

Republic of the Philippines
COURT OF APPEALS
Manila

SIXTH DIVISION

PHILIPPINE TOBACCO
INSTITUTE, INC.,

Plaintiff-Appellant.

CA-G.R. CV-NG. 49376

Members:

-versus-

AUSTRIA MARTINEZ, Chairman
AGCAOILI AND
SALAZAR-FERNANDO, JJ.

SECRETARY OF HEALTH,

Defendant-Appellant.

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HON. SECRETARY OF HEALTH,
Petitioner.

CA-G.R. SF No. 40300

- versus -

HON. ERIBERTO U. ROSARIO,
JR., PRESIDING JUDGE,
REGIONAL TRIAL COURT,
BRANCH 66, MAKATI CITY,
AND PHILIPPINE TOBACCO
INSTITUTE, INC., ET AL.,
Respondents.

Presided by:

FEB 10 2002
Quinto R. Mangin
3:30

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D E C I S I O N

AGCAOILI, J.:

Perched strongly on one arm of the scale is what the Department of Health (DOH) claims as the right of Philippine consumers to protection against hazards in health and safety and to provision of information and education that will facilitate sound choice. On the other arm of the same scale precariously hangs what the Philippine Tobacco Institute Inc. (PTII) claims as their right against governmental interference with the commerce of their products. Both demand protection but the scale

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must tilt in favor of that which would inure to the benefit of the greater number.

Assailed in this consolidated case is the Decision dated September 22, 1994 of the Regional Trial Court, Branch 66, Makati City the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the Secretary of Health or those persons acting under him and by his authority are hereby permanently ordered to cease and desist from enforcing Department of Health's Administrative Order No. 16 only insofar as the following:

1. the printing of the "Secretary of Health's" in addition to the warning statement; and

2. the printing of the warning statement in more than one (1) conspicuous places on the cigarette package.

So Ordered.

The undisputed facts are as follows:

On April 13, 1992, the Philippine Congress, with the goal of safeguarding the health, safety and well-being of Filipino consumers, enacted R.A. No. 7394, otherwise known as the "Consumer Act of the Philippines." Embedded in this law are some provisions regarding the labeling requirements of cigarettes, to wit:

"Art. 94. Labeling requirements of Cigarettes. - All cigarettes for sale or

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distribution within the country shall be contained in a package which shall bear the following statement or its equivalent in Filipino: "Warning: Cigarette Smoking is Dangerous to Your Health." Such statement shall be located in conspicuous place on every cigarette package and shall appear in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the package. Any advertisement of cigarette shall contain the same warning as indicated in the label."

"Art. 27. Minimum Labeling Requirements for Consumer Products - All consumer products domestically sold whether manufactured locally or imported shall indicate the following in their respective labels of packaging:

x x x x x x x x x x

The following may be required by the concerned department in accordance with the rules and regulations they will promulgate under authority of this Act.

x x x x x x x x x x

c) warning of toxicity:

x x x x x x x x x x

Any word, statement or other information required by or under authority of the preceding paragraph shall appear on the label or labeling with such conspicuousness as compared with other words, statements, designs, or devices therein, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase or use.

The above requirements shall form an integral part of the label without danger of being erased or detached under ordinary handling of the product."

Sometime in March 1975, Health Secretary Juan M.

Flavier issued DOH Administrative Order No. 10, Series

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of 1993, providing several guidelines with respect to the mode of depicting the warning statement on the cigarette pack. The pertinent portions of the administrative order read:

"Section 5. The package of all cigarettes for sale or distribution within the country shall bear the statement:

"SECRETARY OF HEALTH'S WARNING:
CIGARETTE SMOKING IS DANGEROUS TO
YOUR HEALTH"

a) The warning statement shall be located on the lower portion of the front and back of the principal display panel of the cigarette pack.

b) The warning statement shall be of black color in type-size letters of bold Helvetica, not less than 3mm. on the standard size cigarette packs of about 10 cm. in length, and shall be enclosed by an outlined box of the same black color on a rectangular white background not less than 25% of the area of the front and back principal display panels."

