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## ASA Adjudication on Gallaher Ltd

### Gallaher Ltd t/a JTI

Members Hill  
Brooklands Road  
Weybridge  
Surrey  
KT13 0QU

**Date:**

26 March 2014

**Media:**

National press

**Sector:**

Tobacco

**Number of complaints:**

3

**Agency:**

Big Al's Creative Emporium

**Complaint Ref:**

A12-208266

**Ad**

Three national press ads, for a tobacco producer, regarding the Government's plain pack consultation on cigarette packs:

a. Text in the first ad stated "The anti-tobacco groups say that plain packs would prevent young people from starting to smoke. So why is there no evidence to support this claim in the Department of Health's consultation? Why, when the same policy was rejected in 2008, due to the same lack of evidence, has nothing credible emerged since?"

b. Text in the second ad stated "Everyone, us included, wants to prevent minors from starting to smoke. So, given the importance of the issue, why is the Department of Health consulting on a proposal which, a) has no evidence to support it and, b) common sense says won't work? In 2008, the same policy was rejected when it was found to have no credible evidence ...".

c. Text in the third ad stated "This same policy was rejected in 2008 because there was no credible evidence."

## Issue

ASH, ASH Scotland and Cancer Research UK challenged whether the claims that the Government had rejected the policy of adopting plain packaging on cigarettes in 2008 because of a lack of credible evidence were misleading and could be substantiated.

## CAP Code (Edition 12)

### [3.13.7](#)

## Response

Gallaher Ltd, t/a JTI (JTI), stated that in 2008 the Department of Health (DH) had considered a range of possible tobacco control measures in its Consultation on the Future of Tobacco Control ("the 2008 Consultation"). Those measures had included a ban on the display of tobacco products at the point of sale, a ban on the sale of tobacco products from vending machines and a requirement for tobacco products to be sold in plain packaging, with the objective of reducing uptake of smoking, and particularly among children and young people.

JTI explained that following the end of the consultation period and the publication in December 2008 of the official report ("the 2008 Consultation Report"), the Government had decided to take forward proposals for a ban on the display of tobacco products at point of sale and a ban on the sale of tobacco products from vending machines. Those two proposals were incorporated into the Health Bill and subsequently became law as the Health Act 2009. JTI stated that, on the other hand, the Government decided in 2008 not to take forward proposals for the plain packaging of tobacco products. They asserted that it was therefore clear from the facts that a proposal for plain packaging of cigarettes was rejected by the Government in 2008, because it was decided at that point in time not to take it forward. They said that other bodies had accepted that that was the case and quoted ASH as having stated in May 2010 that tobacco companies "saw off the proposal to require plain packaging before the Health Bill reached Parliament". JTI further pointed out that the ads did not claim that the proposal had been rejected for all time and said readers would have understood that it was now once again under consideration.

JTI provided copies of a number of ministerial statements made shortly after the publication of the 2008 Consultation Report, which they said reinforced the fact that the Government had rejected the proposal to adopt plain packaging and demonstrated that the reason for this had been because the evidence to take it forward was lacking. For example, they quoted Alan Johnson, then Secretary of

State for Health, as saying in a written ministerial statement to the House of Commons on 9 December 2009 "We believe that more needs to be done to develop our understanding of how the packaging of tobacco products influences smoking by both adults and young people. The Government will therefore keep tobacco packaging under close review". They also quoted him as saying on 16 December "... there is no evidence base that it [plain packaging] actually reduces the number of young children smoking. We want to keep that under review, and when there is an evidence base for it, it could well be another important measure to meet our goal, which is to reduce the number of young people smoking".

A further quote provided by JTI referred to comments made in March 2009 by Baroness Thornton, then Health Minister in the House of Lords, in response to proposed amendments to the Health Bill which would require tobacco to be sold in plain packets, "... we consider it premature at this stage to take this major step ... We will work hard to ensure that the emerging evidence on plain packaging is kept under review, and the Government's policy will change if and when that is appropriate". In May 2009, JTI noted that she had said "Evidence presented during the tobacco consultation suggests that the packaging of tobacco products may encourage young people to start smoking and may undermine health messages about the dangers of smoking. We want to strengthen and build on this evidence base". They also referenced comments made by Gillian Merron, then Minister of State for Public Health, in June 2009 in a debate in the House of Commons, where she stated that there was some evidence that branding on cigarette packs might increase brand awareness among young people but that it was not conclusive, and that no studies had shown that introducing plain packaging of tobacco would cut the number of young people smoking or enable people who wanted to quit to do so. The quotes provided by JTI showed that those views had later been repeated in similar terms in correspondence to JTI from Gillian Merron and between Tessa Jowell MP and Andy Burnham, then Secretary of State for Health.

