country. We now allow the tobacco industry to advertise its deadly and addictive products freely. The tobacco companies use outdoor billboards, bus shelter posters, in-store displays and magazine ads. The cigarette packages themselves, carefully designed and brightly coloured, are a valuable marketing tool.

Direct advertising is only one facet of tobacco promotion. Tobacco companies also sponsor arts and sporting events – an important and relatively low-cost way to raise brand profiles. Watch Jacques Villeneuve win a Grand Prix and see the

Rothman brand name on his jacket sleeve. Attend a Sass Jordan rock concert presented by Belvedere.

Sponsorship is even more insidious than direct advertising because it makes our arts and sporting groups partners in the promotion. We hold our arts and sporting events in high esteem. The tobacco industry feeds off this prestige to buy respectability for its deadly, addictive product. This is not philanthropy. It is advertising in a pernicious form.

Tobacco products have subtly made their way back into popular culture. A film shows Sharon Stone puffing languidly. The cover of Saturday Night magazine features David Layton with a cigarette dangling from his hand. The image is clear. Smoking is sexy and chic. Images of corpses, cancers, underweight babies and burned children are not as appealing but they are more realistic.

A key element of tobacco promotion is to make tobacco use appear normal. This is no small feat with a deadly addiction that involves deliberately inhaling toxic chemical-laden smoke. Anything that the tobacco industry can do to portray smoking as normal helps sell its products. This is why the industry works so hard to gain social acceptability through sponsorships and a trendy image in the media.

Don't blame the kids!

The evidence linking tobacco to death and disease is beyond dispute. The addictive nature of tobacco is well established. Young people are, for the most part, reasonably well informed about at least some of the consequences of smoking. Yet they continue to become smokers.

A common explanation for this paradox is to blame the young people themselves. "Don't they get it? How could they be so foolish? Why won't they listen?"

Who is really at fault? Look in a mirror. It is time we stopped blaming the kids and looked to ourselves for the explanation.

Young people continue to become addicted to tobacco in large numbers because we as individuals and as a society continue to tolerate tobacco use. We send young people an ambiguous message about tobacco.

On one hand, we warn them about the deadly and addictive nature of smoking. On the other hand, we allow smoking to remain a normal and accepted social activity. Toronto City Council, for example, has shown leadership in restricting second-hand smoke in public places – yet it permits du Maurier banners to fly right outside City Hall during the annual jazz festival!

Even though we know smoking kills, we treat tobacco companies as purveyors of just another consumer product, rather than as merchants of addiction and death. We allow tobacco to be sold cheaply and advertised without constraint. And we let our well-respected arts and sporting events serve as vehicles for tobacco promotion. Is it any wonder that so many young people dismiss our warnings about addiction, death and disease?

If we are serious about health and serious about protecting our children, then all of this must change. Tobacco is an addictive and deadly substance that should have no place in our society. All our actions must reflect this reality.

Agenda For Action

Reducing tobacco use is everyone's business – smoker and non-smoker, parent and child, doctor and patient, politician and private citizen. We all have opportunities to contribute to winning the war against tobacco.

Our best chance to beat tobacco is to cut off the addiction at its source. If we can protect our young people from tobacco addiction until they reach adulthood, we can truly create a generation of non-smokers. To achieve this, we must make tobacco unattractive, hard to get, and socially unacceptable. We also have an obligation to protect everyone, but again particularly children, from exposure to second-hand smoke.

This report urges a series of strategies to help reduce tobacco use. These include reducing the accessibility and attractiveness of tobacco to young people, better protection against second-hand smoke, and strong federal controls on tobacco. These strategies build on the recommendations of the Ontario Task Force on the Primary Prevention of Cancer and on previous Chief Medical Officer of Health reports.

Recommendations

Individuals and Families

1. Make every home smoke free.

Getting smoking out of our homes accomplishes two things. It protects family and friends from the hazards of second-hand smoke. And it sends a powerful message that smoking is not socially acceptable. A polite but firm notice at the front door is good health protection and good health promotion.

2. Smokers should quit...today.

If you smoke, you should quit. Join the non-smoking majority – almost three-quarters of Ontario adults. The benefit to your own health will be enormous and immediate. And think of the impact of your action as a role model for your children. Quitting is tough, but it can be done. Contact your local public health department or speak to your family doctor for more information.

3. Use your consumer power to fight tobacco.

Selling tobacco to anyone under the age of 19 is against the law. If a local store breaks this law, stop shopping there and let the management know why. Tell your local public health department – its inspectors can lay charges.

The organizers of arts and sporting events cannot afford to ignore the views of their audiences. Let them know you do not approve of tobacco sponsorship.

Communities

1. Make all places where children go smoke free.

Although province-wide laws would be ideal, municipalities already have the power to prevent exposure to second-hand smoke in public places. They should use this power. Doing so would also make a convincing statement about social acceptability of smoking. Restaurants would be an excellent place to start – a move already taken in communities such as Vaughan, Guelph, London and the City of Toronto – and being actively considered throughout the Greater Toronto Area.

Encourage families to make their homes smoke free. Provide signs that, politely but firmly, inform visitors they must do their smoking outside.

2. Help event organizers replace tobacco sponsorship.

Municipal governments are often partners in arts and sporting events. They should tell the organizers that sponsorship by tobacco companies is unacceptable – and actively help them find alternative sponsors.

3. Boards of health must give priority to tobacco control.

Reducing tobacco use is a priority for public health in Ontario. Some local boards of health have been exemplary in embracing their responsibilities. But some have not done as well, particularly in active enforcement of the law prohibiting sale of cigarettes to young people. These boards of health can, and must, do better.

Health Care Providers

1. Talk to your patients about tobacco.

Discussion about tobacco should be a part of every provider/patient relationship. Counsel young people about the risks of addiction. Advise smokers to quit. If the patient is pregnant, add urgency to the message. Remind all your patients of the dangers of second-hand smoke. Urge them to make their homes smoke free.

2. Help smokers quit.

Health care providers can offer crucial support for quitting smoking. The tools include counselling, positive reinforcement and, for some patients, nicotine replacement. The Canadian Task Force on the Periodic Health Examination recommends physician assistance in smoking cessation as a core primary care practice.

3. Advocate for tobacco control.

Health care providers have high credibility on health issues. Use this asset to advocate for tobacco control. Let your patients, community leaders and government representatives know where you stand. And keep up the pressure.

Provincial Government

1. Make all places where children go smoke free.

Children should not be exposed to second-hand smoke – or to the social message that smoking is a normal activity. While local governments already have the power to deal with second-hand smoke in public places, we can't wait for more than 800 municipalities to take action. Decisive Ontario government leadership to establish a province-wide standard is imperative. Provincial legislation already bans smoking in schools across Ontario. This should be extended to all public places where children go – malls, restaurants, bowling alleys and arenas.

The provincial government should also encourage people to get smoking out of their homes. Promoting a "smoke-free homes" campaign would be a useful first step.

2. Make all workplaces smoke free.

Exposure to second-hand smoke in the workplace is a serious health hazard. Provincial policy has protected most Ontario government workers from second-hand smoke for years. Every smoker, even cabinet ministers, must go outside to smoke. It is time to extend this same protection to all workers in Ontario. Polls show that public opinion strongly supports this move.

Restaurants and bars employ more than a quarter million people province-wide. Protecting these workers from the occupational hazards of second-hand smoke is an important reason for making these premises smoke free.

3. Set up a 1-800-STOPNOW line.

Telephone "hotlines" are an effective way of expanding access to timely and valuable information. Getting smokers to quit is a priority. A 1-800-STOPNOW line could give smokers instant counselling about quitting, as well as details about cessation programs in their communities. In addition, the government could use existing legislation to require tobacco companies to prominently display the 1-800-STOPNOW number on cigarette packages.

4. Help event organizers replace tobacco sponsorship.

Provincial ministries and agencies may be partners in arts and sporting events. These provincial bodies should insist that tobacco sponsors not be permitted and actively help the organizers find alternatives.

FEDERAL GOVERNMENT

1. Put the taxes back on cigarettes.

Price is a very important determinant of smoking behaviour, especially among young people. Raising taxes is the best way of using pricing to discourage tobacco use. The smuggling issue mainly involved untaxed Canadian cigarettes exported to the U.S. then brought back illegally. Cigarette taxes should be applied at source, to the manufacturer, to remove this competitive advantage from smuggling.

2. Implement the federal Tobacco Control Blueprint.

In December 1995, Health Canada produced a comprehensive plan – the Tobacco Control Blueprint. It includes many significant proposals: a ban on advertising; restrictions on tobacco sponsorship and promotion; packaging and labelling requirements; limits on access for young people; product regulation; and others. So far, these are just words. It's time to make them actions!

The Blueprint should be strengthened by including help for Canadian arts and sports organizations to break their dependence on tobacco money. These groups should receive transitional funding from the federal government while they seek new sponsors.

Conclusion

The purpose of this report is to sound the alarm about tobacco. Smoking is lethal and addictive. It is Ontario's number-one killer. It causes disease and death in smokers and, through second-hand smoke, in non-smokers as well. In the few minutes it has taken to read this report, someone in Ontario died from tobacco use.

The recent increase in smoking rates is a time bomb that will have explosive consequences for the future health of Ontarians – unless we disarm it now.

In the past few years, we have relaxed our vigilance toward smoking. We have allowed tobacco to become more accessible by caving in to smuggling and slashing taxes on cigarettes. We have let tobacco companies freely advertise their products and identify themselves with glamorous arts and sporting events.

As a result, an epidemic of cancer and heart disease looms when today's youth reach their middle and later years. The fiscal foundations of medicare could be shaken. We can prevent this tragedy by heeding the alarm sounded in this report. Together, we can make the recent upturn in smoking rates only a temporary setback on the path to a smoke-free society.

Department of Health
Department of Health and Social Services, Northern Ireland
The Scottish Office Department of Health
Welsh Office

REPORT OF THE SCIENTIFIC COMMITTEE ON TOBACCO AND HEALTH

CHAIRMAN:
PROFESSOR DAVID POSWILLO

Scientific Committee on Tobacco and Health

Wellington House 135-155 Waterloo Road London SE1 8UG
Telephone 0171 972 2000

Sir Kenneth Calman
Chief Medical Officer
Richmond House
79 Whitehall
London
SW1A 2NS

5 February 1998

Dear Sir Kenneth

It is my privilege to present to you the report of the Scientific Committee on Tobacco and Health.

It has been an honour to chair this committee during a time of increased public and government awareness of the extent of the tobacco epidemic, the alarming global mortality caused by tobacco and the growing awareness of the dangers to non smokers from passive smoking.

This is the first major UK report since the fourth report of the previous Independent Scientific Committee on Smoking and Health chaired by Sir Peter Froggatt. Taking our lead from that report, we decided to carry out an in depth examination of the emerging science of the health effects of environmental tobacco smoke. We were greatly assisted in this examination by three important overviews of existing studies in relation to lung cancer, ischaemic heart disease and childhood respiratory diseases. Most of this work has now been published as individual papers.

Because the excess risks that we are discussing are not of great magnitude, in the region of 20-30% in the case of lung cancer, we took particular care in assessing evidence submitted to us from the Tobacco Manufacturers' Association which drew the conclusion that there was no increased risk of lung cancer in exposed non smokers. We were grateful for the expertise of members of the Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment who carried out a separate overview of the relevant studies and also considered the chemical composition of environmental tobacco smoke and the evidence for the deposition of genotoxic carcinogens in the respiratory tract. The entirety of the statement which was produced by the CoC on ETS and lung cancer is attached as an annex to this report. Our careful study led us to reject the evidence of the Tobacco Manufacturers' Association and conclude, as did the Independent Scientific Committee on Smoking and Health, that long term exposure to environmental tobacco smoke is a cause of lung cancer.

As ischaemic heart disease is much more common than lung cancer, the similar increased risk in exposed non smokers, which new papers are suggesting is of considerable public health implication. It may be that thousands of such deaths in the UK are caused by passive smoking. The evidence of the damage to the health of infants and children is also of considerable public health significance.

Although our focus was on passive smoking, we attempted to avoid an unbalanced report by looking back at the accumulated knowledge of the major health risks of active smoking. The committee has drawn conclusions relating to the health effects of both active and passive smoking and has made recommendations based on those conclusions. However, we felt that it was vital to focus on key messages, for individuals and for government, which appear at the beginning of the report. These key messages address the topics of active smoking, passive smoking, nicotine addiction, price and marketing of tobacco products and smoking cessation.

With your consent, we sought expert opinions on advertising of tobacco products, particularly in relation to vulnerable young people. We share your concern that the prevalence of cigarette smoking is rising in schoolchildren and welcome the consensus achieved by European Health Ministers on banning tobacco advertising.

If we are to reduce the predicted mortality from tobacco related diseases, amongst our current smokers, then we feel that there should be particular focus on smoking cessation interventions by health professionals and increased utilisation of the effective nicotine medications by smokers who are motivated to stop.

It is salutary to note that one third of the cancer deaths in Britain and one sixth of deaths from other causes could be prevented by avoidance of smoking. If we are serious about improving public health then tobacco control warrants priority attention from government. Resources devoted to this area should reap substantial benefits for the current generation of smokers and for generations to come.

I would like to thank the members of my committee for their invaluable support, expertise and patience. I would also like to extend my gratitude to the medical and scientific secretariat for their hard work and enthusiasm.

Yours sincerely

Chairman

Copies to :
Sir David Carter CMO Scotland
Dr Ruth Hall CMO Wales
Dr Henrietta Campbell CMO Northern Ireland

PART THREE

The Influence of Price and Promotion on Tobacco Consumption

3.1 The Committee focused on the influence of price and promotion (in all its manifestations) on young people because of their vulnerability and susceptiblity to adult influences. It is also known that almost all smokers start to smoke as children or young adults. There is concern to limit consumption and encourage cessation in adults as well as the young and there is evidence that price and promotion influence consumption among existing smokers.[58]

3.2 The dilemma that tobacco consumption has fallen least amongst the poorest families and the regressive effect this has on dependent children, has been discussed by Marsh and MacKay in their book "Poor Smokers".[59] Tobacco tax recovers for the Treasury 17% of the means tested benefits paid to poor smokers by the DSS (1991 figures).

3.3 The subject of price and consumption of tobacco was addressed in the British Medical Bulletin by Joy Townsend.[9] She pointed out that, before the widespread publicity about the health effects of smoking in the early 1960s, there was little difference between the smoking habits of different socio-economic groups. Price has a major effect on cigarette consumption and thus on smoking related diseases, especially in low income groups. It is one of the most powerful elements in strategies for the control of tobacco and is recommended by WHO and other authoritative bodies.[9] Cigarette consumption decreases by about 0.5% for a 1% increase in price adjusted for inflation; the effect is greater in low income groups[9] which may be the groups least susceptible to health education messages.

3.4 Tobacco promotion helps to recruit young smokers, and this promotion occurs without manufacturers making clear the true extent of the harm the products cause and the risk of addiction.

3.5 The Committe received a detailed overview of the marketing challenges facing the UK tobacco industry from Mr Peter Haynes, Marketing Manager of Wellcome. He explained that the marketing objectives of the industry are to encourage smokers to consume more, to undermine motivation to quit, to encourage former smokers to begin again, to encourage adults to start smoking and to hope that the young will experiment and therefore become the pool of new customers. It has been suggested that the industry needs to recruit more than 300 new smokers a day to replace those who die from smoking related diseases.

3.6 The industry approaches the challenge of retention and recruitment of smokers by spending an estimated £60 - 100 million (1994) on promotion. This is described as brand strengthening. It funds a body (Freedom Organisation for the Right to Enjoy Smoking Tobacco - FOREST) to counter the anti-smoking lobbies (retention) and promotes the generic message that smoking is socially acceptable. Generic promotion is subtle and carried out by role models such as fashion models, film and pop stars and television personalities. For example, it is reported that a film star accepted

$500,000 from a tobacco company in 1993 to promote its brand in five feature films including Rambo. (The Times - 13.9.94). It is not possible that such promotion would have a favourable influence on brand choice without encouraging the smoking habit.

3.7 Sports sponsorship serves two purposes - firstly promotion of the brand and secondly by subverting the argument that smoking is a health risk (by association with healthy sports role models).

3.8 Even packaging conveys a product of high quality and therefore the inference that the contents are not harmful despite the health warning.

Conclusions

3.9 Price, advertising and promotion influence cigarette consumption.

3.10 Prevalence of smoking in the UK is increasingly associated with factors of social and economic deprivation.

Recommendations

3.11 The real price of tobacco products should continue to be increased each year to reduce consumption

3.12 All forms of tobacco advertising, promotion and identifiable sponsorship should be banned.

PART FOUR

Smoking and Young People

Introduction

4.1 One meeting was devoted to the topic of smoking and young people. The purpose was to review understanding of the factors influencing young people to smoke and to inform wider thinking on this issue. The Committee noted the importance of stopping young people from experimenting with smoking, given the intensely addictive properties of nicotine.

The Health of the Nation

4.2 The Health of the Nation White Paper[10] recognised the importance of reducing the prevalence of smoking in young people. The White Paper included a specific target to reduce the proportion of 11 to 15 year olds who are regular smokers (defined as smoking at least one cigarette a week) from about 8% in 1988 to less than 6% in 1994. Disappointingly, the 1994 target was not met (see para. 1.19). The prevalence of smoking in this group has risen to 13%, and failure to make any impact here contrasts with the continued steady progress in reducing adult smoking prevalence and tobacco consumption.

Australian Experience

4.3 The Australian Quit Evaluation Studies number 8, 1994-1995[56] concluded that smoking among young people is not declining and there are worrying signs that smoking is re-emerging as a signifier of the rejection of authority. Research into the attitudes of young smokers to quitting revealed two strong themes: young people do not believe that smoking is currently doing them any harm and young smokers intend to quit eventually but put off the decision.

A smoking target for young people

4.4 There may be an advantage in reducing the age range of any future targets among young people by focusing on discrete age groups. It is known that nearly all 10 to 11 year olds do not smoke, but by age 15 years about 30% have become smokers. The main change in attitude and behaviour occurs around age 13, with some variation between the sexes. A clearer focus on prevalence in 14 and 15 year olds (Years 10 and 11 of the National Curriculum) might offer a more precise indicator of the success of efforts to reduce smoking in young people. It will be useful to continue to document prevalence changes in smoking in younger age groups in order to provide early warning of any significant changes which might occur. Members considered that, in the future, gender related smoking prevalence for young people should be monitored for age groups 11, 12 - 13 and 14 - 15.

4.5 While the prevalence of regular smoking is an important indicator, information on the proportion of young people who used to smoke but have given up, those who have tried smoking without taking it up regularly and those who have never smoked is also relevant. Useful data are provided in an Exeter Schools Health Education Unit Publication "Young People in 1996".[57] This book, published in July 1997, reported that a quarter of 14 - 15 year old boys and almost a third of the girls, smoked at least one cigarette during the previous week. 20% of the 14 - 15 year olds were able to buy cigarettes from a shop. Within the 14 - 15 year age range, of girls and boys who consider themselves "regular "smokers, only about 6% say that they do *not* want to give up.

Children's Smoking, Taxes and Tobacco Industry Income

4.6 1994 OPCS figures[62] on tax and industry revenue from children's (illegal ie under 16 years of age) smoking were illuminating. In England the total tobacco tax revenue to Treasury from young people was just under £104m (the industry received nearly £29m). Treasury revenue from under age smoking in Scotland was nearly £11 million, in Wales it was over £5 million and in Northern Ireland treasury income was over £4.5 million. Except in Scotland, under aged girls contributed more to treasury revenue than under aged boys. In England and Wales in 1996 there were 140 prosecutions for tobacco sales to minors, with findings of guilt in 119. [63]

Factors Influencing Young People to Smoke

Parents and siblings

4.7 An OPCS enquiry,[64] commissioned by the Department of Health, showed that young people whose parents smoke are twice as likely to smoke as children of non-smoking parents. It also showed that young people who perceive no parental disapproval are seven times more likely to smoke than young people who perceive strong parental disapproval; that young people with a sibling who smokes are up to four times more likely to be regular smokers than those whose siblings do not smoke; and that the effect of peer smoking is more pronounced with increasing age. A Royal College of Physicians working party report showed that the prevalence of smoking among young people is higher in those living with a single parent and is higher still if the lone parent is a smoker.[65] It should be said that little is known about the relative contribution of family influences and hereditary factors to susceptibility to smoking.

Young People and Price

4.8 It is clear that price plays a definite role in cigarette consumption. Smoking trends in 15 year olds mirror price changes, indicating that they are responsive to price.[66]

Young People and Nicotine Addiction

4.9 Studies of teenagers have shown that pharmacological motives become important very early in the smoking career. By the time daily smoking is established, within only a few months of starting, children take in as much nicotine per cigarette as do dependent adult smokers.[67] Children as young as age 14-15 report experiencing nicotine

withdrawal effects, and perceive that stopping smoking will be hard to achieve successfully.[68] These observations confirm the US Food and Drug Administration's view of cigarette smoking as a "paediatric disease".[69]

Young People and Cigarette Advertising

4.10 The Committee received evidence from Mr P Haynes, (see para. 3.5), suggesting that key advertising messages exploit the emerging independence of young people. Cigarettes are used as a fashion accessory and appeal to young women. Other influences on young people include the linking of sporting heroes and smoking through sports sponsorship, the use of cigarettes by popular characters in television programmes and cigarette promotions. Research suggests that young people are aware of the most heavily advertised cigarette brands.[70] Mr Haynes suggested that the key objective of the advertisers is to expand the market, using various strategies to persuade young people to smoke more.

4.11 Sports sponsorship is acknowledged by the tobacco industry to be valuable advertising. A Tobacco Industry journal in 1994 described the Formula One car as "The most powerful advertising space in the world".[71] In a letter to the Lancet of 15th November 1997, Professor Anne Charlton and colleagues have described a cohort study carried out in 22 secondary schools in England in 1994 and 1995. Boys whose favourite television sport was motor racing had a 12.8% risk of becoming regular smokers compared to 7.0% of boys who did not follow motor racing. The Committee was concerned at the link between the onset of regular smoking in boys and their preference for watching motor racing sponsored by specific brands of cigarettes.

4.12 The Department of Health's Smee Report 1992[72] examined the effect of year-to-year variations in advertising expenditure within countries and concluded that advertising influenced tobacco consumption. The Smee report also reviewed the effect of advertising bans in other countries. Norway and Finland have complete bans on advertising which were estimated to have reduced cigarette consumption by 9% and 7% respectively. Bans in Canada, Australia and New Zealand resulted in reductions less than in Norway and Finland.

4.13 Although other factors may have been involved, the advertising ban in Norway in 1975 appears to have led to a substantial reduction in smoking among school students and adult males.[69] Between 1973 - 1994 female smoking prevalence in the age group 16 - 24 years fell from about 44% to about 28%. For males of the same age group it fell from more than 45% to 30%. Since 1975, when the advertising ban was introduced in Norway prevalence among male daily smokers aged 13 - 15 fell from 15% to 9% in 1990. For girls the fall was from 17% to just below 10%.[74] The ultimate effect of an advertising ban depends to a certain extent on prior restrictions on smoking.

4.14 The committee noted that a paper published in the Journal of the American Medical Association[75] in 1994 concluded that: "The tobacco advertising campaigns targeting women, which were launched in 1967, were associated with a major increase in

smoking uptake that was specific to females younger than the legal age for purchasing cigarettes".

4.15 The long term effect of banning advertising and promotion in Australia and New Zealand, Canada, Norway and Finland and in any other parts of the world instituting a ban, is being watched with interest. Data from New Zealand[76] show that there had not been a decrease in smoking prevalence in those aged 15 years and over between 1991 and 1995. There was a period of marked decline from 1984 to 1990. Among 15-19 year olds smoking prevalence peaked in the first quarter of 1991 and declined in the second half of the year. These changes were thought to be consistent with the heavy tobacco advertising in 1990, the advertising ban from December 1990, and the effect of the 17% cigarette price rise in July 1991. It was concluded in "Tobacco Statistics 1996"[76] that smoking reduced as and when Government intervened, by legislation, taxation, health promotion programmes or publicity campaigns. This document also shows that smoking prevalence amongst Maori people is about double that in Europeans.

4.16 In February 1997, Mrs Christine Godfrey, Health Economist from the University of York, gave a presentation to the Committee on the effects of cigarette advertising on the young. Econometric studies could never provide conclusive evidence of causality ie a direct link between advertising and tobacco consumption. It was therefore necessary to make a judgement on the balance of probabilities, considering all available evidence, not least the marketing intentions and expenditure of tobacco companies.[77] The dramatic increase in the brand share of the product following the launch of the Joe Camel character in the US demonstrated that marketing activities are directed at placing brands in different sectors of the market. Research has looked at young people's recognition and susceptibility to cigarette advertising or marketing techniques. Susceptible young people go on to become smokers, but it is not clear whether susceptibility pre- or post-dates awareness of advertising.[78] Media advertising is only part of the industry's wider marketing activities and should not be considered in isolation from sponsorship, competitions and other types of sales promotion.[79] Evidence from the General Household Survey[1] shows that young people are more likely to smoke heavily promoted brands than older smokers. Current regulations clearly do not protect children from advertising messages. Advertising could also reinforce smoking behaviour, hinder quitting efforts, constrain media coverage of anti-smoking messages and legitimise the smoking habit. The balance of evidence from different types of studies (econometric, experimental and observational), together with examination of the marketing activities of tobacco companies, indicates that advertising influences consumption and that restrictions on advertising and other marketing activities will lead to a reduction in children's smoking.

4.17 The Committee recognised the difficulty in obtaining conclusive evidence on advertising and total tobacco consumption but, having looked at the available evidence, was of the unanimous view that tobaco advertising and promotion influence the uptake of smoking by young people. Based on firm medical evidence of the health effects of active smoking and exposure to ETS, open advertising and promotion of tobacco products could no longer be justified.

4.18 In March 1997, the American Liggett Group Inc., agreed to a legal settlement with 22 US states. As part of the settlement the company undertakes "to scrupulously avoid any and all advertising that would appeal to children and adolescents". The company will hand over a quarter of its pre-tax profits for the next 25 years to a fund for litigants, and will give warnings on cigarette packs that smoking is addictive. It will be noted that this is the first time that a tobacco company has admitted that cigarette smoking is addictive and causes lung cancer, heart disease and emphysema.

4.19 A proposed settlement with the tobacco industry in America was announced in June, 1997. (The full text of the settlement is available on the internet.[80]) US tobacco companies have agreed to pay $368.5bn (£230bn) over 25 years, in a settlement with the Attorneys General from forty states, in return for limitations on future litigation. The deal proposes that teenage smoking should fall by 30% in five years and 60% in ten years with penalties against the tobacco companies if these targets are not met. The proposals, which have yet to be endorsed by the President and approved by Congress, will also ban billboard advertising, store displays, sports promotion and the use of human and cartoon images.

Recent Department of Health Funded Research about Smoking and Young People

4.20 A study on protective factors in adolescent smoking was carried out for the Department of Health.[81] The authors concluded that certain factors operate as protective influences against smoking and are not necessarily the inverse of risk factors. Parental influence was seen to decrease during adolescence as peer influence increased. The importance of self-image or social identity was central.

4.21 The study recommended that interventions should have a family and community component as well as a school component, clear and consistent messages should be promulgated from trusted sources of similar age and from role models in sports and media. There should be promotion of the non-smoking image, stricter monitoring of illegal tobacco sales and better dissemination of existing information on the health effects of cigarette smoking.

4.22 The Exeter Schools' data[61] show the higher percentages of smoking girls than boys in the older age groups (years 9, 10 and 11). This is confirmed by information form ONS,[13] reporting a statistically significant increase among 15 year old boys from 19% in 1993 to 26% in 1994. Although there was also an increase in smoking among girls of this age, from 26% to 30%, it was not statistically significant. Social representation and social identity are important factors with respect to smoking and young people; social representation defines the special features of a social group and social identity relates to an individual's persistent sense of self and of sharing significant characteristics with others.

4.23 A quantitative/behavioural study on "Why do young girls smoke?" was commissioned by the Department of Health.[78] The authors concluded that young adolescent girls smoked more cigarettes than boys. Living in single parent families or step families was a risk factor compared with living with both parents, as was the presence in the home of smokers. Peer influences were of considerable importance: having a best

friend who smoked was identified as a significant risk factor for smoking. Intentions to smoke were predictive of future smoking behaviour six months later. Adolescents were aware of the health risks associated with smoking and of the addictive nature of smoking. Sensation seeking and non conformist aspects of adolescent identity appeared to be important determinants of smoking. The culture of the particular school influenced smoking prevalence over and above social background factors.

4.24 The authors made recommendations for interventions and indicated that school interventions alone were insufficient to deal with the problem of smoking in young people. Other measures necessary to achieve any substantial change included effective non smoking policies in all public institutions, a ban on all forms of tobacco promotion, and fiscal measures to increase the price of tobacco products above inflation and above increases in disposable income. Specific recommendations for health education programmes should have a shifting focus throughout the school curriculum to tie in with the developmental changes in young people as they mature. Adequate training of teachers was necessary and health education should have a more prominent place in the National Curriculum.

Conclusions

4.25 Targeting of young people by tobacco companies is of particular relevance because of the now acknowledged addictive nature of tobacco.

4.26 Price, advertising and promotion influence cigarette consumption among young people.

4.27 Interventions to prevent smoking in young people should form part of concerted action involving all agencies including home, school, community and Government.

Recommendations

4.28 Young people, in particular, should be protected by a ban on all forms of tobacco advertising and promotion.

4.29 The real price of tobacco products should continue to be increased each year to discourage young people from smoking.

4.30 Changes in smoking prevalence in younger age groups should be monitored.

4.31 Educating young people about tobacco addiction and its effects on health should remain an important part of the school curriculum.

4.32 Young people themselves should be involved in looking at constructive ways of reducing initiation of smoking.

ANNEX E

MEMBERSHIP OF SCOTH

Professor David Poswillo (Chairman)
Professor emeritus, United Medical and Dental Schools, Guy's & St Thomas's Hospital, London.

Dr Marion Hall
Department of Obstetrics and Gynaecology, Aberdeen Royal Hospitals NHS Trust, Aberdeen.

Professor Roger Greenhalgh
Imperial College of Science and Medicine, Department of Surgery, Charing Cross Hospital, London

Professor Nicholas Wald
Wolfson Institute of Preventive Medicine, St Bartholomew's and The Royal London School of Medicine and Dentistry, London

Professor Richard Peto
Clinical Trial Service and Epidemiological Studies Unit, Radcliffe Infirmary, Oxford University

Dr Martin Jarvis
Imperial Cancer Research Fund Health Behaviour Unit, University College London Medical School, London

Professor David Marks
Middlesex University, London

Professor Richard Carter
Royal Marsden Hospital and University of Surrey

Dr Aidan Macfarlane
Department of Public Health and Health Policy, Oxfordshire Health Authority

Professor Godfrey Fowler
Professor emeritus of General Practice, Oxford University

Professor Robert Curnow
Professor emeritus, Reading University

Observers

Dr A C Peatfield
Medical Research Council (until April 1997)

Dr Debbie Colson
Medical Research Council (from July 1997)

Mr John Day
Laboratory of the Government Chemist

Mrs Cheryl Swann
Tobacco Products Research Trust (set up under ISCSH) and former scientific secretary to ISCSH

Other Health Departments

Dr Barbara Davis
Senior Medical Officer, Scottish Office Department of Health

Dr Bill Smith
Head of Health and Social Policy Unit, Department of Health and Social Services, Northern Ireland

Dr Paul Tromans
Senior Medical Officer, Welsh Office

Department of Health

Professor Frank Fairweather
Scientific Consultant, Toxicologist, former ISCSH member

Mr Robert Waller
Scientific Secretary until July 1996. Former scientific secretary to ISCSH from 1984

Dr Sue Shepherd
Medical Secretary until July 1996

Dr Dawn Milner
Medical Secretary from July 1996

Dr Gillian Shine
Scientific Secretary from August 1996

THE TOBACCO INDUSTRY AND THE COSTS OF TOBACCO-RELATED ILLNESS

Report of the Senate Community Affairs References Committee

DECEMBER 1995

similar suits. It has been reported that several other states may also seek similar compensation from tobacco companies.[105] Numerous lawsuits by individuals have also been instituted against tobacco companies in the United States. In February 1995 a ruling in the US District Court permitted a New Orleans lawsuit filed against US tobacco companies to go forward as a class action. This suit is now the largest class action lawsuit in United States history.[106]

1.80 The Committee received evidence that there may be difficulties in launching litigation proceedings in the Australian context. For example, in regard to the provision of legal aid in Australia in preparing test case compensation claims, a representative of a tobacco company noted that in Australia, unlike the United States, costs follow the event:

> It means that, if any of those claimants are unsuccessful, the government stands to lose an awful lot of money...in America, costs do not follow the event, there are contingency fees. There has never in the history of the industry been a successful claim asserted by any plaintiff to recover damages. I believe that will remain the case. I believe that will be the case in Australia; I believe that will be the case in England. I do not believe that it is appropriate for the government to support claimants who, under like circumstances, have been demonstrated to be wholly unsuccessful claimants in other jurisdictions.[107]

1.81 Another means of recouping the cost of tobacco-related illness in the Australian context would be to increase Commonwealth excise duties and State/Territory business franchise fees on tobacco products. One submission noted that a large increase in this form of taxation would have a significant impact on the demand for tobacco products. Research shows that staged and widely publicised increases in the real price of tobacco products does have an impact on the demand for cigarettes, particularly among adolescents and potential smokers. Directly targeting the revenue earned from the excise and other taxes would significantly reduce the cost to society of tobacco abuse; and such an initiative would clearly signal the Government's further commitment to reducing consumption.[108] As noted in Chapter 3, the Committee believes that there should be regular, real increases in tobacco taxes levied at the Commonwealth and State/Territory levels and that part of the revenue from these taxes should be directed to tobacco control and health promotion activities.[109]

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105 Victorian Smoking and Health Program, *Status Report: What's Happening in the Legislative and Litigation Spheres of Tobacco Control in the USA*, 9 May 1995, pp.22 ,25.

106 *ibid.*, p.25.

107 *Transcript of Evidence*, pp.492-93 (Philip Morris).

108 Submission No.27, section 5.11 (DHS&H).

109 See paragraphs 3.87-3.101.

CHAPTER 2

GOVERNMENT REGULATION OF THE INDUSTRY

2.1 The tobacco industry in Australia is subject to a number of regulatory controls. These regulations are designed primarily to reduce the consumption of tobacco products. This chapter discusses the current regulations which restrict the promotion of tobacco products by way of advertising and promotion, the conditions under which the products are consumed, and taxation arrangements. The chapter also identifies areas where the current regulatory activity of government could be improved or expanded to reduce or modify the consumption of tobacco products for health reasons.

Regulation of tobacco advertising and promotion

2.2 Tobacco advertising has been progressively restricted in Australia since the 1970s. Direct cigarette advertising has been banned on radio and television in Australia since 1976. In 1988, the ban was extended to include all tobacco products. The legislation, however, was framed to allow 'accidental or incidental' advertising. Cinema and billboard advertising remained the responsibility of the States and Territories.[1]

2.3 In 1989 the Commonwealth introduced the *Smoking and Tobacco Products Advertisements (Prohibition) Act 1989*. The Act banned tobacco advertising in all newspapers and magazines from December 1990. Exemptions were allowed for newspapers and journals published overseas and 'not principally intended' for distribution in Australia.

2.4 Prior to the commencement of the *Tobacco Advertising Prohibition Act 1992* the status of tobacco advertising in Australia was as follows:

- direct advertising in the print and broadcast media was prohibited by the Commonwealth by virtue of the *Smoking and Tobacco Products Advertisements (Prohibition) Act 1989* and the *Broadcasting Act 1942* (as amended);
- other forms of advertising (billboards, cinemas, leaflets etc) were prohibited in Victoria, South Australia, Western Australia and the ACT under specific State/Territory legislation; and
- other States/Territories (Queensland, New South Wales, Tasmania and the Northern Territory) continued to rely on voluntary agreements

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1 Submission No.27, section 4.14 (DHS&H).

regulating the content and placement of advertisements with the objective of protecting children.[2]

Tobacco Advertising Prohibition Act 1992

2.5 In 1992 the Commonwealth introduced the *Tobacco Advertising Prohibition Act 1992* which introduced further restrictions on all forms of tobacco advertising, including broadcasting and the print media effective from 1 July 1993.[3] The objective of the legislation was to provide a national standard with respect to tobacco advertising prohibition, resulting from the differences in State and Territory legislation and the lack of comprehensive legislation in some States and Territories on certain forms of advertising restrictions.[4]

2.6 The extent of the prohibitions in the Act on the broadcast and publication of tobacco advertisements is extensive, covering almost any conduct which promotes tobacco products. As noted above, the Act prohibited the broadcast or publication of tobacco advertisements, after 1 July 1993. The effect of the legislation is to prohibit print media advertising; advertisements in films, videos, television or radio; advertising on tickets, handbills and other documents; the sale or supply of any item containing a tobacco advertisement; and outdoor advertising on billboards or public transport.[5]

2.7 'Tobacco advertisement' is defined very broadly in the Act, and includes any visual or audible message that publicises or promotes smoking, tobacco products, trademarks, designs or manufacturers' names, or any other words closely associated with tobacco products, whether or not such words are also closely associated with other kinds of products.[6] 'Tobacco product' is also defined widely to include not only tobacco and products containing tobacco, but also cigarette paper, cigarette rollers and pipes.[7]

2.8 There are a number of exemptions and defences in the Act. Tobacco advertising is exempted from the prohibition where:

2 *ibid.*, section 4.16. Legislation was subsequently enacted in New South Wales in 1991.

3 This Act repealed the *Smoking and Tobacco Products Advertisements (Prohibition) Act 1989.*

4 Submission No.27, sections 4.14-4.19 (DHS&H).

5 Submission No. 45, p.11 (W. D. & H. O. Wills).

6 'Words' include abbreviations, initials and numbers. The display of company colours may or may not be permitted under the Act and is governed by the particular situation and by the provisions of the Act, in particular, whether it is a knowing or reckless broadcast or publication of a tobacco advertisement, whether it is encompassed by the section 9 definition of 'tobacco advertisement' etc. See *Tobacco Advertising Prohibition Act 1992*, s. 9(1).

7 *Tobacco Advertising Prohibition Act 1992*, s. 8.

- it is an accidental or incidental broadcast or publication of tobacco advertisements where the person or body broadcasting does not receive any benefit for so broadcasting or publishing (clauses 14 and 19 of the Act);

- the advertisement is contained in a publication printed outside Australia and not principally intended for distribution or use in Australia (clause 17);

- it is point-of-sale advertising which is allowed subject to State or Territory laws, or, if there is no such legislation, subject to regulations (clause 16);

- it is an advertisement, in relation to a sporting or cultural event, which the Minister for Human Services and Health has specified in the *Commonwealth Gazette* (clause 18); or

- the advertisement is not published in the course of manufacture, distribution or sale of tobacco products and is published at an individual's own initiative and the individual does not receive any benefit for publishing the advertisement.

2.9 The Act also provides a temporary defence in respect of the publishing prohibition for persons publishing tobacco advertisements arising from a sponsorship contract or other legally enforceable arrangement already entered into before 1 April 1992.[8] Advertisements may not be published after 31 December 1995, or, for those associated with cricket matches, 30 April 1996.

2.10 The *Tobacco Advertising Prohibition Amendment Act 1995* sought to clarify and address some of the unintended consequences of the 1992 parent Act. The Bill amends the *Tobacco Advertising Prohibition Act 1992* to confirm that the 1992 Act is not to apply in a way which would exceed the Commonwealth's power. It also provides for the exemption of various types of tobacco advertisements such as advertisements made in the context of government or political discussion as long as they do not promote tobacco products, and allows advertisements relating to the internal management of the business of a manufacturer or retailer of tobacco products.[9]

8 Tobacco Advertising Prohibition Bill 1992, *Explanatory Memorandum*. See also Submission No.45, pp.11-12 (W.D. & H.O. Wills).

9 Other exemptions include non-tobacco products which share the same or similar name to a tobacco product, manufacturer, distributor or retailer; the publication of the name of the tobacco manufacturer, distributor or retailer in a telephone directory; and the broadcasting or publication of an advertisement on international air flights. See Tobacco Advertising Prohibition Amendment Bill 1994, *Parliamentary Bills Digest*, p.1.

State/Territory regulations

2.11 State and Territory regulations affecting tobacco product advertising exist in New South Wales, Victoria, South Australia, Western Australia and the ACT. Voluntary codes continue to operate in Tasmania and Queensland. State and Territory legislation continues to be relevant even with the passage of the 1992 Commonwealth legislation.

2.12 While the Commonwealth *Tobacco Advertising Prohibition Act 1992* provides a national baseline of tobacco advertising prohibition, it also provides that those States and Territories with specific legislation can continue to rely on their legislation, except where the Commonwealth prohibition is more stringent. For example, point-of-sale advertising is governed by State laws where such laws exist. In the absence of specific State laws, Commonwealth regulations govern this form of advertising. In addition, some State legislation contains other provisions regulating the promotion and sale of tobacco products.[10]

Incidental and accidental tobacco advertising

2.13 Some evidence to the inquiry, such as the submission from the Health Department of Western Australia, argued that incidental and accidental advertising should be prohibited.[11] As noted before, incidental or accidental broadcast or publication of tobacco advertisements is permitted under the Act. Incidental or accidental advertising is defined in the Act in sections 14 and 19 in the following manner:

Section 14

A person may broadcast a tobacco advertisement if:

(a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and

(b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting the other matter).[12]

10 Submission No.45, p.12 (W.D. & H.O. Wills).

11 Submission No. 51, p.6 (Health Department of Western Australia). Some groups argued that all forms of tobacco advertising should be prohibited. See, for example, Submission No. 53, p.11 (NSW Cancer Council, Australian Consumers' Association and Public Health Association of Australia). This submission is hereafter referred to as the submission of the NSW Cancer Council.

12 Section 51(v) of the Constitution enables the Commonwealth to legislate on postal, telegraphic, telephonic and like services. This provision enables the Commonwealth to legislate covering every person-whether or not the person is a corporation.

Section 19

A person may publish a tobacco advertisement if:

(a) the person publishes the advertisement as an accidental or incidental accompaniment to the publication of other matter; and

(b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter).[13]

2.14 Thus broadcasters are permitted to include incidental material which is technically tobacco advertising – for example, in a report of a sporting event where tobacco advertising is permitted at the venue. If, however, the broadcaster receives some benefit for the tobacco advertising, additional to the benefit arising from broadcasting the sporting event, the tobacco advertisement would not be permitted. Similarly, the Act permits the publication of a tobacco advertisement which is published as an accidental or incidental accompaniment to other matter and for which the publisher does not receive any benefit additional to that which they receive for publishing this other material.[14]

2.15 Some groups argued that, given the progressive restriction on tobacco advertising, it was inconsistent for the government to permit certain forms of advertising to continue. One submission noted that the placement of advertisements in the print media and the broadcast of these advertisements through events on television 'clearly constitutes, in effect, tobacco advertising'.[15] Another submission stated that the display of cigarette brand names on television 'extends well beyond match play, or of anything that could be justified as accidental or incidental'.[16]

2.16 One submission noted that many tobacco sponsored events, such as Benson and Hedges cricket and the Australian Grand Prix generate significant media coverage. The submission said that in an Australian Broadcasting Tribunal inquiry into alleged cigarette advertising during the broadcast of the 1990 Australian Grand Prix, it was estimated that for 17 per cent of the total broadcast time tobacco advertising was visible, which raised doubts as to the 'incidental or accidental' nature of the advertising.[17]

13 There is no Commonwealth power over publishing. Therefore the Commonwealth must rely on heads of power which are commonly used in the absence of a specific head of power-these powers include the corporations power, the trade and commerce power, the territories power and the incidental power.

14 *Tobacco Advertising Prohibition Act 1992*, sections 14 and 19.

15 Submission No.51, p.5 (Health Department of Western Australia).

16 Submission No.11, p.2 (Canberra ASH). See also Submission No.9, p.1 (Ms L. Scholem).

17 Submission No.51, p.6 (Health Department of Western Australia).

2.17 While concerns were raised during this inquiry in regard to the incidental broadcast of tobacco advertisements in particular, the Committee did not receive any substantial evidence on issues relating to the incidental publication of tobacco advertisements nor to the question of the accidental broadcast or publication of tobacco advertisements.

2.18 With regard to the incidental depiction of cigarettes and smoking in Australian magazines and other publications a recent study found that, following the ban on tobacco advertising in 1992, the incidental depiction of cigarettes and smoking in Australian magazines is 'infrequent by any reasonable standard'.[18] The study noted that 'there appears to be a commendable constraint by many Australian magazine editors in limiting the publication of photographs that show smoking or cigarettes. Some magazines never show smoking, indicating that a goal of total absence of photographs of smoking is achievable'.[19]

2.19 DHS&H advised the Committee that given the broad ranging definition of 'tobacco advertising' in the Act, which includes any writing, still or moving picture, sign, symbol, or other visual image that gives publicity to, or otherwise promotes smoking or the purchase of a tobacco product, the issue of restricting accidental or incidental advertising is a 'complex' issue.[20]

2.20 The Department stated that permitting accidental and incidental advertising is a 'fair compromise' between the health imperative to limit the ability of tobacco companies to place paid advertisements in the various forms of media and the broader need not to restrict or censor the Australian public's access to those media, which may contain non-sponsored portrayals of smoking.[21]

2.21 The Department advised the Committee that it is 'unclear' as to the extent to which accidental and incidental advertising is permitted in overseas countries. However, the Department stated that incidental advertising in the form of unpaid depiction of smoking in films is not prohibited in any country. The Department provided details of the treatment of indirect advertising in New Zealand and Norway both of which have a comprehensive approach to advertising controls similar to that operating in Australia. In New Zealand, incidental and accidental tobacco advertising is permitted in relation to the 'dissemination, broadcasting, or exhibition of any film, video recording, or sound recording' and in Norway 'indirect publicity of minor importance' is permitted on radio, television and in films.[22]

18 S. Chapman *et al.*, 'Incidental Depiction of Cigarettes and Smoking in Australian Magazines, 1990-1993', *Australian Journal of Public Health*, Vol 19, No.3, 1995, p.314. The study examined the extent of images of smoking or cigarettes in 20 Australian magazines popular among young people or aimed at lower socio-economic groups during three sample periods in 1990 (before the ban), 1991 and 1993 (after the ban).

19 *ibid.*, p.313.

20 Letter from DHS&H to the Committee, dated 23 October 1995, p.4.

21 *ibid.*, p.5.

Conclusions

2.22 The Committee believes that the incidental or accidental broadcast or publication of tobacco advertisements should still be permitted under the *Tobacco Advertising Prohibition Act 1992*. The Committee considers, however, that the provisions relating to incidental or accidental advertising should be closely monitored and strictly enforced by the Department of Human Services and Health.

Recommendation

The Committee RECOMMENDS:

4. That the provisions of the *Tobacco Advertising Prohibition Act 1992* relating to incidental or accidental broadcast or publication of tobacco advertisements be strictly monitored and enforced by the Department of Human Services and Health.

Sponsorship and advertising

2.23 Although advertisement-related sponsorship of the arts and sporting events by tobacco companies still exists, this type of sponsorship will be prohibited under the *Tobacco Advertising Prohibition Act 1992* after 31 December 1995 (and after 30 April 1996 for sponsorship associated with cricket matches).[23]

2.24 Under the Act, however, there is the capacity to exempt particular sporting or cultural events from the ban on tobacco advertising provided an application for exemption satisfies the Minister for Human Services and Health that the event is of national significance and that failure to grant the exemption might result in the event not being held in Australia. The Act provides that advertising associated with a specified event which has been notified in the *Commonwealth Gazette* cannot explicitly promote tobacco products and must comply with any conditions imposed by the Minister on the tobacco advertising permitted at a specified event.[24]

2.25 The guidelines issued under Section 18 of the Act provide that, in specifying the conditions to be complied with in publishing tobacco advertisements in connection with an event, the Minister may take into account the provisions of any proposed or existing contract and whether the advertisements are necessary to ensure the event takes place in Australia. The Minister may impose conditions, such as

22 *ibid.*, p.7.

23 *Tobacco Advertising Prohibition Act 1992*, section 21.

24 *Tobacco Advertising Prohibition Act 1992*, section 18.

limiting advertisements to those necessary to ensure that the event is held in Australia; and excluding external advertisements, advertisements in connection with the promotion of an event, and advertisements which appear to be directed at children.[25]

2.26 To date, all 16 applications for exemptions under the Act have been approved by the Minister. These events have included the Whitbread Round the World Yacht Race (WA), Adelaide Grand Prix, Telecom Rally Australia (Perth), Australian Ladies' Masters (Queensland), and the Australian Motor Cycle Grand Prix (NSW).[26]

2.27 On 21 September 1995, the Minister for Human Services and Health announced a review of the provision for exempting sporting events of international significance under Section 18 of the Act. The terms of reference are to review the provision with regard to 'its consistency with the principles and objectives of the legislation; and the relevance to sporting events of international significance in Australia'. The review will assess options for retaining, modifying or removing the provision.[27]

2.28 Several submissions to the inquiry, including submissions from the Australian Medical Association (AMA), National Heart Foundation, ASH Australia, and ACOSH argued that the Act should be amended to remove the exemption provisions permitting tobacco advertising sponsorship of sporting and cultural events.[28] The AMA stated that tobacco sponsorship was 'simply a method of getting around advertising bans'.[29] Another submission noted that tobacco advertising is 'alive and well' in the form of exempted events, such as the Grand Prix.[30]

2.29 In other submissions it was argued that exemptions for tobacco sponsorships should be limited as much as possible and that, where exemptions are granted, the Commonwealth Government should develop stringent conditions.[31] In granting an exemption for tobacco advertising at the 1996 Melbourne Grand Prix the Minister applied the most stringent conditions ever applied by the Commonwealth Government to such an event. Tobacco advertising will only be permitted where it

25 Guidelines cited in R. Furlong, 'Tobacco Advertising Legislation and the Sponsorship of Sport', *Australian Business Law Review*, Vol. 22(3), June 1994, p.170.

26 Submission No. 54, p.2 (AMA).

27 Minister for Human Services and Health, *News Release*, 21 September 1995. The review is expected to be completed by 30 April 1996.

28 See Submission No.54, p.2 (AMA); Submission No 42, p.3 (National Heart Foundation); Submission No.41, p.8 (ASH Australia); and Submission No.29, p.13 (ACOSH). The AMA recommended that the legislation providing exemptions should be tightened in the short term and that sponsorships should not be permitted in the longer term.

29 Submission No.54, p.2 (AMA).

30 Submission No.41, p.8 (ASH Australia).

31 Submission No.51, p.5 (Health Department of Western Australia); Submission No.54, p.2 (AMA).

relates to existing international contracts for track signage and sponsorship of teams and drivers. Signage other than that associated with the driving teams will be required to carry health warnings, and will be required to occupy at least 25 per cent of the total area of each sign. Advertising away from the track will be prohibited, as will peripheral advertising such as models handing out cigarettes.[32]

2.30 Studies have shown that sponsorship by tobacco manufacturers of televised sport has the same effect on children as more direct cigarette advertising. Children were found to be better able to identify cigarette brands after watching tobacco-sponsored sporting events than they were before. One United Kingdom study found that children were most aware of the cigarette brands which were most frequently associated with sponsored sporting events on television. The study concluded that 'TV sport sponsorship by tobacco manufacturers acts as cigarette advertising to children and therefore circumvents the law banning cigarette advertisements on TV'.[33]

2.31 Another UK study found that over half of the secondary school children in the sample were able to specify a brand name and a sponsored sport or game, such as *Marlboro* and motor car racing. The study argued that:

> Many secondary and older primary school children are aware of the connections between cigarette brand names and sports. Moreover, as the brands and sports most frequently mentioned have often been shown on television, this suggests that children learn about these connections by watching televised sporting events.[34]

Alternative sponsorship

2.32 The Committee recognises that there need to be viable alternatives to tobacco sponsorship of international sporting or cultural events. There are two sources from which such sponsorship may be obtained – private enterprise and the establishment of a national health promotion foundation. It has been noted that non-tobacco private enterprise companies have the opportunity to move into the sponsorship of high exposure sports such as cricket, rugby league and motor racing. There is, however, the possibility that individual companies may be unable or unwilling to completely replace the tobacco sponsorship, given the large sums involved in such sponsorships. It was also pointed out that such companies may have to rationalise their previous

32 Minister for Human Services and Health, *News Release*, 20 September 1995.

33 F. Ledwith, ' Does Tobacco Sports Sponsorship on Television Act as Advertising to Children?', *Health Education Journal*, Vol. 43, No.4, 1984, p.85.

34 P. Aitken *et al.*, 'Children's Awareness of Cigarette Brand Sponsorship of Sports and Games in the UK', *Health Education Research*, Vol.1, No. 3, 1986, p.209. See also A. Blum, 'The Marlboro Grand Prix', *New England Journal of Medicine*, Vol. 324, No. 13, 1991, pp.913-16; and NZ Toxic Substances Board, *Health or Tobacco*, Wellington, May 1989, pp.48-49.

sponsorships, which may result in other sports, especially the least commercially viable sports, facing the loss of private enterprise financial support of these events.[35]

2.33 Another option would be to establish a national health promotion foundation or other national body to replace the sponsorship funding by tobacco companies. Health promotion foundations have been established in several jurisdictions which, among other objectives, aim to replace tobacco sponsorship in their respective jurisdictions. These foundations currently exist in Victoria, South Australia, Western Australia and the ACT.

2.34 The Victorian Health Promotion Foundation, VicHealth, sponsors over 140 sports and an equivalent number of arts and cultural activities.[36] This funding has enabled a number of sports in Victoria, including tennis, soccer and football, as well as opera, ballet and the visual arts, to be 'completely free of tobacco sponsorship'.[37] VicHealth is funded by a levy of up to 5 per cent on the wholesale sales of tobacco products in Victoria (the levy raises $22 million annually). A national foundation could be supported by a levy on tobacco products at the Commonwealth level, similar to the levy which funds VicHealth.[38] In a document produced by the National Campaign Against Drug Abuse, it was also indicated that it may be necessary to investigate the availability of alternative sources of funding for sponsorship, including other corporate bodies and governments.[39]

Conclusions

2.35 The Committee believes that, on the basis of the evidence received from a wide range of groups and of studies that show sponsorship by tobacco manufacturers acts as cigarette advertising to children, there should be no special exemption permitting tobacco advertising at sporting and cultural events of international significance. The Committee further believes this recommendation should be phased in by the year 2000.

2.36 This Committee also believes that the Commonwealth government should establish a national health promotion foundation or other appropriate national body to provide an alternative source of sponsorship funding. This foundation could be funded by an increase in the tobacco excise.

---

35 Furlong, *op. cit.*, p.177.

36 *ibid.*, p.178.

37 Submission No.26, p.4 (Victorian Health Promotion Foundation).

38 Furlong, *op. cit.*, p.182.

39 National Campaign Against Drug Abuse, *National Health Policy on Tobacco in Australia*, March 1991, p.10.

TOWARDS ZERO CONSUMPTION

Generic packaging of tobacco products

Report of the Standing Committee on Health

June 1994

HOUSE OF COMMONS

Issue No. 11

Wednesday, May 25, 1994
Monday, May 30, 1994
Thursday, June 9, 1994
Tuesday, June 14, 1994

Chair: Roger Simmons

CHAMBRE DES COMMUNES

Fascicule nº 11

Le mercredi 25 mai 1994
Le lundi 30 mai 1994
Le jeudi 9 juin 1994
Le mardi 14 juin 1994

Président: Roger Simmons

Minutes of Proceedings and Evidence of the Standing Committee on

Health

Procès-verbaux et témoignages du Comité permanent de la

Santé

RESPECTING:

Study on Plain Packaging of Tobacco Products

Future Business

INCLUDING:

The First Report to the House

CONCERNANT:

Étude sur la banalisation des produits du tabac

Travaux futurs

Y COMPRIS:

Le premier rapport à la Chambre

First Session of the Thirty-fifth Parliament, 1994

Première session de la trente-cinquième législature, 1994

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Liberal
Burin—St. George's (Newfoundland)



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The Standing Committee on Health

has the honour to present its

FIRST REPORT

In accordance with Standing Order 108(2), the Committee has examined plain packaging of tobacco products. The *Terms of Reference* for the study are as follows:

1. To receive evidence and otherwise examine:

   a) the effectiveness of plain packaging of tobacco products in reducing both tobacco consumption and smuggling;

   b) the legal considerations related to plain packaging.

2. To report on the findings of the enquiry and to make recommendations to the federal government.

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TOWARDS ZERO CONSUMPTION GENERIC PACKAGING OF TOBACCO PRODUCTS

The urgency of the public health disaster caused by tobacco use is acute. The time for action is now. The future health of a generation of youngsters hangs in the balance.

Canadian Cancer Society[1]

There is a clear statistical connection between tobacco consumption and a long list of health effects, including cancer.

Robert Parker, President

Canadian Tobacco Manufacturers' Council[2]

INTRODUCTION

On February 8, 1994, Prime Minister Jean Chrétien made a statement in the House of Commons on the federal government's Action Plan on Smuggling of Tobacco Products. Part of that statement dealt with the issue of plain packaging: "We will also examine the feasibility of requiring plain packaging of cigarettes and will also ask the House of Commons Standing Committee on Health to make recommendations in this area."

On March 16, 1994, the Minister of Health, the Hon. Diane Marleau, wrote to the Chairman of the House of Commons Standing Committee on Health, the Hon. Roger Simmons, stating that it would be "appropriate and helpful" if the Standing Committee were to address the issue of plain packaging "as its first priority."

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1 Canadian Cancer Society, *Putting Health First: The Case for Plain Packaging of Tobacco Products*, A Submission to the House of Commons Standing Committee on Health, April 1994, p. 59.

2 Robert Parker, President, Canadian Tobacco Manufacturers' Council, *Minutes of Proceedings and Evidence of the Standing Committee on Health*, (hereafter *Proceedings*), First Session of the Thirty-fifth Parliament, 1994, Issue No. 10, May 12, 1994, p. 63.

Accordingly, the Standing Committee considered the issue and the request from the Prime Minister and the Minister of Health and commenced a study on the plain packaging of tobacco products.

CONTEXT FOR THE COMMITTEE'S STUDY

Although the rate of tobacco smoking in Canada has been dropping for several decades, it remains much too high, and tobacco-related diseases will consequently continue to take an enormous toll on Canadian society. By 1990, for persons 15 years and older, the rate of smoking was 31% for men and 28% for women. This is down from the 1965 rate of 61% for men and 38% for women. The highest smoking rates were among 20- to 44-year-olds; the lowest among 15- to 19-year-olds and the over-65 age group. In addition to the decline in the number of persons smoking by 1990 (although the decline has levelled off somewhat), there has been an overall decrease in the number of cigarettes smoked per day, with more people smoking on average fewer cigarettes daily than in previous years.[3]

A major concern for this Committee, and for Canadian society, is youth and tobacco. Significant numbers of young Canadians start smoking each year, but there is some good news to report. Since 1965, smoking rates for 15- to 19-year-olds have dropped from 55% to 21% for males, and from 37% to 21% for females. Rates have also decreased significantly for 20- to 24-year-olds. The bad news is that the proportion of 15-year-olds who smoke (22% of males and 29% of females) is higher than for the 15- to 19 age group (21%). It is clear that improved programs and policies are required to deter young people from tobacco use.[4]

There is no longer any debate over the intrinsic harmfulness of tobacco and smoking, and in particular the smoking of cigarettes. The medical evidence is overwhelmingly persuasive. Smoking is the leading preventable cause of morbidity and premature mortality in Canada, as it is

[3] National Clearinghouse on Tobacco and Health with Health Canada, *Focus On: Canadians and Tobacco*, September 1993.

[4] *Ibid.*, *Focus On: Youth and Tobacco.*

in other developed countries. Tobacco-related illnesses are responsible for the deaths of at least 38,000 Canadians every year.[5] Recently, and for the first time in history, it was stated that more women will die from lung cancer this year than from breast cancer. Statistics released by Health Canada predict that in 1994, 5,600 women will die from lung cancer compared to 5,400 from breast cancer.[6]

The proposal to legislate a requirement in Canada that cigarettes and other tobacco products be in plain packages is being considered as part of the federal government's strategy to reduce the consumption of tobacco. The proposal has met with the enthusiastic approval of all health and anti-smoking groups that appeared before the Standing Committee on Health during our public hearings.

The primary target group for the plain packaging proposal is the youth of this country. The success of the tobacco industry is based to a substantial degree on nicotine addiction. Many witnesses who appeared before the Committee stated that unless a person takes up smoking before the age of 19, she or he is unlikely ever to take up smoking and to develop an addiction to nicotine. An addiction to nicotine is very likely to become a lifetime burden for an individual and, by extension, an eventual burden for Canadian society as the health effects of tobacco consumption become manifest.

The Committee has received testimony that most smokers take up smoking very early in life, that the average age for starting to smoke in Canada is 13 years old,[7] and that more than 75% of smokers start before they are 18.[8] The Committee heard testimony to the effect that tobacco

[5] Canadian Cancer Society, *Putting Health First: The Case for Plain Packaging of Tobacco Products*, A Submission to the House of Commons Standing Committee on Health, April 1994, p. 4.

[6] "Lung cancer to kill 5,600 women," *The Globe and Mail*, May 12, 1994, p. 1.

[7] Gallup Poll, *A Summary Report on Tobacco, Alcohol and Marijuana Use and Norms Among Young People in Canada: Year 4*, Health and Welfare Canada, Ottawa, 1986. (Cited by Physicians for a Smoke-Free Canada, May 5, 1994.)

[8] United States Department of Health and Human Services, *Health Consequences of Smoking: Nicotine Addiction*, Report of the United States Surgeon General, Rockville, MD, 1988. (Cited by Physicians for a Smoke-Free Canada, May 5, 1994.)

companies in this country deliberately target consumers under the age of 18.[9] The tobacco industry vigorously denies that assertion. Whatever the nature of the evidence on why people start smoking, however, logic dictates that new smokers must continually be recruited from among the teenage, and even younger, subsets of Canada's population, or the tobacco industry itself would have died out years ago along with its most dedicated customers. Tobacco companies are not ignorant of this reality.

It is also very clear that, whether by circumstance or design, children are routinely and multiply exposed to smoking every day, as well as to the trappings of tobacco consumption through the omnipresent displays of tobacco products and a variety of commercial symbols. Among the most prevalent and contentious commercial symbols of the tobacco industry are those that link their products with the sponsorship of such mass-appeal activities as championship tennis, golf, car racing, show-jumping, and cultural events such as music and women's fashions.

One of the purposes of the *Tobacco Products Control Act* (TPCA), which came into force in January 1989, was to protect young persons from inducements to use tobacco products and from the dependence that might result. The legislation banned all forms of tobacco advertising. Further, it required that all sporting and cultural sponsorship undertaken by the tabacco companies was to be under the name of the manufacturer of the product, not the brand name of the product itself. The tobacco companies responded by creating new limited corporations, named after the brands they manufactured, to sponsor sporting and cultural events. In the view of health and anti-smoking organizations, these sponsorships effectively circumvent the intent of the TPCA and its ban on tobacco brand advertising. The implementation of plain packaging for tobacco products could, in the view of these organizations, "very effectively break the link between (tobacco) brand names and sponsorship paving the way to a real advertising ban."[10]

The principal thrust of those witnesses who support the plain packaging proposal is that tobacco products are intrinsically different from all other consumer products currently sold on the market. A

[9] Richard W. Pollay, As Anyone Can Plainly See: Brand Imagery in Cigarette Packaging and Promotion, A submission to the Standing Committee on Health, May 3, 1994, p. 8.

[10] Physicians for a Smoke-Free Canada, *Breaking the Link—The Case for Plain Packaging of Tobacco Industry Products*, A Submission to the House of Commons Standing Committee on Health, May 5, 1994, p. 3.

frequently used phrase during the public hearings was, in effect, that tobacco is the only consumer product on the market that kills the user when used exactly in the manner intended by the manufacturer.

It is also generally agreed that if tobacco were not currently on the market in Canada, any proposal to introduce such a product to the Canadian public would be quickly and resolutely denied. However, the product is on the market, and millions of Canadians use it on a regular basis. Moreover, many of these consumers are addicted to smoking; more specifically, many—probably most—are addicted to the nicotine that is a natural constituent of tobacco.

The Committee believes that the addictiveness of nicotine is an important issue to consider in formulating its recommendations on plain packaging. While the President of the Canadian Tobacco Manufacturers' Council did not agree that nicotine was an addictive chemical, he did not deny that fact. [11] The federal government, however, has accepted that nicotine is addictive, and the new health warnings required for cigarette packages under the TPCA will state that fact.

Although, nicotine is very toxic as well as addictive, the major health problems associated with tobacco use derive from the various other chemicals and substances in tobacco—both when it is burned in the act of smoking, and when the product is used in other ways, for example in a number of "smokeless" formulations. Some of these constituent chemicals are known to cause cancer in humans; others, like carbon monoxide, have different toxic effects.

In light of this persuasive evidence that tobacco products are extremely hazardous to human health, the Committee believes it is appropriate to consider the plain packaging question in a different context from that associated with marketing other consumer products, such as candy bars, cosmetics and foods. Despite the industry's routine assertion that tobacco is a "legal product", most would argue that this facile designation is based on history and tradition rather than on any rational legitimacy. The Committee firmly believes that tobacco is a unique product, one for which there is no safe level of consumption. Tobacco is also unique in the scale of mortality and morbidity associated with it.

[11] Robert Parker, President, Canadian Tobacco Manufacturers' Council, *Proceedings*, Issue No. 10, May 12, 1994, pp. 64-65.

The principal concern of this Committee is the health of the Canadian nation, including programs and policies of health promotion and protection. Clearly and simply stated, tobacco consumption is injurious to the health of the individual and of the nation as a whole. It follows, then, that any proposed governmental initiative or program that will reduce tobacco consumption, either by persuading smokers to abandon the habit or, most especially, by persuading young people not to commence smoking in the first place, is worthy of the most serious consideration.

This is the context in which this Committee's study of the plain packaging question is framed. We are not unaware of the contingent issues arising from such a radical change in the marketing environment for cigarettes and other tobacco products. Even a casual perusal of the list of witnesses who have appeared before us will bear out that contention. But the good health of Canadians is our principal concern, and the thrust of this report is directed toward that objective. The Committee believes that if plain packaging, in conjunction with other tobacco reduction measures, can decrease the commencement or continuation of smoking among youth or adults, it can be deemed a success. The overall aim is to move towards zero consumption.

DEFINITION OF PLAIN PACKAGING

The intent of plain packaging of tobacco products, as it is generally understood, is to make the product unattractive and unappealing to consumers, without any of the eye-catching colour, design, or artwork typically associated with consumer product packaging and frequently reflected in advertising campaigns and related materials for consumer products. One proposal made to the Committee was that the *persuasive packaging* developed by the tobacco industry should now be replaced, through legislation, by *dissuasive packaging*.[12]

The assumption underlying the intent or purpose of plain packaging is that the carefully designed packages for tobacco products, and for cigarette packages in particular, promote tobacco consumption generally. The tobacco industry maintains that the tobacco product package and its

[12] Dr. Frederic Bass, British Columbia Medical Association, *Dissuasive Packaging*, May 3, 1994, p. 2.

associated promotions are intended only to compete for market share among existing brands, and are not intended to persuade people to smoke. Anti-smoking and health groups argue that the cigarette package is a powerful form of advertising for tobacco generally which, together with sports and cultural event sponsorships, creates an appealing and persuasive image for tobacco and smoking.

The precise definition of a "plain package" for tobacco products—also referred to as a "generic package"—has yet to be established. Mr. Kent Foster, Assistant Deputy Minister with the Health Protection Branch, Health Canada, provided the Committee with a basic definition: "Plain packaging is a packaging without any distinctive feature or use of trade mark. The cigarettes would be sold in packages that would be identical in appearance and of the same colour."[13]

The Centre for Health Promotion of the University of Toronto provided an expanded definition: "Plain packages are light brown or white packages with black printing only. No colour, trademarks or unique print fonts are used. Plain packs include only the brand name (in standard font), risk warnings, and product contents information."[14]

The Canadian Cancer Society (CCS) offered more specific details for plain packaging.[15] The CCS suggested that a "dull, unalluring colour" should be required; white is unacceptable because it suggests "purity and cleanliness." Package sizes, materials, opening methods, colours, text placement, font and size of printing would be standardized, and specified by regulation. Each package would be required to bear a "duty-paid" marking, possibly on a cellophane tear-strip that would be part of the cellophane wrapping.

In the Society's view, much of the package should be given over to prominent health warnings and lists of the toxic ingredients in tobacco. The CCS suggested that the brand name of the product, the only

[13] Kent R. Foster, Assistant Deputy Minister, Health Canada, *Notes for an Address* to the House of Commons Standing Committee on Health, April 12, 1994, p. 2.

[14] Centre for Health Promotion, University of Toronto, *Potential Impact of Plain Packaging of Tobacco Products on Youth Perceptions and Behaviour*, A Submission to the House of Commons Standing Committee on Health, April 22, 1994, p. 1.

[15] Canadian Cancer Society, *Putting Health First: The Case for Plain Packaging of Tobacco Products*, A Submission to the House of Commons Standing Committee on Health, April 1994, pp. 6-9.

The conclusions of this study were as follows: (1) plain packaging removes the imagery associated with brand cigarettes; (2) plain packaging eliminates the appeal of the package and the product for both young smokers and young non-smokers; (3) packaging has a greater influence on youth than on adults, and plain packaging would therefore have more impact on young people; (4) plain packaging would have more impact on youth contemplating smoking onset; (5) the image of the product contributes to the decision to smoke, but is not the most important factor; and (6) plain packaging is an important part of a comprehensive strategy to reduce smoking onset among youth, but is not sufficient on its own.

B. Views on the Evidence: How Much is Needed?

Witnesses were in agreement that these four studies did not directly measure the effectiveness of plain packaging in reducing tobacco consumption. In all cases, plain packaging was created specifically for research purposes, in order to assess attitudes toward it. Also, when plain packs were offered, brand packs were also available, a situation that would not exist if plain packaging were legislated in Canada.

Despite this agreement, the witnesses diverged on the question of whether the existing evidence could be used as an indicator of the potential effectiveness of plain packaging. Differing views about the evidence and about the effect of plain packaging on tobacco consumption emanated from two broad categories of witnesses.

Witnesses representing the tobacco industry argued that there was an absence of strong, decisive evidence that plain packaging would affect new smokers or the existing smoking population. They refuted the position that there was any link between the style or nature of a package and the smoking behaviour of adolescents or adults. Not only was the existing evidence insufficient to indicate any effect, they asserted, but the proposition itself was without validity.

Witnesses representing the health organizations argued that the available evidence indicated that plain packaging would lead to a decrease in consumption, and that it provided sufficient grounds for action by the government. They maintained that although the studies did not provide absolute certainty about plain packaging effectiveness, they did indicate that plain packaging was more likely than not to reduce consumption.

These divergent views of industry and health groups are represented in the following statements by the Canadian Tobacco Manufacturers' Council (CTMC) and the Canadian Medical Association (CMA). The Canadian Tobacco Manufacturers' Council stated: "There is not one iota of credible evidence to support the proposition that plain or colourful packaging plays any role in an individual's decision to smoke or to quit smoking."[22] The brief added that "the likelihood is that no objective research can ever 'prove' this entirely false hypothesis. Aside from the near impossibility of replicating the required market condition,...the research is likely to fail because the proposition has no validity in the first place."[23]

On the other hand, the Canadian Medical Association discussed the issue of "burden of proof," of "how much evidence is needed in order to act" on plain packaging. The CMA brief stated: "In the field of health, scientific evidence is gathered bit by bit, over time, until the weight of accumulated evidence allows a reasoned judgment as to when action in the form of disease prevention activities, diagnostic or treatment changes should occur. The level of proof needed to justify action is inversely related to the seriousness of the problem requiring action. One frequently acts with a lesser degree of proof when the problem is very serious."[24] The brief further asserted: "The precise effects of plain packaging of tobacco products can be determined only by doing it rather than by simply talking about it. CMA believes there is enough evidence to say that plain packaging should be an integral part of any comprehensive smoking eradication strategy."[25]

The Committee accepts the conclusion of the health organizations that the available evidence suggests that plain or generic packaging is a reasonable component of the evolving national strategy to reduce tobacco consumption.

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[22] Canadian Tobacco Manufacturers' Council, *Plain Tobacco Packaging: A Brief to the House of Commons Standing Committee on Health*, May 12, 1994, p. 5.

[23] *Ibid.*, p. 12.

[24] Canadian Medical Association, *Plain Packaging of Tobacco Products*, Presentation to the House of Commons Standing Committee on Health, May 3, 1994, p. 6.

[25] *Ibid.*, p. 8.

C. *Additional Studies*

During the enquiry, the Committee heard about additional studies related to plain packaging. These studies are either close to completion or in various stages of planning. They include an Australian study by the Ministerial Council on Drug Strategy; the third part of the study by Centre for Health Promotion, University of Toronto; and the proposed study by Health Canada.

Prior to completion of this report, the Committee received further information about the studies being planned by the Centre for Health Promotion, University of Toronto, and Health Canada, but unfortunately not, about the Australian study. The third part of the Centre for Health Promotion study, funded by the Robert Wood Johnson Foundation based in the United States, is currently being developed. This study will involve 70 Ontario classrooms as well as a sample from the University of Chicago. In addition, two of the proposed 20 focus groups will consist of adults, in an attempt to explore the impact of plain packaging on this segment of the population.[26] Health Canada's framework for its study on plain packaging states: "The purpose of this initiative is to evaluate the role of packaging as an inducement to purchase tobacco produtcs, to develop a protocol for the evaluation of packaging and to design packaging for tobacco products that will make the product less attractive."[27] Completion of both studies is expected early in 1995.

The Committee acknowledges that additional evidence, acquired through carefully planned and executed research studies, will enhance the understanding of the link between packaging and tobacco consumption. The Committee notes with dismay that the tobacco industry presented numerous critical opinions about the existing studies but provided no indication that it has funded or is planning to fund any comparable research in this area.

[26] Josie d'Avernas, Partner, RBJ Health Management Associates on behalf of Centre for Health Promotion, University of Toronto, *Proceedings*, Issue No. 6, April 28, 1994, p. 36.

[27] Health Canada, "Packaging Study Framework," June 7, 1994, p. 2.

POSSIBLE IMPACTS OF PLAIN PACKAGING ON CONTRABAND AND SMUGGLING OF TOBACCO PRODUCTS

In recent years, the smuggling of tobacco products posed a major law enforcement problem in Canada. Evidence presented to the Committee stated that by 1992, one in every six packages of cigarettes smoked in Canada was contraband; in the mid-1980s, the figure was one in 176 packages. This increase was ascribed to the very large price differential between Canadian cigarettes and those sold in the United States. The principal cause of the price difference was high federal and provincial tobacco taxes.[28] With the tax roll-back in February 1994, the problem of tobacco smuggling has declined greatly.

The Committee received conflicting testimony on the possible impact of plain packaging of tobacco products on smuggling tobacco, and particularly cigarettes, into Canada. Virtually all of the industry witnesses stated that tobacco product smuggling would increase if plain packaging were adopted in Canada; the health community witnesses suggested that plain packaging would reduce the incidence of smuggling. These directly contrasting opinions exist because the two groups are considering different aspects of the same issue.

There are at least three types of contraband tobacco products. The first is the smuggling of brands manufactured by legitimate tobacco companies in Canada and other countries, especially the United States. A major component of the recent epidemic of cigarette smuggling involved Canadian brand cigarettes legally exported to the United States, then illegally smuggled back into Canada with no duty paid.

A second type of contraband involves the so-called "copycat brands." These are cigarette brands whose packaging and brand names mimic those of legitimate brands. Examples of copycat brands manufactured by organized crime groups include "Sailor's Light fine cut

[28] Lindquist Avey Macdonald Baskerville, *Plain Packaging—Its Impact on the Contraband Tobacco Market*, p. 5, Document submitted by the Canadian Association of Chain Drug Stores, May 10, 1994.

tobacco" for "Player's Light fine cut tobacco", "Putter's Light" for "Player's Light", and "DK'S" for "DuMaurier King Size."[29] Numerous other contraband copycat brands have appeared on the Canadian market.

A third type of contraband is brand counterfeits. All major manufacturers have found imitations of their trademarks on the Canadian market. The counterfeiters have produced near-perfect copies of legitimate packages, including artwork and colours, trademarks, health warnings, and official Canadian government cellophane seals that carry the "duty-paid" marking. Some of the counterfeits are virtually indistinguishable from the legal product.[30]

The assertion that plain packaging will reduce smuggling is acceptable if one assumes that all brands legally sold in Canada will be in such packages, and if one further assumes that the available contraband brands will be in regular packaging. If this were the case, the contraband packs would be immediately recognizable. Plain packaging may also have some limited beneficial impact on the smuggling of copycat brands, if such brands continue to be part of the contraband trade.

The major concern voiced by witnesses from the business community—that plain packaging will bring about an increase in smuggling—is prompted by the suggestion that plain packages may be much easier and cheaper to counterfeit than the "high-tech" brand packages found on the market today. As already noted, even brand packages can be successfully counterfeited by criminals with access to sophisticated equipment and technologies. Cheap cigarettes could be manufactured in Canada and elsewhere, using substandard tobacco, and be sold in counterfeit plain packages. Also, established smuggling networks in both Canada and the United States could be revived very quickly to serve the illegal market.[31] The point was made that the tobacco used in counterfeit products might be even more harmful to consumers than the tobacco in legal brands, from the standpoint of tar and nicotine

[29] *Ibid.*, p. 9.

[30] *Ibid.*, pp. 10-11.

[31] National Association of Tobacco and Confectionery Distributors, *Brief to the House of Commons Standing Committee on Health on Plain Packaging of Tobacco Products*, May 12, 1994, p. 8.

levels, additives, and pesticide residues.[32] However, no evidence was presented to show that different types and sources of tobacco are more or less harmful to human health.

Several witnesses suggested that adopting plain packaging in Canada could lead to increased smuggling of legal brands in regular packages from other countries, particularly the United States. The President of the Canadian Tobacco Manufacturers' Council made the following statement: "If smokers prefer branded packages as strongly as [the Committee has] been told, smokers will pay more than the legal price for them. Non-availability [of branded packages] would reignite smuggling and provide substantial illegal profits."[33]

The Committee has taken seriously the arguments of those witnesses who aver that plain packaging could result in an increase in smuggling and contraband tobacco products. The government must therefore consider the need to design generic packages that are as difficult and expensive to counterfeit as the legal packaging currently on the Canadian market. There is no reason why a suitable combination of colour scheme and package design could not be devised to make the plain package unattractive, while still making prominent the necessary health warnings and deterring the counterfeiting of cigarette packages. One suggestion was a coloured hologram image on the package, as currently used for currency and credit cards.

Not only would complicated and sophisticated generic packages prove to be a deterrent to counterfeiting, but it is feasible that such packages could make use of the advanced packaging technologies employed by the tobacco-packaging industry. This could protect jobs in that small but highly specialized sector of Canada's economy. The Committee realizes that these considerations, which attempt to encompass the diametrically opposed views of the industry and health groups, will pose a significant challenge for the federal government. Difficult choices may well have to be made; in such situations, however, the health of Canadians must receive first consideration.

[32] Albert Bouw, Chairman, Ontario Flue-Cured Tobacco Growers' Marketing Board, *Proceedings*, Issue No. 9, May 10, 1994, pp. 8, 10.

[33] Robert Parker, Canadian Tobacco Manufacturers' Council, *Proceedings*, Issue No. 10, May 12, 1994, p. 62.

LEGAL CONSIDERATIONS

A. *National Legislative Framework for Plain Packaging*

The witnesses who supported legislation to implement plain packaging envisioned two main legislative avenues. Some suggested amendments to the *Tobacco Products Control Act*, while others pointed to the *Hazardous Products Act*.

Amendments to the *Tobacco Products Control Act*, which has as one of its purposes the protection of young persons "from inducements to use tobacco products and consequent dependence on them," received the fullest consideration by witnesses. Health groups reported that when tobacco advertising was banned, and sporting and cultural sponsorships were to be under the manufacturer's name and not the product brand name, the tobacco industry responded by creating new limited "shell" corporations named after the brands. The health witnesses would like the TPCA to be amended to ban both tobacco sponsorship and brand packaging. The argument is that the package is a mini-billboard, and regular package exposures by smokers create 50-60 billion "advertisements" annually.

Tobacco industry witnesses also referred to the TPCA, either pointing out particular amendments required or arguing that the effectiveness of measures such as the new health warnings should be fully assessed before changing the legislation further. Canadian tobacco companies are currently contesting the *Tobacco Products Control Act*. The challenge, to be heard by the Supreme Court sometime in the next year, rests on two grounds: first, the constitutionality of the federal legislation in the area of public health, usually an arena of provincial concern; and second, the guarantee of freedom of expression under the *Canadian Charter of Rights and Freedoms*.

Other witnesses argued that a legislative framework for plain packaging currently exists in the *Hazardous Products Act*. Witnesses noted that tobacco is a dangerous product, and that this legislation permits regulations to prescribe the form and manner in which information can be disclosed on a label and the manner in which a label can be applied to a controlled product or its container; and also to prescribe hazard symbols and the manner in which hazard symbols can be displayed on a controlled product or its container.

Industry witnesses argued that legislating plain packaging for tobacco sets a dangerous legal precedent. They maintained that tobacco is a legal product and that regulations to restrict it are inappropriate. In rebuttal, health organizations argued that if tobacco were a new product, it would not be allowed on the market. They also noted that no other legally available product is so hazardous when used exactly as the manufacturer intends.

B. *Possible Legislative Infringements*

A number of witnesses raised the possibility that plain packaging would infringe on other existing national legislation. In particular, the *Trade-Marks Act* and the *Competition Act* were singled out for attention.

Many tobacco industry witnesses argued that plain packaging would be an infringement on the manufacturer's rights under the *Trade-Marks Act* amounting to seizure of trademarks and interference with the freedom to conduct legal commerce. Others argued that plain packaging is not about taking away trademark rights from manufacturers, but about the consumer's right to be adequately informed about tobacco use risks, and the government's responsibility to ensure that manufacturers provide such information in a clear and unequivocal format. It was further asserted that governments have prohibited many products and activities without paying compensation to the manufacturers. Witnesses cited examples such as banning vending machines under the *Tobacco Sales to Young Persons Act*, and prohibiting everything from lawn darts to asbestos under the *Hazardous Products Act*.

According to some industry witnesses, limiting the ability of tobacco manufacturers to compete for brand share among Canadian smokers could be contrary to the principles of the *Competition Act*. In addition, plain packaging could provide a competitive advantage to foreign manufacturers, whose advertising is exempt from the TPCA. The Canadian Cancer Society argued that the Canadian tobacco industry does

not currently operate in perfect competition, but in an oligopoly market (with Imperial Tobacco dominating at 67% of the domestic share for cigarettes in 1993).[34]

C. *International Trade Obligations*

The Committee received varied and sometimes contradictory opinions on the implications of plain packaging of tobacco products in relation to international accords. Canada is a party to several international trade agreements, including the General Agreement on Tariffs and Trade (GATT), the Free Trade Agreement (FTA), and the North American Free Trade Agreement (NAFTA). GATT contains two agreements deemed relevant to the plain packaging issue: one on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the other on Technical Barriers to Trade. Under TRIPS, intellectual property and trademarks must be protected, while under the other agreement, technical regulations creating unnecessary obstacles to trade are prohibited. NAFTA's provisions on intellectual property—notably copyright and trademarks—and on investments are deemed relevant to plain packaging.

Witnesses representing the tobacco industry, along with some trademark specialists, argued that plain packaging would contravene these GATT and NAFTA provisions. Trade consultants representing the R.J. Reynolds Tobacco Co. and Philip Morris International Inc. emphasized that Canada has "an unquestioned right to regulate the product," but that plain packaging could be seen as "an impairment of trademarks" under international agreements.[35] This could lead to actions by Canada's major trading partners on behalf of affected domestic manufacturers in their countries and their domestic shareholders in Canadian companies. The Canadian government could therefore face large compensation costs.

Health organizations responded with statements based on opposite legal opinions, affirming that plain packaging could be deemed necessary to meet public health objectives. The Prime Minister, the Minister of Health and the Minister for International Trade quickly lined up to argue for Canada's right to protect its national health. Apparently, any action on plain packaging is open for international arbitration, which could lead to a resolution in one direction or the other.

The Committee believes that prudence should be exercised in the development of plain or generic packaging regulations for tobacco products. First, such regulations must comply with the provisions of the Constitution and Charter, and second, special attention must be paid to Canada's international obligations.

ECONOMIC CONSIDERATIONS OF PLAIN PACKAGING

The Committee received conflicting evidence on the possible economic impacts of plain packaging. Representatives of the tobacco manufacturing industry and related industries stated that the generic packaging proposal would greatly affect their industry, but health groups suggested that it would not have serious or long-lasting negative economic effects, and that tobacco-related health care costs deserve primary consideration.

A. *Impact on the Tobacco Manufacturing Industry*

According to the Canadian Tobacco Manufacturers' Council (CTMC), plain packaging would significantly affect the level of economic activity of the tobacco manufacturing industry in Canada. The Council explained that negative economic effects would not result from a reduction in tobacco consumption—they do not believe that plain packaging would achieve such a goal—but would rather stem directly from increased competition from both imports and illegal producers.[36]

A report commissioned by the CTMC and tabled with the Committee[37] indicated that plain packaging would affect the industry's sales, which amounted to $1.6 billion in 1991, as well as wages and salaries totalling some $235 million to more than 4,300 direct employees. Loss of sales, loss of production and loss of jobs would occur, not only in

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[34] Canadian Cancer Society, *Responses to Arguments Against Plain Packaging of Tobacco Products*, A Submission to the House of Commons Standing Committee on Health, May 24, 1994, p. 19.

[35] Julius Katz, R.J. Reynolds Tobacco Co. and Philip Morris International Inc., *Proceedings*, Issue No. 9, May 10, 1994, p. 48.

[36] Canadian Tobacco Manufacturers' Council, *Plain Tobacco Packaging: A Brief to the House of Commons Standing Committee on Health*, May 12, 1994, p. 23.

[37] Robert Neil Morrison, *Economic and Competitive Aspects of Plain Packaging*, Brief to the House of Commons Standing Committee on Health, May 12, 1994.

the tobacco manufacturing industry, but also in the industry's suppliers, including tobacco growers, the printing and packaging industries, distributors and retailers. It is estimated that the tobacco industry as a whole employed, directly and indirectly, 50,500 person-years in 1992.[38] The report also suggested that plain packaging would reduce related tax revenues for governments, which in 1993 amounted to $6 billion for both federal and provincial governments.[39] Finally, the Council contended that plain packaging would impose additional costs on the tobacco industry; currently, the industry is spending $30 million to comply with new labelling and packaging requirements under the *Tobacco Products Control Act*.[40]

The Committee believes, however, that if the design of the plain pack is sophisticated enough to deter counterfeiting and smuggling, the negative impact on the tobacco manufacturing industry could be limited significantly.

Another report tabled with the Committee offered a different viewpoint on the impact of policies on the tobacco industry aimed at reducing tobacco consumption.[41] This report, prepared by Professor Robert C. Allen, indicated that even if tobacco production were entirely eliminated, there would still be no dramatic impact on the Canadian economy. Noting that the tobacco industry is relatively small in the overall manufacturing sector, it was estimated that if all workers in the tobacco manufacturing and growing sectors lost their jobs, the rate of unemployment would increase by less than one-tenth of one percent. In addition, the report stressed that even the most drastic anti-tobacco policy would not eliminate all employment in the sector. Professor Allen explained that job losses would be gradual because, as a result of their addiction, not all smokers would quit smoking immediately. According to the report, employment losses in the tobacco industry would eventually be counteracted by the creation of new jobs in other economic

[38] Ontario Flue-Cured Tobacco Growers' Marketing Board, *Proceedings*, Issue No. 9, May 10, 1994, p. 7.

[39] *Ibid.*, p. 22.

[40] Canadian Tobacco Manufacturers' Council, *Plain Tobacco Packaging: A Brief to the House of Commons Standing Committee on Health*, May 12, 1994, p. 6.

[41] Robert C. Allen, *The False Dilemma—The Impact of Tobacco Control Policies on Employment in Canada*, February 1993, Document submitted by the Non-Smokers' Rights Association, April 14, 1994.

sectors, as former smokers redirected their purchasing power from tobacco to other products, thereby stimulating job creation in other industries.

Finally, the Canadian Cancer Society suggested that plain packaging would not increase costs to tobacco manufacturers but would actually reduce them, as the industry would spend less on package design, market research, sponsorships and other promotions.[42]

B. Impact on Related Industries

1. Tobacco Growers

Canadian tobacco producers, whose production generated $330 million of sales and employed between 15,000 and 20,000 seasonal workers in 1993,[43] also expressed concerns over plain packaging. Their view was similar to that of tobacco manufacturers. They believed that plain packaging would be unlikely to reduce tobacco consumption, but that it would bring competition from foreign-source and smuggled products which in turn would leave tobacco manufacturers with price as the only factor in competing for market share. The Ontario Flue-Cured Tobacco Growers' Marketing Board stated that, as a result of such price competition: "We are fearful that manufacturers, in order to produce a competitive, price-conscious product, may consider moving their manufacturing facilities outside Canada."[44]

Both Ontario and Quebec tobacco growers' representatives expressed concerns that if tobacco manufacturers moved their facilities outside Canada, they would use less expensive flue-cured tobaccos from other parts of the world. It was alleged that this might force some growers to go out of business, resulting in job losses that could seriously affect local communities.

Professor Allen's report indicated that, although production by tobacco growers fell in Ontario from 1971 to 1991, not all tobacco growers went out of business; some of them retired and some sold their

[42] Canadian Cancer Society, *Responses to Arguments Against Plain Packaging of Tobacco Products*, May 24, 1994, p. 10.

[43] Ontario Flue-Cured Tobacco Growers' Marketing Board, *Proceedings*, Issue No. 9, May 10, 1994, p. 7.

[44] *Ibid.*, p. 6.

holdings to other growers. He suggested that if tobacco use declined, permanent and seasonal jobs could be lost, but tobacco growers could either increase their exports to make up for the loss in domestic sales, or could shift to other crops. The report stressed, however, that farms growing tobacco would generate lower revenues if they shifted to alternative crops.[45]

It should be noted that Agriculture and Agri-food Canada, in collaboration with provincial governments, provides assistance to tobacco growers leaving the industry through the Tobacco Diversification Plan.[46]

2. The Packaging Industry

All representatives of the packaging industry who provided a written brief or testified before the Committee contended that plain packaging would lead to economic hardship. They explained that the packaging process for tobacco products uses specialized equipment and highly skilled workers, and is almost exclusive to the tobacco industry. Shorewood Packaging Inc. stated that 65% of its total production is directly attributable to the tobacco industry,[47] while another company, FPC Flexible Packaging, indicated that tobacco packaging accounts for almost one-third of its annual sales.[48] During the hearings, the Committee was told that packaging companies would move their facilities out of Canada because of limited alternatives for their specialized equipment and highly skilled workers.

In addition, the Packaging Association of Canada told the Committee that plain packaging could result in the loss of 1,200 direct jobs, and even more through the multiplier effect.[49] Wilco Group Ltd. indicated that those highly skilled workers may also consider moving to

[45] Robert C. Allen, *The False Dilemma—The Impact of Tobacco Control Policies on Employment in Canada*, February 1993, pp. 16-19 and 22.

[46] Agriculture and Agri-food Canada, *1994-95 Estimates, Part III—Expenditure Plan*, pp. 96-97.

[47] Shorewood Packaging Inc., *Proceedings*, Issue No. 3, April 19, 1994, p. 6.

[48] FPC Flexible Packaging Corporation, *Submission to the Members of the Standing Committee on Health*, April 25, 1994, p. 1.

[49] Packaging Association of Canada, *Brief to the House of Commons Standing Committee on Health on the Implications of Legislation on Plain Packaging of Tobacco Products*, May 3, 1994, p. 14.

other countries, namely the United States, where their specific qualifications are in demand.[50] According to some witnesses, those regions where the industry is located would be affected.

As stated previously, a sophisticated plain or generic pack designed to prevent counterfeiting and smuggling could also help maintain the current level of employment in the packaging industry. The Canadian Cancer Society shared this view and suggested the following multicoloured options: "A multicolour printing process could still be used under plain packaging, for example: basic brown background, black printing, the warning could have a yellow background with a yellow red marker word such as 'attention' or 'danger'. Health related photographs could be used, for example, a pair of lungs.(...) The inside sliding portion of the package, which is currently blank, could contain detailed health information, in both official languages. It could also carry a listing of the levels of the dozens of carcinogenic or toxic constituents found in tobacco smoke.(...) A "QUIT" telephone line could be printed, as has recently been adopted in Australia."[51]

3. The Wholesale Sector and the Retailing Industry

The Committee also received evidence from many wholesalers and retailers who argued that plain packaging would have a negative impact on their industries. Their major argument was well summarized by the Canadian Federation of Independent Grocers: that brand identification is "crucial to efficiently identify the desired brand."[52] The Committee was told that plain packaging would create brand confusion when ordering, handling, shipping and selling tobacco products. The increased difficulty in correctly identifying products would create loss of time and productivity, increase the risk of errors, lead to consumer complaints, impose additional operating costs on their member businesses, and affect their revenues.

[50] Wilco Group Ltd., *Brief for Presentation to the Government of Canada House of Commons—Standing Committee on Health*, April 1994, p. 2.

[51] Canadian Cancer Society, *Responses to Arguments Against Plain Packaging of Tobacco Products*, May 24, 1994, p. 7.

[52] Canadian Federation of Independent Grocers, *Submission to the Standing Committee on Health—Investigation into Plain Packaging of Tobacco Products*, April 1994, p. 3.

Representatives of the retailing industry contended that plain packaging would decrease their revenues in at least three ways. First, they explained that plain packaging would eliminate display allowances currently paid by tobacco manufacturers. Second, they argued that they would lose their market share as a result of the availability of counterfeit tobacco products. Third, they contended that counterfeit packages, which would lead to price reductions, would affect retailers' profit margins. Overall, the retailing industry feared that they would eventually have to reduce staff or increase the price of other products, making them less competitive in the marketplace.

The Canadian Cancer Society suggested two options to address the difficulty that distributors and retailers might have in properly identifying brands. First, "under plain packaging, boxes containing tobacco products and distributed by wholesalers could still carry trademarks and brand colours. Boxes stored in a retailer's back room could also feature brand colours and trademarks. The only stipulation would be that these boxes not be exhibited at retail."[53] Second, "some retailers have suggested that if all brands looked the same, it would become very difficult to serve customers. This could easily be addressed; for example, by stacking the brands on the shelves in alphabetical order."[54]

C. *Health Care Costs Attributable to Tobacco Use*

While health groups acknowledged that some jobs would be lost in the tobacco industry, they also pointed to tobacco-related diseases and deaths and argued that the importance of job losses in tobacco manufacturing and related industries must be balanced against the long-term savings to the health care system due to a reduction in smoking-related diseases and premature loss of life.

The Canadian Medical Association reiterated that smoking accounts for almost 40,000 deaths in Canada every year.[55] As

[53] Canadian Cancer Society, *Responses to Arguments Against Plain Packaging of Tobacco Products*, May 24, 1994, p. 12.

[54] *Ibid.*

[55] Canadian Medical Association, *Plain Packaging of Tobacco Products*, Presentation to the House of Commons Standing Committee on Health, May 3, 1994, p. 1.

acknowledged by members of the Committee during the hearings, this represents some 110 deaths every day in Canada, or 20% of all deaths. Computed differently, one could say that every 10 days smoking kills some 1,200 Canadians, which is exactly the number of workers whose jobs are often said to be at stake if plain packaging is legislated. Further, the Association stressed the importance of health care costs attributable to smoking: "The cost implications of tobacco addiction to the nation are staggering. More than 100,000 new cases of cancer are reported annually in Canada; a third of these are caused by smoking. Each of these new cancer patients requires diagnostic and treatment services, creating an ever-accelerating burden of ill-health on Canadians and stretching overtaxed health facilities to the limit."[56]

Indeed, Health Canada, in its background document prepared for the Committee, estimated that total health care costs attributable to tobacco use reached approximately $3 billion in 1989.[57] In view of the fact that Canada has a publicly funded health care system, these costs are borne by society as a whole.

The Hon. Ron Stewart, Nova Scotia Minister of Health, stressed the importance of addressing the issue not only in terms of short-term costs and benefits, but particularly with respect to the future of our society—that is, our youth: "My government believes that when something so blatantly affects the health of our population, in particular the portion of the population that represents all the best in our future, we cannot sit idly by and wait for the inevitable.(...) The 12 or 13-year old who is addicted to tobacco has no freedom and indeed has a future that is cloudy at best."[58]

The Committee acknowledges that there is a need to balance the value of health versus jobs. On the one hand, there is no doubt that smoking is harmful; smoking is responsible for too much death, disease and pain. And smoking is simply too costly for Canadian society to endure without protest. On the other hand, the Committee understands workers' fear of losing their jobs and recognizes that plain packaging

[56] *Ibid.*, p. 3.

[57] Health Canada, *Background Information on Tobacco and Plain Packaging*, April 8, 1994, Section 1.

[58] The Hon. Ron Stewart, Nova Scotia Minister of Health, *Proceedings*, Issue No. 10, May 12, 1994, p. 16.

may have some effect on employment in the entire tobacco industry. The Committee believes that jobs are an important and appropriate issue for consideration, because both employment and income are determinants of an individual's health status.

The Committee believes that it could be possible to reduce tobacco consumption through plain packaging while maintaining the level of employment in the tobacco industry. Plain packaging should therefore be designed in such a way as to limit the negative impacts on employment. However, the Committee also notes that both employers and workers in the industry must realize that tobacco consumption is likely to continue to decline; consequently, the industry will inevitably have to adjust to this trend.

Finally, the long-term health status of the Canadian population is the most important issue for this Committee. As a result, it is essential to ensure a healthy life for Canada's youth, who represent the most important asset for our collective future. It is incumbent on governments to do everything possible to effect a reduction in tobacco consumption in this country.

CONCLUSION

The Committee reached several conclusions during this study of plain packaging. First, it concluded that plain or generic packaging is a reasonable component of the evolving national strategy to reduce tobacco consumption. Second, it recognized that plain packaging can be designed to minimize contraband tobacco products. Third, while acknowledging the necessary balance between the value of health and the impact of job losses, the Committee felt that plain packaging can be designed to reduce any negative employment impact. Fourth, on the legal considerations, it urged caution in the development of plain packaging regulations. But, finally, this Committee has concluded that the health of Canadians is the most vital criterion for its deliberations.

RECOMMENDATIONS

In the interest of the health of Canadians, as suggested by the evidence available to the Committee to date and in the absence of evidence to the contrary, the Committee affirms that plain or generic packaging could be a reasonable step in the overall strategy to reduce tobacco consumption.

The Committee, therefore, recommends:

1. **That the federal government establish the legislative framework required to proceed with plain or generic packaging of tobacco products;**

2. **That the legislation be introduced when Health Canada concludes its current study on the effects of plain packaging on tobacco consumption, if the results of that study support the available evidence that such packaging will reduce consumption;**

3. **That the federal government require that plain or generic packages be produced in a manner that minimizes the possibility of contraband products, and that the design incorporate printing and packaging technologies that will make duplication as difficult as possible.**

CANADA

HOUSE OF COMMONS

REPORT OF THE STANDING COMMITTEE ON HEALTH, WELFARE AND SOCIAL AFFAIRS ON TOBACCO AND CIGARETTE SMOKING

PRESENTED BY

CHAIRMAN — M. GASTON ISABELLE

SESSION 1969-1970

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The Standing Committee on Health, Welfare and Social Affairs has the honour to present its

FIRST REPORT

On November 14, 1969, your Committee received the following Order of Reference:

> "*Ordered*,—That the Standing Committee on Health, Welfare and Social Affairs be empowered to study the subject-matter of tobacco advertising;
>
> That the Orders for second reading of Bills C-34, C-69 and C-70 be discharged, and the subject-matter thereof be referred to the Committee; and
>
> That the evidence adduced by the Committee in its study of the subject-matter of Bills C-39, C-45, C-53, C-134, C-137, and C-147 in the First Session of the Twenty-Eighth Parliament be referred to the Committee."

At the first Committee meeting on November 18, Dr. Gaston Isabelle and Mr. Steve Otto were elected Chairman and Vice-Chairman respectively.

Your Committee held 28 formal meetings during the last session and presented, on June 27, 1969, as the Committee's Twelfth Report, a progress report of its study of the subject-matter of Bills relating to tobacco and cigarette smoking.

This report is included in the Committee's Minutes of Proceedings and Evidence No. 44 of the first session of the Twenty-Eighth Parliament, and a copy of the Minutes of Proceedings and Evidence relating to this matter, tabled with the Interim Report, is recorded as Appendix 115 to the Journals of the House.

In addition to the briefs presented and the witnesses heard last session and which are listed in the above report, your Committee was privileged to hear, on November 20, 1969, Dr. Daniel Horn, Ph.D., National Director, Clearing House for Smoking and Health of the United States Public Health Service.

Your Committee is grateful to those who gave evidence and to the associations and organizations who presented well documented briefs.

Your Committee also wishes to thank the personnel of the Committees and Private Legislation Branch and the other supporting services for their assistance.

disease for $201 million, chronic bronchitis for $14 million, emphysema for $7 million, other disabilities for $96 million and fires caused by smoking for $13,500,000.[62, 63]

7

THE REDUCTION OF CIGARETTE SMOKING

Action taken to deal with this problem must have two facets:

(*a*) That directed to the protection of the public;

(*b*) That directed to protecting the interests of various segments of the tobacco industry.

The overall pace of corrective action and the establishment of basic priorities must be determined by the wishes of the public. The timing of priorities within basic priorities must allow for the interests of the public and the broad ramifications of the tobacco industry.

While it is clear that cigarette sales cannot be banned at this time, it is equally clear that the production, distribution and sale of cigarettes should no longer be considered in the same light as the production, distribution and sale of other products. It seems reasonable to introduce whatever steps are feasible to progressively eliminate the promotion of cigarette sales and preparations should be made to assist growers and others affected by reductions in cigarette sales. It is also desirable to increase educational efforts to discourage cigarette smoking and to expand activities to make cigarette smoking less hazardous for those who continue to smoke.

It has been argued that if cigarette smoking is harmful, all sales of the product should be banned and, failing this, that it would be constitutionally and legally improper to interfere with its promotion. However, common sense tells us that it would not be in the public interest to prohibit cigarette sales. The cigarette stands unique among health and social problems. Therefore, society is justified in seeking unique solutions and in rejecting arguments based on technicalities. It is clearly contrary to the public interest for the use of a harmful product to be actively promoted even though a ban on production and sales would be unacceptable. There is increasing public pressure to do whatever is practicable to reduce the hazards of cigarette smoking for Canadians. This concern has been particularly expressed in connection with cigarette advertising.

It has been argued repeatedly that whether or not one smokes is a matter of free choice for mature individuals. This is true in the sense that one has the ulti-

[62] The Estimated Cost of Certain Identifiable Consequences of Cigarette Smoking Upon Health, Longevity, and Property in Canada in 1966, Research and Statistics Memo, Department of National Health and Welfare.

[63] *One should note, however, that the over-riding consideration of the Committee and of the Government must be the health of the consumer—the current or potential Canadian smoker—and, in ensuring his protection, economic considerations are quite secondary to his well-being.*

mate responsibility for what one does to one's own body. It is equally true, however, that the basis of the widespread use of the cigarette is the dependence that one develops on smoking and everyone knows that a large proportion of cigarette sales arise from sales to persons who are unable to stop smoking. There appears to be varying degrees of dependence based on differing mixes of pharmacological, social and pyschological factors. In any case, their dependence would certainly seem to remove the freedom of choice for many cigarette smokers.

It should be noted that despite limited budgets, Canadian smoking and health programs have been gaining momentum and that large numbers of Canadians are convinced of the hazards of smoking and desire that something be done about them. [64, 65, 66, 67] It is clear, however, that the magnitude of the problem is such that something more than health education is desirable. Since voluntary action by cigarette manufacturers and others has so far not appeared to be adequate, legislation is probably required. However, it would be most desirable if the goals of society with regard to this matter could be achieved by voluntary means wherever possible.

Perhaps the most compelling reason to introduce practicable legislation to control the promotion of cigarette smoking is to bring consistency and mutual reinforcement into society's actions to deal with the problem. For example, young people can hardly be expected to believe that governments really consider cigarette smoking to be hazardous if they allow unlimited cigarette promotion. Further, large numbers of smokers wish to stop smoking or stay stopped and anything that could be done to support their resolve and reduce the pressures to smoke, which are part of our society, would be desirable.[68]

[64] Minister of National Health and Welfare reported in 1965 that as early as 1964, 90% of Canadians were aware of the health issue associated with cigarette smoking and 60% were convinced that a definite hazard was involved.

[65] The Minister of National Health and Welfare reported in 1968 that although smoking was increasing among women, it was decreasing among adult males. He reported in 1969 that per capita cigarette consumption decreased 5% between 1966 and 1968.

[66] A survey of students from grades 3 to 13 in 1968 in the North-Western Health Unit District (Kenora) revealed that 90% of non-smokers and 80% of smokers believed smoking may have harmful effects on health. However, only 60% of non-smokers and 50% of smokers said that publicity on the possible harmful effects of smoking had decreased their inclination to smoke.

[67] The Reader's Digest in November, 1966, reported that a poll of Canadian opinion showed that a majority (65%) of Canadians believed that the amounts of tar and nicotine in cigarette smoke should be plainly stated on every package. Sixty-one per cent believed the same facts should be made plain in all cigarette advertising. Eighty-eight per cent of smokers, non-smokers and ex-smokers said "that every effort should be made to discourage young people from getting the cigarette smoking habit."

[68] The Minister of National Health and Welfare reported in 1966 that 45 per cent of regular cigarette smokers had seriously tried to quit smoking.

RECOMMENDATIONS

A. Eliminating the promotion of cigarette sales

Your Committee recommends that cigarette advertising and all other promotion of cigarette sales be progressively eliminated.

(i) *Cigarette Advertising*

Of all the recommendations made to the Committee, the strongest and most frequent appeared to be that steps be taken to control or eliminate cigarette advertising. Special concern was expressed about the effects of such advertising on children and about the importance of television advertising. In criticising television advertising of cigarettes and its effect on children, it was not always clear the witnesses were aware that, by voluntary agreement among Canadian cigarette manufacturers, there is no advertising of cigarettes on television stations in this country before 9 p.m. Presumably they were influenced by cigarette advertising carried by American television stations. The concern about television centred on its unique image-creating potential as well as the fact that one could not be selective about watching and listening to such advertisements as in the case of advertisements in printed media. Further, it has been pointed out that the use of the air waves is a special privilege granted to licensees, is already regulated by a federal authority and cannot be compared with printed advertising in quality or regulation. This has been explained in an editorial by a television station owner describing why he was discontinuing cigarette advertising on his television station but would continue to carry cigarette advertising in his newspaper as long as it was legal to do so.[69]

Evidence was given by the industry that elimination of cigarette advertising in some media, as in Britain, or in all media, as in Italy, had no apparent effect on the prevalence of cigarette smoking. Similarly, it was pointed out that in those countries where there has never been cigarette advertising on television, cigarette smoking has progressively developed.[70] In light of this, one might ask why manufacturers bother to advertise if it has no effect on cigarette sales. However, the failure to demonstrate the effects of these different situations, in no way excuses

[69] Editorial by Mr. John Bassett, Toronto Telegram, Saturday, June 21, 1969.
[70] Minutes—No. 38—Thursday, June 5, 1969, pages 1663, 1664 and 1665.

governments from acting because, in principle, regardless of its effectiveness, it is wrong to promote a practice that impairs health. Further, the suggestion that removing advertising would be ineffective, is a strong argument for more stringent controls of cigarette promotion.

The tobacco industry provided information concerning the amounts spent on cigarette advertising in Canada.[71] This information leads one to agree that the industry has been moderate in advertising its cigarettes and that the relative amount of advertising by the industry has actually been declining in the past few years. However, no information was provided about amounts spent on other types of promotion, for example coupon and premium schemes, or sponsorship of various events.[71] The period 1962 to 1968, which was the period referred to in the industry's comments about relative amounts spent on advertising, was one during which brands offering coupons and premiums or prizes increased from 4 per cent to 24 per cent of the market.[72]

In measuring change or lack of change of one thing in connection with another, for instance the effect on cigarette consumption of the discontinuation of cigarette advertising the industry tended to assume that all other things remained unchanged. For example, in suggesting that the removal of television advertising of cigarettes in Britain had no effect on cigarette consumption, no mention was made of the possible effects of the marked increase in coupon and premium schemes which occurred following the ban.[73] To derive conclusions in such a situation one would have to control other factors which may have influenced the change or lack of change.

Similarly, for other countries, one would have to know what other things happened, if one wished to draw conclusions about the effects of a single factor like the removal of television advertising.

It was repeatedly pointed out that cigarette advertising did not promote cigarette smoking but only promoted particular brands among existing smokers.[74] However, whatever its purpose, any type of cigarette promotion implies that the use of cigarettes is desirable and presumably harmless, and a priori, adds to the cultural acceptability of smoking.[75] Therefore, by simply stating that the reason they advertise is to promote their individual brands, manufacturers cannot be automatically excused from responsibility for the effects of their promotional campaigns.

There is perhaps reason to be concerned about unilateral action to eliminate cigarette advertising on television and radio without doing so concomitantly in printed media. Nevertheless, broadcast advertising has special features which

[71] Minutes—No. 38—Thursday, June 5, 1969, pages 1657, 1658 and 1659.
[72] Minutes—No. 38—Thursday, June 5, 1969, page 1671.
[73] Minutes—No. 38—Thursday, June 5, 1969, page 1664.
[74] Minutes—No. 38—Thursday, June 5, 1969, page 1661.
[75] The United States Court of Appeals for the District of Columbia Circuit has ruled that cigarette advertising inherently promotes cigarette smoking as a desirable habit (Nos. 21285, 21525 and 21526).

cannot be ignored. Outstanding perhaps is that the observer or listener cannot choose whether or not he is exposed to the message and it would seem at least to be in bad taste to promote the use of a harmful product under such circumstances despite the time of broadcast or the age of the audience. In addition, broadcasting comes under existing federal regulation and, because it is desirable to do whatever is practicable to reduce cigarette promotion, it is reasonable to begin with media in which such reduction is feasible. Further, a substantial amount of broadcast cigarette advertising has already been eliminated by the recent action of the Canadian Broadcasting Corporation to remove advertising of all tobacco products from radio and television and of private television stations in Toronto and Ottawa to ban cigarette advertising. The Committee believes that undue hardships would not be imposed on networks and stations by the removal of cigarette advertising.

The industry provided information showing cigarette advertising as a proportion of total national advertising in 1967. Except for week-end supplements at 9 per cent and radio at 7 per cent, cigarette advertising was well below 5 per cent of the total for any of the six media. Overall, cigarette advertising accounted for 3.7 per cent of total national advertising.[76] One could assume from this that no medium would be seriously and permanently affected by a loss of cigarette advertising revenue.

John Wakefield, a British social scientist, studied the effects of the 1965 ban on cigarette advertising on television in the United Kingdom. He reported:

1. The immediate loss of revenue by independent television companies was more than made up in the first year by increased revenue from advertisements of other products.
2. There was a switch of cigarette advertising from television to the press and an increase in the amount spent on advertising of cigars and pipe tobacco in the press and on television.
3. There was a marked increase in promotional expenditures on gift coupon schemes.
4. The proportion of smokers who used only pipes or cigars rose in all age groups of the male population, including for the first time, the 16-19 year olds.
5. The decline in cigarette tobacco consumption by men since 1960 continued in 1965 and 1966. Consumption by women rose in 1966 after falling since 1963.[77]

The broadcast advertising of cigarettes is of special concern in other countries as well. The elimination of such advertising has been proposed by the United States tobacco industry and is expected to be completed there by the end of 1970. This is particularly important to Canada because it will remove the influence of the day-time as well as night-time cigarette advertising reaching this country from the United States stations. About 70 per cent of Canadians live within signal reach

[76] Minutes—No. 38—Thursday, June 5, 1969, page 1666.
[77] World Conference on Smoking and Health, September, 1967, A Summary of the Proceedings, page 238.

of U.S. television stations and almost all Canadians can receive American radio broadcasts.[78] Such action will also remove the possibility of United States brands sold in Canada having unfair competitive advantage over Canadian brands because of broadcasting support.

The Canadian tobacco industry told the Committee that, if Canadian companies could not advertise, U.S. brands would be supported by their U.S. television advertising reaching into Canada, while Canadian brands would have no television support.[79] A further advantage of the elimination of the United States broadcast advertising would be to make it unlikely that Canadian cigarette manufacturers, in the event of an advertising ban in Canada would use American border stations to reach the Canadian market. In light of the current American situation, including the earlier proposal of American broadcasters to phase out cigarette advertising, it is possible that the United States Federal Trade Commission and Federal Communication Commission would discourage American broadcasters from carrying any kind of cigarette advertising.

One would not expect—in the event of an advertising ban in Canada—that printed media originating in the United States would give particular competitive advantage to American brands or be used substantially by Canadian manuturers to reach the Canadian market.

Television advertising of cigarettes has been banned in Britain and in Iceland since 1965. Denmark has had a voluntary ban on the use of television, radio and cinema for cigarette advertising since 1962, and the Netherlands has had a voluntary ban on the use of television for cigarette advertising since 1964. New Zealand banned cigarette advertising on both television and radio in 1963. It is barred from television in France and Belgium and from television and radio in Czechoslovakia, Norway, Sweden, Switzerland and India. All advertising of tobacco products is prohibited in Italy and the U.S.S.R.

In Australia, the National Health and Medical Research Council has agreed that lower death rates from smoking related diseases depend on curtailment of cigarette advertising. In Norway, the Committee for Research in Smoking Habits appointed by the Norwegian Cancer Society has recommended that legislation be prepared to reduce hte volume of advertising as far in the direction of a total ban on advertising as will be practically enforceable. [78, 80, 81, 82, 83]

[78] Minutes—No. 38—Thursday, June 5, 1969, page 1667.
[79] Minutes—No. 38—Thursday, June 5, 1969, pages 1664 and 1665.
[80] Influencing Smoking Behaviour, International Union Against Cancer, 1969.
[81] Smoking and Health Programs in Other Countries, a Report of the National Clearinghouse for Smoking and Health, United States Public Health Service, 1969.
[82] Smoking and Health Enquiry of Countries outside North America, Department of National Health and Welfare, 1969.
[83] Medical News, July 25, 1969.

Some American and Canadian publishers and broadcasters will not accept cigarette advertising. The New York Times, on August 29, 1969, announced, in an editorial urging that the requirement be made general for all forms of advertising and on all cigarette packages, that, from January 1, 1970, it will require all cigarette advertising it accepts to carry both a strong health hazard warning and a statement of tar and nicotine content.

(ii) *Coupon and Premium Schemes*

Another type of advertising of special concern is the chance provision of prizes of cash or goods to purchasers of certain brands of cigarettes. The cigarette manufacturers presented evidence to indicate that premium and coupon schemes do not make smokers smoke more.[84] However, it is surely incontestable that this form of promotion rewards smokers for using certain brands and therefore makes it desirable for non-smokers to start smoking such brands, for present smokers to continue smoking such cigarettes or to smoke more of them, and for ex-smokers to resume smoking. It is quite likely that a person becoming convinced that he or she should stop smoking for economic as much as health reasons would be swayed toward the continuation of smoking with the thought that he might obtain a substantial and quick return on the money spent for cigarettes. This type of promotion is being developed with increasing vigour in Canada with, in some instances, very large cash prizes being offered.

In Britain, following a ban on broadcast advertising there was a very large increase in promotional expenditure on gift coupon schemes. Cigarettes sold with coupons now constitute the major proportion of the British market and British manufacturers appear to be spending three times as much on coupons as they are in advertising in the mass media. In October, 1967, the government decided that legislation should be introduced to ban coupon gifts schemes, to forbid or limit certain forms of cigarette advertising and to limit expenditures on such advertising.[85]

In the 1969 Hearings on Cigarette Labelling and Advertising before the Committee on Interstate and Foreign Commerce of the United States House of Representatives, Dr. Eugene Levitt, who appeared at the request of the United States tobacco industry, testified that children were attracted to their cigarette brand by coupons.[86]

The Canadian cigarette manufacturers presented data to the Committee showing the rate of total industry change and the change in brands offering coupons, premiums or prizes in Canada and the United Kingdom. In both countries, the premium brands show steady growth while the increase in total industry volume has been much smaller and irregular. The industry said that the premium brands increased at the expense of non-premium brands and that this showed that premium schemes do not encourage smoking.[87] From the tables alone, it could be equally well argued, of course, that if it were not for the increasing appeal of

[84] Minutes—No. 38—Thursday, June 5, 1969, page 1672.

[85] Smoking and Health Programs in other countries, a report of the National Clearinghouse for Smoking and Health, United States Public Health Service, 1969.

[86] Hearings of the Committee on Interstate and Foreign Commerce House of Representatives Re Part 3, Cigarette Labelling and Advertising, 1969, page 1272.

[87] Minutes—No. 38—Thursday, June 5, 1969, pages 1671 and 1672.

premium brands, the total industry volume would have shown a substantial decline.

The industry table comparing estimated numbers of cigarettes smoked per day by persons using premium and non-premium brands does not provide a sufficient basis for conclusions.[88] Expected smoking habits vary by sex and age groups. The table does not allow for these differences.

Because of the marked increase in premium and coupon schemes following the removal of television advertising in Britain, and the fact that Canadian cigarette manufacturers are moving vigorously in the same direction, it is possible that the elimination of regular advertising in Canada could be followed by a similar shift. This, plus the possible ineffectiveness of advertising controls in other countries as pointed out by the industry, presents a strong case for the plugging of loopholes by eliminating all promotional activities but especially premium and coupon schemes. *Therefore, in planning the progressive reduction of cigarette advertising, premium and coupon schemes would, along with broadcast advertising, appear to merit first attention.*

(iii) *Free Distribution of Cigarettes*

Another means of promoting cigarette use is the free distribution of cigarettes. **Your Committee recommends therefore, that such distribution be prohibited, whether by cigarette manufacturers, transportation companies, hospital auxiliaries or others.**

Pending the complete elimination of cigarette advertising, the phasing out, as well as the quantity and quality of remaining cigarette advertising, would require attention.

Your Committee recommends that legislation be enacted to prohibit an increase above current levels of the amounts spent on cigarette advertising in any medium or all media combined. This would prevent shifts of advertising or promotion that would defeat the intent of the proposed regulation of advertising.

Your Committee also recommends that legislation be enacted to permit the promotion of brand identification only in any remaining advertising. This could be achieved by showing brand and package, if desired, with no visualization of smoking. References as to the desirability of a particular cigarette, for example, taste, flavour, filter, quality of tobacco or to such things as its widespread use should be curtailed and eventually prohibited.

Your Committee recommends that any advertising or promotional materials, remaining after one year be required to carry the same warning as that designed for use on cigarette packages and cartons and cigarette vending machines.

A proposed timetable for the progressive elimination of cigarette advertising might be as follows:

—Complete elimination of free distribution of cigarettes and all coupon and premium schemes—one year from enactment of legislation.

—No cigarette advertising on television or radio before 10 p.m.—one year from enactment of legislation.

[88] Minutes—No. 38—Thursday, June 5, 1969, page 1672.

—Warning in all remaining advertising and promotional materials—one year from enactment of legislation.

—Prohibition of cigarette advertising on television and radio—two years from enactment of legislation.

—Prohibition of other than simple brand name advertisements in remaining media—two years from enactment of legislation.

—Complete elimination of all cigarette promotional activities—four years from enactment of legislation.

To facilitate the orderly phasing out of cigarette advertisements and to regulate the quality of existing advertisements, it is recommended that the production, advertising and sale of all tobacco products be brought under a revised Tobacco Restraint Act or under the Food and Drugs Act.

B. *Increasing Educational Efforts to Discourage Cigarette Smoking*

(i) *Smoking and Health Programs*

The effectiveness of current smoking and health programs is suggested by the widespread knowledge of the hazards of smoking, by the reduction of cigarette smoking among men, by reductions in per capita cigarette consumption and by the general public concern about the cigarette smoking problem. **Your Committee recommends the continuation and expansion of existing programs in order that Canadians might be reminded of the dangers and assisted in their efforts to avoid or discontinue smoking or to smoke in less hazardous ways.**

If the objective is the eventual elimination of cigarette smoking it is important to change the image of cigarette smoking so that it becomes an undesirable and unfashionable practice. This approach is particularly important among young persons who have not yet started to smoke and to whom the health hazards of smoking appear distant.

It has been suggested that television is the most useful medium to carry out such a campaign and reports about the effectiveness of existing televised smoking and health messages bear this out. **Your Committee therefore recommends that increased efforts be directed toward the production and showing of imaginative television promos and films in general.** While modest increases in budgets for smoking and health programs would allow the production of more materials they would not ensure their showing especially on prime time television. **In order that this could be achieved, your Committee recommends that arrangements be made through the Canadian Radio-Television Commission for increased use of smoking and health commercials on television and radio as compulsory prime-time public service announcements.**

In the Committee's view these messages should not be shown in proportion to cigarette advertisements as in the United States. If this were done there would be a danger of their reduction or elimination when cigarette advertising disappears.

There is no known way to prevent young people from smoking. The problem is a complex one because children are influenced by, and cannot be isolated from, the many pressures to smoke that surround them. Nevertheless, continuing research is required to learn how children and teenagers might be helped to avoid the habit. *Increased funds should be made available to support experimental health education programs in the schools and elsewhere.*

The success of smokers' clinics and other means to assist smokers to discontinue smoking appears to be limited and one method not clearly better than any other. The essential ingredients seem to be strong motivation to stop smoking combined with the resolution to do so. The support of family, friends and society and the reduction of various pressures to smoke—cigarette advertising and the persuasion or example of friends for instance—are important ancillary factors. *Again, increased financial support of experimental programs is required.*

There is insufficient information regarding the effectiveness of various media and types of approaches in health education regarding the dangers of smoking. **Your Committee recommends that increased attention be given to surveys of public knowledge, opinion and other measures of the effectiveness of smoking and health programs.**

Coninuing co-ordination of smoking and health programs carried out by various governments as well as voluntary and professional agencies is necessary if resources are to be used to the maximum and wasteful duplication is to be avoided. **Co-ordinating committees or councils are required at national, provincial and local levels and increased efforts should be made to correct deficiencies in these regards.** A step in this direction has been taken at the national as well as some provincial levels.

(ii) *Cautionary Statements on Cigarette Packages and in Cigarette Advertisements*

The use of a cautionary statement on cigarette packages and cartons and in cigarette advertising was given high priority by groups appearing before the Committee. Testimony was given by the tobacco industry that any warning which goes beyond present scientific knowledge will create disbelief on the part of the consumer; that such warnings are unnecessary because Canadians are already highly aware of the smoking and health issue; that an overstated warning might actually attract attention to smoking, particularly by the young; and that warnings applied to products which may be potential long-term hazards if abused, tend to degrade warnings on products which are immediately and acutely dangerous. The industry went on to say that if such a warning is to be required, that it should not go beyond the present state of scientific knowledge and should be intended to inform consumers of factual matter.[80]

[80] Minutes—No. 38—Thursday, June 5, 1969, pages 1671 and 1674.

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ACKNOWLEDGEMENTS

The Task Force on Smoking has been supported steadfastly by many individuals. The Ontario Council of Health staff are an exceptionally professional group who have been unstinting in their efforts to facilitate. We have appreciated especially the ongoing support of Dagmar Horsburgh, her excellent management of Task Force operations, and her wise counsel. Judy Wu brought her quite remarkable organizational ability and energy to her involvement with the Task Force. The Task Force was awed by the quality of her work and the efficiency with which things got done.

The Health Research and Development Committee, first under the Chairmanship of George Connell and later Donald Layne, was always an excellent parent Committee. It provided firm but flexible direction. The Task Force was impressed with the careful consideration accorded its progress, and the thoughtful and constructive advice at each step.

A great deal was accomplished by the Task Force research assistants, Josie d'Avernas and Marilyn MacKenzie. Both were unusually dedicated, and each brought special gifts. Josie d'Avernas shepherded the Task Force through its first year of operation, succeeding admirably in the very difficult task of pulling together the ideas, working memoranda, and preliminary reports generated by the Task Force's diverse membership. Marilyn MacKenzie contributed her organizational talents, and her great sensitivity to individuals and groups in the community, to provide opportunity for their contributions to the Task Force. We also want to thank these many individuals and groups for their genuine interest in the Task Force and their enriching input.

Both Josie d'Avernas and Marilyn MacKenzie seemed true members of the Task Force. So it was with observers to the Task Force: John Keays from the Ontario Ministry of Health, and David Thornton from Health and Welfare Canada. Both gave freely of their time and effort. Both contributed a keen sensitivity to smoking and health issues, born of their years of experience in the area. The Task Force benefited particularly from John Keays' personal knowledge of the history of smoking and health activity in Ontario and from David Thornton's wide ranging and in-depth appreciation for past and current efforts elsewhere in Canada.

Finally, as Chairman of the Task Force, I want to express my deep appreciation to each of the individual Task Force members. This has been a remarkable experience. I have been impressed over and over again with the intellectual sophistication, flexibility, and honesty of the members. I have been struck repeatedly by the commitment of each to the aims of the Task Force. But most moving have been the ways in which people have worked together, supporting each other's contributions, challenging as necessary, and learning to appreciate and integrate others' perspectives.

J. Allan Best, Ph.D.
May, 1982

Office of the Chairman
Cabinet du Président

Ontario Council of Health
Conseil ontarien de la santé

(416) 965-5031

700 Bay Street
Toronto, Ontario
M5G 1Z6

700, rue Bay
Toronto, Ontario
M5G 1Z6

July 29th, 1982.

The Honorable Larry Grossman
Minister
Ministry of Health
10th Floor
Hepburn Block
QUEEN'S PARK

Dear Mr. Grossman:

For your consideration, I am pleased to transmit the Final Report of the Task Force on Smoking which was presented to the Ontario Council of Health on May 18, 1982.

Before its presentation to Council, the Report was submitted to three external reviewers for a critique of its methodology, internal consistency and overall quality.

Regarding the recommendations of the Task Force, Council felt some were based on incomplete data, and others were more in the political than the scientific field, for example, those relating to agriculture and the tobacco industry, and to taxation. Two recommendations did not receive the support of the Parent Committee, the Health Research and Development Committee. The first had to do with the production of a "safe" cigarette or tobacco substitute, which it did not see as a health research priority. The second had to do with the concept of a free-standing Resource Centre for Smoking and Health. The Committee felt rather the possibility should be explored of using more effectively the existing structures to focus and augment efforts in this area.

Because of these reservations Council is not prepared to endorse or reject individual recommendations, but feels that they should speak for themselves in conjunction with the Report and the data behind it.

Council was enthusiastic in recognizing the Report as a broad survey of all the issues relating to smoking, and thus making an important contribution to public awareness and focusing attention on some of the policy questions which relate to the whole area of smoking.

Council therefore resolved that the Report should be forwarded to you and that it be published by Council in due course as a Report of the Task Force on Smoking.

Yours, sincerely,

R. BRIAN HOLMES, M.D.
Chairman

TASK FORCE ON SMOKING

Dr. J.A. Best *(Chairman)*	Associate Professor and Chairman Department of Health Studies University of Waterloo WATERLOO N2L 3G1
Dr. M.J. Ashley	Professor and Chairman Department of Preventive Medicine and Biostatistics Faculty of Medicine University of Toronto TORONTO M5S 1A8
Dr. A.M. Egbert	Medical Officer of Health Borough of Etobicoke Community Health Department Civic Centre ETOBICOKE M9C 2Y2
Dr. R.C. Frecker	Institute of Biomedical Engineering University of Toronto and Clinical Pharmacology Program Clinical Institute Addiction Research Foundation 33 Russell Street TORONTO M5S 2S1
Dr. R.M. Gilbert	Addiction Research Foundation 33 Russell Street TORONTO M5S 2S1
Mrs. S. Lawson	Director of Chapter Development Ontario Heart Foundation 576 Church Street TORONTO M4Y 2S1
Dr. N.M. Lefcoe	Director, Pulmonary Unit Victoria Hospital Professor of Medicine University of Western Ontario Westminister Campus LONDON N6A 4S2
Mrs. B.J. Milne	Hypertension Research Nurse Mount Sinai Hospital 600 University Avenue, Suite 435 TORONTO M5G 1X5

Dr. W. Rosser	Family Medicine Centre 210 Melrose Avenue OTTAWA K1Y 4K7
Mr. A.P. Warren	Executive Director Ottawa-Carleton Regional District Health Council 1355 Bank Street, Suite 304 OTTAWA K1H 8K7

OBSERVERS

Mrs. J.R. d'Avernas	Department of Health Studies University of Waterloo WATERLOO N2L 3G1
Mr. J. Keays	Health Promotion Services Ontario Ministry of Health 8th Floor Hepburn Block
Mrs. M. MacKenzie	187 Roywood Drive DON MILLS M3A 2E5
Dr. D. Thornton	Chief of Alcohol, Tobacco & Risk Assessment Programs Health and Welfare Canada Health Services and Promotion Branch 9th Floor Journal Building 365 Laurier Avenue West OTTAWA K1A 1B6

COMMITTEE ON HEALTH RESEARCH AND DEVELOPMENT

Dr. D.S. Layne *Chairman*	Vice-President Research and Technology Connaught Laboratories Ltd. 1755 Steeles Ave. W. Willowdale, Ontario M2N 5T8
Dr. D. W. Banting	Associate Professor Dept. of Paediatric and Community Dentistry Dental Services Bldg. University of Western Ontario London, Ontario N6A 5B7
Dr. J.D. Hundleby	Professor Department of Psychology College of Social Science University of Guelph Guelph, Ontario N1G 2W1
Dr. G. Hurteau	Dean Faculty of Medicine University of Ottawa Ottawa, Ontario K1N 6N5
Dr. J.C. Laidlaw	Dean of Health Services McMaster University Medical Centre 1200 Main St. W. Hamilton, Ontario L8S 4J9
Dr. F.J.J. Letemendia	Kingston Psychiatric Hospital Postal Bag 603 Kingston, Ontario K7L 4X3
Dr. E.A. McCulloch	Assistant Dean School of Graduate Studies University of Toronto 65 St. George St. Toronto, Ontario M5S 1A1

Dr. L. Siminovitch	Geneticist-in-Chief Hospital for Sick Children 555 University Avenue Toronto, Ontario M5G 1X8
Dr. R.A. Spasoff	Dept. of Epidemiology and Community Medicine University of Ottawa 1460 Heron Road Ottawa, Ontario K1V 6A6
Dr. A.D. Wolfson	Acting Chairman Ontario Manpower Commission Ministry of Labour Room 610 500 University Ave. Toronto, Ontario M5G 1V7
Mr. D. Woods	100 Roxborough St. E. Toronto, Ontario M4W 1W1
	Shanty Bay Post Office SHANTY BAY L0L 2L0

RESOURCE PERSONS

Dr. A.E. LeBlanc	Director Strategic Research and Manpower Planning Branch 8th Floor, Hepburn Block Queen's Park Toronto, Ontario
Ms. P. Stuckless	Research Branch Ministry of Health 8th Floor, Hepburn Block Queen's Park Toronto, Ont.

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RECOMMENDATION 4:
Increases in Tobacco Taxation

IT IS RECOMMENDED THAT THE GOVERNMENT OF ONTARIO TAKE ACTION TO ENSURE THAT THE RETAIL PRICE OF CIGARETTES BE DOUBLED WITHIN A 12-MONTH PERIOD BY MEANS OF THREE PHASED INCREASES IN BASIC TAXATION ON TOBACCO PRODUCTS, AND ENSURE THROUGH TAXATION THAT THE PRICE OF CIGARETTES KEEPS UP WITH INFLATION THEREAFTER.

It has been well documented that cigarette consumption goes down when the price of cigarettes relative to inflation goes up, and vice versa. How much cigarette consumption would decline in Ontario with a given increase in price can only be estimated.

British experience suggests that relatively large increases over a short period of time are necessary to produce the desired effect.

Several considerations favour this measure as part of a comprehensive program:

1. It probably is the most direct and reliable way to reduce the overall amount of smoking in the Province. Its rapid and substantial effect should make a marked contribution to social climate and facilitate other recommendations.
2. Surveys suggest that public acceptance of the measure may be good.
3. The measure would be productive of additional government revenue, which could be used to finance other components in an overall smoking program.
4. The impact would be especially strong on young people, who have less disposable income and whose smoking is a particular problem for society. Very recent scientific evidence underscores the great significance of this measure for smoking prevention.

RECOMMENDATION 5:
Prohibition of Tobacco Promotion

The Task Force supports the World Health Organization position that there should be total prohibition of all forms of tobacco promotion in all countries. Whereas the Task Force believes that Ontario has a role to play in achieving this objective for Canada,

IT IS RECOMMENDED THAT THE ONTARIO GOVERNMENT INITIATE DISCUSSIONS TO ENCOURAGE THE FEDERAL GOVERNMENT TO TAKE ACTION PROHIBITING PROMOTION OF TOBACCO.

IT IS FURTHER RECOMMENDED THAT, WITHIN AREAS OVER WHICH IT HAS JURISDICTION, THE ONTARIO GOVERNMENT SHOULD PROHIBIT ALL FORMS OF TOBACCO PROMOTION, AND STRENGTHEN CURRENT HEALTH PROMOTION ACTIVITIES ENCOURAGING NON-SMOKING AS PART OF A HEALTHY LIFESTYLE.

Three major considerations provide a rationale for the recommendation:

1. There is a significant likelihood that advertising and other tobacco promotion serve to increase the overall consumption of tobacco in Ontario.
2. Tobacco promotion is inconsistent with the stated aim of the Ontario Ministry of Health to encourage prevention of disease and increased individual responsibility for health. Lack of government action may undermine the effectiveness of a smoking program.
3. The ethics of tobacco promotion are questionable.

The scientific base for restraints on tobacco promotion never will be firm. Increases or decreases in tobacco promotion always occur in the context of societal change and other influences. Thus, the data cannot be conclusive. There is suggestive evidence from many jurisdictions both that increased promotion increases consumption and that decreased promotion decreases consumption. The annual promotion expenditure of the industry in this country makes it unlikely that promotion is not seen to affect consumption, if not by actually increasing it then by maintaining relatively high smoking levels.

Tobacco promotion is especially likely to have a significant effect on consumption by young people. There is a solid scientific base demonstrating the significance of other social influences on smoking onset. Research concerning the reasons children smoke is incomplete with respect to this issue. However, what is known about smoking in particular, and what is known about child development in general, provide an impressive inferential base for the assertion that promotion does play a significant role in the onset process.

Effects of tobacco promotion on the recruitment of new smokers provide sufficient rationale for a ban. Promotion may affect adults as well, but the evidence is inconclusive. It is argued by the industry that the sole effect of promotion in a market such as Ontario's is to influence brand selection by persuading smokers to switch from one brand to another. Recognizing that the scientific data cannot be definitive, many scientists nevertheless have challenged the credibility of this position. It also has been suggested that the argument is specious if one considers various components of the smoker market — new youth and immigrants from developing countries constantly are entering the market, and there are substantial numbers of adult smokers who indicate they would like to quit and thus leave the market.

In sum, while scientific evidence concerning the effects of tobacco promotion on consumption can never be definitive, the convergence of several kinds of data provides a reasonable basis for the recommendation. There is evidence that partial bans on promotion are not effective because manufacturers then make greater use of forms of promotion which are not banned; thus, the recommendation of a total ban.

A different rationale concerns the potential negative effects of inconsistency in government actions. The ability of government to contribute to the crucial development of a supportive environment for nonsmoking is a function of its credibility. Failure to regulate major contributors to smoking may limit seriously the effectiveness of other initiatives. Scientific support for this concern

can be drawn both from the substantial evidence relating credibility to attitude change and health promotion, and from the documentation in other jurisdictions that smoking programs including restrictions on tobacco promotion have been associated with decreased consumption. The specific contribution of restrictions on promotion cannot be isolated because of the interactive effects with other program components. However, it is precisely these interactive effects which are necessary to maximize the effectiveness of a balanced smoking program.

The third aspect of the rationale concerns the ethics of tobacco promotion. The social ethics of the active promotion of a major, lethal public health hazard are difficult to justify. Freedom of information and choice are considerations, but the enormous health consequences of individual failure to protect health create a circumstance parallel in some respects to the need for seat belt legislation, where the Government of Ontario did act with good effect.

A second, very clear ethical concern is the possible effect of tobacco promotion on youth. The majority of adult smokers begin before the age of maturity. Protection of youth is an established government responsibility. In the absence of clear evidence that tobacco promotion does *not* influence smoking onset, promotion of a dangerous and lethal product is highly questionable from an ethical and public health perspective.

PROGRAM MEASURES

RECOMMENDATION 6:
Program Development Funding

FUNDING FOR PROGRAM DEVELOPMENT PROJECTS IN ONTARIO SHOULD BE PROVIDED BY THE GOVERNMENT AND OTHER BODIES ONLY FOLLOWING DEMONSTRATION OF MECHANISMS FOR PRODUCTIVE ONGOING COLLABORATION BETWEEN PROGRAM DEVELOPERS AND RESEARCHERS.

Programs which effectively prevent youth from becoming smokers, or help adults reduce their smoking or quit, have been slow in development. Recent successes in both areas have come with intensive program development efforts, requiring:

1. Thorough understanding of the smoking process and more generally the population to be served.
2. Design of programs rooted in behavioural sciences advances.
3. Scientific evaluation of programs as implemented in the community.

Whereas in most Ontario communities there has been little interaction between smoking researchers and program providers, those programs which have been shown scientifically to be effective typically have involved considerable interaction. The Task Force has concluded that program development is more likely to result in effective programs if developers and researchers collaborate

HOUSE OF COMMONS

Session 1992–93

HEALTH COMMITTEE

Second Report

THE EUROPEAN COMMISSION'S PROPOSED DIRECTIVE ON THE ADVERTISING OF TOBACCO PRODUCTS

Report with Appendices and Proceedings of the Committee together with Minutes of Evidence taken before the Committee and Appendices

Ordered by The House of Commons to be printed 14 December 1992

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Session 1992–93

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The Health Committee is appointed under SO No 130 to examine the expenditure, administration and policy of the Department of Health, associated public bodies and similar matters within the responsibilities of the Secretary of State for Northern Ireland.

The Committee consists of 11 Members, of whom the quorum is three.

The Committee has power:

(a) to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report from time to time;

(b) to appoint persons with technical knowledge either to supply information which is not readily available or to elucidate matters of complexity within the Committee's order of reference;

(c) to communicate to any other such Committee, or the Public Accounts Committee, its evidence and other documents relating to matters of common interest; and

(d) to meet concurrently with any other such Committee for the purposes of deliberating taking evidence, or considering draft reports.

Unless the House otherwise orders, all Members nominated to the Committee continue to be members of the Committee for the remainder of the Parliament.

Monday 13 July 1992

The following were nominated as Members of the Committee:

Mr Roland Boyes
Mr James Clappison
Mr David Congdon
Mr David Hinchliffe
Mrs Jacqui Lait
Alice Mahon
Mrs Marion Roe
Mr Roger Sims
Rev Martin Smyth
Mr Michael Trend
Audrey Wise

Mrs Marion Roe was elected Chairman on Wednesday 15 July 1992.

Monday 26 October 1992

Mr Roland Boyes and Mr David Hinchliffe were discharged and Mr Hugh Bayley and Tessa Jowell were added.

Majesty's Stationery Office at £15.438.

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SECOND REPORT

THE EUROPEAN COMMISSION'S PROPOSED DIRECTIVE ON THE ADVERTISING OF TOBACCO PRODUCTS

The Health Committee has agreed to the following Report:

INTRODUCTION

1. At its meeting on 15 July 1992, the Committee decided to hold a short inquiry into the proposed EC Directive on the advertising of tobacco products with a view to reporting to the House before the meeting of the Council of Health Ministers on 13 November.

2. In its Third Report of Session 1991–92 the former Health Committee summarised the aim of the draft Directive on the advertising of tobacco products as being to:

(a) ban all forms of tobacco advertising in the Community, except that Member States may authorise advertising in tobacco sales outlets which is not visible from the exterior of the premises;

(b) ban indirect advertising of tobacco;

(c) ban the use of established trademarks or brand names for new tobacco products;

(d) ban the free distribution of tobacco products; and

(e) require Member States to provide means by which individuals or organisations can take legal action against tobacco advertising or complain to a monitoring body.[1]

After the publication of the Committee's Report a slightly amended proposal was put forward by the Commission whereby a trademark could be used to advertise both tobacco and non-tobacco products, provided that the trademark had been first registered for non-tobacco products, and that the tobacco turnover does not exceed half the non-tobacco turnover.[2]

3. In the event, it was announced in a written answer on 19 October and confirmed by the Secretary of State on 28 October[3] that no vote would be taken at the November meeting of Health Ministers. The Secretary of State did assure us in oral evidence, however, that the House would be asked to express an opinion on the proposal before any final decision was taken,[4] since when the Directive was considered by European Standing Committee B in February of this year the Committe had been unable to report any resolution to the House.

4. Because the proposal to ban advertising was put forward under Article 100A of the Treaty of Rome as amended by the Single European Act, concerned with the completion of the internal market[5], it caused considerable controversy as, in some quarters, it was doubted that it was *intra vires*. This would have meant that the proposal could only have been put forward under Article 235, which requires unanimity.

5. The former Committee drew attention to an opinion it had received from a legal firm on behalf of the Confederation of European Community Cigarette Manufacturers Limited, which stated:

> "We are of the firm opinion that the proposal is incompatible with the EEC Treaty. We believe that the Council may not adopt the proposal without exceeding its powers..."[6]

6. The Committee requested a memorandum from the Department of Health in an attempt to clear up the confusion. The response from the Department effectively countered the suggestion that the proposal was *ultra vires*, and stated that the Department's lawyers considered that the measure was compatible with Article 100A for three reasons:

(a) the proposal can be regarded as equalising the conditions of competition within the Community;

(b) the proposal establishes a Community-wide system for the advertising of tobacco products; and

---

[1]Third Report from the Health Committee. "The European Community and Health Policy", HC(1991–92)180, para 15

[2]COM(92) 196 final—SYN 194, Expanatory Memorandum

[3]Q71. Question numbers refer to the Minutes of Evidence included in this volume. Hereafter the Question number alone will be given.

[4]Q73

[5]Third Report from the Health Committee, HC(1991–92)180, para 23

[6]*ibid*, para 24

(c) the proposal will facilitate trade in goods which carry advertising: for example magazines.[7]

Despite the Department of Health's unambiguous opinion, there is still doubt expressed about the validity of using Article 100A. For example, Lionel Stanbrook, the UK Advertising Association's Director of European Affairs was quoted recently as saying:

> "The proposed ban is legally flawed. It is a health matter which requires a unanimous vote, not just a majority one."[8]

The Periodical Publishers Association (PPA) raise a further point:

> "The draft Directive is concerned with tobacco advertising to consumers. Publishers are concerned that the current text does not appear to exclude advertising to business in this sector. Such magazines are not seen by consumers–only by traders (and are usually obtained via subscriptions). As the draft Directive permits tobacco advertising within specialist trade premises, publishers believe that advertising to these traders should also be permitted."[9]

7. The Government does not believe that the proposal is necessary for the completion of the internal market; this argument could be countered by the view expressed by its own lawyers in stating that the use of Article 100A was proper. Without a ban on advertising, publishers of magazines, for example, will have to produce different editions for sale in the UK and Germany, perhaps another for sale in Belgium (which restricts the size of advertisements) and yet another for France, which from 1 January 1993 will have a total ban on advertising.

8. The Committee announced its inquiry in September 1992. We received many submissions in which it was claimed that a ban on tobacco advertising was justified because of the damage done to health by smoking. The following points are taken from a briefing by Action on Smoking and Health (ASH), *Tobacco advertising—the case for a ban*[10], and are typical:

> "Tobacco is the most dangerous consumer product known—the only one that kills when used as the makers intend. Smoking is far and away the biggest cause of avoidable death:
>
> It kills 20 times as many people as road accidents.
>
> It kills 155 times as many people as die in fires—and many of these are caused by careless smokers.
>
> In fact, for every person who dies in any kind of accident whatever, seven die from smoking.
>
> It kills 15 times as many people as die from suicide, murder or manslaughter.
>
> It kills 170 times as many people as die from AIDS.
>
> It kills 375 times as many people as die from illicit drug use."

(The figures were taken from official Government statistics from 1989 and 1990.) In oral evidence the Tobacco Advisory Council (TAC) declined to assent to or dissent from these claims.[11]

9. In terms of health promotion however, the Government has consistently taken the view that it believes that voluntary agreements between government and the tobacco industry are the best way to control advertising and this is the argument we feel it is appropriate for us to address in more detail. This view was confirmed when the Department of Health published its response to the former Committee's Third Report,[12] which stated:

> "The Government will continue to keep under review the position on tobacco advertising, against the background of our long-standing policy that the best way to control the advertising and promotion of tobacco products is through the voluntary agreements we have with the tobacco industry"

The Secretary of State, in oral evidence, stuck strongly to the view that the voluntary agreement was the most appropriate means of controlling tobacco advertising.[13] The Government's policy was set out in the White Paper *The Health of the Nation* in July 1992:

> "Successive Governments have effectively controlled tobacco advertising and promotion through a system of voluntary agreements, and a tough new agreement was announced last year. This Government believes that such agreements continue to represent the best way of

[7] *ibid.* para 26
[8] "The European", 24-27 September 1992
[9] Ev. p56 ('Ev' refers to the Appendices to the Minutes of Evidence published in this volume. Hereafter page numbers alone will be given.)
[10] Submitted with TOB 1, see Ev. p1
[11] Q3, Q5
[12] Cm 2014, para 1.3
[13] QQ75,79,81 etc.

controlling tobacco advertising, but recognises that there is widespread concern that such controls should be strong and effective. **It is therefore proposed to review the effects of tobacco advertising, particularly on children, and consider what further steps are necessary.**"

It should be noted, with regard to children, that five out of six adult smokers began smoking before that age of 15.[14] We were given some details of the work being done to fulfil the undertaking given in the White Paper to review the effects of tobacco advertising, particularly on children, on 28 October.[15]

10. The Government stated in its response to the former Committee that it was also waiting for the completion of the Department of Health's analysis of the effect of tobacco advertising on consumption, being undertaken by its chief economic adviser, Dr Clive Smee. This report was eventually published less than two hours before the Secretary of State's appearance before the Committee on 28 October, and we discuss its conclusions later in this report.

11. The Government could have no objection to the proposal on grounds of cost. According to the Department of Health, the Directive, if implemented, would have no financial implications.[16]

WHY DO TOBACCO COMPANIES ADVERTISE?

12. The tobacco companies claim that advertising is aimed at a "mature" market—the number of smokers has reached a ceiling and is declining, and will not increase whatever the industry's marketing people do, and that therefore advertising is designed to persuade existing smokers to change brands—it is not designed to encourage people to take up smoking.

13. In its written evidence to the Committee, the Tobacco Advisory Council stated that:

> "Research shows that 7 per cent of all cigarette smokers change the brand that they smoke each year; 26 per cent regularly smoke more than one brand. In other words one-third of all smokers in the country each year change the brand or brands that they smoke, not "say 5 per cent" as has been recently guessed by anti-smoking campaigners. This represents a market sector that is worth £3 billion at retail prices, by any yardstick a very substantial one. It is a market that easily justifies media cigarette advertising expenditure of approximately £50 million."[17]

The TAC elaborated on this point in oral evidence[18] and insisted:

> "If there is only one thing that we hope we can get across today, Madam Chairman, it is our absolute conviction that a ban on advertising would not reduce the level of smoking, and that is a conviction based on the facts."[19]

14. The "facts" upon which the TAC base their case are not, however, undisputed. In *From the Billboard to the Playground*,[20] it is argued that the tobacco industry's claims are flawed in three ways:

(a) whilst advertising does influence brand choice, it has been shown to have other effects, and there is evidence that it is getting through to children, encouraging those who already smoke to continue, and helping those who do not smoke to start;

(b) the idea of a "mature" tobacco market cannot be supported. There are many markets for tobacco—young, old, female, male and cigar smokers, for example. The key group is young smokers—they have to be recruited and retained for the industry to flourish; and

(c) the argument that tobacco advertising affects brand choice can be restated as "advertising makes the smoker a more effective and sophisticated consumer of tobacco".

15. In their evidence, ASH state that the tobacco industry's claims that advertising does not induce children and adolescents to start smoking are "absurd", academic research demonstrates that cigarette advertising predisposes children to smoking and reinforces the habit in those who have started. For example:

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[14]Ev. P17.
[15]Q104
[16]COM(92) 196 final—SYN, Explanatory Memorandum.
[17]Ev. p2-3
[18]Q8
[19]Q1.
[20]A résumé of the academic research on the influence on advertising on children's smoking, Advertising Research Unit, University of Strathclyde, August 1991, p3.

(a) children can recognise and identify cigarette adverts which do not show brand names or where the brand name has been obscured;

(b) children assign images to cigarette brands—glamour or toughness or "being cool",

(c) children who pay attention to cigarette advertising are more likely to change their views in favour of smoking;

(d) children who approve of cigarette advertising are twice as likely to become smokers as children who disapprove; and

(e) children as young as six associate sponsor cigarette brands with motor racing.[21]

16. The tobacco companies' claim that advertising is aimed at brand changing was supported by two witnesses who describe themselves as "independent analysts"[22] who submitted that their research indicates that advertising has little or no effect on total consumption. This view is supported in the submissions from the Advertising Association[23] and the Institute of Practitioners in Advertising.[24] Sir John Reid of the BMA and his colleagues, in oral evidence, dismissed these claims.[25] There are members of the advertising profession who are also sceptical. David Abbott of Abbott Mead Vickers said that the claim was "so preposterous it is insulting", and Emerson Foote of McCann-Erickson Inc described it as "complete and utter nonsense. The industry knows it is nonsense... I am always amused by the suggestion that advertising, a function that has been shown to increase consumption of virtually every other product, somehow miraculously fails to work for tobacco products".[26]

THE VOLUNTARY AGREEMENT

17. The then Secretary of State for Health announced in September last year that a new voluntary agreement on tobacco advertising had been concluded between the Government and the tobacco industry.[27]

18. The agreement ensured that warnings such as "Smoking Kills" would appear on advertisements as well as on cigarette packets. The industry also agreed to remove 50 per cent of permanent shop-front hoardings over five years. The agreement would also:

(a) ensure that priority is given to the removal of permanent shop-front advertising near schools;

(b) extend the ban on poster advertising visible from schools to posters visible from children's playgrounds;

(c) extend the ban on advertising in certain young women's magazines to cover a wider range of magazines. In addition, the industry will not be able to advertise in new magazines until the readership has been established;

(d) make various changes to the code governing promotional offers of tobacco products. This was to tighten up the requirements designed to ensure that such offers only reach adult smokers; and

(e) ensure that branded advertising on tobacco companies' vehicles will have to carry health warnings from 1992 as will some other forms of promotional items not previously covered by the agreement.[28]

19. The Department's Press Notice announcing the conclusion of the new voluntary agreement also stated that the warnings on advertisements should be attributed to the "Health Department's Chief Medical Officer".[29] This attribution does not seem to apply to the warnings on the cigarette packets themselves—for example a leading brand produced by Philip Morris states above the warning "EEC Council Directive (89/622/EEC)".

20. The effectiveness of the non-binding, voluntary agreement has been doubted by some; for example the World Health Organisation who have stated:

[21] "Tobacco advertising–the case for a ban", pp 12-13, ASH, September 1992.
[22] See Ev. pp53-55 and pp65-68.
[23] Ev. pp59-60 TOB 26.
[24] Ev. pp76-78 TOB 45.
[25] QQ43-49.
[26] "Tobacco Advertising—the case for a ban", para 13.2, Action on Smoking and Health (ASH), December 1991.
[27] Department of Health Press Notice, H91/412, 9 September 1991.
[28] The full text of the agreement is appended to this Report see Appendix 2.
[29] *ibid.*

"The record of the tobacco companies that have voluntarily undertaken to curb tobacco promotion is such that no one can seriously consider self-regulation by the industry to be a serious option",[30]

The WHO put forward their view in a submission to the Committee that they were convinced:

"that a ban on tobacco promotion and advertising is one of the key strategies to reduce tobacco use. It is low-cost measure, which also poorer economies can afford."[31]

The Coronary Prevention Group believe that:

"The voluntary agreement between the Government and the tobacco industry amounts to little more that a legitimisation of tobacco advertising...Even after 20 years of voluntary agreements, cigarette smoking is prominent in the streets and homes of Britain";[32]

and a widely held view was that:

"A voluntary control on tobacco advertised in young woman's magazines has not worked".[33]

In oral evidence Sir John Reid of the BMA expressed his dislike of the very term 'voluntary':

"To my mind, it is better called a rearguard action. The tobacco industry will move only as far as any government will push it, and that most reluctantly."[34]

THE EFFECT OF BANNING TOBACCO ADVERTISING—EXAMPLES FROM OTHER COUNTRIES

21. Much of the dispute about the effectiveness or otherwise of advertising bans in reducing the prevalence of smoking centres around interpretations of the experience of such bans in other countries. Three countries with cultures not radically dissimilar to the UK's are discussed below.

(a) Norway

22. Norway banned tobacco advertising in 1975, when 17 per cent of 13-15 year old Norwegian children were daily smokers. By 1990 this proportion had fallen to 10 per cent. Amongst males aged 16-24 the figure fell from 43 per cent to 25 per cent; for females aged 16-24 the figures were 41 per cent down to 32 per cent, during the same period.

23. The tobacco industry claim that cigarette consumption in Norway has risen by 58 per cent since the introduction of an advertising ban. However, according to ASH, the industry are quoting figures for manufactured cigarettes, whose sales have risen at the expense of "roll-your-owns". When both types of cigarette are taken into consideration, a fall of 12 per cent appears.[35] The TAC argue in their supplementary memorandum that because of the idiosyncrasies of the Norwegian market:

"cigarette consumption data does not provide a complete and reliable picture of the total market for tobacco consumption."[36]

(b) New Zealand

24. ASH believe that New Zealand offers an excellent example of how a ban on advertising can affect consumption, as there are no confounding factors (eg, a change in taxation), and the effects have been closely monitored.

25. The ban was introduced in December 1990. Tobacco released to the market in the first six months of 1991 was 11.3 per cent down on the first half of 1990. In the second half of the year it was 17.7 per cent down. "Similarly, sales of cigarettes in supermarkets fell by 7.6 per cent in the first quarter of 1991 and by 9.6 per cent in the second quarter compared with the corresponding quarters the year before. These measurements are of cigarette sales as a proportion of total groceries, as monitored by the electronic tills. This method eliminates any effect of the recession on purchasers."[37]

[30] World Health Organisation Regional Office for Europe 1990.
[31] Ev. p49.
[32] "The Case against Tobacco Advertising", p8, Coronary Prevention Group, September 1991
[33] Association for Community-Based Maternity Care, quoted by the Health Committee, HC(1990-91)430-I, para 53
[34] Q52
[35] "Tobacco Advertising—the case for a ban", pp20-22, ASH, September 1992
[36] Ev.p13
[37] *ibid*, pp16-19

26. However, the Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST) (a body funded by the tobacco industry), disputes the statement that there were no changes in taxation:

> "massive regular excise tax increases were initiated from July 1989: 28.21 per cent and 110 per cent in that month; 112.53 per cent in September 1989; 115.78 per cent in March 1990; 118.90 per cent in September 1990; 121.38 per cent in March 1991; and 146.38 per cent in July 1991. Moreover, tobacco consumption had already, since 1975, fallen faster in New Zealand before it instituted the ban than in any country that already had bans."[38]

The TAC take the view that:

> "There is, therefore no convincing evidence to suggest that the downturn in the New Zealand cigarette market in 1991 has been caused by anything other than economic and social factors."[39]

(c) Canada

27. ASH quote figures showing consumption of cigarettes per adult has been falling steadily in Canada since 1982, but the rate of decline has doubled since an advertising ban was introduced in January 1989. It fell by an average of 3.6 per cent per annum from 1983-88, but fell 7.6 per cent in 1989 and 6.7 per cent in 1990. ASH also state that:

> "Price is not an explanation for the accelerated decline. The 7.6 per cent decline was associated with a price increase of 12.3 per cent—but in 1985 and 1986 higher price increases produced falls in consumption of only 3.8 per cent and 5.8 per cent respectively. The real prime increase in 1990 was 8.9 per cent—almost the average for the 1983-1988 period (8.6 per cent)."[40]

However, FOREST argue that the BMA and ASH, in quoting the Canadian example, have failed to take tax increases into account:

> "In 1989 in Canada, when their advertising ban came into effect, cigarette taxes were increased by over 50 per cent and more than 200 per cent on fine-cut tobacco. In addition, in 1990 the majority of Canadian provinces also increased taxation by 10 to 50 per cent...in 1991 the Canadian Federal Government increased cigarette taxation by a further 58 per cent, and 9 out of 10...provinces increased tax by a further 20 to 40 per cent."[41]

The TAC also argue that price, not advertising, was the factor which has led to the fall in consumption in Canada, arguing that:

> "In the light of the persistent hiking of taxation it is hardly surprising that an increasing number of Canadian consumers ceased to buy cigarettes as they had before. That is not to say, however, that they did not continue to buy cigarettes."[42]

They also claim that the decline in cigarette purchasing masks a substantial increase in smuggling of cigarettes from the USA.[43]

HOW GREAT A DROP IN CONSUMPTION DOES A VOLUNTARY AGREEMENT PRODUCE?

28. In oral evidence the Secretary of State drew attention to the experience of the UK and the Netherlands in reducing smoking.[44] Both countries have voluntary systems of advertising control. This argument has been deployed before by the Government. On 28 November 1990 the then Parliamentary Under-Secretary stated that the UK, with a 29 per cent drop in consumption between 1975 and 1987, and the Netherlands with a 41 per cent drop, had achieved more by voluntary agreements whereas "not one of the four countries of the Community which have imposed or proposed a ban on advertising or consumption recorded a fall in consumption".[45]

[38] "Up in Smoke: The economics, ethics and politics of tobacco advertising bans", p9, FOREST, 1991
[39] Ev.p13
[40] "Tobacco Advertising—the case for a ban", p19, ASH, September 1992
[41] "Up in Smoke", pp8-9, FOREST 1991
[42] Ev.p14
[43] Ev.p14
[44] Q9
[45] *Official Report*, vol. 181, c975

29. According to ASH, this is an "extraordinary" statement, for example

(a) no country has proposed a ban on consumption;

(b) the Netherlands saw a decrease of only 10 per cent—as with Norway, the omission of hand-rolled cigarettes produced misleading statistics convenient to the tobacco industry;

(c) the Netherlands Government commissioned a report on its voluntary agreement. The report was published in September 1991, and concluded that the code had no direct effect on consumption and that nothing could be expected from such a "half-hearted policy";

(d) The UK's achievements up to 1987 were founded on raising tax levels, not on voluntary agreements.[46]

30. The "success" of the Netherlands was also disputed in a supplementary memorandum from the BMA, which commented:

> "The claim has been made that the Netherlands has achieved a notable reduction in smoking without an advertising ban but with a voluntary agreement. Tobacco industry sources have quoted a 41 per cent reduction in consumption between 1975 and 1987. Unfortunately, the true figure is only an unimpressive 10 per cent. The figure of 41 per cent is for manufactured cigarettes only and excludes hand-rolling tobacco, to which there was substantial swing (motivated, we believe, by price considerations based on differential taxation rates) over the period in question."

