

1994 KEY AREA : LEGAL AFFAIRS

I. SMOKING AND HEALTH ISSUES

Smoking and health related issues have a serious potential impact on BATCo and its group companies. These issues may give rise to product liability claims from smokers, personal injury claims from non-smokers in relation to environmental tobacco smoke, and legal challenges to normal commercial practices such as advertising.

Attacks on the industry by anti-smoking groups, health authorities and the media continue to show a trend worldwide of proposals for new legislation affecting the marketing and sale of tobacco products. Legal Department will continue to work closely with Corporate Affairs, Smoking Issues and R&D departments in resisting unwelcome legislative proposals.

BATCo's strategy for handling smoking and health issues is to take pro-active steps in order to protect the Group's position. These include:-

- witness identification work in respect of potential lawsuits,
- documentation of relevant issues including public awareness of the claimed risks of smoking in individual markets,
- the introduction of a practical and consistent records management policy,
- research work consistent with the Company's legal obligations, and
- liaison with national manufacturing associations in individual markets and discussions with Governments on legislative proposals and voluntary codes of practice.

In addition, BATCo's policy will continue to be strenuously to defend product liability and ETS claims brought against the Company.

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II. INTELLECTUAL PROPERTY

A. Background

It is essential that the Group's intellectual property (in particular its trademark portfolio) should be protected in order to preserve and enhance the goodwill attaching to the Group's brands and to develop competitive advantages in our business.

1. Trademarks

There will continue to be a number of developments, both legal and commercial, which affect BATCo's traditional perception and use of trademarks. These are:

- a) the creation of a single unified market in the EU based on the removal of national barriers to the free movement of goods. This approach is also influencing other economic groups e.g. the Andean Pact which has very recently introduced innovative trademark coexistence provisions in its laws. At present the legal consequences resulting from developments in the EU are:
 - i. It is not normally possible for a trademark owner to prevent branded products sold in one EU country from being exported to other countries within the EU.
 - ii. A trademark owner cannot impose restrictions on its licensees or distributors in the EU which prohibit them from selling in the EU outside specified countries.
 - iii. Harmonisation of trademark laws in the EU may cause some complex problems for the BAT Group due to the long history of split ownership of some important marks.
- b) the developments in the concept of trademark use, i.e. under most national trademark systems some use of a trademark is required to justify its remaining on the Register if the registration is attacked by a competitor. Mere token sales may not be sufficient for this purpose and "genuine commercial use" may be necessary.
- c) the increasing range and extent of advertising bans on tobacco products is likely to affect the use of trademarks on non-tobacco products.
- d) counterfeits, look alikes and trademark piracy.

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2. Copyright

Copyright is important to BATCo in protecting brand image for its products in the market place. Particular benefits afforded to BATCo by copyright include the following:-

- a) Copyright automatically vests in the author and does not need to be registered on any register in order to be enforced. It can therefore be used against an infringer immediately without incurring the lengthy delays often associated with trademark infringement proceedings. To preserve our copyrights it is important that all original drawings and artwork for labels, packs and advertising are signed, dated and safely stored and that the Group should have water-tight contracts with its designers and agencies vesting the ownership of copyright in BATCo or the relevant group company.
- b) Copyright can provide a right of action where BATCo is unable to obtain trademark protection for any reason e.g. because of non-use.
- c) A breach of copyright can have a very beneficial psychological effect on a judge dealing with a trademark infringement when he sees a complicated design copied down to the last detail.
- d) Copyright may cover the total design of a pack or label whereas a registered trademark generally only protects a part of the product get-up.

3. Patents

Patents are important to BATCo in protecting its new technology. Some of the developments mentioned above in relation to trademarks apply equally to the exploitation of patents e.g. patent protection cannot be used to exclude parallel imports within the EC and in some countries if a patent is not used, it may be vulnerable to the issue of a compulsory licence to third parties including competitors.

B. Future Policy

1. BATCo will continue to register the Group's trademarks in all territories deemed appropriate to each mark. New registration policies based on priority brands and territories will be developed.

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2. Group Trademarks Department ("GTD") in Millbank will continue to be responsible for the protection of the Group's international trademarks on a global basis. It is essential that GTD should receive as much information as possible about the use or proposed use of trademarks throughout the world and that marketing departments, both at an international and a local level, communicate their priorities so that GTD know what trademarks and territories are seen as important for future brand development. In the light of this information, GTD can make judgements and recommendations about the Group's trademark portfolio, including the opportunity to dispense with trademarks that are no longer of interest.
3. GTD will continue to have a key input with regard to Brand Control Procedures which must be complied with prior to the launch of any new brands. These procedures must be originated by the RBU's but GTD will ensure the legal integrity of brand use including trademark verification and protection and appropriate licences (see III 3 below). The launch of any brand must be signed off by the RBU (Marketing and Finance), Accounts, GTD and finally the Marketing Director (or his delegate).
4. BATCo will keep under review the operation of those agreements to which it is a party and which have the effect of dividing European markets for particular brands in order to identify potential legal threats to its markets and potential marketing opportunities afforded by the creation of the Single European Market.
5. BATCo will not knowingly adopt trademarks registered by its competitors or seek to usurp the copyright or patent rights of its competitors. It must however, take a strong line in situations where competitors seek to encroach upon BATCo's rights. A tough policy towards infringement is of particular importance in markets where new products seek to gain market share by imitating or 'feeding off' established brand names.
6. Copyright should be used as a supplement to BATCo's trademark rights, so as to widen the scope for retaining BAT's exclusive right to use its brand names and label designs.
7. BATCo will continue to seek patent protection for new technology which it invents in those countries where the technology may be of relevance to its business and future operations or where BATCo wishes to block the use of the technology by its competitors. Patent filing is essential to protect the fruits of BATCo's research. However, patent filing tends to be more expensive than trademark registration and therefore there is a requirement to be more selective in the number of international filings which are made of any particular patent. Patents in which BATCo has no immediate interest will be offered to other companies in the Group. It is essential that there should be regular exchanges of information about the patent filing programmes of BATCo and other principal tobacco operating companies, namely Brown & Williamson, BATCF and Souza Cruz. Otherwise, there is a risk of duplication or conflict if patent filing

