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PHILIP MORRIS IN SECRET COOPERATION WITH A BRITISH HEALTH MINISTER

BY SMOKINGATE ON DECEMBER 20, 2011 - IN UK

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This story exposes Philip Morris International's (PMI) secret collaboration with the British Health Minister [Earl Howe](#) to defeat tobacco control regulations.

The story also reveals how PMI creates and underwrites retailers' "grassroots" campaigns against these regulations — campaigns cynically designed "for the commercial arguments to outweigh all other criteria." And it starts a new series of articles about PMI's strategy of fomenting and financing opposition to tobacco control efforts around the world.

Just like the [Marlboro Cartel](#) and [Price-Fixing Conspiracy](#) stories describe how PMI deceives its customers and investors, our new series of articles starting with today's story shows how PMI misleads its regulators and the public at large in the area of tobacco control. The UK, where even a Health Minister acts as PMI's "third-party advocate," offers a good example of how such a strategy could be quite successful.

The UK, a world leader in tobacco control policy, is experiencing a marked slowdown in the pace of its anti-tobacco reforms this year. The Government has just postponed its promised consultation on plain packaging — a ban on brand logos and colors on cigarette packs. (Innocuously sounding “plain packaging” is actually “the single biggest regulatory threat” to the tobacco industry’s profitability, according to the analysts; “a pure and simple confiscation of the core of our business,” according to PMI, so the stakes are high.) Earlier this year, the Government also announced a delay in the implementation of its ban on cigarette displays in stores, the industry’s second most hated anti-tobacco regulation after plain packaging.

What is going on with this delay, and who is behind it? — critics of the Government’s decision to delay the display ban asked during a heated debate in the House of Lords in July 2011, suggesting that the delay might have been for the benefit of the tobacco industry and that the Government was unduly influenced by the industry’s lobbying.

A Minister of Health, Earl Howe, defended the delay and emphatically rejected those suggestions:

- “The noble Baroness, Lady Morgan of Drefelin, asked me specifically who would benefit from the delay in implementation. Our decision to delay implementation will most benefit the micro and small businesses that are so vital to communities across this country”;
- “The noble Baroness and other noble Lords suggested that the decision to delay the display regulations was unduly influenced by the tobacco industry. I want to take this opportunity to reject that emphatically”;
- “[T]he Government take very seriously their obligations as a party to the World Health Organisation’s Framework Convention on Tobacco Control. The FCTC places treaty obligations on parties to protect the development of public health policy from the vested interests of the tobacco industry. To ensure transparency, in future all organisations with which the Department of Health liaises on tobacco control, including through responding to consultation exercises, will be asked to disclose any links with, or funding received from, the tobacco industry”;
- “We want all parties that engage with the Government to be honest and transparent when it comes to vested interests”;

- “[I]f somebody is concealing the true basis on which they are making representations then that is clearly undesirable” (Hansard, July 11, 2011).

Saying all these right words about “transparency” and “the need to protect public policy from the vested interests of the tobacco industry” is the same Earl Howe who — in secret cooperation with PMI — has been trying to defeat these anti-tobacco measures ever since he was a Shadow Minister for Health in 2009.

In March of 2009, Earl Howe received a letter from Action on Smoking and Health (ASH), in which ASH quoted an opinion by a former Lord Justice of Appeal on the legality of plain packaging, and complained about the tobacco industry’s tactics of “using third-party advocates” in its efforts to delay and discourage reforms.

Earl Howe
House of Lords
London
SW1A 0PW

4 March 2009

Dear Earl Howe

Legal position on plain packaging

Imperial Tobacco, quoted in an article in The Observer last weekend, asserts that "Regulation that requires plain packaging will expropriate valuable corporate assets in which the company and its shareholders have invested for more than a century and risks placing the UK government in breach of a range of legal and treaty obligations that relate to intellectual property rights, international trade and ILO law." Legal challenges of this kind have been tried time and again by the tobacco industry in this country and on each occasion they have failed. They are a delaying tactic, the industry knows they have little chance of success.

Indeed ASH has a legal opinion on this issue by Sir Richard Buxton, a former Lord Justice of Appeal. He has examined the tobacco industry legal objections which were set out in detail in their responses to the Department of Health Consultation on the Future of Tobacco Control.