31. The BMA, in their oral evidence, expressed their belief that the dramatic differences between the success of different countries in reducing smoking could not be ascribed to any particular element of their tobacco control regimes. They argued that the effect of a ban would necessarily be different depending on the level of control that operated before the ban, and on other factors, such as price. Mrs Taylor put it succinctly when she said:

> "We are not here today to pretend that advertising is the only thing in the package, but it is a crucial part of it."[47]

The Secretary of State used almost the same words in oral evidence a week later, saying:

> "...we do not regard it [advertising control] as the only means, we regard it as part of a package."[48]

She described some elements of this package;

> "The issue is whether with the tough agreement that we have already; the commitment to make it tighter in areas if that is appropriate; the clear evidence that price has such an important effect—a 10 per cent increase in price leading to a 3 to 6 per cent reduction in consumption; with the progress we are making on smoking in public places and at work; the work of the health education programmes; is there evidence that a statutory ban, with all the implications that I have described, would be justified in terms of the significance of its effect."[49]

ARGUMENTS AGAINST AN ADVERTISING BAN

32. An argument often raised is that free commercial speech, with certain controls, is synonymous with freedom of expression, and as part of free speech a manufacturer should have the right to promote products if those products are legal. This argument was restated by the TAC in oral evidence.[50] The counter argument is that the legality of tobacco is an accident of history—its use became entrenched before the health hazards were known and that such an accident of history should not prevent the Government from acting to protect people in the future. The present Secretary of State has herself said that:

> "If cigarettes were introduced today, their production and sale would probably be banned."[51]

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[46] "Tobacco Advertising—the case for a ban", pp41–42, ASH, September 1992
[47] Q42
[48] Q101
[49] Q105
[50] Q35
[51] *Official Report*, 20 July 1990, col 1340

ASH say:

> "To use the 'legal product' argument is to argue that society must never be allowed to correct its unwitting mistake"[52]

and the British Medical Association, in responding to the freedom of expression argument commented:

> "freedom...is often used against the introduction of a advertising ban. But it is important to reflect on the section of the population who start smoking and those who are most susceptible to the power of advertising. Five out of six smokers have started smoking by the age of fifteen.
>
> Adults are free to choose whether they want to start smoking, children are more vulnerable and should therefore be protected."[53]

33. Some opponents of a ban argue that it would open the way for governments to make illegal the advertising of other 'unsafe' products.[54] When challenged on this point in oral evidence, Mrs Taylor of the BMA responded:

> "tobacco is a unique product. There is no safe level of consumption of tobacco. There is a safe level of consumption of alcohol, cream cakes and even fast cars. As far as the British Medical Association is concerned we believe tobacco is unique and wish to see its promotion banned"[55]

The TAC deployed the 'thin end of the wedge' argument in relation to banning of tobacco advertising,[56] as did the Secretary of State.[57] However, when challenged to name one other product which shared tobacco's uniquely dangerous status, she was unable to do so.[58] In a subsequent letter to Mr Hugh Bayley MP, the Secretary of State commented:

> "I would certainly not wish to underplay the massive public health impact of tobacco use. While there are other products and services which are legal to sell but which carry a mortality risk in ordinary use to a greater or lesser degree, for example motoring, their impact is not on the same scale as tobacco. Equally, while the *Health of the Nation* White Paper highlights a range of issues, such as diet, where individuals can make informed choices which have a significant impact on their own health, there are no other single products which have the same impact on public health as tobacco.
>
> I would agree that tobacco is unique in the scale of mortality and morbidity that is associated with it."[59]

34. It is also argued by some that an advertising ban would be a protectionist measure, making market penetration by importers almost impossible. Experience in Norway appears to suggest otherwise—the market share of domestic manufactured cigarettes fell from 32 per cent to 10 per cent in the 10 years following the advertising ban.[60]

35. The TAC argue in contrast that:

> "What is clear is that it would severely damage the industry in the UK market—a market that is highly competitive—and give significant advantage to imports. It would grossly distort the market through removing the ability of manufacturers to defend their brands and market shares, and their ability to compete effectively among the one-third of smokers who change the brand, or brands, that they smoke each year. The winners would be manufacturers overseas."[61]

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[52] "Tobacco Advertising—the case for a ban", p45, ASH, September 1992
[53] Ev. p19 (TOB 20)
[54] See for example the Advertising Association, Ev. p59 and the Confederation of EC Cigarette Manufacturers Ltd, Ev. p68
[55] Q65
[56] Q38
[57] Q103
[58] Q110
[59] Ev. p38 TOB 30B
[60] "The case against tobacco advertising", p12, Coronary Prevention Group, September 1991
[61] Q1

In response to this argument the Coronary Prevention Group state that:

> "the assumption here is that only imported brands are cheap. However the UK tobacco industry has responded to the demand for discounted cigarettes by large volume retailers, such as supermarkets, by producing its own cut-price brands."[62]

36. According to the Advertising Association, which strongly opposes a ban on advertising tobacco products:

> "The EC Member State governments which most favour a ban (France, Italy, Spain, Portugal) are those which operate state monopolies in tobacco sales or production... the Italian Government banned tobacco advertising in 1962, stating explicity that the ban was a protectionist measure. These motives have not changed today, since advertising is the primary mechanism for establishing new products in export markets".[63]

This view was also expressed by the Secretary of State.[64] However, when a ban was first suggested in France, it was opposed by Seita, the state-owned monopoly.[65] When this was put to the Secretary of State in oral evidence she expressed a degree of disbelief, but said:

> "I am unable to comment on that, or, frankly to comprehend it".[66]

37. There is an argument that advertising helps encourage the use of 'safer' low-tar brands of cigarettes and filter cigarettes. It is difficult to assess the validity of these claims because the evidence upon which they are based is so out of date. For instance the figures quoted by FOREST in support of this argument date from 1984.[67]

Countries with Advertising Bans	*Per Cent Low Tar*
Finland	32
Norway	22
Italy	20
Singapore	1

Countries with Advertising	*Per Cent Low Tar*
West Germany	88
Switzerland	74
USA	65
UK (0-16 mgs)	53
Sweden	48
France	47
Hong Kong	25[68]

Figures showing the uptake of low tar cigarettes reveal that in 1972, five per cent of cigarettes were up to and including 16mg tar. This rose in each of the following years, reaching 53 per cent in 1983.[69] However, ASH state that in 1988, after 13 years with no advertising, the average tar level in cigarettes in Norway was 13mg—in Sweden (with advertising) it was 15 mg. Finland banned advertising in 1978. In the following five years, cigarettes yielding less than 10mg were introduced, which were taken up by 46 per cent of smokers.[70]

38. Arguments as to the relative safety of different kinds of cigarettes are not ones on which we wish to waste much time. Our principal objective, which we appear to share with the Government, is the reduction of smoking prevalence. If a ban can help to achieve that, then any potential to move smokers towards filter or low tar cigarettes can be significantly discounted. With a 94 per cent use of filter cigarettes in 1982, the argument seems hardly relevant for the UK in any event. If the tobacco industry were genuinely committed to changing patterns of smoking, it could do so through its pricing and marketing structures.

39. It is sometimes argued that sport and the arts would suffer from the loss of sponsorship.[71] The draft Directive does not actually prohibit sponsorship, provided that no display is made of the

[62] "The case against tobacco advertising", p12, Coronary Prevention Group, September 1991
[63] Ev. pp59-60 (TOB 26).
[64] Q105.
[65] "The case against tobacco advertising", p12, Coronary Prevention Group, September 1991.
[66] Q107.
[67] Ev.p4.
[68] "Up in Smoke", p10, FOREST, 1991.
[69] *ibid.*
[70] "Tobacco Advertising—the case for a ban", p39, ASH, September 1991.
[71] See e.g. the CCPR, Ev. pp49-50.

brand name, trademarks, emblems or other distinctive features of tobacco products. Presumably it will become less attractive for tobacco companies to sponsor such events; but there is a widely-held view that it is illogical to have an addictive product which kills one in four of its users linked with a healthy pastime.[72] It is also fair to say that the value of sports sponsorship by tobacco companies is in any case over-rated. Such sponsorship was worth around £7.6 million in 1990–91 (about 3 per cent of total commercial sponsorship of sport).[73]

40. According to one study, BBC coverage of tobacco company sponsored sporting events has also had the effect of convincing 64 per cent of children aged 5–16 that cigarettes are advertised on television.[74] ITV does not cover tobacco-sponsored events.

THE HEALTH OF THE NATION

41. In July the Government published its White Paper *The Health of the Nation*.[75] Amongst its target areas for improving public health, heart disease and strokes and cancer were highlighted—heart disease and strokes to be cut for under 65 year-olds by 40 per cent and the numbers of smokers reduced by a third. In addition to the aim to reduce the prevalence of smoking overall to 20 per cent, the Government also intends:

> "...at least a third of women smokers to stop smoking at the start of their pregnancy by the year 2000.
>
> —To reduce the consumption of cigarettes by at least 40 per cent by the year 2000 (from 98 billion manufactured cigarettes per year in 1990 to 59 billion).
>
> —To reduce smoking prevalence among 11–15 year olds by at least 33 per cent by 1994 (from about 8 per cent in 1988 to less than 6 per cent)."

42. These aims were welcomed by the medical profession, but, as our evidence shows, they were disappointed that the Government did not commit itself to supporting the proposed EC Directive.

43. In its response to the former Health Committee's Third Report of last Session, the Government took up the Committee's recommendation to lay out its agenda for health during the British Presidency of the Community. The Department stated that the Government:

> "hope to promote a wide-ranging debate on all the factors which can contribute to a reduction in smoking."[76]

The actual measures being undertaken were set out by the Minister of Health in oral evidence.[77]

44. This was indeed the theme which the Secretary of State chose to pursue with great emphasis throughout the evidence she gave us on 28 October. Her argument could perhaps be summarised as follows:

(i) that the UK had the second best record in Europe in reducing smoking, without an advertising ban;[78]

(ii) that factors other than advertising had considerably more influence over levels of smoking, especially on its uptake by children;[79]

(iii) that the Government acknowledged the power of advertising;[80]

(iv) that the Government nonetheless believed that the voluntary agreement was just as effective as a statutory ban, if not more so;[81]

(v) that the effectiveness of the ban was unproven;[82] and

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[72] Third Report from the Health Committee, HC(1991-92)180, para 19
[73] Official Report, 19 October 1992, c6w
[74] "Beating the Ban", Foreword, Health Education Authority, 1990
[75] Cm 1986
[76] Cm 2014, para 2.1
[77] Q74
[78] Q75
[79] Q79, QQ80-81, Q83, Q90, Q104 etc.
[80] Q86, Q105
[81] Q83, Q86
[82] Q86

(vi) that therefore the principle of protection of free speech could not be overturned since the burden of proof lay on the side of the proponents of the ban.[83]

It is the final three stages of the Secretary of State's argument as summarised rather baldly above that we wish to consider in our conclusions.

CONCLUSIONS

45. No one could dispute the very significant reductions in levels of smoking in this country in recent years. It is impossible to judge exactly what has been the contribution of the Government and its agencies to this achievement, but we have no doubt they have played some part. However, it is important to note that this reduction has not been uniform across the population. As the OPCS figures indicate,[84] while the prevalence of smoking across all adults fell by 9 per cent between 1980 and 1990 (from 39 per cent to 30 per cent), among men it fell by 11 per cent (from 42 per cent to 31 per cent) but among women only 8 per cent (from 37 per cent to 29 per cent). When these figures are broken down by age as well as sex, a much more disheartening picture emerges. Among 16-19 year old women there has been no reduction whatever since 1980, where smoking prevalence has remained at 32 per cent, although for men in this group it has dropped from 32 per cent to 28 per cent. The pattern is similar among 20-24 year olds. The OPCS figures for 11-15 year olds tell a yet more dispiriting story, with a small reduction for boys and none at all for girls. It seems clear that the sucess of the anti-smoking campaign has been among the 25 plus age group, with men between 50 and 60 being the biggest contributors to the fall in smoking.[85]

46. If there is no safe level of tobacco consumption then the principal target of any anti-smoking measures must logically be those whom the OPCS figures tell us have not so far been reached: the children who are deciding whether or not to start smoking. A strategy that fails to discourage this section of the population while persuading life-long smokers to give up between the ages of 50 and 60 can be counted at best as a somewhat qualified success. **It is clear that if the Government is to achieve its aim of reducing smoking, it must find ways of making an impact on the young which it has so far failed to do.** The Government has acknowledged the importance of this in their *Health of the Nation* targets.

47. Equally it is apparent that all the evidence indicates that price is the most important factor in determining the prevalence of smoking. No witness disputed this conclusion. Peer pressure and parental influence are also important in persuading children to begin smoking. However, the BMA took issue in their supplementary memorandum with the claim by the TAC that the evidence indicates that advertising has no influence on children. Mr Bullock of TAC told us that a study by the OPCS summarised the main factors affecting the decision to smoke by children and that:

> "Advertising was not one of them"[86]

Responding to this statement, the BMA quoted from the introduction to the OPCS report:

> "It had been hoped that the survey might throw some light on the extent to which cigarette advertising is instrumental in encouraging children to start smoking. This is clearly a very difficult area to research, and it was not possible in a survey which was largely devoted to other aspects of starting to smoke to do anything other that touch on the subject."[87]

They went on to quote further from the OPCS:

> "The data do lend some support to the view that tobacco advertising promotes smoking among young people—even such imprecise measures as were used on this study suggest that, controlling for current smoking experience, greater awareness of cigarette advertising is associated with a slightly increased likelihood of starting to smoke in future."[88]

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[83] Q90

[84] Ev. pp15-16

[85] OPCS figures also indicate the uneven distribution of the fall in smoking prevalence across socio-economic groups. For example between 1980 and 1990 smoking prevalence among professional men and women fell from 21 per cent to 16 per cent, while among unskilled manual workers the recorded fall for men was from 57 per cent to 48 per cent and for women from 41 per cent to 36 per cent.

[86] Q26

[87] Ev. p26

[88] Ev. p26

48. In a briefing provided to the Committee by the Parliamentary Office of Science and Technology (POST), attention was drawn to other evidence contained in the Smee report, which we discuss below:

> "An additional point is that due to the addictive nature of smoking, any response of adult smokers to a reduction in advertising may be gradual. A more productive approach could be to assess the effects on teenage smoking of a large change in advertising and promotion in a population where health information is widespread. There are few such investigations, although the report could have given more scrutiny to the experience after the ban in Norway, where teenage smoking fell more than in the population as a whole. That there are clear dose-response relationships in reverse is suggested by evidence from Taiwan and South Korea, where an increase in advertising by American tobacco companies has been followed by an increase in consumption."[89]

49. Of the three most important factors influencing the take-up of smoking by children—price, peer pressure and parental influence—the Government exercises direct control only over the first. There is little doubt that, if it were determined to meet its target of a 30 per cent reduction in smoking prevalence, the Government could do so very rapidly by regularly doubling the retail price of cigarettes until its goal was achieved. The undertaking which the Government has given, however, is to maintain the real level of taxation on cigarettes[90] which suggests that they will be cautious about pulling harder on this particular "lever" of control over consumption. With regard to peer pressure and parental influence, although no-one would belittle the value of health education, as the BMA point out:

> "...advertising is not the only influence in starting children smoking but it is one that is more easily controlled by society than, for example, peer pressure, and is therefore a priority for action."[91]

50. The Secretary of State said that:

> "...sometimes when people debate this issue I get the impression they feel more strongly about a statutory ban than they do about reducing tobacco consumption."[92]

However the unanimity of support for a ban from the public health sector cannot be ignored by the Government, and one particular reason for the attention focused on this issue is the widespread perception that the Government is determined to disregard the potential health gain from such a move. It seems likely that the frustration of the anti-smoking lobby is provoked, at least in part, by the demand from the Government for a quality of proof for the effectiveness of an advertising ban which appears far in excess of that which underpins many other policy initiatives. Indeed we accept that the burden of proof for the contention that tobacco advertising increases tobacco consumption has been met by the evidence provided to the Committee.

51. In the mounting hubbub of debate over the proposed EC advertising ban in the weeks before the November Council of Health Ministers meeting, many hopes were pinned on the widely trailed publication of the report by the Secretary of State's Chief Economic Adviser, Dr Clive Smee. The report eventually appeared just before the Secretary of State appeared before the Committee. It was presented as a "discussion document", and comments were invited by the end of January 1993.

52. Dr Smee's key conclusions were that:

> "the balance of evidence supports the conclusion that advertising does have a positive effect on consumption";

and that in relation to studies of the effects of bans in Norway, Finland, Canada and New Zealand;

> "the banning of advertising was followed by a fall in smoking which cannot reasonably be attributed to other factors";

both of which are in direct contradiction to the claims of the tobacco industry.

53. In oral evidence ministers emphasised what they saw as an ambiguity in Dr Smee's report between the results of his own study of the potential effects of an advertising ban on tobacco consumption and his review of the other work available in this field. Therefore to assist us in weighing all the evidence represented in Dr Smee's report we asked the Parliamentary Office of

[89] see Appendix 1, pxix
[90] Q79
[91] Ev. p26
[92] Q111

Science and Technology (POST) to review it for us. Their very useful analysis is printed as an appendix to this report.[93]

54. The most significant factor drawn out by POST's analysis is contained in the last three paragraphs of their briefing. It is worth quoting them in full:

> "Irrespective of whether the report's analysis is taken as providing **strong** support for a relationship between advertising and consumption, the evidence is at least wholly consistent with the common-sense view that brand advertising not only promotes the brand but also promotes smoking in general.
>
> Although the report does not estimate what effect a ban on advertising might have in the UK, its estimates of the effects **due to advertising bans alone** in the four countries studied is shown in the Table.
>
> Were an attempt to be made to estimate the fall in consumption that might follow a complete ban, it would be necessary to take into account that the UK industry already operates a degree of voluntary restraint. While there have been no detailed studies of the effect of the voluntary measures so far taken, Laugesons and Meads' study of 22 countries assigned a score to reflect the degree of advertising restrictions, ranging from none (score 0) to a ban (score 10). The UK scored 6.0, while that of the four banning countries ranged from 3.5 to 6.0 (see Table). This would suggest that, if anything, any fall in consumption following a ban in the UK could be expected to be less than in Finland, Canada or Norway—since advertising is already more restricted than in those countries immediately before each ban. On the other hand, the UK's starting position is close to that of New Zealand before their ban. Further refinement of any forecast would require a better understanding of the effects of the UK industry's voluntary restraint so far."[94]

55. The overall conclusion which most commentators draw from Dr Smee's analysis is therefore that complete ban on tobacco advertising in the UK is likely to have the effect of reducing consumption.

56. The Minister of Health expressed the hope that this Committee would base any conclusions it might reach about the proposed advertising ban on facts, not opinion.[95] We would expect no less from the Department of Health. It is in the nature of predictions that no-one can quantify the precise effects of a ban on tobacco advertising in the UK. **However we must conclude that, in the face of the evidence that has now been accumulated, the Government can no longer maintain its position that a further tightening of tobacco advertising controls is unlikely to contribute to a reduction of the prevalence of smoking in the UK.**

57. As we earlier concluded, the most important task facing those seeking to reduce the prevalence of tobacco use is to stop children and young people, especially young women, beginning to smoke. Our record over the last ten years in this area is unimpressive. As POST point out in their analysis of the Smee report, the experience after the imposition of an advertising ban in Norway was that teenage smoking fell more than in the population as a whole. This is further evidence that the Government cannot afford to ignore, and which supports the commonsense and widespread view, expressed to us by many witnesses, that the most baleful effect of tobacco advertising is that it depicts smoking as a socially acceptable or even desirable habit, and helps to persuade children that smoking cannot really be dangerous.[96]

58. In the debate about a tobacco advertising ban there are undoubtedly inconsistencies on both sides of the argument. We believe this stems from the curious position of tobacco in our society, which is largely an accident of history. Over the last century, governments of all persuasions have been quick to propose the most draconian controls over dangerous drugs which are abused by a tiny minority of the population. Few would argue that they were wrong to do so. However, by the time the dangers of tobacco were established, it had become a widespread and socially acceptable habit indulged in by the majority of the male population. It would be manifestly impossible at present to make the consumption of tobacco illegal. It is argued therefore that because tobacco is legal to sell it should be legal to advertise. To accept this argument is to accept that we are caught in a Catch 22: that we can only outlaw tobacco advertising if we outlaw its sale and consumption, and that because it would be impossible to do the latter it must be impossible to do the former. No doubt some of those who deploy the argument for free expression in defence of tobacco advertising

[93] see Appendix 1
[94] see Appendix 1
[95] Q113
[96] Effect of Tobacco Advertising on Tobacco Consumption (The 'Smee' Report), DoH, October 1992, p21, para 68iii

are less than committed to the goal of eliminating this potentially lethal habit. We are quite sure that the present Secretary of State is not one of those and that, as she put it herself, she holds no candle for tobacco advertising.[97] However, there seems to be some danger that the Government is allowing itself to be caught on the horns of a largely imaginary dilemma.

59. The Government cannot continue to procrastinate on the issue of an advertising ban on the grounds that it is awaiting a level of proof about its effectiveness which is in the nature of things unobtainable. If Ministers wish to nail their colours to the mast of "free expression" they should do so explicitly, and not continue to dally over the health issues. In order for it to achieve the very demanding targets set out in *The Health of the Nation* it is our belief that the Government cannot afford to ignore the potential of a statutory advertising ban as one amongst a group of measures which will ensure that those targets are met. **We therefore recommend that the Government adopt as its policy the total elimination of tobacco advertising other than at point of sale.**

60. Because printed material is circulated freely within and between community countries, this is a field in which community wide action is necessary. For the Directive to be adopted under the qualified majority voting procedure in the Council of Ministers, 54 weighted votes are needed. Those countries which are known to support the Directive can muster a total of 43 votes between them—11 short of the necessary total. The UK holds 10 votes. If it dropped its opposition then it would need only one other country—any country—to change its stance for the Directive to be adopted.

61. **We recommend that the Government support the Directive.** We recognise that its implementation will take time to plan and put into effect but believe that support for, and ratification of, the Directive would assist in reaching the aims set out in *The Health of the Nation* of reducing the prevalence of cigarette smoking to no more than 20 per cent of the adult population by the year 2000, and would demonstrate the Government's commitment to this target.

Jesse
B. Steinfeld

Reducing the Health Consequences of Smoking

25 YEARS OF PROGRESS

a report of the Surgeon General

1989

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Centers for Disease Control
Center for Chronic Disease Prevention and Health Promotion
Office on Smoking and Health
Rockville, Maryland 20857

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the lessons we have learned in the United States, as detailed in this Report, will help other countries take the necessary steps to avoid the devastation caused by use of tobacco.

C. Everett Koop, M.D., Sc.D.
Surgeon General

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This Report was prepared by the Department of Health and Human Services under the general editorship of the Office on Smoking and Health, Ronald M. Davis, M.D., Director. The Managing Editors were Susan Hawk, Ed.M., M.S., and Thomas E. Novotny, M.D., Office on Smoking and Health.

The scientific editors of the Report were:

Kenneth E. Warner, Ph.D. (Senior Scientific Editor), Professor, Department of Public Health Policy and Administration, School of Public Health, University of Michigan, Ann Arbor, Michigan

Ronald M. Davis, M.D., Director, Office on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Rockville, Maryland

John H. Holbrook, M.D., Professor of Internal Medicine, Department of Internal Medicine, University Hospital, Salt Lake City, Utah

Thomas E. Novotny, M.D., Medical Epidemiologist, Office on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Rockville, Maryland

Judith K. Ockene, Ph.D., Associate Professor of Medicine, and Director, Division of Preventive and Behavioral Medicine, Department of Medicine, University of Massachusetts Medical School, Worcester, Massachusetts

Nancy A. Rigotti, M.D., Associate Director, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts, Instructor in Medicine, Harvard Medical School, Boston, Massachusetts

The following individuals prepared draft chapters or portions of the Report.

Elvin E. Adams, M.D., M.P.H., Associate Director, Health Department, General Conference of Seventh-Day Adventists, Washington, D.C.

Gregory N. Connolly, D.M.D., M.P.H., Director, Office for Nonsmoking and Health, Massachusetts Department of Public Health, Boston, Massachusetts

K. Michael Cummings, Ph.D., M.P.H., Director, Smoking Control Program, Roswell Park Memorial Institute, Buffalo, New York

Ronald M. Davis, M.D., Director, Office on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Rockville, Maryland

Joseph R. DiFranza, M.D., Director of Research, Fitchburg Family Practice Residency Program, University of Massachusetts Medical Center, Fitchburg, Massachusetts

Michael P. Eriksen, Sc.D., Director, Behavioral Research Program, Department of Cancer Prevention and Control, The University of Texas M.D. Anderson Cancer Center, Houston, Texas

David P. Fan, Ph.D., Professor of Genetics and Cell Biology, University of Minnesota, St. Paul, Minnesota

Michael C. Fiore, M.D., M.P.H., Assistant Professor, Department of Medicine, Center for Health Sciences, University of Wisconsin, Madison, Wisconsin

Edwin B. Fisher, Jr., Ph.D., Associate Professor of Psychology, Director, Center for Health Behavior Research, Washington University, St. Louis, Missouri

Jeffrey E. Harris, M.D., Ph.D., Visiting Associate Professor, Department of Biostatistics, Harvard School of Public Health, Boston, Massachusetts; Clinical Associate, Medical Services, Massachusetts General Hospital, Boston, Massachusetts; Associate Professor of Economics, Massachusetts Institute of Technology, Cambridge, Massachusetts

Jan L. Hitchcock, Ph.D., Associate Director, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts

Thomas A. Hodgson, Ph.D., Chief Economist, Office of Analysis and Epidemiology, National Center for Health Statistics, Hyattsville, Maryland

Dietrich Hoffmann, Ph.D., Associate Director, Naylor Dana Institute for Disease Prevention, American Health Foundation, Valhalla, New York

Ilse Hoffmann, Research Coordinator, Naylor Dana Institute for Disease Prevention, American Health Foundation, Valhalla, New York

Juliette S. Kendrick, M.D., Deputy Chief, Pregnancy Epidemiology Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

Lewis H. Kuller, M.D., Dr.P.H., Professor and Chairperson, Department of Epidemiology, Graduate School of Public Health, University of Pittsburgh, Pittsburgh, Pennsylvania

Eugene M. Lewit, Ph.D., Associate Professor, Departments of Medicine and Preventive Medicine and Community Health, Office of Primary Health Care Education, UMDNJ—New Jersey Medical School, Newark, New Jersey

Edward Lichtenstein, Ph.D., Research Scientist, Oregon Research Institute; Professor of Psychology, University of Oregon, Eugene, Oregon

Thomas E. Novotny, M.D., Medical Epidemiologist, Office on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Rockville, Maryland

Judith K. Ockene, Ph.D., Associate Professor of Medicine, and Director, Division of Preventive and Behavioral Medicine, Department of Medicine, University of Massachusetts Medical School, Worcester, Massachusetts

Chris Leo Pashos, M.P.P., Project Coordinator, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts

Richard Peto, M.A., M.Sc., ICRF Cancer Studies Unit, Radcliffe Infirmary, Oxford, England

John P. Pierce, M.Sc., Ph.D., Chief, Epidemiology Branch, Office on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Rockville, Maryland

John M. Pinney, Executive Director, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts

Edward T. Popper, M.B.A., D.B.A., Associate Professor of Marketing, Bryant College, Smithfield, Rhode Island

Patrick L. Remington, M.D., M.P.H., Medical Epidemiologist, Bureau of Community Health and Prevention, Wisconsin Division of Health, Madison, Wisconsin

Nancy A. Rigotti, M.D., Associate Director, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts, and Instructor in Medicine, Harvard Medical School, Boston, Massachusetts

Jonathan M. Samet, M.D., Professor of Medicine, Department of Medicine, Chief, Pulmonary Division, University of New Mexico, Albuquerque, New Mexico

Russell C. Sciandra, M.A., Associate Director, Smoking Control Program, Roswell Park Memorial Institute, Buffalo, New York

Carol Anne Soltanek, M.D., Resident, Southwestern Michigan Area Health Education Center, Kalamazoo, Michigan

Michael A. Stoto, Ph.D., Senior Staff Officer, Institute of Medicine, National Academy of Sciences, Washington, D.C.

Owen T. Thornberry, Ph.D., Director, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control, Hyattsville, Maryland

Kenneth E. Warner, Ph.D., Professor, Department of Public Health Policy and Administration, School of Public Health, University of Michigan, Ann Arbor, Michigan

The editors acknowledge with gratitude the following distinguished scientists, physicians, and others who lent their support in the development of this Report by coordinating manuscript preparation, contributing critical reviews, or assisting in other ways.

Elvin E. Adams, M.D., M.P.H., Associate Director, Health Department, General Conference of Seventh-Day Adventists, Washington, D.C.

Charles Althafer, M.P.H., Assistant Director for Health Promotion and Risk Appraisal, Office of Program Planning and Evaluation, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia

Lynn M. Artz, M.D., M.P.H., Senior Policy Advisor, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Washington, D.C.

Donald A. Berreth, Director, Office of Public Affairs, Centers for Disease Control, Atlanta, Georgia

Gayle M. Boyd, Ph.D., Program Director, Smoking, Tobacco and Cancer Program, Division of Cancer Prevention and Control, National Cancer Institute, Bethesda, Maryland

Allan Brandt, Ph.D., Department of Social Medicine and Health Policy, Harvard Medical School, Boston, Massachusetts

Lester Breslow, M.D., M.P.H., Professor, School of Public Health, and Director, Health Services Research, Jonsson Comprehensive Cancer Center, University of California, Los Angeles, Los Angeles, California

Clarice Brown, M.S., Data Analyst, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, Bethesda, Maryland

David P. Brown, M.D., Deputy Director, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia

Martin Brown, Ph.D., Surveillance and Operations Research Branch, Division of Cancer Prevention and Control, National Cancer Institute, Bethesda, Maryland

David M. Burns, M.D., Associate Professor of Medicine, Division of Pulmonary and Critical Care Medicine, University of California, San Diego Medical Center, San Diego, California

Dee Burton, Ph.D., Assistant Professor, Prevention Research Center, School of Public Health, University of Illinois at Chicago, Chicago, Illinois

Frank J. Chaloupka, Ph.D., Assistant Professor, Department of Economics, College of Business Administration, University of Illinois at Chicago, Chicago, Illinois

Paul D. Cleary, Ph.D., Department of Health Care Policy and The Division on Aging, Harvard Medical School, Boston, Massachusetts

Alexander Cohen, Ph.D., Deputy Director, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia

Joel B. Cohen, Ph.D., Distinguished Service Professor and Director, Center for Consumer Research, University of Florida, Gainesville, Florida

Michael J. Cowell, F.S.A., Vice President and Corporate Actuary, UNUM Life Insurance Company, Portland, Maine

Joseph W. Cullen, Ph.D., Deputy Director, Division of Cancer Prevention and Control, National Cancer Institute, Coordinator for the National Cancer Institute's Smoking, Tobacco and Cancer Program, Bethesda, Maryland

Sir Richard Doll, Emeritus Professor of Medicine, University of Oxford, Acting Director, Imperial Cancer Research Fund, Cancer Epidemiology and Clinical Trials Unit, Oxford, England

J. David Erickson, D.D.S., Ph.D., Chief, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia

Michael P. Eriksen, Sc.D., Director, Behavioral Research Program, Department of Cancer Prevention and Control, University of Texas M.D. Anderson Cancer Center, Houston, Texas

Virginia L. Ernster, Ph.D., Professor of Epidemiology, Department of Epidemiology and International Health, School of Medicine, University of California, San Francisco, California

Roberta G. Ferrence, Ph.D., Prevention Studies Department, Addiction Research Foundation, Toronto, Ontario, Canada

Jonathan E. Fielding, M.D., M.P.H., Professor of Public Health and Pediatrics, University of California at Los Angeles, Los Angeles, California, Vice President and Health Director, Johnson and Johnson Health Management, Inc., Santa Monica, California

John R. Finnegan, Jr., Ph.D., Assistant Professor, School of Public Health, University of Minnesota, Minneapolis, Minnesota

Martin Fishbein, Ph.D., Professor of Psychology and Research Professor, Institute of Communications Research, University of Illinois, Champaign–Urbana, Illinois

Brian R. Flay, D.Phil., Associate Professor and Director, Prevention Research Center, School of Public Health, University of Illinois at Chicago, Chicago, Illinois

William H. Foege, M.D., M.P.H., Executive Director, The Carter Center, Emory University, Atlanta, Georgia

Peter L. Frommer, M.D., Deputy Director, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, Maryland

Lawrence Garfinkel, M.A., Vice President for Epidemiology and Statistics, Director, Cancer Prevention, American Cancer Society, New York, New York

Donald W. Garner, J.D., Professor of Law, Southern Illinois University School of Law, Carbondale, Illinois

Russell E. Glasgow, Ph.D., Research Scientist, Oregon Research Institute, Eugene, Oregon

Thomas J. Glynn, Ph.D., Program Director for Smoking Research, Smoking, Tobacco, and Cancer Program, National Cancer Institute, Bethesda, Maryland

Frederick K. Goodwin, M.D., Administrator, Alcohol, Drug Abuse, and Mental Health Administration, Rockville, Maryland

Nancy P. Gordon, Sc.D., Behavioral Scientist, Division of Research, Northern California Kaiser Permanente Medical Care Program

Leonard Green, Ph.D., Professor of Psychology, Department of Psychology, Washington University, St. Louis, Missouri

Ellen R. Gritz, Ph.D., Director, Division of Cancer Control, Jonsson Comprehensive Cancer Center, University of California, Los Angeles, Los Angeles, California

Neil E. Grunberg, Ph.D., Associate Professor, Department of Medical Psychology, Uniformed Services University of the Health Sciences, Bethesda, Maryland

Dudley H. Hafner, Executive Vice President, American Heart Association, Dallas, Texas

James A. Harrell, M.A., Acting Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Washington, D.C.

Jeffrey E. Harris, M.D., Ph.D., Visiting Associate Professor, Department of Biostatistics, Harvard School of Public Health, Boston, Massachusetts; Clinical Associate, Medical Services, Massachusetts General Hospital, Boston, Massachusetts; Associate Professor of Economics, Massachusetts Institute of Technology, Cambridge, Massachusetts

Jack E. Henningfield, Ph.D., Chief, Biology of Dependence and Abuse Potential Assessment Laboratory, Addiction Research Center, National Institute on Drug Abuse, Baltimore, Maryland

Carol J. Hogue, Ph.D., Director, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

Elvin Hilyer, Associate Director for Policy Coordination, Centers for Disease Control, Atlanta, Georgia

Richard Jessor, Ph.D., Professor of Psychology, Director of the Institute of Behavioral Science, University of Colorado at Boulder, Boulder, Colorado

Lloyd D. Johnston, Ph.D., Program Director, Institute for Social Research, University of Michigan, Ann Arbor, Michigan

John T. Kalberer, Jr., Ph.D., Deputy Director, Division of Disease Prevention, Office of Disease Prevention, Office of the Director, National Institutes of Health, Bethesda, Maryland

John H. Kelso, Acting Administrator, Health Resources and Services Administration, Rockville, Maryland

Larry Kessler, Sc.D., Surveillance and Operations Research Branch, National Cancer Institute, Bethesda, Maryland

A. Joan Klebba, M.A., Statistician, Division of Vital Statistics, National Center for Health Statistics, Centers for Disease Control, Hyattsville, Maryland

Lloyd J. Kolbe, Ph.D., Acting Director, Division of Adolescent and School Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

Jeffrey P. Koplan, M.D., M.P.H., Director, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

Lynn T. Kozlowski, Ph.D., Head, Behavioral Research on Tobacco Use, Addiction Research Foundation, Toronto, Ontario, Canada

Marshall W. Kreuter, Ph.D., Director, Division of Chronic Disease Control and Community Intervention, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

Harry A. Lando, Ph.D., Associate Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota

Charles A. LeMaistre, M.D., President, University of Texas M.D. Anderson Cancer Center, Houston, Texas

Claude Lenfant, M.D., Director, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, Maryland

Eugene M. Lewit, Ph.D., Associate Professor, Departments of Medicine and Preventive Medicine and Community Health, Office of Primary Health Care Education, UMDNJ—New Jersey Medical School, Newark, New Jersey

Bryan R. Luce, M.B.A., Ph.D., Battelle Human Affairs Research Center, Washington, D.C.

Dolores M. Malvitz, Dr.P.H., Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia

Alfred C. Marcus, Ph.D., Associate Director, Division of Cancer Control, Jonsson Comprehensive Cancer Center, University of California, Los Angeles, Los Angeles, California

James S. Marks, M.D., M.P.H., Deputy Director for Public Health Practice, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

James O. Mason, M.D., Dr.P.H., Director, Centers for Disease Control, Atlanta, Georgia

Robin J. Mermelstein, Ph.D., Assistant Professor, Prevention Research Center, School of Public Health, University of Illinois at Chicago, Chicago, Illinois

Dannie C. Middleton, M.D., Medical Officer, Document Development Branch, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia

Gregory J. Morosco, Ph.D., M.P.H., Coordinator, National Heart, Lung, and Blood Institute's Smoking Education Program, National Institutes of Health, Bethesda, Maryland

Joseph P. Mulholland, Ph.D., Bureau of Economics, Federal Trade Commission, Washington, D.C.

Hillary Murt, M.P.H., Research Associate, Department of Health Services Management and Policy, School of Public Health, University of Michigan, Ann Arbor, Michigan

Herbert W. Nickens, M.D., M.A., Director, Office of Minority Health, Public Health Service, Washington, D.C.

Richard W. Niemeier, Ph.D., Acting Director, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia

Stuart L. Nightingale, M.D., Associate Commissioner for Health Affairs, Food and Drug Administration, Rockville, Maryland

Ira S. Ockene, M.D., Professor of Medicine, Director, Preventive Cardiology, Division of Cardiovascular Medicine, University of Massachusetts Medical School, Worcester, Massachusetts

Horace G. Ogden, Consultant, Gaithersburg, Maryland

Patrick M. O'Malley, Ph.D., Associate Research Scientist, Institute for Social Research, University of Michigan, Ann Arbor, Michigan

Mario A. Orlandi, Ph.D., M.P.H., Chief, Division of Health Promotion Research, American Health Foundation, New York, New York

Carole Tracy Orleans, Ph.D., Senior Investigator, Behavioral Medicine and Director of Smoking Cessation Services, Fox Chase Cancer Center, Philadelphia, Pennsylvania

Gerry Oster, Ph.D., Vice President, Policy Analysis, Inc., Brookline, Massachusetts

Clifford H. Patrick, Ph.D., Senior Public Health Advisor, Office of Minority Health, Washington, D.C.

Cheryl L. Perry, Ph.D., Associate Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota

Michael Pertschuck, J.D., Co-director, Advocacy Institute, Washington, D.C.

Edward L. Petsonk, M.D., Senior Medical Officer, Clinical Investigations Branch, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia

John P. Pierce, M.Sc., Ph.D., Chief, Epidemiology Branch, Office on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Rockville, Maryland

John M. Pinney, Executive Director, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts

Edward T. Popper, M.B.A., D.B.A., Associate Professor of Marketing, Bryant College, Smithfield, Rhode Island

William F. Raub, M.D., Deputy Director, National Institutes of Health, Bethesda, Maryland

Dorothy P. Rice, B.A., Sc.D.(Hon.), Professor in Residence, Department of Social and Behavioral Sciences, School of Nursing, University of California, San Francisco, San Francisco, California

Lynn Gloeckler Ries, M.S., Division of Cancer Prevention and Control, Surveillance and Operations Research Branch, National Cancer Institute, Bethesda, Maryland

Ruth Roemer, J.D., Adjunct Professor of Health Law, School of Public Health, University of California, Los Angeles, Los Angeles, California, Past President, American Public Health Association

Kenneth J. Rothman, Dr.P.H., Professor of Family and Community Health, University of Massachusetts Medical School, Worcester, Massachusetts

Jonathan M. Samet, M.D., Professor of Medicine, Department of Medicine, Chief, Pulmonary Division, University of New Mexico, Albuquerque, New Mexico

Thomas C. Schelling, Ph.D., Lucius N. Littauer Professor of Political Economy, Director, Institute for the Study of Smoking Behavior and Policy, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts

Marvin A. Schneiderman, Ph.D., National Academy of Sciences, National Research Council, Board on Environmental Studies and Toxicology, Washington, D.C.

David Schottenfeld, M.D., M.Sc., John G. Searle Professor and Chairman, Department of Epidemiology, School of Public Health, Professor of Internal Medicine, School of Medicine, University of Michigan, Ann Arbor, Michigan

Lowell E. Sever, Ph.D., Assistant Director for Science, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia

Saul Shiffman, Ph.D., Associate Professor, Department of Psychology, Director, Psychology Clinic, University of Pittsburgh, Pittsburgh, Pennsylvania

Donald R. Shopland, Public Health Advisor, Smoking, Tobacco, and Cancer Program, Office of the Director, Division of Cancer Prevention and Control, National Cancer Institute, Bethesda, Maryland

John Slade, M.D., Department of Medicine, University of Medicine and Dentistry of New Jersey, New Brunswick, New Jersey

Jesse L. Steinfeld, M.D., former Surgeon General, Public Health Service, San Diego, California

Steven D. Stellman, Ph.D., Assistant Commissioner for Biostatistics and Epidemiologic Research, New York City Department of Health, New York, New York

Michael A. Stoto, Ph.D., Senior Staff Officer, Institute of Medicine, National Academy of Sciences, Washington, D.C.

James A. Swomley, Managing Director, American Lung Association, New York, New York

Owen T. Thornberry, Ph.D., Director, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control, Hyattsville, Maryland

William M. Tipping, Executive Vice President and Chief Executive Officer, American Cancer Society, Atlanta, Georgia

Dennis D. Tolsma, M.P.H., Assistant Director for Public Health Practice, Centers for Disease Control, Atlanta, Georgia

Frederick L. Trowbridge, M.D., Director, Division of Nutrition, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia

Diana Chapman Walsh, Ph.D., University Professor, Professor of Public Health and Associate Director of the Health Policy Institute, Boston University, Boston, Massachusetts

Judith P. Wilkenfeld, J.D., Program Advisor, Cigarette Advertising and Testing, Federal Trade Commission, Washington, D.C.

Ronald W. Wilson, M.A., Director, Division of Epidemiology and Health Promotion, National Center for Health Statistics, Centers for Disease Control, Hyattsville, Maryland

Ernst L. Wynder, M.D., President, American Health Foundation, New York, New York

James B. Wyngaarden, M.D., Director, National Institutes of Health, Bethesda, Maryland

The editors also acknowledge the contributions of the following staff members and others who assisted in the preparation of this Report.

Margaret Anglin, Secretary, Office on Smoking and Health, Rockville, Maryland

Charles Appiah, Project Clerk, The Circle, Inc., McLean, Virginia

John Artis, Courier, The Circle, Inc., McLean, Virginia

John L. Bagrosky, Associate Director for Program Operations, Office on Smoking and Health, Rockville, Maryland

Sonia Balakirsky, Secretary, Office on Smoking and Health, Rockville, Maryland

Carol A. Bean, Ph.D., Project Director, The Circle, Inc., McLean, Virginia

Marissa Bernstein, Editorial Assistant, The Circle, Inc., McLean, Virginia

Doreen M. Bonnett, Senior Editor, The Circle, Inc., McLean, Virginia

Catherine E. Burckhardt, Editorial Assistant, Office on Smoking and Health, Rockville, Maryland

Gayle A. Christman, Administrative Assistant, The Circle, Inc., McLean, Virginia

Carol K. Cummings, Secretary, Office on Smoking and Health, Rockville, Maryland

Karen M. Deasy, Assistant to the Director for Special Projects, Office on Smoking and Health, Rockville, Maryland

Joanna Ebling, Word Processing Specialist, The Circle, Inc., McLean, Virginia
David Fry, Editor, The Circle, Inc., Mclean, Virginia
Lynn Funkhauser, Word Processing Specialist, The Circle, Inc., McLean, Virginia
Amy Garson, Student Intern, Office on Smoking and Health, Rockville, Maryland
Gary A. Giovino, Ph.D., Epidemiologist, Office on Smoking and Health, Rockville, Maryland
Arnetta G. Glover, Secretary, Office on Smoking and Health, Rockville, Maryland
Victoria M. Grier, Conference Coordinator, The Circle, Inc., McLean, Virginia
Andree C. Harris, Program Analyst, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia
Evridiki Hatziandreu, M.D., Dr.P.H., Epidemic Intelligence Service Officer, Office on Smoking and Health, Rockville, Maryland
Patricia E. Healy, Technical Information Specialist, Office on Smoking and Health, Rockville, Maryland
Timothy K. Hensley, Technical Publications Writer, Office on Smoking and Health, Rockville, Maryland
Robert S. Hutchings, Associate Director for Information and Program Development, Office on Smoking and Health, Rockville, Maryland
Karen Jacob, Senior Editor, The Circle, Inc., McLean, Virginia
Beth Jacobsen, Student Intern, Office on Smoking and Health, Rockville, Maryland
Sheila M. Jones, Word Processing Specialist, The Circle, Inc., McLean, Virginia
Kathleen M. Keever, Secretary, Department of Public Health Policy and Administration, School of Public Health, University of Michigan, Ann Arbor, Michigan
Rick Keir, Senior Editor, The Circle, Inc., McLean, Virginia
Jennifer L. Kirscht, M.P.H., Statistics Consultant, Department of Public Health Policy and Administration, School of Public Health, University of Michigan, Ann Arbor, Michigan
Laura Y. Martin, Program Analyst, Office of Program Planning and Evaluation, Centers for Disease Control, Atlanta, Georgia
Daniel F. McLaughlin, Editor, The Circle, Inc., McLean, Virginia
Sherry L. Mills, M.D., M.P.H., Epidemic Intelligence Service Officer, Office on Smoking and Health, Rockville, Maryland
Nancy A. Miltenberger, M.A., Senior Editor, The Circle, Inc., McLean, Virginia
Elizabeth Mugge, Special Assistant, Office of the Deputy Director, Division of Cancer Prevention and Control, National Cancer Institute, Bethesda, Maryland
Millie R. Naquin, M.Ed., Research Assistant, Office on Smoking and Health, Rockville, Maryland
Regina Nwankwo, Editor, The Circle, Inc., McLean, Virginia
Ruth C. Palmer, Secretary, Office on Smoking and Health, Rockville, Maryland
Lida Peterson, Computer Systems Manager, The Circle, Inc., McLean, Virginia
Renate Phillips, Desktop Publishing/Graphic Artist, The Circle, Inc., McLean, Virginia
Margaret E. Pickerel, Public Information and Publications Specialist, Office on Smoking and Health, Rockville, Maryland
Tamara Shipp, Publications Assistant, The Circle, Inc., McLean, Virginia

Edwin Silverberg, Supervisor, Statistical Information Service, American Cancer Society
Linda R. Spiegelman, Administrative Officer, Office on Smoking and Health, Rockville, Maryland
Traion Stallings, Word Processing Specialist, The Circle, Inc., McLean, Virginia
Daniel R. Tisch, Senior Project Manager, The Circle, Inc., McLean, Virginia
Pamela Wilson, Editor, The Circle, Inc., McLean, Virginia
Louise G. Wiseman, Technical Information Specialist, Office on Smoking and Health, Rockville, Maryland

Broadcast Media

History

In 1949, the U.S. Federal Communications Commission (FCC) promulgated its Fairness Doctrine (FCC 1949). Under this doctrine, which the FCC repealed in August 1988, licensed broadcasters were obligated

> to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views (FCC 1988).

This meant that, as a condition of retaining the required license, broadcasters were required to air both sides of a controversial issue if one side was presented. Subsequent decisions by the FCC indicated that the Fairness Doctrine could require a station to grant free time, even when one viewpoint was presented under paid sponsorship. The FCC did not, however, require that a broadcaster provide equal time for opposing views; only a "reasonable opportunity" for the presentation of opposing views was required (Columbia Law Review 1967).

In January 1967, John Banzhaf, an attorney acting as a private citizen, petitioned the FCC to apply the Fairness Doctrine to cigarette advertising. On June 2, 1967, the Commission ruled that the doctrine applied to cigarette advertising on television and radio and required broadcasters who aired cigarette commercials to provide "a significant amount of time" to citizens who wished to point out that smoking "may be hazardous to the smoker's health" (FCC 1967). In a subsequent press interview, the FCC's chief counsel gave his informal opinion that a ratio of one antismoking message to three cigarette commercials seemed to him to constitute "a significant amount of time" (Whiteside 1971).

The ruling applying the Fairness Doctrine to cigarette advertising went into effect on July 1, 1967. Thereafter, broadcasters began to air an array of antismoking public service announcements (PSAs), developed primarily by voluntary health organizations and government health agencies (Whiteside 1971). The time "donated" for the antismoking spots amounted to approximately 75 million dollars (in 1970 dollars) per year from 1968 through 1970 (Lydon 1970). As discussed in the next section, subsequent Federal legislation, the Public Health Cigarette Smoking Act of 1969, banned cigarette advertising on television and radio, effective January 2, 1971. Once this occurred and cigarette ads were removed from radio and television, the Fairness Doctrine basis for requiring broadcasters to carry antismoking PSAs was eliminated. Antismoking messages then had to compete for public service advertising time donated by broadcasters. As a result, the frequency of the antismoking spots declined dramatically. According to Lewit, Coate, and Grossman (1981), the number of antismoking PSAs declined by almost 80 percent after 1970, relative to the number aired in 1969, and they were shown at times when youths in particular were not likely to be watching television.

Effectiveness

The antismoking messages mandated by the Fairness Doctrine might have been expected to increase public knowledge and change public attitudes about smoking. Indirectly, they might reduce smoking prevalence and tobacco consumption by stimulating cessation and retarding initiation. The degree to which the messages achieved these goals has been assessed by measuring trends in public beliefs concerning the health hazards of smoking, in smoking prevalence, and in cigarette sales before, during, and after the 1968–70 period. PSAs were only one of a number of societal influences on smoking during that period. Because of the broad reach of the mass media, it is impossible to control for these concurrent influences by examining a group that was not exposed to PSAs. Consequently, changes in these indices cannot be unequivocally attributed to the presence of PSAs. Nonetheless, they offer strong circumstantial evidence for an effect of the PSA campaign.

Survey data indicate that PSAs were in fact seen and recalled by large numbers of Americans. O'Keefe (1971) surveyed 621 students below 21 years of age and 300 adults in Central Florida. Ninety percent of the sample recalled seeing at least one antismoking PSA, and about half of them were able to recall a specific commercial. When asked about the effect of PSAs on their own smoking behavior, 32 percent of smokers reported that they had cut down, 37 percent said they thought more about the effects of smoking than before, and 11 percent said they stopped smoking temporarily as a result of the commercials. This study, based on the self-reported smoking behavior of a small sample, does not provide definitive evidence for an effect of PSAs on knowledge or cigarette consumption.

Analysis of trends in national survey data provides a stronger quality of evidence for the effects of PSAs on knowledge or behavior. National survey data collected before, during, and after the 1968–70 period show consistent but small increases in public knowledge of the health hazards of smoking (see Chapter 4). According to the Adult Use of Tobacco Surveys (AUTSs), the proportion of adults who believed that smoking is hazardous to health was already high before the airing of PSAs. It increased slightly during and after the period when PSAs were shown, from 85 to 87 to 90 percent in 1966, 1970, and 1975, respectively. Similar trends were seen for public beliefs concerning the causal relationship between smoking and specific diseases, including lung cancer, heart disease, and chronic obstructive lung disease (Chapter 4). One might expect that the personal and emotional messages in many of the PSAs (Whiteside 1971) would have a particularly salient effect on personalized acceptance of health risks from smoking (Chapter 4). AUTS data show a larger increase in this factor, coincident with the PSAs. The percentage of smokers who were concerned about the effects of smoking on their own health increased from 47 percent in 1966, before the Fairness Doctrine, to 69 and 68 percent in 1970 and 1975, respectively. One must be cautious in attributing these changes solely to the PSA campaign, because increases in public knowledge sometimes continued after the campaign ended and because other informational activities, such as cigarette warning labels, occurred concurrently in both the public and private sectors.

The effect of PSAs on smoking behavior has been assessed by analyzing trends in cigarette sales and smoking prevalence. Analyses of temporal trends in tobacco consumption, as measured by cigarette sales, provide evidence for an effect of PSAs in restraining smoking, at least temporarily. For the 3-year periods before (1965–67), during (1968–70), and after (1971–73) the Fairness Doctrine PSAs, per capita cigarette sales increased by 2.0 percent, decreased by 6.9 percent, and increased by 4.1 percent, respectively (Chapter 5). Warner (1977) compared actual sales figures for the Fairness Doctrine period to projected sales figures (for the same years) based on the trend in sales during the period 1947–67. He predicted that in the absence of PSAs and subsequent publicity, consumption would have been 19.5 percent higher than it actually was by 1975. In a regression analysis of the effects of both cigarette ads and the Fairness Doctrine PSAs, Hamilton (1972) found that the antismoking messages retarded per capita cigarette consumption by 530.7 cigarettes per year, while the cigarette ads boosted it by 95.0 per year. Schneider, Klein, and Murphy (1981) concluded that the PSAs reduced per capita tobacco consumption by 5 percent. Findings from these and related studies are reviewed in Chapter 8.

If PSAs had motivated large numbers of smokers to quit smoking, one would expect to have observed a decline in the prevalence of cigarette smoking, as well as in tobacco consumption, during the period when they were shown. Prevalence data have some limits compared with cigarette consumption data. Estimates of smoking prevalence are based on individuals' self-reported behavior in national surveys, which is a less objective measure than consumption estimates based on sales data. Furthermore, data on prevalence are collected less frequently than are sales data, making prevalence a less sensitive index of short-term effects. Data on the self-reported prevalence of cigarette smoking from 1965–85 show a highly consistent linear trend downward during the entire period (Chapter 5). These data do not provide evidence for an independent effect of the PSA campaign on overall smoking prevalence and contrast with the cigarette consumption data cited above. However, Lewit, Coate, and Grossman (1981), who analyzed the effect of PSAs on the smoking prevalence of teenagers, reported an effect in that age group. They found that the teenage smoking rate was 3.0 percentage points lower during the Fairness Doctrine period than during the 16-month period prior to the Doctrine; most of this effect occurred during the time when PSAs were shown.

Warner (1978) compared cigarette sales data to self-reported cigarette consumption for the years 1964–75. He found that the ratio of self-reported cigarette consumption to cigarette sales ("consumption ratio") decreased from a level of 72 and 73 percent in 1964 and 1966, to 66 percent in 1970, and to 64 percent in 1975. The decrease between 1966 and 1970, years spanning the Fairness Doctrine period, was statistically significant. Between 1966 and 1970, actual aggregate sales dropped 1 percent, while reported consumption dropped 9.5 percent. One explanation for this decline is a greater underreporting of current smoking because of growing awareness of the health hazards of smoking and the declining social acceptability of smoking (Chapter 5). Warner suggested that the Fairness Doctrine PSAs, by causing changes in knowledge and attitudes, may have been responsible for increased underreporting. More recent data from 1974–85 show that the consumption ratio has remained stable at approximately 72 percent, despite further reductions in the social acceptability of smoking (Chapter 5). As mentioned in Chapter 5, the decrease in the consumption ratio reported by Warner may be related to the fact that the self-reported data for 1970 and 1975 were collected by telephone surveys, while the 1964 and 1966 data were collected by in-person interviews; the latter technique generally provides slightly higher smoking prevalence estimates than do telephone surveys.

In summary, both per capita cigarette consumption changes and regression studies comparing actual cigarette sales to projected sales based on prior trends are consistent with the conclusion that the Fairness Doctrine PSAs affected smoking behavior, at least in the short term. Changes in public knowledge about the health effects of smoking as assessed in national surveys, also occurred during the period PSAs were aired. Because of other social influences on smoking during this period, it is impossible to attribute changes in cigarette consumption or public knowledge solely to the airing of PSAs. However, as described further in Chapter 8, they were a prominent component of antismoking activities, which in the aggregate had marked effects on smoking prevalence and tobacco consumption in the 25 years since the release of the 1964 Surgeon General's Report. It is unclear whether and to what degree any short-term effects could have been sustained with an ongoing campaign. If PSAs had continued, it is possible that their short-term effects could have been sustained only with the types of message variation, pulsed media placement patterns, and ongoing communications measurement

TABLE 6.—Cigarette advertising and promotional expenditures, 1970–86 ($ millions)

Year	Advertising	Promotional	Total	Total in constant (1986) dollars	Advertising as percentage of total
1970	314.7	46.3	361.0	1019.4	87.2
1971	251.6	NA	NA	NA	NA
1972	257.6	NA	NA	NA	NA
1973	247.5	NA	NA	NA	NA
1974	306.8	NA	NA	NA	NA
1975	366.2	125.1	491.3	1000.9	74.5
1976	430.0	209.1	639.1	1231.0	67.3
1977	552.0	247.5	799.5	1446.6	69.0
1978	600.5	274.5	875.0	1470.6	68.6
1979	749.0	334.4	1083.4	1636.6	69.1
1980	829.9	412.4	1242.3	1653.0	66.8
1981	998.3	549.4	1547.7	1865.9	64.5
1982	1040.1	753.7	1793.8	2037.6	58.0
1983	1081.0	819.8	1900.8	2091.9	56.9
1984	1097.5	997.7	2095.2	2211.7	52.2
1985	1075.0	1401.4	2476.4	2524.1	43.4
1986	931.8	1450.6	2382.4	2382.4	39.1

NOTE: NA, not available.
SOURCE: Warner (1986b); Federal Trade Commission (1988b).

and tracking characteristic of ongoing national advertising campaigns (Aaker and Meyers 1987), including those of the cigarette companies themselves.

Restrictions on Tobacco Advertising and Promotion

Cigarettes are one of the most heavily marketed consumer products in the United States (FTC 1981b; Davis 1987). Cigarette advertising and promotional expenditures totaled 2.4 billion dollars in 1986 (FTC 1988b). In both actual and constant dollars, these expenditures increased consistently between 1975 and 1985 but fell slightly in 1986, the last year for which data are available (Table 6). A study reviewing 1985 data found that cigarettes were the most heavily advertised category of products in the outdoor media (e.g., billboards), the second most heavily advertised category in magazines (after passenger cars), and the third most heavily advertised subcategory in newspapers (after passenger cars and airlines) (Davis 1987). All six of the major cigarette manufacturers were included among the 100 companies with the highest advertising expenditures in 1985 (Davis 1987). According to FTC reports to Congress for the years 1982 and 1983, the major advertising themes associated cigarette smoking with high-style living, healthy activities, and economic, social, and professional success (FTC 1985b).

Tobacco advertising includes both traditional advertising (in newspapers and magazines, on billboards, and in transit facilities) and promotional activities. Promotional activities are diverse and include the distribution of free product samples, coupons for price reductions, and offers for discounted products (often bearing the name of the cigarette brand). Promotional activities also encompass industry sponsorship of cultural, sporting, and entertainment events, and sponsorship of community or political organizations. Incentives paid to distributors or retailers are another form of tobacco promotion. Over the past decade, the balance of expenditures has shifted from traditional advertising to promotional activities (Davis 1987), so that by 1986, promotional expenditures accounted for 60 percent of the tobacco marketing dollar, compared with only 25 percent of the total in 1975 (FTC 1988b) (Table 6).

This Section reviews previous, current, and proposed government policies to regulate tobacco advertising and promotion. It considers the central public health issue—whether advertising and promotion increase tobacco consumption—and reviews available evidence on this question. The focus of this review is on cigarette advertising and promotion because cigarettes account for the vast majority of both tobacco use and advertising/promotional expenditures. The effects of advertising for other tobacco products have not often been studied. The discussion includes coverage of the smaller body of information about promotional activities beyond traditional advertising because of their growing importance in tobacco marketing.

Effects of Tobacco Advertising and Promotion

Public health concern about tobacco advertising and promotion is based on the premise that these activities encourage the initiation of smoking and stimulate tobacco consumption, especially by children, while retarding cessation efforts, particularly by adults. It has been suggested that ads promoting low-tar and -nicotine cigarettes may allay the anxiety of current smokers, shifting their attention away from the decision to stop smoking by presenting the option of switching to an ostensibly less hazardous brand (Davis 1987). It has also been suggested that tobacco advertising interferes with efforts to inform the public of the health hazards of smoking because media that accept tobacco advertising provide less coverage about the health hazards of tobacco use. Proponents of this view contend that restricting tobacco advertising would reduce both the number of prosmoking messages and their alleged restraining influence on the flow of antitobacco information from the media, thereby making antismoking efforts more visible and potentially more effective (Warner 1985).

By contrast, both tobacco products manufacturers and representatives of the major associations of advertisers have consistently denied that advertising and promotion encourage smoking and the use of other tobacco products. They claim that the purpose and effect of marketing are merely to provide information and to influence brand selection among current users of tobacco products (Waterson 1983; O'Toole 1986; Weil 1986). The statement might also be made that cigarette advertising has permitted tobacco companies to successfully market new brands with reduced tar and nicotine yields and will allow for the future promotion of new products with reduced tar and nicotine. However, because of considerable controversy about the health effects of low-tar and low-nicotine cigarettes (US DHHS 1981a, 1988), the public health benefit of switching to these products remains in doubt (See Chapters 2 and 5).

Mechanisms by Which Advertising and Promotion May Affect Consumption

From a marketing perspective, advertising and promotion have different roles (Popper 1986a; Davis and Jason 1988). Conceptually, both tobacco advertising and promotion could increase tobacco consumption through several direct and indirect mechanisms (Warner 1986b; Warner et al. 1986a). Direct mechanisms all relate to the immediate impact of marketing techniques on the consumer or potential consumer. Indirect mechanisms are those that influence some factor other than the consumer (e.g., the behavior of other institutions such as the news media), which in turn affects the use of tobacco products.

Four direct mechanisms by which tobacco advertising and promotion may increase tobacco consumption have been suggested.

1. Advertising and promotion could encourage children or young adults to experiment with tobacco products and initiate regular use. This is the central focus of the public health concern about advertising and promotion. Initiation could be encouraged when the images presented in cigarette advertising change children's and young adults' attitudes about cigarettes (in general and about specific brands) in a way that makes them more likely to start using tobacco products (McCarthy 1986). Promotion could directly lead to experimentation via the distribution of free samples and the creation of environments (cigarette-sponsored concerts and sporting events) where sample distribution is facilitated and cigarette trial is actively encouraged (Popper 1986b).
2. Advertising and promotion could increase tobacco users' daily consumption of tobacco products. Advertising could serve as a cue to tobacco use by creating

attitudes and images that reinforce the "desirability" of smoking and remind smokers of occasions that are associated with smoking (Glosser 1984; Warner 1986b; Davis 1987). Promotion could act as an economic incentive to increase tobacco users' daily consumption (Popper 1986b). Coupons (either for price reductions or free products) reduce the financial cost of smoking for the consumer, which can encourage increased consumption via the price elasticity of demand (see Part II).

3. Advertising and promotion could reduce current tobacco users' motivation to quit. Tobacco ads, with their attractive imagery and implicit alleviation of fears (Altman et al. 1987), could diminish users' cessation intentions. Advertising of low-tar and -nicotine cigarettes may, in particular, have this effect (Popper 1988; Davis 1987). Promotion could weaken current tobacco users' resolve to quit by reducing the financial cost of smoking (Popper 1986b).
4. Advertising and promotion could encourage former smokers to resume smoking. Quitters experience both physiological and psychological withdrawal (US DHHS 1988). Advertising presents smokers with images reminding them of the reasons and situations in which they smoked, thereby increasing the difficulties associated with withdrawal. Promotional events (sponsored sporting events or concerts) create environments where former smokers are encouraged to resume smoking. They provide cues to smoke in the social situations in which former smokers had been likely to smoke. This effect may be enhanced by the distribution of free cigarette samples that often occurs at tobacco-sponsored events (Popper 1986b; Davis and Jason 1988).

Three indirect mechanisms by which advertising and promotion might increase tobacco consumption have also been suggested.

1. Media dependence on advertising revenues from the tobacco companies may discourage full and open discussion of the hazards of tobacco use. Reduced media attention may reduce the extent of public understanding of the health hazards. This might reduce the public's understanding of the risks of tobacco use and thereby increase tobacco use relative to what it would be in an environment in which media coverage was more extensive and was influenced solely by the inherent interest and importance of the subject (Warner 1985).
2. A number of institutions have to some degree become financially dependent on the promotional, charitable, and public relations spending of the tobacco industry, including professional sports, cultural institutions, and minority organizations. This institutional dependence on tobacco spending may create political support for, or mute opposition to, the industry's marketing and policy objectives (Taylor 1984; Warner 1986b). In turn, this may reduce public knowledge about the risks of tobacco and indirectly, encourage initiation and maintenance of tobacco use.
3. Still more broadly, the ubiquity and familiarity of tobacco advertising and promotion 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. Smokers might interpret the legality of tobacco advertising and promotion as an implicit message that "Smoking can't really be all that dangerous; otherwise the government would ban cigarette advertising." Presented with that statement in a British government survey, 44 percent of smokers agreed (Chapman 1986). This environment may contribute to the initiation of tobacco use by children and the maintenance of use by adults.

Evidence

Evidence pertaining to the effects of tobacco advertising and promotion on the consumption of tobacco products is diverse in its nature and conclusions. The research includes formal empirical analysis, informal empirical observations, and logic. Although some evidence specifically addresses issues of direct or indirect impact, much of it applies generally to the overall effect of tobacco advertising on consumption. Promotion has received less attention in the research published to date. In the following sections, the evidence cited applies to the overall effect, except as indicated. Most of the existing evidence, both analytical and experiential, relates to cigarettes and advertising. Little work has examined the effects of other promotional techniques or addresses the advertising of tobacco products other than cigarettes.

Formal Empirical Analysis

Formal empirical analysis is primarily of two types: (1) statistical studies of the relationship between aggregate cigarette advertising expenditures and aggregate cigarette consumption, using the method of regression analysis, and (2) survey research and experimental studies of smokers' and potential smokers' reactions to and recall of cigarette ads.

Regression Analyses

More than a dozen studies using regression analysis have evaluated the statistical correlation between cigarette advertising expenditures and cigarette sales in at least four western countries. Several of these analyses have found no statistically significant correlation (Schmalensee 1972; Lambin 1976; Metra Consulting Group 1979; Schneider, Klein, Murphy 1981; Johnston 1985; Baltagi and Levin 1986). At least two studies have raised the possibility that advertising expenditures are a function of cigarette sales, rather than the reverse; that is, manufacturers devote a relatively fixed proportion of revenues to advertising, and ad expenditures rise or fall as company sales increase or decrease (Schmalensee 1972; Schneider, Klein, Murphy 1981). Other analyses have identified a statistically significant relationship and concluded that, in the aggregate, increased advertising expenditures do lead to increased sales, although typically the estimated effect of advertising expenditures on consumption is small (Peles 1971; McGuinness and Cowling 1975; Lewit, Coate, Grossman 1981; Reuijl 1982; Porter 1986; Radfar 1985; Roberts and Samuelson 1988; Chetwynd et al., in press). Still other researchers have reported consistently finding a small positive effect, but one that is not generally statistically significant (Hamilton 1972).

Only one regression study has addressed the relationship between cigarette advertising and smoking by teenagers (Lewit, Coate, Grossman 1981), despite the fact that ad[illegible]ence [illegible]e per[illegible] whi[illegible] vas[illegible]ority [illegible]okers[illegible]ate c[illegible]te use

(Chapter 5). As discussed above, Lewit and colleagues examined the issue in the context of the broadcast ad ban, estimating that teenagers' smoking prevalence fell by 0.6 percent from 1970 to 1974 as a result of the ban. Although not a quantitatively substantial effect in percentage terms, it was a statistically significant finding. Given the large population of teenage smokers, even a small percentage change in smoking translates into substantial absolute numbers.

The regression studies vary considerably in methods, sophistication, and quality. Most of the studies rely on time series analysis, introducing the inherent methodological risk of unstable parameter estimates due to correlations among variables over the time periods studied. Findings may also vary because of differences in the time period studied, differences among countries, and variability in functional form specification. The better studies attempt to control for other variables that might influence the movement of both advertising expenditures and consumption, but this is handled inconsistently. Some of the studies treat advertising as having an impact only in the year of expenditure, whereas others examine both current and later (residual) effects of advertising expenditures (Peles 1971). A few use a measure of cumulative advertising expenditures, rather than single-year expenditures, in constructing the principal independent variable (Schneider, Klein, Murphy 1981). A recent study found that quarterly data produced more meaningful results than annual data; the authors speculated that "the longer time period [i.e., annual data] may mask significant relationships" (Chetwynd et al., in press). At least one study has adopted a nondollar measure of advertising (Lewit, Coate, Grossman 1981), recognizing that the assumption of homogeneity over time in the dollar measure may not hold (Calfee 1986).

None of the studies has properly distinguished between and incorporated both conventional advertising and other promotional expenditures. This omission is particularly germane to the late 1980s, the first period in which tobacco product promotional expenditures exceeded conventional advertising (FTC 1988b) (Table 6). Moreover, regression studies have not taken into account other means of interbrand competition besides advertising and promotion. The one exception is a recent study by Roberts and Samuelson (1988), who simultaneously analyzed the effects of advertising expenditures and numbers of brands sold on the market shares of rival manufacturers. In analyses of the low-tar and high-tar U.S. cigarette markets during 1971–82, they found that firms' advertising primarily affected the level of market demand, while individual firms' market shares depended upon the number of brands sold.

Methodological differences and problems such as these restrict the meaningful interpretation and comparison of findings. Furthermore, inherent limitations in the method of regression analysis diminish the ultimate value of these analyses in addressing the two fundamental questions of interest: How much, if at all, do advertising and promotion affect the level of tobacco consumption? Would restrictions or a ban on advertising and promotion affect the level of consumption? Regression analysis is designed to assess the statistical relationship between marginal changes in an independent variable and marginal changes in the dependent variable, controlling for other factors for which data are available. Regression results do not assess the effect of large (or complete) changes in the independent variable. Consequently, the findings of regression studies, pertaining to small changes in ad expenditures, may not relate at all to the change contemplated in a ban—the complete elimination of all advertising and promotion (Cox 1984).

There is a second theoretical reason why regression analysis might not be expected to find a sizable, significant relationship between advertising and consumption. If advertising both expands the overall market and helps firms capture existing market share from competitors, the rational level of advertising expenditure will exceed that which increases aggregate consumption alone. Thus, on the margin, the function of advertising dollars will be to compete for existing market share, not to expand the overall market. Hence, regression analyses, examining marginal effects, would not be expected to demonstrate a strong correlation between advertising expenditures and aggregate consumption (Warner et al. 1986a). In these circumstances, the fact that several of the regression studies have found statistically significant correlations has been interpreted as evidence that advertising does increase consumption (Tye, Warner, Glantz 1987).

Survey Research and Experimental Studies of Reactions to Advertisements

The second category of empirical analysis includes studies testing the hypothesis that advertising encourages children to try tobacco products and initiate related behaviors. Two types of studies fall in this category: surveys assessing recall of and reaction to cigarette ads and experimental analysis of subjects' responses to ads.

Among the surveys, the most direct approach to assessing the relationship between advertising and cigarette consumption has been to ask children or adults about the factors that influenced them to smoke. These studies typically find that advertising is ranked quite low on the list of relevant factors. Marketing experts have questioned the validity of this approach because conscious response to advertising is deemed to be a poor index of actual response (Bergler 1981; Chapman 1986). As such, studies with a similar method and opposite findings also offer little insight into the actual effects of advertising. An example is a study by Fisher and Magnus (1981), which found that most children believe that cigarette ads encourage children to smoke.

An alternative approach that employs both surveys and experiments is to assess reactions to ads and their imagery, often (then or later) correlated with subjects' reported smoking behavior. Analyses of this type range from studies asking subjects to recall cigarette brands and ad themes to experiments measuring subjects' eye contact with magazine ads (Fischer et al., in press). Several studies have associated recognition and approval of cigarette ads with subsequent propensity to smoke (O'Connell et al. 1981; Chapman and Fitzgerald 1982; Alexander et al. 1983; McCarthy 1986; Goldstein et al. 1987). These studies are representative of the research methods used by the cigarette companies themselves to test the communications effects of their advertising (see advertising-related research presented in *Cippolone* v. *Liggett Group* 1988 and *FTC* v. *Brown and Williamson* 1983).

Collectively, these latter studies present data suggesting that cigarette ads are effective in getting children's attention and that they are recalled. In these studies, recall of prominent cigarette brand names and of ad themes is usually high. (By contrast, attention paid to the Surgeon General's health warnings and recall of them are much lower (Fischer et al., in press).) The studies find that strength of interest in the ads correlates with smoking behavior, either current or anticipated. However, the studies do not ex-

amine the causal links between this recall and smoking behavior. It is possible that smoking, or an interest in smoking, might affect awareness of ads, rather than ads encouraging smoking, a point acknowledged by the authors of some of these studies (e.g., Goldstein et al. 1987), but this possiblity has not been examined with regard to cigarette advertising. The hypothesis is supported by the well-documented psychological phenomenon of perceptual vigilance (Spence and Engel 1970), whereby consumers are more aware of advertising for products they use. The opposite phenomenon, perceptual defense or selective perception (Spence 1967), helps explain why smokers avoid perceiving the warning labels and other risk-related information (FTC 1981b).

Additional Empirical Observations and Logical Arguments

The principal evidence for evaluating the role of tobacco advertising and promotion derives from the experience of advertising industry professionals and from logical analyses. Some of the latter are empirical, while others are not.

At the core of the argument that tobacco advertising affects only brand share among competitors and does not increase consumption is the contention that the market for tobacco products is a mature market, one in which market expansion cannot be achieved (O'Toole 1986). Advertising professionals who disagree have argued that market expansion is invariably a purpose of advertising. Furthermore, they have observed that it is principally in connection with two industries "under siege," tobacco and alcohol, that both producers and advertisers have made the brand-share-only argument (Foote 1981; Sharp 1986).

Proponents of the mature market argument have noted that adult per capita cigarette consumption has fallen annually since 1973; aggregate consumption has fallen each of the last 6 years (Tobacco Institute 1987); and per capita tobacco consumption is at an all-time low for this century (Grise 1984). The prevalence trends accounting for this change are particularly evident in cohort analyses that show younger birth cohorts taking up smoking in much smaller percentages than their predecessors (Chapter 5). Even in a mature market, however, the role of cigarette advertising could play a role in market maintenance, in addition to vying for brand share. In a mature or declining market, one standard strategy is to retain customers through defensive advertising and promotion (Kotler 1988). This strategy would be particularly important in the case of the cigarette market, in which an estimated 5 percent of its adult consumers are lost each year due to smoking cessation or death (from diseases related or unrelated to smoking) (Warner 1986b). It has been argued that such defensive strategies can be seen in the tobacco industry's advertising of low- and "ultra-low-tar brands," where the goal of the campaign is not simply a shift between brands but a shift to a lower tar brand as opposed to total cessation (Popper 1988).

In opposition to the mature market argument, analysts have emphasized that although the market as a whole may be declining, segments of it appear to be actual or potential growth markets, including young women, children, blue-collar workers, and certain minority groups (Sharp 1986; Davis 1987). Industry advertising and promotion trends show increases in the relative shares of marketing budgets devoted to several of these subpopulations (Englander 1986; Albright et al., in press).

Analysts have cited the past decade's growth in smokeless tobacco use as evidence that tobacco companies believe that advertising and promotion can be used to attract new consumers, at least for smokeless tobacco products (Connolly et al. 1986; Tye, Warner, Glantz 1987). Consequently, the mature market concept does not apply to smokeless tobacco products. Industry documents describing the marketing strategy for one smokeless tobacco product demonstrate that the company designed the low-nicotine product to serve as a "starter" product. Advertising for the product was concentrated in publications that have a high teenage male readership (Connolly 1986; Feigelson 1983). In other documents, the smokeless tobacco industry has referred to the "graduation" process from the low-nicotine starter products to more "full-flavored" products, that is, those higher in nicotine (Connolly 1986). In addition, advertisements for smokeless tobacco products have provided detailed instructions on how to use the products (Christen 1980), evidence that the marketing campaigns have been intended to attract new users.

Opponents of the position that tobacco advertising serves only to increase or maintain market share have also argued that this position is not financially consistent with the tobacco industry's marketing expenditures. A study of the economics of tobacco advertising concluded that advertising and promotion were unlikely to make financial sense if they served only brand-share function (Tye, Warner, Glantz 1987). Fewer than 10 percent of smokers change brands in any given year (Marketing and Media Decisions 1985). The current advertising and promotion expenditures of the domestic cigarette companies are greater than the sales revenues represented by those brand switchers (Popper 1986b). Furthermore, two companies, Phillip Morris and R.J. Reynolds, control more than two-thirds of the American cigarette market. Much of the limited brand switching that occurs is necessarily between brands of the same company. Based on such observations, it has been argued that the behavior of the tobacco industry itself supports the conclusion that the industry perceives a positive association between advertising and consumption (Warner 1986b).

Much of the empirically based evidence pertaining to the effects of advertising comes from international comparisons. Support for the view that cigarette advertising serves to expand the market comes from the observation that in several countries in which cigarettes are a state monopoly, the state enterprise advertises. If advertising served solely to redistribute smokers among brands, there would be no reason to advertise in such countries (Chapman and Vermeer 1985). Support for the view that advertising does not influence consumption levels has been sought in the experience of countries that have never permitted cigarette advertising, such as the Communist bloc countries, where cigarette consumption is high and has grown rapidly in the absence of advertising (Waterson 1983; Boddewyn 1986). The relevance of this observation has been challenged, however, on the ground that the issue is not whether advertising is the only, or even the most important, determinant of smoking trends. The relevant question, which these comparisons of countries do not and cannot address, is whether the rate of increase in tobacco consumption would have been affected by advertising (Warner et al. 1986a).

The variety of potential indirect influences of tobacco advertising and promotion reflect the magnitude and diversity of expenditures (Taylor 1984; Warner 1986b; FTC 1988b). A substantial body of evidence exists only in one case: the relationship between cigarette advertising revenues and coverage of smoking and health in the media, especially in magazines. The public health relevance of this relationship is based on the assumption that discussion of the hazards of tobacco alters public knowledge of and opinions about tobacco use. Through a complex set of social and individual response mechanisms, knowledge and attitude changes evolve into reductions in smoking. Thus, if the media have restricted coverage of the hazards of tobacco for fear of losing advertising revenue, the public has been deprived of information that might have improved knowledge or changed social opinion more rapidly or extensively, thereby leading to reduced levels of smoking and the associated disease toll (Warner 1985).

Most of the evidence linking the level of cigarette advertising revenue to the degree of media coverage of smoking and health has been developed recently; some of it, however, dates back half a century (Seldes 1938). Formal analytical studies of the phenomenon that control for potential confounding influences are limited in number;

TABLE 7.—Cigarette advertising revenues and coverage of smoking and health, selected magazines

	Years surveyed	Percentage of health articles discussing smoking	Cigarette advertising revenue as percentage of total ad revenue
Reader's Digest	1965–81	34.4	0
Good Housekeeping	1965–81	22.1	0
Prevention	1967–78	15.4	0
Vogue	1965–81	11.7	5.1
U.S. News and World Report	1965–81	7.4	14.6
Ladies' Home Journal	1968–81	7.1	16.3
Time	1965–81	6.9	17.2
Harper's Bazaar	1968–81	4.5	7.1
McCall's	1969–80	4.5	15.1
Newsweek	1969–81	2.9	15.8
Cosmopolitan	1971–81	2.3	9.4
Mademoiselle	1966–81	1.9	7.3
Ms.	1972–81	0	14.8
Redbook	1970–81	0	16.1

NOTE: Magazines listed included a minimum of 60 health-related articles in the years surveyed.
SOURCE: Dale (1982).

existing analyses are based primarily on correlations between magazines' cigarette advertising revenues and their coverage of smoking and health (Whelan et al. 1981; Dale 1982; Jacobson and Amos 1985; White and Whelan 1986; Warner and Goldenhar, in press).

One of these studies found that between 1967 and 1979, there were a total of 8 feature articles that seriously discussed quitting or the dangers of smoking in 10 prominent women's magazines that carry cigarette advertisements. Of the 10 magazines, 4 carried no antismoking articles in the entire 12-year period. By contrast, 2 prominent magazines that do not accept cigarette advertising, *Good Housekeeping* and *Seventeen*, ran 11 and 5 such articles, respectively. On average, the magazines that accepted cigarette advertisements published from 12 to 63 times as many articles on individual topics such as nutrition, contraception, stress, and mental health as they did on the antismoking theme. The ratio was much smaller for *Good Housekeeping* and *Seventeen* (Whelan et al. 1981). In another empirical study by the same organization, researchers examined coverage of smoking and health in prominent magazines recognized for their general interest in health matters. Publications selected for study published at least 60 articles on health topics between 1965 and 1981. The proportion of health articles devoted to smoking was compared with the proportion of advertising revenues derived from cigarette advertisements. Only four of the magazines had as many as 10 percent of their health-related articles devoted to smoking. Of these four, the top three did not accept cigarette advertising. The fourth had the lowest proportionate share of advertising income derived from cigarette ads of the remaining magazines. There was no substantial correlation between the volume of advertisements and smoking coverage within the remaining magazines (Dale 1982; Table 7).

A more recent study compared changes over time in coverage of smoking and health by 39 national magazines that published cigarette ads and 11 magazines that did not. The study also compared these changes with those found in coverage by *The New York Times*, and *The Christian Science Monitor*, as well as with the collective cigarette advertising revenue of the first group of magazines. The two newspapers were selected as measures of the "inherent newsworthiness" of the subject. Comparing two 11-year periods, one preceding the broadcast media ban on cigarette advertising (1959–69) and the other following it (1973–83), the authors found that (1) the magazines that included cigarette ads experienced an increase in real cigarette ad revenues, controlling for inflation, of 727 percent (cigarette ads rose from 1.9 percent of total magazine ad revenues in the first period to 11.0 percent in the second); (2) these magazines decreased their coverage of smoking and health by 65 percent, while the magazines that did not carry cigarette ads decreased their coverage by 29 percent, a statistically significant difference; (3) the two newspapers' coverage fell by 21 percent (the *Times*, which accepts cigarette advertising) and 3 percent (the *Monitor*, which accepts no cigarette advertising). Both decreases were significantly smaller than that of the magazines that included cigarette ads, but not significantly different from that of the magazines not including cigarette ads (Warner and Goldenhar, in press).

In addition to these correlational studies, there is extensive anecdotal evidence about the influence of advertising revenues on magazine coverage of smoking and health. Writers, editors, and publishers have described numerous instances of purported cen-

sorship attributed directly to publications' fears of alienating cigarette advertisers (Smith 1978; Whelan et al. 1981; Bagdikian 1983; Warner 1985; Okie 1985; Magnus 1986). Although the anecdotal evidence pertains mainly to magazines, it includes other media, including newspapers (ABC News 1983; Gitlitz 1983) and the broadcast media prior to the removal of cigarette ads (Bagdikian 1983). Furthermore, there are allegations of advertising-induced censorship related to other tobacco products, such as smokeless tobacco (Connolly 1986).

Federal Advertising Restrictions

The Federal agency responsible for regulating the advertising of tobacco and other consumer products is the FTC. The Federal Trade Commission Act of 1914, amended in 1938, empowers the FTC "to prevent persons, partnerships, or corporations . . . from using unfair or deceptive acts or practices in commerce" (Wagner 1971b).

The FTC's efforts to regulate unsubstantiated claims in tobacco advertisements began well before 1964. From the 1930s through the 1950s, many cigarette advertisements made claims that smoking the advertised brand improved health or at least offered health benefits compared with smoking other brands (Neuberger 1963; Tye 1986). Between 1938 and 1968, the Commission invoked its adjudicatory (quasi-judicial) authority 25 times with respect to cigarette advertising (Fritschler 1969). Between 1945 and 1960, the Commission completed seven formal cease-and-desist order proceedings against cigarette manufacturers involving medical or health claims made in advertising (FTC 1964b). For example, according to Wagner (1971b):

> A 1945 complaint lodged against R.L. Swain Tobacco prohibited representations that respondent's cigarettes were endorsed or approved by the medical profession; that they would soothe the nose, throat, or mouth; that they contained no irritating properties; and that they produced little or no stain on fingers and teeth. In 1950, the FTC moved successfully to curb R.J. Reynolds Tobacco Company from claiming that Camels aided digestion; did not impair the wind or physical condition of athletes; would never harm or irritate the throat or leave an aftertaste; were soothing, restful, and comforting to the nerves; and contained less nicotine than any of the four other largest selling brands. A 1942 complaint against Brown and Williamson Tobacco Company prohibited claims that Kools would keep the head clear in winter and give extra protection against or cure colds.

Because the adjudicatory judgments obtained by the FTC applied only to the parties to the case, other cigarette companies engaging in the same or similar deceptive acts were not immediately affected. Fritschler (1969) concluded that "in the case of cigarette advertising, the Commission found itself putting out brush fires of deception while the inferno raged on." The FTC first promulgated industrywide cigarette advertising guidelines in September 1955. These guidelines were "for the use of its staff in the evaluation of cigarette advertising" (FTC 1964b), as opposed to formal trade regulation rules, which would have the force of law. The guidelines, among other things, sought to prohibit: (1) representations in cigarette advertising of medical approval of cigarette smoking in general or of smoking a particular brand; (2) advertising claims that referred either to the presence or absence of any physical effects relating to cigarette smoking in general or smoking a particular brand, or relating to filters or filtration; and (3) unsubstantiated advertising claims relating to tar and nicotine levels.

In June 1962, the FTC announced the adoption of general rule-making procedures, which it used on three occasions the following year to regulate various nontobacco products (Fritschler 1969). As noted in the section on warning labels, 11 days after the release of the 1964 Report of the Surgeon General's Advisory Committee on Smoking and Health, the FTC announced three proposed trade regulations on cigarette labeling and advertising (FTC 1964a). Rule 2 would have strictly regulated the imagery and copy of cigarette ads in order to prohibit explicit or implicit health claims. However, the proposed rule was vacated (FTC 1965) after the Federal Cigarette Labeling and Advertising Act of 1965 (Public Law 89-92) was signed into law. In the meantime, in April 1964, the major U.S. cigarette manufacturers had adopted their own Cigarette Advertising Code, intended to apply to broadcast advertising. It prohibited making health claims in advertisements and directing advertising to young people. Cigarette manufacturers agreed to avoid ads that represented "cigarette smoking as essential to social prominence, distinction, success, or sexual attraction" and to avoid showing smokers engaged in activities "requiring stamina or athletic conditioning beyond that of normal recreation" (Ernster 1988; Friedman 1975).

In its 1968 report to Congress, the FTC recommended a ban on cigarette advertising on television and radio (FTC 1968). In February 1969, the FCC announced a proposed trade regulation rule that would have banned cigarette commercials from television and radio (FCC 1969). On July 8, 1969, the National Association of Broadcasters announced a plan to phase out all cigarette advertising on the air over a 3 year period beginning January 1, 1970 (Whiteside 1971). At a Senate subcommittee hearing 2 weeks later, the cigarette industry offered voluntarily to end all cigarette advertising on television and radio by September 1970, provided that Congress would grant the companies immunity from antitrust laws to allow them to act in concert (Whiteside 1971). Ultimately, Congress approved the Public Health Cigarette Smoking Act of 1969, which was signed into law on April 1, 1970. The Act prohibited cigarette advertising in the broadcast media effective January 2, 1971.

Subsequent Federal legislation extended the ban on advertisements in the broadcast media to little cigars and to smokeless tobacco products. In September 1973, the Little Cigar Act of 1973 (Public Law 93-109) banned broadcast advertising of "little cigars," defined as "any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco . . . as to which one thousand units weigh not more than three pounds." Over a decade later, smokeless tobacco advertising in the broadcast media was banned by the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Public Law 99-252). The ban took effect on August 27, 1986.

In recent years, the FTC has again had its attention drawn to the content of print advertising. As discussed in a prior section, the FTC successfully obtained on injunction against one manufacturer for incorrectly stating the tar yield of one cigarette brand, Barclay, in packaging and advertising (*FTC* v. *Brown and Williamson* 1983). In addition, the Tobacco Institute (Tobacco Institute 1983) and R.J. Reynolds have advertised in national print media with statements that challenged the link between smoking (active and involuntary) and disease.

During 1985, RJR published an advertisement (R.J. Reynolds 1985a) entitled "Of Cigarettes and Science," which discussed, among other things, the procedures that scientists use to test scientific hypotheses, and presented information about the Multiple Risk Factor Intervention Trial (MRFIT) (MRFIT Research Group 1982). In April 1985, the American Heart Association, the American Cancer Society, and the American Lung Association, acting through the Coalition on Smoking OR Health, petitioned the FTC with regard to this ad. On June 16, 1986, the FTC issued a complaint alleging that the advertisement falsely and misleadingly represented that the purpose of the MRFIT study was to determine whether heart disease is caused by smoking, that the MRFIT study provides credible scientific evidence that smoking is not as hazardous as the public has been led to believe, and that the MRFIT study tends to refute the theory that smoking causes coronary heart disease. The complaint also charged that in light of the representations made in the ad, the advertisement failed to disclose certain material facts about the study, specifically, that the men in the study who quit smoking had a significantly lower rate of coronary heart disease than men who continued to smoke and that the study results are consistent with previous studies showing that those who quit smoking experience a substantial decrease in coronary heart disease mortality.

On June 26, 1986, RJR moved to dismiss the complaint on the grounds that the advertisement was noncommercial speech that was fully protected by the first amendment, even if it was false and deceptive. An Administrative Law Judge agreed and dismissed the complaint on August 4, 1986. In an order and decision dated March 4, 1988, the FTC reversed the judge's order, holding that "the content of the Reynolds advertisement includes words and messages that are characteristic of commercial speech." RJR appealed this decision to the U.S. Court of Appeals of the District of Columbia. Trial on this matter is set for January 30, 1989. (Also see White 1987.) (As of October 1988, all documents related to this administrative matter were maintained in FTC Docket No. 9206.)

State and Local Advertising Restrictions

The preemption clause of the Public Health Cigarette Smoking Act of 1969 (Public Law 91-222) prevents States from regulating or prohibiting cigarette advertising or promotion for health-related reasons. The Act defines "State" to include "any political division of any State." This preemption was left intact by subsequent congressional legislation, including the 1984 Comprehensive Smoking Education Act (Public Law 98-474), which amended other sections of the original law, such as the requirement for warning labels. The stated purpose of the preemption was "to avoid the chaos created by a multiplicity of conflicting regulations" (U.S. Senate 1970). There is no preemption of State and local advertising restrictions for smokeless tobacco in the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Public Law 99-252), although the Act does prevent States from requiring additional warning labels on smokeless tobacco products or advertisements.

States and localities may have some jurisdiction in regulating the location of advertising when the medium is not national in scope. For example, cities may be able to prohibit tobacco advertising on their transit systems. The extent of such jurisdiction is not clear from the preemption clause itself, and there is no body of case law. Several States and local jurisdictions have adopted statutes or regulations banning certain types of purely local cigarette advertising or promotion. The most common restrictions, described below, are bans on transit advertising and on the distribution of free cigarette samples. In some cases, these regulations apply to all tobacco products. None of these policies has been challenged in court.

The strongest State law has been adopted in Utah, where tobacco advertisements are banned on "any billboard, streetcar sign, streetcar, bus, placard, or on any other object or place of display" (Utah 1978). Bans on tobacco advertising in public transit systems have been adopted in several cities. In August 1984, the Board of Directors of the Regional Transportation District in the Denver, CO, area voted to prohibit transit advertising for tobacco products and alcoholic beverages on its buses and in its two downtown transit centers (Schmitz 1984). Similarly, the Massachusetts Bay Transportation Authority (MBTA) in the Boston metropolitan area adopted an administrative policy prohibiting tobacco advertisements on buses and trollies and in stations, effective October 1986 (Boston Herald 1986). The town of Amherst, MA, enacted a bylaw prohibiting tobacco advertising "on or in any bus, taxicab, or any other vehicle used for public transportation" within the town in 1987 (Amherst 1987). The Bay Area Rapid Transit (BART) District in the San Francisco Bay Area of California has eliminated the advertising of tobacco products and alcoholic beverages from its trains and stations. BART covers San Francisco, Alameda, and Contra Costa counties. Based on a vote of the BART Board of Directors, the policy was phased in between May 1987 and May 1988 to allow existing advertising contracts to expire (Collier 1987).

In Minnesota, the Metropolitan Sports Commission voted in January 1988 to end tobacco advertising in Minneapolis' professional sports stadium, the Hubert H. Humphrey Metrodome. The new policy will take effect after expiration of the existing 10-year cigarette advertising contract in 1992. Cigarette advertising revenue under this contract has been approximately 300,000 dollars per year (Marty 1987).

Cities and States have also acted to restrict or ban the distribution of free tobacco product samples, a major form of tobacco promotion. At least 14 cities have banned all distribution of free samples; these include Minneapolis, St. Paul, and Albert Lea, MN; Boston, Newton, Cambridge, Amherst, Somerville, and Worcester, MA; Honolulu, HI; Bowie, MD; Atlanta, GA (Davis and Jason 1988); Austin, TX (Austin 1988); and Cincinnati, OH (Smith 1988). The earliest of these ordinances were adopted by Minneapolis and St. Paul in 1979. Two States (Utah and Minnesota) have prohibited the distribution of free smokeless tobacco samples (Davis and Jason 1988). A larger number of States and cities have banned the distribution of free samples to minors, although the success in enforcing these selective sampling restrictions is uncertain. (See Part III, section on minors' access to tobacco.)

Effects of Government Actions to Restrict Tobacco Advertising

In general, there has been little formal evaluation of the impact of government actions concerning tobacco advertising and promotion.

The relationship between government policy and tobacco consumption has been studied only in the case of the Fairness Doctrine and the subsequent ban on cigarette advertising in the broadcast media. Evaluation of the effectiveness of the broadcast ad ban is complicated by three factors. First, the ban removed the obligation of stations to air the Fairness Doctrine PSAs. To the extent that the PSAs were effective in discouraging smoking, their disappearance serves to undermine any positive effect from the broadcast advertising ban. Second, the savings from reduced advertising in the short term may have allowed the cigarette companies to hold down the price of cigarettes temporarily, which in turn would have served to increase sales (Schneider, Klein, Murphy 1981). Third, after several years of reduced advertising expenditures following the broadcast advertising ban, the cigarette industry dramatically increased expenditures for print media advertising (especially billboards) and for promotional activities (Warner 1986b; Popper 1986a; Davis 1987). To the extent that cigarette advertising in these media and other promotional activities may increase total sales, this also may have served to decrease the net effectiveness of the broadcast ban.

As mentioned in the previous section on the broadcast media, per capita cigarette sales decreased by 6.9 percent during the 3-year period (1968–70) when PSAs were mandated by the Fairness Doctrine, but increased by 4.1 percent during the 3-year period (1971–73) following the end of Fairness Doctrine PSAs and the beginning of the broadcast advertising ban. This suggests that any beneficial effects of the broadcast ad ban may have been outweighed by disappearance of the PSAs, at least in the short run. In a regression analysis of the effects of both cigarette ads and the Fairness Doctrine PSAs, Hamilton (1972) found that the antismoking PSAs retarded per capita cigarette consumption far more than the cigarette ads boosted it. In an analysis taking into account cigarette price, advertising, and counteradvertising, Schneider, Klein, and Murphy (1981) concluded that the net effect of the broadcast advertising ban was to increase cigarette consumption. However, Hamilton (1972) and Warner (1979) both suggested that the net effect of the two policies may have been to increase cigarette consumption in the short term, although they cautioned that the net effect in the long term is difficult to gauge.

It is difficult to evaluate the effect on smoking behavior of FTC actions to regulate the content of advertising. FTC rulings did block misleading advertising, but as the MRFIT case demonstrates, the regulatory process is slow. Delays inherent in the regulatory process limit the impact of the ultimate decisions.

The effect on smoking behavior of State and local restrictions on cigarette advertising and promotion is not known because no evaluations have been conducted. No data are available regarding the effectiveness of sampling bans in reducing the availability of cigarettes. Even if such policies have no direct influence on smoking, however, these restrictions (and the publicity surrounding their enactment) may promote increased public awareness of the issue of smoking and health and may serve as important symbols of social disapproval of tobacco use.

More is known about the financial impact of local advertising bans on transit authorities, for whom the bans result in lost advertising revenue. Information from two of the four jurisdictions that have enacted transit tobacco advertising bans indicates that transit authorities have been able to recoup lost advertising revenue in a relatively short time. Cigarette advertisements accounted for approximately 800,000 dollars, or 36 percent of MBTA's 2.2 million dollars in advertising revenue in 1985 (Boston Herald 1986; AdEast 1986). According to MBTA, it regained its previous (1985) level of advertising revenue in 1987 (Grealy 1988). Similarly, in San Francisco, BART officials reported only a minimal, temporary advertising revenue loss during the year of implementation (Healy 1988). The effect, if any, of transit and sampling bans on national advertising and promotional expenditures by tobacco companies is unknown.

Policies Under Consideration

Currently, as reviewed above, the Federal Government bans tobacco advertising in the broadcast media and regulates the content of tobacco advertising by FTC actions and by the requirement that warning labels appear on cigarette and smokeless tobacco advertisements. A number of proposals that would further restrict tobacco advertising and promotion are now under consideration by the public health community, State legislatures, and Congress. Some of the proposals are mutually exclusive and should be considered as alternatives, whereas others could coexist. Nationally prominent proposals are mentioned here. Their major strengths and weaknesses are considered in detail elsewhere (Warner et al. 1986a).

One group of proposals would have the government more stringently regulate the imagery and content of advertising, either by developing and enforcing an advertising and promotion code or by severely restricting the permissible format of advertisements; the latter is so-called "tombstone advertising." With the former approach, a code defining permissible imagery in advertisements and a mechanism to ensure monitoring of and compliance with the code would have to be developed and implemented. For such a code to be effective, it would have to encompass both advertising and nonadvertising forms of promotion, the latter of which now represents over half of total cigarette advertising and promotional expenditures (FTC 1988b). The advantages and disadvantages of such a code have been discussed (Taylor 1984; FTC 1981b; Warner et al. 1986a). An alternative proposal would limit the imagery and graphics of tobacco advertisements to so-called "tombstone advertising," with no models, slogans, scenes, or colors permitted. The tombstone proposal does not address other forms of promotion. The merits of this proposal are considered elsewhere (e.g., FTC 1981b; Warner et al. 1986a).

A second set of proposals would restrict the availability of tobacco advertising and promotion. These range from a total ban on all advertising and promotion to more limited policies that would prohibit advertising in certain media; prohibit certain promotional techniques, such as the distribution of free tobacco product samples (Davis and Jason 1988); or ban advertising and promotion accessible to children. Currently, the most widely discussed proposal is to ban all forms of advertising and promotion for all tobacco products. The proposal's prominence reflects its advocacy by organizations such as the American Medical Association, American Cancer Society, American Heart Association, American Lung Association, and American Public Health Association, and the fact that it has been the basis of several bills before Congress (e.g., H.R. 1272, 100th Congress, 1st Session) and the subject of congressional hearings (Subcommittee

on Health and the Environment 1986). A total ban on tobacco advertising and promotion was enacted in Canada in June 1988, scheduled to go into effect in stages beginning January 1, 1989 (Burns 1988; House of Commons of Canada 1987).

The ad ban proposal raises a wide range of complex issues whose full discussion is beyond the scope of this Report and has been covered elsewhere (Warner et al. 1986a). The most visible and fundamental is the question of commercial free speech: What is the right of the producers of a legal product to advertise and what is the right of consumers to have access through advertisements to information on legal products? (White 1984; Miller 1985; Weil 1986; Neuborne 1986; Reimer 1986; Covington and Burling 1986; Blasi and Monaghan 1986, 1987). Among the more pragmatic issues is concern that withdrawal of cigarette advertising and tobacco company sponsorship might jeopardize the existence of some publications, advertising agencies, and sports and arts institutions (Warner 1986b). From a public health perspective, the central issue is one of effectiveness: Would an advertising ban in fact achieve its desired end—reductions in smoking prevalence? If so, would a less restrictive policy achieve the same effect without raising first amendment concerns?

A third set of proposals seeks to neutralize the influence of advertising by mandating the publication or broadcast of antitobacco messages by the media. An example of this so-called "counteradvertising" was the FCC requirement for antismoking PSAs in the broadcast media under the Fairness Doctrine from 1967 through 1970; these were discussed in a previous section. The apparent effectiveness of these PSAs led to proposals for the Government to establish a source of substantial and continuous funding for an antitobacco advertising campaign (Warner 1986b). Several mechanisms have been proposed to raise the resources for a paid campaign. One would require tobacco advertisers to pay for an amount of counteradvertising space that is equivalent to or some fraction of what they devote to protobacco advertising. Another proposal would earmark a proportion of the Federal cigarette excise tax to fund a paid counteradvertising campaign (Warner 1986c).

A fourth approach seeks to create an economic disincentive for tobacco manufacturers to advertise by eliminating their ability to deduct tobacco advertising and promotional expenditures as business expenses for income tax purposes. This proposal has also been put into the form of congressional legislation (S. 446, 100th Congress, 1st Session, and H.R. 1563, 100th Congress, 1st Session) and its merit have been debated in congressional hearings (Weil 1986; Stark 1986; Bradley 1986).

The majority of proposals to restrict tobacco advertising and promotion are designed for action at the Federal level, because current Federal legislation preempts States from regulating cigarette advertising. Repeal of the Federal preemption clause has been proposed as a means of encouraging State and local regulatory actions (Bailey 1986; Warner et al. 1986a).

Summary

There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption. However, that analysis also concluded that the extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable (Warner 1986b). This influence relative to other influences on tobacco use, such as peer pressure and role models, is uncertain. Although its effects are not wholly predictable, regulation of advertising and promotion is likely to be a prominent arena for tobacco policy debate in the 1990s. In part this reflects the high visibility of advertising and promotion; in part it reflects the perception that these activities constitute an influence on tobacco consumption that is amenable to government action.

Reporting Requirements

Current Federal legislation mandates that DHHS and the FTC issue reports to Congress on tobacco-related subjects at regular intervals. By virtue of the extensive media coverage and wide dissemination of many of these reports, they often provide information not only to Congress but also to the general public, journalists, other policymakers, health professionals, and researchers.

Surgeon General's Reports

As discussed in Chapter 1, the Federal Cigarette Labeling Act of 1965 and the Public Health Cigarette Smoking Act of 1969 require that the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services) transmit an annual report to Congress on current information about the health consequences of smoking and such recommendations for legislation as he or she may deem appropriate. This Report is the 20th in the series of reports on the health consequences of smoking, generally referred to as Surgeon Generals' Reports, which began with the 1964 Report of the Surgeon General's Advisory Committee on Smoking and Health. The 1986 Report of the Advisory Committee to the Surgeon General, *The Health Consequences of Using Smokeless Tobacco* (US DHHS 1986c), was not produced in response to a specific legislative mandate.

Biennial Status Reports

The Comprehensive Smoking Education Act of 1984 requires the Secretary of Health and Human Services to transmit a report to Congress biennially containing the following information about smoking control efforts: (1) an assessment of Federal activities to inform the public; (2) a description of the extent of public knowledge about the health consequences of smoking; (3) a report of the activities of the Federal Interagency Committee on Smoking and Health, the research and educational activities of DHHS relating to smoking, and State and local laws relating to the use and consumption of cigarettes; (4) information on private actions taken to reduce the effects of smoking on

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Smoking and Health in the Americas

A 1992 Report of the Surgeon General, in collaboration with the Pan American Health Organization

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Centers for Disease Control
National Center for Chronic Disease Prevention and Health Promotion
Office on Smoking and Health

PAN AMERICAN HEALTH ORGANIZATION
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This report was prepared by the Department of Health and Human Services and under the general direction of the Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

William L. Roper, M.D., M.P.H., Director, Centers for Disease Control, Atlanta, Georgia.

Jeffrey P. Koplan, M.D., M.P.H., Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Virginia S. Bales, M.P.H., Deputy Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Michael P. Eriksen., Sc.D., Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

The editors of the report were

Richard B. Rothenberg, M.D., M.P.H., Senior Scientific Editor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Gwendolyn A. Ingraham, Managing Editor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Barbara Sajor Gray, M.Ln., Senior Writer-Editor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Judith Navarro, Ph.D., Consulting Editor, Chief, Editorial Services, Pan American Health Organization, Washington, D.C.

Senior contributing editors were

Aloyzio Achutti, M.D., Professor, Discipline of Promotion and Protection of Health, School of Medicine, Federal University of Rio Grande do Sul, Pôrto Alegre, Brazil.

Neil E. Collishaw, M.A., Chief, Tobacco Products Section, Environmental Health Directorate, Health and Welfare Canada, Ottawa, Canada.

Ronald M. Davis, M.D., Chief Medical Officer, Michigan Department of Public Health, Lansing, Michigan.

Eric Nicholls, M.D., Regional Advisor in Chronic Diseases, Pan American Health Organization, Washington, D.C.

Thomas E. Novotny, M.D., M.P.H., Liaison Officer, School of Public Health, University of California, Berkeley, California.

Sylvia C. Robles, M.D., Department of Public Health, School of Medicine, University of Costa Rica, San Jose, Costa Rica.

Margarita Ronderos Torres, M.D., M.Sc., Head of Epidemiology and Prevention Division, National Cancer Institute, Bogotá, Colombia.

Contributing authors were

Jorge Balán, Ph.D., Director, Center for the Study of State and Society, Buenos Aires, Argentina.

Luis G. Escobedo, M.D., M.P.H., Medical Epidemiologist, Surveillance and Research Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Eugene M. Lewit, Ph.D., Director of Research and Grants, Economics, David and Lucile Packard Foundation, Los Altos, California.

Thomas E. Novotny, M.D., M.P.H., Liaison Officer, School of Public Health, University of California, Berkeley, California.

Ruth Roemer, J.D., Adjunct Professor, School of Public Health, University of California, Los Angeles, California.

Philip L. Shepherd, Ph.D., Associate Professor, Department of Marketing and Environment, Florida International University, Miami, Florida.

Robert Sobel, Ph.D., Professor of Business History, Hofstra University, Hempstead, New York.

Kenneth E. Stanley, Ph.D., Department of Biostatistics, Harvard School of Public Health, Boston, Massachusetts.

Johannes Wilbert, Ph.D., Emeritus Professor of Anthropology, University of California, Los Angeles, Pacific Palisades, California.

Reviewers were

Francisco López Antuñano, M.D., Director, Health Program Development, Pan American Health Organization, Washington, D.C.

Elías Anzola, M.D., Medical Officer, Health Promotion Program, Pan American Health Organization, Washington, D.C.

Howard Barnum, Ph.D., Senior Economist, The World Bank, Washington, D.C.

Glen Bennett, M.P.H., Coordinator, Smoking Education Program, Health Education Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, Maryland.

Mónica Bolis, Advisor on Legislation, Health Policies Development Program, Pan American Health Organization, Washington, D.C.

A. David Brandling-Bennett, M.D., Program Coordinator, Health Situation and Trend Assessment Program, Pan American Health Organization, Washington, D.C.

Allan M. Brandt, Ph.D., Associate Professor, Department of Social Medicine, School of Medicine, University of North Carolina, Chapel Hill, North Carolina.

David M. Burns, M.D., Professor of Medicine, University of California, San Diego Medical Center, San Diego, California.

Peter W. Burr, Agricultural Economist, Tobacco, Cotton, and Seeds Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C.

Juan Chackiel, Chief of Demography, Latin American Center for Demography, CELADE, Santiago, Chile.

Claire Chollat-Traquet, Ph.D., Scientist, Tobacco or Health Program, World Health Organization, Geneva, Switzerland.

Gregory N. Connolly, D.M.D., M.P.H., Director, Office for Nonsmoking and Health, Massachusetts Department of Public Health, Boston, Massachusetts.

Joe H. Davis, M.D., M.P.H., Assistant Director for International Health, Centers for Disease Control, Atlanta, Georgia.

Ronald M. Davis, M.D., Chief Medical Officer, Michigan Department of Public Health, Lansing, Michigan.

Allan C. Erickson, Senior Vice President for Cancer Control, American Cancer Society, Atlanta, Georgia.

Sev S. Fluss, M.S., Chief, Health Legislation, World Health Organization, Geneva, Switzerland.

William H. Foege, M.D., M.P.H., Executive Director, Carter Center of Emory University, Atlanta, Georgia.

Clark W. Heath, Jr., M.D., Vice President of Epidemiology and Statistics, American Cancer Society, Atlanta, Georgia.

Thomas A. Hodgson, Ph.D., Chief Economist, Office of Analysis and Epidemiology, National Center for Health Statistics, Centers for Disease Control, Hyattsville, Maryland.

Bo Holmstedt, M.D., Director, Department of Toxicology, Karolinska Institute, Stockholm, Sweden.

Dean T. Jamison, Ph.D., Department of Public Health and Policy, London School of Hygiene and Tropical Medicine, London, England.

C. Everett Koop, M.D., Sc.D., Surgeon General, U.S. Public Health Service, 1981–1989, Bethesda, Maryland.

Alan Lopez, Ph.D., Statistician/Demographer, Global Health Situation Assessment and Projections, World Health Organization, Geneva, Switzerland.

J. Michael McGinnis, M.D., Director, Office of Disease Prevention and Health Promotion, Department of Health and Human Services, Washington, D.C.

Anthony R. Measham, M.D., Chief, Population, Health, and Nutrition Division, The World Bank, Washington, D.C.

Anthony B. Miller, M.B., FRC, Professor, Department of Preventive Medicine and Biostatistics, Faculty of Medicine, University of Toronto, Ontario, Canada.

W. Henry Mosley, M.D., M.P.H., Professor and Chairman, Department of Population Dynamics, Johns Hopkins University, School of Hygiene and Public Health, Baltimore, Maryland.

Eric Nicholls, M.D., Regional Advisor in Chronic Diseases, Pan American Health Organization, Washington, D.C.

Donald Maxwell Parkin, Ph.D., Chief, Unit of Descriptive Epidemiology, International Agency for Research on Cancer, World Health Organization, Lyon, France.

Mark A. Pertschuk, J.D., Executive Director, Americans for Nonsmokers' Rights, Berkeley, California.

Michael Pertschuk, J.D., Codirector, The Advocacy Institute, Washington, D.C.

John M. Pinney, Chief Executive Officer, Cooperate Health Policies Group, Washington, D.C.

Ranate Plaut, M.D., Epidemiologist, Health Situation and Trend Assessment Program, Pan American Health Organization, Washington, D.C.

Gerardo Reichel-Dolmatoff, Ph.D., Adjunct Professor, University of California, Los Angeles, California.

Helena Restrepo, M.D., Coordinator, Health Promotion Program, Pan American Health Organization, Washington, D.C.

Laurent Rivier, D.Sc., Director, Drug Analysis Unit, Institute of Forensic Medicine, University of Lausanne, Switzerland.

Thomas C. Schelling, Ph.D., Distinguished Professor of Economics and Public Affairs, Department of Economics, University of Maryland, College Park, Maryland.

Richard Evans Schultes, Ph.D., Professor Emeritus and former Director, Botanical Museum, Harvard University, Cambridge, Massachusetts.

Donald R. Shopland, Coordinator for Smoking and Tobacco Control Program, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Jesse L. Steinfeld, M.D., Surgeon General, U.S. Public Health Service, 1969–1973, San Diego, California.

Daniel A. Sumner, Ph.D., Deputy Assistant Secretary for Economics, Office of the Assistant Secretary for Economics, U.S. Department of Agriculture, Washington, D.C.

Cesar A. Vieira, M.D., Coordinator, Health Policies Development Program, Pan American Health Organization, Washington, D.C.

Kenneth E. Warner, Ph.D., Professor of Public Health Policy, School of Public Health, University of Michigan, Ann Arbor, Michigan.

Ernst L. Wynder, M.D., President, American Health Foundation, New York, New York.

Other contributors were

Patricia Ardila, Bilingual Editor, The Circle, Inc., McLean, Virginia.

Cathy D. Arney, Graphic Artist, The Circle, Inc., McLean, Virginia.

John Artis, Courier, The Circle, Inc., McLean, Virginia.

Carol A. Bean, Ph.D., Consultant, Artemis Technologies, Inc., Springfield, Virginia.

Nowell D. Berreth, Writer-Editor, Public Information Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Byron Breedlove, M.A., Assistant Branch Chief, Editorial Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Kelly L. Byrne, Desktop Publishing/Word Processing Specialist, The Circle, Inc., McLean, Virginia.

María Luisa Clark, M.D., Editor, Editorial Services, Pan American Health Organization, Washington, D.C.

Gail A. Cruse, Technical Information Specialist, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Alice A. DeVierno, M.L.S., Manager, Technical Information Center, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Sue T. Dixon, Secretary, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Seth L. Emont, Ph.D., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Christine S. Fralish, Chief, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Gary A. Giovino, Ph.D., Chief, Epidemiology Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Betty H. Haithcock, Editorial Assistant, Editorial Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Gwendolyn A. Harvey, Program Analyst, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Susan A. Hawk, Ed.M., M.S., Program Analyst, Office of the Director, National Center for Health Statistics, Centers for Disease Control, Hyattsville, Maryland.

Phyllis E. Hechtman, Editorial Assistant, The Circle, Inc., McLean, Virginia.

John Helsel, Senior Systems Analyst, The Circle, Inc., McLean, Virginia.

Timothy K. Hensley, Technical Publications Writer-Editor, Public Information Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Frederick L. Hull, Ph.D., Writer-Editor, Editorial Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Delle B. Kelley, Technical Information Specialist, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Mescal J. Knighton, Writer-Editor, Editorial Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Gayle Lloyd, M.A., Editor, Technical Information Center, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Peggy Lytton, Editor, The Circle, Inc., McLean, Virginia.

Patricia McCarty, Secretary, Public Information Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Rachel R. Merritt, Secretary, Technical Information Center, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Jennifer A. Michaels, M.L.S., Technical Information Specialist, Technical Information Center, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Reba A. Norman, M.L.M., Technical Information Specialist, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Cathie M. O'Donnell, Project Director, The Circle, Inc., McLean, Virginia.

Richard Ray, Director of Computer Services, The Circle, Inc., McLean, Virginia.

Flor M. Rojas-Jaber, Editorial Assistant, Editorial Services, Pan American Health Organization, Washington, D.C.

Carlos Rossel, Publications Specialist, Editorial Services, Pan American Health Organization, Washington, D.C.

Beverly Schwartz, M.S., Special Advisor, Public Information Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Rita Shelton, Senior Editor, Editorial Services, Pan American Health Organization, Washington, D.C.

Janete da Silva, Health Manpower Development Program, Pan American Health Organization, Washington, D.C.

Daniel R. Tisch, Director of Publications, The Circle, Inc., McLean, Virginia.

Kymber N. Williams, M.A., Public Information Specialist, Public Information Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia.

Rebecca B. Wolf, M.A., Program Analyst, Office of Program Planning and Evaluation, Centers for Disease Control, Atlanta, Georgia.

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- Bahamas
- Barbados
- Bermuda
- British Virgin Islands
- Cayman Islands
- Dominica
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- Grenada
- Guadeloupe
- Guyana
- Jamaica
- Martinique
- Montserrat
- Netherlands Antilles and Aruba
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Suriname
- Trinidad and Tobago
- Turks and Caicos Islands
- Virgin Islands

North America
- Canada
- United States of America

Data in this report are almost exclusively presented by the above regions. In some instances, however, information is presented separately for the French overseas departments in the Americas (French Guiana, Guadeloupe, and Martinique) and the French territory Saint Pierre and Miquelon, which is in North America. Such instances are noted in the text.

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the Pan American Health Organization or the U.S. Department of Health and Human Services concerning the legal status of any country, territory, city, or area of its authorities, or concerning the delimitation of its frontiers or boundaries.

Chapter 4
Economics of Tobacco Consumption in the Americas

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The costs of smoking-related diseases may be substantial in Brazil, Venezuela, and other countries of the Americas with similar health care systems. The concentration of health care resources for curative care (mainly hospital and fee-for-service physicians' care) in urban, middle- and upper-class areas suggests that these groups consume a disproportionate share of the resources and that smoking-related diseases in these groups are treated aggressively. Smoking-related diseases may also be a more important source of illness in urban, high-income groups than in low-income groups because persons of high income are likely to have a longer, more intense exposure to tobacco use and a longer life span during which smoking-associated diseases may become manifest.

Costs of Smoking-Control Policies and Programs

Knowledge of the dangers of tobacco use and concern for public health have led to the development of smoking-control policies in several countries. (See Chapter 6 for a discussion of control efforts.) Many of these policies—such as restrictions on advertising, warning labels on tobacco packages and in advertisements, restrictions on smoking in public places, and increases in tobacco taxes—use few direct resources, but hidden or intangible costs may be associated with such policies. However, other smoking-control policies—such as public and school education programs, lobbying efforts of smoking-control advocates, and enforcement of restrictions on cigarette sales, advertising, and smoking in public places—use resources that can be considered part of the costs of smoking.

The 1989 report of the Surgeon General presents a detailed analysis of smoking-control activities in the United States (USDHHS 1989). Such activities have recently increased significantly in Canada, where the federal, provincial, and municipal governments have moved to increase tobacco taxes, restrict tobacco advertising, strengthen product warnings, restrict smoking in public places, and help tobacco growers diversify and produce other crops (Collishaw, Kaiserman, Rogers 1990). Except for the program to discourage tobacco cultivation, these policies and programs use few direct resources. These programs reflect, in part, the health advocacy of more than 30 voluntary agencies working individually and collectively (as the Canadian Council on Smoking and Health). Such advocacy activities, although rarely costed-out, consume resources that should be included in estimates of the costs of smoking-control activities.

Through the initiative of local medical leaders and health and education authorities, Brazil's first antismoking campaign began in Pôrto Alegre in 1976 (The World Bank 1989a), spread to other regions, and gained support. In 1985, the Ministry of Health began to develop a national program to control smoking. A recent evaluation by The World Bank (1989a) cited the Brazilian program as a success, although the effects of the program on smoking patterns have not been formally assessed. Health planners from The World Bank found that "public information and personal smoking-cessation services," which cost only 0.2 to 2 percent of per capita gross national product (GNP) for each year of life gained, were the most cost-effective of the preventive and therapeutic interventions reviewed. In contrast, treatment for lung cancer cost 200 percent of per capita GNP per year of life gained. This comparison suggests that public information programs designed to control smoking in Brazil are extremely cost-effective.

Economics of the Tobacco Industry

The Tobacco Sector

Overview

From an economic perspective, the existence of a market for tobacco indicates that tobacco produces some economic benefits, including (1) consumer satisfaction from smoking and other forms of tobacco use and (2) income to producers in excess of the cost of resources for tobacco production. Tobacco production also generates costs—principally the value of resources used to manufacture tobacco products. Confusion about the costs and benefits of tobacco production has been spawned by tobacco industry analysts who label the value of the land, labor, and capital used in tobacco production as a benefit of such production (Tobacco Growers' Information Committee, n.d.;

Agro-economic Services Ltd. and Tabacosmos Ltd. 1987). In fact, because the resources used in tobacco production are not being used for other products, the cost of these resources is the true resource cost of tobacco production. The value of the alternative goods that could be produced with the resources allocated to tobacco production is a measure of the opportunity costs of producing tobacco. A tobacco industry may also generate tax revenues, which are neither benefits nor costs to a society. Rather, taxes are transfers of resource claims from one segment of society to the government for redeployment. Subsidies, such as agricultural support programs, are also transfer payments.

The cultivation of tobacco is prima facie evidence of tobacco's net contribution to growers' incomes. Although tobacco production may be very profitable for the individual producer, it is not necessarily beneficial economically. Subsidies and externalities associated with the production of tobacco may lead to a divergence between what is best for producers and what is best for society as a whole.

Demand for Tobacco

Worldwide consumer demand for tobacco products drives the market for tobacco. In the economist's view, this demand originates from consumer efforts to satisfy exogenously determined wants, which are subject to constraints on consumer resources. Such constraints include limits on time and disposable income. By using information about products and prices, each consumer purchases a mix of goods to maximize consumer satisfaction.

One of tobacco's benefits is the avoidance of nicotine withdrawal symptoms by addicted smokers. This benefit and other pleasurable sensations, called "utility" by economists, may have many components, including status, enjoyment, relaxation, a sense of security, affiliation with other smokers, and perhaps in certain cultures, a sense of being modern or progressive. However difficult these attributes are to measure, economists posit that when consumers choose to spend some of their own limited resources on tobacco, they reveal their preference for purchasing tobacco than for engaging in other forms of consumption or savings.

Price is a measure of the amount of alternative goods forgone to purchase tobacco products. (The effects of variation in cigarette price on tobacco consumption are discussed later in this section.) Tobacco products, as well as most consumer goods, tend to obey the law of downward sloping demand—as price falls (rises), quantity demanded increases (decreases). Factors that increase the retail price of cigarettes, including taxes, tariffs, and import quotas decrease consumption. The cost of raw tobacco is generally not an important factor in the retail price of tobacco products. In addition, although the supply of cigarettes does not affect demand directly, supply influences consumption through the market price: as supply increases, price tends to decrease, which stimulates consumption until the additional sales clear the market. Factors other than price that influence the demand for cigarettes and other tobacco products are cited in Figure 3.

Income determines a consumer's command over resources and limits consumption options. In general, the consumption of most goods increases as income increases, but at a decreasing rate as consumers reach satiety for a particular good. The income elasticity of demand is defined as the percent change in the quantity demanded divided by the percent change in income that caused the demand change. The relation of consumption to income can be observed for individuals, groups, and countries, for which income and consumption fluctuate over time, and for variations in income and consumption among groups at a particular time.

For countries in the Americas, the correlation is positive between per capita cigarette consumption and per capita GNP (Figure 4 and Table 5). This relation is stronger in less-developed countries in

Figure 3. Factors, other than price, that affect the demand for tobacco products

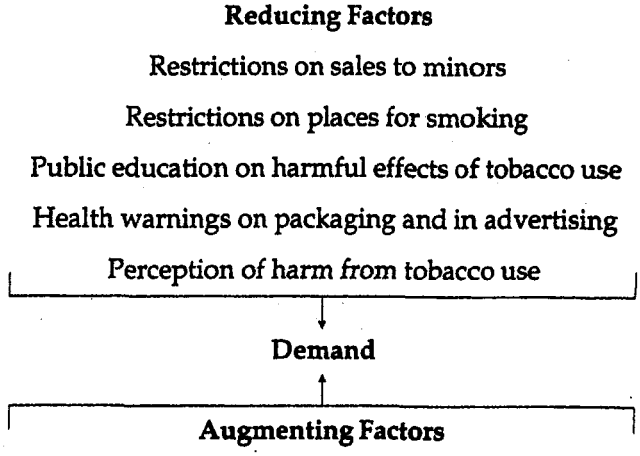
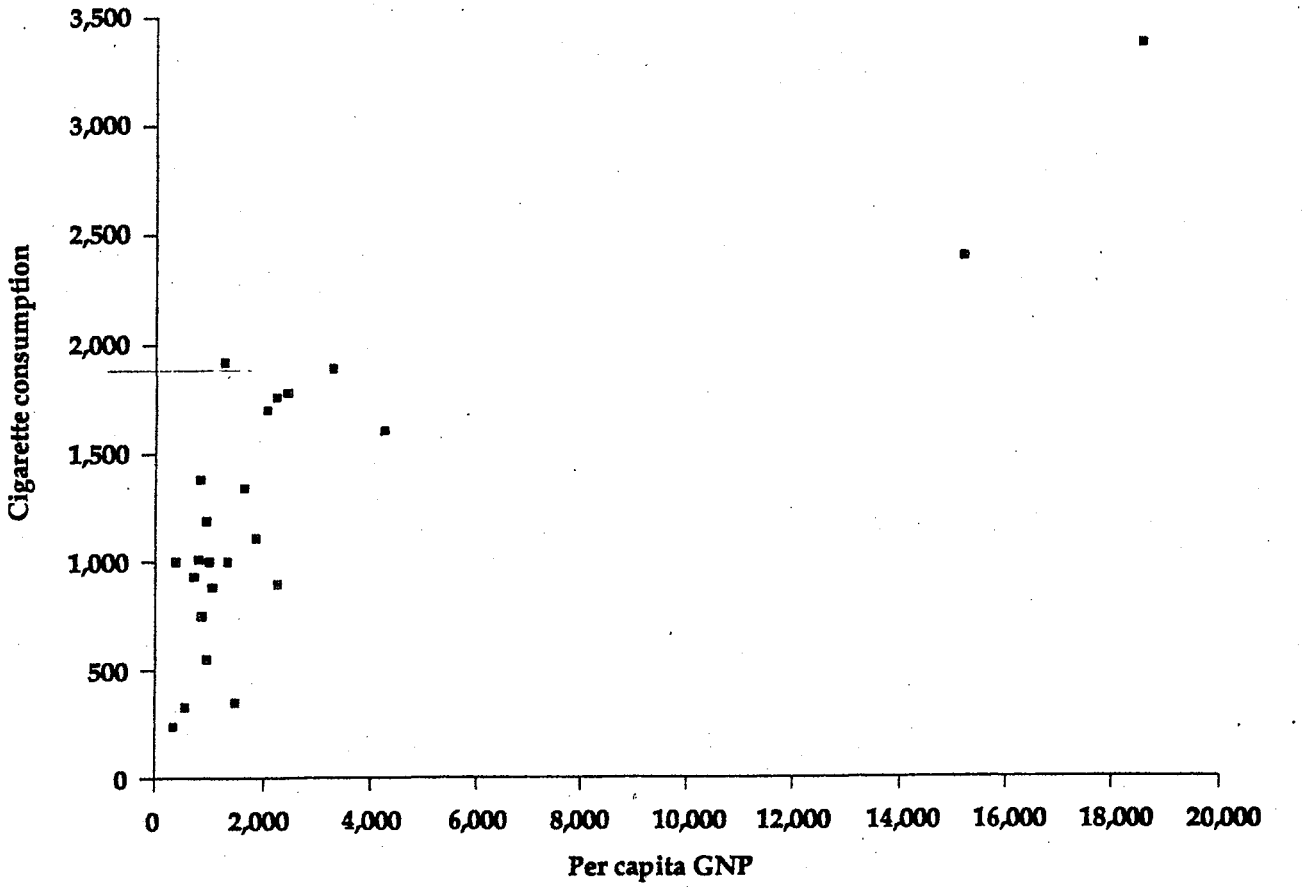


Figure 4. **Per capita cigarette consumption and annual per capita gross national product* (GNP) in 24 countries of the Americas,† 1985**



*Using a model that compares the annual per capita consumption of cigarettes to the log of the GNP, the relationship is expressed by the following linear regression equation: Consumption = -3241 + 616 ln(GNP per capita) (R^2 = .68). This equation was used to calculate the elasticities discussed in the text.
†See Table 5.

which rising incomes frequently lead to increased cigarette consumption due to an increase in the percentage of the population that smokes and in the amount each smoker smokes and to a shift from homemade and roll-your-own cigarettes to more-expensive, factory-made, higher-quality tobacco products.

Several studies indicate that income elasticity measured for multiple countries is higher than that measured for a single country (Table 6). The estimates reported by Chapman and Richardson (1990) and Townsend (1990), and the estimate based on the data in Figure 4, cluster around 0.50 (0.45 to 0.55). However, elasticity tends to fall as income rises, and near-zero estimates have been reported for developed countries (Table 6). In the model that compared consumption to the logarithm of GNP (Figure 4), estimated income elasticity of demand is approximately 2.0 at the lower end of GNP but falls to almost zero (0.04) at the upper end.

Restrictions on cigarette sales or on where smoking is permitted make smoking more difficult. These restrictions raise the total effective price of cigarettes for consumers and reduce cigarette consumption. Increased perception of the harm of cigarette smoking also depresses demand by increasing the total price of cigarettes (including health-associated costs) or by affecting taste.

Physical characteristics of cigarettes, such as filters, and aspects of taste, which include strength, flavor, and smoothness, augment demand. In many countries, the modern tobacco industry developed

Table 5. Per capita* cigarette consumption and income in the Americas

Country	Per capita cigarette consumption (1985)	GNP† per capita (US$) (1987)	Change in consumption (%) (1970–1985)	Average annual growth in GNP (%) (1965–1987)‡
North America				
United States	3,370	18,530	-15	1.5
Canada	2,392	15,160	-30	2.7
Latin America				
Argentina	1,780	2,390	3	0.1
Bolivia	330	580	10	-0.5
Brazil	1,700	2,020	30	4.1
Chile	1,000	1,310	-7	0.2
Colombia	1,920	1,240	15	2.7
Costa Rica	1,340	1,610	-20	1.5
Cuba	3,920		-2	
Dominican Republic	930	730	-11	2.3
Ecuador	880	1,040	26	3.2
El Salvador	750	860	-21	-0.4
Guatemala	550	950	-26	1.2
Haiti	240	360	-55	0.5
Honduras	1,010	810	7	0.7
Mexico	1,109	1,830		2.5
Nicaragua	1,380	830	10	-2.5
Panama	894	2,240		2.4
Paraguay	1,000	990	4	3.4
Peru	350	1,470	-10	0.2
Uruguay	1,760	2,190	14	1.4
Venezuela	1,890	3,230	-4	-0.9
Caribbean				
Barbados	1,380		20	
Guadeloupe	1,080		-1	
Guyana	1,000	390	-26	-4.4
Jamaica	1,190	940	-34	-1.5
Suriname	1,660		60	
Trinidad and Tobago	1,600	4,210	-16	1.3

Source: The World Bank (1989b); U.S. Department of Health and Human Services (1989); Chapman and Wong (1990).
*Aged 18 years or older.
†GNP = Gross national product.
‡1982–1988 data.

because of a shift in consumption from traditional forms of tobacco to modern, machine-made, quality-controlled, flavored cigarettes made from blends of tobacco, including *tabaco rubio*, a flue-cured tobacco. Some authorities have suggested that the development of filter-tipped cigarettes and long, slim cigarettes has increased smoking among women (see Chapter 2, "The Emergence of the Tobacco Companies"). The addictive nature of tobacco, another demand-augmenting factor, is discussed in a prior report (USDHHS 1988).

The degree of competitiveness or structure of the market for tobacco products can also affect the demand for cigarettes by operating on retail price, product differences, and product promotion. In many countries, the market for tobacco products may be reserved for a government-operated or sanctioned monopoly, but cigarette markets in the Americas are characterized by oligopoly—dominance of the market by several large firms (see Chapter 2, "The Emergence of the Tobacco Companies"). Prices tend to be lower and aggregate advertising and promotion expenditures

Table 6. Estimates of income elasticity of demand for cigarettes

Study	Data	Elasticity
Chapman and Wong (1990)	Worldwide, 1980	.45*
Chapman and Wong (1990)	Countries with gross national product <$5,000 per capita, 1980	.55*
Walsh (1980)	Ireland, 1953–1976	.33
Witt and Pass (1981)	United Kingdom, 1955–1975	.13
Lewit and Coate (1982)	United States, 1976	.08
Townsend (1990)	Europe, 1987–1988	.46
Data in Figure 4	24 countries of the Americas, 1985	.49

*Estimates calculated for this report from data provided in Chapman and Wong (1990).

tend to be higher in oligopoly markets than in monopoly markets, because of competition. In addition, oligopoly markets are characterized by greater variety as firms attempt to capture market niches for specific products.

Cigarette advertising and the sponsorship of entertainment, sporting, and cultural events are intended to increase the demand for particular cigarette brands. Measuring the effect, if any, of such advertising on aggregate demand is problematic. Accordingly, public policy toward cigarette advertising and promotional activities is controversial in many countries. Assessment of the impact of tobacco advertising and advertising restrictions was presented in the Surgeon General's 1989 report (USDHHS 1989) and is updated below.

Advertising

In the United States, cigarettes are one of the most heavily advertised products, and the mix of advertising and promotion has changed over time. Cigarette commercials have been prohibited from television and radio since 1971. In 1975, 75 percent of expenditures were directed toward traditional print advertising media (newspapers, magazines, billboards, and point-of-sale posters) and 25 percent toward promotional activities, such as coupons, free samples, public entertainment, and allowances to retailers (CDC 1990). By 1988, when total expenditures reached $3.27 billion, promotional activities accounted for more than two-thirds of all advertising and promotional expenditures. Despite the sizable decline in the use of traditional print media from 1975 to 1988, cigarettes were in 1988 the product most heavily advertised on outdoor media, the second most heavily advertised in magazines, and the sixth most heavily advertised in newspapers (CDC 1990).

In many other countries of the Americas, tobacco advertising expenditures are substantial (Table 7), despite restrictions on advertising activities (see Chapter 5). The Canadian Tobacco Products Control Act banned all tobacco advertising in the Canadian print media beginning January 1, 1989, and required that outdoor advertising on billboards and sponsorship of sporting and cultural events be phased out (Collishaw, Kaiserman, Rogers 1990). This advertising ban is currently being contested by Canadian tobacco companies in a protracted court case (Collishaw, Kaiserman, Rogers 1990).

Advertising aims to increase profit by increasing demand for a particular product (Scherer 1980). In oligopoly markets, advertising is used to differentiate

Table 7. Estimated advertising expenditures* of tobacco industry in selected countries of the Americas

Country	Cost
United States	$3,270.0
Canada	88.0†
Argentina	18.5
Brazil	68.0
Costa Rica	1.8
Dominican Republic	2.4
Ecuador	1.0
El Salvador	0.9
Guatemala	1.8
Mexico	19.8
Panama	1.8
Uruguay	0.7

Source: Philip Morris International Inc. (1988); ERC Statistics International Limited (1988); Centers for Disease Control (1990); Chapman and Wong (1990).

*Estimates are for 1986, 1987, or most current year available; in millions.

†A phased-in ban on tobacco advertising began in January 1989 and is scheduled for completion by January 1993. A court ruling declared the law unconstitutional, but it remains in effect pending appeal (RJR-Macdonald Inc. v. Attorney General of Canada 1990; Imperial Tobacco Limited v. Attorney General of Canada 1990).

among similar products and to build sales or to sustain the price of a particular product (Scherer 1980). Advertising attempts to associate smoking with attributes generally considered positive, such as high-style living, healthful activities, and economic, social, and political success; it fails to voluntarily provide information on the substantial hazards of cigarette consumption. In emphasizing the positive attributes of a product, advertising may increase demand for both a particular brand and a class of products. Much of the debate over tobacco advertising has focused on whether such advertising increases cigarette sales and, consequently, has a negative impact on public health, or whether advertising is strictly a competitive device tobacco companies use to determine relative market share in a stable or declining market, in which case such advertising would have little effect on public health (USDHHS 1989). The results of many analyses of the effects of advertising on cigarette consumption were reviewed in the Surgeon General's 1989 report, which cited the conclusion that it is "more likely than not that advertising and promotional activities do stimulate cigarette consumption" (Warner et al. 1986), although precisely quantifying the influence of these activities on the level of consumption may not be possible.

Evidence from the Canadian advertising ban and the continuing debate over increasing restrictions on advertising in the United States (Koop 1989) and other countries suggest that focus has shifted from the impact of advertising per se to the effects of advertising restrictions on consumption. An extensive study of this issue was performed by the New Zealand Toxic Substances Board (1989) in support of its recommendation for a total ban on tobacco promotion in that country. The relation between tobacco advertising bans and tobacco consumption was examined from 1976 to 1986 in 33 countries. The study demonstrated that "government tobacco advertising bans and controls are accompanied by enhanced rates of fall in tobacco consumption" (page xxiii) and that "the greater a government's degree of control over tobacco advertising and promotion, the greater the annual average fall in tobacco use in adults and young people" (page xxiv). As a follow-up to the New Zealand report, Laugesen and Meads (1990) examined the effects of tobacco advertising restrictions, price, and income on tobacco consumption between 1960 and 1986 in 22 economically developed countries. They found that a total ban on tobacco advertising would have lowered average consumption by 5.4 percent in 1986 in countries without a total ban at that time.

However, these studies have limitations—primarily a failure to account for the potential bias that antitobacco sentiment may be stronger in countries that ban advertising than in countries that do not. Accordingly, restrictions on tobacco advertising are, to some extent, markers of antitobacco sentiment, and a portion of the decline in consumption in countries with bans may be attributable to this sentiment rather than to advertising restrictions. In addition, both studies primarily included developed countries with a high but declining level of tobacco consumption. Extrapolation of these findings to less-developed countries with different patterns of tobacco consumption may be inappropriate.

Supply of Tobacco

Tobacco, which is grown in more than 120 countries, is the most widely grown nonfood crop. It is grown in most developing countries, and the share of tobacco production in developing countries has increased steadily from 50 percent of world production in 1961 to 1963 to 58 percent in 1972 to 1974 to 69 percent in 1987 (Stanley, in press) (also discussed in Chapter 2, "The Emergence of the Tobacco Companies"). In the past decade, most of the increase in worldwide tobacco production has been in China, which accounts for about 34 percent of total world production (Table 8). Major producers in the Americas include the United States (almost 10 percent of

Table 8. Share of world tobacco production, 1990

Country	Production*
Major producers	
China	33.5
United States	9.8
India	7.3
Brazil	6.3
USSR	5.4
Other producers in the Americas	
Canada	1.1
Argentina	1.0
Mexico	0.9
Cuba	0.6
Colombia	0.6
Dominican Republic	0.4
Paraguay	0.3
Venezuela	0.2
Chile	0.1

Source: Food and Agriculture Organization of the United Nations (1990).
*As percentage of world output; computed from weight of crop.

The essence of the argument for tobacco taxes is that tobacco-related illnesses may impose an uncompensated burden on never smokers regardless of their income class. If, however, smoking is positively correlated with income, smoking-related illness is more likely to occur among persons higher in the income distribution. Hence, increases in smoking-related illnesses may result in a shift in health care resources to provide expensive hospital-based care for affluent smokers. If such a shift occurs at the expense of health programs for low-income groups, it may have an undesirable effect on the health of the disadvantaged and on the total income distribution, including transfers (Lewit 1988). As a means of addressing this particular inequity, high tobacco taxes might be justified, whether they discouraged smoking or were used to finance excess health care for smokers.

Another justification for a high tobacco tax is that, to smokers or potential smokers who lack complete information on the dangers of tobacco use, the tax may signal the total costs of tobacco use, including the costs of ill health. An increase in tobacco taxes could improve health by discouraging tobacco use among persons who would not have used tobacco if they were fully informed. The effect would be particularly beneficial if it interfered with the initiation of tobacco use—before smokers became addicted.

Conclusions

1. Because the health costs of tobacco consumption result from cumulative exposure, they are most pronounced in the economically developed countries of North America, which have had major long-term exposure. Since many countries of Latin America and the Caribbean are experiencing an epidemiologic transition, the economic impact of smoking is increasing.

2. The economic costs of smoking are a function of the economic, social, and demographic context of a given country. In the United States, estimated total lifetime excess medical care costs for smokers exceed those for nonsmokers by $501 billion—an average of over $6,000 per current or former smoker. Similar formal estimates for many Latin American and Caribbean countries are not available.

3. Evidence of the cost-effectiveness of smoking control and prevention programs has increased. In Brazil, for example, the cost of public information and personal smoking-cessation services is estimated at 0.2 to 2.0 percent of per capita GNP for each year of life gained; treatment for lung cancer costs 200 percent of per capita GNP per year of life gained.

4. In Latin America and the Caribbean, as GNP increases, cigarette consumption increases, particularly at lower income levels. This effect is attenuated at higher income levels.

5. Advertising tends to increase consumption of cigarettes, although the relationship is difficult to quantify precisely. Advertising restrictions are generally associated with declines in consumption and, hence, are an important component of tobacco-control programs.

6. The case for promoting increased tobacco production on economic grounds should be reconsidered. Although tobacco is typically a very profitable crop, much of the advantage of producing tobacco stems from the various subsidies, tariffs, and supply restrictions that support the high price of tobacco and provide economic rents for tobacco producers. Although the tobacco industry is a significant source of employment, production of alternative goods would generate similar levels of employment.

7. Increases in the price of cigarettes, which are a price-elastic commodity, cause decreases in smoking, particularly among adolescents. Excise taxes may thus be viewed as a public health measure to diminish morbidity and mortality, although the precise impact of taxes on smoking will be influenced by local economic factors.

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Preventing Tobacco Use Among Young People

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National Center for Chronic Disease Prevention and Health Promotion
Office on Smoking and Health

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David Satcher, M.D., Ph.D., Director, Centers for Disease Control and Prevention, Atlanta, Georgia.

Jeffrey P. Koplan, M.D., M.P.H., Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Richard B. Rothenberg, M.D., M.P.H., Associate Director for Science, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

The editors of the report were

Cheryl L. Perry, Ph.D., Senior Scientific Editor, Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Gayle Lloyd, M.A., Managing Editor, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Frederick L. Hull, Ph.D., Technical Editor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Contributing authors were

David R. Arday, M.D., M.P.H., Preventive Medicine Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Dennis V. Ary, Ph.D., Research Scientist, Oregon Research Institute, and President, Oregon Center for Applied Science, Eugene, Oregon.

Michael Booth, Ph.D., Lecturer, Department of Public Health, University of Sydney, Sydney, Australia.

Dee Burton, Ph.D., Associate Director for Media Research, University of Illinois at Chicago Prevention Research Center, School of Public Health, Chicago, Illinois.

Frank J. Chaloupka IV, Ph.D., Assistant Professor, Department of Economics, The University of Illinois at Chicago, Chicago, Illinois.

K. Michael Cummings, Ph.D., M.P.H., Director, Smoking Control Program, Roswell Park Cancer Institute, New York State Department of Health, Buffalo, New York.

Joseph R. DiFranza, M.D., Director of Research, Fitchburg Family Practice Residency Program, Fitchburg, Massachusetts.

Roselyn Payne Epps, M.D., M.P.H., Expert, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Jean L. Forster, Ph.D., M.P.H., Associate Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Gary A. Giovino, Ph.D., Chief, Epidemiology Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Elbert D. Glover, Ph.D., Director, Tobacco Research Center, Mary Babb Randolph Cancer Center, West Virginia University School of Medicine/Robert C. Byrd Health Sciences Center, Morgantown, West Virginia.

Jack E. Henningfield, Ph.D., Chief, Clinical Pharmacology Branch, Addiction Research Center, National Institute on Drug Abuse, National Institutes of Health, Baltimore, Maryland.

Lloyd Johnston, Ph.D., Program Director, Institute of Social Research, University of Michigan, Ann Arbor, Michigan.

Laura Kann, Ph.D., Chief, Surveillance Research Section, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

R. Monina Klevens, D.D.S., M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Edward Lichtenstein, Ph.D., Research Scientist, Oregon Research Institute, Eugene, Oregon.

Marc Manley, M.D., M.P.H., Chief, Public Health Applications Research Branch, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Robert K. Merritt, M.A., Behavioral Scientist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

David E. Nelson, M.D., M.P.H., Medical Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Donald Nutbeam, Ph.D., Professor, Department of Public Health, University of Sydney, Sydney, Australia.

Mario Orlandi, Ph.D., M.P.H., Chief, Division of Health Promotion Research, American Health Foundation, New York, New York.

Cheryl L. Perry, Ph.D., Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Richard W. Pollay, Ph.D., Professor of Marketing and Curator, History of Advertising Archives, Faculty of Commerce, University of British Columbia, Vancouver, British Columbia.

Edward T. Popper, D.B.A., Professor of Business Administration and Marketing, Dean, School of Business and Professional Studies, Aurora University, Aurora, Illinois.

Jonathan M. Samet, M.D., Professor of Medicine, University of New Mexico, School of Medicine, Albuquerque, New Mexico.

Herbert H. Severson, Ph.D., Research Scientist, Oregon Research Institute, Eugene, Oregon.

Dana M. Shelton, M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Charles W. Warren, Ph.D., Sociologist, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

John K. Worden, Ph.D., Research Professor, Department of Family Practice and Office of Health Promotion Research, University of Vermont, Burlington, Vermont.

Reviewers were

David G. Altman, Ph.D., Senior Research Scientist, Stanford Center for Research in Disease Prevention, Stanford University, Palo Alto, California.

Karl E. Bauman, Ph.D., Professor, Department of Health Behavior and Health Education, School of Public Health, University of North Carolina, Chapel Hill, North Carolina.

Richard F. Beltramini, Ph.D., Associate Professor, Department of Marketing, Arizona State University, Tempe, Arizona.

Glen Bennett, M.P.H., Coordinator, Smoking Education Program, National Heart, Lung and Blood Institute, National Institutes of Health, Bethesda, Maryland.

Neal Benowitz, M.D., Professor of Medicine, University of California at San Francisco, San Francisco, California.

Gilbert J. Botvin, Ph.D., Professor and Director, Institute for Prevention Research, Cornell University Medical College, New York, New York.

Robert G. Brubaker, Ph.D., Professor, Department of Psychology, Eastern Kentucky University, Richmond, Kentucky.

David M. Burns, M.D., Professor of Medicine, University of California, San Diego School of Medicine, San Diego, California.

Laurie Chassin, Ph.D., Professor, Arizona State University, Department of Psychology, Tempe, Arizona.

Arden G. Christen, D.D.S., Professor of Oral Biology, Department of Oral Biology, Indiana University School of Dentistry, Indianapolis, Indiana.

Robert J. Collins, D.M.D., M.P.H., Chief Dental Officer, Public Health Service, Indian Health Service, Rockville, Maryland.

Gregory Connolly, D.M.D., M.P.H., Director, Massachusetts Tobacco Control Program, Massachusetts Department of Public Health, Boston, Massachusetts.

K. Michael Cummings, Ph.D., M.P.H., Director, Smoking Control Program, Roswell Park Cancer Institute, New York State Department of Health, Buffalo, New York.

Dorynne J. Czechowicz, M.D., Associate Director for Medical and Professional Affairs, Division of Clinical Research, National Institute on Drug Abuse, National Institutes of Health, Rockville, Maryland.

Michael M. Daube, Public Service Commission, Perth, Australia.

Ronald M. Davis, M.D., Chief Medical Officer, Michigan Department of Public Health, Lansing, Michigan.

John Elder, Ph.D., M.P.H., Professor of Health Promotion, Graduate School of Public Health, San Diego State University, San Diego, California.

Paul Fischer, M.D., Editor, *Journal of Family Practice*, Augusta, Georgia.

Michael C. Fiore, M.D., M.P.H., Director, Center for Tobacco Research and Intervention, University of Wisconsin Medical School, Madison, Wisconsin.

Brian R. Flay, D. Phil., Professor and Director, Prevention Research Center, School of Public Health, University of Illinois, Chicago, Illinois.

Erica Frank, M.D., M.P.H., Assistant Professor, Department of Community Preventive Medicine/ Department of Medicine, Emory University School of Medicine, Atlanta, Georgia.

Betsy Gelb, Ph.D., Director, Institute for Health Care Marketing, and Professor of Marketing, University of Houston, Houston, Texas.

Samuel S. Gidding, M.D., Associate Professor of Pediatrics, Northwestern University Medical School, Division of Cardiology, Children's Memorial Hospital, Chicago, Illinois.

Thomas Glynn, Ph.D., Acting Associate Director, Cancer Control Science Program, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Ellen R. Gritz, Ph.D., Professor and Chair, Department of Behavioral Science, The University of Texas M.D. Anderson Cancer Center, Houston, Texas.

Sandra W. Headen, Ph.D., Assistant Professor of Research, Department of Health Behavior and Health Education, School of Public Health, Chapel Hill, North Carolina.

Richard B. Heyman, M.D., Committee on Substance Abuse, American Academy of Pediatrics, and Suburban Pediatric Associates, Inc., Cincinnati, Ohio.

David Hill, Ph.D., Director, Anti-Cancer Council of Victoria, Victoria, Australia.

Thomas Houston, M.D., Director, Department of Preventive Medicine and Public Health, American Medical Association, Chicago, Illinois.

John Hughes, M.D., Professor, Human Behavioral Pharmacology Laboratory, Departments of Psychiatry, Psychology, and Family Practice, University of Vermont, Burlington, Vermont.

Saundra MacD. Hunter, Ph.D., Research Professor, Tulane University Medical Center, Department of Applied Health Sciences, School of Public Health and Tropical Medicine, New Orleans, Louisiana.

Dushanka V. Kleinman, D.D.S., Deputy Director, National Institute of Dental Research, National Institutes of Health, Bethesda, Maryland.

Norman A. Krasnegor, Ph.D., Chief, Human Learning and Behavior Branch, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, Maryland.

Edward Lichtenstein, Ph.D., Research Scientist, Oregon Research Institute, Eugene, Oregon.

Douglas S. Lloyd, M.D., M.P.H., Associate Administrator for Public Health Practice, Health Resources and Services Administration, Department of Health and Human Services, Rockville, Maryland.

Russell V. Luepker, M.D., M.S., Professor and Head, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

William R. Lynn, Public Health Advisor, Cancer Control Science Program, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Willard Manning, Ph.D., Professor, Institute for Health Services Research, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Stephen E. Marcus, Ph.D., Senior Epidemiologist, National Institute of Dental Research, National Institutes of Health, Bethesda, Maryland.

J. Michael McGinnis, M.D., Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Department of Health and Human Services, Washington, D.C.

Ann D. McNeil, Ph.D., Manager, Smoking Program, Health Education Authority, London, England.

David Murray, Ph.D., Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Thomas Novotny, M.D., M.P.H., Centers for Disease Control and Prevention Liaison Officer and Assistant Dean for Public Health Practice, School of Public Health, University of California, Berkeley South, Berkeley, California.

Patrick O'Malley, Ph.D., Research Scientist, Institute for Social Research, Survey Research Center, University of Michigan, Ann Arbor, Michigan.

Guy S. Parcel, Ph.D., Professor and Director, Center for Health Promotion and Research Development, University of Texas Health Science Center, Houston, Texas.

Joseph Patterson, Director of Government Relations and Special Projects, American Cancer Society, Atlanta, Georgia.

Terry F. Pechacek, Ph.D., Associate Professor, School of Medicine and Biomedical Sciences, State University of New York, Buffalo, New York.

Michael Pertschuk, J.D., Co-Director, The Advocacy Institute, Washington, D.C.

John P. Pierce, Ph.D., Associate Professor and Head, Cancer Prevention and Control, University of California, San Diego, California.

John M. Pinney, Chief Executive Officer, Corporate Health Policies Group, Bethesda, Maryland.

Patrick Remington, M.D., State Medical Officer and Epidemiologist, Chronic Disease and Health Promotion Section, Wisconsin Department of Health and Social Services, Madison, Wisconsin.

John W. Richards, Jr., M.D., Associate Editor, *Journal of Family Practice*, Augusta, Georgia.

Julius Richmond, M.D., John D. McArthur Professor of Health Policy Emeritus, Harvard Medical School, Boston, Massachusetts.

Nancy A. Rigotti, M.D., Assistant Professor of Medicine and Preventive Medicine, Harvard Medical School and Associate Director, Quit Smoking Service, Massachusetts General Hospital, Boston, Massachusetts.

Jonathan M. Samet, M.D., Professor of Medicine, University of New Mexico, School of Medicine, Albuquerque, New Mexico.

Thomas C. Schelling, Ph.D., Distinguished Professor of Economics and Public Affairs, Department of Economics/ School of Public Affairs, University of Maryland, College Park, Maryland.

Russell Sciandra, M.A., Project Manager, American Stop Smoking Intervention Study for Cancer Prevention, New York State Department of Health, Albany, New York.

Donald R. Shopland, Coordinator, Smoking and Tobacco Control Program, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Vivian L. Smith, M.S.W., Acting Director, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockville, Maryland.

Jesse Steinfeld, M.D., Surgeon General, U.S. Public Health Service, 1969-1973, San Diego, California.

Steve Sussman, Ph.D., Associate Professor, Institute for Health Promotion and Disease Prevention Research, University of Southern California, Alhambra, California.

Ira B. Tager, M.D., Professor of Epidemiology, University of California, Berkeley, School of Public Health, Berkeley, California.

Larry Wallack, Dr. P.H., Professor, School of Public Health, University of California at Berkeley, Berkeley, California.

Kenneth E. Warner, Ph.D., Professor and Chair, Department of Public Health Policy and Administration, School of Public Health, University of Michigan, Ann Arbor, Michigan.

Jeffrey Wasserman, Ph.D., Associate Director, Health Policy Research, SysteMetrics, Santa Barbara, California.

Scott T. Weiss, M.D., Associate Professor of Medicine, Harvard School of Public Health, and Channing Laboratory, Harvard Medical School, and Brigham and Women's Hospital, Boston, Massachusetts.

Judith Wilkenfeld, J.D., Assistant Director, Division of Advertising Practices, Federal Trade Commission, Washington, D.C.

Deborah M. Winn, Ph.D., Chief, Analytical Studies and Decision Systems Branch, Epidemiology and Oral Disease Prevention Program, National Institute of Dental Research, National Institutes of Health, Bethesda, Maryland.

Ernst L. Wynder, M.D., President, American Health Foundation, New York, New York.

Other contributors were

Deborah Anker, M.A., Graphic Artist, Circle Solutions, Inc., McLean, Virginia.

Victoria Agee, M.L.S., Agee Indexing Services, Albuquerque, New Mexico.

Kelly L. Byrne, Word Processing Specialist, Circle Solutions, Inc., McLean, Virginia.

Michele Chang, Special Assistant to the Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Jeffrey H. Chrismon, Computer Programmer, The Orkand Corporation, Atlanta, Georgia.

Anita Cowan, M.L.S., Director, Information Systems and Services Group, Circle Solutions, Inc., McLean, Virginia.

Karen M. Deasy, Assistant Director (Liaison), Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Washington, D.C.

Susan R. Derrick, Editorial Assistant, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Alice A. DeVierno, M.L.S., Manager, Technical Information Center, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Elizabeth D. Eckl, M.S.L.S., Information Specialist, Circle Solutions, Inc., McLean Virginia.

Joseph Gfroerer, Statistician, Division of Epidemiology and Prevention Research, National Institute on Drug Abuse, National Institutes of Health, Rockville, Maryland.

Donna Gloria, Secretary, HCR Consulting Group, Atlanta, Georgia.

Lakshmi M. Grama, M.L.S., Database Advisor, Circle Solutions, Inc., McLean, Virginia.

Janet C. Greenblatt, Statistician, Office of Applied Studies, Substance Abuse and Mental Health Services Administration, Washington, D.C.

William A. Harris, Computer Specialist, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Lillian Hatch, M.S.L.S., Information Specialist, Circle Solutions, Inc., McLean, Virginia.

Corinne G. Husten, M.D., M.P.H., Medical Officer, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Gwendolyn A. Ingraham, Writer-Editor, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Atlanta, Georgia.

Jeffrey C. Johnson, Computer Specialist, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Doreen Johnson-Kloehn, M.A., Scientist, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Steven C. Joseph, M.D., Dean, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Sarah Knowlton, J.D., Attorney-Advisor, Office of the General Counsel, Centers for Disease Control and Prevention, Atlanta, Georgia.

Kelli Komro, M.S.W., M.P.H., Doctoral Student, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Sushil Kriplani, M.A., Consultant, Minneapolis, Minnesota.

Mark J. Leech, M.A., Information Specialist, Circle Solutions, Inc., McLean, Virginia.

Peggy Lytton, Editor, Circle Solutions, Inc., McLean, Virginia.

Karen McCloud, Editorial Assistant, HCR Consulting Group, Atlanta, Georgia.

Bonnie L. Manning, Executive Secretary, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

William L. Marx, Technical Information Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Daniel F. McLaughlin, Editor, Circle Solutions, Inc., McLean, Virginia.

Jennifer A. Michaels, M.L.S., Technical Information Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Nancy A. Miltenberger, M.A., Editor, Circle Solutions, Inc., McLean, Virginia.

Kimberly J. Miner, Ph.D., Postdoctoral Fellow, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Paul D. Mowrey, M.S., Research Scientist, Battelle Memorial Institute, Atlanta, Georgia.

Suong Nguyen, Student, School of Public Health, San Diego University, San Diego, California.

Gwen J. Nunnally, Secretary, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Cathie M. O'Donnell, Project Director, Circle Solutions, Inc., McLean, Virginia.

J.P. Peddicord, M.S., Computer Scientist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Richard Ray, Director of Computer Services, Circle Solutions, Inc., McLean, Virginia.

John Robey, Word Processing Specialist, Circle Solutions, Inc., McLean, Virginia.

Kathleen L. Schroeder, D.D.S., Associate Professor of Oral Pathology, West Virginia University School of Medicine, Morgantown, West Virginia.

Maggie Shelby, Secretary, HCR Consulting Group, Atlanta, Georgia.

Michael B. Siegel, M.D., M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Renee E. Sieving, M.S.N., Doctoral Student, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Michael J. Staufacker, M.P.H., Doctoral Student, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Scott L. Tomar, D.M.D., Dr.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Traci L. Toomey, M.P.H., Doctoral Student, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

Laura Williams, Student, Northeast Ohio University College of Medicine, Rootstown, Ohio.

Rebecca B. Wolf, M.A., Program Analyst, Office of Program Planning and Evaluation, Centers for Disease Control and Prevention, Atlanta, Georgia.

Bao-Ping Zhu, Ph.D., Research Scientist, Battelle Memorial Institute, Atlanta, Georgia.

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The Role of Advertising and Promotion in the Marketing of Tobacco Products

Introduction

Businesses use advertising and promotion to influence the marketplace—to prepare a place for their product by signaling how it meets an existing or newly perceived need of the consumer. In the following discussion of such tactics for the tobacco-product marketplace, "advertising" refers to company-funded advertisements that appear in paid media (e.g., broadcasts, magazines, newspapers, outdoor advertising, and transit advertising), whereas "promotion" includes all company-supported nonmedia activity (e.g., direct-mail promotions, allowances, coupons, premiums, point-of-purchase displays, and entertainment sponsorships).

The general role of advertising is to communicate accurate information and to influence attitudes and beliefs (Kotler 1991). The information that advertising communicates can be either factual (e.g., product ingredients or features) or suggestive (e.g., images of types of people who might use a product, or associations of a product with a certain setting or emotion). Much of the regulatory activity for advertising is directed at factual communication; most of the criticism of advertising is directed at suggestive communication—at the images it creates and at the potentially misleading implications of user benefits that can be drawn from those images (Kotler and Armstrong 1991).

Advertising can be used to create primary demand—that is, to bring new users of a product category into the marketplace (Ray 1982). These users are attracted by advertising that demonstrates how a particular product can satisfy a customer need, either physical or psychological, that is currently either unmet or unsatisfied. Users also can be brought into a product marketplace by advertising that causes them to feel a previously unacknowledged need for a particular product. Primary demand can be increased through generic category advertising (such as trade association advertising for commodities like milk or beef). The advertising of a specific brand can sometimes both promote that brand and increase demand for an overall product category; for example, advertising for a particular computer can promote computers in general for first-time buyers.

Advertising also can be used to create selective (or secondary) demand—that is, to convince consumers to switch from one specific brand of product to another (McCarthy and Perreault 1984). Creating selective demand calls for advertising that demonstrates a brand's superior performance, price, or value. Alternatively, advertising can create selective demand by projecting that a brand has a more desirable image than its competitors (such as Avis Rent A Car's well-known slogan, "We're number two . . . but we try harder").

Consumers overestimate the effect of advertising on overall market factors, but underestimate its effect on them personally (Bauer and Greyser 1968). Thus, consumers may criticize advertising as being dishonest and manipulative, but they are unlikely to be able to provide examples of purchases they have made because of what they would consider advertising dishonesty or manipulation. In fact, they are unlikely to be able to identify any purchases they have made because of advertising. For most products, the role of advertising is to create in the consumer a structure of attitudes and beliefs about a product that will facilitate its purchase when the consumer is stimulated by a behavioral prod (Ray 1982). That prod can come from the social environment (for example, from another consumer's recommending the product), from a retailer, or from a promotional incentive, such as a coupon or a free sample.

The actual purchase of a product or service in a marketplace thus is often achieved by marketers' use of a specific promotion (Popper 1986; Davis and Jason 1988). Such activities are used to build on consumers' attitudinal predispositions and lead consumers to act. Promotion, in fact, is the fastest-growing category of all product marketing activity (Kotler 1991). This growth is partly a response to the proliferation of advertising as well as to the limited direct effect that advertising has been found to have on people's actions. Over the past few decades, the superabundance of advertising messages has made it increasingly difficult for a given ad to rise above the clutter of competing messages both in its own product category and in the plethora of advertisements in general. This competition is particularly true for products with well-established images and reputations. Thus, profit return of even a successful advertising expenditure may eventually diminish. Accordingly, the best sales returns for most industries result from effective advertising and promotion working in concert.

Promotional activities can take many forms. Promotional expenditures can stimulate retailers to place and display products in ways that will maximize the opportunity for purchase (e.g., supplying retailers with point-of-purchase displays to locate products at

checkout stands). Coupons reduce the price a consumer pays for products and thereby reduce the consumer's cost-sensitivity, which may be a substantial barrier to making a purchase (McCarthy and Perreault 1993). Premiums (e.g., including a cigarette lighter in the purchase price or even within the actual packaging of a box or carton of cigarettes) reduce cost-sensitivity by increasing (or appearing to increase) the value of a purchase. Free samples do away with cost-sensitivity altogether and actually give consumers an opportunity to try something new (Popper 1986; Davis and Jason 1988). Promotional devices such as these are more likely than advertising alone to lead consumers to purchase a product more than once—a pattern sought by all manufacturers.

