



III. Picture-Based Warning Labels

THE RISING CONSENSUS FOR PICTURE-BASED WARNING LABELS

How then can we resolve the problem of language and literacy discrimination in tobacco health warning labels? Increasingly, research is showing that clear and broadly accessible picture-based warning labels are one of the key strategies to address the public health epidemic that decades of tobacco industry deception and misinformation have created.

Canada has become a leader in the development and implementation of innovative label requirements for tobacco products. Canada's introduction of large picture-based warning labels on tobacco products in 1994 set a precedent that has had a tremendous impact on health warning labels and tobacco control policy internationally.

Picture-based tobacco health warning labels in Canada came in response to a crisis that began over three decades ago. In the early 1980s, Canada had the highest per capita smoking rate in the world.²⁹ From 1975 to 1988, the tobacco industry had negotiated a voluntary warning label that many have called absurd in its actual ability to protect and inform consumers. Tobacco warning labels in Canada at this time stated:

"The Department of National Health and Welfare advises that danger to health increases with amount smoked. Avoid inhaling."

Canadian consumer law places a high level of responsibility on corporations to warn consumers. Tobacco manufacturers have had a longstanding common law duty to advise consumers of the risks associated with their products. This includes advising consumers about both the nature of the risks and the magnitude of the impact.³⁰ Studies showed that tobacco consumers, particularly youth and children, had general knowledge that tobacco is "bad for you." However, beyond this very broad awareness, most tobacco consumers are not informed about the level of lethality and the many risks

involved in consuming tobacco products. Even the World Bank has concluded that, "An overview of the research literature recently concluded that smokers in high-income countries are generally aware of their increased risks of disease, but that they judge the size of these risks to be smaller and less well-established than do non-smokers."³¹

In response to (1) the epidemic of tobacco-related illnesses and addiction; (2) the lack of information among tobacco consumers; (3) and the impact of tobacco industry misinformation, marketing and advertising, Health Canada, and the Canadian federal health department, introduced picture-based warning labels in 1994. In June 2000, this law was strengthened and improved under section 15 of the Tobacco Act, requiring 50 percent of tobacco packages to carry the new warnings within six months of when the law was enacted. The regulation requires 16 warning labels in rotation, which use full color, pictures and graphics. The picture-based labels occupy the upper 50 per cent of both of the "principle display surfaces" of each package. In addition to the exterior warnings, Health Canada also requires an interior warning system that consists of the 16 messages in rotation. Interior warnings are printed either on the slide of the dominant package type, or on a removable inserts for the flip-top box.³²

Studies comparing the impact of different types of warning labels indicate that smokers in countries that require large, picture-based health warning labels on

International Laws Requiring Picture-Based Tobacco Warnings

Countries Requiring Picture-Based Warnings in Tobacco Products

Australia (2006)	60 percent (30 percent front, 90 percent of back)
Belgium (2007)	56 percent of the package covered with picture-based warning
Brazil (2004)	50 percent of the package covered with picture-based warning
Canada (2000)	50 percent of the package covered with picture-based warning
Jordan	
Singapore (2004)	50 percent of the package covered with picture-based warning
Thailand (2005)	50 percent of the package covered with picture-based warning
Uruguay	50 percent of the package covered with picture-based warning
Venezuela (2004)	50 percent of the package covered with picture-based warning

Announced Intention to use Picture-Based Warnings

Czech Republic
Ireland
Latvia
Netherlands
Slovenia

Public Consultation re Picture-Based Warning

Portugal
United Kingdom 48 percent of the package covered with picture-based warning

Picture-Based Warnings Under Consideration

Bangladesh
Hong Kong
India
Malaysia
New Zealand
South Africa
Taiwan

cigarette packs are more likely to recognize disease risks from smoking and to be motivated to quit. One recent study compared smokers in four countries —Canada, Australia, the United Kingdom, and the United States— that have widely varying requirements for cigarette warning labels. The Canadian picture-based warnings are the most prominent among the four countries, while the U.S. warnings are the least prominent. Eighty-four percent of Canadian smokers reported the cigarette package as a source of information on the dangers of smoking, compared to 69 percent of Australian smokers, 56 percent of UK smokers, and 47 percent of US smokers.³³

