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CIGARETTE LABELING AND ADVERTISING

Addendum to hearings held June 23, 24, 25, 29, and July 2, 1964, on bills regulating the labeling and advertising of cigarettes and relating to health problems associated with smoking

(NOTE.—The following statements were inadvertently omitted when the above hearings were printed.)

STATEMENT BY JOSEPH KOLODNY, MANAGING DIRECTOR, NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS, BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, U.S. HOUSE OF REPRESENTATIVES, AT THE PUBLIC HEARING ON BILLS RELATING TO CIGARETTES AND SMOKING PRODUCTS

My name is Joseph Kolodny and I am managing director of the National Association of Tobacco Distributors, Inc., an organization speaking for the distribution arm of the tobacco and related industries which supply tobacco, confectionery, and a vast miscellany of other products to more than 1,500,000 retail outlets.

As citizens and businessmen, we do not underestimate the significance of the Surgeon General's report alleging that cigarette smoking may represent a health hazard. We are, however, exceedingly apprehensive and deeply concerned that any hasty, precipitous action may well leave in its wake an endless trail of anguish and untoward consequences.

We recognize that it is the duty of the Congress of the United States to move promptly and constructively when an alleged hazard to the health of the citizenry of the Nation is brought to its attention. We earnestly submit, however, that any measure taken should be dictated by a prudent evaluation of the imminence and extent of the alleged potential hazard as well as an in-depth study of the probable direct and indirect effect of the application of such remedy.

While it is obviously not within our province or competence to confront the medical aspects of the Surgeon General's report, it is imperative to realize though that in this tumultuous era, when bizarre and gnawing catastrophic situations are constantly erupting, even in the most unexpected and remote sectors of the world, it may be a disservice to our Nation to enact legislation that may undermine a basic American industry.

Any group or individual that proposes a labeling program for cigarettes advertising to the hazardous consequences of their use, inescapably shoulders an immense responsibility no matter how well intentioned the objectives may be. It is well to consider whether—

- (1) there is sufficient definitive information to warrant such a program.

(2) such a program would reasonably satisfy the aim for which it is promulgated.

(3) a proposed program will inure to the public interest without unwittingly causing irreparable harm to vast segments of the American citizenry.

The wiser course would seem to dictate that research and scientific processes be given reasonable time and support, so that the ultimate results will redound to the benefit of the Federal, State, and municipal governments, the industry which benefits them and, overridingly, the gratification of the public's needs and desires.

In our opinion, as underscored by wide experience within our and other industries, labeling would deter but few adult smokers. As it pertains to the youth, it is gospel that they are instinctively eager to burrow into that which is mysterious and forbidden. Thus, the inadvertent result will be an inclination to regard it as a badge of maturity to begin smoking cigarettes, especially when they carry a warning or forbidding legend.

While we do not consider ourselves qualified to dwell on the medical aspects involved in the cigarette issue, it is decidedly within our province (moreover, it is our obligation to the American free competitive system, if precipitous action were to be taken and cigarette labeling tioning of the whole spectrum of the unexcelled American distribution system, if precipitous action were to be taken and cigarette labeling were mandated:

1. Cigarette labeling will have an impact beyond the area in which it is intended.

2. The labeling of cigarettes will have the effect of casting slander and vilification on America's oldest industry, thereby rendering it a target for all sorts of unjustified charges and aspersions.

3. Labeling will tend to cast a shadow of suspicion on an appreciable number of well-established, highly esteemed, and profoundly regarded businessmen whose reputation for honesty and integrity has but few peers in the entire industrial spectrum.

4. The stigma that will accompany the sale of cigarettes will attach itself to other products handled by tobacco merchants with resultant irreparable havoc to the widespread sphere of our economy—with the resultant consequences of employment, bankruptcies, family disintegration, community uprooting, and a substantial increase in the number of unemployed, plus a considerable addition to the 20 percent of the populace for whose benefit that antipoverty bills are in the legislative hopper.

5. The marketing of tobacco is America's oldest industry. It permeates and motivates the funneling to the ultimate user of an amazingly prodigious assortment of consumer products and durable goods which implement our exemplary mass production economy. It is essential to note in this connection that distribution and exposure of merchandise, on a round-the-clock basis to the 191 million American consumers, is the heartbeat of the fabulous sixties.

