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THE SOLICITOR'S DEPARTMENT

Please reply to The Solicitor

and quote this reference: 01/LL/GDM

Your reference:

27th June 1980

C.H. Stewart Lockhart, Esq.,
British-American Tobacco Co. Ltd.,
PO Box 482 Westminster House,
7 Millbank,
London,
SW1P 3JF

C.H.S.L.
30 JUN 1980
30/6

Mr. Maini

Dear Mr. Stewart Lockhart,

Our Director-General's office has referred to me the correspondence arising out of the "Panorama" programme transmitted on 14th April.

The Director-General has replied to the non legal points made in your letter, so that I shall confine my reply to the references made by you to copyright in two documents allegedly shown on the programme.

First, I must say that the Corporation does not concede that the document prepared and signed in 1972 by Dr. S.J. Green was quoted in the programme. I gather that it is suggested that the following words were lifted from Dr. Green's memorandum "I believe it will not be possible to maintain indefinitely the rather hollow 'we are not doctors' stance. And that in due course we shall have to come up in public with a rather more positive approach towards cigarette safety. In my view it would be best to be in a position to say in public what we believe in private." It seems to me that, even if Dr. Green's memo was quoted in the programme, the section used could only have been part of a much longer piece written by Dr. Green and that, on grounds of fair dealing alone, the Corporation would have had every right to use that portion of Dr. Green's memorandum. However, and again not conceding that the passage used was lifted from Dr. Green's memorandum, I consider that the whole issue of smoking and damage to health is of such public importance, that the Corporation would have had every right to use such a quotation notwithstanding the fact that the passage used may have been your Company's copyright.

The public interest point does, of course, apply to the extract from the policy paper quoted in the programme, as does the fair dealing protection afforded the Corporation by the copyright laws of this country. However, a further matter of much greater importance, arises in connection with this document. It

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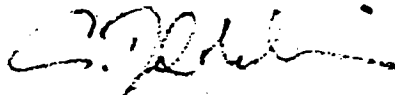
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proposes to break the laws of countries operating tobacco advertising bans either in the present or in the future. Whilst I am sure that B.A.T. would not wish to be a party to such an illegality, I feel that it does not behove B.A.T. to claim copyright in a passage which is not only clearly contrary to public policy, but which could conceivably constitute a conspiracy to break the laws of this and other countries. In my view, copyright cannot be enforced in such a document or, at least, in those portions of the document setting up the illegal proposition.

Reference is also made by you to the confidential nature of the documents. I should like to know how that confidentiality arises. In the case of the conference document, there can be no confidence in a proposal of a clearly illegal nature. Furthermore, Dr. Green's document can, in my view, only be confidential if it is marked as such or if it relates to some secret process or information. As I have said, the Corporation does not concede that Dr. Green's document was used. Even if it was, we have no evidence that it was a confidential piece of information.

Yours sincerely,



(G. De Medico)
for the Solicitor

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