

PETITION NO. _____ of 2004

Petition presented **before the**

NATIONAL HUMAN RIGHTS COMMISSION

Hemant Goswami, on behalf of **Burning Brain Society**

Based at:

#3, Glass office, Business Arcade, Hotel Shivalikview, Sector 17-E, Chandigarh
e-mail: society@burningbrain.org ; **Telephone:** 0172-5185600, 2700001 [Ext. 2803]

Versus

Union of India and all the States mentioned in the “First Schedule” of the “Constitution of India including the States of Jammu & Kashmir, Punjab, Haryana, U.T. of Chandigarh, Himachal Pradesh, Delhi, Uttranchal and Uttar Pradesh

**DENIAL OF HEALTH CARE RIGHTS BY ACTS OF OMISSION IN
CONTRAVENTION TO THE LAW AND THE CONSTITUTION OF INDIA.**

Most respectfully,

The undersigned on behalf of Burning Brain Society, a voluntary organization registered under the “Societies Registration Act” and having its office at #3, Glass Office, Hotel Shivalikview, Sector 17-E, Chandigarh (U.T.) would like to petition as detailed hereunder;

BACKGROUND:

1. Burning Brain Society is a civil society organization working voluntarily for the welfare of the people. Our main focus is on young people and we work for

providing them a direction. We are concerned about the ills and aberrations affecting their lives. It is well known that “Tobacco” is one such aberration.

2. It is a known fact that the health of people who smoke and above all, those who passively inhale the smoke is put to great risk. The innocent souls who do not know of the risks involved and are impressed to take up smoking is a crime as heinous as cold blooded murder.
3. It was very motivating to see India sign and ratify the “Framework Convention on Tobacco Control (FCTC)” and also enacted “The Cigarettes and other tobacco products (Prohibition of advertisement and regulation of trade & commerce, production, supply and distribution) Act 2003 (COTPA),” to be enforced from May 1, 2004. It looked as if the aberrations because of tobacco, which has reached epidemic level, would now be controlled.

CAUSE OF ACTION:

4. That despite the “The Cigarettes and other tobacco products (Prohibition of advertisement and regulation of trade & commerce, production, supply and distribution) Act 2003 (COTPA),” being enforced the government machinery did not come into action and preferred to ignore the violations and continue to promote the interest of the tobacco companies. It is worth considering that;
 - I. People continue to smoke openly in public, denying the right of healthy living to millions other and none of the governments booked anyone under the violation of the COTPA till date. The health of public is ignored for the benefit of some.
 - II. The statutory boards in each public office/area stating, “No Smoking Area - Smoking Here is Offence,” are missing. Even the Courts (High Court included), Secretariat, House of the Legislative Assemblies of the state, Police stations, Government Hospitals, Government Hotels, etc. no one has cared to put in the board. Talking about the general public is much beyond the point.

- III.** No hotels of the area (Even the Government run CITCO hotels in Chandigarh) have segregated the smoking and the non smoking area and the whole area continues to be smoking area. This is clear denial of right to health for the millions of people who are made to inhale the harmful composition of 4000 chemicals, out of which 50 are carcinogenic.
- IV.** Promoting a brand of cigarette by any mode is prohibited under COTPA; Section 5. (3) of the act says: No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of— (a) cigarettes or any other tobacco product; or (b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person. Despite this such promotions continue. Godfrey Phillips Ltd., a tobacco company has reinstated the “Red & White” bravery awards, promoting their cigarette brand “Red & White.” Our efforts resulted in the logo of the cigarette being dropped but the awards promoting the cigarette brand continues. With the punch line of their cigarette brand “*Red and White Piney Walon Ki Baat Hi Kuch Aur Hai*” the continuation of the award promote the same cigarette promotion punch line and amounts to nothing more than cold blooded murder of youngsters who get impressed by such things and take up smoking.
- V.** Companies like ITC Limited are promoting their cigarettes (Wills) by marketing clothes bearing the same name “Wills.” Since after the enactment of the COTPA, this has become illegal but they continue to do so and the government remains a mute spectator. Such promotion is illegal under the COTPA and the reason is well detailed in the preamble of the act, which spells out the spirit behind the Act.
- VI.** It is well known fact that 85% of the people who smoke start between the age of 11 and 18 (and near 100% by 25) and all the cigarette companies target them to hook them early and make them tobacco consumers. ITC Limited is doing an unpardonable act by promoting greeting cards for this segment which carry the logo of their cigarette brand “Gold Flake” and are

name “Gold Flake Expressions Card.” The punch line says, “If it is in your heart, it is on the card.” Promoting cigarettes by carrying the brand name and the logo on the cards is certainly illegal but promoting it to innocent souls is an unpardonable act, besides being unethical and immoral. The facts were brought to the notice of the Government but they have not cared to act. By the inaction of the governments it is a clear denial of right to healthy living not only for the young people but also for the society as a whole.

