

**Industry & Commerce**

SUPERINTENDANCY

EXTERNAL CIRCULAR No. 0 0 5

Bogotá, D.C.

JAN 27, 2012

**To: OWNERS AND MANAGERS OF COMMERCIAL ESTABLISHMENTS WHERE TOBACCO AND ITS DERIVATIVES ARE SOLD SUCH AS CIGARETTES (SHOPS, MINI-MARKETS, LIQUOR STORES AND LARGE STORES)**

**Subject: Adding section 2.1.2.4.1 to Chapter Two of Title II of Sole Circular of the Superintendency of Industry and Commerce.**

1. PURPOSE

To convey instructions to owners and managers of commercial establishments where tobacco and its derivatives are sold, such as cigarettes, to bring about compliance with the provisions on consumer protection, particularly those concerning the prohibition of advertising for such products.

2. LEGAL FOUNDATION

Article 78 of the Political Constitution establishes that the law shall regulate control of the quality of the goods and services offered and provided to the community, as well as information that should be given to the public with their sale.

Items 22 and 61 of Article 1 of Decree 4886 of 2011 ascribe to the Superintendency of Industry and Commerce the functions of seeing to compliance with the provisions on consumer protection, as well as instructing those to whom it is addressed on the manner in which they should comply with such rules, setting criteria that facilitate their compliance and indicating procedures for its comprehensive application.

Through Law 1109 of 2006, the Congress of the Republic approved the WHO's Framework Convention on Tobacco Control for Colombia, whose enforceability was proclaimed by the Constitutional Court in Judgment C-655 of 2007. In the preamble to the Convention, the parties declared that they were "*Seriously concerned about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products,*" for which reason they recognized, based on the definition of certain concepts,<sup>1</sup> among other things, "*that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products*" (Art. 13, Item 1)

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<sup>1</sup>ARTICLE 1. USE OF TERMS.

*For the purposes of this Convention: (...)*

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Subsequently, Law 1335 of 2009 was promulgated, which regulates the consumption, sale, advertising and promotion of cigarettes, tobacco and its derivatives, for the purpose of preventing harm to minors and the non-smoking population, and it stipulated public policies for the prevention of tobacco consumption and to help smokers quit.

This Law 1335 establishes, among other provisions, those concerning the sale of tobacco products to minors (Chapter I, Arts. 2-5), those concerning advertising, packaging and labeling of tobacco and its derivatives (Chapter III, Arts. 13-15), and those having to do with the prohibition of promotional and sponsorship activities (Chapter IV, Arts. 16 and 17).

Article 34 of Law 1335 provides that it falls within the competency of the Superintendency of Industry and Commerce “to undertake verification and oversight” of the standards established in Article 13 and following of this law.

Through Resolution 3961 of 2009 of the Ministry of Social Protection, Article 13 of the aforementioned Law 1335 was regulated, establishing requirements for packaging and labeling of tobacco and its derivatives.

Pursuant to the provisions cited above, it becomes necessary for the Superintendency to establish some minimum criteria concerning the manner of displaying tobacco and its derivatives to the public, such as cigarettes, to prevent this from becoming a kind of advertising. These criteria are to be observed by commercial establishments that put such products up for sale to the public.

3. RULES

Add item 2.1.2.4.1 to Chapter Two of Title II of the Sole Circular of the Superintendency of Industry and Commerce, which is to read as follows:

**“2.1.2.4.1 Display of tobacco and its derivatives such as cigarettes in commercial establishments**

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c) *“tobacco advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;*

(...)

g) *“tobacco sponsorship” means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;*

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In accordance with what is set forth in Laws 1109 of 2006 and 1335 of 2009, and in Resolution 3961 of 2009 of the Ministry of Social Protection and the rules that modify and replace it, the display of tobacco products and tobacco derivatives such as cigarettes in commercial establishments for sale to the public, such as shops, mini-markets, liquor stores and large stores, must observe the following criteria:

- a) Pursuant to what is set forth in item b) of Article 16 of Law 1109 of 2006, and paragraph 3 of Article 2 of Law 1335 of 2009, tobacco and its derivatives such as cigarettes that are on sale cannot be directly accessible to the consuming public. It is necessary for the product to be located behind the display case or cash register of the establishment where it is not available to the public and cannot be handled. So-called "self-service" is prohibited for the purchase of tobacco and its derivatives such as cigarettes, whereby the consumer selects, takes and pays for the products at the cash register.
- b) The display of packs, boxes and cartons of cigarettes and in general of all packages of tobacco and its derivatives in display windows or display cases and at the point of sale in commercial establishments, must be conducted in such a way that all of the main surface of the pack, in accordance with the definition of Article 2 of Resolution 3961 of 2009 of the Ministry of Social Protection, because it is the area where health warnings are located, must be completely visible to the public permanently, without being obstructed, disguised, hidden or capable of being removed.
- c) The display of the product in the display case or shelf intended for such purpose must be implemented in such a manner that the packs of tobacco and its derivatives and the various boxes of cigarettes are organized in rows, one behind the other, arranged by brand, without the situation arising in which the public can see repeated references to brands of a product on display. Displays of 10 and 20 units are considered standard for the different brands.

Paragraph: Bearing in mind that the owners of commercial establishments have the option of distributing any brand of cigarette that is currently produced or imported in the country, the display case or shelf should be presented in such a fashion that it has enough space to exhibit all brands sold, without granting exclusive spaces to any of them. If a commercial establishment has more than one cash register, it may have a maximum of one display case per cash register.

- d) The display of boxes of cigarettes and packs of tobacco or its derivatives in outside display windows of commercial establishments is prohibited.

Unofficial Translation

[EMBEM]

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4. DURATION

This External Circular shall enter into force three months after its publication in the *Diario Oficial* [Official Bulletin ].

Very truly yours,

[illegible signature]

**JOSÉ MIGUEL DE LA CALLE RESTREPO**

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