



### Episode Details:

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Title: Episode 35: Tobacco Company Corrective Statements at the Point of Sale

Description: In this episode, we're talking about the corrective statement signs that tobacco companies are currently being required to post at the point of sale. These signs are part of the results of a court case decision from 2006 that convicted major tobacco companies of racketeering – for a decades-long conspiracy to deliberately mislead the public about the health risks of smoking and secondhand smoke and about the addictiveness of their deadly products. We'll cover some background on what led to this requirement, what the requirements really are, and how tobacco prevention and control advocates can use this as an opportunity to work toward change.

### Transcription:

You're listening to the Counter Tobacco Podcast. I'm your host for today, CounterTobacco.org Managing Editor Mollie Mayfield. On this podcast, we aim to highlight the role the tobacco industry's influence at the point of sale plays in tobacco use and tobacco-related harm and what's being done to reduce that influence and to improve community health and health equity. Today, we're talking about the corrective statements that tobacco companies are currently being required to post at the point of sale.

If you've walked into a convenience store or gas station recently, you may have noticed some new signs posted near the tobacco display talking about the health harms of smoking and how cigarette companies designed cigarettes to be addictive.

These signs aren't part of your local health department's initiatives to educate the public – they are actually part of the long-awaited result of a court case decision from 2006 that convicted major tobacco companies of racketeering – for a decades-long conspiracy to deliberately mislead the public about the health risks of smoking and secondhand smoke, about the addictive nature of nicotine, for manipulating the nicotine delivery of cigarettes to make them more addictive, for deceptively marketing cigarettes as "light" or "low tar" while knowing full well that those cigarettes were just as dangerous as other cigarettes, for targeting the youth market, and for not producing safer cigarettes.

But why are these statements being posted in stores now when the ruling was 17 years ago? Of course because the tobacco industry has been fighting to delay them and weaken them – just like they continue to fight to delay and weaken other life-saving measures that reduce the harm their products cause – like increased taxes and menthol bans.

The verdict was a result of a lawsuit brought by the US Department of Justice in 1999, and six public health groups that intervened in the case in 2005: Tobacco-Free Kids Action Fund (a 501(c)(4) affiliate of the Campaign for Tobacco-Free Kids), American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights and National African American Tobacco Prevention Network. It was filed under the Racketeer Influenced and Corrupt Organizations or "RICO" Act.

The suit also included monetary claims – for forfeiture of illegally obtained profits and for reimbursement of tobacco-related medical expenses and funding for tobacco prevention programs, but those claims were unfortunately dismissed or not allowed as remedies.

In the over 1,500 page opinion that the presiding judge, Judge Gladys Kessler, wrote, she noted that the tobacco companies *"have marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted."* She also noted that, *"over the course of more than 50 years, Defendants lied, misrepresented, and deceived the American public, including smokers and the young people they avidly sought as 'replacement smokers,' about the devastating health effects of smoking and environmental tobacco smoke, they suppressed research, they destroyed documents, they manipulated the use of nicotine so as to increase and perpetuate addiction, they distorted the truth about low tar and light cigarettes so as to discourage smokers from quitting, and they abused the legal system to achieve their goal – to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system."*

This racketeering verdict was important for other monumental reasons as well. In addition to requiring the posting of these corrective statements, the ruling also prohibited tobacco companies from using the terms "low tar," "light," "ultra light," "mild" and "natural," which they used to mislead consumers about the health risks of smoking. This regulation also became part of the 2009 Tobacco Control Act. The ruling also expanded requirements for publication of tobacco companies' internal documents and required the tobacco companies to report marketing data annually to the government.

The "corrective statement" signs are intended to correct the record on the topics the tobacco industry lied about and to hopefully prevent the tobacco companies from committing similar fraud in the future.

