

UNOFFICIAL TRANSLATION

No. [653]
of SEPTEMBER 12, 2013
9th CHAMBER
RG: 13/00095
DE ALMEIDA OBERLANDER Ricardo

**Extract of Minutes of the Clerk's Office
of the Court of Appeal of Versailles**

COURT OF APPEALS OF VERSAILLES

P.h.D. Judgment publicly declared on SEPTEMBER TWELFTH, TWO THOUSAND AND THIRTEEN by Monsieur LARMANJAT, President of the 9th Chamber of Criminal Appeals, in the presence of the Public Prosecutor.

Nature of the judgment:
CRE

On the appeal of a judgment of the Criminal Court of Nanterre -
15th Chamber, of October 5, 2012.

COMPOSITION OF THE COURT

During arguments and deliberations

President: Monsieur LARMANJAT
Counsellors: Monsieur DE CHANVILLE.
Monsieur DAVID

And at the pronouncement of the judgment

President Monsieur LARMANJAT
Counsellors Monsieur ARDISSON
Monsieur GUITTARD

DECISION:
See Pronouncement

PUBLIC PROSECUTOR Monsieur D'HUY, Advocate General, during Arguments

CLERK OF THE COURT: Madame LAMANDIN during Arguments and pronouncement of
the judgment

PARTIES TO THE DISPUTE

Docket No.
of

DE ALMEIIDA OBERLANDER Ricardo

Born on October 14, 1963, in RIO DE JANEIRO (BRAZIL)
Of Brazilian nationality, family status unknown,
Residing at 2 KEAN STREET FLAT LONDON - 7WC2B 4 AQ, UNITED KINGDOM,
Free,

Not appearing, represented by VUILLEZ Judith, Esq., an attorney at the bar of PARIS (conclusions), duly endowed with power of attorney.
THE COMPANY BRITISH AMERICAN TOBACCO FRANCE

SIREN N°: 303-765-630

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

Not appearing, represented by VUILLEZ Judith, Esq., an attorney at the bar of PARIS (conclusions), duly endowed with a power of attorney.

CIVIL PLAINTIFF

S.A. LES DROITS DES NON FUMEURS [The Rights of Non Smokers]

With an address designated c/o LANTA de BERARD Capucine, Esq.,
22 avenue de la Grande Armée 75858 PARIS 17 CEDEX

Not appearing, represented by LANTA DE BERARD Capucine, Esq., an attorney at the bar of PARIS (conclusions), duly endowed with a power of attorney.

BACKGROUND:

THE JUDGMENT:

By judgment after trial on the date of October 5, 2012, the Criminal Court of Nanterre has declared DE ALMEIDA OBERLANDER Ricardo:

guilty of DIRECT ADVERTISING OR PUBLICITY FOR TOBACCO OR ITS PRODUCTS, from January 1, 2010 to January [*sic*, i.e., 'December?'] 31, 2010, on French territory, an offense defined by Articles L.35 12-2 AL.1, L.35 11-3, L.35 11-1 of the Code of Public Health, and punished by Article L.3512-2 AL.1, AL.3 of the Code of Public Health

THE COMPANY BRITISH AMERICAN TOBACCO FRANCE

guilty of DIRECT ADVERTISING OR PUBLICITY FOR TOBACCO OR ITS PRODUCTS, from January 1, 2010 to January [*sic*, i.e., 'December?'] 31, 2010, on French territory, an offense defined by Articles L.35 12-2 AL.1, L.35 11-3, L.35 11-1 of the Code of Public Health, and punished by Article L.3512-2 AL.1, AL.3 of the Code of Public Health

WITH REGARD TO THE CRIMINAL PROCEEDING:

The Court has declared the Corporation BRITISH AMERICAN TOBACCO FRANCE guilty of the acts of which it has been accused;

The Court has sentenced the Corporation BRITISH AMERICAN TOBACCO FRANCE to the payment of a fine of fifty thousand euros (50,000 euros)

The Court has declared DE ALMEIDA OBERLANDER Ricardo guilty of the acts of which he has been accused

The Court has sentenced DE ALMEIDA OBERLANDER Ricardo to the payment of a fine of five thousand euros (5,000 euros);

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

WITH REGARD TO THE CIVIL ACTION:

The Court has declared admissible the founding document of the civil plaintiff, the association LES DROITS DES NON FUMEURS;

