

THE POLITICS OF TOBACCO ADVERTISING

J Connolly

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Introductory articles

The Master Settlement Agreement with the tobacco industry and cigarette advertising in magazines

C King 3rd, M Siegel

Background: In 1998 the attorneys general of 46 states signed a Master Settlement Agreement with the four largest tobacco companies in the United States. The agreement prohibits tobacco advertising that targets people younger than 18 years of age. *Methods:* We analyzed the trends in expenditures for advertising for 15 specific brands of cigarettes and the exposure of young people to cigarette advertising in 38 magazines between 1995 and 2000. We defined cigarette brands as "youth" brands if they were smoked by more than 5% of the smokers in the 8th, 10th, and 12th grades in 1998; all others were considered to be "adult" brands. We classified magazines as youth-oriented magazines if at least 15% of their readers or at least 2 million of their readers were 12–17 years old. "Reach," a standard measure of exposure to advertising, was defined as the number of young persons who read at least one issue of a magazine containing an advertisement for a particular brand of cigarette during a given year. *Results:* In 2000 dollars, the overall advertising expenditures for the 15 brands of cigarettes in the 38 magazines were \$238.2 million in 1995, \$219.3 million in 1998, \$291.1 million in 1999, and \$216.9 million in 2000. Expenditures for youth brands in youth-oriented magazines were \$56.4 million in 1995, \$58.5 million in 1998, \$67.4 million in 1999, and \$59.6 million in 2000. Expenditures for adult brands in youth-oriented magazines were \$72.2 million, \$82.3 million, \$108.6 million, and \$67.6 million, respectively. In 2000, magazine advertisements for youth brands of cigarettes reached more than 80% of young people in the United States an average of 17 times each. *Conclusions:* The Master Settlement Agreement with the tobacco industry appears to have had little effect on cigarette advertising in magazines and on the exposure of young people to these advertisements. (*N Engl J Med* 2001;345:504–11)

Brand appearances in contemporary cinema films and contribution to global marketing of cigarettes

JD Sargent, JJ Tickle, ML Beach, MA Dalton, MB Ahrens, TF Heatherton

Background: The appearance of a cigarette brand in a cinema film gives the brand a certain distinction through its association with the characters and general tone of the film. Through the worldwide distribution of films, brands are promoted globally. We assessed the tobacco-brand appearances in a 10-year sample of contemporary films. *Methods:* We viewed the contents of the top 25 US box-office films for each year of release, from 1988 to 1997 (250 films in total). We compared the prevalence of brand appearances for films produced before a voluntary ban on paid product placement by the tobacco industry (1988–90) with films produced after the ban (1991–97). Tobacco-brand appearance was defined as the screen appearance of a brand name, logo, or identifiable trademark on products or product packaging, billboards, store-front advertising, or tobacco promotional items. We defined actor endorsement of a brand as the display of a brand while being handled or used by an actor. *Findings:* More than 85% of the films contained tobacco use. Tobacco brands appeared in 70 (28%) films. Brand appearances were as common in films suitable for adolescent audiences as they were in films for adult audiences (32% vs 35%), and were also present in 20% of those rated for children. Prevalence of brand appearance did not change overall in relation to the ban. However, there was a striking increase in the type of brand appearance depicted, with actor endorsement increasing from 1% of films before the ban to 11% after. Four US cigarette brands accounted for 80% of brand appearances. Revenues outside the USA accounted for 49% of total revenues for these films, indicating a large international audience. *Interpretation:* Tobacco-brand appearances are common in films and are becoming increasingly endorsed by actors. The most highly advertised US cigarette brands account for most brand appearances, which suggests an advertising motive to this practice. (*Lancet* 2001;357:29–32)

J Connolly
Formerly of Action on
Smoking and Health
(ASH), London, UK



INTRODUCTION

The battle over the advertising and marketing of tobacco products ranks as one of the main fronts in the war between the tobacco industry and the public health community over the last 20 years, both in the UK and around the world.

