



## PROHIBITING PRICE PROMOTIONS AND COUPON REDEMPTIONS BENEFIT PUBLIC HEALTH: RESPONSES TO MISLEADING NATO/SWEDISH MATCH ARGUMENTS

---

Public health efforts to protect youth from the tobacco industry in the point-of-sale environment are gaining momentum nationwide. The tobacco industry is organizing to oppose these efforts. For example, the National Association of Tobacco Outlets (NATO) and cigar and smokeless tobacco company Swedish Match recently launched a website for retailers with misleading arguments and information on the impact of local ordinances targeting the point of sale. The website is called Tobacco Ordinances – Take Another Look (TOTAL) and addresses policies related to price, flavored products, legal minimum sale age of 21, and others.

Tobacco companies spend the vast majority of their total marketing on price-related strategies in the retail environment.<sup>1</sup> Tobacco companies know that higher prices are likely to deter youth from starting or continuing to smoke. Since the industry needs to recruit new smokers to keep the tobacco business profitable, it is desperate to protect its ability to attract youth at the point of sale, regardless of the impact on the health and welfare of young people.

The industry's arguments do not withstand scrutiny. Below, we provide responses to each of its false claims.

### **Tobacco Companies Invest Heavily in Price Discounts and Promotional Efforts That Target Kids**

- In 2014, the top 5 cigarette companies spent over \$6.7 billion on price discounts for cigarettes (e.g., off-invoice discounts, buy-downs and voluntary price reductions to reduce the price of cigarettes to consumers), accounting for nearly 80 percent of total cigarette company marketing expenditures and making it by far the largest marketing expense category. Cigarette companies spent an additional \$521 million on coupons.<sup>2</sup>
- In *U.S. v. Philip Morris* (the 2006 civil racketeering judgment against major cigarette manufacturers), the court specifically found that tobacco companies use strategic price reduction strategies such as coupons and multi-pack discounts to target young people.<sup>3</sup>
- More than 80 percent of convenience stores and more than half of supermarkets have special price promotions advertised inside; 42 percent of convenience stores have exterior price promotions.<sup>4</sup>

### **Tobacco Companies' Price Discounting Increases Youth Smoking**

- The 2012 Surgeon General's Report, *Preventing Tobacco Use Among Youth and Young Adults*, reviewed the available research to date regarding tobacco tax increases and price discounting and concluded that: "...the industry's extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions."<sup>5</sup>
- The use of value-added or coupon promotions makes cigarettes more affordable to kids and those with less financial resources.<sup>6</sup>
- Coupons affect new users by encouraging them to smoke more, moving from the trial stage to being a regular smoker.<sup>7</sup>

### **Prohibiting Price Discounting and Coupon Redemption Would Reduce Youth Smoking**

- According to the Surgeon General, "Because there is strong evidence that as the price of tobacco products increases, tobacco use decreases, especially among young people, then any actions that mitigate the impact of increased price and thus reduce the purchase price of tobacco can increase the initiation and level of use of tobacco products among young people."<sup>8</sup>
- Restricting price-based promotions would reduce youth smoking.<sup>9</sup> In *U.S. v. Philip Morris*, the judge found that "Defendants could significantly reduce adolescent smoking by...stopping all price related marketing (i.e., discounting and value added offers of cigarettes, especially in convenience stores..."<sup>10</sup>

### **Federal Law Enables Jurisdictions to Regulate Retail Sales**

- The Federal Cigarette Labeling and Advertising Act was amended in 2009 to permit state and local governments to enact and enforce "bans or restrictions on the time, place, and manner...of the advertising or promotion of any cigarettes." Courts have interpreted this provision to permit a local government

regulate the price at which cigarettes can be sold, including the prohibition of price promotions or discounts, and the prohibition of the redemption of coupons.<sup>11</sup>

### **Prohibiting Price Promotions and Coupon Redemption Do Not Violate the First Amendment**

- The First Amendment does not prevent state and local governments from regulating prices of tobacco products, nor does it prevent state and local governments from prohibiting discounting, promotional pricing, or prohibiting the redemption of coupons. No seller has a First Amendment right to promote or advertise a price unless that price can legally be charged.
- Redemption of coupons is not speech and is not protected by the First Amendment.<sup>12</sup>
- As long as these policies specifically refer to retail offers of discounted products or coupon redemption (the trading in of coupons or some discounting device in exchange for a lower price), rather than distribution or creating of coupons, then there is no violation of the First Amendment.

