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July 26, 2000

**BY FACSIMILE**

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Attention: Ms. Anne Maher, Assistant Director

**Re: Consent Order with Cigar Manufacturers  
Supplemental Response  
FTC File Nos. 0023199-00023205**

To the Federal Trade Commission:

This letter is supplementary to our letter to the Federal Trade Commission (the "FTC"), dated July 25, 2000 (the "7/25 Letter"), on behalf of our client, Davidoff of Geneva (CT), Inc. ("Davidoff"), in response to the proposed Order, as defined in the 7/25 Letter.

In paragraph 2 of our 7/25 Letter we raise a distinction that should be made with respect to the definition of "utilitarian item" in the proposed Order. We believe that an additional refinement should be made to the definition.

The proposed definition of "utilitarian item" would impose the labeling requirements of the proposed Order on items that are not sold for promotional purposes because they contain a brand name or logo that also appears in connection with the sale of cigars. Exceptions should be made in the definition of "utilitarian item" for products that bear such brand names or logos but that are transferred from manufacturer to consumer for currency and because of their use and value, rather than for promotional purposes. This is especially the case when such products are perceived to be luxury items and are sold for hundreds, even thousands of dollars.

For example, Davidoff sells humidors for thousands of dollars and ashtrays for hundreds of dollars, as well as cigar cutters, lighters, cigar cases, etc., at

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prices which reflect the highest product quality and finest craftsmanship. All of these products contain Davidoff's logos or brand names. These products are considered luxury items and purchased for specific uses as well as for their perceived quality and prestige. These products are sold by Davidoff for profit, not for promotional purposes. Such items are not promotional items, which are most often sold for a loss or for minimal profit in order to promote a separate product. The proposed Order should recognize the distinction between promotional items and products which are sold for profit and which are purchased for their value and for specific uses by consumers in its definition of "utilitarian item."

The FTC recognizes that items that logically should not bear warning labels can easily be swept in under broad regulations regarding utilitarian items. The FTC attempted to exclude utilitarian items from the labeling requirements of the Comprehensive Smokeless Tobacco Health Education Act (15 U.S.C. 4401 *et seq.*) (the "Smokeless Tobacco Act"), which exception was overruled by *Public Citizen v. FTC* (688 F. Supp. 667 (1988); affirmed 869 F.2d 1541 (1989)). However, that recognition survives in 16 C.F.R. 307.9(f) ("Section 307.9(f)"), which provides a mechanism for manufacturers to apply to the FTC "for an exemption from the warning requirements of the [Smokeless Tobacco] Act and these regulations for items ... to which the health warnings could logically apply." The labeling requirements with respect to utilitarian items are too broad, and exceptions thereto can be cumbersome or difficult to define. In addition, cigarette manufacturers are not required to place warning statements on utilitarian items. There is no reason cigar manufacturers should be more highly regulated than cigarette manufacturers.

Due to *Public Citizen v. FTC*, the FTC was forced to backtrack from its broad exemption for utilitarian items from the labeling requirements of the Smokeless Tobacco Act and to enact a much more limited exemption in Section 307.9(f). The FTC is not so constrained with respect to the proposed Order. The definition in the proposed Order is inappropriate and would unfairly burden manufacturers. Moreover, in the event that the FTC were to adopt an exemption mechanism similar to Section 307.9(f), the FTC would, under the proposed definition, be inundated with exemption requests and waiver applications. *Accordingly, the requirement for warning labels on utilitarian items should be removed from the proposed Order entirely.*

*Alternatively, and in addition to our conclusion in paragraph 2 of the 7/25 Letter, we believe that items that are sold by manufacturers for profit, as opposed to those sold or distributed for promotional purposes, and purchased by consumers for their value and for specific uses, even if they bear brand names or logos that also appear in connection with the sale of cigars, should be explicitly excluded from the definition of "utilitarian item." The definition should be revised accordingly.*

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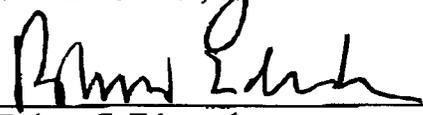
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We would appreciate serious consideration by the Federal Trade Commission of the above comments, in conjunction with the comments contained in our 7/25 Letter. Any questions on our comments may be directed to the undersigned or to Scott F. Brown at this firm.

Very truly yours,

EDMONDS & CO., P.C.

By: 

Robert C. Edmonds

cc: Ms. Eva Kaufman, Davidoff of Geneva (CT), Inc.  
Scott F. Brown, Esq.