6. It is in the distribution area that any impingement upon the smooth process of making the goods available in every "nook and cranny" throughout the Nation, would, inevitably, cause a sharp curtailment in the operation of the mass production facilities, leading to unemployment and economic chaos.

7. The extent of the operations of the wholesale tobacco industry, in assuring an uninterrupted flow of a multiplicity of heterogeneous consumer products, is dramatically demonstrated by its employment of—

- (a) more than 16,000 salesmen;
- (b) more than 17,000 vehicles; and
- (c) the delivery of over 450 million orders annually,

and serving more than 1,500,000 retail outlets.

8. It is of no little significance that, by and large, this multitudinous assortment of independent retail merchants are devoid of any mercantile rating and have embarked into business on a proverbial "shoe-string." The wholesaler, therefore, in this instance, not only fulfills the function of a supplier but, by extending credit—based primarily on the old-fashioned three C's (character, capacity, and confidence)—also acts as banker.

9. It is of no little significance that—

(a) tobacco is the fourth in value among all agricultural crops of the Nation.

(b) more than \$8 billion is spent annually by Americans on the enjoyment of tobacco products.

(c) American cigarettes are a positive messenger of good will throughout the world.

(d) the impact of cigarettes influences the commercial pursuits of a huge segment of our society.

10. Approximately 6,000 wholesalers and over a million and a half retail outlets, together with their families, provide the economic well-being of more than 7.95 million persons. Let's not be unmindful that over 7.95 million people, solely in the distribution of tobacco products, rely for their sustenance primarily on the handling and filling of the public's demand for cigarettes.

11. Much of the exemplary success of the proficient American economic distribution system is strikingly attributable to cigarettes. They are readily available and easily accessible through a populous assortment of retail outlets, including—

- (a) 17,000 corporate and independent supermarkets;
- (b) 287,400 food stores;
- (c) 33,400 drug stores;
- (d) 267,000 eating and drinking establishments;
- (e) 69,800 liquor, cigar, stationery, and novelty stores;
- (f) 31,600 general merchandise, syndicate, and variety stores;
- (g) 81,000 service stations;
- (h) 21,200 hotels, motels, and inns; thousands of bowling alleys, jewelry stores, roadstands, etc.



12. Kindred and collateral products are incalculable beneficiaries of low-cost, speedy, and economic distribution of cigarettes with marked savings to the consuming public. Included among the products benefiting by such "acceleration" are:

baby needs	pipes
candy and confectionery products	playing cards
Christmas decorations	razors and blades
cigars	sanitary napkins
clocks	school supplies
cough drops	scotch tape
creams and lotions	shampoos
deodorants	shaving accessories
electric shavers	shoe polish
film	smokers' accessories
first aids	snuff
fountain supplies	soups
gift wrap and ribbon	socks
gloves	stationery
greeting cards	straws
grocery and food products	sunglasses
gum	suntan lotion
home permanents	talcum powder
insect repellants and insecticides	thermos products
light bulbs	thread
lipsticks	tissues
matches	tobacco
medicines	toothbrushes
nail polish	tooth paste and powder
notions	toys and novelties
nylon hosiery	underwear
paper bags	watch bands
paper cups	watches
paper napkins	writing instruments
party decorations	

13. Should any action tend to interfere with the distribution of cigarettes then, to a greater or lesser degree, the distribution of a vast miscellany of products essential to the consuming American public will be hindered with the inescapable outgrowth of higher costs to the consumer.

Peculiar, and perhaps even unbelievable to some, the versatility of the package of cigarettes in the sphere of the American economic fabric is not only incalculable, but manifestly indispensable. On frequent occasions, we nostalgically refer to the corner "poppa and momma store." We affectionately allude to the erstwhile general store with its "potbellied stove" which, in bygone years, operated as the virtual "town hall" of the community. We fondly recall the local apothecary that ostensibly functioned as an "emergency clinic." These and similar enterprises are sympathetically alluded to as "real Americana" with all of its memorable overtones.

