

THAILAND
COUNTRY REPORT
on
ADVERTISING and PROMOTION BANS

Hatai Chitanondh, M.D., F.I.C.S., F.R.C.S.(T)

President

Thailand Health Promotion Institute



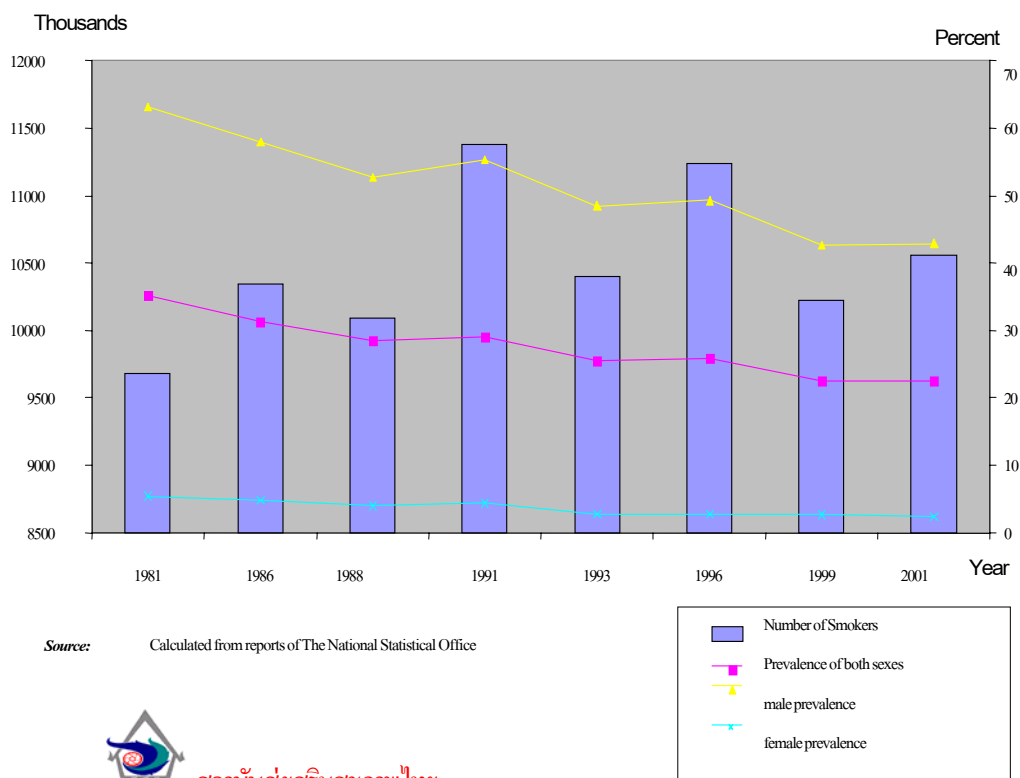
INTRODUCTION

Countrywide household surveys by the National Statistical Office have been the main source of information support for tobacco control in Thailand. The first, second and third surveys were carried out in 1976, 1981 and 1986 - a five-year intervals. Thereafter the surveys were carried out every two years.

For the past two decades, the total number of smokers has risen, presumably as a result of the rise in population, from 9,676,700 in 1981 to 10,551,300 in 2001. Smoking prevalence declined from 35.2% in 1981 to 22.5% in 2001. Male and female smoking rates fell in this period from 63.19% to 42.92% and 5.39% to 2.36% respectively. Annual adult per capita cigarette consumption has also been decreasing, from 1087 in 1995 to 798 in 2000.

Figure 1

Number of Smokers and Smoking Prevalence of Population, Both Sexes, 15 Years and Over, 1981-2001



สถาบันส่งเสริมสุขภาพไทย
มูลนิธิสาธารณสุขแห่งชาติ

DEVELOPMENT OF POLICY : CHRONOLOGY

26 April 1988 - The Cabinet approved tobacco control measures, including a ban on advertising, proposed by the Ministry of Public Health (MOPH). This resolution was forwarded to all ministries to be put into practice .

20 December 1988 - the Thailand Tobacco Monopoly (TTM) complained to the ministry of finance, its supervisor, that after the April Cabinet resolution the TTM ceased its promotional activities, while foreign cigarettes, though not allowed to be sold legally, continued to advertise in printed media and on outdoor billboards. The Cabinet therefore ordered the Consumer Protection Board (CPB) to pass a regulation prohibiting tobacco advertising.

