NEWS

AMERICAN LUNG ASSOCIATION®

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AMERICAN LUNG ASSOCIATION CALLS PROPOSED TOBACCO SETTLEMENT ADVERTISING PROVISIONS INEFFECTIVE

Organization Recommends Stricter Advertising, Marketing Guidelines

(WASHINGTON -- July 24, 1997) -- Calling the proposed tobacco settlement's advertising provisions "a mere inconvenience to the tobacco industry," the American Lung Association and a volunteer task force of advertising and marketing experts today issued recommendations for ways to end tobacco advertising and marketing to adolescents.

"Joe Camel and the Marlboro Man may be dead, but cigarette advertising still has an impact on encouraging young people to smoke," said John R. Garrison, Chief Executive Officer of the American Lung Association.

The American Lung Association created a Tobacco Advertising Advisory Committee to analyze the proposed tobacco settlement. Based on that analysis, the Lung Association has developed the following guidelines to ensure that cigarette advertising does not reach young people and contribute to their decision to smoke:

- All tobacco advertising visuals accepted by publications with audiences over the age of 18 should be limited to black-and-white ads showing only the product package. No props or scenery of any kind should be allowed. Except for the warning label, no copy should be allowed.

- All publications that accept tobacco advertising should be required to conduct annual readership studies showing the percentage of their readers under the age of 18. Those with an under-18 readership more than 15 percent should be prohibited

(more)

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from running tobacco advertisements or announcements of tobacco marketing or promotional campaigns.

- Direct and indirect payments for tobacco product placement in movies, TV programs and video games should be banned. So should payments to entertainment or sports figures to smoke "in public" or in the course of their professions, such as in live music performances.

"Human images and cartoon characters were banned from cigarette advertising during last month's proposed tobacco settlements, however there are an infinite number of symbols and images that can be used which are meaningful to adolescents," said Dan Cohen, President of Dan Cohen Marketing/Communications, a member of the Lung Association's advisory panel.

An analysis of a new Camel Lights print advertisement, which adheres to the proposed tobacco settlement's restrictions, reveals the impact symbols and images have on young people. The advertisement, one in a series of ads in a new Camel campaign, appeared in the July 6, 1997 issue of *Sports Illustrated* and contains the headline "Live Out Loud." Depicted in the ad are several symbols that appeal to young people without the use of traditional images such as human figures or cartoon characters.

"The symbols used in the ad—a motorcycle, the wings of an eagle, a camel and the color black—create powerful visual messages that appeal to adolescents," said Penelope Queen, Director of Band Consultancy, TEAM Strategic International, and a member of the Lung Association panel. "The ad demonstrates how easy it is and will be for the tobacco industry to circumvent the tobacco settlement and create powerful advertising to effectively reach a youth audience."

The proposed tobacco settlement recommends new programs for public education and tobacco-use prevention, including counter-advertising campaigns. The American Lung Association's Tobacco Advertising Advisory Committee will review these proposed programs and make recommendations for steps that must be taken to curb the persuasiveness and influence of tobacco imagery in American culture.

The American Lung Association has been fighting lung disease for more than 90 years. With the generous support of the public and the help of our volunteers, we have seen many advances against lung disease. However, our work is not finished. As we look forward to our second century, we will continue to strive to make breathing easier for everyone. Along with our medical section, the American Thoracic Society, we provide programs of education, community service, advocacy, and research. The American Lung Association's activities are supported by donations to Christmas Seals® and other voluntary contributions. You may obtain additional information via our America Online site, keyword: ALA, or Web site at http://www.lungusa.org.

# # #

American Lung Association
TOBACCO ADVERTISING/MARKETING GUIDELINES

The American Lung Association created a Tobacco Advertising Advisory Committee to assess the future of tobacco advertising under 1) the recommendations made by the Koop/Kessler Advisory Committee on Tobacco and Public Health and 2) the "Proposed Resolution" reached between the tobacco industry and the state attorneys general.

Based on that assessment, following are guidelines the American Lung Association believes should govern any future tobacco product advertisement and marketing campaigns. In general, these guidelines reflect the Lung Association's endorsement of the Koop/Kessler Committee findings. In some instances, the Lung Association's recommendations are even more specific.