He believes their objections are not substantiated and would be happy to talk his conclusions through with you if you would find it helpful.

1. Interference with trade mark rights

Sir Richard Buxton states that, "the objective of trade mark law is to create a publicly regulated means of enabling the owner of goods to prevent other people passing off his goods as their own. The grant of a trade mark accordingly confers a right to stop others using that mark. It does not confer on the trade mark holder a right to use the mark in all circumstances and irrespective of public policy considerations." He also concludes that plain packaging would not breach the WTO TRIPS agreement as under article 8 member states may adopt measures necessary to protect public health.

ASH probably did not expect that Earl Howe would ask Philip Morris to put together a response to their letter. But that was exactly what Earl Howe did, forwarding ASH's letter to PMI's external consultant Gardant, with a cover note saying "I should be most grateful for any comments from Philip Morris on the attached."

From: [REDACTED]
Sent: Sunday, March 08, 2009 7:13 PM
To: [REDACTED]
Subject: Urgent request for assistance
Importance: High

Dear All

Apologies for reaching out to you on a Sunday but I believe this to be urgent.

Please see below and attached. I would very much appreciate the assistance of [REDACTED] on this.

Please note that this will be raised in the Lords debate tomorrow at 15:30 hrs (UK time). If we can assist, we would need to brief Earl Howe by 14:00 hrs.

[REDACTED]

From: HOWE, Earl (mailto:HoweF@parliament.uk)
Sent: 07 March 2009 14:34
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Health Bill: Legal on plain packaging for tobacco products

Dear [REDACTED]

I should be most grateful for any comments from Philip Morris on the attached.

All best wishes

Freddie Howe

-----Original Message-----

From: [REDACTED] (mailto:[REDACTED]@ash.org.uk)
Sent: Wednesday, March 04, 2009 11:40 AM
To: HOWE, Earl
Cc: PEMMING, Mike; LANGLEY, Andrew; CUMBERLEGE, Barness; HARRISON, Paul; PARSONS, Jenny
Subject: Health Bill: Legal on plain packaging for tobacco products
Dear Lord Howe,
After the report in Sunday's Observer I thought you might find it useful to have a brief summary of the legal situation regarding plain packaging for tobacco products.

Yours

In response to that urgent request, PMI prepared a paper for Earl Howe with counter-arguments against ASH, in time to brief him before the next debate.

Around the same time, Earl Howe held a series of meetings with PMI representatives to discuss how to defeat the display ban bill in the House of Lords. It was agreed on these meetings that Earl Howe would challenge the bill outright while his peer Lord Borrie would introduce amendments to water it down. Earl Howe even undertook to visit PMI's offices in Neuchatel, Switzerland, in the summer of that year.

From: [REDACTED]
Sent: Thursday, March 19, 2009 5:55 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Meeting with Earl Howe and Lord Borrie

Dear All

I have just confirmed my next meeting with Earl Howe and Lord Borrie - 14:00 hrs on Tuesday, March 31st - to discuss "strategy" and "amendments to the Bill".

Please note that we think that the Conservative Party are feeling more optimistic about withdrawing the clause implementing a display ban. While I am not certain that this will be so, I think the Conservatives will wish to escalate the issue of display ban up the political agenda. The "optimism" they possibly feel is further exemplified by the press release below from the Scottish Conservatives (despite the fact that they are using data from the NMA). If the Conservatives are intent upon being more aggressive, I do not see further risk to us from this - the issue is already politicised/polarised. And if the Conservatives are right...

From: [REDACTED]
Sent: Tuesday, March 31, 2009 6:56 PM
To: [REDACTED]
Cc: [REDACTED]

Subject: House of Lords meetings

Dear [REDACTED]

I write to provide you with an update on my meetings with the House of Lords today.

The Earl Howe and the Conservative Party are determined to challenge the POS display ban outright at the next (Report) stage. They will therefore table an amendment to the Bill to provide this. Therefore Earl Howe does not believe it would appropriate - it would seem contradictory - for him or the Conservatives to table amendments to provide for restrictions at the point of sale or an exemption for age verified LAMPs.