In a bid to enjoin the implementation of the foregoing administrative rule, PTII, a domestic corporation organized for the principal purpose of ensuring and protecting the welfare and interest of its member corporations and of the Philippine tobacco industry, filed a complaint for injunction against the DOH Secretary before the Regional Trial Court, Branch 66, Makati City. PTII claimed that DOH Administrative Order No. 10 is null and void for having been issued

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without or in excess of the Secretary's authority under R.A. No. 7394.

After the submission of the parties' respective pleadings, the trial court rendered the assailed decision. While it upheld the validity of DOH Administrative Order No. 10, it declared null and void some of its provisions, thus:

"Notwithstanding the foregoing, the court still finds that Administrative Order No. 10 has exceeded the delegated legislative power to the Secretary of Health.

As has been stated earlier, one of the standards set by RA 7394 is that the warning should be in the following wordings: 'WARNING: CIGARETTE SMOKING IS DANGEROUS TO YOUR HEALTH' or its equivalent in Filipino. The warning statement is provided by the law itself and should not, in any way, be shortened, expanded, rephrased or modified.

Administrative Order No. 10, on the other hand, requires that the warning should be stated in this manner:

SECRETARY OF HEALTH'S WARNING:
CIGARETTE SMOKING IS DANGEROUS TO YOUR
HEALTH'

While it is true that the Department of Health is the implementing agency of Article 94 of RA 7394 and the Honorable Secretary of Health is the head of said agency, the modification of the warning statement by adding the words 'Secretary of Health's' is not legally feasible for the reason that RA 7394 explicitly provides the warning statement, namely: 'Warning: Cigarette Smoking Is Dangerous to Your Health'. 'Government Warning' is more in consonance with the law.

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In fine, the warning that smoking is dangerous to health is a government warning brought about by the enactment of RA 7394 and not a warning of the Secretary of Health who is only mandated to implement the government policy.

Another conflict between RA 7394 and the implementing order (DOH AO-10) is the number of places in which the warning statement is to be printed.

Article 94 of RA 7394 provides that the warning should be located in a 'conspicuous place' only and not in conspicuous places.

In violation of Article 94 of RA 7394, the questioned Administrative Order requires that the warning statement should be placed at the back and front principal display panels of the package. In other words, the warning is to be printed in two (2) places instead of one (1) conspicuous place as mandated by RA 7394. In the mind of the court, this constitutes an expansion of the law.

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Hence, the court finds that the Administrative Order is null and void in these respects."

Separate motions for partial reconsideration were filed by PTII and the DOH Secretary but both were denied by the trial court in its order dated March 31, 1995.

Hence, PTII filed the instant appeal, docketed as CA-G.R. CV No. 49376. PTII argues:

(1) The trial court should have categorically ruled that the side panel of the cigarette pack is

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within the contemplation of the requirement that the notice be located in a "conspicuous place." It reasoned out: (a) the side panel as a location for the health warning is a "conspicuous place" as defined by Webster; (b) the congressional discussion clearly showed that the intent of R.A. No. 7394, with respect to the location of the warning label on the cigarette pack, is to require the label to be placed on any side panel; and (c) the warning label printed on the side panel of the cigarette pack is consistent with common usage, as required by law.

(2) The DOH Secretary cannot prohibit the printing of the health warning on the side panel of the cigarette pack since the law itself, R.A. No. 7394, does not provide for such prohibition.

(3) The requirement of reasonableness in administrative rules and regulations was not complied with for the reason that cigarette products were singled out to carry frontal health warnings.

In sum, PTII ascribes to the trial court the following assigned errors:

"I - THE TRIAL COURT ERRED IN FAILING
TO RULE THAT THE PRESENT SIDE

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PANEL HEALTH WARNING EMPLOYED BY THE APPELLANT'S MEMBER CORPORATION COMPLIES WITH THE REQUIREMENTS OF RA 7394.