LOOPHOLES IN THE "PROPOSED RESOLUTION"

- The advertising requirements of the "Proposed Resolution" will not appreciably inhibit the tobacco industry's ability to reach and influence the 12-17 year-old segment of the U.S. population.

- The Proposed Resolution's ban on the use of human images and cartoon characters in advertising and promotion is a *mere inconvenience to the tobacco industry*. An analysis of the new Camel Lights advertisement (Attachment A and the Harley Davidson logo marked Exhibit B) shows how easily tobacco manufacturers can develop new ads with enormous appeal to people under the age of 18. Killing off Joe Camel and the Marlborough Man may satisfy many of their critics, but the death of these symbols will not seriously diminish the power of tobacco advertising to reach and influence teens and children.

AMERICAN LUNG ASSOCIATION ADVERTISING/MARKETING GUIDELINES

In addition to the recommendations from the Koop/Kessler Advisory Committee on Tobacco and Public Health (Attachment B), the American Lung Association recommends:

- All tobacco advertising visuals accepted in publications for over-18 audiences should be limited to black-and-white ads showing the product package. No props or scenery of any kind should be allowed. Except for the warning label, no copy should be allowed.

- The Koop/Kessler Advisory Committee recommends a ban on advertising, marketing and promotion of tobacco products directed at persons under age 18. As can be seen in Attachment C, many non-youth oriented magazines reach a significant number of teens. Therefore, all publications that accept tobacco advertising should be required to conduct annual readership studies showing the percentage of readers under age 18. Those with an under-18 readership of more than 15% should be prohibited from running tobacco advertisements or announcements of tobacco marketing or promotional campaigns.

- The Koop/Kessler Advisory Committee makes excellent recommendations for banning direct and indirect payments for tobacco product placement in movies, TV programs and video games. The American Lung Association additionally recommends an end to payments to entertainment/sports figures to smoke "in public" or in the course of their professions (i.e., live music performances)

NEXT STEPS

Both the "Proposed Resolution" and the Koop/Kessler Advisory Committee on Tobacco and Public Health recommend significant new programs for public education and tobacco prevention, including counteradvertising campaigns. The American Lung Association's Tobacco Advertising Advisory Committee next will review and make recommendations to ensure that counteradvertising programs successfuly affect the pervasiveness of tobacco imagery and influence in our culture.

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Message

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Founded in 1904, the American Lung Association includes affiliated associations throughout the U.S., and a medical section, the American Thoracic Society.

AMERICAN LUNG ASSOCIATION.

PUBLIC POLICY
BRIEF

Tobacco Industry Bailout[1]
July 21, 1997 (ver. 1)

On June 20, 1997, the nation's biggest tobacco companies and state attorneys general announced a settlement of state tobacco lawsuits aimed at recovering Medicaid money the states spend on treating smoking-related diseases. The complex settlement reaches far beyond the scope of the states' individual lawsuits and will need congressional approval. The settlement proposal addresses a variety of issues including the federal Food and Drug Administration's (FDA) authority to regulate tobacco, tobacco advertising and promotion, youth access to tobacco products, environmental tobacco smoke, and immunity for the tobacco industry from future lawsuits.

The American Lung Association believes the settlement falls considerably short of protecting public health. The proposal is wrought with gaping loopholes that can be manipulated by the tobacco industry.

Following is a summary of the American Lung Association's key concerns about the tobacco settlement.

FDA Authority
The settlement stipulates that the FDA can regulate nicotine as a drug but not ban it from cigarettes until 2009 and only then through a "formal" rulemaking process before an administrative law judge. Before reducing nicotine levels, the FDA must prove that its action will result in "a significant overall reduction of health risks," is technologically feasible and will not create "significant demand" for black market or smuggled cigarettes.

Furthermore, the agreement provides that the industry will disclose ingredients to the FDA, but allows it to designate any ingredient as a confidential trade secret, a designation the FDA would have to accept.