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programmes relating to the same area of technology are pursued in isolation by the companies involved.

8. Legal Department/GTD/Patents Department should continue to liaise with the R&D Department in order to preserve the intellectual property rights associated with R&D activities. It is particularly important to ensure that the Group's ownership of inventions, new developments and confidential information is properly safeguarded by seeking to secure patent, copyright and trademark protection at an early stage. In dealings with outside agencies or other third parties who may be involved with BATCo in R&D work it is important that BATCo continues to make every effort to secure that whenever possible the ownership of intellectual property rights arising from such work vests in BATCo and confidential and proprietary information is properly protected by contract.

C. Communciation

The complex international make-up of the BAT Industries Group means that it is essential to maintain adequate communication and information exchange between overseas operating companies and the BATCo Legal Department (including GTD and Patents Department) on the one hand and the overseas operating companies and other tobacco companies in the BAT Industries group on the other hand. This helps to avoid additional problems in the protection of the Group's intellectual property rights which have to be viewed on a comprehensive international basis if they are to be properly maintained and managed. To assist in this process, GTD will enhance its computer system for administering the Group's trademark portfolio.

III MAJOR CONTRACTS

1. Major Contracts

It is BATCo's policy that all major contracts (as defined below) entered into by the Company and its subsidiaries should be reviewed by appropriate in-house or external lawyers. For BATCo and BATUKE major contracts, BATCo Legal Department/Group Trademarks Department should always be consulted. In addition, major contracts entered into by subsidiaries in categories (1), (9), (10), (13) and (14) and all trademark licences should in any event be reviewed by the BATCo Legal Department/Group Trademarks Department.

The purpose of the review is to ensure that all material risks are identified and appropriate action taken prior to entering into a contractual commitment so that BATCo or the relevant subsidiary does not unintentionally accept onerous or unusual contractual commitments. Ultimate approval of a major contract remains with BATCo or local line management; the purposes of the review are to alert management to opportunities for reducing risks, to enable management to negotiate prices that recognise specific risk areas associated with proposed contractual terms, and to ensure that BATCo or the relevant subsidiary is protected as far as is practicable against the occurrence of unforeseen circumstances or unscrupulous behaviour by the other contracting party.

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The legal review is intended to be additional to financial and tax reviews to which a proposed contract will also be subject. Questions of methods of payment, compliance with exchange controls and currency risks will normally be the responsibility of the relevant Finance Director.

For the purposes of this policy, major contracts should be regarded as including:

- (1) Contract or licensed manufacturing agreements placed or accepted by BATCO and its subsidiaries.
- (2) Contracts for the purchase or lease of land and buildings.
- (3) Contracts for the purchase of plant and machinery where not subject to BATCO standard purchase terms and conditions.
- (4) Leaf and materials procurement contracts where not subject to BATCO's or a subsidiary's standard purchasing terms and conditions.
- (5) Financing agreements relating to the provision of security over BATCO's or a subsidiary's assets, capital reconstructions, equity and bond issues.
- (6) Contracts outside the normal scope of BATCO's or a subsidiary's business.
- (7) Agency and distribution contracts.
- (8) Design, advertising, marketing and sponsorship agreements.
- (9) Agreements for the provision or acquisition of technical know-how.
- (10) Patent licences to or from a subsidiary or a third party.
- (11) Consultancy contracts involving access to commercially sensitive information and/or the production of valuable intellectual property.
- (12) Leaf export contracts which vary in any material respect from BATCO's established guidelines for such contracts.
- (13) Mergers and joint venture agreements.
- (14) Acquisitions and disposals of businesses.

2. Contracts registration system

The contracts registration system set out in the BATCO Manual of Operating Procedures volume I, section 9 (i) must be observed in relation to all major contracts entered into by BATCO and BATUKE.

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3. Trademark Licences

Trademark licences relating to the exploitation of the Group's trademarks must be entered into only in accordance with the BAT Group's established policies. These are currently incorporated in the documents entitled respectively "The Responsible Companies Register" (January 1987), "The Management of Trademarks Registration Policy" (July 1988) and "Trademark Protection Policy" (July 1988) although new policies are in the course of being developed.

31 March 1994
PLC638/js/S.143

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