### **Retailers Are Not Harmed by Reduced Tobacco Sales**

- Studies show that the number of convenience stores does not decline following tax increases, nor do declines in cigarette consumption have a negative impact on convenience store employment.<sup>13</sup>
- Money spent on cigarettes in retail stores does not disappear from the area when smokers quit or cutback, but simply shifts to consumer spending on other products or services. For instance, a pack-a-day smoker who quits because of the price will save more than \$2,000 per year on cigarettes and could spend that money on other goods and services, including other products sold by convenience stores.
- Consumer demands are changing and stores need to adapt. A 2015 report commissioned by the National Association of Convenience Stores emphasized growth in healthy options in convenience stores and stated, "C-stores must understand that solely catering to their declining core audience [those purchasing cigarettes, beer, hot dogs, etc.] is not a growth strategy."<sup>14</sup>

---

<sup>1</sup> U.S. Federal Trade Commission (FTC). *Cigarette Report for 2014*, 2016, [https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2014-federal-trade-commission-smokeless-tobacco-report/ftc\\_cigarette\\_report\\_2014.pdf](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2014-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_2014.pdf); FTC, *Smokeless Tobacco Report for 2014*, 2016, [https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2014-federal-trade-commission-smokeless-tobacco-report/ftc\\_smokeless\\_tobacco\\_report\\_2014.pdf](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2014-federal-trade-commission-smokeless-tobacco-report/ftc_smokeless_tobacco_report_2014.pdf) [Data for top 5 manufacturers only].

<sup>2</sup> FTC. *Cigarette Report for 2014*, 2016.

<sup>3</sup> *U.S. v. Philip Morris*, 449 F. Supp. 2d at 639-40.

<sup>4</sup> Center for Public Health Systems Science. *Point-of-Sale Report to the Nation: The Tobacco Retail and Policy Landscape*, 2014.

<sup>5</sup> HHS, *Prevention Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012, [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm), at 530.

<sup>6</sup> HHS, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, Atlanta, GA: HHS, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994; Slater, SJ, et al., "The Impact of Retail Cigarette Marketing Practices on Youth Smoking Uptake," *Archives of Pediatrics and Adolescent Medicine* 161:440-445, May 2007.

<sup>7</sup> HHS, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, Atlanta, GA: HHS, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994; Slater, SJ, et al., "The Impact of Retail Cigarette Marketing Practices on Youth Smoking Uptake," *Archives of Pediatrics and Adolescent Medicine* 161:440-445, May 2007.

<sup>8</sup> HHS, *Prevention Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012, [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm), at 599.

<sup>9</sup> Slater, SJ, et al., "The Impact of Retail Cigarette Marketing Practices on Youth Smoking Uptake," *Archives of Pediatrics and Adolescent Medicine* 161:440-445, May 2007.

<sup>10</sup> *U.S. v. Philip Morris*, 449 F. Supp. 2d at 1113.

<sup>11</sup> *National Association of Tobacco Outlets v. City of Providence*, 731 F.3d 71 (1st Cir. 2013). *National Association of Tobacco Outlets v. City of New York*, 27 F. 3d 415 (S.D.N.Y. 2014).

<sup>12</sup> *National Association of Tobacco Outlets v. City of Providence*, 731 F.3d 71 (1st Cir. 2013). *National Association of Tobacco Outlets v. City of New York*, 27 F. 3d 415 (S.D.N.Y. 2014). These decisions rely on Supreme Court precedents and there is no Supreme Court case to the contrary.

<sup>13</sup> Huang, J & Chaloupka, FJ, "The Economic Impact of State Cigarette Taxes and Smoke-free Air Policies on Convenience Stores," *Tobacco Control* 22(2):91-6, March 2013. Ribisl, KM, Evans, WN, & Feighery, EC, "Falling cigarette consumption in the U.S. and the impact upon tobacco retailer employment," in Bearman, P, Neckerman, K, & Wright, L, eds. *Social and Economic Consequences of Tobacco Control Policy*, New York: Columbia University Press, 2011.

<sup>14</sup> Cardello, H & French, S, "Health & Wellness Trends and Strategies for the Convenience Store Sector," Hudson Institute, October 2015, <http://www.nacsonline.com/YourBusiness/Refresh/Documents/Grow-BFY-Sales.pdf>.