VII. The notification announcing the implementation of the act (COTPA) has been deliberately left incomplete so as to benefit the tobacco companies much against the spirit by which the parliament enacted “The Cigarettes and other tobacco products (Prohibition of advertisement and regulation of trade & commerce, production, supply and distribution) Act 2003.”

5. That besides conducting public awareness activities, we have also approached many government agencies too, three of such petitions (One to the Governor of Punjab & Administrator of Chandigarh, another to the prime Minister and the third one is a complaint against the awards instituted in the name of a cigarette) are appended along, they may kindly be read as a part of this petition.
6. By deliberate inaction and not taking cognizance of the violations clearly amounts to **denial of health care** and “Denial of Healthy Living” to millions of people. The long term repercussions, if the government tries to understand, are too horrific.

PRAYER:

It is therefore prayed that;

- a) The union of India be suggested to make the rules made in this regard more stringent and unambiguous.
- b) All the state governments and the union governments, including the governments of Jammu & Kashmir, Punjab, Haryana, U.T. of Chandigarh (through union of India),

Himachal Pradesh, Delhi, Uttranchal and Uttar Pradesh be directed to enforce the act in its letter and spirit.

- c) The enforcement department of all the state governments, including the governments of Jammu & Kashmir, Punjab, Haryana, Uttar Pradesh, Himachal Pradesh, Delhi, Uttranchal and U.T. of Chandigarh be directed to book the violators trying to promote their tobacco products under various guises and fully enforce the act in its letter and spirit.
- d) May pass any such orders which furthers the spirit of this petition and enhances the welfare and health rights of the general public.

Cordially yours,



Hemant Goswami

Chairperson, Burning Brain Society

Enclosed:

- a.) Cutting of newspapers announcing awards in the name of a cigarette.
- b.) Promotion dangler of “Gold Flake” greeting cards.
- c.) Copy of letter written to the P.M. of India.
- d.) Copy of Memorandum handed over to the Governor of Punjab & Administrator of Chandigarh for action.
- e.) Complaint filed with the I.G. Police Chandigarh for taking action against violations.

COPIES

For the kind attention of;

His Excellency Justice O. P. Verma,
Governor of Punjab and Administrator of Chandigarh,
Raj Bhawan,
Chandigarh

GLORIFICATION OF TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES AND OPEN DISREGARD FOR LAW

His Excellency,

As a responsible member of the civil society, we at Burning Brain Society share our concern for the young people and issues concerning the public at large.

The issue of tobacco and its advertisement concerns the general public and their health and has long term consequences on the public, the young people and the country as a whole. As tobacco & liquor are also the gateway to other substance and drug abuse so any neglect of established laws is going to have a significant multi-dimensional and complex effect on the future.

Government of India has appreciated the facts relating to the harmful effects and consequences of tobacco use which has resulted in the form of “The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.” In the preamble of the Act itself, it has been mentioned that;

World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

AND WHEREAS, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

AND WHEREAS, it is expedient to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by article 47 of the Constitution;

India’s commitment on the issue is further strengthened by signing and ratification of the “Framework Convention of Tobacco Control.” The guiding principals of FCTC further mentions as follows;

2.) Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multi-sectoral measures and coordinated responses, taking into consideration:

- (a) the need to take measures to protect all persons from exposure to tobacco smoke;
- (b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;
- (c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives;

The political commitment, as talked about in FCTC is now more-or-less there, but unfortunately the implementation at the ground level is yet to be achieved.

As a commitment to reduce the use of tobacco and dissuade youngsters from tobacco control a specific ban on any form of advertisement in “The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003” Section 5 and Rule 4 made therein. Section 5 clarifies that No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products. Not more than two boards, not exceeding the size of ninety centimeter by sixty centimeter can be used for advertisement for cigarettes and any other tobacco products and which can only be displayed at the entrance or inside a warehouse or a shop where cigarettes and any other such tobacco products are offered for distribution or sale.