However, Earl Howe sees merit in having Lord Borrie table such amendments to see how the Government react. **Lord Borrie has tabled these amendments today!**

The merit in Lord Borrie tabling these amendments is that he is a Labour (Government) peer and carries considerable weight on the competition issue as he is a former Chairman of the Competition Commission.

However, the process of how the amendments are read - particularly when - comes into play. We are trying to facilitate further discussion between the two peers as Earl Howe is likely to carry some influence on this. The risk posed is that if the amendments on restrictions and LAMPs are read first it could possibly split support for Howe's amendment. If Howe's amendment is read first - which is 90% likely - there is no risk. If Howe's amendment is passed, Borrie's amendments become null and void.

We also raised the issue of an amendment to allow the display of NGP with Earl Howe. Howe sees the merit in this issue/argumentation but, again, as he is challenging the display ban per se he could not table an amendment for NGP. However, the key objective in us raising this with Howe is to bring this issue into his scope. He did express interest and has undertaken to visit Neuchatel once the Bill has passed. This is likely to be in June/July. [REDACTED] have been extremely helpful in preparing documentation for this meeting. However, we will also need to discuss potential 'political' messaging prior to this meeting in Neuchatel. I suggest we discuss this in May when the Bill has completed in the Lords.

Best wishes,

From: [REDACTED]
Sent: Tuesday, March 31, 2009 8:43 PM
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: House of Lords meetings

many thanks for sharing [REDACTED]
I do share the approach. risk is part of the game.

I also believe that to engage on NIG is key and is a mid term process so it is good you had open the topics. I look forward for meeting Lord Howe in Neuchatel
[REDACTED]

Despite the efforts of PMI, Lord Borrie and Earl Howe, the display ban bill was passed, but only to have its implementation delayed later. And, contrary to Earl Howe's emphatic rejections during the Lords debate, that delay was the result of a massive and mostly clandestine campaign by PMI. The campaign is notable not only for its scale and duration, but also for its stealth use of third parties as PMI's fronts. And it is part of PMI's broader, worldwide strategy of secretly fomenting and underwriting opposition to tobacco-control measures from retailers' "grassroots" campaigns and from ostensibly independent business groups, think tanks, politicians and foreign governments — and presenting them as a genuine widespread opposition without disclosing its own behind-the-scene role in manufacturing that opposition. Let's see how this strategy works in the UK.

Fall 2009: PMI adopts a plan to defeat display ban in Ireland and to delay its passage in the UK though the use of third parties such as retailers' associations ("trade stakeholders") and Members of Parliament ("political stakeholders"). PMI is certain that Earl Howe, then a Shadow Health Minister, "will be vocal publicly" in opposition to display ban:

"Our objective is to overturn the Irish legislation and also delay passage of the pending POSD ban bill in the UK."

PMI Draft Communications Plan

Issue

We are facing a POSD ban proposal in the UK. The parliamentary committee is meeting to discuss this on October 12th and it is possible they will agree to pass this into law. This would be the fourth country in the world to do this and the second in the EU after Ireland. There is potential that if this passes it will lead to a further wave of countries adopting such regulation.

Overall Objective

Our objective is to overturn the Irish legislation and also delay passage of the pending POSD ban bill in the UK.

By taking a stance on these types of legislation we intend to show that PMI will not stand by as governments impose regulations that are extreme, untethered to public health and just serve to shift the legal tobacco products to a market dominated by counterfeit and contraband.

Communications Objective

Generate media coverage to raise awareness of the Irish court case and thus discourage the UK parliament from passing pending legislation on a POSD ban.

Product	Organisation	Product Name	Product Description (Product Name and any other relevant information)	PMI Role (Contract or Sponsorship)	Key Services Provided	Contract Start Date (or Date of Agreement)	Contract End Date (or Date of Agreement)	
			Trade Association Sponsorships					
...	

Product	Organisation	Product Name	Product Description (Product Name and any other relevant information)	PMI Role (Contract or Sponsorship)	Key Services Provided	Contract Start Date (or Date of Agreement)	Contract End Date (or Date of Agreement)	
			Charitable Sponsorships					
...	

These are the external consultants and retail associations that PMI actively uses in its campaign:



Spring 2010: Following the passage of the bill, PMI mounts a new campaign, to “create a post-election political environment that allows Government decision-makers to mitigate, through regulation or legislation, the effects of the POSD ban.” The plan includes, in addition to filing a lawsuit and other action items, “Project Clarity – Grassroots campaign” against the ban by the National Federation of Retail Newsagents.

