

Tobacco Advertising Directive

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To: Heath Working Group
European Commission

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We are writing to raise a series of points in relation to tobacco advertising that we hope Ministers and officials will consider before and during the Council meeting of 2nd December.

Intent of the measure and means to deliver

In our view, there is no question that Commissioner Byrne, the Commission Services, the clear majority of the Parliament and most of the Council are fully committed to tackling the epidemic of tobacco-related disease that afflicts Europe, killing over one million Europeans annually. However, the constraints imposed by the limited health competence in the EU treaties – as interpreted by the ECJ and then subsequently by the Commission, combined with the active resistance of Germany, make it difficult to design effective policy and legislation on tobacco advertising at EU level. It is important that ministers consider carefully whether agreeing to weak legislation is worse than having no legislation at all at EU level. The clear implication for future health protection in the EU is to strengthen the treaty competence to allow implementation of evidence-based health measures at EU level.

Indirect advertising

The directive proposal is weakened – many believe fatally – by the absence of measures to control so-called indirect advertising, the use of non-tobacco products to promote tobacco brands. There is no doubt that:

- This is an effective form of tobacco advertising.
- That it is easy for tobacco companies to replace direct advertising with indirect – this was the exact experience of France and several other member states that banned direct advertising
- That it is an explicit strategy on the part of tobacco companies to circumvent tobacco advertising bans.

It is not correct to argue – as some have – that tackling direct advertising at least deals with part of the problem. Promotional budgets will simply shift to indirect advertising. It is inconvenient and expensive for the tobacco companies, which explains their opposition, but it is no more than that. It is unlikely to reduce promotional expenditure or consumption.

Information society marketing

One of the most important cross-border issues is the rise of information society services – and the potential for the tobacco companies to exploit them. We believe this is in its early stages, but there is already considerable evidence of promotional development – we give a selection in the Appendix – see below. It is essential that the European Union uses its transnational jurisdiction to begin to address the problem. As the tobacco industry is driven from more conventional media it is likely to retrench into information society media, which are more difficult – but certainly not impossible – to regulate.

Web sites are used for promoting brands, with games, downloads and music. It is possible to subscribe to texting services or e-mail newsletters. There are sites that support events and tours, and sites that direct users to venues where there is heavy tobacco point of sale promotion. The web offers scope for new tie-ups like art and tobacco and music promotion. Competitions are available and require collection of personal data (which may be used for direct mail later). The web is used for promoting branded merchandise and as a back-up to sponsorships. Even if sponsorships were banned in the EU or a member state, they could still be sponsored outside the EU and then ‘beamed in’ via the internet. The essence of controlling Internet marketing is to hold the manufacturers based or operating in the EU responsible for promotion that is observable from screens in the EU.

Effect on national legislation

The Parliament was – rightly – adamant that the directive should not in any way weaken or compromise national legislation. The Commission has given assurances to this effect, but it does need to be written into the text.

Limited coverage and design of the measure

The directive covers four types of promotion that are capable of crossing borders. Good practice in any tobacco legislation is to ban all forms of tobacco advertising and then to allow exemptions. For example an exemption could be allowed where there is no demonstrable cross-border effect – and such promotion would become the subject of national legislation. As currently formulated there is a danger that there are forms of cross-border advertising not included in the four categories – for example international direct mail. The directive may also create bans on advertising that has no cross-border effect and so invite legal challenge.

Implications for the FCTC negotiations

It is never good practice to agree legislation that will not meet its own objectives. However, bad practice in the European Union might be compounded if it becomes the position that the Community tries to press on developing countries in the negotiations for the WHO Framework Convention on Tobacco Control, which is to be finalised in the negotiations in February. The fact that EU tobacco policies is framed as a trade issue is our own burden and misfortune, but it would be quite wrong to inflict the consequences of arcane basis for health policy on other countries. It would be a disaster for the negotiations and the global fight against tobacco, if the EU negotiated on the basis that the FCTC should have only a ban on four types of cross-border

advertising, and not on indirect advertising. After the extremely constructive role played by EU member states at the last negotiations, this would leave the Community, once again, promoting the lowest common denominator in Europe – ie, failing to support the aspirations of most WHO (and indeed most EU) member states.

The precise division of competence and the *modus operandi* of the Commission and member states at the next negotiations is somewhat unclear to us at present – but a community acquis for tobacco advertising that takes the advertising directive as a basis and does not allow member states to reflect their far more progressive positions will be damaging and counterproductive. We urge ministers and officials to consider carefully the implications of the Tobacco Advertising Directive and what it means for the Community acquis in the light of priorities of the FCTC.

We hope that you will be able to consider these points carefully and reach decisions about the tobacco advertising directive that will be the best for health in the longer term. In our view, Ministers and the Commission should be willing to take difficult decisions with this directive, which might include a pause in these negotiations to consider longer-term implications for EU health policy.

Yours sincerely

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Appendix – information society marketing of tobacco

Brand Promotion

Lucky strike originals merchandising

<http://www.lucky-strike-originals.de/router/zipchck.html>

Type in 'Germany' and postcode '69210' to enter site. The site is full of merchandise promoting the cigarette brand. This site shows that an online store selling tobacco branded merchandise has been established. It also shows a degree of control over access – by requiring a postcode specification.

