

# Pictorial Health Warning Labels

## Countering Tobacco Industry Arguments

The Guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control state, **“Given the evidence that the effectiveness of health warnings and messages increases with their size, Parties should consider using health warnings and messages that cover more than 50% of the principal display areas and aim to cover as much of the principle display area as possible.”**<sup>1</sup> Tobacco companies oppose large pictorial health warning labels (HWLs) because they see them as a threat to their business. Some common industry arguments are refuted below.

**INDUSTRY ARGUMENT:** *There is insufficient evidence that large pictorial HWLs work. They have not worked in countries in which they have been introduced.*

**RESPONSE:** There is a robust body of scientific evidence documenting that pictorial HWLs work.

Pictorial HWLs increase awareness about the health risks associated with smoking for both smokers and non-smokers.<sup>2</sup> Pictorial HWLs dissuade youth from taking up smoking<sup>3</sup> and cause smokers to smoke fewer cigarettes, avoid smoking in front of children and pregnant women, and smoke less at home.<sup>4</sup> Pictorial HWLs can also persuade smokers to quit<sup>5</sup> and can assist in preventing relapse.<sup>6</sup>

Larger HWLs with pictures are significantly more effective than smaller, text-only warnings.<sup>7</sup> Pictorial HWLs have a greater impact than text-only warnings across diverse racial, ethnic and socioeconomic groups.<sup>8</sup> Smokers and non-smokers alike are more likely to notice and recall larger HWLs and often equate the size of warnings with the magnitude of the risk.<sup>7</sup>

Pictorial HWLs have been effective in reducing smoking prevalence in Canada, the first country to introduce pictorial HWLs. Since their introduction in 2001, the pictorial health warnings have resulted in a statistically significant decrease in smoking prevalence in Canada, including in the critical youth cohort.<sup>9</sup>

**INDUSTRY ARGUMENT:** *Large HWLs breach international trade agreements and international investment treaties by infringing intellectual property rights and expropriating the tobacco company trademarks.*

**RESPONSE:** The tobacco industry has a long history of using false arguments about violations of intellectual property obligations and international trade agreements to prevent or delay effective tobacco control policies.

The tobacco industry has been making such arguments about large HWLs since the early 1990s. For example, in 1994 Philip Morris warned South Africa that its proposed health warnings on 25% of the front and 50% of the back of tobacco packs would expropriate its intellectual property and breach its international legal obligations.<sup>13</sup> Legal challenges never materialized and Philip Morris now accepts the need for health warnings on up to 50% of the tobacco packs. The tobacco industry conveyed similar warnings about proposals for even larger HWLs in New Zealand,<sup>14</sup> Canada<sup>15</sup> and Hong Kong<sup>16</sup>.

After decades of warnings with no subsequent follow-up action, Philip Morris International (PMI) brought an international arbitration claim against the Government of Uruguay under a bilateral investment treaty, to challenge its tobacco control laws, including a requirement for 80% pictorial HWLs. In July 2016, the tribunal convened by the International Centre for Settlement of Investment Disputes dismissed the claim<sup>17</sup> in the strongest terms, confirming that, under international law, a trademark holder does not enjoy an absolute right of use that is free of regulation.

Despite all the arguments made by tobacco companies about violations of trade agreements, there has never been a dispute raised about large pictorial HWLs within the World Trade Organization. At least 13 countries have finalized pictorial HWLs covering 75% or more of the principal display areas of the pack.<sup>18</sup>

**INDUSTRY ARGUMENT:** *Printing large pictorial HWLs and requiring warning label rotation is too expensive and difficult and requires more time to implement than the government has allowed.*

**RESPONSE:** Tobacco packaging is highly sophisticated, with or without pictorial HWLs. Due to increasing marketing restrictions, tobacco companies use tobacco product packaging to market their products,

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using innovations such as “limited edition” packs, embossing, indenting, glitter, onserts and inserts, slim packs, round or beveled packs, holograms, split packs, slide packs, and “scratch and niff” packaging. Tobacco companies routinely change and introduce new packaging. Changing this type of packaging is far more complex and costly than changing the pictorial HWLs.<sup>19</sup>

