

LEO BURNETT COMPANY - INC.

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May 2, 1985

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LAW DEPARTMENT

TO: Mike Breslin
CC: Carla Michelotti
Kathy Passaro
FROM: Cindy E. Jancosek

RE: CIGARETTE ADVERTISING

Set forth below is a chronology of events, beginning in the 1950's, regarding developments in cigarette advertising.

- 1954 - American Cancer Society releases Hammond-Horn study indicating higher instance of death from cancer among smokers than non-smokers.
- Tobacco companies set up Tobacco Industry Research Committee (TIRC) to research tobacco use-and health issues (later becomes Council for Tobacco Research - U.S.A.).
- Early 1950's - Tobacco manufacturers begin making more filtered cigarettes in response to growing health concerns. Tar and nicotine content claims begin appearing in advertising.
- 1955 - FTC issues guidelines prohibiting medical claims and unsubstantiated tar and nicotine claims.
- 1957 - Scientific group established by Public Health Service issues report stating that cause-effect relationship between cigarette smoking and lung cancer is adequate to consider instituting public health measures.
- 1958 - Legal and Monetary Subcommittee of House Government Operations Committee issues report stating tobacco companies' advertising has deceived public and chastises FTC for inaction.

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- FTC develops plan to test tar and nicotine content, but results are so inconsistent that plan is abandoned.
 - Tobacco Institute created and takes stance that lack of proof regarding any hazard in smoking obviates need for safer cigarettes.
- 1959 - FTC issues statement that ad references to tar and nicotine constitute prohibited health claims.
- 1960 - Seven tobacco manufacturers enter agreement with FTC to abandon tar and nicotine claims.
- 1962 - Tobacco Institute issues statement declaring smoking is an adult custom and many companies plan to discontinue ads in college publications and other campus promotions.
- Surgeon General Luther Terry sets up panel to investigate smoking/health question and make recommendations for action, at President Kennedy's request.
- 1963 - NAB calls on broadcasters to avoid tobacco ads which appeal to minors.
- November 1 - Abe Fortas, of law firm Arnold, Fortas & Porter, is engaged by six tobacco companies to coordinate and solidify industry actions. Earle C. Clements is selected to act as political lobbyist. Clements advises it would be better to go to Congress and work out a package warning than to risk FTC-imposed rule to put warnings in ads, also.
- 1964 - First Surgeon General's report "Smoking and Health" released to public. Reported causal connection between smoking and lung cancer. Smoking also a contributing factor to other respiratory problems.
- FTC announces it will issue rules governing cigarette labeling and ads. Health warning proposed.
 - March 16 - Industry goes to FTC hearings with plan to have issue transferred to Congress. Tobacco Institute sends senior member of large D.C. law firm as representative - questioning FTC authority to act. Arguments based on legal/jurisdictional grounds.
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- April - Industry announces intent to self-regulate and adopts voluntary code similar to existing NAB guidelines (code attached).
 - May - FTC rules it an unfair and deceptive act to fail to disclose in ads and on packages the dangerous nature of smoking. January 1, 1965, effective date.
 - Congressional bills introduced to consider cigarette advertising and warning issue.
 - Clements successful in getting House Commerce Committee to request delay in effective date of FTC ruling - FTC agrees to delay until July 1, 1965.
- 1965 - Industry approaches Congressional hearings with focus on all aspects of issue - research, 1964 Surgeon General's report, free competition, Congressional role versus state and administrative agencies.
- House committee bill reported out which requires warning on packages, but bars FTC from requiring warning in ads.
 - Final Senate legislation includes ad warning, but ties up any FTC action for three years. Also prohibits FCC, state and local action.
 - Cigarette Labeling and Advertising Act of 1965 requires all packages to carry warning and places three-year moratorium on administrative agency actions.
- 1967 - John Banzhaf asks WCBS-TV for equal time to counter cigarette commercials under FCC fairness doctrine
- FCC decides that fairness doctrine applies to cigarette ads and that WCBS has not aired sufficient programming to offset effect of those ads, but denies Banzhaf equal time. Various petitions to reconsider fail, and FCC upholds decision.
 - Banzhaf files an appeal to have courts decide FCC ruling denying his request for equal time.
 - Tobacco and broadcast industries seek to have FCC ruling overturned in the courts.

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- 1968 - November 21 - U.S. Court of Appeals, D.C., supports FCC's ruling that fairness doctrine can be used to require free time for anti-smoking spots.
- Tobacco industry seeks Supreme Court review of appeals court decision - Supreme Court refuses to review.
- 1969 - With 1965 Cigarette Labeling and Advertising Act scheduled to expire, FCC proposes a ban on broadcast of cigarette advertising.
- Tobacco industry seeks a six-year extension of 1965 Act through Congress, including moratorium on agency action. House re-enacts the law, but not the Senate.
 - At NBC's initiation, the NAB considers a gradual phaseout of broadcast ads for cigarettes with high tar and nicotine content.
 - NAB recommends to the FCC a phaseout of cigarette broadcast ads over a four-year period to begin January 1, 1970.
 - Tobacco industry, angered by NAB action, offers to withdraw all broadcast ads by September 1970, provided it receives immunity from anti-trust prosecution.
 - December 5 - Senate Commerce Committee votes out a bill banning broadcast of cigarette ads by January 1, 1971.
- 1970 - Congress rejects tobacco industry plea for anti-trust immunity. Final bill, signed in April, strengthens warning statement, allows FTC to act against cigarette ads as early as July 1, 1971, and bans commercials.
- The six major cigarette manufacturers enter into a voluntary agreement with the FTC to disclose the tar and nicotine content of cigarettes in advertising materials, in an effort to preclude formal regulation by the Commission.
- 1972 - The FTC issues consent orders to the six major cigarette manufacturers, charging them with violating the Federal Trade Commission Act by failing to disclose in advertising that cigarette smoking is dangerous to one's health. This failure to disclose is deemed deceptive and unfair. The order requires the inclusion of the Surgeon General's warning in all print advertising, billboards and point-of-sale materials.

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1980 - The FTC issues a consent judgment which increases the size of the health warning as it appears in advertising. The FTC had filed a complaint in 1975 charging the tobacco companies with violating the 1972 consent order by failing to make clear and conspicuous disclosure of the Surgeon General's warning in advertising, particularly with respect to outdoor boards.

1984 - Congress passes the Comprehensive Smoking Education Act which requires the disclosure, on a quarterly rotating basis, of four different Surgeon General's warnings. The Act also increases the type size of each warning.

Much of this information came from the book Cigarette Country by Susan Wagner. The book belongs to Leo Burnett and is kept in the Information Center.

Cindy E. Jancosek

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