

Court upholds block on graphic cigarette warnings

August 24 2012, by MICHAEL FELBERBAUM

(AP)—An appeals court on Friday upheld a decision barring the U.S. government from requiring tobacco companies to put large graphic health warnings on cigarette packages to show that smoking can disfigure and even kill.

The U.S. Court of Appeals in Washington affirmed a lower court ruling that the requirement ran afoul of the U.S. Constitution's free speech protections.

Some of the nation's largest tobacco companies sued to block the Food and Drug Administration mandate to include warnings to show the dangers of smoking. They argued that the proposed warnings went beyond factual information into anti-smoking advocacy.

The government argued the photos of dead and diseased smokers are factual in conveying the dangers of tobacco, which is responsible for about 443,000 deaths in the U.S. a year.

The nine graphic warnings proposed by the FDA include color images of a man exhaling cigarette smoke through a tracheotomy hole in his throat, and a plume of cigarette smoke enveloping an infant receiving a mother's kiss. These are accompanied by language that says smoking causes cancer and can harm fetuses. The warnings were to cover the entire top half of cigarette packs, front and back.

In recent years, more than 40 countries or jurisdictions have introduced

labels similar to those created by the FDA. The World Health Organization said in a survey done in countries with graphic labels that a majority of smokers noticed the warnings and more than 25 percent said the warnings led them to consider quitting.

Tobacco companies increasingly rely on their packaging to build brand loyalty and grab consumers—one of the few advertising levers left to them after the government curbed their presence in magazines, billboards and TV.

"It's a significant vindication of First Amendment principles," said Floyd Abrams, an attorney representing Lorillard Tobacco, referring to the Constitution's free speech guarantee. "There's never been any doubt that the government could require warnings on products that can have dangerous results. And what the court is saying is that there are real limits on the ability of the government to require the manufacturer of a lawful product to denounce the product in the course of trying to sell it."

The FDA declined to comment on pending litigation, and the Justice Department said it would review the appeals court ruling. Public health groups are urging the government to appeal.

"While the tobacco industry has grown increasingly aggressive in preying upon the American public with misleading and fraudulent marketing practices over several decades, the warning labels have not been changed in 25 years," said John R. Seffrin, chief executive of the American Cancer Society.

Warning labels first appeared on U.S. cigarette packs in 1965, and current warning labels that feature a small box with text were put on cigarette packs in the mid-1980s. Changes to more graphic warning labels that feature color images of the negative effects of tobacco use were mandated in a law passed in 2009 that, for the first time, gave the

federal government authority to regulate tobacco.

The share of Americans who smoke has fallen dramatically since 1970, from nearly 40 percent to about 20 percent. But the rate has stalled since about 2004, with about 46 million adults in the U.S. smoking cigarettes. Some experts have cited tobacco company discount coupons on cigarettes and lack of funding for programs to discourage smoking or to help smokers quit.

Joining North Carolina-based R.J. Reynolds, owned by Reynolds American Inc., and Lorillard Tobacco, owned by Lorillard Inc., in the lawsuit are Commonwealth Brands Inc., Liggett Group LLC and Santa Fe Natural Tobacco Company Inc.

Richmond, Virginia-based Altria Group Inc., parent company of the nation's largest cigarette maker, Philip Morris USA, which makes the top-selling Marlboro brand, is not a part of the lawsuit.

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