

The ethics of tobacco advertising and advertising bans

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In this chapter, I will examine the main ethical parameters of the arguments pertaining to the alleged 'right' to advertise tobacco products and those maintaining that it should be banned. In particular, I will explore the ethics of the adoption of 'partial' bans on tobacco advertising, since there are now few countries which do not restrict tobacco advertising in some way.

The banning of all forms of tobacco advertising and promotion has long been regarded as a central platform of comprehensive tobacco control policy. Ruth Roemer's 1993 review of the regulation of tobacco lists 27 nations which claim to have totally banned tobacco advertising, with a further 77 having some form of restriction¹. More recently, Bulgaria, Hungary, Lithuania, Moldova, Slovakia, Ukraine and Russia have also been reported to have implemented bans.

The research and public health policy literature on tobacco advertising has burgeoned as moves to ban advertising have become increasingly contested. This literature has been recently reviewed²⁻⁴ and its scope covers the nine areas listed below (these are referenced with particularly important examples of each).

1. Documentation and commentary on changing expenditure on tobacco advertising and promotion⁵, including how this expenditure ranks with other commodity advertising.
2. Econometric research into the relationship between the volume of tobacco advertising and changes in tobacco consumption⁶.
3. Research into the recognition, recall, approval of, or liking for tobacco advertising⁷ and sponsorship⁸, usually by children; and research into the relationship between reaction to such advertising and children's subsequent use of tobacco⁹.
4. Reports of ways by which tobacco advertisers circumvent voluntary codes and legal bans and restrictions¹⁰, including evidence for product placement in films¹¹ and television programs¹².
5. Studies of the relationship between tobacco advertising and the (usually reduced) coverage of smoking and health by newspapers, magazines, and other media¹³.

6. Evidence and commentary on the apparent targeting of non-smokers by tobacco advertisers, especially women¹⁴, children¹⁵ and communities with low smoking rates¹⁶.
7. Semiotic and other interpretive studies of tobacco advertising, examining the likely intentions of advertisers in constructing text and visual copy¹⁷; also qualitative audience studies examining the perceptions of target audiences of this advertising¹⁸.
8. Studies about self-reported reasons for taking up smoking, where advertising is examined as one potential reason. Such studies are commonly promoted by the tobacco industry¹⁹.
9. Evidence relating to the buying of political and community support from groups in receipt of tobacco sponsorship and advertising²⁰.

With notable exceptions²¹⁻²³, the core ethical questions at the heart of proposals to both maintain or ban tobacco advertising have been assumed rather than explicated in this literature. Supporters of tobacco advertising tend to base their support on an assumed equivalence of tobacco with all other retail products and services, allowing them to point to restrictions on the advertising of their product as discriminatory and unfair. They summarise this purported equivalence in the slogan 'if a product is legally sold, it should be legally advertised', which is examined below. Those seeking to ban tobacco advertising argue that tobacco ought not to be considered an ordinary good, but one self-evidently deserving of extraordinary regulatory attention by the state because of the burden of disease caused by tobacco use.

Ethical questions about advertising generally

Part of the debate about the ethics of tobacco advertising involves consideration of ethical questions about advertising *per se*. Advertising is the attempt by owners of goods and services to persuade current and potential consumers to continue or start purchasing. The intention of advertisers is, therefore, to portray products in ways that will maximise their desirability to potential consumers. Some commentators on the ethics of advertising have sought to draw a distinction between its informative and persuasive functions, arguing that pure 'information' in advertising (as said to be exemplified by classified advertisements and yellow page telephone directory listings) is 'moral' because it facilitates rational decision-making and choice. However, 'persuasive' advertising is argued to be unethical because, drawing on Kantian ethics, it affects consumers' 'autonomy' by convincing them to purchase goods which they do not 'need'²⁴. This argument has been severely criticised as resting on a false or simplistic dichotomies of wants and needs and of

information and persuasion²⁵ — information can be highly persuasive, and the persuasive associations lent to a product by advertising can be argued to be as much part of the true ‘meaning’ or reality of that product to consumers as its physical properties.