Cigarette Advertising and Promotional Expenditures

In 1990, cigarette advertising and promotional expenditures grew to almost $4 billion (see Table 1), making cigarettes the second most promoted consumer products (after automobiles) in the United States. These expenditures occurred at a time when domestic sales of cigarettes and adult per-capita consumption were at relatively low levels although domestic revenues continued to increase (Table 2). Advertising and promotional expenditures account for 10 to 12 percent of the revenue generated by the tobacco industry in the United States. More than three quarters of these expenditures were for promotional activities, which had steadily increased to over $3 billion, while advertising expenditures for cigarettes dropped to $887 million (Federal Trade Commission [FTC] 1992). The decline in cigarette advertising came principally from reductions in print advertising (a 14 percent drop in magazine advertising and a 7 percent drop in newspaper advertising) to their lowest level (in constant 1990 dollars) since the ban on broadcast advertising came into effect in January 1971 and the tobacco industry focused advertising attention on print media.

In 1990, expenditures for outdoor advertising and transit posters for cigarettes were at an all-time high of $435 million (see Table 3). The largest category of cigarette promotion that year was that of coupon use and retail value-added promotions, which at $1.2 billion represented nearly 30 percent of all cigarette advertising and promotional expenditures. The cigarette companies spent just over $1 billion on promotional allowances, which included the money that cigarette companies paid to retailers for shelf space (slotting allowances), cooperative advertising allowances, and trade (wholesaler) allowances. Cigarette companies spent over $300 million on point-of-purchase materials in 1990. These expenditures for displays were roughly equivalent (within 10 percent) to cigarette company expenditures on magazine advertising. The substantial increases in retail-oriented expenditures reflect an aggressive cigarette marketplace in which companies vie for larger shares of decreasing numbers of cigarette smokers.

In 1990, the cigarette companies also expended over $125 million on public entertainment (including sponsorship of sporting events and concerts). Total advertising and promotional expenditures for cigarettes included over $108 million for sports and sporting events alone. The cigarette companies reported no expenditures in 1990 for endorsements or testimonials or for having their brand names or tobacco products appear in any motion picture or television shows (FTC 1992). In contrast, movies in the 1980s were sometimes used to promote specific brands of cigarettes and other products (Magnus 1985).

Cigarettes continue to be one of the most heavily advertised products in print media (Centers for Disease Control [CDC] 1990). In 1988, cigarettes ranked first among products advertised in outdoor media, second in magazines, and sixth in newspapers. When advertising expenditures for these three print media are combined, cigarettes were the second most heavily advertised product after passenger cars (CDC 1990). These expenditures for cigarette advertising represent a drop, however, from the total advertising expenditures in these media in 1985 and are consistent with the cigarette industry's shift in emphasis to promotional activities.

One of the indirect consequences of advertising and promotional spending is that the media, reluctant to jeopardize the income that accompanies cigarette advertising, are inhibited in their coverage of the health risks of smoking. Warner, Goldenhar, and McLaughlin (1992) examined 99 magazines published in the United States from 1959 through 1969 and from 1973 through 1986 to assess the probability that the number of articles a magazine published on the health consequences of smoking would reflect whether they carried cigarette advertisements and what proportion of their revenues were derived from cigarette advertisements. Magazines that did not carry cigarette advertisements were more than 40 percent more likely to cover the health consequences of smoking than were magazines that carried such advertising. For women's magazines, the likelihood increased to 230 percent; a 1 percent increase in the share of advertising revenue derived from cigarette advertisements was found to decrease by nearly 2 percent the probability of these magazines' carrying articles on the risks of smoking. Numerous other studies and reports on this aspect of cigarette advertising were discussed in the 1989 Surgeon General's report on smoking and health (U.S. Department of Health and Human Services [USDHHS] 1989) and reinforce the general conclusion that despite

Table 1. Domestic cigarette advertising and promotional expenditures, 1963–1990

Year	Total advertising* dollars (in millions)	Total promotional† dollars (in millions)	Total advertising and promotional dollars (in millions)	Advertising as percentage of total dollars
1963	228.9	13.2	249.5	91.7
1964	240.9	14.6	261.3	92.2
1965	242.3	14.7	263.0	92.1
1966	272.7	17.9	297.5	91.7
1967	285.6	20.3	311.9	91.6
1968	283.1	21.6	310.7	91.1
1969	283.6	13.4	305.9	92.7
1970	296.6	64.4	361.0	82.1
1971	220.4	27.0	251.6	87.6
1972	226.7	22.9	257.6	88.0
1973	220.9	15.2	247.5	89.3
1974	266.5	31.1	306.8	86.9
1975	330.8	160.4	491.3	67.3
1976	425.9	213.2	639.1	66.6
1977	505.8	273.6	779.5	64.9
1978	543.1	331.9	875.0	62.1
1979	682.8	400.6	1,083.4	63.0
1980	790.1	452.2	1,242.3	63.6
1981	899.3	648.3	1,547.7	58.1
1982	923.2	870.6	1,793.8	51.5
1983	910.8	990.0	1,900.8	47.9
1984	930.2	1,065.0	2,095.2	44.4
1985	932.0	1,544.4	2,476.4	37.6
1986	796.3	1,586.0	2,382.4	33.4
1987	719.2	1,861.3	2,580.5	27.9
1988	824.5	2,450.4	3,274.9	25.2
1989	868.3	2,748.7	3,617.0	24.0
1990	835.2	3,156.9	3,992.0	20.9

Source: Federal Trade Commission (1992).

*Includes print advertising in newspapers, magazines, billboards, and public transit and (until ban effective January 1, 1971) on television and radio.

†Includes promotional allowances, sampling distributions, specialty item distribution, public entertainment, direct mail, endorsements, testimonials, coupons, audio-visual, and retail value-added, point-of-sale advertising, except for 1963–1974 and 1971–1974; for 1963–1969 and 1971–1974, only direct mail expenditures are included ("others" category not included).

Table 2. Domestic cigarette sales and per capita consumption, 1963–1990

Year	Total number of cigarettes sold (in billions)	Cigarette consumption (per capita)	Cigarette sales revenue (in millions)	Total advertising and promotional dollars (in millions)
1963	516.5	4,286	NA*	249.5
1964	505.0	4,143	NA	261.3
1965	521.1	4,196	NA	263.0
1966	529.9	4,197	NA	297.5
1967	525.8	4,175	NA	311.9
1968	540.3	4,145	NA	310.7
1969	527.9	3,986	NA	305.9
1970	534.2	3,969	NA	361.0
1971	547.2	3,982	NA	251.6
1972	561.7	4,018	NA	257.6
1973	584.7	4,112	NA	247.5
1974	594.5	4,110	NA	306.8
1975	603.2	4,095	NA	491.3
1976	609.9	4,068	NA	639.1
1977	612.6	4,015	15,594	779.5
1978	615.3	3,965	16,856	875.0
1979	621.8	3,937	17,668	1,083.4
1980	628.2	3,858	19,035	1,242.3
1981	636.5	3,818	20,822	1,547.7
1982	632.5	3,733	22,093	1,793.8
1983	603.6	3,513	25,724	1,900.8
1984	608.4	3,497	27,370	2,095.2
1985	599.3	3,400	28,918	2,476.4
1986	586.4	3,288	30,293	2,382.4
1987	575.4	3,190	32,145	2,580.5
1988	560.7	3,073	33,042	3,274.9
1989	525.6	2,846	37,048	3,617.0
1990	523.7	2,829	39,616	3,992.1

Sources: Federal Trade Commission (1992); U.S. Department of Commerce (1992a, b).
*NA = Not available.

decades of awareness of the dangers of tobacco use, media managers are reluctant to turn away the revenue enjoyed from cigarette advertising (Kessler 1989; Tye 1990).

Smokeless Tobacco Advertising and Promotional Expenditures

In 1986, a report of the Advisory Committee to the Surgeon General concluded that use of smokeless tobacco represents a significant health risk, is not a safe substitute for cigarette smoking, can cause oral cancers, and can lead to nicotine addiction and dependence (USDHHS 1986). In the same year, Congress passed the Comprehensive Smokeless Tobacco Health Education Act (CSTHEA) of 1986 (Public Law 99-252). The act required that (1) the public be informed of any health dangers of smokeless tobacco use, (2) smokeless tobacco advertising and packaging include three rotated warning labels (except on outdoor billboards, which could bear any one of the three warning labels), and (3) smokeless tobacco advertising be restricted from radio and television. The CSTHEA also encouraged legislation to make age 18 the minimum age to purchase smokeless tobacco; by 1993, all 50 states and the District of Columbia had passed such legislation (CDC, Office on Smoking and Health, unpublished data).

The 1986 Advisory Committee Report to the Surgeon General and the 1986 CSTHEA were responses to increasing evidence both that smokeless tobacco use compromised health and that increasing numbers of Americans apparently perceived smokeless tobacco as a safe alternative to cigarette smoking; annual U.S. consumption of smokeless tobacco had increased substantially between 1972 and 1985 (USDHHS 1986). Although the amount (in pounds) of smokeless tobacco sold declined from 1985 through 1988, amounts increased during the following three years (Table 4). By 1991, annual consumption of smokeless tobacco products in the United States had returned to its 1985 level of over 120 million pounds (FTC 1993).

The increases in the use of smokeless tobacco from the 1970s to the mid-1980s can be attributed to more aggressive marketing by the smokeless tobacco industry, new smokeless tobacco products, the teaming of smokeless tobacco with well-known sports and entertainment personalities, the increased accessibility of smokeless tobacco products, and a growing market of young males (Christen 1980; Glover, Christen, Henderson 1981; USDHHS 1992a, b; see "Environmental Factors in the Initiation of Smokeless Tobacco Use" in Chapter 4). One of the primary aims of advertising and promotional activities during the past two decades was to attract people to try smokeless tobacco (Glover, Christen, Henderson 1981; Tye, Warner, Glantz 1987). The strategy was evidently a success. In 1970, men over the age of 55 (presumably longtime users) were the heaviest users of moist snuff; by 1985, the usage rate was two times higher among males aged 16 through 19 than among older men (USDHHS 1992b).

In 1991, the United States Tobacco Company, one of five major tobacco companies that produce smokeless tobacco products in the United States, produced 87 percent of the moist snuff consumed (USDHHS 1992b). The company's most popular products, Copenhagen and Skoal, were also the most popular among adolescent users. Advertisements for these products have stressed that smokeless tobacco is easy to use, that it is convenient "in places where you can't light up," and that "a pinch is all it takes." By providing explicit instructions for use (sometimes delivered by well-known professional athletes) and by suggesting that the product could be used without adult detection, smokeless tobacco advertisements have appeared to target male adolescents (Christen 1980; USDHHS 1992b).

Promotional activities for smokeless tobacco have gained increasing importance since the CSTHEA of 1986, in part because radio and television advertising were banned by the act. Advertising and promotional expenditures for smokeless tobacco decreased each year from 1985 through 1987, then increased yearly from 1988 through 1991, along with yearly smokeless tobacco sales figures (Table 4). Of these expenditures, public entertainment sponsorship was the largest single advertising and promotional spending category from 1986 through 1990; over $21 million was allocated in 1991 (FTC 1993). In 1991, expenditures to provide consumers with cents-off coupons and retail value-added promotions, such as buy-one-get-one-free offers or specialty advertising gifts given at points of sale, became the largest spending category (over $23 million allocated). Public entertainment sponsorship and specialty advertising gifts appear to particularly appeal to male adolescents, even if the smokeless tobacco industry does not explicitly target teens (USDHHS 1992b).

Of particular note is the use of product sampling of smokeless tobacco products. In 1978, the United States Tobacco Company ran advertisements in *Sports Illustrated* for free samples of fruit-flavored, low-nicotine snuff products for beginners (Tye, Warner, Glantz 1987); the samples were accompanied by instructions on how to use smokeless tobacco. Currently, the smokeless tobacco industry's voluntary code on sampling prohibits sampling to those under 18 years old (Davis and Jason 1988); this restriction nonetheless permits the marketing of smokeless tobacco on college campuses.

Table 3. Domestic cigarette advertising and promotional expenditures,* 1986–1990

Expenditures	1986 (in thousands)	% of total	1987 (in thousands)	% of total
Newspapers	119,629	5.0	95,810	3.7
Magazines	340,160	14.3	317,748	12.3
Outdoor	301,822	12.7	269,778	10.5
Transit	34,725	1.5	35,822	1.4
Point-of-purchase	135,541	5.7	153,494	5.9
Promotional allowances	630,036	26.4	702,730	27.2
Sampling distribution	98,866	4.1	55,020	2.1
Speciality item distribution	210,128	8.8	391,351	15.2
Public entertainment	71,439	3.0	71,389	2.8
Direct mail	187,057	7.9	187,931	7.3
Endorsements and testimonials	384	--	376	--
Coupons and retail value-added	--	--	--	--
All others†	252,570	10.6	299,355	11.6
Total‡	2,382,357	100.0	2,580,504	100.0

Source: Federal Trade Commission (1992).
*In U.S. dollars.
†Expenditures for audiovisuals are included in the "all others" category to avoid disclosure of individual company data.
‡Because of rounding, sums of percentages may not equal 100.

A History of Cigarette Advertising to the Young

Ads Targeting Women

In the first quarter of the twentieth century, cigarette firms demonstrated their ability to target and develop specific market segments. In the 1920s, cigarette smokers were predominately males, but the industry recognized females as a large and potentially lucrative market segment open to development. Encouraging the growth of smoking among women was an explicit goal of industry leaders and the focus of both advertising and major public relations efforts. The American Tobacco Company hired advertising expert A. D. Lasker of Lord & Thomas to work on Lucky Strike advertising. Previously, Lasker had successfully handled the delicate problem of advertising sanitary products (i.e., the Kotex brand)

1988 (in thousands)	% of total	1989 (in thousands)	% of total	1990 (in thousands)	% of total
105,783	3.2	76,993	2.1	71,174	1.8
355,055	10.8	380,393	10.5	328,143	8.2
319,293	9.7	358,583	9.9	375,627	9.4
44,379	1.4	52,294	1.4	60,249	1.5
222,289	6.8	241,809	6.7	303,855	7.6
879,703	26.9	999,843	27.6	1,021,427	25.6
74,511	2.3	57,771	1.6	100,893	2.5
190,003	5.8	262,432	7.3	307,037	7.7
88,072	2.7	92,120	2.5	125,094	3.1
42,545	1.3	45,498	1.3	51,875	1.3
781	--	--	--	--	--
874,127	26.7	959,965	26.5	1,183,798	29.6
78,366	2.4	89,290	2.5	62,917	1.6
3,274,853	100.0	3,616,993	100.0	3,992,008	100.0

to women. His cigarette campaign began in the 1920s with an advertising budget of $400,000, which grew to $19 million by 1931. This budget supported a print advertising campaign that featured women and associated cigarettes with the attribute of bodily slimness. The principal selling idea was that smoking was an aid to diet behavior and weight control—a notion explicitly communicated by the slogan, "Reach for a Lucky Instead of a Sweet" (Gunther 1960).

The American Tobacco Company viewed the prospect of reaching the potential female market as "opening a new gold mine right in our front yard" (Bernays 1965, p. 383). Through Edward Bernays, perhaps the nation's most famous public relations consultant, the American Tobacco Company hired A. A. Brill, a psychoanalyst who advised the company to promote cigarettes as "symbols of freedom" (Bernays 1965, p. 386). Bernays then organized women to smoke in public in the 1929 New York Easter Parade (Schudson 1984) and to carry placards identifying their cigarettes as "torches of liberty" (Bernays 1965, p. 197). Photos and articles were distributed to small-town newspapers across the nation (Schudson 1984). Bernays called this public relations activity "the engineering of consent" (Bernays 1965, p. 390).

Advertising for other firms and brands also increasingly featured women and aimed advertising at women. In 1926, the Chesterfield brand of Liggett & Myers displayed a young woman saying, "Blow Some My Way" (Howe 1984). This ad precipitated public

Table 4. Smokeless tobacco sales and advertising expenditures, 1985–1991

Year	Sales		Advertising and promotion expenditures (U.S. $)
	Total pounds sold	Revenues (U.S. $)	
1985	121,449,115	730,618,970	80,068,229
1986	118,778,334	797,777,885	76,676,706
1987	116,540,281	852,717,347	67,777,044
1988	114,435,233	901,654,382	68,223,671
1989	116,437,890	981,637,304	81,200,611
1990	117,415,326	1,091,170,201	90,101,355
1991	120,110,686	1,237,961,670	104,004,042

Source: Federal Trade Commission (1993).

outrage at the attempt to encourage women to smoke, yet prompted the envy and emulation of many other cigarette marketers (Wood 1958). Later, various cigarette campaigns targeted and featured women, including Hollywood movie stars, winners of the Miss America beauty pageant, women in heroic World War II roles, mothers (for Mother's Day), and brides (Howe 1984; Ernster 1985). Some of these campaigns explicitly portrayed cigarette smoking as appropriate for the young. For example, a Lorillard campaign that showed a woman running on the beach encouraged viewers to "Light an Old Gold for young ideas."

Ads Targeting Young People

From the time of the earliest marketing campaigns, parents, educators, and policy makers worried about the exposure—intentional or not, it was inevitable—of young people to cigarette advertising. These concerns were not misplaced. For example, one variant of the American Tobacco Company's campaign for Lucky Strike in the 1920s depicted a young woman and a very young man "breaking the chains of the past" to reach for opportunity and an open pack of cigarettes (Anderson 1929). In 1929, a Senate proponent of amendments to the Pure Food and Drug Act declared, "Not since the days when the vendor of harmful nostrums was swept from our streets, has this country witnessed such an orgy of buncombe, quackery and downright falsehood and fraud as now marks the current campaign promoted by certain cigarette manufacturers to create a vast woman and child market" (Schudson 1984, pp. 194–5).

Such protests had little effect on the tobacco industry's marketing plans. Despite the increased overall number of smokers in the 1920s, 1930s, and 1940s, the industry considered it strategically important to continue efforts to recruit more young consumers. In 1950, for example, a tobacco industry trade journal reported the following industry perception: "A massive potential market still exists among women and young adults, cigarette industry leaders agreed, acknowledging that recruitment of these millions of prospective smokers comprises the major objective for the immediate future and on a long term basis as well" (*United States Tobacco Journal* [*USTJ*] 1950b, p. 1). And at a 1955 press conference announcing redesigned brand packaging, the president of the Philip Morris Companies made it clear that appealing to the young was a deliberate, strategic focus for the company: "We wanted a new, bright package that would appeal to a younger market" (*Tide* 1955, p. 31). The company's ad director was even more explicit: "Our ads are now aimed at young people and emphasize gentleness" (i.e., ease of smoking) (*Tide* 1955, p. 31). A few years later, Philip Morris launched a comic strip campaign featuring a "handsome, rough and ready" adventure hero, "Duke Handy." The comic strip was placed in the Sunday color comic sections of 40 newspapers in a national network. Behind this comic strip was a "heavy promotional campaign" that included "stories and ads in major newspapers on the schedule, Duke Handy campaign buttons, truck posters, newspaper display cards, newsboy competitions and supporting publicity and promotional activities" (*USTJ* 1958a, p. 7).

These youth-oriented marketing strategies prevailed even in the face of increasing reports from scientists warning of the health risks of smoking. In 1963, *Fortune* magazine observed that "several recent studies show that teenagers have not been much impressed by any anti-smoking campaigns" (*Fortune* 1963, p. 101). In one of the studies discussed in this *Fortune* article, Gilbert Research, a firm specializing in research on the

habits and interests of young people, reported that estimates of smoking rates among adolescents aged 13 through 19 had increased from 25 percent in 1961 to 35 percent in 1963. That study also found that 44 percent of graduating seniors smoked. The *Fortune* article linked this reported increase to advertising: "Cigarette ads often portray and seem to be pitched directly at young people" (p. 120).

Promotion Through Radio and Television

Cigarette sellers were among the most enthusiastic pioneers in the use of radio network broadcasting for coast-to-coast advertising. By 1930, the American Tobacco Company, Brown & Williamson, Lorillard, and R.J. Reynolds were all buying network radio time (Dunlap 1931). The American Tobacco Company's Lucky Strike brand sponsored many radio comedies and musical shows, such as *The Jack Benny Show, The Kay Kayser Kollege of Musical Knowledge,* and the best-known and longest running of the popular music shows, *The Lucky Strike Hit Parade.* This radio show, which started in 1928 and ran into the 1950s on television, appealed to a young audience; it featured, for example, teen idol Frank Sinatra when he was launching his career (Cone 1969). So popular was this show in 1938 that when its producers introduced a sweepstakes promotion offering free cartons of "Luckies" for correctly guessing each week's three most popular tunes, the promotion drew nearly seven million entries per week (Hettinger and Neff 1938).

By the early 1930s, R.J. Reynolds was sponsoring radio programs that were popular with youth, such as the *Camel Pleasure Hour, The All Star Radio Revue,* and the enduring *Camel Caravan,* which featured the swing music of Benny Goodman (Tilley 1985). In 1938, the Chesterfield brand of Liggett & Myers signed Glenn Miller and the Andrew Sisters to replace Paul Whiteman (Marin 1980). Artie Shaw appeared for Lorillard's Old Gold cigarettes, and Tommy Dorsey appeared for Brown & Williamson's Kool and Raleigh brands (Lewine 1970). The heavily commercial nature of these shows is hard to imagine by today's standard. A single hour of the *Raleigh Review,* for example, contained 70 promotional references to Raleigh cigarettes (Fox 1984).

Market research studies guided the selection of musical shows and styles that appealed to young people of various ages. For example, the market research files of the J. Walter Thompson Company, then advertising Old Golds for Lorillard, included the following market research studies for 1941 and 1942: Survey of Sales at Colleges, Survey of Dealers in 32 Colleges, Remembrance Check on "Apple" Campaign Among College Students, Report by Crossley on New York City Youth Interests in Radio Programs, and Radio Preferences Among Teenage Boys and Girls (Pollay 1988).

The successful use of radio led the cigarette industry to pioneer in television advertising. By 1950, more than seven hours per week were being sponsored by cigarette sellers. An editorial in that year's *United States Tobacco Journal* pronounced cigarette companies "the dominant factor in television advertising sponsorship"—evidence of the companies' faith that "it is an historically demonstrated certainty that the more people subjected to intelligent advertising, the more people will buy the product advertised" (*USTJ* 1950a, p. 4). By the early 1960s, tobacco companies were spending the majority of their total promotional budget on television advertising (*Advertising Age* [*AA*] 1963m, n). Their trust in the efficacy of advertising in this medium led to record-setting promotional spending (*AA* 1963b, 1964f), corresponding sales growth (*AA* 1963k), and increased profits (*AA* 1963p; *USTJ* 1963c).

Promotion Through Schools

Promotional activities sometimes advanced into the nation's schools. In 1948, Liggett & Myers Tobacco Company provided high schools with free football programs; a scorecard at the center of the program was in effect a two-page advertisement for Chesterfield cigarettes. Public complaints apparently led to the cancellation of this particular campaign, despite the fact that cigarette advertisers had previously supplied such programs for football and other high school sports (*Tide* 1948). In 1953, plastic-coated book covers featuring school logos on the front and cigarette ads on the back were being used to promote Old Gold cigarettes to students in most of the country's 1,800 colleges and in more than a third of its 25,000 high schools (*AA* 1953b).

College students in particular held great marketing potential for the tobacco industry in the 1950s. As Philip Morris Public Relations Director James Bowling explained: "Research and experience proved that the consumer, at this age and experience level, is more susceptible to change, has far-reaching influence value, and is apt to retain brand habits for a longer period of time than the average consumer reached in the general market. Therefore, though the advertising cost per thousand in the college market is relatively high, the actual expenditure can be a great deal more efficient" (Gilbert 1957, p. 184).

In the 1950s, the American Tobacco Company targeted college students with its largest ever Lucky Strike campaign, which used college newspapers, campus radio stations, football programs, and extensive campus sampling and tie-in promotions (*AA* 1953a). A research firm specializing in young people reported that cigarette firms were spending about $5 million per year on college promotions in the 1950s. It noted that most of these college students had started smoking at earlier ages, and that "continual exposure to advertising to adults through

the different media has its effects on young people" (Gilbert 1957, p. 183).

Promotional efforts targeting college students were estimated by the President of the Student Marketing Institute to have doubled in the five years leading up to 1962. During those years, promotional tactics for the 20 brands active on college campuses included free samples distributed by student "representatives" paid by specific tobacco companies. Brown & Williamson, for example, employed 17 salesmen on college campuses (Neuberger 1964). Philip Morris paid 166 campus representatives $50 a month to distribute free cigarettes. Philip Morris also ran a college contest offering record players in exchange for collected empty packages. In New York's Cortland State College, Alpha Delta Delta (a sorority for physical education teachers in training) won several prizes by collecting packages accounting for 1,520,000 cigarettes (Neuberger 1964). College students were awarded cars as prizes in contests run by the Liggett & Myers Tobacco Company (*UST]* 1963a). Cigarettes ads accounted for an estimated 40 percent of the national advertising incomes of the 850 college newspapers in the National Advertising Service (Brecher et al. 1963).

Sponsorship of Sports

Sports sponsorships were another common means to promote specific brands. Professional sports teams were given financial support by tobacco companies. Liggett & Myers had long been associated with baseball, regularly sponsoring games and using athletes' testimonials (*AA* 1963s). In 1963, R.J. Reynolds sponsored eight different baseball teams, and the American Tobacco Company sponsored six more. Football was also used to reach large audiences and to associate cigarettes with athleticism. Phillip Morris, which used athletes' endorsements of its Marlboro brand primarily to appeal to blacks (Pollay, Lee, Carter-Whitney 1992), sponsored National Football League games on CBS (*AA* 1963l) and the league championship games on NBC (*AA* 1963s). Also in 1963, the American Tobacco Company used New York Giants star Frank Gifford in advertisements for Lucky Strikes (*AA* 1963g), Brown & Williamson sponsored football bowl games (*AA* 1963d), and Lorillard had signed to sponsor the Olympic Games of 1964 and was already broadcasting previews (*AA* 1963u).

Criticism of Advertising and Promotional Activities

During these early years of the 1960s, there were criticisms of these successful selling efforts of the cigarette advertisers, just as there are currently. The criticisms were a reaction to the continued increase in cigarette sales among teens despite the growing and still newsworthy concern among scientists that smoking caused cancer. Much of this criticism and concern, however, was muted in the public forum by the reluctance of the media to jeopardize its lucrative cigarette sponsorships (*AA* 1963a). On the other hand, some noncommercial media, like *Reader's Digest*, which does not accept income for advertising, questioned the propriety of media industry behavior. Such questions were also raised in the publication, *The Consumers Union Report on Smoking and the Public Interest* (*AA* 1963r; Brecher et al. 1963). The Surgeon General's first report on smoking and health was imminent at this time and was anticipated with widespread discussion of the legislative responses it might precipitate (*AA* 1963i; Cohen 1963). Much of this talk focused on the industry's sponsorship of sports, on its use of athletes' endorsements, and on advertising copy appealing to the young.

Tobacco companies' targeting of youth was debated both inside and outside the advertising community. From within, a leading trade magazine for the advertising industry, *Advertising Age* (*AA* 1963b), and a leading advertising industry executive, John Orr Young of Young & Rubicam (*AA* 1964a), saw effective marketing to the young as strategically important to maintaining the industry's size and fostering further growth. Other industry spokespersons judged that the use of athletes was problematic, not only because it implied a healthfulness that was unwarranted, but also because it was a means of focusing on the teenage market. One critic asserted that television commercials focused on teens "by means of allusions to athletic prowess, popularity, datability and sexual allure.... It is basically a narcotic dream with an inexcusable dosage of dishonesty" (*AA* 1963e, p. 12).

An editorial in *Advertising Age* counseled the industry to put less emphasis on youth and athletes in their ads (*AA* 1963h). The National Association of Broadcasters, working on the development of a self-regulatory process, declared that "tobacco advertising having an especial appeal to minors, expressed or implied, should be avoided" (*AA* 1963o, p. 85). At the same time, *Reader's Digest* (1963) condensed an article from *Changing Times* magazine that cited the American Tobacco Company, R.J. Reynolds, and Lorillard as companies whose advertising and promotional activities were aimed explicitly at young people. The article noted the on-campus efforts targeted at college students, the hiring of students to distribute cigarette samples, and the dominant presence of cigarette advertising in campus publications. "Nowhere in that bright wonderful world depicted in the ads," the article observed, "is there any hint to youngsters that cigaret[te]s might be harmful" (*Changing Times* 1962, p. 35). The National Congress of Parents and Teachers (also known as the National Parent Teacher

Association) coined the expression "smokewashing" to imply that children were being brainwashed by cigarette advertising (*AA* 1963q).

The campaign that drew the most specific criticism for its advertising copy was the American Tobacco Company's 1963 Lucky Strike slogan: "Luckies separate the men from the boys, but not from the girls" (*AA* 1963c). The television schedule stipulated use of all three networks and spot commercials on 500 stations in 90 markets (*USTJ* 1963b). A typical print ad showed a young man looking longingly at an accomplished, mature man (such as a race car driver) who was enjoying a cigarette while receiving recognition for a feat (such as a trophy for winning a race) and being admired by an attractive woman. The President of the National Association of Broadcasters called the campaign a "brazen, cynical flouting of the concern of millions of American parents about their children starting the smoking habit.... They well know that every boy wants to be regarded as a man" (*AA* 1963g, p. 1). *Advertising Age* joined in editorial condemnation of the campaign by stating: "It is a too-clever, too-cynical attempt.... This is advertising we can do without" (*AA* 1963t, p. 20).

In the face of this criticism, the six major firms in the industry dropped virtually all advertising in college media, football programs, magazines, and newspapers, all of which they had been supporting with up to $1 million annually (*AA* 1963b). This action left in place, however, other teen-targeting practices, such as R.J. Reynolds's expenditure of nearly $2.5 million (about half of its spot radio commitment) on teen radio stations during afterschool hours, a practice the company claimed it discontinued in 1964 (*AA* 1964b). *Advertising Age* noted the political and public relations dilemma that cigarette firms faced, since the companies were interested "in picking up new business from new, young smokers" yet did not want "to be seen reaching to the young market" (*AA* 1963f, p. 108).

Industry executives met in the summer of 1963 to discuss restrictions on television advertising, using the Tobacco Institute as a framework to avoid collusion charges (*AA* 1963v). One of the Tobacco Institute's suggestions was that programs "whose content is directed particularly at youthful audiences should not be sponsored or used. Thus, good judgment in program content, rather than arbitrary restriction of sponsorship to certain hours of the listening or viewing day, should be the determining factor" (*AA* 1963j, p. 1). Although the Tobacco Institute took pains to note that it did not monitor or regulate the advertising of its members, the chief executives of all of the major firms, save Brown & Williamson, instantly endorsed the suggestions, indicating that they would display the necessary judgment and self-regulatory restraint.

The suggestions of the Tobacco Institute drew scorn from Senator Maureen Neuberger, a leading Congressional critic of tobacco-marketing practices. The Senator felt that the suggestions and the entire self-regulatory process would prove to be an "exercise in futility" that was "motivated by a desire to head off government regulation" (*AA* 1963j, p. 8). Senator Warren Magnuson complained about sponsorship (for the Kent brand of cigarettes) of *The Ed Sullivan Show* for the Beatles' American debut, which exposed millions of teens to cigarette advertising (*AA* 1965).

In 1964, the Federal Trade Commission (FTC) noted that both the messages and the media placement seemed destined to attract the young:

> Whether through design or otherwise, cigarette advertising is so placed that its audience is substantially and not merely incidentally or insignificantly, composed of nonadults.... Whether or not the cigarette industry has deliberately attempted to exploit the large and vulnerable youth market, its advertising, in emphatically reiterating the pleasures and attractions of smoking without disclosing the dangers to health, has exercised an undue influence over the large class of youthful, immature consumers or potential consumers of cigarettes (FTC 1964, pp. 110–2).

An analysis of the television schedule sponsored by cigarette firms in 1963 indicated that almost all firms bought air time during a large number of shows that had audiences consisting of 30 percent or more youth (i.e., persons under 21 years old). The sponsors, the shows sponsored, and the percentages of youthful audiences for the shows included the American Tobacco Company—*Combat* (45 percent), *The Jimmy Dean Show* (32 percent), *Monday Night Movie* (30 percent), *Saturday Night Movie* (30 percent), and *The Twilight Zone* (30 percent); Liggett & Myers—*The Outer Limits* (46 percent), *The Price Is Right* (32 percent); Lorillard—*The Joey Bishop Show* (44 percent), *Wide World of Sports* (38 percent), *Winter Olympics Preview* (35 percent), *The Dick Van Dyke Show* (33 percent); Philip Morris—*The Jackie Gleason Show* (38 percent), *The Red Skelton Show* (37 percent), *Route 66* (31 percent); and R.J. Reynolds—*Glynis* (44 percent), *McHale's Navy* (40 percent), *The Beverly Hillbillies* (38 percent), *77 Sunset Strip* (32 percent), and *Saturday Night at the Movies* (32 percent) (Pollay and Compton 1992).

Altogether, cigarette companies sponsored 55 shows for a total of 125 hours a week. On the assumption that the average half-hour television show involved two commercials, teenagers were exposed to more than 1,350 cigarette commercials during 1963, and younger children were exposed to over 845 commercials during that year. Analysis of the time slots most frequently

bought found that they were significantly correlated with the proportion of teenagers each time slot afforded (Pollay and Compton 1992).

A similar analysis in the FTC's annual report to Congress about cigarette advertising counted 73 television programs sponsored by cigarette companies; these programs appeared collectively 296 times during January 1968 and contained 501 advertisements. Not counting other sponsor identifications, this schedule likely exposed the average teenage viewer to over 60 full-length cigarette commercials per month (FTC 1968).

Self-Regulatory Cigarette Advertising Codes

In 1965, the tobacco industry began creating self-regulatory cigarette advertising and promotional codes (U.S. Congress 1965). The standards related primarily to four areas: advertising appealing to the young, advertising containing health representations, the provision of samples, and the distribution of promotional items to the young. The code prohibited cigarette advertising in school and college publications, testimonials from athletes or other celebrities perceived to appeal to the young, the use of advertising through comic books or newspaper comics, and the distribution of samples at schools. Also prohibited were representations that smoking was essential to social success, representations that the healthiness of models was due to cigarette smoking, the use of models who were participating in physical activity, or the use of models who were younger (or appeared younger) than 25 years of age.

As one observer (Baker 1968) noted, the tobacco industry did not seem to find its code particularly restrictive:

> Four months after the code was formulated, Viceroy ads featured young tennis players lighting up after a hot game. Salem showed a young couple playing giggly games alongside a waterfall. . . . A TV commercial producer admitted that it didn't matter how young the models *looked*, or how youthful were their actions, as long as they possessed 'over twenty-five' birth certificates. In fact, his quest was for older models who 'looked young' (p. 116; italics in original).

The code also prohibited cigarette advertising on shows whose audience was "primarily" underage—that is, 45 percent or more of a show's viewers were under 21 years old (*AA* 1966). This decision rule allowed considerable room for interpretation. For example, R.J. Reynolds continued to sponsor *The Beverly Hillbillies* even though the audiences for two selected individual shows exceeded the code requirement; a later interpretation by the tobacco industry held that the code would be applied to two successive months of audience analyses, rather than to selected specific shows (*AA* 1967b). Later that year, after monthly data showed high levels of minors, R.J. Reynolds ceased sponsoring the show (*AA* 1967c).

The National Association of Broadcasters Code Authority, which reviewed all advertisements under the self-regulatory process, noted that the volume and character of cigarette advertising were likely to influence the young and were therefore still problematic. In a confidential report, the association expressed its concern:

> Despite changes which have been brought about in cigarette advertising on radio and television, the cumulative impression created by virtually all of the individual campaigns supports a finding that smoking is made to appear universally acceptable, attractive and desirable. . . . The difficulty in cigarette advertising is that commercials which have an impact upon an adult cannot be assumed to leave unaffected a young viewer, smoker or otherwise. The adult world depicted in cigarette advertising very often is a world to which the adolescent aspires. The cowboy and the steelworker are symbols of a mature masculinity toward which he strives. Popularity, romantic attachment and success are also particularly desirable achievements for the young. To the young, smoking indeed may seem to be an important step towards, and a help in growth from adolescence to, maturity (National Association of Broadcasters 1966, pp. 30–1).

Candy Cigarettes

In 1967, the FTC complained to the tobacco industry that the industry's self-regulatory code permitting the sale of candy and bubble gum in packages that resembled those of actual cigarette brands amounted to "an indirect form of advertising aimed at children" (*AA* 1967a, p. 191). At least five U.S. candy manufacturers distributed candy cigarettes that imitated existing cigarette brands. The brands imitated (some by more than one candy company) were Camel, Lucky Strike, L&M, Marlboro, Pall Mall, Salem, Winston, Chesterfield, Oasis, Lark, and Viceroy. One type of candy cigarette came from a European source and appeared in packages stating, "Made under license of Philip Morris Inc., New York, NY, USA." The domestic candy cigarettes bore no such overt evidence of links to the tobacco industry, but one U.S. candy maker interviewed in *Advertising Age* stated that "no [tobacco] company had ever suggested that it might take action" for unauthorized use of trademarks (*AA* 1967d, p. 97). Another said, "The companies don't object. That's the point. We've been doing it for many years. They don't care" (p. 97).

The tobacco companies disclaimed any intent to lure children with candy cigarettes, but would not say

what action, if any, would be taken. Candy cigarettes imitating Camel, Lucky Strike, L&M, Marlboro, Pall Mall, Salem, Winston, and Viceroy were still available in the United States into the late 1970s (Blum 1980). Such candy has since become less widely available, but it has not been banned by law.

A recent study of the role candy cigarettes play in the development of smoking behaviors used focus groups, student surveys, and a distributional analysis to find that most children knew where to obtain candy cigarettes, even though they were available at only some convenience stores. The study also observed that repeated candy cigarette purchases were significantly correlated with experimental tobacco use, even when the analysis controlled for parents' smoking status (Klein et al. 1992).

Changes in the Style of Cigarette Advertising

Before reports in the early 1950s began linking cancer and smoking, cigarette advertising characteristically had used explicit health claims, assertions, and reassurances, such as "Not a Cough in a Carload," "No Throat Irritation," "More Doctors Smoke Camels Than Any Other Cigarette," "Smoking's More Fun When You're Not Worried by Throat Irritation or 'Smoker's Cough'" (Calfee 1985). With greater public concern about cancer, however, these continuing health claims, although intended to reassure consumers, were likely increasing consumer awareness of the suspected health risks of smoking. Ad slogans like Philip Morris's "The cigarette that takes the fear out of smoking" were thus judged by a *Business Week* article (1953b) to be "strange somersaults. . . . The company comes as close as is possible to the word 'cancer' without actually using it" (p. 54).

Similarly, an article in *Fortune* called industry attention to the fact that many campaigns were so "riddled with warnings and appeals to fear" that "the present cigarette turmoil could be considered an inside job. . . . [The] industry may be promoting itself toward a dead end" (*Fortune* 1953, p. 164). A *Business Week* article pointed out that the manufacturers' explicit health claims were exacerbating consumer concern. Although the industry could attribute its impressive growth to advertising, "the cigarette companies achieved much of this remarkable result by screaming at the top of their lungs about nicotine, cigarette hangovers, smoker's cough, mildness and kindred subjects. . . . From the early 1930s on, this meant almost solely one thing—sell health" (*Business Week* 1953a, pp. 66, 68). The leading trade journal for the tobacco industry, the *United States Tobacco Journal*, pointed out that the industry had been "warned editorially on many occasions that the 'health' theme was a risky one" and counseled selling "pleasure" instead of health (*USTJ* 1958b, p. 4).

Motivation Research and the Image Era

Market motivation researchers were likewise advising the industry to create positive images of cigarettes. The researchers pointed out that "the differences between the taste of different cigarette brands are much more imagined than real" (Dichter 1964, p. 345) and that "logic does not play a major role in marketing cigarettes" (Cheskin 1967, p. 135). Leo Burnett, the advertising expert who led the agency that repositioned the Marlboro campaign from a distinctly feminine to a distinctly masculine image, noted that "those who do smoke do so for various conscious or unconscious reasons" (Burnett 1958, p. 43).

Social Research Inc. did motivation research on the psychology of smokers (Day 1955) and concluded that "advertising makes cigarettes respectable, and is thus reassuring" (Neuberger 1964, p. 38). Young & Rubicam also did a series of deep motivational interviews of smokers to extract social meanings, conflicted feelings, attitudes, perceptions, and beliefs about health aspects (Smith 1954). The results showed the importance of the themes of freedom and escape to smokers. Motivation researchers concluded that people were "really interested in the properties from a psychological point of view. . . . Is it an exotic cigarette? . . . [Is it] masculine? . . . [Does it] alleviate my health worries?" (Martineau 1957, p. 61). They pointed out that health appeals may capture momentary competitive advantages, and they may offer some reassurance to the inveterate smoker. But they do nothing to widen the market, to tap the driving force of the real psychological satisfactions of smoking.

According to these researchers, "the psychological satisfactions are . . . the best material for advertising themes and appeals, because they carry their own reassurance. They are emotional supports which have developed in American society to make smoking seem reasonable, justifiable, and highly desirable. They obviously cannot be thrown in people's faces in their bare essence; but when they are implied, when they are communicated, they are understandable and satisfying" (Martineau 1957, p. 65).

Put simply, the recommendations were to use reassuring pictures, not words; images, not information. This tactic of employing visual imagery, lifestyle portrayals, and drama to create mood and attitude, rather than words, facts, and data to create knowledge and comprehension, is now known as "transformational" or "image" advertising, which stands in contrast with "informational" advertising (Puto and Wells 1983).

A leading text on advertising (Wells, Burnett, Moriarty 1989) uses the Marlboro repositioning campaign (discussed in detail later in this chapter) as the prototype example of this strategy. Martineau (1957)

described a typical Marlboro ad and noted that "the significant meanings are coming from the illustration. The copy logic is strictly after-the-fact" (p. 19). He disputed the conventional wisdom that the illustrations are merely attention-getting devices: "This is nonsense. The other meanings [from the visuals] can be totally unrelated to copy logic—and far more important" (p. 19).

Consequences of Image Advertising

As an article in the trade journal *Printers' Ink* observed, the "grim messages . . . from the health-scare days [of the early 1950s] gave way to pleasant, almost 'Pollyanna' prose. . . . The 1955 comeback . . . [taught advertising to] stick to cajoling the smoker with soft, 'gentle' phrases and oh-so-gay jingles" (Day 1955, p. 15). A few years later, the same journal noted that "once more the industry is back to its traditional and usually successful course — advertising flavor, taste and pleasure against a backdrop of beaches, ski slopes and languid lakes. It is a formula that works, as all-time high sales show" (*Printers' Ink* 1960, p. 37). As *Fortune* (1963) summarized, "Nowadays, all allusions to the health question are models of indirection" (p. 125).

In 1981, the FTC reviewed the changes that had occurred in cigarette advertising since the 1964 Surgeon General's report and noted the continuing glamorization of cigarette smoking. The FTC noted that in the last sixteen years:

> There has been little change. . . . Ads have continued to attempt to allay anxieties about the hazards of smoking and to associate smoking with good health, youthful vigor, social and professional success . . . Thus, the cigarette is portrayed as an integral part of youth, happiness, attractiveness, personal success and an active, vigorous, strenuous lifestyle. . . . [The ads are] rich in thematic imagery associating smoking with, among other things, outdoor activities, athletics, individualism and achievement. They are frequently filled with rugged, vigorous, attractive, healthy-looking people living energetic lives full of success and athletic achievement, free from any health hazards" (FTC 1981, pp. 2–2, 2–8).

Conveying Male and Female Images

One of the early consequences of motivation research was to help the industry give brands of cigarettes distinctly male or female identities (Burnett 1958; Cheskin 1967). Probably no brand more dramatically demonstrated this strategy than Marlboro, which in 1956 was converted, through an enormously successful advertising campaign, from a previous, stereotypically "female" advertising image to a stereotypically "male" image that culminated in the Marlboro cowboy. (The particulars of this marketing transformation are discussed later in this chapter.) Leo Burnett (1961), the man who created the Marlboro cowboy, described how the campaign touched a motivational chord in consumers: "We have been able to get under [the consumers'] skins a bit and find out what they really think about a product or the presentation of it and can't or won't express in words" (p. 63). Research for the campaign was done, in part, by the Home Testing Institute and the Color Research Institute for association testing (Cheskin 1967). Intensive field interviews were used to pretest the selling promotion and advertising techniques (Weissman 1955).

Large advertising spending in all media brought the campaign to a vast audience. Leo Burnett (1961) described outdoor advertising as a vital factor in the success of Marlboro; the medium's low cost per exposure allowed for the use of enough signs to achieve what Burnett called "the No. 1 factor in building confidence . . . the plain old fashioned matter of *friendly familiarity*" (p. 217; italics in original). This success with advertising the Marlboro brand led Philip Morris to launch another brand, Virginia Slims, with stereotyped female characteristics (Weinstein 1970). The success and durability of both these campaigns evidence the power of nonverbal imagery to communicate subjective values such as independence, masculinity, and femininity and to attract and retain consumers.

Historical Perspectives on the Effectiveness of Cigarette Advertising

The role of cigarette advertising in attracting new smokers was easier to recognize in the days when the rate of recruitment exceeded the rate of death and quitting so that total cigarette sales grew. Comments from diverse sources credited cigarette advertising for expanding sales and accelerating market-broadening social trends, such as smoking among women. This acknowledgment of cigarette advertising's effects on demand and onset was commented on in articles by academic analysts, advertising agents and journals, the tobacco trade press, and tobacco executives themselves.

Academic and Industry Analyses

"In the 1920s," a recent analyst noted, "advertising sold the cigarette habit to the American Public—surely the industry's most regrettable achievement of the decade" (Fox 1984, p. 114). Commenting during the 1940s on the diminution of the medical, moral, and religious reservations about smoking previously held by consumers, a Harvard Business School professor wrote, "The campaigns of testimonials featuring well-known personages and the picturing of the 'right' kind of people

smoking have undoubtedly had an influence in breaking down such prejudices. . . . Advertising undoubtedly has played a part in speeding up social acceptance of women's smoking" (Borden 1942, pp. 223, 227).

One analyst who annually evaluated the cigarette industry noted that the industry is a "glowing testimonial to the power of advertising. . . . These particular companies have not only out-spent but also have out-earned any other[s] . . . . [T]he tobacco tycoons . . . are loudest in their praise for the part that advertising has played." (Wootten 1941, p. 5). *Business Week* (1953a) commented that "cigarettes offer the classic case . . . of how a mass-production industry is built on advertising" (p. 66).

Advertising Professionals

Printers' Ink, the leading advertising trade journal of its day, noted in 1930 that sales success already demonstrated "the one feature which has contributed more than any other single factor to the enormous growth of the cigarette industry—advertising" (Tennant 1971, p. 137). This opinion was upheld by the sales performance of cigarettes during the Great Depression: "The growth of cigarette consumption has, itself, been due largely to heavy advertising expenditure. . . . It would be hard to find an industry that better illustrates the economic value of advertising in increasing consumption of a commodity. . . . There can be no doubt but that steady advertising pressure has been a dominating force in increasing cigarette consumption among both men and women" (Weld 1937, pp. 70–2).

John Orr Young's agency, Young & Rubicam, who had previously done work for the tobacco industry, observed in 1964 that cigarette makers had continued to use "attractive boys and girls" to serve as "decoys in cigarette advertisements. Advertising agencies are retained by cigarette manufacturers to create demand for cigarettes among both adults and eager youngsters. The earlier the teenage boy or girl gets the habit, the bigger the national sales volume" (*AA* 1964c, p. 3). Another leading advertising executive, the President of McManus, Johns & Adams, stated, "There is no doubt that all forms of advertising played a part in popularizing the cigarette" (*AA* 1964e, p. 107).

One of the agency executives who had worked on the Marlboro account with Leo Burnett later wrote: "I don't think cigarettes ought to be advertised. . . . [W]hen all the garbage is stripped away, successful cigarette advertising involves showing the kind of people most people would like to be, doing the things most people would like to do, and smoking up a storm. I don't know any way of doing this that doesn't tempt young people to smoke, and, in view of my present knowledge, this is something I prefer not to do" (Daniels 1974, p. 245).

More recently, the late Emerson Foote, a founder of Foote, Cone and Belding and more recently a member of McCann–Erikson, ridiculed the industry claims that its advertising only affects brand switching and has no effect whatsoever on recruitment: "I don't think anyone really believes this. . . . I suspect that creating a positive climate of social acceptability for smoking, which encourages new smokers to join the market, is of greater importance to the industry. . . . 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" (Foote 1981, pp. 1667–8).

Because of their conviction that cigarette advertising played a role in recruiting the young, many advertising professionals refused to work with the cigarette companies. Just before the first Surgeon General's report was published in 1964, *Advertising Age* (1963i) stated emphatically, "It seems safe enough to say that no advertiser, no agency man, and no media man would want to continue advertising cigaret[te]s if it were clear that they pose a serious and positive danger to the health of the ordinary smoker. . . . [L]et's not have any more sidestepping" (p. 22). When the Surgeon General's report was issued, several advertising industry leaders publicly avowed that their ad agencies would cease or refuse cigarette advertising accounts on moral grounds—a position that clearly acknowledged advertising's role in building and sustaining demand. Those who refused included several who were highly visible and prominent—Bill Bernbach of Doyle, Dane, Bernbach (*AA* 1964b); David Ogilvy of Ogilvy and Mather (*AA* 1964d); Nelson Foote of Foote, Cone and Belding (O'Gara 1964); and John Orr Young of Young & Rubicam (*AA* 1964a).

The *United States Tobacco Journal*

The *United States Tobacco Journal*'s frequent and unabashed comments on the power of advertising became something of an editorial litany during the 1950s and early 1960s. In 1953 the journal observed that "advertising, in the hands of manufacturers of tobacco products, has become a powerful tool for the construction of the massive edifice of this industry" (*USTJ* 1953, p. 4). After the industry rebounded from the reports during the early 1950s of a tobacco–cancer link, the journal stated, "There is no obstacle to large-scale sales of tobacco products that cannot be surmounted by aggressive selling" (*USTJ* 1955a, p. 4) and elsewhere noted "the pivotal importance of advertising" (*USTJ* 1955b, p. 4). A year later, the journal could claim that "the effectiveness of current advertising by tobacco products manufacturers has been demonstrated repeatedly by the upward trend in sales volume that results there from" (*USTJ* 1956, p. 4).

In 1959, the journal anticipated the launch of multiple new brands and the associated intense advertising drives to "increase sharply the trend toward greater volume in the whole tobacco industry" (*UST*] 1959, p. 3). "The purpose of advertising . . . has a simple answer: to sell goods," the journal declared in 1960 (*UST*] 1960a, p. 4), later pointing out that "steady increases in sales of cigarettes offer the classic example of what advertising can do . . . advertising pays off" (*UST*] 1960b, p. 4). By 1963, the ever-increasing spending on cigarette advertising and promotion led the journal to declare: "The money invested by the tobacco industry in various forms of advertising and promotion essentially reflects the industry's faith in the effectiveness of advertising as a vital sales-building tool. This faith appears justified by the continued annual rise in sales of cigarettes in this country" (*UST*] 1963c, p. 4). These observations from the tobacco industry's chief trade journal testify to the industry's view of advertising as an increasingly necessary and proven means of selling cigarettes. From a perspective two decades after the 1964 Surgeon General's report, the official history of the R.J. Reynolds Company comments that "the company's advertising expenditures and those of its major rivals were extraordinary, reflecting the apparent agreement on the necessity of large-scale advertising to fuel expansion" (Tilley 1985, p. 330). The view was shared throughout the industry, which embraced increasingly sophisticated advertising strategies in an almost concerted effort. George Washington Hill, proud of his role in building the modern tobacco industry, said, "The impetus of those great advertising campaigns not only built this for ourselves, but built the cigarette business as well, because . . . you help the whole industry if you do a good job" (Tennant 1971, p. 137).

The "Maturity" of the Cigarette Market

As a spokesperson for the cigarette industry has argued in a congressional hearing (Ward 1989), the industry considers itself to be operating in a "mature" market—mature because the growth in this market has slowed over the past two decades and because the product being marketed is well known to consumers. This theoretical concept of a mature market is drawn from the "product life cycle," an analogy to the stages of biological development from birth to death. The application of this theory to the cigarette industry hinges on the belief that markets develop in predictable stages and that these stages govern the intent of corporate behaviors, such as advertising and promotion. It has been asserted before congressional hearings, for example, that "in 'mature' markets such as the one for tobacco products, awareness of the product is universal. The function of advertising in a 'mature' market is to promote brand loyalty or brand switching" (Ward 1989, p. 304). The argument continues that the tobacco industry has no strategic interest in youthful nonsmokers because "advertising cannot influence a nonuser to begin using the product category" (Ward 1989, p. 306).

Few studies have specifically examined how the product life cycle applies to the cigarette industry. One early study written in support of the concept defined three substages of market maturity. Of 33 cigarette brands examined, only 36 percent of them were classified into any of the three mature stages, in contrast with 56 percent of health care and personal care products and 60 percent of food products (Polli and Cook 1969). A few years later, two research directors from the J. Walter Thompson advertising agency reviewed this study and others and counseled readers of the *Harvard Business Review*: "Most writers present the [product life cycle] concept in qualitative terms, in the form of idealization without empirical backing. Also, they fail to draw a clear distinction between product class (e.g., cigarettes), product form (e.g., filter cigarettes), and brand (e.g., Winston). But, for our purposes, this does not matter. We shall see that it is not possible to validate the model at any of these levels of aggregation" (Dhalla and Yuspeh 1976, p. 103).

Advertising textbooks counsel that even when faced with so-called mature markets, advertising firms can and often should attempt both to increase usage among existing customers and to address potential new users. For example, one leading textbook makes it clear that product maturity by no means rules out the capacity—or the need—to attract new users:

> Product class maturity is typified by a slowdown of growth and a fairly constant level of sales. This means that competition may become very intense because any brand can only increase its sales by taking them from a competitor or by developing new uses, users, or changing the product. . . . The brand's objectives during maturity are to defend its position, take share from the competition, promote new uses and users, and support the retailer. . . . In addition, the advertising should stress new uses, new users, and new usage occasions in an attempt to increase overall sales of the product class (Rothschild 1987, p. 105).

It appears that no matter what the appropriate classification of the product, different classes of potential consumers will still exist as market segments with different and particular circumstances. Marketing will thus have to address these individual segments—including that of young people for whom the product and brands are less well known, and for whom appeal must be created, since cigarettes are not a necessity of life.

Perhaps the strongest indicator that cigarette manufacturers, despite their assertions about encouraging brand switching and fostering brand loyalty, must seek out large numbers of new consumers stems from a striking feature of this mature market. The noted "slowdown" over the past two decades reflects the substantial attrition that has occurred among the industry's consumers: since 1964, about 44 million Americans have quit smoking (CDC 1993), and approximately 9 million more have died of tobacco-related disease (Tye, Warner, Glantz 1987). For the cigarette industry to preserve its mature—that is, slowing in growth but not yet declining—U.S. market status, it must attract some two million new smokers each year to replace these lost consumers. To reach this market of potential new smokers, the industry must earmark a large proportion of the $4 billion annually spent on advertising and promotional activities. As is shown through epidemiologic data in Chapters 3 (see "Age or Grade When Smoking Begins") and 4 (see "Sociodemographic Factors in the Initiation of Smoking") of this report, these new smokers will primarily be adolescents. These potential young consumers have been shown to become aware of cigarettes, in part, through cigarette advertising (Chapman and Fitzgerald 1982; Aitken, Leathar, O'Hagan 1985); moreover, young people appear to develop brand loyalty early on (O'Connell et al. 1981), and because of the addictive properties of nicotine (discussed in Chapter 2), these young smokers are likely to continue into adulthood as cigarette consumers.

Contemporary Strategies of the Tobacco Industry

Tobacco companies have used multiple research resources and perspectives even for a single brand. Most of this research is not accessible. However, recent disclosures of corporate documents examined during a trial contesting Canada's cigarette advertising ban, which became effective on January 1, 1989, provide evidence that at least some tobacco companies (in this instance, both plaintiffs) have explicitly targeted youth as recently as the 1980s. These documents, which have been cited and discussed in Pollay and Lavack (1992), were disclosed in proceedings assessing the constitutionality of Canada's Tobacco Products Control Act (Imperial Tobacco Limited & R.J. Reynolds–MacDonald Inc. v. LeProcurer General du Canada, Quebec Superior Court, 1990). This litigation provided a unique opportunity to examine contemporary internal industry documents regarding the industry's strategic interest in youth.

Researching the Young

Documents produced during the Canadian trial revealed information about projects that support the interest of the tobacco industry in the youth market. Imperial Tobacco Limited's Project Huron, for example, evaluated the feasibility of a flavored cigarette targeted primarily at males aged 15 through 25 years old. The project was the subject of at least 33 different market research reports supplied by at least six external research sources over the space of just four years. Research documents discussed the behavior of 11-, 12-, and 13-year-olds and the nature of the process of beginning to smoke (Pollay and Lavack 1992). Both Imperial Tobacco Limited and R.J. Reynolds–MacDonald generated several research studies focused on beginning smokers; some of these studies identified the perceived risks and rationalizations of preteens and teens at smoking onset.

Imperial Tobacco Limited's Project 16 (AG–216)[1] revealed that "the adolescent seeks to display his new urge for independence with a symbol, and cigarettes are such a symbol. . . . Serious efforts to learn to smoke occur between ages 12 and 13 in most cases. . . . However intriguing smoking was at 11, 12 or 13, by the age of 16 or 17 many regretted their use of cigarettes for health reasons and because they feel unable to stop smoking when they want to" (p. i-vi). The follow-up Project Plus/Minus (AG–217) revealed to Imperial Tobacco Limited that "starters no longer disbelieve the dangers of smoking, but they almost universally assume these risks will not apply to themselves because they will not become addicted. Once addiction does take place, it becomes necessary for the smoker to make peace with the accepted hazards. This is done by a wide range of rationalizations. . . . The desire to quit seems to come earlier now than before, even prior to the end of high school" (p. vi).

The other plaintiff in the trial, R.J. Reynolds–MacDonald, had also researched the young, studying in great depth 1,022 subjects from ages 15 through 24 in Youth Target Study '87 (RJR–M–6). To determine whether young people who had never smoked came from particular family and social environments, the study considered the possible factors of adult smoking, family pressures about starting, and smoking by teenage peers. Personality and attitude were assessed through 15 character dimensions, such as "laissez-faire," "workaholic," "wimpishness," or "dropout." Attitudes and knowledge about the association between smoking and health risk were closely studied. The images of smokers, ex-smokers, and never smokers were measured along 17 dimensions. Data on the image of tobacco products were gathered on 25 scales. Advocacy issues were inferred by measuring

[1]To cite documents entered into evidence, this discussion uses the trial numbers indicating who entered the documents—e.g., Attorney General (AG–###) R.J. Reynolds, Inc. (RJR–M–###), or Imperial Tobacco Ltd. (ITL–###).

awareness of antismoking campaigns and the relative credibility of various sources of information, such as doctors, teachers, government employees, and manufacturers. Perhaps the most striking component of this massive research effort, however, was the measurement of personality traits using a clinical psychometric instrument, Cattell's 16 Personality Factors. Scales of this instrument measure elements of personality defined as ranging from tough-minded to tender-minded, trusting to suspicious, or shy to adventuresome, among others.

Youth Target Study '87 used cluster analysis to divide the youth market into seven psychographic groups: "Big City Independents," "Tomorrow's Leaders," "Transitional Adults," "Quiet Conformers," "T.G.I.F.'s," "Insecure Moralists," and "Small Town Traditionalists," (RJR–M–6, pp. 8–10). The T.G.I.F. (Thank God It's Friday) segment was the largest, containing about 30 percent of this population of 15- through 24-year-olds. Since 62 percent of the T.G.I.F. group were reported to be smokers, they were considered an important segment. The T.G.I.F. group primarily comprised underachievers who were "rooted in the present. They live for the moment and tend to be self-indulgent. . . . Achievement and leadership is not a goal for this group compared to others. Societal issues are relative nonissues. . . . They are the most prominent supporters of smoking . . . . They do read newspapers and some magazines, including *Playboy* and *Penthouse*. Heavy metal and hard rock are common music choices" (RJR–M–6, pp. 8, 21).

Portraying Youthful Behavior

As a matter of policy, "positive lifestyle images" were used by Imperial Tobacco Limited to suggest the continued social acceptability of smoking. The company chose models and activities to facilitate young people's identification with the company's products. Creative guidelines for the Player's brand, for example, specified that the target market would "emphasize the under-20-year-old group in its imagery reflection of lifestyle (activity) tastes" (AG–35, p. 42). The models used in Player's advertising were to be "25 years or older, but should appear to be between 18 and 25 years of age" (AG–35, p. 52).

R.J. Reynolds–MacDonald, however, learned that models can be too young appearing for the young consumer's taste. When the Tempo brand cigarette was test-marketed in selected cities, most of its media budget was allotted to out-of-home media, targeting key youth locations and meeting places close to youth-frequented sites, such as theaters, record stores, and video arcades. To target the young, who were perceived to be "extremely influenced by their peer group," the J. Walter Thompson advertising recommendations called for "imagery which portrays the social appeal of peer group acceptance—where acceptance by the group provides a sense of belonging and security" (AG–16, p. 4). The media featured young-looking models arm-in-arm, wearing casual clothes perceived as trendy by the young. The brand met with mixed results in the test market, however, in part because it was too explicitly young in character. Few teenagers, it seems, wanted an explicitly teen product, instead preferring to use products associated with adulthood.

Conveying Pictures of Health

The images used in many of Canada's cigarette ads were carefully crafted to feature attainable activities that appealed to youth but were not so intense as to be unbelievable in the context of smoking. The Player's Filter '81, Creative Guideline (AG–222) required that ads feature activities that "should not require undue physical exertion. They should not be representative of an elitist's sport nor should they be seen as a physical conditioner. The activity shown should be one which is practiced by young people 16 to 20 years old or one that these people can reasonably aspire to in the near future" (AG–222, pp. 1–2).

These images were tested to ensure that they elicited minimal counterargument from viewers. For example, in the Project Stereo Advertising Evaluation (AG–220), a windsurfing ad for the Player's brand received the following evaluation:

> The reaction to windsurfing as an activity is neutral with regard to whether or not the people who engage in it are likely to be smokers or not. However, the more physically fit and healthy-looking the protagonists, the stronger the no-smoking classification elicited. The same person sitting on the beach—perceived by most as resting after surfing—or shown carrying a surfboard—whether getting out of the water or walking toward the ocean—evokes different reactions regarding smoking. Respondents are willing to accept the man smoking while resting but are reluctant to think of him as a smoker while his well-built body is in full view (AG–220, p. 6).

Projecting Images of Independence

The brands most successful with teenagers seem to be those that offer adult imagery rich with connotations of independence, freedom from authority, and/or self-reliance. Imperial Tobacco Limited's Project Sting tested "overtly masculine imagery, targeted at young males" (Pollay 1989b, p. 24). Young males were seen as "going through a stage where they are seeking to express their independence and individuality under constant

pressure of being accepted by their peers" (Pollay 1989b, p. 24). R.J. Reynolds' Export A brand had a special appeal for young Canadian teens and preteens, as the company recognized in its Export Family Strategy Document of 1982 (AG–222): "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" (AG–222, p. 7299).

Imperial Tobacco Limited's Project Stereo (1985) provided creative guidelines for the effective display of freedom and independence in advertising imagery designed to appeal to a young market. Its Final Report (AG–27) made recommendations for designing advertisements for the Player's brand that showed someone "free to choose friends, music, clothes, own activities, to be alone if he wishes"; who "can manage alone" and be "close to nature" with "nobody to interfere, no boss/parents"; someone self-reliant enough to experience solitude without loneliness (AG–27, p. 60).

Project Stereo also described how Player's and its closest rival for young males, Export A, both used images, not words, to convey the critical concepts of independence, self-reliance, autonomy, and freedom from authority. Both brands used advertisements that featured strong, masculine, hardy men who were typically alone in the fresh air of the outdoors. But as is shown in the chart below, the two competitors conveyed their respective images with relatively small yet important differences.

Player's Smoker's Image	Export A Smoker's Image
Chooses to be alone.	Is a loner.
Conveys masculinity but also gentleness.	Conveys machismo ruggedness.
Can show feelings.	Does not show feelings.
Can include women.	Excludes women.
Has a good job, is a good worker.	Is working-class.
Is adventurous.	Is a daredevil.
Is independent and strong willed.	Isn't concerned about society.

(AG–27, p. 18).

The more subtle, less excluding Player's image proved far more successful than the uncompromising Export A image.

Images of the American Ideal

United States advertisers, too, have long thought that individualism and the stimulating notions of independence, self-reliance, and autonomy are important strategic concepts in ad development. The Marlboro cowboy (also known as the Marlboro man) epitomizes this stereotype of American independence. Usually depicted alone, he interacts with no one; he is strikingly free of interference from authority figures such as parents, older brothers, bosses, and bullies. Indeed, the Marlboro man is burdened by no one whose authority he must respect or even consider (see Figure 1).

One account (Meyers 1984) describes the success of Philip Morris's George Weissman and Jack Landry, who were instrumental in making Marlboro the best-selling cigarette brand in the United States. Marlboro had long been sold as a woman's cigarette, with lipstick-colored filters and a "Mild as May" slogan (see Figure 1). The first attempt to reposition the brand as "male" featured the breathy, sensual singing of Julie London and male models with tattooed hands. But when Weissman, then head of marketing for Philip Morris, assumed responsibility for the campaign in the late 1950s, his research informed him that postadolescents in search of an identity were beginning to smoke as a way of declaring independence from their parents. Jack Landry, the advertising executive for Philip Morris, coordinated with the Leo Burnett agency and came up with "commercials that would turn rookie smokers on to Marlboro. . . .[that would convey] the right image to capture the youth market's fancy . . . [and project] a perfect symbol of independence and individualistic rebellion"—in other words, the Marlboro cowboy (Meyers 1984, p. 70). The power of the associative psychological style of advertising was demonstrated by the Marlboro brand's capture of a significant market share of starters every year, until it soon became the best-selling brand.

This success has proved long-lived. In 1993, Marlboro commanded 21 percent of the domestic market share—by far the largest share (Maxwell 1993). As Philip Morris's president and CEO, R. W. Murray observed, the Marlboro man still has a powerful attraction: "The cowboy has appeal to people as a personality. There are elements of adventure, freedom, being in charge of your destiny" (Trachtenberg 1987, p. 109).

Marlboro's success led to much imitation and competition in the industry. The FTC reported that one of the popular advertising strategies of the late 1960s was the use of associative themes, where an image portrayed "one or more personality characteristics which the advertiser hopes will appeal to the audience of existing and potential cigarette smokers. . . . The classic example of this approach is the Marlboro cowboy—ruggedly masculine, self-sufficient. . . . The theme of masculine independence has been used by several other advertisers" (FTC 1970, p. 8). Advertisements for Camel, Newport, and Old Gold were named as examples.

Figure 1. Selected Marlboro cigarette advertisements, 1937–1992







Sources: Clockwise from top left: *New Yorker* 1937; *Road & Track* 1990; *Road & Track* 1992.

In a parallel manner, advertisements for brands such as Virginia Slims appealed to feminine independence. An ad executive who headed the account for a leading female brand, and who requested anonymity, was quoted by the Wall Street Journal as stating, "We try to tap the emerging independence and self-fulfillment of women, to make smoking a badge to express that" (Waldman 1989, p. B1).

Over the past few decades, many advertising campaigns have featured race car drivers, and many brands (such as Camel, Marlboro, and Winston) continue to sponsor racing events and teams. A commercial study of three different executions of a 1976 Viceroy advertisement with close-ups of "a young man in auto racing garb" found that subtle visual differences caused by the model's appearance, positioning, or other visual staging devices could greatly affect consumer reactions. Despite identical verbal copy and layout in all three advertisements, one of them more strongly suggested that smokers of Viceroy had the desirable "positive personality characteristics including courageousness,

independence, adventurousness and aggressiveness" (Schwartz 1976, p. 75).

The sponsorship of racing car events by Marlboro (see Figure 1) may seem inconsistent with the cowboy character, but it is not. The company's Vice President of Marketing Services, Ellen Merlo, explained: "We perceive Formula One and Indy car racing as adding, if you will, a modern-day dimension to the Marlboro Man. The image of Marlboro is very rugged, individualistic, heroic. And so is this style of auto racing. From an image standpoint, the fit is good" (*Business of Racing* 1989, p. 5A).

Historical Content Analyses of Cigarette Advertising

Introduction

The social sciences afford a variety of approaches for describing and analyzing the content of communications of all kinds, whether in the form of speeches, conversations, newspaper articles, signs, or advertisements. Specific communications, such as a single ad or the coherent set of ads that constitutes a campaign, can be examined in detail. Typically, in-depth approaches, such as semiotics, are discursive descriptions that deconstruct the message and its meaning through detailed consideration of the elements of the ad (e.g., words, symbols, images), their structure (e.g., layout and prominence of visuals, rhetorical devices, and emphasis), and the cultural context in which these appear (e.g., the meanings traditionally attached to the ad elements, alone or in combination). These methods describe in sophisticated, analytical terms the probable meaning of the message to the average audience member.

The term "content analysis" is also used to describe a formal set of sampling and coding techniques, whose intent is to produce objective numerical data descriptive of a set of communications, such as a collection of ads. These systematic methods code and count both the overt and latent content of ads by observing the verbal and visual elements within a set of predetermined definitions. The definitions can be coded for events at various levels of observation, from broad themes to specific minutiae. These definitions are employed by trained coders, who apply them to a systematically drawn sample of ads. The reliability of this coding task is usually measured and reported and depends upon how clear are the communications under study, how complex the definitions of interest, how difficult the coding task, how attentive the coders, and other factors. The sample can be either cross-sectional (representing many brands' advertising), longitudinal (tracing evolution of advertising over time), or both. Like other sampling, the representativeness of the sample studied and the resulting potential to generalize from the results are a function of the sampling strategy (e.g., drawn from certain sources, seasonally or randomly determined, a complete census).

The simultaneous pursuit of objectivity in content-analysis coding and meaningful observation often involves methodological judgment to weigh the various trade-offs and compromises. Some analysts (e.g., Ringold and Calfee 1989) deliberately limit their efforts primarily to the verbal content of the ads, analyzing the words in painstaking detail. The limitations of this careful but restricted focus and the inferences that can be appropriately drawn from it have been the subject of a sustained debate (Cohen 1989, 1992; Pollay 1989a; Ringold and Calfee 1990).

The next sections of this chapter discuss the more formal content analyses of historical samples of cigarette ads and focus on the more fundamental results, general tendencies, and broader conclusions. Within the limits of the noted sampling for each study, these analyses describe the universe of cigarette advertising for multiple brands, or of cigarette advertising in general, rather than for specific brands and their campaigns. In some studies, the content-analysis data descriptive of cigarette advertising are related to other information, such as product features, market shares, audience characteristics, or historical events.

Increase in Visual and Vivid Advertising

The first published report analyzing the content of cigarette advertising (Weinberger, Campbell, DuGrenier 1981) studied 251 cigarette ads found in the issues of *Newsweek*, *Sports Illustrated*, and the *Ladies Home Journal* during the years 1957, 1967, and 1977. The report noted an eightfold increase in the volume of cigarette magazine ads between 1957 and 1977, as the industry left broadcast media. The investigators found significant increases, as well, in the proportion of ads in color, at premium locations (e.g., on the back or inside covers of magazines), and with multiple pages. Both explicit and implied health claims were also found to have increased significantly; almost all ads for lower-tar products advertised in 1977 were "tombstone" ads (i.e., consisting of text and package display only—no models, nature

scenes, sports paraphernalia, etc.). Using market data from leading national advertisers and the index of advertising listed by manufacturer, the analysis revealed that a firm's "share of voice" was almost perfectly correlated with its market shares; that is, all tobacco companies included in this study sample of print media were advertising their products in near-exact proportion to their market share.

Becoming Pictures of Health

Verbally explicit health claims, a prominent feature of early cigarette advertising, have been replaced by claims about filter effectiveness, mildness, and the mandatory warnings and disclosures. As scientific evidence of the health risks of smoking became increasingly known to the general public in the 1950s and 1960s, the pseudoscientific claims made by cigarette advertising in earlier decades (claims that using a given brand, for instance, would protect against "smoker's cough") were replaced by unadorned statements of filter effectiveness against tar and nicotine. These later health claims tacitly allowed that smoking was harmful, but they also strongly suggested that smoking a particular brand was significantly less harmful. Such health claims thus have the primary purpose of promoting sales for a separate product category: that of "low-tar, low-nicotine" cigarettes. Verbal health claims in advertising have otherwise been replaced by visual, connotative imagery—what can be called pictures of health.

Ringold (1987) reported on the verbal content of 211 cigarette ads drawn primarily from *Time* magazine from 1926 to 1985, partially supplementing the sample, as needed, with ads drawn from the *New Yorker*, the *Saturday Evening Post*, and *Life*, in that order. Although inexplicably omitting any Philip Morris brands, this sample sought one ad each for six brands: Camel, Chesterfield, Kent, Lucky Strike, Old Gold, and Viceroy. Detailed coding was done on the verbal content in headlines, subheads, and body copy. Even though all "mildness" assertions were treated as taste claims only, health claims were the most frequently made type of claim for the period before 1954. For the overall 1926–1985 study period, health claims were the third most frequent type of claim, representing 18 percent of all claims. This finding was true for five out of the six brands studied, and there was "little to distinguish the various brands in terms of the health claims frequently used" (Ringold 1987).

A study of the words and images of all 567 ads from 108 issues of *Life* (1938–1983) and *Look* (1962–1971) included the ads for 57 brands (Pollay 1991); 14 major brands accounted for 75 percent of the total sample. Multiple judges coded these ads for 12 major and independent thematic dimensions. Three of these dimensions were postulated to communicate healthiness: (1) "health/safety" made verbal claims about positive physical effects, medical use or endorsements, or reduced symptoms and risks, including filter-effectiveness claims (unless the text linked effectiveness to product taste); (2) "bold/lively behavior" provided images of active, athletic, or risk-taking behavior; and (3) "pure scenes" provided images of nature associated with wholesomeness, cleanliness, and purity, such as glaciers, mountain streams, or new-fallen snow. Other themes measured included "well made" (product quality), "good deal" (value for money), "enjoy" (pleasure and satisfaction), "female, male, glamour/luxury" (celebrities, status, wealth), "relax" (peace of mind), and "official" (tested or endorsed by authorities).

Judges found one or more of the healthiness themes in 60 percent of the studied ads, images of bold and lively behavior in 20 percent, and pure scenes in 30 percent. Some stereotypical differentiation of men and women was evident: ads featuring men were significantly more likely to use images of bold and lively behavior, whereas the ads featuring women were significantly more likely to use images of glamour and luxury.

Warner (1985b) studied 716 cigarette ads from *Time* for selected years from 1929 through 1984. Various visual, verbal, and thematic elements of the ads were coded: the presence or absence of smoke, the manner in which cigarettes were held, the nature of models employed, the degree of prominence given to health messages, and the types of themes not focused on health, such as humor, rugged individualism, and romance. Data were not reported for individualism, emancipation, or other themes of independence. Data were grouped according to their proximity to periods of intense public consideration of the health consequences of smoking—such as the health concerns raised in the early 1950s (particularly since increased promotion and supply of cigarettes during World War II had contributed to a larger population of young adult smokers [Blake 1985]), the first (1964) Surgeon General's report on smoking and health, and the Fairness Doctrine that required broadcast cigarette ads to carry health-risk messages during the period 1967–1970. Results show evidence of the dramatic growth in magazine advertising over the 56-year study period: the average number of cigarette ads per issue rose steadily from less than one per issue for the 1929–1952 period to over eight per issue for 1974–1981 (after the ban on radio and television had gone into effect). During the last two decades studied, the images in these ads had the notable characteristic of showing virtually no smoke. Although visible smoke appeared in half of the ads before 1964, after 1964 only 5 percent of lit cigarettes appeared to emit

visible smoke, and after 1976 not a single instance of smoke was found in this sample. The imagery in those ads was increasingly, and apparently deliberately, becoming more pristine by eliminating smoke from ads.

The balance between the verbal and visual elements of the ads was measured in this study, as was the degree of health focus. Ads that relied more heavily on words than on pictorial images were judged as trying to convey a health message. Both the health focus and the balance between verbal and visual elements were found to be episodic; ads tended to verbally emphasize health themes during the years of major smoking and health events. Such ads often emphasized a health-related product innovation, such as scientifically designed filters. This general pattern seemed to end in 1964, the year of the first Surgeon General's report, during and after which ads became more visual. Warner (1985b) notes, "Industry advertising directors may have concluded that the most effective contemporary response to health concerns is an indirect one: conveying visual images of vibrant, physically fit, successful, sociable, and sexy people in physically active or glamorous settings, in other words, associating smoking with people who are the proverbial 'picture of health'" (p. 125). Similar observations were made by Rogers and Gopal (1987), who studied an unspecified number of ads from three issues of *Time* and *Life* magazines each year, at five-year intervals from 1938 to 1986. They noted that over time, positive health appeals were displaced by claims of having "less harmful" products, and that these in turn were displaced by "more and more lifestyle advertising . . . brand imaging . . . using more poster style layouts and color spreads . . . with very little body copy" (pp. 262, 266).

Other researchers have noted the episodic nature of cigarette advertising history but attribute the changes not to industry strategy or sophistication, but to the effects of regulation and self-regulation, such as FTC activity or industry self-regulatory codes. Ringold and Calfee (1989) report on the verbal content of 568 ads drawn primarily from *Time* magazine from 1926 through 1986. This sample is both longitudinal (N = 348), expanding on the sample of one ad per year for various brands reported earlier (Ringold 1987), and cross-sectional, using a sample of 25 ads each for the seven mid-decade years 1926, 1936, 1946, 1956, 1966, 1976, and 1986. The ads were coded along 27 general ad characteristics and 51 claim categories. The coding, described by the authors as conservative, treated all mildness claims as claims about taste that were irrelevant to health and treated all claims about filter innovations as claims about product quality, not about health. Nonetheless, results of the longitudinal sample show that 27 percent of all claims were health claims, making it the most common category, primarily because ads since 1965 were required to carry tar and nicotine disclosures (See "Warning Labels on Tobacco Products" in Chapter 6). Voluntary health claims were anywhere from 17 percent to 29 percent of total claims before 1954 but had nearly disappeared after that year.

In the longitudinal analysis, action-oriented ads—those depicting competitive sports, adventurous pursuits, or leisure behaviors—were more than twice as common (42 percent of all ads) as those showing all other types of activity, such as working, eating, or shopping (17 percent of all ads). Almost identical results were found for the cross-sectional sample of 220 ads. No data were reported for how the frequencies of these images of activities changed over time.

Advertising That Targets Youthful Audiences

Albright et al. (1988) studied cigarette ads in magazines that reach young readers (*Rolling Stone, Cycle World*), female readers (*Ladies Home Journal, Mademoiselle*), or general adult readers (*Time, TV Guide, Ebony, Popular Science*). All cigarette ads in one issue for every year from the 1960s through 1985 were coded, yielding 778 ads for analysis. Like other analysts, Albright et al. found that the volume of magazine advertising increased dramatically during this period, stabilizing after 1977 at six to seven ads per issue. Within this study sample, the proportion of total ads appearing in the magazines reaching younger audiences grew significantly over time to become 36 percent of the total. The analysts concluded that although these data may not fully represent the overall market trends, "women and adolescent magazine readers are exposed to a large quantity of cigarette ads, regardless of the advertisers' intent" (Albright et al. 1988, p. 232).

Altman et al. (1987) analyzed the themes and images employed in this same sample of magazines. The study focused on the ads (78 percent of the total sample) that showed a setting or had a model present. These were coded for elements of the act of smoking, the presence of a low-tar or low-nicotine theme, and suggestions of the "vitality of smoking." The latter concept was measured with subcategories of adventure/risk (e.g., rock climbing, sailing, racing cars), recreation (e.g., playing tennis, surfing), and romantic/erotic appeal (e.g., scantily dressed models, moonlit settings).

Images of risk and adventure, recreation, and erotic or romantic display in youth magazines increased significantly over this period (1960s to 1985). Ads in youth magazines were significantly more likely than ads in other magazines to depict images of adventure or risk,

were more likely to display recreation, and were somewhat less likely to depict erotic imagery. Tombstone ads were less likely to appear in youth magazines, or conversely, youth magazines were more likely to feature image-based ads.[2] Like Warner (1985a), Altman et al. found a decline in the evidence of visible smoke and the act of smoking.

The database of Altman et al. (1987) was extended by Basil et al. (1991), who examined differential targeting, or how cigarette advertising strategies varied depending on the characteristics of the primary readership. These researchers added two magazines with a primarily black readership (*Jet* and *Essence*) and updated the sample to include magazines from the 1960s through July 1989 for an enlarged sample of 1,171 ads. These investigators also delineated three subcategories of romantic/erotic themes: (1) horseplay—males and females cavorting; (2) erotic content—romantic or sexy situations, innuendo; and (3) seductive poses—wanton looks or suggestive glances or poses.

From 1984 through July 1989, the number of ads per magazine issue declined in general in men's and women's magazines but was relatively stable in those magazines reaching black and youth audiences. The most common type of ads in men's and youth magazines showed models engaged in lower-intensity sports, such as water skiing or volleyball. Analysis of variance between magazine types found that ads depicting incidents of horseplay and romantic contact were most prevalent in black- and youth-oriented publications. A separate analysis found that incidents of horseplay had grown significantly more frequent over time and were significantly related to the average age of a magazine's readers; magazines with a younger readership were more likely to run ads featuring horseplay. Comparing results for all consumer segments, the researchers concluded that these ad strategies appear

> to depend on the segment's current rate of smoking. . . . Readers with high smoking rates are often pitched to choose certain brands with appeals based on some aspect of the brand rather than on the models depicted in the ad. However, readers with low smoking rates appear to be given appeals that focus on models, suggesting that smoking is fun, helps you make friends, and will make you desirable. Groups with lower smoking rates are more frequently given appeals that appear to be attempting to recruit new smokers (Basil et al. 1991, p. 88).

[2]Research (such as Fischer et al. 1989) that has examined the effect that health warning labels in cigarette advertising have on young people is discussed in Chapter 6.

The work of King et al. (1991) partially contradicts and partially replicates findings from the previously described studies. King et al. followed a similar sampling strategy, drawing ads from one issue for each available year, between 1954 and 1986, for each of eight magazines representing five distinct audience orientations: general interest (*Time*), older women (*Ladies Home Journal* and *Redbook*), younger women (*Vogue*), older men (*Popular Mechanics* and *Esquire*) and younger men (*Sports Illustrated* and *Playboy*). This sampling yielded 1,100 cigarette ads for an analysis that focused on visually oriented content.

Like other studies, King et al. noted a large increase in magazine advertising: the number of ads per issue was more than ten times greater for the period 1971–1983 than for the period 1954–1970. *Playboy* had both the largest number of cigarette ads per average issue and the lowest median audience age. Unlike earlier studies, however, King et al. found no systematic relationship between the median age of a magazine's audience and the average number of ads published.

As was found in previous multiyear studies, cigarette ads in general relied more and more on visual imagery and became increasingly larger (e.g., more ads were multipaged), more photographic, more colorful, and more visual than verbal. The volume of cigarette ads varied significantly over time; the greatest changes were a decline in the proportional importance of general-interest magazines, a relative stability for both older and younger men's magazines, and a growth in both older and younger women's magazines. The ads in the younger men's and women's magazines together constituted 39 percent of the total cigarette ad volume in this sample of magazines during 1954 through 1970, 33 percent during 1971 through 1983, and 45 percent during 1984 through 1986. Similarly, Warner and Goldenhar's (1992) analysis of the use of 92 magazines as cigarette advertising vehicles from 1959 through 1986 found the largest increase in women's magazines and in magazines reaching predominately blue-collar readers.

Imaging Individualism, Independence, and Self-Reliance

In King and colleagues' (1991) analysis, the activities of the models fall into six categories: adventure (operating a speedboat), recreation (playing ball), erotic (being romantic with another), sociability (talking with peers), working (ranching), and individualistic/solitary (reading a book, watching a sunset). The study defined individualism solely in terms of restful behaviors; this decision and the resulting classification of the Marlboro cowboy as "working" rather than "individualistic solitary" are debatable elements of this study, but the results nonetheless indicate the importance of the independence theme.

For example, the most frequently cited categories of ads that reached younger women were individualism (29 percent), recreation (26 percent), and sociability (20 percent). The most frequently pictured activities in ads that reached younger men were individualism (21 percent), work (21 percent), recreation (20 percent), and adventure (14 percent). The authors noted that "portrayals of individualism were more likely to appear in cigarette ads placed in younger men's and younger women's magazines." Despite this and other noted differences between ads in various types of media, "this study found a striking universality of theme, regardless of audience orientation. Individualistic/solitary and recreational themes were most frequently portrayed in virtually all magazine types" (King et al. 1991, p. 77).

Schooler and Basil (1990) studied all types of billboard ads in San Francisco neighborhoods. Billboard advertising is held to be important because it allows neighborhood-level targeting and ethnic segmentation. Like point-of-sale store signage, billboard advertising has more permanence than magazine ads, allowing multiple incidental exposures for all ages of persons who are on the neighborhood street regularly, going to work, stores, or schools. Of the 901 billboards photographed between May 1985 and September 1987 in 210 commercial districts, tobacco ads were the most frequent (19 percent), closely followed by alcohol (17 percent). Black and Hispanic neighborhoods had significantly more tobacco and alcohol ads than white or Asian neighborhoods. Billboards of any type were 1.7 times more common in black neighborhoods (2.2 per 1,000 people) than in a citywide sampling (1.3 per 1,000). Tobacco billboard ads were even more common in black neighborhoods, appearing at 2.4 times the citywide rate.

The content of these ads was coded for several social cues: sex, ethnicity, apparent social "class" of the models, reward cues (e.g., romance, sociability, recreation, sportiness and active lifestyle, and adventure/risk), and attractiveness cues (e.g., rugged individualism, machismo, fashionableness, sex appeal, fame/expertise, and friendliness). The most prevalent reward cue images associated with smoking were sportiness and active lifestyle, recreation, and adventure/risk. The most prevalent attractiveness cue on tobacco billboards was rugged individualism or machismo. The statistically significant results indicated how important social cues are to these tobacco products. The study suggests that people are more likely to be portrayed in cigarette and alcohol ads (59 percent) than in advertising generally (16 percent), and cigarette and alcohol ads were more likely than others to use models that matched the ethnicity of the neighborhoods.

When advertising for smoking and for alcohol were compared, the study concluded that alcohol ads use modeling cues that suggest that product consumption will enhance one's social life, whereas tobacco billboards emphasize rewards that are more individualistically oriented. "Rugged individualism," the study observed, "was the most prevalent attractiveness cue on tobacco billboards. The epitome of these ads is the Marlboro man" (Schooler and Basil 1990, p. 15). These research results are reported in brief elsewhere (Altman, Schooler, Basil 1991), and additional statistical analyses of the same database reach the same conclusions (Schooler, Basil, Altman 1991).

Altman and colleagues' (1987) analysis of 778 magazine ads (from the 1960s through 1985) also found that images of adventure and risk had become more prevalent across all magazine types. Youth magazines were even more likely than other types to depict images of adventure/risk and recreation.

Other Related Research

Perceptions of Models' Ages

Mazis et al. (1992) studied the perceived age of the models used in cigarette ads appearing in 97 magazines in October 1987. In the 101 issues (some magazines were published more often than once a month) that contained cigarette ads, 393 cigarette ads for 22 brands were found, of which 119 were unique (i.e., did not appear in another of the 97 magazines that month). Narrowing the sample to ads with models whose faces were "clearly visible" (i.e., their faces were at least two-thirds exposed and were depicted close enough to discern approximate age) yielded 50 unique ads with 65 models. Two samples of 280 and 281 judges were recruited from a racially and economically diverse shopping mall, with quotas that guaranteed a cross-section of gender and age (13 years old and older).

Each participant was asked to estimate the age and assess the attractiveness of the models in a random sample of 25 ads. These data were compared to data on the median age of the audiences of the magazines used as sources. A positive and statistically significant correlation was found between perceived model age and median audience age. For example, young-looking models tended to appear in media read by young audiences—a correlation advantageous to the advertisers, since young viewers proved more likely than older viewers to perceive that attractiveness declined with advancing perceived age.

Fourteen (22 percent) of the 65 models were judged, on average, to be less than 25 years old, and eleven (17 percent) were attributed a mean perceived age far enough below 25 years old to be statistically significant. Nine of these young-looking models were women, four of them in various Virginia Slims ads. "Some cigarette

ads," the authors concluded, "are clearly violating the industry's voluntary code that requires models not to 'appear to be less than twenty-five years of age'" (Mazis et al. 1992, p. 35).

Ads That Target Women

The history of campaigns that target women has been reviewed by discussing specific campaigns and generating data for advertising intensities (i.e., the numbers of ads appearing in each magazine) for 1971 through 1984 (Ernster 1985). Tabulation of the number of ads in *Better Homes and Gardens, Ladies Home Journal,* and *McCall's* revealed that ad intensity grew steadily during the 1970s, peaked in 1979, and declined thereafter. Nonetheless, in 1984, an average of more than 10 cigarette ads appeared in each issue of these magazines and of *Cosmopolitan, Family Circle, Glamour, Harper's Bazaar, Mademoiselle, Redbook, Vogue,* and *Woman's Day.*

A similar report (Howe 1984) on the history of women and cigarette advertising included graphs of the frequency of cigarette ads showing women smoking that appeared in *Life* (for the period 1936–1972) and *Ebony* (for 1945–1980). These ads peaked in the mid-1960s, and again in the early 1970s. The report observed that in these peak years, the ads generally focused on "women jogging, biking, backpacking and playing tennis, all while smoking a cigarette, too. It would be difficult to argue that these positive images are not influential on young, image-conscious teenagers" (p. 8).

Ads That Target Blacks

The cigarette ads targeting blacks in *Ebony* from 1950 through 1965 were studied by Pollay, Lee, and Carter-Whitney (1992). When the full census of cigarette ads from *Ebony* (N = 540) were compared with cigarette ads from a matching sample of *Life* issues, the investigators found that the ads targeting blacks were significantly more likely to use athletes and were two to three years tardy in announcing to black consumers new products with tar- and nicotine-reducing filters. Furthermore, cigarette advertising was initially more prevalent in *Life* than in *Ebony,* but after 1960, *Ebony* issues carried more cigarette ads.

The cigarette industry's greater intensity in targeting blacks through advertising has also been observed in more contemporary studies. In 1985, a comparison of advertising in selected magazines directed at white and black audiences (Cummings, Giovino, Mendicino 1987) found that the magazines targeting blacks had significantly more cigarette advertising and more ads for menthol brands, which are preferred by a much higher proportion of blacks than whites (see "Cigarette Brand Preference" in Chapter 3). This racial disparity may mark the cigarette industry's reaction to the notable decline in black adolescent smokers during the past decade (see "Trends in Cigarette Smoking" in Chapter 3). A review of cigarette promotional practices in 1985 noted the diversity of methods for reaching black audiences, including the growing use of sponsorships of athletic, cultural, civic, fashion, and entertainment events. Especially noteworthy was the intensive use of smaller billboards in black communities; these ads accounted for 37 percent of all billboards, and most featured menthol brands. In contrast to the larger highway billboards, smaller billboards are usually placed low and close to the street—and thus visible to passersby of all ages.

Recently, R.J. Reynolds attempted to introduce a new brand of cigarettes, Uptown, to the black community in Philadelphia (Robinson et al. 1992). Through the efforts of black leaders, who mobilized their communities, the Uptown Coalition emerged. The Philadelphia community created the agenda rather than allowing the tobacco industry to dictate it. Media messages were carefully framed, and Uptown Coalition spokespersons were given clearly prescribed roles. In 1990, R.J. Reynolds abruptly canceled the launch of Uptown. The Uptown Coalition was historic because it represented the first community-based initiative that succeeded in getting the tobacco industry to take a cigarette out of production.

Promotional Efforts of the Tobacco Industry

Introduction

Whereas the role of advertising is primarily cognitive and affective (affecting consumers' knowledge, beliefs, and attitudes), the role of promotional efforts includes a substantial conative (action-affecting) component (Kotler 1991). A cigarette advertisement, regardless of how compelling, is unable to put a cigarette into a consumer's hands. At best it can create desire or an interest in smoking. Cigarette promotion, however, can use sampling to put a cigarette into a consumer's hand—along with, in some instances, the lighter to ignite it. Promotion can also target a product to those specific consumers most likely to respond to a manufacturer's appeals (Rossiter and Percy 1987).

Cigarette marketers use several of the major categories of promotion to facilitate both the entrance of new smokers to the market and their development of brand loyalty. Because of the rapid growth in cigarette promotional expenditures (FTC 1992) and the importance of these expenditures in potentially recruiting new smokers, the following discussion will analyze each of these major categories of cigarette promotion. The recency of this growth, however, limits the amount of research this report can draw upon.

Public Entertainment

The cigarette industry uses the sponsorship of public entertainment events to bypass broadcast advertising bans and self-regulatory constraints. Sponsorship is an efficient way for an advertiser to have its brand name and logo achieve the equivalent effect of broadcast advertising without having to include any government-mandated warnings. Thus, cigarette manufacturers sponsor a wide array of sporting events (e.g., the Virginia Slims Tennis Tournament, the Winston Cup series, and auto racing in general through sponsoring particular cars and drivers) and other forms of public entertainment (e.g., the Kool Jazz Concert). The association of the brand name with the event is an advertising association for the brand. For example, through racing events and race cars bearing the Winston and Camel brand names, R.J. Reynolds has become the leading sponsor of automobile and motorcycle racing in the United States (Blum 1991). The association between events and cigarettes is so clear that in some markets, when ads selling tickets for a sponsored event (such as the Virginia Slims Tennis Tournament in Newport, Rhode Island) are run in local newspapers, the ads carry the mandated cigarette health warnings. Sponsorship can also preempt opposition to cigarettes among those who view sponsorship as necessary for the funding of an event. Despite the stated health threat, the association of the cigarette brand name with the event continues unabated on broadcast media, and event programming continues to feature cigarette brand logos. In the 1989 Marlboro Grand Prix telecast, for example, the Marlboro logo could be seen for over 46 of the 94 total minutes of broadcast time (Blum 1991). Such sponsorship is clearly viewed as delivering a brand message by the marketer.

Event sponsorship also provides access to youth markets of potential smokers (Buchanan and Lev 1990). Because youth do not predominantly compose the attendance or viewership of such sponsored events, however, cigarette advertisers can argue that they are not actively targeting youth. Yet given the heavy concentrations of young people in these audiences, and given the limited venues available to cigarette advertisers to present their images to children, sponsored events may be among the most cost-effective promotional mechanisms.

Two studies conducted with children and adolescents support the observations that cigarette industry sponsorship reaches young people. Aitken, Leathar, and Squair (1986) conducted a study to determine children's awareness of cigarette brand sponsorship of sports and games in the United Kingdom. Young people from ages 10 through 17 years old were asked what they understood by the term "sponsorship" and whether they could recall any cigarette brands that sponsored sports. The authors found that 13 percent of 10- and 11-year-old children and 43 percent of 16- and 17-year-olds mentioned that sports sponsorship entailed both a company's financial sponsorship of sporting events and its opportunity to advertise its products; 80 percent of 16- and 17-year-olds mentioned at least one of these two components of sponsorship. More than half of those 12 years old and older correctly associated at least one sponsored sport and the brand of the sponsoring cigarette company. Even children younger than age 11 identified the sponsored sports as activities linked with excitement. These findings supported those of Ledwith (1984), who also found that many 12- through 17-year-old schoolchildren were able to correctly identify sponsored sports and the sponsoring cigarette brand.

A secondary effect of sponsoring sports events is that the brand names become closely associated with the

sports they sponsor. Ledwith (1984), for example, found that the likelihood of linking a sport with a brand of cigarette was directly related to the time spent watching that sport. The study also found that brand awareness increased substantially following the televised broadcast of a major sporting event sponsored by that brand. Thus, Marlboro and Winston have become associated with auto and sports car racing, and Virginia Slims has become associated with tennis; both brands also have become associated with the self-image messages these sports convey. Cigarette smoking may thus appear to receive an implied endorsement from race car drivers, whose expertise is associated with their ability to thoughtfully assess risks, and from tennis players, whose success partly depends on their physical endurance—a trait medically proven to be undermined by cigarette smoking.

Tobacco company sponsorship has not been limited to cigarettes. Connolly, Orleans, and Blum (1992) reported that in 1991, Skoal and Copenhagen, the two smokeless tobacco brands preferred by adolescents, were promoted on national television through their sponsorship of professional rodeo, hunting, formula car racing, "monster" truck racing, drag racing, sprint car racing, and stock car racing. The investigators concluded that "the harmful effects of tobacco are camouflaged against the backdrop and thrill of athletic victory" (p. 353).

Sponsored athletic and entertainment events also provide a venue for product sampling. In areas in which cigarette sampling is legal, free cigarettes and other specialty items can be distributed at these events.

Sampling and Specialty Items

Distribution of free samples is one of the most powerful devices available to marketers. It allows a company to put its product into the hands of possible consumers in circumstances where consumers are more likely to try it (e.g., outside of work or school). In the case of cigarettes, the power of sampling may be especially great (Popper 1986), because these are free samples of an addictive product. Although the cigarette manufacturers argue that samples are not intended for nonusers or minors, there is little evidence of distribution control (U.S. Congress 1986; Davis and Jason 1988).

The power of sampling in the cigarette marketplace is reflected by industry growth. Expenses for distributing samples increased from just under $25 million in 1975 to over $100 million in 1990 (FTC 1992). The tobacco industry agrees, however, that samples should not be given to anyone under age 21 or on school, college, or university campuses (Tobacco Institute 1986). Even more notable is the growth (from $10 million in 1975 to over $300 million in 1990) in the distribution of specialty or premium items (FTC 1992). These items are not simply related to tobacco products by bearing a brand name. Cigarette lighters, for example, are frequently provided with a sample cigarette. The lighter both facilitates trial of the cigarette sample and provides a brand-name reminder once the sample has been consumed.

Premium items also convey an advertising message without an appropriate associated warning. Figure 2 displays two pages of a 1993 *Camel Cash Catalog*. Premium and specialty items from this catalog can be obtained by sending in the listed number of "C-notes," which can be collected from packs of Camel cigarettes. Although a promotional package will often include a health warning along with a specialty item (such as a T-shirt or thong sandal), the warning does not appear on the item (Slade 1992). Since many specialty items include the imaginative content of the cigarette brand's advertising campaign, they provide ongoing advertising without any required health warnings. In a recent George H. Gallup International Institute survey of 1,125 adolescents nationwide, about half of the adolescent smokers reported that they had received promotional items from tobacco companies, as had one in four nonsmoking adolescents (Gallup 1992).

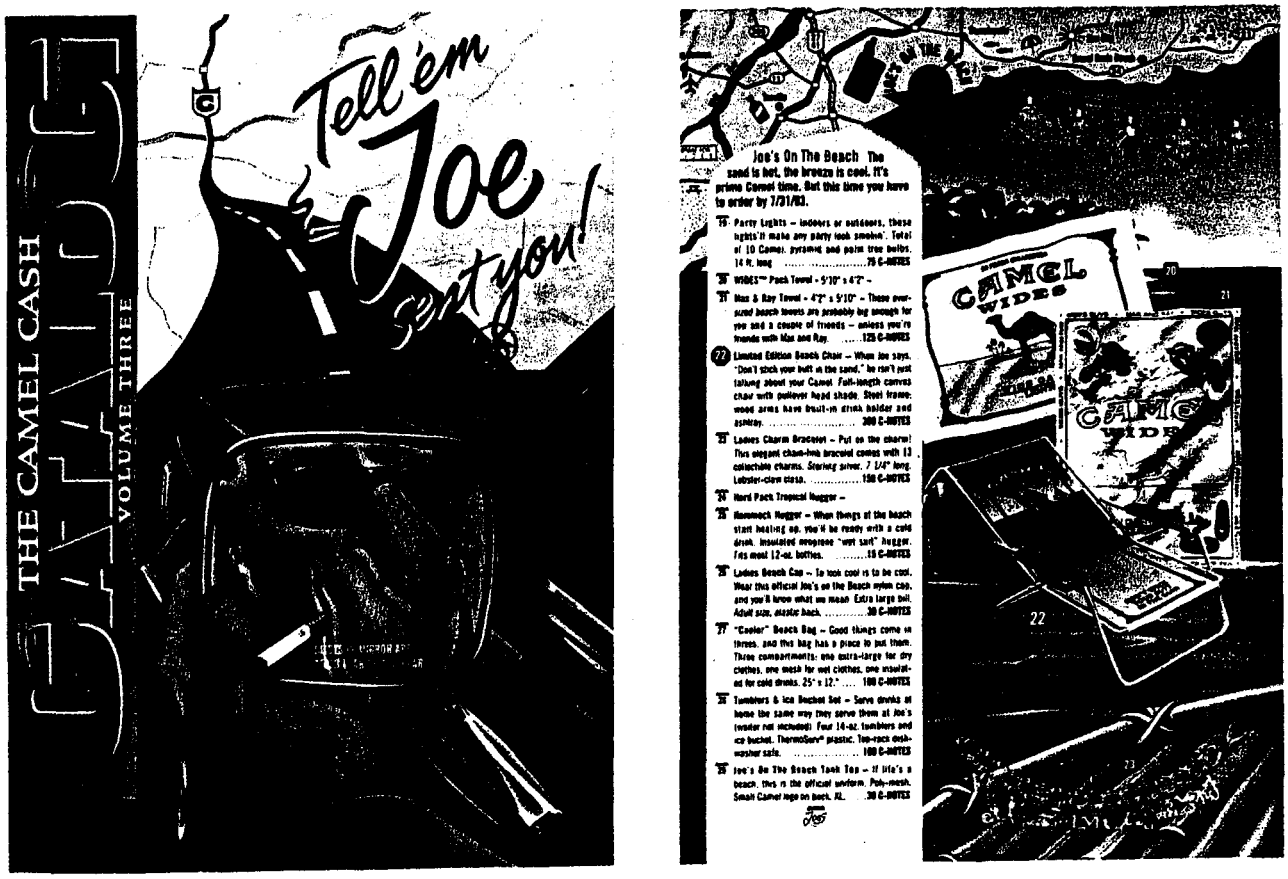
Other Promotional Expenditures

In 1990, three out of every four advertising and promotional dollars spent by the cigarette industry were devoted to promotional allowances, amounting to a total of over $3 billion. Though this amount includes cooperative advertising and payments to wholesalers, its primary function is to pay retailers to continue to display and vend cigarettes from prominent locations in their store.

The over $300 million spent by the tobacco industry on point-of-sale advertising in 1990 (only 10 percent less than the $328 million spent on cigarette advertising in magazines that year) is intended to bring the images of cigarette enjoyment to consumers at the store. For a brand-loyal smoker, the reminder value of a point-of-sale display is low. Therefore, to the extent that these displays focus on brand image, they may not only encourage experienced smokers to switch brands but also encourage new smokers to experiment with a particular brand (and with its associated brand image). The $1.3 billion spent on promotional allowances and point-of-sale displays combined are thus funds potentially directed at new, youthful smokers.

Retail value-added promotion consists of those activities (coupons, special price offers, 25-cigarette packs, etc.) that effectively reduce the cost of cigarettes. The industry argues that this promotion is clearly interbrand

Figure 2. Pages from *The Camel Cash Catalog*, Volume Three



Source: R.J. Reynolds Tobacco Co. (1992).

competition. Although this is undoubtedly the case for some price offers, value-added promotion has two other effects. The first is to reduce the cost of entering the market—a notable effect, since some research studies indicate that the cigarette market is price sensitive (see "Effects of Excise Taxes on Tobacco Use" in Chapter 6). Any money-saving action that facilitates market trial and adoption may disproportionately affect youth, who usually have slim financial reserves and low earning power. Recently, Philip Morris began aggressive price-cutting promotions using coupons for Marlboro (Levin 1993), the predominant brand used by teenagers (CDC 1992). The second effect of coupons and other retail value-added devices is to encourage repeat purchases. Often coupons are enclosed with sample or trial packs and are included with other brand-trial devices. In using these coupons, the smoker moves toward habitually purchasing and using a particular brand and identifying with that brand's image. Moreover, coupons can encourage new users to progress from a trial stage of smoking to regular, addicted use of cigarettes.

Research on the Effects of Cigarette Advertising and Promotional Activities on Young People

Introduction

A substantial and growing body of scientific literature has reported on young people's awareness of, and attitudes about, cigarette advertising and promotional activities.[3] Research has also focused on the effects of these activities on psychosocial risk factors for beginning to smoke. Considered together, these studies offer a compelling argument for the mediated relationship of cigarette advertising and adolescent smoking. To date, however, no longitudinal study of the direct relationship of cigarette advertising to smoking initiation has been reported in the literature. This lack of definitive literature does not imply that a causal relationship does not exist; rather, better quantification of exposure, effect, and etiology is needed. Important data from research conducted for the tobacco industry are not available; such information would add considerably to our knowledge. A definitive study, such as a randomized control trial with young people exposed and not exposed to cigarette advertising, is both practically and ethically impossible. What is possible and needed is research that is longitudinal and multivariate, that takes advantage of recent statistical modeling methods, and that uses large samples of children and young adolescents who have not tried smoking and who have had relatively little exposure to cigarette advertising.

The issue of causality is addressed in this section by examining the effect of cigarette advertising and promotional activities on the known psychosocial risk factors (discussed in detail in Chapter 4) for the initiation of smoking. If advertising and promotional activities consistently affect these factors—factors such as self-image, the functional meanings of smoking, normative expectations, and intentions to smoke—then these activities may also affect smoking onset. This mechanism is especially plausible in the United States, where cigarette advertising and promotional activities are pervasive.

During an unusual historical period, July 1, 1967, through December 31, 1970, antismoking messages were widely aired on television and radio as part of the FTC's Fairness Doctrine. These messages were aired until a complete ban on prosmoking advertising on radio and television took effect on January 1, 1971. For those three and one-half years, the American public was exposed to both prosmoking and antismoking messages on radio and television. A carefully designed study of nearly 7,000 adolescents (Lewit, Coate, Grossman 1981) found that having both sets of messages on radio and television had the effect of reducing adolescent smoking rates; the impact was strongest during the first year of the antismoking messages. These study findings suggest that a nationwide, well-funded antismoking campaign could effectively counter the effects of cigarette advertising in its currently permitted media forms.

Young People's Exposure to Cigarette Advertising

Several research studies show that young people are aware of, and respond to, cigarette advertising. In a recent Gallup (1992) study, 87 percent of the 1,125 adolescents surveyed nationwide could recall recently seeing one or more tobacco company advertisements. Similarly, Pierce et al. (1993) found in their study of nearly 7,000 California adolescents that over 90 percent of the 12- and 13-year-olds could name a brand they had seen advertised. Half of the adolescents in the Gallup survey could identify the cigarette brand name associated with at least one of four cigarette slogans (Gallup 1992).

Chapman and Fitzgerald (1982) tried to determine the level of awareness of cigarette advertisements among 11- through 14-year-olds in Australia and the possibility of a relationship between awareness of advertisements and smoking behavior. Data were collected on smoking prevalence and preferred brands. Participants were asked to identify the cigarette brands advertised in photographs of eight print-media cigarette advertisements that had been edited to remove any identifying writing. The children were also asked to complete edited advertising slogans. Children who reported smoking in the last four weeks were almost two times more likely to correctly identify the advertisements and complete the slogans than were children who reported that they had not smoked during that period. Smokers' preferred brands generally corresponded with the advertisements and slogans most often correctly recognized. Of the 130 brands of cigarettes available on the market at the time of the study (1981), just four brands accounted for cigarettes smoked by nearly 80 percent of these adolescent smokers.

[3]Recent evidence of the effects of tobacco advertising on adult tobacco consumption can be found in the United Kingdom Department of Health document, *Effect of Tobacco Advertising on Tobacco Consumption: A Discussion Document Reviewing the Evidence* (UK Department of Health 1992).

In the United Kingdom, Aitken, Leathar, and O'Hagan (1985) followed a procedure similar to that used by Chapman and Fitzgerald. They showed cigarette advertisements, interspersed among advertisements for other products, to groups of male and female schoolchildren (aged 6 through 16 years) from Glasgow's inner-city areas (most of whose residents were of lower socioeconomic status) and suburban areas (most of whose residents were of higher socioeconomic status). Chapman and Fitzgerald's findings that large proportions of children were aware of cigarette advertisements were supported in this study and were extended to include younger children. Among some of the 12-year-olds and most of the 14- and 16-year-olds in the Glasgow study, the advertising images elicited comments that indicated the young people's perceiving implicit, supposedly adult themes, such as independence, sex appeal, and success.

In a separate study, Aitken et al. (1987) showed nine color photographs of different cigarette advertisements to 12- through 17-year-olds. When the young people were asked if they had seen any of the advertisements before, 83 percent of the 6- and 7-year-olds and 91 percent of the 16- and 17-year-olds recalled seeing the same ad. When asked to match the various ads to brief verbal descriptions of the ads, the study subjects in the three oldest age groups (those 12 through 17 years old) succeeded at a level greater than chance.

Together, the results from these studies show that even relatively young children are aware of cigarette advertising and are able to recall particular advertisements. Older adolescents are moreover capable of interpreting the advertisements in imagistic terms related to attractive features of adult life.

Opinions on Cigarette Advertising and Smoking Behaviors

O'Connell et al. (1981) surveyed more than 6,000 students aged 10 through 12 who were drawn from a sample of 88 primary schools in New South Wales, Australia. Logistic regression was used to determine the relative importance of various personal and social environmental factors in relation to the proportion of children who reported smoking one or more times per week. The factors included friends' smoking, approval of tobacco advertising, siblings' smoking, the amount of money available to spend weekly, gender, age, and parents' smoking. As part of the same study, Alexander et al. (1983) identified factors associated with change in smoking status (both beginning and ceasing to smoke) over the 12 months between the baseline and follow-up surveys. Of the children who reported not smoking during the month preceding the baseline survey, significantly more of those who at baseline approved of cigarette advertising reported smoking during the month preceding the follow-up survey than did those who disapproved of cigarette advertising. Similar results were found for the children who reported smoking during the month preceding the baseline survey. The study thus found a positive relationship between approving of advertising and subsequently taking up smoking, and between disapproving of advertising and quitting smoking.

Armstrong et al. (1990) conducted a large randomized trial among seventh-grade students (13 years old) in Western Australia in which peer-led and teacher-led programs concerning social influences were evaluated. When the students were resurveyed one year and two years after the intervention, the results identified factors associated with beginning to smoke. Both boys and girls who at baseline reported that cigarette advertisements made them think they would like to smoke a cigarette were significantly more likely to have adopted smoking at the one-year and two-year follow-up surveys than those who did not report feeling this way.

Aitken and Eadie (1990) examined whether the awareness and appreciation of cigarette advertisements were independent of other predictors of adolescent smoking. In this study, 868 Glasgow adolescents between the ages of 11 and 14 years were selected at random and interviewed privately in their homes. Older adolescents, boys, and current smokers in the sample tended to approve of cigarette advertisements and were also more likely to correctly identify cigarette advertisements that carried no brand identification. In general, smokers were more successful than nonsmokers at identifying cigarette advertisements, were more likely to have siblings who smoked, tended to be more approving of cigarette advertisements, and were less likely to perceive that their parents strongly opposed smoking. These findings suggest that advertising may reinforce the habit of smoking, even among new, young smokers.

Young People's Responses to Different Types of Cigarette Advertisements

Huang et al. (1992) reported on the preferences of seventh- and eighth-grade children (average age 14) concerning three categories of cigarette advertisement: ads with cartoons, those picturing human models, and those with only the cigarette package and words (tombstone ads). The study was a cross-sectional survey conducted in April 1991 among 243 students in two junior high schools in Chicago. Seventy percent of the students were black, 22 percent white, 3 percent Hispanic, 2 percent Native American, 1 percent Asian, and 2 percent from other races. Analyses were limited to responses of the black and white subjects. The subjects first were

asked to use five-point scales to rate how much they would like to embody the following 19 characteristics: athletic, good-looking, kind, slim, macho, smart, sexy, average, fun, special, independent, cool, afraid, overweight, underweight, tough, important, mature, and immature. They were then shown slides of 13 current cigarette ads representing nine brands taken from nine magazines obtained at a local supermarket newsstand. The students were asked to indicate how much they liked each ad and how likely they would be to buy the brand of cigarettes advertised. For each ad with either cartoon or human models, students were asked to rate the models on the same 19 characteristics used to describe their ideal self-image.

Students preferred advertisements with cartoons; ads with human models were the next most popular, and tombstone ads were liked least. Specifically, both black and white students ranked the two advertisements featuring Camel cigarettes' cartoon camel mascot Old Joe first and second; this preference was more marked among white students. Advertisements with black models were more appealing to black students than to whites, and ads featuring the Marlboro cowboy (who is white) were more appealing to white students than to blacks. Among students who smoked, the buying preferences for all brands closely paralleled the reported ad appeal.

A factor analysis based on the 19 rated attributes identified five groupings of the advertisements. Female models were seen as predominantly "slim" and "good-looking." Joe Camel was "cool" and "fun," as were the two black models in a Salem ad. The Marlboro man was perceived as "tough" and "macho." On the other hand, a Montclair model was ascribed no positive attributes, but was predominantly rated as "not sexy" and "not good-looking." All of the positive attributes reported for the cigarette ad images also were described as positive attributes for the students' ideal self-images.

Uutela et al. (unpublished data) compared how children in Los Angeles and Helsinki perceived advertisements for cigarettes, beer, liquor, and cars. Although Finland does not permit advertising for either tobacco or liquor, the authors noted that Camel boot ads were allowed in the country, as were ads for the Philip Morris Company depicting the Marlboro cowboy. A total of 592 Los Angeles students and 660 Helsinki students between the ages of 8 and 17 years were asked the open-ended question, "What kinds of pictures come to your mind when you think of how a cigarette/beer/liquor/car ad might look?" Their responses were coded into 11 categories.

In Los Angeles, the dominant ad images reported for cigarettes, beer, and liquor all were images of "happy/fun/partying," whereas the ad images for cars were more likely to be in the "outdoors/sports" category. In Helsinki, however, the dominant ad images reported for cigarettes and for beer were "tough/macho," for liquor, "rich/status/success," and for cars, "glamorous/sexy/attractive." The authors concluded that young people in Helsinki perceived cigarette advertising as portraying themes that represent the "traditional man's role," whereas the perceived themes in Los Angeles were less gender specific. Finland is one of the few western countries where smoking continues to be significantly higher among boys than among girls.

Humor in Advertising

Nelson and While (1992) provided evidence for the role of humor in advertisements that appealed to youth in a study of 7,047 students aged 11 through 16 years old from 10 schools in the north, south, and midlands of England. Students first were asked two open-ended questions: "What is your favorite advertisement?" and "Why do you like it?" Ninety-one percent of the students reported a favorite ad; 53 percent of these students reported that humor was their main reason for liking their favorite advertisements. Boys (especially those 13 through 16 years old) were significantly more likely than girls to choose an ad because of its humor. Girls (especially those 15 and 16 years old) were more likely than boys to say they liked the personality appearing in their favorite ad. Children who chose ads for alcohol and tobacco products as their favorites were more likely than other respondents to cite humor as their reason for preferring these ads. Several research studies have demonstrated that adults, as well as children, prefer advertisements with humor (Gelb and Pickett 1983). Nonetheless, cartoons with talking animals are generally considered to appeal more to children than to adults; Joe Camel and Willy Penguin (the cartoon mascot for Kool) would be highly atypical examples of advertising humor if the ads that feature them were meant only for an adult audience.

Responses to Advertisements for the Camel and Marlboro Brands

A few recent studies (DiFranza et al. 1991; Pierce et al. 1991; McCan 1992) have compared the responses of children and adults to Camel cigarettes' Old Joe campaign. The subjects in the DiFranza et al. (1991) study were 1,055 high school students in grades 9 through 12 from five regions of the United States and 345 subjects 21 years of age and older from Massachusetts. The adult subjects were recruited from drivers renewing their licenses at the department of motor vehicles office. Seven different advertisements from Camel's Old Joe campaign were used as stimuli. In the first ad, clues to the product

and brand were masked, and subjects were asked whether they had ever seen the ad and what product and brand were being advertised. They were then shown six other Old Joe ads, one at a time, and asked to rate the appeal of these ads.

The high school students were more likely than adults to recognize and correctly identify Old Joe (98 vs. 73 percent), to think the ads looked "cool" (58 vs. 40 percent), to think the ads were interesting (74 vs. 55 percent), to think that Old Joe is cool (43 vs. 26 percent), and to report that they would like to have Old Joe as a friend (35 vs. 14 percent). Data on brand preference collected from the high school students who smoked were compared with corresponding data from seven surveys completed before the kick-off of the Old Joe campaign early in 1988. The authors reported that in the three-year duration of the Old Joe campaign, the proportion of smokers under 18 years old who preferred Camel cigarettes over other brands rose from 0.5 percent to 33 percent.

Pierce et al. (1991) analyzed data from the California Tobacco Survey, a 1990 random-digit-dialed telephone survey of 24,296 adults aged 18 and over and 5,040 adolescents aged 12 through 17. Respondents were asked to "think back to the cigarette advertisements . . . recently seen on billboards or in magazines. What brand of cigarette was advertised the most?" Thirty-four percent of the adults named Marlboro as the most-advertised brand; 14 percent of the adults named Camel cigarettes. Among the adolescents, 42 percent identified Marlboro and 30 percent identified Camel as the most advertised brand. No more than 3 percent of either the adult or teenage respondents named any other single brand.

The percentage of respondents who named Marlboro increased with age among the adolescents, peaking at 48 percent among 16- and 17-year-olds before declining among adults. The percentage of respondents who named Camel was inversely related to age, ranging from 23 percent for 16- and 17-year-olds, to 20 percent for 18- through 24-year-olds, to 10 percent for respondents aged 45 years and older. Similar results were found by Pierce et al. (1993) and by a Gallup (1992) survey, although Camel advertisements were identified as the most pervasive ads according to McCan's (1992) analysis of the 1992 California Tobacco Survey. It is not surprising, given these results, that Marlboro and Camel cigarettes are used by up to 70 percent of adolescent smokers (Gallup 1992; CDC 1992).

A study conducted by Fischer et al. (1991) suggested that even very young children were aware of the Joe Camel campaign. In this study, three- through six-year-old children were asked to match each of 22 brand logos on cards to one of 12 products pictured on a game board. Ten of the logos were from children's products, seven from adult products, and five from cigarette brands. The recognition rate for Old Joe ranged from 30 percent for three-year-olds to 91 percent for six-year-olds. By the age of six, the face of Old Joe and the silhouette of Mickey Mouse (the logo for the Disney Channel on cable television) were equally well recognized.

Young People's Self-Image and Implications for Tobacco Use

Intention to smoke is one of the strongest predictors of trying cigarettes and of becoming a smoker (Conrad, Flay, Hill 1992). Chassin et al. (1981) found that 9th- and 10th-grade students whose reported image of smokers correlated with their reported self-image, ideal-date image, and certain attributes of ideal self-image were likely to report that they intended to smoke. The attributes of ideal self-image that correlated with attributes of smokers' image were "tough," "foolish," "act big," "disobedient," and "interested in the opposite sex." A positive relationship of self-image and ideal-date image with smokers' image was also found to differentiate students who were already smokers from nonsmokers. Bowen et al. (1991) found that even among preadolescent, fifth-grade boys, reported images of smokers were more likely to match advertising images of smokers among those who had tried a cigarette than among those who had never tried cigarettes.

Barton et al. (1982) asked 6th- and 10th-grade students to evaluate slides of peer models posed with and without cigarettes. Children in both age groups rated smoking models as being less healthy, more foolish, tougher, poorer at schoolwork, more sociable, more ostentatious, and more disobedient than nonsmoking models. Grube et al. (1984) subsequently reported that both smokers and youth who intended to smoke were more likely than nonsmokers to have self-images like the images they attributed to smokers. McCarthy and Gritz (1984) found that among 6th-, 9th-, and 12th-grade boys and among 12th-grade girls, a correlation of ideal self-image to advertising images of smokers was associated with intentions to smoke.

Students in 11 seventh-grade classes in a working-class area of Pasadena participated in a study (Burton et al. 1989) that investigated attributes of four categories of images: self, ideal self, smoker, and cigarette ad. A random sample of 122 students were asked to use a six-point scale to rate four attributes (healthy, wise, tough, and interested in the opposite sex) in responding to four questions: (1) "What sort of person are you?"; (2) "What sort of person would you like to be?"; (3) "What sort of person is a smoker?"; and (4) "In billboards, magazines and other advertisements, smokers are made out to be

what?" Intention to smoke was assessed by the question, "Do you think you will ever smoke cigarettes in the future?" to which there were six possible responses.

Subjects who had small differences between their self-image and their image of smokers, and those who had large differences between their self-image and their ideal self-image, were found to have greater intentions to smoke. These findings can bear closer scrutiny. Smokers' images received relatively low scores from all students, but to a lesser extent among students who had greater intentions to smoke. Since these students had also assigned themselves lower self-images than their peers, they were that much closer to the image scores they assigned to smokers. Also worth elaborating is the observed relationship between greater intention to smoke and greater disparity between self-image and ideal self-image: students intending to smoke assigned themselves lower scores for both images than did their peers. The authors conclude that youth with relatively low self-concepts who do not perceive themselves as being particularly healthy, wise, tough, or interested in the opposite sex may be drawn to smoking as a way of enhancing their low self-image, especially since smoking has been consistently associated with these attributes in advertising.

In a study conducted in 1991 (Burton, Moinuddin, Grenier, unpublished data), 239 black and white seventh- and eighth-grade students in Chicago were asked to rate on a five-point scale their self-image and their ideal self-image according to 13 attributes. Some attributes (such as "special" and "important") were prominent in both scales; other attributes that were highly rated in one image scale were much lower in the other. The attributes that revealed the largest discrepancies between ideal self-image and self-image were "good-looking," "sexy," "tough," and "athletic." The same students were also asked to indicate on a three-point scale how much they would want to buy a given product. When responses to the two sets of questions were compared, having "sexy" as an ideal self-image attribute was associated with expressing an intention to purchase Camel cigarettes, and having "tough" as an ideal self-image attribute was associated with expressing an intention to purchase Marlboro cigarettes.

The image attributions of adolescents described in this set of studies suggests a mechanism of smoking initiation (Figure 3). The visual images in advertisements may thus serve to shape the ideal self-image of this impressionable audience, since the ads may portray attributes that children and adolescents would like to have. The greater the discrepancy between their self-images and their ideal self-images, the more likely these young people are to try to make their self-images more like their ideal self-images (e.g., by "buying into" an improved self-image through responding with the purchase invited by the ads).

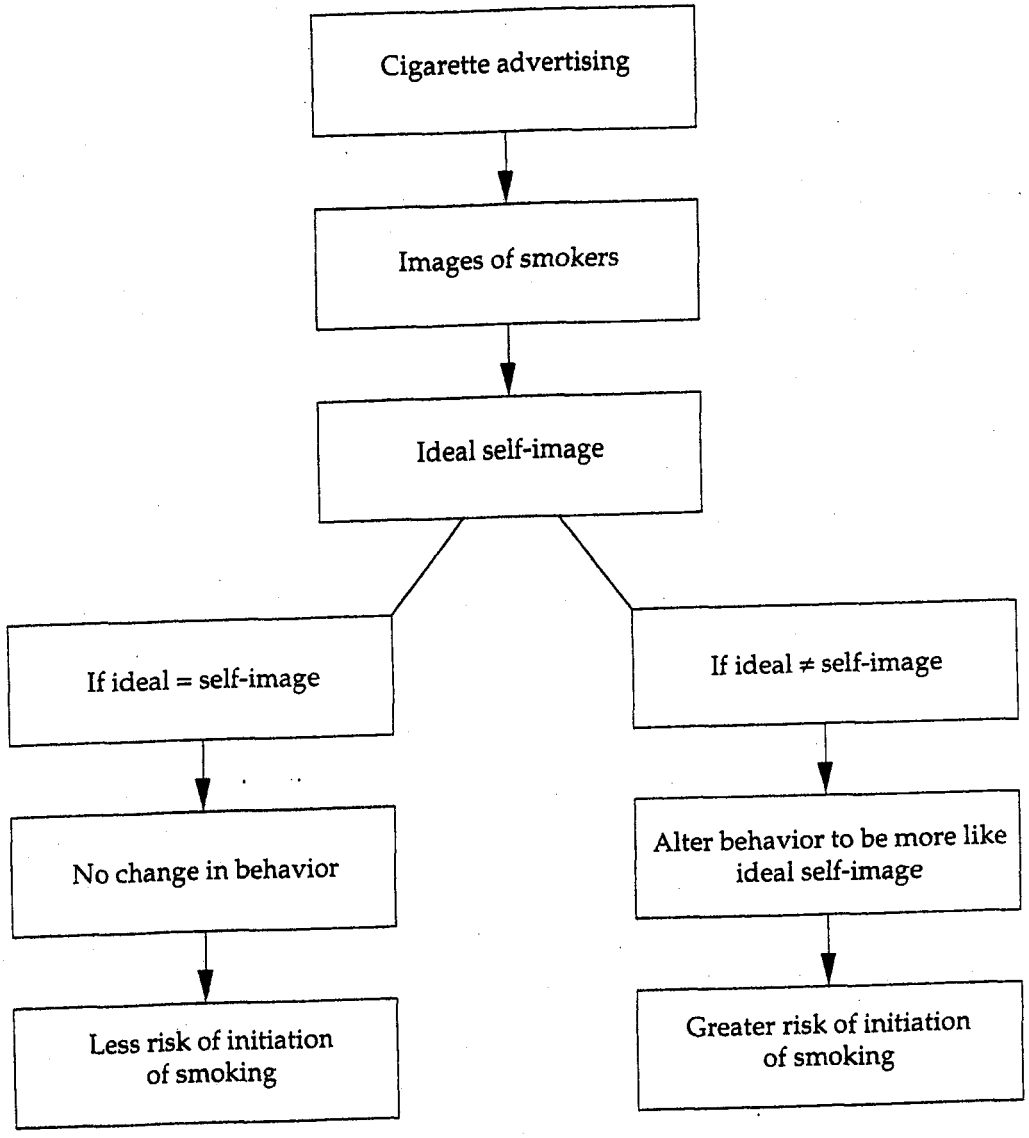
In commercial advertising theory, this notion informs imagery-advertising conceptualization, which presumes that the need for consistency or balance will motivate an individual to try to close the gap between self-image and ideal self-image (McGuire 1989). This con-ceptualization entails an active striving to make the self-image more like the ideal self-image, and not the other way around. Imagery-advertising conceptualization is most compatible with identification theories (e.g., role theories, reference-group theories, and self-presentation theories) that stress the need to expand identity by adopting distinctive thoughts, feelings, or actions (McGuire 1989). Thus, the teenaged girl who responds to a Virginia Slims advertisement that portrays independence is motivated to buy and use the product in order to enhance her sense of independence.

Young People's Misperceptions of Smoking Prevalence and Implications for Tobacco Use

In contrast to the image-advertising model described above, the model in Figure 4 is not concerned with the content of cigarette advertisements, but instead with the pervasiveness of the ads. According to this conceptualization, the pervasiveness of cigarette ads leads youth to overestimate the prevalence of smoking and to consider smoking as normative. Studies have consistently reported that adolescents overestimate the prevalence of cigarette smoking (Johnson 1982; Chassin et al. 1984); moreover, those who smoke overestimate smoking prevalence to a greater extent than do nonsmokers (Sherman et al. 1983; McCarthy and Gritz 1984). Overestimating smoking prevalence has been found to be among the strongest predictors of smoking initiation and acquisition (Chassin et al. 1984; Collins et al. 1987; Sussman et al. 1988; see "Perceived Environmental Factors" for smoking in Chapter 4).

Burton et al. (unpublished data) examined the relationships among cigarette advertising, estimates of smoking prevalence, and intentions to smoke. Children in Helsinki, Finland, where there has been a total tobacco advertising ban since 1978, were compared with children in Los Angeles, where tobacco is advertised in various print media and through promotional activities. Because the Finnish children may have been exposed to tobacco advertising through foreign magazines or through traveling to other countries, the study is characterized as comparing pervasive vs. occasional exposure to advertising. Classroom samples of 477 Helsinki students and 453 Los Angeles students—aged 8 through 14 years in both samples—whose lifetime cigarette use consisted of

Figure 3. A model of smoking initiation: cigarette advertising as a shaping force of an adolescent's ideal self-image



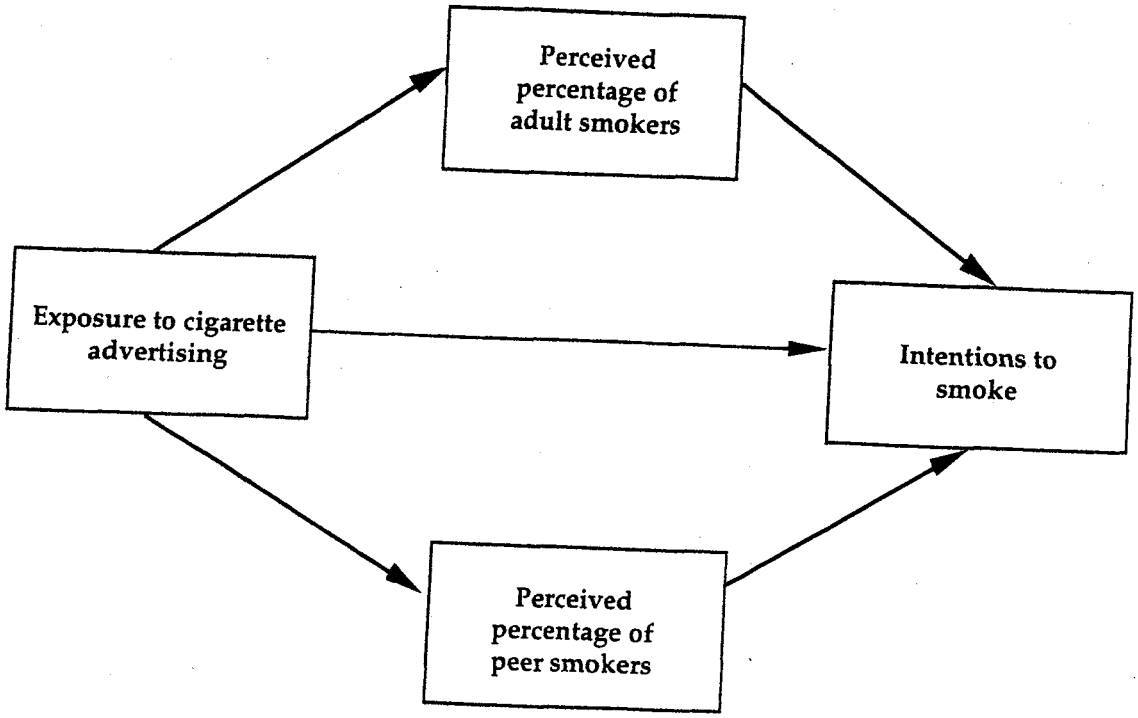
Source: Burton, Moinuddin, Grenier (unpublished data).

no more than a puff of a cigarette were asked how many of their peers and how many adults smoked. Respondents were also asked whether they had ever seen a cigarette ad and when an ad was last seen.

Los Angeles youth were more likely than Helsinki youth to overestimate the prevalence of peer smoking (a 417 percent overestimate vs. a 150 percent one) and of adult smoking (319 percent vs. 173 percent). Both between countries and within the Los Angeles respondents, reported cigarette advertising exposure was positively related to the amount of overestimation of both adult and peer smoking prevalence. Overestimates of smoking prevalence were found to be positively related to intentions to smoke. Interestingly, self-reported exposure to cigarette advertising and intentions to smoke had a direct relationship beyond that mediated by misperceptions of smoking prevalence.

In a recently published study of seventh- and eighth-graders, Botvin et al. (1993) found that exposure to cigarette advertising in periodicals and newspapers was predictive of current smoking status. Adolescents with high exposure to cigarette advertising were significantly

Figure 4. A model of smoking initiation: effect of cigarette advertising on perceptions of smoking prevalence among adults and peers



Source: Burton et al. (unpublished data).

more likely to be current, past-day, past-week, or past-month smokers than were those with low exposure to cigarette advertising. Significant associations were also found between exposure to cigarette advertising and students' estimates of smoking prevalence among their peers and among adults.

Studies have been equivocal concerning the relative importance of overestimates of peer smoking compared with overestimates of adult smoking. The general interpretation is that normative influences are operative in both cases; that is, smoking is more or less misperceived to be a usual and appropriate behavior. It also has been suggested that overestimates of adult smoking serve to increase the symbolism of smoking as a desired, adult behavior; smoking therefore acquires greater meaning to an adolescent in transition to adulthood.

Discussion

Even though the tobacco industry asserts that the sole purpose of advertising and promotional activities is to maintain and potentially increase market shares of adult consumers, it appears that some young people are recruited to smoking by brand advertising. Two sources of epidemiologic data support this assertion. Adolescents consistently smoke the most advertised brands of cigarettes, both in the United States and elsewhere (McCarthy and Gritz 1984; Baker et al. 1987; DiFranza et al. 1991). Moreover, following the introduction of advertisements that appeal to young people, the prevalence of use of those brands—or even the prevalence of smoking altogether—increases. This association was seen among adolescent females after the 1968 introduction of the Virginia Slims brand; smoking prevalence among adolescent females nearly doubled between 1968 (8 percent) and 1974 (15 percent) (USDHHS 1980). A similar associated increase was seen for smokeless tobacco use among adolescent males after a major advertising and promotional campaign in the 1970s focused on "beginners" (Tye, Warner, Glantz 1987). More recently, Camel's Old Joe advertising campaign appears to have substantially increased the brand's market share among persons less than 18 years old (DiFranza et al. 1991).

Advertising and promotional activities also appear to influence risk factors for adolescent tobacco use, even if this is not the intention of the tobacco industry. These

psychosocial risk factors—having a low self-image, attributing positive meanings or benefits to smoking, and perceiving smoking as prevalent and normative—strongly predict smoking intentions and smoking onset.

In several countries, concern about the health consequences of smoking and the potential influence of advertising on consumption has prompted a nationwide ban on tobacco advertising (UK Department of Health 1992). In 1975, Norway banned all tobacco advertising, sponsorship, and indirect tobacco advertising. In 1977, Finland banned all forms of tobacco advertising. Canada introduced a ban in 1989 on all tobacco advertising, sponsorship, and indirect advertising of Canadian origin. New Zealand introduced a ban in December 1990 on advertising in print media originating in New Zealand, on advertising in posters, and on sponsorship of sports. Although the bans in Canada and New Zealand have been relatively recent, the current evidence indicates that these actions have had a significant effect on consumption in each of the four countries (UK Department of Health 1992). In each case, the banning of advertising was followed by a decrease in smoking rates that persisted even when controlled by changes in other factors, such as price. These studies focused on total cigarette consumption; although the bans appear to have influenced smoking rates among young people in Canada and Norway, more specific data concerning young people are forthcoming.

Conclusions

1. Young people continue to be a strategically important market for the tobacco industry.
2. Young people are currently exposed to cigarette messages through print media (including outdoor billboards) and through promotional activities, such as sponsorship of sporting events and public entertainment, point-of-sale displays, and distribution of specialty items.
3. Cigarette advertising uses images rather than information to portray the attractiveness and function of smoking. Human models and cartoon characters in cigarette advertising convey independence, healthfulness, adventure-seeking, and youthful activities—themes correlated with psychosocial factors that appeal to young people.
4. Cigarette advertisements capitalize on the disparity between an ideal and actual self-image and imply that smoking may close the gap.
5. Cigarette advertising appears to affect young people's perceptions of the pervasiveness, image, and function of smoking. Since misperceptions in these areas constitute psychosocial risk factors for the initiation of smoking, cigarette advertising appears to increase young people's risk of smoking.

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ask about limiting smoking in various settings have found that support for such restrictions in schools is usually stronger than for other locations. For example, findings from a telephone survey for the 1989 National Cancer Institute (NCI) Community Intervention Trial for Smoking Cessation (COMMIT) (Centers for Disease Control [CDC] 1991a) revealed that fewer than one-quarter of adult respondents in 10 U.S. intervention communities supported a complete ban on smoking in private worksites and restaurants, whereas over half endorsed a ban on smoking on school grounds. Support for banning smoking in secondary schools possibly reflects the broad societal belief that schools have an important role to play in discouraging tobacco use by children.

Restrictions on Tobacco Advertising and Promotion

Numerous national, state, and local surveys have tried to assess public opinion about restrictions on tobacco product advertising. In a series of national Gallup surveys (Gallup Organization 1978, 1987, 1988, 1991, 1993) conducted between 1977 and 1993, support for a complete ban on cigarette advertising increased from 36 to 53 percent. The 1989 COMMIT survey (CDC 1991a) of a representative sample of 300 to 400 adults 25 to 64 years old in each of 10 intervention communities in 9 states found that between one-half and three-quarters agreed with the statement, "All tobacco advertising should be eliminated."

Some surveys have asked about limiting specific types of tobacco advertising (e.g., billboards, newspapers, magazines) and promotional practices (e.g., distribution of free tobacco samples, tobacco company sponsorship of sporting and cultural events) (Table 1). A 1987 telephone survey (Forster et al. 1991) of 821 adults from seven Minnesota communities asked respondents to indicate their support for restrictions on various forms of advertising. Seventy-three percent of respondents favored a ban on tobacco signs and billboards; 70 percent supported a ban on tobacco advertising in newspapers and magazines. The ACS-sponsored 1989 SAVES survey of four states found that support for a ban on cigarette advertising in newspapers, in magazines, and on billboards ranged from 61 to 69 percent (Marcus et al., in press). Over three-quarters of respondents in this survey agreed with the statement, "Tobacco companies should be prohibited from distributing free tobacco samples on public property or through the mail." Comparable results were obtained in a 1990 telephone survey of adults in California (California Department of Health Services 1991). Fifty-four percent of respondents in this survey supported a ban on tobacco ads on outdoor billboards; 49 percent supported a ban on tobacco ads in newspapers and magazines; 67 percent supported a ban on the distribution of free tobacco samples or coupons to obtain free samples by mail; and 75 percent supported a ban on the distribution of free tobacco samples on public property.

Three surveys (California Department of Health Services 1991; CDC 1991a; Marcus et al., in press) have measured public opinion about tobacco company sponsorship of sporting and cultural events (Table 1). In the 1989 COMMIT survey (CDC 1991a) of 10 communities, from one-third to more than one-half of respondents supported a ban on such sponsorship. The 1989 SAVES survey (Marcus et al., in press) found that about one-half of respondents agreed with the statement, "Tobacco companies should be prohibited from sponsoring sports events or advertising their products at these events." Fifty-two percent of respondents in the aforementioned 1990 California survey (California Department of Health Services 1991) believed that sponsorship of sporting or cultural events by tobacco companies should be banned. In all three surveys, support for a ban on tobacco company sponsorship of sporting and cultural events was about twice as strong among nonsmokers as it was among smokers.

The function and effect of tobacco advertising have been the subject of much controversy and debate among scientists and within the tobacco industry. The tobacco industry has argued that advertising targets adults only and encourages regular smokers to switch brands or to maintain brand loyalty (Tobacco Institute 1964; see "The 'Maturity' of the Cigarette Market" in Chapter 5). Many health experts assert that tobacco advertising targets children to encourage them to start using tobacco (Tye 1987; DiFranza et al. 1991; Fischer et al. 1991; Pierce et al. 1991; CDC 1992a). In fact, a major newspaper, the *Seattle Times*, voluntarily discontinued tobacco advertising in June 1993, citing "growing medical evidence on the dangers of smoking, as well as tobacco advertisers' recent targeting of youth and racial minorities" (Nogaki and Gupta 1993, p. E1). Legislative proposals to restrict or prohibit tobacco advertising are often presented as a means of protecting children (Myers and Hollar 1989). In 1986, about half of the respondents to the Adult Use of Tobacco Survey (AUTS) (USDHHS 1990c) agreed with the statement, "If cigarettes were not advertised anywhere, fewer young people would start smoking." In July 1990, a national Gallup survey (Gallup Organization 1990c) of adults found that more respondents (49 percent) thought that advertising and promotion paid for by the tobacco companies represented an active attempt to get teenagers and young people to start smoking than believed that such efforts were to encourage brand switching among people who already smoke (38 percent).

Table 1. Public opinion about restricting or banning different types of tobacco advertising and promotion United States, 1987–1991

Source and year of survey	Description of survey	Questions or statements	Responses
University of Minnesota 1987 (Forster et al. 1991)	Telephone survey of a random sample of adults (aged 18–74 years) in seven communities in Minnesota (N = 821)	Do you favor or oppose prohibiting tobacco signs and billboards?	73% favored a prohibition
		Do you favor or oppose prohibiting tobacco advertising in magazines and newspapers?	70% favored a prohibition
American Cancer Society 1989 (Marcus et al., in press)	Telephone survey of a random sample of adults (aged ≥ 18 years) in four states: Arizona (N = 294), Pennsylvania (N = 291), Texas (N = 303), and Michigan (N = 98)	Advertising of cigarettes should be banned in newspapers, magazines, and outdoor posters or billboards.	Agreement across the four states sampled: 61%–69%
		Tobacco companies should be prohibited from distributing free tobacco samples on public property or through the mail.	73%–81%
		Tobacco companies should be prohibited from sponsoring sports events or advertising their products at these events.	49%–59%
National Cancer Institute 1989 (Centers for Disease Control 1991b)	Telephone survey of a random sample of 300 to 400 adults (aged 25–64 years) in each of 10 U.S. COMMIT* intervention communities	Tobacco companies should not be allowed to sponsor sporting and cultural events.	Agreement across the 10 communities sampled: 31%–56%
California Department of Health Services 1990 (California Department of Health Services 1991)	Telephone survey of a random sample of adults (aged ≥ 18 years) in California (N = 6,600)	Do you think advertising of tobacco products on outdoor billboards should be allowed or banned?	54% favored a ban (42% smokers; 62% nonsmokers)
		Do you think advertising of tobacco products through newspapers and magazines should be allowed or banned?	49% favored a ban (38% smokers; 57% nonsmokers)
		Do you think sponsorship of sporting or cultural events by tobacco companies should be allowed or banned?	52% favored a ban (39% smokers; 61% nonsmokers)
		Do you think that distribution of free cigarettes and tobacco products on public property should be allowed or banned?	75% favored a ban (62% smokers; 84% nonsmokers)
		Do you think that distribution of free tobacco samples or coupons to obtain free samples by *mail* should be allowed or banned?	67% favored a ban (52% smokers; 78% nonsmokers)

*COMMIT = Community Intervention Trial for Smoking Cessation.

Data collected in a 1992 national telephone poll (N = 1,200) of adults (Louis Harris and Associates 1992) suggest that a predominant belief in the individual's right to smoke coexists with a less predominant concern about the persuasive power of tobacco advertising. An overwhelming majority (87 percent) of respondents agreed with the proposition that "to smoke or not to smoke is a personal decision that adults should be free to make for themselves." On the other hand, 68 percent favored a ban on tobacco ads in newspapers, in magazines, and on billboards; 73 percent said they would support an initiative to require stronger warning labels on cigarette packages; and 83 percent would favor legislation banning tobacco ads targeted at teenagers. Three-quarters of smokers themselves supported a ban on tobacco ads targeted at teenagers. The survey report concludes that "even smokers see smoking as something to be discouraged, especially where teenagers are concerned" (p. 39).

Restrictions on the Sale of Tobacco Products to Minors

Public opinion strongly favors measures to discourage tobacco sales to minors (persons under the age of 18). A 1962 national Gallup personal interview survey (Gallup Organization 1962) found that 79 percent of adults supported the idea that there should be a law against selling cigarettes to people under 16 years old. According to the 1964 AUTS (U.S. Department of Health, Education, and Welfare [USDHEW] 1969), only 9 percent of adults thought that sales of cigarettes to young people under a certain age should not be against the law. Today, all states have laws prohibiting the sale of cigarettes to persons under 18 years old (CDC, OSH, unpublished data).

On July 10, 1992, Congress passed Public Law 102-321, the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act, which contained Section 1926, providing for the enforcement of minors' access legislation in all states receiving funding for the prevention and treatment of substance abuse. These provisions required funded states to enforce legislation prohibiting the sale or distribution of tobacco products to individuals under the age of 18. Enforcement included yearly random, unannounced inspections as well as annual reports to the Secretary of Health and Human Services describing the state's enforcement activities for that year, the extent of success in reducing the availability of tobacco to children under 18, and enforcement strategies to be used in the next year for which funding was being sought. By June 1993, 49 states and the District of Columbia had passed legislation in compliance with Section 1926, prohibiting the sales and distribution of tobacco products to children under the age of 18. (Virginia restrictions applied only to sales of tobacco products.)

Most people do not believe that laws prohibiting the sale of tobacco to minors are adequately enforced, and the overwhelming majority of both smokers and nonsmokers support stronger measures to limit minors' access to tobacco. The 1989 SAVES (Marcus et al., in press) found that 8 out of 10 adults felt it was "very easy" or "somewhat easy" for teenagers to buy cigarettes near where they live (see "Factors That Influence Tobacco Acceptability and Availability" in Chapter 4). The overwhelming majority of respondents to this survey (86 to 92 percent) felt that there should be better enforcement of existing laws banning the sale of tobacco to minors, and most (83 to 88 percent) endorsed the idea that the laws should be strengthened. Results of a 1990 survey of California adults (California Department of Health Services 1991) provide a similar picture; 76 percent responded negatively when asked, "Do you think the laws banning the sale of tobacco products to minors have been adequately enforced?"

Several different surveys have tried to assess public opinion regarding specific types of legislative actions (e.g., licensing retailers and banning cigarette vending machines) to prevent minors' access to tobacco (Table 2). A 1987 survey of adults in Minnesota (Forster et al. 1991) found that 75 percent favored a policy whereby retailers would lose their tobacco licenses if they sold cigarettes to minors. Two-thirds of adult participants in the 1989 COMMIT survey (CDC 1991a) agreed with the statement, "Tobacco products should be as strictly controlled as alcohol products." The majority of respondents in this survey (from 77 to 93 percent) also agreed with the statement, "Merchants who sell tobacco to minors should be fined."

The 1989 SAVES (Marcus et al., in press) asked respondents in four states if they thought the sale of cigarettes through vending machines should be banned. Overall, between 60 and 68 percent of respondents favored a ban on cigarette vending machines; smokers were much less likely than nonsmokers to support a ban (42 to 58 percent vs. 66 to 72 percent). The 1987 Minnesota survey (Forster et al. 1991) found that 57 percent of adults supported a policy eliminating all cigarette vending machines; 80 percent favored a policy banning vending machines in locations where teenagers gather. In the 1990 California survey (California Department of Health Services 1991), a majority of both smokers (74 percent) and nonsmokers (87 percent) favored the idea of banning cigarette vending machines that are accessible to minors. A similar result was found in the 1989 COMMIT survey (CDC 1991a), where between 76 and 89 percent of adults agreed with the statement, "Cigarette vending

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Tobacco Use Among U.S. Racial/Ethnic Minority Groups

African Americans
American Indians and Alaska Natives
Asian Americans and Pacific Islanders
Hispanics

A Report of the Surgeon General

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
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Office on Smoking and Health

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Claire V. Broome, M.D., Acting Director, Centers for Disease Control and Prevention, Atlanta, Georgia.

James S. Marks, M.D., M.P.H., Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Virginia S. Bales, M.P.H., Deputy Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

The editors of the report were

Gerardo Marín, Ph.D., Senior Scientific Editor, Professor, Department of Psychology, University of San Francisco, San Francisco, California.

Gayle Lloyd, M.A., Managing Editor, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Valerie R. Johnson, Senior Editor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Anne M. Pritchett, Technical Editor, Cygnus Corporation, Rockville, Maryland.

Contributing authors were

Neal L. Benowitz, M.D., Professor and Chief, Division of Clinical Pharmacology, Departments of Medicine, Pharmacy, and Psychiatry, School of Medicine, University of California, San Francisco, California.

Alan Blum, M.D., Associate Professor, Baylor College of Medicine, Houston, Texas.

Ronald L. Braithwaite, Ph.D., Associate Professor, Division of Behavioral Sciences and Health Education, Emory University School of Public Health, Atlanta, Georgia.

Felipe G. Castro, M.S.W., Ph.D., Director, Hispanic Research Center, and Associate Professor, Department of Psychology, Arizona State University, Tempe, Arizona.

Moon S. Chen, Jr., Ph.D., M.P.H., Professor, Department of Preventive Medicine, Ohio State University, Columbus, Ohio.

David B. Coultas, M.D., Associate Professor of Medicine, School of Medicine, University of New Mexico, Albuquerque, New Mexico.

Luis G. Escobedo, M.D., M.P.H., Medical Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Dorothy L. Faulkner, Ph.D., M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Larri L. Fredericks, Ph.D., M.P.H., Associate Scientist, American Indian Cancer Control Project, Medical Research Institute, Berkeley, California.

Gary A. Giovino, Ph.D., Chief, Epidemiology Branch, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Sandra W. Headen, Ph.D., Assistant Professor, Department of Health Behavior and Health Education, School of Public Health, University of North Carolina, Chapel Hill, North Carolina.

Felicia Schanche Hodge, Dr.P.H., Principal Investigator and Director, Center for American Indian Research and Education, Berkeley, California.

Nancy J. Kaufman, R.N., M.S., Vice President, Robert Wood Johnson Foundation, Princeton, New Jersey.

Juliette S. Kendrick, M.D., Medical Epidemiologist, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Gary King, Ph.D., Assistant Professor and Coordinator, Urban Health Research Program, School of Medicine, University of Connecticut Health Center, Farmington, Connecticut.

Beverly S. Kingsley, Ph.D., M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Rod Lew, M.P.H., Health Education Director, Asian Health Services, Oakland, California.

Ann M. Malarcher, Ph.D., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Robert K. Merritt, M.A., Health Scientist, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Michael D. Newcomb, Ph.D., Professor, Department of Psychology, University of California, Los Angeles, California.

John P. Peddicord, M.S., Computer Scientist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Richard Pollay, Ph.D., Professor of Marketing, and Curator, History of Advertising Archives, University of British Columbia, Vancouver, British Columbia, Canada.

Amelie G. Ramirez, Dr.P.H., Associate Professor, Department of Family Practice, University of Texas, and Director, South Texas Health Research Center, San Antonio, Texas.

Patricia A. Richter, Ph.D., M.P.H., Toxicologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Robert G. Robinson, Dr.P.H., Associate Director for Program Development, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Richard B. Rothenberg, M.D., M.P.H., Professor, Department of Family and Preventive Medicine, Emory University School of Medicine, Atlanta, Georgia.

Jonathan M. Samet, M.D., Chairman, Department of Epidemiology, School of Hygiene and Public Health, The Johns Hopkins University, Baltimore, Maryland.

Michael W. Schooley, M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Dana Shelton, M.P.H., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Michael B. Siegel, M.D., M.P.H., Assistant Professor, Boston University School of Public Health, Boston, Massachusetts.

Charyn D. Sutton, President, The Onyx Group, Bala Cynwyd, Pennsylvania.

Scott L. Tomar, D.M.D., Dr.P.H., Assistant Professor, Department of Dental Public Health and Hygiene, School of Dentistry, University of California, San Francisco, California.

Bao-Ping Zhu, M.S., M.B.B.S., Ph.D., Visiting Scientist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Reviewers were

Jasjit S. Ahluwalia, M.D., M.P.H., M.S., Assistant Professor of Medicine, Emory University School of Medicine, Atlanta, Georgia.

David G. Altman, Ph.D., Associate Professor, Department of Public Health Sciences, Bowman Gray School of Medicine, Wake Forest University, Winston-Salem, North Carolina.

Glen Bennett, M.P.H., Coordinator, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, Maryland.

Gilbert J. Botvin, Ph.D., Director, Institute for Prevention Research, Department of Public Health, Cornell University Medical College, New York, New York.

L. Jackson Brown, Director, Epidemiology and Oral Disease Prevention Program, National Institute of Dental Research, National Institutes of Health, Bethesda, Maryland.

Linda Burhansstipanov, Dr.P.H., Director, Native American Cancer Research Program, American Medical Center Cancer Research Center, Denver, Colorado.

David Burns, M.D., Professor of Medicine, University of California at San Diego Medical Center, San Diego, California.

W. Michael Byrd, M.D., M.P.H., Visiting Research Fellow, Department of Health Policy and Management, Harvard School of Public Health, Boston, Massachusetts.

Portia S. Choi, M.D., M.P.H., District Health Officer, Dr. Ruth Temple Health Center, Los Angeles, California.

Nathaniel Cobb, M.D., Director, Cancer Prevention and Control Program, Indian Health Service Headquarters West, Albuquerque, New Mexico.

Janet L. Collins, Ph.D., Director, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Robert J. Collins, D.M.D., Chief Dental Officer, U.S. Public Health Service, Rockville, Maryland.

Linda S. Crossett, R.D.H., Research Scientist, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

K. Michael Cummings, Ph.D., Director, Smoking Control Program, Roswell Park Cancer Institute, New York State Department of Health, Buffalo, New York.

Dorynne J. Czechowicz, M.D., Associate Director for Medical and Professional Affairs, Division of Clinical Research, National Institute on Drug Abuse, National Institutes of Health, Rockville, Maryland.

Ronald M. Davis, M.D., Director, Center for Health Promotion and Disease Prevention, Henry Ford Health System, Detroit, Michigan.

Richard A. Daynard, Ph.D., J.D., Chairman, Tobacco Products Liability Project, Northeastern University School of Law, Boston, Massachusetts.

Jane L. Delgado, Ph.D., President and Chief Executive Officer, National Coalition of Hispanic Health and Human Services Organization, Washington, D.C.

John Elder, Ph.D., M.P.H., Professor, Graduate School of Public Health, San Diego State University, San Diego, California.

Harmon Eyre, M.D., Deputy Executive Vice President for Medical Affairs and Research, American Cancer Society, Atlanta, Georgia.

Michael C. Fiore, M.D., M.P.H., Director, Center for Tobacco Research and Intervention, University of Wisconsin Medical School, Madison, Wisconsin.

Adele M. Franks, M.D., Assistant Director for Science, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Harold P. Freeman, M.D., Director of Surgery, Harlem Hospital Center, New York, New York.

Thomas J. Glynn, Ph.D., Chief, Prevention Control Extramural Research Branch, National Cancer Institute, National Institutes of Health, Rockville, Maryland.

Michael G. Goldstein, M.D., Associate Professor of Psychiatry and Human Behavior, Brown University School of Medicine, Providence, Rhode Island.

Robert A. Hahn, Ph.D., M.P.H., Epidemiologist, Epidemiology Program Office, Centers for Disease Control and Prevention, Atlanta, Georgia.

Betty Lee Hawks, M.A., Special Assistant to the Director, Office of Minority Health, U.S. Department of Health and Human Services, Rockville, Maryland.

Clark W. Heath, Jr., M.D., Vice President for Epidemiology and Surveillance Research, American Cancer Society, Atlanta, Georgia.

Jack E. Henningfield, Ph.D., Vice President, Pinney Associates, Bethesda, Maryland.

John H. Holbrook, M.D., Director of Internal Medicine, University of Utah Hospital, Salt Lake City, Utah.

Thomas Houston, M.D., Director, Department of Preventive Medicine and Public Health, American Medical Association, Chicago, Illinois.

Rudolph S. Jackson, Dr.P.H., Professor, Department of Health Education, North Carolina Central University, Durham, North Carolina.

Elaine M. Johnson, Ph.D., Director, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockville, Maryland.

Nora L. Keenan, Ph.D., Epidemiologist, Office of Surveillance and Analysis, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Monina Klevens, D.D.S., M.P.H., Medical Officer, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Atlanta, Georgia.

Norman A. Krasnegor, Ph.D., Chief, Human Learning and Behavior Branch, Center for Research for Mothers and Children, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, Maryland.

Leonard E. Lawrence, M.D., President, National Medical Association, University of Texas Health Sciences Center at San Antonio, San Antonio, Texas.

Edward Lichtenstein, Ph.D., Research Scientist, Oregon Research Institute, Eugene, Oregon.

Douglas S. Lloyd, M.D., M.P.H., Associate Administrator for Public Health Practice, Health Resources and Services Administration, U.S. Department of Health and Human Services, Rockville, Maryland.

Judith Mackay, M.B.E., J.P., F.R.C.P., Director, Asian Consultancy on Tobacco Control, Kowloon, Hong Kong.

Audrey F. Manley, M.D., M.P.H., President, Spelman College, Atlanta, Georgia.

Alfred McAlister, Ph.D., Associate Professor and Associate Director, Center for Health Promotion Research and Development, The University of Texas at Austin, Austin, Texas.

J. Michael McGinnis, M.D., Scholar-in-Residence, National Academy of Sciences, Washington, D.C.

Bertha Mo, Ph.D., M.P.H., Senior Program Officer, International Development Research Centre, Ottawa, Ontario, Canada.

C. Tracy Orleans, Ph.D., Senior Program Officer, The Robert Wood Johnson Foundation, Princeton, New Jersey.

Terry F. Pechacek, Ph.D., Visiting Scientist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Cheryl L. Perry, Ph.D., Professor, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, Minnesota.

John P. Pierce, Ph.D., Sam M. Walton Professor for Cancer Research, Department of Family and Preventive Medicine, University of California, San Diego, California.

Donald H. Reece, Tobacco Control Coordinator, Indian Health Service, Albuquerque, New Mexico.

Patrick Remington, M.D., M.P.H., Chief Medical Officer, Wisconsin Division of Health, Madison, Wisconsin.

Irene Reveles-Chase, M.P.H., Health Education Consultant, Tobacco Control Section, California Department of Public Health, Sacramento, California.

Nancy A. Rigotti, M.D., Director, Quit Smoking Service, General Internal Medicine Unit, Massachusetts General Hospital, Boston, Massachusetts.

Donald J. Sharp, M.D., Medical Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Donald R. Shopland, Coordinator, Smoking and Tobacco Control Program, National Cancer Institute, National Institutes of Health, Bethesda, Maryland.

Beverly R. Singer, M.A., Research Staff Associate, School of Social Work, Columbia University, New York, New York.

Jesse L. Steinfeld, M.D., Surgeon General, U.S. Public Health Service, 1969–1973, San Diego, California.

Jonathan R. Sugarman, M.D., M.P.H., Medical Epidemiologist, Portland Area Indian Health Service, Seattle, Washington.

Michael J. Thun, M.D., Director, Analytic Epidemiology, American Cancer Society, Atlanta, Georgia.

Michael H. Trujillo, M.D., M.P.H., Director, Indian Health Service, Rockville, Maryland.

Kenneth E. Warner, Ph.D., Richard D. Remington Collegiate Professor of Public Health, Department of Health Management and Policy, School of Public Health, University of Michigan, Ann Arbor, Michigan.

Raymond Weston, Ph.D., Postdoctoral Fellow, Memorial Sloan-Kettering Cancer Center, Division of Psychiatry, New York, New York.

Judith Wilkenfeld, J.D., Assistant Director, Division of Advertising Practices, Federal Trade Commission, Washington, D.C.

Jerome Williams, Ph.D., Professor of Marketing, Pennsylvania State University, University Park, Pennsylvania.

Ernst L. Wynder, M.D., President, American Health Foundation, New York, New York.

Other contributors were

Marco Andujar, Telecommunications Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Ruth Atchison, Proofreader, Cygnus Corporation, Rockville, Maryland.

Cheryl Baldwin, Graphic Artist/Desktop Publishing Specialist, High 5 Design, Gaithersburg, Maryland.

Mary Bedford, Proofreader, Cygnus Corporation, Rockville, Maryland.

Christine V. Bellantoni, Graduate Student, University of Connecticut Health Center, Farmington, Connecticut.

Maureen Berg, Desktop Publishing Specialist, Market Experts, Silver Spring, Maryland.

Marissa Bernstein, Indexer, Cygnus Corporation, Rockville, Maryland.

Nowell D. Berreth, Writer-Editor, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Joyce Buchanan, Administrative Assistant, Institute for Social Research, Survey Research Center, University of Michigan, Ann Arbor, Michigan.

Janine E. Bullard, Proofreader, Cygnus Corporation, Rockville, Maryland.

Ralph S. Carabello, Ph.D., Epidemiologist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Jeffrey H. Chrismon, Systems Analyst, TRW Inc., Atlanta, Georgia.

Paulette Clark McGee, Proofreader, Cygnus Corporation, Rockville, Maryland.

Coreen A. Colovos, Copy Editor, Cygnus Corporation, Rockville, Maryland.

David F. Coole, M.S., Statistical Programmer, TRW Inc., Atlanta, Georgia.

Karen M. Deasy, Associate Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Washington, D.C.