JTI stated that, in view of the outcome of the 2008 Consultation and the subsequent position adopted by Government, they did not consider that the claims in the ads that the Government had rejected the policy of adopting plain packaging on cigarettes in 2008 because of a lack of credible evidence were misleading, or likely to mislead.

## Assessment

THIS ADJUDICATION REPLACES THAT PUBLISHED ON 13 MARCH 2013. THE VERDICT HAS CHANGED, MAKING THE COMPLAINT UPHELD IN PART.

### Upheld in part

We understood that plain packaging was one of a number of issues which had been considered during a public consultation by the DH in May 2008. We noted that as a result of that consultation the Government had adopted new policies regarding the point-of-sale display of tobacco products and underage access to tobacco sold in vending machines, and that those policies had been incorporated into the Health Bill and, subsequently, the Health Act 2009. We also noted that plain packaging had not been built into law in the same way at that time.

We acknowledged the numerous statements regarding the issue of plain packaging which had been provided by JTI, and which they considered demonstrated both that the Government had rejected the policy in 2008 and that it had done so because it lacked the evidence to support it. However, although the Government had decided not to take forward the proposal for plain packaging in the same way as it did with other measures considered in the consultation, we understood that they had nevertheless intended to keep the measure under review and planned to re-assess it at a later date. We considered

that that position was stated in a number of the quotes provided by JTI, including Alan Johnson's 9 December 2008 written ministerial statement: "The Government will ... keep tobacco packaging under close review". We considered that the word "rejected" implied a stronger and more definitive action taken by the Government than appeared to be the case, and contacted the DH to clarify the Government's position on plain packaging following the publication of the 2008 Consultation Report in December of that year. They advised that, while the proposal was not pursued in the new legislation introduced in 2008/2009, the Government had kept open the potential for it to be pursued at a later date and had committed to keeping the position under active review.

We noted that at some points the quotes provided by JTI dealt with the issue of what evidence existed in support of plain packaging in 2008/2009. In May 2009, Baroness Thornton had stated "Evidence presented during the tobacco consultation suggests that the packaging of tobacco products may encourage young people to start smoking and may undermine health messages about the dangers of smoking. We want to strengthen and build on this evidence base." That statement appeared to imply that at the time of the 2008 Consultation and shortly after the Government believed that some evidence did exist in support of plain packaging, but not enough to support its introduction.

We acknowledged, however, that some of the other quotes could be interpreted differently, so as to imply that at least some types of evidence were altogether lacking at that time. On that point, the DH commented that a range of factors, including the circumstances, the audience addressed and the type of evidence under discussion, could lead to the expression of apparently different positions on that subject, but reiterated that in 2008/9 the Government had considered only that there was not sufficient evidence to support the introduction of plain packaging.

We noted that the Government had not taken forward and built into law proposals for plain packaging at the same time as other measures considered under the 2008 Consultation. We considered that JTI had substantiated that there was in 2008 a lack of credible evidence that plain packaging would prevent young people from starting to smoke. However, we considered that readers of the ads would be likely to interpret the use of the word "rejected" to describe that decision as a more categorical action than had in fact been taken, and as implying a degree of finality in 2008 greater than was in fact the case. We therefore considered that the claims in the ads that the policy had been "rejected" in 2008 because of a lack of credible evidence gave a misleading impression of the position and action taken at that time by the Government and concluded that the ads breached the Code in that respect.

The ads breached CAP Code (Edition 12) rule 3.1 (Misleading advertising).

## Action

The ads must not appear again in their current form. We told JTI not to claim that in 2008 the Government had "rejected" the policy of plain packaging for cigarettes.

[Previous](#)[Next](#)