



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (619) 645-2461
Facsimile: (619) 645-2012
E-Mail: Michelle.Hickerson@doj.ca.gov

March 2, 2009

Haney H. Bell
Vice President & General Counsel
Santa Fe Natural Tobacco Company, Inc.
One Plaza La Prensa
Santa Fe, NM 87507

RE: Appearance of American Spirit Lights in *He's Just Not That Into You*

Dear Mr. Bell:

It has been reported to our office that your company's cigarette Brand Name American Spirit Lights appears several times in the popular PG-13 rated movie *He's Just Not That Into You*, currently in theaters. As you know, the MSA prohibits Participating Manufacturers from engaging in product placement arrangements. Section III provides, in pertinent part:

(e) Prohibition on Payments Related to Tobacco Products and Media. No Participating Manufacturer may, beginning 30 days after the MSA Execution Date, make, or cause to be made, any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game ("Media")

Consequently, when a Participating Manufacturer's cigarette Brand Name appears in a movie, it gives the impression that someone has paid for that placement and, thus, that MSA is being ignored. Moreover, last year the National Cancer Institute released its latest Smoking and Health Monograph, # 19. This is a comprehensive analysis of the media issues surrounding smoking. With respect to depictions of smoking in movies, the report concludes:

The depiction of cigarette smoking is pervasive in movies, occurring in three-quarters or more of contemporary box-office hits. Identifiable cigarette brands appear in about one-third of movies. The total weight of evidence from cross-

March 2, 2009

Page 2

sectional, longitudinal, and experimental studies indicates *a causal relationship between exposure to depictions of smoking in movies and youth smoking initiation.*

(<http://cancercontrol.cancer.gov/tcrb/monographs/19/index.html>. Emphasis added.)

It is further noted in this monograph that progress in this area (i.e. reducing depictions of smoking and cigarette brand names) would reduce Youth initiation in the future. We hope that Santa Fe Natural Tobacco Company's MSA obligations together with the strong findings of this report will encourage you to take seriously the company's obligation under the MSA to prevent the use of its Brand Name in a way which causes the incidence of Youth smoking to increase. To this end, we ask that you provide us with the following information:

- Since December 23, 1998, has Santa Fe Tobacco Natural Company made or offered, or caused to be made or offered, any payment, donation of services, or other consideration to any person or entity in exchange for placement or use of a Tobacco Product in the above-mentioned film or in any other Media, as that term is defined in Section III(e) of the MSA?
- Since December 23, 1998, has Santa Fe Tobacco Natural Tobacco Company made or offered, or caused to be made or offered, any payment, donation of services, or other consideration to any person or entity to any person or entity in connection with the production of the above-listed films or any other Media, as that term is defined in Section III(e) of the MSA?

Finally, as you know, MSA Section III(i) prohibits Participating Manufacturers from authorizing any third party to use a Brand Name in a way in which a Participating Manufacturer could not:

(i) Limitation on Third-Party Use of Brand Names. After the MSA Execution Date, no Participating Manufacturer may license or otherwise expressly authorize any third party to use or advertise within any Settling State any Brand Name in a manner prohibited by this Agreement if done by such Participating Manufacturer itself Following such written notice, the Participating Manufacturer will *promptly take commercially reasonable steps* against any such non-de minimis third-party activity. (Emphasis added.)

Thus, if Santa Fe Natural Tobacco Company's trademarked products are being used in movies without its consent, please advise what steps you have or will take to prevent such unauthorized use in the future. At a minimum, we would request that Santa Fe Natural Tobacco Company send a strongly worded letter to Warner Brothers requesting that it exclude Santa Fe's trademarked cigarettes and cigarette packs from future movies, and, if possible, from the DVD version of *He's Just Not That Into You*. We invite your ideas as to other commercially reasonable steps that would prevent another instance of the use of your tobacco Brand Names in

March 2, 2009

Page 3

movies. We would also appreciate receiving a copy of your letter to Warner Brothers, as well as a copy of any response you receive. Thank you for your anticipated cooperation and we look forward to hearing from you.

Sincerely,



MICHELLE HICKERSON
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MLH:cs

cc: C. Randall Nuckolls, McKenna, Long & Aldridge
Dennis Eckhart
William Leiblich, National Association of Attorneys General