The Court has sentenced the Corporation BRITISH AMERICAN TOBACCO FRANCE and M. DE ALMEIDA OBERLANDER Ricardo jointly to pay to the association LES DROITS DES NON FUMEURS, civil plaintiff:

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

Furthermore,

The Court has sentenced the Corporation BRITISH AMERICAN TOBACCO FRANCE and M. DE ALMEIDA OBERLANDER Ricardo to pay the association LES DROITS DES NON FUMEURS, civil plaintiff,

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

THE APPEALS:

The Appeal was filed by:

THE COMPANY BRITISH AMERICAN TOBACCO FRANCE, on October 8, 2012, against S.A. LES DROITS DES NON FUMEURS, with its appeal concerning both the criminal as well as the civil provisions of the judgment

Monsieur DE ALMEIDA OBERLANDER Ricardo, le October 8, 2012, against S.A. LES DROITS DES NON FUMEURS, with his appeal concerning both the criminal as well as the civil provisions of the judgment

The Prosecutor of the Republic, on October 8, 2012, against THE COMPANY BRITISH AMERICAN TOBACCO FRANCE

The Prosecutor of the Republic, on October 8, 2012, against Monsieur DE ALMEIDA OBERLANDER Ricardo

S.A. LES DROITS DES NON FUMEURS, on October 19, 2012, against THE COMPANY BRITISH AMERICAN TOBACCO FRANCE, its appeal being confined to the civil provisions

S.A. LES DROITS DES NON FUMEURS, on October 19, 2012, against Monsieur DE ALMEIDA OBERLANDER Ricardo, its appeal being confined to the civil provisions

PRESENTATION OF ARGUMENTS:

At the public hearing on July 4, 2013, The President of the Court noted the absence of the defendants;

The following parties were heard:

Monsieur DAVID, Counsellor, in his report,

LANTA DE BERARD, Esq., attorney of the civil plaintiff, in her advocacy,
Monsieur D'HUY, Advocate General, in his claims,

Attorney VUILLEZ, Esq., in her advocacy,

The President of the Court then notified the parties that the judgment would be pronounced at the hearing on SEPTEMBER 12, 2013, in accordance with Article 462 of the Code of Penal Procedure.

DECISION

THE COURT, after having deliberated in accordance with the law, handed down the following judgment in a public proceeding

REVIEW OF THE FACTS OF THE PROCEEDINGS

On October 27, 2011, the association “Les Droits des Non-Fumeurs” cited the company BRITISH AMERICAN TOBACCO France and Ricardo DE ALMEIDA OBERLANDER, its current President, to appear for the purpose of being declared guilty of the crime of advertising of tobacco or tobacco products indicated by Articles L. 3511-3 and L. 3511-4 of the Code of Public Health that they committed starting on July 23, 2006:

On the one hand, by publishing on the Internet site www.batfrance.com a document entitled “British American Tobacco (BAT) France unleashes a national campaign to raise awareness addressed to consumers on counterfeit cigarettes at 28,000 tobacconists’ shops” the content of which, criticizing in various respects the phenomena of smuggling and counterfeiting of tobacco products, highlighted the risks of counterfeit products to provide reassurance for consumers in a misleading fashion regarding the lesser danger of tobacco products sold in the official network, and to incite the consumption of these latter products and the enhancement of the value of the brand “British American Tobacco France,” calling to mind tobacco and tobacco products

On the other hand, by designing and making available to 28,000 tobacconists’ shops a poster in color with logos of the brand “British American Tobacco France,” intended for points of sale of tobacco, but not in accordance with the prescriptions of the Order of December 31, 1992, whose slogan “False cigarette, True risk” as its text, would incite consumers to consume tobacco products issued by the official network and sold by the manufacturer, reassuring them of their lesser danger, and would contribute to enhancing the value of the brand “British American Tobacco France” calling to mind tobacco and tobacco products.

With regard to the civil action, the association “Les Droits des Non-Fumeurs” calls for the joint sentencing of Ricardo DE ALMEIDA OBERLANDER and the company BRITISH AMERICAN TOBACCO France to pay to it the sum of 200,000 euros in the way of damages and interest, plus 3,000 euros pursuant to Article 475-1 of the Code of Penal Procedure.

