

Tobacco industry tactics: packaging and labelling

Tobacco packs are key to marketing and advertising. The tobacco industry challenges large, graphic warnings and pack size/colour restrictions using intellectual property and “slippery slope” arguments. Through litigation, or threat of litigation, the industry seeks to delay implementation of packaging and labelling restrictions. Donations, political contributions and so-called corporate social responsibility (CSR) activities can result in pro-industry arguments gaining political support.

Introduction

Tobacco packaging is a potent marketing tool. Pack design and colour are used to manipulate people’s perception of the level of harm and increase the products’ appeal, especially among the young, including young women (1–4). For the public health community, packaging is an important medium for communicating health messages (5). Studies from all over the world have concluded that large graphic warnings are associated with reduced tobacco consumption and smoking prevalence, and with increased knowledge of health risks and efforts to quit (6). Therefore, Article 11 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) mandates the adoption and implementation of health warnings on tobacco product packaging and labelling. Article 11 of the WHO FCTC focuses on two key aspects: an effective warning label; and restrictions on misleading or deceptive packaging/labelling elements, including descriptors (light, mild, low tar), emissions yields, and other elements that detract from health warnings or convey that one product is safer than another.

To undermine the effectiveness of packaging and labelling regulations, tobacco companies increasingly use pack colours to replace misleading descriptors and convey the perception of “reduced risk”, to diminish health concerns and reduce the impact of health warning labels (7). Over 100 countries in the world require pictorial warnings on packages¹ and 11 countries in the WHO Eastern Mediterranean Region have graphic warning requirements covering from 50% to 60% of the pack (Bahrain, Djibouti, Egypt, Islamic Republic of Iran, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, United Arab Emirates and Yemen). As plain/standardized packaging has been found to be effective in reducing the appeal of cigarettes/smoking, 17 countries in the world, including Saudi Arabia, have passed plain packaging laws despite the tobacco industry’s resistance (7–9). See Box 1 for more information on plain packaging.

¹ According to the Canadian Cancer Society, at least 118 countries have finalized requirements for graphic pack warnings as of 2018 (see <https://www.fctc.org/wp-content/uploads/2018/10/CCS-international-warnings-report-2018-English-2-MB.pdf>).

Box 1. Plain packaging

A “plain” tobacco package is one that displays brand names and product names in a standard colour and font style, without using logos, colours, brand images or promotional information (inside and/or outside the packaging).

In the past decade, there has been increasing use of international trade and investment treaties to challenge package restrictions primarily on the basis of intellectual property laws and foreign investor’s rights. No further challenges using the trade and investment platform have been initiated after a tobacco industry defeat in Australia and Uruguay.

However, while these cases were pending, tobacco companies used the cases to illustrate threats of infringement for purposes of watering down or delaying legislation (Jamaica, Namibia, Solomon Islands, Sri Lanka) (10). This type of “scare tactic” successfully delayed early plain packaging proposals in Canada and Australia for 20 years (10). After a protracted dispute, the WTO’s adjudicatory body confirmed in June 2018 that Australia’s plain packaging is aligned with WTO rules.

Tobacco industry interference

The tobacco industry does not object to health warnings per se, as they are viewed by the industry as a form of protection from lawsuits and stronger packaging regulations (10). In the early 2000s, the tobacco industry promoted a voluntary code for self-regulating tobacco advertising and health warning labels to pre-empt the WHO FCTC. In particular, the industry’s labelling proposal is a textual warning that occupies “50% or more of the principal display areas but shall be no less than 30% of the principal display areas” (11). The tobacco transnationals’ tolerance for warnings changed after the WHO FCTC was adopted (10). Philip Morris International’s leaked corporate strategy document (2014) suggests that the company’s threshold for “unreasonable” graphic warnings is one that is more than 65%, and that plain packaging is not acceptable (12). The industry is concerned about losing its ability to market products through their packs, including use of colours that convey perceptions of safety or designs that attract certain market segments such as women or adolescents (1, 13). Tobacco companies have undermined effective warning labels by providing unusual sizes and pack designs, such as “lipstick” packs, which are targeting women and youth.

