

Trade Commission and the Department of Health, Education, and Welfare pursuant to that Act it is not an abuse of discretion for the Commission to decide now that a licensee who presents programing and advertising which encourages the public to form this habit potentially hazardous to health has, at the very least, an obligation adequately to inform the public as to the possible hazard.⁸ See *infra*, paragraphs 30-32. Nothing that is presented in the extensive pleadings filed in this matter convinces us that petitioners should prevail on their position to the contrary.

C. COMPATIBILITY WITH THE CIGARETTE LABELING ACT

15. Petitioners further urge that Congress in the Cigarette Labeling and Advertising Act of 1965 (Public Law 89-92, 15 U.S.C. 1331 et. seq.) preempted Federal, State, and local activity to compel health warnings in cigarette advertising, and that the Commission's ruling is not only inconsistent with that policy but lies also in an area where Congress has withdrawn authority. On the basis of our analysis of the provisions of the Labeling Act and its legislative history, we agree that no Federal or State body could legally adopt regulatory measures which would require either a cessation of cigarette advertising or the inclusion of a health warning in the advertisement itself. We nevertheless believe, for the reasons set forth below, that our ruling that broadcast licensees presenting cigarette advertising must otherwise inform the public as to the potential health hazard, is not precluded by the Labeling Act and is entirely consistent with the Congressional decision to promote extensive smoking education campaigns.

16. The Cigarette Labeling Act states that:

"It is the policy of the Congress, and the purpose of this Act, to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

"(1) The public may be adequately informed that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes; and

"(2) Commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health."

The Act thus requires the labeling of cigarette packages with the statement: "Caution: Cigarette Smoking May Be Hazardous to Your Health." The Act also does the following: (1) Makes it unlawful for any person to manufacture, import, or package for sale within the United States any cigarettes which do not bear the above-mentioned statement on the package. Violation of this requirement is made a misdemeanor subject to a fine of not more than \$10,000 (sec. 4, 6); (2) prohibits the requirement of any other cautionary statement on the labeling of cigarettes under laws administered by any Federal, State, or local authority (sec. 5(a)), and prohibits, for 3 years, any requirement by any Federal, State, or local authority that cigarette advertising include a statement relating to smoking and health (sec. 5(b)); (3) states that the Federal Trade Commission has no authority to require any cautionary statement in any advertisement of cigarettes labeled in conformity with the Act, but otherwise neither limits nor expands the authority of the FTC with respect to the dissemination of false or misleading advertisements of cigarettes (sec. 5(c)); (4) permits injunctions to be obtained to restrain violations of the Act, and provides an exemption for cigarettes manufactured for export from the United States (sec. 7 and 8); and (5) requires two Federal agencies to transmit reports to Congress before July 1, 1967, and annually thereafter: (a) The Secretary of Health, Education, and Welfare concerning current information on the health consequences of smoking and recommendations for legislation and (b) the Federal Trade Commission concerning the effectiveness of cigarette advertising, current practices and methods of cigarette advertising and promotion, and recommendations for legislation.

16a. Section 5—the portion preempting Federal, State and local activity to compel health warnings in cigarette labeling and advertising—provides in subsection (b):

⁸ It has long been recognized, of course, that "the Commission's view of what is best in the public interest may change from time to time. Commissions themselves change, underlying philosophies differ, and experience often dictates changes." *Pinellas Broadcasting Co. v. Federal Communications Commission*, 230 F. 2d 204, 206 (C.A.D.C.), cert. den., 350 U.S. 1007.