Making Big Tobacco Give In: You Lose, They Win

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Objectives. To better understand how the tobacco industry responds to tobacco control activists, we explored Philip Morris's response to demands that consumers in developing countries be informed about smoking risks, and analyzed the implications of negotiating with a tobacco company.

Methods. We reviewed internal tobacco industry documents and related materials, constructed a case history of how Philip Morris responded to a shareholder campaign to require health warnings on cigarettes sold worldwide, and analyzed interactions between (1) socially responsible investment activists, (2) Philip Morris management, (3) institutional investors, and (4) industry competitors.

Results. After resisting for 11 years, Philip Morris unilaterally reversed direction, and proposed its own labeling initiative. While activists celebrated, Philip Morris's president detailed privately how the company would yield little and benefit disproportionately. Activists portrayed the tobacco industry as preying on the poor and uneducated and used delegitimization to drive a wedge between the industry and its financial and political allies. When Philip Morris "gave in" to their demands, it exchanged negative publicity for positive public relations and political credibility.

Conclusions. Tobacco companies can appear to accommodate public health demands while securing strategic advantages. Negotiating with the tobacco industry can enhance its legitimacy and facilitate its ability to market deadly cigarettes without corresponding benefits to public health. (*Am J Public Health.* 2006; 96:2048–2054. doi:10.2105/AJPH.2005.075119)

The release of private, internal tobacco industry documents in 1998 disclosed "systematic and global efforts by the tobacco industry to undermine tobacco control policy."[1(p1)] Commenting on a report published in 2000 by the World Health Organization (WHO) about the tobacco industry,[2] Judith Mckay observed that it would be "premature to consider involving or consulting with the tobacco industry on [public health] policy issues."[3(p912)] In 2004, WHO recognized that the tobacco industry continued to use public relations campaigns to undermine tobacco control initiatives and explicitly warned governments and nongovernmental organizations: "Do NOT participate in industry-initiated dialogues—the industry portrays participation in these dialogues as endorsements for its programs."[4(p207)]

As the tobacco industry extends its global reach, some companies claim to have "turned over a new leaf." They provide tobacco-related health information, offer cessation guidance, coach parents regarding how to talk to children about smoking, and represent themselves as suitably responsible partners in tobacco control policymaking. Tobacco control advocates need to understand why WHO's exclusionary cautions remain warranted. We examined the resolution of a marketing controversy concerning developing countries to demonstrate how the tobacco industry can appear to accommodate public health demands, while securing strategic advantages. Company documents are used to describe how Philip Morris "gave in" to demands from shareholder activists and restored its credibility with investors and policymakers, while undermining delegitimization as a key tobacco control strategy and ceding little of value to public health.

METHODS

This study originated from the discovery of a 1991 document in which Philip Morris management announced a new health warning label policy to its board of directors.[5] During the period December 29, 2003, to October 11, 2005, we searched previously undisclosed tobacco industry documents that were made public under *State of Minnesota v Philip Morris, Inc*,[6] and were posted electronically as a result of the 1998 Master Settlement Agreement between 46 state attorneys general and seven tobacco industry defendants.[7] We used multiple electronic archives, including the Legacy Tobacco Documents Library at the University of California, San Francisco (at: http://legacy.library.ucsf.edu); websites of tobacco industry defendants; and Tobacco Documents Online (at: http://tobaccodocuments.org).

We began with combinations of the key words *health*, *warning,* and *label*, and examined all documents containing these terms. This led to additional search terms, such as the acronym XWN for "export warning." Using XWN as a search term, we recovered additional documents concerning health warning issues in the former Soviet Union and in Africa. This process of iterative searching is called snowball sampling.[8,9] We further searched the "File Areas" of Philip Morris executives who were responsible for labeling-policy decisions, and searched for names of shareholder activists who raised the health warning issue. We also interviewed Father Michael Crosby, who led the activists, and searched Academic LexisNexis for contemporaneous news reports. Because the Philip Morris labeling policy involved industry-wide consultations, we also searched for documents from domestic competitors including RJ Reynolds and Brown & Williamson (now merged as Reynolds American), as well as transnational ones such as Rothmans and British American Tobacco. Relevant documents were retrieved from the University of California, San Francisco's British American Tobacco Company (BAT) document archive (at: http://bat.library.ucsf.edu), as well as the Legacy Tobacco Documents Library archive. We also reviewed relevant publications regarding European Community public policy directives.