Susan R. Derrick, Program Analyst, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Ellen C. Dreyer, R.N., M.S., Project Director, Cygnus Corporation, Rockville, Maryland.

Rita Elliott, M.A., Editorial Consultant, University of New Mexico, School of Medicine, Albuquerque, New Mexico.

Raymond J. Gamba, M.S., Graduate Student, The Claremont Graduate School, Claremont, California.

Maritta Perry Grau, M.A., Copy Editor, The Write Touch: Editorial Services, Frederick, Maryland.

Sarah Gregory, Acting Managing Editor, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Lillian E. Hatch, M.S.L.S., Information Specialist, Cygnus Corporation, Rockville, Maryland.

Elizabeth L. Hess, Copy Editor, Cygnus Corporation, Rockville, Maryland.

Thomya Hogan, Proofreader, Cygnus Corporation, Rockville, Maryland.

Reta N. Horton, M.A., Secretary, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Frederick L. Hull, Ph.D., Writer-Editor, Technical Information and Editorial Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Mescal J. Knighton, Writer-Editor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Anh Lé, Project Coordinator, Vietnamese Community Health Promotion Project, University of California, San Francisco, California.

Yun Chen W. Lin, M.P.H., Technical Information Specialist, TRW Inc., Atlanta, Georgia.

William T. Marx, M.L.I.S., Technical Information Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Maribet McCarty, R.N., M.P.H., Technical Information Specialist, The Orkand Corporation, Atlanta, Georgia.

Margie McDonald, Word Processing Specialist, Cygnus Corporation, Rockville, Maryland.

Linda A. McLaughlin, Word Processing Specialist, Cygnus Corporation, Rockville, Maryland.

Jennifer A. Michaels, M.L.S., Technical Information Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Barbara A. Mills, Secretary, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Paul D. Mowery, M.S., Senior Research Scientist, Battelle Memorial Institute, Atlanta, Georgia.

Leslie A. Norman, Public Affairs Specialist, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Atlanta, Georgia.

Ward C. Nyholm, Desktop Publishing Specialist, Cygnus Corporation, Rockville, Maryland.

Patrick O'Malley, Ph.D., Research Scientist, Institute for Social Research, Survey Research Center, University of Michigan, Ann Arbor, Michigan.

Anniette Ponce de León, Student, University of San Francisco, San Francisco, California.

Felicia A. Powell, M.S., Statistical Programmer, TRW Inc., Atlanta, Georgia.

Christopher Rigaux, Project Director, Cygnus Corporation, Rockville, Maryland.

Patricia L. Schwartz, Graphic Artist/Desktop Publishing Specialist, Cygnus Corporation, Rockville, Maryland.

Matthew B. Spangler, Proofreader, Cygnus Corporation, Rockville, Maryland.

Catherine T. Timmerman, Chief Operating Officer, Cygnus Corporation, Rockville, Maryland.

Peggy E. Williams, M.S., Proofreader, Marietta, Georgia.

Eve J. Wilson, Ph.D., Project Manager, Cygnus Corporation, Rockville, Maryland.

Beatrice K. Wolman, M.S., Project Manager, Cygnus Corporation, Rockville, Maryland.

Tobacco Use Among U.S. Racial/Ethnic Minority Groups

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Advertising and Promotion

Advertising is an important influence on tobacco use initiation and maintenance, as documented in *Preventing Tobacco Use Among Young People* (USDHHS 1994). Cigarette advertising and promotion may stimulate cigarette consumption by (1) encouraging children and adolescents to experiment with and initiate regular use of cigarettes, (2) deterring current smokers from quitting, (3) prompting former smokers to begin smoking again, and (4) increasing smokers' daily cigarette consumption by serving as an external cue to smoke (CDC 1990a). In addition, cigarette advertising appears to influence the perceptions of youths and adults about the pervasiveness of cigarette smoking and the images they hold of smokers (USDHHS 1989, 1994). Cigarette advertising also may contribute to the perception that smoking is a socially acceptable, safe behavior and may produce new perceptions about the functions of cigarette smoking in social situations. All of these perceptions have been shown to be risk factors for the initiation of cigarette smoking (Lynch and Bonnie 1994; USDHHS 1994; *Federal Register* 1996).

Unfortunately, the specific effect of advertising on youth in racial/ethnic minority communities is not well understood, to some extent because research is scarce on youth in racial/ethnic communities. Available data indicate that young people smoke the brands that are most heavily advertised. In 1993, the three most heavily advertised brands of cigarettes, Marlboro, Camel, and Newport, were the three most commonly purchased brands among adolescent smokers. More than 45 percent of Hispanic and 63 percent of white teenagers reported purchasing Marlboro. African American teenagers most often chose Newport, one of the mentholated cigarettes heavily marketed to the African American community (Cummings et al. 1987; CDC 1994a). Although combined sales of these three brands represented only 35 percent of the adult market share, they represented 86 percent of the adolescent market share. These data suggest that tobacco advertising influences brand preference among youths and that there are differences in preference among racial/ethnic groups (CDC 1994a).

Another reason that research to date has been unable to quantify the specific effect of tobacco advertising on racial/ethnic groups is that advertising for tobacco products is ubiquitous and uses images, such as glamour, independence, and attractiveness, that appeal to all segments of society. Overall, tobacco products are among the most heavily advertised products in the United States. However, studies have documented that some tobacco products are advertised disproportionately to members of racial/ethnic groups, such as mentholated products to African Americans and brands named "Rio" and the earlier "Dorado" to Hispanics (Gloede 1985; Leviten 1985; Walters 1985).

In a study of adolescents who had never tried smoking, Evans and colleagues (1995) reported an association between a measure they constructed on receptivity to tobacco marketing and a measure of susceptibility to begin smoking. Higher scores on the receptivity index were associated with increasing likelihood of being susceptible to start smoking. The association persisted, even after statistical control for exposure to other smokers, race/ethnicity, and other socioeconomic status variables. Racial/ethnic minority-group specific analyses were not conducted. The findings in this study, though suggestive, require further validation.

Market segmentation is a well-developed strategy for crafting advertising campaigns that present particularly persuasive appeals to targeted audiences (Murphy 1984). It has been suggested that the tobacco industry strategically targets new consumer groups (e.g., women, racial/ethnic groups, and youths) by developing advertisements that exploit the psychological interests and needs of those targeted populations (e.g., Basil et al. 1991). A large and increasing portion of advertising and marketing is targeted to racial/ethnic groups, especially youth (Moore et al. 1996; Zbar 1996). The challenge for the audience is to distinguish the advertising that represents consumer goods with benefit or satisfaction from advertising that represents products that may harm the target community (Moore et al. 1996). Targeted tobacco advertising presents images of success, wealth, happiness, and sophistication, all of which are attractive to racial/ethnic groups, perhaps particularly in contrast with other, less flattering images of those communities presented by the news media. A recent article on the health of African American women discussed the attractive images used to target the African American community. "We have grown almost numb to negative images of ourselves in the media—Black teen girls surrounded by screaming babies or men in handcuffs. Except in cigarette or liquor advertisements. In these we are beautiful, confident, well-dressed, happy, wealthy, in love. . . " (Villarosa 1994, p. 13).

Concern about targeted tobacco advertising has been the subject of various congressional hearings (e.g., U.S. Congress 1987, 1990). Efforts have been made by communities to counteract such advertising. Indeed, tobacco companies' targeting of racial/ethnic communities appears in some cases to have created a reverse marketing effect, such as that seen with the African American community's negative and forceful response to Uptown and X brand cigarettes (see Targeted Products later in this chapter). Recent data show that African Americans' spending on tobacco decreased 5 percent between 1994 and 1995 (Schmeltzer 1996), perhaps due in part to an adverse reaction to the targeted marketing of a harmful product (McIntosh 1995). Counteradvertising has also been used; one poster distributed by Harlem Hospital in 1991 depicted the Marlboro man lighting a cigarette for an African American child. The caption read, "They used to make us pick it. Now they want us to smoke it." A television spot, "Rappers/Pick It," produced by the California Department of Health Services, conveys a similar theme (Kizer et al. 1990, p. 76).

Although many companies are sensitive about disclosing targeted marketing strategies, particularly efforts focused on racial/ethnic minority markets, recent analyses of marketing trends document tobacco companies' efforts to sell their products to racial/ethnic groups and to youths (Davis 1987; Altman et al. 1991; Johnson 1992a; Moore et al. 1996; Stoddard et al. 1997). At least one major tobacco company, Philip Morris, has argued that it does not exclusively target any particular group (Nelson and Lukas 1990). Questions also have been raised about the appropriateness of using targeted advertising and promotional techniques when the quantity and intensity of these efforts are well beyond the proportional purchasing power of the targeted group or when particular promotional techniques such as billboard placements are used in quantities that are out of proportion to the population size of the targeted groups. Examples of targeted advertising and promotion that may be inappropriate include the overly frequent placement of billboards that advertise tobacco products in racial/ethnic enclaves, the use of cultural values and symbols valued by members of racial/ethnic groups to promote tobacco products, and the use of certain promotional practices (e.g., coupons, discounts, tie-ins, and free gifts).

Magazine Advertisements

Certain tobacco products are advertised disproportionately to members of racial/ethnic groups. For example, menthol cigarettes are more frequently advertised in magazines targeting African Americans than in magazines directed at the general public (Cummings et al. 1987). An analysis of one year of issues (June 1984 through May 1985) of three magazines primarily directed at African Americans—*Jet*, *Ebony*, and *Essence*—and of four magazines directed at the general population—*Newsweek*, *Time*, *People*, and *Mademoiselle*—found that 12 percent more advertisements for cigarettes appeared in the African American magazines. In addition, 65.9 percent of the cigarette advertisements in the African American magazines were for menthol cigarettes, compared with 15.4 percent of those in the general population magazines (Cummings et al. 1987). Indeed, Newport, a menthol brand, is the number one preferred cigarette among African American adults and youth (CDC 1990b, 1994a).

Outdoor Advertisements

Early research showed that marketing approaches such as billboards and point-of-sale displays have been particularly effective in reaching African Americans. In one early study, Bullock (1961) sampled 1,106 African Americans and 537 whites from Atlanta, Birmingham, Houston, Memphis, and New Orleans to assess a variety of consumer behaviors. Bullock found that billboards and point-of-sale materials were particularly effective in reaching a high proportion of African American consumers and that African American consumers were more likely than whites to trust advertising. In addition, a disproportionately high number of billboards and other outdoor advertisements promoting cigarettes and other tobacco products have been placed in racial/ethnic minority communities. A recent study in Los Angeles found that the density of cigarette advertisements on billboards was 4.6 times greater in the city proper than in the suburbs (Ewert and Alleyne 1992). In a study conducted in San Diego, Elder and colleagues (1993) found that the highest proportion of billboards featuring tobacco products was in Asian American (13.0 percent) neighborhoods, followed by African American (9.6 percent), Hispanic (4.7 percent), and white (1.1 percent) neighborhoods. The volume of outdoor advertising in Asian American neighborhoods was relatively low, although the proportion of that space devoted to tobacco products was high (Elder et al. 1993). In an earlier study, Mitchell and Greenberg (1991) found that most billboards in racial/ethnic communities in four New Jersey cities were predominantly dedicated to advertised alcoholic beverages and tobacco products. In several urban centers, the proportion of billboard

tobacco advertising has been found to be higher in African American neighborhoods than in white areas (Tuckson 1989; Mitchell and Greenberg 1991; Mayberry and Price 1993). Stoddard and colleagues (1997) documented tobacco billboard advertising in four neighborhoods (African American, Asian American and Pacific Islander, Hispanic, and white) in Los Angeles during 1993 and 1994. Tobacco billboard density (the number of billboards per mile) was highest in African American communities, intermediate in Hispanic and Asian communities, and lowest in white communities. The models in billboards in African American neighborhoods were more likely to appear younger than in the other neighborhoods. In addition, 91 percent of the billboards in African American neighborhoods featured an African American as the central character; in the other three neighborhoods, whites portrayed the central characters.

In-Store Promotions

In-store and over-the-counter promotions for tobacco products also seem to disproportionately target racial/ethnic communities. For example, in racial/ethnic neighborhoods in San Diego, Asian American retail outlets had the highest average number of tobacco promotion displays (6.4), compared with Hispanic (4.6) and African American (3.7) stores (Elder et al. 1993). In addition, low-cost or generic cigarettes that have begun to capture increasing market shares may be particularly effective as part of a targeted campaign directed at members of racial/ethnic groups with low-socioeconomic status and for whom price may be an important consideration in the purchase of cigarettes (Assael 1990).

Convenience store owners often are eager to promote tobacco products, which account for about 26.5 percent of their total sales (National Association of Convenience Stores 1993). In such stores, tobacco companies frequently promote their products through special displays and point-of-sale promotions that provide monetary or product allowances for the store owners (Cummings et al. 1991; Wildey et al. 1992; Davis 1993; USDHHS 1994). In a study of 23 supermarkets and convenience stores in San Diego, Wildey and colleagues (1992) found that 52 percent of store owners reported receiving payments from tobacco companies for displaying advertisements in their stores and that 69 percent of the stores displayed tobacco advertisements on the outside walls, windows, or parking lot signs. The researchers also found that stores in Asian American neighborhoods were more likely than stores in white communities to have outside advertisements for tobacco products. A San Francisco study found that a large number of small stores in racial/ethnic minority neighborhoods display outside placards and small billboards for tobacco products (Gerardo Marín and colleagues, unpublished data). About 57.6 percent of small stores in predominantly African American neighborhoods displayed at least one advertisement for tobacco products, compared with 37.7 percent in predominantly Hispanic neighborhoods and 28.6 percent in predominantly Asian American and Pacific Islander neighborhoods.

Racial/Ethnic Symbols, Names, and Events

Another area of concern about targeted advertising and promotion is the use of clearly identifiable racial/ethnic models; group-specific messages, such as salutes to Latino community organizations during Hispanic Heritage Month, and group-relevant placements. Examples of group-relevant placements are cigarette advertisements appearing during Black History Month and featuring pictures or quotations of African American leaders and Philip Morris's salute to its Bill of Rights campaign during news coverage of Nelson Mandela's release from prison. These advertisements target racial/ethnic communities by making use of symbols and events that are held in high esteem by community members.

Individuals' psychosocial characteristics are commonly used in the design of targeted advertising and marketing campaigns (Basil et al. 1991). Consumers, particularly those who identify with an racial/ethnic group's culture, tend to prefer buying goods that are specifically advertised to their cultural group. Deshpande and colleagues (1986) found that Hispanics who strongly identified with their racial/ethnic culture preferred Spanish language advertising, were more likely than those with less cultural identification to maintain brand loyalty, and were more likely than those with less cultural identification to buy prestige brand goods and those advertised specifically to their racial/ethnic minority group. In addition, Lee and Barnes (1989–1990) found that advertisements targeting African Americans differ from those directed at the general population in that they feature certain bright colors.

Tobacco product promotions also feature symbols and names that have special meaning for racial/ethnic groups. Certain names have special significance for particular groups (Uptown among African Americans), the use of non-English names may appeal to certain linguistic groups (Rio and Dorado among Hispanics), and the use of certain words can conjure

symbols that are meaningful to a particular group (American Spirit among American Indians). The use of racial/ethnic events and symbols to market tobacco can present a complex issue that is difficult for communities to resolve. For instance, the American Spirit cigarette package portrays an American Indian smoking a pipe, and the product's literature features American Indian cultural themes, stating that the American Indian custom was to smoke tobacco leaves the "natural way" and that American Spirit cigarettes are "natural" cigarettes. In early 1997, the American Indian Tobacco Education Network criticized the Sante Fe Tobacco Company for exploiting sacred Indian traditions and imagery to sell its tobacco products. The Sante Fe Tobacco Company countered that it honors Indian traditions in its use of community symbols and even donates tobacco to tribes for ceremonial purposes (Guthrie 1997). The fact remains that American Spirit cigarettes contain tobacco with amounts of tar and nicotine similar to those of commercial brands and are thus dangerous to health, despite their lack of additives. Although targeted marketing of products may bring economic benefits to racial/ethnic communities, when such marketing is for a harmful product such as cigarettes, the target community is challenged to choose between potential economic gain and social recognition versus the inevitable long-term adverse health outcomes from use of the product (Moore et al. 1996).

Cigarette advertisements also have been accused of trivializing social causes and cultural values. For example, a Virginia Slims advertisement that appeared in the July 1994 issue of *Life* uses the concept of racial/ethnic equality to promote use of the product. In addition, certain tobacco product advertisements have used visual images, such as American Indians as warriors, that demean the culture and insult some individuals (Green 1993).

Another significant concern is the effect that targeted tobacco advertising may have on recent immigrants. For many immigrants, the advertising of cigarettes in their country of origin has helped mold their attitudes and perceptions of tobacco use. These perceptions in turn create expectations about the social effects of cigarette smoking as portrayed in advertisements, as well as brand recognition and brand loyalties toward the most frequently advertised brands. Targeted promotional and marketing practices also can affect the decisions of consumers who have recently migrated to the United States and who, in general, have not been exposed to marketing techniques and promotional approaches common in the United States. Immigrants not exposed to lifelong learning from the commercial practices of a market economy may be less critical and overly trusting of the messages and implied promises presented in advertisements. Webster (1990–1991) found that highly acculturated Hispanics rated certain consumer products as defective and overpriced and claimed that advertising was problematic, whereas less acculturated Hispanics were more accepting of such defective products and saw advertising not only as informative but also as enjoyable. Immigrants also respond differently to promotional techniques with which they are unfamiliar. For example, Hispanics who have a low level of acculturation may not respond to certain novel promotional techniques such as the use of coupons (Donthu and Cherian 1992) but are more influenced by radio and billboard advertisements and point-of-sale displays (Webster 1992). Other studies have also found that promotional techniques have differential effects on various sectors of the Hispanic population. The more acculturated Hispanics report being primarily influenced by magazine advertisements, brochures, product labels, and consumer guides, such as *Consumer Reports* and the *Yellow Pages* (Webster 1992).

Targeted Products

Although a few cigarette brands have names that imply specific racial/ethnic minority targeting (e.g., Rio and Dorado for Hispanics), their promotion has been limited to a few states. The recent introduction of American Spirit seems to be directed at American Indians as well as youths and individuals preferring natural products. In addition, Japan Tobacco Inc. has begun to market its top-selling brand, Mild Seven, in the United States (Stebbins 1990; Sesser 1993). The brand is being promoted as a cigarette manufactured by Asians for Asians, and full-page advertisements appear in magazines primarily targeting Asian Americans (Koeppel 1990b). Mild Seven billboards also have appeared in Koreatown and Little Tokyo in Los Angeles as well as in other U.S. cities with large Asian American populations.

One of the best examples of product targeting was the cigarette Uptown, designed by R.J. Reynolds in the 1980s to reach African American smokers (Dagnoli 1989; Simmons 1989; Koeppel 1990a; Robinson and Sutton, in press). The attempted introduction of this cigarette is a case study in racial/ethnic product targeting. The characteristics, packaging, and planned promotion of Uptown cigarettes allegedly were designed specifically for African Americans. The menthol formulation of this new brand was designed to compete directly with Lorillard's Newport

cigarette, which was one of only three full-price cigarettes to gain market shares in 1989 along with Philip Morris's Marlboro and Virginia Slims cigarettes (Dagnoli 1989). In 1986, Newport was the leading brand of cigarettes among African American smokers, ahead of Brown & Williamson's Kool cigarettes and R.J. Reynolds's Salem cigarettes (Simmons 1989; CDC 1990b). The mentholated Uptown cigarettes were to be packed with their filters down in the belief that African American blue-collar workers often open their cigarettes from the bottom to avoid crushing the filters or having to put unwashed hands on the part of the cigarette that goes into their mouth (Ramirez 1990). Furthermore, in its statement announcing Uptown cigarettes, the company defined African Americans as the primary market for the new brand. Unlike Newport cigarettes, which were purported to be aimed at all smokers rather than just African Americans, R.J. Reynolds was specific (Dagnoli 1989). "We expect Uptown to appeal most strongly to black smokers," said Lynn Beasley, vice president of strategic marketing for the company. "Our research led us to believe that Uptown's blend . . . will be an appealing alternative to smokers currently choosing a competitive brand. We have developed a product based on research that shows that a significant percentage of black smokers are currently choosing a brand that offers a lighter menthol flavor than our major menthol brand, Salem" (*Philadelphia News Observer* 1990, p. 7).

Uptown cigarettes were to yield 19 milligrams of tar per cigarette, which was the highest level of tar in all of R.J. Reynolds's cigarette brands, with the exception of unfiltered Camel cigarettes. The planned advertisements were to depict African American couples enjoying cigarettes in a sophisticated urban environment with the slogan "Uptown. The Place. The Taste" (Koeppel 1990a). The marketing plan for Uptown cigarettes was designed to take advantage of media that were particularly effective in reaching African Americans, including billboards, transit advertising, bus shelters, point-of-purchase signs, and advertisements in racial/ethnic newspapers and magazines.

The introduction of Uptown cigarettes was planned for the first week in February 1990 to coincide with Black History Month activities, including receptions, exhibits, festivals, award ceremonies, and other events highlighting the African American experience. Promoting Uptown cigarettes during this high level of activity—through the distribution of free samples and the underwriting of events—would afford R.J. Reynolds a prime opportunity to promote the new brand (Simmons 1989).

R.J. Reynolds selected Philadelphia as the test market site because of its demographics. In 1990, the city's population was approximately 40 percent African American and was served by several African American newspapers. In addition, African Americans tended to live in distinct neighborhoods that could be reached effectively through billboards and transit advertising. Furthermore, unlike some communities that had mobilized against excessive billboard advertising of alcoholic beverages and tobacco products, Philadelphia's African American community had been quiet in this respect.

In the wake of a firestorm of negative national publicity (see Chapter 5), R.J. Reynolds withdrew its plans to test-market Uptown cigarettes in Philadelphia. The protest against this targeted product involved community members, civic and religious leaders, health professionals, and then-Secretary of Health and Human Services Dr. Louis W. Sullivan. Ultimately, R.J. Reynolds decided to withdraw Uptown cigarettes from the market permanently.

The same leadership and strategy were used again in Boston in early 1995 and similarly resulted in the withdrawal of a new brand of cigarettes called "X," thought to be targeted to African Americans because of its red, green, and black packaging and the suggestion of the name of noted leader Malcolm X. In this instance, however, both the manufacturer and the distributor denied that the brand was targeted to African Americans or any other racial/ethnic market (Jackson 1995) (see Efforts to Control Tobacco Advertising and Promotion in Chapter 5).

In January 1997, R.J. Reynolds released a mentholated version of Camel cigarettes. R.J. Reynolds had last marketed a mentholated brand of Camels in 1966 (Tobacco Merchants Association of the United States 1978). Approximately three-fourths of African American smokers smoke mentholated cigarettes (USDHHS 1990) and Camel cigarettes are popular, so the African American community has been concerned that a new menthol brand may escalate smoking among African Americans. In an event similar to that precipitating the withdrawal of Uptown cigarettes, key religious leaders, led by the National Association of African Americans for Positive Imagery, launched a national crusade against the new brand extension of Camel Menthols (Rotzoll 1997).

Aggregation problems. A common problem with some of the studies reviewed in this chapter is that racial/ethnic populations have not been assessed separately from larger populations. For example, some studies of African Americans and whites have failed to separate these groups when reporting the results. Other studies, particularly those with small sample sizes, have not separated subgroups within racial/ethnic minority groups—for example, distinguishing Chinese from Vietnamese—even when such separation is essential to properly understanding the results. Such results would be difficult to reproduce without knowledge of the population mix.

Nonreporting. The data summarized in this chapter are further limited by a bias in the reporting of results. Some researchers report only significant results and fail to indicate the equally important observation that some associations are not significant. This limitation can negatively affect the design of culturally appropriate prevention strategies. In addition, few of the studies reviewed in this chapter adequately describe the procedures followed or the data collected. Properly understanding the meaning and measurement of many of the variables included in these research reports is difficult because of the paucity of detail. Finally, few of these studies have reported on issues of statistical power in their designs, which frequently are characterized by a small sample and a large number of variables.

Despite such limitations in the quality and comparability of data, these studies identify the variables that should be the focus of future research and variables that need to be considered in culturally appropriate prevention programs (see Chapter 5).

Chapter Summary

Tobacco use patterns are influenced by many factors. In addition, the factors themselves and their importance in influencing tobacco use vary among racial and racial/ethnic groups. Some common experiences and themes, however, emerge: the targeted advertising and promotions through racial/ethnic-specific media channels, the influence of peers who smoke on initiation of tobacco use, the association of depression and stress with cigarette smoking and cessation among adults from different racial/ethnic groups, and the influence of acculturation. Psychosocial variables help explain individual tobacco use behavior. Tobacco advertising and promotion are influential because they appear to affect the perceived sense of pervasiveness, function, and image of tobacco use, which in turn affect these psychosocial variables. Another possible influence is the historical relationship between racial/ethnic minority communities and the tobacco industry. Most likely, it is not any one single factor but the interplay or convergence of these factors that significantly influences both a person's decision to use tobacco and the resulting tobacco use patterns. The effects of each factor have so far eluded quantification by researchers based on available evidence; more research is needed to better understand the etiology, exposure, and effects of these factors.

Conclusions

1. The close association of tobacco with significant events and rituals in the history of many racial/ethnic communities and the tobacco industry's long history of providing economic support to some racial/ethnic groups—including employment opportunities and contributions to community groups and leaders—may undermine prevention and control efforts.

2. The tobacco industry's targeted advertising and promotion of tobacco products among members of these four U.S. racial/ethnic groups may undermine prevention and control efforts and thus lead to serious health consequences.

3. The high level of tobacco product advertising in racial/ethnic publications is problematic because the editors and publishers of these publications may omit stories dealing with the damaging effects of tobacco or limit the level of tobacco-use prevention and health promotion information included in their publications.

4. Although much of the original research on psychosocial factors that influence tobacco use reflects general processes that may apply to racial/ethnic populations, documenting such generalizability requires further research.

5. The initiation of tobacco use and early tobacco use among members of the various racial/ethnic minority groups seem to be related to numerous categories of variables—such as sociodemographic, environmental, historical, behavioral, personal, and psychological—although the predictive power of these categories or of specific risk factors is not known with certainty because of the paucity of research.

6. Cigarette smoking among members of the four racial/ethnic groups is associated with depression, psychological stress, and environmental factors such as advertising and promotion and peers who smoke, as is also the case in the general population. The role of these factors in tobacco use among members of these racial/ethnic groups deserves attention by researchers and persons who develop smoking prevention and cessation programs.

Appendix. A Brief History of Tobacco Advertising Targeting African Americans

A previous report of the Surgeon General (USDHHS 1994) presented a brief historical perspective of cigarette advertising in the United States focusing on advertising strategies targeting youths. Because targeted marketing to other racial/ethnic groups is a more recent phenomenon and because information about this practice with African Americans is more available, this appendix focuses on advertising to African Americans. This appendix updates the review in the 1994 Surgeon General's report, particularly as it relates to African Americans.

Early Assumptions

A significant proportion of cigarette advertising targeting African Americans was based on the belief that consumer behavior among African Americans differs from that of whites. In the 1950s, a primary belief of advertising agencies working on cigarette advertising was that status-seeking was a central motivator of African Americans. A survey of *Ebony* readers, published in *Advertising Age* (1950), showed that "prestige and quality—not cost—are the most important factors to stress when appealing to colored buyers. Because of the psychological considerations involved, Negroes are extremely desirous of being identified as customers who recognize and demand quality merchandise" (p. 17).

Another early assumption of advertising agencies targeting African Americans was that advertisements featuring African American models were more effective—or at least more appealing to African

Americans—than advertisements portraying whites. In a 1950 survey of the buying habits and motivations of African Americans, Starch and colleagues found that the majority of *Ebony* readers preferred advertisements featuring African American models, although about one-third of the African American respondents said that it did not matter whether African American models were used (*Advertising Age* 1950). In a later study of consumer reactions to the use of white or African American models, 93 white and 88 African American college freshmen in Houston were asked to react to four cigarette advertisements, indicating whether the models were ugly or beautiful, low class or high class, and friendly or unfriendly (22 bipolar scales were presented) (Barban and Cundiff 1964). In general, the cigarette advertisement with white models and the same advertisement with African American models drew similar reactions from whites and African Americans. In a more recent study, however, African Americans who strongly identified with their culture were more likely to prefer African American models (Whittler 1989). Another recent study has shown that African American college students preferred television commercials for consumer products that included African American models (Pitts et al. 1989). These findings were replicated recently among African American Chicago youths aged 12–14 years who perceived African American models in cigarette advertisements as more appealing (Huang et al. 1992).

A central belief related to targeted advertising and marketing is the assumption that members of racial/ethnic groups, particularly African Americans and Hispanics, are brand-conscious and brand-loyal consumers. This approach to purchasing is believed to motivate consumers to spend extra money to purchase a product with a recognized brand name or a product that has been used by family members and neighbors for a relatively long period of time. Large multinational brand names often are associated with quality in the immigrants' countries of origin, and purchasing of those brands in the United States may serve as an example of having "arrived" or achieved a sought-after economic status. Other researchers hypothesize that previous consumer experiences and an increase in disposable income produce brand consciousness. For example, Dallaire (1955) argued that "the Negro's desire to improve his lot, his increasing income and the fact that he's been burned so badly and so often in the past with shoddy merchandise makes him a highly brand-conscious consumer" (p. 58). Whether brand loyalty is indeed a characteristic of certain racial/ethnic minority groups continues to be debated (Deshpande et al. 1986; Donthu and Cherian 1992); however, this assumption often has been invoked in the design of advertising directed at members of racial/ethnic groups.

Promotional campaigns directed at African Americans and members of other racial/ethnic groups also operate under the assumption that these individuals are more likely than whites to trust advertising, although most of the studies on which this perception is based have been limited by methodological flaws such as nonrandom sampling and a small sample size. In a 1961 study of 1,106 African Americans and 537 whites, about twice as many whites as African Americans had unfavorable attitudes toward all types of advertising (Bullock 1961). In a 1968 study of 1,846 persons, the 77 African Americans interviewed had the highest proportion (53 percent) of favorable responses to the open-ended question "How do you yourself feel about advertising?" compared with 1,707 whites (40 percent) (Bauer and Greyser 1968). Eleven years later, Durand and colleagues (1979) interviewed 80 persons and found that African Americans were consistently more trusting of television and newspapers than whites were, and they relied less on magazine advertisements. Soley and Reid (1983) interviewed a random sample of 185 Atlantans and found that African Americans were more satisfied with the informational value of magazine and television advertising than whites were and that high-income respondents were the least satisfied with advertising.

Early Targeted Advertising Efforts (1940s–1960s)

Turn-of-the-century advertisements for tobacco products tended to include women, to emphasize female sexuality, and to portray women as dangerous and delightful. Conversely, American Indians and African Americans often were pictured as childlike and unattractive (Mitchell 1992). Tobacco companies have depicted African Americans in their advertisements since the first Bull Durham advertisements appeared at the turn of the century, but only since the 1940s have they aggressively targeted African Americans as a distinct consumer market.

In the decades that have followed, tobacco companies have been described as "bold pioneers in both their use of new media and their targeting of other segments even when controversial" (Pollay et al. 1992, p. 49). In 1942, the advertising agency of the Lorillard Tobacco Company, J. Walter Thompson Company, began to monitor cigarette sales in African American neighborhoods as part of an Old Gold cigarette promotion (Pollay 1988). By 1948, Philip Morris was

running its "no cigaret hangover" campaign in the African American press and in daily newspapers published in languages other than English (*Tide* 1948, p. 18). By 1955, several cigarette companies, including Philip Morris, were producing advertising materials targeting African Americans and Hispanics (*Printers' Ink* 1955). Soon thereafter, Philip Morris began placing point-of-sale materials in English as well as Spanish for the newly repositioned Marlboro cigarettes (Ullman Gravure, Inc. 1957). A decade after tobacco firms first displayed an interest in African American consumers, the firms were described as "leaders among advertisers gunning for a bigger share of the Negro market" (Dallaire 1955, p. 58).

One of the earliest targeting efforts, conducted on behalf of Liggett & Myers's Chesterfield cigarettes, targeted African Americans via advertisements featuring athletes' testimonials and placed in racial/ethnic newspapers and magazines, such as *Ebony, Our World,* and *Tan.* The company also launched an extensive point-of-sale advertising campaign featuring African American sports figures (Dallaire 1955). The campaign included a series of six documentary films that presented African American achievements. Each film was viewed by about 3 million people in 500 primarily African American theaters. These films also were shown at more than 100 African American colleges, where free cigarette samples were distributed, reaching an estimated 900,000 additional people. The success of this effort led to the filming of 13 five-minute films featuring interviews with African American celebrities (Dallaire 1955).

The 1950s also marked the introduction of mentholated cigarettes. Although a greater proportion of African Americans now smoke mentholated cigarettes compared with members of other racial/ethnic groups (Chapter 2), no evidence exists that the menthol market was initially conceived as having any special appeal to African Americans or other racial/ethnic groups. Mentholated cigarettes are relative newcomers to the tobacco market, and they have been well received by smokers. In 1956, Brown & Williamson's mentholated and then unfiltered Kool cigarette enjoyed an increasing market share that attracted its competitors to introduce mentholated cigarettes with filters. These competitors and their entries included R.J. Reynolds's Salem, Philip Morris's Spud, Liggett & Myers's Oasis, and Lorillard's Newport cigarettes. By the end of 1957, 5 percent of all cigarettes consumed were mentholated, representing "a relatively sharp gain for a fledgling cigarette movement exploring a new taste" (Wootten 1957, p. 22).

By 1959, The American Tobacco Company, the only firm without a mentholated cigarette, was preparing to market a cigarette tentatively called Richmond. The campaign concept allegedly argued that the Richmond cigarette "gives you all of smoking's pleasure, with none of its penalties" (*Printers' Ink* 1959a, p. 12). Around the same time, Brown & Williamson was ready to test market a second menthol brand, Belair, and was introducing three other menthol brands into the market—Riviera, Spring, and Alpine (*Printers' Ink* 1959c). Tobacco companies also were beginning to use technical jargon to market their menthol products. For example, in 1959, advertising professionals described R.J. Reynolds's advertisements for Salem as "breathlessly reporting 'an amazing new development' in copy that was both opaque and studded with scientific jargon" to inform consumers about the highly porous paper that "air softens every puff. There are, obviously, just no limits to the company's tender regard for the smoker" (*Printers' Ink* 1959b, p. 8).

In a study of early cigarette advertisements targeting African Americans, investigators compared a complete set of cigarette advertisements from *Ebony* for the years 1950–1965 with a matched set of advertisements from *Life* (Pollay et al. 1992). The results, which follow, are important in promoting a better understanding of the principles followed in advertising targeted to African Americans.

By 1965, all six major U.S. cigarette firms had advertised in the pages of *Ebony* as well as *Life.* While the cigarette advertising in *Life* increased over the years, particularly between 1963 and 1965, the amount of such advertising in *Ebony* more than tripled during the same period. *Ebony* initially had fewer cigarette advertisements (16 in 1950) than *Life* (31 in 1950), but a dramatic increase in efforts targeting African Americans soon led *Ebony* to have more than twice the number of cigarette advertisements (57 in 1962) as *Life* (28 in 1962) (Pollay 1990; Pollay et al. 1992). An analysis of the page costs indicated that this pattern was not related to the relative costs of the two magazines nor was it likely related to cigarette firms' joining other firms to offer their products to African Americans through African American-owned media. Although this was a period of general growth for *Ebony,* "cigarette firms increased their spending and page acquisition even more than the average, keeping themselves out in front of the pack" and making cigarette firms the source of an estimated 6.5 percent of *Ebony*'s total advertising income in 1962 (Pollay et al. 1992, p. 54).

The investigators also found that the manifest race/ethnicity of the models portrayed in cigarette

advertisements increased between 1950 and 1965. Out of the 540 cigarette advertisements in *Ebony*, more than 84 percent featured identifiable human models, and more than 90 percent of those used African American models. In the early 1950s, the white endorsers who occasionally appeared in *Ebony* included physicians who claimed "more doctors smoke Camels" and television and movie stars (Pollay et al. 1992). Since 1958, virtually all models in *Ebony*'s cigarette advertisements have been African American. Yet none of the African American cigarette endorsers appearing in *Ebony* advertisements have appeared in *Life* advertisements, not even the widely popular sports stars and musicians.

During the early years of targeted advertising, professional athletes were most often featured in cigarette advertisements. Sports stars were used in advertisements even when the advertising copy was inconsistent with athletics. A Lucky Strike cigarette advertisement in *Ebony*, for example, referenced scientific tests in 1950 but showed a picture of an African American Olympic athlete. These advertisements sometimes differed from advertisements appearing in media targeting the general population. In 1960, Kent cigarettes illustrated its "scientist's choice" campaign in *Ebony* with another Olympic champion, not with a scientist as was done in the advertisement placed in *Life*. Although athletes also appeared in cigarette appeals to the larger public, "cigarette ads aimed at black readers of *Ebony* were significantly more likely to use athletes than those aimed at white readers of *Life*. For 1950–1965, endorsements from athletes were about five times more common in *Ebony* than in *Life*" (Pollay et al. 1992, p. 51).

Although most tobacco-producing companies were targeting the African American market through *Ebony*, these companies advertised significantly fewer cigarette brands in *Ebony* than in *Life* (Pollay et al. 1992). Advertising of new products seems to have lagged in African American publications. Whereas advertisements for filtered tobacco products first appeared in *Life* in 1953 and made up one-half of all cigarette advertising in *Life* by 1955, advertisements for filtered tobacco products did not appear in *Ebony* until 1955 and did not represent one-half of its cigarette advertising until 1958, three years later than for *Life*.

Recent Targeted Advertising Efforts (Late 1960s–1980s)

By the late 1960s, with racial/ethnic pride enhanced by the success of the civil rights movement, the nature and appeal of advertising began to change to better tailor the contents of the advertisements to targeted racial/ethnic groups. In an analysis of advertisements for all consumer products in selected issues of *Ebony* and *Life* in 1960, Berkman (1963) found that in about two-thirds of the advertisements featuring models, African American models were substituted for white models in advertisements placed in *Ebony*, although the content of the advertisements was basically identical. The African American models initially featured were predominantly light skinned, according to Berkman (1963), but subsequent studies of all *Ebony* advertisements between 1952 and 1968 showed that the use of male models with more African American features and hair texture became more common over time, whereas the advertisements continued to use female African American models with Caucasian features (Gitter et al. 1972; Weiss 1972).

Cigarette advertising has changed in similar ways. In the late 1960s, Lorillard's advertisements for Kent cigarettes featured an African American model wearing an Afro hairstyle and saying "that's where it's at" (*Advertising Age* 1968, 1969). By 1971, Liggett & Myers employed an advertising agency that specialized in targeting the African American market. The agency's campaign for L&M cigarettes featured a slogan that called the brand "super bad" (meaning excellent), and research indicated the advertisement had "great appeal among members of the black community" (*Advertising Age* 1971a, p. 20).

Not all cigarette advertisements aimed at African Americans have been successful at employing meaningful role models or at credibly using street or popular language. One African American marketing professional asserted that neither the Marlboro cowboy nor the Viceroy race car driver was meaningful to most African Americans and that Winston's use of the phrase "How good it is!" in a racial/ethnic advertisement was a "white man's cliché that retired with Jackie Gleason." In contrast, Kool's slogan, "Come all the way up to Kool, America's #1 selling menthol," was lauded for astutely positioning the leader as a sign of upward mobility (Wall 1973, p. 71).

In the 1970s, Liggett & Myers began targeting African American women with advertising for its "arty female oriented" Eve cigarettes by running advertisements with African American models in *Black America Magazine, Black Enterprise, Ebony, Essence, Jet, New Lady,* and *Tuesday Magazine* (*Advertising Age* 1971b, p. 24). The next year, Liggett & Myers began promoting L&M cigarettes to African American men and women via advertisements in African American magazines, including *Contact, National Scene,* and *Soul Illustrated*

(*Advertising Age* 1971a). In 1974, Kool cigarette advertisements in African American magazines featuring African American models used the copy "Nobody makes cool like Kool" (*Advertising Age* 1974, p. 76).

During the mid-1970s, products targeted to African Americans began to emerge. For example, R.J. Reynolds created an extra-strong menthol product, Salem Extra, which was advertised as offering "different smokes for different folks." The cigarette was market-tested in Birmingham and New Orleans through outdoor advertisements as well as newspaper and regional magazine advertisements that were supported by sampling. These efforts indicated to the advertising trade that Salem Extra should be targeted to African Americans, along with another extra-strong menthol brand, Super M, which was being tested by The American Tobacco Company in Pittsburgh (O'Connor 1974).

In the late 1970s, tobacco companies began using billboards to advertise cigarettes in racial/ethnic minority communities. Over the past two decades, billboards have appeared more frequently in commercially zoned areas and in older, poorer, and otherwise less desirable residential neighborhoods that border major highways and mass transit systems. In surveys of six cities in the late 1980s, Scenic America, a national organization opposed to billboards, found far more billboards advertising tobacco products in minority neighborhoods than in other neighborhoods (McMahon and Taylor 1990). For example, 76.7 percent of advertising messages on billboards in one impoverished African American community in Philadelphia were for alcoholic beverages and tobacco products. In San Francisco, 62 percent of the billboards in predominantly African American neighborhoods advertised cigarettes, compared with 36 percent of all billboards citywide (McMahon and Taylor 1990). According to the Outdoor Advertising Association of America Marketing Division, tobacco companies are the leading outdoor advertisers, accounting for approximately one-third of all billboards (McMahon and Taylor 1990). Furthermore, data for 1988 show that cigarettes are the most heavily advertised product in outdoor media (CDC 1990a). A study conducted in Columbia, South Carolina, confirmed that African American communities have 2.6 times as many billboards advertising cigarettes as white communities have (Mayberry and Price 1993).

In the late 1970s, cigarette producers and their advertising agencies were becoming very aware of the significance of the African American market, as exemplified by this quotation from a well-known advertising agency: "While Blacks represent only 10.3% of the total U.S. population, they account for 18% of all smokers and 31% of all menthol smokers" (Rosser Reeves Inc. 1979, p. 12). As a result, tobacco companies have heavily advertised and promoted cigarettes to racial/ethnic minorities, particularly African Americans.

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PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION ON ADVERTISING, MARKETING AND ANTITRUST ISSUES IN THE GLOBAL TOBACCO SETTLEMENT

PRESENTED BY

ROBERT PITOFSKY, CHAIRMAN

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

MARCH 3, 1998

Mr. Chairman and members of the Committee, I am here at the request of the Committee to present the testimony of the Federal Trade Commission ("FTC" or "Commission")(1) on two subjects related to the global tobacco settlement. First, I will address proposed restrictions on the advertising, marketing and sale of tobacco products, as well as possible areas for FTC involvement. Second, I will discuss our concerns about any antitrust exemption in the context of a proposed settlement.

FTC Jurisdiction and Historical Overview

The FTC has a long history of reviewing many aspects of the tobacco industry and its advertising and marketing practices. Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.(2) Under Section 5, one of the FTC's major responsibilities is the regulation of national advertising, including the advertising and promotion of cigarettes, smokeless tobacco, and other tobacco products. The FTC also enforces Section 12 of the FTC Act, which prohibits the dissemination of false advertisements for food, drugs, devices, or cosmetics.(3) In its regulation of food, over-the-counter drugs, medical devices, and cosmetics, the Commission shares jurisdiction with the Food and Drug Administration ("FDA"). FTC and FDA work closely with one another in these areas. For nearly 30 years the two agencies have operated under a Memorandum of Understanding that gives primary responsibility over the advertising of these products, with the exception of prescription drugs, to FTC, and primary responsibility over labeling to FDA.(4)

The FTC's law enforcement activities involving tobacco advertising and promotion date back to the 1930s.(5) In 1962, the FTC's request for technical guidance from the U.S. Public Health Service was among the factors that led the Surgeon General to establish an advisory panel to undertake a comprehensive analysis of the data on smoking and health. This advisory panel in turn led to the historic 1964 Report of the Surgeon General finding that cigarette smoking presented significant health risks. In that year, the Commission concluded that in light of the mounting evidence of the serious health risks caused by cigarette smoking, the failure of the cigarette manufacturers to warn consumers of such a danger violated Section 5 of the FTC Act. As a result, the Commission decided to require

tobacco companies to inform the public about the dangers of smoking.(6) This trade regulation rule, which would have required warnings in cigarette advertising and on tobacco packages, eventually was superseded in 1965 by passage of the Federal Cigarette Labeling and Advertising Act ("Cigarette Act"), which required warnings on tobacco packages.(7) In 1972, pursuant to its Section 5 authority, the FTC issued consent orders mandating for the first time that the major cigarette manufacturers place health warnings in cigarette advertisements.(8)

Today, the FTC has a number of tobacco-related responsibilities in addition to its Section 5 authority. These include the statutory authority to administer the Cigarette Act, and to administer and enforce the Comprehensive Smokeless Tobacco Health Education Act ("Smokeless Tobacco Act").(9) The Cigarette Act authorizes the Commission to ensure that the Surgeon General's mandated health warnings are displayed in alternating sequence on cigarette packaging and advertising in the United States. It also directs the Commission to publish an annual report to Congress on cigarette advertising and promotion.(10) The Smokeless Tobacco Act directs the Commission to promulgate regulations governing the health warnings on packaging and advertising for smokeless tobacco products and to publish a biennial report to Congress on smokeless tobacco advertising and promotion. The Commission has issued regulations specifying the placement and rotation of the warnings, and requiring companies to submit plans setting forth their rotation schedule.(11) In addition, tar, nicotine and carbon monoxide yields for cigarettes are currently determined pursuant to the "FTC method," a uniform testing methodology adopted by the Commission more than thirty years ago; these ratings are then disclosed to consumers in certain forms of advertising pursuant to a voluntary agreement among industry members. The Commission also publishes an annual report listing the tar, nicotine, and carbon monoxide yields of domestic cigarettes. Finally, the FTC enforces the ban on broadcasting smokeless tobacco advertisements on radio and television.

Recent Activities

Consumer Protection

The FTC's tobacco advertising program is an important part of the agency's consumer protection mission. The Commission has taken a number of actions in this area in the past year. Last May, for example, the Commission issued a complaint against R. J. Reynolds Tobacco Co. alleging that the company's Joe Camel advertising campaign induced many young people to begin or continue to smoke, or increased the risk that they would do so, and as a result caused, or was likely to cause, significant injury to their health and safety.(12) The FTC is also in the process of reviewing its tar and nicotine testing methodology to determine what changes are necessary to ensure that the test more accurately reflects smokers' actual experience smoking low tar and nicotine cigarettes.

Competition

The FTC also addresses tobacco issues as part of its competition mission and has many years of experience examining the competitive structure of the tobacco industry. The Commission has, for example, investigated the competitive practices of cigarette firms and

challenged the 1994 merger between The American Tobacco Company and Brown & Williamson, a challenge that was subsequently settled by a negotiated order.(13) In addition, this past September, in response to a request from members of the Congressional Task Force on Tobacco and Health, Commission staff prepared an analysis of the potential impact of the proposed tobacco settlement on competition, prices, industry profits and government revenues.(14) In October 1997, the Commission also testified before the Senate Judiciary Committee's Subcommittee on Antitrust, Business Rights, and Competition on the competitive and economic implications of the antitrust exemption proposed in the settlement.

Proposed Advertising and Marketing Restrictions in the Proposed Global Tobacco Settlement

As part of the effort to prevent underage use of tobacco, the proposed global tobacco settlement and the various proposed implementation bills would impose significant restrictions on the advertising, marketing and promotion of tobacco products. These restrictions would be either enacted directly by Congress or achieved through consensual agreements between the tobacco industry and the state and federal governments. The proposed restrictions include banning all outdoor and Internet tobacco advertising; prohibiting brand-name tobacco sponsorship of sporting events; excluding human or cartoon figures from all tobacco advertising; limiting tobacco ads to black-and-white text when they appear in publications with a significant underage readership; banning the use of the name or logo of a tobacco brand on non-tobacco merchandise; and prohibiting the use of any non-tobacco brand name as a brand name for a tobacco product.

The FTC strongly supports the goal of reducing tobacco use by minors. As has been reported by other agencies, tobacco products pose significant health risks, causing an estimated 400,000 deaths each year. Moreover, studies report that most of those who use tobacco products begin when they are under 18, when they are less likely to fully understand the serious long-term health effects posed by tobacco use.(15) By the time these individuals are older and can better assess the health consequences, they are likely to be addicted.(16) Therefore, one effective means of reducing the death and disease caused by tobacco is to prevent tobacco use by minors.

Through its 1992 amendments to the Public Health Service Act, Congress already has recognized that serious public health concerns warrant restricting the sale of tobacco products to minors.(17) We believe that limiting the advertising, marketing and promotion of tobacco products directed to children can be an appropriate and necessary part of a comprehensive approach to reducing youth tobacco use. Such limitations can serve as an important complement to other strategies, such as access restrictions and public education, to reduce underage tobacco use.

The FTC further believes that any effort to restrict tobacco advertising to young people must be sufficiently broad to be effective. The FTC each year issues a report on the advertising and promotional expenditures of U.S. cigarette manufacturers. Those reports show that after cigarette manufacturers were prohibited from advertising on television and radio in 1969 (a prohibition that was intended, in part, to protect children), they put tens of millions of dollars into print advertising to sell their products. In more recent years, the

cigarette manufacturers have shifted an increasing amount of money away from traditional advertising and into sponsorships and so-called "trinkets and trash" -- T-shirts, caps, and other logo-adorned merchandise -- that some believe are very attractive to young people.(18) To prevent simply another such shift in marketing strategy, a set of advertising and marketing restrictions that addresses the many different ways in which tobacco may be marketed and advertised to minors is necessary.

Finally, the advertising and marketing restrictions contained in the proposed global settlement involve a number of complex Constitutional issues. A full discussion of these issues is beyond the scope of this testimony. Nonetheless, the FTC articulated the position in its 1996 comment on FDA's proposed tobacco regulations that restrictions that are appropriately tailored to prevent the advertising and marketing of tobacco to minors will withstand First Amendment scrutiny.(19)

The FTC's Role

Preventing underage use of tobacco products will require concerted and coordinated effort by the various agencies of the federal government, as well as by states and localities. The FDA has compiled a record concerning the harm done by tobacco products and has issued regulations to address these problems. We believe that FDA's efforts have been valuable in promoting public health and that Congress should affirm FDA's authority to regulate tobacco products as it would any other drug or device.

We also believe that the FTC can make a significant contribution to any post-settlement regulation of tobacco advertising. As discussed earlier, the FTC has extensive experience in administering and enforcing the laws that regulate advertising in general and tobacco advertising in particular. Moreover, the FTC is a civil law enforcement agency with investigative and enforcement tools that are well-adapted to regulating tobacco advertising. The Commission, for example, has the power to subpoena documents and testimony, and can issue administrative complaints and conduct administrative proceedings that may result in the issuance of cease and desist orders against practices found to be unfair or deceptive.(20) In proper cases, the Commission also has statutory authority to file suit directly in federal district court to obtain preliminary and permanent injunctive relief, redress for injured consumers, or disgorgement of ill-gotten gains.(21)

At minimum, we therefore believe that it is important that any legislation contain an express reservation of the FTC's Section 5 and Section 12 jurisdiction, *i.e.*, that nothing in the legislation is intended to alter or amend the FTC's authority over unfair or deceptive acts or practices or the dissemination of false advertisements.(22) A provision expressly preserving FTC's authority ensures that the Commission will be able to continue to bring the kinds of cases it has always brought in the tobacco area. It also enables the FTC to address unfair or deceptive acts and practices in the advertising or marketing of tobacco products that might not otherwise be covered by the settlement, or for which the FTC Act provides better or more flexible enforcement tools. For example, the FTC recently received a petition complaining about the advertising of "no additive" cigarettes and suggesting that such ads make a deceptive health claim. Although FDA under the settlement legislation would likely also have authority over such a claim, it might have to initiate a lengthy rulemaking proceeding to address the general use of "no additive" claims,

whereas the FTC can directly investigate a particular advertiser and, if the complaint is borne out, take appropriate enforcement action.

Should Congress, as part of the tobacco legislation currently being considered, determine that the FTC has a role to play in administering the settlement's advertising provisions, the Commission's considerable experience with advertising regulation and the tobacco industry will make it possible to carry out such enforcement responsibilities vigorously and competently.

In contrast, to the extent that there are responsibilities set out in the tobacco legislation that depend on scientific knowledge rather than familiarity with advertising practices or the structure of the marketplace, we believe that such responsibilities are most appropriately undertaken by agencies like the Department of Health and Human Services ("HHS"), through either FDA or one of its other health agencies, whose staff possess such expertise. For example, measuring tar, nicotine, and other smoke constituent yields involves complex scientific and methodological questions. Accordingly, the Commission supports proposals that would transfer responsibility for determining such smoke constituent yields to HHS.

We would further observe that we have carried out other Congressionally-mandated responsibilities in close cooperation with other federal agencies and with state authorities. We would take the same approach with any additional legislative authority. As noted earlier, there are many areas in which we share jurisdiction with FDA and work closely with it, dividing our responsibilities for the regulation of foods, drugs, devices, and cosmetics based on our respective areas of expertise.

Moreover, the FTC regularly coordinates its enforcement efforts with state officials. We share a common enforcement approach with the states on many fronts, with many states enforcing consumer protection statutes and rules patterned after those enforced by the Commission. Separately, recent legislation has expressly granted states the authority to enforce three of the FTC's most prominent consumer protection laws and regulations -- the Telemarketing Sales Rule,(23) the 900-Number Rule,(24) and the Fair Credit Reporting Act.(25) Joint state and federal enforcement in these and other areas has been highly successful, resulting in more extensive and effective enforcement than would otherwise have been possible.(26)

The state attorneys general have played a critical role in bringing forth a comprehensive tobacco settlement. Should that settlement be enacted, the state attorneys general will, and should, continue to play an important role in enforcing its terms. Based on our experience, we strongly support the dual federal-state enforcement scheme contemplated by the proposed settlement. Coordinated federal-state enforcement of the proposed restrictions on tobacco advertising and marketing seems particularly appropriate as many of the proposed restrictions have specific, local applications.(27)

Antitrust Exemption

Let me now turn to the industry's request for an antitrust exemption for activities relating to the settlement. Any proposal for antitrust immunity is a serious matter and deserves

careful examination. Antitrust immunity that is unnecessary, imprecise or excessively broad can enable firms to engage in collusive arrangements that could harm consumers. As a general matter, immunity from the antitrust laws is exceptional and disfavored -- there are few industries or competitive situations in which the antitrust laws do not apply.(28)

As noted earlier, on October 29, 1997, I presented the Commission's testimony on this issue before the Senate Judiciary Committee's Subcommittee on Antitrust, Business Rights, and Competition. That testimony addressed the proposed antitrust exemption contained in the June 20, 1997, proposed tobacco settlement and our analysis was based on our understanding of the industry's antitrust liability concerns at that time.(29) We stated that an antitrust exemption is not required in order to achieve the goals outlined in the proposed settlement.

At the same October 29 hearing, an industry representative, Mr. Meyer G. Koplow, presented testimony in support of an antitrust exemption, outlining five possible reasons an exemption might be needed.(30) Today, I would like to revisit the Commission's October 29 testimony and discuss some additional matters raised by the industry's October 29 testimony and subsequent events.

The fundamental issue is whether the implementation of any terms of the settlement or of any statutory provisions would require collaborative conduct on the part of the tobacco product manufacturers, or whether unilateral compliance with such provisions would suffice. If Congress determines that collaborative conduct is reasonably needed for any legitimate purpose, any antitrust exemption should be narrowly drawn to cover only that conduct.

The immunity provision contained in the proposed global tobacco settlement is very broad. It reads as follows:

> In order to achieve the goals of this agreement and the Act relating to tobacco use by children and adolescents, the tobacco product manufacturers may, notwithstanding the provisions of the Sherman Act, the Clayton Act, or any other federal or state antitrust law, . . . jointly confer, coordinate or act in concert, for this limited purpose.(31)

At the time of the Commission's October 29 testimony, it appeared that the tobacco product manufacturers wanted the proposed immunity provision to protect them in three hypothetical situations. First, manufacturers suggested that they might need to discuss and agree on issues relating to the pass-through of Annual Payment amounts. Second, manufacturers contended that they might need to agree to implement privately the proposed marketing and advertising restrictions in the event that statutory provisions are invalidated on First Amendment grounds. Third, manufacturers stated that they might find it necessary to join forces to deal with retailers that undermine efforts to reduce underage smoking.

Mr. Koplow's October 29 testimony addressed the first and third issues but did not discuss any possible need for private implementation of marketing and advertising restrictions in the event of a successful First Amendment challenge to statutory restrictions. Rather, Mr.

Koplow stated that an antitrust exemption was needed because "[t]he industry is agreeing, pursuant to a protocol-- a contract with the federal government and the states -- not to engage in various forms of advertising, marketing, and promotion . . . ."[(32)] In addition to this issue and the issues relating to the pass-through of Annual Payment costs and joint dealings with uncooperative retailers, Mr. Koplow's testimony also discussed a need for an exemption for the allocation of annual payment amounts and tort liability costs on a market share basis, as well as for "further actions going forward on an industry-wide basis that could be necessary to reduce underage incidence."

The following is a discussion of whether any of these situations warrants a grant of immunity.

(1) Collaboration on the Pass-Through of Annual Payment Amounts

The industry's October 29 testimony acknowledged that an antitrust exemption might not be needed for this purpose if a pass-through requirement is enacted as part of the statute. Thus, the industry agrees with the Commission's view. If a pass-through provision were enacted, manufacturers could comply individually with the statutory requirement. Moreover, even without a legal requirement to pass on the Annual Payment amounts, the industry's historical record, as well as economic logic, demonstrates that firms would pass on the Annual Payment amounts without needing to engage in an agreement requiring an antitrust exemption.[(33)]

A related issue is whether an antitrust exemption would be necessary for the purpose of allocating shares of the Annual Payment amounts and tort liability costs. If an appropriate statutory mechanism were provided, however, the tobacco firms would not have to enter into agreements for that purpose. For example, if the Annual Payment amounts are to be allocated according to each manufacturer's share of sales or some similar method, the statute could specify the mechanism for doing so. A neutral third party could be assigned the task of determining the allocations, and the manufacturers could be directed to transmit sales information to that third party. Such an approach would obviate the need for any agreement among the manufacturers.

(2) Collaboration on Marketing and Advertising Restrictions

Some have also argued that certain marketing or advertising restrictions might have to be implemented by agreement among the manufacturers in the event that statutory provisions containing such restrictions are invalidated on First Amendment grounds. The Commission's October 29 testimony stated that the call for antitrust immunity was premature since we could not predict the likelihood and outcome of any First Amendment challenge. In addition, we noted that it would be necessary to more closely examine whether the embodiment of the marketing and advertising restrictions in state and possibly federal consent decrees -- or, as Mr. Koplow has suggested, in a protocol with the states or the federal government -- might in fact obviate the need for an antitrust exemption. The Commission continues to believe that the industry has not demonstrated a need for an antitrust exemption on these grounds.

(3) Joint Action to Address Problems with Uncooperative Retailers

Another reason advanced for antitrust immunity is that the manufacturers might need to join forces to deal with retailers that undermine the manufacturers' efforts to reduce underage smoking by not complying with restrictions on access to tobacco products by underage consumers. As I testified on October 29, although retailer compliance with access restrictions is a valid concern, it does not appear that manufacturers would have to engage in potentially anticompetitive conduct, such as a group boycott, to address the problem of an uncooperative retailer.

First, the proposed legislation, as contemplated by the settlement, would contain incentives for the manufacturers to respond individually to non-complying retailers. The strong penalties for not meeting target reductions in underage smoking could be abated to some extent under the proposed legislation if a manufacturer acted in good faith and took all reasonable steps to achieve the required reduction.(34) A unilateral decision to reduce or stop dealing with a non-complying retailer should be evidence of good faith, and hence a manufacturer would have an incentive to take such action. Therefore, no antitrust immunity would be required to achieve this result.

Second, the proposed legislation would provide additional mechanisms for state enforcement if a retailer failed adequately to control sales to minors. For example, the state could suspend or revoke the retailer's license to sell cigarettes, or it could assess other penalties.(35) Assuming state enforcement is rigorous, private agreement among the manufacturers to engage in self-help enforcement appears unnecessary.(36)

(4) Catch-all Provision for Future Agreements

Finally, the Commission is especially concerned about the proposal for a catch-all immunity provision, such as the one contained in the proposed global tobacco settlement. The industry's broad-based proposed immunity provision seeks to address purely hypothetical situations and presents a significant risk of price increases (and industry profits) higher than those contemplated by the settlement. Moreover, this provision is inconsistent with most instances where antitrust exemptions have been used. In the rare cases where Congress has conferred a statutory grant of immunity for joint action of competitors, the provisions have more typically excluded specific classes of commerce from the antitrust laws or have exempted a specific transaction or agreement that has been approved by a federal agency, usually in the context of a regulated industry.(37) In contrast, the immunity proposed in the tobacco settlement does not seek to exempt defined categories of transactions or agreements.

The Commission believes that the overall proposed immunity provision is problematic in that it is limited only by the general reference to the goals of the settlement agreement and the proposed implementing statute.(38) Because one of the goals of the settlement is to discourage underage smoking through higher prices that reflect a pass-through of the Annual Payment amounts,(39) the immunity provision might be construed to permit the manufacturers to agree on the actual prices of their cigarettes, not simply on the amount of their Annual Payments. Although the proposed immunity provision does include a requirement of prior approval by the Department of Justice for "any plan or process for taking action pursuant to this section,"(40) the proposed provision presents significant risks

of unintended or inconsistent effects. Even a limited discussion among the manufacturers could result in impermissible "signaling" and result in anticompetitive price increases or other harm to consumers. It would also be difficult to monitor and control the scope of such discussions.

Further, the type of exemption mechanism proposed by the industry, requiring approval by either the Commission or the Department of Justice for proposed courses of action, would thrust upon the specified agency an unwarranted and unrealistic regulatory function. The proposed provision is extremely broad and has no limiting principles based on real and identified needs for an exemption. As a result, the agency would be faced with the possibility of a large number of applications covering a wide range of conduct that in theory might be linked to some goal of the settlement. Each application would require the agency to study the effects on the industry, consumers, and third parties, and determine whether the proposed exemption would be consistent with statutory goals and the public interest. This would detract from the agencies' core mission of enforcing the antitrust laws.

I also would like to discuss an antitrust immunity provision that we have not previously addressed -- an exemption for newly-formed tobacco industry trade associations, subject to oversight by the Attorney General. The Commission sees no apparent justification for such an exemption. The antitrust laws are flexible enough to accommodate the many legitimate activities of trade associations, which also occasionally enter into agreements that are anticompetitive and harm consumers. Over the years, the Commission has brought a number of enforcement actions involving various kinds of trade associations. The proposed exemption for any new tobacco trade association is not necessary and could set an unfortunate precedent.

Accordingly, the Commission believes that the industry has not established a need for any antitrust exemption in order to implement the proposed settlement. Although we firmly believe that the tobacco companies ought not to be subject to increased exposure to potentially damaging private antitrust suits as a result of the settlement, they have not demonstrated that to be a likely outcome. Of course, if the tobacco companies ever do establish the need for an antitrust exemption, the issue can be addressed at that time. The Commission is available to work with the Committee if that need arises.

Summary

In light of the FTC's expertise in consumer protection and competition matters, the Commission believes it can make a substantial contribution to any post-settlement regulation of tobacco advertising and to consideration of other issues raised by the proposed settlement.

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1. This written statement represents the views of the Federal Trade Commission, with Commissioner Mary L. Azcuenaga not participating. My oral presentation and response to questions are my own, and do not necessarily represent the views of the Commission or any other Commissioner.

2. 15 U.S.C. § 45.

3. 15 U.S.C. § 52.

4. Since adoption of the Memorandum of Understanding, FDA has also been granted express jurisdiction over the advertising of restricted medical devices. Medical Device Amendments of 1976, Pub. L. No. 94-295, 90 Stat. 539 (1976). The FTC, however, retains concurrent jurisdiction over the advertising of restricted medical devices under Section 5 of the FTC Act and, with the exception of the power to regulate statutorily mandated statements of intended use, under Section 12. *See In re Dahlberg,* 1995-1 Trade Cas. (CCH) ¶ 70,963 (D. Minn. 1995).

5. *See, e.g., Julep Tobacco Co.,* 27 F.T.C. 1637 (1938) (stipulation prohibiting claims that Julep cigarettes help counteract throat irritations due to heavy smoking and never make the throat dry or parched).

6. *See* Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324, 8354 (1964).

7. Pub. L. No. 89-92, 79 Stat. 282 (1965), *as amended by* Pub. L. No. 98-474, 98 Stat. 2204 (1984), and by Pub. L. No. 99-92, § 11, 99 Stat. 393, 402-04 (1985), *current version at* 15 U.S.C. § 1331 (1994).

8. *See Lorillard et al.,* 80 F.T.C. 455, 460-65 (1972) (consent orders). Under the orders entered into with six tobacco manufacturers, the companies were required to disclose the Surgeon General's warning in identified forms of advertising. The consent orders were modified in 1981, when the Commission sought civil penalties in federal district court against each of the cigarette companies for failure to comply with the 1972 orders. *See United States v. Lorillard,* No. 76-Civ. 814 (JMC) (S.D.N.Y. July 13, 1981). In 1984, Congress amended the Cigarette Act to require rotational warnings for both advertising and package labeling.

9. 15 U.S.C. §§ 4401 *et seq.*

10. Although the Commission administers the Cigarette Act, the Department of Justice enforces it.

11. 16 C.F.R. § 307. Unlike the Cigarette Act, the Smokeless Tobacco Act gives the Commission authority to enforce the health warning requirement.

12. The *R. J. Reynolds* matter is currently pending before the agency in litigation before an administrative law judge. Accordingly, the Commission cannot discuss the merits of these allegations. Any decisions in this matter must be based solely on the record of the proceeding and the facts presented therein.

Other law enforcement actions brought by the Commission in recent years include *American Tobacco Co.,* FTC Docket No. C-3547 (Jan. 3, 1994) (consent order settling allegations that advertisements misrepresented the relative amount of tar that smokers of Carlton cigarettes would take in); *Alan Phan,* FTC Docket No. C-3417 (March 12, 1993) (consent order settling allegations that advertisements misrepresented the health risks of smoking certain non-tobacco cigarettes); *Pinkerton Tobacco Co.,* FTC Docket No. C-3364 (Jan. 9, 1992) (consent order settling allegations that smokeless tobacco company's sponsorship of televised truck and tractor pull violated ban on television advertising of smokeless tobacco products).

13. *FTC v. B.A.T. Industries p.l.c.,* 94 Civ 7849 (motion for preliminary injunction filed Oct. 31, 1994, S.D.N.Y.); *B.A.T. Industries p.l.c.,* FTC Docket No. D.9271 (consent order 1995). Under the April 1995 settlement, BAT agreed to divest certain assets, including brand names (Montclair, among others) and production facilities. That divestiture was completed in October 1996.

14. Federal Trade Commission, "Competition and the Financial Impact of the Proposed Tobacco Industry Settlement," Report prepared by the staff of the Bureaus of Economics, Competition and Consumer Protection at the request of the Congressional Task Force on Tobacco and Health, September 1997 ("Staff Report"). The Staff Report concluded that several features of the settlement, most notably the broad antitrust exemption, might allow cigarette manufacturers to realize substantial profits by increasing the

prices of cigarettes beyond the level needed to satisfy the annual payments included in the settlement. Although government revenues associated with the settlement would also be substantial, the cigarette firms would be able to retain about two-thirds of the financial benefits that would flow from any enhanced coordination associated with the antitrust exemption. In November, FTC staff submitted a supplemental evaluation to Congress addressing issues raised by the tobacco industry regarding the September Staff Report.

15. *See, e.g.,* U.S. Department of Health and Human Services, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General,* Atlanta, Georgia: U.S. Department of Health and Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994 ("1994 Surgeon General's Report"); Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents, 60 Fed. Reg. 41,314 (1995) ("FDA proposed tobacco regulations") and 61 Fed. Reg. 44,396 (1996) ("FDA final tobacco regulations").

16. *See, e.g.,* 1994 Surgeon General's Report at 104; FDA proposed tobacco regulations; FDA final tobacco regulations.

17. Section 1926 of the Public Health Service Act conditions a state's receipt of the full amount of Federal block grants for prevention and treatment of substance abuse upon the recipient state's having in effect "a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18." 42 U.S.C. § 300x-26(a)(1).

18. *See, e.g.,* Institute of Medicine, *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths,* pp. 108-110 (Barbara S. Lynch and Richard J. Bonnie, eds., 1994).

19. Comment of the Federal Trade Commission, *In the Matter of Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents,* Department of Health and Human Services, Food and Drug Administration, Docket No. 95N-0253 (January 1996).

20. 15 U.S.C. § 45. A practice is "deceptive" if it makes a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material. *See* Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983); *reprinted in Cliffdale Associates, Inc.,* 103 F.T.C. 110, appendix (1984). A practice is "unfair" if it is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

21. 15 U.S.C. § 53(b).

22. The proposed tobacco settlement negotiated by the state attorneys general provides that the FTC is "to retain existing authority, except for 'tar,' nicotine, and carbon monoxide testing."

23. 16 C.F.R. § 310.

24. Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. § 308.

25. 15 U.S.C. § 1681 *et seq.*

26. For further information on recent efforts by the FTC and state officials to coordinate enforcement activities, *see generally* Federal Trade Commission, *The Power of Partnerships: FTC-State Cooperative Efforts* (Bureau of Consumer Protection, March 1996); Federal Trade Commission, *Report to Congress Pursuant to the Federal Trade Commission Act Amendments of 1994* (February 1995).

27. Although much tobacco advertising is most efficiently monitored and enforced on a national basis -- for example, advertising on the Internet or in national magazines -- restrictions on other forms of advertising or marketing, such as point-of-sale advertising and the use of local media (*e.g.*, local newspapers) to advertise tobacco products, are more likely to be effectively enforced if there is a clear grant of enforcement authority to the states.

28. *See generally* ABA Section of Antitrust Law, Antitrust Law Developments 1135 (4th ed. 1997) ("With few exceptions, the antitrust laws apply to all industries.").

29. FTC staff had previously examined the proposed immunity provision in detail and presented its analysis in an appendix to the Staff Report on the proposed settlement. *See* Staff Report, *supra* note 14.

30. Testimony of Meyer G. Koplow before the Subcommittee on Antitrust, Business Rights, and Competition (October 29, 1997).

31. Proposed Global Tobacco Settlement, Appendix IV, part C.2.

32. Testimony of Meyer G. Koplow, supra note 30, at 2.

33. The Annual Payments would be treated as an added (marginal) cost of business and would be taken into account in setting price. In fact, certain studies have shown that tobacco product manufacturers historically have been able, without any apparent express collaboration, to impose price increases that exceed any additional costs they may have incurred. Staff Report at v, 25-26.

34. *See* Proposed Global Tobacco Settlement, Title II and Appendix IV.

35. *See id.*, Title I, Part D, and Appendix II.

36. Self-help enforcement by agreement among the manufacturers also would raise serious questions about the rights of third parties who are targeted by the manufacturers.

37. *See* Staff Report at A-3 - A-4. Prior approval of an agreement by a federal agency has not been required where the scope of the immunity was very limited, but broader grants of immunity have been accompanied by strict controls on the development and implementation of agreements. *Id.* at A-4 - A-5.

38. Manufacturers are left to determine on their own, in the first instance, what joint activity may be appropriate to carry out the purposes of the statute. Although those determinations are subject to review, the resolution of any disputes over the manufacturers' determinations may require costly litigation.

39. Proposed Global Tobacco Settlement, Title VI, part B.7.

40. *Id.*, Appendix IV, part C.2. There is a major exception to that requirement, however. Under the proposal, prior approval would not be required for "specific actions taken in accordance with an approved plan." *Id.* Since the specific actions need not be disclosed, a number of anticompetitive agreements could take place without the government's knowledge. Although Mr. Koplow's testimony noted that the industry's application for an exemption under this provision would provide details of the proposed action, that would not obviate our remaining concerns.

federal register

August 28, 1996
Book 1 of 2 Books

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801, et al.

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, 807, 820, and 897

[Docket No. 95N-0253]

RIN 0910-AA48

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations governing access to and promotion of nicotine-containing cigarettes and smokeless tobacco to children and adolescents.

The regulations prohibit the sale of nicotine-containing cigarettes and smokeless tobacco to individuals under the age of 18; require manufacturers, distributors, and retailers to comply with certain conditions regarding the sale and distribution of these products; require retailers to verify a purchaser's age by photographic identification; prohibit all free samples and prohibit the sale of these products through vending machines and self-service displays except in facilities where individuals under the age of 18 are not present or permitted at any time; limit the advertising and labeling to which children and adolescents are exposed to a black-and-white, text-only format; prohibit the sale or distribution of brand-identified promotional nontobacco items such as hats and tee shirts; prohibit sponsorship of sporting and other events, teams, and entries in a brand name of a tobacco product, but permit such sponsorship in a corporate name; and require manufacturers to provide intended use information on all cigarette and smokeless tobacco product labels and in cigarette advertising.

These regulations will address the serious public health problems caused by cigarettes and smokeless tobacco products. They will reduce children's and adolescents' easy access to cigarettes and smokeless tobacco and will significantly decrease the amount of positive imagery that makes these products so appealing to that age group.

The regulations are predicated on the agency's assertion of jurisdiction under the Federal Food, Drug, and Cosmetic Act over cigarettes and smokeless tobacco as delivery devices for nicotine, incorporated as part of the regulations for purposes of, and to facilitate, congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: *Effective date.* The regulation is effective August 28, 1997, except that § 897.14(a) and (b) are effective February 28, 1997 and § 897.34(c) is effective February 28, 1998.

Compliance dates. Manufacturers and distributors are required to comply with the requirements of 21 CFR parts 803 and 804 August 28, 1997; manufacturers are required to comply with the requirements of 21 CFR parts 807 and 820 February 28, 1998.

ADDRESSES: References listed in the footnotes of this document have been placed on public display at the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nancy Yeates, Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0867.

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I. Introduction

A. Purpose and Overview of the Rule

This rule establishes regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents, implementing FDA's determination that it has jurisdiction over these products under the Federal Food, Drug, and Cosmetic Act (the act). As described in "Nicotine in Cigarettes and Smokeless Tobacco Is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act: Jurisdictional Determination" (the 1996 Jurisdictional Determination), annexed hereto, FDA has determined that cigarettes and smokeless tobacco are intended to affect the structure or function of the body, within the meaning of the act's definitions of "drug" and "device." The nicotine in cigarettes and smokeless tobacco is a "drug," which produces significant pharmacological effects in consumers, including satisfaction of addiction, stimulation, sedation, and weight control. Cigarettes and smokeless tobacco are combination products consisting of the drug nicotine and device components intended to deliver nicotine to the body.

FDA has chosen to regulate cigarettes and smokeless tobacco under the act's device authorities. This rule allows the continued marketing of these products, while employing measures to prevent future generations of Americans from becoming addicted to them. As discussed in section I.B. of this document, most people who use cigarettes and smokeless tobacco begin their use before the age of 18 and, therefore, before they fully understand the addictive nature and serious health risks of these products. Even though the sale of tobacco products to minors is illegal in 50 States, the tobacco industry has adopted extensive marketing campaigns which appeal to children and adolescents. Therefore, the rule effects measures that would both complement the existing State restrictions on access and prevent

tobacco companies from marketing their products to children and adolescents.

In determining the best course of action, the agency considered the highly addictive nature of cigarettes and smokeless tobacco and the fact that these products have previously been lawfully marketed to millions of adult Americans. The agency has determined that the approach outlined in this document—restrictions to reduce the use of cigarettes and smokeless tobacco by individuals under the age of 18 while leaving these products on the market for adults—is the available option that is the most consistent with both the act and the agency's mission to protect the public health.

The agency intends to assist affected entities, including retailers, distributors, and manufacturers, in complying with the rule. The agency also will issue a small entities guide in easy to understand language. In addition, the agency will conduct workshops throughout the country to assist affected entities in complying with the rule.

B. Background

Approximately 50 million Americans currently smoke cigarettes and another 6 million use smokeless tobacco.[1] In the Federal Register of August 11, 1995 (60 FR 41314), FDA published a proposed rule entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents" (the 1995 proposed rule). As stated in the preamble to the 1995 proposed rule, tobacco use is the single leading cause of preventable death in the United States.[2] More than 400,000 people die each year from tobacco-related illnesses, such as cancer, respiratory illnesses, and heart disease, often suffering long and painful deaths.[3] Tobacco alone kills more people each year in the United States than acquired immunodeficiency syndrome (AIDS), car accidents, alcohol, homicides, illegal drugs, suicides, and fires, combined.[4]

Tobacco products have historically been legal and widely available in this country. It was only after millions of people became addicted to the nicotine in cigarettes and smokeless tobacco that health experts became fully aware of the extraordinary health risks involved in the consumption of these products. Consequently, tobacco use has become one of the most serious public health problems facing the United States today. Because of the grave health consequences of the use of tobacco products, some have argued that they should be removed from the market.

However, a ban would have adverse health consequences and would not be likely to prevent individuals from gaining access to these products. Of the 50 million people who use cigarettes, 77 to 92 percent are addicted.[5] Data suggest that almost as many smokeless tobacco users may be addicted.[6] Adverse health consequences could result if these people were suddenly deprived of the nicotine these products deliver. As stated in the preamble to the 1995 proposed rule:

> Because of the high addiction rates and the difficulties smokers experience when they attempt to quit, there may be adverse health consequences for many individuals if the products were to be withdrawn suddenly from the marketplace. Our current health care system and available pharmaceuticals may not be able to provide adequate or sufficiently safe treatment for such a precipitous withdrawal.
> (60 FR 41314 at 41348)

A similar situation would exist for addicted smokeless tobacco users.

It is probable also that a black market and smuggling would develop to supply addicted users with these products. As stated in the preamble to the 1995 proposed rule, and discussed further in section II.C.5. of this document, "[t]he products that would be available through a black market could very well be more dangerous (e.g., cigarettes containing more tar or nicotine, or more toxic additives) than products currently on the market" (60 FR 41314 at 41349). Thus, the agency has concluded that, while taking cigarettes and smokeless tobacco off the market could prevent some people from becoming addicted and reduce death and disease for others, the record does not establish that such a ban is the appropriate public health response under the act.

To effectively address the death and disease caused by tobacco products, addiction to cigarettes and smokeless tobacco must be eliminated or substantially reduced. The evidence demonstrates that this can be achieved only by preventing children and adolescents from starting to use tobacco. Most people who suffer the adverse health consequences of using cigarettes and smokeless tobacco begin their use before they reach the age of 18, an age when they are not prepared for, or equipped to, make a decision that, for many, will have lifelong consequences. These young people do not fully understand the serious health risks of these products or do not believe that those risks apply to them. They are also very impressionable and therefore vulnerable to the sophisticated marketing techniques employed by the tobacco industry, techniques that associate the use of tobacco products with excitement, glamour, and independence. When cigarette and smokeless tobacco use by children and adolescents results in addiction, as it so often does, these youths lose their freedom to choose whether or not to use the products as adults.

The facts on underage use confirm this pattern. As stated in the preamble to the 1995 proposed rule, approximately 3 million American adolescents currently smoke and an additional 1 million adolescent males use smokeless tobacco.[7] Eighty-two percent of adults who ever smoked had their first cigarette before the age of 18, and more than half of them had already become regular smokers by that age.[8] Among smokers ages 12 to 17 years, 70 percent already regret their decision to smoke and 66 percent say that they want to quit.[9]

Moreover, children and adolescents are beginning to smoke at younger ages than ever before. Despite a decline in smoking rates in most segments of the American adult population, the rates among children and adolescents have recently begun to rise.[10] Data reported

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[1] "National Household Survey on Drug Abuse: Population Estimate 1993, Department of Health and Human Services (DHHS), Public Health Service (PHS), Substance and Mental Health Services Administration (SAMHSA), Office of Applied Studies, Rockville, MD, Pub. No. (SMA) 94-3017, pp. 89 and 95, 1994.

[2] "Cigarette Smoking—Attributable Mortality and Years of Potential Life Lost—United States, 1990," *Mortality and Morbidity Weekly Report*, (MMWR) CDC, DHHS, vol. 42, No. 33, pp. 645-649, 1993; Lynch, B. S., and R. J. Bonnie, editors, *Growing Up Tobacco Free—Preventing Nicotine Addiction in Children and Youths*, Committee on Preventing Nicotine Addiction in Children and Youths, Division of Biobehavioral Sciences and Mental Disorders, Institute of Medicine, National Academy Press, Washington, DC, p.3, 1994, (hereinafter cited as "IOM Report").

[3] "Cigarette Smoking—Attributable Mortality and Years of Potential Life Lost—United States, 1990," *MMWR*, CDC, DHHS, vol. 42, No. 33, pp. 645-649, 1993.

[4] IOM Report, pp. 3-4.

[5] See authorities cited at 1996 Jurisdictional Determination, Section II(B)(2)(a).

[6] *Id.*

[7] "Preventing Tobacco Use Among Young People: A Report of the Surgeon General," DHHS, PHS, CDC, National Center for Chronic Disease Prevention and Health Promotion, the Office on Smoking and Health (OSH), Atlanta, GA, p. 5, 1994, (hereinafter cited as "1994 SGR").

[8] 1994 SGR, p. 65.

[9] "Teen-Age Attitudes and Behavior Concerning Tobacco," The George H. Gallup International Institute, p. 54, September 1992.

[10] "Cigarette Smoking Among Adults—United States, 1991," *MMWR*, DHHS, CDC, vol. 42, No. 12,

in December 1995, after publication of the 1995 proposed rule, showed increases in 30-day prevalence rates of cigarette smoking for 4 consecutive years for 8th- and 10th-graders, and 3 consecutive years for high school seniors. [11] Daily use of cigarettes by 8th-, 10th-, and 12th-graders has also increased in each of the last 3 years. [12] The percentage of 8th- and 10th-graders who reported smoking in the 30 days before the survey had risen by one-third since 1991 to about 19 percent and 28 percent, respectively. [13] Similarly, the percentage of high school seniors saying that they had smoked in the 30 days before the survey had increased by more than one-fifth since 1991, to about 33.5 percent or one in three. [14]

An adolescent whose cigarette use continues into adulthood increases his or her risk of dying from cancer, cardiovascular disease, or lung disease. [15] Moreover, the earlier a young person's smoking habit begins, the more likely he or she will become a heavy smoker and therefore suffer a greater risk of diseases caused by smoking. [16] Approximately one out of every three young people who become regular smokers each day will die prematurely as a result. [17]

Similar problems exist with underage use of smokeless tobacco. As stated in the 1995 proposed rule, the market for smokeless tobacco has shifted dramatically toward young people since 1970 (60 FR 41314 at 41317). School-based surveys in 1991 estimated that 19.2 percent of 9th to 12th-grade boys use smokeless tobacco. [18] Among high school seniors who had ever tried smokeless tobacco, 73 percent did so by the 9th grade. [19]

As long as children and adolescents become addicted to cigarette and smokeless tobacco use in these numbers, there is little chance that society will be able reduce the toll of tobacco-related illnesses. If, however, the number of children and adolescents who begin tobacco use can be substantially diminished, tobacco-related illness can be correspondingly reduced because data suggest that anyone who does not begin smoking in childhood or adolescence is unlikely to ever begin. [20]

On the basis of this evidence, the agency has determined that establishing restrictions to substantially reduce the number of children and adolescents who become addicted to cigarettes and smokeless tobacco best serves its public health obligations. Because such a small percentage of the U.S. population begins tobacco use after the age of 18, limiting the use of these products to the adult population would substantially reduce the principal source of new users. Thus, the appropriate emphasis is on reducing the use of tobacco products by children and adolescents.

Evidence in the administrative record demonstrates that the most effective way to achieve such a reduction is by limiting the access to, and attractiveness of, cigarettes and smokeless tobacco to young people. FDA concludes that the act provides sufficient authority to issue regulations that, while leaving these products on the market for adult use, restrict access to and promotion of cigarettes and smokeless tobacco to those under 18 years of age.

C. Provisions of the Rule

After considering numerous comments submitted in response to the 1995 proposed rule, the agency is adopting the rule in modified form. New part 897 is being added to Title 21 of the Code of Federal Regulations and contains the regulations governing the labeling, advertising, sale, and distribution of cigarettes and smokeless tobacco to children and adolescents.

FDA is regulating nicotine-containing cigarettes and smokeless tobacco as restricted devices within the meaning of the section 520(e) of the act (21 U.S.C. 360j(e)). While leaving these products on the market for adults, the final rule prohibits the sale of nicotine-containing cigarettes and smokeless tobacco to individuals under the age of 18 and requires manufacturers, distributors, and retailers to comply with certain conditions regarding access to, and promotion of, these products. Among other things, the final rule requires retailers to verify a purchaser's age by photographic identification. It also prohibits all free samples and prohibits the sale of these products through vending machines and self-service displays except in facilities where individuals under the age of 18 are not present or permitted at any time. The rule also limits the advertising and labeling to which children and adolescents are exposed. The rule accomplishes this by generally restricting advertising to which children and adolescents are exposed to a black-and-white, text-only format. In addition, billboards and other outdoor advertising are prohibited within 1,000 feet of schools and public playgrounds. The rule also prohibits the sale or distribution of brand-identified promotional, nontobacco items such as hats and tee shirts. Furthermore, the rule prohibits sponsorship of sporting and other events, teams, and entries in a brand name of a tobacco product, but permits such sponsorship in a corporate name. This rule is intended to complement the regulations issued by SAMHSA implementing section 1926 of the Public Health Service Act (42 U.S.C. 300x-26) regarding the sale and

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pp. 230–233, 1993; Johnston, L. D., P. M. O'Malley, and J. G. Bachman, "National Survey Results on Drug Use from the Monitoring the Future Study 1975–1993, vol. I: Secondary School Students," Rockville, MD, DHHS, PHS, National Institutes of Health (NIH), National Institute on Drug Abuse (NIDA), NIH Pub. No. 94–3809, pp. 9 and 19, 79, 80, and 101, 1994; "Smoking Rates Climb Among American Teen-agers, Who Find Smoking Increasingly Acceptable and Seriously Underestimate the Risks," The University of Michigan News and Information Service, Table 1., July 17, 1995.

[11] "Results from the 1995 Monitoring the Future Survey," National Institute on Drug Abuse Briefing for Donna E. Shalala, Ph.D., Secretary of Health and Human Services, December 13, 1995.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] McGinnis, J. M., and W. H. Foege, "Actual Causes of Death in the United States," *Journal of the American Medical Association (JAMA)*, vol. 270, No. 18, pp. 2207–2212, 1993; "Reducing Health Consequences of Smoking: 25 Years of Progress, A Report of the Surgeon General," DHHS, PHS, CDC, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), OSH, DHHS Pub. No. 89–8411, p. 5, 1989, (hereinafter cited as "1989 SGR"); See generally "The Health Consequences of Smoking: Chronic Obstructive Lung Disease: A Report of the Surgeon General," DHHS, PHS, OSH, 1984, (hereinafter cited as "1984 SGR"); "The Health Consequences of Smoking: Cardiovascular Disease—A Report of the Surgeon General," DHHS, PHS, OSH, 1983 (hereinafter cited as "1983 SGR"); "The Health Consequences of Smoking: Cancer—A Report of the Surgeon General," DHHS, PHS, OSH, 1982, (hereinafter cited as "1982 SGR").

[16] Taioli, E., and E. L. Wynder, "Effect of the Age at Which Smoking Begins on Frequency of Smoking in Adulthood," *The New England Journal of Medicine*, vol. 325, No. 13, pp. 968–969, 1991; Escobedo, L. G., et al. "Sports Participation, Age at Smoking Initiation, and the Risk of Smoking Among U.S. High School Students," *JAMA*, vol. 269, No. 11, pp. 1391–1395, 1993; see also 1994 SGR, p. 65.

[17] Memorandum from Michael P. Eriksen (CDC) to Catherine Lorraine (FDA) August 7, 1995 and CDC Fact Sheet (based on J. P. Pierce, M. C. Fiore, T. E. Novotny, E. J. Hatziandreu, and R. M. Davis, "Trends in Cigarette Smoking in the United States: Projections to the Year 2000," *JAMA*, vol. 261, pp. 61–65, 1989; Unpublished data from the 1986 National Mortality Followback Survey, CDC, OSH; Peto, R., A. D. Lopez, J. Boreham, M. Thun, and C. Heath, Jr., "Mortality from Smoking in Developed Countries, 1950–2000: Indirect Estimates from National Vital Statistics," Oxford University Press, Oxford, 1994).

[18] Kann, L., W. Warren, J. L. Collins, J. Ross, B. Collins, and L. J. Kolbe, "Results from the National School-Based 1991 Youth Risk Behavior Survey and Progress Toward Achieving Related Health Objectives for the Nation," *Public Health Reports*, vol. 108, (Supp. 1), pp. 47–54, 1993.

[19] 1994 SGR, p. 101.

[20] *Id.*, pp. 5, 58, and 65–67.

distribution of tobacco products to individuals under the age of 18 (the SAMHSA rule).

In this document, FDA: (1) Presents its analysis of its authority to issue regulations that impose the enumerated restrictions on the sale and promotion of cigarettes and smokeless tobacco to those under the age of 18, while leaving cigarettes and smokeless tobacco on the market for adults; and (2) responds to comments on the proposed rule.

II. Legal Authority

In the 1996 Jurisdictional Determination, annexed hereto, the Food and Drug Administration (FDA)[21] has determined that cigarettes and smokeless tobacco are combination products consisting of a drug (nicotine) and device components intended to deliver nicotine to the body. The agency may regulate a drug/device combination product using the Federal Food, Drug, and Cosmetic Act's (the act's) drug authorities, device authorities, or both. The agency exercises its discretion to determine which authorities to apply in the regulation of combination products to provide the most effective protection to the public health. FDA has determined that tobacco products are most appropriately regulated under the device provisions of the act, including the restricted device authority in section 520(e) of the act (21 U.S.C. 360j(e)).

A. Legal Principles Applicable to Combination Drug/Device Products

The agency's discretion to choose the appropriate regulatory tools under the act is based, in part, on the authority provided under the Safe Medical Devices Act of 1990 (the SMDA). FDA's interpretation, supported by the language of the statute and its legislative history, is embodied in the agency's implementing regulations codified at part 3 (21 CFR part 3), the delegations of premarket approval authority to FDA's Center for Drug Evaluation and Research (CDER), Center for Devices and Radiological Health (CDRH), and Center for Biologics Evaluation and Research (CBER) that enable all three Centers to administer statutory authority for drugs, devices, and biologics (56 FR 58758, November 21, 1991), and the "intercenter agreements" that guide the agency in allocating Center responsibility for various categories of combination products (56 FR 58760, November 21, 1991). In addition to the authority provided by the SMDA, the agency's discretion is also based on the principles recognized by the Supreme Court in cases such as *United States* v. *An Article of Drug * * * Bacto-Unidisk*, 394 U.S. 784 (1969). In *Bacto-Unidisk*, for example, the Supreme Court upheld the agency's decision to regulate a diagnostic test kit under its drug authorities on the grounds that "[i]t is enough for us that the expert agency charged with the enforcement of remedial legislation has determined that such regulation is desirable for the public health * * *." (*Bacto-Unidisk* 394 U.S. at 791–792.)

The discussion that follows describes in more detail FDA's interpretation of the combination product provisions of the SMDA, the agency's understanding of combination products, and the way in which the agency has exercised its discretion in determining the most appropriate authorities to apply to regulate combination products.

1. The SMDA Recognized Combination Products for the First Time

Congress enacted the SMDA's combination product provisions to recognize combination products as distinct entities subject to regulation under the act and to alleviate the difficulty the agency had experienced in regulating such products, especially those consisting of components of both a drug and a device. First, the SMDA explicitly recognized the existence of products that "constitute a combination of a drug, device, or biological product" (section 503(g)(1) of the act (21 U.S.C. 353(g)(1))). Second, the statute provided a mechanism for determining which agency component would be assigned the administrative responsibility of regulating a particular combination product (*Id.*).

In accordance with its recognition of combination products, the SMDA changed the statutory definitions of "drug" and "device" at section 201(g) and (h) of the act (21 U.S.C. 321(g) and (h)). Before the enactment of the SMDA, section 201(g) of the act provided that a drug "does not include devices or their components, parts, or accessories." The SMDA removed this language from the definition of "drug" so that the terms "drug" and "device" were no longer mutually exclusive, thereby making it possible for a combination product consisting of both a drug and device to be regarded as an independent entity subject to regulation. The legislative history indicates that this definitional change was made "to accommodate the principle of [combination products in] section 20" (S. Rept. 101–513, 101st Cong. 2d sess., at 30 (1990)). For the first time it was possible, as a legal matter, for a single product to have both drug and device components.

The SMDA also permitted a wider range of products to meet the definition of a device. Prior to its amendment by the SMDA, section 201(h) of the act defined a "device" as an instrument or other item that, among other things, "does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes." The SMDA changed the phrase "any of its principal intended purposes" in the definition to read, "its primary intended purposes." This change broadened the definition of device and allowed more products to be categorized as devices.

2. The SMDA Leaves to FDA's Discretion the Determination of Which Regulatory Authorities to Apply to Particular Combination Products

Having recognized combination products, the SMDA also provided a clear mechanism for determining which agency component a particular combination product should be directed to for review. Under the SMDA, the agency must:

> [d]etermine the primary mode of action of the combination product. If the [agency] determines that the primary mode of action is that of—
>
> (A) a drug (other than a biological product), the persons charged with premarket review of drugs shall have primary jurisdiction,
>
> (B) a device, the persons charged with premarket review of devices shall have primary jurisdiction, or
>
> (C) a biological product, the persons charged with premarket review of biological products shall have primary jurisdiction.

(Section 503(g)(1) of the act)

This section of the SMDA "provide[d] the [agency] with firm ground rules to direct products promptly to that part of FDA responsible for reviewing the article that provides the primary mode of action of the combination product" (S. Rept. 101–513, 101st Cong., 2d sess., 30 (1990)).

Although the SMDA provided a mechanism for determining which agency component, i.e., a Center, should review a particular combination product, the legislation left to FDA the discretion to decide which statutory authorities it would use in regulating a particular combination product. The

[21] The Secretary of the Department of Health and Human Services (DHHS) (the Secretary) has the authority to carry out functions under the act through the Commissioner of Food and Drugs (the Commissioner). (See section 903 of the act (21 U.S.C. 393); 21 CFR 5.10 and 5.11.) Throughout this document, references to FDA include the Secretary and the Commissioner.

protection of the public health." For example, the agency has established exemptions from adequate directions for use where adequate directions for common uses of certain devices are known to the ordinary individual. (See § 801.116.) Tobacco products have a very long history of use in this country, and they are one of the most readily available consumer products on the market today. Consequently, the way in which these products are used is common knowledge. FDA believes that the public health would not be advanced by requiring adequate directions for use. Accordingly, the agency has added a provision to the final rule exempting cigarette and smokeless tobacco from the requirement of having adequate directions for use. Section 801.126, states, "Cigarette and smokeless tobacco as defined in part 897 of this chapter are exempt from section 502(f)(1) of the Federal, Food, Drug, and Cosmetic Act."

The agency has considered the requirement in section 502(f)(2) of the act that the labeling of a medical device must provide "adequate warnings against use * * * by children where its use may be dangerous to health." In the agency's view, the warnings mandated by the Cigarette Act (15 U.S.C. 1333) and the Smokeless Act (15 U.S.C. 4402) satisfy this requirement. Additionally, the Surgeon General's warnings provide information warning against use in persons with certain conditions, i.e., pregnant women. Consequently, cigarettes and smokeless tobacco are not exempt from the statutory requirements under section 502(f)(2) of the act.

F. Package Inserts

(7) Several comments stated that FDA should require cigarette and smokeless tobacco packages to contain package inserts that contain health information and information about the chemicals added to cigarettes and smokeless tobacco. One comment stated that FDA has statutory authority to require package inserts under sections 502(a) and (q) and 520(e) of the act. Another comment stated that the agency is not preempted from requiring package inserts because sections 1334(a) and 4406 of the Cigarette Act and the Smokeless Act, respectively, preempt statements related to health "on any package," not *in* any package.

FDA agrees with the comments that it has statutory authority under the act to require package inserts for these products. Under section 502(a) of the act, a device is misbranded if its labeling is false or misleading in any particular. Section 201 of the act (21 U.S.C. 321), the "Definitions" section of the act, describes the concept of "misleading" in the context of labeling and advertising. Section 201(n) of the act explicitly provides that, in determining whether the labeling of a device is misleading, there shall be taken into account not only representations or suggestions made in the labeling, but also the extent to which the labeling fails to reveal facts that are material in light of such representations or material with respect to the consequences that may result from use of the device under the conditions for use stated in the labeling or under customary or usual conditions of use.

These statutory provisions, combined with section 701(a) of the act (21 U.S.C. 371(a)), authorize FDA to issue a regulation designed to ensure that persons using a medical device will receive information that is material with respect to the consequences that may result from use of the device under its labeled conditions. In the prescription drug context, this interpretation of the act and the agency's authority to require patient labeling for prescription drug products have been upheld. (See *Pharmaceutical Manufacturers Assn.* v. *FDA*, 484 F.Supp. 1179 (D. Del. 1980) *aff'd per curiam*, 634 F.2d 106 (3rd Cir. 1980).)

Additionally, on several occasions, the agency has required patient package inserts for devices, and has specified either the express language for the patient package insert or the type of information to be included in the patient package insert. These devices include hearing aids (§ 801.420), intrauterine devices (§ 801.427), and menstrual tampons (§ 801.430).

The agency also agrees with the comment that it is not prohibited from requiring patient package inserts due to the preemption clauses in the Cigarette Act and the Smokeless Act. Each of the clauses in these statutes specifically prohibits requirements that statements relating to smoking and health be placed on the package. Package inserts, by nature, are typically found in the package.

Although the agency believes that package inserts for these products are authorized under the act and would provide useful information to users, further evaluation would be needed to determine what specific information a package insert would contain. Therefore, the agency is not requiring them as part of this rule.

VI. Advertising

A. Subpart D—Restrictions on Advertising and Labeling of Tobacco Products

Subpart D in part 897 contains the restrictions for advertising and labeling of cigarettes and smokeless tobacco. Subpart D of part 897 in the Food and Drug Administration's (FDA's) August 11, 1995, proposed rule (60 FR 41314) (the 1995 proposed rule) provoked some of the strongest and most passionate comments from both supporters and opponents of the proposed restrictions. Many comments from the tobacco industry, the advertising industry, public interest groups, and individuals expressed major concerns about the legality, constitutionality, and wisdom of the advertising restrictions in general and about the underlying support for individual sections of the 1995 proposed rule. Comments from the largest organization of psychologists in the world, public interest and health groups, individual advertisers, and individuals expressed strong support for the legality and constitutionality of the proposal, provided information supporting various provisions of the proposal, and emphasized the necessity for comprehensive advertising regulations.

The purpose of the advertising regulations is to decrease young people's use of tobacco products by ensuring that the restrictions on access are not undermined by the product appeal that advertising for these products creates for young people. (See *Central Hudson Gas and Electric Corp.* v. *Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 569 (1980).) Proposed subpart D of part 897 included a range of restrictions that attempted to preserve the informational components of advertising and labeling which can provide useful product information for adult smokers, while eliminating the imagery and color that make advertising appealing and compelling to children and adolescents under 18 years of age.

Briefly, the 1995 proposed rule included four provisions. Section 897.30 would have defined those media in which labeling and advertising for cigarettes or smokeless tobacco may appear. In addition, it would prohibit outdoor advertising within 1,000 feet of elementary and secondary schools and playgrounds. Proposed § 897.32 would limit all advertising to black text on a white background. Advertising in any publication that is read primarily by adults would be permitted to continue to use imagery and color. Further, all

cigarette and smokeless tobacco product advertisements would be required to include the product's established name and intended use, e.g., "Cigarettes—A Nicotine Delivery Device," and cigarette advertisements would be required to include a brief statement, such as "About one out of three kids who become smokers will die from their smoking." Proposed § 897.34 would prohibit the sale and distribution of nontobacco items, contests and games of chance, and sponsored events using any indicia of product identification (e.g., brand name, logo, recognizable pattern of color). Finally, proposed § 897.36 outlined those conditions under which the agency would find the advertising or labeling of any cigarette or smokeless tobacco product to be false or misleading.

In response to comments filed, FDA has modified the proposed regulations. Briefly, some of the more substantive changes include: The definition of adult-oriented publications remains unchanged, but the preamble makes clear that the responsibility will be assigned specifically to the manufacturer, distributor, or retailer of tobacco products that wishes to place advertisements to gather and retain competent and reliable evidence that the readership of the publication meets the criteria for an adult-oriented publication. Moreover, unrestricted advertising, i.e., with color and imagery, may be displayed at facilities described in § 897.16(c)(2)(ii) that may sell tobacco from vending machines and self-service provided that the advertising, e.g., posters and signs, must be displayed so that they are not visible from outside the facility and are affixed to a wall or fixture in the facility.

The revised intended use statement is "Nicotine Delivery Device for Persons 18 or Older," and the agency will not require a brief statement other than the Surgeon General's warnings.

As provided in the 1995 proposed rule, the final rule states that any event sponsored by a manufacturer, distributor, or retailer of tobacco products is to be sponsored only in the corporate name. Teams and entries also may be sponsored but only in the corporate name. The regulation includes a ban on all brand-identified nontobacco items, including those transactions based upon proofs-of-purchase. However, the proposed ban on contests and games has been deleted. Finally, the agency has decided to delete the definition of false or misleading advertising and labeling from this final rule because it is duplicative and unnecessary in light of the underlying requirements in sections 201(n), 502(a), and 502(q) (21 U.S.C. 321(n), 352(a), and 352(q)) of the Federal Food, Drug, and Cosmetic Act (the act).

Section VI.B. of this document provides a general discussion of the rationale for including significant advertising restrictions in the final regulation, including a discussion in response to comments concerning the theory of advertising and the importance of color and imagery to advertising's appeal, especially for young people. This section also provides a discussion of the effects of advertising on young people, including expert opinion and research evidence provided by the American Psychological Association.

Section VI.C. of this document provides responses to questions raised about the constitutionality of the regulations. Section VI.D. of this document includes a discussion of the evidence that cigarettes and smokeless tobacco advertising plays a direct and material role in young people's decisions to purchase and use these products. This part also explains why restricting tobacco advertising will advance the Federal Government's interest in preventing the use of tobacco products by young people, and provides responses to comments about the evidence. Finally, section VI.E. of this document responds to comments concerning the factual evidence provided by FDA in support of its proposed regulation in a section-by-section format, as well as to comments claiming that each of these sections was not narrowly tailored to minimize the burden on commercial speech. [76]

B. The Need for Advertising Restrictions

In the preamble to the proposed 1995 rule, FDA tentatively asserted that a preponderance of the quantitative and qualitative studies of cigarette advertising suggested: (1) A causal relationship between tobacco advertising and tobacco use by young people, and (2) a positive effect of stringent advertising measures on smoking rates and on youth tobacco use. In arriving at this tentative finding, FDA relied heavily on the National Academy of Sciences Institute of Medicine's (IOM's) Report entitled *Growing Up Tobacco Free, Preventing Nicotine Addiction in Children and Youths*, Washington, DC 1994 (the IOM Report) and the Department of Health and Human Services' (DHHS') Center for Disease Control and Prevention's (CDC's) Report entitled *Preventing Tobacco Use Among Young People, A Report of the Surgeon General* (1994) (1994 SGR). Both indicated that advertising was an important factor in young people's tobacco use, and that restrictions on advertising must be part of any meaningful approach to reducing smoking and smokeless tobacco use among young people. In addition, FDA was careful to note that industry statements and actions and examples of youth oriented advertising and marketing campaigns lent support to the agency's findings.

FDA's review and consideration of the comments received has led the agency to conclude that advertising plays a material role in the decision by those under 18 to use tobacco products.

1. Advertising and Young People

(1) Comments from the tobacco industry argued that FDA had simply assumed that young people found cigarette and smokeless tobacco advertising to be appealing, and that there was no empirical evidence of how young people actually perceived the imagery displayed in cigarette and smokeless tobacco advertisements. The comments argued that the research cited by the agency relates primarily to the role of imagery in brand choice decisions. In addition, several comments disputed FDA's evidence that young people are particularly vulnerable to image-oriented advertisements. To respond to these comments, it is necessary to describe the function of advertising and how it affects young people.

a. *Function of advertising.* Advertisers use a mix of advertising and promotional vehicles to call attention to the product they are selling—to describe its properties, to convey its superiority over other products, and in some cases to give it an allure above and beyond the qualities of the product itself. (A red convertible can be a mode of transportation; it can also tell people a

[76] For the purposes of section VI. of this document, the agency will refer to advertising and labeling merely as "advertising." As the agency pointed out in the preamble to the 1995 proposed rule, advertising and labeling often perform the same function: to convey information about the product; to promote consumer awareness, interest, and desire; to change or shape consumer attitudes and images about the product; and/or to promote good will for the product (60 FR 41314 at 41328). Moreover, most court cases involving advertising do not distinguish between the forms of advertising that FDA calls labeling and those referred to as advertising. When there is a need to distinguish between the two forms of promotion, for example, when labeling and advertising are subject to different statutory requirements, this document will make clear what is being discussed.

lot about who you are, or who you think you are or want to be.)

Advertising creates a matrix of attributes for a product or product category and beliefs about the product and its possessor. It can serve to convey images that are recalled later when an event prompts the consumer to think about a purchase. Consumers, as a general rule, overestimate the effect that advertising has on the market in general, but they routinely underestimate its effect upon them and their own purchasing choices. [77]

As discussed in sections VI.B.1.b. and VI.B.1.c. of this document, advertising that is diverse, image-laden, and colorful can be particularly effective in attracting attention in a cluttered advertising environment. Further, advertising that is repeated frequently and in as many different media as possible is most likely to ensure that its message is received by the maximum number of consumers. This trend toward the use of many media in a coordinated effort to communicate an advertising message supports the need for a comprehensive approach to mitigating the effects of tobacco advertising. [78]

Every presentation can add to and build upon the imagery and appeal created for a product category or a particular brand. Print advertising, direct mail, and outdoor advertising help to create an image of the brand (and sometimes an image of the brand's user) and provide information about price, taste, relative safety, and product developments for current or prospective users. William Campbell, Chief Executive Officer of Philip Morris, explained the importance of linking the brand imagery in various media in relationship to the success in marketing its Marlboro product:

[W]e've managed to take what was originally tunnel vision advertising and positioning * * * into every kind of avenue * * *. For example, our auto racing activities are just another way to express the Marlboro positioning. Some would say the Marlboro Cup is different from Marlboro Country, but it is absolutely consistent. [79]

The use of many different media is also important in advertising directed to children. An example of a successful multimedia approach directed to children is the cigarette smoking prevention program conducted by Flynn et al., in Vermont, New York, and Montana, and cited in the preamble to the 1995 proposed rule. [80] This effort combined school cigarette smoking prevention programs with a mass media intervention featuring more than 50 different television and radio spots over a 4-year period. Some communities received the school cigarette smoking prevention programs alone, and others received the school program in combination with the mass media intervention. By the final year of the program, students exposed to both school and mass media interventions were 35 percent less likely to have smoked during the past week than students exposed only to the school program. Further, this preventive effect persisted for at least 2 years following the completion of the program. [81] The researchers attributed the effectiveness of their program in part to the fact that their intervention used a wide variety of messages and message styles over a significant period of time.

Thus, all media collectively along with the amount of exposure time to young people, can increase the effectiveness of the advertiser's message. For example, billboards near schools or playgrounds expose children to unavoidable advertising messages for a more prolonged period of time than billboards they pass on the highway. Further, sponsored events that typically last for 2 to 3 hours ensure that those attending the event or viewing it at home on television are exposed for a sustained period of time.

b. *Color contributes.* Color is an important component of advertising. It can be used to promote a "feeling" and a message—blue is cool, red is hot, green is menthol. Studies have shown that four-color advertisements significantly increase attention and recall relative to two color or black- and white- advertisements. [82] Moreover, the importance of color in advertising becomes more salient when it is considered that most consumer behavior occurs in conditions of "low involvement." [83] Low involvement conditions are those that occur when a reader skims a magazine advertisement rather than carefully searching for an advertisement for information about price, taste, relative "safety" of the product, or product improvement.

A recent article in *The European* [84] described the importance of color:

[S]ecuring a brand colour is more important than ever, particularly for companies chasing a youth market. The main reason is the increasing use of fast and furious graphics in advertising and marketing communications generally. "This makes owning a colour more and more important. You can keep changing the graphics, but the colour remains constant in the consumer's mind." Owning a colour also helps when sponsoring a sports event, for instance, "All Pepsi now has to do is put up lots of blue," said Brant. [85]

c. *The importance of imagery.* Imagery also enhances the ability of advertising to communicate more quickly in low involvement situations and in quick exposure contexts. Pictorial information is remembered much better than verbal information, as pictures perform a function of "organizing" the qualities of the product as depicted with an image. Generally, as the pictures or images in an advertisement increase (both in number and the proportion of the advertisement occupied by the image), the advertisement is more likely to be recognized, and the brand name more likely to be remembered. In most cases, pictorial or image advertising is a more robust and flexible communications medium and can be used to communicate with the functionally illiterate or the young person in a hurry. [86]

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[77] Gunther, A. C., and E. Thorson, "Perceived Persuasive Effects of Product Commercials and Public Service Announcements: Third Person Effects in New Domains," *Communication Research*, vol. 19, pp. 574–575, 1992.

[78] Flynn, B. S., J. K. Worden, R. H. Secker-Walker, G. J. Badger, B. M. Geller, and M. C. Costanza, "Prevention of Cigarette Smoking Through Mass Media Intervention and School Programs," *American Journal of Public Health*, vol. 82, pp. 827–834, 1992.

[79] "Philip Morris Keeps Smoking—Campbell Sees Growth for Tobacco Unit in Declining Industry," *Advertising Age*, p. 20, Nov. 19, 1990.

[80] Flynn, B. S., J. K. Worden, R. H. Secker-Walker, G. J. Badger, B. M. Geller, and M. C. Costanza, "Prevention of Cigarette Smoking Through Mass Media Intervention and School Programs," *American Journal of Public Health*, vol. 82, pp. 827–834, 1992.

[81] Flynn, B. S., J. K. Worden, R. H. Secker-Walker, P. L. Pirie, G. J. Badger, and B. M. Geller, "Mass Media Interventions for and School Interventions for Cigarette Smoking Prevention: Effects Two Years After Completion," *American Journal of Public Health*, vol. 84, pp. 1148–1150, 1994.

[82] Hanssens, D., and B. Weitz, "The Effectiveness of Industrial Print Advertisements Across Product Categories," *Journal of Marketing Research*, vol. 17, pp. 294–306, 1980.

[83] MacInnis, D. J., and L. L. Price, "The Role of Imagery in Information Processing: Review and Extensions," *Journal of Consumer Research*, vol. 13, pp. 473–491, 1987.

[84] Short, D., "The Colour of Money," *The European*, p. 21, April 10, 1996.

[85] *Id.* Brant was commenting on Pepsi's decision to change its brand color to blue.

[86] Lutz, K. A., and R. J. Lutz, "Effects of Interactive Imagery on Learning: Applications to Advertising," *Journal of Applied Psychology*, vol. 62, pp. 493–498, 1977; Hendon, D. W., "How Mechanical Factors Affect Ad Perception," *Journal of Advertising Research*, vol. 13, pp. 39–45, 1973; See also Holbrook, M. B., and D. R. Lehmann, "Form Versus Content in Predicting Starch Scores," *Journal of Advertising Research*, vol. 20, pp. 53–62, 1980; Twedt, D. W., "A Multiple Factor Analysis of

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An executive from Griffin Bacal, one of the largest advertising agencies in New York, explained how visual imagery scored with young people:

Pictures sell. Visuals count * * * even those visuals that seemingly have nothing to do with the product sale. * * * [including locations, sets, props, wardrobe, colors, numbers, sexes and ages of people in the ads] * * * Kids want to be like each other. Group acceptance, and living the life of the gang, is critical. * * * Similarly, kids define themselves by the product choices they make and share. Be sure your advertising makes the "world" accessible and "invites" the viewer to join. [87]

Evidence from social psychology and marketing research shows image-based advertising, such as that employed by the cigarette and smokeless tobacco industry, is particularly effective with young people, and that the information conveyed by imagery is likely to be more significant to young people than information conveyed by other means in the advertisement.

According to the "elaboration-likelihood model of persuasion," persuasive communications, such as advertisements, can persuade people either: (1) By the "central route," or (2) by the "peripheral route." [88] The central route refers to the process by which a person reads the messages or information contained in the advertisement and thinks carefully about it and is influenced by the strength of its arguments. The peripheral route is a process in which individuals, particularly young people, are more likely to pay attention and be persuaded by peripheral cues such as attractive models, color and scenery, which are unrelated to the primary parts of the message. Therefore, a young person, or anyone who is unmotivated or unable to carefully consider the arguments in a message, is likely to be persuaded via the peripheral route.

In markets where most brands in a product category are similar (as is the case with cigarettes and smokeless tobacco products), most advertising provides little, if any, new information. Thus, peripheral cues (such as color and imagery) take on added significance. Moreover, according to the model, for children, the motivation and ability to "elaborate" upon the arguments (pay attention to and think about the factual information) contained in cigarette and smokeless tobacco advertising are relatively low, making young people more susceptible to influence from peripheral cues such as color and imagery.

Finally, according to the comment from the nation's largest psychological association, children generally have less information-processing ability than adults, and they are less able or less willing to pay attention to the factual information in the advertisements. This comment stated that because any possible negative health consequences associated with using tobacco products are relatively far in the future for them, children are less motivated than adults to carefully consider information such as tar and nicotine content or the Surgeon General's warnings, which are contained in cigarette and smokeless tobacco advertising. Thus, the comment concludes, color and imagery in advertisements are important components for young people. [89]

A communications researcher who provided comments on FDA's 1995 proposed rule for the consolidated comment of the cigarette industry asserted that the elaboration likelihood model was relevant to the way children respond to tobacco advertising, but took a somewhat different view than that expressed above. Specifically, the comment stated that children are most likely to use the central route when they are ego-involved in the subject of persuasion, and that "ego-involvement generally comes from those subjects which are salient to the groups with which one is aligned - e.g. peers." However, the comment also stated that because children would have no real experiences surrounding the initiation of cigarette smoking, they would be likely to engage in peripheral processing, and would rely on credible sources, such as peers. The comment contended,

The reason the elaboration likelihood model is relevant here is that the decision to begin smoking cigarettes does not come out of a set of fixed or habituated experiences personal to the decision maker. For that reason *this decision is likely to be one on which a person is particularly susceptible to the influence of others*, and therefore source credibility becomes key. [Emphasis added].

The agency is not convinced by the comment. This explanation does not address children's responses to tobacco advertisements—it essentially assumes that children are influenced by advertising only insofar as it is filtered through the experience of their peers. This reasoning is both circular and illogical. However, the agency does concur with the comment's view that children typically process tobacco advertising via the peripheral route, that children are particularly susceptible to the influence of others regarding the decision to start smoking or to use smokeless tobacco, and that perceived source credibility plays an important role. FDA maintains that the "source" of the persuasive message in tobacco advertising is frequently conveyed by the imagery presented in the advertisement. The same comment expressed this sentiment, stating "[s]ince the media consumer often does not know the writer or broadcaster personally, the consumer or receiver may attribute source credibility to the media themselves." To the extent that characters featured in tobacco advertising, such as Joe Camel, the Marlboro Man or the attractive models or race car heroes typically portrayed in such advertising appear credible and appealing, they are perceived as credible sources, and could influence children regarding the decision to smoke or to use smokeless tobacco products.

2. Advertising and Adults

(2) Several comments from the tobacco industry and the advertising industry stated that cigarette and smokeless tobacco advertising plays an important economic role in tobacco marketing. A comment from the tobacco industry stated that FDA proposed restrictions would: (1) Substantially impair advertising of tobacco to adults; (2) deprive adults of useful information about products and services such as availability, price, and quality; (3) reduce the incentive and ability to market improved products; and (4) deprive adult smokers of the benefits of competition to provide a broad range of choices and to assure that tobacco products are provided at the lowest possible cost. Consequently, the comment said that the 1995 proposed rule would have a far greater adverse impact on advertising to adults than on advertising seen by young people.

One comment from an advertising agency argued that restrictions on the advertising of tobacco products would "significantly erode the progress made over the past 15 years in increasing the quantity and variety of information readily available to the public." This

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Advertising Readership," *Journal of Applied Psychology*, vol. 36, pp. 207–215, 1952.

[87] Kurnit, P., "10 Tips From the Top Agency-Exec Explains How Griffin Bacal Scores with Kids," *Advertising Age Supplement*, pp. 19–20, February 10, 1992.

[88] Petty, R. E., and J. T. Cacioppo, *Communication and Persuasion: Central and Peripheral Routes to Attitude Change*, Springer-Verlag, New York, p. 3, 1986.

[89] See also, Huang, D. P., D. Burton, H. L'Howe, and D. M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisements Among Adolescents," *Tobacco Control*, vol. 1, pp. 249–255, 1992.

progress, the comment reiterated, has benefited and continues to benefit the public.

Further, several comments argued that unfettered advertising is consistent with our Nation's belief in providing the broadest possible range of information to individuals, so that they can exercise informed judgment in their daily lives. For these reasons, the comment stated, further restrictions on the advertising of legal products would not be in the public interest and should be opposed.

FDA recognizes, as these comments maintained, that imagery and color make advertising appealing to adults, as well as to children, and that advertisers consistently use these elements to make advertisements compelling and attention getting. Moreover, removal of color and imagery will make advertising's role in presenting information to adults more difficult. However, as stated more fully in the preamble to the 1995 proposed rule, FDA has attempted to tailor its advertising restrictions as narrowly as possible consistent with its purpose of reducing young people's attraction to and use of tobacco. Thus, rather than banning all advertising, the proposed regulations retain the informational function of advertising by permitting text-only advertising while removing color and imagery from those advertisements to which young people are unavoidably exposed.

FDA does not believe that these restrictions should dramatically increase search costs for adult smokers and smokeless tobacco users who are actively looking for information on price and new product innovations. Text-only advertising requires a high involvement on the part of the consumer but can realistically be expected to provide sufficient information to carry the message and also provide sufficient appeal to attract current smokers and smokeless tobacco users. Some advertising for low-tar products relies on text-only or text with few pictures.

If the information about product type is important and desired by adult tobacco users, it can and will be provided by text-only advertisements if the industry desires to make the information available. As noted above, advertising for low-tar cigarettes is generally high-involvement advertising at the present and therefore can be expected to survive in a text-only environment. Nonetheless, the agency recognizes that it may be more difficult for advertising, without imagery and color, to attract the attention of current tobacco users. However, the agency has decided that the public health benefits of reducing advertising's ability to create appeal for young people greatly outweighs the tobacco companies' interest in unrestricted advertising to adults.

The position argued by these comments is essentially that industry has the right to communicate freely with its intended audience regardless of the impact its advertising has on the illegal and vulnerable audience of children and adolescents. Other comments counter this comment asserting that it is the Government's obligation to protect children because of their special vulnerabilities, their lack of experience and knowledge, and their limited ability to make appropriate decisions regarding behavior that will have lifelong health consequences. FDA believes its obligation with respect to tobacco products is to safeguard the health and safety of young people to ensure that they do not begin a potentially lifelong addiction to products that cause so much disease and premature death.

C. The Regulations Under the First Amendment

1. Introduction

Under section 520(e) of the act (21 U.S.C. 360j(e)), FDA included a number of proposed conditions in the 1995 proposed rule on how cigarettes and smokeless tobacco could be advertised as part of its proposed restrictions on the sale of these products. The agency tentatively found that these conditions are necessary to reduce the advertising's ability to create demand for these products—that is, the desire to purchase them—among children and adolescents under 18, for whom these products are not safe (60 FR 41314 at 41350). In addition, FDA tentatively found that it was necessary to include an industry-financed education program among these conditions.

In proposing these measures, FDA recognized that they would have to pass muster under the protections of communication extended by the First Amendment to the United States Constitution, in particular, under the protections extended to commercial speech (60 FR 41314 at 41353). Before addressing the commercial speech analysis, however, this section responds to several comments which registered more fundamental complaints under the First Amendment about FDA's proposed approach.

(3) Several comments, which were from the tobacco and advertising industries, found in statements made by FDA evidence of an intent not merely to protect the health of young persons but to "delegitimize" lawful adult conduct, to engage in "viewpoint discrimination," and to run "roughshod" over the rights of cigarette and smokeless tobacco companies. One comment said that it is outside the realm of permissible exercise of governmental power to suppress speech for the purpose of instilling values that the Federal Government believes are appropriate. This comment also said that the purpose of FDA's rulemaking is to eliminate speech that conflicts with Government messages on smoking and health. The comment noted that FDA's goal is to bring about the demise of smoking as a social custom. However, a comment from a consumer group disagreed, saying instead that FDA's 1995 proposed rule was limited to covering only those activities designed to promote the sale of the product to young people and thus covered only commercial speech.

FDA has carefully considered these comments and has taken the concerns that they expressed into account as it developed this final rule. The agency recognizes that its authority is limited by the act and the Constitution. Thus, it has scrutinized each of the conditions on advertising that it proposed in light of whether the condition advances the purposes of section 520(e) of the act or some other section of the act, and whether the condition is consistent with the First Amendment.

FDA's primary concern is the public health. Because of the potentiality for harmful effects on individuals under 18 from use of cigarettes and smokeless tobacco, FDA is adopting restrictions on advertising among other restrictions on the sale, distribution, and use of these products. These restrictions will mean that it should be more difficult to sell these products to people under age 18, who currently purchase these products in significant numbers.

The agency acknowledges that insofar as these restrictions help reduce the sale of tobacco products to young people, the restrictions will have an adverse effect on the cigarette and smokeless tobacco companies. However, this fact does not mean that FDA is trying to bring about the demise of the tobacco industry. The restrictions that FDA is adopting have been tailored to help reduce tobacco advertising's ability to create an underage market for these products, while leaving open ample avenues for cigarette and smokeless tobacco companies to communicate to current users 18 years of age or older about their products. As explained in detail in

section VI.E. of this document, this is all that the First Amendment requires.

(4) Several comments argued that, in the 1995 proposed rule, FDA had understated the protection that commercial speech is afforded under the First Amendment. These comments pointed out that advertisers and consumers have powerful First Amendment rights to send and receive commercial messages. To support this point, one comment pointed out that the Supreme Court has recognized that the free flow of commercial information is "indispensable to proper allocation of resources in a free enterprise system." (See *Virginia State Bd. of Pharmacy* v. *Virginia Citizen's Consumer Council, Inc.*, 425 U.S. 748, 765 (1976).) The comment also pointed out that the Court went on to say that a "particular consumer's interest in the free flow of commercial information * * * may be as keen, if not keener by far, than his interest in the day's most urgent political debate" (*Id.* at 763).

Another comment, however, citing *Ohralik* v. *Ohio State Bar Ass'n.*, 436 U.S. 447 (1978), stated that there are dangers inherent in a free-for-all marketplace, and that, at times, vigilant Government action is needed to protect the public from false, deceptive, or overbearing sales campaigns.

In addition to the comments, the agency has considered the Supreme Court's recent decision in *44 Liquormart, Inc.* v. *Rhode Island*, 116 S.Ct. 1495 (1996), which was handed down after the rulemaking record was closed. The Court ruled unanimously that Rhode Island's ban on all dissemination of price advertising for alcoholic beverages was violative of the First Amendment. No rationale for this judgment commanded a majority of the Court, however. Nonetheless, FDA considered each part of the principal opinion, as well as the concurring opinions, in arriving at the decisions that are set forth in this final rule.

FDA in no way underestimates the protection extended to commercial speech by the First Amendment. FDA recognizes the important societal interests served by this type of speech and has given full consideration to those interests in developing this final rule. Nonetheless, it is also true, as the agency stated in the 1995 proposed rule (60 FR 41314 at 41353 to 41354), that the measure of protection that commercial speech receives is commensurate with its subordinate position in the scale of First Amendment values, and it is subject to modes of regulation that might be impermissible in the realm of noncommercial expression. (See *Florida Bar* v. *Went For It, Inc.*, 115 S.Ct. 2371, 2375 (1995).)

However, in *44 Liquormart, Inc.*, three Justices stated:

> [w]hen a State entirely prohibits the dissemination of truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands.
> (116 S.Ct. at 1507)

This statement has no application to the restrictions that FDA is imposing for two reasons. First, FDA is not entirely prohibiting the dissemination of commercial messages about cigarettes and smokeless tobacco. As explained in section VI.E. of this document, it is adopting carefully tailored restrictions on the time, place, and manner in which such messages may be conveyed so that they are not used to undermine the restrictions on access by minors. Second, the restrictions are related to the bargaining process. As explained in section II.C.3. of this document in the discussion of section 520(e) of the act, the access restrictions, and the concomitant restrictions on promotion of these products, derive from the fact that, at least as a matter of law, minors are not competent to use these products.

"The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation." (See *Central Hudson*, 447 U.S. at 563.) FDA has weighed these factors in deciding what restrictions on cigarette and smokeless tobacco advertising can appropriately be included in this final rule.

2. The *Central Hudson* Test

The comments were unanimous in agreeing that any restrictions the agency adopts on commercial speech will be assessed under the test first articulated by the Supreme Court in *Central Hudson*, 447 U.S. at 563–64. This test was originally set out as a four-step analysis in *Central Hudson*; however, in one recent case, *Florida Bar* v. *Went For It, Inc.*, the Supreme Court described the test as having three prongs after a preliminary determination is made, although the matters to be considered remain unchanged:

> Under *Central Hudson*, the government may freely regulate commercial speech that concerns unlawful activity or is misleading* * *. Commercial speech that falls into neither of these categories, * * * may be regulated if the government satisfies a test consisting of three related prongs: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn" * * *. (115 S.Ct. at 2376 (citations omitted))

FDA explained in the preamble to the 1995 proposed rule why the restrictions on advertising that it was proposing met each requirement of the *Central Hudson* test (60 FR 41314 at 41354 and 41356). The agency received a number of comments on its analysis—mostly from the tobacco industry, newspaper or magazine associations, and advertisers. These comments argued that FDA's proposed restrictions failed under one or more elements of the *Central Hudson* test. The agency also received comments from a public interest group, which has the protection of commercial speech as one of its interests, and from a coalition of major national health organizations. Both of these comments argued that, in virtually all respects, FDA's proposed restrictions satisfy the *Central Hudson* test.

In the sections that follow, for each of the restrictions on advertising that the agency proposed, FDA will analyze the case law that elucidates the applicable standard, the information presented in comments, and all other available evidence and decide whether that standard is met. However, before the agency does so, it must first consider the preliminary inquiry under *Went For It* and decide whether the First Amendment provides any protection to the advertising that is restricted by this final rule.

3. Is Cigarette and Smokeless Tobacco Advertising Misleading, or Does It Relate to Unlawful Activity?

As stated earlier, the preliminary inquiry under the *Went for It* case is whether the commercial speech is misleading or relates to unlawful activity. FDA did not specifically address this aspect of the *Central Hudson* analysis in its proposal (60 FR 41314 at 41354). Nonetheless, several comments did.

Many of the comments asserted that the targeted speech concerns lawful conduct, and that, therefore, this aspect of the *Central Hudson* analysis is satisfied. One comment noted FDA's silence on this matter and said that there is thus no suggestion that cigarette advertisements propose an illegal transaction or urge youths to begin smoking before it is lawful for them to do so.

Some comments argued, however, that cigarette and smokeless tobacco

advertising is not entitled to First Amendment protection because it is misleading, and it concerns unlawful activity. These comments pointed out that it is unlawful in all 50 States to sell tobacco products to children under the age of 18. The comments said the evidence that FDA assembled in its 1995 proposal suggested that manufacturers of tobacco products are aware that their advertising campaigns induce minors to experiment with tobacco products (citing 60 FR 41314 at 41330–41331), and that much of the promotional efforts of the tobacco industry are geared toward an illegal end—inducing minors to try to break the law by obtaining cigarettes and smokeless tobacco that may not legally be sold or otherwise provided to them.

The comments also argued that governmental entities are entitled to broad discretion when regulating the promotion of legal products or activities that pose dangers to society (citing, e.g., *United States* v. *Edge Broadcasting Co.*, 509 U.S. 418 (1993)). The comments argued that cigarette advertising is designed to persuade minors that any concerns about health hazards are misplaced or overstated, and that their peers are having fun because they smoke.

Contrary positions were taken by several comments. One argued that the fact that the sale of tobacco to minors is illegal under State law does not remove the constitutional protection for advertising to adults an otherwise lawful product (citing *Dunagin* v. *City of Oxford*, 718 F.2d 738, 743 (5th Cir. 1983) (en banc), cert. denied, 467 U.S. 1259 (1984).) A second comment cited the conclusion of a respected researcher that: "the suggestion that advertising messages are somehow working subliminally to twist children's minds before they are old enough to know better is a complete invention, for which there is no evidence whatever" (citing McDonald, C., "Children, Smoking and Advertising: What Does the Research Really Tell Us?," 12 *International Journal Of Advertising* 286 (1993)). These comments also argued that given the warnings that must appear in all tobacco advertising, it could not be maintained that tobacco advertising is misleading.

FDA has carefully considered these comments. They raise the fundamental question of whether tobacco advertising is protected by the First Amendment. This question cannot be disposed of based simply on the question of whether such advertising explicitly urges young people to begin purchasing or using tobacco products before it is lawful for them to do so.[90]

The Supreme Court has repeatedly said that commercial speech "related to" unlawful activity is not entitled to First Amendment protection. (See *44 Liquormart, Inc.*, 116 S.Ct. at 1505 n.7 (" By contrast, the First Amendment does not protect commercial speech about unlawful activities."); *Florida Bar* v. *Went For It*, 115 S.Ct. 2376 ("Under *Central Hudson*, the government may freely regulate commercial speech that concerns unlawful activity or is misleading"); *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 69 (1983) ("The State may also prohibit commercial speech related to illegal behavior."); *Central Hudson*, 447 U.S. at 563–564 ("The government may ban * * * commercial speech related to illegal activity." (citations omitted)).) Tobacco advertising is "related to illegal activity" in two significant respects and thus, in fact, might not be protected speech.

First, tobacco ads, at least as a legal matter, propose a commercial transaction (see *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976); *Pittsburgh Press Co.* v. *Human Relations Com'n*, 413 U.S. 376, 389 (1973)), that is, to sell cigarettes and smokeless tobacco. In proposing these transactions, the advertisers do not differentiate between adult and minor purchasers. Because sales to minors are unlawful in every State,[91] the undifferentiated offer to sell constitutes, at least in part, an unlawful offer to sell. At the very least, these advertisements are clearly perceived by minors as offers or inducements to buy and use these products. Millions of American children and adolescents act on these perceived offers. It is estimated that each year children and adolescents consume between 516 million and 947 million cigarette packages and 26 million containers of smokeless tobacco (60 FR 41314 at 41315). Thus, in a practical sense, cigarette and smokeless tobacco advertising is proposing transactions that are illegal (see *Virginia State Board of Pharmacy* v. *Virginia Citizens Council, Inc.*, 425 U.S. at 772), whether or not that is the advertiser's intent. As such, the protections of the First Amendment might not attach to such advertising because it proposes an illegal transaction. (See *Pittsburgh Press Co.*, 413 U.S. at 389; *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 638 (1985) ("The States and the Federal Government are free to prevent the dissemination of commercial speech that is false, deceptive, or misleading, * * *, or that proposes an illegal transaction * * *" (citations omitted)).)

Second, even if it is assumed, *arguendo*, that cigarette and smokeless tobacco ads are not, for constitutional purposes, literal offers to sell to minors, they nonetheless are "related to" an unlawful activity. Whether it is the advertiser's intent or not, as explained in sections VI.D.3. through VI.D.6. of this preamble, cigarette and smokeless tobacco advertising has a powerful appeal to children and adolescents under the age of 18 and through this appeal, by means of the image that it projects, it has an effect on a young person's decision to use, and thus to attempt to purchase, tobacco products. Yet, as stated above, sale of tobacco products to minors is unlawful in all 50 States, and the purchase, possession, or use of tobacco products by minors is unlawful in a majority of States.[92] Thus, the appeal of tobacco advertising to minors is such that this type of advertising can appropriately be viewed as encouraging, and thus being "related to", illegal activity. As a result, it is arguable that, without more, FDA would be able to freely restrict such advertising.

Nevertheless, the advertising also relates to lawful activity—the sale of tobacco products to adults. Consequently, FDA may not have unlimited discretion to regulate tobacco advertising. (See *Dunagin* v. *City of Oxford*, 718 F.2d at 743.) At the very least, however, FDA should be afforded discretion to do what it has tried to do in these regulations; that is, to distinguish advertising that "relates to" commercial activity that, in substantial respects, is unlawful, the sale of tobacco products to children, from advertising that does not.

Significantly, the Supreme Court was confronted with a situation similar to this in *United States* v. *Edge Broadcasting*. In *Edge*, the Supreme Court upheld a Federal statute that prohibited advertising that "related to" unlawful activity (broadcast of lottery advertising by a broadcaster licensed to

[90] As explained more fully below, FDA finds unpersuasive the quote from McDonald because it does not address the means by which cigarette and smokeless tobacco product advertising influences minors' decisions on whether to purchase and use these products. Therefore, the agency turns to the legal issue raised by the comments.

[91] "State Laws on Tobacco Control—United States, 1995," *Morbidity and Mortality Weekly Report (MMWR)*, CDC, DHHS, vol. 44, No. ss–6, pp. 16–17, November 3, 1995.

[92] *Id.*

a State that does not allow lotteries), but not advertising that did not relate to unlawful activity (broadcasting of lottery advertising by a broadcaster licensed to a State that allowed a lottery.)

Edge was recently cited with approval by the plurality opinion in *44 Liquormart Inc.*, 116 S.Ct. at 1511. Justice Stevens (joined by Justices Thomas, Kennedy, and Ginsburg) reasoned that the statute in *Edge* "was designed to regulate advertising about an activity that had been deemed illegal in the jurisdiction in which the broadcaster was located." He contrasted the statute in *Edge* to the statute in *44 Liquormart* which "targets information about entirely lawful behavior" (*Id.*). Thus, the Supreme Court has countenanced distinctions in how speech is regulated that are based on whether the underlying conduct to which the speech relates is *entirely lawful* or not. That is exactly the type of distinction that FDA is drawing here.

Thus, a credible argument can be made that advertising of cigarettes and smokeless tobacco, at least to the extent that it is related to sale of these products to children under 18, is not speech protected by the First Amendment, and thus that the regulations that FDA is adopting restricting such advertising are subject only to review under an arbitrary or capricious standard. (See *Florida Bar* v. *Went For it, Inc.*, 115 S.Ct. at 2376.) However, FDA is not relying solely on this analysis. Alternatively, FDA has assumed that a *Central Hudson* test, such as that applied in *Edge*—for products that relate to both lawful and unlawful transactions—would be appropriate here. Therefore, a full analysis of these restrictions under *Central Hudson* follows.

Before proceeding to the *Central Hudson* analysis and considering the comments that bear on it, FDA wants to emphasize that, even if the First Amendment applies to tobacco advertising, the restrictions that the agency is adopting have very limited impact on those attributes of commercial speech that are protected by the First Amendment. In *44 Liquormart, Inc.*, a plurality of the Supreme Court reemphasized that commercial speech is protected solely because of the informational value:

> Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to *who is producing and selling what product, for what reason, and at what price.* So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.

116 S.Ct. at 1505 (emphasis added), quoting *Virginia Board of Pharmacy* v. *Virginia Citizens Consumer Council.*

The restrictions that FDA is adopting have virtually no effect on the core informational function of commercial speech as described in *44 Liquormart, Inc.* and *Virginia Board of Pharmacy.* Except for billboards within 1,000 feet of schools and playgrounds, which, as explained below, present special circumstances, FDA is not restricting the ability of a manufacturer, distributor, or retailer to inform the public about what they are selling, why they are selling it, or the price of their products or, for that matter, about the characteristics of their products or about any other aspect of what they sell. FDA's concerns are about the ability of manufacturers to use images, color, and peripheral presentations (such as sponsorship) in their advertising and promotion of their products to create particular appeal for children and adolescents under 18. Thus, FDA has designed the restrictions that it is adopting to ensure that adults can continue to be informed by the information in tobacco advertising while restricting the noninformative aspects of advertising that appeal to children and adolescents under the age of 18. The agency will explain how it has achieved this end in the discussion that follows.

4. Is the Asserted Government Interest Substantial?

Assuming that the *Central Hudson* test applies, "[t]he State must assert a substantial interest to be achieved by restrictions on commercial speech." (See *Central Hudson*, 447 U.S. at 564.) In the 1995 proposed rule, FDA stated that this prong of the *Central Hudson* test was satisfied because the proposed regulations serve the substantial Government interest of protecting the public health. FDA stated that the advertising restrictions will help to reduce the use of cigarettes and smokeless tobacco by those who are "the most vulnerable to addiction and, perhaps, the least capable of deciding whether to use the products. Decreased use of these products will reduce the risk of tobacco-related illnesses and deaths" (60 FR 41314 at 41354).

Most of the comments that FDA received on this issue, even some from those who otherwise opposed the agency's proposed restrictions, agreed with the agency that it has a substantial interest in protecting the health of individuals under 18 years of age.

(5) Two comments, however, said that the interest asserted by FDA is insufficient to justify the proposed restrictions on speech. One of those comments said that smoking is a legal and widespread activity, and that there is no congressional policy against smoking. One comment said that while the Government has a substantial interest in ensuring that tobacco products are used by adults only, FDA is not empowered to protect that interest.

FDA strongly disagrees with the latter comments. The Government's interest in the public health, and particularly in the well-being of minors, is well-established. (See *Action for Children's Television* v. *FCC*, 58 F.3d 654, 661 (D.C. Cir. 1995) and 60 FR 41314 at 41354.) In fact, the Supreme Court has found that there is a compelling, not merely a substantial, interest in protecting the physical and psychological well-being of children, *New York* v. *Ferber*, 458 U.S. 747, 756–57 (1982), and that the Government's interest in the well-being of youth and in parents' claim to authority in their own household can justify the regulation of otherwise protected expression, *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 749 (1978). (See also *Denver Area Educational Telecommunications Consortium* v. *FCC*, 64 U.S.L.W. 4706 (in press) (June 28, 1996).)

As the agency has explained in section II.B. and in the 1996 Jurisdictional Determination annexed hereto, cigarettes and smokeless tobacco are drug delivery devices that are subject to regulation as devices under the act. Their use by children and adolescents under 18 presents serious risk to the health of this segment of the population. For example, studies show that the age one begins smoking influences the amount of smoking one will engage in as an adult and will ultimately influence the smoker's risk of tobacco related morbidity and mortality (60 FR 41314 at 41317). In addition, the risk of oral cancer increases with increased exposure to smokeless tobacco products (60 FR 41314 at 41319). Thus, the health of children and adolescents is related to their use of cigarettes and smokeless tobacco.

FDA's compelling interest in the health and well-being of minors supports restrictions on cigarette and smokeless tobacco advertising to ensure

that advertising does not undermine FDA's restrictions on the sale of these products.

One comment said that while FDA's articulated interest in protecting minors from harm clearly is substantial, this interest is not served by FDA's regulations. According to the comment, the only goal served directly by the proposed regulations is that of delegitimatizing smoking. Two comments said that under the guise of protecting adolescents and children, FDA is trying to "'save' all Americans from the 'evils' of smoking." Two comments said that the agency is trying to prevent cigarette advertising from presenting smoking in a positive light. One comment, citing *Carey* v. *Population Services International*, 431 U.S. 678 (1977), said that the Government cannot restrict cigarette advertising because it legitimizes or favorably influences a young person's views toward tobacco products.

FDA finds no merit in these comments. Advertisements for cigarette and smokeless tobacco are not banned by the restrictions that FDA is adopting. For example, the companies are free to use advertising in almost all media that communicates to adults about the price, taste, or joys of using their product, as long as they do so using black-and-white, text-only advertisements, or using imagery and color in publications read primarily by adults. Thus, it is simply not true that manufacturers will be prevented from presenting tobacco use in a positive light or that they will be prevented from conveying truthful, nonmisleading information in almost all media.

These regulations are intended, however, as explained in section VI.E. of this document, to prevent manufacturers from advertising their tobacco products in a way that encourages underage individuals to purchase these products. They are authorized by sections 520(e) and 502(q) of the act and are in no way inconsistent with *Carey* v. *Population Services International*.

Carey involved a challenge to a law that banned all advertisement of contraceptives. The Government argued that advertising contraceptives would legitimize sexual activity of young children. The Supreme Court said that this basis was not a justification for validating suppression of expression protected by the First Amendment (431 U.S. at 701).

Carey is distinguishable from the present situation in several ways. The advertisements in that case stated the availability of products and services that were not only entirely legal but were constitutionally protected because they involved the exercise of a fundamental right (*Id.*). (The Court also struck down other provisions of the law that prohibited distribution of contraceptives to anyone under the age of 16 and by anyone other than a licensed pharmacist.) Cigarettes and smokeless tobacco are neither lawful for all people nor constitutionally protected. The sale of these products to individuals under 18 is unlawful in every State (see also, 42 U.S.C. 300x-26), and possession, purchase, or use of at least some tobacco products by this segment of the population is unlawful in a majority of States.[93] Moreover, there was no credible suggestion in any of these comments that the restrictions on the sale of these products infringe on the exercise of a fundamental right.

The Supreme Court in *Carey* made clear the limited coverage of its holding. (See 431 U.S. at 702, n. 29 ("We do not have before us, and therefore express no views on, state regulation of the time, place, or manner of such commercial advertising based on these or other state interests.").) Thus, given the significant differences in the two situations, *Carey* does not limit FDA's ability to adopt conditions on advertising that are designed to ensure that restrictions on sale to minors are not undermined.

(6) Finally, a group of comments on this first prong of the *Central Hudson* test attacked FDA for being paternalistic. These comments said that a principal theme of commercial speech doctrine is a societal intolerance for Government-enforced ignorance designed to "help" consumers who are not trusted by bureaucrats to evaluate advertising for themselves. One comment said that how to balance short-term gratification against long-term risk is a uniquely personal analysis that is best left to individual autonomy rather than Government censorship. The comment said that people must be trusted to perceive their own best interests without Government intervention in the information flow. These comments take on a particular significance in light of the plurality's statement in *44 Liquormart, Inc.* v. *Rhode Island*, 116 S.Ct. at 1508, that "[t]he First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good."

[93] *Id.*

FDA has no disagreement with these comments with respect to individuals and, in fact, finds these regulations cannot fairly be characterized as paternalistic with respect to that population group. These regulations do not prohibit the inclusion of any information in advertising. They also do not impose the type of ban on accurate commercial information that has characterized the limitations on commercial speech that the Supreme Court has branded as paternalistic. (See, e.g., *44 Liquormart, Inc.*, 116 S.Ct. at 1510; *Virginia Bd of Pharmacy*, 425 U.S. at 769-770.)

The agency acknowledges, however, that in another respect, these regulations are paternalistic. These regulations are specifically aimed at protecting children and adolescents under the age of 18 from the appeal of tobacco advertising. The agency finds however, that for it to be paternalistic with respect to children and adolescents in no way offends the First Amendment or Supreme Court precedent. (See *Denver Area Communications Consortium, Inc.* v. *FCC*, No. 95-124 (U.S. June 28, 1996) *slip op.* at 25.) Nothing in *44 Liquormart, Inc.*, for example, suggests in any way that government may not be paternalistic with respect to children and adolescents under the age of 18.

In fact, the Supreme Court has stated: "* * * [T]he law has generally regarded minors as having a lesser capability for making important decisions." (See *Carey* v. *Population Services International*, 431 U.S. at 693, n. 15.) Given these facts—that most cigarette smokers smoke their first cigarette before 18, that children and adolescents who use tobacco products quickly become addicted to them before they reach the age of 18, that among smokers aged 12 to 17 years, 70 percent regret their decision to smoke, and 66 percent state that they want to quit (60 FR 41314)—the decision to smoke is among the most important that an individual will make. Significantly, all 50 States have prohibited sales of cigarettes to people under 18 years of age. These regulations have been tailored to help ensure that individuals do not make a decision on whether to smoke before they are 18 and have a greater capacity to understand the consequences of their actions, and that they are not influenced to make this decision before that time by advertising. At the same time, FDA has sought to ensure that the restrictions do not burden any more speech than is necessary to accomplish this goal. Thus, FDA's purpose is not inconsistent with law, commercial speech doctrine, or the

country's precepts of individual autonomy.

D. Evidence Supporting FDA's Advertising Restrictions

1. Introduction

Having considered the preliminary inquiry and the first prong of the *Central Hudson* analysis, the agency turns to the heart of this analysis, whether the restrictions on cigarette and smokeless tobacco advertising that FDA is imposing are in proportion to the interest that it is seeking to advance. To meet its burden on this issue, FDA first must show that tobacco advertising plays a concrete role in the decision of minors to smoke, and that each specific restriction on this advertising that it is adopting will contribute to limiting its effects and thus to protecting the health of children and adolescents under the age of 18. The extensive evidence in this proceeding fully supports these judgments.

2. Do the Regulations Directly Advance the Governmental Interest Asserted?

In *Central Hudson*, the Supreme Court said that any limitation on commercial speech that the State imposes "must be designed carefully to achieve the State's goal" (447 U.S. at 564). "* * * [T]he restriction must directly advance the State interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose" (*Id.*).

The Supreme Court elaborated on what this aspect of the *Central Hudson* test requires in *Edenfield* v. *Fane*, 507 U.S. 761, 770–771 (1993);

> It is well-established that "[t]he party seeking to uphold a restriction on commercial speech carries the burden of justifying it." * * * This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree * * *. Without this requirement, a state could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression.

In *Edenfield*, the Court struck down a Florida ban on in-person solicitation by Certified Public Accountants (CPA's) because the State board failed to demonstrate that the harm it recited was real.

> It presents no studies that suggest personal solicitation of prospective business clients by CPAs creates the dangers of fraud, overreaching, or compromised independence that the Board claims to fear. The record does not disclose any anecdotal evidence, either from Florida or another State, that validates the Board's suppositions. (*Id.*)

In *Rubin* v. *Coors*, the Court struck down a section of the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) that prohibited beer labels from displaying alcohol content because the Government failed to demonstrate that this restriction would alleviate the recited harm to a material degree. (See 115 S.Ct. at 1592.) The Court characterized the Government's regulatory scheme as "irrational" (*Id.*). See also, Justice Stevens' opinion in *44 Liquormart*, 116 S.Ct. at 1509, 1510. (In striking down Rhode Island's ban on price advertising for failure to demonstrate that the restrictions would advance the State's interest, Stevens, joined by Justices Kennedy, Ginsburg, and Souter, found that while the record "suggests that the price advertising ban may have some impact on the purchasing patterns of temperate drinkers of modest means * * * no evidence [has been presented] to suggest that its speech prohibition will significantly reduce market-wide consumption." Therefore, Stevens stated that "[s]uch speculation certainly does not suffice when the State takes aim at accurate commercial information for paternalistic ends.")

Thus, under the applicable case law, to adopt the proposed restrictions on cigarette and smokeless tobacco advertising, FDA must find that it can conclude from the available evidence that: (1) Advertising plays a material role in the process by which children and adolescents decide to begin or to continue to use these products; and (2) Limitations on advertising will contribute in a direct and material way to FDA's efforts to ensure that the restrictions it is adopting on the sale and use of tobacco products to minors are not undermined.

Contrary to what some comments asserted, it is not necessary for FDA to establish by empirical evidence that advertising actually causes underage individuals to smoke, or that the restrictions on advertising will directly result in individuals that are under 18 ceasing to use cigarettes or smokeless tobacco. It is not necessary in satisfying this prong of *Central Hudson* for the agency to prove conclusively that the correlation in fact (empirically) exists, or that the steps undertaken will completely solve the problem. (See *United States* v. *Edge Broadcasting Co.*, 509 U.S. 418, 434–35.) Rather, the agency must show that the available evidence, expert opinion, surveys and studies provide sufficient support for the inference that advertising does play a material role in children's tobacco use.

In the 1995 proposed rule, FDA suggested that its judgment as to whether the governmental interest involved was directly advanced by its actions was entitled to some deference. "The Supreme Court has stated that, when determining whether an action advances the governmental interest, it is willing to defer to the 'common sense judgments' of the regulatory agency as long as they are not unreasonable" (citing, *Metromedia Inc.* v. *City of San Diego*, 453 U.S. 490, 509 (1981) (60 FR 41314 at 41354)).

Several comments took issue with this suggestion. One comment said that FDA had mischaracterized Supreme Court jurisprudence, and two comments said that courts will defer only to common sense judgments of legislatures.

FDA disagrees with those comments. In *Florida Bar* v. *Went For It, Inc.*, the Supreme Court said that it had permitted "litigants," which it did not limit to State legislatures, to justify speech restrictions by "studies and anecdotes pertaining to different locales altogether, * * * or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and "simple common sense * * *" (115 S.Ct. at 2378). Thus, FDA's reliance on common sense (which, as made clear in section VI.D.3. through VI.D.6. of this document, provides only part of the basis for FDA's findings) is justified.

(7) One comment said that, rather than giving FDA deference, courts review with special care any regulations that suppress commercial speech to pursue a nonspeech-related policy.

FDA disagrees with this comment for two reasons. First, these regulations do not suppress commercial speech. While they limit such speech, they leave open significant means of communication about these products. Second, this comment derives specifically from footnote 9 of *Central Hudson*, 447 U.S. at 566 ("We review with special care regulations that entirely suppress commercial speech in order to pursue a nonspeech-related policy."). In that case, the Supreme Court found that control of demand for electricity was a speech-related policy (see 447 U.S. at 569). Similarly, the policy that FDA seeks to advance here, control of demand for cigarettes and smokeless tobacco by minors, is a speech-related policy.

(8) Finally, one comment said that FDA claimed deference for its common sense judgments to deflect attention from the lack of a factual basis for the 1995 proposed rule. Two comments, however, stated that FDA has compiled a record on the problem that is more extensive than any that existed in any of the cases in which the Supreme Court upheld restrictions on commercial speech.

In the discussion that follows, FDA reviews the evidence on whether cigarette and smokeless tobacco advertising affects the decision by minors to use these products, and whether the restrictions on advertising that it is imposing will limit the effect to a material degree. This review demonstrates that FDA's judgment on these issues is supported not only by common sense but by studies, anecdotes, history, expert consensus documents, and empirical data. All of this evidence provides support that restrictions on the advertising of these products will directly advance the Government's interest in protecting the health of children and adolescents under 18 years of age.

3. Is There Harm? Does Advertising Affect the Decision by Young People to Use Tobacco Products?

a. *In general.* In the preamble to the 1995 proposed rule, FDA stated that perhaps the most compelling piece of evidence supporting restrictions was that these products were among the most heavily advertised and widely promoted products in America. The agency cited the most recent Federal Trade Commission (FTC) figures of overall expenditures for 1993, that indicated that over $6.1 billion had been spent by the cigarette and smokeless tobacco industries to promote their products in diverse media. These include magazines, newspapers, outdoor advertising, point of purchase, direct mail, in-store, dissemination of nontobacco items with brand identification, and sponsorship of cultural and sporting events.

(9) Several comments from the tobacco industry and the advertising industry criticized FDA's reliance on the immensity of advertising expenditures that show that tobacco products are heavily advertised. The comments claimed that the size of the industry advertising budget is not evidence that it is effective in causing young people to smoke.Conversely, one comment concluded that:

[h]ighly repetitious ad exposure likely leads to judgment biases in both risk and social perceptions, such as assessments of smoking prevalence and the social acceptance experienced by smokers.

The largest psychological association, in its comments, agreed and stated that research indicates that young people are indeed exposed to substantial and unavoidable advertising and promotion,[94] even though they have been banned from radio and television. Referencing numerous studies, this comment stated further that:

there is considerable evidence that young people are exposed to tobacco ads, that those who smoke are especially likely to be aware of cigarette advertising, and that liking of cigarette advertising among young people is predictive of smoking behavior * * *.

The comment continued that increasing one's exposure to advertising and promotions creates persuasion, and that reducing that exposure will impede that process.[95] One study[96] found that even brief exposure to tobacco advertising can cause some young people to have more favorable beliefs about smokers.[97]

FDA did not cite the industry's expenditures to indicate that the size of the industry's advertising budget was, in and of itself, a problem, but rather to show that the very size of the campaign, and the resultant ubiquity and unavoidability of the advertising in all media, created a climate that influences young people's decisions about tobacco use. The ubiquity creates what FDA referred to in the preamble to the proposed rule (60 FR 41314 at 41343), as "friendly familiarity" that makes smoking and smokeless tobacco use seem respectable to young people. In its comments, the advertising agency that coined this phrase in the 1960's has protested that FDA used the phrase improperly. However, regardless of the firm's protest, the agency finds that this phrase "friendly familiarity" accurately describes the effect of massive marketing that uses a variety of media and saturates potential consumers with information and imagery. Researchers have found that "the ubiquitous display of messages promoting tobacco use clearly fosters an environment in which experimentation by youth is expected, if not implicitly encouraged."[98]

b. *Evidence regarding young people's exposure to, recall of, approval of, and response to advertising.* Many studies have demonstrated that young people are aware of, respond favorably to, and are influenced by cigarette advertising. In the preamble to the 1995 proposed rule, FDA presented a number of studies examining young people's exposure to, recall of, approval of, and response to cigarette advertising.[99] Collectively, these studies showed that children who smoke are more likely to correctly identify cigarette advertisements and slogans in which the product names or parts of the slogans have been removed than are children who do not smoke, and that exposure to and approval of cigarette advertising were positively

[94] Fischer, P. M., M. P. Schwartz, J. W. Richards, A. O. Goldstein, and T. H. Rojas, "Brand Logo Recognition by Children Aged 3 to 6 years: Mickey Mouse and Old Joe Camel," *Journal of the American Medical Association (JAMA)*, vol. 266, pp. 3145–3148, 1991; Mizerski, R., K. Straughn, and J. Feldman, "The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children," presented at Marketing and Public Policy Conference, 1994.

[95] For example, Lavidge, R. J., and G. A. Steiner, "A Model for Predictive Measurements of Advertising Effectiveness," *Journal of Marketing*, vol. 25, pp. 59–62, 1961; McGuire, W. J., "Persistence of the Resistance to Persuasion Induced by Various Types of Prior Belief Defenses," *Journal of Abnormal and Social Psychology*, vol. 64, pp. 241–248, 1962.

[96] Pechmann, C., and S. Ratneshwar, "The Effects of Antismoking and Cigarette Advertising on Young Adolescents' Perceptions of Peers who Smoke," *Journal of Consumer Research*, vol. 21, pp. 236–251, 1994.

[97] See also, Hock, J., P. Gendall, and M. Stockdale, "Some Effects of Tobacco Sponsorship Advertisements on Young Males," *International Journal of Advertising*, vol. 12, pp. 25–35, 1993.

[98] Bonnie, R. J., and B. S. Lynch, "Time to Up the Ante in the War on Smoking," *Issues in Science and Technology*, vol. 11, pp. 33–37, 1994.

[99] Chapman, S., and B. Fitzgerald, "Brand Preference and Advertising Recall in Adolescent Smokers: Some Implications for Health Promotion," *American Journal of Public Health*, vol. 72, pp. 491–494, 1982; Aitken, P. P., and D. R. Eadie, "Reinforcing Effects of Cigarette Advertising on Under-Age Smoking," *British Journal of Addiction*, vol. 85, pp. 399–412, 1990; Goldstein, A. O., P. M. Fischer, J. W. Richards, and D. Creten, "Relationship Between High School Student Smoking and Recognition of Cigarette Advertisements," *Journal of Pediatrics*, vol. 110, pp. 488–491, 1987; Botvin, G. L., C. J. Goldberg, E. M. Botvin, and L. Dusenbury, "Smoking Behavior of Adolescents Exposed to Cigarette Advertising," *Public Health Reports*, vol. 108, pp. 217–224, 1993; Klitzner, M., P. J. Gruenewald, and E. Bamberger, "Cigarette Advertising and Adolescent Experimentation With Smoking," *British Journal of Addiction*, vol. 86, pp. 287–298, 1991; Aitken, P. P., D. R. Eadie, G. B. Hastings, and A. J. Haywood, "Predisposing Effects of Cigarette Advertising on Children's Intentions to Smoke When Older," *British Journal of Addiction*, vol. 86, pp. 383–390, 1991; O'Connell, D. L., H. M. Alexander, A. J. Dobson, D. M. Lloyd, G. R. Hardes, H. J. Springthorpe, and S. R. Leeder, "Cigarette Smoking and Drug Use in Schoolchildren: II. Factors Associated With Smoking," *International Journal of Epidemiology*, vol. 10, pp. 223–231, 1981; Alexander, H. M., R. Calcott, A. J. Dobson, G. R. Hardes, D. M. Lloyd, D. L. O'Connell, et al., "Cigarette Smoking and Drug Use in Schoolchildren: IV. Factors Associated With Changes in Smoking Behaviour," *International Journal of Epidemiology*, vol. 12, pp. 59–66, 1983.

related to smoking behavior and intentions to smoke.

(10) Several comments from the tobacco industry and advertising groups were critical of these studies. The comments argued that none of the studies demonstrated that recognition of, exposure to, or approval of, cigarette advertising caused the initiation of cigarette smoking; that smoking in fact engendered increased exposure to, approval of and recognition of cigarette advertising; and that the samples were inappropriate and not generalizable. One comment took issue with the way in which smoking transition was defined in the Aitken study cited by the agency.[100] In addition, the same comment questioned the use of self-reported measures of cigarette advertising exposure in several of the studies.

FDA agrees that none of these studies individually is sufficient to: (1) Establish that advertising has an effect of directly causing minors to use tobacco products; (2) determine directionality—that is, did advertising cause the observed effect, or are smokers more observant of advertising (the Klitzner, Aitken, et al., and Alexander studies attempted to control for this effect); or (3) define terms or disprove the influence of peer pressure in smoking behavior.

However, none of these defects is sufficient to render it inappropriate for FDA to use the studies as evidence. The studies, in fact, present useful insight into how advertising affects smoking behavior and when considered with other studies provide sufficient support for the agency's conclusions. For example, one study[101] stated that the results show that part of the process of becoming a smoker is to adopt a preferred brand, which the advertising and tobacco industries concede is affected by advertising. Moreover, these studies clearly indicate that, at a minimum, advertising plays an important role in developing an appealing and memorable image for brands. Finally, FDA recognizes that advertising may not be *the* most important factor in a child's decision to smoke; however, the studies cited by the agency establish that it is a substantial, contributing, and therefore material, factor.

c. *Evidence concerning overestimation of smoking prevalence.* In the preamble to the 1995 proposed rule, FDA cited numerous studies finding that children's misperceptions about the prevalence of smoking are related to smoking initiation and the progression to regular smoking.[102] Further, the evidence indicated that cigarette advertising plays a role in leading young people to overestimate the prevalence of smoking.

(11) Several comments criticized the overestimation of smoking prevalence studies presented by FDA in its 1995 proposed rule. The most common criticism was that the cited studies did not demonstrate a causal relationship between either exposure to advertising or overestimation of smoking prevalence and intentions to smoke. One comment noted that some of the cited studies did not necessarily measure "overestimation," but instead simply measured respondents' perceptions of smoking levels among their peers and adults. Another comment argued that FDA ignored other variables (such as whether or not one's friends smoked) that were predictive of smoking status or intentions to smoke.

It is true that some of the cited studies did not measure "overestimation" in the most literal sense but instead measured respondents' perceptions of smoking levels among peers and adults. However, the perceived levels were still uniformly higher among those who smoked than among those who did not. The importance of these studies is the fact that they established differences in perception between smoking and nonsmoking young people about the prevalence, and therefore the acceptability, of smoking.

d. *The effects of selected advertising campaigns that were effective with children.* In the preamble to the 1995 proposed rule, FDA presented evidence about two campaigns that appear to have been particularly effective with children, and a historical analysis of trends in U.S. smoking initiation among 10- to 20-year-olds from 1944 to 1980.[103]

FDA presented several studies finding that the "Joe Camel" campaign had a significant impact on underage smoking in the United States,[104] and that a humorous character for Embassy Regal cigarettes named "Reg" was appealing to children in the United Kingdom.[105]

FDA also cited a recent study that used data from the National Health Interview Survey to study trends in smoking initiation among 10 to 20 year olds from 1944 through 1980.[106] The study concluded that tobacco marketing campaigns that targeted women resulted in increased smoking uptake in young women and girls, but not in adults generally.[107]

The Joe Camel Campaign—In the preamble to the 1995 proposed rule,

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[100] Aitken, P. P., D. R. Eadie, G. B. Hastings, and A. J. Haywood, "Predisposing Effects of Cigarette Advertising on Children's Intentions to Smoke When Older," *British Journal of Addiction*, vol. 86, pp. 383–390, 1991.

