

FTC Requires Cigaret Labels, Ads To Warn Smoking May Cause Death

Label Ruling Effective Jan. 1, Ad Deadline Is July 1, 1965; Appeal Could Cause Delay

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Federal Trade Commission issued a regulation requiring a warning on all cigaret packages and advertisements that smoking is dangerous to health and may cause death.

Under the terms of the FTC ruling, cigaret makers will have until next Jan. 1 to post the warning "clearly and prominently" on all package and carton labels and until July 1, 1965, to insert it in all ad material. The near-certainty of a court challenge by the tobacco industry, however, will probably delay enforcement for some time. FTC Chairman Paul Rand Dixon said the new regulation would be held in abeyance while under court review. He estimated that it might take four years or longer for the issue to be resolved.

Sen. Jordan (D., N.C.) said the FTC rule will be challenged immediately in Federal court. He said he conferred with growers, warehousemen and manufacturers who agreed to an immediate court test. He and his Democratic colleague from North Carolina, Sen. Ervin, said that if the court test failed they would seek to revoke the ruling in Congress or through the Administration. "It is a most unfair and unreasonable decision and I do not think it will stand up," Mr. Jordan said. Mr. Ervin called the ruling "unjust and unfair."

A tobacco industry spokesman agreed that the cigaret companies probably will fight the regulation in the courts. Spokesmen for the companies said they were surprised and shocked by the FTC ruling. (See story below.)

Mr. Dixon ended months of speculation about the FTC's intentions during an appearance yesterday before the House Commerce Committee. The panel is ostensibly pondering several bills that would accomplish through legislation what the FTC intends to do administratively. But sharp questioning directed at Mr. Dixon from Chairman Harris (D., Ark.) and other members of the House panel made it plain that one purpose of the committee hearings was to dissuade the FTC from acting.

Ruling Detailed to Panel

Seizing the initiative, the FTC chairman informed one hostile interrogator, Rep. Kornegay (D., N.C.), that the commission had already put its antismoking regulations in final form. He then produced 25 copies of the 200-page ruling for distribution to the lawmakers. "We had our printers work all night to get them ready in case you wanted one," he observed.

The warning requirement promulgated yesterday differs from a preliminary version put forward by the FTC in January, following the report to the U.S. Surgeon General conclusively linking cigaret smoking with cancer.

It still directs cigaret makers to alert the smoking public to potential hazards and in the harshest terms. The exact language of the rul-

ing prescribes disclosure that "smoking is dangerous to health and may cause death from cancer and other diseases." But whereas the preliminary draft would have required this precise wording or an equally severe alternate form in all ads and labels, the final version leaves it up to the cigaret makers and their advertising men to set the tenor of the message. Thus, it will be up to the FTC to sift ad proposals on a company-by-company basis.

Hinting that the commission may show some tolerance, Mr. Dixon observed that "people in the advertising industry can say many things many ways and mean the same thing," and he added that "we're not an autocratic body."

Two Other Directives Dropped

The final regulations drop entirely two other advertising directives that had been proposed last January to govern what claims the tobacco industry could make for its products.

One would have prohibited any implications that cigaret smoking "promotes good health or physical well-being." The other would have required commission approval for any claims that one brand of cigarets is less harmful than another.

Tobacco industry creation of its own self-policing advertising code led to the deletion of these two provisions, the FTC ruling stated. "The industry has indicated an intention of acting voluntarily to end undesirable practices in these areas, and should the industry succeed there will be no need for formal commission action," the commissioners concluded.

All four FTC commissioners (a fifth seat on the panel is at present vacant) were in accord on the need for requiring the industry to display a warning message. The industry's code doesn't go this far and "no industry representative has indicated that cigaret manufacturers are willing" to do so on their own, they noted. One FTC member, Everette MacIntyre, differed slightly with his colleagues over what the warning should contain. He favored slightly milder language to merely state that "cigaret smoking is a health hazard." Mr. MacIntyre would also have given the industry until next July 1 to comply with the labeling as well as the advertising requirement.

Industry Arguments Rejected

The FTC rejected all the arguments that tobacco growers, cigaret makers and advertising men had raised against the disclosure requirement during formal hearings earlier this year. Contrary to their contention that publicity given the report to the Surgeon General has already put smokers on guard, the commission found that most people are still only vaguely aware there's a controversy over smoking's effect on health. To the argument that similar warnings should be required to alert consumers to the hazards of automobiles, alcoholic beverages and rich foods, the FTC replied that the danger in these products stems solely from improper or excessive use. By contrast, even "moderate" use of cigarets may be dangerous, the ruling stated.

Another apparent reason for the FTC's haste in putting its regulations out has been a challenge to its jurisdiction from the Food and Drug Administration. In earlier testimony before the House Committee, Surgeon General Luther Terry contended that the FDA is better equipped than the FTC to oversee cigaret labeling practices. Though conceding that advertising is the FTC's domain, he questioned the commission's authority to require a cigaret warning statement without a new power grant from Congress.

Chairman Harris renewed the challenge yesterday in questioning Mr. Dixon. He contended the FTC is empowered to prevent misleading ad claims but not to compel "affirmative" disclosures. "The question I would like to develop," he told the FTC chairman, "is the extent to which the commission can go in directing an industry to engage in certain practices against its will."

Mr. Dixon clearly failed to satisfy the Arkansan with his rejoinder that the FTC has a duty to require affirmative warnings about a product when their omission would be misleading. He cited instances where the commission had compelled importers to state the country of origin on a product as an aid to U.S. consumers who prefer domestically made goods.

Tobacco Firms Surprised

A WALL STREET JOURNAL News Roundup

Cigaret company spokesmen reacted with considerable surprise and some shock to the announcement of the Federal Trade Commission's new ruling on cigaret advertising and labeling. The surprise stemmed largely from the fact that the question has been raised in previous cigaret legislation hearings before the House Commerce Committee of whether the FTC has authority to order a manufacturer to publish warnings of potential dangers from a product.

Prices of tobacco shares listed on the New York Stock Exchange dropped yesterday after the announcement of the new FTC rules. American Tobacco Co. closed at \$32.375, off \$1.125; R.J. Reynolds Tobacco Co., \$41, off 87½ cents; Philip Morris, Inc., \$78, off \$1.50; Liggett & Myers Tobacco Co., \$75.25, off \$1.50; and P. Lorillard Co. \$12.75, off 75 cents.