The technology required to print color warnings is widespread.<sup>19</sup> Tobacco companies adapt their packaging frequently to promote new products and flavors. It is no more difficult or expensive to add or rotate pictorial health warning.<sup>20</sup>

**INDUSTRY ARGUMENT:** *Public education campaigns are a better way to educate about the dangers of smoking than pictorial HWLs.*

**RESPONSE:** The primary audience for pictorial HWLs is people who use tobacco. Pictorial warnings on tobacco products are effective because tobacco packs have high visibility among this audience — smokers see them every time they purchase a pack. In countries where retail display of tobacco products is not banned, large pictorial HWLs may also be displayed prominently at the point of sale. When viewed at points of sale, large pictorial health warnings communicate both to tobacco users and non-users the harms of tobacco use, including to youth.

Governments should deploy a comprehensive and multi-faceted approach to communicating the harms of tobacco use. Public education, mass-media campaigns, and pictorial HWLs all have their place in a comprehensive approach to communicating tobacco harms. Mass media campaigns and enhanced package warnings work more effectively together than individually in reducing the harms of tobacco use.<sup>20</sup>

**INDUSTRY ARGUMENT:** *Both smokers and non-smokers already know the risks of smoking. In fact, some people over-estimate the health risks of smoking.*

**RESPONSE:** Smokers have significant gaps in their knowledge of the risks of smoking. Smokers who notice pictorial HWLs on tobacco packs are more likely to be aware of the associated health risks, such as lung cancer and heart disease.<sup>21</sup> Smokers living in countries with pictorial HWLs report greater awareness of the health risks of smoking.<sup>22</sup> Smokers also report that they receive more information about the risks of smoking from the tobacco product package than from any other source except television.<sup>23</sup> This is important because an understanding of both the risks and severity of smoking are important factors in motivating smokers to quit.

Children living in countries that require larger HWLs and warnings that include a compelling pictorial image of the negative health impacts of smoking are more likely to be aware of, and understand, the health risks of tobacco products.<sup>22</sup>

**INDUSTRY ARGUMENT:** *Pictorial HWLs will cause the illicit tobacco market to increase, and result in reductions in government revenue*

**RESPONSE:** Pictorial HWLs do not increase the demand for illicit cigarettes but instead reduce the overall demand for cigarettes by increasing the awareness of the health risks associated smoking cigarettes. Illicit trade is a function of supply and demand.<sup>24</sup> Governments can greatly reduce the supply of illicit cigarettes on the market by maintaining strong tax administration systems that include monitoring and enforcement.<sup>25</sup>