Targeting youth and women



Indonesia

**Lipstick Pack
Sold in
Indonesia,
Lao PDR,
Malaysia and
Singapore**



Lao PDR



seatca.org

Large graphic health warnings easily gain support among the populace (14). However, after a law is adopted, the tobacco industry uses domestic courts to block or delay implementation, as experienced in Australia, Brazil, India, Ireland, Kenya, Nepal, Norway Sri Lanka, Thailand, Uganda, United Kingdom, Uruguay (15, 16), among others. This is particularly true for graphic warnings larger than 50%. Although the majority of litigation goes in favour of public health, there is a strong probability that such litigation creates a chilling effect on tobacco control implementation. Tobacco industry interference can lead to weak enforcement or watered-down provisions, as has occurred in Jamaica, Namibia, Sri Lanka and the Solomon Islands, where package warnings were either reduced in size or suffered due to lack of implementation (16).

The tobacco industry's internal documents from the 1980s illustrate how it delayed and watered-down health warning policies (in Bahrain, Kuwait, Lebanon, United Arab Emirates and Yemen) and attempted to manipulate Saudi Arabia and Iraq's positions to defeat health warning proposals at the Arab Gulf Health Ministers Conference (17). Philip Morris considered visible textual health warnings as "unacceptable" and stated that "invoking legal action" is a key strategy to counter such warnings (18).

Philip Morris International's leaked documents (2014) reveal their strategy on packaging restrictions viewed as "extreme" such as plain packaging and graphic warnings. The company aims to influence regulation and allow packaging to be used as a marketing tool by "reshap(ing) the regulatory environment to allow brand differentiation in order to maximize commercial opportunities and grow market share" (12). Philip Morris International's strategy is to challenge plain packaging and graphic health warnings greater than 65%. The transnational company aims to: "continue to slow the spread of excessive measures by deploying a compelling fact base and making the debate politically relevant"; promote "less extreme measures" to shift the debate towards "education, enforcement, etc."; marginalize such policies and their advocates as "prohibitionists"; and assert the "industry's right to be treated like any other regulated industry (brands, trademarks, etc.)". However, it seems that the standards for "reasonable" pack warning sizes have changed for the tobacco industry. In 2012–2013, the tobacco industry claimed 35% (19) was a reasonable size for health warnings, but the 2014 leaked documents show that its new threshold size is 65% of the pack (20).

Looking at the history of the tobacco industry, as well as the 10-year plan of Philip Morris, it can be expected that tobacco companies will continue to challenge restrictions on packaging and labelling. The tobacco companies' strategy is to detract attention from plain packaging and large health warnings by focusing attention on government shortcomings in education and enforcement, areas where the tobacco companies and their front groups are ready to "offer assistance." The tobacco industry continues to threaten litigation, based on its usual arguments, without acknowledging the cases lost in favour of public health. The most common industry tactics include lobbying directly or through front groups to mislead top government officials, followed by media strategies to popularize its misleading and deceptive arguments. To prevent tobacco industry influence, it is necessary to identify the tobacco industry's allies; several databases and materials house a list of front groups and third parties (see Table 1).

Table 1. Front groups and third parties

Topic	Publisher (year)	Website database*/pdf
Tobacco industry allies	Stopping Tobacco Organizations and Products (2019)	exposetobacco.org*
Front groups and lobbyists	Campaign for Tobacco-Free Kids (2019)	takeapart.org*
Free market think tanks opposing tobacco control	The Guardian (2019)	guardian.org*
Organizations opposing plain packaging in WTO; industry-linked tracking and tracing systems and organizations	GGTC, WHO Framework Convention Secretariat's Knowledge Hub on Article 5.3 (2018)	untobaccocontrol.org/kh/article-5.3
List of tobacco industry players and front groups	Action on Smoking and Health (ASH) (2014)	ash.org.uk
Third parties, including front groups, think tanks, etc.	Tobacco Control Research Group, University of Bath (2012)	tobaccotactics.org*

Tobacco industry arguments

The tobacco industry uses the same arguments against packaging and labelling restrictions in different jurisdictions.