Information in tobacco advertising?

One of the cornerstones of the argument in favour of advertising generally is that advertising provides consumers with information about products and services being offered for sale. Classical economists argue that efficiency is optimised when all parties in an economic transaction have maximum information. The usual sorts of information exemplified in such arguments include price, the attributes of a product and notice of availability.

Does tobacco advertising provide such information and help facilitate choice? Mention of price is virtually absent in tobacco advertising, except at point of sale, where discounting is rampant in tobacco retailing. Descriptions of product yield attributes are common in advertising and brand naming, but these are frequently specious (‘fresh’), patently subjective (‘luxury’, ‘super’). Also, because many smokers block the tiny air vent holes with their fingers or lips, thereby greatly increasing the yields of tar and nicotine they inhale when compared to the smoking machine determined yields cited in advertising and on packs, cigarette advertising is in this respect arguably misleading²⁶. The argument that tobacco advertising provides information is thus largely bankrupt when examined against actual practice.

Some have argued that so-called ‘tombstone’ advertising — advertising showing only the cigarette pack with the product name — ought to be considered a benign non-persuasive form of tobacco advertising which might be said to satisfy the basic criteria for ‘information only’ advertising. The assumption here is that tombstone advertising essentially is ‘here it is!’ advertising, informing consumers about the name of the brand, its packaging, the number of cigarettes in it, and sometimes the tar and nicotine yields. Putting aside manipulative efforts such as *Marlboro*’s Belgian initiative during the 1980s of putting the picture of the *Marlboro* cowboy on the pack in anticipation of overcoming a move to tombstone advertising, it is fallacious to argue that pack-only advertising is somehow devoid of persuasive intent. A great deal of research goes into the selection of names, pack design²⁷ and into the selection of seemingly bland words in the slogans that accompany pictures of packs. Every effort is made to make tombstone advertising as enticing as possible.

Selectivity

Because there are limits to the time or space any advertisement occupies in the media, its content cannot possibly cover all aspects of a product’s

qualities, its origin, its various uses, all consequences that might conceivably flow from its use and so on. Instead, advertisers cannot avoid being selective about what they say and infer about their products. Understandably, in needing to be selective and in intending that advertising should persuade consumers, advertisers select emphases that are predicted to make products seem desirable.

We do not expect an advertiser of cars to take up the limited advertising space and time available drawing consumers' attention to the possible adverse financial consequences of owning a car, to the statistical probabilities of car drivers being killed or injured, or to the relative merits of using public transport. Yet all of these issues are plainly relevant to car buyers. Parallel questions can be asked about advertising for any product, including tobacco. The ethical questions arising here ask whether, in the inevitable exercise of selectivity in constructing advertisements, any consumer deception is involved. Is advertising intrinsically misleading to consumers if it fails, as it always does, to fully describe every possible facet of a product and consequence of its use?

If the answer to this is yes, then such a radical standard for determining consumer deception will condemn all advertising as unethical and provides no insight into whether tobacco advertising is in any way exceptional, warranting the special treatment it gets.

Are tobacco advertisements lies?

Lying is *prima facie* unethical. Can it be said that tobacco advertising constitutes lying? A lie is a statement made by one who does not believe it with the intention that someone else shall be led to believe it²⁸. There are three critical elements to this definition when applying it to tobacco advertising: determining what it is that tobacco advertising proposes to its audiences; establishing that tobacco advertisers know these propositions to be false; and a conception of the audience as those who believe any 'false' claims made in tobacco advertising to be true.

