Interpretation

No.577【Compelled Speech Case】

Date

2004/05/07

Issue

Is Article 8, Paragraph 1, of the Tobacco Hazards Prevention Act unconstitutional in mandating that tobacco product suppliers disclose on the containers the level of nicotine and tar contained in a tobacco product?

Holding

Article 11 of the Constitution protects people's active freedom of expression as well as passive freedom not to express. The scope of such protection includes expressions of subjective opinions and statements of objective facts. Product labeling is a means to provide objective information about a product and therefore falls within the scope of the protection of free speech. However, the government may adopt reasonable and appropriate measures through legislation, which are necessary to advance important public interests. 1

To improve the health of the people, the government is to promote comprehensive health services and devote attention to social welfare programs such as medical care. Article 8, Paragraph 1 of the Tobacco Hazards Prevention Act provides that the level of nicotine and tar contained in the tobacco products shall be indicated, in Chinese, on the tobacco product containers. Article 21 of the said Act imposes sanctions on the violative tobacco product suppliers. Such a legal obligation to disclose imposed upon the tobacco product suppliers constitutes a restriction on the freedom not to express by compelling them to disclose material product information. However, this restriction serves important public interests such as providing consumers with necessary product information and safeguarding the health of the people and does not exceed the degree of necessity, and therefore it is not repugnant to the protection of freedom of speech and the principle of 2

proportionality set forth respectively in Articles 11 and 23 of the Constitution. Although requiring the tobacco product suppliers to disclose product information on tobacco containers constitutes a restriction on their property rights, such product labeling nevertheless is a social duty imposed upon the tobacco product suppliers because such labeling concerns the health of the people. Since the restriction is minor and within the tolerable scope of the social duty, it is consistent with the constitutional provision protecting the property rights of the people. The labeling obligation of the tobacco products, which applies only to the labeling that occurs after the implementation of the said provision, is not imposed retroactively under the time scope of the legal application. It cannot be deemed a violation of people's property rights because of retroactive application. Article 8, Paragraph 1 shall be observed together with Article 21 of the said Act, and the content of the said provisions is sufficiently clear to determine the objects falling within the scope of the regulations, their behaviors and the legal consequences of infringement. It thus does not constitute a violation of the principle of legal clarity in a rule-of-law nation. Besides, concerning various kinds of foods, tobacco products, and liquor products, these products shall not be compared on the same basis because each product may have a different impact on human body; it is within legislators* discretion to prioritize the order of regulation and regulate accordingly based on the nature of different products. It is therefore consistent with the equal protection of law guaranteed by Article 7 of the Constitution.

Reasoning

Article 11 of the Constitution protects people's active freedom of expression as well as passive freedom not to express. The scope of such protection includes expressions of subjective opinions and statements of objective facts. Product labeling is a means to provide objective information about a product and therefore is to be deemed one kind of commercial speech which is helpful to consumers in making their rational economic choices. If a product's labeling is to promote lawful transactions and its content is not false or misleading, it has the same functions as other speech in providing information, forming public opinion and self-realization. Such product labeling shall fall within the scope of protection provided to freedom of speech outlined in Article 11 of the Constitution and recognized by J.Y. Interpretation No. 414. However, to provide consumers with truthful and complete information and to

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prevent any misleading information or deception caused by the content of product labeling or to advance other important public interests, the government may legislatively adopt measures which are substantially related to such objectives such as requiring product suppliers to provide material product information.

Although administrative regulations often prescribe the elements of the governing acts and the violative legal consequences separately, they are to be observed jointly to determine the objects falling within the scope of the regulations, their behaviors and the legal consequences of their infringement. Article 8, Paragraph 1 of the Tobacco Hazards Prevention Act prescribes the elements of the governing acts while Article 21 of the same Act prescribes the objects falling within the scope of the regulations and the legal consequences of infringement. By observing both provisions, it can be sufficiently determined that the objects falling within the scope of the regulations are tobacco product manufacturers, importers and sellers who are obliged to label the amount of nicotine and tar in Chinese on tobacco containers. In case of violation, the competent authority may impose an administrative fine at an amount of no less than TWD 100,000 but no more than TWD 300,000 on any of them with discretion and order them to recall all tobacco products and rectify the situation within a specified period. Whoever fails to comply with such order within the said period is to be ordered to cease manufacture or importation for six months to one year. All violative tobacco products is to be confiscated and destroyed. The prescription of the objects falling within the scope of the regulations, their behaviors and the legal consequences of infringement outlined in the Tobacco Hazards Prevention Act are definite and unequivocal, and thus do not constitute a violation of the principle of legal clarity in a rule-of-law nation. 2

By referring to Article 157 of the Constitution and Article 10, Paragraph 8 of the Amendments to the Constitution, it is evident that the government is to promote comprehensive health services and devote attention to social welfare programs such as medical care in order to improve the health of the people. Article 8, Paragraph 1 of the Tobacco Hazards Prevention Act, which was promulgated on March 19, 1997, and went into force on September 19 of the same year, provides that the level of nicotine and tar contained in the tobacco products shall be indicated, in Chinese, on tobacco product containers. Article 21 of the same Act provides that whoever violates the provisions set forth in 3