The civil plaintiff reminds us that on July 23, 2010, the company British American Tobacco France, appearing as the world's second largest tobacco company, commercializing some thirty brands, had published on its Internet site and widely disseminated to its press contacts a press release entitled: "British American

Tobacco (BAT) France unleashes a national campaign to raise awareness addressed to consumers concerning counterfeit cigarettes at 28,000 tobacconists' shops: False cigarette, True risk, and Where do you buy your cigarettes?" The document was decorated in colors (yellows and blues) and logos of the tobacco manufacturer, and it indicated that this campaign for prevention was launched in Lille, on July 23, 2010, through Patrick BRICE, President of the Federation of tobacconists' shops of the North in the presence of a legislative deputy of the North, and numerous representatives of tobacconists' shops, with the aim of "raising the awareness of consumers to the risk involved in buying outside the official sales network, that of tobacconists' shops"

The document stressed various elements and it was particularly critical of the following:

- as a result of smuggling and counterfeiting, governments find themselves deprived of annual revenues of several tens of billions of dollars throughout the world, all the while countenancing the endangerment of their consumers who are exposed to products that do not comply with national standards
- practical analyses of counterfeit cigarettes show that one can find in them cement, sawdust, insects, plastic, pieces of tires, and even excrement...
- This phenomenon brings down the average price of cigarettes that leads to over-consumption of tobacco and is thus contrary to public health policy.

The document also underscored actions already performed by the company British American Tobacco France in connection with the matter:

- "smuggling and counterfeiting of tobacco constitute reprehensible crimes, and represent a veritable scourge against which British American Tobacco has always fought"
- "the first tobacco company to undertake actions against Internet sites for the illicit sale of tobacco products"
- The company claims that it is "very much in the lead at the forefront of this fight against smuggling, counterfeiting and trans-boundary purchases of tobacco."

Starting on July 23, 2010, posters decorated with blue and yellow colors and the logo of the tobacco manufacturer had been distributed to 28,000 tobacco shops in France. These posters reproduced the following text, in very prominent characters, with a layout in the colors of the brand of the manufacturer, and with a photo of a number of cigarettes in the background:

"FALSE cigarette, TRUE risk

What about you, where do you buy your cigarettes?"

Then in medium-sized characters: "today in France, more than 22 % of cigarettes consumed are purchased outside the official network. Cigarette counterfeiting or smuggling is a true risk and supports mafia networks. Criminal sanctions are incurred."

The logo of the manufacturer was affixed in a highly visible manner, on the lower right side of the poster.

The association "*Les Droits des Non-Fumeurs*" considers that this entails a promotion of a tobacco product and of the use of tobacco.

The company British American Tobacco France asserts, on the contrary, that the poster has no advertising character, and recalls that the the operation is taking place in a context of growing awareness of the illegal trade in tobacco.

In this regard, the defendants indicate that on May 15, the company British American Tobacco France signed with the general bureau of Customs and Duties a

Memorandum of agreement for the purpose of working against the illegal trade in tobacco products in France.

Furthermore, on July 15, 2010, the company British American Tobacco France signed a cooperation agreement with the European Union reminding states-members of the importance of the fight against counterfeiting and smuggling of cigarettes in terms of the budgetary losses to which they give rise.

Accordingly, it is to respond to these needs and obligations that the company has commenced a concrete action to inform adult smokers regarding the risks associated with the purchase of counterfeit tobacco products.

As a consequence, the defendants have asked for the charges to be dropped, and, in a subsidiary fashion, for the waiving of the punishment and exclusion of their criminal record from bulletins number 2 and 3.

With regard to the civil action, they have requested the rejection of the civil plaintiff's claim in the absence of any substantiation of injury.

By judgment on the date of October 5, 2012, the District Court of Nanterre declared the company BRITISH AMERICAN TOBACCO France and Ricardo DE ALMEIDA OBERLANDER guilty of the crime as charged, and the convicted offenders were sentenced to fines of 50,000 euros and 5,000 euros respectively, rejecting the motion for exemption from registration of a criminal record in bulletin No. 2 of convictions.

With regard to the civil action, the court declared the association "Les Droits des Non-Fumeurs" to have standing as a civil plaintiff and jointly sentenced the company British American Tobacco France and Ricardo DE ALMEIDA OBERLANDER to pay to the association "Les Droits des non fumeurs" the sum of 20,000 euros in the way of damages and interest, as well as the sum of 2,000 euros, pursuant to Article 475-1 of the Code of Penal Procedure.

