



COURT OF ROME
XVII CIVIL DIVISION
Specialized Business Court

The appointed Judge Fausto Basile, in the civil proceedings registered under case no. 57714 of the Civil Actions Registry - Special summary proceedings - for the year 2019, filed

By

Asso-Consum Onlus Consumers' Association, registered in the CNCU (National Council of Consumers and Users) as one of the leading national associations, with headquarters in Rome 5, represented by Attorneys [REDACTED] and [REDACTED], duly appointed as per power of attorney attached to the Introductory Appeal,

Plaintiff

Against

I [REDACTED] T [REDACTED] Italia S.r.l., with headquarters located at Via [REDACTED] no. 22 Rome, in the person of **Mr. A [REDACTED]**, Chairman of the Board of Directors and **Mr. A [REDACTED]**, CEO

And

F [REDACTED] V [REDACTED] B.V. (Fiscal Code [REDACTED]) in the person of CEOs [REDACTED] and [REDACTED], with headquarters in Amsterdam, [REDACTED], Netherlands, jointly represented by Attorneys



██████████ and ██████████, with chosen address for service at the offices of their legal representatives located in Via ██████████ 281 Rome, as per attached Defense Memorandum;

Defendants

In regards to the outstanding issue presented at the hearing of 10/23/2019, the court has **RULED** the following

ORDER OF JUSTICE

With a complaint pursuant to art. 140 of Legislative Decree no. 206 and 669-bis et seq. of the Italian Civil Code, filed on 09/13/2019, the plaintiff Asso-Consum Onlus Consumers' Association (hereinafter also referred to as the "Association"), listed as one of the leading Associations in the National Council of Consumers and Users, recognized by the Ministry of Economic Development, pursuant to and for the purposes of art. 137 of the Italian Civil Code (see doc. 1), has petitioned the court, as an urgent precautionary measure, for an injunction revoking the advertising campaign promoted by the defendants **I ██████████ T ██████████ Italia S.r.l. and F ██████████ V ██████████ B.V.** – Members of the **I ██████████ T ██████████ Group** – for the electronic cigarette named “██████████” and cartridges, named “██████████” (hereinafter referred to as **Kit ██████████**).

In support of its petition, the Association argued that the abovementioned advertising campaign is unlawful, as it is prohibited by current legislation and, most recently, by Directive 2014/40/EU of the



European Parliament and of the Council of 3 April 2014 and by Legislative Decree No 6 of 12 January 2016.

In fact, for the purpose of providing the best possible protection for consumers, Article 21, paragraph 10, of Legislative Decree no. 6 of 12 January 2016 prohibits all forms of advertising and/or sponsorship of electronic cigarettes, while Article 14 of Legislative Decree no. 6 of 12 January 2016 prohibits the public dissemination of promotional messages relating to the same contents referred to in the above-mentioned article.

With specific reference to the Italian market, the above-mentioned promotional campaign of the Kit [REDACTED] was initiated by the Defendants in violation of the current regulations and would continue by means of:

a) "commercial campaigns" "with the purpose of promoting the electronic cigarette and its liquid cartridges" massively carried out via (i) "commercial communications in Information Society services" as well as (ii) "printed publications", with consequent violation of art. 21(10), letter a) of Legislative Decree no. 6 of 12 January 2016, and b) organizing and contributing to "events, activities or acts of individuals having the indirect or direct purpose of promoting the electronic cigarettes and liquid cartridges", with consequent violation of Article 21(10), letter d) of Legislative Decree no. 6 of 12 January 2016.

The unlawful business practices carried out by the Defendants include:

1) the use of the website [REDACTED] it/it owned by F [REDACTED] V [REDACTED] (see doc.6) and mainstream communication channels such as



Instagram, Facebook and YouTube; 2) printed advertisement, including billboards posted in the cities of Rome and Milan and through advertising spaces rented by ATAC (Rome Public Transportation System); 3) the organization and sponsorship of public events, activities aimed at the promotion of the electronic cigarette;

Furthermore, the content of the promotional material related to the Kit [REDACTED] provides a misleading and incorrect presentation of the product to the consumers, in violation of the provisions of the above-mentioned art. 14(1).