II - THE TRIAL COURT ERRED IN NOT RULING THAT ADMINISTRATIVE ORDER NO. 10 CANNOT VALIDLY HAVE THE EFFECT OF PROHIBITING APPELLANT FROM USING THE SIDE PANEL OF CIGARETTE PACKS AS A LOCATION FOR THE WARNING LABEL.

III - THE TRIAL COURT ERRED IN NOT RULING THAT ADMINISTRATIVE ORDER NO. 10 IS INVALID FOR BEING UNREASONABLE."

On the other hand, the DOH Secretary took a different recourse by filing a "Petition for Certiorari (Appeal By Certiorari)" with the Supreme Court, raising a question of law (G.R. No. 119632). However, the Supreme Court remanded the petition to this court, for consolidation with PTII's pending appeal. Hence, the consolidated cases before us, docketed as CA-G.R. CV No. 49376.

In his petition, the DOH Secretary claims that the spirit of the law should prevail over the letter thereof. He insists that the warning statement should be imprinted both on the front and back panels of the cigarette pack, and not only on one side of the cigarette pack as is now being done by PTII members. According to him, the phrase "in conspicuous place" should not automatically mean "not more than one" because a warning must not only be existent, it must

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also be effective. His petition raises a single question of law, to wit:

"WHETHER OR NOT PETITIONER SECRETARY'S ADMINISTRATIVE ORDER (A.O.) NO. 10, WHICH DIRECTS OR REQUIRES THE PRINTING OF THE WARNING STATEMENT ON BOTH THE FRONT AND BACK PANELS OF CIGARETTE PACKS, IS IN ACCORDANCE WITH AND NECESSARILY CARRIES OUT THE SPIRIT AND PURPOSE OF ARTICLES 77 AND 93 OF E.A. NO. 7392

The cardinal issue put forth for this court's consideration is - did the DOH Secretary exceed his authority in requiring the printing of the phrase "SECRETARY OF HEALTH'S WARNING: CIGARETTE SMOKING IS DANGEROUS TO YOUR HEALTH" on the front and back panels of the cigarette pack?

The issue demands a determination of whether or not the DOH Secretary exceeded his authority in requiring: (a) the insertion of the additional phrase "SECRETARY OF HEALTH'S" in the notice since the law simply requires this particular statement to be printed: "Warning: Cigarette Smoking is Dangerous to Your Health" and, (b) the printing of the warning statement on both the front and back panels of the cigarette pack.

The first is actually no longer an issue since the Secretary of Health had, by avoiding any discussion of the matter in his petition, obviously conceded that the

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insertion of the phrase "SECRETARY OF HEALTH'S" in the notice is superfluous if not unauthorized. Indeed, a rule in administrative law is that the delegate can neither add to nor detract from the express language of the law in specific cases. In this case, the law simply authorizes the imprint of the following label on the cigarette pack: "Warning: Cigarette Smoking is Dangerous to Your Health" so that the additional words "SECRETARY OF HEALTH'S" is clearly a surplusage without any legal basis.

However, the second, meaning the requirement in DOH's Administrative Order No. 10, Series of 1993, that the warning statement "shall be located on the lower portion of the front and back of the principal display panel of the cigarette pack," must be sustained.

At the outset, it is well to note that with the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the power of "subordinate legislation." With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations. (Cruz, Philippine Political

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Law, 1998 ed., 101) Thus, it is permissible for an administrative agency to act in a legislative capacity by supplementing the statute, filling in the details or interstices of the dominant act pursuant to a specific delegation of legislative power. (De Leon, Administrative Law: Text and Cases, 1993 ed., 80)

In the case at bench, the delegatory act, R.A. No. 7394, empowers the Secretary of Health to promulgate rules and regulations on the labelling requirements of consumer products such as cigarettes. Specifically, Article 77 and Article 94 of R.A. No. 7394 are the bedrock of the Secretary's authority to promulgate rules and regulations on the matter of "warning of toxicity." These provisions provide that:

(1) All cigarettes for sale or distribution within the country "shall be contained in a package which shall bear the following statement or its equivalent in Filipino: 'Warning: Cigarette Smoking is Dangerous To Your Health.'"