The first of these elements is most problematical. Most contemporary tobacco advertising makes very few written or verbal propositions about the tobacco advertised that can be simply assessed as true or false. Rather, the advertisements seek to position a set of carefully market researched associations in *opposition* to the brands being advertised in the attempt to forge positive associations about tobacco, smoking and smokers. The associations are designed to attach attributes to particular brands so that consumers will identify these brands as compatible with their desired presentation of self in everyday life, or to offer solutions to contradictions in the lives of consumers or in their feelings about smoking¹⁷. Here, cigarette advertisements and brand names make

semiotic propositions about (for example) personal potency to the socially impotent, relaxation to the harried, a sense of modernity to those fearful of being seen as conservative, or a sense of belonging to the lonely (one Australian brand is named *Escort*, a Filipino brand *Hope*).

These are no more 'lies' or false statements than the proposition that 'Coke adds life'. These are simply commercially motivated attempts at socially constructing particular meanings for smoking or *Coca Cola*. For every person who insists that the 'real' meaning of smoking is something to do with disease and addiction, there are many who associate smoking with the meanings portrayed in tobacco advertising. It is specious to argue that one meaning is 'true' while others are false, and hence to then demonstrate that tobacco advertisers 'knew' that a suggestion in their advertising that smoking equals sophistication was false. While tobacco advertising remains a largely connotative form of communication, demonstrating that it peddles lies and demonstrable falsehoods will be difficult.

Deception through omission?

Another way of approaching the question of whether advertising is misleading is to ask whether there are aspects of a product which if omitted from advertising, would result in consumers being misled. For example, consumer protection laws in many countries insist that financial services advertising make explicit claims about terms of credit, so serious are the consequences for consumers should they be misled. The questions arising here concern whether there are fundamental issues about a product that should be mandatory in any advertising for it. With tobacco advertising, many argue that the risks of use are so high that, at very least, advertising should be accompanied by detailed health warnings worded so as to maximise their comprehensibility and resonance.

However, here many have pointed out the tobacco industry's long record in constructing advertising designed to mock, distract and generally undermine such health warnings. In Australia in 1995, Rothmans modified its pack design after bold new warnings were introduced²⁹ so that a warning on the front of the flip-top box such as 'Smoking when pregnant harms your baby' is accompanied by the contemptuous advertising slogan 'Anyhow . . . have a Winfield' printed on the inside of the flip-top box. This mockery has recently reached its apotheosis with the launch and promotion of *Death* cigarettes in the Europe³⁰. Here *Death*'s owners have turned health warnings into an 'in your face' gesture of proud defiance so that the risks of smoking are not only acknowledged, but held out as a badge of audacity, risk-taking and scorn on safe living.

The advent of the *Death* brand illustrates perhaps more completely than all previous argument, the ability of advertising to appropriate virtually any appeal—even a message overtly antithetical to the product—and turn it into a marketing edge using the massive advertising budgets available to the industry. This ability would appear to transcend all guidelines and thematic restraints on advertising copy and hence act to largely neutralise the intent of health warnings for some people.

Tobacco is an extraordinary product

Some commentators have argued that the ethics of advertising should be inextricably linked to questions about the ‘goodness’ of the products being advertised. Leiser³¹ and Lee³² argue that ‘the advertisement of a bad product cannot be good’, with Leiser arguing that persuasive and seductive appeals can be ethically defensible if they have been put to the service of promoting beneficial ends (for example, using nostalgic appeals to country life to sell fruit and vegetables or using scare tactics to persuade people not to drink alcohol before driving). This emphasis on the product rather than on the way it is advertised is at the heart of all concern about tobacco advertising. Critics of the RJ Reynolds’ *Joe Camel* cartoon character’s appeal to very young children have not been critical of the use of an anthropomorphic cartoon character in itself (cartoons have been often used to promote health), but rather of the use of the cartoon to promote *Camel* cigarettes to children. Critics of the use of sexuality to sell cigarettes are not generally opposed to sensual or erotic imagery, but to the use to which it is put: to make cigarettes seem attractive.

