



A call to reduce harm from tobacco pack marketing and bolster consumer health protection in New Zealand

The New Zealand Commerce Commission recently issued warnings to the major tobacco companies in New Zealand and stated that their use of the descriptors 'light' and 'mild' risked 'breaching the Fair Trading Act'.¹ We suggest that this action indicates a need to consider both the future of tobacco pack marketing in New Zealand, and the function of consumer protection law and agencies charged with protecting public health.

The issue of continued tobacco industry deception—The removal of remaining 'light' and 'mild' descriptors from tobacco packs will probably do little to ameliorate the effects of deceptive marketing to smokers. Such marketing has occurred over decades. Tobacco companies have anticipated and prepared for the greater regulation of all their marketing activities. For instance, in New Zealand and elsewhere, other descriptors and signifiers, such as tobacco pack colours, have been prepared to pre-empt moves to regulate the use of 'light' and 'mild'.² Evidence from the UK also reveals that banning the descriptors 'light' and 'mild' may be unlikely to correct mistaken beliefs, which are deeply held and reinforced by other reassuring terms, images and colouring in product marketing.³

Some time ago, tobacco marketers began pairing 'blue', 'fine', 'white' and 'silver' with 'light' and 'extra light'; this association has ensured that smokers recognise these words as substitutes for 'light'. Tobacco companies in New Zealand have also established blue and white pack colours as ways to signal the idea of 'light' and 'extra light'.⁴ These alternatives to 'light' and 'mild' are likely to ensure that the deception perpetuated on smokers will continue, albeit in a different guise.

These strategies mean that warnings to tobacco companies, such as the one recently issued by the Commerce Commission, will be insufficient to prevent continuing deception. Instead, comprehensive change is necessary.

Tobacco packages are a potent advertisement that makes every smoker a marketer for the brand they smoke. The advertisement is usually visible at the point of sale, each time smokers pull the pack out to light up, and each time they put the pack on a café table. The meticulously researched brand imagery featured on tobacco packages is eye-catching, appealing and likely to increase smoking.^{5,6} Increased smoking means increased harm to health, increased healthcare costs, and greater poverty for smokers and their families/whanau.

Research evidence shows that young people see cigarette packs as glamorous and use them as a 'badge' product.⁶ Thus the removal of this pernicious marketing will help reduce the risk that children and young adults will experiment with smoking, and become addicted.

The solutions for controlling tobacco pack marketing—To deal appropriately with 'pack marketing', we suggest the following complementary steps. First, increasing the graphic health warning to 100% of the front, top, bottom, and sides of the pack.

This would remove almost all effects of tobacco pack marketing. Second, introduce plain packaging,^{7,8} where a brand name could be featured in a standard type font (shape, size, colour, and location) on the 10% of the pack back that is currently not a graphic warning. Except for the plain brand name, tobacco packs would have a uniform regulated colour, shape, size, and texture.⁹

This addition to tobacco control will cost taxpayers nothing; as with graphic warnings, it will be the tobacco companies that properly bear the costs. By contrast, these measures stand to save taxpayers both dollars and heartache.

Upgrading regulatory law and agencies for consumer health protection—The Commerce Commission's recent decision came 19 years after they had first been notified of the deceptive behaviour practised by tobacco companies in New Zealand, and after they had been notified on a number of other occasions.¹⁰ Until the warning last month, neither the Commerce Commission nor the Ministry of Health had used the Fair Trading Act to move against such behaviour. In contrast, the Commission has taken tobacco companies to court to *increase* competition in the New Zealand market.¹¹ Ironically, the effect of that move was to promote more effective tobacco marketing to the New Zealand public.

The Commerce Commission's decision to not: (i) Act on 'light' and 'mild' in a way that would deter future such behaviour; (ii) Act to control other deceptive aspects of tobacco marketing in New Zealand,^{4, 12} and/or (iii) Require remedial action for the deception (or payments to enable such action, as required in Australia)¹³, suggests that more effective consumer health protection laws and structures are needed. This is particularly so for tobacco, due to the under-regulation of this extremely dangerous, addictive product.¹⁴

The systemic problems with New Zealand consumer health protection legislation include: (i) Fragmented government, with insufficiently clear responsibilities (e.g. the Commerce Commission has suggested that the Ministry of Health should cover tobacco consumer protection)¹⁰; (ii) Legislation that does not sufficiently take health consequences into account; (iii) Insufficient funding for consumer protection;¹⁰ and (iv) Lack of political action to promote greater protection of consumers' health, including penalties for deceptive actions that are harmful to public health. These problems have slowed progress on tobacco control in this country.