(2) The warning "shall be located in conspicuous place on every cigarette package and shall appear in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the package."

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(3) The warning of toxicity may be required by the concerned department in accordance with the rules and regulations they will promulgate under authority of the Act.

(4) The warning of toxicity, etc. shall appear in the label, or labeling with such conspicuousness as compared with other words, statements, designs, or devices therein, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase or use.

The law has therefore set the guidelines or standards for the delegate -- the Secretary of Health -- to consider in formulating the implementing rules and regulations, and against which DOH Administrative Order No. 10 should be measured.

Upon a conscientious calibration of the arguments of the parties, we are led to the conclusion that the aforesaid administrative order, insofar as it requires that -

"a) The warning statement shall be located on the lower portion of the front and back of the principal display panel of the cigarette pack."

is not inconsistent with, but fully complements, the requirements of the law.

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James D. *[Signature]*

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Since the legislature, by virtue of Article 77 of R.A. No. 7394, has expressly authorized the Department of Health, through the Secretary, to issue rules and regulations in the implementation thereof, particularly on the matter of "warning of toxicity," it is fairly obvious that the Secretary is empowered to determine the manner in which the law is to be carried out, to be exercised consistently with the standards set forth therein. Indeed, our jurisprudence is replete with cases holding that where an administrative agency has been granted by law to issue rules and regulations to enforce a particular statute, it can legally adopt a reasonable procedure to carry out its mandate. And where a particular statute does not require any particular method to be followed by an administrative agency, the latter may adopt any reasonable method to carry out its functions. (Agpalo, The Law of Public Officers, 1998 ed., 161-162)

As held by our Supreme Court, "the true distinction is between the delegation of power to make the law, which necessarily involves discretion as to what the law shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (People v. Verra, 64 Phil. 56 [1937])

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The keywords are "conspicuous place." When the law says that the phrase "Warning: Cigarette Smoking is Dangerous To Your Health" should be printed in "conspicuous place," it means that location in the cigarette pack which will effectively bring to the consumers' attention the caution provided by R.A. No. 7394. Indeed, a warning must not only be existent, it must also be effective. For what good will a warning serve if it will remain unnoticed?

PTII would insist that the side panel is a place conspicuous enough to contain the warning label as this is supposed to be consistent with common usage. However, our considered view is that the questioned administrative order is more direct, consistent and complementary in its interpretation of the law, which is that, any word, statement, or other information shall appear on the label or labelling with such conspicuousness as compared with other words, statements, designs, or devices therein, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase or use. The warning shall form an integral part of the label without danger of being erased or detached under ordinary handling of the product.

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There ought to be no question that cigarette users are more likely to notice the caution or warning when placed on both the front and back panels of the cigarette pack than when the same is confined to the narrower space on either side. The front and back panels are naturally bigger and wider and, therefore, more expansive as to allow the consumer a greater chance of immediately reading the notice.

There is much to commend to the apt observations of the Solicitor General*:

" x x x . cigarette packs are not displayed and/or sold 'sideways'. Since the customary condition of sale of such item highlights its two (2) faces, or the front and back panels, it is but fair to a consumer's 'free choice' that the 'warning' should appear on these panels. Needless to say, while the purpose of the law is to 'warn' consumers of the hazards of smoking, such objective cannot be achieved if the warning may not be noticed until after the purchase. Note that cigarette packs may be displayed in a manner where the face without the warning is exposed.