In view of these facts and of the refusal of the defendants to discontinue the advertising campaign, the Association acted to protect consumers and users in petitioning the Court, as a precautionary measure, an injunction to entirely stop the advertising campaign, pursuant to and for the purposes of art. 140(1) letter a) of the Consumer Code.

With a defense pleading filed on 22 October 2019, by the defendants **I [REDACTED] T [REDACTED] Italia S.r.l. and F [REDACTED] V [REDACTED] B.V.** entered the proceedings contesting the plaintiff's arguments and requesting dismissal due to the lack of legal grounds to determine the alleged unlawfulness of the business practices of and the existence of an imminent danger for consumers, which would justify the plaintiff's call for an urgent injunction, pursuant to art. 140 of the Consumer Code.

In support of their argument, the Defendants have stated that:

1) the wording "commercial communications in Information Society services" found in Decree no. 6/2016 and in Directive 2014/40/UE on



tobacco products should not be interpreted through the use of the definitions of 'commercial communications' and 'information society services' contained in Directive 2000/31/EC, transposed by Legislative Decree 70/2003; this would be in conflict with the need to take account of the specific nature of the legislation in the sector, as well as with the guidelines expressed by other Member States of the European Union;

2) the institutional website [REDACTED] it/it should be treated as an online shop that the customer (user of the Kit [REDACTED] or a user of electronic cigarettes or, in any case, an adult smoker) can consciously access to find our product information and prices (in some cases with variations or “specials”) in the same way they would by visiting any physical shop in the Country;

3) the supporting photo documents presented by the plaintiff are irrelevant as they cannot be defined as “promotional or advertising communications”, but rather website pages with no advertisement purpose, containing product information (see doc. 10 page 2), release dates (see doc.10 page 1), descriptions and instruction manuals (see doc. 10 pages 3 and 4), an online store (doc. 10 pages 6,8,10,112-16), disclaimer, conditions of sale, privacy, assistance and range of products (p. 7, 11 and 17, doc. 10). The Defendants also argue that “*the publication of mere informational content and/or images related to their products on the company website cannot be considered promotional activities and therefore is not in violation of the current legislation.*” It cannot be doubted that the company websites as well as their social network



pages only contain **mere product information and pictures**, and any other information that does not have promotional purpose. Furthermore, consumers intentionally access the website, without being solicited by the company, whether if they know the brand or by researching the brand and browsing the website or the social network pages; Age verification is also required to access both the official website or the social network pages.

4) the page #supplied [REDACTED] Cannot be considered the company's website, because it is only an aggregator of social media posts containing the aforementioned hashtag, for which the Defendants have no sponsorship contract. "The so-called user-generated contents can be lawfully republished by the Defendants on the company web pages without being in any way considered advertising or promotional content, as the message is not being commissioned by the supplier."

5) With reference to the videos published on the YouTube channel [REDACTED], which is age-restricted, the video with title *Just you & [REDACTED]* (see doc. 16, defense) had legitimate content at the time of its publications, but has now been removed from the channel due to being posted by mistake. The other videos posted on the channel were very few, are no longer visible, or were mainly intended for internal company use.

6) With reference to the news article dated 15 April 2016 (doc. 15, defense) mentioning a past advertising campaign, the Defendants argue that the content was produced by a third party, with no control by I [REDACTED]. As a result, the content cannot be considered "editorial advertising" but



rather independent editorial work made by a third party, and any resulting indirect advertising would only constitute an expression of freedom of thought and press.

7) With reference to the “**published advertisements**” the Defendants argue that the Plaintiff has arbitrarily interpreted the term with a definition given by Law no. 47/1948, without considering that the Decree no. 6/2016 has no reference to that definition. The billboards posted in the cities of Milan and Rome (doc. 17, prosecution) are not in violation of the EU Directive nor the Decree. They are not considered to be “printed publications” prohibited by the provisions of art. 20 of the EU directive and by art. 21(10) lett. a of the Decree. As implemented by the UK authorities, based on the same Directive, there are specific guidelines which permit and regulate the use of “*outdoor posters, posters on side of buses*” as well as the publication of informational content on company websites and/or social media pages (e.g. Facebook, etc.)