Rizla Papers

<http://www.rizla.co.uk/>

This site shows how tobacco promotion could go. Extravagant site which also sells branded clothing as part of the Rizla lifestyle. Click on browse catalogue, where t-shirts and vests are shown rotating in three-dimensional interactive displays. Ordering is limited to residents of the UK only. Also invites feedback from visitors. Visitors are offered the option to sign onto an email list which alerts them when Rizla are 'doing something interesting' – showing the integration of e-mail and internet.

Camel Trophy / Camel Active

<http://www.camel-discovery.com/>

Link up with Land Rover

<http://www.flatlandroversociety.com/wwwboard/messeges/238.html>

Example of e-mail bulletin board run by Camel Active

West - Germany

www.west.de

Software downloads, games, competitions, music, animation. Asks if you are 18 but makes no check.

Davidoff

<http://www.davidoff-cigarettes.de/shop/shop.php?shopredirect=1>

Website selling luxury goods, mainly clothes but also cigarettes

Marlboro Classics – Netherlands

<http://www.marlboro-classics.nl/>

Marlboro Classics is Philip Morris's attempt to extend its globally recognised cigarette brand into clothing. This website is of its Amsterdam branch which also allows the visitor to go on to a mailing lists to be kept aware of news and new collections.

British American Racing (BAR)

<http://www.britishamericanracing.com/>

Heavy promotion of Lucky Strike, with merchandise, downloads and photos.

Venue Promotion

BAT's Citigobo

<http://www.citygobo.com>

BAT tries to be cool with a new covert web site designed to promote cigarettes while pretending to be a guide to happening bars and clubs. BAT is not actually mentioned on the site. The idea is to persuade people to visit venues that have high BAT point of sale presence. It also includes texting services and other information society. The ASH web site www.citygobo2.com challenges this and includes a leaked document from BAT, which sets out the company's internet strategy in the 'HORECA' (hotels, restaurants and cafes) sector.

Camel Active stores - Asia

<http://www.camelactive-asia.com/th/home.asp>

Home page for Camel Active in Asia – guidance on location of stores, newsletter.

Youth Smoking Prevention

www.youthsmokingprevention.com

Tobacco industry site purportedly aimed at anti-smoking. However, such sites could have a deliberate counter-productive effect by portraying smoking as an adult activity and not-smoking as childish or uncool. It could be subtle tobacco promotion.

Use of art, sport and other media

Julian Opie and British American Racing

http://www.alancristea.com/pages/new_pub/julian_opie_fast.html

The Alan Cristea Gallery has published a series of new prints by Julian Opie. Based on the imagery of Formula One racing, these prints are the first commission resulting from the new Tribe Art project, a collaboration between ArtWise, Lucky Strike and the British American Racing Formula One Team.

Salem – Malaysia (music)

<http://www.midvalley.com.my/salemcoolplanet/products.html>

"The ultimate music store". Includes promotions, sales of CDs, tapes, etc. clearly aimed at a youth market. This is a tie up with Salem's involvement in music, and focussed in Malaysia where advertising has been banned.

Dunhill – Malaysia (football)

<http://www.dxplay.com.my/>

This is a cult football site part of BAT's promotion of Dunhill through European football (especially UK Premier League) in Malaysia. The site has techniques to ensure that only Malaysian users can access it.

Computer games

Internet Game with Marlboro chevrons

http://www.azerinet.com/ssi_rus/flash/flash/regbi.html

This internet game features the red Marlboro chevrons in the background. Ultimate Arcade, the makers of the game, list themselves as pioneers in "Interactive Marketing and Advergaming."

The popular Colin McRae rally game for Playstation and PC included stylized the BAT 555 State Express logo until recently.

Cheap Cigarettes over the internet

The internet retailers for cigarettes also have many options for promotion at the virtual point of sale. People will be increasingly drawn to such retailing and the point of sale promotional activity may be very effective.

Esmoke.com

<http://www.esmokes.com/>

Very flash site offering a wide range of tobacco. Also offers coupon and reward schemes to buyers and is running a prize draw for a cruise – you need to submit your email address as part of a survey in order to enter the draw.

Cigar club

<http://www.cigarsclub.com/cigarettes.htm>

Requires country, postcode and registration before an order is placed.

Discount Camel Cigarettes

<http://www.cheap-camel-cigarettes.com/>

Discount Marlboro Cigarettes

<http://www.discount-marlboro-cigarettes.com/>

Although using different domain names, these two seem to be sister sites offering the same brands but one running Camel banner and the other a Marlboro one on the Homepage. Both sites state that due to differing excise laws in countries including Britain, Sweden, New Zealand, Israel, orders have to be placed on a separate page.

Ariva

www.goariva.com

A site run by Star Scientific in the US, demonstrates that login checks may be used to validate user information.

Non-tobacco promotional sites

Pepsi UK

www.pepsi.co.uk

There are many hi-tech sites that demonstrate that the templates for youth orientated sites already exist for the tobacco industry to exploit.