Article 7, Paragraph 1 and Article 8, Paragraph 1 of the said Act or engages in the prohibited acts prescribed in Article 7, Paragraph 2 of the said Act shall be subject to a fine at an amount of no less than TWD 100,000 but no more than TWD 300,000 and be notified to recall all tobacco products and rectify the situation within a specified period. Whoever fails to comply with such order within the said period shall be ordered to cease manufacture or importation for six months to one year. All violative tobacco products shall be confiscated and destroyed. The prescription set forth in these provisions is a legal duty imposed by the government on the tobacco product suppliers to mandate disclosure of material objective information on the product label. Such a legal duty constitutes a restriction on the freedom of the tobacco product suppliers not to disclose information regarding specific products. However, this duty of disclosure helps consumers to be adequately informed of the content of tobacco products. Moreover, revealing the amount of each ingredient in the tobacco products will help consumers to be aware of and alert to the potential hazards caused by smoking. By doing so, consumers can make a rational and informed purchase, and it therefore substantially facilitates the accomplishment of the government objective to safeguard the health of the people. While holding all levels of government agencies and schools responsible for anti-smoking education may be a less restrictive means, such measure is less effective to achieve the government objective in comparison with the duty to disclose material product information imposed upon tobacco product suppliers. The imposition of the duty to disclose is therefore not incongruent with the principle of necessity. Furthermore, since the imposition of duty to disclose upon the tobacco product suppliers purports to advance the important public interests of providing consumers with necessary product information and safeguarding the health of the people, it does not compel them to provide personal information or to express a particular opinion nor requires them to disclose trade secrets. Merely requiring them to provide objective information about product ingredients which can be easily obtained therefore does not exceed what is necessary. In addition, considering the physical harm caused by addiction to tobacco products, and in order to make tobacco product suppliers strictly adhere to the duty of disclosure, the government may impose upon a violator a considerable fine under Article 21 of the Tobacco Hazards Prevention Act either with or without first requiring the violator to rectify within a specified time period. In comparison with a direct order to cease manufacture or importation of the tobacco products, the

imposition upon a violator of a considerable fine is considered a relatively effective and lenient means. Moreover, requiring the tobacco product manufacturers, importers, and sellers, rather than the entire tobacco industry, to provide material product information on the tobacco product containers is considered a reasonably necessary and proper means to achieve the purpose of tobacco hazard prevention. Although Article 21 of the Tobacco Hazards Prevention Act imposes limits on the tobacco product suppliers' freedom not to express, the means adopted by the government is substantially related to the ends, which constitute important public interests in safeguarding the health of the people and providing necessary trade information. The limitation is consistent with the requirement of the rule of proportionality in a rule-of-law state and has not exceeded the level of necessity in advancing public interests, and is thus congruent with Articles 11 and 23 of the Constitution.

Although requiring the tobacco product suppliers to provide product information on the tobacco product containers constitutes a restriction on their property rights, such product labeling nevertheless is consistent with the principle of good faith dealing and transparency that are recognized in business transactions. Such duty of labeling concerns the health of the people and provides necessary information regarding the content of the product and is, therefore, a social duty arisen from the property right of the tobacco products. Since the restriction is minor and within a tolerable scope of the social duty, it is consistent with the constitutional provision protecting the property rights of the people. Besides, the newly effective law is in principle inapplicable to ex ante events, i.e., events that already occurred before the law. This is the ex post facto principle, which bans the retroactive application of law. The so-called "events" mean all sets of facts which constitute the statutory elements; the so-called "occurred" means all sets of legal facts must have been embodied in real life. The duty of disclosure and liability prescribed in Article 8, Paragraph 1 and Article 21 of the Tobacco Hazards Prevention Act are only applicable to tobacco product labeling events that occurred after the promulgation and implementation of the said Act. Neither of the preceding provisions extends the duty of disclosure upon the tobacco product suppliers to the period before the enactment and implementation of the said Act. Since the Tobacco Hazards Prevention Act does not apply retroactively, it can hardly be claimed that the property right is infringed because of the retroactive application of law. With regard to a particular set of facts that occurred ex ante

which constitutes a partial element of the newly effective law, such as the manufacturing time, importation time, or distribution time of the regulated tobacco products which shall be subjected to labeling duty, the legislators shall, under the premise of taking account of public interests, enact transitional clauses to make exemptions or to defer application of the new law, if special consideration is needed. However, to require those tobacco products that have already entered the distribution channel before the implementation of the said Act but not yet been sold to comply with the labeling requirement will cause unforeseeable detriment to the tobacco product suppliers' property rights. Thus, to protect the reliance interests of the people, the legislators were obligated to enact a transitional clause for the tobacco products mentioned above. Article 30 of the Tobacco Hazards Prevention Act provides that the said Act shall be implemented six months after its promulgation. This transitional clause gave the tobacco product suppliers enough time to prepare in advance for the tobacco products that entered the distribution channel before the implementation to fulfill the labeling duty, and therefore saved them from immediate legal detriment incurred by the change of law. The six months' transitional period, which constitutes no impediment to the achievement of the legislative objective to safeguard the health of the people, is congruent with the principle of reliance protection. Besides, concerning various kinds of foods, tobacco products, and liquor products, these products shall not be compared on the same basis because each product may have different impacts on the human body; it is within legislators* discretion to prioritize the order of regulation and regulate accordingly based on the nature of different products. It is therefore consistent with the equal protection of law guaranteed by Article 7 of the Constitution.

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* Translation by Li-Chih LIN

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