10 February 1989 - The Advertising Committee of the CPB made an announcement, published in the Royal Gazette, that cigarettes are under labelling control, thus cannot be advertised, pursuant to the Consumers Protection Act 1979.

4 August 1992 - The Tobacco Product Control Act (TPCA) 1992 became effective.

Information about tobacco-related morbidity and mortality has been fragmented owing to the lack of relevant studies and surveys. Among cancers of various organs lung cancer was the second most common during 1988 -1991. The age-standardized incidence rate of lung cancer among women in the Northern region is 37.4 per 100,000 - considered to be a high world indicator.

The advertising ban under the Consumers Protection Act 1979, which became effective on 10 February 1989, was enforced by the office of the CPB which has a wide responsibility in the area of consumers protection. Officials of the CPB were not knowledgeable about tobacco promotional tactics and did not enforce the law as regards the ban on tobacco advertising. The secretary of the National Committee of Control of Control of Tobacco Use (NCCTU) had to request prosecution in every case of wrong doings. Therefore the NCCTU secretary, who was the chairman of the tobacco control law drafting committee, incorporated the advertising ban in the newlydrafted TPCA. Thus the new law would be under the responsibility of the MOPH, which has more knowledgeable officials. After the TPCA became effective on 4 August 1992, the Announcement of the CPB Advertising Committee became nullified.

The Tobacco Products Control Act 1992

In this act, sections relevant to advertising and promotion are as follows:

Section 3:

"Advertising" means an act undertaken by any means to allow the public to see, hear, or know the statement for commercial interest;

Section 4: No person shall be allowed to dispose of, sell, exchange or give the tobacco products to a person when it is known to the former that the buyer or receiver has not attain eighteen full years of age;

Section 5: No person shall be allowed to sell the tobacco products through vending machines;

Section 6: No person shall be allowed to do any of the following:

- to sell goods or render services with the distribution, addition or gift of tobacco products, or in exchange for tobacco products, as the case may be;
- to sell the tobacco products with the distribution, addition, gift of, or in exchange for, other goods or services;
- to give or offer the right to attend the games, shows, services or any other benefit as a consideration to the buyer of tobacco products or a person bringing the packaging of tobacco products for exchange or redemption therefor;

Section 7: No person shall be allowed to distribute tobacco products as a sample of the tobacco products so as to proliferate such tobacco products or to persuade the public to consume such tobacco products except for a customary gift;

Section 8: No person shall be allowed to advertise tobacco products or expose the name or brand of tobacco products in the printed media, via radio broadcast, television or anywhere else which may be used for advertising purposes, or to use the name or brand of tobacco products in shows, games, services or any other activity the objective of which is to let the public understand that the name or brand belongs to tobacco products.

The provisions of paragraph one do not apply to live broadcasts from abroad, via radio or television, and the advertisement of tobacco products in the printed media printed outside the Kingdom not* specifically for disposal in the Kingdom;

Section 9: No person shall be allowed to advertise goods using the name or brand of tobacco products as a brand of such goods in such a manner as to make such a brand understood to be that of tobacco products;

Section 10: No person shall be allowed to manufacture, import for sale or general distribution, or advertise any goods having such an appearance as to be understood to be an imitation of such tobacco products as cigarettes or cigars, under the law on tobacco, or of the packaging of said products;

Section 17: Any person violating Section 4 or Section 5 shall be subject to an imprisonment not exceeding one month or a fine not exceeding 2,000 Baht or both;

Section 18: Any person violating Section 6, Section 7, Section 9 or Section 10 shall be subject to a fine not exceeding 20,000 Baht;

Section 19: Any person violating Section 8 paragraph one shall be subject to a fine not exceeding 200,000 Baht;

Section 24: In case where the violation of Section 4, Section 5, Section 6, Section 8 paragraph one, Section 9, Section 10 or Section 13 is by manufacturer or importer, the violator shall be subject to the penalty twice that provided for such offences.

The Tobacco Products Control Act 1992 contains a very comprehensive ban on advertising and promotion. It can be summarized as follows:

The ban covers all media (section 3 and 8):

- The ban is almost complete, and includes sponsorship. Although there is no such term as 'sponsorship' the definition of 'advertising' (Section 3) means that showing, mentioning, or referring to cigarette logos or products is illegal. Therefore sponsorship, which must show cigarette logos or product names is considered an illegal act (Section 8).
- The only exceptions are live radio or television broadcasts from abroad and advertisements in printed media published outside Thailand (Section 8).
- The ban covers all indirect advertising:

- point-of-sale(POS) advertising is not allowed. Although the law does not specify POS, it is covered by the phrase, "or anywhere else which may be used for advertising purposes", in Section 8;
- product placement (Sections 3 and 8);
- trademark diversification (TMD) (Section 9);
- advertising goods that have an appearance such that they are understood to be in imitation of said tobacco products (Section 10); and
- sponsorship (Sections 3 and 8);

The bans covers several promotional activities:

- prohibition of sale to minors (Section 4);
- prohibition of sale through vending machines (Section 5); and
- prohibition of exchanges, free premiums, redemption, giveaways, etc. (Sections 6 and 7).