We used approximately 600 retrieved documents as well as background materials

to construct a case history. Within this case, we analyzed the strategic interactions of 4 sets of participants: (1) socially responsible investment activists, (2) Philip Morris management, (3) stakeholders including institutional stock investors, and (4) tobacco industry competitors.

RESULTS

Background

In 1979, spurred by a World Health Organization report,[10] tobacco control advocates began expressing concerns about the marketing of cigarettes in developing countries.[11–13] They saw that declining cigarette consumption in the United States was driving aggressively expanded promotion abroad. These same advocates protested that the tobacco industry was targeting people who had little experience with commercial marketing or cigarettes engineered to deliver consistently high doses of nicotine and who could not afford additional health or financial burdens.[14–16]

In 1980, a coalition of religious organizations led by Father Michael Crosby[14] decided to intervene to protect the targets of "aggressive promotion tactics" by using the then novel tactic of a corporate shareholder resolution in order to obtain information about industry marketing practices.[17–19] (The US Securities and Exchange Commission [SEC] requires corporations to hold annual general meetings where stockholders vote on management proposals and may present resolutions of their own.[20]) Crosby's experience of widespread Marlboro advertising in Costa Rica led him to focus on Philip Morris,[17] although shareholder resolutions were also filed at R.J. Reynolds and possibly other US tobacco companies.[21]

At the Philip Morris April annual general meeting, shareholders decide resolutions submitted by the previous November. The Crosby coalition's 1980–1981 resolution called upon Philip Morris to: (1) describe the size and market share of the company's "Third World" markets; (2) report on advertising and promotion, "including projections for the next five years"; and (3) describe its policies with regard to 3 WHO recommendations[10]: (a) "banning promotions of tobacco"; (b) "limitation of cigarette tar and nicotine levels . . . to that in the United States"; and (c) "[i]nforming consumers of the risks of tobacco use in countries where there may be little or no regulations concerning health risks for smokers."[19]

Philip Morris management opposed the resolution,[22] and devoted a third of its 1981 executive preparation manual to the issue.[23] They denied any "causal connection" between smoking and disease,[22] and insisted that consumers worldwide were adequately informed of smoking "risks."[24] The company asserted that it was opposed in principle to intervening in the prerogatives of local governments,[25] but it also expressed commercial concerns; namely, that sales would suffer if Philip Morris products were thought to be more dangerous than those without warning labels.[26]

The 1980–1981 resolution[18–20] won 3% of the shareholder votes,[27] enough by SEC rules to qualify for resubmission the following year.[17] However, despite a growing coalition of supporters,[16,28–31] the 1981–1982 resolution failed to win 6% of the votes required for further submission.[32] By SEC rules, the resolution could not be resubmitted for the balance of a 5-year period.[33] The 1981–1982 resolution, however, drew a critical, if ambivalent, response from institutional investors, which would have repercussions a decade later.[34–36] Yale University supported Philip Morris's refusal to release proprietary information, but criticized management for its unwillingness to cooperate with the socially responsible investment advocates.[37] Bryn Mawr College abstained from the vote because of similarly conflicted sentiments;[38] Connecticut Mutual Life Insurance voted for the resolution despite reservations.[39]