In addition to the use of large, clear, powerful images that communicate to consumers across language and literacy barriers, the Canadian tobacco warning labels also include messaging aimed to raise consumers' consciousness. Despite the tobacco industry's strong resistance to any specific mention of smoking-related disease, Health Canada requires tobacco manufactures to speak to the specific proven risks: addiction, lung cancer, heart disease, emphysema, mouth disease, stroke, second-hand smoke, maternal smoking during pregnancy, effects of parents smoking on the risks of uptake among children, a warning of hydrogen cyanide, and a "proportionality" message (deaths from tobacco compared with other causes of preventable death). The 16 interior messages included nine positive messages to encourage cessation, such as "You CAN quit smoking!" as well as questions to compliment the exterior warnings, such as:

"If I get lung cancer, what are my chances of surviving?"

"Can second-hand smoke harm my family?"

"Can tobacco cause brain injury?"

When the newest generation of picture-based warning labels hit the shelves in 2001, the smoking rate in Canada was 22 percent. By 2005, this number had dropped to 20 percent.³⁴ Even a study commissioned by Rothmans, Benson & Hedges Ltd. (R.B.H.) in the year 2000 (Project Jagger, June 23, 2000), cited by the Quebec Superior Court: "shows that the warnings with photos recently mandated by the federal government are having a major impact on consumers."³⁵

In the first decade since picture-based tobacco warning labels were introduced in Canada, eight more countries have adopted similar legislation requiring graphic warning labels on tobacco products. Another fourteen countries are in various stages of consideration and implementation of similar requirements.

Much of the international momentum toward picture-based warning labels is in response to the research studies that show that picture-based warnings can be much more cost-effective than other types of tobacco public health campaigns. For example, in 1998-1999, California conducted a \$22 million mass media campaign that included messages linking impotence to smoking. Researchers from the University of Waterloo in Canada surveyed smokers and found that while California respondents were more likely than other US respondents to identify the risk of impotence from smoking, they did not reach a higher level of awareness than Canadian residents who were surveyed. Canada achieved this same level of awareness via warning labels that were introduced at little or no cost to the government.³⁶

TOBACCO INDUSTRY RESPONSE

Soon after the introduction of the earliest health warning labels (HWLs) in the early 1960's, the tobacco industry began to aggressively take action to block, weaken and monitor these initiatives both in the US and abroad.

The tobacco industry has used a variety of strategies and arguments to avoid health warning labels. Two researchers, Chapman and Carter, who studied the tobacco industry in Australia outline four strategies used by the industry to avoid regulated health warnings. The first strategy involves submissions to governments stating that health departments and ministries were overstepping their responsibilities, "that the proposed policy was motivated by puritanical prohibitionism" and "that there was insufficient evidence to justify warnings." To date, the industry continues to argue that there are no studies that have shown the effectiveness of pictorial-based health warning labels despite research from Canada, Brazil, and other countries.

The second strategy involves privately influencing politicians and the media through covert lobbying and contri-

butions to election funds of all political parties.

The third strategy involves using third parties to influence decision makers, such as co-opting sports organizations, business councils, and other industry confederations.

Finally, the fourth strategy involves commissioning research. This research was used to create six main arguments to oppose warn-

ing labels: (1) that tobacco warnings are the start of a “slippery slope” of requiring corporations to warn consumers about more and more issues; (2) that claims made in warnings are unsubstantiated in the evidence; (3) that warnings are an assault on free enterprise and the national economy; (4) that warnings don’t work; (5) that smokers already know that smoking is harmful; and (6) that warnings desecrate pack design and branding.³⁷

The idea that health warning labels’ claims are unsubstantiated by the evidence was particularly relevant with regards to the “Smoking is addictive” warning, which has been strenuously resisted by the tobacco industry because of its immense legal implications. As stated by tobacco industry lawyers, “... we can’t defend continued smoking as ‘free choice’ if the person was ‘addicted.’”³⁸

Arguments by the tobacco industry regarding the economic costs and difficulty of designing new, pictorial-based health warning labels were frequently used. These arguments have been countered by numerous studies showing the facility with which the tobacco industry is easily able to provide unique brands and packaging for different markets, regions and within countries in a way that is cost efficient.³⁹

The industry continuously uses arguments that the public is already informed about the consequences of smoking and therefore needed no further health warning labels. To support this argument, industry research used broadly formulated questions about health impacts of smoking and not surprisingly, nearly all respondents where able to state that, “they had heard something about smoking and health.”⁴⁰ This finding was used to

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negate the need for further health warning labels. As stated elsewhere in this paper, this does not address the gap in public awareness about the severity of the health consequences of consuming tobacco products, which is even greater in working class communities and immigrant communities throughout the United States, who have been targeted by the tobacco indus-

try as consumers and often barred from access to public health warnings.

