

Corrective Statements From the Tobacco Industry: More Evidence for Why We Need Effective Tobacco Control.

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More than 11 years after a federal court order, the major U.S. tobacco companies must begin publishing “corrective statements” to tell the American people the truth about their deadly and highly addictive products. The statements are due for release on November 26, 2017

In 1999, the department of Justice filed a lawsuit (United States v. Philip Morris) under the Racketeering Influenced and Corrupt Organizations (RICO) act. In August 2006, U.S. District Judge Gladys Kessler issued a landmark decision finding that the tobacco companies had violated civil racketeering laws and defrauded the American people by lying about the health effects of smoking and about the addictiveness of cigarettes and nicotine, and by marketing their toxic and highly addictive products to children. Judge Kessler’s decision found that “Defendants have marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted”.¹

The industry vigorously fought the release of the corrective statements, arguing that bringing attention to prior deceptive actions likened the statements to forced public confessions and violated their first amendment rights. On appeal, Judge Kessler’s determinations that the cigarette manufacturers engaged in deliberate deception, with “specific intent” to defraud consumers were affirmed. The United States Court of Appeals, District of Columbia Circuit stressed that the (tobacco) companies knew of their falsity at the time and made the statements with the intent to deceive, and observed, “We are not dealing with accidental falsehoods, or sincere attempts to persuade; Defendants’

liability rests on deceptions perpetrated with knowledge of their falsity". The Appeals Court found that First Amendment (free speech) protections did not apply as it is well settled that the First Amendment does not protect fraud or deliberate misrepresentation.² In a November, 2012 opinion, the DC District Court found that "each and every one of these Defendants repeatedly, consistently, vigorously - and falsely - denied the existence of any adverse health effects from smoking," despite "the massive documentation in their internal corporate files from their own scientists, executives, and public relations people", "For approximately forty years, Defendants publicly, vehemently, and repeatedly denied the addictiveness of smoking and nicotine's central role in smoking." and the "Defendants crafted and implemented a broad strategy to undermine and distort the evidence indicating passive smoke as a health hazard" and that the Defendants knew that "smokers of low tar cigarettes modify their smoking behavior, or 'compensate,' for the reduced nicotine yields by taking more frequent puffs, inhaling smoke more deeply, holding smoke in their lungs longer, covering cigarette ventilation holes with fingers or lips, and/or smoking more cigarettes ... Based on their sophisticated understanding of compensation, Defendants understood that low tar/light cigarettes offered no clear health benefits". The Court also found that "evidence in this case clearly establishes that Defendants ... have not ceased engaging in unlawful activity" and "Defendants continued to engage in conduct that is materially indistinguishable from their previous actions, activity that continues to this day".³ Each corrective statement as ordered would have a preamble that states: "A Federal Court has ruled that Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA deliberately deceived the American public about [particular topic], and has ordered those companies to make this statement. Here is

the truth.” However, based on a 2015 Court of Appeals ruling, the defendants were able to have removed, “deliberately deceived the American public about” and “Here is the truth” from the preamble to the statements.⁴

The 2006 court order required corrective statements in major newspapers, on the three leading television networks, on cigarette “onserts,” and in retail displays. The industry is continuing to fight the requirement for corrective statements to be part of retail displays.

These statements are only being published in the United States media. They are not being published internationally. In Southeast Asia, for example, the tobacco industry continues to aggressively market to youth and to fight tobacco control efforts.⁵

The court ordered corrective statements include the following:⁶

Adverse Health Effects of Smoking

- Smoking kills, on average, 1,200 Americans. Every day.
- More people die every year from smoking than from murder, AIDS, suicide, drugs, car crashes, and alcohol, **combined**.
- Smoking causes heart disease, emphysema, acute myeloid leukemia, and cancer of the mouth, esophagus, larynx, lung, stomach, kidney, bladder, and pancreas.
- Smoking also causes reduced fertility, low birth weight in newborns, and cancer of the cervix.

Addictiveness of Smoking and Nicotine

- Smoking is highly addictive. Nicotine is the addictive drug in tobacco.
- Cigarette companies intentionally designed cigarettes with enough nicotine to create and sustain addiction.
- It's not easy to quit.
- When you smoke, the nicotine actually changes the brain – that's why quitting is so hard.

Lack of Significant Health Benefit from Smoking “Low Tar,” “Light,” “Ultra Light,” “Mild,” and “Natural” Cigarettes

- Many smokers switch to low tar and light cigarettes rather than quitting because they think low tar and light cigarettes are less harmful. They are **not**.
- “Low tar” and “light” cigarette smokers inhale essentially the same amount of tar and nicotine as they would from regular cigarettes.
- **All** cigarettes cause cancer, lung disease, heart attacks, and premature death – lights, low tar, ultra lights, and naturals. There is no safe cigarette.

Manipulation of Cigarette Design and Composition to Ensure Optimum Nicotine Delivery

- Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA intentionally designed cigarettes to make them more addictive.
- Cigarette companies control the impact and delivery of nicotine in many ways, including designing filters and selecting cigarette paper to maximize the ingestion

of nicotine, adding ammonia to make the cigarette taste less harsh, and controlling the physical and chemical make-up of the tobacco blend.

- When you smoke, the nicotine actually changes the brain – that’s why quitting is so hard.