STEPS OF IMPLEMENTATION

10 February 1989-3 August 1992:

PROHIBITION UNDER THE CONSUMERS PROTECTION ACT 1979

Because the CPB was not knowledgeable about tobacco industry tactics, the secretary of the NCCTU monitored violations and notified the CPB which then prosecuted the cases accordingly. Violations included the following:

Direct advertising, for example:

- installing big outdoor billboards advertising the cigarette brands Winston, Kent and Salem; billboards were also placed in the international airport and its tax-free shops;
- painting of the logo 'Mild Seven' on the bodies of cigarette delivery vans;

- launching new cigarette brands, such as Waves of Japan Tobacco Inc., with giveaways, exchanges, etc.

POS advertising, for example:

- placing numerous empty cartons in front of shops;
- placing large dispensers displaying logos at sales points;
- suspending mobiles (imitating cigarette packaging) in such places.

Product placement, for example:

- wearing a t-shirt exhibiting the 'Lucky Strike' logo in a television drama;
- publishing pictures with cigarette logos in magazines and calendars, advertising other products in newspapers, yearbooks etc.; and
- printing cigarette brand names on clothes and postcards.

TMD, for example:

- advertising a 'Marlboro Country Tour' on television;
- setting up billboard with the logo 'Winston - Style of the USA' across a street;
- advertising in newspapers "Kent Leisure Holidays""555 The Statesman Collection" and "Camel Boots".

Sport sponsorship, for example:

- football: telecast the "555 Football Special";
- snooker: telecast of the "555 Asian Snooker Open" and the "555 WorldSeries Challenge";
- golf : a small billboard with the logo "Salem" at the venue of "Singha Beer Pro-Am Tournament";
- cricket : a small billboard at the venue of the "Benson & Hedges Cricket International";
- motorcycling : a "Lucky Strike–Suzuki" team competed in a race.

All of these violations were discovered by the NCCTU secretary and were sent to the CPB for prosecution. Some cases were investigated and fined resulted, and in some cases the final results were not known. The fines were up to 40,000 Baht, according to the stipulations of the Consumer Protection Act. The billboards were ordered by the CPB to be removed by the CPB.

After promulgation of the CPB advertising ban, violations of the law by the transnational tobacco companies (TTCs) continued the wrongdoing that had existed previously. Violations and circumventions that occurred long after the enactment of the advertising ban were either through the TTCs pretending to be naïve, or because they wanted to test the effectiveness of law enforcement.

4 August 1992-present: PROHIBITION under the Tobacco Products Control Act1992

The Minister of Public Health appointed officials of the MOPH, the Ministry of Interior, Municipalities, the Excise Department, and the Custom Department, to be responsible for the enforcement of this law. Approximately 3000-4000 officials were appointed on 25 August 1992 and on 9 June 1993. There was only one meeting, held shortly after the TPCA enactment, for the appointed officials to clarify the law. The supposed law enforcers are from various government agencies with wide-ranging responsibilities. Their superiors are not interested in tobacco control. Most of the appointed MOPH officials have several identity cards for enforcing several laws and never utilize them. This is a major flaw of the Thai bureaucratic system of law enforcement.

Appointed officials from the Institute of Tobacco Consumption Control (ITCC) of the Department of Medical Services (DMS) are supposed to form the core of law enforcement in this area. There has been no official report of violations recorded by the ITCC. The president of the Thailand Health Promotion Institute (THPI) is at the same time the drafter of the laws, the establisher of the Office of Tobacco Consumption Control (later the ITCC), and the former boss of the ITCC director. He used this informal relationship to push the ITCC director to take action in several cases of violation of the law, but very few results

were achieved. The THPI is a nongovernmental organization and the THPI president is a retired government official. Both have no authority in law enforcement.