The company BRITISH AMERICAN TOBACCO France, Ricardo DE ALMEIDA OBERLANDER and the association "Les Droits des Non-Fumeurs" have appealed this decision.

In arguments before the court, the parties represented have again put forward the same demands and measures as in the first instance.

Thus, the company BRITISH AMERICAN TOBACCO France upholds the position that the document giving rise to criminal charges contains nothing but objective informational elements concerning the campaign to raise awareness, notably the scourge of the sale of cigarettes through smuggling and counterfeiting.

The press release in dispute was published on the company's institutional website, which makes no reference to brands of tobacco sold to the public, which gives no indication of any indulgence towards tobacco and makes a point of drawing the visitor's attention at several opportunities to the risks associated with tobacco consumption. According to the defendants, it can, moreover, be gleaned from the record of the facts introduced into evidence by the civil plaintiff that the institutional website of the company BRITISH AMERICAN TOBACCO France reminds the reader without any ambiguity on the page entitled "Tobacco and health" that "Smoking can cause serious diseases, such as lung cancer or cardiovascular and respiratory diseases. There is no such thing as cigarettes without risk." Moreover, the statement devotes an entire page to reviewing the risks inherent to tobacco consumption entitled "Consumption at risk," and states under the heading "Quitting smoking," that there is no such thing

as tobacco consumption without risk. For a smoker, the best way to reduce these risks is to stop smoking.”

With regard to the insertion of the name and logo, the defendants note that this is the name of the company under which they also conduct their activities. It is indeed as members of the tobacco industry, directly affected in their activities by the smuggling and counterfeiting of cigarettes and officially involved in a very active fashion in the campaign against this parallel economy that the company BRITISH AMERICAN TOBACCO France sent the poster in dispute to tobacconists' shops, the only ones authorized by law to engage in the retail sale of tobacco products.

It is in this same capacity that the company name and logo were included on the notice, these mentions being required by Article R. 123-238 of the Code of Commerce.

These initiatives, on the contrary, ought to be recorded in a body of actions conducted entirely officially and legally by the company in coordination with national and European authorities in the context of the fight against counterfeiting and smuggling.

The defendants also object to the judgment retaining the statement that “The inclusion of the manufacturer's name, logo, and colors on the items in question also comprises the material basis of the offence, since the text giving rise to the criminal charge *“not only applies to brands of tobacco and any advertising for tobacco. The very name of the company calls tobacco to mind, since it is known as a manufacturer of cigarettes, as does the photo on the poster as well, which includes cigarettes.”* This reasoning would allow one to suppose that the mere inclusion by the company BRITISH AMERICAN TOBACCO France of its company title on any item whatsoever could be characterized as the crime of illegal advertising for tobacco.

It is also maintained that if the title of the company does indeed contain the word ‘tobacco’ in English, a conviction could not be based on the use of the company name, since the only company still manufacturing **cigarettes** in France is the company ALTADIS, and such a basis would have discriminatory effects pursuant to Article 34 of the founding treaty of the European Union.

Furthermore, a conviction would have the effect of undermining the very substance of the right to free exercise of a professional activity.

The defendants indicate, furthermore, that the poster subject to litigation would not constitute an assault on the law or on the jurisprudence handed down in connection with the prohibition of indirect advertising for tobacco, the constitutional council availing itself of the occasion to reiterate that the text prohibiting direct or indirect advertising for tobacco does not constitute an assault on free enterprise, since it does not prohibit the production, distribution, or purveying of the tobacco in tobacco products.

The defendants believe, then, that there could be grounds to revise the judgment for these reasons, with respect to upholding the point that inclusion of the manufacturer's name, logo, and colors on the items in question also constitutes the material basis for the offense.

The defendants maintain further that the fact of purchasing counterfeit or smuggled cigarettes would indeed entail risks: a risk of criminal and customs sanctions, but also an additional risk to health, and since the consumption of tobacco is harmful to health, this risk could be further increased since these products are not subject to strict control with respect to their composition. According to the defendants, it should by no means be construed, as the court has done, that the slogan, “False cigarette, True risk” would enhance the value of true cigarettes in the mind of the consumer, which would be unfailingly associated with this statement. It is sustained that this phrase is a shock slogan that is directly inspired by those used by a variety of public or private agencies communicating about efforts to suppress smuggling and counterfeiting products, and moreover it is in keeping with the message sought after by the authorities.