[101] Chapman, S., and B. Fitzgerald, "Brand Preference and Advertising Recall in Adolescent Smokers: Some Implications for Health Promotion," *American Journal of Public Health*, vol. 72, pp. 491–494, 1982.

[102] Chassin, L., C. C. Presson, S. J. Sherman, E. Corty, and R. W. Olshavsky, "Predicting the Onset of Cigarette Smoking in Adolescents: A Longitudinal Study," *Journal of Applied Social Psychology*, vol. 14, pp. 224–243, 1984; Collins, L. M., S. Sussman, J. Mestel Rauch, C. W. Dent, C. A. Johnson, W. B. Hansen, and B. R. Flay, "Psychosocial Predictors of Young Adolescent Cigarette Smoking: A Sixteen-Month, Three-Wave Longitudinal Study," *Journal of Applied Social Psychology*, vol. 17, pp. 554–573, 1987; Sussman, S., C. W. Dent, J. Mestel-Rauch, C. A. Johnson, W. B. Hansen, and B. R. Flay, "Adolescent Nonsmokers, Triers, and Regular Smokers' Estimates of Cigarette Smoking Prevalence: When do Overestimations Occur and by Whom?," *Journal of Applied Social Psychology*, vol. 18, pp. 537–551, 1988; 1994 SGR, p. 192–195, citing Burton, et al., The L.A./Finland Study; Sherman, S. J., C. C. Presson, L. Chassin, E. Corty, and R. Olshavsky, "The False Consensus Effect in Estimates of Smoking Prevalence: Underlying Mechanisms," *Personality and Social Psychology Bulletin*, vol. 9, pp. 197–207, 1983; Botvin, G. J., C. J. Goldberg, E. M. Botvin, and L. Dusenbury, "Smoking Behavior of Adolescents Exposed to Cigarette Advertising," *Public Health Reports*, vol. 108, pp. 217–224, 1993.

[103] Pierce, J. P., E. Gilpin, D. M. Burns, E. Whalen, B. Rosbrook, D. Shopland, and M. Johnson, "Does Tobacco Advertising Target Young People to Start Smoking?" *JAMA*, vol. 266, pp. 3154–3158, 1991; Fischer, P. M., M. P. Schwartz, J. W. Richards, A. O. Goldstein, and T. H. Rojas, "Brand Logo Recognition by Children Aged 3 to 6 Years: Mickey Mouse and Old Joe Camel," *JAMA*, vol. 266, pp. 3145–3148, 1991; Hastings, G. B., H. Ryan, P. Teer, and A. M. MacKintosh, "Cigarette Advertising and Children's Smoking: Why Reg was Withdrawn," *British Medical Journal*, vol. 309, pp. 933–937, 1994; Pierce, J. P., L. Lee, and E. A. Gilpin, "Smoking Initiation by Adolescent Girls, 1944 through 1988: An Association with Targeted Advertising," *JAMA*, vol. 271, pp. 608–611, 1991.

[104] Fischer, P. M., M. P. Schwartz, J. W. Richards, A. O. Goldstein, and T. H. Rojas, "Brand Logo Recognition by Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel," *JAMA*, vol. 266, pp. 3145–3148, 1991; Pierce, J. P., E. Gilpin, D. M. Burns, E. Whalen, E. Rosbrook, D. R. Shopland, and M. Johnson, "Does Tobacco Advertising Target Young People to Start Smoking?", *JAMA*, vol. 266, pp. 3154–3158, 1991.

[105] Hastings, G. B., H. Ryan, P. Teer, and A. M. MacKintosh, "Cigarette Advertising and Children's Smoking: Why Reg was Withdrawn," *British Medical Journal*, vol. 309, pp. 933–937, 1994.

[106] Pierce, J. P., L. Lee, and E. A. Gilpin, "Smoking Initiation by Adolescent Girls, 1944 through 1988: An Association with Targeted Advertising," *JAMA*, vol. 271, pp. 608–611, 1994.

[107] *Id.*; See also Pierce, J. P., and E. A. Gilpin, "A Historical Analysis of Tobacco Marketing and Uptake of Smoking by Youth in the United States: 1890–1977," *Health Psychology*, vol. 14, pp. 500–508, 1995. Burns, D. M., L. Lee, J. W. Vaughn, Y. K. Chiu, and D. R. Shopland, "Rates of Smoking Initiation Among Adolescents and Young Adults, 1907–1981," *Tobacco Control*, vol. 4, supp. 1, pp. 52–58, 1995.

FDA described R. J. Reynolds' (RJR) use of the cartoon Joe Camel as the centerpiece of a very successful campaign that sought to revitalize Camel cigarettes. The preamble to the 1995 proposed rule described two sets of studies. One set indicatedthat the campaign was so pervasive and juvenile that children as young as 3 to 6 years old, recognized the Joe Camel character and knew that he sold cigarettes. The other set of studies provided evidence that the campaign had resulted in Camel's share of the adolescent youth market rising from below 4 percent of underage smokers to between 13 and 16 percent in a short period of time (60 FR 41314 at 41333).

This description of the Camel campaign produced over 200 comments from the advertising, tobacco, legal and publications industries, members of legislative bodies, State and local government officials and agencies, health providers and organizations, academics, and the general public. The latter included many anecdotal references to children's positive reactions to the campaign, including comments from parents, teachers, and children themselves. One comment, from a State attorney general, stated that "In 1993, after reviewing research documenting the extremely powerful effect R. J. Reynolds' 'Cool Joe Camel' ads have on children, I joined with 26 other State Attorneys General in calling" for a ban on that campaign.

(12) The comments differed radically in assessing the accuracy of FDA's use of Joe Camel as evidence of the effect of a youth-oriented campaign. A number of comments stated that the Joe Camel campaign was neither directed toward children nor effective at reaching them, and that FDA's evidence did not support the agency's position. The comments criticized the studies cited by FDA and referred to other studies that they believed supported their contention that the Joe Camel campaign was not directed toward children. For example, one comment argued there was no evidence to suggest that brand recognition had any influence on smoking initiation. This same comment also complained that the studies relied on by FDA were ungeneralizable and were from medical journals, not marketing journals. Another comment argued that the Pierce study cited by the agency had demonstrated only that Camel and Marlboro were thought to be the most advertised brands across all respondent age groups.[108]

Several comments argued that the finding in the Fischer and Mizerski studies that children recognize Joe Camel did not necessarily indicate that they liked Joe Camel, let alone that they would be more likely to take up cigarette smoking.[109] For example, some comments from the tobacco industry discussed the Mizerski study funded by RJR and criticized FDA's use of it. FDA, as noted above, had cited this study in the 1995 proposed rule to show that 72 percent of 6 year olds and 52 percent of children between the ages of 3 and 6 could identify Joe Camel.[110] This exceeded the recognition rates for Ronald McDonald, a character frequently advertised on television. The comments, however, stated that the results of the study indicated that while recognition of the cartoon trade characters and liking of the associated product each tended to increase with age, for Joe Camel, at every age, children who recognized Joe Camel were more likely to report disliking cigarettes than did children who did not recognize Joe Camel.

Several comments also cited another study by Henke (the Henke Study),[111] which found results suggesting that even though recognition of brand advertising symbols increases with age, recognition does not necessarily indicate favorable attitudes about a product. Although the children in the study were generally able to recognize Joe Camel, 97 percent of the respondents reported that cigarettes were "bad for you," and all but one of the minors stated that cigarettes were for adults. Several comments also mentioned a November 1993 Roper survey of over 1,000 young people between ages 10 and 17.[112] This survey found that 97 percent of those youths who recognized "Joe Camel" had negative opinions about smoking.

Finally, these comments also stated that the Joe Camel campaign did not increase the smoking rates of minors. The comments cited to data from CDC's Office of Smoking and Health's (OSH's) study "1993 Teenage Attitudes and Practices Survey, Public Use Data Tape" (TAPS II)[113] that show that, contrary to FDA's assertion and citation to data from Monitoring the Future,[114] there has not been an increase in youth smoking rates as a result of the Joe Camel campaign.

Conversely, several comments from professional associations and many from private citizens supported FDA's tentative conclusion that some tobacco advertising campaigns—particularly Joe Camel—are very effective with children. Some comments referred to the same research evidence cited by FDA in the 1995 proposed rule.

It is not the agency's position that the recognition studies provide evidence of the effect of this campaign upon the smoking habits of children. The Henke study found that children age 6 and younger do not smoke and uniformly report that they dislike smoking.[115] However, although young children usually dislike smoking, many of them later do smoke. FDA's point in using the recognition studies was that advertising for Camel cigarettes was so pervasive and appealing to young people that children saw the advertisements and assimilated them even though they were too young to even think about smoking. These studies provide important evidence of the pervasiveness of tobacco advertising.

The Henke study (cited by comments opposed to the 1995 proposed rule), which reported that although recognition of brand advertising symbols increases with age, recognition does not necessarily indicate favorable attitudes toward a product—is subject to

[108] Pierce, J., et al., "Does Tobacco Advertising Target Young People to Start Smoking? Evidence from California," *JAMA*, vol. 266, No. 22, p. 3154–3158, 1991.

[109] Fischer, P. M., et al., "Brand Logo Recognition by Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel," vol. 266, pp. 3145–3148, 1991; Mizerski, R., "The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children," presented at "Marketing and Public Policy Conference," May 13–14, 1994.

[110] Independent research by Fischer found that 91 percent of 6 year-olds and 30 percent of 3 year-olds recognized Joe Camel. Fischer, P. M., J. W. Schwartz, A. O. Goldstein, and T. H. Rojas, "Brand Logo Recognition by Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel," *JAMA*, vol. 266, pp. 3145–3148, 1991.

[111] Henke, L., "Young Children's Perceptions of Cigarette Brand Advertising Symbols: Awareness, Affect and Target Market Identification," *Journal of Advertising*, in press.

[112] Roper Starch, "Advertising Character and Slogan Survey," pp. 16–17, November 1993 (conducted for R. J. Reynolds Tobacco Co.).

[113] "1993 Teenage Attitudes and Practices Survey, Public Use Data Tape," CDC, OSH, p. 3, 1993 (unpublished data).

[114] Johnston, L. D., P. M. O'Malley, and J. G. Bachman, *National Survey Results on Drug Use from the Monitoring the Future Survey, 1975–1993: vol. I: Secondary School Students*, Rockville, MD, DHHS, Public Health Service (PHS), National Institutes of Health (NIH), National Institute on Drug Abuse (NIDA), NIH Pub. No. 94–3809, 1994.

[115] Henke, L., "Young Children's Perceptions of Cigarette Brand Advertising Symbols: Awareness, Affect and Target Market Identification," *Journal of Advertising*, in press.

many of the same criticisms as those leveled by the tobacco industry at studies cited by FDA, and in fact contains more serious flaws that suggest that its results should be interpreted with a great deal of caution.

First, the sample employed in this study was both inadequate to test the author's hypotheses, and is nongeneralizable to other populations. There were only 83 participants in the study; this sample is too small to allow for adequate power to test the author's fine-grained hypotheses concerning age. In fact, the inadequate sample size led the author to collapse the participants into three age groups for many analyses, which meant that 3-year olds were placed into the same group as children who were 5-and-a-half years old. In addition, participants all were recruited from middle class neighborhoods in the same "small coastal town" in Maine. Racial breakdowns were not presented, but it is likely, given the demographics of upstate Maine, that whites were overrepresented and African-Americans underrepresented. In addition, males were overrepresented. At best, the sample represents the population of 3- to 8-year-old children in that small town in Maine, but it is not even clear that this is the case.

Second, the interview process used to collect data in the study, and even the nature of the interviewers themselves, greatly limit the conclusions that may be drawn from the study. The study used six different interviewers, five of whom were college undergraduates, and one of whom was a child care professional. Each interviewer participated in but a single training session before collecting data. Further, not all of the interviewers were blind to the hypotheses of the study. This is a great concern, considering the very subjective nature of the interview. It was not reported whether who the interviewer was had significant effects on the results of the study (and indeed the sample size is probably too small to permit such an analysis), but it is unlikely that all six interviewers conducted the interviews in precisely the same way or elicited the same types of responses from the participants.

The interview process itself appeared to be highly biased and subjective in nature. It is not surprising that the children overwhelmingly reported that cigarettes were "bad for you" and were meant for adults, given that they were being interviewed face-to-face by adult strangers. Any potential differences attributable to recognition of cigarette advertising were probably masked by the intimidating presence of the interviewer. Further, the answers to questions such as "Do you like this product or not like this product?," and "Is this product good for you or bad for you?" can depend to a great extent on the manner in which they are asked.

Overall, the small, nonrepresentative sample, the excessive number of questionable interviewers, and the interview process itself all cast serious doubt on the value of this study. Finally, as noted in the previous paragraph, children almost uniformly report that smoking is bad, but many of them will smoke in the future in part due to the appeal created for the product by advertising.

Additional studies—Two additional studies on this issue of recognition were submitted to the docket. The first, an article by Joel S. Dubow,[116] merely commented on several general studies on recall of advertising. The result was that children and especially adolescents remember more about advertising than adults. (FDA agrees with the point that advertising is more memorable to children.) Further, all the advertisements tested, and those that children and adolescents remembered so well, were either on television or presented in a movie theater setting.

Children and adolescents are more visually oriented than adults; they remember what they see on television. However, as noted, commercials for cigarettes are not on television and so the high recognition rates of Joe Camel cannot be accounted for on that basis. Thus, the study begs the same question that is raised by the Mizerski study: Where did those 3 to 6 year olds see the cigarette advertisements they found so memorable?

The answer may be provided by the second recognition study submitted by RJR. One study was conducted by Roper Starch in November 1993 for RJR and tested young people's recognition of advertising characters. The results of that study show that Joe Camel was recognized by 86 percent of all 10 to 17 year olds, in both aided and unaided recall. The characters with greater recognition were all televised characters: the Energizer Bunny, Ronald McDonald, the Keebler Elves, etc. Recognition scores for those characters were in the 97 percent to 100 percent range. Of more interest, 95 percent of those who recognized Joe Camel knew that he sold cigarettes, similar to the product familiarity rates for the other characters.[117]

But perhaps the most interesting answers were those provided by the children who responded that they knew that Joe Camel sold cigarettes. In response to the question, "[p]lease tell me the ways that you might have seen or heard about this character," 51 percent said the information came from a billboard advertisement, 45 percent said from an advertisement in a magazine, 32 percent said from an advertisement in the store, and 22 percent said on a tee shirt. A sizable group said they had seen him on television (42 percent). On the other hand, all the other characters were identified as having been on television (88 percent to 100 percent). Recognition based upon billboard exposure for these other characters was between 6 percent and 13 percent. Most were not recognized as having been on tee shirts.

Clearly, cigarettes are marketed differently than most consumer products; nonetheless, whatever the marketing mix used by the tobacco industry, cigarette advertisements are clearly being seen and assimilated by those too young to be interested in or to have started smoking.

A second type of study, provided evidence of the effect of this campaign on adolescent smoking rates. As noted, one comment disputed that there was a rise in young people's smoking rates that corresponded to the introduction of the Joe Camel campaign. The significance of this argument is that if smoking rates after the introduction of the Joe Camel advertising campaign did not rise, there is little reason to believe that the campaign caused young people to take up smoking. This comment referred to its own analysis of smoking trends, which it stated were derived from TAPS II[118] data and not from the data in Monitoring the Future used by FDA.[119]

FDA has provided a more detailed answer to this comment above. As explained there, the agency finds this comment to be without merit. The Monitoring the Future study is the most consistent source of data available on youth smoking rates. RJR's expert, Dr. J.

[116] Dubow, J. S., "Advertising Recognition and Recall by Age-Including Teens," *Journal of Advertising Research*, pp. 55–60, Sept/Oct 1995.

[117] "Advertising Character and Slogan Survey," pp. 10, 12, 22–23.

[118] "Current Trends: Changes in the Cigarette Brand Preferences of Adolescent Smokers—United States, 1989–1993," *MMWR*, CDC, vol. 43, pp. 577–581, Aug 19, 1994.

[119] Johnston, L. D., P. M. O'Malley, and J. G. Bachman, *National Survey Results on Drug Use from the Monitoring the Future Study, 1975–1993: Vol. I: Secondary School Students*, DHHS, PHS, NIH, NIDA, NIH Pub. No. 94–3809, 1994.

Howard Beales, III, has referred to it as "[t]he most consistent data available" to track the incidence of teen smoking over time.[120] Moreover, Dr. Beales noted that other Government studies are "sporadic" and, by implication, cannot be relied upon to give an accurate picture of overall smoking trends.

The Monitoring the Future Study indicates that from 1987 to 1993, the 30-day smoking rates and daily smoking rates for male high school seniors increased steadily, although with variations in some years.[121] During that same period, Camel's share of the youth market rose from below 4 percent to around 13 percent (60 FR 41314 at 41330).

These data do not absolutely prove that Camel advertising "caused" a rise in youth smoking. However, they do provide further evidence that the Joe Camel campaign had an effect on youth smoking rates.

(13) Comments from the tobacco industry maintained that FTC's investigation, which failed to produce "evidence to support" FTC action against RJR for the Joe Camel campaign, should have been dispositive of the issue. Therefore, the comments argued, it is inappropriate for FDA to use the campaign as evidence that advertising causes children to start to smoke. The comments maintained that the FTC review included the same studies relied upon by FDA to condemn the Joe Camel campaign.

Comments stated further that Congress has vested jurisdiction in FTC to prosecute unfair and deceptive advertising of tobacco products, and that it has sole jurisdiction in this area. (See Federal Trade Commission Act (the FTC Act) (15 U.S.C. 41).) These comments noted further that FTC has shown its ability to fulfill its responsibilities in this area, citing two recent consent agreements secured by FTC. One was against RJR for advertising that disputed some of the health risks of smoking. (See *In the matter of R. J. Reynolds Tobacco Company*, 113 FTC 344 (1990).) The other was against American Tobacco Company for allegedly misleading statements about tar and nicotine ratings. (See *In the matter of The American Tobacco Company*, Dkt. No. C-3547 (Consent Order, January 31, 1995).)

On the other hand, comments from two national health organizations alleged that the fact FTC concluded it was unable to take action against Joe Camel demonstrates that the FTC Act, as it is currently being interpreted by the Commission, is not sufficient to protect American youth from inappropriate tobacco advertising and that FDA, therefore, needs to take action under its authority.

The industry comments misapprehend FDA's citation to the Joe Camel campaign. As noted above, FDA cited to numerous studies that had been performed by independent researchers on children's recognition of the main character of a youth oriented advertising campaign (60 FR 41314 at 41333). The agency also cited to several documents that it had obtained that indicated that RJR may have intended for its Joe Camel campaign to appeal to and attract young people (60 FR 41314 at 41330). FDA's discussion of the marketing success of the Joe Camel campaign is not intended to suggest that FDA had found or concluded that the Joe Camel campaign violated any law, but that FDA had found in that success—tripling Camel's share of the youth market—support for restricting such activities in the future through rulemaking.

Moreover, FTC did not disagree with FDA's use of the campaign. In its comment to FDA on the 1995 proposed rule, FTC stated, "This decision [by FTC to close the RJR investigation without issuing a complaint] does not contradict FDA's conclusion." FTC continued that its failure to initiate legal action did not "mean that cigarette and smokeless tobacco advertising, in the aggregate, is not one of a number of factors that 'play[s] an important role in a youth's decision to use tobacco.'"[122]

(14) The other citation to the Joe Camel campaign (60 FR 41314 at 41330) utilized RJR's documents to illustrate the youth focus of one advertising campaign through use of the company's own documents. Some comments received from the tobacco industry (including one from RJR), trade associations, and some individuals disagreed with this use and stated that the Camel campaign was designed to, and did in fact, attract the attention of young adult smokers, aged 18 to 24. These comments stated that the Joe Camel campaign was directed to adult smokers, specifically existing male Marlboro smokers aged 18 to 24. The comments stated that the illustrated character Joe Camel was developed to reposition the brand by stressing images and characteristics, such as the "Smooth Moves" image, which appeal to the young adult, particularly male, Marlboro smoker.

Industry comments further stated that the company conducted no market research on nonsmokers, and that the campaign reached adult smokers aged 18 to 24 years. One comment postulated that it is merely the cartoon form of Joe Camel that causes people to mistakenly believe that Joe Camel is child-oriented. It stated further that many adult products are advertised using illustrated characters, such as the Pink Panther for fiberglass insulation, Garfield the Cat for a hotel chain, Mr. Clean for household products, and the Peanuts characters for life insurance. Moreover, RJR stated that it made efforts to ensure that the ad copy and promotional activity for Joe Camel would not appeal to minors. It said that a skateboard promotion proposed by an advertising agency was rejected by the company because it was assumed that skateboarding is disproportionately engaged in by children and adolescents. Similarly, marketing research included 25 to 34 year olds "to serve as a safety check to make sure that the concept appeal did not skew too young."

These comments further stated that Joe Camel advertisements were directed to, and reached, the intended market. Examples of publications in which the Joe Camel advertisements were placed are *Cycle World*, *Penthouse*, *Gentleman's Quarterly*, and *Road and Track*. Joe Camel's share of 18 to 24 year olds increased by 6.9 percentage points, from 3.2 in 1986, the year before Joe Camel's inception, to 10.1 by the end of 1994. The comment stated that Camel's and Marlboro's growth came at the expense of other brands. These comments are consistent with the industry's assertion that this is the whole point of cigarette advertising: to encourage current smokers to buy the advertised brand either by switching brands or remaining loyal to their existing brands. (This comment states that because there is no evidence that smoking rates have risen among adolescents, there cannot be a reason to believe that Camel's success among adolescents came from new, as opposed to existing, smokers. See section III.B. of

[120] Beales, J. H., "Teenage Smoking: Fact and Fiction," *The American Enterprise*, vol. 21, March/April 1994.

[121] Johnston, L. D., P. M. O'Malley, and J. G. Bachman, *National Survey Results on Drug Use from the Monitoring the Future Study, 1975-1994, Vol. I: Secondary School Students*, DHHS, PHS, NIH, NIDA, NIH Pub. No. 94-3809, 1995.

[122] FTC analyzed the complaint recommendation before it under its unfairness jurisdiction. An action is unfair if it causes substantial consumer injury, without offsetting benefits to consumers or competition, which consumers cannot reasonably avoid. (*International Harvester*, 194 FTC 949, 1070, 1984.)

this document for a refutation of the industry assertion that smoking rates among adolescents are static.)

In contrast, comments from health organizations and concerned citizens stated that Joe Camel has been successful in attracting underage smokers. These comments further stated the belief that the campaign was intended to attract children, citing the methods of advertising and promotion employed as evidence of its intention to appeal to children. For example, one comment stated: "* * * T-shirts and caps, like those marketed with 'Joe Camel' are found in disproportionate numbers of children."

FDA continues to believe that RJR documents do illustrate the creation of and execution of a decidedly youth-oriented campaign.

FDA finds that previously confidential RJR documents provide convincing evidence of the company's intention to attract young smokers and so-called presmokers to its Camel brand. These documents, identified as RJR marketing documents and submitted during the comment period, reflect a company policy that in order to grow and ensure a profitable future, the company must develop new brands that would appeal to and capture a share of the youth market. These young people were described as "presmokers" and "learners" in RJR marketing language and were identified as being 14 to 18 year olds.

While the documents concerning the Camel campaign (focus group reports, etc.) submitted by RJR to the rulemaking docket do not identify the under-18 group as the company's target, the implication arises from the company-submitted documents that the Camel campaign was the logical outgrowth of the planning and forecasting contained in the heretofore confidential marketing documents.

In a 1972 memo entitled "Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein," the author, Claude Teague Jr., Assistant Director of Research and Development, wrote:

[I]t may be well to consider another aspect of our business; that * * * the factors which induce a presmoker or nonsmoker to become a habituated smoker. * * * He does not start smoking to obtain undefined physiological gratifications or reliefs, and certainly he does not start to smoke to satisfy a nonexistent craving for nicotine. Rather, he appears to start to smoke for purely psychological reasons—to emulate a valued image, to conform, to experiment, to defy, to be daring, to have something to do with his hands, and the like. Only after experiencing smoking for some period of time do the physiological "satisfactions" and habituation become apparent and needed. Indeed, the first smoking experiences are often unpleasant until a tolerance for nicotine has been developed. * * * [I]f we are to attract the nonsmoker or presmoker, there is nothing in this type of product that he would currently understand or desire. We have deliberately played down the role of nicotine, hence the nonsmoker has little or no knowledge of what satisfactions it may offer him and no desire to try it. Instead, we somehow must convince him with wholly irrational reasons that he should try smoking, in the hope that he will for himself then discover the real "satisfactions" obtainable. [123]

In 1973, the same author reported in another memo, "Research Planning Memorandum on Some Thought about New Brands of Cigarettes for the Youth Market," his thoughts on how to acquire a portion of the important youth market:

[W]e should simply recognize that many or most of the "21 and under" group will inevitably become smokers, and offer them an opportunity to use our brands.Realistically, if our Company is to survive and prosper, over the long-term we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market; I believe it unrealistic to expect that existing brands identified with an over-thirty 'establishment' market can ever become the 'in' products with the youth group. Thus we need new brands designed to be particularly attractive to the young smoker, while ideally at the same time being appealing to all smokers. [124]

Mr. Teague then described the factors he thought must be taken into account in designing a brand that would attract young people:

Several things will go to make up any such new "youth" brands, the most important of which may be the image and quality-which are, of course, interrelated. The questions then are: What image? and What quality? Perhaps these questions may best be approached by consideration of factors influencing pre-smokers to try smoking, learn to smoke and become confirmed smokers. * * * For the pre-smoker and "learner" the physical effects of smoking are largely unknown, unneeded, or actually quite unpleasant or awkward. The expected or derived psychological effects are largely responsible for influencing the pre-smoker to try smoking, and provide sufficient motivation during the "learning" period to keep the "learner" period going; despite the physical unpleasantness and awkwardness of the period. * * * [125]

Mr. Teague continues with some reasons why young people smoke and then gives advice on the type of advertising campaign that would appeal to the presmoker group based on these reasons:

A. *Group Identification*—Pre-smokers learn to smoke to identify with and participate in shared experiences of a group of associates. If the majority of one's closest associates smoke cigarettes, then there is strong psychological pressure, particularly on the young person, to identify with the group, follow the crowd, and avoid being out of phase with the group's value system even though, paradoxically the group value system may esteem individuality. This provides a large incentive to begin smoking.

* * * * *

[The brand's] promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing individuality and "doing ones own thing."

B. *Stress and Boredom Relief*—The teens and early twenties are periods of intense psychological stress, restlessness and boredom. Many socially awkward situations are encountered. [the documents mentions smoking gives you something to do with your hands—find an ashtray etc.]

C. *Self-Image Enhancement*—The fragile, developing self-image of the young person needs all of the support and enhancement it can get. Smoking may appear to enhance that self-image in a variety of ways. [Values mentioned in the document include adventurousness, adult image.] If one values certain characteristics in specific individuals or types and those persons or types smoke, then if one also smokes he is psychologically a little more like the valued image. This self-image enhancement effect has traditionally been a strong promotional theme for cigarette brands and should continue to be emphasized.

D. *Experimentation*—There is a strong drive in most people, particularly the young, to try new things and experiences. This drive no doubt leads many presmokers to experiment with smoking, simply because it is there and they want to know more about it. A new brand offering something novel and different is likely to attract experimenters, young and old, and if it offers an advantage it is likely to retain those users. [126]

In March 1976 R. J. Reynolds' Research Department created a memo entitled, "Planning Assumptions and Forecast for the Period 19**-1986 for R. J. Reynolds Tobacco Company." Under a heading, The Tobacco Industry and R. J. Reynolds Tobacco Company—subheading E. Products—the memo states:

The present large number of people in the 18-35 year old age group represents the greatest opportunity for long-term cigarette sales growth. Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and

[123] Teague, C., *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein*, pp. 4-5, 1972.

[124] Teague, C., *Research Planning Memorandum on Some Thought About New Brands for Cigarettes for the Youth Market*, p. 1, 1973.

[125] *Id.*, pp. 1-2.

[126] *Id.*, pp. 6-7.

use will become the dominant brands in future years. Evidence now available * * * indicate[s] that the 14 to 18 year old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.
(Emphasis omitted.) [127]

By the mid to late 1980's, RJR was marketing its newly revitalized Camel brand to "young adults" 18 to 20 years old. According to an internal memo cited in the *Wall Street Journal*, [128] the business plan for 1990 had a single-minded focus on getting young adults, especially the 18 to 20 year olds, to smoke Camels. The brand was to be refocused on young adult smokers, aged 18 to 24 with a strong emphasis on males 18 to 20. [129]

Documents submitted by RJR in its comment detail its plans for developing and promoting Joe Camel as the spokescharacter for the brand. In language reminiscent of the 1973 Teague memo, RJR reemphasized the importance of the young adult smokers (which RJR nicknamed the "YAS")—noting that only 5 percent of smokers start after age 24. [130] The paper noted that 40 percent of the "virile" segment have made a brand choice at age 18—a brand to which they will be loyal for years or throughout their smoking career. Thus, although this document describes the YAS as 18 to 24 year olds, the company's interest appears to have been with those younger than 18 who are in the process of selecting their first brand, the 14 to 18 year olds described by Teague.

In addition, the problem, the White Paper emphasized, was that Camel needed a facelift to make it relevant to this YAS group. Research, they noted, indicates that YAS see advertising as "younger adult oriented" when it is speaking directly to them. Therefore, advertising needed to be developed to speak to the target audience, to appeal to the "hot buttons" of young people such as to "escape into imagination." "Fantasy to these smokers can mean imagining a place to escape to or an image of yourself that is better than reality."

The YAS group also relates to excitement and fun, noted the White Paper: "Younger adults center their lives on having fun in every way possible and at every time possible. Their definition of success is 'enjoying today' which differentiates them from older smokers. Advertising which incorporates an 'exciting', 'fun', 'humorous' theme provides a way for these smokers to 'feel good' about the message."

By 1988 RJR was testing its new ideas about Camel. It described the results in a *Marketing Research Report, entitled Camel "Big Idea" Focus Groups—Round II* dated September 21, 1988, and written by M. R. Bolger. The group was composed of male Marlboro smokers ages 18 to 34. Two groups were men 18 to 20, two groups were 21 to 24, and one group was age 25 to 34 to serve as a "safety check" to make sure the concept did not skew too young. Various themes were tested and one, "Smooth Moves," was received best by the younger portion of the target—those that had fewer responsibilities, are single, and go to parties. The focus groups also showed that premiums (nontobacco items) performed best among the younger portion of the group. Older smokers were more discerning and saw the items as being of little value to them. [131]

What resulted from this research was the Joe Camel campaign, an unusually successful effort, particularly with the group that RJR research documents discussed—the 14 to 18 year olds. Thus, RJR appears to have used its research on 18 to 20 year olds to its advantage with the 14 to 18 year old group—a group who shares many of the same interests and "hot" buttons of the older group. These internal documents complement those cited in the preamble to the 1995 proposed rule. In the preamble to the 1995 proposed rule, FDA described two letters from RJR sales managers about the placement of YAS [Camel] merchandise. Both letters stated that high school neighborhoods were a likely location for YAS. RJR, in its comments to the proposed rule, stated that those two letters were mistakes. However, these latest documents rebut RJR's comment. The mistake made by the two sales representatives was in speaking too clearly of the company's intention.

"Reg"—The second campaign reviewed by FDA was the "Reg" campaign used in the United Kingdom. One comment took issue with FDA's claim that the "Reg" campaign was

[127] An RJR spokesperson referred to these documents and did not dispute their validity. (See Levy, D., "RJR Memo Targeted Teen Market," *USA Today*, p. 1D, October 6, 1995; "Report: Teen Cigarettes Eyed," *AP Online*, October 4, 1995.); *Planning Assumptions and Forecast for the Period 197*–1986 for R.J. Reynolds Tobacco Company*, Research Department, 1976.

[128] Freedman, A. M., and S. L. Huang, "Reynolds Marketing Strategy Sought to Get Young Adults to Smoke Camels," *Wall Street Journal*, p. B10, col. 3, November 2, 1995.

[129] A 1984 strategic research document, authored by Diane Burrows of R. J. Reynolds and entitled "Younger Adult Smokers: Strategies and Opportunities," came to FDA's attention as a result of its inclusion as an exhibit attached to a brief filed by the State of Minnesota and Blue Cross in Ramsey County District Court in litigation involving the seven tobacco companies. The document was also described in numerous press accounts of the event (e.g., Phelps, D., and J. Hodges, "Suit: Kids were focus of Reynolds strategy. Documents filed in state's lawsuit against the tobacco industry show how R. J. Reynolds targeted young smokers as critical to the industry's future," *Star Tribune*, 1A, July 11, 1996; Worklan, P., "R. J. Reynolds Secret Report Targets Young Adult Market," *Chicago Tribune*, N19, July 11, 1996.) Although the agency has not relied on this memo as part of the justification for this rule, FDA is citing to it here because it is relevant to the issues discussed.

The memo indicates that by 1984, R. J. Reynolds was beginning to conduct research on the concepts detailed above that were developed during the 1970's. The memo describes the problem facing Reynolds at that time of declining market share and then proposed a solution: "RJR's consistent policy is that smoking is a matter of free, informed, adult choice which the Company does not seek to influence. However, in order to plan our business, we must consider the effects those choices may have on the future of the industry. Furthermore, if we are to compete effectively, we must recognize the imperative to know and meet the wants of those who are 18 and *have already elected to smoke*, as well as those of older smokers (emphasis added)."

The memo recognizes several important facts: "The renewal of the market stems almost entirely from 18-year-old smokers. No more than 5% of smokers start after age 24."Moreover, the memo also recognizes that: "[t]he brand loyalty of 18-year-old smokers far outweighs any tendency to switch with age. Thus, the annual influx of 18-year-old smokers provides an effortless, momentum to successful 'first brands'."

These "first brands" were identified as those which appeal to the 18-year-old smoker rather than switchers ages 19–24.

The memo identifies additional factors that had to be considered in this calculus: (1) Although 18- to 24-year-olds account for a very small part of market share, this age group represents the future of a brand. Those young, brand loyal smokers who now consume very few cigarettes, will consume more cigarettes with age and generally remain loyal to this first brand, its brand family or to the company; (2) Although young smokers are easier to switch than older smokers, a brand can not rely exclusively on switching younger smokers to produce a lasting brand equity—the major and most important share advantage available to a company is to have a cigarette brand relevant to young people and accepted by them as their "first brand."

The reports's recommendation was to research and capitalize on the factors and strategies which have been successful with youth brands of the past. This would require devoting substantial resources to identifying and tracking values, wants, and media effectiveness relevant to younger people. Because of the sensitivity of this young market, the memo continued: "brand development/management should encompass all aspects of the marketing mix and maintain a long term, single-minded focus to all elements-product, advertising, name, packaging, media, promotion and distribution. (Emphasis omitted)"

This must include, the memo stated, a careful emphasis on the "imagery and product positives" relevant to "younger adults."

[130] "White Paper," Camel Advertising Development, p. 1, undated.

[131] Bolger, M. R., "Camel 'Big Idea' Focus Groups—Round II," *Marketing Research Report*, September 21, 1988.

particularly effective with British adolescents and argued that the study that FDA relied on was based on unreliable evidence and is not applicable to American adolescents. The comment contended that there was no evidence to show that liking the "Reg" character caused children to smoke and argued instead that children who smoked came to like "Reg." The comment also argued that the recognition task, described in the study, was too suggestive and biased, and suggested that the young people were primed and pressured to say they had seen the advertisements during "games" that they say took place before the recognition task.

First, this comment is wrong. Games were played during another portion of the study, not the one referenced. The comment confused the quantitative survey with the qualitative. Second, evidence from England about youth smoking habits is no less probative than evidence from the United States, as it provides insights into children's smoking behavior.

Smoking Trends—A few comments were critical of the study of trends in the smoking initiation study, which found a temporal relationship between advertising targeted at women and rising initiation rates among girls and young women.[132] The principal criticisms were that the authors failed to examine the actual advertising campaigns in question, that FDA failed to consider alternative explanations for the study's findings, and that the study's measures were subjective and unreliable.

In response, the agency reiterates that it did not cite to this study, or any one study, as "proof" that advertising during this period "caused" a rise in smoking initiation. The study was provided as one example of targeted marketing being "associated" with increases in cigarette consumption among young people.[133] A logical inference to be drawn from the cumulative effect of such studies i

[132] Pierce, J. P., L. Lee, and E. A. Gilpin, "Smoking Initiation by Adolescent Girls, 1944 through 1988, An Association with Targeted Advertising," *JAMA*, vol. 271, pp. 608–611, 1994.

[133] A more sophisticated example of this type of time series analysis was published by the FTC to show that health claims in food advertising could have a beneficial effect upon people's consumption of high fiber breakfast cereals. (Ippolito, P., and A. Mathios, *Health Claims in Advertising and Labeling, A Study of the Cereal Market*, Bureau of Economics Staff Report, FTC, August 1989.)

[134] "Current Trends: Changes in the Cigarette Brand Preferences of Adolescent Smokers—United States, 1989–1993," *MMWR*, CDC, vol. 43, pp. 577–581, August 19, 1994; Goldstein, A. O., P. M. Fischer, J. W. Richards, and D. Creten, "Relationship Between High School Student Smoking and Recognition of Cigarette Advertisements," *Journal of Pediatrics*, vol. 110, pp. 488–491, 1987.

[135] "Current Trends: Changes in the Cigarette Brand Preferences of Adolescent Smokers—United States, 1989–1993," *MMWR*, CDC, vol. 43, pp. 577–581, August 19, 1994.

[136] Teinowitz, I., "Add RJR to List of Cig Price Cuts," *Advertising Age*, pp. 3 and 46, April 26, 1993.

[137] Goldstein, A. O., P. M. Fischer, J. W. Richards, and D. Creten, "Relationship Between High School Student Smoking and Recognition of Cigarette Advertisements," *Journal of Pediatrics*, vol. 110, pp. 488–491, 1987.

[138] "Current Trends: Changes in the Cigarette Brand Preferences of Adolescent Smokers—United States, 1989–1993," *MMWR*, CDC, vol. 43, pp. 577–581, August 19, 1994.

The choice permits the user to adopt the image created by the brand.

f. *The Canada advertising case.* A series of comments raises new issues not considered in the preamble to the 1995 proposed rule.

The September 1995 decision of the Supreme Court of Canada on the Canadian Tobacco Products Control Act (TPCA),[139] enacted to regulate tobacco advertising and promotion in Canada, prompted several comments, primarily from the tobacco industry. The TPCA banned all tobacco advertising, restricted the promotion of tobacco products and required packaging to display prominent unattributed health messages and toxic constituent information. As soon as the TPCA was enacted in 1988, the tobacco companies challenged the act as unconstitutional. On September 21, 1995, the Supreme Court of Canada found that Parliament had the criminal law power to legislate regarding the advertising and promotion of tobacco products, but that, based on the record developed in the court below, the restrictions on advertising and promotion violated the tobacco companies' freedom of expression guaranteed to all Canadians. Several of the key sections of the TPCA were struck down by the Canadian Supreme Court. The Canadian court ruled that the government had failed to demonstrate that the restraints regarding advertising, promotion, and labeling were reasonable and justified restrictions on freedom of expression.

The Canadian court also found that the government had failed to demonstrate that less intrusive measures, falling short of a complete restriction on advertising and promotion, would be less effective in protecting young people from inducements to use tobacco products. Further, the Canadian court found that the government had failed to show that unattributed health messages were required to achieve its objective of reducing tobacco consumption. Finally, the Canadian court decided that there was no rational connection between prohibiting a tobacco product trademark on a nontobacco product and the objective of the TPCA. The decision left the advertising and promotion of tobacco products substantially unregulated in Canada.

Because of some similarities between the Canadian federal tobacco control strategy and FDA's proposed regulation, some comments suggested that the opinions of the Canadian court are a basis for rejecting actions and laws targeting lawful tobacco advertising, particularly FDA proposed regulations. Moreover, the comments said that the Canadian court concluded that the proposed prohibition on tobacco advertising could not be sustained because it "failed the rational connection test" in that there was no causal connection "whether based on direct evidence or logic and reason" justifying the law (100 C.C.C. 3d. 449, Charter of Rights).

In contrast, one comment suggested that the ruling on this case is consistent with FDA's emphasis on reducing image advertising directed towards young people. The comment stated that FDA's focus fits the Canadian court's decision and had the Canadian government restricted image advertising rather than banning all advertising, it would have upheld the regulation.

FDA does not find the decision of the Canadian court to be contrary to its findings. The Canadian court did recognize that image or lifestyle advertising can affect overall consumption. Moreover, contrary to the comment's suggestion, the court specifically recognized that: "measures * * * to prohibit advertising aimed at children and adolescents * * * would be a reasonable impairment of the right to free expression, given the important objective and the legislative context" (100 C.C.C. 3d. 449).

Finally, FDA has considered a much larger quantity of evidence than that which was before the Canadian court, including the evidence concerning nontobacco item ownership by young people and the materials received during the comment period. The latter included the heretofore confidential or secret documents from RJR's marketing department and also those concerning the results of RJR's focus groups, which showed that interest in nontobacco items was highest among the young. Thus, FDA considered a much fuller record than that before the Canadian court. Moreover, the comment period provided the agency with additional evidence concerning various proposed provisions. FDA's final rule is thus based on a very complete and full record and its decisions are well justified.

g. *Roberts and Samuelson.* Concerning the effect of advertising on consumption patterns, one study not considered by the court in Canada, but cited by FDA in the preamble to the 1995 proposed rule, was an econometric analysis employed by Roberts and Samuelson[140] to show that advertising can increase the market demand for tobacco products. The study measured the effect on brand share and market size of advertising for low and high-tar cigarettes. The results indicated that advertising for low tar cigarettes did increase overall market size.

The study looked at the question of the effect of advertising not from the viewpoint of the consumer, but from the producer's perspective—how much should a firm invest in advertising in order to maximize its profits. A predicate assumption is that a manufacturer would not invest in advertising if the cost did not produce a return. This study also was conducted by independent economists and appeared in a peer reviewed journal.

Several comments criticized the study as an "ambitious failure." The industry comments criticized the study on the following grounds: The study inappropriately measures the level of advertising in messages and not in expenditures, and the study had inadequacies in some assumptions and in the data and these flaws thus call into question the study's results. Moreover, the comments alleged that misallocation of advertising expenditures may have biased the results. The results of the study show that advertising for low tar cigarettes had a beneficial effect on the overall level of consumption, but that the same effect did not occur for high tar cigarette advertising. The comments noted that young people do not consume low tar cigarettes, and therefore the results are irrelevant to a discussion of youth smoking. Moreover, the comments said that the results are not generalizable to all cigarette advertising. Finally, the comments said that population growth may have accounted for the finding of a relationship between advertising and consumption.

The agency disagrees with the criticisms of this study and finds instead that it is persuasive evidence of the effects of tobacco advertising for low-tar cigarettes on the overall market. In answer to the first criticism, the study used messages instead of expenditures as a measure of advertising in order to increase the accuracy of the analysis. It is the messages actually seen by a consumer, and not the amount spent by the company on advertising, that is more relevant in assessing the effect of advertising. If the cost of advertising

[139] *RJR-MacDonald, Inc.* v. *Canada (Attorney General)*, S.Ct. of Canada, 100 C.C.C. 3d 449, Sept. 21, 1995.

[140] Roberts, M. J., and L. Samuelson, "An Empirical Analysis of Dynamic, Nonprice Competition in an Oligopolistic Industry," *Rand Journal of Economics*, vol. 19, pp. 200–220, 1988.

were to go up, and thus firms would have to pay more for fewer messages, we would not expect to find a greater effect on consumers, which was the effect shown by the study.

The second issue, that there were flaws in the study, is similarly not fatal. As noted in section VI.D.4.d. of this document, each study utilizes the best data and methods available at the time. This may not be the perfect study, but its flaws are minor and do not affect its usefulness. Moreover, one major criticism was with the advertising variable and as noted more fully in section VI.D.6.a. of this document data on advertising expenditures are generally considered trade secrets by the companies. Thus, independent researchers have to use whatever data are available, even if they are not perfect. If the industry wanted to ensure more complete studies, it could release old data relevant to advertising expenditures.

Third, the comments complain that the focus of the study, low-tar advertising, limits the applicability of the results. However, the fact that this study found that advertising for low-tar cigarettes increased the market is not a limitation that restricts the results to that one example. The importance of the results is that the study shows that advertising in this oligopolistic industry can affect the market size. The purpose of dividing the market into high- and low-tar advertising was an attempt to isolate the effect of advertising for each of the product classes.

Fourth, the comments expressed concern about the possibility of population growth as an intervening factor. Population growth should not have affected the results as growth would have affected the high-tar market as well as the low-tar market, a consequence that did not occur.

FDA concludes that this study presents excellent evidence of the effect of advertising on consumption patterns and, that it would have provided quite supportive evidence before the Canada court for advertising restrictions.

h. *The African-American youth market.* Referring to the declining African American youth tobacco market, several comments argued that FDA's tentative finding in the preamble to the 1995 proposed rule on the relationship between outdoor cigarette advertising and tobacco consumption by young people is incorrect. Comments said that if cigarette advertising increases the prevalence of smoking among young people, the percentage of African-American young people who smoke should be equivalent to that of whites, because African-American young people see as much or more cigarette advertising than do whites. However, smoking rates for young African-Americans are much lower than for white young people. One comment further indicated that African-American young people's decision to smoke may be more responsive to peer influence and parental and community advice than cigarette advertising.

It is unclear why African-American young people do not use tobacco at the same rate as white young people. It is surely not that their parents smoke less; the smoking rate among African-American adults is 26 percent, almost the same rate as for white adults.[141] Whatever may be the reason (and it is unknown) for the lower smoking rates among youth among that segment of the population, it does not provide sufficient evidence against advertising restrictions when other evidence shows that advertising does affect children's decisions to use tobacco products.

1. *The evidence relating to smokeless tobacco.* A couple of comments argued that FDA had presented insufficient evidence regarding the effect of advertising on the decision to use smokeless tobacco. One joint comment from the smokeless tobacco manufacturers stated:

> The studies cited by the agency regarding cigarette advertisements and smoking are all either highly flawed, biased, or simply do not support the agency's hypothesis. * * * Even more troubling—and from the standpoint of sustaining its legal obligation, a fatal flaw—is the agency's audacity to propose a virtual ban on advertising for smokeless tobacco products without even deigning to build a case.

The comment is correct that there is less evidence available regarding smokeless tobacco advertising practices and smokeless tobacco use. Nevertheless, the record contains sufficient evidence to provide a basis for applying the advertising restrictions in the 1995 proposed rule to smokeless products. In the preamble to the 1995 proposed rule (60 FR 41314 at 41331), reference was made to the remarkably successful regeneration of the smokeless tobacco market by U.S. Tobacco (UST), the leading smokeless tobacco company, in the 1980's. In the 1970's, the segment of the population with the highest use of these products was over age 50, and young men were among the lowest. Fifteen years later, there had been a tenfold increase in the use of smokeless tobacco by young men, whose use became double that of men over 50. The preamble to the 1995 proposed rule attributed that increase to the concerted advertising and marketing efforts of UST.

As detailed more fully in the preamble to the 1995 proposed rule (60 FR 41313 at 41331), officials at UST held a marketing meeting in 1968 where, according to the *Wall Street Journal*, the vice-president for marketing said, "We must sell the use of tobacco in the mouth and appeal to young people *** we hope to start a fad." Another official attending the same meeting was quoted as saying, "We were looking for new users-younger people who, by reputation, wouldn't try the old products."

Later, Louis Bantle, the chairman of the board of UST, described the reason that so many young males use smokeless tobacco, "I think there are a lot of reasons, with one of them being that it is very 'macho:." UST's advertising utilized the themes that play well with 'macho' boys—rugged masculine images—and utilized heros to this group—professional athletes. Bantle described the success of this program thus: "In Texas today, a kid wouldn't dare to go to school, even if he doesn't use the product, without a can in his Levis."

The UST program also utilized a promotional program that it called "graduation strategy":

> UST distributes free samples of low nicotine-delivery brands of moist snuff and instructs its representatives not to distribute free samples of higher nicotine-delivery brands. The low nicotine-delivery brands also have a disproportionate share of advertising relative to their market share. For example, in 1983, Skoal Bandits, a starter brand, accounted for 47 percent of UST's advertising dollars, but accounted for only 2 percent of the market share by weight. In contrast, Copenhagen, the highest nicotine-delivery brand, had only 1 percent of the advertising expenditures, but 50 percent of the market share. This advertising focus is indicative of UST's "graduation process" of starting new smokeless tobacco product users on low nicotine-delivery brands and having them graduate to higher nicotine-delivery brands as a method of recruiting new, younger users.
> (60 FR 41314 at 41331)

Therefore, the agency disagrees with the assertion that it has presented no evidence to support restricting smokeless tobacco advertising. In fact, it finds the graduation strategy to be strong evidence of the effectiveness of advertising in targeting young people to become new users and consistent with and supported by the general

[141] "Cigarette Smoking Among Adults—United States-, 1993," *MMWR*, CDC, vol. 43, pp. 925–930, 1994.

discussion, see sections VI.B. and VI.D. of this document.

4. Why Young People Use Tobacco and the Role of Advertising in That Process

(15) Regardless of the evidence cited in section VI.D.3. of this document, many comments argued that children start to smoke and use smokeless tobacco because of influences on them other than advertising, primarily the influence of their friends and peers.

a. *Why young people use tobacco.* One comment cited studies showing that young people who were most likely to be smokers were those who were particularly rebellious or prone to deviant behavior, [142] and said that it was counterintuitive that young people fitting these profiles would want to conform to what advertising portrayed as desirable.

Conversely, many comments said that cigarette advertising, like all advertising portrays highly attractive images. One comment stated that when young people's peers are also smoking, this can serve to personalize the images and make them relevant for their own lives, and cause them to have favorable impressions about their friends who smoke. [143]

One comment argued further that children smoke because they hope to convey a positive self-image. [144] Hence, young people may be particularly vulnerable to being influenced by the attractive images presented in cigarette and smokeless tobacco advertising. [145]

Specifically, the same comment cited numerous studies that indicate that many young people smoke because they hope to convey a positive image. [146] Based on these studies, the comment stated: "Image or impression management (Schlenker, 1980) has great utility for young people as they struggle for social acceptance and autonomy (citations omitted)."

Finally, the comment described the developmental aspects of adolescents that are relevant to this issue:

With respect to developmental aspects of adolescence, there are two related factors that make adolescents especially vulnerable to being influenced by tobacco advertising. First, adolescents are typically beginning to focus on peer group interactions more than on family interactions (e.g., Brown et al., 1986), which they may likewise value to a far greater extent. Second, tobacco use constitutes a "temporal trap" (Messick and McClelland, 1983) in the sense that the peer group benefits of tobacco use are immediate, while the negative consequences in terms of health outcomes are so far into the future that many adolescents, who often see themselves as invulnerable even in the present, would consider them to be irrelevant. Furthermore, the negative social consequences of tobacco use in adulthood (i.e., social stigmatization * * *) are also unimportant to adolescents at the time they are making the decision to use tobacco products. [147]

Stated differently, adolescence is a time of "identity formation." Young people use the attractive imagery of advertising as a "window into the adult world." They are "susceptible to the images of romance, success, sophistication, popularity, and adventure * * *." [148] By adolescence, clothes, possessions, and "badge products" such as cigarettes are used to define oneself and to control relations with others. [149]

Support for this view of the role of tobacco advertising also comes from the tobacco industry:

FDA turns a blind eye to the fact that the personal display of products with commercial logo—through dress and other forms of expression—is a form of participation in American popular culture. It is a way to register a group identity to signal one's place in the social fabric.

In addition to these comments, FDA has the words of RJR's research department in a 1973 memo, detailed in section VI.D.3.d. of this document, that chart a course for attracting the young smoker. [150]

On the basis of the evidence cited and reviewed in section VI.D.3. of this document, the agency finds that the suggestion that it is impossible to advertise in a way that would appeal to rebellious nonconformist teenagers is

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[142] Chassin, L., C. C. Presson, S. J. Sherman, E. Corty, and R. W. Olshavsky, "Predicting the Onset of Cigarette Smoking in Adolescents: A Longitudinal Study," *Journal of Applied Social Psychology*, vol. 14, pp. 224–243, 1984; Collins, L. M., S. Sussman, J. Mestel Rauch, C. W. Dent, C. J. Johnson, W. B. Hansen, and B. R. Flay, "Psychosocial Predictors of Young Adolescent Cigarette Smoking: A Sixteen-Month, Three-Wave Longitudinal Study," *Journal of Applied Social Psychology*, vol. 17, pp. 554–573, 1987.

[143] Pechmann, C., and S. J. Knight, "Cigarette Ads, Antismoking Ads and Peers: Why do Underage Youth Smoke Cigarettes?" *Advances in Consumer Research*, Association for Consumer Research, edited by Corfman, K. P., and J. G. Lynch, eds., Provo, UT, vol. 23, pp. 267–268, 1996.

[144] Chassin, L., C. Presson, S. J. Sherman, E. Corty, and R. W. Olshavsky, "Self-Images and Cigarette Smoking in Adolescence," *Personality and Social Psychology Bulletin*, vol. 7, pp. 670–676, 1981; Barton, J., L. Chassin, C. Presson, and S. J. Sherman, "Social Image Factors as Motivators of Smoking Initiation in Early and Middle Adolescence," *Child Development*, pp. 1499–1511, 1982.

[145] *Id.*

[146] Chassin, L., C. Presson, S. J. Sherman, E. Corty, and R. W. Olshavsky, "Self-Images and Cigarette Smoking in Adolescence," *Personality and Social Psychology Bulletin*, vol. 7, pp. 670–676, 1981; Barton, J., L. Chassin, C. C. Presson, and S. J. Sherman, "Social Image Factors as Motivators of Smoking Initiation in Early and Middle Adolescence," *Child Development*, pp. 1499–1511, 1982; Belk, R. W., "Possessions and the Extended Self," *Journal of Consumer Research*, vol. 15, pp. 139–168, 1988; Belk, R. W., R. Mayer, and A. Driscoll, "Children's Recognition of Consumption Symbolism in Children's Products," *Journal of Consumer Research*, vol. 10, pp. 386–397, 1984; Brown, B. B., M. J. Lohr, and E. L. McClenahan, "Early Adolescents' Perceptions of Peer Pressure," vol. 6, pp. 139–154, 1986; Messick, P. M., and C. C. McClelland, "Social Traps and Temporal Traps," *Personality and Social Psychology Bulletin*, vol. 9, pp. 105–110, 1983; Levy, S. J., "Meanings in Advertising Stimuli," *Advertising and Consumer Psychology*, Praeger, New York, pp. 214–226, 1986; Solomon, M. R., "The Role of Products as Social Stimuli: A Symbolic Interactionism Perspective," *Journal of Consumer Research*, vol. 10, pp. 319–329, 1983.

[147] Brown, B. B., M. J. Lohr, and E. L. McClenhanan, "Early Adolescents' Perceptions of Peer Pressure," *Journal of Early Adolescence*, vol. 6, pp. 139–154, 1986; Messick, P. M., and C. C. McClelland, "Social Traps and Temporal Traps," *Personality and Social Psychology Bulletin*, vol. 9, pp. 105–110, 1983.

[148] Nichter, M., and E. Cartwright, "Saving the Children for the Tobacco Industry," *Medical Anthropology Quarterly*, vol. 5, pp. 236–256, 1991.

[149] Stacey, B. G., "Economic Socialization in the Pre-Adult Years," *British Journal of Social Psychology*, vol. 21, pp. 159–173, 1982.

[150] A July 3, 1974 memo, authored by D. W. Tredennick, of R. J. Reynolds' Marketing Research Department was submitted to the rulemaking docket by the Attorney General of Mississippi in response to the reopening of the rulemaking record (61 FR 11349, March 20, 1996). Although the agency has not relied on the memo as part of the justification for this rule, FDA is citing to it here because it is relevant to the issues discussed. The memo was also reported in the press, see Schwartz, J., "R. J. Reynolds Marketing Memo Discusses Young Smokers' Brand Image," *Washington Post*, A03, April 23, 1996. The memo asked and answered the question: "What causes smokers to select their first brand of cigarettes?" The answers developed by Mr. Tredennick echos the concepts discussed above. The memo hypothesized that: "[t]he causes of initial brand selection *relate directly to the reasons a young person smokes*. The more closely a brand meets the psychological 'support' needs (advertising or otherwise communicated brand or physiological needs (product characteristics), the more likely it is that a given brand will be selected. (Emphasis added)" One important characteristic was associated with the user "image" associated with a brand. "To some extent young smokers 'wear' their cigarette and it becomes an important part of the 'I' they wish to be, along with their clothing and the way they style their hair." The memo also recognized the importance of peer influence on a young person's decisions about smoking and noted that: "It must also be true that influential young smokers (perhaps relatively few) have made brand selections based on product characteristics or advertising and promotion communication. The fact that two brands, Marlboro and Kool, have such dominant shares among youths suggests the above hypothesis * * *." Tredennick noted further that both Marlboro and Kool project imagery that is psychologically important to adolescents—the need for support and strength.

without merit. Tobacco advertising plays directly to the factors that are central to adolescents as they decide whether to use tobacco products. Thus, the available evidence clearly supports a finding that advertising plays an important role in young people's tobacco use.

b. *Determinants of smoking.* Several comments from the advertising and tobacco industries claimed that the econometric studies performed for them by experts found that peers, parents, and siblings have the greatest influence on young peoples' decision to start smoking.

Citing an econometric analysis performed for RJR by Dr. J. H. Beales, on data concerning its Joe Camel advertising campaign, one comment argued that "minors balance the risks and rewards of smoking to decide whether or not to smoke, just as they would any other consumption decision. The greater an individual minor perceives the net rewards of smoking, the more likely he or she will try smoking. Minors who perceive greater net rewards of smoking are also likely to smoke more intensively."

The comment further argued that an analysis based upon this theoretical model by Dr. Beales found that neither advertising nor advertising expenditures has an appreciable effect on young people's perceptions of the benefits of smoking and thus would have no indirect effect on teenage smoking decisions.[151] More specifically, the comments stated that the Beales' studies show that advertising expenditures for the particular brands that most teenagers smoke, Marlboro and Camel, do not influence and are not associated with smoking decisions. Moreover, Dr. Beales reported that the results of his studies indicate further that advertising did not have an indirect effect on smoking behavior. Beales concluded that minors who had been exposed to more advertising did not identify the perceived rewards of smoking—"smoking helps when bored," "smoking helps relax," "smoking helps with stress," and "smoking helps in social situations," in a greater number than did those minors who reported less exposure. The comment concluded that the failure of the 1993 Beales study to find either direct or indirect effects from advertising on smoking behavior should be conclusive.

FDA does not agree. The 1993 Beales study presents only one analysis of youthful smoking and that analysis is flawed.[152] Dr. Beales appears to have performed tests using an ordered logistic regression model to test for: (1) The effect of advertising on smoking behavior, using advertising expenditures and young people's view of "most advertised brand" as measures; and (2) smoking behavior as a function of a number of psychosocial variables and determinants.

First, a logistic model is only as good as the variables used. Thus, if a variable is mispecified or imprecise, the model's predictive capacity will be severely compromised. The variable "most advertised brand" appears to be quite imprecise as a measure to capture the effect of advertising. The most that this variable would capture would be the ability of the campaign to be seen and remembered. It would not capture the appeal of the campaign, or the effect of the campaign on consumers, nor could it measure the ability of an advertising campaign to change or create consumer action. In addition, it would not be surprising to find that almost as many nonsmoking young people as young smokers found Camel (or Marlboro) to be the most advertised brands, since those advertising campaigns were quite ubiquitous at the time the data for this study were collected and were, in fact, the most advertised brands. A variable that cannot discriminate between users and nonusers, because all had seen and remembered the advertising, cannot be expected to produce useful predictive results in a regression analysis of why people, particularly young people, smoke.

Second, Dr. Beales attempted to determine whether differences in advertising expenditures would predict smoking behavior. It appears, however, that Dr. Beales did not look at this question longitudinally—that is, he did not look at whether smoking rates varied as a function of advertising expenditures for Camel cigarettes before the Joe Camel campaign and after the campaign started. Instead, he appears to have measured smoking rates as a function of the differences in regional advertising expenditures in California during one time period. It should not be surprising therefore that little if any effect on smoking rates was found: (1) There is no reason to expect to find significant changes in smoking behavior based on small regional variations within one State in advertising expenditures, and (2) optimum expenditures for advertising outlays in any given region would have been determined in advance by an advertising agency and therefore would more likely reflect smoking patterns already in existence. Had he wanted to measure smoking behavior as a function of Camel's advertising, he should have modeled it longitudinally over time. Since the regional advertising expenditures must have been obtained from a RJR data base, Beales clearly had access to other sources of data within the company. He therefore should have been able to acquire advertising expenditures for the Camel brand before the introduction of Joe Camel and advertising expenditures for the period after Joe Camel's appearance. This would have been a better test.

Finally, Dr. Beales performed an analysis to determine the "true" determinants of smoking. Dr. Beales' regression analysis utilized a series of psychosocial characteristics and beliefs about smoking. He found that the only factor that failed to produce an association was advertising. First, as noted, there is no reason to believe that "most advertised brand" would perform as a useful surrogate for the effects of advertising. Therefore, regardless of the value of the study, it is not good evidence concerning the role of advertising in young people's smoking decision. Second, the analysis indicates what is already known: certain beliefs and life patterns can help predict who may become a smoker. However, it does not measure what effect advertising can have on a young person's perception or beliefs.

Additional concerns about the study are similar to those that the tobacco industry comments raised about studies cited by FDA. The first concern is that several variables used in the model measure the same impact. This redundancy could create a multicollinearity problem (i.e., two or more variables vary together but it is very difficult to determine which variable influences the other). Moreover, the redundancy may have caused irrelevant variables to be included in the regression equation. Both multicollinearity and the inclusion of irrelevant variables can affect the efficiency of the model's estimates. The second concern is that the model used in the study is questionable. The correct model could well have been a double hurdle model, i.e., modeling the decision to smoke first and then modeling the choice of what brand to smoke, second.

[151] Dr. Beales used children's designation of a "most advertised brand" as a surrogate for the effect of advertising.

[152] Beales, J. H., "Advertising and the Determinants of Teenage Smoking Behavior," p. 44, 1993.

Finally, there is concern that the data for the impact of advertising expenditures and smoking behavior were incompatible and, thus, may have failed to find a relationship that did in fact exist. The teen smoking prevalence data were from a behavioral study, and the measurement of advertising expenditures was from regional advertising expenditures, undoubtedly maintained by the company. The smoking decision for a teenager may very well not have been influenced by the amount of money spent but by the number of messages he/she receives. The aggregate expenditures for advertising cannot measure the number of messages actually received by an individual teen.

Given the multitude of problems with the design of the study and the choice of variables, the study has limited capability for producing results that can adequately describe advertising effects on smoking behavior. Moreover, this study is but one of many and, whatever its value, it does not overwhelm the evidence that FDA has relied on.

c. *Laugesen and Meads.* In contrast to the Beales' study, FDA had cited a study by Laugesen and Meads, entitled "Advertising, Price, Income and Publicity Effects on Weekly Cigarette Sales in New Zealand Supermarkets," [153] which provided evidence that increases in advertising expenditures had an effect on youth smoking behavior including recruiting new smokers and increasing the market base.

One comment stated that data from supermarkets were unrepresentative, both because of the percentage of sales from supermarkets in New Zealand (presumably not large), and because it is not known what percentage of sales to young people are made at supermarkets. Moreover, many conditions were not accounted for, including possible different pricing structures between retail outlets.

The comments also criticized several major assumptions they claim were made in the study, for example, that young people purchase the less expensive, down market brand. Finally, the comment criticizes the failure to control for other variables (such as rotating health warnings and new advertising restrictions).

The authors themselves responded to some of the concerns expressed. For example, they explained that they specifically chose to collect data from supermarkets because other "authors with access to full industry data [154] have recommended that the data interval [for supermarket sales] should reflect the inter-purchase time for cigarettes," which in New Zealand is a week or less. Moreover, the authors found that supermarket cigarette sales are more consistent than other points of sales. Hence there were fewer fluctuations in the demand data for cigarettes.

Moreover, in response to the second comment, the authors did not assume that young people purchase downmarket cigarettes at a higher rate than the general population, but that people with lower income, which includes young people, purchase these brands more often. But more importantly, the study found that it takes only 2 years of advertising of this downmarket brand to expand the teen market by 4 percent, and this fact was not disputed.

d. *Other comments.* Finally, several comments criticized the quality of the evidence cited by FDA in its preamble to the 1995 proposed rule. One comment stated that FDA has relied too heavily on studies conducted by physicians or others not familiar with the art and science of persuasion. Further, it asserted that most of the evidence cited in support of the regulations had been published in medical journals and not in peer reviewed marketing journals.

However, a review of the evidence presented belies that concern. First, FDA relied on the research and expert opinion of consumer psychologists, business and marketing experts, economists and social science researchers as well as medical experts. Moreover, FDA has relied on two outstanding reports issued in the past few years that specifically addressed the issue of young people's use of tobacco—the 1994 SGR and the IOM Report. Both commented extensively on the role that advertising plays in young people's smoking behavior and use of smokeless tobacco and both recommended strongly that a comprehensive plan to attack the problem of youth tobacco use include stringent advertising restrictions.

Moreover, of the 15 members of the IOM committee, 7 were expert in the fields of behavioral sciences, including psychology, psychiatry and public policy, anthropology, and economics. Similarly, the contributing authors to the 1994 SGR included experts in economics, social research, marketing, and business administration. Finally, the comments submitted include additional empirical evidence, the expert opinion of the American Psychological Association, [155] and the words of the tobacco industry itself, all of which are referred to in this document.

One comment criticized FDA's reliance on the IOM Report and the 1994 SGR as simply presenting "selective reviews" of much of the same "dubious literature" reviewed by FDA. Another comment stated that FDA had indiscriminately relied on studies cited in the 1994 SGR, none of which, the comment claimed, was capable of determining whether advertising influences children to initiate smoking.

Several comments appeared to place great importance on the fact that both reports acknowledge that the psychosocial and econometric research that they present do not prove that cigarette advertising causes young people to begin smoking or to use smokeless tobacco. The IOM Report stated that, because of the nature of the research, it is not known for certain whether youths already interested in smoking or smokeless tobacco become more attentive to advertisements for these products or whether these advertisements lead youths to become more interested in these products. One comment argued that the "IOM's recognition of this weakness fatally undermines its own and FDA's arguments on the impact of advertising on smoking behavior." Another comment claimed that the IOM Report acknowledges the lack of a causal relationship between advertising and smoking and acknowledges that the very econometric studies it cites are unreliable to determine whether advertising contributes to youth smoking behavior. The comment also stated that FDA misstates IOM's conclusion regarding evidence of a

[153] Laugesen, M., and C. Meads, "Advertising, Price, Income, and Publicity Effects on Weekly Cigarette Sales in New Zealand Supermarkets," *British Journal of Addiction*, vol. 86, pp. 83–89, 1991.

[154] The authors cited this study as an example of one having access to full industry data. Leeflang, P. S. H., and Reuyl, "Advertising and Industry Sales: An Empirical Study of the West German Cigarette Market," *Journal of Marketing*, vol. 49, p. 97, 1985; Laugesen, M., and C. Meads, "Advertising, Price, Income, and Publicity Effects on Weekly Cigarette Sales in New Zealand Supermarkets," *British Journal of Addiction*, vol. 86, pp. 83–89, 1991.

[155] The American Psychological Association represents 132,000 members and affiliates and is the largest organization of psychologists in the world. Its comment represents the organization's "research-based recommendations" and reflects significant input from several relevant divisions including the Division of Personality and Social Psychology, the Division of Society for the Psychological Study of Social Issues, and the Division of Consumer Psychology.

causal relationship between advertising and smoking initiation. Further, several comments cited to a statement in the 1994 SGR that "no longitudinal study of the direct relationship of cigarette advertising to smoking initiation has been reported in the literature." [156] However, these comments failed to include the sentence immediately preceding this quote: "Considered together, these studies offer a compelling argument for the mediated relationship of cigarette advertising and adolescent smoking."

Another comment in support of advertising restrictions on tobacco products argued that the multidisciplinary studies cited in the 1994 SGR supported the conclusion that marketing and advertising tobacco products do play a role in tobacco use among young people. The comment suggested that this conclusion is consistent with the 1989 Surgeon General's conclusion that "the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption." [157] Additionally, the comment supported the findings of the 1994 SGR that "cigarette advertising appears to increase young people's risk of smoking" by conveying the impression that smoking has social benefits and is far more common than it really is. [158] Moreover, this comment contended that the IOM's conclusions supported FDA's tentative view that image advertising of tobacco products is tremendously appealing to young people.

As noted more fully in section VI.B. of this document, FDA did rely heavily on the two reports, and continues to find the reports persuasive evidence. They represent mainstream scientific consensus and are appropriately entitled to a great deal of deference. The agency notes that, in a different but not entirely unrelated context, that of health claims for food, Congress has said that FDA would have to specifically justify any decision rejecting the conclusions of a report from an authoritative scientific body of the United States. (See section 403(r)(4)(C) of the act (21 U.S.C. 343(r)(4)(C)).) No justification for rejecting the IOM's conclusions exists here.

Finally, the agency, like the 1994 SGR and IOM Report, finds that an adequate basis does exist to conclude that advertising plays a "mediated relationship" to adolescent tobacco use. [159] The proper question is not, "Is advertising the most important cause of youth initiation?" but rather, "does FDA have a solid body of evidence establishing that advertising encourages young people's tobacco use such that FDA could rationally restrict that advertising?" The answer to this question is "yes."

5. Has the Agency Met Its Burden?

(16) Several comments from the tobacco and advertising industries criticized the agency for failing to present evidence that conclusively establishes a causal link between advertising and young people's decisions to begin using cigarettes and smokeless tobacco.

FDA disagrees that its burden is to conclusively prove by rigorous empirical studies that advertising causes initial consumption of cigarettes and smokeless tobacco. No single study is capable of doing so. As one comment stated, it would in fact be practically and ethically impossible to conduct such a study. Certainly no study presented by industry or any other party demonstrated that advertising does *not* cause the initial consumption of cigarettes and smokeless tobacco. Indeed, it should be noted that not one study cited by FDA or submitted by industry could conclusively demonstrate that *any* factor actually *caused* children to begin smoking or to use smokeless tobacco. This includes family and peer influences, which the tobacco industry repeatedly cite as the major determinants of youth smoking and smokeless tobacco use. As was suggested by a comment, however, even when a young person's decision to smoke is strongly influenced by a friend or parent, advertising reinforces the decision and makes the young person feel good about the decision and the "identity" thereby acquired.

It should also be noted that the apparent focus on the possible causal role of cigarette and smokeless tobacco advertising in young people's *initial* decision to smoke or to use smokeless tobacco is overly narrow. Human behavior cannot be modeled so simplistically. In point of fact, tobacco advertising has an effect on young people's tobacco use behavior if it affects initiation, maintenance, or attempts at quitting.

The evidence that FDA has gathered in this proceeding establishes that cigarette and smokeless tobacco advertising does have such an effect. While not all the evidence in the record supports this conclusion, there is more than adequate evidence, that when considered together, supports a conclusion that advertising, with the knowledge of the industry, does affect the smoking behavior and tobacco use of people under the age of 18. This behavior includes the decision whether to start using cigarettes or smokeless tobacco, whether to continue using or to increase ones consumption, when and where it is proper to use tobacco, and whether to quit. This evidence includes:

Expert opinion—The American Psychological Association provided expert opinion, with specific citation to numerous studies, to show that tobacco advertising plays directly to the factors that are central to children and adolescents and thus plays an important role in their decision to use tobacco. (See section VI.D.4.a. of this document; and 60 FR 41314 at 41329.)

Advertising Theory—Basic advertising and consumer psychology theory, statements from advertising experts, and general consumer testing show that advertising that is multi-media, that uses color, and that employs more pictures, characters, or cartoons as opposed to text is more robust and can be better processed, understood and remembered by children and adolescents, who have less information processing ability than adults. (See section VI.B.1. and VI.B2. of this document.)

Studies and Surveys—Studies show that children are exposed to substantial and unavoidable advertising, that exposure to tobacco advertising leads to favorable beliefs about tobacco use, that advertising plays a role in leading young people to overestimate the prevalence of tobacco use, and that these factors are related to young people's tobacco initiation and use. (See sections VI.D.3.a., VI.D.3.b., and VI.D.3.c. of this document.)

Empirical Studies—Studies conducted on sales data have shown that advertising did increase one segment of the tobacco market (low tar cigarettes), that advertising in New Zealand had the effect of increasing tobacco sales to young people, and that a large multi-country survey showed that advertising tends to increase consumption of tobacco products. (See 60 FR 41314 at 41333 through 41334; sections VI.D.3.g., VI.D.4.c., and VI.D.6.a. of this document)

Anecdotal Evidence, and Various Advertising Campaigns Successful with

[156] 1994 SGR, p. 188.
[157] 1989 SGR, p. 517.
[158] 1994 SGR, p. 195.
[159] *Id.*, p. 188.

Young People—Studies show that the buying behavior of young people is influenced by advertising, that they smoke the most advertised brands, that children ages 3 to 6 can recognize a cartoon character associated with smoking at the same rate as they recognize Ronald McDonald, that various ad campaigns (Camel cigarettes, Reg cigarettes, products designed for women, and smokeless tobacco advertising aimed at new users) that appeared to be targeted to young people did have an effect upon young people's purchases and use of tobacco, and that young people report that they got their information about a tobacco brand from billboards, magazines, in store advertising and on teeshirts (60 FR 41314 at 41329 through 41334; and see sections VI.D.3.d., VI.D.3.e., and VI.D.3.i. of this document).

Industry Statements—Statements in documents created by R. J. Reynolds' researchers, by Philip Morris advertising people, by executives of US Tobacco and by people in and doing work for various Canadian tobacco companies indicate that young people are an important and often crucial segment of the tobacco market.

Consensus Reports—The IOM and 1994 SGR concluded on the basis of an exhaustive review of the evidence that advertising affects young people's perceptions of the pervasiveness, image, and function of smoking, that misperceptions in these areas constitute psychosocial risk factors for the initiation of tobacco use, and thus advertising appears to increase young people's risk of tobacco use.

Consequently, tobacco advertising works in a way that is roughly analogous to the way the Supreme Court described how deceptive advertising works (*FTC* v. *Colgate - Palmolive Co.*, 380 U.S. 374 (1965)). The Supreme Court described how sellers use deceptive practices to break down the resistance of the buying public (*Id.* at 389–90). Here, as the 1994 SGR, the IOM report, and the comment of the American Psychological Association demonstrate, cigarette and smokeless tobacco companies use image and other advertising techniques to appeal to adolescents' need to belong and to appear to be adult, and thereby to break down their resistance to tobacco use. The advertising helps the companies to overcome the fact, as documents for R. J. Reynolds show, that there is no natural craving for nicotine. While the advertising techniques used by the tobacco industry are quite different than those used by the company in the referenced Supreme Court case, they ultimately have the same goal—to induce people, in this case young people, to purchase and use these products.

Thus, the evidence in this proceeding demonstrates that cigarette and smokeless tobacco advertising plays a material role in the decision of children and adolescents under the age of 18 to engage in tobacco use behavior. It therefore establishes that the harm from this advertising is real.

6. The Efficacy of the Restrictions; Empirical Evidence Concerning Advertising Restrictions

The final aspect of the analysis under the second prong of the *Central Hudson* test requires a showing by the agency that the restrictions that it seeks to impose will alleviate the harm to a material degree. FDA finds, based upon a review of all of the evidence and the comments received, that the restrictions will, in fact, meet this test.

(17) Nearly all comments in opposition to advertising restrictions argued that the preponderance of the empirical evidence supported a finding of no effect from advertising on young people. Some comments stated that, consequently, the advertising restrictions are "unwarranted, unjustified, unnecessary, [and] will not be effective in reducing underage smoking." Several comments, representing a variety of interest groups, claimed that the "best available evidence" found that "peer pressure," "peer and family smoking behaviors" and "young people's perceptions of the costs and benefits of smoking" are more important than advertising and promotion in encouraging young people to experiment with cigarettes and smokeless tobacco.[160] Still others claimed that "being a girl," "living with a single parent," "having relatively less negative views about smoking," "having no intention to stay in full-time education after age 16," and "thinking they might be a smoker in the future," are key influencing factors for a young person to start smoking.[161]

The tobacco industry and the advertising industry stated that their advertising is not directed at children and adolescents but to adults who already use tobacco, and thus it is not a proper subject for government regulation. The advertising agency for the largest cigarette brand stated, "[T]obacco advertising has as its intended audience existing smokers * * * it is not the company's desire that children start to smoke."

However, one comment questioned this and asked how cigarette advertising that has an impact upon adults can be assumed to leave unaffected a young viewer, smoker or otherwise. The same comment also cited the words of one retired Marlboro ad man: "I don't know any way of doing this (advertising cigarettes) that doesn't tempt young people to smoke."[162]

Many comments from consumer groups, public health organizations and numerous private individuals were supportive of the agency's position that the 1995 proposed rule will reduce underage smoking and use of smokeless tobacco. The comments cited evidence from numerous sources such as government officials, university researchers, and antismoking advocates to demonstrate that restrictions on advertising would be effective.

For example, a comment from a leading psychological association stated that research, common sense, and its expert opinion support that, if image-oriented advertising and promotion are replaced with text-only advertising, it would reduce the advertiser's ability to suggest that tobacco users project a desirable image, e.g., glamour, sexiness or maturity.[163]

FDA has concluded that restrictions on advertising and promotion are necessary to reduce the appeal of tobacco products to young people. Such restrictions will protect the access restrictions that the agency is adopting from being undermined and thereby the health of young people. To be effective,

[160] Beales, J. H., "Advertising and the Determinants of Teenage Smoking Behavior," vol. 44, 1993.

[161] McDonald, C., "Children, Smoking and Advertising: What Does the Research Really Tell Us?", *International Journal of Advertising*, vol. 12, pp. 279–287, 1993; Goddard, E., "Why Children Start Smoking," *British Journal of Addiction*, vol. 87, No. 1, pp. 17–25, 1992.

[162] Daniels, D., *Giants, Pygmies and Other Advertising People*, Crain, Chicago, p. 245, 1974.

[163] Cohen, J. B., "Reconceptualizing Alcohol Advertising Effects: A Consumer Psychology Perspective," *The Effects of the Mass Media on the Use and Abuse of Alcohol*, Research Monograph, No. 28, Bethesda, MD, NIH, 1995; Goldberg, M. W., J. Madill-Marshall, G. J. Gorn, J. Liefeld, and H. Vredenburg, "Two Experiments Assessing the Visual and Semantic Images Associated with Current and Plain (Generic) Cigarette Packaging," *Advances in Consumer Research*, edited by Corfman, K. P., and J. G. Lynch, Association for Consumer Research, Provo, UT, vol. 23, 1996; Pollay, R. W., and A. M. Lavack, "The Targeting of Youths by Cigarette Marketers: Archival Evidence on Trial," *Advances in Consumer Research*, Association for Consumer Research, Provo, UT, vol. 20, pp. 266–271, 1993; Richins, M. L., "Social Comparison and the Idealized Images of Advertising," *Journal of Consumer Research*, vol. 18, pp. 71–83, 1991.

these restrictions must be comprehensive, that is, they must apply to the many types of media currently used in a coordinated way to advertise cigarettes and smokeless tobacco.

FDA finds support for the need for comprehensive regulation in the experiences of other countries which have enacted and put into place some form of restrictions on the advertising of tobacco. Some comments discussed the experience in other countries in which tobacco advertising has been banned. These comments indicated that in countries that have enacted restrictions on advertising that were not comprehensive, the industry was able to continue advertising and portraying attractive imagery in media left uncovered by regulations. For example, Canada, Finland, Great Britain, and Australia enacted regulations of tobacco advertising that did not completely ban or restrict all forms of advertising and promotion. In each of those instances, according to the comments, the tobacco industry was able to take advantage of loopholes in the system to continue to advertise to reach their target audience. Thus, in Canada the advertising ban, which did not ban nontobacco items, was accompanied by the increased use of nontobacco items that carried the tobacco brand name as a mechanism for continuing to advertise the tobacco brand and its prior image. In Great Britain, sophisticated colorful advertisements appeared when the use of human figures in tobacco advertising was banned; in Australia, loopholes in sports sponsorship provisions enabled the industry to continue sports advertising.

Another comment detailed numerous other examples of tobacco companies continuing to advertise effectively in spite of a ban or restrictions on advertising. For example, this comment noted that after France banned all cigarette advertising in magazines, Philip Morris set up a travel agency and advertised "Marlboro Country Travel" in French magazines (Thus, although there was no longer any "cigarette advertising," Philip Morris was able to continue using its western, cowboy theme in advertisements for a travel agency). The comment noted further that in Europe, advertising for cigarettes was replaced by advertisements, using the same imagery, for Camel and Marlboro sports watches and Camel boots. In Malaysia, cigarette companies set up travel agencies called Marlboro, Kent, and Peter Stuyvesant, clothing stores named Camel, jewelry stores named for Benson and Hedges, luxury car dealerships named More, Salem record stores and Salem and More concert and movie promotions to advertise cigarettes in a country that has banned cigarette advertising. FDA finds that these comments provide strong support for the need for the advertising restrictions to be comprehensive and apply to all advertising media to be effective.

Two aspects of the evidence in this proceeding are particularly persuasive in evidencing that restrictions on advertising will directly advance the agency's goal of protecting the health of children and adolescents under 18. The experience of other countries that have adopted advertising restrictions shows that when those restrictions are enforced, they have resulted in reductions in the level of tobacco use. In addition, the courts themselves have generally found that, as a matter of common sense, reductions in advertising have produced a reduction in demand. While some comments tried to distinguish these cases, FDA finds that they are relevant.

A discussion of each of these aspects of the evidence follows:

a. *International and cross country studies.* FDA did not receive consistent comment on the international studies [164] that it cited in the preamble to the 1995 proposed rule on the relationship between advertising restrictions and consumption.

(18) Several comments stated that advertising restrictions have not affected tobacco product consumption, and further stated that, in fact, tobacco product consumption has increased in most countries with advertising and promotional restrictions.

In contrast, other comments supported the findings of the same studies and stated that the studies support the conclusion that advertising and promotional restrictions can be effective in curbing smoking initiation among young people.

Several comments opposing the 1995 proposed rule maintained that better surveys of the results of advertising restrictions abroad were done in conjunction with the World Health Organization (WHO). The two WHO surveys on the health behavior of schoolchildren in four countries found that smoking among schoolchildren is related to peer smoking behaviors and to the number of smokers in the family. [165] More importantly, the comments said that the survey found "no systematic differences" between the smoking behavior of young people in countries where tobacco advertising is completely restricted and in countries where it is not. They asserted that the findings of the WHO survey completely repudiate FDA's assertion that advertising restrictions reduce tobacco consumption among young people. The comments further argued that a followup survey found that the prevalence of smoking among schoolchildren in countries with total tobacco advertising restrictions was actually higher than countries with fewer restrictions. [166]

However, the two surveys cited by these comments did not compare the percentage of young people who smoked before and after the implementation of tobacco advertising restrictions within countries. In order to realistically measure the effect of advertising restrictions, each country must be looked at individually. For example, country A, with a high rate of smoking, cuts its smoking rate in half. This would be considered a major success for country A, but country A still may have a higher smoking rate than country B. Country B may not have instituted any advertising restrictions because its smoking rate has always been low. Thus, comparing the rates of countries A and B would be like comparing apples and oranges.

Studies that have looked at before and after data from individual countries have reported downward trends in smoking rates among young people following advertising restrictions. [167] For example, in Norway the percentage of 15-year old boys and the percentage of 15-year old girls who were daily smokers in 1975, before a restriction on all forms of tobacco advertising and promotion was put in place, was

[164] Smee, C., "Effect of Tobacco Advertising on Tobacco Consumption—A Discussion Document Reviewing the Evidence," Department of Health, Economics, and Operational Research Division, London, 1992; "Health or Tobacco—An End to Tobacco Advertising and Promotion," Toxic Substances Board (TSB), Wellington, New Zealand, May 1989; Laugesen, M., and C. Meads, "Tobacco Advertising Restriction Price, Income and Tobacco Consumption in OECD Countries, 1960–1986," *British Journal of Addiction*, vol. 86, pp. 1343–1354, 1991.

[165] Aaro, L. E., B. Wold, L. Kannas, and M. Rimpela, "Health Behavior in Schoolchildren: A WHO Cross-National Survey," *Health Promotion*, vol. 1, pp. 17–33, May 1986.

[166] Van Reek, J., H. Adriaanse, and L. Aaro, "Smoking by Schoolchildren in Eleven European Countries," *Proceedings of the 7th World Conference on Tobacco and Health*, Duroton, B., and K. Jamrozik, vol. 301, pp. 301–302, 1991.

[167] Bjartvelt, K., "The Effect of an Advertising Ban—Who has the Burden of Proof," National Health Screening Service, Norway, 1994; Rimpela, M., L. E. Aaro, and A. H. Rimpela, "The Effects of Tobacco Sales Promotion on Initiation of Smoking," *Scandinavian Journal of Social Medicine*, 1994.

approximately 23 percent and 28 percent, respectively. [168] According to the WHO followup survey, the percentage of 15- to 16-year old boys and the percentage of 15- to 16-year old girls who were daily smokers in 1986–1987 was 16 percent and 17 percent, respectively. [169] This represents success not only with the group that was prohibited from purchasing cigarettes, those younger than 16, but also with a group that could legally purchase cigarettes. These results also appear to indicate that the restrictions did not simply move the onset of smoking to the first legal year of purchase.

Comments from the tobacco industry also relied upon research conducted by J. J. Boddewyn, which has found results contrary to those presented by FDA, to argue that tobacco advertising bans have not been a successful part of tobacco control policy. [170] Boddewyn's research is directly contrary to many of the studies cited by FDA in support of its 1995 proposed rule and is also inconsistent with the best available data on smoking rates from the countries studied.

Boddewyn has used selective data on the total number of cigarettes sold in a particular country as the basis for his analysis and has used it to justify a finding that, in those countries where advertising bans have been introduced, decreases in the total number of cigarettes sold have not followed. Relying solely on the number of cigarettes sold in a country to measure the effects of government restrictions fails to take into account the myriad of influences that can affect cigarette consumption and, thus, will not yield accurate results.

First, the overall number of cigarettes sold in a country may be influenced by factors other than the percentage of the population that smokes. For example, if the population of a country has risen, or if those who remained smokers were the heaviest smokers, the number of cigarettes smoked may not fall even though the percentage of the population that smokes has decreased. Moreover, an analysis based on the number of cigarettes sold would not account for the success advertising restrictions might have had with those not yet addicted to tobacco. The preaddicted group, mostly composed of children, does not smoke as many cigarettes as do older addicted smokers. Therefore, any success in stemming initiation rates would not show up for many years if measured as fewer cigarettes consumed.

Finally, Boddewyn and others have claimed that the experience in Norway, Finland, and Sweden supports the view that advertising restrictions have been ineffective in reducing smoking rates. However, three reports [171] presented at the World Conference of Tobacco and Health in Paris, France in October 1994 support the conclusion that advertising restrictions, if comprehensive and enforced, are effective in helping to reduce the percentage of people who smoke, particularly young people not yet addicted to tobacco.

Bjartveit's report presented the results of the Norwegian experience after the implementation of the 1975 Norway advertising ban. In 1975, Norway banned all advertising of tobacco products and prohibited the sale of tobacco to anyone under the age of 16. Norway also required warnings on packages, an educational program, and, in 1980, a larger excise tax. The results of Norway's actions belie Boddewyn's claims. First, the prevalence of smoking for boys and girls declined between 1975 and 1990. The percentage of daily smokers aged 13 to 15 declined from 15 percent to 9 percent for boys and from 17 percent to less than 10 percent for girls. Per-capita consumption for boys and girls also declined. Between 1975 and 1994, the overall sales of cigarettes and smoking tobacco per person among 15 year olds has declined from over 2,000 grams of tobacco to less than 1,800 grams.

In 1976, Finland banned some forms of tobacco advertising and promotion and increased expenditures for health education. While relatively little data are available on the smoking trends in Finland, one comment reported data that showed the government's actions did have an impact, although the extent has been more uneven than in Norway. Before the advertising restrictions, cigarette consumption was increasing at the rate of 2.2 percent per year. In the decade since the 1975 Finland advertising ban, the rate of increase has been cut in half to a little over 1 percent per year—a meaningful change but not a decline. However, the greatest benefits have been for teenagers. In 1973, 26 percent of 16 to 18 year olds in secondary school smoked. By 1979, 2 years after restrictions went into place, this rate dropped to 14 percent. Since that time, the decrease has continued but has leveled off. In 1973, 19 percent of 14-year old children in Finland smoked. By 1979, 2 years after the ban, only 8 percent of 14-year old children in Finland smoked, a decrease of over 50 percent.

Moreover, a report by Rimpela [172] provided a more complete explanation of the experience that Finland has had with its advertising restrictions. Although the 1978 Finnish Tobacco Act banned cigarette advertisements in youth magazines, it did not eliminate the advertising of product-families or the sponsorship of events. Consequently, the tobacco companies found new means of sales promotion through image advertising in these two venues. The author concluded that a promotional onslaught in these two forums undercut the so-called advertising ban, and the weak implementation of the legislation by health authorities caused the advertising restrictions to be less effective than they might have been with a total ban. The author contrasted these uneven results with the success of Norway's total ban.

The study presents strong evidence for the need for comprehensive advertising restrictions covering all forms of advertising and promotion in order to achieve the best results in reducing youth tobacco use. Finally, the restrictions imposed in Sweden have not been in effect long enough to measure accurately.

1. *The British Health Department Report.* Several comments from the tobacco industry criticized the findings of the British Health Department Report (Smee Report) that advertising increases consumption of tobacco products, and that restrictions on advertising decrease tobacco use beyond what would have occurred in the absence of

[168] Rimpela, M., L. E. Aaro, and A. H. Rimpela, "The Effects of Tobacco Sales Promotion on Initiation of Smoking," *Scandinavian Journal of Social Medicine*, vol. 49, pp. 1–23, 1994.

[169] Van Reek, J., H. Adriaanse, and L. Aaro, "Smoking by Schoolchildren in Eleven European Countries," *Proceedings of the 7th World Conference on Tobacco and Health*, Duroton, B., and K. Jamrozik, vol. 301, pp. 301–302, 1991.

[170] Boddewyn, J. J., "Tobacco Advertising Bans and Consumption in 16 Countries," International Advertising Association, 1986; Boddewyn, J. J., "Why do Juveniles Start Smoking?" Children's Research Unit of London (CRU) Study, 1986; Boddewyn, J. J., "Cigarette Advertising Bans and Smoking: The Flawed Policy Connection," *International Journal of Advertising*, vol. 13, No. 4: pp. 311–332, 1994.

[171] Bjartveit, K., "The Effect of an Advertising Ban—Who Has the Burden of Proof," National Health Screening Service, Oslo, Norway, October 1994; Lund, K., "Tobacco Advertising and How to Measure Its Effect on Smoking Behavior," *Tobacco and Health*, Slama, K., ed., Plenum Press, New York, pp. 199–204, 1995; Rimpela, M., L. E. Aaro, and A. H. Rimpela, "The Effects of Tobacco Sales Promotion on Initiation of Smoking," *Scandinavian Journal of Social Medicine*, vol. 49, pp. 1–23, 1994.

[172] Rimpela, M., L. E. Aaro, and A. H. Rimpela, "The Effects of Tobacco Sales Promotion on Initiation of Smoking," *Scandinavian Journal of Social Medicine*, vol. 49, pp. 1–23, 1994.

regulation.[173] The Smee Report examined: (1) The relationship between cigarette advertising, (2) the effects of partial and complete advertising bans on tobacco consumption, and (3) the results of cross-national studies. The study focused on countries for which the most complete data exists—Norway, Finland, Canada, New Zealand, and the United Kingdom. One reported result of this analysis was that in all five countries, bans or restrictions on cigarette advertising resulted in an aggregate decrease in cigarette consumption.

(19) The comments argued that the WHO study contradicts the findings of this report regarding Norway, Finland, and Canada, stating that the findings do not indicate that advertising restrictions affect consumption. Several comments stated their belief that the author's (Smee's) "sweeping and unjustified" conclusions are based on "data collected over a short time period" and on a "limited and incomplete review of the available evidence". They also argued that Smee's reliance on existing studies linking advertising and consumption is misplaced. Furthermore, the comments specifically criticized the report's use of several of the reviewed studies, which, they claim, did not apply rigorous statistical analysis. Finally, the comments stated that the author's model made no allowances for the effect of externalities, such as health shocks (the Royal College of Physicians' Report on Smoking in 1962, the Report of the Surgeon General's Panel on Smoking and Lung Cancer in 1964, etc.). All the above comments maintained that the Smee Report should not be relied upon as evidence of the causal relationship between advertising restrictions and teen smoking behavior.

FDA disagrees with the comments' assessment and finds the Smee Report to be unbiased and useful as a comprehensive survey of the literature. Upon examining the specific concerns expressed by the comments in connection with specific country analyses, FDA has found that the criticisms are without merit. For example, the comments stated that the reduction in tobacco consumption found in Norway could be attributed to externalities, such as to enforcement of other provisions of the antitobacco legislation package, e.g., health warnings, health education, and sales restrictions. However, Smee reported that the share of reduction in tobacco consumption attributable to the advertising ban "is likely to account for the great majority of the effect." Another comment expressed concern that Smee, in reporting on the Canadian experience, failed to include income as an independent variable. The comment stated that this could seriously bias the results because real income was falling in Canada at the time the advertising ban went into effect. However, in the initial Smee model, the income variable was included, and it did not explain the variation in tobacco consumption. In the final model, Smee did not include the income variable. However, removing the income variable did not significantly change the estimated coefficient and would not have biased the estimates from the model.

Finally, all econometric studies are subject to limitations. As noted in sections VI.D.4.d. and VI.D.5. of this document, it would require controlled studies to produce better results and it is neither practical nor ethical to conduct such studies. Empirical research is always subject to the criticism that some variables were omitted, or that alternative specifications would yield different results. However, Smee collected many studies, and hence his compilation includes many different specifications of tobacco demand. Thus, although it is difficult to evaluate the causes of variations in each study, an analysis of all the existing studies should yield more generalizable and robust results than those of a single study. The question here is not whether each of the studies has limitations, but to what extent those limitations impair the findings of the overall survey. Smee's study represents the best attempt to date to compile the numerous studies on the effects of advertising restrictions on tobacco use and to provide a coherent analysis. His conclusion was that restrictions on advertising did reduce tobacco use.

A comment in support of the findings of the Smee Report stated that this study was unbiased and performed by a credible organization. The comment argued that advertising restrictions produced the decline in the percentage of young people who smoke in the countries studied. In response to the tobacco industry's claim that the total number of cigarettes consumed continued to rise in several countries, the comment said that "it takes a number of years for the impact of the fact that fewer people are starting to smoke to show up in overall tobacco consumption data."

ii. *New Zealand Toxic Substances Board Study.* Several comments gave considerable attention to the New Zealand Government Toxic Substances Board ("TSB") Study which reviewed the effect of advertising restrictions in 33 countries.[174] The study concluded that there was a correlation between the degree of restrictions imposed in each country and decline in tobacco use.

(20) Comments submitted by those opposing the proposed regulations argued that the study lacked objectivity because of methodological errors, particularly in the collection, sorting and selective use of data. The comments argued that these errors removed all probative value from the study. Moreover, the comments noted that FDA's use of the study illustrates its inconclusive nature. In addition, one comment asserted that the drop-offs in consumption and the number of smokers may be related to events other than legislated restrictions.

One comment argued that several studies cited by FDA in the preamble to the 1995 proposed rule, including Chetwynd and Harrison, do not support the claimed relationship between advertising expenditures and consumption because the studies have flawed data and fundamental methodological errors. For instance, the comment argued that, in the Laugesen study on tobacco consumption in 23 Organization for Economic Cooperation and Development (OECD) countries described below,[175] the qualitative variables used were not relevant to the regression model and biased the results. Additionally, the comment criticized the authors of the study for ignoring contradictory findings.

One comment suggested that the findings in several smaller studies cited by FDA[176] do not indicate that

[173] Smee, C., "Effect of Tobacco Advertising on Tobacco Consumption—A Discussion Document Reviewing Evidence," Department of Health, Economics, and Operational Research Division, London, p. 18, 1992.

[174] "Health or Tobacco—An End to Tobacco Advertising and Promotion," TSB, Wellington, New Zealand, May 1989.

[175] Laugesen, M., and C. Meads, "Tobacco Advertising Restrictions, Price, Income, and Tobacco Consumption in OECD Countries, 1960–1986," *British Journal of Addiction*, vol. 86, pp. 1343–1354, 1991.

[176] Chetwynd, J., P. Coope, R. J. Brodie, and E. Wells, "Impact of Cigarette Advertising on Aggregate Demand for Cigarettes in New Zealand," *British Journal of Addiction*, vol. 83, p. 409–414, 1988; Harrison, R., J. Chetwynd, and R. J. Brodie, "The Influence of Advertising on Tobacco Consumption: A Reply to Jackson and Ekelund," *British Journal of Addiction*, vol. 84, pp. 1251–1254, 1989; Raferty, J., "Advertising and Smoking—A Smoldering Debate?", *British Journal of Addiction*, vol. 84, pp. 1241–1246, 1989.

advertising affects consumption. The comment argued that one of the analyses failed to account for common trends resulting from the diffusion of information about health risks. The comment further stated that Chetwynd used a model in his study that was more likely to indicate correlation than causation. The comment also asserted that the model suffers from poor data and fails to take into account changing social mores. In addition, the comment argued that a comparable study (Boddewyn) has not shown a decrease in cigarette consumption in areas that restrict advertising. [177]

Industry comments uniformly criticized the TSB study. This study was also criticized by the Canadian courts in the course of litigation over the validity of Canada's advertising restrictions, see section VI.D.3.f. of this document. In response, the TSB published a modification of the original study that recognized that mistakes had been made in the initial report. The reissued report was entitled "A Reply to Tobacco Industry Claims about Health or Tobacco," ISBN–0–477–04574–X (hereinafter referred to as the Reply). According to one comment from a public interest group:

> The Reply re-analyzed the data of the impact of advertising in a number of countries based upon criticisms of the original report by the tobacco industry. Even after taking into account the criticisms of the tobacco industry, the New Zealand government found strong empirical evidence of the link between tobacco advertising and tobacco consumption.

In addition to the issuance of the Reply, Laugesen and Meads [178] retested the typology created by the TSB and applied it to 22 OECD countries for a 15-year period. In the preamble to the 1995 proposed rule, FDA referred to the Laugesen study as providing affirmation of the TSB's analysis and conclusions, that, as a group, countries prohibiting tobacco advertising in most or all media experienced more rapid percentage falls in consumption than the group of countries that permitted promotion (60 FR 41314 at 41334).

The industry comments' major criticism of the Laugesen study is that the scale developed by Laugeson is flawed. The comments criticized the amount of weight accorded to different types of advertising restrictions (i.e., TV ban versus warning on package). However, the rating scale accurately reflects the level of restrictions in each country. The steps between the ratings in the scale may be smaller or larger than the comments believe were warranted, but the relative rankings would remain the same regardless.

Finally, several comments found fault with the smaller studies cited by FDA, including ones by Chetwynd and Harrison. Contrary to the comments' assertions, the studies do include the most relevant variables such as price, income and advertising expenditures. A major complaint of the industry regarding studies done abroad is that the advertising expenditures fail to be totally inclusive. However, the solution to that problem lies with the industry in most cases. Advertising expenditures are a closely guarded industry trade secret, [179] which the companies state cannot be released to the public because of their commercial sensitivity. However, the industry could release older relevant data that are no longer sensitive for the purposes of investigation and study. Moreover, researchers who have had access to industry data have not released their data sets for replication by other research groups. [180]

The final study criticized by the industry, performed by Harrison, was written in response to earlier criticism by the industry about the Chetwynd study, and it therefore provided some answers to the comments' concerns. For example, the comments fault Chetwynd for failing to take into account changing social mores. Harrison stated that he retested Chetwynd's model and found that the model was structurally stable through time in the long term. He also found that the long run analyses indicated that the impact of cigarette advertising on consumption may be larger than was suggested in the original work. [181]

After reviewing the studies provided by the comments and reevaluating the studies relied upon in the preamble to the 1995 proposed rule, FDA reaffirms that the statement that it made in the preamble is correct:

> These studies provide insight into the effects of advertising on the general appeal of and demand for cigarettes and smokeless tobacco products. They also provide evidence confirming advertising's effect on consumption and the effectiveness of advertising restrictions on reducing youth smoking.

(60 FR 41314 at 41333)

Based on the foregoing, FDA finds that the international experience provides empirical evidence that restrictions on tobacco advertising, when given appropriate scope and when fully implemented, will reduce cigarette and smokeless tobacco use among children and adolescents under the age of 18. This experience provides strong evidence that the restrictions that FDA is imposing will directly advance its interest in protecting the health of these young people.

b. *Case law considering the effect of advertising and advertising restrictions upon tobacco use by young people.* Virtually every court that has examined the issue has held that there is a direct connection between advertising and demand for the product advertised. For example, in *Central Hudson Gas and Electric*, 447 U.S. at 569, the Supreme Court stated: "[T]he State's interest in energy conservation is directly advanced by the Commission order at issue here. There is an immediate connection between advertising and demand for electricity." See also *Posadas de Puerto Rico* v. *Tourism Co. of Puerto Rico*, 478 U.S. at 341–342. In *United States* v. *Edge Broadcasting Co.*, the Supreme Court carried its position in *Central Hudson* one step further:

> If there is an immediate connection between advertising and demand, and the federal regulation decreases advertising, it stands to reason that the policy of decreasing demand for gambling is correspondingly advanced.

(509 U.S. 434)

Each circuit court that has considered the issue has also concluded that the regulation of advertising is reasonably aimed at reducing demand. (See, *Anheuser-Busch, Inc.* v. *Schmoke*, 63 F.3d 1305, 1314–15 (4th Cir 1995), *vacated and remanded* 64 U.S.L.W. 3333 (May 20, 1996); *Dunagin* v. *City of Oxford, Miss.*, 718 F.2d at 750 ("[W]e hold that sufficient reason exists to believe that advertising and consumption are linked to justify the ban, whether or not 'concrete scientific evidence' exists to that effect."); and *Oklahoma Telecasters Ass'n* v. *Crisp*, 699 F.2d 490, 501 (10th Cir. 1983), rev'd on other grounds sub.nom. *Capital*

[177] Boddewyn, J. J., "Tobacco Advertising Bans and Consumption in 16 Countries," International Advertising Association, 1986.

[178] Laugesen, M., and C. Meads, "Tobacco Advertising Restriction, Price, Income, and Tobacco Consumption in OECD Countries, 1960–1986," *British Journal of Addiction*, vol. 86, pp. 1343–1354, 1991.

[179] Even in the United States, only FTC has access to company expenditure data and it is prevented from disclosing information concerning advertising expenditures except at the industry-agglomerated level.

[180] Beales, J. H., "Advertising and the Determinants of Teenage Smoking Behavior," p. 44, 1993.

[181] Harrison, R., J. Chetwynd, and R. J. Brodie, "The Influence of Advertising on Tobacco Consumption: A Reply to Jackson and Ekelund," *British Journal of Addiction*, vol. 84, pp. 1251–1254, 1989.

Cities Cable, Inc. v. *Crisp*, 467 U.S. 691 (1984)).) In *Greater New Orleans Broadcasting Ass'n* v. *United States*, 69 F.3d 1296, 1301 (5th Cir. 1995), the court said:

> They cannot seriously dispute that a prohibition of advertising of casino gambling directly advances the governmental interest in discouraging such gambling and fulfills the [second] *Central Hudson* prong. It is axiomatic that the purpose and effect of advertising is to increase consumer demand.

To counter the weight of this case law, comments that opposed FDA's advertising restrictions made two arguments. First, several comments from the tobacco and advertising industries argued that the agency cannot rely on the assumption of a link between advertising and demand that is embodied in these decisions and, citing the Court's more recent *Coors* decision, contended that the agency's evidentiary record will be held to a higher standard of proof.

However, as one comment correctly noted, the Court in Coors wrote:

> It is assuredly a matter of 'common sense' that a restriction on the advertising of a product characteristic will decrease the extent to which consumers select a product on the basis of that trait.

(115 S.Ct. at 1592) Moreover, in *44 Liquormart, Inc.*, Justice Stevens quoted with apparent approval *Central Hudson's* reliance on the "immediate connection" between "promotional advertising" and demand (116 S.Ct. at 1506, quoting *Central Hudson* 447 U.S. at 569). Thus, the Supreme Court continues to hold that there is a connection between advertising and demand, and FDA finds no merit to this contention in the contrary argument in the comments.

The second argument that these comments made is that because tobacco products constitute a "mature product" whose availability and qualities are widely known to consumers, the purpose and function of cigarette advertising is to build market share and to maintain brand loyalty, not to stimulate demand. FDA considers these comments in depth in the following section of this document.

c. *The function of advertising in the "mature" market.* Comments from the industry, advertisers, psychologists, and economists argued that although it may be true that advertising generally serves the function of increasing demand for a product category, that truism does not work for tobacco, which, they claim, is a mature market.

(21) The comments argued that because tobacco is a mature product, advertising serves to reinforce brand loyalty and to induce current smokers to switch brands. They stated that because consumers are already aware of the tobacco category, advertising does not serve to inform potential consumers of the product and to entice them to become a user. One comment likened tobacco to other mature products such as soft drinks, deodorants, antiperspirants, and appliances. Moreover, this comment argued that "[b]ecause FDA lacks marketing expertise," it has been misled by the size of the industry's advertising expenditures and assumed, incorrectly, that this means that the industry is attempting to expand its overall market. Finally, several comments stated that there are no data that clearly prove that advertising and promotion increase demand in the tobacco market.

Other comments took the opposing view and agreed with FDA's assessment that tobacco advertisements make tobacco products more appealing to young people and affects tobacco use among young people. Several comments argued that the market for cigarettes and smokeless tobacco is not mature but is actually very dynamic. In addition to brand switching and brand loyalty, they argued that tobacco marketing generates market expansion. The comment noted that there is substantial movement at the margins with new customers entering the market, and many current customers trying to leave.

FDA agrees with those comments that expressed the view that labeling the tobacco market as a "mature market" is a simplistic denotation, which fails to recognize the movement *into* the market each day of new young smokers often motivated in part by advertising. Even "mature" markets must replenish their customer base as older consumers leave the market. In fact, approximately one million new young smokers enter the tobacco market each year. These new smokers are necessary to keep the mature market stable and to prevent decline. There is no evidence to suggest that these new smokers are predestined [182] to enter the market. RJR acknowledged this in one marketing memo,

> "[I]f we are to attract the nonsmoker or the presmoker, there is nothing in this type of product that he would currently understand or desire. * * * Instead, we somehow must convince him with wholly irrational reasons that he should try smoking." [183]

They must be influenced by peers, parents, and advertising, either to join the market or to decline to enter.

The agency finds that regardless of whether marketers and their advertising agencies intentionally target children and adolescents, young people are still affected by advertising. Children are not isolated from tobacco advertising's attractiveness or inducements. There is no "magic curtain around children and teenagers who seek to learn how to fit into the adult world," nor is there any evidence to support a claim that young people are immune from advertising's blandishments. [184]

Comments asserting that tobacco advertising fails to increase consumption for the tobacco market run contrary to the views of one well-known advertising executive who stated:

> I am always amused by the suggestion that advertising, a function that has been shown to increase consumption of virtually every other product, somehow miraculously fails to work for tobacco products. [185]

Further, the view that advertising does not affect consumption is contradicted by industry experience, logic, and evidence. It does not appear credible that the industry spends more than $6 billion annually merely to maintain brand share and to try to switch current smokers; this argument defies common sense. The economics of this argument are strained—five manufacturers control almost 100 percent of the market, and three of these have approximately 90 percent of the market. [186]

The courts have also expressed skepticism about this argument. In *Dunagin* v. *City of Oxford, Miss.*, the advertiser's expert, a professor in sociology who specialized in alcoholism, testified that advertising merely affected brand loyalty and market share, rather than increasing overall consumption or consumption of individual consumers (718 F.2d at 748). The court rejected this argument:

> It is beyond our ability to understand why huge sums of money would be devoted to the promotion of sales of liquor without expected

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[182] Teague, C., *Research Planning Memorandum on Some Thought about New Brands of Cigarettes for the Youth Market*, 1973.

[183] Teague, C., *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein*, 1972.

[184] Cohen, J. B., "Charting a Public Policy for Cigarettes," *Marketing and Advertising Regulation: The Federal Trade Commission in the 1990's*, edited by Murphy, P. E., and W. L. Wilkie, University of Notre Dame Press, Notre Dame, IN, pp. 234–254 , 1990.

[185] Foote, E., "Advertising and Tobacco," *JAMA*, vol. 245, pp. 1667–1668, 1981.

[186] Weidner, D., "RJR Tobacco International Gets New Chief," *Winston-Salem Journal*, p. A1, Dec. 8, 1995. (Philip Morris, 45 percent, Reynolds 27 percent.); Antunes, S., "B & W Harassed Workers," *Evening Standard*, p. 47, Nov. 16, 1994. (After Brown & Williamson acquired American Tobacco, it had 18 percent of the market.)

results, or continue without realized results. No doubt competitors want to retain and expand their share of the market, but what businessperson stops short with competitive comparisons? It is total sales, profits, that pay the advertisers and dollars go into advertising only if they produce sales. Money talks: it talks to the young and the old about what counts in the marketplace of our society, and it talks here in support of Mississippi's concern.

(718 F.2d at 749)

The court concluded: "We simply do not believe that the liquor industry spends a billion dollars a year on advertising solely to acquire an added market share at the expense of competitors" (718 F.2d at 750). The same reasoning applies here.

(22) One comment discussed the results of a recent study that the comment said had been accepted for publication [187] which found that less than 10 percent of adult smokers switch brands each year, and that only 6.7 percent switch companies. The commentary suggests that this amount of "real" brand switching would not justify $6.1 billion, an amount in annual advertising and promotional expenditures.

In addition to logic, there is empirical evidence that advertising can expand demand in a so-called mature market and in fact has done so in the cigarette market before. Smoking rates for teenage girls rose from 8.4 percent in 1968, when major promotional campaigns first targeted women, to 15.3 percent in 1974, by which time other tobacco companies had also begun marketing women's brands. [188] The same phenomenon was captured differently in a recent study [189] that tracked initiation rates for girls and women over a 40-year period. The study found that smoking initiation rates rose for girls under 18 during the period between 1967 and 1973 (women's targeting period), even though initiation rates did not rise for women 18 and older. Finally, as detailed more fully in the preamble to the 1995 proposed rule (60 FR 41314 at 41345), another study looked at the effect of variations in advertising expenditures for low tar cigarettes. Although the advertising did not increase the advertiser's brand share, increased advertising for low tar cigarettes caused the entire market for cigarettes to increase. [190]

The ability of advertising to expand total demand for a particular class of products through market segmentation has also been demonstrated in other markets when the breakfast cereal industry first began making health claims for their products, such as those regarding the cancer-prevention benefits of dietary fiber. The creation of a new segment of the cereal market—healthy cereal—through the use of advertising resulted in an increase in the overall adult cereal market. Advertising caused an increase in aggregate demand by giving consumers a "new" product that met their needs, wants, and desires. [191]

Thus, advertising can serve an important role in meeting and expanding desires in the marketplace. It identifies consumers' needs and desires and then matches them with the attributes of particular product categories and brands. Advertising can perform this function through its use of explicit claims or through imagery, code words, or psychosocial cues. And, in doing so, it can both shift demand across the entire product category and create new demand.

Moreover, the industry's mature market categorization assumes that the product category has no outside competitors, i.e., that there is no other product line that competes for the consumers' attentions and dollars. For example, soft drinks are a mature market, but more healthful drinks, such as milk, juices, or even water, can attempt to draw off part of the market. In addition, soft drinks can try to expand their own market share as Coca Cola and later Pepsi did a number of years ago [192] when they promoted cola for breakfast.

Similarly, tobacco has competitors. New users or "presmokers," as one RJR employee refers to them, [193] are faced not only with tobacco imagery but also with antismoking health messages in commercial media and in schools. Current smokers are faced with alternatives to smoking, including over-the-counter and prescription drug advertising for nicotine replacement products and stop-smoking cures. The tobacco market thus has to convince the presmoker or new smoker to switch from the nonuse category promoted by health professionals, public service announcements, and school messages, to tobacco use. Also, it must constantly convince the addicted smoker not to leave the market by use of a competing nicotine-delivery product, a nicotine replacement source, or by other voluntary means.

Finally, even the industry acknowledges that young people are a strategically important audience because brand loyalty often develops during this period of trying cigarettes and becoming a smoker. In 1973, RJR's research and development officer wrote "Realistically, if our Company is to survive and prosper over the long term, we must get our share of the youth market." [194] And, as noted in the preamble of the 1995 proposed rule, these words reflect those uttered by the Canadian sister company of the American tobacco company, Brown and Williamson Tobacco Corp.

If the last ten years have taught us anything, it is that the industry is dominated by the companies who respond most effectively to the needs of younger smokers. [195]

FDA finds that there is no merit to the industry's claim that because the tobacco market is a mature market, advertising does not stimulate demand but only reallocates the existing market between companies. Not only is the industry's argument overly simplistic, but, as shown, advertising plays an important role in creating new customers, including young people. FDA shares the incredulity expressed by the court in *Dunagin*, 718 F.2d at 750, regarding this argument: "It is beyond our ability to understand" why an industry would spend billions a year merely to acquire market share at the expense of its competitors, when it has a much harder job of convincing young people to start a habit that is neither easy to acquire nor pleasant. Consequently, FDA finds that the second prong of *Central Hudson* is satisfied, i.e., the advertising restrictions directly and materially advance the substantial state interest.

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[187] Siegel, M., et al., "The Extent of Cigarette Brand and Company Switching: Results from the Adult Use-of-Tobacco Survey," *American Journal of Preventive Medicine*, vol. 12, No. 1, pp. 14–16, 1996.

[188] Botvin, G. J., C. J. Goldberg, E. M. Botvin, and L. Dusenbury, "Smoking Behavior of Adolescents Exposed to Cigarette Advertising," *Public Health Reports*, vol. 108, pp. 217, 222, 1993.

[189] Pierce J. P., L. Lee, and E. A. Gilpin, "Smoking Initiation by Adolescent Girls, 1944 through 1988," *Journal of the American Medical Association*, vol. 271, No. 8, pp. 608–611, 1994.

[190] Roberts, M. J., and L. Samuelson, "An Empirical Analysis of Dynamic, Nonprice Oligoplistic Industry," *Rand Journal of Economics*, vol. 19, pp. 200–220, 1988.

[191] Ippolito, P., and A. Mathios, *Health Claims in Advertising and Labeling: A Study of the Cereal Market*, p. 32, 1989.

[192] Dourado, P., "Breakfast Cola Takes on America's Coffee Giants," *The Independent*, p. 28, April 15, 1990.

[193] Teague, C., *Research Planning Memorandum on Some Thoughts about New Brands of Cigarettes for the Youth Market*, p. 1, 1973.

[194] *Id.*

[195] Overall Marketing Objectives-F88, 1988 Imperial Tobacco Ltd. Marketing Plan, p. 6; 60 FR 41314 at 41331.

E. Provisions of the Final Rule

FDA selected each of the restrictions that it included in the 1995 proposed rule based on its tentative view that the particular restriction is necessary to providing a comprehensive response to the appeal of tobacco advertising to young people. Each proposed restriction was intended to address an aspect of this advertising that contributes to its appeal. The agency tentatively concluded that, together, these restrictions will ensure that advertising is not used to undermine the access restrictions that FDA proposed and thus will help to protect the health of children and adolescents under the age of 18.

In this section of the document, FDA will respond to comments on each element of this comprehensive approach, including comments on whether the regulations are legally supportable. A key question about the agency's approach is whether there is a reasonable fit between the agency's interest and the means that it has chosen to accomplish it; that is, between the agency's interest and the specific restrictions that it proposed. This inquiry involves consideration of the restrictions under the third and final prong of *Central Hudson.*

FDA will first consider comments that raised general concerns about its approach under the third prong of *Central Hudson.* It will then consider comments that raised concerns about specific restrictions under this aspect of *Central Hudson* as part of its discussion of the comments on each restriction.

1. Are FDA's Regulations Narrowly Drawn?

In the preamble to the 1995 proposed rule, FDA stated that the regulations that it was proposing met the final prong of the *Central Hudson* test (60 FR 41314 at 41355). In *Central Hudson,* the Supreme Court stated that the First Amendment mandates that speech restrictions be "narrowly drawn." The Court continued:

> The regulatory technique may extend only as far as the interest it serves. The State cannot regulate speech that poses no danger to the asserted State interest, * * * nor can it completely suppress information when narrower restrictions on expression would serve its interest as well.

(447 U.S. at 565, n.7) FDA pointed out, however, that: "The Supreme Court has made it clear that this prong does not require a 'least restrictive means test,' but rather that there be a 'reasonable fit' between the government's regulation and the substantial governmental interest sought to be served" (*Board of Trustees of State University of New York* v. *Fox,* 492 U.S. 469, 480 (1989); (60 FR 41314 at 41355).

(23) This statement by FDA provoked a significant amount of comment. Several comments said that FDA had mischaracterized its burden. These comments argued that *Fox* did not dilute the *Central Hudson* analysis, and that any restriction on commercial speech must be narrowly tailored. One comment pointed out that, in *Rubin* v. *Coors,* the Supreme Court made no mention of reasonable fit. The comment stated that in Rubin v. Coors, the Supreme Court said that *Central Hudson* requires that a valid restriction be no more extensive than necessary to serve the governmental interest (115 S.Ct. at 1591). Finally, one comment said that FDA was arguing that courts have applied a rational basis standard to restrictions on commercial speech, but the comment stated that FDA was wrong because courts have rejected this notion.

In response to these comments, FDA has carefully evaluated the relevant case law. The agency does not agree that it mischaracterized its burden in the 1995 proposed rule.

It is true that in *Rubin* v. *Coors* the Supreme Court found that the challenged statutory provision violated the First Amendment's protection of commercial speech, at least in part, because it was more extensive than necessary (115 S.Ct. at 1594). However, the Court also stated that its inquiry under the last two steps of *Central Hudson* involves "a consideration of the 'fit' between the legislature's ends and the means chosen to accomplish those ends" (*Id.* at 1391 (quoting *Posadas De Puerto Rico Associates* v. *Tourism Co. of Puerto Rico,* 478 U.S. at 341); (See also *44 Liquormart, Inc.* v. *Rhode Island,* 116 S.Ct. at 1510 ("As a result, even under the less than strict standard that generally applies in commercial speech cases, the state has failed to establish a reasonable fit between its abridgment of speech and its temperance goal.")).

Moreover, the Court's statement in *Rubin* v. *Coors* that a restriction on commercial speech must be no broader than necessary, which was cited by a comment, must be read in light of the Court's discussion of this requirement in *Board of Trustees of State University of New York* v. *Fox,* 492 U.S. at 476–481. In *Fox,* the Supreme Court concluded from its consideration of how this phrase has been used in its case law and in the related case law on time, place, and manner restrictions, that what is required, exactly as the agency said in the 1995 proposed rule, is a fit between the Government's ends and the means chosen to accomplish those ends that is not necessarily perfect but reasonable (492 U.S. at 480). The Supreme Court reiterated this point in *Florida Bar* v. *Went For It, Inc.,* 115 S.Ct. at 2380 (citations omitted):

> With respect to this prong, the differences between commercial speech and noncommercial speech are manifest. In *Fox,* we made clear that the "least restrictive means" test has no role in the commercial speech context * * * "What our decisions require," instead, "is a 'fit' between the legislature's ends and the means chosen to accomplish those ends," a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is 'in proportion to the interest served' that employs not necessarily the least restrictive means but * * * a means narrowly tailored to achieve the desired objective.

Thus, FDA did not mischaracterize its burden in the 1995 proposed rule. Moreover, in any event, FDA has narrowly tailored its provisions.

Before turning to the question of whether there is a reasonable fit between FDA's interest in the health of children and the restrictions that FDA proposed on tobacco advertising, the agency wishes to make clear that, contrary to the claim of one comment, it recognizes that courts have not equated the reasonable fit test with rational basis review. (See, e.g., *Florida Bar* v. *Went For It, Inc.*) FDA recognizes that the reasonable fit test requires that the Government goal be substantial, and that the cost of achieving that goal be carefully calculated. (See *Board of Trustees of State University of New York* v. *Fox,* 492 U.S. at 480.) It also recognizes that this test requires that the agency consider whether there are less burdensome alternatives to restrictions on speech.

Having already established that its goal is substantial (see section VI.C.4. of this document), FDA will consider the issues of the costs of the restrictions and alternatives to these restrictions in its analysis of the comments that follows.

(24) Several comments argued that the restrictions on cigarette and smokeless tobacco advertising that FDA proposed are not narrowly tailored. One comment said that the premise of the narrow tailoring requirement is that commercial speech is valuable, and that it may only be restricted when it is necessary to do so. Other comments argued that restrictions on speech must attack only problem speech, and that FDA had failed to prove that this is what the proposed restrictions did. These

comments stated that FDA's proposed restrictions are more extensive than necessary to achieve the agency's asserted interest, particularly because the agency had failed to show that the advertising restrictions will have any effect on underage smoking. Some comments argued that the restrictions that FDA proposed were tantamount to a ban because they will prevent the advertiser's message from reaching consumers.

Other comments disagreed. These comments said that FDA's proposed action is narrowly tailored. They argued that FDA had steered clear of imposing a categorical ban on tobacco advertising, or even broad prophylactic rules. One comment said that tailored prohibitions, instead of all-out bans, are important signposts indicating a measured response.

FDA disagrees with the comments that claimed that the restrictions were not narrowly tailored. The agency recognizes, as the Supreme Court said in *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626, 646 (1985), that it has the burden of distinguishing the harmless from the harmful. FDA has met this burden.

The restrictions that FDA is adopting are not like those in *Central Hudson*, which, even though the Public Service Commission's interest was limited to energy conservation, reached all promotional advertising, regardless of the impact of the touted service on energy use. (See 447 U.S. at 570.) Rather, FDA's restrictions are carefully crafted to focus on those media and aspects of advertising that children are routinely exposed to and that the available evidence shows has the greatest effect on youngsters, while leaving the informational aspects of advertising largely untouched. FDA is not banning outdoor advertising; it is restricting it so that it does not unavoidably confront children when they play. It is not banning print advertising. It is restricting the use of images and color, which are particularly appealing to children, in publications that have a large number of young readers under the age of 18 and in other forms of advertising to which children are routinely exposed but permitting unrestricted advertising in adult publications and adult venues. It is restricting cigarette and smokeless tobacco companies' use of brand names and product identifications in sponsored events, but again in a way that reflects the agency's concern about children and adolescents under the age of 18. That is, it is permitting companies to sponsor in the corporate name in order to engender good will, but preventing them from using the brand specific attractive imagery that is influential with young people. Finally, it is prohibiting the use of branded promotional items because it is the young who find particular value in these items. In each of these respects, the agency has gone no further than it has found, based on the evidence, is necessary to meet its ends. (See *Dunagin* v. *City of Oxford, Miss.*, 718 F.2d at 751.)

Under the restrictions that FDA is adopting, firms will remain free to disseminate advertising that performs all the informational functions that are protected by the First Amendment. They will be able to disseminate information on what they are selling, for what reason, and at what price. (See *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 765 (1976); *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 364 (1977).) Thus, the situation here is analogous to that in *Friedman* v. *Rogers*, 440 U.S. 1 (1979), where the Supreme Court found that a restriction on the use of optometrical trade names had only an incidental effect on the content of commercial speech. The Court said that "the factual information associated with trade names may be communicated freely and explicitly to the public" (440 U.S. at 16). So, here, any information that firms wish to communicate to adults may still be communicated by use of words. Indeed, the tobacco industry has used text-only advertising successfully in the past.[196]

It may be true, as some of the comments state and as the agency recognized above, that it will be more difficult for adult consumers to find cigarette and smokeless tobacco advertising without images and color, but willingness to search for information is one of the things that adults will do when they need information about price, quality, or product performance. Moreover, as discussed above, adult tobacco users are particularly interested in information on price, "safer" cigarettes, and new products, information that can be freely conveyed under FDA's regulations.

(25) The effect of the proposed restrictions on cigarette and smokeless tobacco product manufacturers' ability to communicate with adults was the subject of a number of comments. These comments argued that the proposed restrictions would not only preclude speech that may be perceived by young people, it would preclude speech that would be received by adults. The restrictions, these comments asserted, would deprive adults, who are legally entitled to smoke, of their right to the free flow of relevant commercial information. Other comments, relying on several cases, said that the First Amendment does not countenance wholesale censorship of speech for adults under the guise of protecting children. Many comments, for example, quoted a statement from *Butler* v. *State of Michigan*, 352 U.S. 380, 383 (1957) ("Surely, this is to burn the house to roast the pig.") in support of this point. One comment said that FDA's purpose of reducing tobacco use by minors cannot support massive censorship between tobacco advertisers and adults.

One comment, however, argued that FDA's proposed restrictions are narrowly tailored to the specific types of advertising that are most effective with children. This comment said that these restrictions permit companies to continue marketing practices that do not appeal to children.

FDA has considered the concerns expressed in the comments. First, FDA does not agree that its interest is limited. As discussed above, the agency's interest is compelling. Nonetheless, the agency has tried very hard to tailor the restrictions on advertising in this final rule to focus them in order to limit the appeal of advertising to the young and ensure that the restrictions on access to cigarettes and smokeless tobacco will not be undermined, while at the same time, minimizing their effect on adults. Given this approach, FDA's restrictions differ significantly from those struck down in *Butler* v. *State of Michigan*, where the Court overturned conviction of a bookseller for selling a book to adults that contained some portions that might be objectionable to young people. In that case, the Supreme Court stated:

> We have before us legislation not reasonably restricted to the evil with which it is said to deal. The incidence of this enactment is to reduce the adult population of Michigan to only what is fit for children. (352 U.S. at 383)

This statement clearly does not describe the situation under the restrictions FDA is adopting. Except for limits on images and colors, the restrictions that FDA is adopting do not limit what cigarette and smokeless tobacco manufacturers, distributors, or retailers may say. As stated above, they are free to put into words any nondeceptive message that they would have communicated by color or image.

[196] As discussed more fully elsewhere, advertising for low-tar products is generally more reliant on text than on imagery.

FDA's restrictions, as one comment stated, restrict only those advertising techniques that have the most appeal. Thus, contrary to the situation in *Butler* v. *Michigan*, these restrictions are reasonably restricted to the harms they are intended to address.

Nor are the restrictions that FDA is imposing like the one struck down in *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60 (1983), which was cited by several comments. In that case, a Federal statute prohibited the mailing of unsolicited advertisements for contraceptives. The Postal Service sought to justify this restriction as aiding parents' efforts to discuss birth control with their children. While the Court found this interest to be substantial, it found the restriction to be more extensive than the Constitution permits (463 U.S. at 73). The Supreme Court struck down the restrictions, stating: "The level of discourse reaching the mailbox simply cannot be limited to that which would be suitable for a sandbox" (*Id.* at 74). It is in this respect that FDA's restrictions differ from those in *Bolger*. While FDA may limit the type of color or imagery, or the use of noncommunicative media, i.e., hats, FDA's restrictions do not limit the types of information that can be disseminated, except within 1,000 feet of schools and playgrounds.

(26) Other comments cited *Sable Communications* v. *FCC*, 492 U.S. 115 (1989), in which the Supreme Court struck down an outright ban on indecent as well as obscene interstate commercial telephone messages. This case is not relevant here because FDA is not imposing an outright ban on cigarette and smokeless tobacco advertising,[197] and because in contrast to Congress's failure to make findings that would justify the ban in *Sable*, FDA is fully explaining the basis for each of the restrictions that it is adopting here.

Other comments cited *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205 (1975), in which the Supreme Court struck down an ordinance that, to protect minors, made it illegal to exhibit a motion picture visible from public streets in which female buttocks and bare breasts were shown. In doing so, the Supreme Court stated that: "Speech * * * cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them" (422 U.S. at 213).

Again, however, FDA is imposing restrictions on the manner and, to a limited extent, places in which cigarettes and smokeless tobacco are advertised, not content restrictions. Moreover, FDA is restricting commercial speech, which, as stated in section VI.C.1. of this document, is subject to a subordinate position in the scale of First Amendment values to the noncommercial expressions involved in *Erznoznik*. Thus, this case has no application here.

(27) Finally, a few comments cited *Project 80's, Inc.* v. *City of Pocatello*, 942 F.2d 635 (9th Cir. 1991), a case in which the U.S. Court of Appeals for the Ninth Circuit struck down ordinances that prohibited door-to-door solicitation because they restricted both wanted and unwanted solicitations. (See 942 F.2d at 638–639.) The municipalities sought to defend these ordinances on the grounds that they did not prohibit in-home sales. However, the court said that residents who wanted to receive unwanted solicitors had to post a "Solicitors Welcome" sign, and that the Government's imposition of affirmative obligations on the residents' First Amendment rights to receive speech is not permissible (*Id.* at 639).

Presumably, the comments cited this case as evidence that FDA's restrictions on tobacco advertising sweep too broadly because they affect the rights of both minors and adults to receive speech. Again, however, the case is distinguishable. Under FDA's restrictions, adults will be able to continue to receive tobacco advertising without any obligation to take any affirmative steps. They will have to look a little harder because, to advance FDA's interest in protecting the health of minors, advertisements will generally not have images or color, and such advertising will not be around schools or playgrounds. However, the advertising should otherwise continue to be available in newspapers, magazines, and billboards and appear unrestricted in adult publications and venues. There is no indication in *Project '80, Inc.* v. *City of Pocatello*, that the Ninth Circuit would find in such restrictions an undue burden under the First Amendment.

This review of the case law shows that FDA's effort to tailor the restrictions that it is adopting for cigarette and smokeless tobacco advertising that clearly distinguishes them from the governmental efforts to protect minors that have been struck down as sweeping too broadly and as impinging on the rights of adults. Under FDA's restrictions, there will still be a free flow of information to adults and not massive censorship as some comments allege. Thus, these comments do not provide a basis to conclude that FDA's restrictions fail the third prong of the *Central Hudson* test.

(28) Several comments pointed out that the Supreme Court has stated on several occasions that regulations that disregard numerous and obvious less restrictive and more precise means of achieving the government's asserted objectives are not narrowly tailored. These comments suggested that there are several less restrictive alternatives to the restrictions on advertising that FDA had proposed. One alternative pointed to by the comments was better enforcement of laws prohibiting sales to minors. The comments pointed out that Congress passed legislation as part of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act of 1992, that prohibits DHHS from providing block grants for the prevention and treatment of substance abuse unless the State prohibits the sale and distribution of tobacco products to persons under 18. The comments said that FDA should give this new law a chance to work before imposing restrictions on speech, particularly in light of the fact that DHHS itself said in its 1995 proposed rule to implement this new law that "[e]liminating virtually all sales [of tobacco products] to minors does not even present particularly difficult enforcement problems" (see 58 FR 45156 at 45165, August 26, 1993).

The other alternative, according to the comments, that exists to the restrictions is an educational campaign that is sponsored either by the Government or that is provided through voluntary counter speech by the tobacco industry.

The agency recognizes that the various opinions by the Justices in *44 Liquormart* reiterate the need to consider nonspeech restrictions. Justice Stevens, speaking for himself and Justices Kennedy, Ginsburg, and Souter stated that the legislature "cannot satisfy the requirement that its restriction on speech be no more extensive than necessary," given that alternative forms of regulation, such as taxation or limits on purchases that did not involve restrictions on speech, could achieve the goal of promoting temperance as well as, or better, than,

[197] The Court specifically distinguished *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), because that case did not involve a total ban on broadcasting indecent material. The Court pointed out that the FCC rule in that case sought to channel the indecent material to times of the day when children most likely would not be exposed to it (*Sable Communications* v. *FCC*, 492 U.S. at 127). FDA's intention here is to impose a similar type of focused and tailored restriction on tobacco advertising to limit the appeal of such advertising to children.

its ban. Moreover, Justice O'Connor in a concurrence, joined by the Chief Justice, and Justices Souter and Breyer stated:

> The availability of less burdensome alternatives to reach the stated goal signals that the fit between the legislature's ends and the means chosen to accomplish those ends may be too imprecise to withstand First Amendment scrutiny.

(116 S.Ct. at 1521)

(29) One comment, however, argued that, for two reasons, there is no plausible claim that FDA has disregarded reasonable alternatives. First, the comment pointed out that the Federal Government has engaged in an incremental effort for 30 years to strike the appropriate balance in regulating the sale of tobacco products. This effort was successful in bringing down overall smoking rates, but youth smoking rates remained stable during the 1980's and have recently begun to rise. Because previous measures have failed, the comment said, it was now appropriate for FDA to take stricter action to reduce the use of tobacco products by minors. Second, the comment noted that a lack of narrow tailoring often manifests itself in a restraint that is either grossly underinclusive or overinclusive. The comment said that FDA had been neither here.

In *Florida Bar* v. *Went For It, Inc.*, 115 S.Ct. at 2380, the Supreme Court made clear that the question whether a restriction on commercial speech is reasonably well-tailored turns, at least in part, on the existence of "numerous and obvious less burdensome alternatives to restrictions on commercial speech * * *." (See 115 S.Ct. at 2380 (citing *Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. 410, 418 n.13 (1993)).) FDA has considered the alternatives suggested by the comments and finds that none of them is an appropriate alternative to the restrictions that FDA is adopting.

First, the Government has engaged in a 30-year effort to eliminate young people's access to and use of tobacco products. The industry, through its voluntary code and various education programs, has professed to be part of the solution. However, tobacco can be easily obtained by young people (between 516 million and 947 million packs of cigarettes sold illegally per year to children (1992–1993) (60 FR 41314 at 41315)). Moreover, although adult smoking rates have declined dramatically since the publication of the first Surgeon General's Report in 1964 (from over 42.4 percent in 1965 to 25 percent in 1993) (60 FR 41314 at 41317), young people's smoking rates failed to decline during the decade of the 1980's and began to rise in 1991. Between 1991 and 1995, the proportion of 8th and 10th graders who reported smoking in the 30 days before the survey had risen by one-third, to about 19 percent and 28 percent, respectively. Smoking among high school seniors had increased by more than one-fifth since 1992, with 33.5 percent saying that they had smoked in the 30 days before the survey.[198] Thus, past efforts involving age restrictions and warning messages on packages and advertising have not been sufficient to reduce the demand for tobacco by young people. The restrictions on advertising are designed to affect the demand.

Second, the agency proposed a sufficiently comprehensive set of regulatory restrictions to address the problem of tobacco use by young people, to wit: (1) Provisions that restrict and prevent sales of tobacco products to young people; (2) provisions that reduce the appeal of tobacco products for young people that is created by advertising and promotions; and (3) a program to provide educational messages for young people to help them resist tobacco use. Thus, the agency has not relied solely on regulations that have an impact upon the speech of the tobacco industry but has included provisions to address the activity itself.

Third, while it is true that better enforcement of laws restricting sales to minors is complementary to FDA's approach, it does not eliminate the need for this action. As DHHS recognized in its final rule implementing the ADAMHA Reorganization Act of 1992, DHHS's action under that statute and FDA's regulations both address the need to reduce minors' access to tobacco products. FDA's action, however, in addition to reducing access, attempts, through the restrictions on advertising, to reduce "the powerful appeal of tobacco products to children and adolescents" (61 FR 1492, January 19, 1996).[199]

Advertising, as explained in sections VI.B. and VI.D. of this document, plays a role in the decision of children and adolescents to use cigarettes and smokeless tobacco. As long as advertising continues to play that role, young people will be motivated to obtain access to tobacco products and to attempt to circumvent any access restrictions. Thus, the restrictions on speech are necessary to prevent advertising from undermining FDA's proposed restrictions on access. First, the agency notes that the voluntary educational campaigns conducted by tobacco companies have not been effective in reducing underage tobacco use. This fact is evidenced by the increase in prevalence of tobacco use among young people. (See, e.g., 60 FR 41314 at 41315.) Second, the agency finds that any educational campaign is likely to be undermined if the young people to whom it is aimed continue to be the target of advertising that fosters the perception that experimentation with tobacco by young people is expected and accepted.

The U.S. Court of Appeals for the Fifth Circuit considered a suggestion similar to that of an educational campaign in *Dunagin* v. *City of Oxford, Miss.* and found it not to be an alternative to restrictions on advertising:

> We do not believe that a less restrictive time, place, and manner restriction, such as a disclaimer warning of the dangers of alcohol, would be effective. The state's concern is not that the public is unaware of the dangers of alcohol * * * The concern instead is that advertising will unduly promote alcohol consumption despite known dangers.

(See 718 F.2d at 751; see also *Posadas de Puerto Rico Ass'n* v. *Tourism Co. of Puerto Rico*, 478 U.S. at 344.) This is exactly FDA's concern about the effect of advertising on underage tobacco use, and why an educational campaign, which may complement advertising restrictions, is not an alternative to them.

Thus, the agency concludes that there are no less burdensome alternatives to restrictions on advertising. In this respect, this proceeding is distinguishable from that considered in *Rubin* v. *Coors*, which was cited by a number of the comments. In *Rubin* v. *Coors*, the Supreme Court pointed to the fact that the respondent cited several options that could advance the Government's asserted interest in a manner less intrusive to respondent's First Amendment rights than the

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[198] "Teen Smoking, Marijuana Use Increase Sharply, Study Shows; HHS Sees Alarming 'Culturewide' Change in Progress," *The Washington Times*, p. A2, December 16, 1995; quoting from "Results from the 1995 Monitoring the Future Survey," National Institute on Drug Abuse Briefing for Donna E. Shalala, Ph.D., Secretary of Health and Human Services, December 13, 1995.

[199] It is true that in its August 25, 1993, proposal (58 FR 45156), DHHS stated, as the comments say, that eliminating virtually all sales to minors does not present particularly difficult enforcement problems. This statement did not imply, however, that achieving this goal would be easy, nor did it reflect consideration of what ancillary measures would be useful to help to achieve this goal. It was, rather, a statement of DHHS' view that this goal could be achieved.

statutory provision the Government had adopted (115 S.Ct. at 1593).[200] Here, as in section VI.E. of this document, there are none believed to be nearly as effective.

In *U.S.* v. *Edge Broadcasting Co.*, 509 U.S. 418, 430 (1993), the Supreme Court said that "the requirement of narrow tailoring is met if 'the * * * regulation promotes a substantial Government interest that would be achieved less effectively absent the regulation,' provided that it did not burden substantially more speech than necessary to further the government's legitimate interests."

FDA's restrictions on cigarette and smokeless tobacco advertising clearly meet this test. FDA's restrictions directly and materially advance its compelling interest in the health of children and adolescents under the age of 18. The discussion of the lack of less restrictive alternatives demonstrates that the agency's goals would be achieved less effectively in the absence of these restrictions. Finally, as the discussion on narrow tailoring and in the review of the comments on each of the regulations on advertising that follows makes clear, FDA is restricting only those aspects of advertising that have particular appeal to the young. Thus, the agency has crafted the advertising provisions with specificity to allow unrestricted advertising in those venues that are not seen by or used by children and adolescents. Accordingly, publications with adult readership and adult establishments may have unlimited print advertising. Moreover, companies are free to offer nontobacco items and events in their corporate names or unbranded. Companies, thus, can reward adult usage by providing these incentives but may not do so in a format (with brand identification and imagery) which is appealing to young people.

However, the agency has been unable to determine additional areas for unrestricted advertising. Thus, other than adult establishments, such as bars, there are no areas at other retail establishments that are not visible to young people. Billboards are ubiquitous and accessible to all ages. Nontobacco items can be restricted to dissemination to adults, but they would still serve as walking billboards. Finally, there are no adult only sponsored events—children are at the events or watching them on television. As described more fully in section VI.E.8. of this document, in the case of auto racing, attendance by young people is on the rise.

2. Section 897.30(a)—Permissible Forms of Labeling and Advertising

Proposed § 897.30(a) would have established the scope of permissible forms of labeling and advertising for cigarettes and smokeless tobacco. Proposed § 897.30(a)(1) would have defined permissible forms of advertising as newspapers, magazines, periodicals, or other publications (whether periodic or limited distribution); billboards, posters, placards; and nonpoint of sale promotional material (including direct mail). Proposed § 897.30(a)(2) would have defined permissible forms of labeling as point of sale promotional material; audio and/or video formats delivered at a point of sale; and entries and teams in sponsored events.

In response to the comments, FDA has revised § 897.30(a) so that it no longer distinguishes between advertising and labeling, deletes teams and entries as permissible advertising, describes the procedure that FDA will follow when it is informed by advertisers of their intent to advertise in a medium *not* listed in the regulation.

In addition, the first sentence of § 897.30(a), which states that this subpart does not apply to cigarette or smokeless tobacco product package labels, has been redesignated as § 897.30(c).

(30) Several comments were received addressing the issue of permissible advertising outlets. Comments from the tobacco and advertising industries opposed the 1995 proposed rule. These comments criticized the 1995 proposed rule for not defining the term "advertising" and called the 1995 proposed rule unprecedented in the scope of its limitations on the forms of media, a violation of the First Amendment, a violation of the Administrative Procedure Act (APA), and beyond FDA's statutory authority. Supporters of the 1995 proposed rule, including health and public interest groups, stated that it is a reasonable measure given the effect of advertising on children and that it provides manufacturers with a wide variety of means for communicating with their customers. Some supporting comments urged that the prohibition of certain media, such as the Internet, be stated explicitly.

Several comments from the tobacco industry expressed concern that FDA did not define the term "advertising" "because § 897.30(a)(1) would limit the media in which cigarettes may be 'advertised,' the definition of 'advertising' as used by FDA is crucial; yet the term is not defined in the proposed regulations."

Moreover, they expressed concern that the definition was so sweeping that it could literally "include reports to shareholders or potential shareholders; communications among manufacturers, wholesalers, distributors, and retailers; or even communications to the news media insofar as they might be deemed a 'commercial use.'"

Other comments requested that the agency clarify the definition to ban product placements in movies and commercials shown in movie theaters. Several comments stated that § 897.30 should be extended to include tobacco product packages to reduce the means of a child expressing affinity with the image associated with a particular brand. One comment recommended tombstone packaging without an identifiable logo.

The agency carefully considered whether it should attempt to define the term "advertising" more explicitly than it did. "Advertising" as a term is constantly evolving, as new media and new techniques of marketing emerge. Although its boundaries are understood (and were provided in the preamble to the 1995 proposed rule), there is no one accepted definition. FTC is the Federal agency with general responsibility for regulating most consumer advertising. Yet neither FTC nor any of its rules define the general term "advertising." The agency agrees with the approach taken by FTC and continues to believe that the term "advertising" should not be defined any more specifically. Thus, FDA finds that the description of advertising in the preamble to the 1995 proposed rule is appropriate:

> Labeling and advertising are used throughout this subpart to include all commercial uses of the brand name of a product (alone or in conjunction with other words), logo, symbol, motto, selling message, or any other indicia of product identification similar or identical to that used for any brand of cigarette or smokeless tobacco product. However, labeling and advertising would exclude package labels, which would be covered under proposed subpart C.

(60 FR 41314 at 41334)

The agency also agrees with comments that state that it must provide some context for the application of so open ended a definition. For example, comments contended that "commercial use" could be interpreted to include such items as trade advertising (communication between

[200] One alternative that the respondents in *Rubin* v. *Coors* advanced was prohibiting marketing efforts emphasizing high alcohol strength (115 S.Ct. at 1593.) What FDA is doing here is analogous to that alternative. It is restricting marketing efforts that have particular appeal to the young.

manufacturers, wholesalers, distributors, and retailers), shareholder reports, and possibly even communications with the news media. This was not FDA's intent. This rule is a consumer based regulation; it is not the intention of FDA to include purely business related communications. Thus, noncommercial uses would not be affected. These would include such uses as unpaid press statements, signs on factories noting locations, business cards, and stockholder reports. While many of these uses would be ordinary and necessary business expenses, they would not be commercial uses in the context of the rule's restrictions on tobacco advertising affecting minors' tobacco use.

Furthermore, the preamble to the 1995 proposed rule explained that the agency intends to permit advertising with imagery and color in publications that are read primarily by adults. For that reason, under § 897.32(a), advertisements in publications (whether periodic or limited distribution) with primarily adult readership are not restricted to a text-only format. Trade advertising in trade press publications and trade show publications, trade catalogs, price sheets, and other publications for wholesalers, distributors, and retailers that will not be seen by consumers, including minors, are unaffected by the rule.

Also, the agency does not believe that the term "advertising" needs to be defined to clarify what is *not* a permissible advertising outlet. The 1995 proposed rule clearly specifies what advertising outlets are included within the regulation's coverage. However, the agency has been persuaded to make more clear its procedures for new or uncovered media. These procedures are described in this section.

The agency does not agree with comments that the rule needs to be clarified regarding infomercials or advertorials (program length commercials). Television infomercials are not allowed under the statutory broadcast ban, and magazine advertorials would be treated like any other magazine advertising. The agency recognizes that commercial advertising messages (videos) shown in a movie theater are not addressed by the 1995 proposed rule. If this becomes a desired medium, the companies would need to notify FDA 30 days prior to using a new medium. Finally, product placements in movies, music videos, and television, if not placed at the expense of a tobacco manufacturer, distributor, or retailer, would not be affected by this rule. The agency does not intend to regulate a film producer's artistic expression—i.e., what the producer chooses to display in movies.

The agency has decided not to include restrictions on tobacco product packaging. The agency has attempted to narrowly tailor this rule and therefore has not included packaging restrictions at this time.

(31) Several comments from the advertising industry expressed concern that the wording of § 897.30(a)(1) would ban all advertising for tobacco products that is not expressly permitted. If so, the comment states, the rule would be arbitrary and capricious because the agency did not present evidence that these unnamed advertising techniques influence young people. Another comment pointed out that the channels available to tobacco companies for communicating with adults already have been severely restricted by Congress' ban on television and radio advertising.

In contrast, comments from organizations of health professionals and a public interest group supported the scope of permissible advertising. One specific comment stated that, "The media listed in § 897.30 provide manufacturers with a wide variety of means for communicating with their customers."

The agency has determined that the scope of the permissible outlets for tobacco advertising in the 1995 proposed rule is reasonable. The permissible forms are the known current forums for tobacco labeling and advertising and account for the vast majority of advertising expenditures. While the format of much of current tobacco advertising is being restricted to a text-only format, almost all of the current media outlets being used for tobacco advertising will still be permissible. Legal users will continue to be able to receive information about cigarettes and smokeless tobacco, in a text-only format in most cases, in virtually all the same media currently used for tobacco advertising. Moreover, if an advertiser intends to use a new media outlet not included in the list of permissible advertising, its responsibility is to notify FDA and provide the agency with information about the media and the extent to which the advertising is seen by young people. FDA will review any submission and make a determination whether provisions of the final regulation provide sufficient information for the advertiser to know how to disseminate its advertising or whether the regulations need to be amended. Advertising in any new media will be subject to the text-only format requirement if it is a medium used by young people. Therefore, FDA has created a new § 897.30(a)(2) to reflect this new process.

The agency believes this approach is reasonable and is fully consistent with its statutory authority and with the First Amendment. In *Central Hudson Gas & Electric Co.*, 447 U.S. at 571, n.13, the Supreme Court suggested that the Public Service Commission might consider a system of previewing advertising campaigns to ensure that they will not defeat conservation policy. The Court pointed out that "commercial speech is such a sturdy brand of expression that traditional prior restraint doctrine may not apply to it" (*Id.*). Given the agency's significant interest in ensuring that the restrictions on access that it is imposing are not undermined, FDA finds that the requirement that firms consult with it before using a new advertising medium is a limited means of regulating commercial expression that is likely to vindicate FDA's public health interests. This approach will not prohibit the tobacco industry from advertising in new media but will protect young people by giving the agency an opportunity to review the problems presented by a new media and to design new regulations or adapt current ones.

(32) One comment from a public interest group concerned with electronic media urged FDA to explicitly prohibit tobacco advertising over the Internet, Worldwide Web, and other on-line services and interactive media. The comment stated that children and adolescents are increasingly using on-line services with up to 4 million Americans under age 18 using, or with access to, on-line services. The comment stated further that the interactive nature of the on-line services gives advertisements numerous advantages over traditional print advertisements. The comment emphasized that a ban on tobacco advertising over these media is necessary because the text-only format would not be as effective in reducing the appeal of tobacco advertising to minors given the interactive nature of these media.

One comment from an organization of health professionals stated that one tobacco company advertises its mail-order business through a Web site on the Internet and offers links to other tobacco-related sites. The comment wondered why this type of advertisement was not banned by FCC

since the Internet operates over telephone lines, a form of electronic media that is regulated by FCC and from which cigarette advertising is banned.

A few comments dealt with on-line advertising and recommended that the rule should limit format to black text on a plain background, require advertisers to demonstrate that significant numbers of children do not access ad sites, require use of any available blocking technology, and define "conspicuous" and "prominent" as they pertain to interactive media.

Some of these comments have suggested that advertising of tobacco products in on-line media should be banned under the Federal Cigarette Labeling and Advertising Act's (the Cigarette Act) (15 U.S.C. 1331) and the Comprehensive Smokeless Tobacco Health Education Act of 1996's (the Smokeless Act) (15 U.S.C. 4401) prohibition of advertising on any media subject to the jurisdiction of FCC. The agency leaves the issue of jurisdiction and the applicability of the broadcast ban to the Department of Justice, which has the appropriate jurisdiction over the Cigarette Act, and to FTC, which has along with the Department of Justice jurisdiction over the Smokeless Act. Were these agencies not to take action and were, tobacco advertising to continue in on-line media, then FDA is available to meet with advertisers regarding their responsibility under the final rule.

The agency recognizes the growing importance and use of on-line media and the Internet for communications of all sorts, including tobacco sales and advertising. On-line media are not included within the list of permissible outlets for tobacco advertising because the agency does not have sufficient information on the technology to include regulations in the final rule. However, advertisers interested in advertising on the Internet should notify the agency, after the rule is final, and provide the agency with sufficient information about use by young people so that the agency can make a proper determination. This notification is for discussion purposes only, and is not in any way intended to imply, or create a need for, prior approval.

The agency recognizes the concern expressed by one comment that a text-only format, without additional requirements, may not be as effective in protecting young people from on-line advertising as it would be for print advertising because of the interactive nature of on-line media. The agency would consider the unique qualities of on-line media and the Internet in evaluating any requests to use these media. Any other statement about specific requirements for this new media or any other media would constitute speculation at this point. [201]

Section 897.30(a)(1) provides a comprehensive listing of the permissible forms of advertising and labeling. The evidence that FDA has gathered in this proceeding establishes the need for and importance of such a comprehensive listing. In addition to the general evidence and support provided by expert opinion, advertising theory, studies and surveys, empirical studies, anecdotal evidence, industry statements, and two consensus reports (the IOM Report and the 1994 SGR) described in section VI.D.5. of this document, FDA has found specific support for a comprehensive listing in:

Empirical Studies—Various economic and econometric studies of international and cross-country data show that restrictions on advertising and promotional activities can result in a decline in tobacco use (see section VI.D.6.a. of this document).

Country Experience—The experience of countries, such as Norway and Finland, shows that comprehensive advertising restrictions can positively affect the smoking rates of young people over time (see section VI.D.6.a. of this document).

Advertising Theory—Each separate advertising media plays a critical role in shaping young people's beliefs about tobacco use, and ultimately their use of tobacco products (see sections VI.D.3.a. through VI.D.3.e. of this document). Therefore, regulation of advertising must address each type of media. As will be described in the following sections of the regulation, the restrictions on each media are necessary to reduce the appeal of tobacco for young people and to prevent unrestricted tobacco advertising from undermining the regulation's access provisions. Moreover, as international experience indicates (see section VI.D.6. of this document), when regulations that are not comprehensive are implemented, tobacco money can migrate to unregulated advertising venues (e.g., if publications are prohibited, money expended on sponsorship will increase) and can undermine the force of the regulation. Thus, in order to be effective, restrictions must be as comprehensive as possible.

Based on all of the foregoing, FDA concludes that the comprehensive listing of permissible advertising in § 897.30(a)(1) will directly and materially advance the agency's efforts to reduce consumption of tobacco products by children and adolescents under the age of 18.

3. Section 897.30(b)—Billboards

The agency proposed in § 897.30(b) to prohibit outdoor advertising, including but not limited to billboards, posters, or placards, placed within 1,000 feet of any public playground or playground in a public park, elementary school, or secondary school. FDA proposed this provision because these are places where children and adolescents spend a great deal of time and should therefore be free of advertising for these products. The agency tentatively concluded that this was a reasonable restriction and noted that the cigarette industry's voluntary "Cigarette Advertising and Promotion Code," (the Code) revised in 1990, contains a similar provision concerning schools and playgrounds (60 FR 41314 at 41334 through 41335).

(33) FDA received over 2,500 comments concerning this part of the 1995 proposed rule. Comments opposing this measure pointed out that the tobacco industry has established a voluntary code similar to the proposed provision with which advertisers already comply, and that therefore, there is no reason to make this measure mandatory. These comments also stated that outdoor advertising does not target children and adolescents, and that parents, siblings, and friends have a much greater influence than billboards and posters on a young person's desire to start smoking. Further, they stated that there is no evidence that this measure would reduce any teenager's desire to smoke.

Most comments supported this provision, stating that children and adolescents should not be subjected to visual images promoting tobacco use around those areas where they attend school or play. The comments argued that children and adolescents want to be like the attractive models in the advertising, and, thus, the advertisements directly influence them to start using tobacco.

In the Federal Register of March 20, 1996 (61 FR 11349), the agency reopened the comment period for the August 1995 proposed rule to place on the public record a memorandum that provided further explanation of the

[201] In addition to the substantive changes, the following changes in language have been made: (1) Deletion of "only" in § 897.30(a)(1); (2) substitution of (a)(2) for (b) in 897.30; and (3) deletion of "and" before "in point of sale" in § 897.30(a)(1).

agency's proposal to ban outdoor advertising within 1,000 feet of schools and playgrounds. The document provided an additional 30 days in which to comment on this new information. The memorandum stated that the agency was aware of the industry's voluntary 500-foot ban on advertising from schools and playgrounds but also that it was cognizant, based on the experience of its employees, that billboards can loom large in the sight of children and adolescents at that distance and thus would be able to capture their attention. The agency also noted that 1,000 feet is about 3 blocks and that signage kept that far away from schools and playgrounds would not loom as large, if it would be visible at all. Moreover, the 1,000 feet will protect children as they travel to and from these locations.

In response to the comments, FDA has modified the provision to clarify the coverage of the provision. Thus, the final rule states that the 1,000-foot area is to be measured from the perimeter of the playground or school. Moreover, a definition of playground is included as well as an indication that the relevant area of a playground in a larger public park is limited to the play area itself. Section 897.30(b) reads:

No outdoor advertising for cigarettes or smokeless tobacco, including billboards, posters, or placards, may be placed within 1,000 feet of the perimeter of any public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds, or basketball courts), elementary school, or secondary school.

(34) Several comments asked FDA to define what is meant by the term "playground." The comments stated that the term could be construed to include literally any place of outdoor recreation where children may play (i.e., a paved parking lot, a tennis court, or a city park), even places used primarily by persons 18 years of age or older. One of the comments noted that the industry code refers to "children's playgrounds" (i.e., playgrounds designed primarily for use by children), but that § 897.30(b) refers to "any playground."

Some comments suggested that the term "playground" should include the playgrounds of city parks, recreation facilities, theme parks (e.g., Disneyland), and national parks.

The agency agrees that it needs to clarify what is meant by the term "playground." A typical dictionary definition of "playground" states that it is: (1) An outdoor area set aside for recreation and play, especially one having equipment such as seesaws and swings; or (2) a field or area of unrestricted activity. The intent of the proposal was not to preclude outdoor advertising within 1,000 feet of any area that would fall under this broad definition, but to preclude cigarette and smokeless tobacco advertising around those areas where children and adolescents are likely to spend a lot of time. Clearly, areas around schools with equipment such as swings and seesaws are areas where children are likely to play. Public parks for family recreational purposes with play equipment, and facilities for activities such as baseball or basketball are also areas where children and adolescents are likely to be present for hours at a time.

However, private enterprises, such as theme parks and recreational facilities, are not necessarily intended only for children and adolescents. Those that are, may require the presence of an adult for entry. There are usually entrance fees or required purchases for use of these areas. In addition, children and adolescents may not be present in these areas on any regular basis (e.g., an annual visit to a theme park). Therefore, the agency will not include these areas in the regulation. Moreover, because all outdoor advertising must be in black and white text, the agency sees no need to extend the prohibition beyond elementary and secondary schools and public playgrounds at this time.

The concern expressed that a decision by private parties to build a playground could destroy the value of a billboard sign should no longer exist. Because the agency is limiting its definition of playground to those publicly owned playgrounds, any interested party could object to the establishment of the playground.

FDA is modifying § 897.30(b) to state that outdoor advertising is prohibited within 1,000 feet of the perimeter of any public playground or playground area in a public park (e.g., areas with equipment such as swings and seesaws, baseball diamonds, basketball courts), elementary school or secondary school. The agency concludes that this modification in § 897.30(b) is adequate to clarify the term "playground," and that a more specific definition for "playground" is not necessary at this time.

The agency notes that the definition makes clear that, when an area is set aside for a playground within a public park, the 1,000 feet is measured from the perimeter of the play area and not from the larger park.

(35) Several comments contended that the regulation should specify that the 1,000-foot rule should be measured from the perimeter of the property to avoid confusion. One comment asked that the provision be more clear as to what types of schools would be included within the definition.

The agency agrees with the first comment. The intent of the 1995 proposed rule was that the distance would be measured from the perimeter of the school or playground. Any other measurement could defeat the purpose of the regulation. For example, measuring from the edge of a building or from the center of a playground could allow outdoor advertising to be placed closer to the perimeter where children may be assembled or playing. In addition, for large schools or playgrounds, the outdoor advertising could feasibly be near the perimeter of the school or playground if the distance is measured from somewhere other than the perimeter. Therefore, to clarify the intent of the provision, FDA is modifying § 897.30(b) to state that no outdoor advertising may be placed within 1,000 feet of the perimeter of any playground, elementary school, or secondary school.

However, the agency does not believe that it needs to provide a definition of elementary and secondary schools, as those terms, as commonly used, include all such schools (kindergarten through 12th grade) whether public, private, or parochial.

(36) One comment stated that the tobacco industry Code of Advertising Practices (the Code) applies to outdoor advertising on billboards, and that § 897.30(b) applies to all outdoor signage, including signage on the exterior of retail establishments that sell tobacco, and conceivably even to advertising on buses, taxis, and other vehicles that might venture within the 1,000-foot zone.

Another comment stated that FDA should consider regulations that eliminate tobacco advertising via traveling vans and trailers because trailers and vans are mobile billboards and can be strategically placed to gain maximum exposure among young people.

FDA agrees that § 897.30(b) applies to more forms of advertising media than does the tobacco industry code (i.e., all outdoor advertising, not just billboards). FDA's regulation restricts all outdoor advertising of tobacco products, including, but not limited to, billboards, posters, and placards. However, the intent and purpose of § 897.30(b) is not

to prohibit signage on taxis and buses that are not located in, but may pass through, the school or play zone. Such signage is usually temporary or transient and does not present the same concern of a permanent sign.

(37) Several comments questioned the factual basis for the proposed ban on outdoor advertising of cigarettes and smokeless tobacco within 1,000 feet of schools and playgrounds and stated that "employee" experience is not a sufficient basis. One comment argued that FDA should give little weight to employee experience in light of the fact that cigarette manufacturers submitted expert testimony that children and adolescents pay relatively little attention to billboard advertising at any distance. In addition, some comments argued that FDA's analysis related solely to billboards, and that it had presented no evidence or analysis justifying a ban on store signage. Finally, several comments stated that the agency failed to take into account the "visibility" of the outdoor advertising. These comments suggested that any regulation must take into account whether obstructions exist (e.g., trees, winding roads, signage placed facing away from the prohibited area).