The THPI has been the only organization that has compiled lists of practices violating the law. They included:

- Direct advertising, for example:
- cigarettes advertised in THAI Airways' duty-free price list. In the May-June 1994 issue there were full-page advertisements for Marlboro, Dunhill, and 555. There were several cigarette advertisements in the THAI Airways in-flight magazine "Swasdee". In the January 1994 issue, on one page there were advertisements for Marlboro, Mild Seven, Dunhill and 555; there was advertising for the "555 Subaru World Rally Team" in the June and August 1994 issues.

POS;- in all retail outlets selling foreign cigarettes there were:

- colour pictures of cowboys, the camel logo, and the logo "get lucky" installed on cigarette cabinets;
- large signs showing prices and price reductions for certain brands.

Product placement included:

- wearing clothes with cigarette logos on television shows;
- smoking by principal characters, especially the heroes and heroines, in television shows;
- displaying tobacco brand names in calendars, e.g. a Honda car calendar depicted several Marlboro logos;
- advertisement of other products in newspapers, e.g. an advertisement for Shell Oil included a picture of a Formula One car displaying both Shell and Marlboro logos;
- pictures in magazines and on the sports pages of newspapers showing cigarette logos on cars, athlete's clothes, etc.

TMD includede:

- advertising "Winston House" and "Camel Trophy Adventure Wear" in newspapers; advertising "Camel Trophy Adventure Wear" and "Marlboro Classics" on posters installed in shopping outlets and in other media on different occasions.

Sport Sponsorship included:

- participation by the "555 Subaru" team in the Asia-Pacific Rally, 3-6 December 1993,
- publicity of a visit by Mild Seven-sponsored Formula One driver Michael Schumacher, dressed in his racing suit. This was followed by the "95 Formula-1 Festival" at a department store on 14 -30 October 1994;
- THPI research found that in one year (1998 - 1999) a cable television station aired 1,343 hours of tobacco-sponsored sports events, consisting of 99 live legal telecasts and 1,698 repeats.. According to the law only live telecasts are permitted (see section 8 of TPCA 1992). Therefore the repeats are considered illegal.

Other promotions, for example:

- In December 1992, the tax-free shops at the Bangkok International Airport ran a promotional programmme: people buying goods worth 1,000 Baht would be entitled to a reduction of 100 Bath for other goods, including cigarettes.

SUCCESS OF THE INTERVENTION

During the first period (10 February 1989-3 August 1992) when the advertising ban was under the Consumer Protection Act 1979, the intervention was reasonably successful. Almost all cases notified to the CPB by the NCCTU Secretary were investigated and led to fines.

After 4 August 1992, the MOPH became responsible for the newly-enacted Tobacco Products Control Act 1992 and law enforcement has become very weak. The THPI has been the main monitoring force and provided numerous notifications to the ITCC. Most of

these were not dealt with efficiently. In a few cases, however, suppression of the tobacco industry's promotional activities was successful owing to the THPI's vigilance and strong media advocacy.

Success Story 1

Defeat of the Olympic Committee of Thailand's attempt to adopt tobacco sponsorship

In October 1990 the secretary of the Olympic Committee of Thailand (OCT) gave a press interview stating that the OCT would consider accepting TTC sponsorship of sport, and that the OCT would push for amendment of the law banning cigarette advertising.

On 21 October the secretary of NCCTU gave a press interview opposing the proposal. This was followed by streams of news items, columns, and articles in favour of sponsorship; 18 news stories and 15 articles opposed it; and there were 9 news stories, 7 articles and 1 cartoon expressing a neutral stance. The pro-sponsorship group included the Secretary and Treasurer of the OCT, a former Deputy Public Health Minister, and a large number of sport columnists. The opposition consisted of the Secretary of the NCCTU, the Secretary of the No-Smoking Campaign Project, the Public Health Minister, the Privy Councillor, and some journalists.

After the continuous 5 month debate, the pro-sponsorship group gave up.

Success Story 2

Thailand was the only country in which the "Subaru-555" logo could not be displayed in the Asia-Pacific Rally

1993 was the first year of the Asia-Pacific Rally which was held in 6 countries, Australia, Hong Kong (now Hong Kong Special Administrative Region of China), Beijing (China), Indonesia, Malaysia, New Zealand and Thailand. After the race, the THPI and its grass-root allies gave a press conference stating that exhibiting the "Subaru-555" logo was illegal. The MOPH followed up with letter of protest to the organizers of the rally. The planned domestic rallies – four in 1993 - were scrapped.

From 1994 on, the "Subaru 555" logo was changed to "Subaru ///" when the rallies were held in Thailand.

