

## AD WATCH

*This article is based on a presentation at the Ninth World Conference on Tobacco and Health, held in Paris, France on 10-14 October 1994.*

## Tobacco advertising: the New Zealand experience

In theory, New Zealand has a ban on new tobacco advertising, including sponsorship – however, the New Zealand tobacco industry has found ways of circumventing the law – ways that have produced a plethora of new tobacco advertising material.

Tobacco advertising on New Zealand radio and television ceased in 1963, and at cinemas and on billboards in 1973. In 1990 the Smoke-free Environments Act was passed to ban all new tobacco advertising, and also new tobacco sponsorship advertising in all media – through direct and indirect advertising.

All tobacco sponsorship contracts signed before 17 May 1990 may continue until 30 June 1995. This corresponds with the date for the phasing out of such contracts in Australia, a provision incorporated because of the frequency of televised sporting events broadcast from Australia. The Act allows point-of-sale signs erected before 16 December 1990 to remain until 1 January 1995 providing they are not repaired or repainted.



Figure 1 A cigarette advertisement masquerading as a "price notice" to escape the ban on tobacco advertising.



Figure 2 Identical "price notices" are grouped together to circumvent the maximum legal size for notices.

Although the Act clearly prohibits new advertisements after 16 December 1990, the industry has exploited loopholes in the legislation, producing a flood of new tobacco advertisements because: (a) the wording of the legislation has not been sufficiently clear on all matters; (b) the legal advice to the Ministry of Health has been negative and has discouraged the Ministry, which is empowered to enforce the Act, from taking legal action against the tobacco companies; and (c) the long phasing out provisions allow the tobacco industry virtually unfettered power to advertise in the interim.

Section 22 of the Smoke-free Environments Act (1990) provides that: "No person shall publish, or arrange for any other person to publish, any tobacco advertisement in New Zealand."

"Tobacco advertisement" is broadly defined to include written, printed, or spoken words and the use of trademarks, in all media, however, the Act allows exemptions for "price lists" and "price notices", which may continue indefinitely. Unfortunately, these are not clearly defined.

Price lists are required to carry a health warning but there is no limitation on their size. A list of prices has often been affixed to the corner of large tobacco advertisements, with the industry claiming the whole advertisement to be a price list.

The size of price notices is limited by the accompanying Regulations, but no health warning is required. The Act allows retailers to "display (in accordance with the Regulations) inside the retailer's place of business, any notice identifying the tobacco products that are available for purchase in that place and indicating their price."

The tobacco companies have produced large, colourful advertisements that feature the price of the brand in one corner – often barely discernible (figure 1).

The industry then claims these new advertisements are "price notices" and exempt from the ban and may be displayed forever. Each of these "notices" may not exceed the maximum legal size of 297 × 630 mm, but a group of such signs is often placed beside each other to create a large area of advertising (figure 2).

Figure 3 shows a cluster of identical "price notices" for Holiday cigarettes – one of the least expensive brands – below the counter, close to confectionery items that are bought primarily by children.

It is not clear whether the notice may refer to only one brand or product. Health profes-





Figure 3 A cluster of "price notices" for Holiday cigarettes

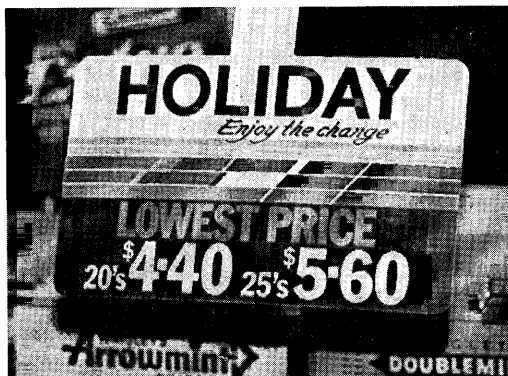


Figure 4 Two prices were shown on the same "price notice" after health professionals complained about industry practices.

sionals have argued the intention of the Act is that the notice should identify a number of products rather than one particular brand. The industry has reacted to our claims by putting two prices on the same notice, as is illustrated in figure 4.

As the rate of decline in cigarette consumption has tapered off, the tobacco industry claims the ban is not working. New Zealand does not, in effect, have a ban on advertising because the new advertisements and long phasing out period allow extensive advertising in retail outlets and sponsorship advertising in all media, including TV.

A major fashion and tennis event is sponsored under the banner of "Benson & Hedges". Promotional material for these two events this year featured a gold rectangle and the slogan "Where Dreams Turn to Gold". The gold rectangle carried information about the Fashion Awards in the same size and colouring as is used on Benson & Hedges cigarette packets (figure 5).

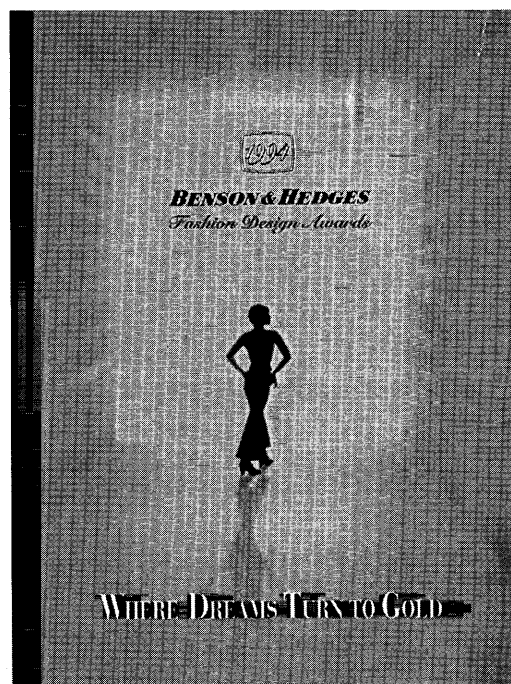


Figure 5 Promotional material for a Benson & Hedges fashion and tennis event featured a gold rectangle of the same size and colouring as that used on Benson & Hedges cigarette packets.

The manufacturer, WD & HO Wills, a subsidiary of BAT Industries, denied claims that the gold rectangle could be construed as representing a Benson & Hedges packet. Several media commentators thought otherwise. Gordon Clark, Creative Director for the advertising agency Saatchi and Saatchi, was asked what he considered to be the smartest, most creative buy he had spotted on TV in the last month. His reply:

The TV ads promoting Benson & Hedges sponsorship of the tennis, where the camera moves down a long tunnel to a doorway bathed in yellow light. I didn't believe in subliminal advertising until I saw this spot. Watch for the colour and shape of the doorway and the strategically placed graphics at the end. If that's not a cigarette pack, I'll move to Marlboro country.<sup>1</sup>

Tobacco sponsorship of the Benson & Hedges Fashion Awards must cease next year. ASH has been advised that WD & HO Wills plan to continue to sponsor the event, which will be renamed "The Gold Fashion Awards" – or a similar name using the word "gold" – and will be promoted with the use of a gold rectangle in all media. A legal question then arises as to whether a gold rectangle is deemed to be a tobacco advertisement.

To date, the Ministry of Health has not been prepared to challenge the tobacco companies on any of these new forms of advertising. ASH (NZ) is trying to raise funds for a private legal challenge – otherwise they could continue *ad infinitum*.

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<sup>1</sup> *Televiews*. Auckland, New Zealand: Television New Zealand 1994 Feb.