It is these outlets that characterize the sinews and heartbeat of the American melting pot at its noblest. It is historically beloved home-spun outlets that provide the inspiration, the encouragement and drive for an ever-expanding and greater America—a land which has flourished and prospered into the mightiest nation on earth, buttressed not only by its genius in the world of science, technology, and production but, overridingly, by the energetic entrepreneurs who today operate a preponderant percentage of the one and a half million retail outlets. A great many of these merchants ventured into business

enterprises armed solely with courage, diligence, a few packages of cigarettes, a few bars of candy and a handful of trinkets. It is this multiplicity of outlets, dotting every main street and corner throughout the Nation that are peopled by diligent, conscientious, and industrious entrepreneurs, whose incomes, generally speaking, rarely compare with that of gainfully employed factory workers. They symbolize a far-flung cross-section of American citizenry also encompassing:

(1) Retired people who are intent upon maintaining activity as well as gratifying their erstwhile longing to engage in business on their own.

(2) Physically handicapped who strive to eke out a livelihood and concurrently avoid becoming public charges.

(3) Newlyweds who set out to build a future by exercising their inherent American initiative to embark on a business career to succeed or bust.

(4) Ambitious people who are disinclined to be employed by others and elect to "run their own business."

Cognizant as we are that no individual or group has a license or right to enjoy or derive material benefits when the health of the citizenry is allegedly at stake, we do not feel that the situation is so critical as to warrant precipitous action, the result of which would tend to jeopardize and disrupt the business activities of hundreds of thousands of independent entrepreneurs who are availing themselves of the American freedom of opportunity.

The situation surrounding cigarettes is not in any way static; extensive and constant research is engaged in at numerous levels and countless sources. All these are intent upon removing, if such element is unearthed, any ingredient or molecule that may even remotely reflect upon the pleasure derived by consuming this remarkable and unique creation of Mother Earth.

STATEMENT OF THE TELEVISION BUREAU OF ADVERTISING, INC., SUBMITTED TO THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES, IN OPPOSITION TO CERTAIN BILLS PENDING BEFORE THE COMMITTEE RELATING TO THE ADVERTISING OF CIGARETTES

The statement is submitted by the Television Bureau of Advertising, Inc., in opposition to H.R. 9655 (Blatnik), H.R. 9657 (Dingell), H.R. 9808 (Riehlman), and any other bills that may be pending before the committee which would or could have the effect of imposing new or special limitations or restrictions on the advertising of cigarettes. It is respectfully requested that this statement be included in any printed record of hearings to be held by the committee in connection with such bills.

The Television Bureau of Advertising is a nonprofit business league created and supported by television stations, station representative groups, and networks. The principal purpose of the bureau, which has offices in New York, Chicago, and Los Angeles, is to promote the use of television as an advertising medium.

Because cigarette advertising contributes substantially to television revenues, we are naturally concerned with any proposed legislation that would unjustifiably or unnecessarily inhibit the freedom of cigarette advertisers and thereby reduce their incentive to advertise on television. H.R. 9655 and H.R. 9657, which would direct the Federal Trade Commission to require that every cigarette advertisement include a warning that cigarette smoking is injurious to health, and H.R. 9808, which would authorize the Commission to prescribe by regulation cautionary statements to be included in all cigarette advertisements, are examples of such legislation. It seems clear that, should legislation of this type be enacted, cigarette advertising on television would substantially diminish, if not disappear altogether.

Our opposition to bills like H.R. 9655, H.R. 9657, and H.R. 9808, is not, however, based primarily on the loss of cigarette advertising revenue—possibly in excess of \$130 million annually—that would result from their adoption. Our fundamental concern is with the precedent that enactment of any special legislation of this type would establish.

Cigarette advertising on television is currently subject to the same standards and restrictions that product advertising generally is subject to. We believe this is as it should be. The principal applicable provision of law is section 5 of the Federal Trade Commission Act, which authorizes the Commission to prohibit any advertising which it finds to be false or misleading. In our view these general standards are sufficient to protect the public from unjustified or otherwise improper advertising claims. Subject to the limitations reflected in section 5 of the Federal Trade Commission Act, advertisers—whether of cigarettes or any other product—should be free to stress the affirmative case for their product without having to set forth in their ads a prescribed set of negative facts or hypotheses designed to undercut the affirmative message. The concept of “equal time,” appropriate in politics, is out of place in product advertising—particularly where, as here, the case against the product has been so publicized in recent years that there is probably not a user in the country who is unaware of it.

We think that any legislation which goes beyond the general standards of section 5 of the Federal Trade Commission Act is unnecessary and could destroy a vital stimulus to our economy. Our economy is a commercial one—that is, individual buying decisions, backed by individual purchasing power, determine both its shape or direction and, in large measure, its magnitude or rate of activity. Product advertising stimulates consumer demand, which in turn leads to increased production and sales. These in turn provide employment and tax revenues. In short, product advertising plays a crucial role in promoting economic growth.

