

Landmark court case: youth protection ensured on cigarette vending machines



The Federal Court of Justice ruled off years of legal proceedings with potentially substantial effects on the trade setting up cigarette vending machines in Germany with the dismissal of the non-admission appeal. The complainant party had demanded to force through stricter controls on cigarette machines – e.g. supervision of vending machines or installation of biometric identification features – for purposes of youth protection. In contrast, it has now been definitively and judicially confirmed that the previous practice of age control via *GeldKarte* (chip-based electronic purse system) with youth protection feature, identity card or EU driving licence is within the law and youth protection on cigarette vending machines is ensured.

The complainant had already proceeded against two tobacco product wholesalers in injunctive proceedings, but remained unsuccessful in all instances (Regional Courts in Mainz – File No. 12 HK 055/10 – and Darmstadt – File No. 22 O 318/10; Higher Regional Courts in Koblenz – File No. 9 U 1226/10 – and Frankfurt – File No. 6 U 246/10). In the main issue, the Regional Court in Aschaffenburg – File No. 32 O 104/11 – and the Higher Regional Court in Bamberg – File No. 3 U 222/11 – dismissed the case. The Senate, presided over by Judge Wolfgang Götz, had even settled the matter without oral proceedings due to the unambiguousness of the factual and legal position. Now the non-admission appeal with the Federal Court of Justice (BGH) – File No. I ZR 145/12 – against the decision of the Higher Regional Court (OLG) in Bamberg remained unsuccessful because the complainant no longer substantiated this.

Carsten Zenner, Managing Director of the Federal Association of German Tobacco Product Wholesalers and Vending Machine Operators (BDTA), commented on the outcome of the proceedings as follows: “Our association and its members are naturally committed to youth protection. The medium-sized tobacco product wholesale trade has invested about 300 million euros in the *GeldKarte* chip card system, which in the opinion of the legislature also comprehensively takes youth protection into account. We are pleased that these investments and the age verification technique have been recognised by the courts.”

Attorney Prof Dr Peter Ruess, partner in the Düsseldorf law firm Arnold Ruess and representative of both sued tobacco product wholesalers, described the procedural success as consistent. “There simply was no violation of the Youth Protection Act. This is the legislative assessment and now also the legally binding opinion of the courts.”