The emphasis is on the word BOARD and the SIZE OF THE BOARD. It clearly conveys that no other form of advertisement is allowed; but all over the region Cigarette companies are affixing boards much bigger than the specified size and engaging in many other forms of advertisements. Even electrical shops, departmental stores and such like establishments have also affixed boards carrying advertisement of tobacco products. In most of the cases these boards are not affixed at the entrance or inside the establishment but affixed outside on the top of the shop and aided by back lit or neon lighting. This is certainly against the law but still the Government is doing little to book the offenders.

Government of India has also shown its commitment in preventing the young people from taking to the habit of tobacco consumption by specifically banning its sale to young people, but most unfortunately this provision is gallantly ignored and most vendors can be seen selling it to young people and above all children as young as 10-12 years can be seen selling it too. Besides, it has come to our notice that when young people go to buy tobacco products the tobacco vendors have now started charging a premium (Black-marketing) from young people after telling them about the ban. They are not only selling tobacco products openly to young people but also making double the money now by doing so. The authorities have turned a nelson-eye to this too.

It is also important that by law, sale of tobacco products by minors is banned; wherein in the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 the involvement of young people at any stage in manufacturing process is banned but if the sale of the tobacco product by minors is allowed the whole purpose is defeated. It may be mentioned here that the distributor who provides/sells/distribute the product to such young people for further sale can be aptly booked for the violation. Further the

Government may also be recommended to amend the act to prohibit the sale of tobacco products by minors.

Smoking in public is as prevalent as before the enactment of the said law. All public offices, public places, hotels including Government controlled and run hotels continue to disregard the law in this regard. Even the statutory board to be affixed at public places, as mentioned in Rule 3, which requires that The owner or the manager or in charge of the affairs of a public place display prominently a board of a minimum size of sixty centimeter by thirty centimeter in the Indian language(s) as applicable, at least one at the entrance of the public place and one at conspicuous place(s) inside, containing the warning "No Smoking Area - Smoking here is an offence is missing from each and every establishment of the region. What to say, even the D.C. Office, Secretariat, Bus stand, Police Stations, Citco and other Government controlled hotels too are openly breaking the law in this regard. Shouldn't such officials who are supposed to implement the law be punished much more severely when they themselves commit an offence under the same law?

Shops at most places, under the control of the Government, where people should not smoke, like the bus-stand, educational institutes, courts, etc. are still selling tobacco products actively. Punjab University, ISBT, High Court and other such place continue to have cigarettes shops and other commercial establishments too operating from such place continue to sell tobacco products illegally. How can the ban on smoking be effective if such places, under the control of the government continue to sell tobacco product within their premises? Shouldn't this be stopped immediately?

Same kinds of violations are apparent with liquor products too. Advertisement of liquor products can be seen all over the region. Surrogate advertisements which leave very little to imagine, galore. All wine shops are adorned by scores of hoardings, banners and posters. The glorification and glamorization of liquor products prompt the young people to drink besides conveying that doing so is fashionable. Shouldn't all such advertisements be removed especially when they are against the law?

It is high time to understand that smoking and alcohol consumption is the first step towards drugs and substance abuse. Most drug users graduate into drugs and substance abuser from first being a smoker or alcohol consumer. It is important to pay attention to the basic prevention. We must take care that the young people including school going children do not start the habits of smoking and/or drinking. It is important to enforce with commitment the laws in this regard and we should do everything possible to stop glorification and glamorization of such products. Government spends a large amount of money on de-addiction programmes with little success. Member of the public who do not consume tobacco or liquor also bear the brunt of tobacco and liquor in many ways, passive smoking is just one of them. Public hospitals bear the burden of tobacco and alcohol related ailments and spend lots of resources on such diseases. Law and order problems because of alcohol are very well known. Then why shouldn't we become serious about the issue and put a stop to its further use and at the least enforce the laws in this regard seriously?