The agency disagrees that it has not provided an adequate basis for its proposed regulation. In addition to the analysis provided by the agency in its March 20, 1996, Federal Register document, the agency received two comments during the comment period with evidence regarding this issue. A professor of biophysics and optometry stated that he believed that there was a rational and quantitative basis for deciding on a given distance if that distance was to be based on the visibility of words on a billboard. Specifically, he stated that children and adolescents typically have 20/15 visual acuity. Therefore, it is possible, using a mathematical formula using a right-angled triangle and the definition of the tangent trigonometric function to compute the distance at which words are visible. He computed the distances from which it would be possible to see both words 1 foot high and 2 feet high. In addition, he computed the distances for a "normal" visual acuity of 20/20. If one were to average these numbers, the result would be approximately 1,200 feet, which could be rounded to 1,000 feet.

Table 1a.

	1-foot high letters	2-foot high letters
20/15 vision	917 feet	1,833 feet
20/20 vision	687.8 feet	1,376

(38) Another comment reminded the agency that two separate laws passed by Congress had provided for a 1,000-foot zone around schools as a means to protect youngsters from dangerous and unsafe behavior. The Controlled Substances Act (21 U.S.C. 860) provides additional penalties for anyone distributing or manufacturing drugs within 1,000 feet of schools, playgrounds, and universities, and 18 U.S.C. 922 prohibited possession of a firearm within 1,000 feet of schools.[202] Moreover, the comment contained scores of pictures of advertising billboards and signs within 500 and 1,000 feet of school and playgrounds as well as statements by children indicating that the signs are ubiquitous and attractive. The pictures and statements may only be anecdotal evidence of the proliferation of tobacco advertising near schools and playgrounds, but the number of children who provided pictures in such a short period of time indicates that the problem of advertising in proximity to schools and playgrounds is not isolated.

Moreover, the agency also disagrees that it has no basis for including other outdoor signage, including signs on stores, in the regulation. The agency provided evidence in the administrative record and comments refer to evidence,[203] which showed that in a test area, those stores within 1,000 feet of schools had a significantly greater percentage of windows covered with tobacco signs than those further away. Moreover, the two RJR memoranda by sales representatives, described in section VI.D.3.d. of this document, mention the importance of supplying stores near high schools with "young adult" material.

This provides sufficient support for the agency's concern with signage on stores near schools. Young people are more likely to frequent stores near schools, especially older adolescents, and these venues should therefore be free of advertising for tobacco products.

The agency also finds that it cannot address the comments' concerns with obstructions. It would not be possible to qualify a regulation to account for the fact that trees may obstruct a sign when they are in full bloom but not in winter, or that children may be able to see signage as streets wind or that face away from the school or playground as they walk to and from school. The line that the agency has drawn is narrowly tailored (see *Board of Trustees of State University of New York* v. *Fox* 492 U.S. at 480) and consistent with how a standard needs to be crafted for it to be enforceable.

Finally, FDA finds that the expert testimony referred to in the industry comment that indicates that young people do not pay attention to billboards is contradicted by other evidence in the record. The Roper Starch study mentioned in section VI.D.3.d. of this document, submitted by RJR, reported that 51 percent of 10 to 17 year olds surveyed reported that they had seen or heard of Joe Camel from a billboard advertisement. For this reason, FDA is not accepting the suggestion in the comment.

(39) A number of comments from the tobacco and outdoor advertising industries stated that the tobacco industry had adopted a code in 1990, which encouraged all billboard companies to establish and manage a program to prohibit alcohol and tobacco advertisements within 500 feet of places of worship and primary and secondary schools. They noted that over 16,000 billboards nationwide have been voluntarily identified as "off limits" for these categories of advertising. As a consequence, the comments asserted that Government action is unnecessary.

One of the comments stated that the fact that members of an industry have elected to submit to a code of advertising practices does not make it reasonable for the government to impose mandatory advertising restrictions backed by criminal sanctions. It stated that private parties may voluntarily take actions that the Constitution forbids the Government to mandate. The comment argued that few industries would risk any self-regulation if their decision to do so might establish a predicate for even greater Federal regulation.

Conversely, several comments raised concerns about the voluntary code and cited numerous examples of violations that continued after the sponsors and the billboard companies had been informed of the violations. One

[202] Although this statute was overturned in *United States* v. *Lopez*, 115 S.Ct. 1624 (1995), as inappropriate under the Commerce Clause, the congressional determination that 1,000 feet was an appropriate distance was not disturbed.

[203] Rogers, T., E. C. Teighey, E. M. Tencoti, J. L. Butler, and L. Weiner, "Community Mobilization to Reduce Point-of-Purchase Advertising of Tobacco," *Health Education Quarterly*, 1995, in press.

comment stated that a survey found that in California tobacco advertising is more prevalent at stores within 1,000 feet of schools than at stores farther from schools. The comment asserted that statewide findings also revealed that there is more exterior store advertising in areas where at least 30 percent of the neighborhood is 18 years old or younger, and that the advertisements are placed near the candy or at a child's eye view (3 feet or below).

The agency is aware that the Code of Advertising Practices has not been uniformly observed, as several comments pointed out. Moreover, the industry code is significantly less inclusive than the proposed regulation as it covers only billboard advertising and not other forms of outdoor advertising such as posters and placards. These other forms are likely to be placed near retail establishments and in some cases, according to comments, have appeared on school fences. The agency finds that all outdoor advertising must be included in the regulation in order to provide comprehensive coverage. There is little difference between a billboard and a large poster to a child. Both are advertisements, and both are visible, so that children see them as they go to and from school and play.

In addition, the Code prohibits outdoor advertising only within 500 feet of schools, an area only a block or a block and a half from the school (there are 10 to 12 city blocks to a mile). One block will not provide sufficient protection as it would not cover the areas where many children congregate with their friends. Moreover, a child's vision does not stop at one block from school. A prohibition of 1,000 feet will ensure the absence of signs for 2 to 3 blocks from a school or playground which can be seen from these locations where children spend a significant amount of time each day. (Several comments stated that FDA had misused its math to calculate block distances in its March 20, 1996, Federal Register document (61 FR 11349).) If the misstatement caused any confusion, the agency regrets it but does not believe that the one-half block difference undermined the rationale.)

(40) One series of comments supported FDA's 1995 proposal, stating that the restriction on billboards near schools should not be compromised, nor the distance reduced.

A number of comments argued that the proposed regulation did not go far enough. One comment recommended excluding outdoor tobacco advertising from neighborhoods where children live. Another comment stated the belief that the ban on billboards should be at least double the proposed 1,000 feet from schools, while others argued that outdoor advertising should be prohibited completely.

These comments stressed the importance of billboards and other outdoor advertising in creating cigarette brand awareness among children. For example, one comment discussed the results of a survey conducted for *Advertising Age*, which showed that 46 percent of children 8 to 13 years old said they most often saw cigarette advertising on billboards, outpacing magazines. It stated that 34 percent of children 14 to 18 years old cited billboards as the predominant advertising medium for tobacco products.[204] The comment stated further that all billboards, regardless of placement, are seen by significant numbers of children, therefore, it clearly makes sense that, as a means to protect children from tobacco advertising, such advertisements should be prohibited from billboards and other outdoor advertisements. The comment emphasized its point by quoting from the billboard industry's own marketing material ("Outdoor: It's not a medium, it's a large"), "You can't zap it. You can't ignore it * * * It asks little time, but leaves a long impression." The comment stated that the same publication notes, "Outdoor is right up there. Day and night. Lurking. Waiting for another ambush."

One tobacco company presented evidence of the effectiveness of billboards in bringing tobacco advertising to children. RJR, in its comment on the 1995 proposed rule, as stated in section VI.D.3.d. of this document, attached a study conducted for it to test children's recognition of advertising characters and slogans (Roper Starch study). This study involved 1,117 children 10 to 17 years of age, with 86 percent of them recognizing Joe Camel using aided and unaided recall. When asked where they had seen Joe Camel, 51 percent said on billboards.[205] That amount of recall shows that billboards represent a very effective advertising medium and belies the industry's assertion that billboards are not an effective source of advertising information for children.

Finally, one comment from a public interest group warned that, the more complex a rule is, the more difficult enforcement becomes. It stated that spacing limitations, such as the proposed 1,000-foot zone around schools, begs a series of questions, for example: How is that distance measured, from what point to what point. It stated that these questions would make it virtually impossible for citizens to play an active role in enforcing this rule. The comment stated that without citizen participation, billboard control is extremely difficult, and that this situation has, in fact, contributed to the industry's disregard for local and State billboard control laws.

The agency finds that the comments, as well as the evidence spelled out in the 1995 proposal, have provided ample support to establish that outdoor advertising has a significant impact on children and adolescents. While the comments have presented significant evidence in support of a ban on all outdoor advertising, the agency is not convinced that a ban or a restriction on tobacco advertising of more than 1,000 feet would be appropriate. As discussed elsewhere in this document, the agency is requiring that all permissible outdoor advertising be in a black and white, text-only, format. Therefore, some of the concerns raised by the comments requesting a complete ban on outdoor tobacco advertising or of expanding the ban are addressed by that provision. Moreover, the agency's regulations are an attempt to balance the rights of adults to receive information about a legal product with its desire to protect children from the unavoidable appeal of advertising. Thus, although the line could be drawn elsewhere, the agency finds that the 1,000 feet limitation should ensure adequate protection from visible advertising where children spend a significant amount of time but will permit adults to get information.

(41) One comment stated that FDA's action violated the APA because the agency offered no evidence in support of its claim that children spend a great deal of time in areas as far as 1,000 feet from the places specified in § 897.30(b). It added that the justification for text-only advertising undercuts FDA's justification for its 1,000-foot ban.

Another comment stated that although tobacco product advertising is disseminated through a broad spectrum of media, outdoor advertising is the only such medium that is subject to additional specific prohibitions under the 1995 proposed rule beyond the

[204] Levin, G., "Poll Shows Camel Ads are Effective With Kids; Preteens Best Recognize Brand," *Advertising Age*, p. 12, April 27, 1992.

[205] "Advertising Character and Slogan Survey," pp. 10, 22.

prohibitions applicable to all tobacco product advertising. It stated that the record does not contain evidence that would establish either that these prohibited outdoor advertising signs are viewed more often by minors than other advertising media, or that outdoor advertising in general has a greater impact on minors than other media. There is nothing, the comments argued, that indicates that the mandatory content restrictions and affirmative disclosure requirements imposed by the proposal would be less effective in outdoor advertising of tobacco products than when such an advertisement is placed in a rock and roll magazine, or in an exempt publication with 1 million adolescent readers.

One of the comments stated that because the text-only requirement itself is intended to render the advertising unattractive to young people, the additional "protection" offered by the 1,000-foot rule would be wholly gratuitous.

Several comments argued that there is no proof that this additional area of ban will reduce any teenager's desire to use tobacco: a desire that has withstood the ban of TV and radio advertisements and a massive educational program. The comment stated that the 1,000-foot rule seems particularly gratuitous in view of the fact that it would ban advertising that FDA, by virtue of its proposed text-only requirement, already has stripped of the features FDA deems make it appealing to young people.

FDA disagrees with these comments. The agency's bases for the text-only requirement for billboards and for the 1,000-foot ban are reasonable and supportable, and they are not in conflict. The text-only format requirement will reduce the appeal of cigarette and smokeless tobacco product advertising to persons younger than 18 years of age without affecting the information conveyed to adults (60 FR 41314 at 41335). It is an attempt to narrowly tailor the restriction by balancing the need to restrict advertising's appeal to children with the preservation of the informational function of advertising for adults.

The prohibition on outdoor advertising within 1,000 feet of schools and playgrounds is designed to address a different problem. The concern is not the appeal of the advertising. If the problem were only appeal, the 1,000-foot restriction would not be necessary because the text-only requirement would eliminate this concern. The concern is the nature of billboards themselves. Billboards near schools and playgrounds ensure that children are exposed to their messages for a prolonged period of time. As the Supreme Court recognized in *Packer Corp.* v. *Utah*, 285 U.S. 105, 110 (1934), billboards are seen without the exercise of choice or volition, and viewers have the message thrust upon them by all the arts and devices that skill can produce. This is particularly true of billboards that are readily visible (i.e., within 1,000 feet) when children play or study at a playground or school, places where by design children spend a lot of time, or when children walk to and from a school or playground. Confronted daily and unavoidably with the advertised message, even in text-only, a child gets a sense of familiarity, normalcy and acceptability of the message and the product that is advertised.

(42) Several comments stated that placing a circle with a radius of 1,000 feet drawn from the perimeter of each school and playground would establish a "forbidden zone" that would be at least 2,000 feet in diameter (i.e., over one-third of a mile). They stated that in many communities, this would be tantamount to a de facto ban, for there would be virtually no outdoor location that could escape the rule's prohibition.

Several comments pointed out that even if advertisers wanted to disseminate advertisements on billboards that complied with the FDA proposal, there would be virtually no locations where such outdoor advertising signs could be located in some cities. They submitted results of computer assisted surveys of nine cities showing the areas where outdoor advertising of tobacco products would be allowed under the 1995 proposal. The survey showed that outdoor tobacco advertising would be prohibited in 94 percent and 78 percent of the respective land mass of Manhattan and Boston under the proposal. The comment stated that this range approximates the high and low percentages that could be anticipated in other metropolitan areas in the United States. Moreover, when it correlated the data collected from the study and other data regarding the actual location of billboards, the comment found that, even under the most expansive view, not a single billboard in Manhattan (including the commercial corridor of Times Square), and no more than 24 actual billboard locations in the entire city of Boston, would be permitted to display tobacco advertisements.

The comment stated further that even if the rule permits a few locations where tobacco advertising would be allowed in a given municipality, there is no commercial utility in a limited number of outdoor advertising signs where the location of the advertisement is dictated by the 1,000-foot rule, rather than by market demographics and vehicle circulation. According to the comments, these latter factors are what actually control billboard placement. It concluded that, as a practical matter, FDA's proposed outdoor advertising restrictions would eliminate billboards as a medium for tobacco advertising even in those jurisdictions where a small number of such signs theoretically would be available.

FDA has carefully considered the possibility that its restrictions effectively outlaw outdoor advertising in most urban areas. The agency has concluded, however, that if this situation comes to pass, it would be a consequence of the density of population in cities. FDA's intent in adopting § 897.30(b) is to restrict the accessible and intrusive communication of information about cigarettes and smokeless tobacco to children and adolescents at school and at play. It was not to provide for distances that would have the effect of banning outdoor signs from urban areas. By limiting the restriction to 1,000 feet, FDA has tried to make it no more extensive than necessary to achieve its intended end. FDA has considered the cost of its restriction but concludes that a narrower restriction would not adequately advance its purpose of protecting young people from unavoidable advertising in settings in which they are essentially a captive audience.

The 1,000-foot restriction on outdoor advertising will serve to remove what has been shown is an effective means for tobacco companies to communicate with young people in a direct and unavoidable manner. Eliminating such billboards will thus mean eliminating a means by which the industry has influenced young people to engage in tobacco use behavior. Therefore, the agency concludes that § 897.30(b) is a necessary part of its effort to reduce underage use of tobacco products.

Several comments from the tobacco industry and from retailers pointed out that § 897.30(b) would prevent retail establishments within the 1,000-foot zone from informing potential customers that tobacco (or particular brands thereof) are available for purchase therein and at what prices. These comments stated that this restriction not only would hurt the retailers but would increase, in turn, the

search costs for adult smokers. The comments stated that retailers in the small slivers of a city in which outdoor advertising would continue to be permitted would be afforded an unfair competitive advantage.

One comment added that convenience stores located within 1,000 feet of a school or playground would not even be able to put a small black on white placard on top of a gas pump that merely indicates the price of tobacco, but that a billboard across the street and located a little over 1,000 feet away from the same school or playground could carry the brand name of a tobacco product in black letters as tall as the store's front door. The comment urged FDA to recognize this distinction.

The agency acknowledges that some retailers may be prohibited from placing advertising concerning tobacco products on or around their retail establishments, while others, perhaps just across the street, can. Any minimum distance that the agency establishes will preclude some retailers from outdoor advertising at their retail establishments but not others. However, FDA has determined that it is necessary to keep outdoor advertising away from areas where children are likely to congregate daily.

FDA notes that the Supreme Court cases that have considered restrictions on speech have recognized that such restrictions may not be perfectly tailored, see, e.g., *Board of Trustees of State University of NY* v. *Fox*, 492 U.S. at 479. Thus, while in a few instances there may be inequities created by the line FDA has drawn, because there is a reasonable fit, as explained in section VI.E.1. of this document, between FDA's ends and the restrictions that it is adopting, these minor problems do not doom FDA's rule (*Id.* at 480).

FDA's prohibition on signage on stores within 1,000 feet of schools and playgrounds will advance the agency's interest in protecting the health of children. Several of the studies submitted with comments showed that there is more signage in and around stores near schools and playgrounds than in stores generally. The ban on outdoor advertising within 1,000 feet of schools and playgrounds will ensure that signage near schools will be removed and thus minimize any sense of familiarity that would develop.

Thus, even though the agency has carefully considered these comments, it concludes that it is appropriate to establish a minimum distance from schools and playgrounds within which all outdoor advertising is prohibited.

(43) A number of comments argued that the prohibition on tobacco billboards within 1,000 feet of schools violates the Commerce Clause as recently interpreted by the Supreme Court in *United States* v. *Lopez*, 115 S.Ct. 1624 (1995). In *Lopez*, the Supreme Court held that Congress lacked the power under the Commerce Clause to criminalize the possession of a gun within 1,000 feet of a school. One comment argued that the Congress's commerce power only permits it to regulate, for example, the interstate transit of advertisements, but that once the advertisement is within a state, it is private property and not subject to regulation under the Commerce Clause.

The agency disagrees. Under the Commerce Clause, Congress may "regulate those activities having a substantial relation to interstate commerce, * * *, i.e., those activities that substantially affect interstate commerce." (See *Lopez*, 115 S.Ct. at 1629-30 (citation omitted).) As the Supreme Court noted in *Lopez*, "the possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce" (*Id.* at 1634; see also *id.* at 1640 (Kennedy, J., concurring)). As all advertising is inherently commercial in that it proposes a sale, the placement of tobacco billboards in a local school zone is economic activity that does substantially affect interstate commerce because it affects the demand for tobacco and smokeless tobacco. That the advertisements are private property after transportation in interstate commerce does not alter this analysis. Indeed, "[a]ctivities conducted within State lines do not by this fact alone escape the sweep of the Commerce Clause. Interstate commerce may be dependent upon them." (See *United States* v. *Rock Royal Co-op., Inc.*, 307 U.S. 533, 569 (1939); see also *Wickard* v. *Filburn*, 317 U.S. 111, 127–28 (1942) (holding that, under Commerce Clause, Congress could control farmer's production of wheat for home consumption because cumulative effect of such consumption by many farmers might alter supply and demand in interstate wheat market).) As such, regulation of the placement of billboards advertising tobacco products does not violate the Commerce Clause.[206]

(44) A number of comments argued that § 897.30(b) would violate the First Amendment. These comments argued that, given the requirement for black text-only on a white background, the restriction on billboards within 1,000 feet of schools and playgrounds would not directly and materially advance a substantial government interest. The comments also argued that the billboard restriction could not be considered to be narrowly tailored. One comment from a public interest group, however, argued that FDA's proposal is fully constitutional because it is much more limited than the restrictions on billboards upheld in *Penn Advertising* v. *Mayor and City Council of Baltimore*, 63 F.3d 1318 (4th Cir. 1995) vacated, remanded 64 U.S.L.W. 3868 (U.S. July 1, 1996), and *Metromedia, Inc.* v. *San Diego*, 453 U.S. 490 (1981). The comment pointed out that in *Metromedia, Inc.*, the Supreme Court held that the City's interest in traffic safety and aesthetics were sufficient to justify a ban on commercial outdoor advertising (453 U.S. at 551, n. 23). Here, the comment said, the interest that FDA has asserted is more weighty.

FDA disagrees with the comments that argued that § 897.30(b) violates the First Amendment. As explained, this restriction does advance FDA's interest beyond what is accomplished by the text-only restriction. As explained in sections VI.B. and VI.D. of this document, the regular exposure of children to tobacco advertising, even in text-only form, builds a sense of familiarity and acceptability that; reports and studies say, contributes materially to the decisions of young people to experiment with and use tobacco products. Thus restrictions that eliminate such exposure will eliminate one factor that contributes to the process by which children and adolescents decide to smoke or use smokeless tobacco and, consequently, will directly advance FDA's interest.

Moreover, the restriction that FDA is adopting is narrowly tailored to advance its interest. FDA's concern is with the advertising that can be seen from schools and playgrounds, the place at which children and adolescents spend a significant amount of time each day. Three blocks or 1,000 feet is about the distance at which signs are readily visible. Thus, FDA has restricted outdoor advertising within this distance of schools and playgrounds.

[206] Moreover, cigarettes and smokeless tobacco products are nicotine delivery devices. Congress plainly provided for medical devices to be federally regulated as indicated by the provision allowing seizure of devices without proof of interstate shipment (section 304 of the act) (21 U.S.C. 334)) and by a presumption that devices are in interstate commerce (section 709 of the act (21 U.S.C. 379)).

The result of FDA's restriction is that children will not be confronted with tobacco advertising as they study and play, and thus there will be a corresponding reduction in the ability of tobacco advertisers to create the impression of acceptance and familiarity that is influential with youngsters. Consequently, there is a reasonable fit between FDA's interest in protecting the health of children and the restriction on outdoor advertising that it is adopting (see *City of Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. at 416; *Board of Trustees of State University of New York* v. *Fox*, 492 U.S. at 480).

Thus, FDA concludes that, in fashioning the restriction on billboards, it has fully met its obligations under the First Amendment.

In summary, FDA finds that § 897.30(b) will contribute in a direct and material way to reducing underage tobacco use. The evidence establishes that billboards are one of the most effective forms of advertising for young people, and that their elimination near schools and playgrounds will directly and materially advance FDA's goals.

Studies—A Roper Starch survey submitted by R. J. Reynolds found that billboards were the most mentioned source of information about Joe Camel for children (see section VI.D.3.d. of this document), and a study conducted for *Advertising Age* (April 27, 1992) discussed in this section showed that 46 percent of children 8 to 13 and 34 percent of children 14 to 18 said that billboards are a predominant form of advertising for tobacco.

Advertising Theory—Billboards near schools and playgrounds give the child a sense of familiarity, normalcy, and acceptability of the message on the product. Therefore, regulation of the format and even the location of some billboards and other outdoor signs within 1,000 feet of a school or playground, is essential. As discussed in this section, comments submitted in this rulemaking include photographs that evidence the intrusive effect of billboards and signage around schools and playgrounds.

Evidence of Children's Visual Range—Data provided by a professor of biophysics and optometry, detailed in this section, support a finding that 1,000 feet is an appropriate distance to remove signage that would be visible and readable to students.

Congressional Finding—As detailed in this section, Congress mandated a 1,000 foot drug free zone around schools and playgrounds (Controlled Substances Act (21 U.S.C. 860)) as an appropriate area in which to protect young people from drug dealing near schools and playgrounds.

Finally, the agency has tailored the ban as narrowly as possible by defining playgrounds narrowly and, as noted above, by restricting the area of the ban to that consistent with children's visual range.

4. Section 897.32(a)—Text-Only Format

Under proposed § 897.32(a), cigarette and smokeless tobacco product labeling and advertising, as described in § 897.30(a) and (b), would be required to use black text on a white background and nothing else. The agency tentatively concluded that this text-only requirement would reduce the appeal of cigarette and smokeless tobacco product labeling and advertising to persons younger than 18 years of age and preserve advertising's informative aspects—that is, to provide useful information to consumers legally able to purchase these products.

In response to comments, the agency has decided to permit another exception to the requirement that all permissible advertising appear in text-only. Thus, it has created an exception for advertising in adult facilities that meet the criteria of § 897.16(c)(2)(ii) provided the advertising is affixed to the wall or fixture in the facility and is not visible from outside the facility. FDA has added this provision, as paragraph (a)(1) of § 897.32 and renumbered the exception for adult publications as § 897.32(a)(2)(i) and (a)(2)(ii).

Several comments suggested that FDA should provide an appropriate definition of "text-only" for permissible audio and video advertising, specifically static black text on a white background with no music or sounds. Therefore, proposed § 897.32 has been revised in consideration of comments received. A new § 897.32(b) has been added to provide guidance for audio/video advertising. Proposed § 897.32(b) has been redesignated as (c), and proposed § 897.32(c) and (d) have been eliminated. New § 897.32(b) has been added to provide explicit format requirements for one form of permissible advertising that had been left out of the proposed regulation.[207]

Many comments were received specifically addressing the text-only proposal. That children and adolescents should not use tobacco products was the one point of agreement among them. However, many comments from adult smokers and nonsmokers, retailers, tobacco farmers, elected officials, and the tobacco, advertising, newspaper, and magazine industries strongly objected to the text-only requirement. Their major objections were that: (1) Cigarette advertising does not cause young people to start smoking; (2) the proposed advertising restrictions would violate the First Amendment; and (3) the restrictions would have the effect of a virtual ban on cigarette advertising. Some comments expressed the concern or suspicion that FDA was using this proposal, ostensibly directed at minors, as a pretext to try to ban cigarette advertising generally.

In contrast, nearly three-quarters of the comments—mostly from parents, teenagers, public health officials, teachers, doctors, public interest groups, medical organizations, and some individuals in the advertising business—supported the proposal for text-only advertisements. The major reason presented for their support was the need to eliminate the appeal for tobacco that the advertising creates among children and adolescents. Some supporters urged even stronger action such as a total ban on all tobacco advertising. Some comments expressed the opinion that even though the proposed regulations may also affect adults, any resulting reductions in smoking by adults would not necessarily be bad.

(45) A number of comments questioned the validity of the evidence cited by FDA as support for the proposal. Many of these comments came from groups representing the tobacco, advertising, and publishing industries. These comments argued that there is no evidence that advertising with color and images encourages use of tobacco by minors or that advertising converts nonsmokers or nonchewers into smokers or chewers. Moreover, these other comments argued that there is no evidence that limiting advertisements to text-only is essential to reduce youth smoking and that there is no evidence that black and white text will reduce underage smoking.

In contrast, a number of supportive comments stated that the evidence cited by FDA, as well as studies published

[207] In addition to the substantive changes made to § 897.32, the following changes in language have been made: (1) Addition of "Except as provided.* * * section," to § 897.32(a); (2) addition of "any" to § 897.32(a); (3) amended language in § 897.32(a)(2) starting with "any publication" and ending with "an adult publication" and, in the last sentence, "an adult publication,"; (4) two changes to § 897.32(a)(2)(i) "younger than 18 years of age" and "15 percent or less"; and (5) deletion of "labeling" from § 897.32(c).

since the proposal, demonstrate the special susceptibility of children and adolescents to pictures, cartoons, photographs, other graphic images and colors.

Specifically, many comments observed that the appearance of Joe Camel in traditional advertising forums (magazines, billboards) attracts children and adolescents. One child wrote that his father gave him two sports magazines. "There were eight smoking ads in them * * * the last one had two pictures of Joe Camel smoking. This can attract kids to start smoking."

Studies cited in the preamble to the 1995 proposed rule and in section IV.B. of this document, demonstrate the impact that images and colors, cartoons, and pictures and other graphic material have on children and adolescents. This does not mean that the same characteristics of advertising do not appeal to or affect adults. However, the effect of these techniques on children and adolescents is magnified because of their usual level of involvement in advertising as in everything else.[208] As detailed more fully in section VI.B. of this document, children and adolescents respond to stimuli that interest them, and that provides them with information that is important. Young people do not have the information processing skills that adults possess, and as a result more often than not, the information that is relevant to them comes in the form of images and colors rather than with a lot of words. This fact provides an explanation why 86 percent of children and adolescents smoke the three most heavily advertised brands (all are promoted with attractive imagery), even though they are generally price sensitive.[209] Adults buy generic products for price reasons or low tar brands for health concerns.[210] Advertising's colorful images are not as relevant to them as cost. Given these factors, FDA finds that the text-only requirement will significantly reduce the appeal of cigarette and smokeless tobacco advertising to young people and reduce its influence on them.

(46) Many comments, especially from the magazine, newspaper, advertising, and tobacco industries, stated that the proposal will operate as a virtual ban on most types of cigarette and smokeless tobacco advertisements. These comments argued that the text-only format requirement will eliminate tobacco companies' ability to attract the attention of potential customers and to convey brand messages and will render advertising invisible to adults. Therefore, tobacco advertisers would be far less likely to advertise in the text-only format. Also, not having a clear standard for when the text-only requirement applies (see also definition of adult publication) will cause tobacco advertisers to avoid more publications than may be necessary to ensure that they do not violate the rule. Many of these comments also argued that advertising would become ineffective. One comment said that advertising that passes unnoticed amounts to no advertising at all. This comment also asserted that, as a result of the text-only proposal, no viable alternative channels of communication would exist.

Comments from the tobacco and advertising industry suggested that the advertising industry would suffer revenue, profit, and job losses as a result of the text-only format; employees involved in graphics arts would especially be affected; and suppliers providing services and products to advertising agencies would also be adversely affected.

A number of comments supporting the proposal recommended a total ban on all tobacco advertising. Many comments stated that a ban on all tobacco advertising and marketing would be reasonable because the tobacco industry will use any available loopholes to market tobacco products and will test any partial ban.

Tobacco companies will be able to continue advertising in most of the same forums in a text-only format. Advertising with colors, pictures, and graphics will still be allowed in adult publications. Tobacco advertisers will still be able to convey information to adults about taste, price, and product development using text-only advertising. Many current advertisements for low tar cigarettes rely heavily on text formats.

The agency is not limiting fonts, font styles, or size of type because it believes that the tobacco industry and its advertising firms can use their creativity with a variety of print formats to produce text-only advertising that will effectively communicate their messages, including brand messages, to adults. However, the agency is also convinced that print advertising, no matter how creative, will not be able to provide the attractive imagery that young people look for in advertising to explain the importance of a product to them, e.g., what to wear, whom to hang out with, how to look cool (see discussion of the importance of color and imagery in the introduction to this section).

Moreover, although the restriction to text-only advertisements may tend to solidify market position, it will not give any one company new competitive advantage over another since all companies must play by the same rules. Thus, the economic impact of the rule on the advertising business will be mitigated by a shifting of resources to create new advertising in compliance with the rule and to advertising for other businesses (see section XV. of this document entitled "Analysis of Impacts" for more information).

The agency does not support a total ban on all tobacco advertising as was suggested by a number of comments. The agency has been able to tailor the restrictions that it is adopting, by requirements such as the text-only advertisements requirement, to eliminate the appeal of tobacco advertising for children and adolescents while still allowing a means for companies to communicate with adult tobacco users. The use of text-only will mean that there can be continued advertising that is less likely to attract young people but that can convey information to adults.

(47) Several comments stated that limiting point of sale advertising to text-only would effectively ban point of sale advertising and impair retailers' ability to market tobacco products to adult customers.

Many comments noted the places one sees (and placement of) Joe Camel at point of sale, the nature of the items on which his image appears, and his ubiquitousness in and around stores, as evidence of the intent of at least one tobacco company to try to attract young people. A physician commented that he:

> recently was returning from an evening [of] helping to care for [a] patient who was dying of emphysema [a lung ailment caused by cigarette smoking]. I decided to stop at a convenience store * * * I was confronted with no less than 14 advertisements for cigarettes. From the Camel Joe sign beckoning in the parking lot * * * a customer is bombarded with ads urging them to buy cigarettes.

Another comment stated that "advertisements on convenience store doors are placed well below adult eye-level and features such popular advertising cartoons as Joe and

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[208] One such study tested the effect of different forms of advertising on children and found that they preferred pictures to text-only. (See Huang, P. P., D. Burton, H. L'Howe, and D. M. Sosin, "Black-White Differences in Appeal of Cigarette Advertisements Among Adolescents," *Tobacco Control*, vol. 1, pp. 249–255; 1992.)

[209] "Changes in the Cigarette Brand Preferences of Adolescent Smokers—United States, 1989–1993," in *MMWR*, CDC, DHHS, vol. 43, pp. 577–581, 1994.

[210] Teinowitz, I., "Add RJR to List of Cig Price Cuts," *Advertising Age*, pp. 3, 46, April 26, 1993.

Josephine Camel. It seems counter-intuitive to assume that such advertising is intended for adults." Another comment stated, "Tobacco companies say they do *not* want to entice our children to smoke, then why are Joe Camel ads above the candy counters?" One comment noted that at a major retailer near the commenter's neighborhood, Joe Camel posters are right behind an exhibit of pogs, a popular children's collectible toy.

Manufacturers and retailers are not prohibited from promoting tobacco products at the retail level. Adult consumers looking for price and product information about cigarettes and smokeless tobacco will be able to find that information by searching even without the images to attract them. Text-only point of sale advertising, like magazines or billboards, will be effective in communicating this information. Thus, FDA is not banning point of sale advertising.

While text-only point of sale advertising can be effective with adults, it will have less allure and be less appealing to children and adolescents. Children and adolescents, who are less willing to process print information in a leisurely setting (such as reading a magazine), will not find textual material appealing in the momentary time setting of a retail purchase.

(48) A comment from an advertising industry association stated that:

> * * * FDA's prohibition on all direct mail promotion of tobacco products except for "tombstone" messages * * * is even more onerous than that imposed on publications, since at least some publications will be permitted to carry non-tombstone advertising. The disparate treatment of direct mail exposes the real purpose of the FDA to censor messages to adults, because that medium by definition can be addressed to a specific audience, i.e., adults, with little risk of inadvertent viewing by minors.

This comment also noted that this form of direct advertising is not insignificant to the industry and given the small likelihood of youth access to it, should not be severely restricted. The comment noted that total industry spending on direct mail advertising was $33 million in 1993.

Some comments from mail-order firms noted that the text-only requirement would adversely affect catalogs for tobacco and related products, making them less appealing and less effective for marketing to adult smokers. One comment from the owner of a small (55 employees) tobacco products manufacturing business said the text-only requirement for its catalog, along with several other aspects of the 1995 proposed rule, would destroy his business:

> It offends me as a good American running a clean, honest business that a cadre of bureaucrats in Washington, DC would propose a rule that could ruin my life's work. FDA has given no more thought to the impact on my business than I might give to swatting a mosquito.

A supportive comment stated that the tobacco industry has made increasing use of direct mail promotions, including contests, questionnaires, coupons, offers, and even birthday cards. It stated that no company can be certain its mailing lists do not include minors. In a 1993 survey of 12 to 17 year olds, 7.6 percent indicated they had received mail personally addressed to them from a tobacco company. This could project out to 1.6 million persons aged 12 to 17. This comment noted that a major tobacco company sent free packs of cigarettes to people on its mailing list as a holiday present "from the Camel family" and has not changed its practice despite the fact that as many as 1.6 million 12 to 17 year olds could be on tobacco company mailing lists.

Direct mail is a high involvement medium, that is, it requires the recipient to study the text in order to get the central message. In those circumstances, text-only can be effective with recipients who have an interest in the offer. There is less of a need to attract a consumer's attention with a direct mail promotion, including a catalog, than with a point of sale or magazine advertisement. A consumer opening a direct mail promotion he/she is interested in is in a high-involvement mode and is prepared to read the enclosed material and catalog. Although the material may be more easily ignored, current tobacco users who want to buy by direct mail can get the information from textual material.

Mailings in text-only to current customers and to other adult smokers are permitted under the rule. On the other hand, if a direct mail promotion or catalog is seen by a child, the text-only format would make it much less appealing and less interesting. This is especially important since there is evidence that as many as 1.6 million children aged 12 to 17 receive direct mail tobacco promotions. Thus, text-only direct mail is important to accomplish the purpose of this rulemaking. Moreover, contrary to being censorship, as some comments stated, the text-only format for direct mail will allow advertisers to send adults an encyclopedia of information about any aspect of smoking or tobacco products while protecting children from the effects of advertising.

Although direct mail catalog advertising will be less interesting, sales should only be minimally affected. As the final rule does not include a prohibition on mail-order sales, the only restriction will be the text-only format. In addition, this should be less of an impediment than a total ban to small mail order company owners such as the commenter.

This compromise represents the agency's attempt to narrowly tailor its rule. Based on comments received from the industry, most mail-order customers purchase tobacco products for price, convenience, and uniqueness and to stockpile a long term supply. The agency believes that creative and effective advertising for adults can be designed in the text-only format for catalogs, especially for catalogs targeted to consumers purchasing tobacco products for these reasons. Therefore, FDA is not exempting direct mail promotion of tobacco products from the text-only requirement.

(49) One comment suggested that FDA create an exception for direct mail similar to that for publications. The comment said that direct marketers can target mailings so that children and adolescents are protected to, at the very least, the same degree that the regulations provide for the publishing industry.

FDA has considered this request but finds that it cannot grant it. The agency based the threshold for publications on the ground that publications with youth readership of less than 15 percent are not of interest to young people and thus would be unlikely to be read by them. The same cannot be said of direct mail advertisements that come addressed with the child's name on it. (As explained in this section, surveys show that a significant portion of tobacco direct mail advertising is sent directly to individuals under the age of 18.) The appearance of the child's name in the address will cause the child to look at the advertisement and thus will cause the message to be thrust on the child in a manner similar to messages on billboards or point of purchase (see *Packer Corp.* v. *Utah*, 285 U.S. 105, 110 (1934)). Thus, direct mail advertising is more similar in nature to billboards and point of purchase advertising than are publications. Consequently, as with the former types of advertising, FDA has concluded that to reduce the appeal of direct mail advertising to those youngsters who view it, it is appropriate

to require that this type of advertising be in the text-only format.

(50) A few comments said that in the same way the agency attempted to carve out an exception for publications with primarily adult readers, it should permit a similar exception for advertising in bars, clubs, etc., with customers over 21 years of age.

The agency agrees with these comments. The agency recognizes the need to precisely tailor its regulations and thus, has created an exception for advertising in adult only (18 years of age and older) facilities permitted to sell tobacco products from vending machines and self-service under § 897.16(c)(2)(ii). These facilities, which are required to ensure that no one under the age of 18 is present, or permitted to enter, the facility at any time, may display permissible advertising, i.e., with color and imagery, provided that the advertising is not visible from outside the facility and is affixed to a wall or fixture within the facility. These conditions will ensure that the advertising does not become a surrogate for outdoor advertising and is not carried from the facility.

(51) The agency received some comments from opponents and supporters of the 1995 proposed rule that stated that this provision might be counterproductive and result in increased demand for cigarettes and smokeless tobacco by minors. One comment from an association of advertising agencies stated that a reduction in spending on cigarette advertising, resulting from the proposal, could make cigarettes less expensive and increase demand for these products. In contrast, another comment from a tobacco company stated that reduced competition due to the text-only restrictions could lead to price increases for some brands which would harm the adult purchasers of those brands.

Some comments stated that the health warnings in cigarette advertising would become less effective in the proposed text-only format. This consequence could result in fewer people giving up smoking because of information in the health warnings. Some comments argued that the text-only format might actually attract more attention from minors because these advertisements would be so different from most advertising.

The agency finds that, on balance, the evidence does not support a conclusion that the text-only requirement will be counterproductive. This finding is based in part on the contradictory comments regarding the price of cigarettes. Some comments from the advertising industry argued that tobacco companies would use the savings from doing less advertising to reduce the price of cigarettes, which would increase demand especially among young people who are price sensitive. Other comments from the tobacco industry argued that the requirement would reduce competition, which could lead to higher prices for adult consumers. This conflict points out the speculative, and therefore unconvincing, nature of the claims that the restrictions will be counterproductive.

Also, despite concerns expressed by the tobacco industry and others that the text-only format would make the Surgeon General's health warning less effective, there is evidence from the focus groups conducted by the agency that this warning is not very effective with young people now.[211] The text-only format will not interfere with the ability of the Surgeon General's warning to warn adults of the health hazards of smoking. This format will, however, reduce the appeal to young people that advertising creates and therefore will lessen the need for the warning for young people.

The agency has considered the concern of some comments that the text-only format will be so unlike most advertising that young people will be attracted to it. Whatever attraction the novelty has for young people, the agency has concluded that it should be less than the attraction of the current imagery in tobacco advertising.

(52) A number of comments, especially from the tobacco industry, expressed concern about the 1995 proposed rule's adverse impact on competition. Many comments stated that advertising is critical to competition, brand choice, and product innovation. Comments from the tobacco industry stated that the primary purposes of its advertising are to promote brand competition and to maintain brand loyalty. Many of these comments argued that the text-only format would stamp out competition and freeze market shares. Some comments also stated that the 1995 proposed rule would serve as a barrier to new and improved products and product innovation, especially to products like lower tar cigarettes.

Although all firms will be subject to the same rules, some firms may still gain an advantage by dominant market position or by being more creative in their text-only advertising or more effective in their placement of advertising. Tobacco companies will still be able to advertise in virtually all the same forums they use now, but companies may gain competitive advantages by developing new marketing techniques aimed at adults that are within the rules. All industries have to adapt to changing competitive circumstances, whether caused by government regulations, demanded by the public, self-imposed as in professional sports, affected by international competition and changing technologies, or in reaction to changes in consumer preferences. Creative companies can succeed by adapting better than their competitors within the new framework.

Additionally, these advertising restrictions could make it more difficult for a new competitive tobacco company to be formed and to enter the market. But, there are much greater barriers to entry for a new firm in terms of the nature of the tobacco business, capital requirements, and the existing large firms already in the business. Nevertheless, to the extent that the regulations do produce anticompetitive effects, these are outweighed by the public health benefits of the rule.

Finally, information on new products and on product innovations need not be "stamped out." This kind of information can be conveyed in the text-only format. One example of a new product that the tobacco industry claims might not have been developed if this rule had been in effect is the low tar cigarette. Yet advertising for low tar brands tends to use much more text than regular brands because the information is factual and specific. Therefore, the agency continues to find the text-only requirement to be an appropriately tailored remedy.

(53) Comments offered differing views on the function of advertising. Some stated that imagery is necessary to attract and hold the attention of adult smokers in order to convey useful information about the product and to effectively differentiate brands, while others saw images as being too appealing to children. These latter comments argued that FDA's rule is seeking to regulate only the presentation of the advertising that attracts children (the imagery), not its content.

One small business owner said the proposed ban on imagery would make established advertising logos with pictures worthless, not just for the major tobacco companies but also for small firms in tobacco related businesses. Others stated that the 1995 proposed

[211] Focus group report in administrative record, December 1, 1995, 60 FR 61670.

rule is not strong enough. One comment said that FDA is mistaken in asserting that the black and white text format removes imagery and emotive content from the advertisement. It said that the regulation should also limit the type styles, font sizes, and shapes of borders and letters.

The agency continues to believe that it has created an appropriately tailored remedy. The tobacco and advertising industries argue that FDA's ban on imagery and color is overinclusive and not narrowly tailored. FDA disagrees, however. The restriction on the use of images and color preserves informational advertising because of its utility to adults while eliminating the aspects of advertising that are most attractive to young people. The agency is regulating only the manner in which advertising is presented, not the information contained in it. Also, the agency is allowing imagery in advertising in adult publications.

There is undoubtedly an impact on businesses that have established logos, pictures, and other graphics associated with their businesses or products. However, all businesses are subject to the same requirements, and thus no one business should receive any competitive advantage.

The agency does not agree with comments recommending restrictions on type styles, fonts, etc. Such a restriction on advertising is, given the currently available evidence, more restrictive than necessary. Text-only advertising should be sufficient to reduce the appeal of advertising based on imagery to children and adolescents, however creatively the text is displayed. The agency concludes that the elimination of imagery and color directly and materially advances its interest in protecting the health of young people by making tobacco advertising much less appealing to them and, therefore, it makes it less likely that they will be influenced to use tobacco products.

(54) Several comments requested that FDA provide specific regulation for audio and video formats. Specifically, the comments requested that audio be confined to a text-only format appropriate for audio (words) unaccompanied by music or sound and that video be limited to black text on a white background only. Restrictions, such as these, the comments continued, would apply the spirit of the text-only format to these media. Finally, one comment expressed the concern that without these restrictions, tobacco companies might create and disseminate music tapes, similar to one distributed by RJR with music by "The Hard Pack." This would, the comment stated, provide aural imagery for young people.

The agency agrees that it should provide more specific guidance for permissible audio and video media and that this guidance should be a logical application of the text-only requirement. Therefore, the agency has amended § 897.32 to add a new paragraph (b), which requires text-only black and white text in video advertising, which should be static, and text-only, no music, in audio advertisements.

(55) Several comments challenged FDA's proposal to limit most advertising to the use of the text-only, black print on white background format on the grounds that this limitation would violate the First Amendment. These comments relied most heavily on three cases: *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 (1985), in which the Supreme Court struck down a restriction on the use of pictures in attorney advertising; *Shapero* v. *Kentucky Bar Association*, 486 U.S. 466 (1988), in which the Supreme Court held that the State may not restrict lawyer solicitations to those least likely to be read by the recipient; and *In re R. M. J.*, 455 U.S. 191 (1984), a case in which the Court struck down a requirement that lawyers use a fixed format in their advertising. One comment, however, argued that FDA's restriction is fully consistent with the First Amendment.

In *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. at 647, the Supreme Court said that "the burden is on the State to present a substantial governmental interest justifying the restriction * * * and to demonstrate that the restriction vindicates that interest through [narrowly tailored] means."[212] FDA will apply this test here.

As explained in section VI.C.4. of this document, FDA has not merely a substantial, but a compelling, interest in the health of minors. It is this interest that led it to propose the restriction on the use of images and color in cigarette and smokeless tobacco advertising.

Several comments argued, however, that the restriction on images and color do not further FDA's interest. These comments argued that there is no evidence that the use of color and images in advertising increases tobacco use among young people.

FDA has fully addressed this assertion. The available evidence demonstrates that pictures and colors have particular appeal to children and adolescents under 18 years of age, and that they are more important to underage individuals than other aspects of the advertisement.[213] Young people pay attention to peripheral cues in an advertisement, such as the models that appear in them, color, and scenery, and it is these components that tobacco advertisers use to create the images that are so important to people under the age of 18. Thus, the restriction on images and colors will have a particular effect on the appeal of advertisements to young people and make these advertisements a significantly less effective means of communicating to this group.

(56) Several comments also argued that FDA's restriction on the use of colors and images is not narrowly tailored, pointing to the fact that the agency proposed to eliminate the use of all visual images and graphic designs in cigarette and smokeless tobacco advertisements.

These comments misinterpret the rule. FDA has not restricted all use of color and images. FDA has provided that these mechanisms may continue to be used in publications with primarily adult readership and in adult-only establishments. The agency has endeavored to restrict as little speech as possible. FDA has found, however, that it could not limit the appeal of cigarette and smokeless tobacco advertising to the young if it did not restrict the use of image and color.

Each of the cases relied upon by the comments is fundamentally distinguishable from the current situation. In each of these cases, the body seeking to restrict the advertising in question failed to present any evidence that the restriction was addressing an actual harm (see *Zauderer*, 471 U.S. at 648–649; *Shapero*, 486 U.S. at 479–80; (see also *Florida Bar* v. *Went For It, Inc.*, 115 S.Ct. at 2378 ("Finally, the State in Shapero assembled no evidence attempting to demonstrate any actual harm caused by targeted direct mail."); *In re R. M. J.*, 455 U.S. at 206). Here, in contrast, the record fully establishes the reality of the harm, and that FDA's interest will be directly and materially advanced by the

[212] *Zauderer* actually states "* * * through the least restrictive available means." However, in *Board of Trustees of State University of N.Y.* v. *Fox*, 492 U.S. at 479–481, the Court clarified this phrase as requiring narrowly tailored means.

[213] See, e.g., Petty, R. E., and J. T. Cacioppo, *Communication and Persuasion: Central and Peripheral Routes to Attitude Change*, Springer-Verlag, New York, 1986.

restriction on colors and images. For these reasons, FDA finds no merit to these comments.

In summary, FDA finds that the evidence amassed during this investigation and provided by comments provides ample support for its requirement that all forms of advertising that children see and are exposed to can have an effect upon their attitudes about tobacco use.

The empirical studies and surveys, expert opinion, anecdotal evidence, industry statements, and consensus report described in section VI.D.5. of this document implicate advertising as an important source of information for young people's attitudes about, and use of, tobacco products. This evidence shows that any regulation that hopes to be successful must be comprehensive and include some type of restriction upon all forms of advertising and promotions. FDA's regulation provides restrictions that will contribute directly and materially to that end but that are tailored as narrowly as possible. Except in the limited case of outdoor advertising within 1,000 feet of schools, no informational advertising will be disturbed. However, those aspects of advertising that have particular appeal to young people will be banned.

Color and Imagery—Color and imagery are necessary ingredients for advertising in conditions of "low involvement," such as occurs when skimming a magazine or seeing a billboard (see sections VI.B.1.b. and VI.B.1 c. of this document).

FDA's restriction will eliminate the color and imagery but will permit information to be communicated. This requirement is as important for in-store advertising, billboards, and direct mail, as it is for traditional publications. As discussed in this section, young people get their information and product imagery from all these sources: (1) Point of sale advertising confronts young people when they go to make a purchase. The imagery is as large as life and presents the child with an enticement at the time when purchase is immediately available. It can as effectively impart information to adults with words. (2) Direct mail can frequently wind up in the hands of a young person or be addressed personally to the child or adolescent. One study found that 7.6 percent of children 12 to 17 years questioned had received mail personally addressed to them from a tobacco company (1.6 million teens).

Billboards—Billboards provide a major source of information about tobacco for young people. One study published in *Advertising Age* (April 27, 1992), found that 46 percent of children 8 to 13 years old and 34 percent of children 14 to 18 cited billboards as the predominant advertising medium for tobacco products (see section VI.E.3. of this document). The Starch Survey conducted for R.J. Reynolds found that 51 percent of children 10 to 17 who recognized Joe Camel as a tobacco mascot, reported seeing him on billboards (see section VI.D.3.d. of this document).

Cross-Country and International Studies—Studies described evidence that regulations that are stringent and comprehensive will have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones (see section VI.D.6.a. of this document). The text-only requirement, while not as stringent as a ban, will accomplish its purpose while preserving the informational function of advertising.

Finally, the regulation is narrowly tailored. It permits adult publications and adult locations to display advertising with images and colors. The agency has attempted to define these venues with as much precision as possible but recognizes that there may be some difficulties in application. It, therefore, has made it clear that it will work with the industry to try to establish as clear rules as possible. In-store, outdoor, and direct mail advertising do not lend themselves to such tailoring. Nonetheless, the agency is confident that adults seeking information about products can be adequately informed at time of purchase or by mail order catalogue using text-only.

5. Section 897.32(a)—Definition of "Adult Publication"

The preamble to the 1995 proposed rule explained that the agency was interested in permitting advertising in publications that are read primarily by adults to continue to use imagery and color. For that reason, under proposed § 897.32(a), advertisements in publications with primarily adult readership would not be restricted to a text-only format. The agency proposed to define such publications as those: (1) Whose readers age 18 or older constitute 85 percent or more of the publication's total readership,[214] or (2) that are read by fewer than 2 million people under the age of 18, whichever method ensures the fewest young readers. The agency defined the readership of a publication as the total number of people that read any given copy of that publication and stated in the preamble that it should be measured according to industry standards and, at a minimum, by asking a nationally projectable survey of people what publications they read or looked at during any given time. The preamble to the 1995 proposed rule noted that a reader is one who said that he or she read the last issue of a publication. The 1995 proposed rule provided that before disseminating advertising containing images and colors, it would be the company's obligation to establish that the publication meets the criteria for a primarily adult readership.

Numerous comments were received by the agency regarding the exception from the text-only requirement for adult publications and the definition of an adult publication. Comments from the newspaper, magazine, and advertising industries were particularly critical of the readership thresholds chosen for the definition of an adult publication and were especially concerned about whether there would be any reliable and practical way to determine readership levels for most publications. Many comments from individuals who supported the text-only requirement saw this exception as a possible loophole for the tobacco industry to escape the text-only restrictions.

In a notice published in the Federal Register of March 20, 1996 (61 FR 11349), the agency reopened the comment period to place on the public record a memorandum that provided further explanation of the agency's proposal to exempt publications with primarily adult readership from the text-only requirement. The document provided an additional 30 days to comment on this new information. The memorandum stated that the agency had selected the 85 percent per 2-million threshold based on the public perception that certain magazines are likely to be of interest to young people under the age of 18. The agency extrapolated from the readership percentages for those publications to the proposed threshold levels. Data supporting this line had been placed in the administrative record for the proposed rule (vol. 105, document 1550) and additional readership data was

[214] This portion of the definition was edited in the final rule to make the two provisions parallel. Thus, § 897.32(a)(2)(i) now reads, "whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence."

provided during the comment period. The agency noted additionally that at some point the number of underage readers is so great that the publication can no longer be considered to be of no interest to those under 18, regardless of the percentage of the readership. The agency selected 2,000,000 as that level.[215]

(57) Some comments objected to the proposed readership thresholds, calling them arbitrary and stating that FDA provided no basis, no rational justification, and no evidence for them. One tobacco industry comment stated that it used an FTC methodology based on readership and the number of pages of advertising to conclude that magazines with greater readership by minors tend to have less cigarette advertising than other publications.

Some comments also objected to the 2 million minor readers threshold because it would subject some adult-oriented magazines to the tombstone format even though their percentage of minor readers is very low. One comment cited the following examples and readership figures: *People Magazine* (3,020,000 minors: 7.8 percent of all readers) and *Better Homes and Gardens* (2,042,000 minors: 5.5 percent of all readers); *Time* (1,972,000 minors; 7.66 percent of all readers) and *Newsweek* (1,911,000 minors; 8.01 percent of all readers) are also close to the threshold. In addition, some comments suggested that FDA's explanation that 2,000,000 is a large number is not adequate basis for regulation.

Some comments stated that the proposed thresholds were unfair to the up to 85 percent, or more in some cases, of a publication's readers who were adults. "Such a regulation is inconsistent with the principle that the government may not 'reduce the adult population * * * to reading only what is fit for children.'"

In contrast, comments supporting the proposal stated that just because the line (i.e., thresholds) could be drawn differently was not important as long as FDA can rationally explain why it drew the line where it did. One comment suggested that FDA should require the text-only format in the 10 most read magazines by young people in addition to the present proposal. Some comments recommended requiring the text-only format for advertisements in all publications.

One comment stated that no tobacco advertising, even text-only, should be allowed whatsoever in publications with youth readership, and adult publications should have text-only tobacco advertisements. This comment also said that the agency should monitor this exception to ensure that tobacco companies don't increase advertising in national adult publications that are widely read by the entire family including children and adolescents and to be wary of tobacco companies creating their own adult publications saturated with tobacco advertising.

Other comments supporting the proposal stated that some degree of overinclusiveness is acceptable and expected because of the difficulties in fine-tuning any regulation. Other comments saw any exception for any publications as a potential loophole that could be used by tobacco companies to continue using imagery in advertising. They said that experience in other countries with tobacco advertising restrictions showed that "the tobacco industry used all of its creativity to manipulate the system to take advantage of whatever opportunities were still available to reach their target audience, particularly young, impressionable individuals."

The comments received, especially from the magazine and newspaper industries, made clear that both defining an adult publication and determining whether a particular publication meets the definition are difficult issues. However, while these comments were helpful in pointing out the difficulty of defining an adult publication, they did not offer any realistic alternative definition in terms of a readership-by-minors threshold. Because of the concern about tobacco use by children and adolescents, which was voiced by virtually all comments pro or con, the agency believes it has sufficient evidence to justify a text-only requirement. However, the agency's concern is with advertising that affects minors and with tailoring the restrictions in this final rule to burden as little speech as possible. Therefore, FDA concludes that an exception from the text-only requirement for publications that are read primarily by adults is still reasonable and feasible.

The agency has decided to retain the exception for adult publications and to retain the readership thresholds in this final rule. The 15 percent young readers threshold is reasonable based on readership data submitted with comments. The 15 percent threshold would require text-only advertising in the following sports and racing magazines: *Sports Illustrated* (18 percent), *Car and Driver* (18.3 percent), *Motor Trend* (22.1), and *Road & Track* (20.6 percent) and in the following general circulation magazines: *Rolling Stone* (18.5 percent), *Vogue* (18 percent), *Mademoiselle* (19.7 percent), and *Glamour* (17.1 percent).[216] The agency's judgment is based on common public perception that these are the types of magazines that young people under the age of 18 will find of interest and read. Thus, based on public perceptions and inductively given the nature of the magazines involved, FDA finds a 15 percent cut-off to be appropriate.

The 2 million number is justified based upon the agency's concern for young people. The agency finds that at some point, the number of underage readers is so great that the magazine can no longer be considered to not be of interest to children and adolescents under 18 years of age. This threshold would require text-only advertising in a publication like *People*, where the percentage of readers who are minors is only 7.8 percent, but where the number of readers under 18 years of age is 3,020,000. Publications like *Time*, *Newsweek*, *Family Circle*, and *Popular Mechanics*, however, would not be subject to the text-only format under either threshold; based on how these publications are affected, FDA concludes that, on balance, the thresholds are reasonable.[217] The agency's concern is not with the "intended" audience of the publication because there is no magic curtain between the interests of young adults and adolescents. The agency's concern is to protect children from the appeal of advertising that they cannot avoid. Fifteen percent youth readership or 2 million young readers narrowly addresses this concern.

The agency does not agree with comments that the rule should be made more restrictive by, for example, allowing only text-only advertising in adult publications and no advertising at all in other publications. The text-only format will reduce the appeal of tobacco advertising to young people while allowing communication of important information to adults. The agency will continue to monitor the effect on young people of text-only advertising as well as the exception created for adult publications and will consider taking any additional action that is appropriate.

[215] See section XV. of this document, Analysis of Impacts, for a discussion of publications that would be affected.

[216] Barents Group, LLC, citing Publishers Information Bureau and Mediamark Research, Inc., pp. 53–54.

[217] *Id.*

Finally, the agency finds no basis to the comments' concern that the regulations will reduce the reading level of adults to those of children. The agency has crafted the exception for adult publications specifically to minimize the effect of the regulations on adults. Moreover, text-only, or the absence of color and imagery, will have significantly less impact on adults than on young people. As discussed more fully in the introduction to this section, adults generally have more capacity to engage in high involvement search than do young people. Furthermore, full information will be available to them in the text format. The First Amendment demands no more.

(58) Several comments recognized that FDA made the March 20, 1996, Federal Register document and the associated data in the record publicly available to meet its obligation under the APA to provide interested parties with an opportunity to comment meaningfully on the proposed rule. These comments stated, however, that one of the memoranda, dated March 11, 1996, placed on the public record by the Federal Register document makes clear that FDA had readership numbers in mind when it developed the proposal, but that the agency had failed to disclose those numbers to the public. The comments said that these numbers are neither reflected in the memorandum added to the record in the March 20, 1996, Federal Register document nor the administrative record that FDA has made publicly available. The comments said that the memorandum in question refers to readership numbers that were in comments submitted by the tobacco industry, and thus these numbers could not have been the numbers that FDA considered in developing its proposal. The comments said that FDA's failure to disclose this information rendered the proceeding arbitrary and capricious.

These comments are in error. FDA placed the information that it relied upon in developing the tentative 15-percent threshold on public display at approximately the time that it published the proposed rule. The data appear at pages 95T030074–75 of the administrative record (vol. 105, number 1550). (The numbers are similar but not identical to those supplied by the industry.) As one comment pointed out, in *Connecticut Light and Power Co.* v. *Nuclear Reg Com'n.*, 673 F.2d 525, 530 (D.C. Cir.), *cert. denied* 459 U.S. 835 (1982), the United States Court of Appeals for the District of Columbia Circuit stated, "In order to allow for useful criticism, it is especially important for the agency to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules." The agency fully complied with this expectation by including the data that it had reviewed in the material that it made publicly available. Thus, the agency finds the claims in the comments summarized here to be without any basis in fact.

(59) Several comments asserted that the memorandum added to the record in the March 20, 1996, Federal Register document did not provide a reasoned explanation for the threshold that FDA had proposed. Several comments argued that there is no principle in, or discernible from, the memorandum that leads to the choice of 15 percent, as opposed to 49 percent, as the ceiling for the percentage of underage readers a publication could have and still be considered primarily adult. One comment said that FDA's reasoning was circular. Other comments said that FDA had pointed to no facts in the March 20, 1996, Federal Register document or the attendant memorandum that supports its judgment. These comments stated that FDA merely applied an arbitrarily chosen 15 percent figure to readership data and concluded that it had hit the right number. Some comments questioned why a publication with 84 percent adult readership was problematic, while a publication with 86 percent adult readership was not. Of all the comments that criticized FDA's proposed threshold, only one provided any alternative. This comment cited the tobacco industry's voluntary Cigarette Advertising and Promotion Code, Advertising 1(a), which prohibits advertising in publications directed primarily to those under 21 years of age.

In contrast to the foregoing comments, which were from the tobacco and advertising industries, a comment from a coalition of groups concerned about smoking and health stated that the agency's tentative judgment was unbiased, reasonable, and narrowly tailored to meet FDA's stated goal of limiting the specific forms of advertising that have the greatest impact on children to those publications that do not have a regular heavy readership of children.

FDA has carefully reviewed these comments. Based on this review, FDA first considered whether its March 20, 1996, Federal Register document and the memorandum added to the record under that notice had adequately explained the basis for the proposed threshold.

The legislative history of the APA states that agency notice must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or arguments thereto (S. Doc. 248, 79th Cong., 2d sess. 200 (1946)). The notice must disclose in detail the thinking that has animated the form of the proposed rule and the data on which that rule is based. (See *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9 (D.C. Cir. 1977).) In *Connecticut Light & Power* v. *Nuclear Reg. Com'n*, 673 F.2d at 530, the court held that a notice of proposed rulemaking should provide an accurate picture of the agency's reasoning, so that interested persons may comment meaningfully on the proposed rule.

The March 20, 1996, Federal Register document and the associated data in the record clearly meet this standard. As stated in this section, FDA made clear that its tentative judgment was based on a review of available data (from Simons Market Research) on the readership profiles of various publications. By dividing the publications based on whether, in the FDA employees' experience, the publications were publicly perceived as being of interest to minors or not and then examining readership information on each publication, FDA employees found that the publications that were viewed as being of interest to young people had readerships that included individuals under the age of 18 at a level of 15 percent or higher. FDA also found that the information on additional publications that it received during the comment period produced results that were consistent with the pattern that emerged from its initial review.[218]

Thus, FDA's reasoning is not circular. FDA based the threshold on its tentative finding, from the work that its employees had done, that the publications viewed as of interest to young people had readerships that were more than 15 percent under 18. Significantly, while the comments of the tobacco and advertising industry disagreed with the basis for the proposed threshold in various ways, none presented any data showing that publications with a youth readership of 15 percent or more are not viewed by consumers as of interest to young people.

It is important to keep in mind that the purpose of the threshold is to ensure

[218] See memorandum of March 11, 1996, added to the administrative record in the March 20, 1996, Federal Register.

that no more speech than necessary is burdened by FDA's restriction on advertising. Given that FDA wants to ensure that its restriction is as narrowly tailored as possible, in response to the criticisms in the comments, FDA considered whether there was a more appropriate basis on which to craft the restriction. Unfortunately, the comments criticizing the proposal were not helpful. The only suggested alternative to the proposed threshold that they put forward was the provision in the Code. This provision is inadequate on its face, however, because it is based on a minimum age of 21, rather than 18, which is the minimum provided in the laws of all the States and section 1926 of the PHS Act. Moreover, the comment that suggested this alternative gave no indication of how the age group to which a publication is primarily directed would be determined.

As a matter of common sense, FDA focused on the percentage of readers under the age of 18 in the general population and on comparing that percentage to the percentage of readers under 18 years of age for a particular publication. Certain conclusions can logically be drawn on the basis of such a comparison. If the percentage of young readers of a publication is greater than the percentage of young people in the general population, the publication can be viewed as having particular appeal to young readers. A publication with a youth readership percentage that is approximately equal to the percentage of young people in the general population can be viewed as one of general appeal, including appeal to young readers. A publication with a lower percentage of young readers than in the general population, however, would obviously be one of limited appeal to young people, and thus one that could appropriately be considered of interest primarily to adults.

Given the logic of this approach, FDA turned to the U.S. census. What the agency found is that young people between the ages of 5 and 17 constitute approximately 15 percent of the U.S. population.[219] Since this percentage is the same as the one that FDA used in developing the proposal, this approach fully supports the approach that FDA proposed. (Although 5 and 6 year olds may not be reading magazines, utilizing this age group builds in a margin for error.) It ratifies the judgments that FDA employees made in arriving at the proposed threshold.

Some may assert that it is mere coincidence that the two approaches produce the same result. FDA disagrees. The congruence of the two approaches, the FDA employee anecdotal search and the use of the census data, is attributable to the basic validity of the premise underlying FDA's initial approach. Magazines have reputations as to the audiences to which they appeal, and those reputations are generally earned based on the nature of their contents. Thus, contrary to the assertions in some of the comments, the 15 percent threshold is well-supported and appropriate.

As for the question as to why a publication with 84 percent adult readership would be problematic, while a publication with 86 percent adult readership would not, the agency turns to the case law on narrow tailoring, which is, as stated in section VI.E. of this document, what this exercise is about. In *Board of Trustees of State University of N.Y.* v. *Fox*, the Supreme Court stated:

> In sum, while we have insisted that "the free flow of commercial information is valuable enough to justify would-be regulators the costs of distinguishing * * * the harmless from the harmful," * * * we have not gone so far as to impose upon them the burden of demonstrating that the distinguishment is 100% complete, or that the manner of restriction is absolutely the least severe that will achieve the desired end. What our decisions require is a "fit between the legislature's ends and the means to accomplish those ends," * * *—a fit that is not necessarily perfect but reasonable * * *. (492 U.S. at 480 (citations omitted))

FDA has done its best to distinguish publications that are likely to be read by children and adolescents from those that are not. FDA finds that, if its restriction on advertising is to be meaningful, it must be based on a line that is enforceable. While only 2 percentage points separate a publication with 84 percent adult readership from one with 86 percent (although those 2 percentage points can mean a difference of tens of thousands of youngsters), the underrepresentation of underage readers in the readership of the latter publication establishes its limited appeal to young readers, and thus that it is less likely to be read by them.

For the foregoing reasons, FDA is adopting the 15-percent threshold.

(60) Comments from an association of magazine publishers and others expressed a number of concerns about the adequacy of current data for determining whether a publication met the definition of an adult publication. Some comments said that current data and methodology to determine youth readership, while adequate for marketing purposes, are totally inadequate to justify their use as measuring devices for the imposition of criminal or civil liability on the exercise of First Amendment rights. These comments noted that the vast majority of magazines do not subscribe to either adult or youth surveys. Two comments stated that only about 2 percent of all magazines participate in the two major adult audience surveys. One comment stated that participation in the youth readership surveys, Simmons's STARS and MediaMark Research Inc.'s (MRI's) TEENMARK, is even more limited, just over one-half of one percent of all magazines.

One comment noted that to comply with the 1995 proposed rule, publications must identify readers of all ages but that current audience measurement systems do not provide this comprehensive coverage especially for readers younger than 12 years of age. Another comment noted that since the survey organizations do not survey individuals on college campuses, in the armed services, or in institutional settings, adult readership would be underestimated. Several comments noted the difficulty in determining readership data for any one issue of a magazine. Another comment noted that multi-issue advertisements would be a problem for publications right around the threshold if the publication crosses back and forth.

Several comments noted that the survey organizations would have to make substantial methodological changes to the surveys to meet the 1995 proposed rule's standard. One comment said that some problems would include adding magazines to the surveys, and dealing with unreliable results. Another comment asked who would decide the research design for the surveys since different research methodologies could be competent and reliable yet result in different conclusions. Another comment said that it could be prohibitively expensive to increase audience samples to create a legally enforceable standard, and that changes to audience measurement procedures could undermine the usefulness of the surveys for their designed marketing information purpose.

One supporting comment from an association of addiction specialists stated that "the agency should require the industry to monitor with surveys of ad recall (correlated with tobacco use

[219] U.S. Bureau of the Census, Population Paper Listing 21, 1994.

and intention to use patterns) among the population under age 18 years to help the agency understand the extent to which image-based messages continue to reach the young."

One comment pointed out that it would be virtually impossible to determine a legally enforceable standard for the 15 percent youth readership threshold since there is substantial variation in audience estimates between survey organizations and over time. Several comments noted that FDA's definition of a reader is not consistent with the definition used by Simmons and MRI.

Some comments suggested that a more realistic measure of who reads a publication would be who subscribes to it. Other comments opposed this alternative stating that the key criteria should be regular readership, not paid subscribers. One comment said that "[t]his alteration of the proposed exemption would destroy the intent and purpose of the advertising limitation."

Several comments said that the proposal would violate due process by punishing publishers or advertisers who are unable to determine whether their conduct violates the law because the survey data are not sufficiently comprehensive and reliable. Several comments, including one from an association of newspaper publishers, expressed concern about who would determine readership. One comment asked whether a newspaper would be subject to criminal liability based on readership data it supplies, and whether the responsibility for ascertaining whether a publication qualifies as an adult publication would be on those running the advertisements.

The agency recognizes the limitations of current readership data and the difficulties of using current readership surveys to meet the requirements of this rule. However, the agency concludes that the exception from the text-only format for adult publications is feasible as well as reasonable. First of all, the burden of proof for determining youth readership is placed by the rule on the tobacco company doing the advertising, not on the publication or the advertising agency. Under § 897.32(a)(2), the tobacco company will need to be able to demonstrate that a publication in which it is running an advertisement with images and colors meets the definition of an adult publication. Therefore, only the tobacco company will be subject to any penalties for improperly placing advertisements, even if it used data provided by the publication as part of its determination.

Second, either of the two methodologies can be used to measure readership. In addition, the agency has modified § 897.32(a)(1) and (a)(2) to make clear that any other competent and reliable private sector survey evidence may be used. A tobacco company may use one of the two major customary and reasonable readership surveys (such as MRI and Simmons). The agency does not believe that there is only one acceptable methodology. The agency is willing to accept the standard methodology currently used by MRI and Simmons as evidence. Moreover, the agency is willing to use the age range of 12 to 17, which appears to be the current standard for defining youth, in determining youth readership.

If a particular publication is not currently covered by one of the major surveys, it is the tobacco company's responsibility to develop the readership data necessary to justify a decision to advertise in that publication. The company could request a survey by one of the major survey firms, or it could develop an acceptable alternative. In either case, the agency will be available to work with the company. The company will always have the alternative to advertise in any publication in the text-only format.

The agency also acknowledges the difficulty in determining the youth readership for any particular issue of a publication. Thus, data from a survey for the most recent issues of a publication can serve as proof of readership for comparable upcoming issues unless a particular upcoming issue is being targeted at younger readers. The survey schedule used by the major survey organizations would be acceptable to the agency. A tobacco company could utilize a more frequent survey schedule if it believed the readership had changed in its favor. A rolling average of a certain number of issues could be used, for example, to determine youth readership. The problem of multi-issue contracts for advertising could be solved by a survey for a comparable period of time (e.g., winter months) preceding the contract.

The agency is willing to accept the definitions of a reader that are customarily used by the major survey organizations. The agency does not agree that using subscribers to a publication in lieu of readers is a better measure. Many children who read a publication will not be listed as subscribers (for example, *Sports Illustrated* has a youth readership of 18 to 20 percent but a youth subscriber rate of only 6.5 or 7 percent).[220] Also, adults are more likely to subscribe for their families, thereby creating an underestimation of youth exposure.

(61) Several comments assumed that the purpose of the March 20, 1996, Federal Register document was to justify the restriction on advertising format that the agency had proposed for other than adult-oriented publications. These comments argued that explaining how the agency arrived at the 15 percent and 2 million readership thresholds does not approach the factual justification necessary to restrict First Amendment freedoms.

Other comments asserted that FDA's assumption that certain magazines were of interest to those under 18, as the starting point in arriving at the 15 percent threshold, shows that the limits were content based. These comments argued that basing restrictions on content violated the First Amendment.

The comments misunderstood FDA's purpose in proposing, and in adopting, the 15 percent and 2 million under 18 readership thresholds and of the memoranda added to the public record in the March 20, 1996, Federal Register document that indicated how the agency tentatively arrived at those thresholds. As discussed in section VI.D. of this document, the evidence in this proceeding establishes the effect of cigarette and smokeless tobacco advertising on those under 18 years of age. This evidence fully justifies FDA's decision to restrict the advertising for these products.

However, in imposing such a restriction on commercial speech, FDA has an obligation to ensure that the restriction is no more broad than necessary to serve the agency's substantial interests (*Board of Trustees of State University of N.Y.* v. *Fox*, 492 U.S. at 476). The purpose of the memorandum was to document FDA's efforts to tailor the restriction to ensure that it did not restrict advertising in those publications that were not likely to be read by children or adolescents and thus were not likely to have an effect on the group that FDA is trying to protect. Consequently, contrary to the claims of the first group of comments, the agency's goal in the memorandum was not to justify a restriction on First Amendment freedoms but to explain how it sought to ensure, and why its tentative decision was that, the limits it proposed to place on the coverage of the

[220] Interview on "The News Hour With Jim Lehrer," Public Broadcasting Systems, May 16, 1996.

restriction are reasonable (see *Id.* at 480).

On the other hand, other comments that opposed FDA's proposed restriction on format said that the threshold would have different impacts on similar publications. One comment provided the following examples of publications that would be considered "youth oriented" or primarily adult under the 15 percent threshold (the comment argued that the effects of the 2 million readership threshold were not relevant to the rationality of the 15 percent threshold):

Table 1b.—Examples of Publications

Youth Oriented Publications	Primarily Adult Oriented Publications
Popular Science	Popular Mechanics
Soap Opera Weekly	Soap Opera Digest
Outdoor Life	Field and Stream
Cable Guide	TV Guide
Mademoiselle	Cosmopolitan

The positions taken by these comments makes clear that the thresholds were not content based. If the thresholds were content based, then publications that have similar content would be subject to the same restriction. They are not. The reason they are not is that FDA's goal in arriving at the thresholds was to ensure that cigarette and smokeless tobacco advertisements that are likely to be seen by children and adolescents are the kinds of advertisements that are likely to appeal to them. The agency's only way of judging the likelihood that an advertisement that appears in a publication will be seen by those under the age of 18 is by considering the readership profile of that publication. Thus, the agency has tailored the threshold to either reflect the percentage of readership that are under 18 years of age or to ensure that publications with an extensive youth readership are covered.

The comments that complained about the differing impact of FDA's threshold on similar publications, given the purpose of the threshold, serve to underline its significance. The information submitted by the comments shows that there are significant differences in the readership of similar publications and thus in the likelihood that the material contained in these publications will be seen by young people. The treatment of publications under the agency's restriction reflects the latter fact, not the former.

Popular Science magazine has a readership that is 6 percent more youthful than *Popular Mechanics*; *Soap Opera Weekly* has a 3 percent more youthful readership than *Soap Opera Digest*; and there is a 9 percent bigger youth audience for *Outdoor Life* than for *Field and Stream*. These differences are not minor or meaningless and demonstrate that, although the 15 percent threshold is not perfect, it will serve, as it was designed to, protect those under 18. *TV Guide* and *Cosmopolitan* are not excluded although, as mass distribution magazines the percentage of young readers is less than 15 percent, because they attract over 2 million young readers—a number of young people too large to ignore.[221]

(62) Many comments, especially from the magazine and newspaper industries, expressed concerns about the impact of this proposal on their way of doing business. One comment stated that the proposed text-only format would provide financial disincentives for magazines and newspapers to attract young readers, especially if the publication were near the borderline of being required to use the text-only format. This comment suggested that the provision would affect editorial and content decisions regarding young readers.

Some comments noted that newspapers have been struggling to attract young readers raised on television, but that success in doing this might cause the loss of significant tobacco advertising revenue. One newspaper industry association comment stated that the rule would discourage newspaper programs promoting youth reading and literacy. Some comments stated that the loss of advertising revenue could cause publications to decrease content and increase prices. Some comments thought the result of these effects of the rule would be losses in jobs in the newspaper and magazine industries.

The agency is not sure what impact the exception for adult publications will have on incentives for magazines and newspapers to attract young readers, on editorial content, and on youth literacy programs. The comments that raised these issues mostly speculated about these effects and did not provide any data as to how many of the thousands of newspapers and magazines in the United States carry tobacco advertising, or on what portion of their total advertising revenue comes from tobacco companies. Many business factors affect a publication's decisions regarding its target audience and editorial content, and these are likely to change for a variety of reasons. Those publications affected by this regulation will have to adjust just as they would if a major advertiser reduced its advertising. Under the rule, all publications could still accept text-only advertising. The cigarette and smokeless tobacco industries are capable of designing their advertising to be attractive to adult readers (see section VI.E.4. of this document). Thus, it seems as likely that the effects of the rule in these areas will be minimal and will be far outweighed by the overall benefits of reducing youth smoking. The effect of the rule on prices and jobs in the magazine and newspaper industries is addressed in the section on the economic impact of the rule.

(63) Several comments argued that FDA's restrictions on the format of advertising, and the standard that it proposed for deciding whether a publication has a predominantly adult readership, interfere with the rights of newspapers and magazines to decide what to print. One comment said that some publications will not want to give up revenue from tobacco advertising. Therefore, the comment continued, these publications will base decisions about editorial content on how appealing a particular story would be to readers under the age of 18. Because of the impact of the restrictions on editorial content, the comment concluded, they should be subject to strict scrutiny rather than the more limited scrutiny given to commercial speech.

FDA finds no merit to this argument. A similar argument was made in *Pittsburgh Press Co.* v. *Pittsburgh Com'n on Human Relations*, 413 U.S. 376 (1973). The newspaper company in that case, which involved a First Amendment challenge to a municipal ordinance that prohibited a newspaper from carrying gender-designated advertising for nonexempt job opportunities, argued that the focus of the case must be on the exercise of editorial judgment by the newspaper rather than on the commercial nature of the ads in question.

The Supreme Court rejected this argument. The Court said that under some circumstances, at least, a newspaper's editorial judgments in connection with an advertisement take on the character of the advertisement. In those cases, "[t]he scope of the newspaper's First Amendment protection may be affected by the content of the advertisement"

[221] Barents Group, LLC, citing Publishing Information Bureau and Mediamark Research, Inc., pp. 53–54.

(*Pittsburgh Press Co.*, 413 U.S. at 386). The Court said that, at least under some circumstances, a commercial advertisement remains commercial in the hands of the media (*Id.* at 387). The Court found that nothing about the decision to accept a commercial advertisement for placement in a gender-designated column lifts the newspaper's actions from the category of commercial speech. The Court said that the ad was in practical effect a commercial statement (*Id.* at 387–88; see also *United States* v. *Hunter*, 459 F.2d 205, 212 (4th Cir. 1972) ("But it has been held that a newspaper will not be insulated from the otherwise valid regulation of economic activity merely because it also engages in constitutionally protected dissemination of ideas")).

Here, the question that is raised is whether or not a publication will decide to put itself in a position of being able to accept an advertisement that is particularly appealing to individuals under 18 years of age or not. Nothing about this judgment distinguishes it from the commercial speech itself. Because nothing about FDA's restrictions would prevent the publication from carrying a cigarette or smokeless tobacco advertisement no matter what judgment the publication makes, essentially the editorial judgment comes down to the question of what will be the format of the advertisement that it will carry. This judgment clearly comes within the category of commercial speech, and FDA has fully justified its regulation of commercial speech under the *Central Hudson* test.

6. Advertising—§ 897.32 Requirements for Disclosure of Important Information

a. *Established name and intended use—§ 897.32(c).* Proposed § 897.32(b) (now renumbered as § 897.32(c)) provided that each manufacturer, distributor, and retailer (of tobacco and smokeless tobacco) advertising or causing to be advertised, disseminating or causing to be disseminated, advertising, but not labeling, permitted under § 897.30(a), shall include, as provided in section 502(r) of the act, the product's established name and a statement of its intended use as follows: "Tobacco—A Nicotine Delivery Device," "Cigarette Tobacco—A Nicotine-Delivery Device," or "Loose Leaf Chewing Tobacco," "Plug Chewing Tobacco," "Twist Chewing Tobacco," "Moist Snuff" or "Dry Snuff," whichever is appropriate for the product, followed by the words "A Nicotine-Delivery Device."

The preamble to the 1995 proposed rule explained that section 502(r)(1) of the act requires, for any restricted device, that all advertising or other descriptive printed material contain a true statement of the device's established name. Under section 502(r)(2) of the act, a restricted device is misbranded unless all advertising contains "a brief statement of the intended uses of the device." The agency explained in the preamble to the 1995 proposed rule that it is necessary to require that the product's established name and intended uses be placed on all advertising, under section 520(e) of the act, as a measure that affirmatively identifies the products to persons reading the advertising (the other brief statement requirements under section 502(r)(2) of the act are discussed in section IV.E.6.b. of this document).

The agency did not receive any comments on the "established name" provision and has thus codified the provision in the final rule as § 897.32(c). The agency has modified the "intended use" provision in this final rule to require that cigarette and smokeless tobacco advertising contain the statement "A Nicotine-Delivery Device for Persons 18 or Older." For clarity, the agency has referenced subpart D generally rather than § 897.30(a) specifically. As stated in the 1995 proposed rule, the established name requirement applies to both tobacco and smokeless tobacco.

(64) Several comments opposed the proposed "intended use" provision. One tobacco industry comment stated that FDA's proposal is not authorized under section 502(r) of the act because: (1) The "intended use" of tobacco products is for smoking taste and pleasure, not a "nicotine delivery device;" (2) the "intended use" provision of the act does not require that manufacturers list all information related to all purposes for which a drug is intended; and (3) FDA is not free to prescribe an "intended use" of its own invention. The comment also argued that FDA's statement, which communicates only that a cigarette yields nicotine, is not a statement of "intended use" and is of no value to consumers who obtain more complete nicotine information that cigarette manufacturers already provide in advertising.

The agency disagrees with the comments stating that it is not free to prescribe an intended use. As discussed in this section, the agency is required by section 502(r)(2) of the act to require a brief statement of intended use for all restricted devices.

Additionally, it is within FDA's primary jurisdiction and expertise to determine a device's intended use. FDA has decades of experience evaluating the intended uses of FDA-regulated products, including restricted devices, prescription and over-the-counter drugs, biological products, and dietary supplements through its review and approval process for those products.

As described in the 1996 Jurisdictional Determination annexed hereto, the available evidence demonstrates that manufacturers intend to affect the structure and function of the body by delivering pharmacologically active doses of nicotine to the consumer. Although the agency proposed that the intended use include the language "Nicotine Delivery Device," the agency has determined, based on the comments received, that a more accurate statement of the intended use would provide more value to consumers. Because cigarettes and smokeless tobacco products can legally be sold only to those persons 18 years of age and older, the agency believes the intended use statement should reflect the target population for which the product is intended. Often, the intended use statement for a drug or device includes the patient population by whom the product may be used. Accordingly, the intended use statement has been revised to require the following language on all advertisements for cigarette and smokeless tobacco: "A Nicotine-Delivery Device For Persons 18 or Older."

b. *Section 897.32(d) Brief statement.* Proposed § 897.32(c) and (d) would have required that each manufacturer, distributor, and retailer of cigarettes include in all advertising, but not labeling, a brief statement, printed in black text on a white background that was readable, clear, conspicuous, prominent, and contiguous to the Surgeon General's warning. Because the Smokeless Act preempts other statements about tobacco use and health in advertising, the 1995 proposed rule stated that the provision only applied to cigarettes (and not smokeless tobacco). The 1995 proposed rule provided one brief statement as an example ("ABOUT 1 OUT OF 3 KIDS WHO BECOME SMOKERS WILL DIE FROM THEIR SMOKING") (60 FR 41314 at 41338). The agency requested comment on what other information should be included in the brief statements concerning relevant

warnings, precautions, side effects, and contraindications and on how best to ensure that the statement will be clear, conspicuous, and prominently displayed. The agency also requested comment on whether it should require a listing of the component parts or ingredients of these restricted devices.

The preamble to the 1995 proposed rule explained that the agency was proposing to require this brief statement under section 502(r)(2) of the act. The preamble stated that the act specifically excludes labeling from the requirements in section 502(r) of the act. The 1995 proposed rule stated that the agency would specify the design, content, and format of the brief statements, in part based on focus groups with young people, to ensure that the information would be communicated effectively to young people.

The agency received numerous comments on this brief statement, and about half of the comments supported the provision and half opposed it. Most of the comments that supported the brief statement requirement recommended other information to be included in the brief statement, and offered suggestions on how best to ensure that the statement will be clear, conspicuous, and prominently displayed.

During the comment period, FDA performed extensive focus group testing on the brief statement to evaluate the content and various formats for the brief statement to determine if the information would be communicated effectively to young people. Those results were placed on the public record and made available for comment, 1 month prior to the close of the comment period. FDA received a few comments on the focus group results from the tobacco industry and concerned individuals.

The final rule does not specify a particular statement to be placed in all cigarette advertisements, as proposed in § 897.32(c), nor does it require the brief statement to be targeted to young people. Rather, the agency has concluded that the current Surgeon General's warnings contain important health information, concerning the risks related to the use of cigarettes, of the sort required under section 502(r) of the act and, consequently, has decided not to require a specific, different statement. Specifically, the Surgeon General's warnings currently required to be included in cigarette advertisements and on cigarette packages contain the following information: Cigarettes cause lung cancer, heart disease and emphysema, may complicate pregnancies, and contain carbon monoxide; smoking by pregnant women may result in fetal injury, premature birth and low birth weight; and quitting reduces serious risks.

The agency has also considered the fact that there is a heightened public awareness by adults of the addictiveness of cigarettes, as well as the serious health effects that can result from their use. Much of this awareness stems from: (1) The publicity of the numerous Surgeon General's reports that have issued in the last few decades, (2) the campaigns supported by health groups and State and local governments, as well as (3) the attention generated by the agency's investigation of these products.

Under the current circumstances, the agency has determined that the current Surgeon General's warnings, which must be in virtually all advertisements, contain the type of important health information required under section 502(r) of the act. Accordingly, the agency has determined that advertisements that contain the current Surgeon General's warnings meet section 502(r) of the act.

Finally, because the agency has determined that the Surgeon General's warnings are adequate, and those warnings must be displayed in a format prescribed by law, there is no longer any need for proposed § 897.32(d), which required that the brief statement be readable, clear, conspicuous, prominent, and contiguous to the Surgeon General's warning.

(65) One comment argued that the proposed warning requirement for tobacco is not a warning, nor is it part of a brief statement, as those terms are used in section 502(r) of the act. The comment stated that because FDA proposes to allow tobacco to be marketed as devices subject only to general controls, one of which is the brief statement provision, then the "brief statement" must be capable of providing, with other general controls, "reasonable assurance of the safety and effectiveness" of tobacco under the act. The comment argued that because FDA regards tobacco as having "dangerous health consequences" (60 FR 41314 at 41349), and does not believe that tobacco can be "safe and effective" for anyone, then FDA's proposed "brief statement" provision is not within the scope of the act. The comment stated that the only warning that is consistent with FDA's view would be one that warned against anyone using the device at all.

The comment miscomprehends the purpose of the brief statement, which is to provide information about the risks and benefits regarding the product. This provision is not intended to serve, on its own, as a mechanism to provide reasonable assurance of safety for these products.

(66) One comment argued that even if FDA could validly require a brief statement for tobacco as an exercise of its statutory authority, the imposition of a warning requirement as part of the brief statement is invalid because advertisements for tobacco are already required to bear the Surgeon General's warning under 15 U.S.C. 1333(a)(2) and (a)(3). In addition, the comment stated that FDA is not authorized to require that the information be presented "in a lurid fashion to achieve an ulterior purpose" or as "a threat intended to scare people," and that the warning information is meant only for the purposes of enabling the physician or patient to make a rational risk/benefit judgment.

Another comment argued that the contention that the Surgeon General's warning is "ineffective" is without merit. The agency agrees that the current Surgeon General's warnings contain the type of important health information that advertisements must contain under section 502(r)(2) of the act. Accordingly, the agency has determined that advertisements that contain the current Surgeon General's warnings sufficiently meet the brief statement requirement of the act.

(67) One comment stated that the brief statement provision would "cause so much visual clutter in tobacco advertising as to render effective communication nearly impossible."

Another comment stated that FDA will be unable to justify the economic burdens on communication with adults that are created by the brief statement requirement because, in order to include all the mandated statements, advertisers would be required to purchase additional space and thus would have to reduce, because of budgetary pressures, the number of advertisements they could place.

Because the agency has determined that the current Surgeon General's warnings will be sufficient as a brief statement, the issue raised by these comments is no longer pertinent.

(68) Several comments which supported the 1995 proposed rule suggested alternative statements and submitted recommended language for the brief statement. Many comments suggested specific types of information

for inclusion in the brief statement. Several comments provided recommendations on how the statement could be "clear and conspicuous." One comment stated that messages must be carefully pretested on members of the target audience to ensure that labels: (1) Attract attention; (2) are personally relevant; and (3) do not elicit psychological reactance, i.e., behaviors directly counter to those desired due to irritation, rebellion, or misinterpretation. The comment recommended that messages be varied periodically to ensure that they remain attention-getting and pertinent.

Several comments recommended that the rule be more specific in what is meant by "readable, clear, conspicuous, prominent" by giving either a detailed set of format specifications of the lettering and background or by giving a set of performance criteria. One comment enclosed an unpublished review on warnings, which recommended that warnings should attract attention of the target audience by using high contrast and color; separating warnings from other information; considering size (relative to other information in the display) and location (since people tend to scan left to right and top to bottom warnings should be located near the top or to the left, depending on the overall design of the display); and by using signal words to capture attention, such as "CAUTION," OR "WARNING," pictorials, rotational warnings to avoid habituation, and auditory warnings. In addition, the review stated that warnings should describe the hazard, without "overwarning," and describe the nature of the injury, illness or property damage that could result from the hazard. The review recommended that written warnings should be organized with an attention getting icon and signal word at the top, then hazard information, then instructions. Finally, the review recommended that warnings should instruct about appropriate and inappropriate behaviors, motivate people to comply, be as brief as possible, and should last and be available as long as needed.

One comment recommended that the relevant warnings, precautions, side effects, and contraindications be in a language understandable and appealing to even the youngest potential tobacco user. Several comments recommended that a minimum size should be required, expressed as a percentage of the advertisement (e.g., 25 percent of the advertisement). Several comments recommended that a border be placed around the brief statement and suggested other graphic enhancements to make the information in the brief statement more noticeable.

The agency recognizes that there are several ways to communicate the requirement for "relevant warnings, precautions, side effects, and contraindications" set forth in section 502(r) of the act. In this case, however, the agency has determined that the current Surgeon General's warnings are sufficient as at least one way of complying with section 502(r) of the act. In addition, the agency appreciates the numerous suggestions on how to make the brief statement readable, clear, conspicuous, and prominent. However, since no additional information will be required at this time, and the format for the Surgeon General's warnings is determined by law, the agency has deleted proposed § 897.32(d).

(69) One comment stated that FDA's attempt to gather information through the focus group studies about adolescents' perceptions of the adequacy of the Surgeon General's warnings for use in designing its own additional warning underscores the direct conflict between the Cigarette Act and the proposed regulation.

This comment has misinterpreted the purpose and the results of the focus group testing. FDA's focus groups were intended to explore how adolescents perceive various messages. The Surgeon General's warnings, as well as other warnings, were tested with the focus groups merely to serve as a basis for reactions to messages that currently exist in the public domain.

(70) FDA received few comments concerning the focus group results. In general, these comments questioned the validity and usefulness of focus groups. Further, some comments asserted that the warnings preferred by the young people in the focus groups may have unintended consequences.

As discussed in this section, the focus groups tested a variety of specific brief statements that were intended to be directed towards young people. However, the agency has decided that the final rule will not specify a particular brief statement, but will accept the current Surgeon General's warnings as sufficient. Moreover, section 502(r) of the act does not require that the brief statement be directed to young people, but rather that it provide "a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications." This function is adequately filled by the intended use statements required by § 897.32(c) and the Surgeon General's warnings. Thus, because the final rule is not based on the focus group results, the agency need not address the previous comments concerning the focus group results.

7. Section 897.34(a) and (b)—Promotions, Nontobacco Items, and Contests and Games of Chance

The agency proposed in § 897.34(a) to prohibit the sale or distribution of all nontobacco items that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristic. FDA stated in the 1995 proposal that this requirement is intended to reach such items as tee shirts, caps, and sporting goods and other items bearing tobacco brand names or other indicia of product identification (60 FR 41314 at 41336).

As discussed in the preamble to the 1995 proposed rule (60 FR 41314 at 41336), a Gallup survey found that about one-half of adolescent smokers, and one-quarter of all nonsmokers, own at least one promotional item. The IOM found that this form of advertising is particularly effective with young people. Young people have relatively little disposable income, so promotions are appealing because they represent a means of "getting something for nothing." In many cases, the items—tee shirts, caps, and sporting goods—are particularly attractive to young people. Some items, when used or worn by young people, also create a new advertising medium—the "walking billboard"—which can come into schools or other locations where advertising is usually prohibited (60 FR 41314 at 41336). Moreover, this form of advertising has grown in importance over the last 20 years. The portion of annual expenditures of the cigarette industry devoted to these promotions rose from 2.1 percent in 1975 to 8.5 percent in 1980.[222]

On the basis of the evidence before it, the agency tentatively concluded that the ban on nontobacco items was necessary to eliminate the something-for-nothing appeal of these items, as well as to prevent wearers or users of these items from becoming image-laden walking advertisements.

FDA proposed in § 897.34(b) to prohibit all proof of purchase transactions of nontobacco items as well as all lotteries, contests, and games of chance associated with a tobacco purchase. The agency stated that, because contests and lotteries are

[222] IOM Report, p. 109.

usually conducted through the mail, it was not able to devise regulations that would reduce a young person's access to contests or lotteries.

(71) FDA received a substantial number of comments concerning the 1995 proposed rule to prohibit these promotional activities. Comments opposing these provisions argued that tobacco companies should be allowed to advertise in a fair manner however they wish. Many comments from individuals stated that they like the "freebies." They contended that the agency does not have authority to regulate the clothes people wear or to ban contests and promotional activities that are only available to adults. A number of comments from individuals stated that what they did with their lives was their business.

Comments also objected to the agency's proposed ban on contests and games of chance. These comments stated that existing laws and regulations already provide a sufficient regulatory framework.

The majority of comments, however, supported these provisions and stated that children and adolescents should not be "walking billboards." Moreover, these comments argued that even though young people cannot participate in the contests, they can easily get caught up in the excitement of promotional activities. Comments declared that prohibiting tobacco product-related gifts, items, contests, and games of chance will break the enticing connection between sports and tobacco use.

The agency agrees with the comments that said that existing laws and regulations of lotteries, contests, and games of chance are sufficient. First, there appears to be little evidence about these practices and young people's participation in them. Secondly, current laws prohibit all games of chance and the like that are advertised on a product label or that are conditioned on the sale of the product. Therefore, participation, if any, by minors is not necessarily related to a purchase. Third, any promotional material associated with the advertising of the games, which is of primary concern, will be required to appear in text-only format. Therefore, the agency has modified this section to delete the ban on these practices. In addition, the agency has modified § 897.34(a) to clarify that responsibility for complying with this provision rests with the manufacturer and the distributor of imported tobacco, but not other distributors or retailers.

(72) Comments differed on whether proposed § 897.34(a) is beyond FDA's authority under the act. The comments addressed a number and variety of legal issues. One comment stated that FDA has no authority to ban the items and services covered by § 897.34(a). It stated that items and services (e.g., travel agencies) bearing indicia of tobacco product identification are not foods, drugs, cosmetics, or devices as defined in the act and, therefore, are outside the agency's jurisdiction.

Another comment stated that nontobacco items cannot be regulated as advertising in the way FDA proposes because: (a) The 1995 proposed rule extends to goods and services provided to product users in connection with cigarette purchases, most of which are not displayed or disseminated to the general public, and thus do not constitute advertising (see *Marcyan* v. *Nissen Corp.*, 578 F. Supp. 485, 507 (N.D. Ind. 1982), *aff'd sub nom. Marcyan* v. *Marcy Gymnasium Equip. Co.*, 725 F.2d 687 (7th Cir. 1983)); and (b) many of the types of items covered by § 897.34(a) are promotional items but not advertising (e.g., a logo-bearing mug given away or sold by a manufacturer is not an advertisement).

One comment, which favored the provision, provided support for the classification of promotional items as advertising. The comment referenced *Public Citizen* v. *FTC*, 869 F.2d 1541 at 1556 (D.C. Cir. 1989), in which the U.S. Court of Appeals for the D.C. Circuit held that the Smokeless Act requirement that "advertisements" carry health warnings "plainly covers utilitarian items [nontobacco items] that are distributed for promotional purposes." FTC defined utilitarian objects as items that are sold or given or caused to be sold or given by any manufacturer, packager, or importer to consumers for their personal use and that display the brand name, logo, or selling message of any tobacco product (16 CFR 307.3n). FDA's interpretation of what is covered by § 897.34(a) and (b) is consistent with this definition. The comment also stated that as a result of that court case, FTC's smokeless tobacco rules now require that utilitarian items promoting smokeless tobacco bear specific health warnings required of all smokeless tobacco advertising (16 CFR 307.9).[223]

Another comment pointed out that the *Public Citizen* case provides ample legal precedent not only for the conclusion that promotional materials are advertising, but also that they have a direct impact on a minor's tobacco use. The court, relying on evidence compiled by the FTC, found that "in the case of adolescents, utilitarian items might be among the most effective forms of promotion" (869 F.2d at 1549 n. 15). In addition, the lower court provided an additional rationale for restriction based upon the items' longevity and durability.

> [P]rinted advertising is customarily quickly read (if at all) and discarded (as, of course, are product packages) by typical consumers. "Utilitarian objects," on the other hand * * * are retained, precisely because they continue to have utility. They are also likely to be made of durable substances: fabric, plastic, glass, or metal. They may be around for years. And each use of them brings a new reminder of the sponsor and his product * * *

(688 F. Supp. 667, 680 (D.D.C. 1988), *aff'd*, 869 F.2d 1541 (D.C. Cir. 1989))

The agency finds that the reasoning in the *Public Citizen* case is persuasive and compels the conclusion that branded nontobacco items are advertising. It also finds that young people acquire and use these products.

Moreover, the agency finds nothing in the *Marcyan* v. *Nissan Corp.* case is to the contrary. In relevant parts, that case involved an endorsement that appeared in the front of a users' manual. The court held that this endorsement did not constitute "advertising" because it is not "distributed to the general public for the purpose of promoting plaintiffs' products: it is a user's manual and is provided to a purchaser of the defendants' equipment together with the equipment in order to describe its proper use" (578 F.2d at 507). Promotional items are distributed or sold to the general public. They are festooned with the product's brand name or identification, and they are intended to remind the user and others who see the item about the product. As the court in *Public Citizen* found, "each use of them brings a new reminder of the sponsor and his product" (688 F. Supp. at 670). Therefore, the comments' suggestion that these advertising items are beyond FDA's jurisdiction is plainly wrong.

(73) One comment, which had argued that promotional items were not drugs or devices nor were they advertising, objected as well to FDA's alternative

[223] The FTC comment also indicated that although nontobacco items are "advertising" under the Smokeless Act, a different legislative history exempts these items from the Cigarette Act. The comment stated that the definition of advertising under the Cigarette Act is understood to exempt utilitarian items because of legislative history expressly stating Congress's intent to preserve the arrangement under consent agreements entered into by the tobacco industry in 1972 and 1981 (*Public Citizen*, 869 F.2d at 1555).

categorization of these items as labeling. The comment stated that nontobacco items could constitute "labeling" only if there were a "textual relationship" between them and the product (*Kordel v. United States*, 335 U.S. 345, 350 (1948)). The comment argued further that items that provide no more substantive information than a brand name, logo, or recognizable color or pattern of colors simply do not explain the use of the product, and therefore do not constitute labeling. The comment concluded that if the items are not advertising or labeling, FDA would not have authority to take the actions required by this provision.

The agency agrees that these promotional items are neither devices nor drugs; however, this fact is not relevant to the agency's authority to proscribe their use. As explained earlier in this document, FDA has authority to impose restrictions on the access to and promotion of devices under section 520(e) of the act, and this authority provides the basis for restrictions on advertising, including those that FDA is imposing on promotional items. FDA also derives authority for these restrictions from section 502 of the act. Likewise, it is not relevant in this instance whether the items are described as advertising or labeling. The agency has the authority to restrict them because they promote the use of restricted devices, cigarettes and smokeless tobacco, by young people and thus undercut the restrictions on access to these products that FDA has imposed. Therefore, FDA has authority to regulate how these promotional items are used by manufacturers, distributors, and retailers of the restricted devices.

(74) Many comments challenged FDA's evidentiary basis for this provision. Those opposing the provision made the point that promotional items do not cause young people to use tobacco, and that banning them will not reduce tobacco use. These comments fall into two categories: Those that rely on theoretical or policy arguments and those that provide or criticize studies or other evidence.

a. *Theoretical or policy considerations.* Several comments argued generally that it is well-documented that the significant factors associated with regular underage tobacco use are peer pressure and smoking by friends, older siblings and parents. They noted that FDA cited no evidence that the use of a tobacco trademark on a nontobacco product, such as a lighter or jacket, has any impact on underage tobacco consumption, or that its removal will reduce youth tobacco use. Consequently, they argue, banning the use of tobacco brand names on nontobacco products will fail to achieve FDA's goal of curbing teen smoking.

One comment maintained that people, including those under age 18, do not wear these items in order to advertise anything or to be "walking billboards." Rather, according to this comment, they wear them to make a public statement, because they find the items aesthetically pleasing, or for other reasons. Moreover, the comment argued, FDA has no authority to regulate the attire of adults, school students, or anyone else.

In addition, the comment argued, the goal of these programs is to reinforce brand loyalty among existing customers. Their purpose is to expand market share among existing smokers, not to induce nonsmokers to start smoking. These programs are, by their very nature, aimed at people who already are smokers, that is, the merchandise is provided only to consumers who have accumulated and submitted significant numbers of proofs of purchase. No one would be persuaded to start smoking by a cents-off coupon or by the offer of a free cigarette lighter, but a smoker might be tempted by the offer. The comment argued that in the hard fought battles for market share among cigarette companies, discounts and premiums represent a way to promote and retain brand loyalty and to weaken loyalty to competitors' brands.

Some comments bolstered their arguments with a citation to the decision of the Supreme Court of Canada, which, they claimed, invalidated a similar ban. The Canadian court concluded that there was no direct or indirect evidence of any causal connection between the objective of decreasing tobacco consumption and the absolute prohibition on the use of a tobacco trademark on articles other than tobacco products. These comments argued that FDA should follow the Canadian judgment (see section VI.D.3.f. of this document for a complete discussion of this case).

On the other hand, one comment stated that U.S. and international experience provide substantial support for a ban. It stated that in the United States, nontobacco items were heavily used by RJR to market its Camel tobacco to young people.

In addition, one comment that supported FDA's action stated that young people participate to a marked extent in tobacco company promotions. It noted that these promotions all use attractive imagery and prizes that are intrinsically interesting to adolescents. Other comments stated that these promotions are particularly effective with young people, who have less disposable income. The items are a way for young people to get something for nothing and provide added incentive for young people to purchase tobacco products. One comment that supported this provision stated that these items can become "walking billboards," that can come into schools and other places where tobacco advertising is generally prohibited.

Another comment stated that the ban serves as an important corollary to the advertising restrictions, specifically, it argued that the impact of removing tobacco product advertisements from minors' magazines would surely be reduced if minors themselves continued wearing the advertisements on their heads and bodies. The comment asserted that there is a correlation between participation in a promotion and susceptibility to tobacco use.

b. *Studies and evidence.* One comment referenced a new study[224] that found that participation in tobacco company promotions by 12 to 17 year olds is more predictive of susceptibility to use tobacco products than smoking by those close to the individual. The measure of "participation" was the possession of a catalog, the ownership of any promotional item, or the saving of coupons that could be redeemed for promotional items. The study found that catalog ownership was the most common form of participation in tobacco company promotions.

A comment that opposed this provision argued that FDA had cited no credible studies that demonstrate either that these items are especially appealing to young people, or that possessing these items causes young people to start smoking or to smoke more. It stated that although FDA relied on a study by Dr. John Slade[225] that reported that there is an association between participating in promotions and a person's susceptibility to tobacco use, FDA did not describe the study thoroughly. The comment stated that the notion of susceptibility is itself problematic. It stated that even if this study is taken at face value, it does not support FDA's conclusions. While the study reported that 83.5 percent of

[224] Evans, N., et al., "Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking," *Journal of the National Cancer Institute*, vol. 87, pp. 1538–1545, 1995.

[225] Slade, J., et al., "Teenagers Participate in Tobacco Promotions," presented at the 9th World Conference on Tobacco and Health, October 10–14, 1994.

respondents age 12 to 17 were aware of at least one tobacco company promotion, it also reported that only 10.6 percent of respondents owned a nontobacco promotional item. These numbers, the comment asserted, do not support the theory that nontobacco items are appealing to youth or have a discernible impact on youth smoking rates.

Moreover, the comment took exception with Dr. Slade's finding that 25.6 percent of 12 to 13 year olds and 42.7 percent of 16 to 17 year olds participate in promotional programs such as Camel Cash or Marlboro miles. The comment stated:

*the reason for these apparently high percentages is clear from the most cursory analysis of the data * * * [I]n this supposedly random survey, fully 45.7 percent of the households of 12–13 year olds interviewed had someone at home who smoked (37.9 percent in households of 16–17 year olds), and yet, in reality only 25 percent of the American public—half the rate of the population relied upon by Dr. Slade—smoke. [Thus], the unrepresentative sample population Dr. Slade employed created a significant bias, which distorts the results of this survey and renders them entirely unreliable.*

Finally, one comment stated that the primary basis for the provision appeared to be data[226] that allegedly show that 44 percent of teenage smokers and 27 percent of teenage nonsmokers have received nontobacco promotional items. The comment stated that the study is irrelevant because it drew no conclusion as to the significance of the number, nor did it indicate how the teenagers received the items.

In response, the agency concludes that the evidence presents a compelling case to prohibit the sale and distribution of all nontobacco items that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristic. The evidence establishes that these nontobacco items are readily available to young people and are attractive and appealing to them with as many as 40 to 50 percent of young smokers having at least one item (60 FR 41314 at 41336). The imagery and the item itself create a badge product for the young person and permit him/her the means to portray identification.

FDA has shown that tobacco advertising plays out over many media, and that any media can effectively carry the advertising message. Moreover, the agency recognizes that the tobacco industry has exploited loopholes in partial bans of advertising to move its imagery to different media. When advertising has been banned or severely restricted, the attractive imagery can be and has been replicated on nontobacco items that go anywhere, are seen everywhere, and are permanent, durable, and unavoidable. By transferring the imagery to nontobacco items, the companies have "thwarted" the attempts to reduce the appeal of tobacco products to children.

In addition, items, unlike advertisements in publications and on billboards, have little informational value. They exist solely to entertain, and to provide a badge that, as the Tobacco Institute asserted, allows the wearer to make a statement about his "social group" for all to see. But because tobacco is not a normal consumer product, it should not be treated like a frivolity. Advertising that seeks to increase a person's identification with and enjoyment of an addictive deadly habit has the ability, particularly among young people, to undermine the restriction on access that FDA is imposing. For these reasons, the agency continues to find sufficient evidence to support a ban on these items.

Finally, regarding the unpublished paper by Dr. Slade, the comment has confused the household smoking rate with the overall population smoking rate. The smoking rate per household can be as high as twice the overall adult smoking rate. For example, if the smoking rate for adults were 25 percent and assuming two adults per household and only one of the pair smokes, then the household smoking rate could be as high as double that of the individual rate. Therefore the range of possible household smoking rates would be 25 percent to 50 percent, with 44 percent being quite plausible.

Lastly, the comments that state that peer pressure and smoking by friends and family are significant factors in influencing a young person's tobacco use, rather than promotional items, fail to recognize that if a young person is influenced by what a peer says about tobacco use, he or she will also likely be influenced by that same peer wearing a tobacco promotional item.

(75) One comment from a small smokeless tobacco company expressed concern because much of the packaging used for its products also bears its corporate logo. Moreover, several of its brand names include words in its corporate logo. Thus, the comment argues that FDA might find that its corporate logo is an "indicium of product identification" covered by the restrictions in § 897.34. The comment stated that promotional items are a small but important part of its advertising and promotional activity, and these items allow its customers to feel like a part of an extended family. It would be unfair, the comment argued, as well as harmful to the company, if FDA were to determine that a corporate logo may not be used on promotional items.

One comment stated that the total merchandising and ban in § 897.34(a) is unreasonably broad in scope. It stated that it virtually limits all merchandising, because all colors or patterns of colors are associated with some brand or another of tobacco product. The comment stated that the proposed regulation is so confusingly vague that one could argue that a "distributor" would be prohibited from using the color red in any event for any product category, brand, or corporation because Marlboro brand tobacco products utilize the color red.

Another comment stated that because the definitions of "cigarette" and "smokeless tobacco product" are limited to tobacco products with nicotine, the agency should consider the possibility that a tobacco company could market a nicotine-free brand extension of a cigarette or a smokeless tobacco product and advertise this product free of restrictions. The comment stated that the advertising for such a product could have carryover value for the nicotine containing versions of the product thereby undermining the intent of the regulations.

The agency agrees that it needs to clarify the scope of § 897.34(a). The regulation covers any item with indicia of the brand identity. If the corporate logo is not an indicium of a brand identity, its use would not be prohibited in nontobacco labeling or advertising. On the other hand, if a corporate logo includes an identifiable brand name or image, it must comply with the restrictions. Any other position would permit a company to evade the intent of this regulation by using a corporate logo to continue to display brand imagery. For example, RJR may continue to sell or distribute hats and tee shirts with the name "R. J. Reynolds" on them, but not the name "Camel." Nor can it put the Camel inside the Reynolds logo. The agency, therefore, has amended § 897.34(a) to state that the indicia of product identification cannot be identical or similar to, or identifiable

[226] "Teenage Attitudes and Behavior Concerning Tobacco—Report of the Findings," the George H. Gallup International Institute, Princeton, NJ, p. 59, September 1992.

with those used "for any brand of cigarettes or smokeless tobacco".

In addition, it is not the agency's intention to ban the use of registered or recognizable colors for all advertising. Only the owner or user of the brand identification is prohibited from using that color or pattern of colors in a manner so as to advertise tobacco or smokeless tobacco. For example, Philip Morris would be prohibited from using the distinctive red, black, and white pattern of colors which identify Marlboro, but neither RJR nor Joe's Garage would be prohibited by the regulations from using those colors.

Finally, in response to the last comment, the agency has restricted the coverage of this regulation to promotions of cigarettes and smokeless tobacco products containing nicotine. It has no evidence justifying a broader coverage of the regulation to nicotine-free products at this time. However, a company could not give a nontobacco product (a nicotine free product) a tobacco brand name. This is exactly what this section of the final rule forbids.

(76) Several comments argued that § 897.34(a) constituted a restriction on symbolic expression that cannot be characterized as commercial speech. The comments argued that these items do not propose a commercial transaction. One comment argued that in *Cohen* v. *California*, 403 U.S. 15 (1971), the Supreme Court recognized that otherwise objectionable words worn on a jacket are fully protected speech.

FDA finds no merit to these comments. Section 897.34(a) on its face is limited only to manufacturers and to distributors of imported cigarettes or smokeless tobacco. It does not limit the rights of individuals to express themselves by wearing an article of clothing that bears a picture of a cigarette or a logo.[227] What it does limit is the ability of manufacturers and some distributors of tobacco and smokeless tobacco to do what is the essence of commercial speech—to take actions to call public attention to the products whose logo the items bear, so as to arouse a desire to buy those products. (See *Public Citizen* v. *FTC*, 869 F.2d at 1554.) Because this is what the nontobacco items that are the subject of § 897.34(a) are designed to do, they share all the characteristics of the pamphlets that the Supreme Court in *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 66–67 (1983), found to be commercial speech. Consequently, FDA may regulate the nontobacco items as commercial speech, as long as its regulation passes muster under the *Central Hudson* test (see 463 U.S. at 68).

(77) Some comments challenged the constitutionality of the prohibition on the use of a cigarette or smokeless tobacco brand logo on nontobacco products under the *Central Hudson* test. The comments argued that the prohibition does not directly advance FDA's interest because the prohibition is unrelated to the goal of protecting children. The comments also argued that the prohibition is not narrowly tailored because it is not limited to children and not limited to products that are particularly attractive to children.

Several comments disagreed and argued that the prohibition is a constitutionally permissible restriction on speech. One of these comments pointed to the finding in the IOM's Report *Growing Up Tobacco Free* of the effectiveness of this type of advertising with young people. The comment said that FDA would therefore be justified in prohibiting its use.

FDA has carefully considered these comments. The agency concludes that the prohibition on the use of a cigarette or smokeless tobacco brand logo on nontobacco items is a permissible restriction under the First Amendment.

First, this restriction will directly advance FDA's interest in protecting the health of people under 18 years of age. In *Public Citizen* v. *FTC*, 869 F.2d at 1549 n. 15, the Court of Appeals for the D.C. Circuit recognized that the nontobacco "utilitarian items might be among the most effective forms of promotion with respect to adolescents." This judgment is consistent with much of the other evidence in the administrative record. A 1992 Gallup survey found that 44 percent of all adolescent smokers and 27 percent of adolescent nonsmokers owned at least one promotional item from a tobacco company.[228] Testing by RJR in 1988 found that nontobacco items performed best among young adults.[229]

The IOM Report pointed out that the ubiquity of nontobacco items conveys the impression that tobacco use is the norm.[230] As stated in section VI.D.3.c. of this document, this impression, that tobacco use is widespread and accepted, fosters experimentation with tobacco and smokeless tobacco by young people. This fact led the IOM to recommend that the use of tobacco product logos on nontobacco items be prohibited.[231] The IOM said that this and several other related steps (including requiring the use of the text-only format) were necessary to eliminate those features of advertising that tend to encourage tobacco use by children and youths.

Thus, the prohibition on the use of these logos will directly advance FDA's interest. The IOM's recommendation provides significant evidence of this fact.

Second, even though FDA is prohibiting the use of brand logos on nontobacco items, this restriction meets the requirement of narrow tailoring. The Supreme Court has held that a ban may satisfy this requirement if the agency's judgment is that it is "perhaps the only effective approach" (*Board of Trustees of the State of N.Y.* v. *Fox*, 492 U.S. at 479). In this case, FDA has determined that a ban of these items is necessary for several reasons. The appeal of something for nothing items for youngsters is great, and the extent of the appeal makes it virtually impossible to distinguish among items, as suggested by one comment. As the IOM pointed out, these items, when worn or used by children, are capable of penetrating areas of a child's world that might be off-limits to other forms of advertising.[232] Because they penetrate the young persons' world, they are very effective in creating the sense that tobacco use is widely accepted, which, as stated in section VI.D.3.c. of this document, is extremely important to children and adolescents. These items act like a badge that marks an individual as a member of a group, another attribute that makes them particularly attractive for young people. There is no way to limit the distribution of these items to adults only. The industry claims that it already is taking sufficient action to ensure that only adults get these items[233] but as the evidence

[227] The fact that individuals would be free to make their own articles of clothing with brand names of tobacco products on them does not make the regulations fatally underinclusive. (See *U.S.* v. *Edge Broadcasting Co.*, 509 U.S. 434 ("Accordingly, the Government may be said to advance its purpose by substantially reducing lottery advertising, even where it is not wholly eradicated.").)

[228] "Teenage Attitudes and Behavior Concerning Tobacco—Report of the Findings," The George H. Gallup International Institute, Princeton, NJ, pp. 17, 59, September 1992.

[229] Bolger, M. R., *Marketing Research Report, entitled Camel "Big Idea" Focus Groups-Round II*, September 21, 1988.

[230] IOM Report, p. 110.

[231] *Id.*, p. 133.

[232] *Id.*, p. 110.

[233] The Cigarette Advertising and Promotion Code, subscribed to by the major cigarette manufacturers, contains three provisions that

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indicates, a substantial number of young people have them. As noted in this section, almost one-half of young smokers and one-quarter of nonsmokers have one or more items. Moreover, even were items to be distributed to adults only, this would not prevent the wearers from becoming walking advertisements that would continue to display the attractive imagery.

For all these reasons, FDA finds that all nontobacco items that bear cigarette or smokeless tobacco brand logos are capable of playing a significant role in a young person's decision to engage in tobacco use. Because no distinction among these products is apparent, and no way of limiting their availability to adults is possible, FDA finds that the most direct and effective means of controlling their appeal to adolescents and children under the age of 18 is to prohibit manufacturers, distributors, and retailers of tobacco products from distributing or selling them.

(78) One comment opposed § 897.34(a) because the comment argued that the provision would impose restrictions on an otherwise lawful use of trademarks. It stated that § 897.34(a) would prohibit the right of any trademark owner to use a trademark for the sole reason that the trademark is used by another party on tobacco products. The comment stated that § 897.34(a) also would prevent large distributors and retailers, who handle a wide variety of both tobacco and nontobacco products, from distributing or selling any product which happened to bear the same or similar mark as that used on a tobacco product. The comment stated that, for example, grocery markets could not stock or sell Beechnut baby food or chewing gum because Beechnut also is used as a trademark for chewing tobacco even though the manufacturers are two different companies with the same name. It stated that the Lanham Act (15 U.S.C. 1051 (1996)) would, and in fact does, permit such identically branded products to coexist in the marketplace because of the absence of any likelihood that these products would be associated or confused with each other.

FDA recognizes that § 897.34(a) as proposed created unintended confusion and therefore will amend the provision to clarify the agency's meaning. Changes have been made that are intended to clarify § 897.34(a) so that retailers and distributors of domestic tobacco products are not included, thus avoiding the problem identified with the comment and making it possible for grocers to sell Beechnut baby food and Beechnut tobacco products.

(79) Several comments stated that § 897.34(a) would unlawfully constrain the separate and distinct activity of trademark diversification in connection with products that are unrelated to the marketing of tobacco products by cigarette manufacturers. One comment contended that general bans on the licensing of brand logos pertaining to tobacco products are incompatible with long-established principles of international trademark law. The comment asserted that the use of such trademarks in a nontobacco context is not an indirect means of advertising or promoting tobacco products. The comment stated further that it is an increasingly common practice in many industries to "spin off" new products by marketing them under a trademark that has acquired some cachet or represents quality. It stated that such licensed products are not marketed in an effort to sell the "root" product, rather, the trademark has some "detachable" qualities that help build demand for the licensed goods. It stated that the same is true of marketing a nontobacco product under the trademark of a tobacco product.

FDA cannot agree with the comments' claims. While the agency recognizes that the use of these trademarks on hats and tee shirts promotes the underlying tobacco product by continuing the extensive imaging in these venues. Moreover, as the court in *Public Citizen*, 869 F.2d at 1549, n. 15, recognized, branded nontobacco items might be the most effective type of promotion to young people. Therefore, failure to include this form of advertising and promotion in the regulation, would weaken considerably FDA's efforts to reduce the appeal of these products to young people under 18, and would undermine the agency's access restrictions.

The agency also disagrees with the comment's suggestion that § 897.34(a) effects a taking (or deprivation of a property right) by prohibiting the use of tobacco trademarks to market nontobacco products. Section 897.34(a) clearly relates to commercial speech and the comment is merely attempting to cloak commercial messages with the issues of registrability and value of well-known trademarks. As discussed in section XI. of this document, the agency has determined that this regulation does not effect a taking compensable under the Fifth Amendment.

One comment that supported FDA's proposal stated that smokeless tobacco makers circumvent the FTC regulation that covers the use of brand names of smokeless tobacco products on promotional items such as caps and tee-shirts. For instance, rather than stop making such items, U.S. Tobacco has registered Skoal Bandit Racing, Skoal—Copenhagen Pro Rodeo, and Skoal Music as service marks and places these names on many of the items it offers the public, thereby evading FTC's regulation. The comment stated that this experience demonstrates the need for regulations of this sort to be comprehensive.

The comment stated further that there may be other relatively easy ways around § 897.34(a). It stated that if the rights to a brand name were transferred to an entity that was not a manufacturer, distributor, or retailer that this separate entity could then license back the use of the brand name to the tobacco company and proceed to market, license, distribute, or sell other goods and services using that same brand name. The comment stated that one way to close this loophole would be to require manufacturers to own the trademarks and the rights to all associated symbols for each brand they produce.

FDA disagrees with these comments and believes that the concerns expressed are misplaced. Section 897.34(a) prohibits all use of the Skoal brand name on nontobacco items, whether used alone, i.e., "SKOAL," or with other words, such as "Skoal Racing Bandit." In addition, the provision forbids not just the use of the brand name, logo, etc. by the manufacturer but also the marketing, licensing, distributing, selling of them, or the causing of any of those activities; thus, effectively preventing the type of license-transfer arrangement described in the comment.

(80) Several comments stated that FDA cannot ban contests and lotteries under section 520(e) of the act, because they are not devices. Moreover, the comments stated that existing laws and regulations provide adequate protection and to the extent that the participation of minors in these activities is a problem the States already have ample power to regulate them.

In addition, a comment stated that FDA offered no evidence, or citation to studies, that contests, lotteries, or games involving tobacco products have particular appeal to adolescents. Moreover, the comment stated, that any inability to quantify participation by youth does not mean that the agency

address the necessity of preventing anyone under the age of 21 from getting promotional items.

can ban an entire form of promotion to adults.

One comment pointed out that, by law, customers wishing to participate in games of chance or similar promotional activities must be adults. The comment stated that banning such activity bears no relationship to achieving FDA's stated purpose. The sole effect of FDA's ban would be to unjustly impair the relationship between tobacco manufacturers, retailers, and their adult customers.

One comment stated that the agency should not prohibit all use of contests or games of chance by the tobacco industry because regulations already exist and are enforced by the Bureau of Alcohol, Tobacco, and Firearms (BATF).

Another comment stated that the proposed rule misunderstands the nature of such activities, misrepresents the appeal of promotions, and assumes without proof that promotions induce young people to smoke. It stated that promotional activities are not undertaken to encourage people, young or old, to smoke, but rather to introduce existing smokers to the brand being promoted and to provide them with incentives to choose that brand over others. Moreover, participation in such games is expressly limited to smokers who are 21 years of age or older.

Conversely, one comment provided support for the 1995 proposed rule. It stated that, while it is unlikely that anyone under 18 years of age actually has ever received any of the major prizes or offers from the give-aways, the award of prizes is not the point of these marketing tools. It stated that the consumer's participation in the fantasy of the prize in association with the brand being promoted is the reason these contests are used.

FDA has been persuaded by the comments to modify § 897.34(b) regarding lotteries and games of chance in connection with nontobacco items. Federal law already prohibits "any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery to be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products" (26 U.S.C. 5723(C)). BATF has issued regulations enforcing this provision (27 CFR 270.311).

In addition, although no Federal agency has issued specific restrictions on games of chance and lotteries in connection with advertising of tobacco products, Federal and State law prohibit games, contests, and lotteries if based on product purchase (18 U.S.C. 1302–1307, 1341 (1995)). Given these existing Federal requirements, the agency has concluded that there is no need to add FDA regulations. Therefore, § 897.34(b) has been modified to delete the provision concerning lotteries and games of chance but to continue to the prohibition of gifts and proof of purchase acquisitions.

It must be understood, however, that advertising for games, lotteries, or contests may not contain any indicia of product identification other than black text on a white background, since the advertisement for a contest in the name of a tobacco brand, or identifiable as a tobacco brand, is restricted to text-only format as required in § 897.32(a). The agency points out that, as part of the review of the regulation that it plans to undertake in 2 years, FDA intends to consider the effect of games of chance and lotteries on young people and determine whether additional regulations are necessary.

Based on the evidence amassed during its investigation, and the surveys described in the preamble to the 1995 proposed rule (60 FR 41314 at 41336) and submitted during the comment period, FDA has concluded that nontobacco items (identified with a tobacco brand), either sold, given away, or provided for proof of purchase are an instrumental form of advertising in affecting young people's attitudes towards and use of tobacco. Moreover, banning this form of advertising is essential to reduce tobacco consumption by young people. This form of advertising has grown in importance over the last 20 years. As discussed in this section, expenditures rose from 2.1 percent in 1975 to 8.5 percent in 1980 (60 FR 41314).

Studies—A Gallup survey found that about one-half of young smokers and one quarter of all non-smokers, own at least one promotional item (60 FR 41314 at 41336). Another study, detailed more fully in this section, found that participation in tobacco company promotions (owning an item, collecting coupons for gifts, or having a catalogue) by 12 to 17 year olds is more predictive of susceptibility to use of tobacco products than smoking by those close to the individual. Another study, by Slade, found that 25.6 percent of 12 to 13 year olds and 42.7 percent of 16 to 17 year olds participate in promotional programs such as Camel Cash and Marlboro miles (60 FR 41314 at 41336).

Evidence Provided by Industry Members—Two separate studies done for R.J. Reynolds, and described in this section, found that tee shirts were a significant source of information about tobacco for some young people and that these items performed best among young people.

A ban on this type of advertising will prevent the "something for nothing appeal" of give aways and proofs of purchase and will eliminate the walking billboard, who can enter schools and other locations where advertising is inappropriate. Thus, FDA concludes that the restriction it is adopting on this type of promotional material will directly advance FDA's efforts to substantially reduce consumption of tobacco products by children and adolescents under 18.

8. Section 897.34(c)—Sponsorship of Events

Proposed § 897.34(c) provided that "no manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event, in the brand name, logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of a product identification similar or identical to those used for tobacco or smokeless tobacco products." Proposed § 897.34(c) would have permitted a manufacturer, distributor, or retailer to sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event in the name of the corporation that manufactures the tobacco product, provided that both the registered corporate name and the corporation were in existence before January 1, 1995.

The preamble to the 1995 proposed rule explained that sponsorship by cigarette and smokeless tobacco companies associates tobacco use with exciting, glamorous, or fun events such as car racing and rodeos, and provides an opportunity for "embedded advertising" that actively creates a "friendly familiarity" between tobacco and sports enthusiasts, many of whom are children and adolescents. The preamble to the 1995 proposed rule cited several studies that demonstrate the impact of sponsorship on consumer attitudes (60 FR 41314 at 41337 through 41338). The proposed restriction was intended to break the link between tobacco company-sponsored events and use of tobacco and reduce the "friendly familiarity" that sponsorship generates for a brand.

(81) FDA received a substantial number of comments concerning the agency's 1995 proposal on sponsorship, including comments submitted by the

tobacco industry, motorsport industry, advertising agencies, adult smokers, medical professionals, public interest groups, and racecar drivers. Approximately 300,000 individuals submitted a form letter that was produced by 1 tobacco manufacturer. The form letter inaccurately referred to the 1995 proposal as a "ban on tobacco sponsorship of events including concerts, State fairs and consumer promotions" whereas the agency proposed to permit tobacco company sponsorship of all events to continue as long as they are in the corporate name. Other comments submitted by the tobacco industry, adult smokers, and motorsport industry strongly objected to the provision. In contrast, those comments submitted by public interest groups, medical professionals, and some racecar drivers strongly supported the provision.

In response to comments, the agency has modified this provision to prohibit all sponsored entries and teams using the brand name in addition to the prohibitions that were proposed. Moreover, the final rule clarifies that the corporate entity that can sponsor events, teams and entries must not only be registered but that the registration must be in active use in the United States, and the corporate name cannot include any indicia of product identification "that are identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco."

(82) Several comments addressed the issue of whether young people attend, or even see, sponsorship events. Some comments opposed the provision, arguing that sponsored events (such as motorsport events and seniors golf tournaments) are created for and attended by adult smokers, and that there is no credible evidence that these events are targeted at, created for, attended by, or even seen by significant numbers of children and adolescents. One comment stated that "contrary to FDA's assertions," the industry takes special steps to ensure that material distributed at events is not attractive to minors. One comment stated that "[r]ecent industry studies demonstrate that the overwhelming majority of fans at motorsports events are adults," and that "for example, 97 percent of NASCAR Winston Cup Series race attendees are 18 years of age and older [and] [m]ore than 90 percent of NHRA Winston Drag Racing Series attendees are 21 years old and older." The underlying studies were not, however, cited or attached to the comment.

One comment added that motorsport events are not seen by "significant" numbers of children under the print media standard proposed by FDA (i.e., the "15 percent/2 million benchmark"). The comment argued that:

> [o]n the one hand, the agency concedes that image advertising is permissible in publications with a primarily adult readership because "the effect of such advertising on young people would be nominal," but on the other hand, it attempts to measure the impact of cigarette brand sponsorships * * * by using statistics on the viewing audience of sponsored motorsport events without recognizing that these figures demonstrate the fact that the vast majority of viewers of such events are adults.

The comment stated that:

> [I]n fact, the 64.05 million underage viewers of the 354 motorsport broadcasts studied represents only 7 percent of the total viewing audience of these broadcasts. This averages out to 180,806 underage viewers per event. These figures are far below the 15 percent and two million readership benchmarks that are permitted for image advertising in print media.
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> * * *

The comment also stated that FDA made no attempt to measure the percentage of adolescents in the live gate of sponsored events, and that industry estimates indicate that the overwhelming percentage of fans attending motorsport events are adults.

One comment stated that the price of a typical ticket to a stock car race event is expensive enough to preclude adults from taking their children to events and to preclude children themselves from attending these events.

Other comments supported the provision, stating that tennis tournaments, sports car, motorcycle and powerboat racing, and rodeos all are aimed at sports enthusiasts, many of whom are children or teenagers, and that rock concerts and country music festivals are "magnets" for adolescents.

One comment stated that:

> [it] is also no coincidence that when the tobacco industry sponsors events where the audience is almost entirely educated adults, the sponsorship is in the name of the corporation (i.e., art exhibits, modern dance companies), but when the event fits the psychological image the tobacco industry needs to attract adolescents, the sponsorship is in the name of the brand most likely to appeal to those children (Virginia Slims, Marlboro, Winston, Skoal Bandit).

The agency, which acknowledges the comments' reports on the number of young people at events, did not receive any data to support or refute these numbers. However, recent reports in the press indicate that the number of young people attending these events may be growing.

> In NASCAR we found a great kids' business. I was astounded by their information, statistics and demographics regarding kids. [Fred Siebert, president of Hanna-Barbera, Inc., explaining why the company is sponsoring a cartoon race car to appear in NASCAR races emblazoned with Fred Flintstone and other cartoons on the hood.] After reviewing the 1995 NASCAR season, we concluded that a sizable number of attendees at NASCAR events were families with kids ages 6–11. Yet we felt NASCAR was not specifically serving that audience. [Gary Bechtel, owner Diamond Ridge Motorsports, who will field a NASCAR car and team named Cartoon Network Wacky Racing.] [234]
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> We looked at NASCAR and saw how quickly it was growing nationally and the fact that so many families go to the races it seemed like a natural fit. [235]

Moreover, the agency finds that 64.05 million underage viewers (or 180,806 underage viewers per event) is clearly not "insignificant." As discussed in the preamble to the 1995 proposed rule, the "Sponsor's Report," which estimated the value of all product exposure for most U.S. automobile races, found that 354 motorsport broadcasts "had a total viewing audience of 915 million people, of whom 64 million were children and adolescents." The preamble to the 1995 proposed rule stated: "the impact of sponsoring televised events such as these automobile races is perhaps most apparent when one realizes that over 10 million people attended these events, while 90 times that number viewed them on television" (60 FR 41314 at 41337). In addition, recent news accounts indicate that televising of races has increased both in volume and diversity. For example, television can often support three major races in 1 day. The two cable ESPN channels had 150 hours of auto racing programming in May, 1996, including 95 hours of live races, time trials, qualifying and practice laps. [236]

The effect of sponsored events on the young people who attend or see these events is enormous. Advertising affects young people's opinion of tobacco products, first, by creating attractive and exciting images that can serve as a "badge" or identification, second, by utilizing multiple and prolonged exposure in a variety of media, thereby

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[234] "Diamond Ridge Motorsports and Hanna-Barbera, Inc., to form Wacky Racing Team Changing Face of NASCAR; Deal Launches Cartoon Network Consumer Branding Initiative," *Business Wire*, November 10, 1995.

[235] "Automobile Racing's Widening Appeal Gets the Flintstones in Sponsor Table," *The Times Union*, p. B11, March 30, 1996.

[236] Moore, S., "Ladies and Gentlemen, Start Your Televisions," *Washington Post*, May 26, 1996.

creating an impression of prevalence and normalcy about tobacco use, and finally, by associating the product with varied positive events and images. The sponsorship of events by tobacco companies uniquely achieves all three objectives. Sponsorship creates an association between the exciting, glamorous or fun event with the sponsoring entity. Whether at the live gate, or on television, young people will repeatedly see and begin to associate the event, which they are enjoying, with the imagery and appeal of the product. All of the attendant concerns of hero worship of the sports figures and glamorization of the product by identification with the event are present, whether there are thousands or hundreds of thousands of young people in attendance. Race car drivers are extremely popular with young people and often are looked up to as heroes. According to one promoter of NASCAR properties, "We've found that boys look to NASCAR drivers the same way they do to heroes, such as firemen, policemen, professional fighters, or astronauts." [237]

Furthermore, sponsorship events present a prolonged period of time in which to expose the audience, including young people, to the imagery. Sponsorship events do not provide people with a momentary glimpse at the imagery, but from 1 to 2 or 3 hours of constant attractive imagery. The audience has more than enough time to associate the images of the sporting event or the concert with the product.

The agency agrees that there may be some events (such as seniors golf tournaments) that are primarily attended by adult audiences. The agency also does not claim that *all* sponsorship events are *attended* primarily by young people, but that the *exposure* (which includes television broadcasts) of young people to sponsored events is substantial. Even if a small percentage of young people attend certain sponsorship events, the amount of television exposure that young people receive is substantial.

In addition, the agency recognizes that numbers or percentages of the audience less than 18 may be lower than the threshold established for "adult" publications. However, the type of exposure in these two media are dramatically different. Young people reading or flipping through a magazine may momentarily glance at advertisements if they are interesting or eye-catching, and as a result, the exposure, if any, to one particular advertisement may be brief (the average time spent viewing an advertisement is about 9 seconds [238]). However, young people who attend sponsorship events or view them on television are unavoidably bombarded with posters, signs, hats, t-shirts, cars, and the like, linked with a fun, exciting, or glamorous event that they enjoy for a prolonged period of time. Often, celebrities participating in these events are wearing clothes and hats bearing the brand name and attractive imagery, and young people come to associate athletes who they admire with tobacco products. The amount of time viewed and the positive association with the event are incalculable as persuasive messages. Thus, the agency rejects the idea of setting a minimum attendance threshold for brand name advertising.

(83) FDA received many comments addressing its use of the concept of "friendly familiarity" in connection with tobacco sponsorship of events. Several comments stated that FDA misunderstood the theory, [239] arguing that sponsorships and promotions do not cause young people to smoke, and that FDA has failed to meet its burden of demonstrating that a ban of such activities will result in any decrease in underage smoking. In fact, according to this comment, the studies demonstrate that young people are most familiar with the brands of tobacco that are most heavily advertised.

One comment asserted that since motorsport advertising and promotion comprises a small percentage of overall tobacco advertising (on the order of 4 or 5 percent of total tobacco advertising), there is little support for the conclusion that tobacco sponsorship of motorsports has any significant effect on the rate of youth smoking.

One comment from a 26-year old ex-smoker (who began smoking at age 10, and smoked for 13 years) and NASCAR racing fan stated:

[M]y favorite driver is sponsored by a beer company. I don't drink and I'm not going to start because my favorite driver has that sponsor. However- if I DID drink already, I may switch brands to support my driver. All the advertising in the world will not sway me (or most-intelligent people) to do something I wouldn't do anyway.

In contrast, several comments labeled the 1995 proposed rule a "reasonable measure" and stated that "the evidence cited by FDA in support of this proposal is substantial and entirely consistent with the best available evidence." One comment supported FDA's sponsorship restrictions because sponsorship heightens product visibility, molds consumer attitudes, links the product with a particular lifestyle, and thus increases sales.

One comment commended FDA for drawing a "reasonable line—one that allows tobacco companies to continue to sponsor events and therefore to reap the corporate good will that flows from sponsorship, but compels the companies to jettison the hard-sell message that now typifies these events."

Several comments stated that the events sponsored by tobacco companies have a direct and powerful impact on young people because they are fun, exciting, and glamorous, and events such as tennis tournaments (Virginia Slims), sports car (NASCAR), motorcycles and powerboat racing, rodeos, rock concerts, and country music festivals are aimed at sports and music enthusiasts, including children or teenagers. The comment stated that when minors view these events, either in-person or on the television, they are: "inundated with images of the brandname or product logo (which are pasted on uniforms, vehicles, signs and virtually every surface imaginable), creating a direct and compelling association between the product and an enjoyable event."

The comment stated that children and young adults are particularly vulnerable to this sort of product advertising, because adolescence is the time of life during which identities are shaped. The comment further stated that there is ample evidence that demonstrates that the sponsorship of events leads to strong associations between the event and the brandname, that in turn influences the purchasing decisions of minors.

One comment stated that Virginia Slims' sponsorship of tennis was vital to the image advertising Philip Morris used to sell Virginia Slims tobacco to adolescent girls, and that Marlboro sponsorship of racing events is no less effective with adolescent boys. The comment stated that sports sponsorship has a secondary impact because "[the athletes who participate in the sponsored event, whether they be race

[237] Williams, S., "NASCAR Races into Kid's Licensing, National Association for Stockcar Auto Racing Seeking Promotional Appeal and Other Products," *Children's Business*, vol. 9, No. 7, p. 28, July 1, 1994.

[238] Fischer, P., J. Richards, and E. Berman, "Recall and Eye Tracking Study of Adolescents Viewing Tobacco Advertisements," *JAMA*, vol. 261, pp. 84-89, 1989.

[239] The comment stated that "[t]he need to establish a 'friendly familiarity' with a brand name is not about deciding to smoke * * * nor about deciding to use a commodity at all—the decision to make a category purchase within a mature product category is ALREADY made before advertising affects the brand choice within the category."

car drivers or tennis players, become walking advertisements and role models." The comment stated that "[a]s reflected by the Industry's own Code, everyone agrees that athletes should not endorse tobacco products because of her potential impact on children, but being a spokesperson for the Virginia Slims Tennis Tournament, NASCAR racing, etcetera is no less effective."

The agency finds that the evidence regarding the effect of advertising and sponsorship on children's smoking behavior is persuasive and more than sufficient to justify this regulation. The preamble to the 1995 proposed rule described the available evidence and explained why the agency is regulating sponsored events. The evidence demonstrates that sponsorship of sporting events by tobacco companies can lead young people to associate brand names with certain life styles or activities and can affect their purchasing decisions (60 FR 41314 at 41336 through 41338). The industry, in its comments, has questioned the relevance of the evidence but has failed to demonstrate that FDA's tentative views were wrong (the industry's criticisms of the individual studies are described below).

Sponsorship events actively create an association between tobacco and event enthusiasts. People under the age of 18 are still forming attitudes and beliefs about tobacco use, see smoking and smokeless tobacco use as a coping mechanism, a gauge of maturity, a way to enter a new peer group, or as a means to display independence (60 FR 41314 at 41329). This final rule is intended to break the link between tobacco brand-sponsored events and images and use of tobacco by young people. In addition, the tobacco industry itself has recognized the vulnerability of young people to advertising featuring sports heroes and other celebrities. In its 1994 Code, the cigarette industry promised that "No sports or celebrity testimonials shall be used or those of others who would have special appeal to persons under 21 years of age." [240] The impact of tobacco's association with the race driver, the car, or the event is no less powerful and no less persuasive.

Finally, although motorsport advertising comprises only a small percent of overall tobacco advertising, its effect, like that of magazines, or hats and tee shirts, is cumulative. Each separate advertising venue, in and of itself, does not produce the entire effect. However, taken together, the effect of each advertising exposure is magnified beyond each discrete exposure, to create the impression that cigarette and smokeless tobacco use is widespread and widely accepted. These impressions, as stated in section IV.D.3.c. of this document, are very influential to children and adolescents.

(84) Several comments criticized in detail the studies relied on by FDA to show the effect that sponsorship has on young people.

One comment stated that the studies relied on by FDA (40 FR 41331 and 41332) do not provide scientifically valid support for the conclusion that there is a causal relationship between the promotional and sponsorship activities banned under § 897.34(c) and the problem of underage smoking.

The agency proposed to regulate sponsored events based upon its tentative finding that the best evidence supported such regulation. Although the comments argued that the studies are inadequate, the comments offered no new evidence to suggest that the conclusions are invalid.

(85) One comment argued that although the conclusion reached by an unpublished paper by John Slade [241] is that 7 percent of the viewing audiences for NASCAR races are youths, the NASCAR Demographics brochure states that "NASCAR records of the age of persons who attend motorsport events show that only 3 percent are youths." The comment stated that this does not constitute a principled basis for outlawing tobacco company sponsorship of these races even if every other assumption FDA makes about the impact of event sponsorship were true.

The agency disagrees with the comments on the paper by Dr. Slade. Slade's paper established that these events are attended by and seen by a large number of young people. The study measured its stated objective, it establishes the important fact that children are being unavoidably exposed over and over again to attractive and appealing images associated with tobacco products at NASCAR events. The study establishes that young people are present at events where a popular sport is associated with tobacco on signs, cars, people, etc.

The agency also disagrees with the comment that suggested that the price of tickets to motorsport events was sufficiently high to preclude adults from taking their children to see them. In fact, some motorsport events allow children to attend free of charge or offer discount tickets for children. [242]

(86) One comment stated that the study performed by Aitken, et al. [243] (the Aitken study) did not attempt to gauge whether exposure to tobacco-sponsored events or teams engendered favorable feelings for tobacco products in the surveyed young people and stated that the study only addressed the effect of factors such as sex, age, and socioeconomic status on awareness of cigarette sponsorships. The comment also stated that the Aitken study did not test the effect of sponsorship activities in this country, and that FDA ignores the fact that tobacco companies sponsor a wider variety of more popular sports in the United Kingdom, such as "snooker, cricket and darts." Finally, the comment accused FDA of "selective reading," citing FDA's omission of a statement made by the authors when discussing past studies that even though minors may be aware of the sponsorships, "[t]his of course does not mean that cigarette advertising plays a part in inducing children to start smoking." The comment also criticized the author of the study for stating that even though very few of the primary schoolchildren named John Player Special or Marlboro as being associated with racing, "[t]his suggests that linkages or associations between brand names (or their visual cues) and exciting sports are often unconscious, or at the very least, not readily retrieved by consciousness (Aitken et al., p. 209)." The comment claims "[t]hat astonishingly biased hypothesis was not tested by any questions that attempted to probe the "unconscious" or the "consciousness" of the interviewees."

The agency disagrees with the comment's criticism of the Aitken study. This study conducted in the United Kingdom demonstrated that primary schoolchildren who said that they intended to smoke when they were older tended to be more favorably disposed to cigarette advertising. Moreover, Aitken's comment that this

[240] Cigarette Advertising and Promotion Code, 1990.

[241] 60 FR 41314 at 41337, n. 225; citing Slade, J., "Tobacco Product Advertising During Motorsports Broadcasts: A Quantitative Assessment," presentation at the 9th World Conference on Tobacco and Health, October 10–14, 1994.

[242] See, e.g., Rosewater, A., "Retirement is no Drag for Prudhomme," *Plain Dealer*, p. 7D, June 4, 1996; "Fun Book 96/ This Spectator Sport: Easy Over," *Newsday*, p. 80, May 19, 1996; Schmiedel, M., "Motor Sports World Motorcycle Trials in Exeter Next Weekend," *The Providence Journal-Bulletin*, p. 13D, May 19, 1996.

[243] 60 FR 41314 at 41337, n. 226; citing Aitken, P. P., D. S. Leathar, and S. I. Squair, "Children's Awareness of Cigarette Brand Sponsorship of Sports and Games in the UK," *Health Education Research, Theory and Practice*, vol. 1, pp. 203–211, 1986.

study did not mean that advertising plays a part in inducing children to start smoking" is an accurate statement of the study. The purpose of the study was to examine the effect of sponsorship on children's awareness of tobacco sponsorship and brand name identification with that sport, not on their smoking behavior. This fact is not a flaw but a description of the study design and the study's limitations. The study, however, is quite useful in showing the effect of sponsored events on young people's awareness of brands.

In addition, the comment selectively quoted a portion of the Aitken study (regarding linkages), while ignoring the reason the statement was made. The author of the study made this statement in the context of the finding that whereas only 9 percent of the primary schoolchildren named John Player Special or Marlboro as sponsoring or being associated with racing cars, 47 percent of primary schoolchildren chose John Player Special or Marlboro as being liked by "someone who likes excitement and fast racing cars." The authors also found that linkages or associations between cigarette brand names (or their visual cues) and exciting sponsored sports can be elicited by simple advertisements, even among children who do not have a critical awareness of the purpose of commercial sponsorship. This type of linkage is the primary issue, rather than whether such information is "conscious" or "unconscious" in nature.

(87) One comment stated that the study performed by Ledworth[244] (the Ledworth study), which found that even a fairly brief exposure to tobacco sponsored sporting events on television may increase children's brand awareness, failed to control for other sources of information that could result in brand awareness (i.e., if a family member smokes), and that even the author of the study stated that further investigation needed to be done to determine whether tobacco sports sponsorship persuades children to smoke. The comment also stated that FDA cannot extrapolate the study results to the United States because the study was based on foreign sponsorship and viewership practices, which differ significantly from those in this country. The comment stated that the differences are highlighted by the fact that 74 percent of the surveyed children watched at least part of the snooker match, and that the child viewership of NASCAR is "* * * significantly more limited, at most, even by Slade's number, to 7 percent."

The agency disagrees with the comment's criticism of the Ledworth study. The Ledworth study demonstrates the power of association between an event and brand awareness among young people. The study is evidence of the important link formed by that association.

(88) One comment stated that the study performed by Hock et al.[245] (the Hock study), which showed that nonsmoking boys who saw a tobacco sponsorship advertisement had a diminished concern that tobacco hurt sports performance, "has no real relevance to the issue of event sponsorship and suffers from obvious, significant methodological flaws." The comment explained that the video viewed by one of the groups contained an advertisement promoting a cigarette company's sponsorship of a sporting event and thus reports the effect of a particular advertisement, not the effects of the types of sponsorships at issue here. The comment also stated that American tobacco companies are not permitted to advertise sponsorships in this fashion under 15 U.S.C. 1335 (the television advertising ban). The comment argued that the portion of the conclusion quoted by FDA overstates the results of the flawed research because the authors themselves emphasized that "nonsmokers'" general attitudes to smoking were not significantly affected by exposure to sponsorship events. Finally, the comment argued that, among the group of smokers, the authors reported that exposure to the sponsorship advertisement did not affect the smokers' brand choices, and that the authors cautioned that "these findings do not, in themselves, constitute a case for legislation."

The agency disagrees with the comment's criticism of the Hock study. Although the advertisement used in the Hock study may have been different than advertisements that appear in the United States, and only a single advertisement was tested, these factors alone do not render the author's conclusions invalid. Again, most importantly, the study provides evidence that brand sponsorship produces awareness of the product and the brand in young viewers. The agency also disagrees with the comment's assertion that FDA overstated the findings of the study. The agency specifically acknowledged in the preamble to the 1995 proposed rule that exposure to the particular advertisement did not affect overall attitudes toward smoking (60 FR 41314 at 41338).

Moreover, the agency disagrees with the comment regarding brand preferences of smokers. As the study authors noted, the study primarily focused on nonsmokers. Thus, the fact that there were few smokers in the study makes it more difficult to find significant effects on smokers. In addition, the authors note more than once that the effects of sponsorship appear to be primarily on nonsmokers.

The important point of this study and the others cited by the agency is that sponsorship of events helps create a positive association between the event and the tobacco company. The child relates the event to the product and this contributes to the perception that tobacco use is acceptable and not dangerous. This attitude helps an environment that fosters experimentation with tobacco products.

Finally, the comment asserted that FDA's reliance on the two-page memorandum from Nigel Gray[246] is "not only disingenuous, but demonstrates that FDA has not evaluated the data on which it purports to rely." The comment stated that "the statistics cited in this study lack any explanation or support." The comment also states that "[the conclusions stated in the memorandum are at odds with those in the studies by Aitken and Hock cited by FDA." The comment stated that the author cited a "Western Australian survey" that found that 65 percent of 10 to 11 year olds surveyed believed that tobacco sponsorship of sports is advertising for tobacco, whereas the Aitken study "found that only 4 percent of 10 to 11 year olds identified advertising as a component of sports sponsorships by tobacco companies." The comment also argued that the study by Hock found no effect of the sponsorship advertisement on brand choice, whereas the memorandum by Gray revealed that sponsorship did effect brand choice.

The agency recognizes that there are problems with the two-page memorandum from Nigel Gray because the data on which it was based have not been made available. Therefore, the

[244] 60 FR 41314 at 41338, n. 227; citing Ledworth, F., "Does Tobacco Sports Sponsorship on Television Act as Advertising to Children," *Health Education Journal*, vol. 43, no. 4, 1984.

[245] Hock, J., P. Gendall, and M. Stockdale, "Some Effects of Tobacco Sponsorship Advertisements on Young Males," *International Journal of Advertising*, vol. 12, pp. 25–35, January 1993.

[246] 60 FR 41314 at 41338, n. 228; citing memorandum from Gray, N., (Anti-Cancer Council of Victoria), to all members of the Federal Parliament, December 15, 1989.

agency has placed no weight on its findings and does not rely on it in the final rule.

On the other hand, the memorandum cannot be used to diminish the usefulness of the other studies that have been cited. A careful reading of the data presented by the Aitken study reveals that indeed 17 percent of 10 to 11 year olds identified advertising as a component of sports sponsorship by tobacco companies. While it is true, as the comment indicated, that 4 percent mentioned only the advertising component, the comment has overlooked the fact that an additional 13 percent of 10 to 11 year olds mentioned both advertising and economic components.

In summary, these studies provide ample support that brand name sports sponsorship produces, for young people, memorable associations

Contrary to the comments cited, the FTC asserted, in its comment, that sponsorship is advertising, citing its 1992 consent order involving the Pinkerton Tobacco Co., (Consent Order) C-3364 (1992).

The comment also stated that in 1995, the Department of Justice announced consent decrees resolving allegations that Philip Morris, Inc., and the owners of Madison Square Garden in New York City violated the Cigarette Act's ban prohibiting advertising for tobacco on television and other media regulated by FCC through the display of cigarette brand names and logos at live sporting events that were broadcast on television (*United States* v. *Madison Square Garden, L. P.*, No. 95-2228 (S.D.N.Y., April 7, 1995); *United States* v. *Philip Morris, Inc.*, No. 95-1077 (D.D.C. June 6, 1995)). The consent decrees prohibit Philip Morris and Madison Square Garden from placing cigarette advertising in places regularly in the camera's focus where they might be seen on television.

The agency finds that sponsorship is advertising within the scope of this regulation. The claim by the comments that the *Lorillard* and *Reynolds Tobacco* consent orders demonstrate that the FTC does not find sponsorship to be advertising is incorrect. The two cited cases are consent orders that did not provide a definition of advertising but limited the coverage of the consent order to the specific types of advertising mentioned in the order. The two orders clearly excluded categories of obvious advertising from the coverage of the order (see, e.g., point of sale advertisements less than 36 square inches).

Although the agency acknowledges that the "IEG Complete Guide to Sponsorship" (IEG guide) states that sponsorship is not advertising, IEG is creating a semantical distinction between one form of advertising (traditional media advertising) from other types of advertising (e.g., promotional items, sponsorship). The IEG guide states that "[w]hat sponsorship generally accomplishes *better* [emphasis added] than advertising is establishing qualitative attributes, such as shaping consumers' image of a brand, increasing favorability ratings, and generating awareness." In addition, the IEG guide states that sponsorship is more effective than advertising in increasing "propensity to purchase." This latter description of sponsorship falls within the courts definition of advertising in *Public Citizen* v. *FTC*, 869 F.2d at 1554, as "any action to call attention to a product so as to arouse a desire to buy."

The agency finds for all these reasons that sponsorship can be regulated as advertising under the act.

(91) Several comments argued that FDA does not have the authority to restrict sponsorship events. One comment stated that FDA has no authority to regulate cigarette advertising to "break the link" between sponsored events and use of tobacco, and reduce the "friendly familiarity" that sponsorships generate among young people. The comment stated that FDA can prohibit only false or misleading restricted device advertising and cannot prohibit advertising that simply links a name to a product. One comment stated that it is difficult to understand how the sponsorship of the IndyCar Marlboro 500 or the National Hot Rod Association Winston Drag Racing Series, promotional activities that would be prohibited under the 1995 proposed rule, involve the "misbranding" of tobacco products.

Several comments addressed the issue of whether FDA's proposed ban on brand name sponsorship violates the First Amendment. Several comments argued that the proposed restrictions on advertising and promotional activities are overly broad and violate the First Amendment because the 1995 proposed rule would prohibit virtually all forms of tobacco sponsorship and advertising at motorsport events, and FDA made no attempt to limit the restrictions to advertisements directed at minors. One comment argued that the provision would not directly and materially advance the government's interest, because there is no reasonable basis for asserting that sponsorship causes youth tobacco use. The comment stated that FDA did not attempt to differentiate between those events that attract children and adolescents and those that attract adults. Thus, according to the comment, a ban on tobacco sponsorship of an event that few or no children or adolescents attend will not directly and materially advance a reduction in underage tobacco use.

In contrast, one comment which supported the provision stated that sponsored events have a direct and powerful impact on young people, and thus there is a "reasonable fit" under the final two prongs of the *Central Hudson* test. The comment argued that the 1995 proposed rule is narrowly tailored because "FDA has selected the approach that best effectuates its goal of reducing tobacco consumption by minors, without needlessly restricting the industry's ability to sponsor events and garner the good will that flows from such sponsorship."

FDA concludes that sponsorship of events and sponsored teams and events is an advertising medium that is effective in influencing young people's decision to engage in smoking behavior and tobacco use.

As explained in this section, the agency has authority to restrict advertising of restricted devices like tobacco and smokeless tobacco under sections 520(e) and 502(q) of the act. As the studies described in this section[247] demonstrate, sponsorship associates the advertised brand with the event and thus shapes the image of the brand and the individual's image of tobacco use. Sponsorship of rodeos and car racing, for example, associates the product with events where risks are high but socially approved and are taken by individuals who brave the odds.[248] This type of situation fits in very well with the image concerns of adolescent males described in section VI.D.4.a. of this document.

Youths who attend the sponsored event are directly and unavoidably confronted with messages for the sponsoring product. This exposure creates a sense of familiarity and acceptance similar to that created by billboards near schools and playgrounds.

In addition, the sponsored events are televised. As a result of this fact, through mention of the sponsor and camera shots that pan the place where the event is held, awareness of the brand is created, along with the associations described above.

Given these factors, a restriction on sponsorship will be effective in limiting the influences on children and adolescents to use tobacco products and thus in protecting their health. Moreover, there is a reasonable fit between the restriction and FDA's interest. The restriction focuses on the use of the brand because of the association between the brand and tobacco use.[249] By building associations with the brand, sponsorship and the advertising displayed at the event creates a desirable image for young people that contributes to a positive feeling about the product that sponsors

[247] See e.g., Aitken, P. P., D. S. Leathar, and S. I. Squair, "Children's Awareness of Cigarette Brand Sponsorship of Sports and Games in the U.K.," *Health Education Research*, vol. 1, pp. 203-211, 1986.

[248] IOM Report, p. 112.

[249] Hock, J., P. Gendall, and M. Stockdale, "Some Effects of Tobacco Sponsorship Advertisements on Young Males," *International Journal of Advertising*, vol. 12, No. 1, January 1993.

the event. This positive image not only provides a brand that the young person might select but also adds to the young person's positive feelings about using the product. It is the creation of this association that FDA will prevent by restricting sponsorship.

FDA is not aware of any way to limit the restriction to events that are attended by young people. However, FDA has no desire to restrict manufacturers' abilities to contribute to the community by sponsoring athletic, cultural, or other events. Thus, the agency has narrowly tailored the restriction on sponsorship to use of brand identification because it presents the harm that FDA is trying to eliminate. For these reasons, FDA concludes that its restrictions on sponsorship are consistent with its legal authority and with the First Amendment.

(92) Several comments (including one from a participant in motorsport events) argued that allowing tobacco companies to place brand names and logos at highly visible locations during broadcast sporting events has afforded tobacco companies the opportunity to circumvent the Cigarette Act, which prohibited broadcast advertising of cigarettes. One comment stated that tobacco companies receive millions of dollars of free brand name television and radio exposure during these events and use messages in these advertisements that are particularly effective with children. One comment stated that "the degree to which sponsoring events gives tobacco companies television time is staggering," and "[j]ust in the televising of the Indiana 500 [sic], Marlboro received almost 3½ hours of television exposure and 146 mentions of its brand name." The comment cited cases where Congress and the courts have already recognized and upheld the importance and the constitutionality of keeping tobacco advertising off the airwaves (*Capital Broadcasting Co.* v. *Mitchell*, 333 F. Supp. 582 (D.D.C. 1971), aff'd sub nom. *Capital Broadcasting Co.* v. *Acting Attorney General*, 405 U.S. 1000 (1972)), and concluded that a reviewing court would likely sustain the provision regarding event sponsorship simply because it has become a pervasive tool used by the tobacco industry to evade the restriction on television advertising.

The agency finds that there is adequate support for its ban on brand name sponsorship of events. As stated in the preamble to the 1995 proposed rule and in response to an earlier comment, "[t]he amount and financial value of television exposure gained by a firm can be substantial." The preamble to the 1995 proposed rule cited two studies which discussed the impact of sponsoring televised events and concluded that:

> [t]he impact of sponsoring televised events such as these automobile races is perhaps most apparent when one realizes that over 10 million people attended these events, while 90 times that number viewed them on television.

(60 FR 41314 at 41337)

By restricting brand name sponsorship of events, the final rule will eliminate those brand name sponsored events that continue to permit tobacco product brand names to appear on television.

(93) Several comments expressed concern that the 1995 proposed rule was not sufficiently inclusive; specifically, it did not prohibit the incorporation of an event in a brand name by someone other than the tobacco company and did not explicitly ban the use of the name of a foreign tobacco company in U.S. sport events. Some comments stated that restricting sponsorship of entertainment and sporting events to corporate name only for corporate sponsors that had been in existence prior to January 1, 1995, "leaves open many shadow entities incorporated under tobacco brand names because tobacco transnationals have been creating these front groups for years to escape promotion restrictions in other countries."

One comment stated that Canada, after it had banned brand name sponsorship, found that industry used new "corporations" such as Camel Racing PLC to continue sponsoring in a brand name. Thus, the comments recommended that the regulation ensure that corporate sponsorship of events be allowed only if the corporate name is the name of the manufacturing entity and that the name has no similarity to a brand name of any of that manufacturer's tobacco products.

Several comments expressed concern about a recent trend among U.S. manufacturers to develop brands that are made by a corporate entity. For example, one comment stated that RJR has developed a series of brands with an art deco style of pack design and is selling them through a wholly owned subsidiary named Moonlight Tobacco.

Another comment stated that Philip Morris has been test marketing a brand called "Dave's," which it produces through a boutique company named "Dave's Tobacco Company." These comments stated that the agency should amend the 1995 proposed rule to prohibit any corporate name or logo that had a brand name or product identification within it.

Finally, a comment stated that there are many other existing brand names that are also corporate names, such as "Rothmans" and "Sampoerna" (a brand of clove cigarette (Kretek) imported from Indonesia) that are manufactured overseas. This comment argued that non-U.S. corporate names must also be included in the final rules proscription.

The agency recognizes the concern expressed by the comments. As stated in the preamble to the 1995 proposed rule, the requirement that the corporation be in existence on January 1, 1995, is intended to prevent manufacturers from circumventing this restriction by incorporating separately each brand that they manufacture for use in sponsorship (60 FR 41314 at 41336). The comments have suggested that manufacturers may circumvent this restriction by the use of shadow entities, many of which have already been incorporated under tobacco brand names in other countries (or have been incorporated as events). The agency agrees that the proposed restrictions do not prevent this type of circumvention.

Thus, in response to the comments' suggestions, the agency has modified the proposed regulations to reflect that the registered corporate name and corporation must have been in existence and registered in the United States and have been in active use in this country before January 1, 1995. Thus, FDA has modified § 897.34(c) to state: "Nothing in this paragraph prevents a manufacturer, distributor, or retailer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or team or entry, in the name of the corporation which manufactures the tobacco product, provided that both the corporate name and the corporation were registered, and in use in the United States prior to January 1, 1995, * * *." This provision makes clear that manufacturers are free to sponsor events in their corporate name but contains language that will prevent the type of circumvention of the restriction that was posited by the comments.