The public health community has argued that the advertising and promotion of tobacco products leads more people to begin smoking and dissuades smokers from quitting. As such, it leads to more smokers, and more deaths due to smoking. They argue that, as a result, it is important for governments to legislate to prohibit tobacco advertising and promotion. The public health community also argues that a prohibition on tobacco advertising must be complete. It is not sufficient merely to ban, for example, advertising on television or that aimed at those aged under 18. If this is done, they argue, tobacco companies' marketing budgets will simply be moved into those areas of marketing which are not prohibited, and the effect (of persuading non-smokers to start smoking) will continue. The public health community argues that, while society as a whole has a right to free speech, this right is not untrammelled. The right to free speech carries with it responsibilities, and society has a responsibility to ensure that advertising should not harm anyone. They argue that, as tobacco advertising leads non-smokers to start smoking, it directly leads to the death of around half of them from smoking related disease and, as such, should not be permitted. Finally, the public health community argues that there are already restrictions on the advertising of other potentially harmful products such as firearms and prescription drugs, so that a ban on tobacco advertising would be neither unprecedented nor "the thin end of the wedge".

By contrast, the tobacco industry and its supporters have consistently argued that, while its products are controversial, they remain legal. They argue that, for a company to practise its legitimate and legal business, it must be allowed to advertise and promote its products. They argue that prohibition of the advertising of a legal product would be a dangerous limitation on the right to free speech, and that it would set a dangerous precedent with prohibitions on the marketing of other legal products such as alcohol, coffee, and fatty foods being sure to follow. The tobacco industry also argues that tobacco advertising does not affect the total number of people smoking. Rather, they argue, it is intended to persuade current smokers to switch from one brand to another. As such, a ban on tobacco advertising would not reduce tobacco consumption and might indeed increase it as, without advertising, tobacco manufacturers would be forced to compete on price reducing the cost of cigarettes. This in turn would lead to more people smoking. Finally, they argue that they do not market their products at the under 18s, but instead at adult smokers who make an informed choice to smoke. As such, they have a right to be able to receive information on brands to inform this choice.

In addition to its inherent value as a public health measure (in the eyes of the public health community at least), the prohibition of tobacco advertising has taken on a symbolic, almost totemic, value to many in the public health community. The prohibition of tobacco advertising is a public policy goal which can be achieved relatively simply by government action if the political will exists to do so. It requires relatively simple legislation to introduce a comprehensive prohibition of tobacco advertising, and there are no direct financial implications for government inlaying such legislation in the same way as there are, for example, in changing tobacco taxation rates in order to bring about a reduction in smoking. All sides of the political spectrum also agree that the policy outcome (a reduction in deaths due to smoking) is a desirable one, even if they do not always agree the means that are likely to achieve this. In addition, opinion polls have shown that the banning of tobacco advertising is a popular move among the public. A poll conducted by ICM for Action on Smoking and Health (ASH) in 2001 found that around two thirds of the population want tobacco advertising to be banned.¹ As a result of the relative ease with which a government can ban tobacco advertising if it chooses to do so, public health campaigners have sometimes appeared to treat the willingness or otherwise of governments to do so as a barometer of their determination to tackle the public health issues caused by smoking more generally.

The issues surrounding the prohibition of tobacco advertising remain fairly constant around the world. However, the outcomes which governments have reached have varied substantially. For example in the European Union, eight countries (Luxembourg, France, Italy, Portugal, Finland, Ireland, Belgium, and Denmark) have either a total ban on tobacco advertising or allow only extremely limited exemptions. A further two countries (the UK and Netherlands) are in the process of legislating to ban tobacco advertising. However, the remaining five have either no restrictions or only very limited ones.²

In the UK, legislation to ban tobacco advertising and promotion was an election manifesto commitment of the Labour Party when they came to power in 1997. A Bill to meet this commitment was introduced in January 2001, but was lost due to lack of time in the run up to the 2001 general election and did not complete its parliamentary stages. The re-introduction of this legislation was included in the Labour Party's 2001 manifesto but the Bill was not re-introduced in the July 2001 Queen's Speech. Following this omission, Liberal Democrat peer Lord Clement-Jones re-introduced the legislation as a Private Member's Bill in the House of

Lords. At the time of writing this Bill has passed through the parliamentary stages in the House of Lords and has been re-adopted by the Government in the House of Commons. This makes it likely to become law by the end of the current Parliamentary session.³

This paper examines in more depth the political, rather than scientific, issues which have arisen during attempts to prohibit tobacco advertising in different countries, focusing primarily on the UK legislation currently before Parliament.