We believe that if Congress imposes special restrictions on the advertising of one particular industry, it effectively restricts that industry's purchases, its employment, its production, its sales, its taxes, and its profits. Moreover, if it applies such restrictions to one industry it necessarily sets a precedent for the imposition of similar or comparable restrictions on other industries. In short, such action could soon lead to the imposition of deadening commercial restrictions on our entire national economy.

The traditional and generally accepted purpose of advertising is to attract people to the product or service advertised. To do this, the manufacturer presents the positive side of his product or service, in a manner he believes will best show the public the role his product can fill. This, we believe, is the historical and proper role of advertising in our free society. The public, by its own evaluation of the positive statements made by competitive products or services, and taking into account its own independently acquired knowledge, based on reading, observation, and experience, makes up its own mind and makes the final decision with its own purchasing dollars.

We do not advocate economic growth or stimulation through any deception. Product advertising must be truthful. It must be responsible. It cannot mislead. But we seriously question whether advertising would continue to exist as an economic stimulant if every advertisement were required to state or call attention to every possible risk that may be associated with use of the product.

Everyone knows, for example, that automobiles can kill. Yet if automobile manufacturers were required to recite this fact in every automobile advertisement, the positive message that the advertisement was meant to convey, the advertisement's affirmative effect, would be substantially reduced. We do not think the public interest would be thereby served.

We cannot accept the proposition that advertising has the additional function or obligation of setting forth the case against the advertised product or service—whether that case be proved beyond a doubt or only suspected. Where a product or service is accepted in commerce, and the advertising is not false and misleading, manufacturers should not be compelled to remind consumers of what they already know. Such requirements cannot be justified as necessary to prevent deception, which we believe is the only proper standard to apply.

A rule that would require recital of known risks can, in our view, only be explained by a desire to reduce the effectiveness of advertising and thereby discourage manufacturers from employing this traditional selling tool. We believe a manufacturer should not be required to criticize himself in his advertising.

As long as a product is a recognized, legitimate article of commerce, and as long as the advertising does not misrepresent the product, we believe the manufacturer in his advertising properly has the same freedom of expression as that available to an individual. This becomes particularly clear when we remember that mass media advertising is actually nothing but an extension of person-to-person selling.

As already noted, laws and interpretive decisions already exist to prohibit and prevent advertising misrepresentation. We cannot believe additional legislation is required to safeguard our citizens from the asserted danger of candy, automobiles, products in aerosol containers, electric light sockets, amateur athletics, gasoline, beer, cigarettes, or being overweight.

We are deeply concerned with the establishment of a precedent for restrictions placed upon advertising that extend beyond the already regulated areas of misrepresentation. If one product is required to advertise its possible disadvantages, is not a precedent set by which all other products should be required to advertise their possible dis-

advantages? It is one thing to require advertising to be truthful, not to deceive. It is another to impose such restrictions or limitations upon it so as to dissuade advertisers from communicating the affirmative story they have to tell. Such a policy amounts to prohibitionism, which we firmly believe is neither just nor, as we have suggested, sound policy. We cannot believe that legislation such as H.R. 9655, H.R. 9657, or H.R. 9808, would be in the American tradition of freedom of speech, whether by industries, companies or individuals.

Respectfully submitted.

NORMAN E. CASH,
President, Television Bureau of Advertising, Inc.

A STATEMENT BY THE ASSOCIATION OF NATIONAL ADVERTISERS, INC.,
BEARING UPON THE TOBACCO LEGISLATION HEARINGS OF THE HOUSE
COMMERCE COMMITTEE

The Association of National Advertisers (hereinafter referred to as ANA) is a nonprofit membership organization which was founded in 1910 to represent the interests of companies which use advertising to an important extent in their sales, public relations, and marketing operations. The association is dedicated to the furtherance of the science of advertising; the elimination of waste and inefficiency in the process of distributing products and services; the safeguarding of the essential values in advertising as an instrument for inducing sales; and the promotion of the common interest and welfare of its members as buyers of advertising, and otherwise.