Herein lies the nub of opposition to tobacco advertising. Its critics argue that whatever its effects (and using reductionist methodologies, these are extraordinarily difficult to dissect from the contemporaneous influence of other tobacco control strategies³³) the *intention* of tobacco advertisers is by definition to promote tobacco use. The ‘brand switching’ argument is quite irrelevant to this concern, for a brand cannot be promoted without promoting smoking itself. If governments have policies to reduce tobacco use, policies that allow tobacco advertising are simply inconsistent with these.

By any standard, tobacco is no ordinary product. A recent US Surgeon General stated in the preface to the 1990 Surgeon General’s report on smoking: ‘it is safe to say that smoking represents the most extensively documented cause of disease ever investigated in the history of biomedical research’. The first section of this book documents the effects of tobacco use still further. Efforts to ban tobacco advertising have not been mounted because of ethical concerns for the imagery and persuasive rhetoric

employed, but because the intention of this advertising is to promote tobacco use. And there is a wealth of evidence that it succeeds in doing so⁴.

Being no ordinary product in causing the catastrophic degree of harm and cost to both individuals and the state that it does throughout populations, advocates of banning advertising argue that it is reasonable that tobacco should be subject to extraordinary controls designed to reduce this harm. Controlling advertising is but one form of such control.

Is there a 'right' to advertise?

Defenders of tobacco advertising tend to assume a free marketing philosophy where any restrictions on advertising are seen as ethically offensive to the sovereignty of business interests. As Milton Friedman has written: 'few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their shareholders as possible'³⁴. However, governments intervene in marketplaces in many ways, ranging from the outright banning of products already in a marketplace (e.g. thalidomide) or of newly developed products (e.g. many instances of unsafe toys, furniture, etc.), through restrictions on sales, packaging and advertising information requirements, to restrictions and bans on advertising. At one extreme of regulation, governments frequently exercise their rights to ban products outright, typically citing consumer protection from unsafe goods as their rationale. In many countries, certain therapeutic goods are available only through registered pharmacies with consumer access requiring a doctors' prescription. In many countries, the supply of alcohol, firearms and explosives, while not illegal, is strictly regulated and conditional. In Australia, it is illegal to sell high powered motorcycles to people with (beginners') provisional licenses. Finally, in some countries drugs such as strong analgesics and bronchodilators are freely available to consumers through pharmacies, but are not permitted by law to be advertised directly to the public because of concerns that advertising may promote inappropriate use.

This range of government intervention illustrates that restrictions on advertising represent only one strategy in the attempt to control the use of products that have known potential to affect adversely either those who use them or the general public. There is no more a 'right' to advertise than there is a 'right' to sell. Both activities are frequently subsumed by broader considerations of public benefit, welfare and safety. These considerations can be paternalistic³⁵ (justified by concern to protect individuals from the consequences of their own behaviour, particularly when it can be demonstrated that individuals have inadequate or

erroneous knowledge about the range, probability and severity of these consequences), or Millean³⁶ (based on concerns to restrain individual liberty if its expression has adverse consequences for others).

Some libertarians argue that paternalism is ethically unjustified — people should be free to risk harm to themselves provided that they can demonstrate that they are fully informed about the probability of, and the nature of, the harm they risk. While many people living in nations which have histories of health education about the risks of tobacco use are informed in general terms about smoking, their knowledge is often inadequate to any usual test of informed consent. This is much more the case in nations with high illiteracy rates and poor records in health education. And even if it could be established that smokers were well-informed about the risks they face, Goodin argues: ‘we do not leave it to the discretion of consumers, however well-informed, whether or not to drink grossly polluted water, ingest grossly contaminated foods, or inject grossly dangerous drugs. We simply prohibit such things, on grounds of public health, by appeal to utilitarian calculations of one sort or another (p587)’²².

No nation prohibits tobacco, and no internationally recognised public health agency has called for tobacco to be banned in the way that Goodin’s argument above might imply. Almost all international public health agencies, though, have called for tobacco advertising to be banned.