8) the informational booklets (flyer) presented by the Prosecution are irrelevant, as they clearly have a mere informational purpose and are intended for distribution only to tobacco resellers and industry professionals. In fact, art. 21 of Decree no 6/2016 expressly allows printed communications intended for professionals in the trade of electronic cigarette and cartridges;

9) Photographs of the information stands of the Kit (doc. 19, prosecution) on premises where smoking products are resold should also be regarded as information and non-promotional material, as the



locations are only accessible to those who deliberately choose to visit.

10) the widespread use by all the main competitors in the manufacture and marketing of electronic cigarettes of the alleged unlawful conduct attributed to the defendants, either by means of billboards or through their respective websites and social channels, shows that the interpretation of the relevant legislation supported by the defendants is not isolated but rather fully consistent with the common practices adopted in the tobacco industry throughout the European Union;

Finally, the defendant objected that specific urgent reasons are non-existing and that there were concrete damage caused to consumers, as provided by Article 140 of the Consumer Code, to justify the request of the urgent precautionary action sought by the plaintiff to stop actions that are posing a risk to users and consumers.

After hearing the parties at the hearing dated 23 October 2019, the appointed Judge has reserved his decision.

The first law that introduced a ban on tobacco product advertising in Italy dates back to 1962, with the sole article of Law No 165/1962, which is still in effect (Article 8 of Decree-Law No 4/1983, converted into Law No 52/1983, which only amended the penalties and not the ban) provides: "Advertising propaganda for any smoking product, whether domestic or foreign, shall be prohibited".



With regard to the manufacturing, presentation and sale of tobacco products, Directive 2001/37/EC of 5 June 2001, implemented in Italy by Legislative Decree No 184/2003, repealed by the new Directive No 2014/40/2014 of 3 April 2014/EU "on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products and related products". This Directive was implemented by Legislative Decree no. 6 of 12 January 2016, which repealed the previous Legislative Decree no. 184/2003. Directive no. 2014/40/EU and Decree no. 6/2016 regulate not only the manufacturing, presentation and sale of traditional tobacco products, but also that of "related products", primarily electronic cigarettes and liquid refill cartridges.

Without going into the specific of the recent regulations on the circulation and sale, even online, of electronic cigarettes and cartridges, what is relevant here is the prohibition of commercial communications that directly or indirectly promote electronic cigarettes and cartridges, as provided for, respectively, by art. 20 of the Directive and art. 21 of the Decree transposing the latter.

The issue of commercial advertising of tobacco products and related products is directly addressed by Directive No. 2014/40/EU, which in Paragraph 7 states that "Legislative action at the EU level is also necessary to implement the WHO Framework Convention on Tobacco Control ("FCTC") of May 2003, whose provisions are binding on the European Union and its Member States. The provisions of the FCTC on



the regulation of the composition of tobacco products, on the regulation of the information to be provided on tobacco products, on the packaging and labelling of tobacco products, on advertising and on the illicit trade in tobacco products are particularly relevant”.

With particular reference to the advertising of electronic cigarettes, paragraph 43 of the Directive states that: “The disparities between national laws and practices on advertising and sponsorship concerning electronic cigarettes present an obstacle to the free movement of goods and the freedom to provide services, and create an appreciable risk of distortion of competition. Without further action at Union level, these disparities are likely to increase over the coming years, also taking into account the growing market for e-cigarettes and liquid refill containers. It is therefore necessary to approximate national provisions on the advertising and sponsorship of such products having cross-border effects, taking as a base a high level of protection of human health. Electronic cigarettes can develop into a gateway to nicotine addiction and, ultimately, to traditional tobacco consumption, as they mimic and normalize the action of smoking. For this reason, it is appropriate to adopt a restrictive approach to the advertising of electronic cigarettes and liquid refill containers.

To that end, Article 20(5) introduced provisions requiring Member States to prohibit the commercial advertising of electronic cigarettes and liquid refills.