Current membership in the ANA consists of approximately 700 companies representing a wide cross section of industry. For instance, the ANA membership by industrial classification is as follows:

<i>Industry</i>	<i>Number of members</i>
Agricultural equipment.....	8
Automotive.....	6
Automotive accessories.....	16
Brewing.....	10
Building materials.....	32
Chemicals.....	50
Clothing and textiles.....	55
Drug and toiletries.....	57
Electrical equipment.....	19
Food and grocery.....	61
Industry trade associations.....	11
Insurance.....	23
Jewelry, optical, photographic, sports goods.....	25
Liquor and wine.....	27
Metals, basic.....	22
Nonelectrical household furnishings.....	19
Office equipment.....	28
Paper.....	19
Petroleum.....	35
Soaps, cleansers, polishes.....	21
Soft drinks.....	8
Tire and rubber.....	7
Tobacco.....	8
Travel and transportation.....	39
Industrial (other than metals or chemicals).....	81

Similarly, the ANA membership is representative of both the most extensive users of advertising such as General Motors, Procter & Gamble, General Foods, etc., and many smaller advertisers as well. In fact, while approximately 75 percent of ANA members invest over \$1 million in advertising annually, almost 100 member companies spend less than \$500,000 each year.

ANA members, quite obviously, use every advertising medium in their advertising programs. They represent the bulk of the national support for television as 87 of the 100 leading users of that medium are ANA members. However, the advertising investments of concerns represented in ANA are also the principal support of most national magazines, newspapers, business papers, and the outdoor medium as well.

The membership of ANA, of course, has a wide geographical distribution as concerns involved in the association's activities are headquartered in virtually every major city across the country. The geographical distribution of the association is even more pronounced when the plants and distribution facilities of its member companies are taken into account.

ANA entertains, and voices, no opinion regarding the relationship—or lack of one—between cigarette smoking and public health. Our association presents this statement because of the public importance of advertising as an economic force. Our position would be qualitatively the same if, instead of cigarettes, this committee were studying any other class of products.

The governing objective—yours and the ANA's alike—is to serve the public's truest interests. The problem is with complexity, not with purpose. Oversimplification may be tempting, but it rarely provides a sound basis for legislation.

Physical health and economic health are both vital to public well-being. Neither should be impaired to serve the other unless no way can be found which will nurture both.

Effective advertising is *sine qua non* to the economy our Nation enjoys today. Without it there would be little vigor in competition, or stimulus to the mass distribution which supports mass production and feeds mass consumption.

Without advertising revenues, many of our radio and television stations would cease to exist, our magazines and newspapers would fold, and those media remaining would have to charge the public such high prices that the great entertainment, social awareness, and knowledge values of these media, which we almost take for granted today, would be available only to a few.

The antennae of our association are, therefore, finely tuned to the stirring of trends or tenets, governmental or otherwise, which may proliferate to stifle the robust function of advertising.

The variety of bills before your committee on the subject of cigarette advertising precludes our competent analysis of them in detail at this time. In general, however, we express disapproval of any device for imposing a sort of eminent domain upon an advertiser—a commandeering of his communications to the public—to compel the transmission of governmentally ordained messages.

We recognize, and do not quarrel with, the proposition that an advertisement cannot content itself with a half-truth, and that, to the

extent further information is required to obviate deceptiveness in what an advertiser has elected to say, he should not be allowed to stop short of truth. But section 5 of the Federal Trade Commission Act empowers the Commission to enjoin any advertiser who indulges in such deception. The bills with which we are now concerned are of a different nature.

It is not with the prevention of deception that they are concerned. No new law is needed for that. Rather, they seek to turn the persuasive powers of advertising toward discouraging people from purchasing or smoking cigarettes.

The vital function of advertising in our economy is to sell, not to unsell. If Congress believes that a given product (a narcotic, for example) is inherently dangerous—or should be utilized only by certain people under particular circumstances—it should restrict the use and sale of the commodity itself. If, however, it is willing that the item be freely available to the public, it should not erode the independent and important economic function, advertising. The precedent would be an insidious one and, once inoculated, hard to contain.

Governmental dictation of what must appear in advertising would be tantamount to prohibition. The composition of an advertisement is a highly skilled and specialized process. We know that seemingly insignificant changes in a phrase—or even of a word—may seriously alter its effectiveness. Advertisers are not likely to risk the moneys that are needed to run a campaign which features copy they feel will defeat the very purpose of their investment.

We are confident that your committee's perceptive analysis of this situation will lead it to conclude that the national interest will not be well served by imposing a form of bondage upon advertising.