Campaign Objectives:

OK:

- Create a post-election political environment that allows Government decision-makers to mitigate, through regulation or legislation, the effects of the POSD ban.

- Retailers are essential to campaign success, so must be parties to the lawsuit and must take the lead in the communications effort.

Strategy:

Through retailers, leverage the economic focus of the upcoming election to secure our stated objectives, while using the lawsuit as the fulcrum.

Meetings/calls with trade associations / key accounts to finalise Deliverables and messaging:

- NFRN
- ACS
- British Retail Consortium (Post filing)
- Confederation of British Industry (Post filing)
- Leicestershire Asian Business Association (LABA)
- UK Key Account Groups
 - List...
- Global Key Accounts

Project Clarity – Grass roots campaign

See full NFRN status and grass roots campaign actions on [REDACTED]'s 'Grassroots Campaign Tracking' document (Key points below)

Hire Media Consultant for campaign

Prospective Parliamentary Candidate (PPC) target list

Media training for NFRN spokesperson – see communications plan

NFRN campaign materials:

- Member communication (letter) on campaign
- Election Manifesto for NFRN members
- PPC tool kit for NFRN members
- Pledge Card approved
- Electronic communications (more detail?)

NFRN Events:

- Campaign launch at NFRN Spring Conference
- PPC interaction Pilot
- PPC mailing (more detail?)
- PPC mailing 2
- Electronic Communications published (details?)
- Regional PPC event West Midlands
- Regional PPC event South East
- Regional PPC event North West
- Regional PPC event North East

From: [REDACTED]
Sent: Monday, April 26, 2010 5:07 PM
To: [REDACTED]
Subject: FW: Tories Quoted in Evening Standard article

[REDACTED]
Don't know if you saw this, but this is hugely important. **Directly attributable to the grassroots efforts.**

Best,
[REDACTED]

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From: [REDACTED]
Sent: Monday, April 26, 2010 4:35 PM
To: [REDACTED]
Subject: Tories Quoted in Evening Standard article

Dear All

See below an article to run in the Evening Standard tomorrow. I will include this in the summary today.

<http://www.thisislondon.co.uk/standard/business/article-23878075-tories-back-industry-appeal-against-cigarette-display-law.do>

Tories back industry appeal against cigarette display law

The Conservatives today threw their weight behind the tobacco industry's campaign to overturn a move to force shops to sell cigarettes under the counter.

Fall 2010 – Spring 2011: PMI launches yet another retailer grassroots campaign, with the objective of “secur[ing] a retreat of the existing statutory instruments which enable the point of sale display ban in the UK for the sale of cigarettes from 2011 onwards,” this time using yet another retailers’ association, LABA. The campaign includes, among other actions, organizing meetings between individual retailers and their MPs, with PMI’s consultant teams providing media coverage. Another meeting between Earl Howe and PMI is planned as well.

*“The campaign is designed to enable the retailers to talk directly to their MPs, **for the commercial arguments to outweigh all other criteria** and for the MPs to see local, regional and national benefits in siding with their local corner store and community shop.”*

Actions:

1. Grassroots Activity

The intention is to build further political pressure within the government for the DH to remove the POSD ban. The plan is to secure 300 active, supportive and committed MPs who will, should there be a free vote on a repeal or retreat, elect to vote to support the local retailers in their constituency.

The campaign is designed to enable the retailers to talk directly to their MPs, for the **commercial arguments to outweigh all other criteria** and for the MPs to see local, regional and national benefit in siding with their local corner store and community shop.