What the tobacco industry says	What studies show
<p>Packaging restrictions, including large health warnings, violate intellectual property rights as embodied in trademark laws.</p> <p><i>Tobacco companies have initiated litigation on these grounds in various countries to challenge the government's right to impose packaging restrictions. In Nepal, Sri Lanka and Thailand the industry argued that increasing the size of graphic warnings beyond 60% of the pack size would violate international trade and investment agreements (19, 21, 22). None of these cases were successful.</i></p>	<p>In nearly all cases, courts have upheld the government's right to impose packaging restrictions, recognizing them as a public health measure to protect against the adverse effects of tobacco use. Courts have recognized that the government's duty to protect public health should take precedence over trade or property considerations, and that imposing health warnings and other packaging restrictions is in line with this fundamental policy (23).</p>
<p>Informing the public of health hazards is achieved through text warnings. Graphic/picture warnings do not work, are misleading and do not convince smokers to quit.</p>	<p>A 60-country study shows that pictorial or graphic health warnings are associated with smoking reduction. Pictorial or graphic health warnings are more likely to be noticed than text-only warnings, are more effective in educating smokers about the health risks of smoking, increase the frequency with which smokers think about the health risks, and are associated with increased motivation to quit smoking. Picture-based warnings have been found to be particularly effective among children and youth, as well as among people with lower literacy rates or lower levels of education (25).</p>

What the tobacco industry says	What studies show
<p>Graphic warnings/plain packaging represent a slippery slope.</p> <p><i>This is typically argued by business groups that are representing tobacco industry interests.</i></p>	<p>The slippery slope argument does not apply to tobacco products/tobacco industry, because cigarettes are unique. Cigarettes are the most highly regulated consumer product globally. The tobacco industry is the only consumer product industry that is identified as having an irreconcilable and fundamental conflict of interest with public health. WHO does not recommend the adoption of plain packaging for products other than tobacco, noting that tobacco products are uniquely harmful and a body of evidence shows that plain packaging is an effective public health intervention (26).</p>
<p>Graphic warnings encourage smuggling, as consumers prefer cigarette packs without graphic warnings.</p>	<p>There is no evidence that graphic health warnings have led to an increase in smuggling in any jurisdiction. In fact, large picture warnings may help to reduce smuggling, because each country has a unique set of warnings and make contraband cigarettes easier to identify (26).</p>
<p>Graphic warnings have negative economic impacts on businesses and levels of employment (e.g. farmers will lose their livelihoods).</p>	<p>The public health benefits and net economic gain from tax increases are far more significant than any potential loss of business (27). Job losses are largely attributable to tobacco companies' automation and consolidation (28). In over 100 countries that have adopted graphic warnings, there is no evidence that graphic warnings have led to negative economic impacts, such as unemployment or loss in livelihood.</p>

Tobacco industry tactics

The tobacco industry uses multi-pronged tactics to challenge packaging and labelling restrictions. The most common forms of these tactics, and related examples, are given below.

Research tactics – discrediting proven science, and exaggerating the economic importance of the industry

Tactic	Description/example	Counter-tactics
<p>Requiring/commissioning research</p>	<p>To undermine and delay plain packaging laws, the tobacco industry required proponents to provide evidence showing the effectiveness of plain packaging. At the same time, the industry promoted misleading research on plain packaging and pack size restrictions through its think tanks and other allies (29). Such organizations were funded in the United Kingdom in 2012 (30) to spearhead campaigns and produce pseudo-scientific research to undermine plain packaging initiatives.</p> <p>Internal documents recovered from the tobacco industry show it has adopted the practice of donating to universities and research institutions in order to produce favourable research to legitimize its false claims (31).</p> <p>Philip Morris International continues to fund universities, although some have reportedly returned such funds after facing sharp criticism (32).</p>	<p>Raise awareness; require information from the tobacco industry (Article 5.3, recommendations 1 and 5).</p> <p>In Australia and the United Kingdom, tobacco control advocates successfully exposed industry-backed researchers/ research and promoted independent research in order to protect tobacco control policies (30). The fact that governments allowed public access to the positions submitted by the tobacco industry was a critical measure that allowed civil society groups and independent scientists to challenge the tobacco industry's fake science.</p> <p>Article 5.3 of the WHO FCTC recommends that governments demand, from tobacco companies, information that would aid in regulation of the tobacco industry and require such information to be publicly available and ensure, under pain of penalty, that such information is accurate.</p>

