

Judge blocks plan for graphic cigarette warnings

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Photo: Food & Drug Administration

Says the FDA mandate amounts to a violation of constitutional right to free speech.

(HealthDay) -- A federal judge on Wednesday blocked implementation of an FDA mandate that would have forced tobacco companies to place graphic anti-smoking images on packages of cigarettes.

The proposed requirement from the U.S. Food and Drug Administration, which was set to kick in this September, would have emblazoned cigarette packaging with images of people dying from smoking-related disease, mouth and gum damage linked to smoking and other gruesome portrayals of the harms of smoking.

But U.S. [District Judge](#) Richard Leon, of the U.S. District Court in the District of Columbia, ruled on Wednesday that the FDA mandate violated the Constitutional free speech amendment, the [Associated Press](#)

reported.

Back in November, Leon said it was likely that the [tobacco industry](#) would succeed in a lawsuit to overturn the requirement. So, he temporarily blocked the FDA initiative until the court case could be resolved, which might take years, the news service said.

Leon called the FDA mandate a violation of tobacco companies' right to free speech.

Still, anti-smoking advocates took issue with Leon's latest decision.

"Today's ruling by U.S. [District Court Judge](#) Richard Leon blocking implementation of new, graphic cigarette warning labels is not surprising given his earlier decision to issue a [preliminary injunction](#) against the warnings," Matthew Myers, president for the Campaign for Tobacco-Free Kids, said in a statement released Wednesday evening.

"Today's ruling is again wrong on the science and the law. It is incomprehensible that Judge Leon would conclude that the warnings are 'neither factual nor accurate' when they unequivocally tell the truth about cigarette smoking - that it is addictive, harms children, causes [fatal lung disease](#), cancer, strokes and heart disease, and can kill you," Myers added. "What isn't factual or accurate about these warnings? Not even the tobacco industry disputes these facts."

"We're pleased that the U.S. Department of Justice has already appealed the earlier ruling and is working to preserve this critical requirement of the landmark 2009 law giving the [U.S.] [Food and Drug Administration](#) the authority to regulate tobacco products. If allowed to stand, Judge Leon's rulings would make it impossible to implement any effective [warning labels](#)."

Oral arguments on the appeal have been scheduled for April, according to a spokesman for the Campaign for Tobacco-Free Kids.

The FDA has contended that the benefits to the public of highlighting the dangers of smoking outweighed the tobacco industry's free speech rights. The agency did not immediately provide a comment on Leon's ruling Wednesday, the *AP* reported.

Leon said last fall that the nine graphic images, which were approved by the FDA, did more than just convey facts about the health risks of smoking -- they took an advocacy stance, a key distinction in a free-speech case.

"It is abundantly clear from viewing these images that the emotional response they were crafted to induce is calculated to provoke the viewer to quit, or never to start smoking -- an objective wholly apart from disseminating purely factual and uncontroversial information," Leon wrote in his 29-page opinion issued Nov. 7.

The nine proposed images, designed to fill the top half of all cigarette packs, have stirred controversy since the concept first emerged in 2009.

One image shows a man's face and a lighted cigarette in his hand, with smoke escaping from a hole in his neck -- the result of a tracheotomy. The caption reads "Cigarettes are addictive." Another image shows a mother holding a baby as smoke swirls about them, with the warning: "Tobacco smoke can harm your children."

A third image depicts a distraught woman with the caption: "Warning: Smoking causes fatal lung disease in nonsmokers."

A fourth picture shows a mouth with smoked-stained teeth and an open sore on the lower lip. "Cigarettes cause cancer," the caption reads.

The labels are a part of the requirements of the Family Smoking Prevention and Tobacco Control Act, signed into law in 2009 by President Barack Obama. For the first time, the law gave the FDA significant control over tobacco products.

Smoking is the leading cause of early and preventable death in the United States, resulting in some 443,000 fatalities each year, according to the U.S. Centers for Disease Control and Prevention, and costs almost \$200 billion every year in medical costs and lost productivity.

Over the last decade, countries as varied as Canada, Australia, Chile, Brazil, Iran and Singapore, among others, have adopted graphic warnings on [tobacco](#) products. Some are downright disturbing: in Brazil, cigarette packages come with pictures of dead babies and a gangrened foot with blackened toes.

More information: For more on the warning labels and to see the images, visit this [FDA website](#).

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