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U.S. Challenges Judge Ruling on Cigarette Graphic Warnings

By Tom Schoenberg - Mar 5, 2012

The U.S. government appealed a federal judge's ruling throwing out requirements for graphic warning labels regarding the health risks of cigarettes.

The [Food and Drug Administration](#) filed a notice of appeal today in U.S. District Court in [Washington](#) seeking to overturn Judge Richard Leon's Feb. 29 decision that the government's rule violates the [tobacco companies'](#) rights to free speech.

The [U.S. Court of Appeals](#) in Washington is scheduled to hear arguments next month on the government's challenge to a ruling Leon issued in November that canceled a Sept. 22 deadline for tobacco companies to begin displaying images such as diseased lungs and a cadaver with chest staples on an autopsy table on the top half of the front and back of all cigarette packages.

It is unclear whether the three-judge panel will consider today's appeal on April 10.

[Lorillard Inc. \(LO\)](#), [Reynolds American Inc. \(RAI\)](#)'s R.J. Reynolds unit, Commonwealth Brands Inc., Liggett Group LLC and Santa Fe Natural Tobacco Co. sued the FDA in August, claiming its mandates for cigarette packages, cartons and advertising violate the First Amendment. The companies said in court papers that it would cost them a total of about \$20 million to meet the 2012 deadline.

The graphics were supposed to cover the top half of the front and back of cigarette packages and 20 percent of print advertisements. The FDA estimated the visual warnings would help lower the smoking rate by about 0.212 percentage points, Leon wrote in his opinion.

FDA Mandates

During a Feb. 1 hearing, Mark Stern, a Justice Department lawyer, compared the FDA mandates to warnings on packages of charcoal telling people to not use it indoors, noting that 28 people a year die from carbon monoxide poisoning for using charcoal inside their homes.

With cigarettes, there are 440,000 deaths, Stern said.

“That’s a pretty big interest,” he added. “It’s no secret that the government wants people to stop smoking.”

Leon said during the hearing there’s nothing in the record to show that Congress gave “clear, thoughtful analysis” to the First Amendment implications of the law.

“Congress did what it did out of some innate sense of ‘we can do this,’” he said.

The case is R.J. Reynolds Tobacco Co. v. U.S. Food and Drug Administration, 11-cv-1482, U.S. District Court, [District of Columbia](#) (Washington).

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