- Direct mail to LABA members highlighting the details of the campaign
- Letter to MP's - To secure the interest of the MPs, LABA and its association of retailers will issue a mailing to all sitting MPs, inviting them to engage in the campaign.
- Consultant calls to 300 MP's and corresponding constituency retailer to arrange meetings
- Site visits/meetings (MP and retailer to meet and consultant team to achieve media coverage/picture)
- LABA website and communications tool - To provide a high specification website and communications tool which enables LABA members to actively participate in their organisation's campaign. The site will also facilitate LABA's reputation building strategy. The site will be coded and designed to support high-resolution, high-bandwidth videos, pictures and podcasts, which will be made available to members and subscribers.
- LABA retail poll - poll of retailers across the UK to highlight the views on the POSD ban. Results to be published on the LABA website and provided to MP's as part of the LABA political engagement

2. Engagement with key political stakeholders

Setting up of meetings and sending correspondence to key stakeholders

Stakeholder list

- **DH - Andrew Lansley/Anne Milton**
 - Letters from LABA, ACS & NFRN
 - ACS and NFRN postcard/letter campaigns
 - Communication from US Chambers of Commerce
- **Messages:**
 - Impact on small retailers
 - Lack of evidence to support the ban
 - Youth smoking prevalence has not declined in Ireland since the display ban has been implemented
 - Better Regulatory options exist
 - Illicit trade
 - If the Government is not comfortable implementing the POSD ban they should delay the implementation
- **DBIS - Vince Cable/Mark Prisk/Graeme Sandell**
 - Letters/meetings from LABA, ACS & NFRN
 - ACS and NFRN postcard/letter campaigns
 - P/M meetings with Graeme Sandell
 - Request meeting with Mark Prisk
 - Communication from US Chambers of Commerce

From: [REDACTED]
Sent: Friday, March 19, 2010 12:18 PM
To: [REDACTED]
Subject: RE: UK Action Plan

Colleagues,

[REDACTED] and I met with Imperial's Head of Group Corporate Affairs and Head of Group Public and Political Affairs today to discuss various legislative and regulatory issues. As per the plan, we also discussed the potential litigation in the UK and related communications. Two issues in particular are relevant to this plan:

[REDACTED]

[REDACTED]

Imperial believes that given their status and history in the market, they will NOT be able to stand in the background letting the retailers speak out as much as we might desire. Further, it is not at all clear that they will have a retailer joining their suit.

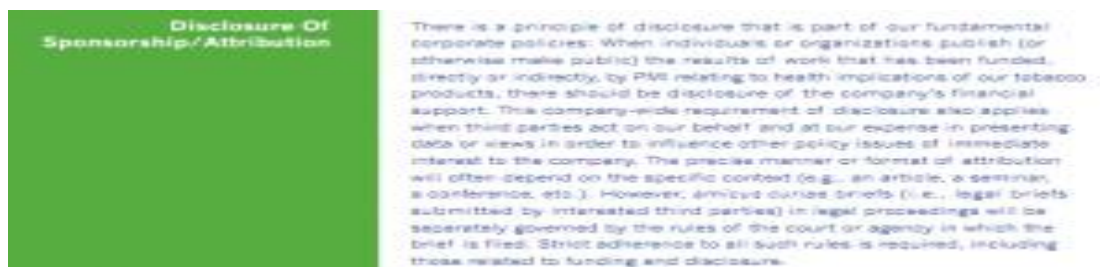
Thanks.

One of the main messages that PMI directed the retailers to convey to the MPs was: "if the Government is not comfortable implementing the POSD ban they should delay the implementation." And it worked like a charm: not only did the UK Government indeed delay the ban citing concerns for retailers, but its Health Minister even defended the delay with PMI's message points (channeled through retailers) while emphatically rejecting the notion that the tobacco industry had anything to do with the delay. And so, with a little help from its friends in the House of Lords and in the retailer associations, PMI appears to be winning the latest regulatory battles in the UK.

Could there be any doubt that PMI's stealth strategy is deceptive and improper? The Company tells the whole world from its website that there is "a principle of disclosure that is part of our fundamental corporate policies":

"there should be disclosure of the company's financial support . . . when third parties act on our behalf and at our expense in presenting data or views in order to influence . . . policy issues of immediate interest to the company."

http://www.pmi.com/eng/documents/Code_of_Conduct.pdf



Yet, until now, PMI's underwriting of the retailers' "grassroots" campaigns against tobacco control measures has not been disclosed.

* * *

PMI CEO Louis C. Camilleri complained at the Company's 2011 annual shareholder meeting: "I don't think we get enough recognition for the efforts we make to ensure that there is effective worldwide regulation of a product that is harmful and that is addictive." These "efforts" — in the UK, in Australia, in the EU, and other places — are now being recognized here, at SmokinGate.com. Stay tuned for more stories to come.