It is thus through a process of reasoning *a contrario*, which is inadmissible in criminal law, that the court was able to consider that this slogan constitutes the material basis for the offense of direct advertising of tobacco.

The defendants are of the opinion, nonetheless, that the choice of the slogan may have been a clumsy one.

Even so, this clumsiness cannot at all events be characterized as a culpable intention, as long as, contrary to what the court construes to be the intention, the company was indeed helping to inform smokers about counterfeiting and smuggling, and not promoting tobacco under cover of this campaign.

The company BRITISH AMERICAN TOBACCO France reminds the Court that in its capacity as an industrial figure and a major player in this sector, it has actively taken part for years in the fight against the illegal trade in cigarettes alongside public authorities, and in particular the customs administration. It is in this context and completely in keeping with these different actions that on July 20, 2010, that is, several days after the signing of the cooperation agreement with the European Union, the company sent the notice to tobacco retailers and published the press release on its institutional website.

The defendants believe, in sum, that a conviction would tend to prevent execution of undertakings and actions in support of the fight against a scourge that affects the products that it commercializes, on the grounds that it engages in these tobacco-related activities on false pretenses, whereas in reality its motivation and intentions must be to seek to promote its products by availing itself of this pretext. Such an interpretation of Articles L. 3511-3 and following of the Code of Public Health would be contrary to jurisprudence, in particular the very recent jurisprudence of the Court of Final Appeal in this matter.

With regard to the civil action, the defendants argue that the action of the civil plaintiff is entirely inadmissible, inasmuch as the notice in question is addressed exclusively to smokers, whereas the plaintiff is exclusively interested in the situation of non-smokers who are in no way affected by the poster and the notice that has given rise to the criminal charges.

Finally, in a subsidiary fashion, Ricardo DE ALMEIDA OBERLANDER requests the exclusion of his criminal record from bulletins 2 and 3.

The Public Prosecutor has requested confirmation of guilt and the increase of the fines imposed.

WHEREFORE THE COURT RULES,

On the admissibility of the action by the association “Les Droits des Non-Fumeurs”

It appears that the association “Les Droits des Non-Fumeurs” has been duly established for more than five years, and that pursuant to the terms of Article 2 of its by-laws, its purpose is “*to act to influence governmental authorities to secure respect for regulation of the protection of non-smokers and to control tobacco, in particular, to undertake in French and European jurisdictions all actions tending to compel respect of the legislative texts concerning tobacco control, including provisions concerning advertising and publicity for tobacco, - To act on the basis of Article L. 3512-1 of the Code of Public Health, which confers upon it the right to exercise its rights as a civil plaintiff to file suit for violations of the provisions of the law.*”

Therefore, with regard to legal and statutory provisions, the association whose purpose is tobacco control, and not only the defense of non-smokers as

the company BRITISH AMERICAN TOBACCO France falsely alleges, has standing to exercise the rights allowed to civil parties to file suit through Article L, 35 12-1 of the Code of Public Health.

Furthermore, a resolution by the association's Board of Directors, on May 21, 2011, renewed on May 12, 2012, authorized its President to undertake any legal action having tobacco control as its purpose.

Under these conditions, the first judges ruled with good reason that the association "Les Droits des Non-Fumeurs" has standing to pursue its claim.

On the crime of direct or indirect publicity or advertising for tobacco

1 The company BRITISH AMERICAN TOBACCO France maintains that the press release of July 23, 2010, as well as the notice associated with it, had the aim of making the general public aware of the health risks associated with the purchase and consumption of smuggled and counterfeit tobacco products.

It appears, however, upon examining them, that the message delivered tends to give rise to the belief that this company is seeking a goal of general public interest by fighting the scourge of tobacco. In fact, by speaking negatively of smuggled or counterfeit cigarettes, the slogan clearly allows one to think that tobacco products available in the official networks and sold by the company BRITISH AMERICAN TOBACCO France, the signatory of the notice and manufacturer, presents a lesser risk, particularly to health. In this regard, the defendant company cannot in light of the evidence attempt to make us believe that the risk in question was first of all a risk of criminality or customs violations, since it also evokes the hazards posed to consumers by the smuggled and counterfeit products.