Finally, future strategies already suggested by the industry to block health warning labels include using international trade agreements including enabling regulations for GATT/TRIPPS using commercial property, packaging and trademark arguments.⁴¹

In the United States, all of the aforementioned strategies, arguments and tactics have been used by the tobacco industry to avoid effective health warning labels.

The tobacco industry has been monitoring bills introduced in the State Congress since the late 1950s. For example, in 1958, Representative Matera introduced a bill in the House of Massachusetts that required a warning that “the use of the cigarettes may induce cancer of the lungs” and failed to pass committee according to a tobacco industry document.

Since the adoption of Federal Cigarette Labeling and Advertising Act of 1965, numerous bills have been introduced in to strengthen the warning labels. The tobacco industry not only monitored them in the House and the Senate committees, but also lobbied against them and successfully prevented attempts to strengthen warning labels. For example, during the 1980s several bills were proposed by Representative Henry Waxman. Tobacco industry documents reveal the history of their vigorous opposition to these bills:

- In March 1982, during the public hearings before the House Commerce Subcommittee on Health and the Environment on H.R. 4957 (“Comprehensive

Smoking Prevention Education Act”), RJ Reynolds’s representative Edward Horrigan stated that “the industry is opposed to the Waxman cigarette labeling proposal because it is unnecessary, misleading and, most importantly, because the medical and scientific assumptions or “findings” underlying it are incorrect and unsubstantiated. He called the bill unnecessary because virtually everyone is aware of the claimed-dangers of smoking. March 1982, H.R. 4957.⁴²

- In April 1982, a Brown & Williamson internal memorandum written to the Ohio TAN (Tobacco Action Network) Advisory Committee, described the actions taken to oppose two new proposals that were introduced in the House (by Rep. Waxman; H.R. 5653) and in the Senate (by Senator Hatch-Packwood; S. 1929):

Gentlemen, as we discussed TAN has begun to mobilize on a nation-wide basis against two similar bills at the federal level. Your help is essential to insure that our Ohio legislators in Washington are well aware of our stance regarding these bills.

Both pieces of legislation appear to be designed to do nothing more than harass our industry . . .⁴³

Regarding the Waxman Bill, “We are requesting that all TAN (Tobacco Action Network) members in these districts write their Congressmen immediately, in opposition to the bill, in order to prevent it from being brought before the full House Committee on Energy and Commerce.”⁴⁴ [emphasis in the original]

Regarding the Hatch-Packwood Bill, “All Ohio TAN members are being requested to write him immediately to discourage passage of the bill.” [emphasis in the original] The memorandum concludes stating that “either of these bills, if passed, would have a devastating effect on each of our industries” and that “this may be our most vital federal legislative battle during the 1980’s, because it addresses the very question of how far our government will go to deter the use of tobacco products.”⁴⁵

- In May 24, 1982, another B&W memorandum described the success of the tobacco industry related to the bills pending in the Congress:

Subsequent to our initial serious concern about the warning notice bills, conditions have improved and at present we are cautiously optimistic that neither of the bills will be passed from committee. The improvement in outlook has been due in part to extensive efforts by the industry to communicate its position to the Congress and in part to a fortuitous unfolding of events.⁴⁶