(1) WHO Framework Convention on Tobacco Control, “Elaboration of Guidelines for Implementation of Article 11 of the Convention”, 2008, [http://apps.who.int/gb/fctc/PDF/cop3/FCTC\\_COP3\\_7-en.pdf](http://apps.who.int/gb/fctc/PDF/cop3/FCTC_COP3_7-en.pdf). (2) Fong, G. et al. The impact of pictures on the effectiveness of tobacco warnings. *Bulletin of the World Health Organization*. 2009;87:640-643. doi: 10.2471/BLT.09.069575. (3) Vardavas CI, Connolly G, Karamanolis K, Kafatos A. Adolescents perceived effectiveness of the proposed European graphic tobacco warning labels. *European Journal of Public Health*. 2009 Apr;19(2):212-7. (4) Levis D.M., Stone-Wiggins B., O’Hegarty M., Tong V.T., Polen K.N., Cassell C.H. Women’s perspectives on smoking and pregnancy and graphic warning labels. *Am. J. Health Behav*. 2014;38:755–764. doi: 10.5993/AJHB.38.5.13. (5) Hammond D, Fong GT, McDonald PW, Cameron R, Brown KS. Impact of the graphic Canadian warning labels on adult smoking behaviour. *Tob Control* 2003; 12:391–5. (6) Partos, T.R., Borland, R. et al, “Cigarette packet warning labels can prevent relapse: findings from the International Tobacco Control 4-Country policy evaluation cohort study”, *Tobacco Control* 2013;22:e43-e50 doi:10.1136/tobaccocontrol-2011-050254. (7) Hammond, D., “Health warning messages on tobacco products: a review”, *Tobacco Control*. 2011 Sep; 20 (5): 327-37. Epub 2011 May 23. (8) Cantrell, J, Vallone, D.M et al, “Impact of Tobacco-Related Health Warning Labels across Socioeconomic, Race and Ethnic Groups: Results from a Randomized Web-Based Experiment” *PLoS ONE* 2013, 8(1):e52206. (9) Azagba, S., Sharaf, M.F., “The effect of graphic cigarette warning labels on smoking behavior: evidence from the Canadian experience.” *Nicotine Tob Res*. 2013 Mar; 15 (3): 708-17. Epub 2012 Sep 18. Erratum in *Nicotine Tob Res*. 2013 May; 15 (5): 1000-2; Health Canada and the Public Health Agency of Canada, “Federal Tobacco Control Strategy 2001-2011, Horizontal Evaluation”, June 2012. (10) The Tobacco Institute of Southern Africa, “Submission in respect of Tobacco Products Control Amendment Bill”, September 29, 1998, <http://legacy.library.ucsf.edu/tid/lde73a99/pdf>, accessed 11 February 2014; see also: Philip Morris International, draft letter to Director-General, National Health and Population Development, August 23, 1994, <http://legacy.library.ucsf.edu/tid/xot45c00>. (11) Tobacco Institute of New Zealand Limited, Submissions to Ministry of Health, December 1997, <http://legacy.library.ucsf.edu/tid/qee51a99>. (12) Canadian Tobacco Manufacturer’s Council, Brief in Response to Health Canada’s Proposals for Tobacco Act Regulations, March 12, 1999, <http://legacy.library.ucsf.edu/tid/pqh62c00>. (13) Tobacco Institute of Hong Kong Limited, Letter to Secretary for Health and Welfare, March 14, 1996, <http://legacy.library.ucsf.edu/tid/dpj44a99>; see also <http://legacy.library.ucsf.edu/tid/zza55d00>. (14) The award and pleadings from the case are available here: <http://www.italaw.com/cases/460>. (15) International Legal Consortium, Tobacco Free Kids. Legislation by Country. Available from: <http://www.tobaccocontrol.org/legislation/>. (16) Hammond D. Tobacco labelling toolkit: Implementation. In: Hammond D, editor. *Tobacco Labeling and Packaging Toolkit: a guide to FCTC article 11*. Waterloo: University of Waterloo; 2008. (17) World Health Organization (WHO). WHO Report on the global tobacco epidemic, 2008: The MPOWER package. Geneva: 2008. Available from: [http://www.who.int/entity/tobacco/mpower/mpower\\_report\\_full\\_2008.pdf](http://www.who.int/entity/tobacco/mpower/mpower_report_full_2008.pdf). (18) Borland R, Hill D. Initial impact of the new Australian tobacco health warnings on knowledge and beliefs. *Tobacco Control* 1997; 6: 317-25. (19) Hammond D, Fong GT, McNeill A, Borland R, Cummings KM, Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: Findings from the International Tobacco Control (ITC) Four Country Survey. *Tobacco Control*. 2006 Jun;15 Suppl 3:iii19-25. (20) Hammond D. Health warnings on tobacco packages: Summary of evidence and legal challenges. Waterloo: University of Waterloo; 2008. Available from: [http://tobaccofreecenter.org/files/pdfs/reports\\_articles/India%20Labelling%20Review-Revised%20\(Hammond%202008\).pdf](http://tobaccofreecenter.org/files/pdfs/reports_articles/India%20Labelling%20Review-Revised%20(Hammond%202008).pdf). (21) Joossens L, Raw M From cigarette smuggling to illicit tobacco trade *Tobacco Control* 2012;21:230-234. (22) WHO. Technical Manual on Tobacco Tax Administration. 2010. Available from: [http://apps.who.int/iris/bitstream/10665/44316/1/9789241563994\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44316/1/9789241563994_eng.pdf).