CAVEAT: The settlement document is complex. The document is not a draft of legislative language, rather it is a narrative outline of potential legislation. Some sections are vague or open to differing interpretations. This Public Policy Brief is not a comprehensive analysis of the agreement, rather it is an attempt to highlight many of the questions and problems the American Lung Association has found in reviewing the settlement agreement. As ALA continues its analysis, this document will be revised.

ALA position
The FDA's authority to regulate tobacco is sacrosanct. No changes in the agency's current authority or limits on future authority are acceptable. The tobacco settlement would make it almost impossible for the FDA to regulate nicotine.

The settlement sets up two unacceptable hurdles for the FDA to regulate the nicotine in tobacco products through its authority over medical devices. First, the agency would be required to use "formal rulemaking" to get the job done. Unlike "notice and comment" rulemaking, which can be concluded in a year or so, formal rulemaking requires a full-scale evidentiary proceeding that can take many years. Second, the settlement would require the agency to prove that lowering nicotine levels will not create a black-market demand for tobacco products with higher nicotine yields. Meeting the final test on black market or contraband sales will be impossible for the agency. Tobacco executives agree. British American Tobacco CEO Martin Broughton said in the Wall Street Journal about the likelihood that FDA would regulate nicotine: "It is an unlikely prospect. The contraband part gives me the most comfort."

For years, public health advocates have argued that the public, especially users of tobacco products, have a right to know what additives the companies put in their products. The settlement does nothing to rectify this problem.

Immunity from Future Liability
The settlement insulates the industry from paying any penalty for past wrongdoing. It provides that "no punitive damages [may be imposed] in individual tort actions." It also strips away the right of individual plaintiffs to band together to bring class-action cases, thereby affording tobacco victims fewer rights than people injured by other consumer products. The settlement also places strict caps on the amount of damages a tobacco company would have to pay in a given year and on the amount an individual could recover in one year.

ALA position
The American Lung Association is adamantly opposed to any immunity or limits on the tobacco industry's future liability. Damages should not be capped. No limitations should be imposed on punitive damages. There should be no ban on class-action lawsuits. As Joan Claybrook of Public Citizen puts it, "Bending the civil justice system to benefit a corporate wrongdoer is unjustified and sets a dangerous precedent that every irresponsible corporation will want to follow."

Advertising & Promotion
All outdoor tobacco advertising (billboards, etc.) would be banned, as would advertising via the Internet. Sports promotions and in-store displays would be banned. Tobacco ads could no longer feature human images or cartoon characters. The cigarette companies would pay for anti-tobacco advertising campaigns. Cigarette packages would carry stronger warnings covering 25 percent of the front of a package.

ALA position
Limits on advertising must be comprehensive. When faced with restrictions in the past, the industry has found creative and successful ways to market its products. This scenario has been the case in other countries that have imposed advertising restrictions. The creative genius of the industry, coupled with that of its high-paid advertising consultants, will come up with a

brand-new world of tobacco marketing to get around the settlement. Options a tobacco company might use include direct mail marketing, tobacco company "outlets" and paying celebrities to smoke their brands in public.

Compliance & Corporate Culture --- "Look Back" Provisions

The settlement would fine the industry if youth smoking rates do not drop by 30 percent in 5 years, 50 percent in 7 years, and 60 percent in ten years. There is a penalty of $80 million per percentage point by which the target is missed. This figure is based on the estimated profit from a lifetime of smoking if the individual began at age 14. The fine is subject to an annual cap of $2 billion for the entire industry. After paying the fine, however, the industry can petition the FDA to argue that it pursued all "reasonable available measures" to reduce youth smoking and took no actions to undermine that goal. If the FDA accepts that argument, the companies get 75 percent of their money back; if the FDA does not accept the argument, the companies can appeal the matter in court. The fine is tax deductible as a business expense.

ALA position

The financial penalties are much too low and could be recouped by the industry by raising the price of cigarettes just a few cents per pack – now at 5 to 8 cents per pack. This program is an industry-wide program with no accountability by individual companies. A program that will really change corporate behavior must require individual companies to take responsibility for the sale of their products to children and sanction those companies for failing to resolve the problem. The fine levied against a company must not be tax deductible and must be severe enough to change behavior. These sanctions must place the offenders at severe and escalating disadvantage for their behavior. Additional nonfinancial "penalties" must be added to ensure youth smoking rates are met, such as plain packaging or a total ban on advertising for companies found to be targeting youth. Also, details are needed on what will constitute "reasonable available measures" that the industry can claim were employed to reduce their non-compliance fee.

