

UNOFFICIAL TRANSLATION

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Court of Appeals of Versailles Court of First Instance of Nanterre Judgment of October 5, 2012 15 th Criminal Court Record N° Docket N° 11206045240	EXTRACT OF THE MINUTES OF THE CLERK OF THE COURT OF FIRST INSTANCE OF THE JUDICIAL DISTRICT OF NANTERRE (HAUTS-DE-SEINE)
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Argued on September 7, 2012
Verdict issued on October 5, 2012

[STAMP IN MARGIN:]

Issued: 12:22 p.m.
To: Lanta de Berard, Esq.
On: December 21, 2012

Issued: 12:13 p.m.
To: Vuillez Judith, Esq.
On: December 21, 2012

CRIMINAL COURT JUDGEMENT

At the public hearing in the Criminal Court of Nanterre, on OCTOBER FIFTH, TWO THOUSAND AND TWELVE

Composed of

Madame PREVOST-DESPREZ Isabelle, President,
Mr. FEZAS William, Associate Judge,
Madame LAFOIX Claire, Associate Judge,
Assisted by Madame LAMARRE Patricia, Clerk of the Court,

In the presence of Mr. BLANCHET Benjamin, substitute,

a judgment has been handed down in the matter

BETWEEN:

PLAINTIFF:

The association *LES DROITS DES NON FUMEURS* [‘The Rights of Non-Smokers’], with headquarters at 1 chemin des Bouvreuil 68140 GRIESBACH-AU-VAL, represented by its legal counsel.
plaintiff,
represented by Capucine LANTA DE BERARD, Esq., invested with a power of attorney, an attorney at the bar of Paris (R 224)

AND:

THE PROSECUTOR OF THE REPUBLIC, of this tribunal, an added party

[Handwritten:] *Appeal of the B.A.T. company on October 8, 2012*
Appeal of Mr. P. on October 8, 2012
Appeal of Mr. De Almeida on October 8, 2012
Appeal of Mr. P. October 8, 2012

AND

The Accused:

The company BRITISH AMERICAN TOBACCO FRANCE

SIREN/SIRET N°: 303 765 630

Represented by its legal counsel,

Address 29-31 rue de l'Abreuvoir 92513 BOULOGNE BILLANCOURT

CEDEX FRANCE

represented by VUILLEZ Judith, Esq., attorney at the bar of PARIS (R 139)

Charged with:

-DIRECT PUBLICITY OR ADVERTISING IN FAVOR OF TOBACCO OR ITS PRODUCTS, acts committed between January 1st 2010 and December 31, 2010, on French territory.

The Accused:

Name: **DE ALMEIDA OBERLANDER Ricardo**

Born on October 14, 1963, in RIO DE JANEIRO (BRAZIL)

Nationality : Brazilian

Marital status:

Professional status:

Prior criminal record: no convictions

residing at : 29-31 rue de l'Abreuvoir 92513 BOULOGNE BILLANCOURT CEDEX FRANCE

Penal status: free

The party being assisted by VUILLEZ Judith, Esq., attorney at the bar of PARIS (R 139), in the presence of M.CYPEL Fernando, Portuguese interpreter, registered in the list of judiciary experts, with his oath have been given in advance,

Charged with:

-DIRECT PUBLICITY OR ADVERTISING OF TOBACCO OR ITS PRODUCTS, acts committed from January 1st 2010 to December 31, 2010, on French territory.

PROCEEDINGS

When a hearing was held on this case on September 7, 2012, the President confirmed the presence and identity of DE ALMEIDA OBERLANDER Ricardo, and made known the matter pending before the court.

The President has investigated the matter, questioned the accused present on the facts, and taken testimony through the intermediation of the appointed interpreter.

The arguments of Capucine LANTA de BERARD, Esq., counsel for the plaintiff, have been heard, and she has presented her conclusions.

The Public Prosecutor's claims have been heard.

The arguments for the defense of VUILLEZ Judith, Esq., counsel for SAS BRITISH AMERICAN TOBACCO FRANCE and Mr. DE ALMEIDA OBERLANDER Ricardo, have been heard.

