

****Title**:** Department of Health and Food and Drug Administration vs. Philip Morris Philippines Manufacturing, Inc.

****Facts**:**

On November 19, 2008, Philip Morris Philippines Manufacturing, Inc. (PMPMI), through their advertising agency PCN Promopro, Inc. (PCN), applied for a sales promotion permit for their “Gear Up Promotional Activity” (Gear Up Promo) to the Bureau of Food and Drugs (BFAD), now known as the Food and Drug Administration (FDA), per Republic Act No. 7394, the Consumer Act of the Philippines. After not receiving formal communication from BFAD for over fifteen days, PMPMI inquired about the status of their application and was verbally informed about a Directive that prohibited tobacco promotional activities. On January 8, 2009, PCN formally requested BFAD to document this lack of formal action on record.

Subsequently, on November 28, 2008, PMPMI filed another application for a sales promotional permit for their “Golden Stick Promotional Activity” (Golden Stick Promo) through another advertising agency, Arc Worldwide Philippines Co. (AWPC). This application was outrightly refused by BFAD pursuant to the directive prohibiting tobacco promotional activities.

On January 5, 2009, a formal letter from BFAD, citing instructions from the Undersecretary of Health for Standards and Regulations, stated that all tobacco promotions were prohibited as of July 1, 2008, in accordance with RA 9211 or the Tobacco Regulation Act of 2003.

PMPMI appealed on January 19, 2009, claiming that RA 9211 restricted but did not ban promotions, arguing vested rights and due process. The DOH Secretary denied the appeal, affirming BFAD’s actions by interpreting RA 9211 to prohibit all forms of tobacco-related promotions.

Aggrieved, PMPMI filed a petition for certiorari and mandamus with the Court of Appeals (CA), alleging grave abuse of discretion.

****Issues**:**

1. Whether the Court of Appeals erred in finding that the authority of the Department of Health (DOH) through the Bureau of Food and Drugs (BFAD) to regulate tobacco sales promotions under RA 7394 had been impliedly repealed by RA 9211.
2. Whether the CA erred in determining that RA 9211 did not completely prohibit tobacco promotions post-July 1, 2008.

Court's Decision:

The Supreme Court affirmed the Court of Appeals' ruling in favor of PMPMI.

1. **Authority of DOH:**

- The Court supported the CA's conclusion that the creation of the Inter-Agency Committee-Tobacco (IAC-Tobacco) as provided by Section 29 of RA 9211 effectively repealed the relevant provisions of RA 7394 concerning the authority of the DOH to regulate sales promotion for tobacco. The IAC-Tobacco, not the DOH, holds the exclusive power and function to administer and implement RA 9211, which involves regulating tobacco promotions, inherently inclusive of sales promotions.

2. **Interpretation of RA 9211:**

- On the matter of whether RA 9211 imposed a total ban on tobacco promotions, the Court disagreed with the DOH's interpretation. The CA correctly interpreted that while RA 9211 banned advertising and sponsorships from July 1, 2008, it only restricted promotions rather than banning them outright. The prohibition of advertising and sponsorships cannot be extensionally construed to include promotions, which are distinct activities under the act.

Doctrine:

- **Implied Repeal:** A later statute (special law) can implicitly repeal the provisions of an earlier statute (general law) if both are in conflict and the later law comprehensively covers the regulatory scheme.
- **Clear and Unambiguous Provisions:** When the language of the law is clear and unambiguous, there is no need for interpretation, only application.

Class Notes:

- **Implied Repeal:** Section 29 of RA 9211 impliedly repealed DOH's authority under Article 116 in relation to Article 109 of RA 7394.
- **Sales Promotion vs. Promotion:** RA 7394 defines 'sales promotion' as techniques to increase sales through consumer participation, while RA 9211 defines 'promotion' as a broader term encompassing various activities to promote a tobacco brand.
- **Exclusive Jurisdiction:** IAC-Tobacco holds exclusive jurisdiction over administering the provisions of RA 9211, overruling former regulatory practices by the DOH/FDA.
- **Legal Interpretation:** Distinctions between clear statutory terms should be upheld unless expressly stated otherwise.

Historical Background:

- **Tobacco Control Regulation**: The progression from RA 7394 to RA 9211 reflects the state's evolving policies on regulating tobacco, emphasizing health protection and adherence to international obligations such as the Framework Convention on Tobacco Control (FCTC).
- **IAC-Tobacco Formation**: Established under RA 9211 to centralize and enforce tobacco control measures, reflecting an effort to create a specialized body for more cohesive governance over tobacco products and activities.