The agency also agrees with the comments that suggest that manufacturers may also attempt to circumvent this restriction by placing within the corporate name or logo elements of brand identification such as names (Smokin' Joe), colors (the tricolor decoration), etc. Tobacco products can be promoted using more than just the brand name. In fact, the name may be less important than the attractive

imagery, recognizable colors and patterns of colors (Marlboro), characters and heroes (Joe Camel racecar drivers) all of which provide the user with a desired image. A yellow motorcross bike with a head of a Camel conveys the image of Joe Camel without the name of the product. Therefore, it is necessary in order to break the link between the event and the product to restrict the images in addition to the name. Thus, FDA has modified § 897.34(c) so that it concludes with the following statement:

"* * * and that the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco products.

The agency also recognizes that at some time in the future, corporate entities may be formed to sell tobacco products, which are new to the tobacco business and in no way associated with current manufacturers. Should those entities desire to sponsor events, they would be precluded by the language of § 897.34(c) from doing so. The agency envisions that such entities could petition the agency, under 21 CFR part 10, for an exemption from this provision.

(94) One comment stated that FDA's proposed ban on brand-name sponsorship is an unjustified limitation on the right of private individuals to select their own sponsors.

This comment has misinterpreted the 1995 proposed rule. The rule does not limit the "right" of private individuals to select sponsors. Individuals are free to select any sponsor they choose. The rule, however, prohibits the event from including any brand name, logo, symbols, motto, selling message, or any other indicia of product identification similar or identical to those used for any brand of cigarette or smokeless tobacco. However, the final rule does not prevent corporate sponsors that were in existence and registered in the United States before January 1, 1995, from advertising in their registered corporate names.

(95) Several comments stated that sponsorship restrictions would have a negative impact on sports events. Approximately 300,000 copies of one form letter were submitted as comments. All included the statement: "I am 21 years of age or older and oppose the new regulations proposed by the Food and Drug Administration (Docket No. 95N–0253) that would prohibit tobacco company sponsorship of entertainment and sporting events." The form letter also stated that "If FDA gets control of tobacco and bans tobacco sponsorships, ticket prices could rise as well. And there might be fewer events. All this adds up to consumers being the big losers."

One comment stated "I oppose any attempt by President or FDA to deny RJR the right to sponsor the Winston Cup Racing Series!" One comment stated "[b]y banning the sponsorship of NASCAR, the races won't get any money, and if they have to stop racing, that will make me mad, and I am too old to be getting mad—75 years [old]."

One comment stated that because of the potential loss of economic support, many events will not be viable if cigarette company sponsorship is no longer available. Several comments argued that FDA's proposed ban on sponsorship, promotional programs, and contests would eliminate events enjoyed primarily by adults. One comment stated that "[w]e believe that we and millions of other middle class fans like us, will no longer be able to afford the NASCAR we love." One comment stated that the provision "will adversely affect the economy of the tobacco industry and that affects many people in many States, not just the racing industry and communities."

One comment stated that the loss of sponsorship revenue to race track owners, operators, and promoters would negatively affect the motorsports industry because racing fans will suffer in the form of increased ticket prices or decreased services at motorsports events, and increased ticket prices will decrease attendance at race events, forcing racetrack operators to cut jobs and other employee benefits, further depressing the economies of hundreds of communities around the nation. The comment also stated that since motorsports injects hundreds of millions of dollars into local and regional economies, particularly in rural and suburban communities that have been the hardest hit by recession and job losses, FDA's proposed regulation would have a substantial impact on local and regional economies across the country and hurt the future of motorsports.

In contrast, one comment that supported the proposal was from a "dedicated car racer," and stated that "the truth is that car racing will do just fine without tying its wonderful image to the interest of the cancer promoters." The comment stated that:

in Europe where racing cars run without any cigarette advertising whatsoever, people camp out for days trying to get into the events, and that the recent Formula One European Grand Prix was run in cold miserable, weather with packed stands and not a single cigarette logo in sight.

The comment stated that "I hope [FDA] will look out for the rest of us and stand firm in favor of a ban on tobacco advertising at all sporting events."

One comment stated that "many of the millions of dollars spent on these promotions are available to the cigarette industry only because 3,000 children start smoking each day," and "[t]his situation can be viewed as an industry demanding a bounty of 3,000 lives per day in exchange for its financial support of the sports, music, and other entertainment appealing to children and youth."

One comment stated that:

the abundance of other sponsors indicates that auto racing would not fail if tobacco products are not allowed to be event sponsors and if teams sponsored by tobacco products are restricted to black and white uniform and car designs. Similar fears were expressed when cigarette commercials were banned from electronic media, but they proved groundless.

The comment stated that sponsors do not make a sport such as auto racing or rodeo popular because auto racing and rodeo are "compelling, popular spectator sports in their own right." The comment stated that "popular sports attract sponsors who want to advertise." The comment stated that "[t]he Olympics would remain a premier sporting event without Coca-Cola or Kodak" and "NASCAR stock car racing is among the most popular spectator sports to thrive." The comment stated that "the audience is not there because of tobacco: tobacco is there because of the audience."

The agency advises that the concerns expressed by some of these comments have misinterpreted the rule. The rule does not "prohibit tobacco company sponsorship of entertainment and sporting events" or "ban tobacco sponsorships, promotional programs, and contests." The rule prohibits a sponsored event from being identified with a cigarette or smokeless tobacco product brand name or any other cigarette or smokeless tobacco brand identifying characteristic. All athletic, musical, artistic, or other social or cultural events would be permitted to be sponsored in the name of the tobacco company as long as the other conditions in § 897.34(c) are met.

In addition, the tobacco industry accounts for only 4 percent of all sponsored events. This rule does not prohibit the other 96 percent of

nontobacco forms of sponsorship (60 FR 41314 at 41337). Thus, even if the restriction on sponsorship of tobacco products resulted in a decrease of tobacco company sponsored events, the events will still exist through the support of the nontobacco forms of sponsorship. The agency agrees with the comment that "auto racing would not fail if tobacco products are not allowed to be event sponsors." Thus, restricting tobacco product brand name sponsorship clearly will not "ban all sponsorship events."

Finally, recent news stories quote persons knowledgeable about car racing saying racing would survive without tobacco sponsorship, for example, one quote: "If this happened 10 years ago, it would have been crushing to the racing industry. Now people are lining up to take Winston's place." [250]

In conclusion, FDA finds that sponsorship of events (such as car races, tennis matches, and rodeos) and entries in those events (race cars and drivers, tennis players) can have a profound effect on young people's attitude about and use of tobacco by providing multiple and prolonged exposure to the brand name and logo in a variety of media, thereby creating an impression of prevalence and normalcy about tobacco use (see section VI.D.3.c. of this document), by associating the product with varied positive events, images, and heroes, and by creating attractive and exciting images that can serve as a "badge" or an identification (see section VI.D.4.a. of this document). The industry itself recognizes the concern that sports figures as endorsers can create problems of hero worship and emulation; its Code promises not to employ sports or celebrity testimonials or those of others "who would have special appeal to persons under 21 years of age." Sponsorship creates no less of an association than an endorsement. Moreover, FDA finds that restrictions on sponsorship identified with a tobacco brand are necessary to reduce tobacco use by young people. These findings are based on studies and recent reports that the number of young people who attend these events or see them on television is significant and growing.

Studies—Four different studies, one each by Slade, Aitken, Ledworth, and Hock (60 FR 41314 at 41337 and 41338) and described further in this section, provide evidence that sponsored events of all types are attended, and seen on television, by a substantial number of young people, and that the effect of the exposure is to increase brand awareness and association between the brand and the event. This attitude contributes to a sense of friendly familiarity about tobacco use and a perception that tobacco use is acceptable and common place.

Surveys on attendance and TV audience, described further in this section, establish that attendance by children at events and viewership by children and adolescents on television are significant. The preamble to the proposed rule used the number 64 million as an annual approximation of underage viewers of motorsport events in addition to those at the event (60 FR 41314 at 41337). In addition, newspaper articles detailed in this section describe the increasing importance of young people to sponsored events as a growing part of the live audience. Moreover, although less data is available on other types of sponsored events, comments received by the agency in response to the proposed rule, and described further in this section, state that many children and teenagers watch tennis, motorcycle and powerboat racing, and rodeos on television and attend and watch on television rock concerts and country music festivals.

Finally, the agency has tailored the restriction narrowly. The agency recognizes the importance of corporate sponsorship in engendering goodwill for a company with its customers and in providing support to sports, the arts, and music. Therefore, the agency has crafted the regulation to not interfere with this aspect of sponsorship but has merely denied the companies the right to use brand and product identification, which are most appealing to young people.

9. Proposed § 897.36—False or Misleading Statements

The agency proposed in § 897.36 that labeling or advertising of any cigarette or smokeless tobacco product:

> is false or misleading if the labeling or advertising contains any express or implied false, deceptive, or misleading statement, omits important information, lacks fair balance, or lacks substantial evidence to support any claims made of the product.

This provision would have explicitly implemented sections 201(n), 501(a) (21 U.S.C. 351), and 502(q)(1) of the act. Section 897.36 was meant to be illustrative rather than exhaustive.

The agency stated in the 1995 proposed rule that its regulations concerning prescription drug advertising provide great specificity as to what constitutes violative advertising (part 202 (21 CFR part 202)) but that this same degree of specificity is not practical in the case of a widely used consumer product like tobacco because the advertising for it contains an unlimited variety of claims that make categorization difficult. Therefore, the agency tentatively concluded that it would provide general guidance for the types of advertising claims that will be considered violative, rather than to attempt to identify every possible type of false and misleading claim (60 FR 41314 at 41339 and 41340).

(96) Several comments objected to various portions of the definition, for example the phrases "omits important information" and "lacks fair balance." They asserted that the phrases expand the definition of what constitutes "misleading" advertising, are subjective, and make compliance burdensome because the phrases are not defined. Moreover, the comment complained that neither "fair balance" nor "substantial evidence" were appropriately included in the definition of false and misleading.

Additionally, the comments argued that laws regarding false and misleading advertising are well established, and that false and misleading advertising is subject to the jurisdiction of the FTC. The comment stated that it was, therefore, inappropriate for FDA to establish vague and overreaching parameters of "unfair and deceptive" advertising.

One comment stated that what "information" is important is undefined. It stated that there is always information that someone may consider "important" (e.g., price, availability, freshness, taste research), and that it would be unreasonable to allow FDA, or any regulatory organization or entity, to review tobacco advertising in the capacity of determining information that should have been included. This comment argued that the legal precedent defining deceptive advertising is already established and should not be changed by FDA.

One comment stated that by introducing the word "important" into the proposed standard for misbranding of tobacco, FDA has impermissibly gone beyond the "materiality" test for misbranding set forth by Congress in section 201(n) of the act, acted arbitrarily and capriciously, and proposed a new standard that is unconstitutionally vague.

[250] Quoting Ardy Arani, a director of the Atlanta-based Championship Group, a sports marketing agency in Jacobsen, G., "Mass Merchandisers Jostle With Tobacco Companies to Cash in on the Auto Racing Craze," *The New York Times*, p. D71, February 21, 1996.

One comment stated that FDA also proposes that labeling or advertising would be false or misleading if it "lacks fair balance." It stated that FDA has obviously borrowed this concept from the prescription drug regulations (§ 202.1(e)(5)(ii)), but it is inapplicable to tobacco. The comment stated that, first, the "fair balance" requirement for drugs is based not on the section 502 "false or misleading" prohibition but rather on section 502(n)(3), which requires that prescription drug advertising contain a "true statement" relating to "side effects, contraindications, and effectiveness."

The comment stated that, second, as the drug regulation makes clear, the "fair balance" required is between information about a product's therapeutic benefits and information about its adverse effects when used. It stated that because no therapeutic claims are made for tobacco, the "fair balance" concept is simply inapplicable.

One comment, however, stated that, under this regulation, advertising for cigarettes and smokeless tobacco will be considered false or misleading if it "omits important information." It stated that this is a reasonable rule, and that it should be part of the final rule, but it is one that may be difficult for manufacturers to comply with absent guidance from FDA.

FDA has been persuaded that the proposed general guidance in proposed § 897.36 on what might constitute false and misleading advertising has created unintended confusion. Under section 502(a) and (q)(1) of the act, any restricted device is misbranded if its advertising or labeling is false or misleading in any particular. Section 201(n) of the act states that:

> If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.

After review of the applicable provisions of the act concerning labeling and advertising, the agency has determined that those provisions are adequate and that the definition in proposed § 897.36 is unnecessary. Because cigarette and smokeless tobacco advertising remains subject to regulatory action if it is false or misleading in any particular, FDA has decided to delete § 897.36 from the final rule.

(97) Some comments supporting proposed § 897.36 recommended that specific restrictions be placed on advertising that emphasizes tar and nicotine levels and implies a weight benefit to tobacco products.

Other comments suggested requiring the disclosure of ingredients. These comments argued that consumers do not know the ingredients of these products or the functions that these ingredients serve. It added that consumers do not know the doses of nicotine and other critical materials that they ingest with these products. The comment stated that terms such as "light" and "low tar" have little meaning in view of the tendency of consumers to smoke cigarettes differently depending upon the way nicotine delivery has been engineered. A comment from a tobacco company opposed disclosure of ingredients fearing loss of valuable trade secret information.

The agency has decided that these comments fall outside the scope of this rulemaking. The agency did not propose labeling or advertising restrictions concerning the levels of tar, nicotine, or other components of cigarettes or smokeless tobacco, or perceived benefits of tobacco products, only that labeling or advertising not be false or misleading. It did not receive comments sufficient to warrant restrictions addressing these issues. Consequently, advertising and labeling claims will be evaluated on a case by case basis for compliance with sections 201(n), 502(a), (q), and (r), 510(j) (21 U.S.C. 360(j)), and 520(e) of the act. Therefore, FDA is not modifying part 897 to address these concerns at this time.

F. Additional First Amendment Issues

Finally, several general issues were raised by commenters concerning the nature of the protection afforded commercial speech by the First Amendment.

(98) One comment argued that the original understanding of the First Amendment was that truthful commercial messages are fully protected.

In response to this comment, FDA points out that the Supreme Court took the position that the First Amendment does not protect commercial speech (see *Valentine* v. *Chrestensen*, 316 U.S. 52 (1942)), until it repudiated that position in *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). Since 1976, the Court has decided numerous cases, most recently *Rubin* v. *Coors, Florida Bar* v. *Went For It, Inc.*, and *44 Liquormart Inc.* v. *Rhode Island*, that address the level of protection afforded commercial speech by the First Amendment. FDA has followed that case law in its development of this final rule. Therefore, FDA has developed this final rule in accordance with the applicable law.

(99) A comment filed by an association of advertising agencies warned that the proposed regulations "establish a dangerous precedent that could open the floodgates to dramatic government intrusion into the process of communication * * * and [are] a dangerous blueprint for government censorship of other kinds of advertising." The comment expressed concern that regulations of advertising for tobacco products will permit, in fact will encourage, the future regulation of other "controversial products."

Tobacco products are not "controversial" products as these comments contend. They represent the single most preventable cause of death in the United States (1989 Report to the Surgeon General at p. i). Not only is the harm caused by tobacco use real (the comment refers to "imagined harm"), but the product that produces the disease and death is addictive. Moreover, tobacco use begins among young people, who may be able to describe the risks of tobacco use, but who do not personalize that risk to themselves. These young people begin to use tobacco before they can adequately weigh the consequences of use and thus, become addicted and subject to the real long term harms caused by tobacco use. That is why all 50 States and the District of Columbia outlaw the sale of tobacco products to those under 18 years of age. Finally, as discussed in section VI.D. of this document, advertising does affect young people's decision to use tobacco products in a significant and material way. This is not an "assertion" made out of whole cloth but a reality. Thus, regulation of tobacco advertising may set a precedent for future government action, but it sets a high threshold for such regulation.

The Supreme Court has granted ample protection to commercial speech, but the Court has also stressed, nothing in the First Amendment prevents the Government from ensuring "that the stream of commercial information flows cleanly as well as freely." (See *Edenfield*

v. *Fane*, 506 U.S. 761, 768.) One comment noted: "This concern takes on special force where, as here, crucial public health concerns are implicated, and where a particularly powerful seller * * * has used its virtually limitless resources to saturate the marketplace with its promotional messages."

The Government's interest in protecting the health of children and teenagers through measures designed to prevent them from beginning a lifetime of addiction and disease is of the highest order and is sufficient justification for the restrictions finalized here.

VII. Education Campaign

In the Federal Register of August 11, 1995 (60 FR 41314), the Food and Drug Administration (FDA) proposed to require that tobacco companies establish a national education program, using television as its predominant medium, to discourage children and adolescents from using cigarettes and smokeless tobacco (the 1995 proposed rule). The agency received more than 1,500 comments concerning the program, nearly three-quarters of which favored going forward with it. The comments raised many issues concerning the program as proposed, including whether the proposed funding would be either equitable or sufficient, whether industry's level of involvement would jeopardize its effectiveness, whether current industry educational programs are sufficient, about the design of the educational programs, the manufacturer's obligations to carry them out, the agency's statutory authority to require an education campaign under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 360j(e)), and the constitutionality of the campaign as proposed.

The agency has reexamined its statutory authority for requiring an education campaign and believes that section 518(a) of the act (21 U.S.C. 360h(a)) is more appropriate and practicable than the restricted device authority in section 520(e) of the act under which FDA had proposed the education campaign. Under section 518(a) of the act, if the agency finds that a device presents an unreasonable risk of substantial harm to the public health, that notification is necessary to eliminate this risk, and that no more practicable means is available under the act, then, after consultation with device manufacturers, the agency may issue a notification order that requires them to notify the appropriate persons in a form appropriate to eliminate the risk. The agency has used section 518(a)'s separate, affirmative grant of statutory authority on a number of occasions to compel medical device manufacturers to provide notice to users or potential users of their products about risks presented by their use or misuse.

The agency believes that, with respect to cigarettes and smokeless tobacco, it could make the findings required by section 518(a) of the act and so could order tobacco manufacturers to notify young people about the substantial health risks that tobacco products present in a form appropriate to eliminate the risk. That is, the agency believes that it could find that cigarettes and smokeless tobacco present an unreasonable risk of substantial harm to the public health, that notification is necessary to eliminate this risk, and that no more practicable means is available under the act.

The agency has concluded, therefore, that it will not require an education campaign as part of this tobacco rule. The agency intends, however, to send letters that indicate that the agency believes that it could make the statutory findings necessary to issue notification orders under section 518(a) of the act to cigarette and smokeless tobacco manufacturers. As section 518(a) of the act requires, these consultation letters will offer tobacco companies an opportunity to consult with the agency about the necessity for, and specific requirements of, any notification orders before the agency issues any orders to the companies.

Because the education campaign will not be a requirement of this final rule, the agency need not respond to the many comments that it received concerning the proposed campaign. Nevertheless, because the agency intends to pursue implementation of an education campaign using the notification provision of section 518(a) of the act, the agency will respond briefly to comments that questioned the effectiveness and design of the proposed education campaign.

(1) The agency received comments questioning the effectiveness of other educational campaigns and the agency's use of these campaigns to support the position that a national educational campaign would be effective in helping reduce tobacco use among young people. Comments from the tobacco industry argued that studies cited by FDA are scientifically flawed and therefore that the agency overstated the likely effects of the provision. One industry comment argued that FDA misinterpreted a study by Simonich [251] (the Simonich study), cited in the preamble to the 1995 proposed rule to demonstrate that the media campaign conducted under the Fairness Doctrine (FD) reduced cigarette consumption by 6.2 percent (60 FR 41314 at 41327). The comment concluded that the data from the Simonich study indicated that the overall effect of the Fairness Doctrine was merely a 0.4 percent decline in per capita consumption.

FDA disagrees with the industry's interpretation of the Simonich study. The agency believes that the Simonich study results, correctly interpreted, indicate that the FD education campaign reduced per capita cigarette consumption an average of 4.5 percent, [252] that is, a 4.5 percent reduction in consumption over the period of time over which the FD was in effect for entire quarters. Thus, the FD education campaign did play an important role in reducing per capita cigarette consumption.

(2) Comments also questioned the effectiveness of education programs cited by the agency. The tobacco industry's comment argued that California's $26 million multi-year media campaign actually confirmed that televised education campaigns do not influence youth smoking. Further, the comment stated that it was not possible to say what impact, if any, a national media campaign's introduction or termination had on consumption in Greece because Greece's educational television and radio advertising campaign was only one element of an overall education campaign.

With regard to the California media campaign, FDA notes that this campaign was directed to adults, not young people. Moreover, the media campaign was countered by increased per capita spending by the tobacco industry in the types of imagery-based advertising that influences children and adolescents. Therefore, the agency would have expected the media campaign to have had a greater negative impact on tobacco use by adults than by children and

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[251] Simonich, W. L., "Government Antismoking Policies," Peter Lang Publishing, Inc., 1991.

[252] Simonich modeled the effect of the FD as: % Δ Consumption = $-0.063(X_t + .464162X_{t-1} + .464162^2X_{t-2} + .464162^3X_{t-3})$ where X_t represents antismoking advertising expenditures in quarter t and -0.063 is the coefficient for the FD stock variable obtained from the analysis (*Id.*, p. 153). FDA used Simonich's model and his "Estimated Fairness Doctrine Real Advertising Expenditure per Capita 14+" data series (*Id.*, pp. 250, and 259-260) to calculate the quarterly percent reduction in per capita cigarette consumption from March 1967 through April 1970. The average percent reduction in consumption for this period was 4.5 percent.

The 1995 proposed rule provided a 90-day comment period (extended to 144 days in the Federal Register of October 16, 1995, 60 FR 53560). As discussed previously, the revised burden hour estimates in the final rule are based partially on comments received.

The information collection provisions in the proposed rule were approved under OMB no. 0910–0312. Because of changes made since the proposed rule, FDA has submitted the information collection provisions of the final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule.

XVII. Congressional Review

This final rule has been determined to be a major rule for purposes of 5 U.S.C. 801 *et seq.*, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). FDA is submitting the information and reports as required by that statute.

List of Subjects

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 804

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 897

Advertising, Cigarettes, Labeling, Sale and distribution, Smokeless tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 801, 803, 804, 807, and 820 are amended and a new part 897 is added as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.126 is added to subpart D to read as follows:

§ 801.126 Exemptions for cigarettes and smokeless tobacco.

Cigarettes and smokeless tobacco as defined in part 897 of this chapter are exempt from section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act.

PART 803—MEDICAL DEVICE REPORTING

3. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

4. Section 803.19 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 803.19 Exemptions, variances, and alternative reporting requirements.

* * * * *

(f) Manufacturers as defined in part 897 of this chapter shall submit medical device reports concerning cigarettes and smokeless tobacco under this part only for serious adverse events that are not well-known or well-documented by the scientific community, including events related to contamination, or a change in any ingredient or any manufacturing process.

(g) User facilities are exempt from submitting medical device reports concerning cigarettes and smokeless tobacco under this part.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

5. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

6. Section 804.25 is amended by adding a new paragraph (c) to read as follows:

§ 804.25 Reports by distributors.

* * * * *

(c) Distributors as defined in part 897 of this chapter shall submit medical device reports concerning cigarettes and smokeless tobacco under this part only for adverse events related to contamination.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

7. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

8. Section 807.65 is amended by adding a new paragraph (j) to read as follows:

§ 807.65 Exemptions for device establishments.

* * * * *

(j) Distributors of cigarettes or smokeless tobacco as defined in part 897 of this chapter.

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

9. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: Secs. 501, 502, 515, 518, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e, 360h, 360i, 360j, 371, 374).

10. Section 820.1 is amended by adding and reserving new paragraph (e) and adding new paragraph (f) to read as follows:

§ 820.1 Scope.

* * * * *

(c) [Reserved]

(f) This part does not apply to distributors of cigarettes or smokeless tobacco as defined in part 897 of this chapter.

11. New part 897 is added to read as follows:

PART 897—CIGARETTES AND SMOKELESS TOBACCO

Subpart A—General Provisions

Sec.

897.1 Scope.
897.2 Purpose.
897.3 Definitions.

Subpart B—Prohibition of Sale and Distribution to Persons Younger Than 18 Years of Age

897.10 General responsibilities of manufacturers, distributors, and retailers.
897.12 Additional responsibilities of manufacturers.
897.14 Additional responsibilities of retailers.
897.16 Conditions of manufacture, sale, and distribution.

Subpart C—Labels

897.24 Established names for cigarettes and smokeless tobacco.
897.25 Statement of intended use and age restriction.

Subpart D—Labeling and Advertising

897.30 Scope of permissible forms of labeling and advertising.
897.32 Format and content requirements for labeling and advertising.
897.34 Sale and distribution of nontobacco items and services, gifts, and sponsorship of events.

Authority: Secs. 502, 510, 518, 519, 520, 701, 704, 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360h, 360i, 360j, 371, 374, 393).

Subpart A—General Provisions

§ 897.1 Scope.

(a) This part sets out the restrictions under the Federal Food, Drug, and Cosmetic Act (the act) on the sale, distribution, and use of cigarettes and smokeless tobacco that contain nicotine.

(b) The failure to comply with any applicable provision in this part in the sale, distribution, and use of cigarettes and smokeless tobacco renders the product misbranded under the act.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of Title 21, unless otherwise noted.

§ 897.2 Purpose.

The purpose of this part is to establish restrictions on the sale, distribution, and use of cigarettes and smokeless tobacco in order to reduce the number of children and adolescents who use these products, and to reduce the life-threatening consequences associated with tobacco use.

§ 897.3 Definitions.

(a) *Cigarette* means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a)(1) of this section.

(b) *Cigarette tobacco* means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements pertaining to cigarettes shall also apply to cigarette tobacco.

(c) *Distributor* means any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for the purposes of this part.

(d) *Manufacturer* means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product.

(e) *Nicotine* means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl)pyridine or $C_{10}H_{14}N_2$, including any salt or complex of nicotine.

(f) *Package* means a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(g) *Point of sale* means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(h) *Retailer* means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this part.

(i) *Smokeless tobacco* means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

Subpart B—Prohibition of Sale and Distribution to Persons Younger Than 18 Years of Age

§ 897.10 General responsibilities of manufacturers, distributors, and retailers.

Each manufacturer, distributor, and retailer is responsible for ensuring that the cigarettes or smokeless tobacco it manufactures, labels, advertises, packages, distributes, sells, or otherwise holds for sale comply with all applicable requirements under this part.

§ 897.12 Additional responsibilities of manufacturers.

In addition to the other responsibilities under this part, each manufacturer shall remove from each point of sale all self-service displays, advertising, labeling, and other items that the manufacturer owns that do not comply with the requirements under this part.

§ 897.14 Additional responsibilities of retailers.

In addition to the other requirements under this part, each retailer is responsible for ensuring that all sales of cigarettes or smokeless tobacco to any person comply with the following requirements:

(a) No retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age;

(b)(1) Except as otherwise provided in § 897.16(c)(2)(i) and in paragraph (b)(2) of this section, each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age;

(2) No such verification is required for any person over the age of 26;

(c) Except as otherwise provided in § 897.16(c)(2)(ii), a retailer may sell cigarettes or smokeless tobacco only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine);

(d) No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size defined in § 897.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use; and

(e) Each retailer shall ensure that all self-service displays, advertising, labeling, and other items, that are located in the retailer's establishment and that do not comply with the requirements of this part, are removed or are brought into compliance with the requirements under this part.

§ 897.16 Conditions of manufacture, sale, and distribution.

(a) *Restriction on product names.* A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on January 1, 1995.

(b) *Minimum cigarette package size.* Except as otherwise provided under this section, no manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

(c) *Vending machines, self-service displays, mail-order sales, and other "impersonal" modes of sale.* (1) Except as otherwise provided under this section, a retailer may sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays.

(2) Exceptions. The following methods of sale are permitted:

(i) Mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail; and

(ii) Vending machines (including vending machines that sell packaged, single cigarettes) and self-service displays that are located in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

(d) *Free samples.* No manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes or smokeless tobacco.

(e) *Restrictions on labels, labeling, and advertising.* No manufacturer, distributor, or retailer may sell or distribute, or cause to be sold or distributed, cigarettes or smokeless tobacco with labels, labeling, or advertising not in compliance with subparts C and D of this part, and other applicable requirements.

Subpart C—Labels

§ 897.24 Established names for cigarettes and smokeless tobacco.

Each cigarette or smokeless tobacco package shall bear, as provided in section 502 of the act, the following established name: "Cigarettes", "Cigarette Tobacco", "Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff", or "Dry Snuff", whichever name is appropriate.

§ 897.25 Statement of intended use and age restriction.

Each cigarette or smokeless tobacco package, that is offered for sale, sold, or otherwise distributed shall bear the following statement: "Nicotine-Delivery Device for Persons 18 or Older".

Subpart D—Labeling and Advertising

§ 897.30 Scope of permissible forms of labeling and advertising.

(a)(1) A manufacturer, distributor, or retailer may, in accordance with this subpart D, disseminate or cause to be disseminated advertising or labeling which bears a cigarette or smokeless tobacco brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification, in newspapers; in magazines; in periodicals or other publications (whether periodic or limited distribution); on billboards, posters, and placards; in nonpoint-of-sale promotional material (including direct mail); in point-of-sale promotional material; and in audio or video formats delivered at a point-of-sale.

(2) A manufacturer, distributor, or retailer intending to disseminate, or to cause to be disseminated, advertising or labeling for cigarettes or smokeless tobacco in a medium that is not listed in paragraph (a)(1) of this section, shall notify the agency 30 days prior to the use of such medium. The notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by persons younger than 18 years of age. The manufacturer, distributor, or retailer shall send this notice to the Division of Drug Marketing, Advertising, and Communications, 5600 Fishers Lane (HFD–40), rm. 17B–20, Rockville, MD 20857.

(b) No outdoor advertising for cigarettes or smokeless tobacco, including billboards, posters, or placards, may be placed within 1,000 feet of the perimeter of any public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds, or basketball courts), elementary school, or secondary school.

(c) This subpart D does not apply to cigarette or smokeless tobacco package labels.

§ 897.32 Format and content requirements for labeling and advertising.

(a) Except as provided in paragraph (b) of this section, each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for cigarettes or smokeless tobacco shall use only black text on a white background. This section does not apply to advertising:

(1) In any facility where vending machines and self- service displays are permitted under this part, provided that the advertising is not visible from outside the facility and that it is affixed to a wall or fixture in the facility; or

(2) Appearing in any publication (whether periodic or limited distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication. For the purposes of this section, an adult publication is a newspaper, magazine, periodical, or other publication:

(i) Whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and

(ii) That is read by fewer than 2 million persons younger than 18 years of age as measured by competent and reliable survey evidence.

(b) Labeling and advertising in an audio or video format shall be limited as follows:

(1) Audio format shall be limited to words only with no music or sound effects.

(2) Video formats shall be limited to static black text only on a white background. Any audio with the video shall be limited to words only with no music or sound effects.

(c) Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising permitted under this subpart D, shall include, as provided in section 502 of the act, the product's established name and a statement of its intended use as follows: "Cigarettes—A Nicotine-Delivery Device for Persons 18 or Older", "Cigarette Tobacco—A Nicotine-Delivery Device for Persons 18 or Older", or "Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff" or "Dry Snuff", whichever is appropriate for the product, followed by the words "A Nicotine-Delivery Device for Persons 18 or Older".

§ 897.34 Sale and distribution of nontobacco items and services, gifts, and sponsorship of events.

(a) No manufacturer and no distributor of imported cigarettes or smokeless tobacco may market, license, distribute, sell, or cause to be marketed, licensed, distributed, or sold any item (other than cigarettes or smokeless tobacco) or service, which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

(b) No manufacturer, distributor, or retailer may offer or cause to be offered any gift or item (other then cigarettes or smokeless tobacco) to any person

purchasing cigarettes or smokeless tobacco in consideration of the purchase thereof, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

(c) No manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco. Nothing in this paragraph prevents a manufacturer, distributor, or retailer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or team or entry, in the name of the corporation which manufactures the tobacco product, provided that both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995, and that the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

Dated: August 22, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

NOTE: The following Annex will not appear in the Code of Federal Regulations.

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Tobacco or health

A global status report

The World Health Organization was established in 1948 as a specialized agency of the United Nations serving as the directing and coordinating authority for international health matters and public health. One of WHO's constitutional functions is to provide objective and reliable information and advice in the field of human health, a responsibility that it fulfils in part through its extensive programme of publications.

The Organization seeks through its publications to support national health strategies and address the most pressing public health concerns of populations around the world. To respond to the needs of Member States at all levels of development, WHO publishes practical manuals, handbooks and training material for specific categories of health workers; internationally applicable guidelines and standards; reviews and analyses of health policies, programmes and research; and state-of-the-art consensus reports that offer technical advice and recommendations for decision-makers. These books are closely tied to the Organization's priority activities, encompassing disease prevention and control, the development of equitable health systems based on primary health care, and health promotion for individuals and communities. Progress towards better health for all also demands the global dissemination and exchange of information that draws on the knowledge and experience of all WHO's Member countries and the collaboration of world leaders in public health and the biomedical sciences.

To ensure the widest possible availability of authoritative information and guidance on health matters, WHO secures the broad international distribution of its publications and encourages their translation and adaptation. By helping to promote and protect health and prevent and control disease throughout the world, WHO's books contribute to achieving the Organization's principal objective – the attainment by all people of the highest possible level of health.

Tobacco or health

A global status report



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[1] The following abbreviations are used in these profiles:
GDP: gross domestic product
real GDP per capita (PPP$): real gross domestic product per capita expressed in terms of parity purchasing power.

RETTES ARE ADDICTIVE", "SMOKING CAUSES HEART DISEASE" and "TOBACCO SMOKE CAUSES FATAL LUNG DISEASE IN NON-SMOKERS";

— messages displayed in black-on-white or white-on-black format, occupying 20% or more of the largest surfaces of packages of tobacco products.

Progressive elimination of tobacco advertising

A number of countries have successfully passed laws to ban all or nearly all forms of tobacco advertising as part of comprehensive tobacco control measures. Frequently, however, further legislative action has been necessary to tighten the restrictions imposed, as these are often circumvented by the use of indirect advertising and other means. A French law of 1976 banned tobacco advertisements, but these were simply replaced by advertisements for matches and lighters bearing the names, trademarks and logos of tobacco products. Under a 1991 revision of the law, the ban on all direct and indirect forms of tobacco advertising was made much more explicit, only limited and explicit exceptions at points of purchase being permitted. Other countries have also had to revise their legislation before the ban on tobacco advertising could be effectively enforced.

It has been reported that, as of 1990, 27 countries had banned tobacco advertising completely or almost completely (*14*). Since then, however, the number has declined to 18. While Australia and Kuwait recently introduced bans on tobacco advertising, bans that had previously been in force became inoperative in Canada and the newly independent states of Central and Eastern Europe. However, Canada and many Central and Eastern European countries are considering draft legislation to re-establish them.

Experience with partial bans on tobacco advertising has shown them to be less effective than originally believed. For example, tobacco advertisements were banned from radio and television in the United States in the early 1970s, but later analysis showed that total tobacco advertising volume and expenditure continued to increase. Advertisements were simply transferred to other media.

Successful complete or almost complete bans on tobacco advertising are characterized by:

— general prohibition (with the limited exceptions mentioned below) of all use of names of tobacco products, trademarks, and logos in all advertising, whether for tobacco products or non-tobacco goods and services, or for sporting or cultural events, institutions, organizations or participants;

— general prohibition of the use of tobacco product trade names, trademarks, and logos, except on tobacco products themselves;

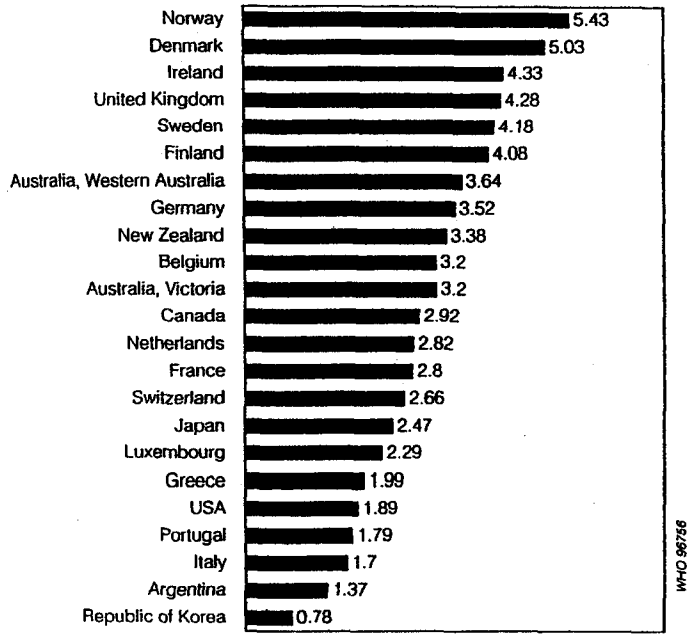
— prohibition of the use of games, contests, and prizes and the free distribution of cigarettes by tobacco importers, manufacturers, wholesalers, and retailers or their agents;

— exemption from the general prohibitions of only specific and limited forms of advertising, e.g. signs of specifically limited size, number, and content at points of purchase for tobacco products.

Financial measures to discourage tobacco consumption

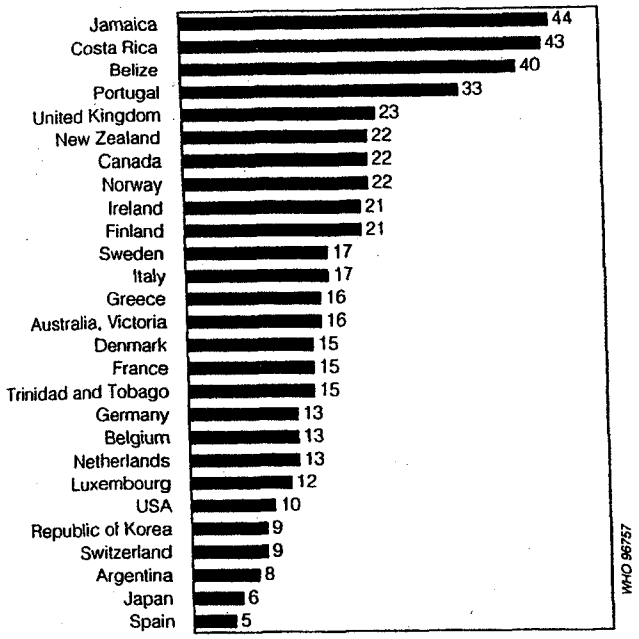
A number of studies in several countries have shown that, for every 10% increase in the price of tobacco products, consumption can be expected to decline by 2–8%. Price has been found to have an even stronger effect in reducing tobacco consumption among two key target groups — adolescents and people of lower socioeconomic status. While the size of the effect may vary, it has been clearly demonstrated that raising the price of tobacco products does reduce tobacco consumption. Therefore, regular increases in the price of tobacco products are of critical importance in a comprehensive tobacco control strategy.

Cigarette prices vary widely. For the selected countries for which 1995 information was available (see Fig. 9), the price of 20 cigarettes varied seven-fold from the highest to the lowest ranking country. Comparative price data can be misleading, however, because of the variation in wage and price structures from one country to



Source: Non-smokers' Rights Association, Ottawa, Canada

Fig. 9 Average price of 20 cigarettes in US$, selected countries, 1995



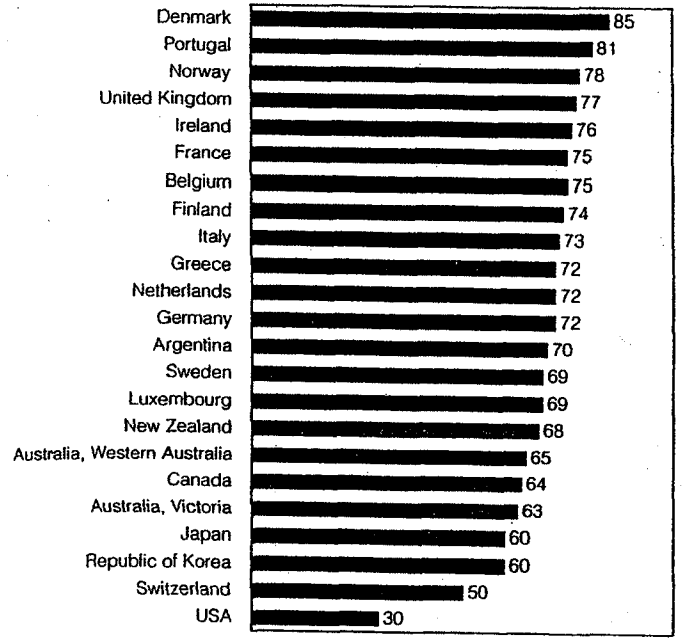
Source: WHO estimates

Fig. 10 Minutes of labour at the average industrial wage required to earn the price of a packet of 20 cigarettes, selected countries, early 1990s

another. These factors can be controlled by expressing the price of cigarettes, not in dollars, but in the minutes of labour required to earn the price of a packet of 20 cigarettes, as shown in Fig. 10 for selected countries. Information of this type permits more meaningful international comparisons of the price of tobacco products. It is to be hoped that these data will be collected for a larger number of countries in the future.

When prices and taxes vary a great deal among countries, one possible result is an increase in the smuggling of cigarettes. In 1994, it was estimated that world cigarette exports exceeded imports by 282 000 million cigarettes, about 5% of world production. Although there are several potential explanations, cigarette smuggling is a major contributor to this excess of exports. One method of limiting smuggling is to seek greater harmonization of cigarette prices and taxes. As shown in Fig. 11, a number of countries impose taxes amounting to 60–80% of the price. Price and tax harmonization among countries is a key element in controlling international smuggling of tobacco products.

Tobacco taxes can serve many useful purposes. In particular, regular increases in tobacco taxes such that tobacco prices increase at rates faster than that of the general growth in prices and incomes both reduce consumption and increase government revenue. As previously mentioned, many countries successfully use part of the



Source: Non-smokers' Rights Association, Ottawa, Canada

Fig. 11 Tax as a percentage of the price of 20 cigarettes, selected countries, 1995

tobacco taxation revenue to offset the cost of operating their comprehensive tobacco control programmes. In Finland, 0.45% of tobacco taxation revenue is allocated to tobacco control activities. In several Australian states, tobacco taxes are used to finance health promotion foundations. A similar foundation exists in New Zealand, funded from general taxation revenue. One of the functions of these foundations is to sponsor sports and cultural events formerly sponsored by tobacco companies. In other countries, such as Nepal, Portugal, Romania, and Switzerland, part of the tobacco tax revenue is used to finance specific health or social programmes.

Countries with long-standing comprehensive tobacco control policies

Finland, Iceland, Norway, Portugal, and Singapore all have comprehensive tobacco control policies that have been gradually developed since the 1970s by progressively adding or improving tobacco control measures. In the 1990s, measures to further improve protection from involuntary exposure to tobacco smoke were introduced in Finland, Norway, and Singapore. In addition, Finland and Norway have adopted new legislative provisions to make it clear that existing bans on tobacco advertising also apply to indirect advertising.

Countries with recently implemented comprehensive tobacco control policies

Australia (most states), France, New Zealand, Sweden, and Thailand have more recently implemented truly comprehensive tobacco control programmes embracing most or all of the nine elements called for by resolution WHA39.14 of the 1986 World Health Assembly (see p. 49).

Australia

As a consequence of Australia's federal system of government, responsibility for tobacco control is split between the federal and state governments, the states bearing a large part of the responsibility. Accordingly, tobacco control measures differ in different parts of the country. With some variations, they have been implemented in the most populous states, but not yet in some of the more sparsely populated ones. Victoria, South Australia, and Western Australia were the first states to adopt comprehensive tobacco control policies. In conjunction with measures introduced by the Federal Government, smoking-control measures in Australia generally restrict smoking in transport, public places, health care facilities and government buildings to just a few smoking areas, or ban it altogether. Strong health messages, together with information on the tar and nicotine content, are required on packages of cigarettes. Most forms of tobacco advertising, except at the point of purchase, are banned.

A notable feature of tobacco control in Australia is the creation of health promotion foundations, with the objective of sponsoring sports and cultural events formerly sponsored by tobacco companies. Pioneered by the state of Victoria and emulated by other states, these foundations are well funded by dedicated surtaxes on tobacco products. Education and promotional activities to encourage a smoke-free life have been considerably extended through various activities financed by these funds. Smoking prevalence has declined in Victoria, South Australia, and Western Australia, the three Australian states with the longest experience of comprehensive tobacco control programmes.

In 1992, the effectiveness of proposals for new health warnings was subjected to rigorous examination in Australia (*16*). The study, financed in part by money from tobacco taxes through a state health promotion foundation, found that warnings could be effective in discouraging consumption if they were strong and varied, were prominently displayed on the front of the package, at the top, and were accompanied by a more detailed and varied explanation of some of the health hazards of tobacco use on the back of the package.

The Australian Council of Health Ministers endorsed this report and, on its recommendation, regulations were adopted to require such warnings. Australia now has some of the world's strongest and most effective health warnings on packages of cigarettes.

France

Information and education programmes on smoking have been intensified in France, as have smoking cessation programmes. Tobacco taxes have also been increased regularly, and in 1991 France adopted a comprehensive tobacco control law. This law, which was phased in and came fully into force in 1993, bans tobacco advertising except at the point of sale, requires the composition of tobacco products and tar and nicotine yields to be stated on the label, fixes maximum tar yields, and requires strong health warnings on both the front and the back of the package. Moreover, the law also controls smoking in transport, public places, and workplaces by either banning it altogether or limiting it to just a few smoking areas. A nongovernmental organization, the National Committee Against Tobacco Use (CNCT), has been especially vigilant in encouraging strict observance of the tobacco advertising ban. Early attempts to circumvent the law prompted the CNCT to bring charges against the alleged violators, resulting in a number of successful convictions which, in turn, have led to near-total compliance with the strict ban on direct and indirect tobacco advertising. By 1995, tobacco consumption, measured in weight of tobacco products sold, had fallen by 7.3% since 1991 when the comprehensive tobacco control law was adopted (*17*).

New Zealand

In New Zealand, the Smoke-Free Environments Act came into force in 1990. This comprehensive tobacco control law bans most forms of tobacco advertising, and requires varied health warnings and a statement of the tar and nicotine content on cigarette packages. While existing tobacco sponsorships were permitted to run until 1993, the Act also created the Health Sponsorship Council, funded from general Government revenues, with the function of sponsoring sports and cultural events, thereby replacing sponsorships by tobacco companies. The law also requires all employers to adopt policies on smoking in the workplace. While the Act allows considerable latitude in the content of such smoking policies, many employers have now chosen to ban smoking in the workplace completely. The Act also bans smoking on domestic flights and flights to Australia. Smoking is also banned in intercity buses, and restricted to a few smoking areas on trains. Similarly, smoking in many public places and health care institutions is either banned or restricted to only a few smoking areas.

The Act has been complemented by intensified health promotion and health education campaigns in favour of a smoke-free life, as well as by tax increases such that the price of cigarettes has increased at a rate greater than the rate of inflation. After an extensive evaluation of the country's comprehensive tobacco control policies, the investigators responsible concluded that one component, the ban on tobacco advertising, had caused a one-off permanent 8% reduction in tobacco use (*18*).

In 1991, the year following the passage of the Smoke-Free Environments Act, annual cigarette consumption per adult fell by 8.4% to 1791 cigarettes, a 71-year low, and the second-lowest level among countries of the Organisation for Economic

Co-operation and Development (OECD). In the same year smoking prevalence fell by 10%. There has also been a strong cumulative effect of the gradual improvement in New Zealand's comprehensive tobacco control policies. Adult per capita tobacco consumption declined by 36% from 1984 to 1991.

Sweden

Sweden began funding health education and health information campaigns against tobacco use as early as 1964 and was also one of the first countries to require rotating health warnings on cigarette packages, which were introduced in 1977. A new Tobacco Control Act was adopted in 1994. This restricted smoking in public places and workplaces, required health warnings on packages, set maximum limits for tar, and banned most forms of direct tobacco advertising. However, indirect advertising by the use of tobacco trade marks on non-tobacco goods and services is still permitted.

Thailand

It is especially noteworthy that Thailand has adopted a comprehensive tobacco control programme because it has done so in the face of a large number of adverse factors. Thailand is a developing country with many other serious health problems that compete for priority attention. It is both a tobacco growing and tobacco manufacturing country, and tobacco use is widespread. Moreover, Thailand, like its South-East Asian neighbours, was threatened with trade sanctions if the domestic market was not opened up to the import of American cigarettes.

Thailand resisted this threat. Eventually the matter was resolved by a panel of the General Agreement on Tariffs and Trade, which ruled that the ban on imports was not justified but that, in the interests of protecting public health, a number of other tobacco control measures could be undertaken. Although the ban on imports of foreign cigarettes has been lifted, public information campaigns against smoking have been intensified. Other smoking-control measures have been consolidated into two new laws that are the keystones of a new comprehensive national tobacco control policy.

The 1992 Non-smokers' Health Protection Act authorizes the Ministry of Public Health to designate certain public places as non-smoking areas. Owners of establishments that fail to designate such areas are liable to a fine, as are individuals who smoke in non-smoking areas. Regulations to specifically designate non-smoking areas are under development in the Ministry of Public Health.

The 1992 Tobacco Products Control Act prohibits all forms of cigarette advertising and sales promotion, including free samples, price reductions, and gift and coupon schemes. Tobacco product facsimiles are banned, as is the display of tobacco brand names on other products, as well as in advertisements for other goods and services. Only live television shows from outside the country and foreign magazines are exempted from the ban. The Act and related regulations require very prominent rotating health warnings on cigarette packages. Manufacturers and importers are required to disclose tobacco product ingredients to the Ministry of Public Health.

Sales from vending machines are prohibited, as are sales to persons under 18 years of age.

However, Government officials will have to be especially vigilant to see that the new legislation is respected. Five major importers are competing for a share of Thailand's lucrative tobacco market. As of the mid-1990s, legal imports had 1–3% of the market, while the Thai Tobacco Monopoly had 90%, and imported contraband cigarettes accounted for the remaining 7–9%. Smuggling continues because of differences in taxation between domestic and imported cigarettes. An excise tax of 55% of the retail price is applied to both, but an additional tax of 30% of the retail price is imposed on imported cigarettes.

Enforcement officials from several Government departments are responsible for ensuring that the new restrictions on tobacco advertising and marketing, and on smoking in public places, are respected. If they are successful, Thailand may soon begin to enjoy the public health benefits that flow from declining tobacco consumption.

Effectiveness of comprehensive tobacco control policies

For the most part, the countries with comprehensive tobacco control policies have tobacco consumption rates that have remained low and stable or are declining still further. The effectiveness of advertising bans in four countries, namely Canada (during the early 1990s when its advertising ban was in effect), Finland, New Zealand and Norway, were the subject of detailed analysis (*19*). It was concluded that:

"Though there are qualifications (for example, the bans in Canada and New Zealand are relatively recent and so may not yet have had their full impact), the current evidence available on these four countries indicates a significant effect. In each case the banning of advertising was followed by a fall in consumption which cannot reasonably be attributed to other factors."

The same report (*19*) also examined year-to-year variations in tobacco advertising expenditures within countries and concluded that "The balance of evidence thus supports the conclusion that advertising does have a positive effect on consumption."

Another study, notable for its scope, used multiple regression techniques to evaluate the effect of advertising restrictions, price and income on tobacco consumption in 22 OECD countries from 1960 to 1986 (*20*). Above threshold levels, both price relative to income and advertising restrictions were found to be significant in decreasing tobacco consumption. Moreover, the most comprehensive tobacco control programmes that included both high prices for tobacco products and comprehensive bans on tobacco advertising, together with stringent health warning labelling requirements for cigarette packages, had the strongest effect on reducing tobacco consumption. The authors estimated that a ban on tobacco advertising, together with strong and varied health warnings on packages and a 36% increase in real price, would have reduced tobacco consumption by 13.5% in 1986, had any of the OECD countries studied taken such measures in that year.

This study, both by its scientific rigour and by its comprehensive inclusion of virtually all available international data on the question, lends scientific weight to the assertion that national tobacco control programmes that include at least progressively increasing tobacco prices through taxation, strict controls on tobacco advertising, and strong warnings on packages of tobacco products are effective in preventing and discouraging tobacco use.

Several countries now have comprehensive tobacco control policies of the kind recommended by the World Health Assembly. Through the use of scientific evaluation techniques, the effectiveness of such policies has been demonstrated for all OECD countries, as well as individually for several countries that have implemented policies of this type. The positive experience of these countries with comprehensive tobacco control policies, and the repeated quantitative demonstrations of their effectiveness, should be further encouragement to those countries that are currently contemplating the implementation of such policies.

Conclusions

This publication is intended to serve as a resource and reference work for those concerned with epidemiological surveillance. More importantly, it is hoped that this book will reinforce the need for urgent tobacco control action, and facilitate and encourage strong and sustainable tobacco control measures in all Member States.

WHO has recommended that all Member States should implement comprehensive tobacco control policies and programmes that include at least the following components:

— continuous monitoring of the tobacco epidemic;

— measures to prevent children from becoming addicted to tobacco;

— measures to protect people from involuntary exposure to tobacco smoke;

— effective health promotion, health education, and smoking-cessation programmes;

— prominent health warnings on tobacco product packaging;

— progressive elimination of tobacco advertising;

— the use of financial measures, such as higher tobacco taxes, to discourage tobacco consumption.

There is an urgent need for all countries to take action now to implement tobacco control policies and programmes based on these principles. Only when they do so will significant progress be made in combating what has become a truly global epidemic.

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There is an urgent need for all countries to take action now to implement tobacco control policies and programmes based on these principles. Only when they do so will significant progress be made in combating what has become a truly global epidemic.



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TABAC OU SANTé

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Edited by:
D Yach &
S Harrison

FINAL CONFERENCE RECOMMENDATIONS FOR TOBACCO CONTROL IN AFRICA

Data Collection

* Researchers should undertake to provide local data on tobacco use and its health risks; local case control studies (to estimate relative risks) and selected prospective studies.

* All countries in Africa should establish and maintain national cancer registries in order to ensure the collection of accurate and complete data on the incidence and prevalence of cancer mortality in relation to tobacco use.

Trade

* An international agency should undertake a thorough investigation of 30 African countries that have a negative trade balance because of the importation of tobacco.

* The practice of importing tobacco products for resale and export to neighbouring countries should be prohibited by African governments.

* No tobacco products should be sold in duty-free shops in Africa.

* The smuggling of tobacco products should be stopped by the action of enforcement agencies on a regional basis.

Agricultural Diversification

* Every African country with substantial tobacco production should consider steps to decrease tobacco production and to encourage agricultural diversification with the goal of replacing tobacco production by increased production of foodcrops.

Tobacco Taxation

All African countries should examine the pricing of tobacco products to determine whether the price of tobacco has kept pace with the rate of inflation and, if not, that the tax on tobacco is adjusted to reduce affordibility of tobacco products.

Tobacco and Development

* To promote health and development in Africa, increased financial support should be given by development agencies (the World Bank, the Africa Development Bank and other development agencies), and trade and agriculture ministries, to encourage the tobacco growers in Africa to diversify.

* Countries need to ensure that the expansion of tourism in Africa is not associated with increased promotion and use of tobacco.

Information, Education and Publicity

* Full access to all available international tobacco control information should be provided through a system encompassing the ministry of health, the WHO representative in the country, the NGOs and the academic research sector. Access should be provided with Africa Medicus and Globalink.

* National tobacco control policies should be designed to reach high-risk individuals, including youth (in and out of school), women and workers.

* All African countries should assign priority to prevention of tobacco use by women through mobilising women's organisations, emphasising the health hazards of tobacco in maternal and child health services, and incorporating anti-tobacco education and information into community development activities.

* All countries should require the provision of educational modules on tobacco and health in primary and secondary schools and information on tobacco and health should be integrated into the general curriculum.

* All schools should be totally smoke free.

* Full information on the health hazards of tobacco use should be presented on the freedom radio network accessible to Francophone African Countries.

Legislation

* All African countries should review their tobacco control legislation with the goal of banning all advertising and sponsorship by the tobacco industry; providing smoke-free public and workplaces; preventing smoking by young people and deterring tobacco use by raising taxes on tobacco products.

* All African countries should undertake to strengthen the implementation and enforcement of tobacco control legislation.

* African countries should reject the substitution of voluntary agreements with the tobacco industry for effective control legislation because voluntary agreements are difficult to enforce and easy to circumvent.

Integration of Tobacco Control in Primary Health Care

Tobacco control programmes should be integrated into primary health care programmes.

Interim Tobacco Control Consultation for Africa

An Interim Tobacco Control Commission for Africa should be created to monitor and assist the implementation of the recommendations of the All Africa Conference on Tobacco Control and report on progress to the World Conference on Tobacco and Health in Paris. The members of this Commission should include the WHO Regional Office for Africa; the organising committee of the All Africa Conference; a representative of the UICC, Africa office; a representative of Africa Women Against Tobacco; a representative of the Association of Medical Schools in Africa; a representative of the tobacco control movement in Francophone countries; and representatives selected to ensure geographical balance on the Commission.

International Agencies

All African countries and appropriate international agencies should encourage the building of human resource capacity for tobacco control. Training programmes in modern concepts of tobacco control should be established in existing public health training institutions.

Strategies for a Smoke-free World



Recommendations of the International Workshop on Smoking and Health to the International Council on Alcohol and Addictions

Strategies for a Smoke-free World

Recommendations of the International Workshop on Smoking and Health to the International Council on Alcohol and Addictions

Calgary, Alberta, Canada, 1985

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Organized by
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and
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In cooperation with
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At the request of
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Lausanne, Switzerland

Edited by Peggy Edwards
and Jan Skirrow

The opinions expressed in this document do not necessarily reflect the policies of the organizations involved in conducting the workshop.

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Revision 2

Introduction

In 1980 the Board of Directors of the International Council on Alcohol and Addictions (ICAA) concluded that tobacco, because of its highly addictive properties, should be included within the Council's mandate. However, the ICAA was able to devote few resources to tobacco issues prior to the 34th International Congress on Alcoholism and Drug Dependence,[1] held in Calgary, Canada, in August 1985. The 34th Congress provided the opportunity to initiate a more active program.

With this in mind, a four day International Workshop on Smoking and Health was convened immediately prior to the 34th Congress. It was organized at the request of the ICAA by the Health Promotion Directorate of Health and Welfare Canada and the Alberta Alcohol and Drug Abuse Commission, in cooperation with the World Health Organization Program on Smoking and Health. Recognized experts from around the world were invited to participate in the Workshop (See *Participants in the Workshop*).

The Workshop took the approach that tobacco is as addictive as any of the other substances with which the ICAA is concerned. The addictive properties of tobacco cause people to continue smoking, even when they recognize the health consequences and would like to stop. This point, which has been underemphasized in the past, has both policy and program implications. In policy terms, it raises the ethical question of whether or not governments should allow multinational conglomerates to seek new markets for tobacco products. In program terms, it highlights the critical importance of prevention and the likely difficulty of cessation. Nevertheless, the Workshop considered it important to emphasize that millions of people can and do quit smoking, most of them on their own. Unfortunately, many more do not.

Tobacco's addictive properties legitimize the involvement of the ICAA with tobacco issues. Moreover, these properties lend further urgency to the need for intervention by specialized addiction agencies. Since few people smoke in moderation, there are inevitable and usually serious health consequences for virtually all users. Non-users exposed to tobacco smoke are also at risk.

This document contains the Recommendations of the International Workshop on Smoking and Health to the ICAA Board of Directors. In addition, a general report of the Workshop discussions and a collection of selected resource papers prepared specifically for the workshop are separately available (See *Related Documents*).

Recommendations To ICAA

Participants in the International Workshop on Smoking and Health welcome the decision by the ICAA to become actively involved in tobacco control. The ICAA, with its addiction perspective and impressive network of contacts, offers a significant opportunity to strengthen international efforts.

The fourteen recommendations that follow involve a significant new role for the ICAA in the tobacco field. Some can be initiated immediately; others suggest policy guidelines for future action. Four involve policy, seven concern strategy and three deal with research. Several state positions that the ICAA is asked to advocate in its relations with other bodies.

Policy Recommendations

1. The Workshop asks the ICAA to endorse the objectives and recommendations set out in the World Health Organization 1979 Expert Committee report *Controlling the Smoking Epidemic*,[2] which calls for, among other things, an end to all forms of tobacco promotion.

2. The ICAA is also asked to join the International Union Against Tuberculosis and l'Union Internationale Contre le Cancer in endorsing the recommendations of the World Health Organization 1983 Expert Committee report *Smoking Control in Developing Countries*.[3]

3. The ICAA should actively campaign for the adoption of comprehensive tobacco control programs, both nationally and internationally. In making this recommendation, the Workshop stresses the need to adopt a strong advocacy position for concerted political action.

4. It is recommended that the ICAA convene an advisory group to prepare a program of work that will concentrate its efforts in tobacco control. This group could build on this report[4] and design a plan of action that suits the capacity and network of the ICAA. The ICAA is also asked to widely publicize its involvement in the tobacco field.

Strategy Recommendations

5. The ICAA strategy should recognize the accomplishments of those already active in the field, and use its international position to strengthen their voice. To this end, the ICAA is asked to seek membership in the International Liaison Group on Smoking and Health.

6. The ICAA is asked to urge the World Health Organization to convene a summit meeting of non-governmental organizations concerned with tobacco control. This will provide an opportunity to further integrate anti-smoking efforts and to enlist the support of new allies such as international youth groups and amateur sport federations.

7. The ICAA is asked to urge the World Health Organization to match its commitment of resources to smoking and health with its expression of concern about the issue. This involves strengthening the headquarters program in Geneva, and establishing or expanding focal points in regional offices, especially those dealing with developing countries.

8. It is recommended that the ICAA urge other members of the United Nations family of organizations to adopt policies that will actively combat the cultivation and use of tobacco. Under no circumstances should organizations such as the Food and Agricultural Organization, the United Nations Conference on Trade and Development, or the World Bank assist any country to grow tobacco. Instead, they should encourage crop diversification and take steps to raise the awareness of Third World governments of the environmental and economic consequences of tobacco production. If we are to achieve "health for all", especially in the developing world, international institutions must use their consulting, economic and fiscal power to foster crop substitution, and introduce economic development that reduces the reliance on tobacco growing.

9. The ICAA should seek support from international and national aid agencies to encourage the development of training programs for coordinators in tobacco control. Establishment of focal points with well-trained staff is an essential starting point for developing countries.

10. It is recommended that the ICAA take a determined position on tobacco control and urge governments, other addiction agencies, and its own members to recognize that in establishing priorities, the consequences associated with tobacco use are at least comparable in their severity to alcohol and other drugs.

11. The Workshop recommends that the ICAA urge governments around the world to spend the equivalent of one percent of their tax revenue from tobacco on tobacco/health education. If necessary, tobacco taxes should be increased to cover this. Furthermore, the Workshop urges that each country allocate a portion of its tobacco tax revenue to an international fund that would support similar activities at the international level.

Research Recommendations

12. The Workshop recommends the assessment of alternative, economically-viable tobacco substitutes in countries with variable climatic and socio-economic conditions.

13. The Workshop recommends that a comprehensive cost-benefit review of the issues in tobacco production and use be undertaken. The short-term gains associated with tobacco growing makes it understandable that countries needing jobs, tax revenue and foreign exchange turn to tobacco as a cash crop. However, these decisions ignore the long-term health, economic and environmental consequences. These need to be brought to the fore in a comprehensive study.

14. A program of targeted research is proposed. Such a program would involve the identification and characterization of addiction mechanisms, development of better measures of exposure to the constituents of tobacco and examination of the industry's strategies for expansion into new markets. These are practical and important avenues of exploration.

Conclusion

The Workshop accepts the epidemic consequences of tobacco use as an incontrovertable fact challenging world health. It recognizes that successful strategies exist — if the political will to put them in place can be asserted. The Workshop urges all countries of the world to actualize that will by initiating comprehensive programs in tobacco control.

The entrance of the ICAA to the field is a positive development. We look forward to the contribution that an experienced addiction agency can bring to the traditional strategic planning in tobacco control. We extend our appreciation for your support and offer these recommendations to the Board of Directors of the ICAA as you join the international challenge of tobacco control.

Footnotes

[1]The International Council on Alcohol and Addictions is an international non-governmental organization with consultative status Category II with the United Nations Economic and Social Council and is in official relations with the World Health Organization. Among its functions is the sponsorship of the International Congresses on Alcoholism and Drug Dependence. The 34th Congress was held in Calgary, Canada in August 1985. This Congress marked the 50th anniversary of these events.

[2]World Health Organization. *Controlling the Smoking Epidemic: Report of a WHO Expert Committee*. Technical Report Series No. 636 (Geneva: 1979).

[3]World Health Organization. *Smoking Control Strategies in Developing Countries: Report of a WHO Expert Committee*. Technical Report Series No. 695 (Geneva: 1983).

[4]Alberta Alcohol and Drug Abuse Commission. *Strategies for a Smoke-free World. A Report of the International Workshop on Smoking and Health* (Edmonton, 1985a).

Participants in the International Workshop on Smoking and Health, Calgary, Canada, 1985

Dr. Abdel Aziz
Deputy Director of General Health
Health, Special Education and Social Welfare
Government of Pakistan
C Block
Pakistan Secretariat
Islamabad, Pakistan

Ms. Bev Bell
Project Coordinator
Health Promotion Directorate
Health & Welfare Canada
Tunney's Pasture
Ottawa, Ontario, Canada
K1A 1B4

Dr. Kjell Bjartveit
Chairman, National Council on Smoking and Health
P.O. Box 8155, Department 0033
Oslo, Norway

Dr. Michael Daube
Executive Director
Health Promotion and Education
Health Department of Western Australia
60 Beaufort Street
Perth, Australia 6000

Mr. Ron Draper
Director General
Health Promotion Directorate
Health and Welfare Canada
4th Floor, Jeanne Mance Building
Tunney's Pasture
Ottawa, Ontario, Canada
K1A 1B4

Prof. D. Femi-Pearse
Department of Medicine
Lagos University Teaching Hospital
Private Mail Bag 12003
Lagos, Nigeria

Prof. W.F. Forbes
Faculty of Mathematics
University of Waterloo
Waterloo, Ontario, Canada
N2L 3G1

Dr. Richard Frecker
Head, Biomedical Research
Addiction Research Foundation
33 Russell Street
Toronto, Ontario, Canada
M5S 2S1

Dr. Takeshi Hirayama
Chief, Epidemiology
National Cancer Centre Research Institute
Tsukiji 5 Chome
Chuoko, Tokyo, Japan

Dr. R. Masironi
Coordinator, WHO Program on Smoking and Health
World Health Organization
1211, Geneva 27
Switzerland

Dr. Alfred McAlister
University of Texas
Centre for Health Promotion, Research and Development
P.0. Box 20036
Houston, Texas
77225, USA

Mr. Paul Melia
Acting Chief, Tobacco Unit
Health Promotion Directorate
Health and Welfare Canada
Tunney's Pasture
Ottawa Ontario, Canada
K1A 1B4

Dr. David Nostbakhen
Executive Director
Canadian Interfaith Network
Berkley Studios
315 Queen Street East
Toronto, Ontario, Canada
M5A 1S7

Dr. Mario Rigatto
Professor of Medicine
Federal University of Rio Grande do Sul
Chairman, Latin American Coordinating Committee on Smoking Control
Caixa Postal 1902
90 000 Porto Alegre
Brazil

Mr. Byron Rogers
Policy Analyst, Health Protection Branch
Bureau of Tobacco Control
Health and Welfare Canada
LCDC Building
Room 202
Tunney's Pasture
Ottawa, Ontario, Canada
K1A 0L2

Mr. Jan Skirrow
Executive Director
Alberta Alcohol and Drug Abuse Commission
6th Floor, 10909 Jasper Avenue
Edmonton, Alberta, Canada
T5J 3M9

Not in Attendance at Workshop

Dr. A.R. Al-Awadi
Minister of Public Health
Ministry of Public Health
Kuwait, Kuwait

Ms. Peggy Edwards
Tobacco Program Officer
Health Promotion Directorate
Health and Welfare Canada
Ottawa, Ontario, Canada
K1A 1B4

Dr. Ruth Roemer
School of Public Health
University of California
Los Angeles, California
90024 USA

Related Documents

1. Alberta Alcohol and Drug Abuse Commission. *Strategies for a Smoke-free World: A Report of the International Workshop on Smoking and Health* (Edmonton: 1986).

2. Alberta Alcohol and Drug Abuse Commission. *Strategies for a Smoke-free World: Selected Resource Documents* (Edmonton: Available August, 1986).

Both of these documents are available at a nominal charge from:

International Council on Alcohol and Addictions
Box 140, CH-1001
Lausanne, Switzerland or

Alberta Alcohol and Drug Abuse Commission
10909 Jasper Avenue
Edmonton, Alberta, Canada
T5J 3M9

Tobacco Use: An American Crisis

Final Conference Report And Recommendations From America's Health Community

Washington, DC
January 9-12, 1993

UNGO 93.09 C1/2

Tobacco Use: An American Crisis

Foreword

In only seven years, we will reach the date the US Department of Health and Human Services has set for a series of national health goals called "Healthy People 2000." The US Surgeon General has called for a "Smokefree Society by Year 2000." Looking ahead to that almost mystical date, members of the tobacco control community assembled in Washington, DC January 9-12, 1993 to discuss, plan, and issue a series of goals and objectives in twelve areas concerning tobacco and health.

Co-sponsored by the American Medical Association, the Centers for Disease Control and Prevention, the City of Hope National Medical Center, the Coalition on Smoking OR Health (the American Cancer Society, the American Heart Association, and the American Lung Association), the Memorial Sloan-Kettering Cancer Center, and the University of Texas M.D. Anderson Cancer Center, this conference represented a unique gathering of organizations and individuals concerned about tobacco use and its impact on health. Putting aside "turf" issues and differences in policy and priorities, over 200 participants were educated, stimulated, and challenged by plenary speakers and workshop activities.

This document includes several of the plenary addresses as well as reports from each of the work areas. Each workshop report contains background information relevant to the issue, and ends with a series of recommendations for the future for each area. The recommendations are also summarized at the end of this report. The conference sponsors hope that the proceedings will be a useful blueprint for the groups and individuals represented at the conference; local, state, and federal agencies and lawmakers; and others interested in preventive medicine and public health.

Since the early 1950's, medical research has brought our knowledge about tobacco and health from an observation made by a few physicians that related smoking with lung cancer to our current realization that tobacco use is the single most important preventable cause of illness and premature death in this country. More than 60,000 studies about tobacco use have made this the most thoroughly studied subject in medical science. A small sample of tobacco's impact on American society reminds us of the importance of tobacco control in public health.

- The annual total of premature deaths in America from tobacco use is about 434,000 persons. Smoking is the major cause of lung cancer, of deaths from emphysema and chronic bronchitis, and is a principal cause of heart disease and stroke. About one-third of smokers will die from a tobacco-related illness or condition—almost 25% of the total deaths in the US.

- Exposure to environmental tobacco smoke when nonsmokers inhale thousands of chemicals during "passive" smoking may kill as many as 53,000 Americans yearly. One analysis estimates that about 35,000 of these deaths are from heart disease; other studies, including new conclusions released by the US Environmental Protection Agency, project about 3000 lung cancer deaths from environmental tobacco smoke exposure each year. In addition, environmental smoke imposed upon children causes 150,000 to 300,000 cases of bronchitis and pneumonia each year, and worsens asthma in up to 1 million children annually.

- Smoking among adults has fallen to the lowest level in over 50 years, about 25%, but teen smoking has not changed significantly since 1980. Eighty-five to ninety percent of new smokers begin before age 20. About 3000 children begin smoking each day in the United States. The tobacco industry spends about $4 billion each year for advertising and promotion of its products, activities that recruit new smokers and attempt to convince current smokers not to quit.

- Increased health care costs, lost productivity and missed work, higher insurance costs, and higher maintenance costs in businesses in which employees may smoke are at least $68 billion annually.

Conclusions of the conference

Across different work groups, conference participants came to several points of concurrence that transcended their issue-specific areas:

Increase the Federal excise tax on cigarettes by two dollars per pack.

The present Federal tax on cigarettes, 24 cents per pack, puts the United States near the bottom of the list among the industrialized nations, which tax tobacco at a much higher rate. Conference

participants suggest $2 per pack as more in keeping with the health costs due to tobacco use. Even more important, it was estimated that a $2 tax increase will save 2 million lives over time. The tax would deter youth from starting to smoke, perhaps more effectively than any other single health promotion tactic. Adults would also have an increased incentive to quit smoking. Independent public opinion polls show broadbased support for a cigarette excise tax by over 70% of respondents. While not tying use of tax revenues to specific projects, participants agreed that the tax should be indexed to the consumer price index or another suitable marker that would keep the tax from being absorbed by inflation.

State governments should also raise the excise tax on tobacco products appriopriately. The California and Massachussetts experience shows that voters *will* pass a tax increase if it gets on the ballot.

Enable regulatory agencies to assume jurisdiction over tobacco products.

Cigarettes and other tobacco products are both the most dangerous and the least regulated consumer product in the country. It is the opinion of many in the health community that the Food and Drug Administration (FDA) currently has the authority to regulate tobacco products as drugs when direct or implied health claims are made. The FDA should be given specific statutory power by Congress to expand its authority to regulate the manufacture, sale, labeling, advertising, and promotion of tobacco products. The Federal Trade Commission should use its authority to regulate "unfair and deceptive" advertising, and the Department of Justice should enforce the ban on televised cigarette advertising currently being broken by tobacco industry sports promotions.

Protect the public, especially children, from environmental tobacco smoke (ETS) exposure.

As health professionals, we must educate our patients about the risks and dangers of ETS, and advocate for clean indoor air ordinances that protect the public from its harmful effects. This could cut costs related to acute illness among smoke-exposed children, and in the workplace, smoking bans would have the dual effect of health protection from ETS and help increase the number of adults that stop smoking.

Restrict the tobacco industry's advertising and promotional campaigns.

The tobacco industry currently spends about $4 *billion* each year on advertising and promotions. Banning sports sponsorships and other promotions and the tobacco industry's use of healthy, sexy, athletic models and cartoon figures in advertising should result in a decrease in tobacco use, especially among youth. At the local level, the health community should be vocal in opposing the tobacco industry's use of sports sponsorships and other promotional enticements, distribution of samples, and targeting of minority groups for high concentrations of advertising.

Foreword adapted from Houston, TP: Tobacco Control: Toward the Year 2000. *The Journal of Family Practice* 1993; 36:601-602. Reprinted with permission.

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As chair of the conference planning committee, I would like to thank its members for their hard work, and the support from their institutions to the conference:

City of Hope National Medical Center
Karen Warren, Executive Vice President

The Centers for Disease Control and Prevention
Michael Eriksen, ScD, Director, Office on Smoking and Health

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Alan Davis, American Cancer Society
Scott Ballin, American Heart Association
Fran DuMelle, American Lung Association

Memorial Sloan-Kettering Memorial Cancer Center
James Quirk, Senior Vice President

University of Texas M.D. Anderson Cancer Center
Harry Holmes, Associate Vice President for Government Relations

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Ralph Reed, MD, of the AMA Washington staff, should also be remembered for his thoughtful assistance in planning the conference. Doctor Reed was forced to interrupt his participation with the committee midway through its work because of his fight against lymphatic cancer. His death reminds us of life's fragility, and of the importance of our task in preventing tobacco's contribution to its premature end.

Thomas P. Houston, MD
Director, Department of Preventive Medicine and Public Health
American Medical Association

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President
University of Texas M.D. Anderson Cancer Center

3 Michael Eriksen, ScD
Director, Office of Smoking and Health
Centers for Disease Control and Prevention

7 Michael Pertschuk
Co-Director
Advocacy Institute

11 Alexander B. Grannis
New York State Assemblyman

12 Dianne Watson
California State Senator

14 Antonia Novello, MD
U.S. Surgeon General

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Tobacco Marketing and Promotion

Alan Blum, MD
Matt Myers, JD

Introduction

In 1964, the Surgeon General's first report on smoking and health proved beyond any reasonable doubt that cigarette smoking is the single most preventable cause of premature death and disease in the United States. Nonetheless, despite repeated reports by governmental and private sector organizations which focus on the nature and impact of tobacco advertising and marketing, such promotion continues unregulated and unrestricted, and tobacco industry efforts to recruit new users, maintain current users, and silence its opponents continue unabated.

In providing an analysis of public policy options, this paper will briefly review the current data and literature about the significance of advertising and promotion of tobacco products in the United States. It will discuss the influence of cigarette and spitting tobacco advertising on young people, adults, and the media; how tobacco and health issues are covered in the mass media, how society views tobacco and tobacco advertising, and how the government responds to tobacco and health issues.

Nature and extent of tobacco advertising and promotion

How Much is Spent?

While the tobacco industry contends that tobacco advertising and marketing is not intended to and does not help to attract new smokers, in 1990 the tobacco industry spent over $3.9 billion—or more than $10.6 million a day—promoting its products. These figures represent an increase of over $370 million since 1989 and another increase of $342 million since 1988. Even when these expenditures are adjusted for inflation, the 1990 figures represent an increase of more than one hundred percent in advertising and promotion expenditures by the tobacco industry during the 1980s.

Today, annual expenditures on cigarette advertising promotion total more than $4 billion—or $14 for every man, woman and child in this country. The advertising promotional expenditure per carton is in excess of $1.35. In contrast, in 1980, after adjusting for inflation to constant 1989 dollars, the tobacco industry only spent $.58 per carton on advertising and promotion.

Tobacco Advertising and Promotion Expenditures

While tobacco industry advertising spending in magazines ($380 million in 1989), newspapers ($77 million in 1989), and billboards ($39 million in 1989), continue to be large enough to have a major impact on each of these media, such traditional advertising has been supplemented by other forms of promotion.

For example, point-of-sale advertising in retail establishments totaled $241 million in 1989, an increase of 99% from the previous year. Similarly, the amount spent on give-away non-cigarette utility items, such as calendars, lighters, and T-shirts, increased by over $72 million from 1988 to reach a total of $262 million in 1989. If this figure were to include retail value added give-aways, such as key chains and lighters, which are given as a bonus when a consumer purchases a pack of cigarettes, the expenditure would be far higher. (Incidentally, point-of-sale advertising and advertising on utilitarian items are exempted from the health warning requirements.)

Expenditures on the promotion of sports and sporting events also is growing. In 1989, the tobacco industry spent $97.7 million on sports and sporting events, an increase of more than 8% in one year from the $84 million spent in 1988. Such activities include golf, tennis, and various froms of motor racing. Tobacco billboards also continued to be the dominate advertisements in many major professional stadiums in which non-tobacco sponsored events are played and televised.

A number of promotional themes and campaigns that began in Europe have found their way to the United States. For example, in 1992 Philip Morris announced a new campaign entitled the "Marlboro Adventure Team ...Ten guys who will hike and bike, as well as ride the rapids of the Southwest." According to Philip Morris, as of March 1993, more than 300,000 people had applied to participate in the events.

Doubtless the most significant trend in tobacco advertising expenditures—and the least addressed by tobacco control advocates—is that of promotional allowances, such as the amount paid by cigarette companies to retailers for shelf space, cooperative advertising with retailers, trade promotions to wholesalers. Promotional allowances, which constitute the single largest advertising category, totalled $999.8 million in 1989. Discount coupons and retail value added promotions, such as multiple pack promotions and offers of a free key chain or lighter (blister-packed to a cigarette pack), comprise the second largest advertising and promotional expenditure by the tobacco industry. In 1989, $959.9 million was spent on this type of advertising and promotion. Health advocates have devoted scant attention to an examina-

tion of the role such promotions have had in counteracting the intended cigarette consumption-reducing effect of excise taxes.

The amount of money being spent on discount coupons, giveaways, and cut-rate cigarettes illustrates the emphasis placed by the tobacco industry on those consumers who have fewer dollars to spend on tobacco. While such emphasis may, in part, be a reaction to the recent recession, it also appears to represent a strategy designed to offset any reduction in cigarette consumption as result of increased excise taxes, as well as knowledge by the tobacco industry that the prevalence of smoking is inversely proportional to income.

Targeted marketing

Tobacco Marketing and Youth

Cigarette manufacturers say they do not market to young people do not want children to smoke. Indeed, Philip Morris and R.J. Reynolds have created national advertising campaigns built upon prevalence theme. However, the tobacco industry's claims are contradicted by its heavy use of image-based advertising in contexts where the ads will be observed by young people.

Each year, more than three million American young people under the age of 18 consume 947 million packs of cigarettes. Almost 90 percent of all new smokers start by the age of 21. The age of initiation of smoking has declined over the last 40 years by 2.4 years overall and 5.4 years for white females.

It is no coincidence that teenagers smoke precisely those brands with advertising messages which appear to be targeted at adolescents. A 1989 CDC study, confirming an earlier study conducted by DOC (Doctors Ought to Care) regarding cigarette brand preferences among adolescents, found that 71 percent of white teenagers who buy their own cigarettes smoke Marlboro, while 61 percent of black teenagers buy Newport, a menthol brand. Camel represents the second most popular brand among white youth, while for blacks, the next most preferred brands are Kool and Salem, two other menthol brands. In two recent surveys, at least 84 percent of the adolescent current smokers who usually bought their own cigarettes purchased one of three most highly advertised targeted brands—Marlboro, Newport or Camel—each of which emphasizes image-based advertising. The same surveys found that brand preference is much more concentrated among adolescents who smoke than among adults who smoke.

For years, Marlboro has been the predominant brand used by adolescents, who appear to be attracted to the brand's image of strength and independence promoted in the long-running "Marlboro Man" advertising campaign. The longstanding success of Marlboro has been partly explained by William J. McCarthy and Ellen Gritz, who examined the psychological and social factors that influence teenagers to smoke. According to testimony provided by Dr. McCarthy before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce,

"To the degree that adolescents consciously try to reduce the distance between their ideal self-image and their own self-images, and the scientific literature supports that they do, there is reason to conclude that the personality traits popularly imputed to cigarette smokers and cigarette advertisements are sufficiently alluring to induce adolescents to smoke....For the typical teenager seeking to make his/her real self correspond more closely to his/her ideal self, the portrayal in cigarette ads of valued aspects of identity such as independence, social and physical attractiveness and confidence cannot fail to make cigarettes appear more attractive to teenagers than they would be without such associated imagery."

The Joe Camel cartoon caricature introduced in the US in the mid-1980's contains none of the subtlety of the Marlboro cowboy, but few advertising campaigns have been more effective in such a short period of time with young people. In 1986, Camel ranked seventh among the youngest age group of people who smoke. In 1989, one year after the advertising campaign began, the brand ranked third among teenagers surveyed.

Three studies published in the December 11, 1991 issue of the *Journal of the American Medical Association (JAMA)* confirmed what every expert (and anyone with common sense) had already concluded. Whatever the intent, the "Old Joe" cartoon camel advertising campaign had its greatest influence on children and adolescents. Two of these studies specifically examined the influence of the "Old Joe" campaign on teenagers.

Both studies of teenagers found: (1) that teenagers are far more likely to have seen and remember these advertisements than adults; (2) that teenagers associated these advertisements with the product being advertised far more than adults; and (3) most importantly, a stunning and dramatic rise in the use of Camel cigarettes directly paralleled the introduction and pursuit of this advertising campaign.

The same two studies documented an explosive growth in the sale of Camel cigarettes in pre-teens and adolescents. While surveys conducted on seven different occasions between 1976 and 1988 among seventh to twelfth graders revealed that only 0.5 percent of those surveyed used Camel cigarettes, the study released in the December 1991 issue of *JAMA* of the same age group in 1990 found that 32.8 percent reported using Camel cigarettes. The second study found that among teens and pre-teens surveyed the use of Camel cigarettes rose 230 percent between 1986 and 1990.

As shocking as are the results of these two studies, a third study published in the same issue of *JAMA*, which examined the influence of this campaign on three to six year old children, is even more disturbing. Among six year olds surveyed, nearly as many of the children could identify an illustration of the "Old Joe" camel cartoon logo as could identify a commonly used logo of Mickey Mouse.

The "Old Joe" campaign has combined every marketing tool available to the tobacco industry to reach out to children. Not only do the print advertisements using "Old Joe" stress themes that uniquely appeal to young people, but the overall campaign has also included free T-shirts, baseball caps, posters, inflatable air mattresses, and other items of clothing far more likely to be worn or used by adolescents than by adults. Further, the campaign has

made heavy use of discount coupons. At least one advertisement went so far as to explain to individuals who do not like to redeem coupons (that is, children too young to legally do so), how to ask a friend or a stranger to do so for them.

While the "Old Joe" campaign's appeal to youth is so blatant that *Advertising Age* has editorialized that this campaign "crossed the divider between [a company's] legal right to advertise and its unique social responsibility to the general public", the advertising campaign has continued unabated. However, those concerned about the influence of advertising on young people also should not lose sight of the fact that while "Old Joe" has prompted a public outcry for reform, countless other image-based ubiquitous cigarette advertising campaigns, exemplified by the "Marlboro" cowboy and Virginia Slims models, pose every bit as serious a problem.

Tobacco Marketing and Women

Over the last 25 years, tobacco marketing targeted at women has become evermore pervasive. It was less than 30 years ago that the first cigarette introduced *solely* for women was brought on the market. It is no coincidence that advertising campaigns targeted at women preceded and then accompanied the rapid spread of smoking among teenage girls in the United States in the late 1960s and the early 1970s. Taking advantage of major changes in social attitudes about the role of women in our society, the tobacco industry in the late 1960s began a massive campaign to associate smoking with independence and social progress—the type of values portrayed by Virginia Slims advertising campaigns.

While the tobacco industry has long marketed tobacco products to women implying that smoking provides a mechanism for staying thin, the 1980s witnessed an explosion of advertising using false images that link smoking with tall, thin, elegant, attractive women using advertising slogans which associate tobacco use with good health through thinness and weight reduction. Recent advertisements for Super Slims from Virginia Slims feature photographs of tall, ultra thin young women dressed in tight, revealing clothing whose images have been elongated and bodies made to appear even more slender through trick photography. The ads make use of words with double meanings, all of which have weight or thinness-related meanings, such as "Ultra Light", and tag lines, such as "We can't make your calls shorter, just slimmer." Ads for Capri Super Slims carry the bold slogan, "The Slimmest Slim."

The 1989 Teenage Attitudes and Practices (TAPS) Survey of adolescents found that while non-smoking adolescent girls strongly disagree with the statement that smoking helps keep weight down, the survey found that among current teenage girls who smoke, over 66 percent of those surveyed agreed with the statement that smoking helps keep one's weight down. The 1986 Adult Use of Tobacco Survey found that 52.7 percent of all women age 21 through 49 strongly or somewhat agreed with the statement that smoking helps control weight.

These ads are successful. In the 1960s, far more teenage boys smoked than teenage girls. In the 1970s, teenage girls were the only population cohort where smoking actually increased. Today, teenage boys and teenage girls smoke in almost equal numbers.

Tobacco Marketing and Ethnic Minorities

The tobacco industry has been especially adept at exploiting racial identity in defining a profitable market among ethnic minorities. The result is an increase in smoking-related disease and death among targeted ethnic groups in the US.

Seeking new markets through advertising and promotional campaigns in certain minority communities has been a necessity for tobacco companies as the smoking white male population has decreased in the US during the past two decades. While major daily newspapers have experienced a decrease in revenue from cigarette advertising accounts, the African American-owned and Hispanic-owned newspapers continue to be a major context for cigarette advertising targeted to these specific ethnic communities.

Tobacco companies and the minority press have become allies in the effort to promote cigarettes in ethnic communities and inner-city neighborhoods. In November 1985, Philip Morris hosted 93 publishers of the African American newspapers at its corporate headquarters in New York for a forum on preserving freedoms in American life. Early in 1986, these publishers voted to condemn attempts to restriction on tobacco advertising. In 1990, the National Association of Hispanic Publications made a similar statement. The 350 Hispanic newspapers that belong to the association receive about 20% of their advertising revenue from alcohol and tobacco companies.

Perhaps the greatest concentration of tobacco company advertising is in African American publications such as *Jet, Essence,* and *Ebony*, which reach 47 percent of African American women and 38% of African American men. Despite frequent health topics head-lined on the front covers of *Ebony* and *Essence, Ebony* has never published a major article on the leading cause of death among African Americans: tobacco, in its 40-year history. *Essence*, which positions itself as a Black lifestyle magazine, has never published an article on smoking, much less on cigarette advertising.

Billboard and transit advertising, while not African American- or Hispanic-owned, represent an important media within these communities. Studies conducted by Scenic America and other organizations have shown disproportionate advertising of tobacco and alcohol products in inner-city neighborhoods. In many African American and Hispanic neighborhoods, virtually 80% to 90% of all billboard advertising is for brands of tobacco and alcohol. In African American communities especially, cigarette advertising is the single common theme in a variety of retail outlets from food stores and supermarkets to beauty parlors and barber shops (as well as dry cleaners, laundromats, gas stations, and bars and grills).

Ironically, money saving offers are perhaps the major appeal that the tobacco industry makes to the people with the lowest disposable income. There has been a dramatic increase in the number

of rebate coupons in magazines and newspapers, and in-store discounts good for up to 50% off on cigarette packs. In a suburban, predominently white neighborhood, promotions include a free t-shirt or other item for the purchase of three packages of cigarettes. The same promotional offer in an African American or Hispanic neighborhood is available for a one-pack purchase. The free distribution of sample packs is also common in inner-city communities.

Tobacco companies have also linked cigarette promotions to African American and Hispanic music and cultural events. R.J. Reynolds and United States Tobacco (UST) sponsor Hispanic street fairs and festivals, such as Cinco de Mayo celebrations, and Brown and Williamson foots the bill for numerous Spanish and jazz musicals in Hispanic communities. Brown and Williamson also presents annual "Kool Achiever" awards (named for Kool cigarettes) to people who want to improve the "quality of life in inner-city communities." The tobacco company has even enlisted the National Urban League, the National Newspaper Publishers Association, and the NAACP in the nominating process. Johnson Publications, publishers of *Ebony* and *Jet*, adds another insidious twist by permitting itself to be the apparent sponsor of a national traveling fashion fair that is in large part paid for by R.J. Reynolds to promote its More brand of cigarettes. Similarly, Philip Morris has sponsored cultural events such as the Alvin Ailey American Dance Theatre, jazz and blues concerts, and a photographic display of the late Dr. Martin Luther King, Jr.

In 1990, R.J. Reynolds announced plans to launch a new menthol cigarette brand called Uptown (more than 65% of blacks who smoke buy menthol brands). Philadelphia, Pennsylvania was selected as the test market for a promotional blitz aimed at young urban African Americans. However, before the tobacco company could get its marketing off the ground, a local group calling itself the Uptown Coalition was formed by Dr. Robert Robinson, then with Fox Chase Cancer Center. With the help from other health advocacy groups and a blast at R.J. Reynolds by Secretary of Health and Human Services Louis Sullivan, the Uptown Coalition was successful in preventing the test market of the brand. Despite the Coalition's success, R.J. Reynolds began an aggressive national campaign for Salem cigarettes ("The Box") in inner-city African American neighborhoods for which Uptown had been intended. Similarly, other cigarette brands popular among African Americans, such as Newport and Benson and Hedges, continue to be agressively marketed in much the same way.

Tobacco advertising and promotion: Market expansion or brand switching

The tobacco industry claims that the $4 billion it spends each year on cigarette advertising is intended only to maintain "brand loyalty" and that it does not seek to attract new smokers, (or, conversly, that cigarette advertising is only designed to persuade smokers to switch brands). The tobacco industry has further argued that unless those who are concerned about the impact of tobacco can prove that advertising and marketing actually causes people to start or not to stop, cigarette advertising and marketing should remain unrestricted.

In support of its position, the tobacco industry often quotes out of context a single sentence in the 1989 Report of the Surgeon General that states "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption."

However, the tobacco industry consciously and deceitfully fails to put the sentence in context by omitting the following sentences from the Surgeon General's Report which appear immediately after the quoted sentence:

"Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms (whereby advertising may affect consumption) concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption."

Aside from its dishonesty, the tobacco industry's position lacks merit for three distinct, independent reasons. First, the point of the Surgeon General, as stated in testimony before the Subcommittee on Transportation and Hazardous Substances of the Energy and Commerce Committee of the United States House of Representatives on September 13, 1989, is that a perfectly designed study to prove that cigarette advertising increases cigarette consumption will probably never be accomplished because proof of that type in a single study is virtually never available "when studying human behavior." The overwhelming evidence demonstrates that tobacco advertising and marketing practices do have an impact on the use of tobacco in a variety of complex, interrelated ways that are not capable of being proven or disproven in a single study, but are no less significant.

Second, the tobacco industry has attempted to manipulate the debate into a focus on the availability of a single scientific study precisely to avoid public policy action in much the same way that the tobacco industry established the Counsel on Tobacco Research to avoid public policy action on the health effects of tobacco long after more than enough evidence was available to act. Third, in light of the available data, the uncontroverted health effects of tobacco use, and the stated goal of our government to discourage tobacco use, especially among children, the burden should be on the tobacco industry to demonstrate that its $3.9 billion marketing effort does not play any role, direct or indirect, in the uptake of tobacco use rather than on those responsible officials concerned about the health of our nation to prove to the contrary.

The data demonstrating that marketing and advertising of tobacco products does play a role in tobacco use comes from many disciplines and from many sources. Combined, it can lead to only one conclusion. Briefly, these data fall into six categories.

1. The tobacco industry annually loses more of its customers than do the manufacturers of any other product. An average of 1.5 million Americans quit smoking each year and an additional 434,000 die from smoking-related causes. Since over 90 per-

cent of all new smokers are under the age of 20, this means that thousands of children have to begin smoking each day in order for the tobacco industry to maintain the status quo. The tobacco industry knows that if one hasn't started smoking by their 18th birthday, they only have a one in ten chance of ever doing so.

2. Only a small percentage of all smokers switch brands each year. Three manufacturers currently sell over 80 percent of all cigarettes sold in the United States. Thus, too few smokers switch to justify a $3.9 billion expenditure each year. Also, many of those who do switch simply switch to a different brand of the same manufacturer. If the sole purpose of advertising was brand switching, the three major tobacco manufacturers would make far more money if they agreed to discontinue tobacco advertising and marketing because they spend far more each year on advertising and marketing than they make by acquiring new smokers from their competitors.

3. Tobacco advertising has been shown to work. Advertising campaigns targeted at women preceded and then accompanied the rapid spread of smoking among women. Advertising campaigns on behalf of smokeless tobacco products preceded and then accompanied the rapid rise of the use of smokeless tobacco products by teenagers. The recent "Old Joe" advertising campaign has documented the dramatic influence over a short period of time a single advertising campaign can have on tobacco use among adolescents. None of these changes in smoking rates can be primarily explained by any factor other than the impact of advertising and marketing for specific brands.

4. Advertising experts agree that market expansion is a significant objective of advertising for virtually all products. There is no evidence that advertising operates differently for tobacco products. Tobacco is not the type of mature market where new consumers do not need to be attracted. The mature market argument applies in situations where a society becomes fully educated as to the need for and benefits of a product and will continue to purchase that product without further education or persuasion. Many household products, such as soap, tissue paper, or laundry detergent fall into this category. However, tobacco is different. Given the educational efforts to discourage people from using tobacco products and given the known health hazards of tobacco products, each new generation of children must be convinced and persuaded of a reason to buy the product. Thus, by depicting tobacco products as an integral part of a highly desirable lifestyle and personal image, tobacco advertisers attract individuals who do not currently use that product, but who want to emulate that lifestyle and project a depicted image. Advertisements that effectively associate smoking with the latest trends or ideas or with independence, sophistication, sexual, social, or athletic success and happiness attract smokers and non-smokers alike who want to be like the people in the ads.

5. If advertising does not increase consumption for tobacco products, why do state monopolies advertise in countries where there is no competition? At one time or another, several countries which then had state monopolies, inclucing Austria, Japan, South Korea, Thailand, and Turkey, have engaged in widespread cigarette advertising.

6. The tobacco industry has generated considerable debate over what can be learned about the role of advertising from the international experience of countries that banned advertising after previously permitting it. While several countries with free market economies have enacted statutory bans on the advertising and/or promotion of tobacco, only a few have instituted *effective* bans. Even fewer countries have combined those bans or restrictions with a comprehensive smoking-education program or counteradvertising campaign.

While the tobacco industry has funded a study which manipulates the data in an effort to make it appear as if restrictions or bans on tobacco advertising have had no impact, an increasing number of impartial governmentally funded studies provide substantial evidence to the contrary. A 1989 study by the Government of New Zealand provided persuasive evidence that in those countries which enacted serious bans, there was a measurable overall decrease in tobacco use from what would have existed had there been no ban and/or restriction.

In 1993 the Chief Economic Advisor of the Department of Health of the Government of Great Britain issued a report which found that advertising tends to increase consumption of tobacco products and that bans on tobacco advertising tend to result in a decrease of tobacco use from what would have occurred in the absence of such a ban. The report considered 19 key studies from the United Kingdom, United States and elsewhere. Focusing on the four countries with the most sufficient data—Norway, Finland, Canada and New Zealand—the report's author found that in all four countries, bans or restrictions on advertising resulted in an overall decrease in consumption.

The limitations of these data must be understood. Multiple anti-tobacco actions accompanied the advertising ban. It is impossible to know the effect of the advertising ban alone. Nonetheless, the data from these countries show a positive correlation between eliminating advertising and promotion and a declining percentage of young people who smoke.

Despite any argument the tobacco industry decides to proulgate during the debate on cigarette advertising, everyone can agree that an advertisement for cigarettes, regardless of brand, is an advertisement to smoke.

Current governmental restrictions on tobacco advertising and promotion

At the federal level, there has been remarkably little done to restrict the influence of tobacco advertising and promotion.

In 1965, Congress rejected a proposal by the Federal Trade Commission to require detailed health warnings on all cigarette advertisements and packages and, instead, required only that all cigarette packages carry the following message: "Caution: Cigarette Smoking May Be Hazardous To Your Health." No warning

was required on cigarette print advertisements at that time. In 1969, Congress amended the message on cigarette packages to read, "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health" and banned cigarette advertisements from the broadcast media after January 1, 1971. But at the same time, Congress preempted the Federal Trade Commission (FTC) from imposing any health warning requirements on cigarette print advertisements for a period of two years. When the Congressional preemption expired in 1971, the FTC and the six major tobacco manufacturers entered into a consent decree by which the companies agreed to include the mandated package warning in their print advertisements.

For the next decade, neither the FTC, nor Congress took any further action to limit tobacco advertising or to require tobacco companies to do more to educate the American public about the health hazards of smoking. In 1981, the Federal Trade Commission issued a report which found that the then-existing health warning on cigarette ads and packs was inadequate and recommended that Congress take additional action to remedy the situation. In 1984, Congress enacted the Comprehensive Smoking Education Act, which replaced the single health warning on cigarette ads and packages with the four health warnings which now appear. A similar set of warnings was required for smokeless tobacco products by Congress through the Comprehensive Smokeless Tobacco Health Education Act of 1986.

Congress has otherwise imposed no restrictions or other requirements which directly affect tobacco advertising and promotion. The Food and Drug Administration takes the position that it has no authority over tobacco products or their advertisements as long as the ads make no health-related claims. The authority of the Federal Trade Commission over tobacco advertising promotion is limited to enforcing the warning label legislation and to carrying out its traditional mandate to prohibit false or deceptive advertising, an authority which the FTC has exercised only rarely.

In 1992, for the first time, Congress took a step to restrict the sale of tobacco products to individuals under the age of 18 as part of the Alcohol/Drug Abuse and Mental Health Administration Reorganization Act. In that Act, Congress limited the right of the Secretary of the Department of Health and Human Services to make certain state funding grants unless the state involved has a law making it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute such products to any individual under the age of 18, and unless the state has submitted a plan to indicate that it will enforce such a law in a manner "that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18."

Public policy options

Given the nature, extent and impact of tobacco advertising and promotion today, the two questions are: (1) What should be done to most effectively reduce and counter the influence of advertising and marketing on tobacco use in the United States today, and (2) given the political realities, what, if any, actions should be taken to eliminate or counter the most egregious tobacco advertising abuses while progress is made towards long-term goals?

The following policy options are not new, but neither have they been adopted nor implemented:

Proposal I:

Ban Advertising and Promotion

A ban on advertising and promotion would eliminate all advertising of any kind for tobacco products, including all billboards, print advertisements and utilitarian items, such as T-shirts and hats. It would also prohibit tobacco companies from sponsoring events such as rock concerts and tennis tournaments under the cigarette brand names. Organizations such as the American Lung Association, the American Heart Association, the American Cancer Society and the American Medical Association have endorsed a ban on advertising and promotion. Legislation to ban all advertising and promotion of tobacco products was first introduced in Congress in 1986 and has been introduced again in the 100th and 101st Congresses without being enacted.

Pro

A ban would not only eliminate the direct influence of tobacco marketing efforts, such as the lure of seductive advertisements and billboards, but the indirect effects as well, such as the inadequate coverage of the health consequences of smoking by advertising-dependent news media.

Recent US Supreme Court decisions support the position that a legislatively mandated ban on tobacco advertising and promotion would probably be upheld as constitutional, if it were based on the government's desire to reduce the number of deaths caused by tobacco usage by reducing the prevalence of smoking.

Con

Opponents of an advertising ban raise three principal objections: 1) an advertising ban is unconstitutional; 2) a ban would be ineffective in reducing the prevalence of smoking; and 3) a ban would lead to bans on other consumer products.

The debate over an advertising ban is made more complicated because it engenders opposition by the mass media, who have become dependent upon tobacco advertising dollars and who argue that they would be financially hurt by eliminating these revenues. Organizations, such as the American Civil Liberties Union (ACLU) have expressed First Amendment concerns. Further, the proposed ban also engenders opposition by many arts and minority organizations, which receive substantial financial support from tobacco companies.

Proposal II:

Develop a Mechanism to Fund and Produce an Effective Ongoing Counter-Advertising Program

Counter-advertising is often mentioned as an alternative or complement to restrictions on tobacco advertising. Counter-advertising may indeed lend support for restrictions only cigarette

advertising. To be effective, counter-advertisements need to be professionally produced and placed frequently in often-seen media. This requires adequate funding to purchase advertising space and time on television and radio. The success of the program cannot depend on the media's good will in placing these ads for free (public service announcements). Small-scale pioneering paid counter-advertising programs were begun in the 1970's and 1980's by DOC and by media consultant Tony Schwartz. Major counter-advertising programs have been launched by several states in Australia. In the US, voters in California and Massachusetts approved referenda to increase cigarette excise taxes, a portion of which are dedicated to paid counter-advertising to discourage smoking. A bill introduced by Senator Ted Kennedy to fund a federal agency to purchase counter-advertising did not pass in the 100th Congress.

Pro

Supporters of this approach point to the fact that anti-tobacco counter-ads run in the late 1960s-prepared as a result of applying the Fairness Doctrine to tobacco advertisements on television and radio-accompanied a significant decline in tobacco consumption. Studies demonstrate that the counter-ads played an important role in reducing tobacco consumption during this period of time.

A major advantage of this option is that it involves no restrictions on speech. Thus, it obviates any argument of First Amendment concerns even by the most zealous supporters of the tobacco industry and the ACLU.

Con

The largest obstacle to creating an effective counter-advertising campaign is financing. In the late 1960s, counter-advertisements were broadcast on television and radio without charge, as required by the Federal Communication Commission. Today, an effective health campaign would require substantial funding to compete successfully against the $4 billion spent annually by the tobacco industry. Given the high federal budget deficit, it would be difficult to obtain an annual appropriation of this amount. One funding option is to earmark a portion of the cigarette excise tax for this purpose. Each penny of the federal tax generates almost $300 million, so a relatively small increase dedicated to counter-advertising could provide measurable returns.

Another funding option is to require that tobacco advertisers provide funds to purchase space for counter-ads on a proportional basis to their advertising expenditures. Or, this proposal might be combined with the proposal to eliminate the tax deductibility of tobacco marketing expenditures, and earmark a portion of the additional taxes received for counter-advertising.

Proposal III:

Eliminate Advertising Expense Deductions

This proposal would deny tobacco companies a tax deduction for cigarette advertising expenses. Currently, tobacco comapnies can deduct 100% of their advertising expenses as a business expense. Senator Harkin (D-IA) introduced legislation to this effect near the end of the 102nd Congress, but it was defeated, 56-38.

These proposals would not prohibit tobacco manufacturers from advertising, but would eliminate the manufacturers' privilege of deducting these expenditures from their taxes as tax-deductible business expenses.

Pro

The tobacco industry saves over a billion dollars each year because its huge advertising and promotion budgets are tax-deductible. Removing this governmental privilege would substantially increase the cost of advertising and promotion and presumably, reduce tobacco manufacturers' financial incentive to spend so heavily. This proposal also relieves American taxpayers of some of the burden of subsidizing the tobacco manufacturers' marketing efforts.

Further, the Supreme Court has made it clear that a company does not have a constitutional right to such a tax deduction.

Con

Opponents of this legislation have argued that this approach is an unconstitutional restriction on free speech. The constitutional challenge to eliminating the advertising tax deduction has even less merit than the challenge to an outright advertising ban. Congress has broad latitude in establishing classifications within the tax code which confer benefits on some groups that are denied to others.

Proposal IV:

Tombstone Advertising

"Tombstone advertising" is an alternative to proposals to ban tobacco advertising or eliminate the tax deduction for tobacco advertising expenses. There are a variety of configurations of tombstone advertising, but the most common would prohibit the use of models, slogans, scenes or colors in tobacco advertisements or on tobacco packages. Only text would be permitted. Restricting tobacco advertising or tombstone advertising could also be tied to strict limits on tobacco promotions and brand-name sponsorship.

Pro

Many tobacco advertisements rely on slogans and images. By and large, these ads sell the potential smoker an image which he/she may wish to emulate. This form of image advertising is most effective with young people, who are very image-conscious, see tobacco use as one way of being somebody they are not and pay little attention to advertisements that are primarily text oriented. Restricting tobacco advertising to tombstone ads would be an action designed to reduce the effectiveness of tobacco advertising with young people by eliminating the form of advertising considered most persuasive with this group. It would eliminate both the Marlboro cowboy, "Old Joe" and the image projected by Virginia Slims advertisements.

Thematic imagery ads are not just aimed at the young, but also at women and minorities. Strictly prohibiting the use of thematic imagery would dramatically alter tobacco industry marketing towards these groups as well.

Tombstone advertising does not restrict what a tobacco manufacturer can say about its products in its ads nor does it limit the amount a manufacturer can spend to advertise. Thus, it is likely to raise fewer free speech concerns.

Con

This proposal does not reflect an understanding of the importance of the brand-name of a product as an essential component of advertising. The brand-name itself is as important as any associated imagery. Moreover, unless a tombstone advertising policy also restricted promotional activities, its effectiveness would be limited. Cigarette marketing expenditures have steadily shifted from newspaper and magazine advertisements to promotional activities, such as sponsoring events, coupons and other price oriented mechanisms. Indeed, tobacco company expenditures for promotions now exceed expenditures on advertising.

Proposal V:

Enact a Version of the Tobacco Industry Advertising Code

The federal government could enact legislation modeled after the tobacco industry's voluntary advertising code, but with its most glaring weaknesses corrected. Among other things, the Code currently states that it prohibits advertising in publications directed at those under 21 years of age, the use of models under, or appearing to be under, 25 years of age, and advertisements suggesting that smoking "is essential to social prominence, distinction, success, or sexual attraction...." To date, the tobacco industry has used its Code as a public relations gimmick, but has never seriously abided by its provisions.

Pro

The principal advantage of this approach is that it simply codifies and creates an enforcement mechanism for principles that the tobacco industry itself purports to have adopted. It would be difficult for the tobacco industry to claim the new Code represents governmental restrictions on commercial speech, if the Code were based on the industry's own attempt to eliminate abusive advertising practices.

Con

Codifying the industry's advertising guidelines, or any other code of conduct, would require Congress to establish amorphous standards that might be difficult to enforce. For instance, what is a publication "directed primarily to those under 21 years of age?" How does one determine whether an actor appears to be under 25 years of age? Such a code would also likely permit the continued use of some of the marketing methods, such as the Marlboro Man, which are most effective with young people. Enforcing a "voluntary" code without restricting promotional activities would also fail to address one of the principal marketing techniques of the tobacco industry.

Proposal VI:

Eliminate the Federal Preemption of State Regulation of Tobacco Advertising

The Public Health Cigarette Smoking Act of 1969 prohibits states from enacting requirements or prohibitions based on smoking and health with regard to cigarette advertising or promotion. Repealing this clause would enable states to impose additional requirements and restrictions-including bans in appropriate circumstances-on tobacco advertising and marketing which take place wholly within their borders.

Pro

States should have the right to protect their own citizens; repealing this limitation would allow states to enact a variety of their own measures to discourage tobacco consumption within their jurisdictions.

Con

Opponents contend that repealing this provision would given states license to violate manufacturers' First Amendment rights and would create the possibility of 50 different states enacting 50 different sets of rules.

Proposal VII:

Enact Improved Warning Labels

The current warning labels required on tobacco products and advertisements were established by the 1984 amendments to the Federal Cigarette Labeling and Advertising Act. They were enacted because of the ineffectiveness of the then-existing warning label. Concerns have been raised about the effectiveness of the 1984 warnings as well, including the adequacy of the text of the current labels, the visibility of the warnings and the location of the current warnings.

Congress could amend the Act to require a different warning label format, content or location to help improve the labels' effectiveness on tobacco products and in tobacco ads. Information not now included, such as "Smoking is addictive," could be added.

This Act could also be amended to require a "circle and arrow" format similar to that required on smokeless tobacco products packages and advertisements. This graphic device would make the current warning labels more visible. If this were done, the size of the circle and arrow and warning label print might both have to be increased.

Congress should also consider placing the warning label on the front of tobacco packages to improve the frequency with which they are seen. Moreover, the health warning on billboards should be made more prominent: to be effective, they must be legible from a distance, and at high speeds.

Pro

Improved health warnings can be enacted without appropriating substantial additional funds and without raising new First Amendment concerns. They also can be tailored to fill in specific gaps in

consumer knowledge. Finally, the concept of a health warning is one legislators accept.

Con

Questions are raised about the effectiveness of warning labels as a major component of an anti-tobacco effort. Whatever role warning labels may play in a comprehensive tobacco education program, the increased benefit of strengthening the current warnings is difficult to predict with certainty. Warning labels have provided tobacco companies with added immunity from litigation even as they disarow the truth of the warnings.

Proposal VIII:

Authorize FDA to Regulate Tobacco Advertising

Federal laws and regulations of foods and drugs set very strict standards on how these products may be advertised and promoted. FDA has taken the position that it does not have authority over tobacco or tobacco advertising. Congress can remedy this by enacting appropriate legislation.

Pro

FDA regulations already contain dozens of restrictions on pharmaceutical advertising and promotion. These restrictions have in effect prevented pharmaceutical companies from certain types of advertisements aimed at consumers on television and radio, billboards and general circulation newspapers and magazines. Since tobacco and its components are more hazardous than many regulated drugs, the regulatory exemption of tobacco products is at best inconsistent. By providing the FDA with authority to regulate tobacco advertising, Congress could assure that a strict code is applied and avoid many of the difficulties in formulating new standards for tobacco advertising and promotion.

Con

Giving the FDA authority to regulate tobacco advertising and promotion will leave the degree of such regulation largely at the discretion of the federal agency. Regulation might increase or decrease based on the views of agency personnel at any given time.

Recommendations

1. Effectively pressure the government to enforce the existing law.

   a. Document the violation of the existing laws.

   b. Document the failure to enforce the existing laws.

2. Counter the tobacco industry's misinformation by educating the public.

   Develop a mechanism for an ongoing campaign to:

   a. Counter the brand-name images promoted by the industry.

   b. Educate the public about the effects of tobacco use and the tactics of the tobacco industry.

   c. Educate the public about the need for restrictions on cigarette advertising and promotion.

   d. Expose those who enter agreements with the industry to promote tobacco.

3. The group restates its long-term commitment to eliminate exploitation by the tobacco industry through advertising and marketing.

   a. It is in America's best interest to take into account the dynamic nature of the industry and for any ban to be broad enough to cover traditional forms of advertising and more recent trends like sponsorship, product placement, utilitarian items, etc. and learn from other countries where the industry has circumvented a ban.

   b. Any restrictions on advertising should move forward in sync with a counteradvertising and educational campaign.

   c. It must be recognized that there need to be a number of interim steps while any proposal for the elimination of tobacco marketing is debated. These include

      1. The items mentioned in priorities 1 and 2,

      2. Sustained educational campaigns on the evils of tobacco marketing, and

      3. Interim steps that attack tactics which have the greatest impact on children, such as sports and music sponsorship, utilitarian items, state action, etc.

4. Eliminate the tax deduction on tobacco advertising.

5. Increase the emphasis on what states can do: eliminate the federal preemption of tobacco advertising regulations by states.

6. Develop a mechanism or funding for current mechanisms to more effectively monitor and evaluate the tobacco industry's activities. Develop this research so we will have adequate data from which to develop strategies for the future.

7. Reject the tobacco industry's voluntary code in its current or any future form.

Challenges to ourselves

1. Challenge the leadership of our movement to develop a strategic plan for potential funding, and designate individuals and organizations to implement recommendations of each of the workgroups.

2. Identify and develop additional resources devoted to accomplishing the above.

3. Broaden the diversity of our group to include those being exploited by the tobacco industry.

4. Broaden our base of support in terms of numbers, meaning grassroots support.

5. Explore and assess the impact of warning labels in countries that require stronger labels.

6. Identify and develop leadership to implement recommendations and action steps.

IT CAN BE DONE

A smoke-free Europe



WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR EUROPE
COPENHAGEN



Their future health
Our present responsibility

The Charter Against Tobacco



Fresh air free from tobacco smoke is an essential component of the right to a healthy and unpolluted environment.



Every child and adolescent has the right to be protected from all tobacco promotion and to receive all necessary educational and other help to resist the temptation to start using tobacco in any form.



All citizens have the right to smoke-free air in enclosed public places and transport.



Every worker has the right to breathe air in the workplace that is unpolluted by tobacco smoke.



Every smoker has the right to receive encouragement and help to overcome the habit.



Each citizen has the right to be informed of the unparalleled health risks of tobacco use.

It Can Be Done . . .

. . . This was Dr Kjell Bjartveit's conclusion when he gave an overview at the Conference of anti-smoking measures that have been successfully implemented. This slogan was later referred to throughout the Conference, and is now used as the title of this book.

Mr Dick Dowler, who for many years has worked with Dr Bjartveit and illustrated his presentations, undertook the artwork and layout for this book. Some of Dr Bjartveit's illustrations from his presentation in Madrid and elsewhere are included here.

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The views expressed in this publication are those of the participants in the meeting and do not necessarily represent the decisions or the stated policy of the World Health Organization.

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The World Health Organization is a specialized agency of the United Nations with primary responsibility for international health matters and public health. Through this Organization, which was created in 1948, the health professions of some 165 countries exchange their knowledge and experience with the aim of making possible the attainment by all citizens of the world by the year 2000 of a level of health that will permit them to lead a socially and economically productive life.

The WHO Regional Office for Europe is one of six regional offices throughout the world, each with its own programme geared to the particular health problems of the countries it serves. The European Region has 32 active Member States,[a] and is unique in that a large proportion of them are industrialized countries with highly advanced medical services. The European programme therefore differs from those of other regions in concentrating on the problems associated with industrial society. In its strategy for attaining the goal of "health for all by the year 2000" the Regional Office is arranging its activities in three main areas: promotion of lifestyles conducive to health; reduction of preventable conditions; and provision of care that is adequate, accessible and acceptable to all.

The Region is also characterized by the large number of languages spoken by its peoples, and the resulting difficulties in disseminating information to all who may need it. The Regional Office publishes in four languages – English, French, German and Russian – and applications for rights of translation into other languages are most welcome.

[a] *Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, USSR, United Kingdom and Yugoslavia.*

IT CAN BE DONE

A smoke-free Europe

Report of the first European Conference on Tobacco Policy Madrid, 7–11 November 1988

Organized jointly by

The WHO Regional Office for Europe

The Ministry of Health and Consumer Affairs of Spain

The Commission of the European Communities

In collaboration with

The International Agency for Research on Cancer

The International Union Against Cancer









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These booklets describe the Regional Office's 5-year Action Plan, and study nine topics on the subject of tobacco. They were provided to the Conference as background documentation.

See pages 66 & 67

To make it possible for every person in Europe to enjoy the rights set out in the charter, the Conference participants recommended ten strategies to be followed.

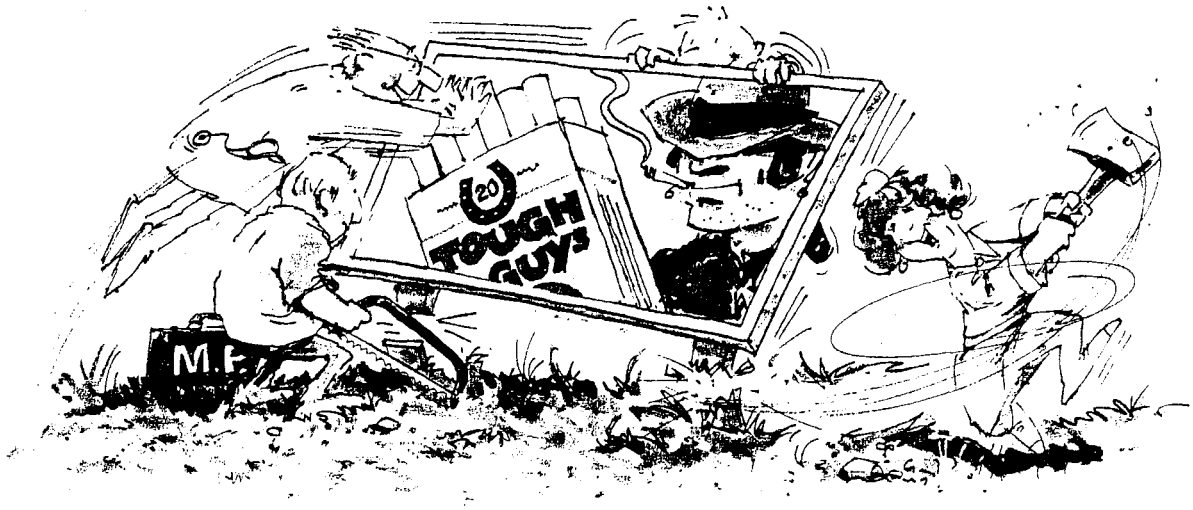
Ten strategies for a smoke-free Europe

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The Conference participants felt that a tobacco control policy that encompassed these ten strategies, coupled with the more specific areas covered by the Action Plan on Tobacco and the recommendations contained in the booklets specially prepared for the Conference, could bring about a significant reduction of

3 Outlaw the advertising and promotion of tobacco products and sponsorship by the tobacco industry



Some few European countries have banned advertising as part of a tobacco policy and still others have no advertising of any product. But the advent of new forms of communication media and attempts by the tobacco industry to avoid advertising restrictions by using other methods of promotion mean that even these countries cannot be confident of remaining untouched by tobacco promotion.

Those who have studied the subject of tobacco control have for many years been convinced that tobacco advertising promotes not only the individual products but the habit of tobacco use itself. By using compelling imagery, tobacco advertising can promise glamour, excitement, and social and sexual success to current and prospective customers. These appealing and persvasive images work to undermine the credibility of health education campaigns about smoking. Furthermore, tobacco promotion impedes the flow of information because many magazines and newspapers tend to ignore the tobacco issue or to minimize its importance for fear of offending advertisers.[a]

Children are, of course, the prime marketing target for the tobacco industry. As long-term smokers are killed off by their habit and increasing numbers of the survivors give it up, the pool of smokers must be replenished in order to maintain the profits of the industry. The new smokers who are recruited are almost exclusively children and adolescents, and advertising is an important element in promoting and influencing smoking among the young.

Research reported on in the background documentation for this Conference shows that children become so well acquainted with the particular imagery and style of cigarette brands that they can name the specific product being advertised in advertisements that do not show the brand name. They can also identify cigarette brands being surreptitiously promoted by brand stretching – using other goods and services, such as sports clothes, shoes or holidays, to promote cigarette brands – and through sports sponsorship.

These results and those of similar research projects are reinforced by the experience of Iceland and Norway, which have both observed a significant decline in smoking by adolescents since all forms of tobacco advertising were banned.

[a] *For an overview of the arguments about tobacco advertising and a review of the evidence, see Pushing smoke: tobacco advertising and promotion (Smoke-free Europe No. 8) described on pages 66 and 67.*

Obstacles to a tobacco advertising ban

It has often been observed that the reason the industry so vigorously resists any restriction of its licence to advertise is not to defend some principle of freedom of expression, but because advertising is such an effective way of promoting smoking. (Some commentators have noted wryly that the best way to assess the effectiveness of any tobacco control strategy is to measure the degree of industry opposition to it.) In any event, the right of children to grow up free of the pressure to take up a life-endangering habit must outweigh the leave that the tobacco industry currently enjoys to promote its products almost without restriction.

The record of the tobacco companies that have "voluntarily" undertaken to curb tobacco promotion is such that no one can seriously consider self-regulation by the industry to be a serious option. The examples of industry violations of the agreements it makes with governments have been copiously documented.[a] Indeed, the Swedish government is so concerned about efforts to market products that act as hidden advertisements for cigarettes that it has appointed a Royal Commission to study this and other shortcomings of its tobacco policy with a view to possible legislation.[b]

The chief ways tobacco companies have of getting round restrictions is through "brand-stretching" mentioned above, "product placement" – paying to show cigarette brand names prominently in films or in advertisements for other products – and sponsorship. By sponsoring arts groups or sports, a company can associate tobacco with prestige cultural events or with the excitement and healthy image of sport. Using the proceeds of a special levy on tobacco to support these groups when sponsorship is banned is discussed elsewhere in this report and was heavily endorsed by Conference participants.

The question of restricting the advertising of tobacco products is really an international one. Smaller countries, such as Iceland, already experience the problem of advertising overspill. Although Iceland has banned tobacco advertising, the majority of the magazines read there are printed abroad and must be excepted from the rules. But the new mass communications media such as cable and satellite television are a greater cause for concern. Some European countries – Italy, for example – already experience a degree of cigarette advertising being beamed to their television screens from abroad, but it is possible that this problem will become much more widespread with the proliferation of satellite television. Conference participants were most anxious that international agreements should ensure that the tobacco industry would not be able to use this medium for advertising.

International agreement should also guarantee that the industry should not use international events such as the football World Cup, and especially the Olympic Games, to promote tobacco. Acceptance of sponsorship from tobacco companies is against the Olympic Charter, but the Olympic Movement should go further and promote the health of athletes, officials and observers by making the Games a smoke-free event, following the model of the Calgary Winter Olympic Games in 1988.



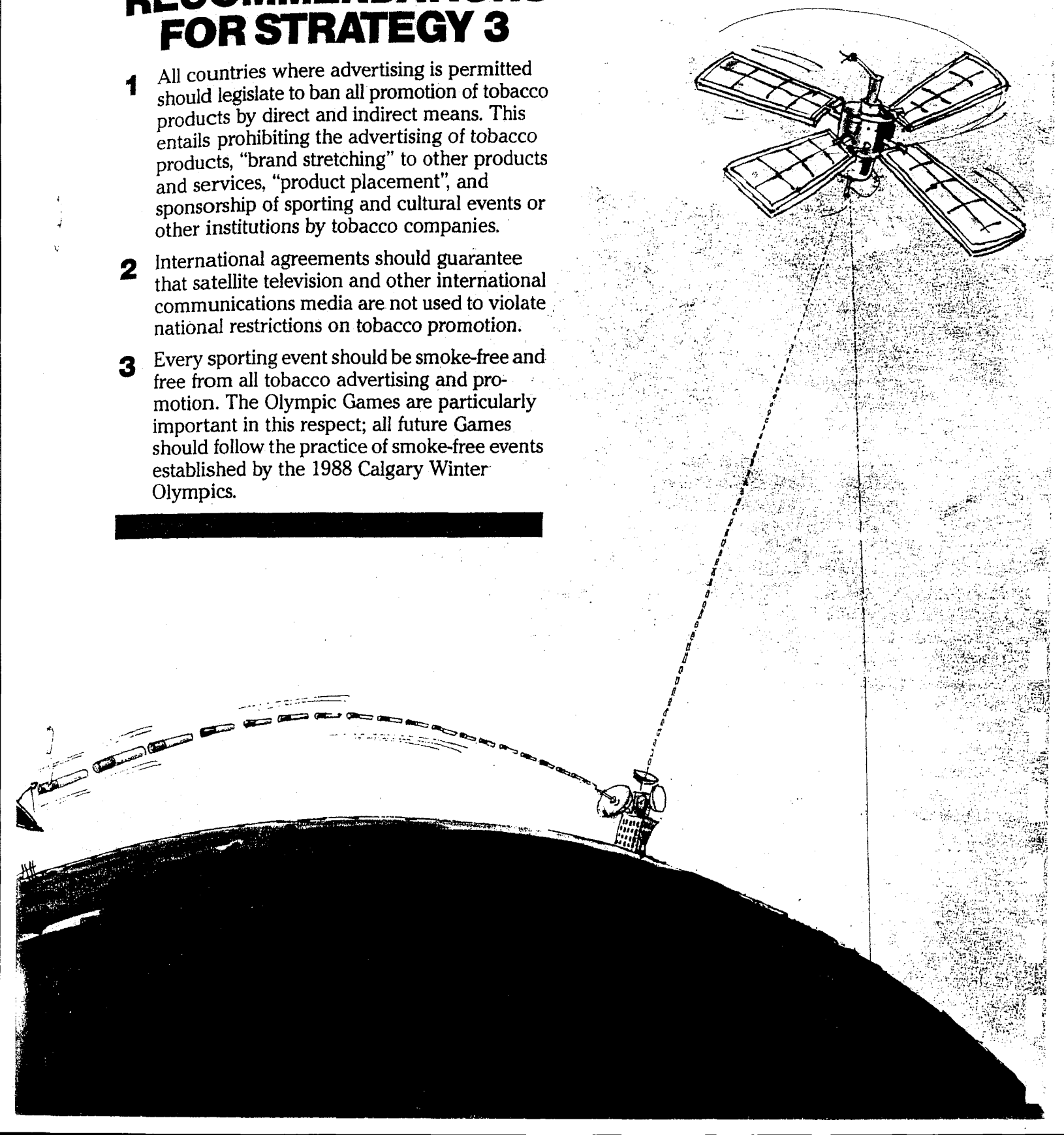
[a] *Roberts, J.L. Code busting by tobacco companies. United Kingdom. Health Education Council and North Western Regional Health Authority, 1986.*

[b] *Millwood, D. & Gezelius, H. Smart promotion. Vällingsby, National Swedish Board for Consumer Policies; Stockholm, National Board of Health and Welfare; The Hague, International Organization of Consumers' Unions, 1989.*

10 Strategies cont. (3)

RECOMMENDATIONS FOR STRATEGY 3

1. All countries where advertising is permitted should legislate to ban all promotion of tobacco products by direct and indirect means. This entails prohibiting the advertising of tobacco products, "brand stretching" to other products and services, "product placement", and sponsorship of sporting and cultural events or other institutions by tobacco companies.
2. International agreements should guarantee that satellite television and other international communications media are not used to violate national restrictions on tobacco promotion.
3. Every sporting event should be smoke-free and free from all tobacco advertising and promotion. The Olympic Games are particularly important in this respect; all future Games should follow the practice of smoke-free events established by the 1988 Calgary Winter Olympics.



RESOLUTIONS OF THE NINTH WORLD CONFERENCE ON TOBACCO AND HEALTH

This conference resolves that:

1. All nations implement the International Strategy for Tobacco Control.
2. The Prime Ministers of Germany, the United Kingdom and the Netherlands be informed by formal letter from the President of this conference and individual letters from conference participants that their governments' action in blocking the implementation of the Directive on Tobacco Advertising in the European Union is an international scandal and is detrimental to the health of all citizens of the European Union, and by example of the citizens in all developing regions of the world who look to the European Union for leadership in Public Health Policy.
3. The International Strategy for Tobacco Control (resolution 1) should be implemented by all the governments of Central and Eastern Europe. Moreover, the Western governments which have the headquarters of the transnational tobacco companies (which now control a majority of the tobacco production capacity in the Central and Eastern Europe region) should share the responsability for ending the tobacco epidemic and assist governments in the region to implement the strategy.
4. This conference further resolves that:
   a. Duty-free sales of tobacco products be prohibited.
   b. National Governments, Ministers of Health, and the World Health Organisation should immediately initiate action to prepare and achieve an International Convention on Tobacco Control to be adopted by the United Nations as an aid to enforcement of the International Strategy for Tobacco Control (resolution 1) adopted by the Ninth World Conference on Tobacco and Health.
   c. Leaders of all religious communities be urged to adopt an official position and take action to protect humanity from the dangers to health from tobacco.
   d. An Islamic Council for Tobacco Control be established.
   e. National governments should be encouraged to take measures leading to the adoption of generic packaging as a means of reducing inducements to tobacco consumption.
   f. In view of the vital importance of information and data exchange, the European Commission is strongly urged to maintain its support for BASP to enable this organisation to continue its major contribution to tobacco control in the European Union.

Edited by Karen Slama, Plenum Press, New York, 1995

AN INTERNATIONAL STRATEGY FOR TOBACCO CONTROL

Since measures to deal with the tobacco problem must be comprehensive and long term, the following individual actions should form the basis of such a strategy.

1. Legislation to ban all direct and indirect advertising and promotion of tobacco products.
2. Legislation to protect young people from tobacco promotion and sales.
3. Policies to discourage the onset and maintenance of tobacco use, including:
   a. intensive health education and information to young people and adults;
   b. wide availability of support for tobacco users who wish to stop.
4. Economic policies to discourage production and use of all tobacco products, including:
   a. progressive significant increases in taxation above inflation (and the growth of disposable income), and the allocation of a specific proportion of such taxes for tobacco control purposes;
   b. action to discourage tobacco production and marketing by the abolition of all subsidies and protection for tobacco growers and the development of alternative economic, agricultural and international trade policies;
   c. removal of tobacco from national cost of living indexes;
   d. measures to control smuggling of tobacco products.
5. Effective health warnings and regulation of tobacco product packaging and such promotional material still permitted.
6. A policy for the regulation of tar and nicotine content of tobacco products.
7. "Smoke-free" public policies - to protect the health and rights of people in all common environments.
8. Policies to block future marketing initiatives of the transnational tobacco industry.
9. Effective national monitoring of the tobacco pandemic and the enforcement of these control measures.

SMOKEFREE EUROPE

A FORUM FOR NETWORKS



SMOKEFREE EUROPE: CONFERENCE ON TOBACCO OR HEALTH
Helsinki, Finland 2-4 October 1996
Finnish Centre for Health Promotion, conference Secretariat
Ministry of Social Affairs and Health

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Europe Against Cancer
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Ministry of Education
Finnish Slot Machine Association
Pharmacia & Upjohn

SCIENTIFIC BOARD
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Cancer Society of Finland
President of the conference

Professor Pekka Puska
National Public Health Institute
Chairman of the organising committee

Dr Harri Vertio
Director
Finnish Centre for Health Promotion

WRITERS & EDITORS
Mark Waller
Satu Lipponen
Finnish Centre for Health Promotion

Photographs: Jukka Uotila
Cover design: Anne-Mari Ahonen
Page lay-out: Samuli Jokipaltio

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SMOKEFREE EUROPE CONFERENCE RESOLUTION ON THE EUROPEAN TOBACCO STRATEGY

The Conference for a Smokefree Europe, Helsinki, 2-4 October 1996, with more than 500 scientists, administrators, politicians and public health professionals and activists from 50 countries, recognizing that tobacco products cause 850,000 deaths annually in the European region:

- endorses the International Strategy for Tobacco Control of the 9th World Conference on Tobacco or Health (1994). The Conference is aware that other strategies to promote nonsmoking and smoke-free environments have been devised and recognizes their value for stimulating and guiding action;
- also fully endorses of the recommendations of the High Level Cancer Expert Committee of the Europe Against Cancer programme. The Conference also urges countries outside the European Union to implement them.

Tobacco products cause a variety of diseases ranging from cancers and respiratory diseases to cardiovascular diseases. The Conference urges all public health organizations to contribute to tobacco prevention efforts in their communities. All national and international agencies, non-governmental organizations, the European Union and the World Health Organization should collaborate closely on tobacco control issues.

The conference declares:

Everyone has a right to a smoke-free environment at home, in public places and at work.

1. All people have the right to smoke-free air. Children and other vulnerable people need unpolluted air for health. Everyone has a right to a smoke-free environment at home, in public places and at work. Communities and national governments have a duty to guarantee that no one is involuntarily exposed to tobacco smoke. They must legislate to guarantee a smoke-free environment in work places and public places as well as to carry out cam-

paigns to encourage people to make their homes smoke-free.

2. There is a wide scientific consensus, as reflected in the work of the US Food and Drug Administration, that nicotine in tobacco products creates and sustains addiction. Most smokers start at early age thus developing a substance dependence. All governments should protect adolescents from tobacco addiction, as they do from other addictions, by using eduction and well enforced legal restrictions on the sales of tobacco to adolescents.
3. The new initiative on the international framework convention on tobacco prepared by WHO deserves the support of all countries and the European Community.
4. In countries of Central and Eastern Europe (CEE) the tobacco industry should be made to comply with the same rules as in the European Union countries. The Conference urges all CEE Governments to take urgent action against tobacco, following the example set by Lithuania, Poland and Slovenia, in order to improve health and to prevent the widening gap in health status and legislation between EU and CEE countries. All international organizations should support politically, financially and otherwise, action in CEE countries.
5. Since women may be more vulnerable than men to the principle diseases related to tobacco, and as they are also a prime target of the tobacco industry, all countries are urged to adopt strategies recognising these special needs.
6. All governments are urged to provide adequate resources to fund tobacco control activities in their country.

Finally, the Conference recognises that the key issues are:

- ensuring that reducing tobacco consumption is made a top health priority protecting young people from all pressures to take up the smoking habit
- building alliances and coalitions between all sectors of society, including health professionals, mass media and businesses
- discouraging the onset and maintenance of tobacco use by health education and information and giving support for quitting to tobacco users
- making smoke-free flights available throughout Europe
- using tobacco liability and litigation as attractive new tools for tobacco control

- legislating to ban all direct and indirect advertising and promotion of tobacco products
- increasing tobacco taxation significantly
- allocating a proportion of tobacco tax revenue for tobacco control and health promotion
- abolishing all subsidies for tobacco production
- establishing effective health warnings and regulation of tobacco packaging including the introduction of generic packaging
- regulating tar and nicotine yields of tobacco products
- banning self-service displays and vending machines
- ending sales of duty free cigarettes and other tobacco products
- blocking the international marketing efforts of the transnational tobacco industry
- monitoring the tobacco epidemic ■

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TOBACCO CONTROL AND PREVENTION

A Guide for Low Income Countries

1998

Karen Slama

International Union Against Tuberculosis and Lung Disease

a founding member of **INGCAT**,
the International Non Governmental Coalition Against Tobacco

68 Boulevard Saint-Michel, 75006 Paris, France

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APPENDIX III

A. Resolutions of the 10th World Conference on Tobacco or Health

Beijing, China, 24-28 August 1997

The Conference notes that the current 3.5 million annual deaths from tobacco will increase to 10 million deaths by 2025 and that the epidemic is expanding especially in developing countries and amongst women.

Given the overwhelming scientific evidence confirming that tobacco use is responsible for this growing and global epidemic of death and disease, and that passive smoking is harmful, the 10th World Conference on Tobacco or Health makes the following resolutions.

1. Stopping tobacco use

The Conference recommends that, given the only way to save millions of lives by reducing the projected global tobacco-related death toll, which is over 100 million deaths over the next twenty years;

i. the public health community make strenuous efforts to help people stop using tobacco products.

2. WHO International Framework Convention on Tobacco Control

The Conference recommends:

i. The WHO and governments to formulate an International Framework Convention to include protocols for comprehensive tobacco control programmes and the recommendations from previous World Conferences, and with the capability to be made broader and more restrictive over time;

ii. Governments to make the necessary financial and technical resources available to the World Health Organization to enable it to develop a Framework Convention on Tobacco Control, as requested by the 49th World Health Assembly in 1996;

iii. The WHO to undertake urgent work to develop a comprehensive Framework Convention in time for agreement at the 53rd World Health Assembly in 2000;

iv. All Governments to agree a Framework Convention text at the 53rd World Health Assembly in 2000 and to ratify and bring the Convention into force promptly.

3. United Nations

The Conference recommends:

i. The United Nations Secretary General ensures that the issue of tobacco control be a priority at the highest level in the United Nations and its agencies;

ii. Governments to take up the issue of international tobacco control at the highest level in the United Nations and to secure adequate funding and political commitment for this task throughout the world.

4. International implications of domestic tobacco control measures

The Conference recommends that governments consider the international implications of tobacco control policies or settlements with the tobacco industry, and to ensure that:

a. such measures do not contribute to an increase in the worldwide epidemic of tobacco-related death and disease;

b. the legal rights of those not party to any agreement or policy are fully protected;

c. such measures do not inhibit full public scrutiny of the past, present and future activities of the tobacco industry and;

d. the tobacco industry pay the costs of damage caused by tobacco.

5. Participation of women and representatives of developing and transition countries

The Conference recommends:

i. All bodies concerned with strategic planning and tobacco control policy development, implementation and evaluation, such as the WHO Expert Advisory Panel, to increase their involvement and representation of women and of people from developing and transition countries;

ii. Future World Conferences on Tobacco or Health to follow the successful example of the 10th World Conference and ensure:

a. equal representation of women and strong representation of people from developing and transition countries as committee members, plenary speakers, chairpersons and discussants.

b. that support is provided to allow all key constituencies, including women, minorities, and people from developing and transition countries, to participate at all levels.

6. Reflecting the full human, social and environmental costs of tobacco

The Conference recommends:

i. The establishment and maintenance of a worldwide monitoring system of the tobacco epidemic and that appropriate resources be provided.

ii. The appropriate multilateral agencies and development banks to finance and undertake cooperative research programmes to establish a full economic analysis of tobacco growing, production and use, taking into account costs of damage to the environment, harm to workers, damage to smokers and passive smokers, and all other tobacco-induced costs that fall on society.

iii. That those responsible for economic policy and advice, including finance ministries and agencies such as development banks and the IMF, ensure that the full health, environmental, social and economic costs of tobacco are represented in the price of tobacco products through taxation.

7. Denormalisation and regulation of tobacco as a harmful substance

The conference recommends that:

i. all governments recognize that tobacco is uniquely dangerous and cannot be treated like a normal consumer product because it is the only substance which is both extremely harmful and powerfully addictive when used as intended by its manufacturers, while remaining legal and in widespread use.

ii. all governments subject the contents of tobacco products and smoke, and all aspects of the tobacco business to strict and legally binding regulatory control.

8. Expanding partnerships for a tobacco-free world

The conference recommends:

i. that all non-government organisations involved in tobacco control support INGCAT (International Non-Governmental Coalition Against Tobacco);

ii. and that international networking be established in all sectors involved with tobacco control such as nursing professionals and religious sectors.

A healthier, tobacco-free world depends on each and every one of us: the governments, international organisations, non-governmental organisations, communities and individuals. Let us ALL unite in our efforts to make the world tobacco-free.

B. An International Strategy For Tobacco Control

Adopted at the 9th World Conference on Tobacco and Health, Paris, France, 10-14 October, 1994.

Included in the Charter of INGCAT, the International Non Governmental Coalition Against Tobacco.

1. *Legislation to ban all direct and indirect advertising and promotion of tobacco products.*
2. *Legislation to protect young people from tobacco promotion and sales.*
3. *Policies to discourage the onset and maintenance of tobacco use, including*
   a) intensive health education and information to young people and adults
   b) wide availability of support for tobacco users who wish to stop.
4. *Economic policies to discourage production and use of all tobacco products, including:*
   a) progressive significant increases in taxation above inflation (and the growth of disposable income), and the allocation of a specific proportion of such taxes for tobacco control purposes;
   b) action to discourage tobacco production and marketing by the abolition of all subsidies and protection for tobacco growers and the development of alternative economic, agricultural and international trade policies;
   c) removal of tobacco from national cost of living indexes;
   d) measures to control smuggling of tobacco products.
5. *Effective health warnings and regulation of tobacco product packaging and such promotional material still permitted.*
6. *A policy for the regulation of tar and nicotine content of tobacco products.*
7. *"Smoke-free" public policies—to protect the health and rights of people in all common environments.*
8. *Policies to block future marketing initiatives of the transnational tobacco industry.*
9. *Effective national monitoring of the tobacco pandemic and the enforcement of these control measures.*

The INWAT Resolution

The following additional resolution has been proposed by the International Network of Women Against Tobacco:

Since women may be more vulnerable than men to the principle diseases related to tobacco, and as they are also a prime target of the tobacco industry, all countries are urged to adopt strategies recognising these special needs.

TOBACCO-FREE CANADA
FIRST NATIONAL CONFERENCE ON TOBACCO OR HEALTH

Ottawa October 20 - 22, 1993

CONFERENCE RESOLUTIONS

WHEREAS great effort and progress has been made in recent years by thousands of individual Canadians and organizations, many of which are represented at this conference, to control the tobacco epidemic, the First National Conference on Tobacco or Health COMMITS TO INCREASED HEALTH PROMOTION, DISEASE PREVENTION AND LEGISLATIVE ACTION to control our number one preventable health problem and RECOMMENDS and URGES:

- THAT non-governmental health, medical, educational and scientific organizations in Canada reorient budgets in order to increase tobacco control resources commensurate with the health impact of tobacco use on Canadians;

- THAT all governments in Canada reorient budgets in order to increase tobacco control resources commensurate with the health impact of tobacco use on Canadians;

- THAT non-governmental health, medical, educational and scientific organizations in Canada with an interest in tobacco control and resources commit significant funding for public policy advocacy including professional staff and support services and a fast track mechanism for decision making;

- THAT health and medical organizations establish a Tobacco Behavioral Research Challenge Fund to provide targeted funding to combat the tobacco epidemic through documenting success and indicating new directions on appropriate interventions;

- THAT those involved with young people and tobacco employ a comprehensive approach using schools as one environment, addressing factors in curriculum, school environment, health services, social support and control of the physical environment;

- THAT federal, provincial and territorial governments and national voluntary health organizations collaborate in following up this conference with one devoted to women and tobacco, with special attention to aboriginal, francophone, immigrant and poor women;

- THAT governments and health organizations develop more and better tobacco control programs with adequate funding to assist populations of women especially those who are poor and marginalized;

(English translation of following three resolutions follows)

• QUE le Comité directeur de la Stratégie nationale de lutte contre le tabagisme s'assure de la présence d'une solide délégation canadienne à la 9ième Conférence mondiale sur le tabac et la santé qui aura lieu à Paris en 1994, et

• QUE le Comité directeur de la Stratégie nationale de lutte contre le tabagisme s'assure d'une représentation proportionnelle de francophones à l'intérieur de la délégation canadienne à la 9ième Conférence mondiale étant donné l'importance du tabagisme chez les francophones du Canada et l'implication et l'intérêt croissant des francophones dans la lutte au tabagisme;

• QUE, lors des futures conférences nationales sur le tabagisme et la santé, des services de traduction simultanée dans les deux langues officielles soient disponibles pour toutes les sessions ainsi que toute documentation pertinente afin d'y faciliter l'accès et d'assurer une participation maximale;

(THAT the Steering Committee of the National Strategy to Reduce Tobacco Use ensure the presence of a strong Canadian delegation at the World Conference on Tobacco or Health in Paris in 1994, and

THAT the Steering Committee of the National Strategy to Reduce Tobacco Use ensure a proportional representation of francophones within this Canadian delegation -- considering the degree of tobacco use among Canadian francophones as well as the increasing interest and involvement of francophones in reducing tobacco use;

THAT at future national conferences on tobacco or health, there be simultaneous interpretation of all sessions and translation of all pertinent documents in both official languages -- to facilitate access and maximize participation);

• THAT the Steering Committee of the National Strategy to Reduce Tobacco Use develop a suitable recognition program, including awards, for success in tobacco control by organizations, communities and governments in Canada;

• THAT the Steering Committee of the National Strategy to Reduce Tobacco Use approach tobacco control in context with other risk behaviours, such as, for example, sedentary life style and integrate these strategies;

• THAT health professional organizations encourage and educate their practitioners in effective smoking cessation interventions;

• THAT the Clinton Administration and Congress immediately adopt an increase in federal excise taxes on tobacco, consistent with recommendations by the U.S. Coalition on Smoking OR Health -- to curb contraband tobacco trade between Canada and the U.S., work towards tobacco tax parity with Canada and encourage Americans to become tobacco-free;

• THAT federal and provincial governments encourage their counterparts in the U.S. to increase tobacco excise taxes to parity with those in Canada;

- THAT U.S. states bordering Canada immediately increase tobacco excise taxes to parity with provincial excise taxes across the border;

- THAT the Government of Canada re-instate an export tax on all exported tobacco products to equalize the price of contraband and legally sold tobacco products;

- THAT federal and provincial governments work with aboriginal people and organizations to stop tobacco smuggling on Indian reserves;

- THAT the federal Minister of Health quickly designate provincial, regional, and municipal enforcement officials as inspectors under the provisions of the Tobacco Sales to Young Persons Act;

- THAT the federal Minister of Health and provincial/territorial Health Ministers make provisions for and coordinate prominent health warnings on all signage relating to the Tobacco Sales to Young Persons Act and provincial/territorial legislation to control tobacco sales to minors;

- THAT the federal government amend the Tobacco Sales to Young Persons Act to make the minimum age of purchase 19;

- THAT the federal government amend the Tobacco Sales to Young Persons Act to prohibit vending machine sales;

- THAT smokeless tobacco be considered in all initiatives in our national strategy;

- THAT all federal and provincial governments compile data on the usage of smokeless tobacco by Canadian youth;

- THAT smokeless tobacco information be required within all provincial elementary school health curricula;

- THAT the next national conference include a focus on teenagers;

- THAT all federal, provincial and territorial governments pass legislation requiring the plain packaging of tobacco products;

- THAT all federal, provincial and territorial governments prohibit the packaging of cigarettes by businesses and individuals in package sizes containing less than 20 cigarettes;

- THAT the federal and provincial governments cease all direct and indirect assistance for manufactured and leaf tobacco exports;

- THAT the Government of Canada strictly enforce the Tobacco Products Control Act and Tobacco Products Control Regulations;

- THAT the Government of Canada amend the Tobacco Products Control Act to prohibit tobacco sponsorship advertising;

• THAT the Government of Canada be applauded for its landmark health warnings on tobacco packages and ensure the introduction of these as scheduled;

• THAT the Government of Canada require detailed health messages in or on all tobacco packages, such as, for example, package inserts;

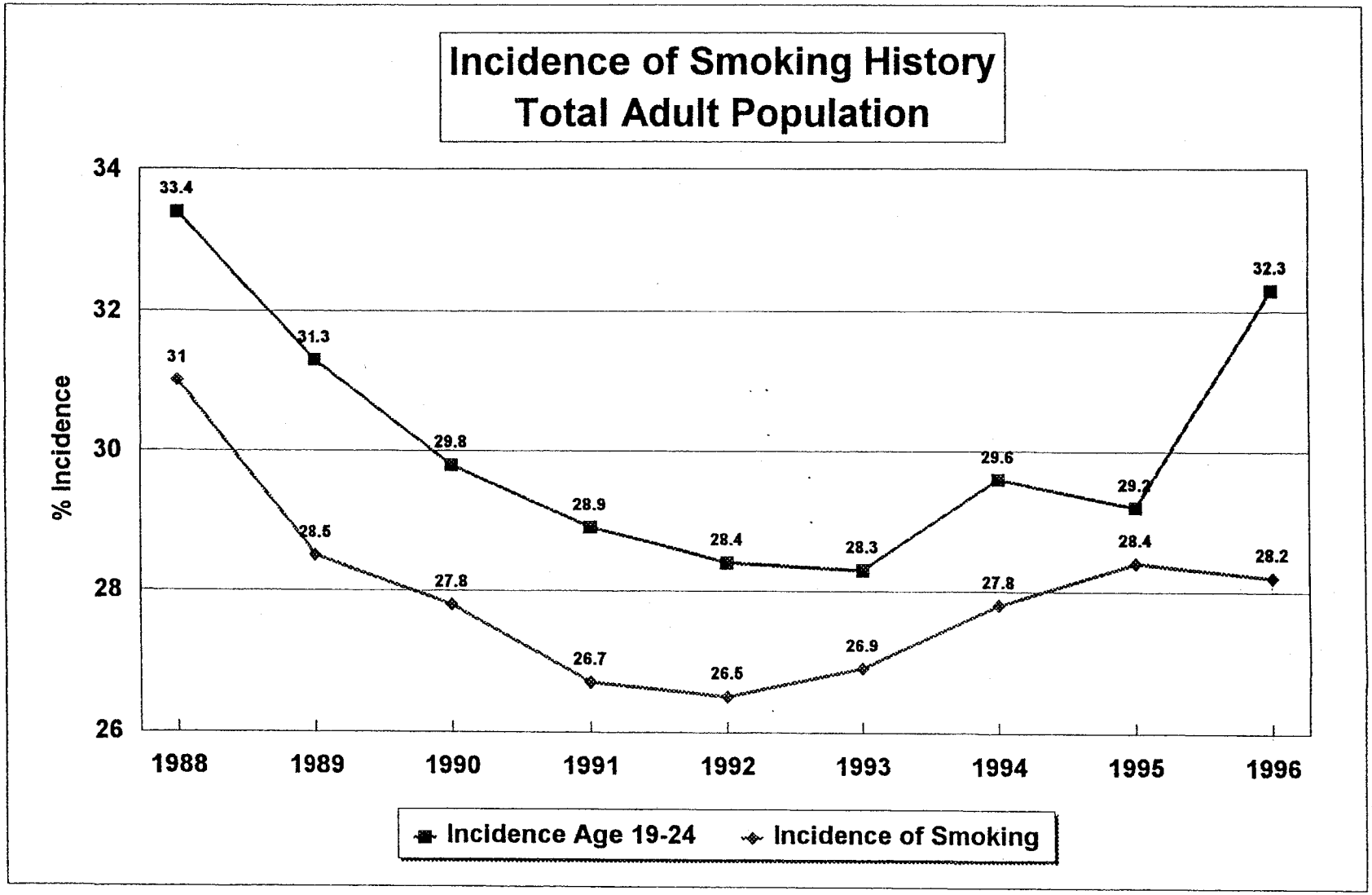
• THAT the Government of Canada and national health organizations designate resources, identify appropriate mechanisms and develop strategies to assist with global tobacco control efforts – in collaboration with the World Health Organization;

• THAT the federal government support Recommendation 25 of the Victoria Declaration on Heart Health that international trade in tobacco products be halted and that no trade agreement limit domestic tobacco control policies;

• THAT the Government of Alberta immediately introduce in the Legislature without delay the Tobacco Control Act; and

• THAT the Government of Ontario introduce in the Legislature without further delay the Ontario Tobacco Act to:

- restrict the sale of tobacco to licensed outlets;
- prohibit the sale of tobacco in pharmacies;
- require all tobacco products be sold in plain packages;
- raise the minimum age of legal purchase to 19
- prohibit smoking in all public places, including arenas and restaurants;
- restrict smoking in all workplaces to designated, separately ventilated areas;
- ban smoking from schools and school property;
- include effective enforcement mechanisms.



Source:
R.J.R. Macdonald Inc. surveys

R.J.R. MACDONALD INC.

Date : June 4, 1997

To : Rich Kauffeld

From : Lance Newman
Steve Wilson

Subject : Market Incidence and Usage

In response to your request, this provides an overview of the tracking of smoking incidence and per capita consumption and how we use them to predict industry volume.

OVERVIEW

A. Omnibus

Initiated in 1987, Omnibus is a syndicated survey technique which gathers trend information on incidence, brand usage/share, awareness, purchase habits and demographics. It is our only source of YAS tracking. This is a national telephone survey contacting 2,000 adults per month, yielding us with about 550 factory made smokers.

	Month	Quarter	Year
n =	550	1,650	6,600

The data is collected by Thompson Lightstone & Company, a major research supplier that has been in business for 20 years.

B. Questions and Calculations

The questions used to capture incidence and sticks per day usage statistics are attached. While we are currently modifying questions to improve the Omnibus study, these questions have been in use throughout the December 1996 timeframe.

Incidence of Smoking

- Calculated as answers to Question 1 in the smoking section, divided by the total adult respondents in the survey. This question has been asked (as written on the current questionnaire) since inception of the study. No changes have been made to the question over time.

Stick Per Day

- Sticks per day, or average daily consumption is collected in two ways on the questionnaire: in broad numerical ranges and as the actual number of sticks per day. When the study was initiated, responses were coded into ranges only and the question was asked for each type of cigarette smoked. In February 1990, the actual number of sticks per day, smoked on average were recorded (regardless of type) in order to increase the accuracy of measurement. Reported data based on 12 month moving averages is therefore available from 1991 onwards.

C. Data Accuracy

The statistical variance due to the size of the national sample (95% confidence) would be:

	Monthly	Quarterly	L12M
Incidence	+/- 2.19%	+/- 1.27%	+/- 0.63%
Sticks/Day	+/- 4.18%	+/- 2.41%	+/- 1.21%

It should be noted that **the responses themselves are not necessarily accurate**, as they may contain a bias; for example, the understatement of daily usage.

CLAIMED INCIDENCE TRENDS

A. Total Smokers: Declining incidence, except from 1993 to 1995. Total incidence is roughly the same as six years ago and beginning to decline again.

B. 19-24's: Declining incidence from 1988 to 1993, but increasing through 1996. Incidence of 19-24's appears at highest levels since 1988.

CLAIMED USAGE TRENDS

A. Total Smokers: Essentially flat since 1991, with an apparent drop in 1996.

B. 19-24's: A generally declining trend since 1991.

Rich Kauffeld
June 4, 1997
Page 3

MARKET FORECAST

The Omnibus study plays a central role in developing market forecasts for our corporate planning purposes. Our current outlook anticipates a year-over-year volume decline of 1% which traces to declining incidence and usage trends as identified by Omnibus but is somewhat offset by projected growth in the adult population (Statistics Canada). This methodology provides reasonably accurate estimates of market volume, as long as a dummy coefficient is used to adjust for the following error factors:

A. Usage

While difficult to verify, we suspect that actual usage is consistently under-reported, introducing a large inherent bias into our analysis.

B. Incidence of Smoking

This factor is dependent upon respondents indicating that they "regularly" smoke a type of tobacco product. We know that there are smokers who do not report themselves as such and there are "social" smokers who occasionally purchase tobacco products but do not consider themselves as smokers.

C. Not Sampled

We do not collect data from underage smokers. As such, volume attributable to this group can only be estimated by identifying and eliminating the smoking factors and biases from our total market data as measured by industry shipments (Statistics Canada).

In order to account for these factors in our forecasting activities, a general coefficient has been determined through regression analysis, which accounts for 30% of industry volume, not predicted by strictly using claimed incidence and usage factors. This coefficient allows the use of Omnibus data in predicting total industry consumption with an acceptable degree of statistical uncertainty.

Please let me know if you require any further data or explanation.

Regards,

Encl.