The accused was the last to take the stand.

The Clerk of the Court has taken note of the unfolding of the proceedings.

Following the proceedings at the hearing on SEPTEMBER SEVENTH, TWO THOUSAND AND TWELVE, the tribunal, being composed of Madame PREVOST-DESPREZ Isabelle, President. Mr. FEZAS William and Madame LAFOIX Claire, Associate Judges, assisted by Madame LAMARRE Patricia, Clerk of the Court, and in the presence of Mr. BLANCHET Benjamin, substitute, informed the parties present or duly represented that the judgment would be pronounced on October 5, 2012 at 1:30 p.m. .

On this date, expounding the court's deliberations in accordance with the law, the President read her decision,

The Court has **deliberated and reached a verdict in accordance with the law, as follows:**

The company BRITISH AMERICAN TOBACCO FRANCE and Mr. DE ALMEIDA OBERLANDER Ricardo have been summoned to appear before this court at the instigation of the association "*les Droits des Non-Fumeurs* [the Rights of Non-Smokers]," pursuant to the reasons set forth in their summons

WITH REGARD TO THE CRIMINAL PROSECUTION:

In light of the Code of Public Health, and in particular its Articles L. 3511-1, L. 3511-3, L. 3511-4, L. 3512-2 and L.3512-3, and Administrative Order of December 31, 1992,

RULES that the press release of July 23, 2010, and the poster, "*False cigarette, true risk*" distributed at 28,000 points of sale of tobacco, comprise the component elements of the crime of illegal advertising of tobacco or tobacco products.

- DECLARE Mr. DE ALMEIDA OBERLANDER Ricardo César in his capacity as President of the Company BRITISH AMERICAN TOBACCO FRANCE, and the company BRITISH AMERICAN TOBACCO FRANCE guilty of having, during 2010, and at all events within a period for which the statute of limitations has not run out, committed the crime in the national territory of illegal advertising of tobacco or tobacco products, in particular:

- on the one hand, by publishing on its website a document entitled “*British American Tobacco (BAT) France launches a national campaign to raise consumer awareness of counterfeit cigarettes at 28,000 tobacco shops*” whose content, by denouncing on various grounds the incidence of smuggling and counterfeiting of tobacco products, underscores the risks of counterfeit products to reassure consumers in a misleading fashion concerning the lesser danger of tobacco products sold within the official system, and to foster the consumption of such products and the enhancement of the value of the “British American Tobacco France” brand, making people think of their tobacco and tobacco products;

- on the other hand, conceiving and making available to 28,000 tobacco shops in a colored poster with the logo of the “British American Tobacco France” brand, addressed to points of sale of tobacco but not in accordance with the terms of the Administrative Order of December 31, 1992, and whose slogan “false cigarette, true risk,” as its text, encourages consumers to consume tobacco products issued by the official system and sold by the manufacturer, reassuring them of their lesser danger and serving to enhance the value of the “British American Tobacco France” brand, making people think of their tobacco and tobacco products.

These offenses are indicated by Articles L3511-3 and L3511-4 of the Code of Public Health and the Administrative Order of December 31, 1992 in its consolidated version of April 14, 2006, and punished by Articles L3512-2 and L3512-3 of the Code of Public Health.

HEREBY ISSUE A VERDICT as required in penal terms, pursuant to the claims of Madame or Mr. representative of the Public Prosecutor.

WITH REGARD TO THE CIVIL ACTION:

In light of Articles 2 and following, and 464 and following of the Code of Penal Procedure
In light of Article L35 12-1 of the Code of Public Health

DECLARE admissible and duly founded the suit brought by the association, *Les Droits des Non-Fumeurs* [The Rights of Non-Smokers]

Jointly CONDEMN Mr. DE ALMEIDA OBERLANDER Ricardo César in his capacity as President of the Company BRITISH AMERICAN TOBACCO FRANCE, and the Company BRITISH AMERICAN TOBACCO FRANCE to pay to the association “LES DROITS DES NON FUMEURS” the sum of 200,000 Euros in the way of damages and interest in reparation of any damages incurred.