Although the inclusion of the company name and logo are not at issue as such, in terms of the notice, their association with a slogan that is apparently positive for the consumer has the effect of enhancing the image of the company BRITISH AMERICAN TOBACCO France as a manufacturer and distributor of tobacco products, and thereby to encourage the sale of tobacco for its profit.

Under these conditions, it is completely unviable for the the company BRITISH AMERICAN TOBACCO France to argue, on one hand, that pursuant to Article R. 123-23 8 of the Code of Commerce, it was required to include its title and logo on the documents at issue, inasmuch as it is the association of the latter with a message in favor of tobacco sold legally that makes it possible to consider that the company knowingly communicated about tobacco products under the cover of a message of public interest, and on the other hand, that the prohibition of using the title and logo including the term "Tobacco" would constitute an infringement of free enterprise as defined in Article 34 of the founding treaty of the European Union, considering that neither the title nor the logo are at issue in and of themselves.

Finally, the company BRITISH AMERICAN TOBACCO France cannot reasonably maintain that the conviction for the remarks in contention would have the effect of undermining free enterprise, since it is legal for the company to manufacture and distribute its tobacco products freely on French territory, subject to the limitation of not communicating about the products in question, just like any other French or European company.

The fact that the company BRITISH AMERICAN TOBACCO France has become involved with actions in the fight against smuggling or counterfeiting of cigarettes with the European Union or the French customs administration, which is probably in accordance with its commercial interest, does not exclude the possibility of illegal communication.

In this regard, the company cleverly endeavors to maintain that its message was undoubtedly clumsy, in order to claim that the intentional element of the offense is lacking. It is evident, nonetheless, that the company had perfectly orchestrated its communication with tobacconists' shops in order to reach consumers as directly as possible, and that therefore, it cannot validly claim that it did not knowingly wish to associate its image with the sale of a less harmful tobacco. This fact is manifestly indicative of the fraudulent intention of the accused offense.

2. Ricardo DE ALMEIDA OBERLANDER, then President of the company BRITISH AMERICAN TOBACCO France, in personally disseminating the messages at issue in a public demonstration, is found guilty of the crime of which he has been accused, and having manifestly acted on behalf of the company in his capacity as its director, has incurred the criminal liability of the company in accordance with Article 12 1-2 of the Penal Code.

3. With regard to the sanctions to be imposed, it appears that the fine of 5,000 euros imposed upon Ricardo DE ALMEIDA OBERLANDER is perfectly suitable, considering the fact that the latter no longer exercises his duties within the company, but on the other hand, with regard to the significance of the disturbance of public order and the attempt to manipulate a communication that was seemingly in the public interest, a fine of 100,000 euros must be imposed upon the company BRITISH AMERICAN TOBACCO France.

The judgment will be revised to such effect.

Finally, in the absence of a justified interest in doing so, there are no grounds from excluding the present conviction of Ricardo DE ALMEIDA OBERLANDER from bulletins 2 and 3.

The judgment will thus be confirmed with the charge as it stands.

WITH REGARD TO THE CIVIL ACTION

The crime imputed to Ricardo DE ALMEIDA OBERLANDER and the company BRITISH AMERICAN TOBACCO France has manifestly entailed a direct assault on the collective interests represented by the association "Les Droits des Non-Fumeurs," whose institutional purpose is primarily to defend against the use of tobacco.

Indeed, because of the specificity of its purpose, the object of its mission, the association has been subjected to a direct and personal injury from this act of illegal advertising for tobacco.

It is with reason that the first judges declared that Ricardo DE ALMEIDA OBERLANDER and the company BRITISH AMERICAN TOBACCO France are jointly liable for the damage suffered by the civil plaintiff, and they sentenced them to make reparation thereof.

The reparation of the injury to the association "Les Droits des Non-Fumeurs" set at 20,000 Euros, which takes into account the representativeness of the civil plaintiff, the scope of

its actions and the significance of the disturbance suffered, and the sum awarded in application of Article 475-1 of the Code of Penal Procedure, was justly assessed by the court.

Under these conditions, the judgment must be confirmed in all of its civil provisions.

Finally, it seems equitable to award to the association “Les Droits des Non-Fumeurs” an additional sum of 2,000 euros in application of Article 475-1 of the Code of Penal Procedure, at the appellate level.