In Italy, the content of this provision has been transposed into national



law by Article 21(10) of Decree No 6/2016, which reads as follows:

“10. The following is prohibited:

- a) commercial communications in information society services, in the press and other printed publications, with the aim or direct or indirect effect of promoting electronic cigarettes and liquid refill cartridges, with the exception of publications intended exclusively for professionals in the trade of electronic cigarettes and liquid refill containers and publications printed and published in third countries, if such publications are not intended primarily for the European Union market;
- b) radio commercials with the aim or direct or indirect effect of promoting electronic cigarettes and liquid refill cartridges;
- c) any form of public or private contribution to radio broadcasts with the aim or direct or indirect effect of promoting electronic cigarettes and liquid refill cartridges;
- d) any form of public or private contribution to events, activities or individuals which involve or take place in different Member States, or which otherwise have a cross-border impact, with the aim or direct or indirect effect of promoting electronic cigarettes and liquid refill cartridges;
- e) audiovisual commercial communications on electronic cigarettes and refill cartridges to which Directive 2010/13/EU of the European Parliament and of the Council applies. Paragraph 9 regulates the presentation of the packaging of electronic cigarettes and refill



cartridges, recalling the requirements for tobacco products set out in Article 14(a) and (c) of the same Decree.

Article 14(a) states that the labelling of unit packets and any external packaging and the tobacco product itself must not include any elements or characteristics which: "(a) promote a product or encourages its consumption by giving misleading information as to its characteristics, health effects, risks or emissions; the labels do not contain any information as to the nicotine, tar or carbon monoxide content of the tobacco product [...] c) refer to a taste, smell, aroma or other additive or the lack thereof".

In view of the aforementioned provisions (at a community and national level) on the commercial advertising of electronic cigarettes and refill cartridges, the plaintiff petitioned for an urgent injunction against the advertising campaign for the Kit [REDACTED] which unlawfully carried out by the Defendants.

The Defendants have not denied such activities, but argued that that such conduct is to be considered lawful in the light of the current provisions on the prohibition of commercial advertising of electronic cigarettes.

The Defense argued that: on the one hand, such activities were not carried out for advertising/promotional purposes, but rather for merely informational purposes about the products. On the other hand, there have been some commercial communications which do not fall within the "printed publications" category for which the prohibition applies.



First of all, First of all, the Defendants' objection to the possibility of using the definitions of 'commercial communications' and 'information society services' contained in Directive 2000/31/EC, transposed by Legislative Decree No 70/2003, on 'certain legal aspects of information society services in the internal market, with particular reference to electronic commerce', also in relation to the advertising of smoking products regulated by another Directive and other transposing Decree, does not appear to be justified. Under the terms of Article 2, paragraph 1, letter f) of Legislative Decree no. 70/2003, "commercial communications" means "all forms of communication intended, directly or indirectly, to promote goods, services or the image of a company, organization or person who exercises an agricultural, commercial, industrial, craft or professional activity. The following are not strictly defined as commercial communications:

- 1) information that allows direct access to the activity of the enterprise, individual or organization, such as a domain name, or an e-mail address;
- 2) communications relating to the goods, services or image of that company, entity or organization, which are processed independently, in particular without any remuneration.

With regard to the definition of "commercial communications", what is relevant is not so much the fact that the aforementioned Legislative Decree no. 70/2003 limits its effectiveness "for the purposes of this decree", but rather that it is a sufficiently broad definition, which describes precisely the content and purpose of commercial advertising,



so that it can also be used extensively in industries, such as that of smoking products, other than electronic commerce.

Moreover, this definition does not differ significantly from the traditional meaning of "advertising" contained in Article 2, paragraph 1, letter a) of Legislative Decree no. 74/1992, according to which "advertising" means "any form of message that is broadcast, in any way, in the exercise of a commercial, industrial, craft or professional activity with the aim of promoting the sale of goods or properties, the establishment or transfer of rights, or the provision of works or services".

This law was repealed in 2005 by the Consumer Code without, nevertheless, the need to reiterate this definition, which was replaced by the notion of "commercial communication" contained in Legislative Decree no. 70/2003.