Framing of arguments

A frame is a way of packaging and positioning an issue so that it conveys a certain meaning.⁴⁻⁶ It has been defined as the emphasis placed round particular issues “that seeks to define ‘what the issue is really about’”,⁴ as “the process by which someone packages a group of facts to create a story”,⁷ and as “the broadly shared beliefs, values and perspectives familiar to the members of a societal culture and likely to endure in that culture over long periods of time, on which individuals and institutions draw in order to give meaning, sense and normative direction to their thinking and action in policy matters”.⁸

On a broader level, the framing of an issue not only defines the issue but also implicitly suggests a solution. It is for this reason that it has been described as “the basis by which public policy decisions are made”.⁷ For example, in the debate over water fluoridation two competing frames are that of public health, which can be paraphrased as “the state has a responsibility to fluoridate the water for the good of citizens’ health” and that of individual freedom, paraphrased as “the state has no right to interfere with what I drink—I have the right to decide whether or not to take fluoride tablets”. Each of these frames suggests a different preferred solution. The former suggests that water fluoridation ought to take place; the latter that it shouldn’t. As Wagenaar and Streff point out: “how questions are worded is related to how policy advocates and opponents shape and present policy options to legislators and other opinion leaders, as well as to the general public”.⁹ The effect of framing has been demonstrated in studies of public opinion on alcohol policies,⁹ seat belt laws,¹⁰ and environmental policy.¹¹ Issue framing is thought to play a central role in the formation of policy on public health. It has been argued that, in reality, debates on public health issues represent a battle for framing the issue in the eyes of the public and policy makers.⁷ Rather than the relative merits of the cases being put being the deciding factor in whether or not a proposal goes ahead, it is actually the relative success of proponents and opponents in framing the overall terms of the debate. As a result, it is hardly surprising that both the public health community and the tobacco industry and their supporters have attempted to frame the debate on their own terms in order to give their preferred course of action the best chance of success.

In the case of tobacco advertising, the issue in most cases has been whether or not a government ought to bring in legislation to ban the advertising and promotion of cigarettes and other tobacco products. In the course of debates, both proponents and opponents of this legislation have sought to win the battle to frame the debate in ways which present their case to best advantage. In the course of legislation to ban tobacco advertising in the UK, the following arguments are those which have been used most often by either the public health community or the tobacco industry in order to support their case¹²:

▶ Tobacco advertising persuades young people to start smoking and dissuades smokers from quitting. The

government has a duty to reduce this death toll by any means necessary (put forward by the public health community).

- ▶ Smoking kills and treating smokers costs the Exchequer a huge amount of money (public health community).
- ▶ Tobacco advertising is about persuading smokers to change brands, not about persuading non-smokers to start (tobacco industry).
- ▶ A ban on advertising will not reduce the number of people smoking and may actually increase it (tobacco industry).
- ▶ The government has no right to restrict the advertising of a legal product (tobacco industry).
- ▶ Adult smokers have a right to information on which cigarettes to smoke.
- ▶ The current voluntary agreements are working well and should be allowed to continue (tobacco industry).

Broadly speaking, these seven arguments break down into three frames:

- ▶ The effectiveness of the legislation
- ▶ The economic impact of the legislation
- ▶ Civil liberties/role of government

It is worth noting that each of these frames has been used, albeit with differing emphasis, by both sides of the debate to demonstrate their points. The following sections examine each of these frames in turn, looking at how they have been used during the passage of the UK’s legislation to ban tobacco advertising.

Effectiveness of the legislation

The evidence base for the effectiveness of bans on tobacco advertising in reducing tobacco consumption was the centre of much debate during the passage of the UK legislation. Supporters of the legislation, including the Government, have pointed to a large number of studies showing that advertising bans have been effective in countries where they have been introduced.

During the Second Reading debate for the legislation on 2 November 2001, the Bill’s promoter, Lord Clement-Jones, reviewed the evidence:

“Dr Clive Smee, Chief Economic Adviser to the Department of Health, published the most comprehensive study of the link between advertising and tobacco consumption in 1992. He reviewed 19 studies, mainly from the UK and the United States, correlating advertising spend and total tobacco consumption. Smee concluded: ‘The balance of evidence thus supports the conclusion that advertising does have a positive effect on consumption’.