SMOKING SECTION

ASK EVERYONE

1. Do you yourself regularly smoke any of the following? [READ LIST - FOLLOWING ROTATION ORDER]

		Yes	No
CONTINUE	Factory made cigarettes	1	A
	Roll-your-own cigarettes (i.e. loose, fine-cut tobacco for rolling cigarettes by hand or with a rolling machine)	2	B
IF CODE 3 OR 4 ONLY CIRCLED, SKIP TO Q.2b	Pipes	3	C
	Cigars	4	D
CONTINUE	Custom cut tobacco (i.e. pre-proportioned tobacco sticks for insertion into filter tubes)	5	E

IF NO TO ALL AT Q1, SKIP TO Q2b

2a) Please tell me on average, how many cigarettes in total do you smoke in a day? Please include in your total all different types of cigarettes which you may smoke. [PROBE FOR ACTUAL NUMBER OF CIGARETTES - WRITE IN ACTUAL NUMBER AND CIRCLE CATEGORY BELOW] [ENSURE RESPONDENT UNDERSTANDS THAT THE QUESTION REFERS TO ALL TYPES OF CIGARETTES SMOKED PER DAY]

ACTUAL # ____ ____

Less than 1 00
Refused/Don't know/Not stated 97

40 or more 1
30 to 39 2
20 to 29 3
10 to 19 4
5 to 9 5
1 to 4 6
Less than 1 7
Refused/Don't know/Not stated 9

INCIDENCE TRENDS — NATIONAL
TOTAL CIGARETTES — L12M

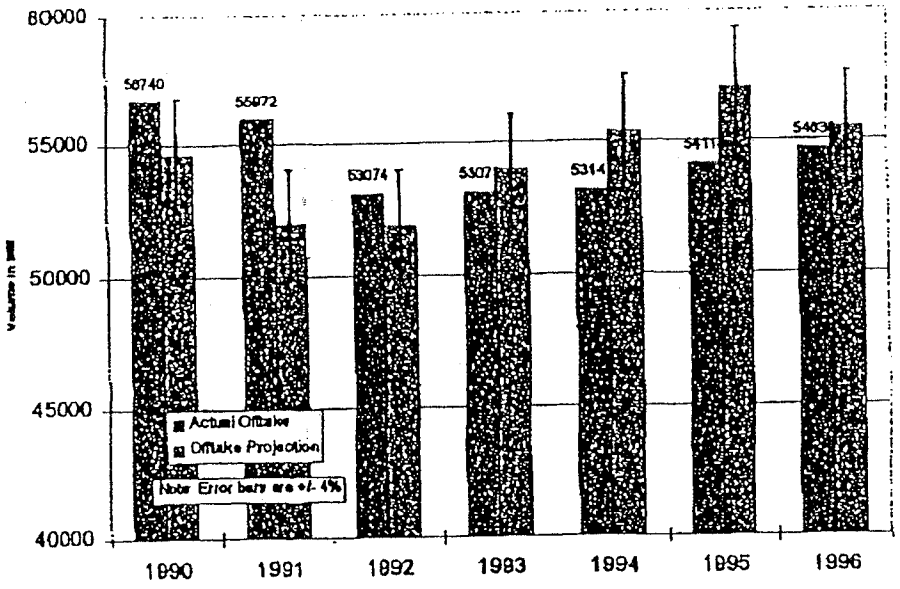
	'88	'89	'90	'91	'92	'93	'94	'95	'96
TOTAL (%)	31.0	28.5	27.8	26.7	26.5	26.9	27.8	28.4	28.2
19-24's (%)	33.4	31.3	29.8	28.9	28.4	28.3	29.6	29.2	32.3

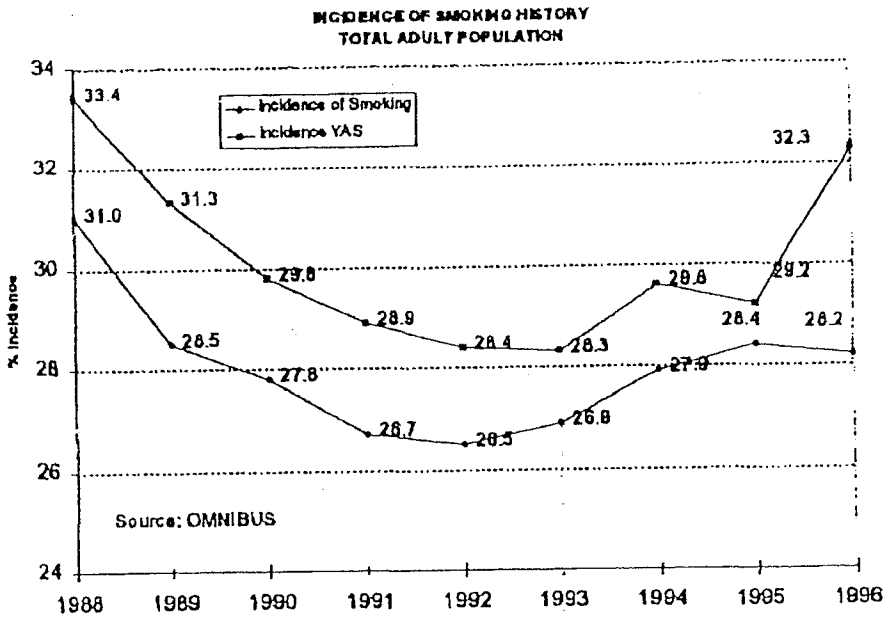
USAGE TRENDS — NATIONAL
AVERAGE STICKS PER DAY — L12M

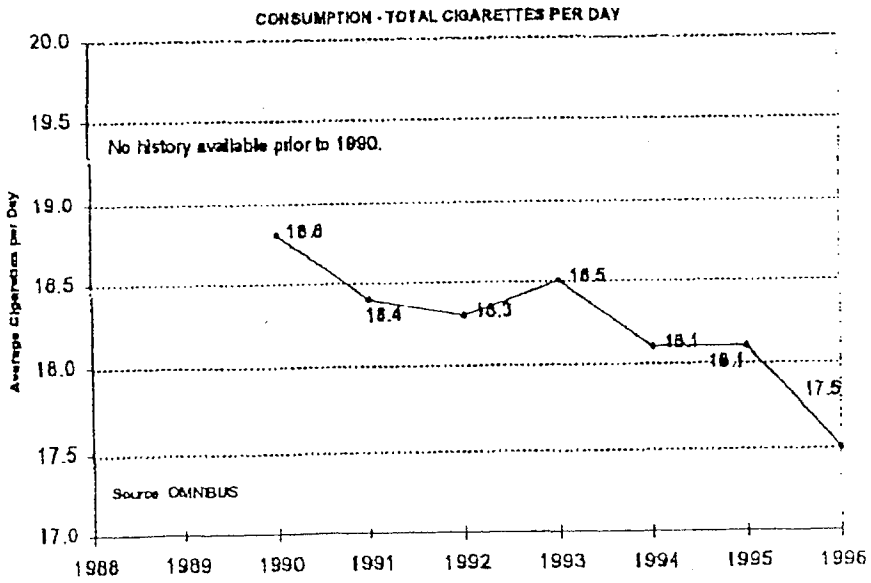
	'91	'92	'93	'94	'95	'96
TOTAL (%)	18.2	18.1	18.3	18.1	18.1	17.5
19-24's (%)	15.7	15.0	15.4	15.4	14.8	14.6

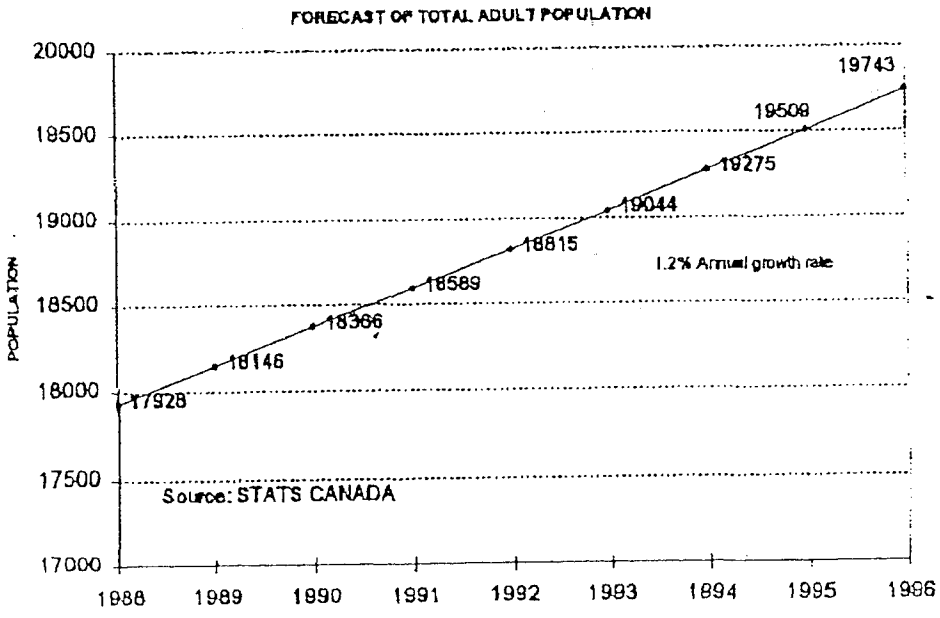
Tobacco Market Dynamics

1988-1996



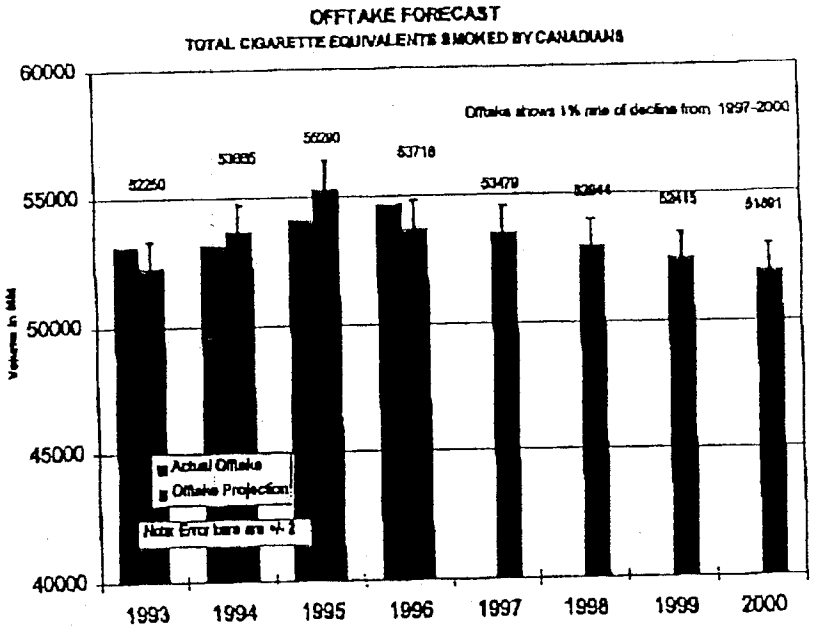


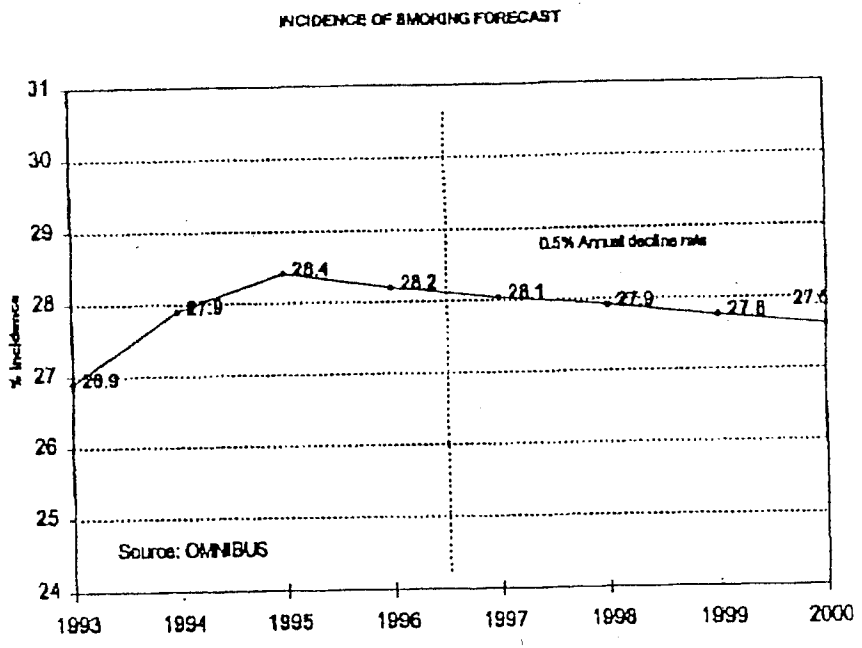


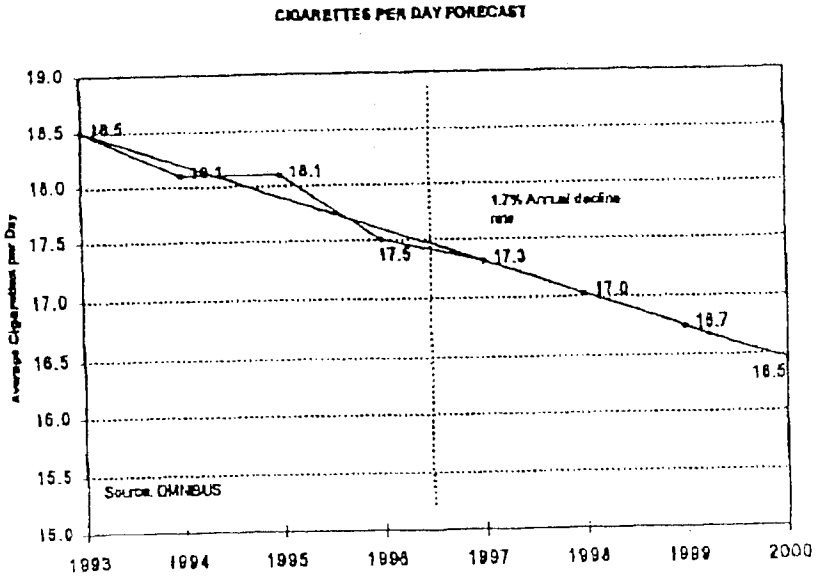


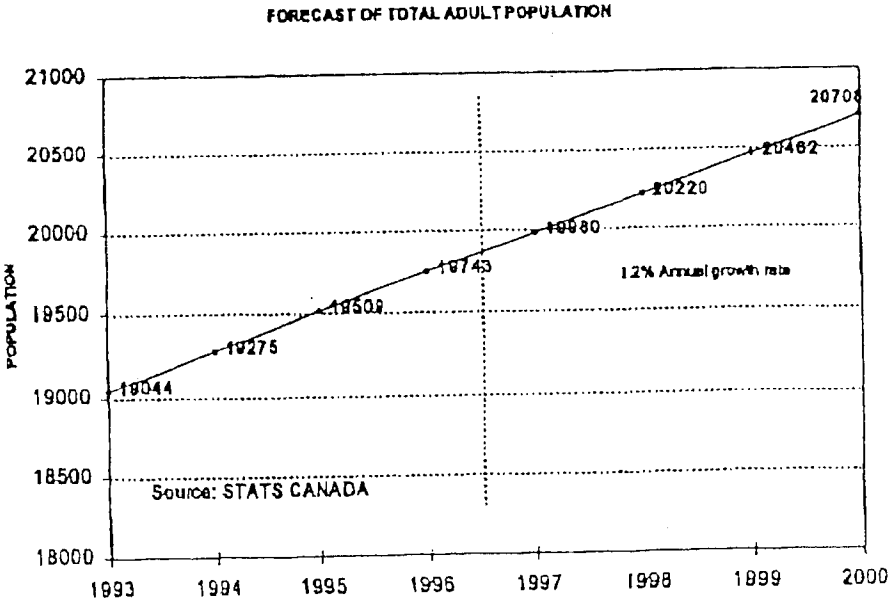
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Industry Offtake Forecast



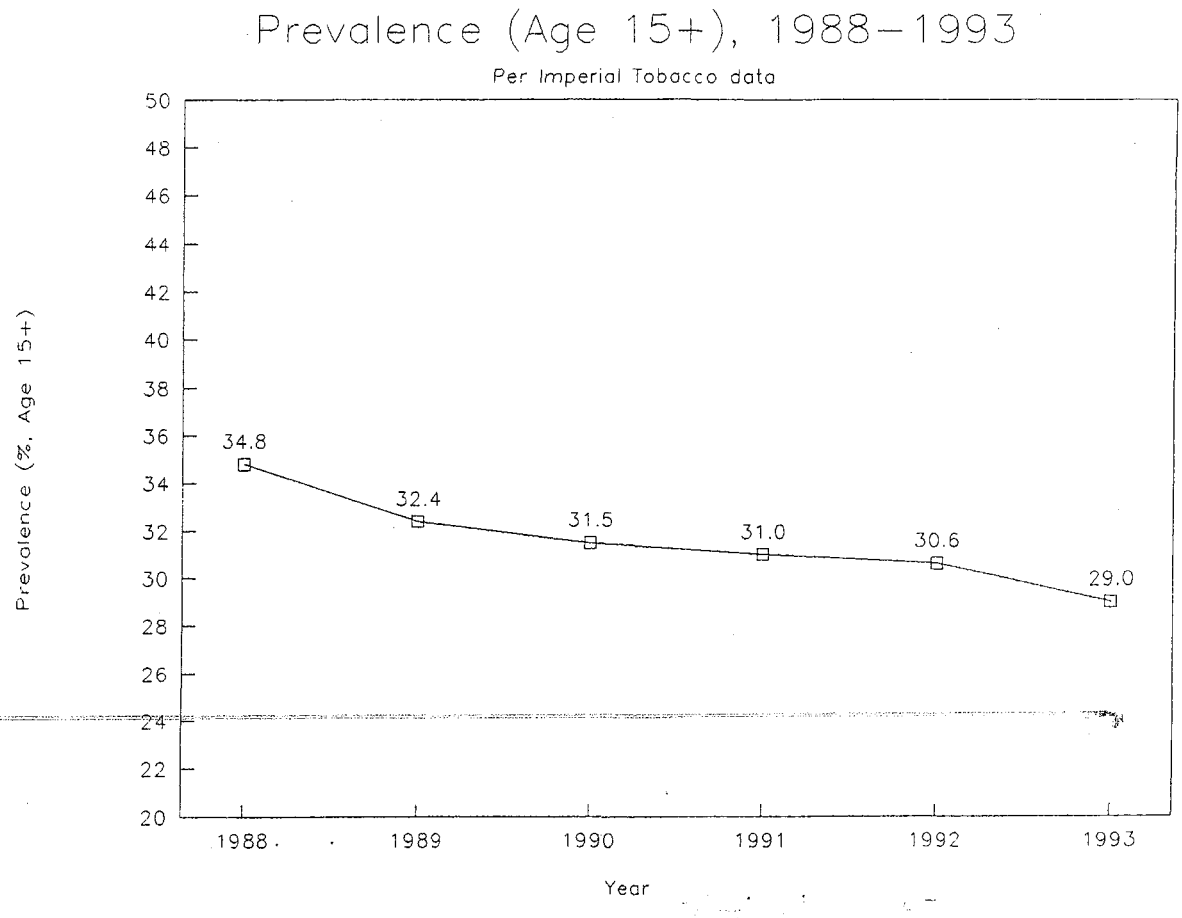






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TOTAL P.09



As indicated in the graph, smoking prevalence fell from 34.8% in 1988, the year prior to the *Tobacco Products Control Act* being in force, to 29.0% in 1993, the last year for which data are available, representing a decline of 16.7% (5.8%÷34.8%). Given the tobacco tax rollback in 1994, one could expect that Imperial Tobacco data report an increase in prevalence in 1994.

Source: For 1988 and 1989, see Imperial Tobacco, "The Canadian Tobacco Market at a Glance", 1989. For 1990-1993, see Imasco Ltd. Annual Reports for 1992 (p.7) and 1993 (p.18). Imperial Tobacco's prevalence data for 1994 to the present is not yet publicly available.

Imperial Tobacco Limited/Limitée

THE CANADIAN TOBACCO MARKET

AT A GLANCE

AG-31

1989

File: Resume

CANADA & CIGARETTES
CALENDAR 1971-1989

	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
1. TOTAL POPULATION (Millions)	21.7	21.8	22.1	22.3	22.5	23.0	23.2	23.5	23.7	24.0	24.2	24.5	24.7	25.1	25.4	25.6	25.9	26.1	26.5
% -vs- Previous Year	1.4	0.5	1.4	0.9	0.9	2.2	0.9	1.3	0.9	1.3	0.8	1.2	0.8	1.6	1.2	0.8	1.2	0.8	1.5
2. POPULATION 15 OVER (Millions)	15.3	15.5	15.9	16.3	16.7	17.1	17.4	17.8	18.1	18.4	18.7	18.9	19.2	19.7	19.9	20.1	20.4	20.6	20.7
% -vs- Previous Year	2.7	1.3	2.6	2.5	2.5	2.4	1.8	2.3	1.7	1.7	1.6	1.1	1.6	2.6	1.0	1.0	1.5	1.0	0.5
3. INCIDENCE 15 OVER (Claimed)/(Sp.'89)																			
Total	46.9	45.6	45.6	44.2	43.9	44.2	43.1	40.0	39.8	40.3	39.4	39.5	38.6	39.6	37.1	34.3	33.5	34.8	32.4
Male	54.6	52.5	51.7	48.6	49.3	49.0	47.6	46.4	44.1	44.1	43.9	41.9	42.6	42.1	38.2	35.6	35.6	35.7	34.1
Female	39.4	38.8	39.0	39.8	38.6	39.2	38.7	35.0	36.0	36.7	35.0	37.1	34.8	37.1	36.0	33.0	31.4	33.9	30.7
4. USAGE (Cigarettes/Day)/(Sp.'89)																			
Claimed	20.5	20.7	21.2	20.9	20.8	21.1	21.4	21.5	21.5	21.4	21.8	22.3	22.1	22.0	21.4	21.7	21.2	21.0	20.9
Calculated	21.1	22.0	22.7	23.5	23.5	23.8	24.2	25.5	26.0	24.9	25.8	25.7	25.2	23.7	24.2	24.8	24.2	23.0	23.6
5. Actual Quitting - TOTAL/(Sp.'89)	1.4	2.1	1.3	1.7	1.8	1.9	2.1	1.9	1.7	1.7	1.9	1.9	2.3	1.8	1.8	1.7	1.4	1.4	1.8
(Less than 6 months) Male	1.4	2.4	1.7	2.1	1.8	2.4	2.2	2.2	1.8	2.0	2.3	1.9	2.8	2.2	1.8	2.2	1.5	1.4	1.8
Female	1.4	1.8	1.0	1.3	1.8	1.4	2.0	1.5	1.7	1.4	1.4	1.9	1.8	1.5	1.7	1.3	1.4	1.5	1.7
6. STARTING 15 OVER/(YTD Aug.'89)	n/a	n/a	n/a	n/a	0.5	0.7	0.8	0.8	0.8	0.9	0.9	0.6	0.6	0.7	0.7	0.9	0.7	0.7	0.7
7. SWITCHING RATE (Past Year)/(YTD Aug.'89)	9.4	8.0	10.0	10.1	10.0	14.1	18.2	18.0	17.1	16.3	13.9	12.3	12.6	10.9	10.8	18.7	13.7	11.7	11.0
8. % USUALLY BUY BY CARTON/(YTD Aug.'89)	n/a	n/a	46	46	50	51	50	49	46	47	48	48	49	40	37	38	36	36	31
SMOKING & HEALTH/(YTD Aug.'89)																			
9. % Agree Smoking is Dangerous for Anyone	48	59	56	63	64	67	71	72	72	74	75	76	76	77	77	79	77	77	79
2. % Attempted to Quit	n/a	n/a	n/a	n/a	n/a	40	40	42	42	43	43	41	43	41	41	45	43	43	43
1. % Intend to Quit/	n/a	23	24	24	25	27	34	36	38	40	45	40	44	42	45	47	47	48	49
2. ACTUAL INDUSTRY VOLUME (Blns)/(12-M Aug.'89)	50.9	53.4	54.9	57.2	57.4	59.5	61.5	61.4	63.7	64.3	66.4	66.1	62.7	61.4	58.7	55.3	52.4	50.9	49.1
% -vs- Previous Year	2.2	4.9	2.8	4.2	0.3	3.7	3.4	-0.2	3.7	0.9	3.3	-0.5	-5.1	-2.1	-4.4	-5.8	-5.2	-2.9	-3.6

Highlights of operations

in millions of dollars, except as noted	1989	1988	1987	1986	198
			Twelve months ended December 31		
Revenues	**2,385.6**	2,018.1	1,926.0	1,754.6	1,701.0
Revenues, net of sales and excise taxes	**896.2**	862.0	816.2	712.0	757.5
Operating earnings	**334.0**	308.0	279.1	208.1	243
Operating margins (%)	**37.3**	35.7	34.2	29.2	32.1
Market share - domestic cigarettes (%)	**57.9**	56.2	54.4	51.5	52.6
Capital expenditures	**22.9**	18.9	25.6	23.3	16

Imperial Tobacco's share of the Canadian manufactured cigarette market increased 1.7 points to 57.9%.

The transfer of cigar production from the Montréal plant to Joliette was successfully completed, improving the productivity of both plants.

All packaging was changed to meet the requirements of the Tobacco Products Control Act.

Over one million Canadians attended sports and cultural events sponsored by Player's Ltd., du Maurier Ltd. and du Maurier Arts Ltd.

In 1989 Imperial Tobacco recorded another strong financial performance and further market share gains. Operating earnings rose by 8% to $334.0 million and at year end, Imperial's share of the Canadian manufactured cigarette market stood at 57.9%, an increase of 1.7 share points. In the fine cut tobacco market, Imperial Tobacco's share declined by 1.6 share points to 47.2%.

Canadian cigarette manufacturers were expecting a modest decline in consumption in 1989. However, the April federal budget struck a major blow to industry forecasts. The excise duty on manufactured cigarettes increased by an incredible 161% and on fine cut tobacco, by 654%. Seven provinces also raised tobacco taxes and Canadian smokers faced overall price increases of up to 35% on manufactured cigarettes and 89% on fine cut tobacco. Industry volume of manufactured cigarettes fell 7% to 47.6 billion units and Imperial's volume dropped 4% to 27.5 billion units.

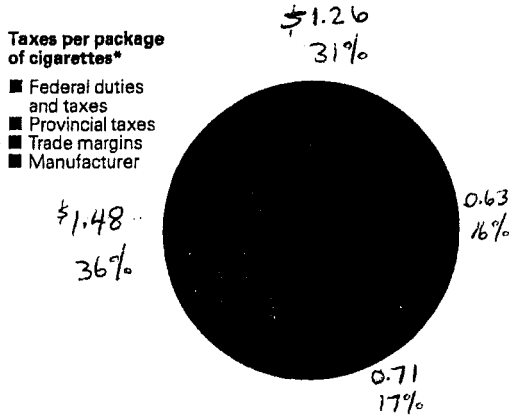
The Tobacco Products Control Act

Under the Tobacco Products Control Act, major packaging changes were made during the year, incorporating newly mandated health warnings. The modifications were costly and disruptive. The total expense of approximately $10 million was charged to current year earnings. The Federal Health and Welfare Minister has announced that new regulations will force another redesig of our packaging, effective June 1, 1991.

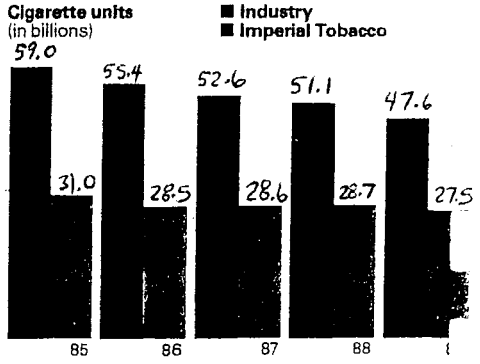
In September 1989 Imperial's legal challenge to the constitutionality of the Act began before the Québec Superior Court. We are arguing that the sections of the Act that prohibit communication with our customers through advertising infringe on the guarantees of freedom of expression contained i the Canadian Charter of Rights and Freedoms. We are also arguing that tobacco adve tising is not within the jurisdiction of the Federal Government. The legal challenge is as yet unresolved.

Trademark strength

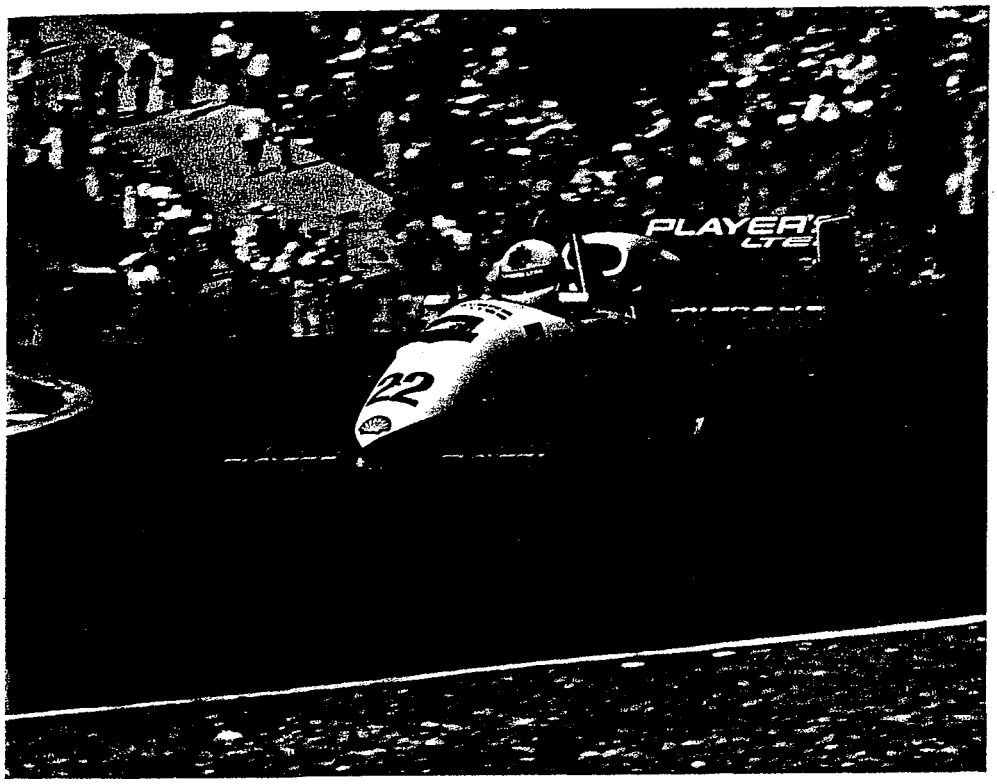
Against this very difficult background, Imperial Tobacco's major brands performed remarkably well. Player's, the company's leading family of cigarettes, increased its share of the Canadian market by 0.5 share



*Based on a $4.08 retail price in the Province of Ontario, November 1989.



Canadians were offered a wide range of cultural and sports events by Player's Ltd., du Maurier Ltd. and du Maurier Arts Ltd. throughout 1989.



points to 25.4%. The Player's family of Player's Plain, Player's Filter, Player's Medium, Player's Light and Player's Extra Light is consolidating its position as Canada's most popular brand.

The du Maurier family, which includes du Maurier, du Maurier Light, du Maurier Extra Light and du Maurier Special, is the second most popular cigarette brand in the country. In 1989 it increased its market share by 1.2 share points to 22.0%. Both Player's and du Maurier underwent packaging updates in 1989, adopting contemporary designs which were well received by consumers.

Matinée, Matinée Special Mild, Matinée Extra Mild and Matinée Slims make up Imperial's third major brand family. Collectively, the family enjoyed a good year, growing to 6.1% of the market, an increase of 0.3 share points over 1988.

Sponsorships

Canadians were offered a wide range of first class cultural and sports events by Player's Ltd., du Maurier Ltd. and du Maurier Arts Ltd. throughout 1989. In all, these companies sponsored 116 major events from coast to coast.

Player's Ltd. staged six motor races in the Formula Atlantic Series and 17 races in the Player's Ltd./GM Motorsport Series across Canada. Unique championships such as the Player's Ltd. Pacific in Vancouver and the Player's Ltd. 500 in Calgary were also well attended. World class tennis, with top-ranked international competitors, attracted large audiences at the Player's Ltd. Challenge and Player's Ltd. International.

Both sporting and cultural events were presented by du Maurier Ltd. Professional golf in Toronto and Montréal, jazz festivals in Toronto and Vancouver and equestrian events in Calgary and Halifax lived up to their traditions of excellence. For its part, du Maurier Arts Ltd. gave vital financial support to 68 of the country's top performing arts groups.

Productivity

Cigar making operations were successfully transferred from Montréal to Joliette in 1989, improving productivity at both locations. At head office a number of employees retired in accordance with our 1988 position reduction plan. The program supports Imperial's long term commitment to productivity growth and creates employee development opportunities within the organization. Management development and continuity are essential to Imperial's success, now and in the future.

Jean-Louis Mercier, Chairman and Chief Executive Officer (l.) with Wilmat Tennyson, President and Chief Operating Officer (r.).



Imperial Leaf Tobacco

A good growing season produced a Canadian flue-cured tobacco crop of approximately 160 million pounds. Imperial expects to purchase about 75 million pounds, of which 11 million pounds will be exported to overseas manufacturers.

Outlook

The controversy surrounding smoking has escalated in recent years and yet we are as confident as ever about the future of Imperial Tobacco. Millions of Canadians continue to smoke and among them our major trademarks enjoy an excellent reputation for quality. Imperial's share of the cigarette market is increasing year after year, and the high calibre of our people is the envy of the industry. On the strength of these important assets, we expect continued earnings growth and market share increases in 1990.

Jean-Louis Mercier
Chairman and Chief Executive Officer

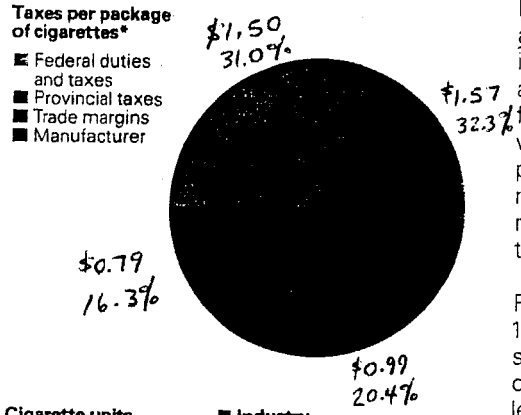
Highlights of operations

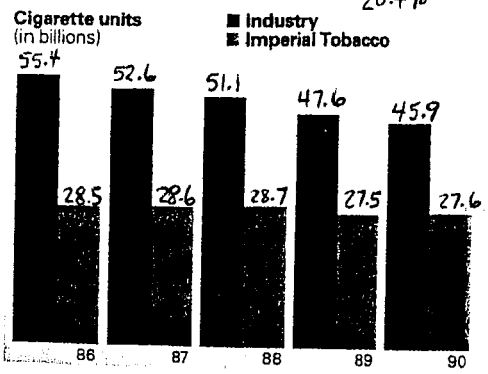
Millions of dollars, except as noted	Twelve months ended December 31				
	1990	1989	1988	1987	1986
Revenues	**2,707.6**	2,385.6	2,018.1	1,926.0	1,754.6
Revenues, net of sales and excise taxes	**963.1**	896.2	862.0	816.2	712.0
Operating earnings	**367.1**	334.0	308.0	279.1	208.1
Operating margins (%)	**38.1**	37.3	35.7	34.2	29.2
Market share – domestic cigarettes (%)	**60.0**	57.9	56.2	54.4	51.5
Capital expenditures	**23.2**	22.9	18.9	25.6	23.3

Imperial Tobacco's share of the Canadian manufactured cigarette market increased 2.1 share points to 60%.

Imperial Leaf Tobacco purchased 74 million pounds of flue-cured tobacco leaf, about 54% of the Canadian crop. Of this amount, 14 million pounds will be exported to overseas manufacturers.

Imperial Tobacco has a long history of excellent employee relations. A new labour agreement that will carry through to 1992 was reached.





*Based on a retail price of $4.85 per pack of 25 cigarettes in the Province of Ontario, October 1990.

Imperial Tobacco posted a 10% rise in operating earnings in 1990 and again strengthened its position in the manufactured cigarette industry, increasing market share by 2.1 share points to 60%.

While industry cigarette sales fell 3.5% to 45.9 billion units, Imperial Tobacco sales increased slightly to 27.6 billion units. The company's share of the market for fine cut tobacco, which is used for roll-your-own cigarettes, fell 4.8 share points to 42.4%. Federal and provincial government tax policies over several years have pushed the retail price of cigarettes to extraordinary levels. The very high retail prices, more than any other factor, account for the decline in domestic industry sales. High prices have also encouraged a significant black market for smuggled and stolen cigarettes as well as a large increase in cross-border shopping. Not only do these activities have a negative impact on industry sales, they also result in a significant loss in government taxation revenues.

Federal legislation, which took effect in 1989, prohibits, with some transitional provisions, Canadian advertising and promotion of tobacco products. Imperial Tobacco challenged the constitutional validity of the legislation and the trial was completed in December. The judgment has not yet been rendered.

Imperial Tobacco's operating margins are growing steadily in this difficult environment, in large part because market share growth has helped to sustain volumes. The value of trademarks to market share is fundamental. Canadian smokers almost always ask for a brand name and about 60% of the time, they ask for Imperial Tobacco products. Player's and du Maurier are Canada's two leading brands, accounting for nearly half of all cigarette sales in the country.

The Player's family now has a market-leading share of more than 26%. The brand family includes Player's Plain, Player's Filter, Player's Medium, Player's Light and Player's Extra Light.

The du Maurier family is a close second with 24% of the market. In 1990, we added du Maurier Ultra Light to the line of du Maurier, du Maurier Light, du Maurier Extra Light and du Maurier Special. As with all new products, the introduction of du Maurier Ultra Light was strictly guided by extensive consumer research. The product offers the smooth du Maurier taste at a slightly lower tar level than was previously available.

Our third major brand family, Matinée, Matinée Special Mild, Matinée Extra Mild and Matinée Slims, was stable last year with a 6% market share.

Sustained sales volumes also contribute to efficient manufacturing operations. In manufacturing, and in all other areas of the business, the company is constantly looking for ways to improve productivity. We are committed to success and recognize that success depends on our ability to control costs without compromising the quality of our products.

Our dedication to being the best extends to all activities of the company. Imperial Tobacco and its affiliated companies play a sponsorship role that is second to none in both sports and the arts in Canada.

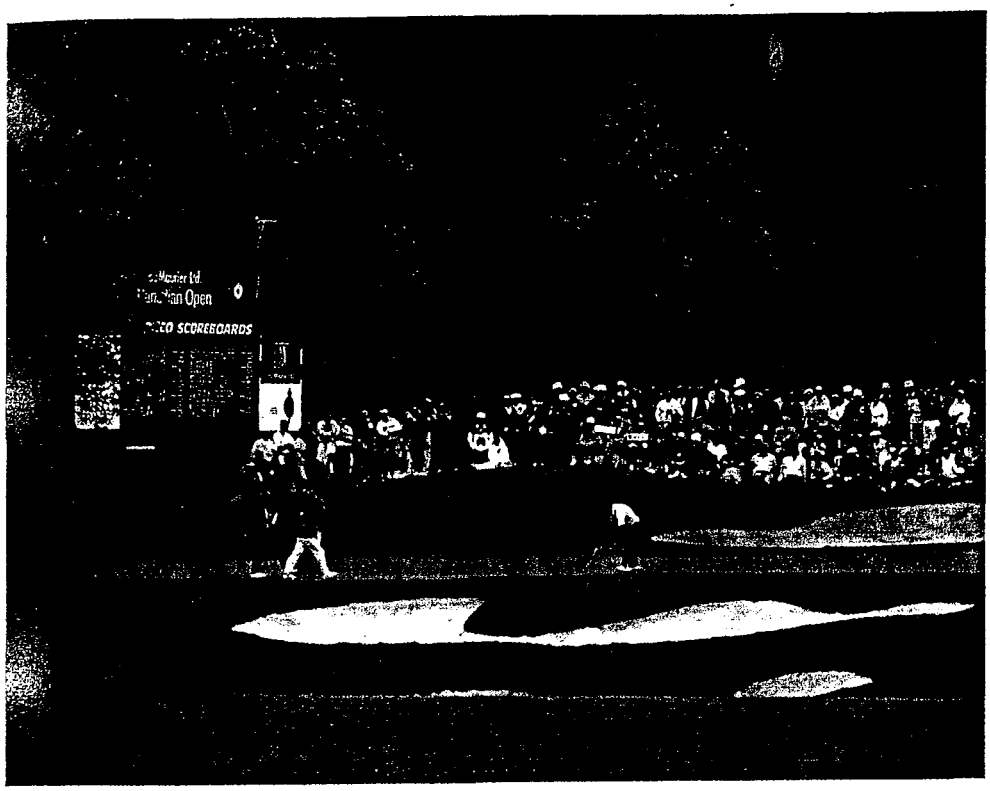
The world's best tennis professionals compete in Canada each summer in the *Player's Ltd. Challenge* and *Player's Ltd. Interna-*

The Canadian Open, Canada's premier men's golf event sponsored by du Maurier Ltd.

As with all new products, the introduction of du Maurier Ultra Light was strictly guided by extensive consumer research.

The company manufactures in Montréal, Guelph and Joliette and has sales offices and distribution centres across Canada.

Jean-Louis Mercier, Chairman and Chief Executive Officer (l.) with Wilmat Tennyson, President and Chief Operating Officer (r.).





tional tournaments. Large and enthusiastic crowds appeared at the National Tennis Centre in Toronto, which hosted the men's event and at the Jarry Tennis Stadium in Montréal, site of the women's tournament.

The Player's Ltd. commitment to motorsport continued across Canada with the *Formula Atlantic* series and the *Player's Ltd./GM Motorsport* series.The *Player's Ltd. Pacific* in Vancouver, the *Player's Ltd. 500* in Calgary and the *Player's Ltd. Mondial* in Montréal rounded out the season.

The *Canadian Open*, Canada's premier men's golf event sponsored by du Maurier Ltd., was again held at the challenging Glen Abbey course in Oakville.The *du Maurier Ltd. Classic*, held at the Westmount Golf Club in Kitchener, is recognized as one of the four major events on the women's professional tour. In equestrian events, the *du Maurier Ltd. International* drew a record 44,000 spectators to Spruce Meadows in Calgary while the *du Maurier Ltd. Cup* was again a stellar attraction in Halifax. Altogether, over one million spectators attended sporting events across Canada sponsored by du Maurier Ltd. and Player's Ltd.





Major summer jazz festivals in Ottawa, Toronto, Saskatoon and Vancouver were sponsored by du Maurier Ltd. In addition, du Maurier Ltd. has pledged $500,000 to l'Orchestre Symphonique de Québec. Continuing its historic role in support of Canadian culture, du Maurier Arts Ltd. contributed nearly $1 million to 87 of the country's leading performing arts groups last year.

In spite of the tax burden on consumers and the continuing controversy over tobacco, millions of Canadians still choose to smoke. It is difficult to speculate on the tax and legislative environment in the years ahead but, even if unit sales continue to decline, the market will still be substantial and profitable.

Experience has taught us that when you consistently do everything as well as you possibly can, over time you build trademarks that are very meaningful to consumers. Our continued earnings and cash flow growth is assured by the strength of those trademarks and the high quality people, marketing and products that make them the preferred brands of Canadian smokers.That is the hallmark of Imperial Tobacco and the foundation for our success in the years ahead.

Jean-Louis Mercier
Chairman and Chief Executive Officer

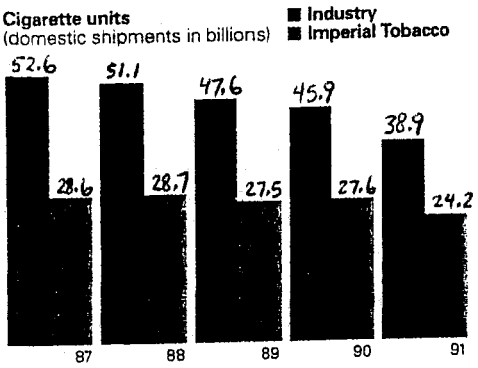
Highlights of operations

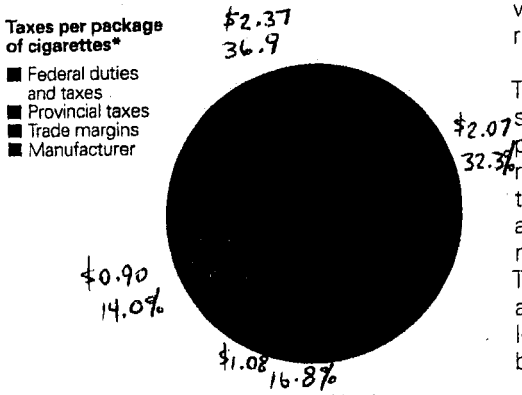
Millions of dollars, except as noted	Twelve months ended December 31				
	1991	1990	1989	1988	1987
Revenues	**2,952.7**	2,707.6	2,385.6	2,018.1	1,926.0
Revenues, net of sales and excise taxes	**1,040.2**	963.1	896.2	862.0	816.2
Operating earnings	**397.0**	367.1	334.0	308.0	279.1
Operating margins (%)	**38.2**	38.1	37.3	35.7	34.2
Market share – domestic cigarettes (%)	**62.0**	60.0	57.9	56.2	54.4
Capital expenditures	**22.1**	23.2	22.9	18.9	25.6

Round one of the fight over the federal government's tobacco products advertising ban was won by Imperial Tobacco.

In 1991, tobacco taxes were raised as never before and Canadian smokers told their governments that enough is enough.

Imperial Tobacco's share of the Canadian manufactured cigarette market increased two share points to 62%.





*Based on a retail price of $6.42 per pack of 25 cigarettes in the Province of Ontario, October 1991.

The power of Imperial Tobacco's trademarks led to another year of record earnings and strong market share growth in 1991. By all accounts, it was a difficult year for the industry, principally because governments raised tobacco taxes as never before. Federal and provincial tax increases caused retail cigarette prices to rise by 35% to 40%. Consequently, it was widely expected that industry volume would decline by at least 10%, but this did not materialize. In fact, 1991 was the year when Canadian smokers told their governments that enough is enough. They did so in two very dramatic ways.

In May, Imperial Tobacco joined a campaign to facilitate a tax protest by frustrated Canadian smokers. The manufacturers, with support from their unions, tobacco growers, the Smokers' Freedom Society and the National Association of Tobacco and Confectionery Distributors, made protest forms available in cigarette packages and at retail outlets. Surveys at the time indicated that several million forms were sent to the Prime Minister and that 60% of the Canadians who were aware of the campaign supported the protest. This support included a large number of non-smokers. The message sent by citizens from across the country to elected politicians was clear. Tobacco taxation in Canada has reached unacceptable levels.

The second manifestation of smokers' dissatisfaction has been the dramatic shift in purchasing patterns. In last year's annual report, we indicated that high tobacco taxation was encouraging cross-border shopping as well as the growth of a worrisome illicit market for smuggled and stolen cigarettes. The tax increases in 1991 served to accelerate these trends to the point where it is no longer sufficient to measure the industry by domestic sales alone. To illustrate this point, consider that domestic sales of cigarettes and cigarette equivalents, principally fine cut tobacco for roll-your-own cigarettes, declined 14% in 1991. However, if export and duty free sales are included, the decline was less than 4%. Tobacco taxation, it seems, is rapidly approaching the point of diminishing returns both as a source of government revenue and as a means of curbing tobacco consumption in Canada.

Governments are rightly concerned about cross-border shopping and tobacco smuggling. Looking for a solution, the federal government imposed an export tax on Canadian tobacco products in February 1992. In our view, the tax is misguided and will work to the detriment of all participants in the Canadian industry. It will curtail legitimate exports of tobacco products while inducing smugglers to distribute American brands in Canada. We do not condone smuggling but we are prepared to take whatever steps are necessary to protect the company's interests in legitimate export markets. Ultimately, that could involve transferring some production outside Canada.

Imperial Tobacco did receive some good news in 1991 with our successful court challenge of the Tobacco Products Control Act. The Act came into force on January 1, 1989 and provided for the elimination of all Canadian tobacco product advertising by 1993. The court supported our view that the Act violated freedom of expression under the Canadian Charter of Rights and Freedoms and that the federal government had legislated outside its jurisdiction. We regard this as a landmark decision, one which demonstrates that the courts are there to protect people from those who would seek to limit freedom of expression, including governments. The Attorney General has appealed the de-

Gaétan Difoglio was born in Montréal. He studied marketing at Concordia University and obtained an M.B.A. from the University of British Columbia. He joined Imperial Tobacco's marketing division in 1990.



"The commitment is incredibly strong and we have very high standards. You don't get ahead by owning your ideas, you get ahead by sharing your ideas. The emphasis on consultation frees us from internal competition and allows us to focus on the consumer.

"I never think of it as a job. I have always tried to figure out why people do things. Most interesting is that you can always be surprised. We are very much a fact-based company. A lot of people have intuition and their own way of looking at things. But, in a world divorced from fact, the person with the most dominating personality will win. Sometimes the facts prove you wrong and you say to yourself that's why we do research. It's fun to discover that you are wrong.

"You can always learn more about consumers. The person that puts down the money changes all the time. In an ideal world, you would listen to each and every one of them and keep on doing it."

cision but we expect the ruling to be upheld by the higher courts.

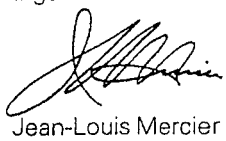
While the judgment is an important affirmation of the right to commercial free speech in Canada, we recognize that many believe that tobacco advertising should be the object of some limitations. Indeed, the industry operated under a voluntary code restricting advertising from 1972 until the *Tobacco* Products Control Act came into force. We believe that the decision to smoke is one that informed adults should make and we actively encourage retailers to abide by federal and provincial legislation prohibiting the sale of tobacco to minors. It is still too early to predict if, and in what form, tobacco advertising will return in Canada. Fundamentally, our position is to avoid taking actions that Canadians at large would deem improper for a tobacco company.

Imperial's success is driven by relentless consumer research and respect for the value of our trademarks. Efforts by our employees to reduce controllable costs and enhance quality serve to strengthen our position further. We owe our industry-leading position to the time and effort spent making sure that Canadian smokers are entirely satisfied by brands made in Canada by Imperial Tobacco. Trademarks do not exist on their own, they owe their existence to loyal consumers. Accordingly, Imperial has developed a full range of quality tobacco products, primarily under three brand families: Player's, du Maurier and Matinée.

The Player's family increased its domestic market share to 27.4% in 1991 and the du Maurier family continues to be a close second, growing to 25.0% of the market last year. The Matinée family of brands declined slightly to 5.8% of the market. After extensive consumer research, packaging designs for all Matinée products were updated in 1991 to project a more international and contemporary image. In 1992, Matinée Ltd. will assume sponsorship of Tennis Canada's premier international women's tennis tournament, acknowledged as one of the top women's tennis events in the world.

Our plans for 1992 can best be characterized as more of the same. All of our efforts and activities are designed to service consumers to the best of our ability. The formula has not changed because it is working so well. What does change from year to year are the challenging circumstances that characterize the industry. Success in the face of challenge calls for commitment and ingenuity, qualities that our employees have demonstrated so often in the past and we have every confidence that they will do so again in 1992.

While Canadian tobacco consumption continues to decline, the outlook for the industry in general, and Imperial Tobacco in particular, remains positive. With the retirement of Wilmat Tennyson and the succession of Don Brown to the position of president and chief operating officer, Imperial Tobacco will continue to benefit from strong leadership. Don Brown came up on the marketing side of the company, playing a leading role in the development of Imperial's proven marketing and consumer research capabilities. Under his able direction, we expect further growth in Imperial Tobacco's market share and earnings well into the future.



Jean-Louis Mercier
Chairman and Chief Executive Officer

Through the years, Imperial Tobacco has successfully adapted to change and overcome many challenges. Of late, the single biggest challenge has been dealing with the effects of exorbitant taxes on domestic cigarette sales. The combined provincial and federal tax burden has increased 132% since 1987. High taxes have caused major shifts in the domestic tobacco market with price becoming a more important factor in the marketing mix. There is a trend towards purchases of single packages instead of cartons and there is growing market segmentation according to cigarette length and package size. Traditional distribution systems are being severely tested because smugglers offer cigarettes at prices not seen in the domestic market for many years.

All of the evidence suggests that the illicit market is still growing by leaps and bounds, with demand being met by exported Canadian cigarettes as well as products originating from a variety of countries including the United States, the United Kingdom, Switzerland and Austria. Commencing in April 1992, we voluntarily restrained export shipments in support of the government plan to reduce smuggling. The result was a loss of market share by Imperial Tobacco without any apparent effect on the level of illicit product sales.

It has been our contention all along that the smuggling problem is something that cannot be controlled, not by the government and certainly not by Imperial Tobacco. The only workable solution is a significant reduction of taxes by both the federal and provincial levels of government. The company's two licensed distributors in the United States could have sold more of our products last year. We are taking steps to ensure that they are properly supplied in 1993.

While smuggling is distorting industry statistics, the evidence indicates that our leading brands continue to gain in popularity. Last year, *Player's* and *du Maurier* accounted for 56.6% of the Canadian duty paid market for manufactured cigarettes, up 4.2 share points over 1991. Combined with *Matinée* and all other cigarette brands, our share of this market is now 66.2% compared with 54.4% five years ago. Over the next three years, we are setting our sights on further increasing our domestic market share.

In 1992, we entered into an agreement with Philip Morris USA covering the distribution of Canadian-made *Player's* cigarettes and fine cut tobacco in the United States, in both duty free and duty paid markets. We are presently studying other options for increasing foreign sales more substantially.

Imperial Tobacco is the only tobacco manufacturer that is investing in any significant way in its Canadian operations. We are currently upgrading our leaf processing facilities in Aylmer, Ontario, a project that will be beneficial to the company as well as to Canadian tobacco growers. Capital expenditures of $35 million, covering a variety of projects, are planned for 1993 in order to contain costs and add to our flexibility in responding to market changes.

As we proceed, we do so armed with important fundamental strengths. Most notable are our established Canadian trademarks, superior market intelligence and outstanding employees. Underlying all three is our deeply entrenched consumer orientation.

The constant challenge is to extend Imperial Tobacco's record of performance and further consolidate the company's position as the undisputed industry leader in Canada. We expect to meet that challenge again in 1993.



Player's Light Smooth

Imperial Tobacco solidified its leadership of the Canadian tobacco industry in 1992 with the introduction of *Player's Light Smooth*. Test marketed in Alberta last May, the product generated an extraordinary degree of consumer interest, high trial levels and better than expected market share performance.

***Player's Light Smooth* was extended nationally in September. To draw attention to this launch, it was initially offered in a promotional tin pack. This packaging generated great excitement, with collectors offering up to $25 for an empty container.**

The market share forecast predicted the brand could reach 1.3% of the market after 12 months. It actually achieved a 2.6% share in just four months and continues to grow in every region of Canada. To date, over 4,000 complimentary letters have been received from customers in response to the new *Player's Light Smooth*.

Jean-Louis Mercier
Chairman and Chief Executive Officer

Highlights of operations

Millions of dollars, except as noted	Years ended December 31				
	1992	1991	1990	1989	1988
Revenues	**3,049.7**	2,952.7	2,707.6	2,385.6	2,018.1
Revenues, net of tobacco taxes and duties	**1,082.3**	1,040.2	963.1	896.2	862.0
Earnings from operations	**432.0**	397.0	367.1	334.0	308.0
Market share – domestic manufactured cigarettes (%)	**66.2**	62.0	60.0	57.9	56.2
Additions to capital assets	**35.8**	22.1	23.2	22.9	18.9

Gross revenues increased in 1992 reflecting a full year of the tax increase introduced in the federal budget of February 1991, as well as a manufacturers' price increase. While there were no changes to federal tobacco taxes in 1992, some provinces increased their taxes on cigarettes. Tobacco taxes and duties represented 65% of gross revenues in both 1992 and 1991. Manufacturers' prices of cigarettes, excluding taxes and duties, were increased in September 1992 by 4.9% and by 12.5% in September 1991. Earnings from operations, as a percentage of net revenues, rose to 39.9% in 1992 from 38.2% in 1991. Higher margins, resulting from increased prices and productivity improvements, more than offset the impact of lower unit sales volumes.

High tobacco prices in Canada caused by excessive taxation have changed purchasing patterns and opened new distribution channels. A growing number of smokers are switching to lower taxed alternatives and smuggled products and the export and duty free markets have expanded significantly. In an effort to counteract smuggling, the federal government imposed an export tax of $8 per carton of cigarettes, along with other control measures, effective February 12, 1992. On April 8, 1992, the federal government suspended the collection of the export tax while retaining the other control measures and introduced more prominent labelling requirements to distinguish tobacco products for tax purposes.

Based upon Statistics Canada figures and Imperial Tobacco estimates, the Canadian industry's total shipments designated mainly for North American markets were:

	1992	1991	1990
Domestic:	Billions of cigarettes or approx. equivalents		
Cigarettes	35.1	38.9	45.9
Roll-your-own	6.3	7.4	7.4
Export and duty free:			
Cigarettes	8.1	6.6	2.6
Roll-your-own	2.3	2.4	0.6
Total[1]	51.8	55.3	56.5

[1] Excludes foreign manufactured products available in Canada and consumers' purchases of raw leaf tobacco.

Because foreign manufactured products and consumers' purchases of raw leaf tobacco are excluded, industry shipments alone are not a true indication of total Canadian tobacco consumption. Including these segments, Imperial Tobacco estimates 1992 total industry volume at 54.7 billion cigarettes or approximate equivalents compared with 56.3 billion in 1991, a decline of 2.8%.

Imperial Tobacco's shipments and estimated share of market (as defined in the previous table) were:

	1992	1991	1990
Domestic:	Billions of cigarettes or approx. equivalents		
Cigarettes	23.2	24.2	27.6
Roll-your-own	2.3	2.4	2.8
Export and duty free:			
Cigarettes	2.5	3.7	1.3
Roll-your-own	0.3	0.3	0.1
Total	28.3	30.6	31.8
Market share (%)[1]	54.7	55.4	56.2

[1] Excludes foreign manufactured products available in Canada and consumers' purchases of raw leaf tobacco.

Market share performance is being affected by the volume of smuggled cigarettes consumed by Canadians. All manufacturers are supplying demand for their products in the domestic duty paid market. However, Imperial Tobacco curtailed supply to export and duty free markets in compliance with the federal government's request. It is believed that this resulted in sales being lost to other manufacturers, primarily from Canada, but also from the U.S. and elsewhere. In any event, the decision to curtail shipments has had no effect on the growth of the market for smuggled cigarettes. Partly as a result of these developments, Imperial Tobacco's share of cigarettes manufactured for the domestic duty paid market increased to 66.2% from 62.0% in 1991. *Player's* and *du Maurier* families accounted for 56.6% of this market. With respect to cigarettes manufactured for export and duty free markets, Imperial Tobacco's share in 1992 declined to approximately 31% from approximately 57% in 1991. In order to protect sales and market share over the long term, Imperial Tobacco is taking steps in 1993 to supply demand from its two licensed distributors in the United States.

The incidence of smoking among Canadians has shown an average decline of 0.7% per year in the past 5 years. The declines in 1991 and 1992 were 0.5% and 0.4% respectively, and this slowing rate is expected to continue. Incidence, for these purposes, is the percentage of adults, surveyed by an independent research firm, who claim to smoke cigarettes.

During 1992, an agreement was signed with Philip Morris to supply Canadian-made cigarettes and fine cut tobaccos under the *Player's* trademark for distribution in the U.S. domestic and duty free markets. Shipments under this agreement did not begin until late in 1992 and it is still too early to estimate the sales volume potential.

In January 1993, the Québec Court of Appeal rendered a decision upholding the validity of the federal Tobacco Products Control Act (the "Act"), thus reversing a Québec Superior Court decision rendered in July 1991 which had declared the Act unconstitutional. The Act bans the advertising and promotion of tobacco products in Canada and governs the labelling and monitoring of such products. Since the Act does not preclude spill-over advertising of foreign brand tobacco products, this could be detrimental to the sale of Canadian brands. Imperial Tobacco has announced its intention to seek leave to appeal the judgment to the Supreme Court of Canada.

The continuing decline in tobacco sales remains a fundamental challenge facing Imperial Tobacco and the industry. Demographics, health issues, changes in public attitudes towards smoking and increasing government intervention are contributing factors.

With its expertise in the marketplace and strong Canadian trademarks, Imperial Tobacco is well positioned to deal with competitive initiatives and the challenges facing the Canadian industry. Imperial Tobacco is also evaluating opportunities in other markets. Earnings from operations, cash flow and market share are expected to grow in 1993, assuming no major initiatives are taken by the federal and provincial governments.

(Management's Discussion and Analysis continues on page 9)

Highlights of operations				Years ended December 31	
Millions of dollars, except as noted	**1993**	1992	1991	1990	1989
Revenues	**2,860**	3,050	2,953	2,708	2,386
Revenues, net of tobacco taxes and duties	**1,151**	1,083	1,041	963	896
Earnings from operations	**462**	432	397	367	334
Market share–domestic manufactured cigarettes (%)	**67.1**	66.2	62.0	60.0	57.9
Additions to capital assets	**28**	36	22	23	23

Imperial Tobacco offers a full range of quality tobacco products and is the industry leader in Canada. Its cigarette trademarks include the two largest selling domestic brand families, Player's and du Maurier.

For the past 20 years, Imperial Tobacco has invested extensively in consumer research and maintained a tight focus on the Canadian tobacco market. We believe the key to success is knowing our customers and carefully applying that knowledge to satisfy their preferences. Since 1973, Imperial's share of the Canadian domestic cigarette market has grown from 37.1% to 67.1%, a full 30 share points.

Operating results in 1993 were very good, despite rather difficult circumstances. When the year began, we had been voluntarily limiting exports for about nine months, cooperating with the federal government in its attempt to control the growth of tobacco smuggling. However, by then it was obvious that the government's restraint program was not working. Imperial Tobacco had reduced its 1992 cigarette exports by more than a billion units from the prior year level with no discernible impact on the contraband market. In fact, the contraband market grew at an ever-increasing rate. The forensic accounting firm of Lindquest Avey MacDonald Baskerville Inc. reported at the time that other manufacturers' products, domestic and foreign, were simply filling the void left by the withdrawal of Imperial's brands.

In March 1993, we provided the federal government with our assessment of the situation and advised that in the best interests of our employees, our suppliers, Canadian tobacco growers, and Imasco shareholders, we could no longer restrict the level of exports. Over the balance of the year, shipments grew steadily, and most of the lost market share had been recouped by year end. The recovery can be attributed to the strength of Imperial's leading trademarks, *Player's* and *du Maurier*.

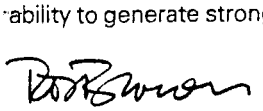
It is now understood by virtually everyone that very high Canadian tobacco taxes are at the root of the contraband problem. In response to mounting public pressure, on February 8, 1994, the federal and Québec governments announced a series of corrective measures. The centrepiece was an across-the-board federal tax roll back of five dollars per carton of 200 cigarettes and additional reductions in conjunction with provinces that choose to participate. The effect was to reduce the retail price of a carton of cigarettes in Québec by more than 50% to about $22. New Brunswick and Ontario later reduced their taxes. All of this was most welcome, as was the announced intensification of enforcement activities. However, the new three year surtax on tobacco manufacturing profits is another matter. In our view, the surtax is both unwarranted and unfair. The blame for organized tobacco smuggling lies with government tax policy, not with Canadian tobacco manufacturers.

Despite our strong objections to the surtax, we do support the efforts of the federal and provincial governments to close down the contraband market and we hope that the announced corrective measures will be successful. This is clearly in the best long term interests of Imperial Tobacco.

Beyond restoring an orderly and legal tobacco market in Canada, one of the biggest issues facing Imperial Tobacco is the gradual decline in smoking by Canadians. For many years, we have successfully maintained production volumes by increasing market share. While we expect this to continue, as Imperial's market share grows and the total market continues to shrink, maintaining volumes will become increasingly difficult. Consequently, profit growth will become more dependant on productivity improvements and sales to markets outside Canada.

There are three essential elements in our strategy going forward. We will extend our leadership in the Canadian market, further gaining market share by satisfying the preferences of Canadian smokers better than our competitors. We will continue to focus on productivity. And, over time, we will systematically explore opportunities in strategic markets outside Canada in order to maintain, or even grow, production volumes.

Imperial has a long tradition of success. I have every confidence in the determination of our employees and in their ability to successfully implement these business plans. By so doing, we expect to maintain our ability to generate strong cash flow and steady earnings growth.



Donald Brown
Chairman, President, and Chief Executive Officer

The following comments and analyses, appearing on pages 18 to 24, 29, 31 and 33, are intended to be read in conjunction with the consolidated financial statements of the Corporation.

Results of operations by operating company

Imperial Tobacco

Net revenues increased 6% in 1993 primarily due to increased prices. Manufacturer's prices of cigarettes were raised 7.3% in July 1993 and 4.9% in September 1992, while total 1993 shipments of cigarettes and roll-your-own products increased 2.1%. Gross revenues, whose principal components are domestic tobacco taxes and duties, declined 6% in 1993 because a larger proportion of sales were in the export and duty-free markets where tobacco taxes and duties do not apply. There were no changes to federal tobacco tax rates in 1993 or 1992.

During 1993, the contraband market continued to grow in response to Canadian demand for reasonably-priced cigarettes. With increased smuggling, domestic shipments of tobacco products continued to decline, harming the legitimate wholesale and retail trade in Canada, and the export and duty-free markets grew considerably. Based upon Statistics Canada figures and Imperial Tobacco estimates, the Canadian industry's total shipments designated mainly for North American markets were:

	1993	1992	1991
Domestic:	Billions of cigarettes or approx. equivalents		
Cigarettes	30.2	35.1	38.9
Roll-your-own	5.0	6.3	7.4
Export and duty-free:			
Cigarettes	14.4	8.1	6.6
Roll-your-own	2.8	2.3	2.4
Total[1]	52.4	51.8	55.3

1 Excludes foreign manufactured products available in Canada and consumer purchases of raw leaf tobacco.

Shipments of tobacco products by Canadian manufacturers alone no longer provide a true indication of total Canadian consumption. During 1993, foreign manufactured products entered Canada illicitly, and consumers purchased raw leaf tobacco to make their own cigarettes. Including these elements, Imperial Tobacco estimates 1993 total industry volume at 54.0 billion cigarettes or approximate equivalents compared with 54.7 billion in 1992, a decrease of 1.1%.

Imperial Tobacco's shipments and estimated share of market (as defined in the previous table) were:

	1993	1992	1991
Domestic:	Billions of cigarettes or approx. equivalents		
Cigarettes	20.3	23.2	24.2
Roll-your-own	2.0	2.3	2.4
Export and duty-free:			
Cigarettes	6.2	2.5	3.7
Roll-your-own	0.4	0.3	0.3
Total	28.9	28.3	30.6
Market share (%)[1]	55.2	54.7	55.4

1 Excludes foreign manufactured products available in Canada and consumer purchases of raw leaf tobacco.

Earnings from operations increased 7% in 1993 and represented 40.2% of net revenues compared with 39.9% in 1992. The improvement in earnings from operations resulted from increases in sales volumes and prices together with a shift in sales mix to higher margin products.

In support of the federal government program to reduce smuggling, Imperial Tobacco voluntarily restricted its export sales from April 1992 until March 1993. Other suppliers filled the void, and Imperial Tobacco's decision to restrain shipments had no apparent effect on the growth of smuggling. The restraint program did result in a decline in Imperial Tobacco's overall market share and unsatisfied demand for its products. After resuming shipments, Imperial Tobacco gradually recaptured market share in the export and duty-free segment. Imperial Tobacco's share of manufactured cigarette shipments to this segment rose to approximately 45% in 1993 from 31% in 1992. In 1991, prior to the restraint action, its share was 57%. In the domestic duty-paid market for manufactured cigarettes, Imperial Tobacco's market share continued to grow, reaching 67.1% in 1993 from 66.2% in 1992. This gain demonstrates the strength of its two major trademarks, *Player's* and *du Maurier*, which together accounted for 57.7% of the domestic market.

The incidence of smoking among Canadians, calculated as the percentage of adults, surveyed by an independent research firm, who claim to smoke cigarettes, declined from 32.1% in 1989 to 30.6% in 1992 and 29.0% in 1993. The average decline over the period was 0.8 points per annum.

The high taxation policies of the federal and provincial governments are the primary cause of the alarming growth of smuggling in various parts of Canada. In order to reduce the smuggling problem, the federal and Québec governments announced a series of corrective measures on February 8, 1994. The federal measures have the effect of reducing the tax collected on a carton of cigarettes by $5.00 nationally and provide for additional reductions to match provincial tax reductions that exceed $5.00 a carton, to a maximum federal reduction of $10.00. For its part, the Québec government, among other measures, reduced taxes on a carton of cigarettes by $11.00. Combined with the federal tax reduction, this lowered the retail price of a carton of cigarettes in the province of Québec by approximately 50%. Subsequent to the actions taken by the federal and Québec governments, the governments of New Brunswick and Ontario announced reductions in cigarette taxes of $7.00 and $9.60 per carton, respectively. As of February 21, 1994, the remaining provinces, where smuggling is not as widespread, either have chosen not to roll back tobacco taxes or have delayed any decision pending further evaluation.

The federal government initiatives also include the introduction of an excise tax of $8.00 per carton of cigarettes on export sales in excess of three percent of the prior year's production. Sales to Canadian duty-free stores and to tax-paid foreign markets are exempt from the export tax. Furthermore, the measures include a three-year surtax on profits of tobacco manufacturers which in total, over the period, is expected to generate approximately $200 million to fund a range of activities aimed at reducing smoking. In addition, the federal government announced that it will increase enforcement of the law along the Canada-U.S. border to reduce the illegal trade of tobacco and other products. Finally, the measures include legislation and regulations raising the minimum age of tobacco purchase from 16 to 18, restricting the location of tobacco vending machines, and regulating the size of cigarette packages. New regulations under the Tobacco Products Control Act (TPCA) are also contemplated.

On October 14, 1993, the Supreme Court of Canada granted Imperial Tobacco leave to appeal from the 1993 Québec Court of Appeal judgment declaring the TPCA to be valid legislation. The TPCA is a federal statute that bans all forms of tobacco trademark advertising in Canada and governs the labelling and monitoring of tobacco products. Since the TPCA does not preclude spill-over advertising of foreign tobacco products, this could be detrimental to the sale of Canadian brands. In 1991, the Québec Superior Court had ruled that the TPCA was unconstitutional.

The government appealed this decision to the Québec Court of Appeal, and the original Québec Superior Court judgment was overturned. The timing of a final decision by the Supreme Court on the constitutionality of the legislation is uncertain, but is not expected to be rendered until late 1994. In the meantime, Imperial Tobacco is preparing new packaging to comply with regulations under the TPCA which must be implemented by September 1994.

In November 1993, the Ontario government proposed legislation which, if enacted, would reduce the legitimate retail distribution network for tobacco products by banning their sale in various health facilities, by drug stores, and by vending machines. The proposed legislation would also prohibit selling or giving tobacco products to a person under age 19, forbid smoking in a variety of places, and authorize the regulation of tobacco packaging and the posting of health warning signs by retailers. Other provinces, including Nova Scotia, Newfoundland, British Columbia, and Manitoba, have either adopted or are proposing to adopt legislation imposing restrictive measures covering the sale, distribution, and consumption of tobacco products.

Demographics, health concerns, societal pressures against smoking, and government legislation will continue to be factors that could unfavourably impact the industry. Notwithstanding this environment, Imperial Tobacco has consistently generated increased earnings through price increases, market share growth and, to a lesser extent, productivity improvements. The recent measures announced by the federal government should bring back an orderly and legal market for tobacco products in Canada when all provinces choose to participate. However, the three-year surtax will negatively impact the after-tax results of Imperial Tobacco. Some of the additional taxes should be offset by additional volume resulting from increased market share, as Imperial Tobacco's share of domestic duty-paid manufactured cigarettes is higher than its share of the export and duty-free markets. Imperial Tobacco plans to continue to employ its strong Canadian trademarks and expertise to generate growth in market share. During 1994, a comprehensive activity based costing study involving all aspects of the company will be completed. It is anticipated that improvements in productivity will result from this program. Also, during 1994 and 1995, additional investments will be made in technology to further improve the efficiency of operations. For the longer term, opportunities in international markets are being explored.

CT Financial Services

General economic conditions have a direct impact on the results of CT Financial Services. Interest rates in North America continued to decline throughout 1993. These declines resulted in slow deposit growth as customers shifted from traditional deposit instruments to higher yielding investments such as debt and equity mutual funds. The unemployment rate remained high in Canada and, coupled with depressed residential and commercial real estate markets, contributed to limited growth in Canadian mortgage portfolios in 1993. In the United States, the unemployment rate declined, and housing starts grew during the year. These factors, together with continued low interest rates, contributed to significant growth in mortgage originations at First Federal in 1993.

Net earnings attributed to common shareholders in 1993 decreased 20% to $145 million. The provision for investment losses remained high in 1993, but was below 1992 levels. First Federal's contribution to net earnings in 1993 amounted to $38 million compared with $36 million in 1992. Fully diluted net earnings per common share declined from $1.51 in 1992 to $1.21. Return on fully diluted common shareholders' equity was 7.9% for 1993 compared with 10.2% in 1992, while net earnings as a percentage of average assets was 0.36% compared with 0.45% in 1992.

The principal business segments of CT Financial Services are financial intermediary services, asset management or fiduciary services, and real estate property investment. The majority of earnings is derived from financial intermediary services. Revenues of CT Financial Services, as reported by Imasco Limited, were as follows:

	1993	1992	1991
			Millions of dollars
Gross investment income	3,321	3,620	4,006
Fees	355	335	297
Other income	27	44	17
	3,703	3,999	4,320

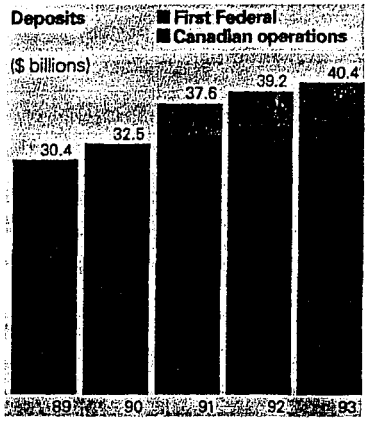
Net investment income, which is the difference between revenue earned on investments and interest expense on deposits and borrowings, was $1.1 billion in 1993, virtually unchanged from 1992. Net investment income can be adjusted to a taxable equivalent basis to reflect the differing tax treatments accorded income derived from various types of investments. Management believes that this provides a more meaningful comparison. On a taxable equivalent basis, net investment income was $1.2 billion in 1993, unchanged from 1992. Net interest rate differential, the rate of return on averaged interest earning assets less the rate of interest expense on averaged interest bearing liabilities, on a taxable equivalent basis, was 2.32% in 1993 compared with 2.50% in 1992. The components of net investment income and the net interest rate differential in 1993 are detailed in the following table:

	Average balance	Income/ expense	Average rate
			Millions of dollars
Investments	44,541	3,421	7.68%
Deposits and borrowings	42,330	2,271	5.36%
		1,150	2.32%

The change in net investment income from 1992 caused by variations in volume and rate is detailed as follows:

	Volume	Rate	Net
			Millions of dollars
Investments	265	(581)	(316)
Deposits and borrowings	172	(472)	(300)
	93	(109)	(16)

The net interest rate differential in Canadian operations declined during 1993 to 2.27% from 2.46% in 1992 due primarily to a change in deposit mix. First Federal's net interest rate differential declined from 2.74% to 2.55% during 1993 for two reasons. During 1992, interest rate collars maintained spread despite declining interest rates and, in 1993, early prepayments by consumers taking advantage of favourable rates caused spreads to decline.



Lending operations are funded primarily with retail customer deposits. Total deposit growth was $1.2 billion or 3% in 1993 compared with $1.6 billion or 4% in 1992. Demand deposit growth was 4% compared to 9% in 1992, while term deposit growth was 3% for 1993. Low interest rates throughout 1993 caused consumers to shift funds on deposit to higher yielding investments. Growth in term deposits was primarily in deposits with a term of less than

Highlights of operations				Years ended December 31	
Millions of dollars, except as noted	**1994**	1993	1992	1991	1990
Revenues	**2,586**	2,860	3,050	2,953	2,708
Revenues, net of tobacco taxes and duties	**1,335**	1,151	1,083	1,041	963
Earnings from operations	**592**	462	432	397	367
Market share–manufactured cigarettes (domestic and export) (%)	**64.3**	59.5	59.6	61.3	59.4
Additions to capital assets	**31**	28	36	22	23

Imperial Tobacco manufactures a full range of quality tobacco products and is the industry leader in Canada. Trademarks include *Player's* and *du Maurier*, the two largest selling domestic brand families.

Renowned for its consumer focus, Imperial Tobacco garnered a 64.3% share of the Canadian manufactured cigarette market in 1994.



André Chénard, Manager, Human Resource Development: "Developing our people is really not a cost, it's an investment. You can stop doing development right now and save money, but it will haunt you in two to three years, because people won't be prepared for the tasks they will have to do or the decisions they'll have to make."

An exceptional year

Growth continued for Imperial Tobacco in 1994, with earnings for the year up an impressive 28%. Imperial's share of manufactured cigarette shipments (domestic and export) increased by 4.8 share points, reaching an all-time high of 64.3% and causing our cigarette production volumes to increase significantly. Our sales mix also shifted, with decreased sales of fine-cut tobacco for roll-your-own cigarettes more than offset by increased sales of higher margin manufactured cigarettes.

Order returns to the market

In February 1994, the federal and several provincial governments announced significant tax rollbacks for tobacco products. It was a retreat from misguided policies that were designed to discourage smoking, but which instead created a huge contraband cigarette market. Prices had soared due to over-taxation, and many consumers turned from domestic, duty-paid cigarettes and fine-cut tobacco to smuggled products. As expected, the lower taxes all but extinguished smuggling activity in Eastern Canada. The return to an orderly market favoured Imperial Tobacco, for our strengths have long been our premier trademarks and superior sales and distribution capabilities.

Despite alarmist predictions to the contrary, the tobacco tax rollbacks appear to have had no significant impact on total consumption. Imperial's market share has now reverted to the level it would have been, were it not for smuggling and for the company's voluntary restraint of exports for an eleven-month period in support of government anti-smuggling efforts.

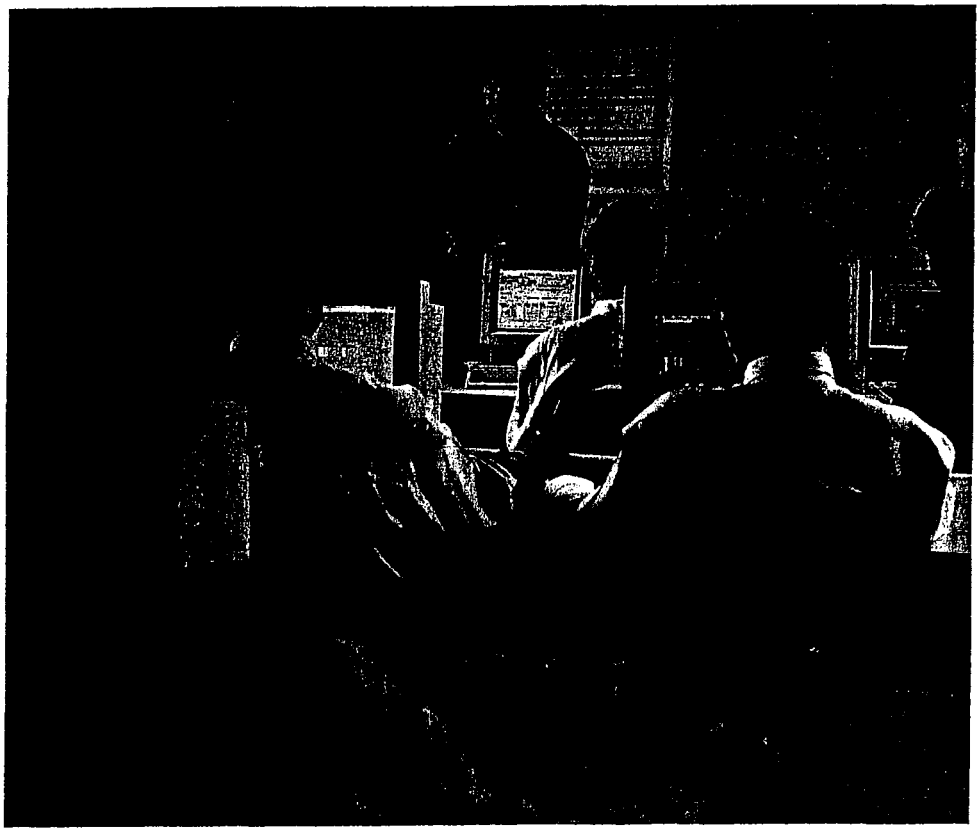
Having given up on one tax, the government imposed a three-year surtax on tobacco manufacturing profits. As a result, the company provided $39 million for surtaxes to the federal and Québec governments in 1994. At the federal level alone, Imperial's 1994 income taxes, surtaxes, excise taxes, and excise duties amounted to approximately $1.5 billion.

The regulatory environment

It was another active year on the regulatory front, with various provinces and the federal government passing laws to further restrict the sale and use of tobacco products. In September, the industry introduced new government-mandated warning labels on packages of tobacco products, and plain packaging for cigarettes is now being considered by the federal government.

We consider the concept of plain packaging to be misguided, as there is no credible evidence that it will either induce current smokers to quit or discourage non-smokers from starting. Its adoption would confiscate valuable property of tobacco manufacturers–their trademarks–without compensation. Not only would this violate accepted notions of fairness relative to private property, it would contravene Canada's international trade obligations. The proposal could be damaging in other ways, because it threatens many Canadian jobs and would facilitate trade in smuggled and counterfeit tobacco products.

The federal Minister of Health has indicated that the government will not make a final decision on plain packaging until the Supreme Court has decided on the industry's right to advertise (stemming from a constitutional challenge to the Tobacco



With implementation of Triple I (Integrated Information at Imperial) slated for January 1996, the accent at Imperial Tobacco is on designing training for the 900-plus individu... who will use the enterprise-wide information system. Because all business areas will be linked within one computer environment, vi tually all work processes will change. Benefits will include dramatic improvements in the order entry and inventory management syste greater productivity, and better utilization of manpower, materials, and machines.

Over 50 courses will introduce Triple I to em ployees next fall. Instruction will combine classroom training and personalized tutoria A key strategy of the training design has been to involve representatives of the operating divi sions, all of whom will use the technology, in creating course materials. These individuals ha spent the past year working on interdivisiona teams to improve business processes. Several are shown at left, developing the system prototype with consultant Mike Alkier. Because of the in-depth understanding of Triple I, they will also instruct trainees and monitor progress

Products Control Act). The Court heard arguments in November, and a decision is expected during 1995. Apart from its impact on the plain packaging debate, a favourable judgment on advertising by the Supreme Court would be an important affirmation of the right to commercial free speech in Canada.

Such a ruling, however, would not usher in a return to unrestricted tobacco advertising. Imperial Tobacco recognizes that many people believe tobacco advertising should be limited. Indeed, the Canadian tobacco industry voluntarily restricted advertising from 1972 until the Tobacco Products Control Act came into force. Furthermore, we encourage retailers to abide by federal and provincial legislation prohibiting the sale of tobacco to minors and provide point-of-sale signage to help them enforce the law. Ultimately, we believe the decision to smoke is one that informed adults should make.

Managing in a changing industry

Imperial Tobacco's success in the marketplace has been built on understanding smokers' preferences and satisfying these on a cost-effective basis. In 1994, the company embarked on a number of programs to ensure that productivity will make a substantial contribution to earnings growth in the years ahead.

In December, we announced a plan to invest $118 million over the next five years in streamlining manufacturing operations and modernizing machinery. Another major initiative is Triple I (Integrated Information at Imperial), a computerized information system that will make virtually every business function more efficient. Furthermore, to allow Imperial to focus on product profitability, an activity-based management system was adopted in 1994. All costs and revenues were analyzed by type of activity, product, geographical area, and point of manufacture and then benchmarked against those of other best-practice companies.

Outlook

The near-term outlook is for continued earnings growth fuelled by domestic market share gains and productivity enhancements. Over time, we will look to increase volumes by pursuing opportunities in international markets.

Imperial Tobacco has significant strengths, including superior Canadian trademark and a deep understanding of consumers gained through extensive market research. Above all, we have outstanding employees who have created the market leadership position our company enjoys today. Together, these assets equip us well to meet the challenges of tomorrow.

R. Donald Brown
Chairman, President, and Chief Executive Officer

The following comments and analyses, appearing on pages 25 to 34, 39, 41 and 43, are intended to be read in conjunction with the consolidated financial statements of the Corporation.

Results of operations

Imperial Tobacco

On February 8, 1994, the federal and Québec governments announced a series of corrective measures to reduce an alarming tobacco smuggling problem that existed in various parts of Canada. High tobacco taxation was the cause of the problem, and central to the corrective measures was a significant tax rollback. Subsequently, the governments of New Brunswick, Ontario, Nova Scotia, and Prince Edward Island also implemented tax reductions. The deepest provincial cuts came from Québec and Ontario, which represent approximately 65% of the Canadian market. In these two provinces, the retail price of a carton of cigarettes dropped by approximately 50%. Over a period of several years, taxation of tobacco products had grown significantly. As a result of increased retail prices, many Canadian tobacco consumers turned from the domestic, duty-paid market for manufactured cigarettes and roll-your-own tobacco to smuggled products. The tax rollback reversed this trend. The return to an orderly domestic distribution system favoured Imperial Tobacco, as its market share has historically been strongest in the domestic manufactured cigarette segment. Net revenues and earnings from operations improved considerably as a result.

The return of sales to the domestic segment from the export and duty-free segment following the tax rollback is illustrated in the following table of estimates for the Canadian industry's total shipments.

	1994	1993	1992
Domestic:	Billions of cigarettes or approx. equivalents		
Cigarettes	45.7	30.2	35.1
Roll-your-own	5.1	5.0	6.3
Export and duty-free:			
Cigarettes	1.9	14.4	8.1
Roll-your-own	0.6	2.8	2.3
Total[1]	53.3	52.4	51.8

1 Based upon Statistics Canada figures, adjusted to exclude non-Canadian brands manufactured by a competitor for foreign consumption, and Imperial Tobacco estimates. Amounts reported exclude (primarily in 1993 and 1992) foreign-manufactured products available in Canada and consumer purchases of raw leaf tobacco.

Prior to the tax rollback, foreign-manufactured products were entering Canada illicitly, and consumers were purchasing raw leaf tobacco to make their own cigarettes. Adjusting for these factors, Imperial Tobacco estimates 1994 total industry volume to be essentially unchanged from 1993. Shipments are sales to wholesalers and can vary with production and inventory levels. They do not reflect prevalence or consumption levels. Over the last three years, Canadian consumption has been difficult to measure accurately due to substantial quantities of tobacco distributed through illicit channels. In an effort to measure changes in smoking patterns, Health Canada and Statistics Canada have recently collaborated to conduct quarterly surveys on smoking in Canada. In the first survey, conducted in April and May 1994, it was reported that among persons aged 15 and over, 31% smoke cigarettes. Further, the report indicated that this is the same proportion as estimated in 1991 by Statistics Canada's general social survey. In the second and most recent survey, conducted in August and September 1994, it was reported that 30% of individuals aged 15 and over smoke.

Imperial Tobacco's net revenues increased 16% to $1.3 billion in 1994, primarily due to increased sales volumes. Total shipments of cigarettes and roll-your-own products increased 13% during 1994, principally as a result of a market share gain of 6.1 share points. Manufacturers' prices to the wholesale trade for cigarettes were last increased in July 1993, by 7.3%. The timing of this increase partially explains the improved net revenues, since sales were recorded at the higher prices throughout 1994, and only during 6 months of 1993. Imperial Tobacco's shipments and estimated share of market were as follows:

	1994	1993	1992
Domestic:	Billions of cigarettes or approx. equivalents		
Cigarettes	29.8	20.3	23.2
Roll-your-own	1.9	2.0	2.3
Export and duty-free:			
Cigarettes	0.9	6.2	2.5
Roll-your-own	0.1	0.4	0.3
Total	32.7	28.9	28.3
Market share (%)[1]	61.3	55.2	54.7

1 Based upon Statistics Canada figures, adjusted to exclude non-Canadian brands manufactured by a competitor for foreign consumption, and Imperial Tobacco estimates. Amounts reported exclude (primarily in 1993 and 1992) foreign-manufactured products available in Canada and consumer purchases of raw leaf tobacco.

The increase in Imperial Tobacco's overall market share following the tobacco tax rollback can be attributed to the strengths of its major Canadian trademarks, *Player's* and *du Maurier*, and to the effectiveness of its sales force in the domestic market. It also demonstrates the degree to which the company's sales were impacted by its voluntary decision to restrict export and duty-free shipments from April 1992 until March 1993, in support of the federal government's program to reduce smuggling. During this period other manufacturers filled the void, but after resuming export and duty-free shipments, Imperial Tobacco gradually recaptured market share in this segment, though not to normal domestic market share levels.

Earnings from operations increased 28% in 1994 to $592 million and represented 44.4% of net revenues compared with 40.2% in 1993. The increase is principally due to higher net revenues, but also reflects gross margin improvement due to a shift of volume from roll-your-own products to higher margin manufactured cigarettes, and cost management improvements. In conjunction with the tobacco tax rollback, the federal and Québec governments imposed a three-year surtax on profits of tobacco manufacturers, the proceeds of which, in the case of the federal government, are intended to be used for anti-tobacco activities. If the $39 million provided by Imperial Tobacco for tobacco surtaxes during 1994 were to be considered an operating cost and deducted from earnings from operations, Imperial Tobacco's 1994 earnings from operations and percentage increase from 1993 would be as follows:

	1994	1993	% change
	Millions of dollars		
Earnings from operations – as reported	592	462	28
less: Provision for tobacco surtaxes	39	–	–
Earnings from operations – adjusted for tobacco surtaxes	553	462	20

The main challenge for Imperial Tobacco is the long-term decline in consumption of tobacco products in Canada, principally due to

demographics, consumers' health concerns, and changing attitudes toward smoking. Allowing for variations from year to year, this long-term trend is expected to continue. In addition, government taxation and regulation of tobacco products continue to be major issues faced by all Canadian tobacco manufacturers.

Together with the rollback of tobacco taxes and the three-year surtax on profits of tobacco manufacturers, the federal government initiatives announced on February 8, 1994 also included the introduction of an $8 per carton of cigarettes excise tax on export sales in excess of three percent of the prior year's production (excluding sales to Canadian duty-free stores and tax-paid foreign markets, and export sales of brands not available in the Canadian market). Also included were legislation and regulations that raise the minimum age for the legal purchase of tobacco from 16 to 18, restrict the location of tobacco vending machines, regulate the minimum number of cigarettes per package, and require a marking on each cigarette sold in the domestic market. In anticipation of the passage of the law, Canadian tobacco manufacturers discontinued the manufacture of cigarette packages containing fewer than 20 cigarettes in March 1994.

The Canadian tobacco industry is awaiting a decision by the Supreme Court of Canada regarding the challenge by Imperial Tobacco and RJR-Macdonald of the validity of the Tobacco Products Control Act (TPCA). The TPCA is a federal statute that bans all forms of tobacco trademark advertising and promotion in Canada. However, full corporate names can still be used in public representations that promote cultural and sporting events or that acknowledge the financial or other contributions made by the companies toward such an activity or event. Since the TPCA does not preclude spill-over advertising of foreign tobacco products, over time this restriction could be detrimental to the position of Canadian brands. The TPCA also governs the labelling and monitoring of tobacco products. Arguments were presented to the Supreme Court during the fourth quarter of 1994, and the final judgment is expected during 1995.

In April 1994, the federal government mandated the Standing Committee on Health to examine the legal implications and effectiveness of plain packaging of tobacco products in reducing both tobacco consumption and smuggling. In its June 1994 report, the committee asserted that plain packaging could be a reasonable step in the overall strategy to reduce tobacco consumption. The principal recommendations were that the federal government establish the legislative framework required to proceed with plain packaging, and that legislation be introduced if the results of a Health Canada study demonstrate that plain packaging will reduce consumption. The government of Canada issued its response to the committee's report in November 1994. While agreeing in principle with the recommendations, the Minister of Health deferred proceeding with legislation pending further study of the issue and the Supreme Court of Canada's ruling on the TPCA's validity.

It is difficult at this time to accurately predict what the implications of plain packaging would be for the industry. Imperial Tobacco believes that the implementation of plain packaging legislation would be another misguided effort to reduce tobacco consumption, and the government admits to the current lack of credible evidence to support this proposition. Rather, the plain packaging of Canadian cigarettes would facilitate their counterfeiting and perhaps render illegally imported cigarettes more appealing to the consumer, thereby re-igniting the contraband market. This could significantly affect economic activity in tobacco-related industries and result in job losses for tobacco growers, the tobacco manufacturing industry, the printing and packaging industries, distributers, and retailers. Furthermore, several briefs before the committee by international organizations have advised the government that the implementation of true plain packaging legislation would constitute an unfair expropriation of trademarks without compensation, which would violate international conventions and trade treaties to which Canada is a party.

Other restrictive measures were enacted in 1994 at both the federal and provincial levels. In September 1994, the Canadian tobacco manufacturers incurred considerable expense to implement federal government regulations which required that stronger and more prominent health warnings be printed in black and white on the principal display panels of cigarette packages. During 1994, Nova Scotia, New Brunswick, Newfoundland, Ontario, and British Columbia amended existing legislation or adopted new legislation imposing restrictive measures covering the packaging, sale, distribution, and consumption of tobacco products. In Ontario, new legislation to prohibit the sale of tobacco products in drugstores and enable the provincial government to impose unique warnings on tobacco products sold in the province took effect January 1, 1995. Further, numerous provinces have required tobacco manufacturers to create unique markings identifying tobacco products for sale in their jurisdictions. While the industry has been able to negotiate reasonable timetables for implementing these changes, doing so will add to the cost and complexity of operations. An increasing number of municipal governments and private enterprises have also introduced restrictions on smoking, and anti-tobacco lobby groups continue to pressure governments at all levels to adopt more stringent regulations against smoking.

On January 13, 1995, a Statement of Claim in the name of three individuals was filed in the Ontario Court of Justice against Imperial Tobacco Limited and the two other major Canadian tobacco companies. The plaintiffs are seeking, among other things, to have the suit certified as a class action and to be awarded damages for losses said to be consequential to their alleged addiction to tobacco. Refer to Note 30 on page 52 for further details on the lawsuit. Imperial Tobacco will vigorously defend its position, and, although the lawsuit is at a very early stage and it is difficult to predict the outcome of lawsuits, the Corporation believes that Imperial Tobacco has a number of valid defenses.

The demise of the contraband market in 1994 yielded positive results for Imperial Tobacco. However, the gains realized in 1994 reflect a one-time readjustment of the marketplace. The positive impact of the February 1994 tobacco tax rollback should also affect comparative results for the first quarter of 1995. The outlook for the balance of 1995 is a return to the company's historical growth trends in earnings, assuming no further negative government initiatives. Imperial Tobacco plans to continue employing its strong Canadian trademarks and expertise to generate market share growth. Productivity initiatives will also continue. During 1994, the company completed a comprehensive activity-based management study, and benefits are expected to be realized commencing in 1995. By the end of 1995, Imperial Tobacco expects to substantially complete a significant information technology project initiated in 1994 to replace the majority of its application systems with a totally integrated suite of applications. The project entails a major restructuring of Imperial Tobacco's business processes and should permit flexibility and quicker response in addressing consumer needs and strategic business issues. The company will also invest approximately $118 million over a three- to five-year period in its manufacturing facilities to achieve higher productivity, better cost management, and greater flexibility in responding to market needs. The most significant benefits are expected to be realized commencing in 1996.

In the past, Imperial Tobacco has been able to mitigate the challenges faced by the industry through increased market share, price adjustments, and productivity improvements. Imperial Tobacco's

objective is to continue to grow earnings and cash flow through further advances in these areas and, over time, to develop non-Canadian sales.

CT Financial Services

Net earnings attributed to common shareholders for 1994 increased 35% over 1993. This recovery was attributable to increased net investment income and fee income, expense control, and lower provision for investment losses. Previous years' net earnings were adversely affected by high levels of non-performing investments and the resultant requirement for provision for investment losses. First Federal's contribution to net earnings in 1994 amounted to $47 million compared with $38 million in 1993. Fully diluted net earnings per common share increased 36% in 1994 to $1.64 from $1.21 in 1993. Return on fully diluted common shareholders' equity was 10.1% for 1994 compared with 7.9% in 1993, while net earnings as a percentage of average assets was 0.47% compared with 0.36% in 1993.

The principal business segments of CT Financial Services are financial intermediary services, asset management or fiduciary services, and real estate property investment. The majority of earnings is derived from financial intermediary services provided by Canada Trust in Canada and by First Federal in the United States. Revenues of CT Financial Services, as reported by Imasco Limited, were as follows:

	1994	1993	1992
		Millions of dollars	
Gross investment income	3,320	3,321	3,620
Fees	437	355	335
Other income	(3)	27	44
	3,754	3,703	3,999

Net investment income, the difference between revenue earned on investments and interest expense on deposits and borrowings, rose 6% during 1994 to $1.1 billion. Net investment income can be adjusted to a taxable equivalent basis to reflect the differing tax treatments accorded income derived from various types of investments. Management believes this provides a more meaningful comparison. On a taxable equivalent basis, net investment income was $1.2 billion in 1994, unchanged from 1993. Net interest rate differential or spread, the difference between investment income earned as a percentage of averaged investments and interest expense as a percentage of averaged interest-bearing liabilities adjusted to a taxable equivalent basis, was 2.37% in 1994 compared with 2.32% in 1993. The components of net investment income and the net interest rate differential in 1994 are detailed in the following table:

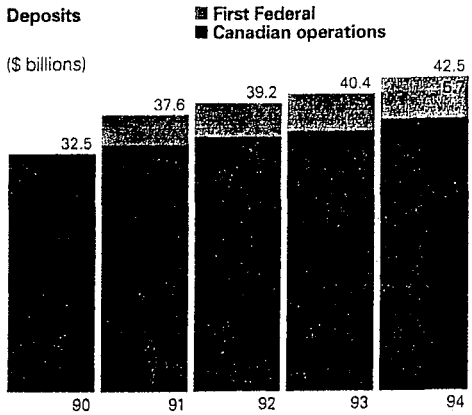
	Average balance	Income/ expense	Average rate
		Millions of dollars	
Investments	45,849	3,412	7.44%
Deposits and borrowings	43,511	2,205	5.07%
		1,207	2.37%

The change in net investment income from 1993 caused by variations in volume and rate is detailed as follows:

	Volume	Rate	Net
		Millions of dollars	
Investments	100	(109)	(9)
Deposits and borrowings	63	(129)	(66)
	37	20	57

At Canada Trust, spread increased during 1994 despite competitive pricing pressures and balance sheet mix changes. Canada Trust's 1994 net interest rate differential was 2.34% compared to 2.27% the previous year. During the first half of the year, the differential rose due to a favourable interest rate environment. Rising interest rates caused a shift in customer preference to long-term deposits in the second half of the year which contributed to a decline in the differential. The differential earned in the first half of the year offset the decline in the second half and resulted in the full-year differential increasing over the previous year. First Federal's 1994 net interest rate differential was 2.53% compared with 2.55% last year. The spread was lower, primarily due to lower rates earned on adjustable-rate mortgages. First Federal originates both fixed and adjustable-rate mortgages and sells fixed-rate mortgages after origination.

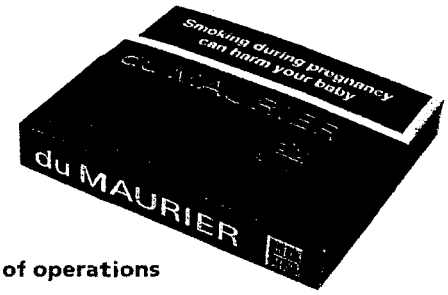
Personal lending operations are funded primarily with retail customer deposits. Total deposit growth was $2.1 billion or 5% in 1994 compared with $1.2 billion or 3% in 1993. Low interest rates throughout 1993 caused consumers to shift funds on deposit to higher yielding investments such as mutual funds. During 1994, rising interest rates resulted in a migration back to term deposits with the portfolio increasing 12% by year-end. Demand deposits declined as rates of return for consumers on demand balances remained low throughout



1994. RSPs and RIFs grew by 2% in 1994, compared with 3% in 1993. At December 31, 1994, virtually all of Canada Trust's deposits were from Canadian retail customers. The other principal liabilities were Canadian dollar Eurodebentures, domestically issued convertible debentures, term deposit receipts, Receiver General of Canada balances, and clearing balances. Canada Trust's deposits were $36.8 billion at December 31, 1994 with an average cost of funds of 5.08%. In August 1994, Canada Trustco Mortgage Company (Canada Trustco) issued $150 million subordinated capital debentures. These debentures are considered capital for purposes of federal capital adequacy reporting. At December 31, 1994, virtually all of First Federal's deposits were from U.S. retail customers. As well, First Federal borrows from the Federal Home Loan Bank (FHLB) at a cost of funds typically lower than treasury rates. Deposits of First Federal were $5.7 billion at year-end with an average cost of funds of 3.30%. First Federal's average cost of total funds, including FHLB, was 3.83%.

Cash, short-term notes, and short-term government bonds are used to meet liquidity requirements. During 1994, cash and short-term notes increased by $473 million, and short-term government bonds decreased by $189 million. Short-term government bonds represented 30% of securities at year-end. Securities, other than short-term government bonds, substantially consist of high quality shares, long-term government bonds, and mortgage-backed securities (MBS). Long-term securities are intended to be held to maturity. The average return on the securities portfolio for 1994 was 6.86%. First Federal holds a large portfolio of MBS consisting of securities backed by mortgages guaranteed by U.S. federal government agencies.

Imperial's mission is to compete successfully in any market it enters by satisfying adult smokers' needs better than its competitors – and to do this in a manner that is profitable and sustainable and that increases the value of the company.



Highlights of operations

Millions of dollars, except as noted	1995	1994	1993	1992	1991
				Years ended December 31	
Revenues	**2,652**	2,586	2,860	3,050	2,953
Revenues, net of tobacco taxes and duties	**1,407**	1,335	1,151	1,083	1,041
Earnings from operations	**645**	592	462	432	397
Market share – manufactured cigarettes (domestic and export) (%)	**66.3**	64.3	59.5	59.6	61.3
Additions to capital assets	**49**	31	28	36	22

In a declining market, Imperial Tobacco's total 1995 cigarette shipments were up 1.8% due to the strong popularity of our *du Maurier* and *Player's* brand families, both of which gained market share. The company's share of the cigarette market (domestic and export) rose by 2.0 share points to reach 66.3% at year-end. Factoring in roll-your-own products, our share of the total market was 62.6%, a gain of 1.3 share points. Productivity improvements, a price increase in April, and an improved product mix all helped maintain margins. The net result was a 9% increase in earnings from operations, another record performance for Imperial Tobacco.

The regulatory environment

On September 21, the Supreme Court of Canada ruled on the constitutionality of the Tobacco Products Control Act, a law that banned all advertising and promotion of tobacco products in Canada and required unattributed health messages to be printed on packages. The Court concluded that several key provisions of the Act infringed the freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms. With some suggested limitations, the decision supported the right of tobacco manufacturers to communicate with customers as well as the right of Canadian smokers to receive such information through advertising and promotion.

Repercussions of the Supreme Court decision surfaced in December. Canada's Health Minister launched a consultation process regarding a variety of potential measures, perhaps going as far as another ban on tobacco advertising plus curtailment of industry sponsorship activities. For its part, the Canadian Tobacco Manufacturers' Council announced the Tobacco Industry Voluntary Packaging and Advertising Code. This self-imposed code is among the most restrictive in the world and is a balanced solution to the issue of tobacco advertising. Its restrictions took effect immediately and include prohibition of so-called lifestyle advertising and a requirement that, prior to acceptance by any media outlet, all advertising must be pre-cleared by an independent authority.



Jean Lefort (foreground) and Robert Gauthier put a new, high-speed cigarette maker through its paces in the Montréal plant. Imperial is investing $118 million over a three-year period to streamline manufacturing operations and modernize machinery.

Managing to be competitive

Imperial Tobacco's success has always been based on knowing smokers' preferences and effectively meeting their needs. Today, as industry volumes in Canada steadily decline and tobacco companies compete for a share of the shrinking market, being a cost-effective producer is another market imperative. The following are selected highlights of ongoing dynamic changes designed to increase Imperial's productivity:

Corporate reorganization

In 1995, six operating divisions were reduced to five. At the heart of the restructuring is a major reorganization of work that will entail redeployment, multi-skilled jobs, and, ultimately, self-directed work teams. Our human resources group is providing major support for these changes, from role clarification to identifying core competencies and recommending appropriate training and development activities to be implemented over the next two years.

Business Process Improvement (BPI)

BPI is a process that taps employee initiative and know-how to create smoother links in work flow, particularly at points where two departments communicate. It began nearly four years ago in manufacturing, in full partnership with the union, and is now extending to other divisions. Changes recommended by employees are enhancing Imperial's competitiveness.

Integrated Information Systems

In January 1996, the company switched over to a totally integrated suite of information systems giving all employees access to the same, on-line information. Developing the new system entailed revisiting all business processes, an endeavour that became a key driver of process improvement and productivity. Resulting efficiencies will permit Imperial to adapt more rapidly to changes in the business environment.

Upgraded technology and facilities

$118 million has been earmarked to streamline manufacturing operations and modernize machinery. Work began in July on a $42 million facility in Aylmer, Ontario, that will consolidate primary processing of leaf tobacco, thereby improving product quality and lowering operating costs. Likewise, we have committed to higher-speed cigarette-making equipment in our Guelph and Montréal plants. In Montréal, new manufacturing, packing, and handling equipment installations are 80% complete.

Outlook

We are busy preparing for the future at Imperial. The business continues to be extremely successful in Canada, and we are seeking ways to develop our presence in new markets. Our human resources are stronger than ever, with employees fully involved in making Imperial's processes more efficient for the competitive tomorrows. We appreciate their dedication and we value their contributions. It is a privilege to lead such a committed organization.



R. Donald Brown
Chairman, President and
Chief Executive Officer

Other costs and administration expenses declined in 1995 as a result of lower corporate expenses and certain non-recurring cash receipts.

The reduction in interest expense of $21 million in 1995 is primarily attributable to a $14 million premium recorded in 1994 for the retirement of high coupon debt by Hardee's (refer to Note 27 on page 58). In addition, interest expense also decreased due to lower total average debt. Interest expense on fixed-rate debt was reduced in 1995 due to lower average fixed-rate debt levels, while interest expense on variable-rate debt was higher in 1995 due to increased average variable-rate debt and higher interest rates. The average interest rate on total debt was 8.5% in 1995, compared with 8.3% in 1994, as the average interest rate on variable-rate debt increased to 6.8% in 1995 from 5.3% in 1994. At December 31, 1995, 26% of the company's long-term debt was of a variable-rate nature and exposed to future movements in interest rates. This ratio was 32% at December 31, 1994. Changes in the composition of long-term debt during 1995 are discussed on page 41. Interest coverage, the ratio of earnings before interest and taxes to interest expense, was 4.8 in 1995 and excluding the special charge would have been 6.9. Coverage in 1994 was 5.9.

Imasco's overall effective income tax rate was 50.1% in 1995. The special charge has been recorded without the benefit of a tax recovery, as it is not virtually certain that the future tax benefits will be realized. As a result, the effective income tax rate is unusually high. Imasco's normalized effective tax rate, excluding the special charge, was 33.0% in 1995, compared with 33.5% in 1994. Note 20 on page 57 outlines the principal factors that caused the reduction in the normalized effective income tax rate in 1995.

Together with the tobacco tax rollbacks and other measures aimed at eliminating the contraband tobacco market, in February 1994 the federal and Québec governments imposed surtaxes on the profits of tobacco manufacturers to be in effect for a three-year period ending February 1997. During 1995, Imperial Tobacco provided $47 million for these surtaxes, compared with $39 million for the eleven-month period in 1994.

In September 1995, Imasco completed the sale of The UCS Group (refer to Note 22 on page 57). In accordance with Canadian accounting requirements, the after-tax operating results of The UCS Group are reported separately as discontinued operations, and prior-year amounts have been restated. The net assets of The UCS Group were disposed of at approximately book value, and the company reported break-even operating results in 1995, prior to disposition.

Net earnings attributed to common shares, upon which the calculation of earnings per common share is based, represent the residual of net earnings after dividends on preference shares have been paid. Dividends on preference shares were reduced in 1995 due to the repurchase and redemption of preference shares discussed on page 43. The weighted average number of common shares outstanding amounted to 233,538,739 during 1995, compared with 236,871,978 during 1994. Changes in common shares outstanding are itemized in Note 16 on page 55. Earnings per common share were $0.91 in 1995 and excluding the special charge would have been $2.30. This compares with $2.09 reported in 1994. The return on average common shareholders' equity was 6.7% in 1995 and excluding the special charge would have been 16.1%, the same as in 1994.

Imperial Tobacco

Revenues, net of tobacco taxes and duties, increased 5% in 1995 to $1.4 billion. Total unit shipments of cigarettes and roll-your-own products by Imperial Tobacco increased 0.7% during 1995, which contributed to the higher revenues. The improvement also reflects a cigarette price increase to wholesalers of 4.1% effective April 1995, the first increase by Imperial Tobacco since July 1993.

Industry shipments of cigarettes and roll-your-own products are estimated to be 52.6 billion cigarettes and approximate equivalents in 1995. It was the first full year of business activity since the significant rollbacks of tobacco taxes by the federal and certain provincial governments that took place from February through May 1994. The tax rollbacks are believed to have substantially eliminated the international smuggling of tobacco products into Eastern Canada and returned sales principally to the domestic, duty-paid market for manufactured products from the export and duty-free segments. This trend is illustrated in the following table of estimates for the Canadian industry's total shipments.

	1995	1994	1993
	Billions of cigarettes and approximate equivalents		
Domestic:			
Cigarettes	**45.6**	45.7	30.2
Roll-your-own	**5.2**	5.1	5.0
Export and duty-free:			
Cigarettes	**1.4**	1.9	14.4
Roll-your-own	**0.4**	0.6	2.8
Total [1]	**52.6**	53.3	52.4

[1] Based upon Statistics Canada figures (adjusted to exclude non-Canadian brands manufactured by a competitor for foreign consumption) and Imperial Tobacco estimates. Amounts reported exclude (primarily in 1993) foreign-manufactured products available in Canada and consumer purchases of raw leaf tobacco.

The preceding table does not provide a measure of consumer prevalence or of consumption levels. Shipments shown are sales to wholesalers and can vary according to production and inventory levels and other marketplace dynamics. In addition, the table does not consider that some foreign-manufactured products enter Canada illegally and, prior to the tobacco tax rollbacks, consumers were purchasing raw leaf tobacco to make their own cigarettes. Imperial Tobacco believes the decline in 1995 industry volume is overstated as the 1994 increase included an inventory build-up following the tax rollbacks. Imperial Tobacco projects a relatively low rate of decline in consumption levels in 1996.

Imperial Tobacco's market share has historically been strongest in the domestic manufactured cigarette segment. Consequently, Imperial Tobacco benefitted from the return of sales

volume to this segment following the tobacco tax rollbacks, particularly in 1994. Imperial Tobacco's shipments and estimated share of market were as follows:

	1995	1994	1993
Domestic:	Billions of cigarettes and approximate equivalents		
Cigarettes	**30.6**	29.8	20.3
Roll-your-own	**1.6**	2.0	2.0
Export and duty-free:			
Cigarettes	**0.6**	0.8	6.2
Roll-your-own	**0.1**	0.1	0.4
Total	**32.9**	32.7	28.9
Market share (%) [1]	**62.6**	61.3	55.2

[1] Based upon Statistics Canada figures (adjusted to exclude non-Canadian brands manufactured by a competitor for foreign consumption) and Imperial Tobacco estimates. Amounts reported exclude (primarily in 1993) foreign-manufactured products available in Canada and consumer purchases of raw leaf tobacco.

In 1995, Imperial Tobacco continued to gain volume and market share from its domestic competitors and other non-domestic manufacturers. This can be attributed to four main factors: the strengths of its three major Canadian trademarks, *du Maurier, Player's,* and *Matinée;* product quality; market and consumer research; and the effectiveness of its sales force in the domestic market.

Earnings from operations increased 9% in 1995 to $645 million. This represented 45.8% of net revenues, compared with 44.4% in 1994. The increase in earnings from operations is due to higher sales volumes, improved gross margins attributable to a more favourable sales mix, the price increase, and productivity improvements. In conjunction with the tobacco tax rollbacks, the federal and Québec governments in 1994 imposed a three-year surtax on profits of tobacco manufacturers ending in February 1997. Part of the proceeds, in the case of the federal government, is being used to fund its Tobacco Demand Reduction Strategy. In 1995, the provision for tobacco surtaxes amounted to $47 million, compared with $39 million in 1994 when it was in effect for an eleven-month period.

The major challenge for Imperial Tobacco continues to be increasing its sales volume despite the long-term slow decline in consumption of tobacco products in Canada. This decline is principally due to demographics, consumers' health concerns, and changing attitudes toward smoking. Allowing for variations from year to year, this long-term trend is expected to persist. In addition, government taxation and regulation of tobacco products continue to be major issues faced by all Canadian tobacco manufacturers.

On February 17, 1995, the federal government announced a $0.60 federal excise tax increase per carton of cigarettes intended for retail sale in Ontario and Québec. On the same date, the governments of Ontario and Québec announced an identical increase of $0.60 per carton in their respective tobacco taxes. Ontario did not proceed with the formal legislative approval required to implement the increase, whereas Québec did. Québec went on to increase its cigarette tax by an additional $0.72 per carton in its May 10, 1995 budget.

On September 21, 1995, the Supreme Court of Canada rendered its judgment regarding the challenge by Imperial Tobacco and RJR-Macdonald Inc. of the validity of the Tobacco Products Control Act (TPCA). In a majority decision (five to four), the Court struck down five sections of the TPCA on the basis that these sections infringed the right to freedom of expression as set out in the Canadian Charter of Rights and Freedoms. The sections contained a ban on the Canadian advertising of tobacco products, limitations on in-store advertising, rules governing sponsorships by tobacco manufacturers, restrictions against the use of tobacco-related trademarks on non-tobacco products, and a prohibition against extraneous information on packages containing tobacco products.

On December 11, 1995, Canada's Health Minister issued a consultation document setting forth the Health Department's objectives for replacement of the TPCA. Some of the principal elements proposed include the following: a complete ban on advertising, restrictions on promotional and sponsorship activities, measures to reduce access to tobacco products by minors, restrictions on point-of-sale activities, imposition of packaging and labelling requirements including health messages and limitations on the minimum package size, and governmental powers to eventually regulate tobacco product constituents and smoke emissions. The document will be the subject of consultations with provincial governments, the health community, tobacco manufacturers, and other interested parties early in 1996. The Health Minister indicated her expectation that the government would introduce legislation in the spring of 1996. On January 25, 1996, a new Health Minister was appointed. There is no indication of what impact, if any, this development will have on the outcome of the process.

On December 19, 1995, Canada's three major cigarette manufacturers, through the Canadian Tobacco Manufacturers' Council (CTMC), announced the Tobacco Industry Voluntary Packaging and Advertising Code (the Code) to be effective immediately. The Code is intended to regulate the marketing practices of the CTMC's members and follows the ruling of the Supreme Court of Canada. Under the Code, all brand and sponsorship advertising must be submitted to an independent body for pre-clearance. Tobacco advertising will be aimed only at increasing or maintaining market share and must be directed only to adult smokers. Advertising of tobacco products on radio or television, as well as any brand advertising showing people, is prohibited. With respect to sponsorship and related activities, the Code permits the use of tobacco trademarks for the principal purpose of promoting the activity or event, but prohibits the use of packages, products, or examples of a product. The Code also restricts the use of tobacco trademarks on non-tobacco items. Furthermore, the Code requires health messages attributed to Health Canada to be printed on the principal display panels of all tobacco product packages. Product advertising will also carry a government health message.

In April 1994, the federal government mandated the Standing Committee on Health to examine the effectiveness and legal ramifications of using plain packaging of tobacco products to reduce both consumption and smuggling. In November 1994, Canada's Minister of Health deferred proceeding with legislation pending both further study of the issue and the ruling of the Supreme Court of Canada on the validity of the TPCA. The

expert panel commissioned by Health Canada released its report on plain packaging in May 1995. In light of the ruling of the Supreme Court of Canada, Imperial Tobacco believes that plain packaging would violate the Canadian Charter of Rights and Freedoms.

Other restrictive measures have also been imposed at provincial and municipal levels. They include the prohibition of the sale of tobacco products in Ontario drugstores and vending machines. The provincial governments of Nova Scotia, Québec, and British Columbia have proposed or implemented additional legislative initiatives concerning the sale, distribution, and consumption of tobacco products. Several municipalities, including Vancouver, Metro-Toronto, and Ottawa, have proposed or adopted further restrictive measures covering the promotion and consumption of tobacco products. Anti-tobacco lobby groups continue to pressure governments at all levels to adopt more stringent regulations against smoking.

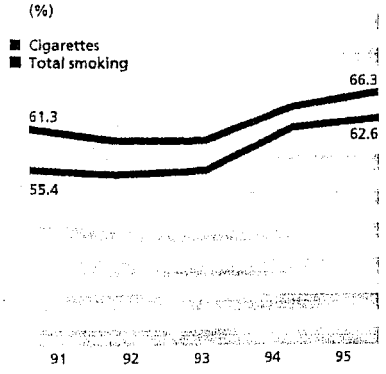
On March 3, 1995, Imperial Tobacco was served with a Statement of Claim on behalf of four plaintiffs. The plaintiffs are seeking, among other things, to have the suit against Imperial Tobacco and the two other major Canadian tobacco companies certified as a class action and to be awarded damages for losses said to be consequential to their alleged addiction to tobacco. No date has been set for plaintiffs' motion to determine whether the case will be certified as a class action. (Refer to Note 32 on page 60 for further details on the lawsuit.) Imperial Tobacco will vigorously defend its position, and, although the lawsuit is at a very early stage and it is difficult to predict the outcome of lawsuits, the Corporation believes that Imperial Tobacco has a number of valid defenses.

The company has several major productivity initiatives under way that should continue to yield positive results in 1996. During 1995, Imperial Tobacco announced a major reorganization of its corporate structure intended to increase the effectiveness of the company's operations. A guiding principle is to focus resources on activities that are valued by the company's trade customers and by consumers. The in-depth reassessment of each of the company's activities is closely coupled with the implementation of company-wide integrated computerized information systems at the beginning of 1996. The full benefits of these programs are expected to be realized over the next two years. Concurrently, the company is investing substantial amounts in its manufacturing facilities to achieve higher productivity, better cost management, and greater flexibility in responding to customer needs. It has also developed a comprehensive, long-term tobacco leaf strategy consistent with its continuing objective to meet consumer demands better than the competition. A key element of the strategy is to optimize the use of Canadian tobacco in order to maintain uniform and consistent taste qualities and improve cost effectiveness.

As part of a longer-term strategy, the company continues to explore international market opportunities. Since Imperial Tobacco does not own the rights to the *du Maurier* and *Player's* trademarks outside Canada, new brands will be developed. The primary focus will be in the United States, where Imperial Tobacco will continue test marketing a roll-your-own product in 1996.

Imperial Tobacco forecasts continued growth in net revenues and earnings from operations for 1996, assuming no significant negative government initiatives. The principal focus will be to generate profitable market share growth in both the manufactured cigarette and roll-your-own segments.

Market share
(%)



CT Financial Services

The principal business segments of CT Financial Services are financial intermediary services and fiduciary services. The majority of earnings is derived from financial intermediary services provided by Canada Trust in Canada and by First Federal in the United States. Revenues of CT Financial Services, as reported by Imasco Limited, were as follows:

	1995	1994	1993
		Millions of dollars	
Gross investment income	**3,925**	3,320	3,321
Fees	**496**	437	355
Other income	**35**	(3)	27
	4,456	3,754	3,703

Net earnings attributed to common shareholders for 1995 increased 23% over 1994. This improvement was largely due to higher fee revenue, which increased 14% over 1994, and a tightly controlled 7% increase in expenses, compared to a 10% increase in revenues net of interest expense. In 1995, net earnings of Canada Trust and First Federal amounted to $201 million and $66 million, respectively, compared with $175 million and $47 million in 1994. Fully diluted net earnings per common share increased 23% in 1995 to $2.02 from $1.64 in 1994. Return on fully diluted average common shareholders' equity was 11.8% for 1995, compared with 10.2% for 1994, while net earnings as a percentage of average assets was 0.53%, compared with 0.47% in 1994.

Net investment income, the difference between revenue earned on investments and interest expense on deposits and borrowings, rose 5% during 1995 to $1.2 billion. Net investment income can be adjusted to a taxable equivalent basis to reflect the differing tax treatments accorded income derived from various types of investments. On a taxable equivalent basis, net investment income was $1.3 billion in 1995, an increase of 4% from 1994.

Net interest rate differential or spread (the difference between investment income earned as a percentage of average investments and interest expense as a percentage of average interest-bearing liabilities adjusted to a taxable equivalent basis) was

Imperial's mission is to compete successfully in any market it enters by satisfying adult smokers' needs better than its competitors – and to do this in a manner that is profitable and sustainable and that increases the value of the company.



Imperial Tobacco

Imperial Tobacco continued to grow in 1996. Earnings from operations were up 9%, and total shipments rose 3.2%. The company extended its lead in the Canadian manufactured cigarette market (domestic and export) with a market share gain of 0.3 share points, to reach 66.6% by year-end. *du Maurier* and *Player's* are by far the country's most popular brand families. Within the total tobacco products market (cigarettes and roll-your-own products), Imperial's share was 62.3%, compared with 62.6% in 1995.

The regulatory climate

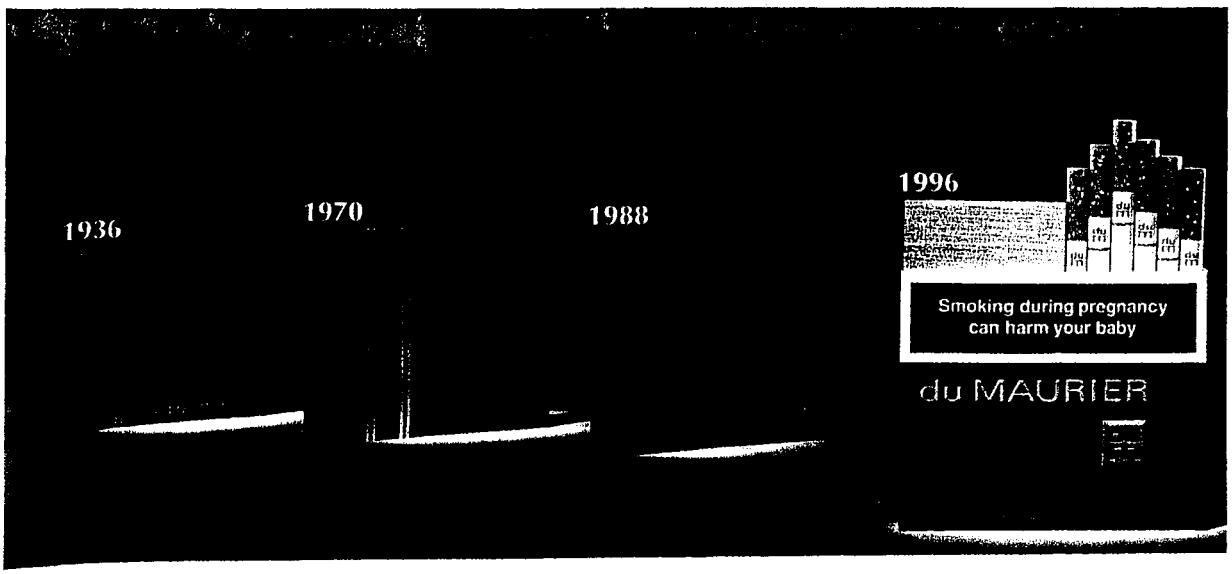
Following the Supreme Court of Canada's decision in September 1995 to strike down key provisions of the Tobacco Products Control Act, Canadian tobacco companies quickly moved to fill the regulatory void, introducing the Tobacco Industry Voluntary Packaging and Advertising Code in December 1995. In October 1996 "Operation ID" was launched, a partnership with more than 30,000 retailers aimed at curtailing sales of tobacco products to minors. Imperial strongly supports both initiatives.

In December 1996 the federal government introduced new tobacco control legislation that is currently under study by Parliament. In its current form Bill C-71 appears effectively to ban advertising and sponsorship activities by tobacco companies, in disregard of the recognized right of tobacco product manufacturers to communicate with the seven million adult smokers in Canada. While the final form of the Bill has yet to be determined, we may have to go to court again to ensure that our Charter-guaranteed rights are fully respected.

When Bill C-71 was introduced, the government also announced a three-year extension of the surtax on tobacco manufacturers' profits, first enacted in 1994. This decision was disappointing, as a competitive corporate taxation regime is key to maintaining industry manufacturing activity in Canada. In effect, the federal surtax now amounts to a permanent, hidden tax on cigarettes,

Highlights of operations

Millions of dollars, except as noted	1996	1995	1994	1993	1992
				Years ended December 31	
Revenues	**2,827**	2,652	2,586	2,860	3,050
Revenues, net of tobacco taxes and duties	**1,527**	1,407	1,335	1,151	1,083
Earnings from operations	**705**	645	592	462	432
Market share – domestic and export manufactured cigarettes (%)	**66.6**	66.3	64.3	59.5	59.6
Additions to capital assets	**66**	49	31	28	36



The evolution of quality
The changing face of *du Maurier* highlights Imperial Tobacco's ability to reposition brands and keep pace with evolving consumer preferences.

and in December 1996 Imperial instituted a $0.31 per carton increase to wholesalers as a first step in recovering the levy.

These regulatory developments did not distract us from building the business. We continued to focus on brand development, productivity, and streamlined operations.

Brand development
A new Player's brand, *Player's Premiere*, was successfully test marketed in November in Nova Scotia, Prince Edward Island, and British Columbia, and a national roll-out is planned for 1997. The brand responds to those smokers who prefer full-flavoured taste with reduced irritation. In the third quarter we re-introduced *Avanti, Player's Special Blend,* and *Matinée Slims* to respond to the growing popularity of non-mainstream products in certain markets. And to counter a decline in our share of the fine-cut tobacco market, we introduced two *Player's* 50% bonus roll-your-own products. These initiatives reflect the strong customer focus that has been the basis of Imperial's success over the years.

Productivity improvements
Imperial's manufacturing productivity programs moved forward in 1996. Higher-speed cigarette-making equipment is being installed in Montréal and Guelph, and centralization of all primary leaf processing activities in Aylmer, Ontario, is now complete. In June the company announced plans for a new $28 million plant to produce expanded tobacco, an important component of lower-priced, fine-cut offerings and lighter cigarettes. Since 1991 our actual and planned new investments in the Aylmer facility exceed $100 million.

Streamlined processes and work flow
Planning for our reorganized work flow is proceeding steadily, both in the management ranks and on the factory floor, where we are working with our unions to improve the quality and flexibility of operations. At each plant we now have vital union commitment for partnership as well as specific implementation plans.

Projects are also under way to review the alignment of business processes with company goals. We are examining the supply chain from leaf to delivery of finished goods as well as the ways our products are distributed. And, after its first full year of operation, our integrated information system is providing the productivity and management flexibility benefits we expected.

Outlook
Imperial is Canada's leading tobacco manufacturer, and the company's formula for future success will remain the same as it has always been: to be responsive by offering brands that adult smokers prefer, to be the lowest cost producer, and to be ready for tomorrow by incorporating the wisdom and commitment of our outstanding employees into all that we do.



R. Donald Brown
Chairman, President and
Chief Executive Officer

and 10%, respectively, in 1996. The increase at Imperial Tobacco reflects higher revenues and the benefits of continuing cost controls and productivity improvements, while the increase at CT Financial is due to higher net investment income and fee-based revenue. CT Financial's 1996 results include a $70 million special provision related to its real estate investments, based upon an assessment by CT Financial's management of a permanent impairment in the value of these assets. Excluding this special real estate provision, CT Financial's operating earnings before goodwill amortization increased 26% in 1996. Hardee's results declined in 1996 (excluding the 1995 special charge discussed below) as a result of lower revenues. The increase reported by Shoppers Drug Mart in 1996 is almost entirely due to the acquisition of Big V, while the increase at Genstar Development is a result of improvements in Canadian residential housing markets and the maturing of projects in the United States.

In the fourth quarter of 1995, Hardee's recorded a special charge of $325 million (US $239 million), predominantly to write down assets of its Roy Rogers restaurant business, but also to record certain provisions against the operations of Hardee's and Fast Food Merchandisers (FFM). The special charge is discussed in greater detail on page 37 and in Note 9.

Goodwill amortization increased 18% in 1996 and is detailed in Note 2. The increase is principally attributable to the amortization for ten months of the goodwill arising on the acquisition of Big V (refer to Note 17). Additional goodwill amortization recorded on small acquisitions by CT Financial was substantially offset by the elimination of goodwill amortization on Roy Rogers following the write-off of this goodwill as part of the 1995 special charge.

Interest expense declined 4% in 1996, although the average total debt outstanding in 1996 was $142 million higher than in 1995. The decrease is attributable to two principal factors: lower interest rates on variable-rate debt and the refinancing of fixed-rate debt with lower-cost, variable-rate debt. The average interest rate on total debt was 7.3% in 1996, compared with 8.5% in 1995, while the average interest rate on variable-rate debt was 5.6% in 1996, compared with 6.8% in 1995. The proportion of variable-rate debt rose from 28% of total debt at December 31, 1995, to 53% at December 31, 1996, as a result of financing activities undertaken during 1996. Changes in the composition of total debt in 1996 are discussed on page 41. Interest coverage (the ratio of earnings before interest and taxes to interest expense) was 7.8 in 1996, compared with 4.8 in 1995 (6.9 excluding the special charge). The company's management of interest rate risk is discussed in Note 23.

Imasco's overall effective income tax rate was 34.3% in 1996, compared with 50.1% in 1995. The effective income tax rate in 1995 was unusually high because no tax recovery was recorded on the special charge. Excluding the special charge the effective income tax rate in 1995 would have been 33.0%. The company has not recorded tax recoveries on Hardee's 1996 losses and on the 1995 special charge, as it is not virtually certain that the future tax benefits will be realized. In 1996, CT Financial, through its U.S. subsidiary, First Federal Savings and Loan Association of Rochester (First Federal), recorded a $45 million tax recovery following the successful resolution of a tax matter outstanding with the Internal Revenue Service. Excluding the First Federal tax recovery, Imasco's effective tax rate in 1996 was 38.6%. Note 11 outlines the principal factors that caused the tax rate to vary between 1995 and 1996.

Earnings per common share (EPS) amounted to $2.55 in 1996, compared with $0.91 in 1995. Excluding the special charge, 1995 EPS would have been $2.30, and the increase in 1996 EPS would have been 11%. EPS is calculated by dividing net earnings attributed to common shares (net earnings less dividends on preference shares) by the weighted-average number of common shares outstanding during the year. The weighted-average number of shares outstanding in 1996 amounted to 232,050,820, compared with 233,538,739 in 1995. Changes in common shares outstanding are itemized in Note 7. The return on average common shareholders' equity was 18.2% in 1996, compared with 6.7% in 1995 (16.1% excluding the special charge).

With the exception of Hardee's, strong performances are expected in 1997 from each of Imasco's businesses. The sale of First Federal by CT Financial (refer to Note 21), which is expected to close in early 1997, will generate a pre-tax gain of approximately $300 million. Including the non-recurring tax recovery of $45 million, First Federal contributed $122 million to Imasco's net earnings in 1996. Until a decision on the deployment of the sales proceeds is made, Imasco will be carrying excess capital, which will affect the company's return on equity.



Revenues, net of tobacco taxes and duties, increased 9% in 1996 to $1.5 billion. The increase reflects a 3.2% rise in total shipments of cigarettes and roll-your-own products and a 4.2% cigarette price increase to wholesalers effective April 1996. Imperial Tobacco's cigarette prices to wholesalers had previously been increased by 4.1% effective April 1995. Export sales of leaf tobacco also increased in 1996 and contributed to the higher revenues.

Total shipments of cigarettes, roll-your-own products, and tobacco sticks for the Canadian industry are estimated to have increased 3.6% during 1996 to 54.5 billion cigarettes and approximate equivalents, as detailed in the following table:

	1996	1995	1994
Billions of cigarettes and approximate equivalents			
Domestic:			
Cigarettes	**47.1**	45.6	45.7
Roll-your-own	**4.2**	4.1	4.4
Tobacco sticks	**1.4**	1.1	0.7
Export and duty-free:			
Cigarettes	**1.4**	1.4	1.9
Roll-your-own	**0.4**	0.4	0.6
Total [1]	**54.5**	52.6	53.3

[1] Based upon Statistics Canada figures (adjusted to exclude non-Canadian brands manufactured by a competitor for foreign consumption) and Imperial Tobacco estimates.

Imperial Tobacco believes the increase in industry shipments in 1996 is attributable to an increase in the number of smokers and to an inventory build-up by wholesalers towards the end of the year. The company believes the decline in the 1995 industry volume is overstated, as 1994 statistics include an inventory build-up following the significant rollbacks of tobacco taxes by the federal and certain provincial governments in February 1994. The above table does not provide an accurate measure of smoking prevalence or consumption levels. Shipments represent sales to wholesalers and can vary according to production and inventory levels and other marketplace dynamics.

Imperial Tobacco's shipments and estimated market share were as follows:

	1996	1995	1994
Billions of cigarettes and approximate equivalents			
Domestic:			
Cigarettes	**31.6**	30.6	29.8
Roll-your-own	**1.6**	1.6	2.0
Tobacco sticks	**–**	–	–
Export and duty-free:			
Cigarettes	**0.7**	0.6	0.8
Roll-your-own	**0.1**	0.1	0.1
Total	**34.0**	32.9	32.7
Market share (%) [1]	**62.3**	62.6	61.3

[1] Based upon Statistics Canada figures (adjusted to exclude non-Canadian brands manufactured by a competitor for foreign consumption) and Imperial Tobacco estimates.

In 1996 Imperial Tobacco continued to gain market share in the manufactured cigarette segment. The company's share of this segment, in which profit margins are largest and Imperial Tobacco is strongest, rose from 66.3% in 1995 to 66.6% in 1996. This gain can be attributed to four main factors: the strength of Imperial Tobacco's three major Canadian trademarks, *du Maurier, Player's,* and *Matinée;* product quality; market and consumer research; and the effectiveness of the company's domestic sales force.

Market share in the roll-your-own segment declined 3.2 share points during 1996 to 35.8% due to aggressive, value-oriented initiatives by competitors. Imperial Tobacco responded with the introduction late in the year of a 50% bonus offering of *Player's* roll-your-own tobacco. The tobacco sticks category continued to grow in 1996 due to a preferential tax treatment and represented 2.6% of the total Canadian market at December 31, 1996. While Imperial Tobacco's ability to compete in this segment has been limited by patent restrictions, it is continuing to explore alternatives that would permit it to compete in this segment. The launch of the 50% bonus product, together with other initiatives, is expected to have a positive effect on the company's total market share in 1997.

Operating earnings increased 9% in 1996 to $705 million. This represented 46.1% of net revenues, compared with 45.8% in 1995. The increase in operating earnings is attributable to the higher revenues discussed above and to the benefits of continuing cost controls and productivity improvements.

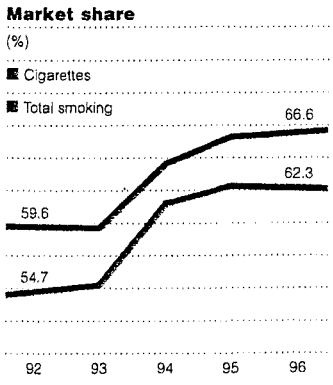
Government taxation and regulation of tobacco products continue to be major issues faced by Canadian tobacco manufacturers. On November 28, 1996, the federal government announced an extension of the federal surtax on the profits of tobacco manufacturers for an additional three-year period. The surtax, originally imposed by the federal and Québec governments in 1994 in conjunction with the tobacco tax rollbacks, was scheduled to expire February 8, 1997. In 1996 Imperial Tobacco's provision for tobacco surtaxes amounted to $53 million, compared with $47 million in 1995. In the company's view, extending the federal surtax effectively transforms it into an indirect product tax that should be recovered in the product price, as other product taxes are recovered. The first step towards the surtax recovery was taken when Imperial Tobacco increased its cigarette sales price to wholesalers by $0.31 per carton effective December 16, 1996. This price increase represents only a portion of the cost arising from the federal surtax. In the past, the entire cost of the surtaxes had been absorbed by the company.

Also on November 28, 1996, the federal government announced an increase of $0.70 per carton of 200 cigarettes of the federal excise tax for cigarettes for sale in Ontario, Québec, New Brunswick, Nova Scotia, and Prince Edward Island. These provinces subsequently matched the federal increase with an increase of $0.70 per carton in their respective tobacco taxes. Previously, on February 17, 1995, the federal government had increased the federal excise tax by $0.60 per carton of cigarettes intended for sale in Québec and Ontario. On the same date, the Québec government also increased its tobacco sales tax by $0.60 per carton and followed with a further increase of $0.72 per carton in its May 10, 1995, budget.

On September 21, 1995, the Supreme Court of Canada rendered its judgment regarding the challenge by Imperial Tobacco and RJR-Macdonald Inc. of the validity of the Tobacco Products Control Act (TPCA). In a majority decision, the Court struck down five sections of the TPCA on the basis that they infringed the right to freedom of expression as set out in the Canadian Charter of Rights and Freedoms. The sections contained a ban on the Canadian advertising of tobacco products, limitations on in-store advertising, rules governing sponsorship by tobacco manufacturers, restrictions against the use of tobacco-related trademarks on non-tobacco products, and a prohibition against extraneous information on packages containing tobacco products.

On December 19, 1995, the Canadian Tobacco Manufacturers' Council released the text of the Tobacco Industry Voluntary Packaging and Advertising Code (the Code) designed to regulate, in the absence of legislation, the activities of the industry in respect of advertising, promotion, and packaging materials. The Code provides for an independent enforcement agency to receive and adjudicate third-party complaints, and the Canadian Advertising Foundation acts as the independent agency. Since the implementation of the Code, members of the industry have received several complaints, all of which have been ruled on by the Canadian Advertising Foundation. Where appropriate, member companies have responded to the rulings.

On December 2, 1996, the federal Minister of Health tabled Bill C-71, proposed legislation to regulate the manufacture, sale, labelling, advertising, and promotion of tobacco products. This proposal would replace the TPCA and the Tobacco Sales to Young Persons Act. If the proposed legislation is enacted without changes, the industry's freedom to manufacture and market its products could be substantially affected. Provisions of the proposed legislation include: the establishment of powers to regulate the composition of tobacco products; further restrictions on access to tobacco products; health messages on packages of tobacco products that are attributable to an authority prescribed by regulations as well as detailed information concerning tobacco products and their emissions; prohibition of advertising of tobacco products except for product information and brand-preference advertising which does not evoke any emotion about a tobacco product and which may appear only in publications with primarily adult readership, in materials mailed to adults, or in places where young persons are not permitted by law; prohibition of the distribution and promotion of tobacco products if any of their brand elements appear on a non-tobacco product associated with youth or a lifestyle; severe restrictions on sponsorship promotions containing tobacco brand elements that limit the tobacco brand elements to the bottom 10% of promotional materials and permit promotional materials to appear only in publications with primarily adult readership, in materials mailed to adults, on signs at the site of the event, or in places where young persons are not permitted by law;



and the requirement that manufacturers report on tobacco products and related brand elements. The proposed Bill also provides for a stern enforcement scheme including unannounced and warrant-free searches and seizures, heavy monetary fines and jail sentences, as well as wide discretion on the part of the authorities regarding the venue of enforcement proceedings. With Bill C-71 still pending, the industry continues to regulate itself by the Code.

Restrictive measures have also been imposed by provincial and municipal governments. They include the prohibition in Ontario of the sale of tobacco products in drugstores and vending machines. The Minister of Health for Québec is considering legislation that, among other things, would restrict tobacco smoking in public places and put limitations on advertising and sponsorship activities. The provincial governments of Nova Scotia, New Brunswick, and British Columbia have proposed or implemented additional legislative initiatives concerning the sale, distribution, and consumption of tobacco products; several municipalities, including Vancouver, Metro-Toronto, and Ottawa, have proposed or adopted further restrictive measures regarding the consumption of tobacco products. Anti-tobacco lobby groups are actively pressuring governments at all levels to adopt more stringent measures against smoking.

For information on tobacco litigation involving Imperial Tobacco and a related company, please see Note 22.

In addition, in September 1996 the Minister of Health for British Columbia suggested that the province might sue tobacco companies to recover health-care costs for smoking-related illnesses. To date, nothing further has been announced.

Imperial Tobacco continues to focus on improving its productivity. Major investments are being made to upgrade the company's information technology systems, streamline manufacturing processes, and upgrade machinery. At the beginning of 1996 Imperial Tobacco replaced the majority of its computer application systems with a totally integrated information system. A new facility to centralize the primary processing of leaf tobacco in Aylmer, Ontario, is now complete, and the construction of an expanded tobacco plant (scheduled for completion in early 1999) is also under way at the same location. In addition, higher-speed cigarette-making

machinery is being installed in the Guelph and Montréal plants. The company's management structure has been reorganized to increase the effectiveness of operations and to create a more responsive organization. The full benefits of these productivity initiatives will be realized in future years, as investments in manufacturing facilities are completed and employees adapt to the new structure, systems, and machinery.

The major challenge for Imperial Tobacco continues to be to increase its sales volume despite the long-term, slow decline in consumption of tobacco products in Canada. This trend may vary from year to year, with slight increases occurring over certain periods such as 1996, but over the long term Imperial Tobacco foresees a gradual decline in consumption. This long-term decline is due to an aging population, consumers' health concerns, and the diminishing social acceptance of smoking.

The company continues to explore international markets as an avenue for growth. Since Imperial Tobacco does not own the rights to the *du Maurier* and *Player's* trademarks outside Canada, new brands must be developed. In Buffalo, New York, Imperial Tobacco discontinued the test marketing of a roll-your-own product, as sales did not meet objectives. Other alternatives are currently being evaluated. Expansion in international markets forms part of the company's longer-term strategy, but is unlikely to result in a significant contribution to profits in the short term.

Imperial Tobacco has consistently demonstrated its ability to overcome difficult competitive and regulatory circumstances. The company foresees growth in revenues and operating earnings in 1997, assuming no significant impact from additional anti-tobacco initiatives by government. The growth is expected to be derived from market share gains, productivity enhancements, and price adjustments.



CT Financial Services

The principal business segments of CT Financial are financial intermediary services and wealth management services. The majority of earnings are derived from financial intermediary services provided by Canada Trust in Canada and by First Federal in the United States.

In August 1996 CT Financial announced an agreement to sell its investment in First Federal to Marine Midland Bank of Buffalo, New York. Proceeds of the sale will be approximately $940 million, and the pre-tax gain will be approximately $300 million. The sale is subject to regulatory approval and is expected to close early in 1997. Initially acquired in 1991 through a capital injection of $218 million, First Federal has been a financially rewarding asset that has provided the opportunity to gain extremely valuable experience in the United States market.

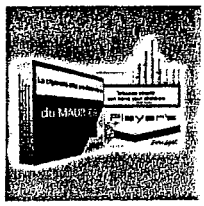
The manner of deployment of the proceeds has not yet been decided and will remain under review during 1997. Following completion of the sale, 1997 net earnings of CT Financial will be negatively affected. Because the sale had not yet closed at year-end, First Federal's assets and liabilities and results of operations for the year continue to be included in the consolidated financial statements.

In December 1996 CT Financial announced an agreement to purchase Meloche Monnex Inc. (Monnex), Canada's leading provider of home, automobile, and travel insurance to members of professional and alumni associations. The purchase of 100% of its shares from London Insurance Group and senior Monnex management is subject to regulatory approval and is expected to close early in 1997. The purchase price of approximately $142 million in cash is subject to adjustments contingent on certain business conditions.

Monnex, with corporate assets of $303 million at September 30, 1996, offers products that will complement the creditor and accident insurance offered to Canada Trust's customers by Canadian Trinity Life Insurance Company. Its purchase will provide an opportunity to expand both customer bases. Monnex will bring to Canada Trust expanded affinity group marketing techniques and abilities, but will not directly impact the retail branch operations since federal regulations continue to prohibit the sale of these types of insurance products from retail branches.

CT Financial's net earnings attributed to common shareholders amounted to $303 million in 1996 as detailed in the following table:

Millions of dollars	**1996**	1995	1994
Revenues	**4,400**	4,456	3,754
Interest expense	**2,488**	2,751	2,205
Provision for investment impairment	**172**	127	140
Operating expenses	**1,267**	1,148	1,076
Pre-tax earnings, before goodwill amortization	**473**	430	333
Goodwill amortization	**7**	3	–
Pre-tax earnings	**466**	427	333
Provision for income taxes	**135**	150	101
Preference share dividends of subsidiaries and non-controlling interest	**13**	10	10
Net earnings	**318**	267	222
Preference share dividends of CT Financial	**15**	26	26
Net earnings attributed to common shares	**303**	241	196



Imperial Tobacco

Imperial's mission is to compete successfully for market share in any market it enters by satisfying adult smokers' preferences better than its competitors – and to do this in a manner that is profitable and sustainable and that increases the value of the company.

Highlights of operations

Millions of dollars, except as noted	1997	1996	1995	1994	1993
				Years ended December 31	
Revenues	**3,005**	2,827	2,652	2,586	2,860
Revenues, net of tobacco taxes and duties	**1,642**	1,527	1,407	1,335	1,151
Earnings from operations	**775**	705	645	592	462
Market share – domestic and export manufactured cigarettes (%)	**68.0**	66.6	66.3	64.3	59.5
Additions to capital assets	**83**	66	49	31	28

Imperial's earnings from operations were up 10% in 1997, reaching $775 million. Factors behind this strong performance were market-share increases for both manufactured cigarettes and roll-your-own tobacco products, improved productivity, and higher prices.

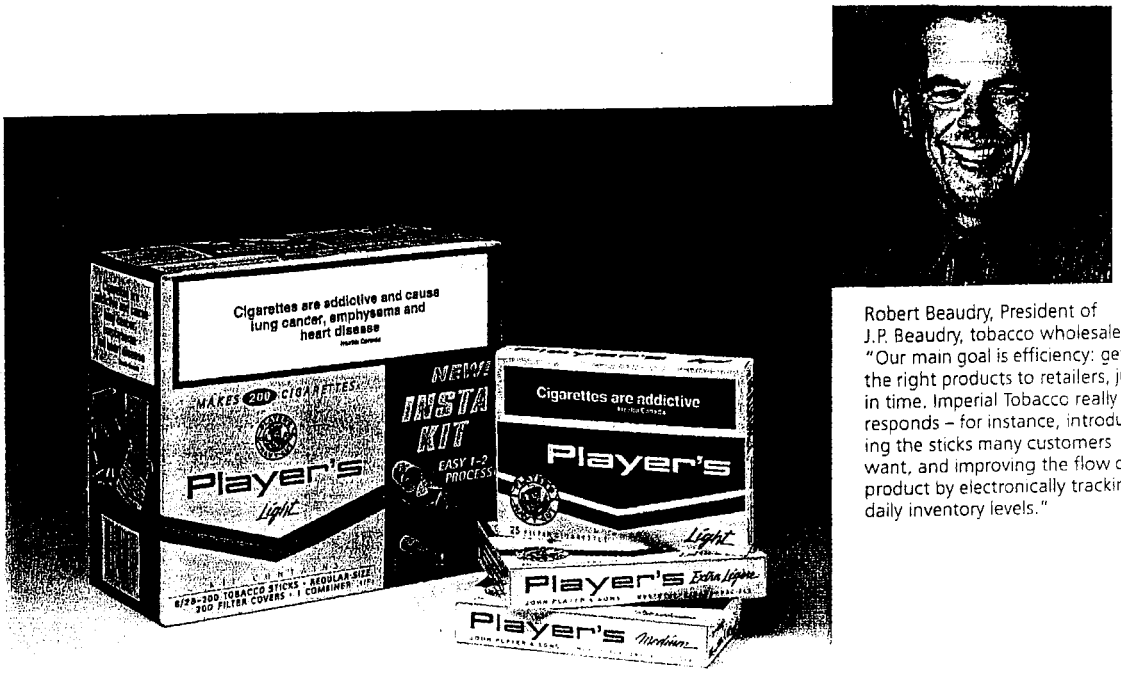
Combined sales of our *du Maurier* and *Player's* brands (numbers one and two in popularity) account for close to 60% of the Canadian cigarette market; *Matinée* is also growing and is now the fourth largest-selling brand in Canada. All told, Imperial's share of the manufactured cigarette market (which constitutes close to 90% of industry sales) was 68.0% in 1997, up 1.4 share points; in the overall tobacco market (cigarettes, roll-your-own products, and tobacco sticks) our share climbed 1.3 share points to 63.6%.

Industry update

The year's results were achieved despite a 2.9% decline in industry shipments and a 0.9% decline in Imperial's shipments. These volume declines are somewhat overstated, reflecting inventory adjustments following strong shipments late in 1996. Nonetheless, patterns in consumer behavior and smoking incidence point toward a continued, slow decline in demand for tobacco products.

The Tobacco Act, Bill C-71, became law last April. As a result of its restrictiveness and as-yet-undefined regulations, tobacco product advertising has ceased. Effective October 1998 the Act will constrain the promotion of tobacco-sponsored cultural and sporting events to the point of removing their commercial value. Consequently, this summer Imperial Tobacco's sponsorship commitments will go forward, but unless the legislation is amended substantially all sponsorship activities will cease thereafter. During the advertising ban that was in place from 1989 through 1995, Imperial's market share growth continued unabated, and I have full confidence that we will keep finding ways to compete effectively in the marketplace.

We believe there should be regulations governing tobacco advertising, particularly concerning minors. But these regulations must be reasonable. What concerns us are extreme policies that are unlikely to affect smoking patterns, particularly those that interfere with the rights of Canadians to receive information about the tobacco products they have a right to buy. The three major Canadian tobacco companies have mounted a legal challenge to the Act. We are optimistic that the courts will restore both the right to communicate with adult smokers and their right to receive information about products that are lawfully sold.



Robert Beaudry, President of J.P. Beaudry, tobacco wholesalers: "Our main goal is efficiency: getting the right products to retailers, just in time. Imperial Tobacco really responds – for instance, introducing the sticks many customers want, and improving the flow of product by electronically tracking daily inventory levels."

Striking a chord with customers: New initiatives in 1997 included the introduction of sticks and the revamping of *Player's* packaging.

A relatively recent event in Canada is the emergence of litigation against tobacco companies, including Imperial Tobacco. It is widely believed that there are health risks associated with smoking, and our position is that individuals are responsible for their own lifestyle choices. We remain confident that these actions will be successfully defended.

We operate in a challenging, heavily regulated industry. However, as long as adult Canadians choose to smoke, as nearly seven million do today, Imperial Tobacco will provide these customers with the quality products they want.

Brand development

In 1997 we test marketed more contemporary packaging for the Player's family in Nova Scotia and re-launched *John Player's Special* in British Columbia to meet growing market demand for Virginia-blend, international trademarks in that province. We also re-entered the stick market with the launch of *Player's Light Instakit* in Québec. Sticks are cylinders of tobacco sold in kit form and taxed at a relatively low rate, providing an economical alternative to fully manufactured products. In the early months we quickly captured a significant share of the Québec stick market, and we expect to be very competitive in this growing category.

Productivity initiatives and improvements

In 1994 Imperial embarked on a two-part change process with the goal of becoming a more efficient and flexible organization. The process involves investment in facilities and machinery and, equally important, investment in our work force to support the cultural changes that will facilitate improvements in work organization.

By the end of 1997 at our Aylmer complex we had completed centralizing all primary production activities, upgrading our leaf-processing operation, and building a new facility to produce expanded tobacco. Our cigarette plants in Guelph and Montréal are also being modernized, although delays in delivery of the new high-speed machinery caused the upgrade to fall behind schedule at Guelph. The first module has now been certified and is performing to specifications, and we will invest an additional $83 million in 1998 and early 1999 to complete the upgrades.

To more effectively benefit from the expertise and creativity of our employees, we are redefining the work flow, moving from a functional to a process-based approach that entails broader roles and greater flexibility for individuals. Importantly, our employees have widened their perspectives and now feel ownership in the entire process. As these changes take hold, they will make Imperial Tobacco a more agile, responsive company.

Outlook

As industry volume declines, profitability increasingly depends upon market share growth and efficiency. A focus of 1998 will be refinement of our supply chain from the tobacco fields to the retail outlet. The objectives are improved efficiency and greater assurance that Imperial's products are always available where and when consumers want to buy them. Partners such as growers, suppliers, wholesalers, and retailers also stand to benefit as we improve common business procedures.

An important factor in Imperial Tobacco's strong 1997 results is the commitment of our employees. They share a belief in continuous improvement and have helped us engineer significant changes in the workplace. All of us at Imperial Tobacco are excited about the future and dedicated to making 1998 another year of earnings growth.

R. Donald Brown
Chairman, President and
Chief Executive Officer



Imperial Tobacco

Results of operations

Revenues, net of tobacco taxes and duties, increased 8% in 1997 to $1.6 billion. The rise in revenues reflects a cigarette price increase to wholesalers effective April 1997 that amounted to 4.3%. As well, cigarette prices were increased effective December 1996 and October 1997 by 3.6% and 2.9%, respectively, to recover the cost of the federal surtax on the profits of tobacco manufacturers paid by the company. Imperial Tobacco's cigarette prices to wholesalers had previously been increased by 4.2% effective April 1996. The company's total shipments in 1997 declined by 0.9%. Export sales of leaf tobacco increased in 1997 and contributed to the higher revenues.

Imperial Tobacco shipments	**1997**	1996	1995
Billions of cigarettes and approximate equivalents			
Domestic			
Cigarettes	**31.2**	31.6	30.6
Roll-your-own	**1.6**	1.6	1.6
Tobacco sticks	**0.1**	–	–
Export and duty-free			
Cigarettes	**0.8**	0.7	0.6
Roll-your-own	**–**	0.1	0.1
Total	**33.7**	34.0	32.9
Market share (%) [1]	**63.6**	62.3	62.6

[1] Based upon Statistics Canada figures and Imperial Tobacco estimates.

Total shipments of cigarettes, roll-your-own products, and tobacco sticks for the Canadian industry are estimated to have decreased 2.9% in 1997 to 52.9 billion cigarettes and equivalents.

Industry shipments	**1997**	1996	1995
Billions of cigarettes and approximate equivalents			
Domestic			
Cigarettes	**45.5**	47.1	45.6
Roll-your-own	**4.2**	4.2	4.1
Tobacco sticks	**1.5**	1.4	1.1
Export and duty-free			
Cigarettes	**1.5**	1.4	1.4
Roll-your-own	**0.2**	0.4	0.4
Total [1]	**52.9**	54.5	52.6

[1] Based upon Statistics Canada figures and Imperial Tobacco estimates.

The preceding table does not provide an accurate measure of smoking prevalence or consumption levels. Shipments represent sales to wholesalers and can vary according to production and inventory levels and other distribution-channel dynamics. Imperial Tobacco believes that a substantial portion of the 1996 increase and 1997 decrease in industry and company shipments is explained by an inventory build-up by wholesalers towards the end of 1996. The company believes the decline in 1997 shipments was also caused by a reduction in the daily usage by smokers, more so than by a reduction in the number of smokers.

In 1997 Imperial Tobacco continued to gain market share in the dominant segment, manufactured cigarettes. The company's share of this segment, in which profit margins are largest and Imperial Tobacco is strongest, rose from 66.6% in 1996 to 68.0% in 1997. This gain can be attributed to four main factors: the strength of Imperial Tobacco's three major Canadian trademarks, *du Maurier*, *Player's*, and *Matinée*; product quality; market and consumer research; and the effectiveness of the company's domestic sales force.

Imperial Tobacco's market share in the roll-your-own segment increased 0.7 share points during 1997 to 36.5%. In response to value-oriented initiatives by competitors, Imperial Tobacco launched a 50% bonus offering of *Player's* roll-your-own tobacco in late 1996. This product has performed well, and the company's share of the bonus roll-your-own category has increased.

The tobacco sticks segment continued to grow in 1997 due to less onerous tax treatment and represented 2.8% of the total Canadian market at December 31, 1997, compared with 2.6% one year earlier. Imperial Tobacco launched a new tobacco stick product in Québec under the *Player's* trademark in late 1997 and plans to extend the launch to British Columbia in the first quarter of 1998. Imperial Tobacco had been absent from this segment since 1991 due to apparent patent restrictions. The success of this segment is contingent upon current differential tax treatments.

Operating earnings increased 10% in 1997 to $775 million, which represented 47.2% of net revenues, compared with 46.1% in 1996. The increase in operating earnings is attributable to the higher revenues discussed above and to the benefits of continuing cost controls and productivity improvements.

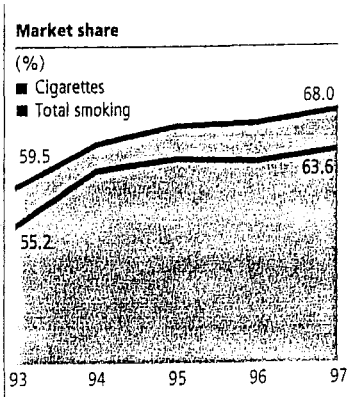
Business environment

Government taxation and regulation of tobacco products continue to be major issues that may adversely affect the operating results of the Canadian tobacco manufacturers. On November 28, 1996, the federal government announced the extension of the federal surtax on the profits of tobacco manufacturers for an additional three-year period. The surtax, originally introduced by the federal and Québec governments in 1994 in conjunction with rollbacks of tobacco taxes, was scheduled to expire February 8, 1997. The Québec government did not extend its surtax. In 1997 Imperial Tobacco's provision for tobacco surtaxes amounted to

$56 million, compared with $53 million in 1996. In Imperial Tobacco's view, extending the federal surtax effectively transformed it into an indirect product tax to be recovered in the product price, as other product taxes are recovered. The first step towards the surtax recovery was taken when Imperial Tobacco increased its cigarette sales price to wholesalers by $0.31 per carton (200 cigarettes) effective December 16, 1996. The second step was taken when a price increase of $0.27 was introduced effective October 6, 1997. The combined price increases are expected to generate sufficient after-tax earnings to substantially offset the surtax.

The federal government did not introduce a tobacco tax increase on cigarettes and roll-your-own tobacco during 1997. However, on March 26, 1997, the Québec government increased its provincial tax on cigarettes by $0.28 per carton. Previously, on November 28, 1996, the federal government had increased the federal excise tax by $0.70 per carton of cigarettes intended for sale in Ontario, Québec, New Brunswick, Nova Scotia, and Prince Edward Island. These provinces matched the federal increase with an increase of $0.70 per carton in their tobacco taxes.

On April 25, 1997, the federal government enacted the Tobacco Act, Bill C-71, to replace the Tobacco Products Control Act and the Tobacco Sales to Young Persons Act. The Tobacco Act (the Act) purports to give the federal government the authority to regulate the manufacture, sale, labeling, advertising, and promotion of tobacco products in Canada. Provisions of the legislation include: the establishment of powers to regulate the composition of tobacco products; further restrictions on access to tobacco products by young persons; health messages on packages of tobacco products that are attributable to an authority prescribed by regulations as well as detailed information concerning tobacco products and their emissions; prohibition of advertising of tobacco products except for product information and brand-preference advertising in (1) publications with primarily adult readership, (2) materials mailed to adults, and (3) places where young persons are not permitted by law, but an outright prohibition of any product advertising that evokes an image or emotion about a lifestyle, or any that could on reasonable grounds be construed to be appealing to people younger than 18; prohibition of the distribution and promotion of tobacco products if any of their brand elements appear on a non-tobacco product associated with youth or evocative of a lifestyle; severe restrictions on sponsorship promotions containing tobacco brand elements that limit the tobacco brand elements to the bottom 10% of promotional materials and permit promotional materials



to appear only in publications with primarily adult readership, in materials mailed to adults, and on signs at the site of the event and in places where young persons are not permitted by law; and the requirement that manufacturers report on tobacco products and related brand elements. The sponsorship-related provisions are not likely to come into force until October 1, 1998. The Act also provides for a stern enforcement scheme including searches and seizures without warrant, heavy monetary fines and jail sentences, and wide discretion on the part of the authorities regarding the venue for enforcement proceedings. The government has still not issued regulations under the Act. Imperial Tobacco views the provisions of the Act as a *de facto* ban on product advertising and as removing the commercial value of tobacco sponsorship and, unless amendments are made to the legislation, will cease substantially all sponsorship activities after October 1, 1998.

On May 14, 1997, Imperial Tobacco and other members of the Canadian tobacco industry brought an action in the Québec Superior Court challenging the validity of several sections of the Tobacco Act. The companies will argue that the legislation is a violation of the Charter of Rights and Freedoms. The case is expected to be heard in 1998.

Restrictive measures have also been imposed by provincial and municipal governments. They include prohibition of the sale of tobacco products in Ontario and New Brunswick drugstores. The Minister of Health for the province of Québec has in the past considered legislation that, among other things, would restrict tobacco smoking in public places and place limitations on advertising and sponsorship activities. The provincial governments of Nova Scotia and British Columbia have proposed or implemented additional legislative initiatives concerning the sale, distribution, packaging, and consumption of tobacco products. Several municipalities, including Vancouver, Toronto, and Ottawa, have proposed or adopted further restrictive measures covering the consumption of tobacco products. And anti-tobacco lobby groups continue to pressure governments at all levels to adopt more stringent measures against smoking.

For information on tobacco litigation please see Note 21.

The major challenge for Imperial Tobacco continues to be to increase its sales volume despite the long-term, slow decline in consumption of tobacco products in Canada. This trend may vary from year to year, but over the long term Imperial Tobacco expects it to continue. The long-term industry decline is due to an aging population, consumer health concerns, and the diminishing social acceptance of smoking.

With this environment as a backdrop, Imperial Tobacco is increasing its focus on improving productivity. Major investments have been made to upgrade the company's information technology systems, streamline manufacturing processes, and modernize machinery. Manufacturing initiatives continued in 1997 with the completion of an expanded tobacco plant in Aylmer, Ontario. The installation of high-speed cigarette-making equipment, which began in 1997, will proceed throughout 1998 and is expected to be completed in 1999. The estimated cost to complete the modernization program is $83 million. The company is also undertaking a supply-chain management project, the objective of which is to improve consumer service by increasing the availability of Imperial Tobacco's products at the retail level while reducing total inventory in the supply chain. The project is expected to increase market share and improve profitability through a streamlined total business process based on collaboration among Imperial Tobacco and its suppliers and customers. The company has started to realize benefits from its productivity initiatives, with additional improvement expected in future years upon completion of the various projects.

Outlook

Imperial Tobacco has consistently demonstrated its ability to overcome difficult competitive and regulatory circumstances. The company foresees continuing growth in revenues and operating earnings in 1998, assuming no significant impact from additional anti-tobacco initiatives by government. The growth is expected to be derived from price increases, market share gains, and productivity enhancements.

The company continues to explore international markets as an avenue for growth. However, since Imperial Tobacco does not own the rights to its major Canadian trademarks outside Canada, new brands must be developed. In September 1997 test marketing of an all-natural tobacco, American-type cigarette under the *Mercer* trademark began in Portland, Oregon. Expansion in international markets forms part of the company's longer-term strategy, but is unlikely to result in a significant contribution to profits in the short term.



CT Financial Services

CT Financial's principal business is the provision of personal financial services. It also has subsidiaries engaged in the insurance and real estate investment businesses, and operates a full-service bank licensed in the Netherlands.

CT Financial's two largest subsidiaries, Canada Trustco Mortgage Company (Canada Trustco) and The Canada Trust Company, are fully integrated for operating purposes and carry on business under the name Canada Trust. Each of these subsidiaries is registered under and carries on business subject to the provisions of the Trust and Loan Companies Act, Canada (Federal Act) and provincial legislation. Canada Trust is the largest trust and loan company in Canada based on total assets and the only independent trust and loan company operating across Canada.

Major developments

On March 1, 1997, CT Financial sold its investment in First Federal for cash proceeds of $923 million (refer to Note 9 for further details). Deployment of the proceeds has not yet been decided and will remain under review during 1998. The proceeds from the sale have been invested in secure low-yielding investments pending final redeployment.

On April 11, 1997, CT Financial acquired 100% of Monnex for $142 million plus future performance considerations (refer to Note 17 for further details). The purchase of Monnex is complementary to the creditor and accident insurance offered to CT Financial's customers by CT Financial Assurance Company (CTFA) and provides opportunities to expand both customer bases. CT Financial benefits from Monnex's experience with affinity group marketing techniques, but will not offer Monnex insurance products for sale through its retail branch network as federal regulations currently prohibit it from doing so. Monnex operates as an independent company within the CT Financial group of companies and may, in the future, provide additional value-added features to its clients.

On July 1, 1997, Canada Trust sold its pension and institutional trust and custody business for proceeds of $157 million, with possible further proceeds to be recorded based on future considerations. Canada Trust retained its client recordkeeping business, which maintains individual records for capital accumulation plans, including money purchase pension plans, group RSPs, deferred profit sharing plans, and employee savings plans.

On October 1, 1997, CT Financial sold its interest in Coldwell Banker Affiliates of Canada, a full-service real estate brokerage franchise company. This sale is in keeping with CT Financial's strategy to focus on personal financial services.

On October 17, 1997, CT Financial purchased one-half of Gordon Capital Corporation's 50% interest in Gordon Private Client Corporation (GPCC), a private full-service retail brokerage