In essence, regardless of the definition one may choose, "commercial communication" should be understood as any form of message with commercial content that has the direct or indirect purpose of promoting the sale of goods or services to consumers.

With regard to the definition of "information society services" in Article 2(1)(a) of Legislative Decree No 70/2003, understood as "economic activities carried out online - as well as services defined in Article 1(1)(b) of Law No 317 of 21 June 1986", the defendants have not provided any valid argument for stating that such a term, where used also by Article 21 of Legislative Decree No 6/2016, must be given a



different meaning from that above.

Therefore, and in view of the "restrictive approach to the advertising of electronic cigarettes and liquid refill containers" aimed at achieving "a high level of protection of human health", clearly stated in Paragraph 43 of Directive 2014/40/EU, the defense argument (that the company's official website and social media pages (such as Facebook and Instagram) should not be included in the scope of information society services in which commercial communications with the direct or indirect aim of promoting the sale of electronic cigarettes are prohibited) shall be dismissed.

The defense states that the company's website is to be considered as an online retail store, fully equivalent to a physical store, which only customers of legal age can access to obtain information, prices and promotional offers on the products, with the option of purchasing online.

The Defendants also state that access to the website and social media pages is age-restricted and those who access them do so voluntarily.

Furthermore, it is a customary and lawful practice to redirect customers to the online shop via dedicated links posted on social media.

The fact that consumers who indicate to be of legal age may purchase electronic cigarettes and liquid refill cartridges on the official website, as in any physical store, does not imply that a virtual store voluntarily accessible to adults may contain advertising messages or commercial communications otherwise prohibited on the Internet.



The advertising of electronic cigarettes and refills must also be considered prohibited on the company's official website, or on any other website owned by the Defendants, unless the content in question is not of a commercial nature, but of informational nature, including descriptions and instructions for use.

In fact, Directive no. 2014/40/EU and Decree no. 6/2016 prohibit the direct or indirect promotion of electronic cigarettes, but do not prevent retailers or manufacturers from providing information on a product, regardless of a consumer request. However, information on prices and technical characteristics of products (instructions for use, ingredients, taste, nicotine content, description of product components including, where applicable, the opening and refilling mechanism) must be provided in a correct manner and not with promotional intent.

Therefore, reproductions of images of e-cigarettes and liquid refill containers on the websites of manufacturers and/or retailers should be deemed to be permitted for the sole purpose of enabling the consumer to identify and choose the product to be purchased online, as well as for the purpose of describing its technical characteristics and in instruction manuals, while other types of images whose purpose or direct or indirect effect is to promote the sale of the products shall remain prohibited.

In addition to pages containing the information, descriptions and technical characteristics of the various types of electronic cigarettes and refill cartridges, it is permissible for a web page to include images of the



product on the home page in order to immediately inform the consumer of the fact that they have accessed the official website of the company producing and/or marketing that type of electronic cigarette.

All other images of electronic cigarettes, alone or with persons and/or things, which cannot be attributed the aforementioned descriptive/informative characteristics shall be considered advertising messages aimed at promoting the sale of such products, which is prohibited by art. 21, par. 10, letter. a) of Legislative Decree no. 6/2016.

Nor does the fact that consumers can voluntarily and knowingly access the website containing such commercial communications, only if they declare that they are of legal age, and that they are not passively subjected to such advertising by messages or e-mails addressed directly to them, exclude the advertising nature of such images.

In fact, in prohibiting commercial communications in information society services with the purpose or effect, direct or indirect, of promoting electronic cigarettes, the law makes no distinction between advertising messages published on web pages which consumers accesses voluntarily and those that are sent to them, with or without their consent.

This applies both to the company's official website and to social media pages owned by the Defendants. Again, the fact that consumers need to verify their age before they can access the web page does not exclude the direct or indirect purpose and/or effect of promoting electronic cigarettes through images that show men and women in an attitude of



satisfaction or pleasure while using or in the presence of electronic cigarettes. Such images, as they contain prohibited advertising messages aimed at promoting the spread of use and, therefore, ultimately, the sale of electronic cigarettes must be removed from the social channels owned by or traceable to the Defendants.