FOR THESE REASONS,

THE COURT, after having deliberated on the matter, ruling in open court, and having heard all arguments with respect to Ricardo DE ALMEIDA OBERLANDER, the company BRITISH AMERICAN TOBACCO France and the association “Les Droits des Non-Fumeurs” and in the last resort,

Declares admissible the appeals of Ricardo DE ALMEIDA OBERLANDER, the company BRITISH AMERICAN TOBACCO France, the association “Les Droits des Non-Fumeurs” and the Public Prosecutor, and

Declares that the association “Les Droits des Non-Fumeurs” has standing to pursue its action

With regard to the criminal prosecution,

In light of the Code of Public Health, and particularly its Articles L. 3511-1, L. 3511-3, L. 3511-4, L. 3512-2 and L. 3512-3, the administrative order of December 31, 1992, the Framework Convention for Tobacco Control of the World Health Organization of May 21, 2003, ratified by France on October 19, 2004,

The Court confirms the decision handed down in all of its criminal provisions except for the sanction imposed on the company BRITISH AMERICAN TOBACCO France, it being specified that Ricardo DE ALMEIDA OBERLANDER and the company BRITISH AMERICAN TOBACCO France have been found guilty, in accordance with the terms of the subpoena formally served on September 27, 2011, at the petition of the association “Les Droits des Non-Fumeurs,” of the crime of illegal advertising of tobacco or tobacco products on the one hand, by publishing on the Internet site “www.Batfrance.com” a document entitled “British American Tobacco France launch a national campaign to raise awareness at 28,000 tobacconists’ shops addressed to consumers concerning counterfeit cigarettes” and on the other hand, by designing and making available to the 28,000 tobacconists’ shops a poster with the colors and logo of the brand British American Tobacco France intended for points of sale of tobacco that was not in compliance with the prescriptions of the administrative order of December 31, 1992, which acts were committed starting on July 23, 2010, and at all events within a period for which the statute of limitations has not run out, on the national territory

The Court annuls the judgment of the District Court of Nanterre on the date of October 5, 2012, in which it sentenced the company BRITISH AMERICAN TOBACCO France to a fine of 50,000 euros

In a new ruling,

The Court sentences the company BRITISH AMERICAN TOBACCO France to pay a fine of 100,000 euros

With regard to the civil action,

The judgment handed down is confirmed in all of its civil provisions

And in addition,
the court sentences the company BRITISH AMERICAN TOBACCO France and Ricardo DE ALMEIDA OBERLANDER to pay to the association “Les Droits des Non-Fumeurs,” pursuant to Article 475-1 of the Code of Penal Procedure, an additional sum of 2,000 euros at the appellate level.

If the convicted party pays the amount of the fees set in the proceedings and, if applicable, of the fine, within a period of one month counting from the serving of this order by the bailiff, such amount shall be reduced by 20 % without such reduction being allowed to exceed 1,500€, and payment of the fine shall pose no impediment to the exercise of the right of appeal, and this, pursuant to Article 707-3 of the Code of Penal Procedure. In the case of an appeal against the penal provisions, it shall be incumbent upon the interested party to seek the restitution of the funds paid out.

The civil plaintiff, having been awarded damages and interest to be paid by the convicted party, is informed of the possibility of filing a claim with the Crime Victims Compensation Commission (*CIVI - Commission d’Indemnisation des Victimes d’Infraction*) within a period of one year counting from this opinion, as long as the conditions required by Articles 706-3 and 706-14 of the new Code of Penal Procedure have been met.

The convicted party is informed of the possibility for civil plaintiffs who are not eligible to file a claim with the CIVI to file a claim with the Office of Damage Recovery Assistance for Crime Victims (*SARVI - Service d’Aide au Recouvrement des Victimes d’Infraction*) if the convicted party does not proceed to execute payment of the damages and interest that it has been ordered to pay within a period of 2 calendar months counting from the day when the decision becomes definitive.

And Monsieur LARMANJAT, President, and Madame LAMANDIN, Clerk of the Court, have signed this Judgment.

CLERK OF THE COURT,
[illegible signature]

THE PRESIDENT.
[illegible signature]

BY CERTIFIED COPY
CHIEF CLERK OF THE COURT

**Decision submitted at a fixed procedural fee
(Article 1018A of the Code of Taxation): 120,00€**

[COURT OF APPEALS
OF VERSAILLES
CLERK OF THE
CRIMINAL COURT]