Shareholder activists kept the resolution alive for 11 years by focusing negative attention on the tobacco industry's behavior. A 1990–1991 resolution introduced at the April 1991 annual general meeting won 7% of the votes, which Philip Morris President and board vice chair R. William Murray acknowledged was "the largest favorable response ever to a proposal . . . not supported by management."[5] The April 1991 resolution, entitled "Establishing a Global Uniform Labeling Minimum," resolved: "that . . . users of our cigarettes throughout the world will be appropriately and clearly warned of the health hazards caused by smoking . . . based on similar warnings . . . demanded in the United States and the European Economic Community."[40] After 11 years of resistance and faced with the return of the shareholders' resolution in 1991–1992, Philip Morris introduced its own warning label initiative. Murray explained to Philip Morris's board how a "voluntary" initiative of management's devising would cost the company little, but would benefit it disproportionately.[5]

Turning Shareholder Activism Into Issues Management

Murray's December 1991 board presentation disclosed that Philip Morris had been considering a global health warning label policy for at least three years.[5] Privileged documents suggest that Philip Morris had been consulting with other tobacco companies regarding labeling,[41–44] in parallel with 1988–1989 European Community discussions about rationalizing tobacco warning labels. The European Community discussions were provoked by Ireland's 1986 passage of health warning regulations and its subsequent refusal of unlabeled cigarette imports. This resulted in a directive (89/622/EEC) which was issued in May 1989 that mandated health warnings throughout the European Community.[45,46]

As early as December 1988, an executive of the European branch of Burston-Marsteller, Philip Morris's public relations consultants, had queried Philip Morris International chief executive officer Geoffrey Bible regarding "whether the EEC [European Economic Community] approach might not make sense worldwide,"[47] but Philip Morris was also tracking opposition to the directive. In April 1989, for example, Philip Morris International had solicited a Belgian law firm's opinion regarding whether Directive 89/622/EEC was legally defective.[48]

In September 1991, when Crosby notified Philip Morris of his intent to resubmit the resolution "Establishing a Global Uniform Labeling Minimum" at the 1992 annual general meeting,[49,50] chief executive officer Michael Miles queried top executives: "Should we preempt [Crosby] by just going ahead and doing

it?"[51] For two months, memos circulated among Philip Morris executives analyzing the potential consequences of the preemptive action.[52–57] By November, Philip Morris International senior vice president Dinyar Devitre was confident enough to explore the idea with William Ryan, chief executive officer of Rothmans, a transnational tobacco competitor.[58] Devitre's confidence, however, would prove premature.

The December speech prepared for Murray to deliver to his directors announced:

"We have decided to print the US Surgeon General's health warning on all PM [Philip Morris] cigarette packs which currently have no labels . . .. Implementation is underway. We expect to convert approximately 60% . . . by April 1 [1992] and the remainder by the end of 1992."[5] Murray explained that Philip Morris had been waiting for "such time that we could use the initiative as a bargaining chip with Congress. That occasion did not materialize."[5]

But the health warning issue had become a source of "growing agitation among a number of . . . important constituencies," and specifically, was "contribut[ing] to the decision to divest Company stock."[5] Indeed, while Philip Morris publicly denied any effects of the Crosby group's activities[59,60] (although the company acknowledged them internally[61]), the campaign by responsible investment activists was fueling pressure on institutional investors to eliminate their tobacco stock investments.[34–36]

Transmuting Public Pressure into Strategic Advantage

According to Murray, Philip Morris planned to use its labeling initiative in 4 ways: (1) to eliminate shareholder activism, "We will inform Father Crosby of the initiative and ask him to withdraw his proxy proposal"; (2) to counteract university divestments, "We will use the initiative in future discussions related to divestment to demonstrate a moderate, sensitive and responsive posture"; (3) to promote a responsible corporate image, "We can cite the initiative to demonstrate Philip Morris' consistent track record on matters of corporate responsibility"; and (4) to restore influence with policymakers, "We will use the initiative in Washington, informing our friends and moderates in the Congress and the Administration."[5]

The shareholder coalition attempted to negotiate details: languages to be used, whether the initiative would be extended to advertising, how it would be publicized;[62] however, by February 5, 1992, the coalition had apparently agreed to Philip Morris's policy on Philip Morris's terms.[63] In competing public statements, Father Crosby claimed a victory for his coalition's 11-year campaign and highlighted the "half trillion cigarette[s]" that would henceforth carry health warning labels.[64] Philip Morris emphasized that "less than 10% of [its] overall cigarette sales" would be affected.[59]