While companies that produce and/or market electronic cigarettes and refill cartridges are not prohibited from own social media pages (accounts and pages on Facebook, Instagram, etc..), the use of such channels shall be prohibited for the purpose of conveying advertising messages that have the direct or indirect purpose or effect of promoting the use and, therefore, increase the sale of such products to the public.

In the case of images created and published by independent third parties and without any kind of compensation by the manufacturer (the so-called user-generated contents), with hashtags that recall a model or a brand of electronic cigarette (such as, for example, the), although the defendants cannot be held responsible for such activities, in any case they cannot republish or promote - even through links - such posts or images on their own social channels if they represent electronic cigarettes on their own or with things and / or people in an attitude of satisfaction or pleasure, in the presence or thanks to the use of the product. These images will be in fact considered to have the direct or indirect effect of encouraging consumers or even potential consumers to use electronic cigarettes, thus promoting their sale.

With regards to the lawfulness of the display of advertising posters for



the Kit in Rome and Milan (doc. 17, prosecution), and on public transport in Rome (doc. 18 prosecution), the defendants did not deny the unquestionable promotional nature of such displays (one of the posters portrays the image of a man and a woman in a state of relaxation and pleasure while using electronic cigarettes), but rather claimed that it was a type of medium which did not fall within the scope of the “other printed publications” which the Directive and the Decree repeatedly prohibit as a means of commercial communications “with the aim or direct or indirect effect of promoting electronic cigarettes”.

The Defendant objected to the definition of “printed publications” contained in the Press Act No 43/1948 and refer to the guidelines adopted by the United Kingdom Government Authorities in defying the scope of the advertising ban laid down in Directive 2014/40/EU. The guidelines allowed posters to be placed outdoors and on the sides of buses, on the assumption that they were a type of media excluded from the advertising ban laid down in Article 20(5) of the Directive.

Again, the Court finds the Defendant’s argument, presented in the summary judgement of the precautionary phase, to be unfounded. Therefore, such media, containing explicit advertising messages aimed at promoting the sale of electronic cigarettes, must be regarded as prohibited under Article 21(10)(a) of Decree No 6/2016. Regardless of the definition of “printed” contained in Law no. 43/1948, it is clear that the expression “other printed material” refers to any type of typographical or photographic reproduction intended for publication on



media other than the so-called printed paper (newspapers, periodicals, magazines, etc.). It seems therefore impossible to conclude that outdoor displays such as posters and billboards, in public places or places open to the public (streets, plazas, railway or metro stations, etc.) or on public transport can be regarded as media other than “printed publications”.

As for the choice of the British guidelines to allow such types of media, this is not in any way binding for this matter, nor are the argument supported by valid grounds suggesting that Directive 2014/40/EU exempts such forms of advertising messages from the prohibition.

Indeed, while the Directive aims (as stated above) to “adopt a restrictive approach to the advertising of electronic cigarettes and liquid refill containers” in order to achieve a “high level of human health protection” (Paragraph 43), the UK guidelines explicitly state that “the Department of Health has adopted a minimum approach to the implementation of Article 20(5)”.

Consequently, the advertisements in question are to be regarded as commercial communications in printed publications for the purpose of promoting electronic cigarettes, as such prohibited by Article 21(10)(a) of Legislative Decree No 6/2016.

With regard to whether or not the informational booklets, 'flyers' presented by the Prosecution also fall within the scope of the advertising ban in question (doc. 3 and 19), it should be noted that these contain a complex content, partly aimed at customers and partly at "professionals in the e-cigarette trade".



The Directive and the Decree, however, consider that publications containing advertising messages for e-cigarettes are lawful only if they are intended "exclusively" for industry professional and not when they appear to be intended for both consumers and professionals. However, with specific reference to the content of doc. 13, it does not appear possible to establish through the summary assessment of the precautionary phase whether this type of publication has a merely descriptive and informative content of the characteristics of the product or whether its purpose or effect is also to promote the sale of electronic cigarettes. Therefore, any further assessment in this regard should be referred to in the relevant proceeding.