Environmental Tobacco Smoke (ETS)

Tobacco use in public places, workplaces of 10 or more persons and fast-food restaurants would be prohibited, except for areas with separate ventilation and through which nonsmokers need not pass. Exemptions include bingo parlors, casinos, prisons and tobacco stores. The legislation would not preempt or otherwise affect any federal rules that restrict smoking in federal facilities.

ALA position

The settlement language dealing with ETS position is weaker than current law in many states. Ventilation systems are not an acceptable alternative. The settlement would not protect restaurant, bar and other hospitality workers – the very people who often work for hours in smoke-filled environments. The agreement appears to continue exemptions for smoking in the Veterans' hospitals and other federal facilities. As we move into the 21st century, our goal should be "zero" tolerance for tobacco smoke.

Public Health Funding

Tobacco companies would pay $368.5 billion over 25 years for anti-smoking campaigns and public health efforts. Most would be paid in annual installments starting at $10 billion and rising to $15 billion. The money would be divided among the states whose attorneys general sued, public health groups, and a new industry fund to pay for damage claims and treatment cost owed to smokers who are ill.

ALA position

The tobacco industry is getting off lightly. Companies can raise prices and write off the settlement payments as tax deductions, pushing payments onto the taxpayer and tobacco consumer. In the meantime, millions of current smokers will continue to use their deadly products and the industry will continue to lure new, young smokers into nicotine addiction. The settlement provides a stable financial situation for the industry for the next 25 years.

Tobacco Industry Documents

The settlement purports to require the tobacco companies to release documents relating to health effects and research, marketing and children. However, the settlement does not require the industry to disclose a single document that it has not already released in litigation. In fact, the settlement allows the industry to continue pressing the same privilege and confidentiality arguments it has used to block discovery in litigation. The settlement provides that industry lawyers will conduct a document-by-document review of all records withheld as privileged in litigation to reconsider whether they should be released. Only after the review is completed would any independent assessment of the validity of privilege claims be allowed.

ALA position

The proposal will perpetuate decades of tobacco industry cover-up. Exempted would be the millions of pages of information now shielded by "attorney-client" privilege. These documents can reveal a lot about the industry's wrongdoing and would be made public through the legal discovery process if the states' lawsuits are pursued in court.

International Impact

Worldwide sales of cigarettes in 1996 reached a total of $295.8 billion. Approximately 85 percent of the three million tobacco-related deaths occur each year outside the United States. By the year 2020, the World Health Organization predicts that 10 million people will die annually from tobacco-related disease – 70 percent in the developing world.

The U.S. tobacco settlement excludes the rest of the world. Consequently, the U.S. tobacco companies' strategy will be to continue targeting the overseas market, especially the Third World and Eastern Europe, where they already sell a large majority of their cigarettes.

ALA position

The tobacco settlement ignores the rest of the world and condemns children in other countries to avoidable tobacco addiction, resulting in millions of preventable deaths each year. Promoting the export of tobacco-caused addiction, disease and death is unacceptable.

Tax Provisions

Although the industry will pay $368.5 billion dollars over 25 years, almost every penny will be deemed a business expense and therefore considered tax deductible. Given the 40 percent marginal tax rate paid by RJR (and presumably by other tobacco companies), the tax deduction would be about $150 billion.

ALA's position

Expenses incurred by the tobacco industry as part of the settlement should not be underwritten by the American. people. In order to change the corporate culture of this industry it must pay for the settlement. And while higher cigarette prices may help reduce youth smoking, the payments described in the settlement will not harm the industry financially – in fact the settlement provide financial stability for the industry for 25 years.

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Recommended Reading

The text of the tobacco settlement is available via the Internet at:

www.usatoday.com/news/smoke

Additional information can be found via the following web sites:

www.lungusa.org
www.tobacco.neu.edu
www.washingtonpost.com
www.reuters.com
www.nytimes.com
www.ash.org
www.smokescreen.org