The tobacco industry spends the large majority of all of their marketing dollars in the retail environment – to the tune of over \$8.6 billion dollars in 2021 alone, amounting to nearly \$1 million per hour. And they're spending it there for good reason – because they know exposure to tobacco marketing in retail stores leads kids to start using tobacco products and makes it harder for adults who currently use tobacco to quit. Now, thanks to this ruling, tobacco companies must also use the retail environment to tell the harsh truth about the deadly tobacco products they aggressively market and sell and how they have lied about their health impacts for decades.

So, what exactly do the signs look like?

There are 17 different versions, including statements like:

- Smoking kills, on average, 1,200 Americans. Every day.
- Cigarette companies intentionally designed cigarettes with enough nicotine to create and sustain addiction.
- All cigarettes cause cancer, lung disease, heart attacks, and premature death – lights, low tar, ultra lights, and naturals. There is no safe cigarette.
- Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA intentionally designed cigarettes to make them more addictive.
- When you smoke, the nicotine actually changes the brain – that's why quitting is so hard.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, severe asthma, and reduced lung function.

We'll link to images of the signs in the show notes and the full text of all 17, but they were designed by communications experts hired by the DOJ – the Department of Justice. They are black with white text with a teal section on top with black text, and contain a teal and magenta asterisk symbol.

According to the text of the court order [text of the court order](#), retailers are required to post a single sign that is 144 sq inches and “placed a highly visible location within 48” of the main customer entrance of the store, that can be seen by customers as they enter the store, and is at least 48” above the floor.”

Smaller “kiosk”-type stores will be required to post the sign “near the selling window, highly visible to the customer, and that can be seen by customers as they approach or are standing at the selling window. “

The requirement to post these corrective statements at the point of sale actually follows requirements to publish the same statements in newspapers and on television - so those ran in 2017 and 2018 - on their websites (so that started in November of 2018 and runs in perpetuity – there's no requirement to end or that that should end at any particular point), and they've

also been required to post them on cigarette packs (a requirement which ran between Nov 2018 and 2021 for two weeks at a time, three times a year over the course of two years).

Retailers are required post an initial sign now starting now - October 1, 2023 (that's when the enforcement of it starts), and then will be required to rotate the signage to post a different message between July 1, 2024 and September 30, 2024. The signs are also available in Spanish, and the Spanish-language versions must also be posted in geographic areas of the US where there are high proportions of residents that speak Spanish.

You may also be wondering: Why are retailers required to post these signs if it was the tobacco companies that deceived the public?

Well, many retailers – to the tune of about 220,000 across the country - have contracts with tobacco companies that impose requirements on how tobacco products are displayed, promoted, and priced in retail stores (listeners, you can learn more about these contracts in our [previous podcast episode all about the contracts between tobacco retailers and tobacco companies and their impact on the retail environment](#)). So now, major tobacco companies including Altria, Philip Morris USA, R.J. Reynolds Tobacco Company, and 4 cigarette brands owned by ITG Brands LLC, have been required to modify those contracts with retailers to also require retailers to post signs with corrective statements.

Retail trade associations – the National Association of Convenience Stores and the National Association of Tobacco Outlets also were part of the negotiations in determining appropriate requirements for this specific remedy as an outcome of the case. Again, you'll see them at 220,000 retailers across the country.

Another key question: how will posting of the signs be enforced?

So, enforcement of the requirement starts, as I stated, October 1<sup>st</sup>, 2023. Tobacco companies will be required to contract with an auditor to ensure retailers are posting the signs as required. The auditors won't visit every store of course, but will inspect a random sample four times throughout the required posting time period. There will also be a tip line that the general public can use to report retailers that are out of compliance, and the auditors will then follow up on those tips. If a retailer has repeat violations of noncompliance, they may be required to post a second sign or pay a fine to the tobacco company. And if more than 15% of retailers with a contract are found noncompliant, the tobacco companies could also face millions of dollars in fines.

So, what will the ultimate impact of these signs be?

Maybe they'll encourage folks to start thinking about quitting. Maybe they'll encourage retailers to re-think selling tobacco.

