

# US to revise cigarette warning labels (Update)

March 19 2013, by Michael Felberbaum

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This file combination photo made from file images provided by the U.S. Food and Drug Administration shows two of nine cigarette warning labels from the FDA. On Tuesday, March 19, 2013, the U.S. government said it won't appeal a court decision blocking it from requiring tobacco companies to put large graphic health warnings on cigarette packages. In a letter obtained by The Associated Press, Attorney General Eric Holder said that the Food and Drug Administration will go back to the drawing board and propose new labels. (AP Photo/U.S. Food and Drug Administration, File)

The U.S. government is abandoning a legal battle to require that cigarette packs carry a set of large and often macabre warning labels depicting the dangers of smoking and encouraging smokers to quit.

Instead, the Food and Drug Administration will go back to the drawing board and create labels to replace those that included images of diseased lungs and the sewn-up corpse of a smoker, according to a letter from Attorney General Eric Holder obtained by The Associated Press. The government had until Monday to ask the U.S. Supreme Court to review an appeals court decision upholding a ruling that the requirement violated First Amendment free speech protections.

"In light of these circumstances, the Solicitor General has determined ... not to seek Supreme Court review of the First Amendment issues at the present time," Holder wrote in a Friday letter to House Speaker John Boehner notifying him of the decision.

Some of the nation's largest tobacco companies, including R.J. Reynolds Tobacco Co., sued to block the mandate to include warnings on cigarette packs as part of the 2009 Family Smoking Prevention and Tobacco Control Act that, for the first time, gave the federal government authority to regulate tobacco. The nine labels originally set to appear on store shelves last year would've represented the biggest change in cigarette packs in the U.S. in 25 years.

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. They had argued that the proposed warnings went beyond factual information into anti-smoking advocacy.

The government, however, argued the images were 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 included 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 were accompanied by assertions that smoking causes cancer and can harm fetuses. The warnings were to cover the entire top half of cigarette packs, front and back, and include the phone number for a stop-smoking hotline, 1-800-QUIT-NOW.

In a statement on Tuesday, the FDA said it would "undertake research to support a new rulemaking consistent with the Tobacco Control Act." The FDA did not provide a timeline for the revised labels.

"Although we pushed forcefully ... (the) ruling against the warning labels won't deter the FDA from seeking an effective and sound way to implement the law," Dr. Howard Koh, assistant secretary of the Department of Health and Human Services, wrote in a blog post Tuesday afternoon.

Floyd Abrams, a noted First Amendment lawyer who represented Lorillard Tobacco Co. in the challenge said he wasn't surprised by the Justice Department's decision not to appeal.

"The graphic warnings imposed by the FDA were constitutionally indefensible," he wrote in an email.

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.

The share of Americans who smoke has fallen dramatically since 1970, from nearly 40 percent to about 19 percent. But the rate has stalled since about 2004, with about 45 million adults in the U.S. smoking cigarettes. It's unclear why it hasn't budged, but some market watchers have cited tobacco company discount coupons on cigarettes and lack of funding for programs to discourage smoking or to help smokers quit.

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.

Joining North Carolina-based R.J. Reynolds, owned by Reynolds American Inc., and Lorillard Tobacco, owned by Lorillard Inc., in the lawsuit were 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, was not a part of the lawsuit.

The case is separate from a lawsuit by several of the same tobacco companies over other marketing restrictions in the 2009 law. Last March, a federal appeals court in Cincinnati ruled that the law was constitutional. The companies in October petitioned the U.S. Supreme Court to review that case.

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