Adverse Health Effects of Exposure to Secondhand Smoke

- Secondhand smoke causes lung cancer and coronary heart disease in adults who do **not** smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, severe asthma, and reduced lung function.
- There is no safe level of exposure to secondhand smoke.

Needless to say, all of these statements are true, with a robust evidence base behind them.

All draw on all conclusions from US Surgeon General Reports on tobacco. This is the first time that the tobacco companies are being forced to acknowledge the truth about smoking to the general public. It is important that the public be told the truth. Tobacco is a product that is highly addictive and as a direct consequence of its design, kills people when used exactly as intended.

We know that efforts to tell the truth about tobacco have been effective in reducing rates of tobacco dependence. The release of the first US Surgeon General Report in 1964 marked the peak of the tobacco epidemic in the United States⁷ and it led to effective

counter-advertising. While not yet in-place in the United States, graphic warning labels have been associated with decreases in smoking prevalence⁸, with some studies suggesting greatest impact among those with lower educational attainment.⁹ A meta-analysis of 37 experimental studies concluded that the graphic warning labels garnered stronger cognitive and emotional reactions and more effectively increased intentions to not start smoking and to quit smoking compared to text only warnings.¹⁰ The “Truth” counter-marketing campaign was launched in Florida in 1998. The components include in-school education, enforcement, a school-based youth organization, community-based organizations, and an aggressive, well-funded, counter-advertising program grounded in an industry manipulation theme. The campaign decreased smoking intentions and behavior among youth in Florida.^{11,12}

It is critical that the truth reach adolescents and young adults. Ninety percent of current smokers started tobacco use before they reached 18 years, and ninety-nine percent before 26 years.⁷ The tobacco industry understands that youth (termed “replacement smokers” and/or “learners” in industry documents) are their critical market¹³⁻¹⁶, not only marketing their products in venues accessible to and with appeal to youth, but also aggressively fighting effective efforts to protect youth from tobacco.¹⁷⁻¹⁸ A 1973 confidential document from RJ Reynolds states, “Realistically, if our Company is to survive and prosper, over the long term we must get our share of the youth market”.¹⁹

Previous tobacco industry marketing campaigns have been shown to target youth, with the research documenting the impact of the Joe Camel (1987-1997) and Camel #9

(introduced January 2007) advertising campaigns on youth²⁰⁻²². Smoking in the movies is associated with smoking initiation among adolescents.^{23,24} Tobacco industry direct to consumer and point of sale marketing reaches youth, with greater exposure associated with increased odds of both smoking initiation and established smoking among youth.²⁵⁻²⁷ Exposure to electronic cigarette advertising increases uptake of product use among adolescents.²⁸ Exposure of middle and high school students to pro-tobacco advertisements is common, with 43% reporting exposure on the Internet, 76% in retail stores, and 37% in newspapers/magazines (2012 National Youth Tobacco Survey).²⁹ Social media is a new venue for promoting tobacco to youth.³⁰ The US Surgeon General in 2014 concluded, “The evidence is sufficient to conclude that advertising and promotional activities by the tobacco companies cause the onset and continuation of smoking among adolescents and young adults”.⁷

Although combustible cigarettes are only allowed to have menthol as a characterizing flavor, similar restrictions do not apply to other tobacco products. Cigars, electronic nicotine delivery systems, and hookah are commonly available in a wide variety of flavors including fruit, candy, and mint. Youth who start smoking with menthol cigarettes are more likely to go on to become established smokers and to report higher levels of tobacco dependence.³¹ Flavors dramatically increase the appeal of these products to youth – making them essentially highly addictive candy.³²⁻³⁵

The 2009 Family Smoking Prevention and Tobacco Control Act gives the U.S. Food and Drug Administration (FDA) the authority to regulate the manufacturing, marketing and

sale of tobacco products. The law includes specific restrictions on youth access and marketing and grants FDA authority to take additional actions in the future to protect the public health. Under the authority granted by the Family Smoking Prevention and Tobacco Control Act, the FDA finalized a “deeming rule” that extends its regulatory authority to all tobacco products, including e-cigarettes, cigars, and hookah and pipe tobacco. The law also authorizes pre-market review, the review and approval of all new tobacco products before they can be introduced to the market. Product standards are to be based on available medical, scientific and other technological evidence as appropriate for the protection of the public health.^{36,37}

New tobacco products that target youth include flavored e-cigarettes and flavored cigars. Unfortunately, the FDA has fallen short on taking action to limit tobacco marketing and has fallen short on actions to regulate or restrict tobacco products whose design attracts and addicts youth. Despite clear evidence on the impact of flavorings on youth initiation and a clear mandate to take action to protect the public health, the FDA has deferred taking action on flavored e-cigarettes and cigars or action on menthol flavorings -- which they can do now -- and instead are focusing efforts on as yet unproven strategies, such as reducing nicotine in cigarettes but not other tobacco products. The FDA currently appears to be interested in the commercial goal of “fostering innovation in less harmful nicotine delivery” rather than taking effective action to protect our youth from nicotine and tobacco addiction³⁸

The court ordered and evidence-based “Corrective Statements” from the tobacco industry are a good first step. We need to go further. There are simple measures that can be taken to protect our youth – such as restrictions on flavors and on marketing. We need to

aggressively tell the truth about the deceptions of the tobacco industry and viscerally describe the grim reality of the death and disease caused by their products. How many of our youth need to fall victim to tobacco and nicotine before the FDA and other policy makers take the needed actions?

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