While the signs will sit beside much larger displays of tobacco products and advertising at the point of sale, they are noticeable, AND they could also serve as an opportunity to engage

retailers and other community members in conversations about ways to limit the tobacco industry's influence going forward.

This is a really prime opportunity to educate both decision makers and the public about tobacco industry contracts with retailers – since the retailers are only being required to post the signs because of those contracts - and ways to limit their impact on public health.

For instance, the contracts often dictate pricing and promotions for tobacco products in retail stores – but local and state jurisdictions can prohibit discounts on tobacco, set minimum prices for each type of tobacco product, and prohibit the redemption of coupons.

The contracts dictate how and where tobacco products and advertising are displayed in stores, but there are ways local and state jurisdictions can limit advertising and displays in stores, too.

In addition, policy solutions that restrict retailer density (through [licensing or zoning](#)) that limit the number, type, and/or location of tobacco retailers in our communities can also help. These are all ways to limit tobacco companies' influence in our communities.

The posting of these corrective statements at the point of sale is also a great time to educate the public about tobacco companies' decades of deception – for example, as the Oklahoma Tobacco Settlement Endowment Fund (TSET) is doing with their Tobacco Stops With Me media campaign: <https://stopswithme.com/corrective-statements-assets/>. So, they've designed social media graphics, videos, and print ads editing the court-ordered statements to be even more explicit about the tobacco industry's priorities of profit over people.

So here's a clip from one of those videos: "Big Tobacco lied for decades about manipulating nicotine in cigarettes. Legally, here's what tobacco companies are forced to say now. Here's what they're really saying. Get the truth behind the lies at stopswithme.com, a program of TSET."

So in that video, they're crossing out the text "Altria, R.J. Reynolds and Lorillard intentionally designed cigarettes to make them more addictive" and replacing it with "We intentionally designed cigarettes to make sure people got hooked and stayed hooked"

The corrective statement signs may be a way to spark conversations with retailers about transitioning away from selling tobacco entirely or making other voluntary changes in their stores, like reducing tobacco advertising that is not required under their contracts with retailers or moving products away from kid-friendly items.

It's also a great opportunity to point shoppers seeing these signs in stores towards quit-lines and other cessation resources, perhaps by requiring quit-line information to be posted at the point of sale as well or adding the number to materials that retailers can voluntarily post in their stores.

We're looking forward to seeing all the different ways that states and local jurisdictions are able to build on these messages in retail stores to make an impact in their communities and push back against the harms that tobacco companies continue to inflict.

That's all for today, folks. Thanks for listening, and I look forward to you joining us again next time! In the meantime, you can find more information about retail tobacco control at our website [CounterTobacco.org](http://CounterTobacco.org), subscribe to our monthly newsletter, and follow us on social media.

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#### Resources:

- Read the [full text of these court-ordered corrective statements](#) and see [images of all 17 point-of-sale signs](#).
- Read Judge Kessler's [final opinion](#) and the [court order](#)
- History of the case:
  - [23 Year History of the Racketeering Lawsuit Against the Tobacco Industry: Guilty of Deceiving the American Public](#), *American Cancer Society Cancer Action Network*
  - [United States vs. Philip Morris \(1999\)](#), *Public Health Law Center*
  - [Timeline: United States v. Philip Morris USA Inc., et al.](#), *Campaign for Tobacco Free Kids*
  - [U.S. Racketeering Verdict: Big Tobacco Guilty as Charged](#), *Campaign for Tobacco-Free Kids*
  - [Department of Justice Lawsuit Against the Tobacco Industry](#), *American Cancer Society Cancer Action Network*
- More on the corrective statements at the point of sale:
  - [Starting July 1, Tobacco Companies Must Post Signs About Health Risks of Smoking at About 220,000 Stores Across U.S. – Signs Stem from 2006 Racketeering Verdict Against Companies](#), *Campaign for Tobacco-Free Kids*
- Media campaign: ["Tobacco Stops With Me" Corrective Statement Media Campaign, Oklahoma Tobacco Settlement Endowment Fund \(TSET\)](#)