The cornerstone of arguments used by proponents of the continuation of tobacco advertising is that the only factor relevant to whether a product should be advertised is its current legal status. By this argument, the industry would agree that illicit drugs should not be advertised, but would presumably (along with most in public health) support the lifting of any restrictions on the advertising of condoms. This insistence on the current legal status of tobacco is indifferent to the history of research into tobacco whereby its consequences to health only became established long after its use and manufacturing infrastructure became widespread. As many have argued, if tobacco had been recently ‘invented’ and subject to the tests of safety required of food and drugs, no nation would release it onto the market in the way it is sold today.

The rejoinder to this by defenders of tobacco advertising is to make hollow calls for governments to declare tobacco illegal if they are sincere in their concerns. When governments ignore such taunts, supporters of tobacco advertising allege hypocrisy on the part of governments, pointing to their appetite for tobacco excise tax.

As argued above, concern to control use of any product can be addressed through a variety of policies, of which outright banning is the furthest extreme. Considerations of proportionality — making sure that restrictions and controls imposed are no broader than necessary to

achieve the desired ends—can make a decision to ban advertising while not banning the product entirely reasonable.

Is advertising 'free speech'?

Proponents of tobacco advertising have sought to argue that commercial speech is a form of free speech and, therefore, sacrosanct under constitutional guarantees in many democracies³⁷. This argument has been repeatedly rejected by courts which, in the USA, have ruled on matters as diverse as casinos and commercial activities on university campuses that governments have a right to restrict commercial speech through concern about wider community issues²¹.

Tobacco advertising and children

In many countries, it is illegal to sell tobacco to children. This is of critical relevance to any discussion on the ethics of tobacco advertising. Where laws forbid the sale of tobacco products to children, it is because children are said to be below an age where their informed consent can be assumed. It is, therefore, reasoned that tobacco advertising appeals directed at them or which can be shown to appeal to them are unethical in that they seek or cause to influence consent in people deemed legally incapable of consenting.

It has been repeatedly shown that children do indeed see, recall, admire, discuss and generally relate to advertising in the same sort of ways that adults are intended to do by tobacco advertisers. Apart from the obvious point that the tobacco industry makes much money from sales to underage smokers³⁸, the research on the impact of advertising on children makes nonsense of any pretence that advertising is 'targeted' only to adult smokers.

With the exception of premises where children are forbidden by law from entering (for example casinos, legal brothels, some premises licensed to sell alcohol), there are no advertising sites nor media to which children do not have the same access as adults. Some countries have arrangements, usually in the form of voluntary codes negotiated with the tobacco industry, that tobacco advertising will be 'restrained' in various ways. In entering such voluntary agreements, the tobacco industry typically asserts that it is not intent on targeting its advertising at children, further asserting that it regards smoking as 'an adult custom' and does not wish children to smoke.

For example, several countries in the past have endorsed voluntary agreements with the industry whereby cigarette advertisements will only

be screened on television late at night, and not placed on billboards closer than 200 metres from schools. In such arrangements, an admission is being made by government and industry, as parties to these agreements, that there is a case for trying to minimise the exposure of children to such advertising—that if they were exposed, the advertisements might succeed in the same intent that they have for adults.

In practice, the logic of partial or selective tobacco advertising bans is equivalent to the ambition to be 'a little bit pregnant'. Many children do not go to bed before the arbitrary times after which cigarette advertising is screened, and with the popularisation of video recorders, many children record programs including advertisements screened after their bedtime. The logic of banning tobacco billboards adjacent to schools is even more absurd. Here, it is being suggested that a child sighting such a billboard 195 metres from a school might be influenced by its message, but the same child sighting the same advertisement 205 metres from a school would somehow be immune from its persuasions.

Partial bans carry with them an ethical conviction that tobacco advertising should be controlled, but belie this conviction by allowing the very same advertising that is banned to be displayed in the different media still permitted to carry such advertising. Such absurdity can only be interpreted as the product of an ethical duplicity cynically put to the service of collusive governmental and industry posturing about their responsibilities to children.

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