Legal tactics – conspiring to hijack the political and legislative process, and intimidating governments with litigation or the threat of litigation

Tactic	Description/example	Counter-tactics
<p>Lobbing/ providing political or campaign contributions to policy-makers</p>	<p>In many countries, political influence has enabled tobacco companies to limit the effectiveness of measures relating to pack warnings and restrictions.</p> <p>In 2010, lobby registries in Canada showed that the tobacco industry lobbied 80 times in two years to successfully delay enlargement of graphic warnings (33).</p> <p>In 2012, Philip Morris International's partner Swedish Match reported being approached by an associate of an European Union (EU) official to lift a tobacco control restriction in the EU's Tobacco Products Directive (TPD) (34).</p> <p>Lobbying influenced the 2014 EU TPD, where plain packaging and point-of-sales display bans were removed from original drafts (34).</p>	<p>Raise awareness; require information from the tobacco industry; limit interactions and require interactions to be transparent (Article 5.3, recommendations 1, 2 and 5).</p> <p>Exposing corruption and bribery is a powerful tool to overcome political influence. A lobbying registry and a requirement to declare political donations serve as important tools to monitor the tobacco industry's tactics.</p> <p>Based on reports of corruption, the EU official was forced to resign and his associate, who allegedly initiated the solicitation, was investigated. Philip Morris International's documents note that the controversy adversely affected their ability to access policy-makers (34).</p> <p>The Corporate Europe Observatory, a civil society group, made a complaint to the EU Ombudsman about the European Commission's refusal to publish online details of meetings which its services and staff had with the tobacco industry, after learning of meetings between major transnationals and EU officials. The Ombudsman ruled, on the basis of Article 5.3 of the WHO FCTC, that such non-transparency "constitutes maladministration" (35).</p>

Public relations tactics – faking support through front groups, and manipulating public opinion to gain the appearance of respectability

Tactic	Description/example	Counter-tactics
<p>Using front groups and third parties to represent its interests</p>	<p>Over 40 organizations from 27 countries submitted their opposition to Australia's plain packaging law at the WTO (36).</p> <p>British American Tobacco engaged hundreds of people and organizations to lobby against plain packaging in the Australia and the United Kingdom.</p> <p>Over 160 lobbyist were deployed by Philip Morris alone to lobby against packaging restrictions at the EU TPD in 2014.</p>	<p>Raise awareness; limit interactions (Article 5.3, recommendations 1 and 2).</p> <p>Exposing tobacco industry front groups makes government officials aware of those they should not unnecessarily interact with in order to safeguard public health interests.</p> <p>In 2014, a civil society group released a brief focused on tobacco front groups and industry lobbying tactics intended for party parliamentary groups. The document listed over 100 organizations linked with the tobacco industry, their actions and what tobacco company was involved. The organizations included local associations, suppliers and affiliates, and international think tanks. It also listed over 20 public relations agencies and law firms representing tobacco industry interests (37).</p>
<p>Using so-called CSR to advance its agenda</p>	<p>Research shows that the tobacco industry uses so-called CSR initiatives to secure access to policy-makers and influence their decisions, thus undermining tobacco control policies (38).</p>	<p>Denormalize so-called CSR; avoid conflicts of interest; require information from the tobacco industry (Article 5.3, recommendations 4, 5 and 6).</p> <p>The best way to prevent industry influence through corporate donations is to denormalize it, primarily by prohibiting it or banning its publication. Such measures also prevent potential conflicts of interest.</p> <p>Some countries have banned contributions from the tobacco industry, or its publication, including Brazil, Kuwait, Montenegro, Oman, Serbia, Singapore and Thailand. In 2012, the fifth Conference of the Parties refused observer status to an international organization, the Interpol, because it received so-called CSR funds from Philip Morris (38).</p> <p>For countries that continue to allow so-called CSR, the tobacco industry must be required to submit information about such activities so they can be monitored.</p>