Smee also reviewed the impact of advertising bans that had been introduced at the time. The most significant of those were Norway and Finland where bans had been in place for over a decade at the time of the report. He concluded: ‘In each case the banning of advertising was followed by a fall in smoking on a scale which cannot reasonably be attributed to other factors’.

Other recent work has come to similar conclusions. In its publication ‘Curbing the epidemic: government and the economics of tobacco control’ in 1999 the World Bank analyzed the evidence and concluded that tobacco advertising causes tobacco consumption to increase and partial advertising bans are ineffective: ‘Policymakers who are interested in controlling tobacco need to know whether cigarette advertising and promotion affect consumption. The answer is that they almost certainly do, although the data are not straightforward. The key conclusion is that bans on advertising and promotion prove effective, but only if they are comprehensive, covering all media and all uses of brand names and logos’.

Other recent evidence comes from American researchers Saffer and Chaloupka of the National Bureau of Economic Research in

the US, who studied data from 22 countries, in their paper ‘The effect of tobacco advertising bans on tobacco consumption’. They concluded: ‘tobacco advertising increases tobacco consumption. The empirical research also shows that comprehensive advertising bans can reduce tobacco consumption, but that a limited set of advertising bans will have little or no effect.’¹³

In the course of the debate these findings were echoed by a number of peers including Lord Hunt, the Minister in charge of health in the House of Lords.¹⁴

Opponents of the Bill, however, were less convinced, or pretended to be, by the evidence. Lord Naseby, the most vociferous opponent of the Bill during its passage through the Lords, said:

*“the 1992 Smeed report, which has been referred to today and is often quoted, made no estimate of the likely effect on consumption of a total ban on tobacco advertising in the UK. That fact was subsequently confirmed by the author. Even given the range speculated, one must ask why the mid-point should be taken. The outcome could lie anywhere across the range. Personally, I believe that the effect would be zero. I suggest that we should be provided with something much more substantial than pure speculation in justification of the Bill. That is particularly important, given that there are people—including people outside the tobacco industry—who believe that the effect could equally well be an increase in tobacco consumption and the take-up of smoking. Indeed, when one looks at the evidence of the experience of earlier bans on alcohol in the United States and in certain Canadian provinces, one soon begins to believe that the effect may be exactly the opposite to the one sought.”*¹⁵

This issue recurred numerous times during the course of the debates on this legislation in the House of Lords, with opponents of the Bill attempting to have a clause included which would have automatically rescinded the legislation if, after 5 years, there had not been a fall in the consumption of tobacco. While this may at first glance seem like a sensible precaution, there are a number of problems with this approach. Firstly, it assumes that the evidence base for the effectiveness of advertising bans is less than comprehensive. Supporters of the legislation do not agree that this is the case. Secondly, it sets a dangerous precedent—“sunset” clauses (as clauses such as these are known) are generally only used when the state is taking powers to restrict severely an individual’s freedoms. That is not the case for this legislation. Finally, such a clause would, in the view of the Bill’s supporters, give the tobacco industry “carte blanche” to try to undermine the legislation for 5 years in order to get it overturned. As a result, the Bill’s supporters resisted calls for a sunset clause. This point was taken to a vote, which was won convincingly by the supporters of the legislation with a majority of more than three to one.¹⁶

In the end the battle for “control” of the “effectiveness” frame in the passage of this legislation was one of the largest points of argument. It was won by supporters of the legislation.

Economic impact of the legislation

In the course of the debates on a ban on tobacco advertising in the UK, many of the legislation’s opponents attempted to play up the potential downside of the legislation with regard to its economic impact. A number of these contributions focused on the effect of the legislation on “the little man”—that, while people may agree with clamping down on advertising in general, it would have a serious effect on small businesses such as newsagents. For example, Lord Lucas said:

*“I think of the ordinary corner shop selling magazines and one of those magazines contains a tobacco advertisement. Is it being suggested that every single corner magazine shop has to go through every edition of every magazine on its shelves to make sure that it does not contain a tobacco advertisement? That is what the Bill provides at the moment. It imposes a duty on these people who are far too far down the chain to be of any real significance in checking. I really do not think that should be the case. It is fair enough to bring in the middle people—those who devise an advertisement—because they are involved in the intellectual process of putting an advertisement together. I believe they ought to share the publisher’s liability under Clause 2(1). But I do not believe that the two other classes of person should have this duty of care imposed on them.”*¹⁷