In March 1992, Philip Morris responded to concerns from institutional shareholders about overseas labeling. Chief counsel Murray H. Bring assured Stanford University President Donald Kennedy "that by the end of this year, the US Surgeon General's warnings, or some other appropriate warning, will appear on every Philip Morris cigarette package sold worldwide."[65,66] Stanford chose not to divest at the time.[67] A similar exchange ensued between Bring and the University of Scranton.[68–70]

Philip Morris planned to maintain this "low key approach," and "not attempt to 'go public' to make news." Instead, they planned to use the [labeling] "initiative as a tactical tool to address specific circumstances."[61] This may have conflicted with publicizing the initiative as a demonstration of corporate responsibility. A draft statement was intended to promote the initiative as "another in a number of steps taken by Philip Morris in recent years to respond to concerns related to its cigarette business."[61] However, we found no evidence of how, if at all, it was used.

Although we discovered no documents that describe how Philip Morris used its labeling initiative to restore influence in Washington, the company used it in other capitals to "establish a dialogue with the Ministry of Health to work out . . . a warning acceptable both in content and language. We have already followed this route in the Dominican Republic and in the Philippines."[71] The language Philip Morris negotiated with the Philippines ("Warning: Cigarette Smoking is Dangerous to Your Health"[72]) was neither as explicit nor as informative as the US Surgeon General's warnings (e.g., "Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy," or "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight"[73]), that the company was otherwise volunteering to provide.

According to Murray, the company conceded little to the activists' goal of informing people in developing countries about the health risks of smoking. "Approximately 90% of the Company's worldwide cigarette sales are already labeled," he told his board. The largest Philip Morris market still receiving unlabeled cigarettes was Italy, where government regulation was expected shortly, and much of the remainder were duty-free cigarettes sold in the West.[5]

The information content of the new warnings was also questionable. The Dominican Republic, for example, ended up with weaker warnings than the Philippines when Philip Morris negotiated a change to the Health Ministry's proposed language from "Fumar *es* perjudicial . . ." ("Smoking *is* hazardous . . .") to "Fumar *puede ser* perjudicial . . ." ("Smoking *may be* hazardous . . .") [italics added].[74,75] In addition, the labels would mostly be printed in English or French, languages possibly not well known by consumers, who might not even be able to read. "I checked the official languages of some of the countries where we already have warnings," Philip Morris marketing communications manager Leslie Greher reported to public affairs director Matt Winokur. "In many cases we do not use the first-listed or even second-listed language."[76]

Finally, as Greher observed to Winokur, consumers stood to gain little from even well-translated warnings. "The bottom line is that the probability of a consumer noticing and/or understanding the warning will not be substantially increased."[76] As a 1992 British American Tobacco Company assessment of the issue noted, "Smokers have a low level of awareness and recall with regard to pack health warnings . . . generally ignor[ing] the warning once it becomes a familiar sight."[77]

Murray's speech to the board suggested the labeling initiative's costs would be modest. The company would scrap about $1 million in obsolete packaging, and invest $4 million to develop new materials[5]: a fraction of Philip Morris's 1991 worldwide tobacco revenues of

$6.5 billion.[78] Murray also minimized the potential for lost sales resulting from consumers being put off by the labels.[5] Some Philip Morris executives even predicted that US-style warning labels would give their cigarettes "a marketing advantage . . . set[ting] the product apart as truly American."[79] The company's African experience later confirmed this. The regional director had worried that warning labels "might have a negative impact on . . . sales, especially if the competition did not follow," but by December 1993, he reported, "There was no negative impact; on the contrary, in some places it may be a positive."[80] Philip Morris had also "carefully examined the potential legal ramifications," Murray noted, and determined that "the initiative would have no significant impact on litigation in the United States or overseas."[5]