Jointly CONDEMN Mr. DE ALMEIDA OBERLANDER Ricardo César in his capacity as President of the Company BRITISH AMERICAN TOBACCO FRANCE, and the Company BRITISH AMERICAN TOBACCO FRANCE to pay to the association “LES DROITS DES NON FUMEURS” the sum of 3,000 Euros pursuant to Article 475-1 of the Code of Penal Procedure.

Jointly CONDEMN Mr. DE ALMEIDA OBERLANDER Ricardo César in his capacity as President of the Company BRITISH AMERICAN TOBACCO FRANCE, and the Company BRITISH AMERICAN TOBACCO FRANCE to assume all court costs.

GROUNDS

WITH REGARD TO THE CRIMINAL PROSECUTION:

The association, “*Les Droits des Non Fumeurs*” directly summoned Ricardo DE ALMEIDA OBERLANDER to appear before the criminal court in his capacity as President of the Company BRITISH AMERICAN TOBACCO France, and the corporation BRITISH AMERICAN TOBACCO, a juridical person charged with illegal advertising of tobacco

-On the one hand for publishing on the company’s website a document on the campaign launched by the company to raise awareness, whose content denounces the incidence of smuggling and counterfeiting of tobacco products, and underscores the risks of counterfeit products to assure the consumer in a misleading fashion, according to the plaintiff, of the lesser danger of tobacco products

- on the other hand, conceiving and delivering to 28,000 tobacco shops a poster in color bearing the logo of the brand of British American Tobacco France intended for points of sale of tobacco but not in accordance with the prescriptions of the Administrative Order of December 31, 1992, and whose slogan “false cigarette, true risk” as its text encourages consumers to consume tobacco products issued by the official network and sold by the manufacturer, reassuring them of their lesser danger, and moreover, according to the plaintiff, contributing to enhancing the value of the brand British American Tobacco France, making people think of tobacco and tobacco products.

With respect to the date of the offenses being tried, the plaintiff presents them as starting on July 23, 2010, as attested by the internet press release and the launching of the aforesaid prevention campaign by the defendants in Lille.

The advertising poster submitted into evidence by the plaintiff was also distributed to tobacco shops starting on this date.

With regard to the material element of the offense:

It involves determining whether the internet press release and the advertising poster in question constitute direct or indirect publicity or advertising for tobacco.

More precisely, it involves determining whether these actions, whatever their purpose, have as their effect to make people think of tobacco products.

Now then, it cannot be disputed that by stating, “false cigarette, true risk,” in the two items of publicity in question, the accused enhance the value of the true cigarette, so that it is unavoidably associated in the mind of the consumer with false risk;

Moreover, on the poster the consumer is directly addressed when he is asked where he purchases his cigarettes, with a very strong reminder in this case of tobacco products.

The defense offers the pretext that what is at issue is to remind the consumer of the criminal hazard incurred by the purchaser of “false,” i.e., counterfeit cigarettes. Now then, the court can only conclude that this stated intention to participate in the campaign against criminality did not entail as a consequence citation of the relevant legal texts, setting forth the prohibition and punishment of counterfeiting. Furthermore, the accused actually does warn of the definitely genuine health risk of smoking counterfeit cigarettes, without calling to mind the health risk associated with tobacco and with “true” cigarettes.

The inclusion of the name and color logo of the manufacturer on the publicity items in question also constitutes the material element of the offense, since the relevant legal text does not apply to any particular brands of tobacco but to all advertising for tobacco. The very name of the company calls tobacco to mind, and it is known as a manufacturer of cigarettes, which is also evoked, moreover, by the photo on the poster including several cigarettes

The defense asserts that the poster does not have any advertising significance. There was therefore a certain logic in not heeding the prescriptions of the Administrative Order of December 31, 1992, since indeed the logo of the manufacturer BRITISH AMERICAN TOBACCO does appear on the poster and on the other hand, the health warning mentioned in Article 5 of this same administrative order does not appear there. The moral criterion is entirely met as far as non-observance of the very specific prescriptions of the texts that sanction illegal advertising for tobacco are concerned. It is all the more obvious in particular that it is under cover of a campaign to raise awareness of counterfeiting that this advertising for true tobacco has been undertaken.