In a similar way, Baroness Gibson spoke in favour of “the little man”—in her case in the shape of people working in tobacco manufacturing. “If the Bill was successful”, she said, “these people would risk the loss of employment, something which should be avoided”.¹⁸

In response to each of these arguments, supporters of the legislation countered that the legislation was necessary in order to reduce tobacco related deaths which cost the taxpayer a large sum of money each year. During the Bill’s second reading debate, Health Minister Lord Hunt estimated that a 2.5% reduction in tobacco consumption—the Government’s estimate of what could be achieved by an advertising ban—would eventually save the National Health Service around £80m per year.¹⁹

Although these arguments were asserted frequently during the course of the legislation, the issue was never taken to a vote so it is difficult to assess which of these sets of arguments gained the upper hand with a majority of peers.

Civil liberties/role of government

It is within this frame that opponents of the legislation concentrated most of their efforts during the Second Reading debates of both the ultimately doomed Government legislation and Lord Clement-Jones’ Private Member’s Bill. Many speeches during these debates described the legislation in extremely negative terms. For example, during the debate on the Government’s Bill on 28 March 2001 Lord Geddes said that:

*“I have real problems with the conflict between a legal product [...] on the one hand and a banning of advertising on the other. To be consistent—I hope that this does not happen—surely tobacco should be declared illegal. Then there would be some logic in the Bill and in the ban on advertising because, in that context, you would be banning advertising of an illegal product. Here you are banning advertising—or proposing to—of a legal product. I cannot get my mind around that.”*²⁰

In addition, Lord Harris, the patron of “Forest”, the tobacco industry funded smokers’ rights organisation, went even further, saying:

*“At a more mundane level, this Bill would violate the right of competing businesses, including corner shops, to communicate freely, as we have heard, with their own customers. Such a far-reaching statutory prohibition, which is unprecedented in a free society in times of peace, would require some special explanation and justification. One does not have that special justification.”*²¹

Lord Mason of Barnsley, another opponent of the legislation, said very much the same thing:

“The tobacco smoker feels he is being told and controlled, and to him it is anathema in a democratic society. Tobacco is still a legal product and it has the legal right to be advertised. I know that tobacco companies argue that they are directing their advertisements not at young or potential customers but at the

Learning points

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- ▶ The tobacco industry and public health community are at war over the advertising and marketing of tobacco; the stakes are high
- ▶ The prohibition of tobacco advertising could be achieved relatively simply by government action, provided the political will exists to do so
- ▶ Legislation on tobacco advertising may make it onto the statute books in 2002, but it could yet be derailed by a concerted effort from the tobacco industry to influence Parliament. Even if legislation succeeds, the industry is likely to challenge the legislation in the courts.

competition between competing brands. Well, be that as it may, the point is that they are being singled out for public and unfair chastisement. Now under this legislation so strictly to control their right to advertise and promote their products, banning their advertising and promotion to this extent is almost the final step to stop smokers being informed of their tobacco choice."²²

In response to these points, supporters of the Bill have sought to equate the proposed legislation with restrictions on the advertising of other products such as firearms and prescription drugs, which are responsible for fewer deaths than tobacco. This point was made by both Lord Clement-Jones and Lord Hunt in the course of debates on the Bill—for example, during the Second Reading Debate on the Private Members' Bill on 28 November 2001.²³

Conclusion

This paper has set out the issues involved in the politics of tobacco advertising and given examples of how arguments have been deployed by both supporters and opponents of a tobacco advertising ban in the UK. This is an area where the battles are very much ongoing; while legislation is looking likely to make it onto the statute books in the course of 2002, at the time of writing it still has not happened and may yet be derailed by a concerted attempt on behalf of the tobacco industry to influence Parliament. Even if the legislation succeeds in getting onto the statute books, it is likely to be challenged in the courts by the tobacco industry in an attempt to see it struck down on technical grounds. During this process, we can expect to see many of the same arguments being used by both sides. It may yet be several years before a full prohibition on tobacco advertising is in place in the UK, and even longer before we can see the

extent of the effect that tobacco advertising has on consumption and tobacco related illness.

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