Outcomes and Interests

According to executive coaching materials prepared for Philip Morris's 1994 shareholders' meeting, Philip Morris's initiative was essentially completed by the spring of 1994; Morocco was the sole exception.[81] Correspondence between Philip Morris and its Moroccan trading partner, the state monopoly Regie des Tabacs Marocaine (RTM), suggests that RTM was engaged in negotiations for language weaker than the US surgeon general's warning,[82,83] as had previously been accomplished in the Philippines and the Dominican Republic.[71,73–75]

Early predictions of unconditional support from competitors,[58,84] however, failed to materialize. Instead, James Seddon of Rothmans Legal Services Department wrote: "The implication of your Company's move for industry affairs and for lawyers are many and complex . . . The issue is so important that it merits a meeting of the various company principals, the worst position being that the various companies become divided on the treatment of this issue."[85]

At that London meeting in January 1992, "[e]very company opposed PM's decision."[86] They insisted on caucusing in Philip Morris's absence, and when the Philip Morris representative was invited back, he was presented with a list of objections, which began with disappointment "that PM did not consult with [us] before making this decision."[86] Seddon noted "that PM's unilateral decision . . . was a departure from the industry's tradition of consultation, especially on matters affecting liability litigation."[86]

The companies feared that voluntary concessions would give away "the defense that 'smokers are already informed,'" while "tempting further labeling initiatives . . . [and] demands for 'uniform practices' in other areas."[86] They worried the concessions would (1) give the Americans an unfair advantage over the British, who were debarred from making Health Ministry attributions comparable to the US surgeon general's warnings, (2) undermine Germany's court challenge to European Community labeling regulations, and (3) complicate European negotiations over labeling duty-free cigarettes.[86] Most of all, the other companies questioned Philip Morris's motives, and asserted that Philip Morris's "'real' reason [for the initiative was] 'the share price'," which they felt no need to support.[84] Philip Morris was accustomed to labeling in its domestic market (where warnings negotiated between Congress and the tobacco industry[87] were weaker than what had been recommended by the Federal Trade Commission[88]), and for the company, the numerous advantages of "giving in" clearly outweighed the costs of ongoing resistance to the activist coalition's efforts.

DISCUSSION

Although Philip Morris minimized it, continued pressure from the Crosby coalition prodded the company to offer a "voluntary" labeling initiative. Philip Morris acknowledged that the labeling controversy was feeding into sensitive matters, notably the academic tobacco stock divestment discussions of 1990–1992,[34] and the coalition was winning too many battles before the SEC, which expanded the terrain upon which shareholders could challenge corporate management.[89] It is important, however, to consider just what the company conceded and what it got.

As Murray predicted, Philip Morris's costs for enacting its global labeling initiative were outweighed by the returns. Philip Morris bolstered claims of corporate social responsibility, enhanced relationships with institutional investors and governmental allies, augmented sales, improved conditions for tobacco stocks by eliminating an argument for divestment, and sidelined activists. Little, however, was gained for the people the activists sought to protect. Labeling was extended to a few small markets, in possibly irrelevant languages, while the industry negotiated watered-down wording. Although the activists made what must have seemed at the time to be plausible assumptions about the value of extending labeling worldwide, the industry already knew that the then-current warning label standard—plain print in a box (tombstone labeling)—was of limited effectiveness. This has been substantiated by subsequent research.

Compared with other strategies (taxation, ad bans, counter-advertising), health warning labels have not been particularly effective for reducing cigarette consumption.[88] Until Canada introduced oversized, graphic warnings in the late 1990s,[90–93] neither the content, format, nor placement of cigarette package warnings had been designed with clear health communication objectives in mind.[87] The United States standard tombstone-style warnings fail all requirements of salient design: they are too small, do not stand out, are printed vertically and on the pack's narrowest section, and lack attention-getting icons or graphics.[88,94] The US Federal Trade Commission criticized the lack of saliency of warning labels as early as 1981,[95] and a 1990 study found continuing problems with even the 1984-updated US Surgeon General's warning labels. The 1990 study recommended improved wording, increased size, and bolder design,[96] the same features that Canadian studies show to be most salient.[90–92] (Philip Morris consistently supports FDA regulation of the "text of health warnings"[97] but never mentions size or design.)