Since many among the enforcement agencies and the decision making body themselves are tobacco users so they have a dwindling commitment which dilutes the drive against

tobacco. It is important that people who consume tobacco be removed from any chain of command in a drive against tobacco. This may also be considered. Cotinine, which is a major metabolite of nicotine, can be screened during the annual health checks of the Government officials, this way officials who consume tobacco can be identified and removed from the decision making chain related to enforcement of laws relating to smoking and drug use resulting in increased commitment against laws made in this regard

As our way of contributing on the “Day against drug abuse,” on June 26, 2004, we started video graphing the violations with regard to the display of advertisements of tobacco and liquor products. This 23 minutes raw video film, which we are presenting your good self, is just illustrative in nature. The violations are so open and common that wherever we went, we had something to cover. Violation of the law is everywhere and with very little efforts we could video graph some of the violations. Hundreds of people are knowingly violating the law and can be booked in a single day with lakhs of Rupees as collections in the form of penalties.

We appeal that the future generation and the members of the general public who by choice do not consume such products be protected from the harmful effects of tobacco and other alcoholic products.

We further appeal your high office to take such necessary steps which help in enforcing the law made by the Union of India and establish the rule of law and not the commercial interest of cigarette companies, who are selling nothing but slow poison.

Yours cordially,

Hemant Goswami
(Chairperson)

On behalf of all the members of “Burning Brain Society” and the members of the civil society.

Kind Attention: Sh. Manmohan Singh,
Prime Minister of India,
PM Office, South Block, Raisina Hill,
New Delhi - India-110 011.
E-Mail: manmohan@sansad.nic.in

**INTERVENTION OF PMO REQUIRED TO STOP TOBACCO PROMOTION
TO YOUNGSTERS**

Sir,

We would like to bring to your kind knowledge about a ploy by tobacco companies to promote their tobacco products to youngsters.

The segment targeted by them is 10 years to 25 years. Promoting tobacco to anyone or selling tobacco products to young people below 18 is already a crime under “The Cigarettes and other tobacco products (Prohibition of advertisement and regulation of trade & commerce, production, supply and distribution) Act 2003.” Despite this fact, tobacco companies are openly promoting and selling their products to minors and youngsters. We have brought the facts to the knowledge of various Governmental agencies but it appears that it is quite a task to wake them up from their slumber.

Surrogate advertisements and promotions of tobacco products are also banned under the said act but tobacco companies are not perturbed by the law and appear to be hand-in-league with the government machinery.

Two such recent incidences which we would like to bring to your kind notice are;

1. Promotion of a brand of cigarette (Red and White) by Godfrey Phillips by reinstating a bravery award in the name of their cigarette brand (they call it social initiative).
 2. Marketing of greeting cards meant for children by ITC Ltd. Bearing the name of one of their cigarette brand (Gold Flake) and carrying a deceptively similar logo style on the cards.
- In the first instance the cigarette company is promoting the brand of their cigarette “Red and White” by instituting “Red and White Bravery Awards.” It is worth noting that many government officials and senior officials participate in these award ceremonies in return for petty gains. We have been protesting about the same but with little success till now. After the implementation of said Act, Section 5(3) of the Act clearly declares these kinds of surrogate promotions illegal but the Government and its officials refuse to act.
- In another case ITC Limited is promoting greeting cards under the brand name “Gold Flake Expressions.” It is worth noting that these cards bear the name of their leading cigarette brand “Gold Flake,” carries a similar logo as on the cigarette pack and is targeting young people in the segment of 10-25 years. Can we allow cold blooded murder of our children? Can we allow such subliminal publicity targeting innocent souls? Who will answer this question and when will

we react? ITC is also marketing confectionary items like candies, toffee rolls etc. for children and it is going to be just a matter of time when these things are also going to bear the name of cigarette or other tobacco products. Shouldn't all such cards be immediately confiscated and action be taken against the company?

The issue becomes more important when we realize that the government itself is having about 31% stake in ITC through LIC, UTI and other insurance companies. If the Government is a share holder of tobacco companies and prefers to remain in the "killing" business (instead of investing in cash starved infrastructure development), still it must insure that the business is conducted in a legal, moral and ethical way. Regard for the law and the dignity of life must be maintained at all times, after all wealth accumulation by any means is not the sole aim of the state, if it be one.

These are not isolated cases; another tobacco company (KUBER) has started marketing snacks (Namkeen) under the brand name of their tobacco product (Kuber Namkeen) and hence promoting the tobacco product. Many tobacco companies are promoting their tobacco products through another similar or same named product by just declaring that this is a non-tobacco product whereas the other variant bearing the same name is a tobacco product (Example Pan-Parag).

