

SMOKESHOP[®]

THE INDUSTRY AUTHORITY ON TOBACCO RETAILING

Official Publication of the International Premium Cigar & Pipe Retailers Association (IPCPR)

DECEMBER 2011

Mass Market Explosion

Cigar Sales Are Hot



www.smokeshopmag.com

PLUS:

- > **Tradition & Ambition: Savinelli Pipes**
- > **Judy Hunter: Making a Difference**

Tobacco “Sponsorships” Come Under Fire

What is an unacceptable tobacco brand name sponsorship under the FDA’s regulations? It turns out public and political pressure can derail promotion partners, even with FDA involvement.

>BY TROUTMAN SANDERS TOBACCO TEAM

In what most observers view as an apparent capitulation to political pressure from public health groups and certain members of congress, officials for the Orange Bowl announced in December that they abandoned plans to have Camacho Cigars promote its cigars at game-day events over a three-year period.

Although the Tobacco Control Act bans brand name “sponsorships” of athletic, social, and cultural events, the sponsorship ban does not apply to cigars or pipe tobacco. The sponsorship ban is limited only to cigarettes, roll-your-own tobacco, and smokeless tobacco.

agreement between Camacho Cigars and the Orange Bowl did not appear to violate the Tobacco Control Act, public health groups raised the dubious claim that the deal was prohibited by federal tobacco marketing restrictions. In support of that position, three of the architects of the Tobacco Control Act—Senators Durbin, Blumenthal and Durbin—argued that cigars contain the same cancer-causing chemicals as cigarettes, and should therefore be subject to the same restrictions.

If Congress was of the view that brand-name sponsorship restrictions were so important for cigars, why did

tobacco manufacturers, distributors and retailers from “sponsoring” any “athletic, musical, artistic, or other social or cultural event, or any entry or team in any event” in the brand name, logo or selling message of any cigarette or smokeless tobacco brand.” Manufacturers, distributors and retailers are permitted to conduct such sponsorships in their corporate name, but only if the corporate name was registered and in use before January 1, 1995. (The legality of this grandfathering provision seems doubtful.)

Since FDA issued these regulations, a number of issues have arisen regarding what constitutes an unacceptable “sponsorship.” Clearly, a tobacco products manufacturer cannot be an “official sponsor” of such events, if the sponsorship is in the company’s brand name. It seems equally clear that a tobacco company remains free to conduct advertising, sales or sampling at such events. (Indeed, smokeless tobacco sampling is expressly permitted under FDA’s regulations.) It is conceivable that FDA could raise questions when the level of advertising at sporting or cultural events is so prevalent that it could be deemed a “sponsorship.”

What if a tobacco company calls itself a “partner” in a cultural event, as opposed to a “sponsor”? The two terms seem to be functionally indistinguishable, and FDA definitively answered this question in an August 26, 2011 warning letter to Santa Fe Natural Tobacco Company. As indicated in the warning letter, Santa Fe apparently was listed as a “partner” on the website of the Voodoo Experience music and art festival. Santa Fe’s website listed the Voodoo Experience as one of the events it would attend. The letter warns that the statements render Santa Fe’s products misbranded under the Tobacco Control Act, and directs Santa Fe to make appropriate corrections. The offending statements now appear to have been removed from both websites. **S**

>If Congress was of the view that brand-name sponsorship restrictions were so important for cigars, why did they not include such restrictions in the Tobacco Control Act?

Moreover, public accounts of the cigar company’s “sponsorship” indicated that Camacho planned to advertise its products at game-day events and to offer adult restricted smoking lounges. Under those circumstances, it would not appear that such activity rises to the level of a “sponsorship,” as opposed to naming rights that are common in college football bowls. In any event, if the definition of “sponsorship” were broadly applied to simple advertising at game-day events, such a First Amendment speech restriction may be unconstitutionally vague.

Notwithstanding the fact that the

they not include such restrictions in the Tobacco Control Act? These same senators have repeatedly implored FDA to extend the brand name sponsorship and other advertising restrictions to cigars pursuant to its authority under the Tobacco Control Act, but FDA has not yet done so. The latest reported estimate for such regulations is early 2012.

SPONSORSHIPS BANNED UNDER FDA’S TOBACCO REGULATIONS

Effective June 2010, FDA issued advertising and marketing restrictions under the Tobacco Control Act. Among those requirements is a provision prohibiting

Troutman Sanders Tobacco Team,

Troutman Sanders LLP, 1001 Haxall Point, Richmond, Va. 23219, Tel: (804) 697-2206, Web: www.troutmansanders.com, Email: ashley.taylor@troutmansanders.com, Fax: (804) 697-1339.