If warning labels were so ineffective, why did Philip Morris resist the activists for more than a decade, and why did other tobacco companies continue to resist labeling even after Philip Morris conceded? In addition to a general unwillingness to bow to outside pressures, Philip Morris and other companies feared that voluntary labeling could be taken as a legal admission of their product's dangers, or as an acknowledgment of negligence for not warning sooner. As late as November 1990, Philip Morris outside

counsel cautioned that "placing a warning on cigarettes sold in a particular country . . . might be seen as admitting liability."[98] Philip Morris's competitors objected to Philip Morris's unilateral action, which they believed created complications in their home markets.

Another possible explanation for Philip Morris's reluctance is that labels disrupt the seductiveness of package designs.[99] A Philip Morris spokesperson's guide from the period speaks of "package design" as "a valuable commercial asset" which "shareholders . . . have a right to insist that warnings not deface."[100] As recently as 2002, a Philip Morris spokesman worried that expanded package warnings would not leave room enough "for company trademarks and other brand information."[101]

Study Limitations

We cannot claim that we have retrieved every extant document that is potentially relevant to this case, because of the voluminous archives and their limited indexing at the time of this study. It is possible that there are other relevant documents that were destroyed or never released.[102] All archival research is fundamentally interpretive, and involves retrospective examination of documentary evidence; we made efforts to consider alternative interpretations and to position our account within the context of the time by examining other data sources.[103]

Conclusions

This case study illustrates that, although direct engagement with the industry can focus attention on tobacco control issues, negotiations or settlements may undermine delegitimization and provide the industry with opportunities to improve public relations, and in the end, garner relatively little for public health. The Philip Morris shareholder resolutions questioned the legitimacy of the tobacco industry's business practices, and was an effective strategy for influencing public opinion and disrupting the industry's relations with allies.[34–36,104,105] The industry-focused media campaign integral to California's highly effective tobacco control program, for example, delivers a strong delegitimizing message,[106] as do successful campaigns in Canada and elsewhere.[105]

The Crosby campaign furthered tobacco industry delegitimization by portraying an industry that preys upon vulnerable people in the developing world, a matter of concern for institutional tobacco stockholders already sensitized by the South African divestment movement.[34–36,67] As Philip Morris's Murray acknowledged, the labeling campaign's greatest impact on Philip Morris was that it drove a wedge between the company and its financial and political allies,[5] an observation seconded by Father Crosby's own assessment of the accomplishments of his shareholder campaigns.[107]

But Philip Morris moved from strategic disadvantage to advantage precisely when it finally "gave in" to the activists' demands. This case analysis suggests that negotiating or settling with the tobacco industry may potentiate more risks than rewards, a conclusion that is in line with earlier studies of tobacco industry boycott settlements.[104,108] Perhaps the only goal worth the risks of negotiating directly with the industry would be a plan to end the for-profit manufacture and marketing of tobacco products. ■

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This article was accepted November 3, 2005.

Contributors

N. Wander conducted the research, performed the analysis, and was the principal author of this article. R.E. Malone designed the research, obtained the funding, collaborated on the analysis, and contributed substantially to the writing of this article.

Acknowledgments

This work was funded by the California Tobacco-Related Disease Research Program (grant 11RT–0139) and the National Cancer Institute (grant CA095989).

The authors thank Geraint Howells of Lancaster University School of Law for insight into European Community tobacco directives, and the members of their research team—Patricia McDaniel, Naphtali Offen, Elizabeth Smith—as well as the other co-presenters of the 2005 National Conference on Tobacco or Health panel "Co-Opting the Tobacco Control Movement: Philip Morris' 'Extreme Makeover'"—Stella Bialous and Anne Landman—for their feedback in the development of this paper.

Human Participant Protection

This study was approved by the committee on human research of the University of California, San Francisco.

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