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Brazil: PM loses warnings case

Philip Morris (PM), the world's largest cigarette manufacturer outside China, and arguably the most aggressive in fighting effective tobacco control measures, has lost an important legal case about health warnings. PM had challenged Brazil's imposition of striking new graphic tobacco package warnings about serious disease; and although initially it won a favourable judgement, a higher court has now overturned this after an appeal by the Brazilian health ministry.

In 2009, Brazil launched a new series of 10 pictorial warnings for cigarette packs, the third set it has issued. The new warnings generated several complaints from the tobacco industry, particularly the largest two tobacco companies operating in the country, Souza Cruz, a subsidiary of British American Tobacco (BAT) and Philip Morris (PM). The tobacco industry union SindiTabaco in the state of Rio Grande do Sul also filed a legal complaint against the new warnings.

PM demanded exemption from displaying seven of the 10 new warnings on cigarette packs, at points of sale and on any other promotional materials, arguing that the images were grotesque. It also complained that they did not correctly depict the risks being described in the warnings' text, and would mislead the public by being scary, offensive and with a clear intention of creating aversion and rejection.

PM obtained an initial favourable decision from the second region federal court, but the federal Attorney General's office, as well as the national sanitary surveillance agency, Anvisa—the regulatory agency in charge of implementing and enforcing the warnings—and the federal public defence office appealed against the decision. In the appeal, these federal institutions emphasised that the judge's decision had violated the federal law of 1996 that restricts use and marketing of tobacco products. The law stipulates that all marketing materials associated with tobacco (as well as other substances) must have warnings about harmful effects, and that it is within the scope of the health ministry to establish the content of such warnings.

In November 2010 the superior tribunal accepted the government's arguments and agreed that PM must maintain all 10 warnings in circulation. The seven images that PM wanted to avoid showing were about miscarriage (a fetus in an ashtray), stroke, gangrene, death, myocardial infarction, toxicity, and lung cancer and emphysema.

The final decision also stated that the initial finding, in favour of PM, had violated Brazil's code of consumers' rights, which requires that all products and services need to have accurate and clear information about risks to health and consumers' safety. Additionally, the court found that it was Anvisa's mandate to establish norms, regulate, and to enforce and conduct surveillance of all products, substances and services that might have an impact on health, including cigarette sales and marketing.

The 2008 global adult tobacco survey found that 87.7 per cent of smokers recalled the existing pictorial warnings and 65 per cent of smokers were considering cessation attempts as a result of the warnings. After the judgement against its attempt to avoid most of the new warnings,

PM has one more chance to make a further legal appeal; it remains to be seen whether it takes up such an opportunity, or accepts that after such a decisive loss, it had better just circulate some of the world's most truthfully graphic depictions of what may happen to its customers.

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Brazil: two of the seven health warnings that Philip Morris did not want to put on Marlboro cigarette packs.