Petitioner moreover submits that to carry the spirit and purpose of R.A. No. 7394 into effect, the warning statement should be inscribed at both the front and back panels of the cigarette pack, not just at either the front or the back panels thereof. This is to make the 'warning' really conspicuous, no matter which way the cigarette pack is turned, or no matter which panel is put on display.

¹ Assisted by Assistant Solicitor General Roman G. Del Rosario and Associate Solicitor Ethel U. Odrunia

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Simply put, if the inscription of the warning statement is allowed on one face only -- that is, either on the front of back panel of the cigarette pack -- the same could defeat the very purpose of the law, which is to give fair warning to the consumers of cigarettes. This could be done through the simple expediency of exposing or putting on display the panel which does not contain the warning statement.

Verily, the sentence 'such statement shall be located in conspicuous place on every cigarette package and shall appear in conspicuous and legible type...' provided for in Article 94 of R.A. 7394 should be construed in such manner as to carry out the true meaning of 'conspicuous' which is 'one that is obvious to the eye or mind', 'attracting attention', 'striking' or 'noticeable' (Webster's Ninth New Collegiate Dictionary, 1990 Ed.)"

The term "conspicuous place" constitutes a sufficient and reasonably adequate standard that maps out the boundaries of the Secretary of Health's authority. We have no hesitation in holding that the Secretary exercised his best judgment in specifying the particular location on the cigarette pack of the warning on toxicity.

It is the modern tendency of legislative bodies to be more liberal in permitting grants of discretion to administrative agencies in order to facilitate the administration of laws as the complexity of economic and governmental conditions increases. In other words, the necessities of modern legislations dealing with complex

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economic and social problems have led to judicial approval of broad standards for administrative action. Detailed standards are not required, especially in regulatory enactments under the police power, the legislature is not required to provide such a standard as confers the least amount of discretion, and in many situations detailed standard in precise and unvarying form would be wholly unrealistic and more arbitrary than a general indefinite one. (1 Am. Jur. 118)

It is wrong to say that the Secretary of Health exceeded his authority in requiring the warning label to be placed on the front and back panels of the cigarette pack because of the suggestion that the side panel is also one conspicuous place. The determination of which portion on the pack is conspicuous lies in the discretion of the administrative agency conferred with the power of subordinate legislation. Discretion may be defined, when applied to public functionaries, as the power or right conferred upon them by law of acting officially under certain circumstances, according to the dictates of their own judgment or conscience, and not controlled by the judgment or conscience of others. The very essence of a discretionary power is that the person exercising it may choose which of several courses will be followed. (*Supra*, 64)

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Verily, the fact that the side panel of a cigarette pack is also a conspicuous place for the warning statement does not preclude the Secretary of Health from requiring it to be placed on the front and back portions of the principal display panel which, unarguably, are places which are "obvious to the eye," more "noticeable," and "attracting attention." This is a question of discretion to which PTII cannot raise any legal objection as long as the law passed the sufficient standard test. In the instant case, suffice it to say that the term "conspicuous place" constitutes a sufficient and reasonably adequate standard that would map out the boundaries of the Secretary of Health's authority.

It is often said that no law is ever enacted that is intended to be meaningless, much less inutile. We must therefore, as far as we can, divine its meaning, its significance, its reason for being. Statutes should be construed in the light of the object to be achieved and the evil or mischief to be suppressed, and they should be given such construction as will advance the object, suppress the mischief, and secure the benefits intended. (Guia v. Commission On Elections, 20 SCRA 420 [1992])

It is rather ironic that PTII cannot see the reasonable connection between Administrative Order No.

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10 and R.A. No. 7394 insofar as the latter's purpose and subject matter are concerned. It is therefore useful to refer to the law's "Declaration of Basic Policy" as follows:

"Art. 2. Declaration of Basic Policy. - It is the policy of the State to protect the interests of the consumer, promote his general welfare and to establish standards of conduct for business and industry. Towards this end, the State shall implement measures to achieve the following objectives:

a) protection against hazards to health and safety;

b) protection against deceptive, unfair and unconscionable sales acts and practices;

c) provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer;

d) provision of adequate rights and means of redress; and

e) involvement of consumer representatives in the formulation of social and economic policies."

