[FR] Tobacco Advertising - Latest Developments

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Since the Evin Law of 10 January 1991 was voted to outlaw any direct or indirect advertising for tobacco or its products, judges have condemned any attempt to get around the law thus making it almost impossible to publicise any brand of tobacco. A judgement of the Cour de cassation on 19 November 1997 has confirmed for instance that tobacco advertising cannot be excluded from the scope of Article 10.1 of the European Convention on Human Rights, which lays down the principle of the freedom of expression, but that insofar as regulating tobacco advertising constitutes a measure necessary for the protection of health, the restriction on the freedom of expression is justified.

Three decisions handed down in the last few weeks are however to be noted in that all three override action by the CNCT (Comité national contre le tabagisme - National Committee Against Tobacco Abuse) by admitting that, in certain contexts, mention of a brand of tobacco may not be construed as an act of advertising and propaganda prohibited by Article L 355-25 of the Public Health Code (Code la Santé Publique).

In a first judgement of 29 January 1998, the Paris Court of Appeal accepted that advertising activity during the privatising of the Seita (Société nationale de fabrication des produits du tabac - National Tobacco Products Manufacturing Company), which used visuals mentioning tobacco, was not intended to advertise tobacco or a tobacco product and is not therefore included in the scope of the Evin Law.

In another decision of 12 February 1998, the same jurisdiction accepted that a scientific prize being sponsored by a brand of tobacco does not constitute covert advertising for tobacco as long as the promotional activity is "limited to the scientific community or mentioned in press releases that journalists are free not to pass on to the general public if they deem that these releases would tend to constitute illegal advertising for tobacco." Finally, in a judgement handed down on 25 February 1998, the judges found that the provisions of the Evin Law and the Decree of 29 May 1992 enforcing this law do not forbid television channels from broadcasting pictures showing people smoking. The only unlawful act that these companies can be found guilty of is that of a breach of their obligation to provide a smoking area as required by the Decree.

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Cour d'appel de Paris, 29 janvier 1998, Min. pub. CNCT c/ Cayzac, Comolli, Euro RSCG, Seita

Paris Court of Appeal, 29 January 1998, Govt Min. and CNCT v. Cayzac, Comolli, Euro RSCG, Seita

Cour d'appel de Paris, 12 février 1998, Min. pub. et CNCT c/ Le Picard et autres

Paris Court of Appeal, 12 February 1998, Govt Min. and CNCT v. Le Picard and others

TGI Paris, 25 février 1998, CNCT et autre c/ France 2 et autre

TGI Paris, 25 February 1998, CNCT and others. v. France 2 and others

Cour de cassation, ch. crim. 19 novembre 1997, Serge July

Court of cassation, chambre criminelle, 19 November 1997, Serge July

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