Hear Ye! Hear Ye! The End of Cigarette Advertising is Near

By ACSH Staff — January 1, 1992

Historians may record that it was the confluence in time and space of two events the unprecedented success of the "Old Joe" Camel ads and the anticipated U.S. Supreme Court ruling against tobacco companies which triggered the beginning of the end for cigarette advertising in America.

* At a December, 1991 press conference in New York, Dr. George D. Lundberg, editor of The Journal of the American Medical Association, announced that there was now solid scientific evidence that children recognized "Old Joe" as readily as they did Mickey Mouse. Indeed the evidence of cigarette awareness among young kids is so startling that the geniuses behind this campaign should step forward and take a bow. They have indeed succeeded in their mission; by cleverly linking smoking and sexual images, they got their message across to our children.

Unfortunately for the advertising industry, the ad's "success" ignited outrage in the medical community. "Old Joe", Dr. Lundberg said, was "the metaphorical straw that broke the advertising camel's back", one which would start the dominoes falling on all cigarette advertising.

* In October, 1991, the United States Supreme Court heard opening arguments in the case of Cipollone v. Liggett. The survivors of Rose Cipollone, a smoker who developed lung cancer, claim that the manufacturers are responsible for her death. The industry disagrees arguing that Congress "pre-empted" them from liability when it mandated warning labels. The Court will not decide the merits of Mrs. Cipollone's case, but rather whether or not cigarette companies are immune from lawsuits.

After the October, 1991 arguments (with only eight justices) the high Court was apparently deadlocked (they usually take a preliminary vote after the opening arguments) and decided to re-hear the case on January 13, 1992 with Judge Clarence Thomas as tie-breaking vote. (A ruling is expected early this summer.) Judicial bookies give odds that Thomas (given his states rights orientation) will rule against federal pre-emption, thus removing the industry's shield of legal immunity. The result: a growing number of lawsuits.

Whether or not smokers prevail in later court actions for damages is problematic. However, in any scenario, cigarette advertising itself will be on trial: the cornerstone of the plaintiff's argument for product liability will be that the industry was and is actively involved in a strategy of deception to negate the effects of warnings by using ads associating smoking with sex, machoism, youth and the good life. In press coverage of these trials, Americans will get unprecedented insight into how the manufacturers of the leading cause of premature death manipulate the media and consumers through misleading advertising to entice the public to use an inherently dangerous product. The
long simmering public contempt for cigarette advertisements, recently further fueled by "Old Joe" and the proof that ads reach children, will boil over. The call for an advertising ban will assume new momentum.

Under another scenario (with the same end results), should the plaintiffs be awarded damages in jury trials, tobacco manufacturers may seek to minimize future losses. To do so they could admit that cigarettes present health risks, offer to feature skull and cross bones labels and promise to market only on an "informed consent" basis, whereby smokers assume all the responsibility for the consequences of smoking. Continued advertising, at least as we now know it, would be incompatible with this new "here's the truth, you're on your own" strategy.

Thus, cigarette ads will disappear from magazines, newspapers and billboards. Perhaps they will by forced by consumer-driven congressional action. Or, as was the case with radio and television ads, industry may voluntarily withdraw them to prevent even stricter regulation. But, inevitably, there will be those who still defend the "right" to advertise. To them I ask: How can you rationalize advertising a product which, when used as intended, maims and kills, claiming the lives of 1,300 Americans each day? (That's the equivalent of two filled-to-capacity jumbo jets crashing daily.)

Because cigarettes are the only inherently hazardous legal U.S. product, current-day analogies don't exist. But consider the patent medicine Radithor, a radium water widely marketed and advertised in the 1920s. In ads, Radithor's manufacturer promised consumers that daily consumption would give them extra energy and make them feel good all over. Radithor users paid for their "glow" of health with prolonged and grisly deaths from leukemia, bone cancers and other radium-induced malignancies. The only difference between radium water and cigarettes is one of historical accident, in that cigarettes gained an economic and biochemical stranglehold on this country before scientists established them as hazards. To modern day champions of cigarette advertising I pose this question: If Radithor were approved for sale today would you defend the "right" to spend over 3.5 billion dollars advertising and promoting it both to children as well as adults?

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