

News analysis

CZECH REPUBLIC: POTENT SMOKING AND IMPOTENCE CAMPAIGN

Smoking causes up to 20% of erectile dysfunction in men. This fact, especially interesting for adolescents both male and female, was part of a campaign launched in December 2007, prepared free of charge by the advertising agency Leagas Delaney Praha for the Czech society for treatment of tobacco dependence. Together with the sexual medicine society of the Czech medical association, the campaign includes postcards, posters, press advertising and web design.

Among the images developed for the campaign are three bedroom scenes, all with a slogan that translates as, "What good is a smoker in the bedroom?" They each show an unfortunate male smoker unable to perform his expected role in bed, who has been pressed into service instead as a standard lamp, a candlestick and a glass table support, respectively. Another three images, produced on postcards in a series known as "Happy impotent", show men who suffer from erectile dysfunction, apparently now happily engaged in traditionally female pursuits such as knitting and embroidery. Small embroidery sets are being provided to tobacco shops to be given to men buying cigarettes.



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SOUTH AFRICA: SNUS "NOT A TOBACCO PRODUCT"

Just as Ali Baba is forever linked to the 40 thieves, are tobacco manufacturers always to be associated with disease, death and deceit? Swedish Match (SM), some say, is different. It is allegedly more ethical. Recent events in South Africa show that the company can "get down and dirty" with the very best, in trying to bend the law to its advantage.

In 2006, subsidiaries of SM, Leonard Dingler and Brasant, distributed promotional brochures for snus in South Africa, even though the advertising of tobacco products has been prohibited since 2001. The brochure variously claimed that snus was safer than smoking, could be enjoyed where smoking was prohibited and was environmentally safe.

The National Council Against Smoking (NCAS) complained to the Advertising Standards Authority (ASA) that the brochure was illegal and should be withdrawn. Leonard Dingler responded that snus was not technically a tobacco product as defined by the Tobacco Products Control Act and,

therefore, was not governed by the Act. So the company claimed it was free to advertise snus.

The case hinged on whether snus was legally a tobacco product. South African law defines a tobacco product as "any product made from tobacco and intended for use by smoking, inhalation, chewing, sniffing or sucking," a definition also used by the European Union and other jurisdictions.

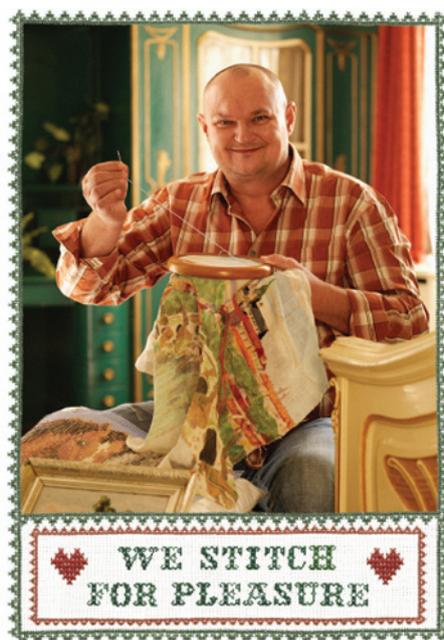
Leonard Dingler claimed that, "Snus is placed under the lip, but no chewing, sucking or sniffing is required" and that snus was not intended for use by any of the means described by the law.

The NCAS countered that snus was sucked. Since the act does not define the word suck, its ordinary dictionary definition holds. One meaning of suck is "to hold, moisten or manoeuvre in the mouth". Snus is held between the lips and teeth and is moistened, so that nicotine may be absorbed. It is therefore sucked. Case made.

The initial ruling of the ASA directorate agreed with the NCAS and ordered the brochures to be withdrawn. Leonard Dingler appealed against the ruling but the appeal was rejected. Dingler appealed once more to the final appeals committee of the ASA.

Dingler stated in its appeal that the passive holding of an object in the mouth did not amount to sucking, as it did not involve the buccal, cheek and tongue muscles that have to be used to create a suction so as to, for example, suck liquid into the mouth.

In deciding which of the two definitions of suck applied, the appeals commission used the so-called golden rule of interpretation. This says that a court will be justified in departing from the literal sense of a word or modifying it in such a manner as will secure a conclusion, which will give expression to the true intention of the legislature. Further, courts may disregard even clear and unambiguous language where it would lead to a result contrary to the intention of the legislature. It is presumed that the legislator intends the courts to observe the *maxim ut res magis valeat quam ferat* (it is better for a rule to have effect than to be made void). So statutes must be enacted in



Czech Republic: English language versions of some of the original Czech advertisements used recently to highlight the role of smoking in erectile dysfunction. Two series of images, called "What good is a smoker in the bedroom?" and "Happy impotent", urge male smokers to telephone the national helpline number for advice on giving up smoking.

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