- In 1983, Rep. Waxman introduced bill H.R. 1824 in the House, which would have required three rotating HWLs replacing the 1969 single warning label. The first one would have read: “Warning: Cigarette Smoking causes LUNG CANCER AND EMPHYSEMA; is a mayor cause of HEART DISEASE; is ADDICTIVE and may result in DEATH.” The second one would have said: “Cigarette Smoking by Pregnant Women may result in MISCARRIAGE, PREMATURE BIRTHS, OR BIRTH WEIGHT DEFICIENCIES” and the third one “Smokers: No Matter how long you have smoked QUITTING NOW greatly reduces the risks to your health.” The The Philip Morris USA internal report “The Case for defeat of H.R. 1824” contained arguments used by the industry to prevent meaningful HWLs.⁴⁷ As a result, the Comprehensive Smoking Education Act of 1984, which established the current four HWLs, was diluted and did not include statements about addiction and death.
- During the 1990s attempts within Congress to pass stronger labeling polices continued. In 1993 Rep. Waxman introduced a bill modeled on the laws of Australia and Canada, which would have required nine rotating HWLs including addressing addiction, environmental tobacco smoke, and the warning “cigarettes can kill you.” In 2000, a graphic warning label bill was introduced by Senator Durbin that would address these issues. Both bills died before going to the floor.⁴⁸

Most recently, Philip Morris, México and BAT México entered into an agreement with the Mexican Ministry of Health that resulted in the industry voluntarily placing a warning label message on the side of the pack of cigarettes that is ambiguous and confusing. In exchange for financial subsidy from Phillip Morris and BAT, the Ministry of Health agreed to not place stronger and more

effective pictorial labels on the package front in accordance with the agreement's explicit preemption of "images or pictures."⁴⁹

Each of these examples demonstrate how the tobacco industry recognizes the impact and effectiveness of tobacco health warning labels just as much as public health officials. These blatant efforts of transnational tobacco corporations to interfere with progressive legislation that would serve the best interests of the public must be exposed so that public health protection is driving our policy decisions, rather than the narrow interests of tobacco corporations.

THE FRAMEWORK CONVENTION ON TOBACCO CONTROL

In May 2003, after four years of negotiations the member countries of the World Health Organization adopted an historic tobacco control treaty, the Framework Convention on Tobacco Control (FCTC). This treaty was soon signed by over 100 countries, and went into force on February 27, 2005. To date, a total of 137 countries have ratified the FCTC and thus are committed to implementing the legally required policies outlined in the treaty.

One of the elements of the treaty concerns warning labels. Article 11 of the FCTC states that warning messages should cover at least 50 percent of the principal

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display areas of the package (i.e. both the front and back), but at a minimum must cover at least 30 percent of the principal display areas. It also requires that the messages be rotated and encourages the use of pictures and pictograms as well as the use of non-health messages (e.g. "Quit Smoking—Save Money!"). These require-

ments reflect the findings that, to be effective, warning labels must be noticeable, relevant and memorable. To command attention, warning labels should occupy a *minimum* of 50 percent of the display area and should be in color! Pictorial warnings are also necessary, particularly in countries with low literacy rates or where research shows smokers are ignoring warning labels (for example where warning labels have been on cigarette packs for a long period of time and consumers may have become "immune" to them).

Detailed information on the FCTC can be found on the website of the Framework Alliance for Tobacco Control, (<http://fctc.org/>) an alliance of more than 250 organizations representing over 90 countries around the world which was created to support the development, ratification and implementation of the FCTC. Information can also be found on the World Health Organization's Tobacco Free Initiative site (<http://www.who.int/tobacco/en/>).

The United States has signed the treaty, but the United States Congress has still not taken action to ratify and adopt this treaty.

Recommendation

Our experience and research has shown that clear and broadly accessible picture-based warning labels are one of the key strategies available to address the public health epidemic that has been created by decades of tobacco industry deception and misinformation.

The United States Congress is the legislative body that can take action to provide access to tobacco health warnings on picture-based warning labels to non-English and low literacy tobacco users. We think it is of the highest urgency that the United States join the international consensus and enact picture-based warning labels as a more effective and cost-efficient model of educating and protecting the rights of all of our communities.

We urge Congressional Representatives who are concerned about tobacco control, language rights and civil

rights to propose legislation to amend the Comprehensive Smoking Education Act of 1984 (Public Law 98-474) and require picture-based warning labels. This may include directing the Office of Governmental Accountability or another appropriate government agency to file a Report to Congress. The report must look at the deadly consequence to non-English speaking and low-literate tobacco consumers of text-only, English only warning labels. The report must reflect evidence that picture-based warning labels are the best and most cost effective way to address this deadly consequence and recommend an amendment to the Comprehensive Smoking Education Act of 1984 (Public Law 98-474) that would require graphic warning labels to remedy this problem.