It should only be pointed out here that the reference to the provisions of art. 14 of the Decree (to which art. 21, par. 9 refers, also for electronic cigarettes) concerning the presentation of the product, does not appear *prima facie* applicable also to the aforementioned publications, since these are provisions concerning the packaging and labelling of electronic cigarettes and cartridges. With reference, instead, to the videos published on the YouTube channel, the Defendants have argued that a series of audiovisual contents better described on page 13 of the defense memorandum have been removed or limited for internal use only. Since the Defendants have not objected to this allegation and since it is not possible to ascertain in this precautionary procedure the presence of such contents on the YouTube channel, any further assessment on this point should be referred to in any relevant proceeding.



Finally, Article 140, paragraph 8, of the Consumer Code requires a risk of imminent and irreparable damage for a concerned Consumer Association to petition the Court for an urgent injunction to stop acts and conducts deemed detrimental to the interests of consumers. Given that Directive n. 2014/40/EU prohibits the advertising of electronic cigarettes in order to ensure a high level of human health, it is clear that massive advertising campaigns such as that carried out by the Defendants for the Kit [REDACTED], especially through publicly displayed posters in the cities of Rome and Milan, as well as on public transport in Rome, are in conflict with the aims of the Directive, and pose a risk to the health of consumers or potential consumers to whom these forms of advertising are addressed. As stated by Paragraph 43 of the Directive “Electronic Cigarettes can develop into a gateway to nicotine addiction and ultimately traditional tobacco consumption, as they mimic and normalize the action of smoking.” Given the danger to human health that the advertised products pose, the Court finds that there are sufficient reasons of urgency to justify a precautionary measure to stop all commercial communications aimed at promoting the sale of electronic cigarettes and refill cartridges.

On the other hand, if the injunction against the unlawful acts as potentially harmful to the health of consumers were to be adopted only after the outcome of the ordinary judgment, the harmful effects of the current advertising campaign involving the Kit [REDACTED] would have been completely exhausted and the injunction would be ineffective.



In conclusion, all the legal requirements being met, the precautionary measured requested by the Association shall be granted within the limits indicated above and, consequently, the Defendants are ordered to remove, within 15 days from this judgement, all commercial communications involving the Kit [REDACTED] or similar products, considered unlawful under the provisions of art. 21, par. 10, letter a) of Legislative Decree no. 6/2016. Specifically, the Defendants must remove from their websites and social media pages all images, including those reposted from third party contents, which are deemed to be unlawful under the provisions prohibiting of advertising of electronic cigarettes and refill cartridges, as well as advertising posters, billboards, and any other printed material promoting electronic cigarettes, cartridges and similar products displayed in public places or open to the public or on public transport.

In order to ensure the effectiveness of the injunction and in view of the seriousness of the matter, a penalty shall also be set at € 500.00 for each violation and for each day of delay in the execution of this order. The costs of the proceedings shall be borne by the defendants, to the extent settled in accordance with the parameters established by Ministerial Decree no. 55/2014.

THEREFORE

In accordance with Articles 21, paragraph 10, letter a) of Legislative Decree no. 6/2016, 140 of Legislative Decree no. 206/2005 and 669-octies of the Code of Civil Procedure, the Court:



- a) orders that the Defendants **I [REDACTED] T [REDACTED] Italia S.r.l. and F [REDACTED] V [REDACTED] B.V.** remove all commercial communications related to electronic cigarettes and refill cartridges deemed unlawful, as explained in this judgement, within 15 days from the date of this judgement;
- b) sets a fine of € 500.00 for each violation and for each day of delay in the execution of this order, as specified in paragraph a) above;
- c) sentences **I [REDACTED] T [REDACTED] Italia S.r.l. and F [REDACTED] V [REDACTED] B.V.**, jointly liable to the reimbursement of all legal costs related to these proceedings in favor of Asso-Consum Onlus, Consumer's Association, and to a compensation of €6,000.00 in addition to administrative costs, VAT and CPA.

So ordered in Rome on 4 November 2019

The Appointed Judge

Fausto Basile