

Smoking in a TV program: unauthorized advertising in favor of tobacco?

[AUDIOVISUAL]

Cass. Crim. 21 February 2017

This case was introduced following the broadcast of a TV program consisting in filming, during a dinner, several guests from various backgrounds, which showed three famous persons smoking.

Both the broadcaster, the company managing the channel's website (from which viewers could access the TV program by means of catch-up TV), and their directors, were sued on the grounds that the French public health code prohibits the propaganda and the advertising, direct or indirect, in favor of tobacco.

The question that was asked to the Cour de cassation was whether the showing of notorious people smoking in a TV program was to be considered as tobacco advertising.

The Court of appeal of Paris had decided that the broadcast of the sequences showing the guests smoking, action that could be interpreted as a moment of pleasure, participated to a promotion in favor of tobacco. The Court held that it was the case even though there was no additional comment to highlight this moment.

The Court of appeal also found that the sequences could have been deleted during the editing of the TV program, and that such deletion would not have affected the comprehensibility of the debates nor it would have violated the freedom of expression.

However, the Cour de cassation did not follow the Court of appeal's reasoning. It considered that the mere fact that persons were shown smoking during a TV program does not constitute advertising in favor of tobacco.

Camille BURKHART