

programs on smoking and health reach about 70 percent of the school children in the United States. Forty States have developed materials on smoking and health for children or plan to do so, and 27 States have either held conferences on smoking and health or intend to do so. In September 1966 a nationwide program to discourage smoking among seventh and eighth graders was launched by the National Congress of Parents and Teachers. This plan is being supported by the Public Health Service and is operating in 21 States.

28. The affected industries have renewed their efforts at self-regulation since the enactment of the Labeling Act. While there has been no change in the Cigarette Advertising Code of the cigarette manufacturers, they have sought and obtained FTC approval to make factual advertising statements about tar and nicotine content. On March 25, 1966, the FTC determined that a factual statement of the tar and nicotine content of the mainstream smoke from a cigarette would not be in violation of that Commission's 1955 Cigarette Advertising Guides or of any provision of the law administered by the Commission. However, no collateral statements (other than the factual statement of tar and nicotine content of cigarettes) suggesting the reduction or elimination of health hazards in smoking are allowed, and all these factual statements must be based upon a standardized testing techniques.¹²

29. In October 1966 the Code Authority for the NAB issued the Cigarette Advertising Guideline which they had announced during the 1965 Senate hearings would be forthcoming.¹³ The main objectives of the guidelines are to restrict advertising appeals to youth and statements concerning the health benefits of smoking. In January 1967, the Code Authority announced in a news release a slight change in the Television Code to strengthen its position as to appeals to youth. The Television Code, section IX, General Advertising Standards, paragraph 7, now reads:

"The advertising of cigarettes shall not state or imply claims regarding health and shall not be presented in such a manner as to indicate to youth that the use of cigarettes contributes to individual achievement, personal acceptance or is a habit worthy of imitation.

30. Considering these affirmative efforts by Congress, Federal, State and local public and private agencies, and the affected industries to educate the public as to the smoking health hazard and, particularly, to discourage youth from forming the habit, we are not persuaded by petitioners' argument that HEW and FTC have primary jurisdiction in this matter and that this Commission alone is precluded from following its traditional method of assuring that the public is adequately informed as to both sides of this controversial issue of public importance. Significantly, Congress was at pains to spell out what was pre-empted (secs. 5 (a) and (b)), and specifically stated that except as is otherwise provided in subsections (a) and (b), "nothing in this Act shall be construed to limit, restrict, expand, or otherwise affect, the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes * * *." Similarly, we believe that there was no preclusion of FCC action, so long as such action is consonant with the "comprehensive Federal program * * *" (sec. 2). As set forth in the prior discussion, we think that our responsibilities and policies under the Communications Act and our ruling herein are entirely consonant with the Congressional objectives in this area. Indeed, it is our belief that the Commission could not properly follow any other course in this matter. For this Commission, like other administrative agencies, was "not commissioned to effectuate the policies" of the Communica-

¹² New York Times, Mar. 29, 1966, 53:6.

¹³ *Text of the New Cigarette Advertising Guidelines:*

Athletic activity. A person who is or has been a prominent athlete shall not be used in a cigarette commercial. Cigarette commercials shall not depict persons participating in, or appearing to be participants in, sports or athletic activity requiring physical exertion.

Tar and nicotine statements. Factual statements of tar and nicotine content of cigarettes are subject to proper documentation. No statements or claims regarding benefits to health and well-being are acceptable.

Filters. Cigarette advertising shall not state that because of the presence of the filter or its construction the cigarette is beneficial to the health or well-being of the smoker.

Uniformed individuals. Individuals in certain types of uniforms have a special appeal to youth. Therefore, such uniformed individuals as commercial pilots, firemen, the military and police officers shall not be used in cigarette advertising.

Premiums. Cigarette advertising shall not include references to offers of premiums which are primarily designed for youth.

Portrayal of youth. Children or youth shall not appear in cigarette commercials in any manner, even though they are merely bystanders or part of the background. Cigarette advertising shall use individuals who both are and appear to be adults and who are shown in settings associated with adults.