Evidently, the purpose of the law which Administrative Order No. 10 seeks to achieve are: (a) the protection of consumers against the hazards of health and safety, and (b) the provision of information and education that will facilitate sound choice. Unarguably, the printing of the warning on the front and back panels of the cigarette pack will provide a greater measure of access to valuable information which is helpful for the consumer to make a sound and an

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informed choice. The right of the consumer to be protected against the marketing of goods that are hazardous to health and life and the right to a healthy environment cannot be overemphasized.

We have examined PTII's exhibits and we are convinced that the warning printed on the side panel of the cigarette pack does not serve the purpose of R.A. No. 7394, particularly that of providing information and education to facilitate sound choice by the consumers.

Corollarily, there is no need for an extended exposition on the persuasiveness of the congressional discussion concerning the real intent of R.A. No. 7394 for the same does not depict the intention of the majority of Congress, it being a mere discussion within the Committee of Trade and Industry.

Finally, we cannot subscribe to the trial court's pronouncement that the term "conspicuous place" precludes the DOH Secretary from requiring the printing of the notice on both the front and back panels of the cigarette pack on the ground that the word "place" connotes a singular meaning. It is a rule in statutory construction that when the context of a statute so indicates, words in plural include the singular, and vice versa. Where such construction is necessary to

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give effect to the legislative intent, words in the plural number will be construed to include the singular and words importing the singular only will be applied to the plural of persons and things. As a matter of fact, even the article "a" is generally not used in a singular sense unless such an intention is clear from the language of the statute. (83 C.L.S. 337)

The fight for consumers' rights dates back to the earlier times. Today, it has taken a revolutionary thrust. Even the United Nations has adopted the guidelines for consumer protection to ensure that every consumer in the member countries will be protected. The UN guidelines embodied the eight inalienable rights of consumers, three of which are pertinent to the case at bench. First, the right to safety. It is the right to be protected against the marketing of goods or the provision of services that are hazardous to health and life. Second, the right to information. Consumers have the right to be protected against dishonest or misleading advertising or labeling. It also includes the right to be given facts and information needed to make an informed choice. And third, the right to a healthy environment. It is the right to live and work in an environment which is neither threatening nor dangerous and which permits a life of dignity and well-being. (Sponsorship Speech of Senator Mercado, Record of the Senate, July 24, 1991) These same guidelines, as can be

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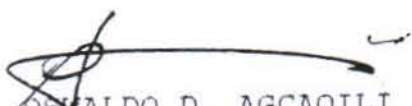
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gleaned from the above-quoted Declaration of Basic Policy, were the very same force that inspired the legislature in passing the Consumer Act of the Philippines. To give effect to these noble objectives, it is just fitting that we interpret the law not by the letter that killeth but by the spirit that giveth life.

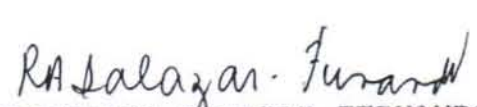
WHEREFORE, the decision of the trial court is hereby MODIFIED. The provision of section 5 (a) of DOH Administrative Order No. 10, requiring the warning statement to be printed on the lower portion of the front and back of the principal display panel of the cigarette pack, is hereby DECLARED valid.

SO ORDERED.


OSVALDO D. AGCAOILI
Associate Justice

WE CONCUR:


MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice


REMEDIOS SALAZAR-FERNANDO
Associate Justice

A T T E S T A T I O N

I hereby attest that the above decision was reached after due consultation among the members of this Division in accordance with the provisions of section 13, Article VIII of the Constitution.


MA. ALICIA AUSTRIA-MARTINEZ
Chairman, Sixth Division

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CLERK OF COURT

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