The other provisions of "The Cigarettes and other tobacco products (Prohibition of advertisement and regulation of trade & commerce, production, supply and distribution) Act 2003" too remains unimplemented is no secret as even outside the "Nirman Bhawan," the seat of Ministry of Health, open violations of the tobacco act galore but no body seems to be interested to react. Anyhow that remains beyond the scope of present petition.

There can be no doubt about the fact that these all tobacco companies are trying to target young people as more than 85% of the people who consume tobacco start before the age of 18. I don't think we will allow tobacco companies to do so. We have a strong international commitment in the form of FCTC too, this is the time to show and prove that we are committed. We need your intervention to stop all this.

Thanking you,
yours cordially

Hemant Goswami
Chairperson, Burning Brain Society

BBS/0704/CP/001
July 28, 2004

For the kind attention of;
The **Inspector General of Police**, Chandigarh

Call for taking Cognizance of the offence(s) committed under The Cigarette and Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

Dear Sir,

Your attention is called towards the news item/interview in the page 6 of the Chandigarh Tribune dated July 28, 2004 under the head "Lifestyle". Wherein Sh. Sundeep Kumar, Senior Vice President, Corporate Affairs of the Company Godfrey Phillips India Limited has announced some awards in the brand name of one of their cigarette "Red and White" and has also declared that some eminent personalities including police officers, retired judges of the supreme court and high court, renowned social workers and media personalities have agreed to be a part of the event as judges.

We would like to draw your attention to the relevant extracts from "**The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003**"

Section 5. (3) No person, shall, under a contract or otherwise **promote or agree to promote** the use or consumption of—

(a) cigarettes or any other tobacco product; **or**

(b) **any trade mark or brand name of cigarettes** or any other tobacco product in exchange **for a sponsorship, gift, prize or scholarship** given **or agreed to be given** by another person.

Wherein the above mention action of Sh. Sundeep Kumar and the others mentioned by him amounts to promoting the BRAND of Tobacco which is prohibited under the law u/s 5 of the above mentioned act. You are requested to book him and the other members of the panel of judges and others who have agreed to be a part of the proposed and publicized event under section 22 and other relevant provisions of the act and initiate the action. Further those who are involved in this present act or any act agreed to be done in future should also be dealt according to the provisions of law.

We are also enclosing a raw video film (on VCD) shot by us, highlighting the open violations of the Act across the city. The same was also presented to His Excellency Justice O. P. Verma, the Administrator of Chandigarh. We were specifically asked by the Administrator to apprise your good office of any future violations in this regard. A

memorandum highlighting the violations was also presented to the Administrator which we are annexing herewith to reiterate its contents and for necessary action.

Thanking you,
Yours cordially

Satish Kumar Bhatti
For **Burning Brain Society**
(Secretary, Legal– Action Group Against Tobacco; BBS)

Enclosures:

- 1) Copy of newspaper dated July 28, 2004.
- 2) Copy of the VCD highlighting violation of Advertisements of tobacco products.
- 3) Copy of the petition given to the Administrator.

Been brave? Enter for awards before Sept 9

TIMES NEWS NETWORK

Chandigarh: Entries for the 13th Red & White bravery awards for the year 2004 will be announced for Punjab and Haryana on September 29. Entries will be accepted till September 9.



Sundeep Kumar

This year's winners will get gold, silver and bronze prizes in the categories of "physical bravery" and "social acts of daring". Other than this, the prize money under

the social lifetime achievement award has been enhanced to Rs 2,00,000.

Seventy entries, compared to the 60 entries last year, have already been received so far. Certain conditions, however, apply. Firstly, the act should not be an attempt to save the individual or his immediate family's lives. Secondly, the person should have endangered his own life also. The applicant should be above 18 years of age and the act should have been committed between June 2003 and 2004, said Sundeep Kumar, vice-president, Red & White, here, on Tuesday.

The social award has been instituted for individuals fighting against social evils of dowry, child marriage and environmental concerns.

"GOLD FLAKE" CARDS



FROM THE WEBSITE OF ITC
All trademarks are property of the registered owners



killercards@burningbrain.org

Left: Logo of the cigarette brand with yellow gold, black and red colour. **Right:** Logo on the greeting card for youngsters with the name of the cigarette brand "Gold Flake" and similar shape and same colour combination of yellow, black & red.