The defense rejects the involvement of the Chief Executive Officer of British American Tobacco, Ricardo Orlander, to the effect that criminal liability on his part is not to be presumed,

It would appear, nonetheless, and this is confirmed, that the CEO of the corporation BRITISH AMERICAN TOBACCO is primarily involved in this campaign to raise awareness of cigarette smuggling. The accused, moreover, has not produced any delegation of powers to one of the senior executives of the corporation, BRITISH AMERICAN TOBACCO.

The juridical person and Ricardo Orlander are therefore pronounced guilty as charged of illegal advertising for tobacco or tobacco products starting on July 23, 2010, in the national territory.

As punishment, the court condemns the juridical person to a fine of 50,000 euros, M. Ricardo Orlander to a fine of 5,000 euros, and rejects the motion for non-registration of a criminal record.

WITH REGARD TO THE CIVIL ACTION:

Whereas there are grounds to declare admissible as to form the suit brought by the association LES DROITS DES NON FUMEURS;

Whereas it is fitting to condemn the corporation SAS BRITISH AMERICAN TOBACCO FRANCE and Mr. DE ALMEIDA OBERLANDER Ricardo to pay jointly the sum of
_twenty thousand euros (20,000 euros) in damages and interest
_as well as the sum of two thousand euros (2,000 euros) pursuant to Article 475-1 of the Code of Penal Procedure;

FOR THESE REASONS

Ruling in open court, subject to appeal and having heard all arguments, with respect to SAS BRITISH AMERICAN TOBACCO FRANCE, Mr. DE ALMEIDA OBERLANDER Ricardo and the association LES DROITS DES NON FUMEURS,

WITH REGARD TO THE CRIMINAL PROSECUTION:

The Court pronounces SAS BRITISH AMERICAN TOBACCO FRANCE guilty of the offenses of which it has been accused;

Condemns SAS BRITISH AMERICAN TOBACCO FRANCE to pay a fine in the amount of fifty thousand euros (50,000 euros);

Pronounces DE ALMEIDA OBERLANDER Ricardo guilty of the offenses of which he has been accused;

Condemns DE ALMEIDA OBERLANDER Ricardo to pay a fine in the amount of five thousand euros (5,000 euros);

Rejects the motion for exemption from registration of a criminal record in bulletin No. 2 of convictions for DE ALMEIDA OBERLANDER Ricardo, of the sentence that has just been pronounced.

This decision is subject to a fixed procedural fee of 90 euros, for which SAS BRITISH AMERICAN TOBACCO FRANCE and DE ALMEIDA OBERLANDER Ricardo are liable;

The convicted parties are hereby given notice that if the fine and fixed procedural fee are paid within a period of one month counting from the date that they learned of the judgment, they shall benefit by a reduction of 20% of the total amount due.

WITH REGARD TO THE CIVIL ACTION:

The Court rules admissible the bringing of the suit by the association LES DROITS DES NON FUMEURS;

Condemns SAS BRITISH AMERICAN TOBACCO FRANCE and Mr. DE ALMEIDA OBERLANDER Ricardo jointly to pay the plaintiff, the association LES DROITS DES NON FUMEURS,

– the sum of twenty thousand euros (20, 000 euros) in damages and interest;

Furthermore, the court condemns SAS BRITISH AMERICAN TOBACCO FRANCE and Mr. DE ALMEIDA OBERLANDER Ricardo jointly to pay the plaintiff, the association LES DROITS DES NON FUMEURS,

– the sum of two thousand euros (2,000 euros) pursuant to Article 475-1 of the Code of Penal Procedure;

The present judgment having been signed by the President and the clerk of the court.

THE CLERK OF THE COURT

[illegible signature]

THE PRESIDENT

[illegible signature]

Certified duplicate copy issued
Nanterre, on December 21, 2012
[STAMP] Clerk of the Court

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