The solutions, at least for tobacco consumers, include making the Ministry of Health directly responsible for acting to protect consumers from deception practised by tobacco companies (including Fair Trading Act aspects). This would require sufficient extra funding and staff to deal with tobacco companies (the resources used by PHARMAC to confront pharmaceutical companies would provide an appropriate model).^{15,16} However, if the Fair Trading Act is to deal effectively with the general health aspects of consumer protection, it requires amendment. Additional provisions could include incorporating health impact assessment processes,¹⁷ and a precautionary approach, which could require the tobacco industry to prove that its behaviour was not deceptive.

The fundamental cause of all the problems outlined above is the continuing incentive for companies to maximise the profits they make from manufacturing and selling tobacco products. This profit motivation is the underlying barrier to efforts to develop

long-term consumer protection from these hazardous and addictive products. In parallel with the policy initiatives outlined above, the removal of tobacco distribution from the commercial arena would simplify consumer protection, and promote greater public health.¹⁴

Competing interests: All authors have undertaken work for health sector agencies involved in tobacco control.

George Thomson
Senior Research Fellow
Department of Public Health
University of Otago, Wellington

Nick Wilson
Senior Lecturer
Department of Public Health
University of Otago, Wellington

Janet Hoek
Professor
Department of Marketing
Massey University

References:

1. Commerce Commission. Media Release: Consumers warned 'light' and 'mild' tobacco likely to be just as deadly as regular strength. Commerce Commission. Wellington. 24 September 2008.
<http://www.comcom.govt.nz/MediaCentre/MediaReleases/200809/consumerswarnedlightandmildtobacco.aspx>
2. King B, Borland R. What was "light" and "mild" is now "smooth" and "fine": new labelling of Australian cigarettes. *Tob Control*. 2005;14:214–5.
3. Borland R, Fong G, Yong H-H, et al. What happened to smokers' beliefs about light cigarettes when "light/mild" brand descriptors were banned in the UK? Findings from the International Tobacco Control (ITC) Four Country Survey. *Tob Control*. 2008;17:256–62.
4. Peace J, Wilson N, Thomson G, et al. Recent changes in cigarette packaging in New Zealand may continue to mislead smokers. *N Z Med J*. 2008;121(1268).
<http://www.nzmj.com/journal/121-1268/2908>
5. Eadie D, Hastings G, Stead M, et al. Branding: Could it hold the key to future tobacco reduction policy? *Health Educ*. 1999;3:103–9.
6. Pollay R. How cigarette advertising works: Rich imagery and poor information. History of Advertising Archives, Faculty of Commerce, UBC. Vancouver. <http://www.smoke-free.ca/defacto/D057-Pollay-HowCigaretteAdvertisingWorks.pdf>
7. Freeman B, Chapman S, Rimmer M. The case for the plain packaging of tobacco products. *Addiction*. 2008;103:580–90.
8. Wakefield M, Germain D, Durkin S. How does increasingly plainer cigarette packaging influence adult smokers' perceptions about brand image? An experimental study. *Tob Control*. 2008;17:doi:10.1136/tc.2008.026732.
9. Cunningham R, Kyle K. The case for plain packaging. *Tob Control*. 1995;4:80–6.
10. Thomson G, Wilson N. Implementation failures in the use of two New Zealand laws to control the tobacco industry: 1989-2005. *Aust New Zealand Health Policy*. 2005;2:32.
11. Chapple I. Tobacco case needs work: High Court. *New Zealand Herald*. Auckland. February 16, 2002;p.C5.

12. Wilson N, Thomson G, Edwards R. Should New Zealand's Commerce Commission act on cigarette brand name deception? [letter] N Z Med J 2006;119(1244).
<http://www.nzmj.com/journal/119-1244/2295>
13. Australian Competition and Consumer Commission. ACCC resolves 'light' and 'mild' cigarette issue with B.A.T. and Philip Morris. Australian Competition and Consumer Commission. Canberra. 12th May 2005.
<http://www.accc.gov.au/content/index.phtml/itemId/607418/fromItemId/2332>
14. Thomson G, Wilson N, Crane J. Rethinking the regulatory framework for tobacco control in New Zealand. N Z Med J 2005;118(1213). <http://www.nzmj.com/journal/118-1213/1405>
15. Braae R, McNee W, Moore D. Managing pharmaceutical expenditure while increasing access. The pharmaceutical management agency (PHARMAC) experience. Pharmacoeconomics 1999;6:649–60.
16. PHARMAC. Briefing paper for the Minister of Health. PHARMAC. Wellington. December 1999. <http://www.pharmac.govt.nz/download/Post%20Election%20Briefing.doc>
17. Hubel M, Hedin A. Developing health impact assessment in the European Union. Bull World Health Organ 2003;81:463–4.