Tactic	Description/example	Counter-tactics
Creating media content to oppose packaging restrictions	<p>In Australia and New Zealand, British American Tobacco employed a multi-year national media campaign, deriding plain packaging legislation as part of a “nanny state”(39). The same argument was raised by tobacco companies and front groups in the United Kingdom when consultations on plain packaging were underway (40).</p> <p>In Canada, tobacco companies attempted to weaken regulations through lobbying and public relations campaigns, presenting their claims as facts using websites, posters and advertisements, as well as Twitter and Facebook accounts (40).</p>	<p>Raise awareness (Article 5.3, recommendation 1).</p> <p>An effective means to counter public confusion caused by the tobacco industry is by raising awareness about industry tactics, its front groups, and evidence behind the proposed life-saving measure.</p> <p>The Government of Australia has responded with a website providing a comprehensive review of the major issues on smoking and health in Australia, and raising awareness on tobacco industry tactics and arguments, while providing counter arguments to dispel confusion.</p>

Other tactics

Whenever package restrictions enter the public debate, front groups and third parties become prominent in the media, so-called socially responsible activities increase, lobbying activities increase, and studies aimed at detracting attention from the real issues are commissioned. Even after graphic warnings are adopted, the tobacco industry creates a new set of obstacles to delay or undermine implementation. In Kenya, mandated health warnings on cigarette packages are often applied as removable stickers; this has also been observed in Southeast Asian countries (21, 41). In many jurisdictions where legislation is not specific, graphic warnings are printed in very low resolution to reduce their impact. In Sri Lanka and the Philippines, the tobacco industry has argued that the health ministry does not have authority to pass regulation on graphic warnings (42). In the Philippines, the Philippine Tobacco Institute and its member companies, requested a four-month postponement in implementation of text warnings, despite the law being in force three years before. Several years later, upon adoption of a subsequent policy, tobacco companies likewise questioned the graphic health warnings issued by the health ministry, again causing a four-month delay in implementation (43).

Recommendations

The Guidelines for implementation of Article 5.3 of the WHO FCTC provide clear ways to counter tobacco industry tactics. For instance, banning so-called CSR activities by the tobacco industry reduces the industry’s opportunity to access policy-makers and potential “allies” or front groups. Requiring information from the tobacco industry, including its political contributions, helps to identify and expose its tactics. Furthermore, raising awareness about tobacco industry tactics helps to address the industry’s interference in tobacco control policies. To prevent undue influence on policy-makers, governments should adopt a code of conduct that prescribes measures to avoid conflicts of interest and unnecessary interactions with the tobacco industry, as well as to

ensure transparency of interactions that occur. Underpinning these measures is raising awareness about the nature of tobacco products themselves, and the true purpose of “socially responsible” activities performed by the tobacco industry.

Article 5.3 Guidelines

Recommendations

1. **Raise awareness** about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.
2. Establish **measures to limit interactions** with the tobacco industry and **ensure the transparency** of those interactions that occur.
3. **Reject partnerships** and non-binding or non-enforceable agreements with the tobacco industry.
4. **Avoid conflicts of interest for government officials and employees.**
5. **Require that information collected** from the tobacco industry **be transparent and accurate.**
6. **Denormalize** and to the extent possible, regulate **activities described as “socially responsible”** by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.
7. **Do not give privileged treatment to tobacco companies.**
8. Treat State-owned tobacco companies in the same way as any other tobacco industry.

Enforcement

Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms to meet their obligations under Article 5.3 of the Convention and these guidelines.

Monitoring implementation of Article 5.3 of the Guidelines

Nongovernmental organizations and other members of **civil society not affiliated with the tobacco industry could play an essential role** in monitoring the activities of the tobacco industry.

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