Success Story 3

Thailand is the only country on the Asian golf circuit in which Davidoff logos are not displayed

The Asian Professional Golf Association (Asian PGA) had the watch company, Omega, as its main regional sponsor until 1999, when Davidoff took over. The Asian PGA's "Davidoff Tours" tournaments were held 20 times in 11 countries.

In Thailand there were 2 tournaments - The Lexus International on 14-17 October 1999, and The Thailand Open on 1-4 December. Both times, local organizers were told by the THPI president that displaying Davidoff logos was illegal. The Lexus tournament did not heed the warning and the THPI president led initiate an arrest by the ITCC staff. The tournament organizer was prosecuted.

Since then, all Davidoff Asian PGA tours held in Thailand have not dared to exhibit the Davidoff logo. Thailand is the only country on the tour to have "Davidoff-free" competitions.

Success Story 4

BAT's first nicophilantropy was thwarted - a rare happening in BAT's history

Bangkok was once known as the "Venice of the East" because of the many canals that crisscrossed the metropolis. One of the canals - "Saen Saeb", dug 166 years ago by royal order of the third king of the present Chakri Dynasty, in former times was a center for marine commerce. People used the 72-kilometer canal to travel to many districts situated along its course all the way to Chachoengsao Province in the East. The pleasant way of life has changed. Now the canal is filled with the sounds of insects and mosquitoes buzzing around. Travel along the canal is no longer leisurely; boats now emphasize speed to get through the polluted waters as quickly as possible.

Two daily newspapers of the Nation Multimedia conglomerate – The Thai language "Krungthep Turakit" and the English language 'The Nation' – published a half-page black and white advertisements of the project 'Clean Saen Saeb Canal' on September 4, 8, 9, 14, 19, 21, 26 and October 3, 2001. The main sponsor was the British American Tobacco (Thailand) Inc (BAT). The captions were – '*Returning Life to Saen Saeb Canal is Returning Life to the People*', '*Saen Saeb : Venice of the East Once More*', etc. Publicity was also carried out through a television channel and a radio station owned by the Nation Group. Billboards were installed along the banks of the canal. On September 22 a colorful festival was organized and the Bangkok Governor ceremoniously received the donation from the BAT's country manager. This was the first nicophilantropy of the company since its recent establishment as BAT's subsidiary in Thailand.

An NGO, funded by the Thai Health Promotion Foundation, compiled all types of misconduct of BAT from its own internal documents and published a booklet '*Facts about BAT*'. This was sent to the chairman of the Nation Group along with the letter requesting him to abandon BAT's sponsorship.

From 3 October onward publicity about the project ended. The NGO's grassroots allies wrote to the Nation chairman thanking him for his conscientious decision.

There have been failures as well, e.g.:

- Philip Morris has been sponsoring an ASEAN ARTS AWARD since 1994. In the first year THPI president came out through press interviews to oppose the activity, followed by the MOPH, the No-Smoking Campaign Project, the Medical Council, and some newspaper columnists. In spite of this Philip Morris continued to hold the yearly contest until today. The sponsorship showed only Philip Morris company logo and with no showing of the cigarette brand name the act could not be considered illegal¹;
- Point of sale promotional activities at several ten of thousand retail shops all over the country, which are illegal, have not been dealt with;
- Product placements in television are still rampant, even increasing, especially in foreign films televised by cable televisions country wide although there is a law prohibiting this. The law controls radio and TV broadcasting and the responsible agency is the public relation department of the prime minister's office.;
- TMD in the form of Camel Trophy stickers are pasted onto cars roaming the streets all over the country;
- Cigarette logos can be seen in numerous tobacco-sponsored sport telecasts in the cable TV all year round; and
- several others.

CONCLUSION

Thailand has a very good and strong law with an exceptionally comprehensive ban of advertising, promotion and sponsorship. However, law enforcement have been very weak and circumventions and violations are still rampant. To effectively prevent an increase of tobacco consumption of the people enforcement of advertising ban must be comprehensively planned and efficiently implemented.

DISK ZIP/ THPI PROG 1 /FOLDER :Articles / FILE: 45.3 TFI-Country report - Ad & Promotion, pdf

¹ As explained before, Thai tobacco control authorities consider that if the product logos are shown, it is considered illegal because it must be interpreted as 'for commercial purpose' according to the legal definition of ad. On the other hand, it is considered legal when the transnational tobacco companies sponsor an Art Contest and they show, for example, only the Philip Morris company's name, not its tobacco products logo or trademarks. This is because Philip Morris has several goods other than tobacco products and it can argue that it does not promote its tobacco product specifically. This is unfortunately a loophole in the Act.