

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 2, 2009

Mr. Bill Greiwe
President and CEO
Cheyenne International, LLC
701 South Battleground Avenue
Grover, NC 28073

Dear Mr. Greiwe:

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the marketing and sale of tobacco products to children. On September 22, 2009, the U.S. Food and Drug Administration banned the sale of flavored cigarettes. FDA took this action under the authority of the Family Smoking Prevention and Tobacco Control Act, a law that originated within this Committee.

According to public health groups, your company is attempting to circumvent this ban by repackaging your flavored cigarettes as “little cigars.”¹ The “little cigars” you market include products with peach, vanilla, wild cherry, grape, and “xotic berry” flavors. In addition, Cheyenne also markets “Body Shot” cigars in various flavors including whiskey, mojito, and rum & cola.

The Family Smoking Prevention and Tobacco Control Act defines a cigarette as a product that:

meets the definition of the term ‘cigarette’ in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-you-own tobacco.²

¹ Letter from Matthew L. Myers, Campaign for Tobacco-Free Kids, et al, to FDA Docket Number FDA-2009-N-0294 (August 27, 2009).

² 21 U.S.C. § 387.

The Federal Cigarette Labeling and Advertising Act defines cigarettes as:

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).³

We are investigating the allegations that Cheyenne's "little cigars" and "Body Shot" cigars are no different than flavored cigarettes and are merely an attempt to circumvent the recent FDA regulatory action by continuing to market tobacco products that appeal to children. To assist us in our investigation, we ask that you provide the following documents and information to the Committee, from January 1, 2004 to the present:

1. Cheyenne's official corporate definition of flavored cigars, flavored little cigars, and flavored cigarettes and, if none exists, a written explanation of how Cheyenne's flavored little cigars and flavored cigars differ from flavored cigarettes;
2. A written explanation supporting Cheyenne's position that its flavored little cigars and flavored cigars cannot be regulated as cigarettes under federal law;
3. All internal and external communications related to Cheyenne's decision to market flavored little cigars and flavored cigars;
4. All marketing materials related to Cheyenne's flavored little cigars and flavored cigars, including (a) all advertisements and a schedule of publications in which they have appeared to date, and (b) the marketing budget for Cheyenne's flavored little cigars and flavored cigars for calendar 2009 to date;
5. All marketing or consumer research related to Cheyenne's flavored little cigars and flavored cigars, including, but not limited to, research related to the age of consumers of flavored tobacco;
6. All corporate policies and actions by Cheyenne to ensure that its flavored little cigars and flavored cigars are not consumed by minors. Please include a detailed description of all costs Cheyenne has incurred to implement these policies and actions.
7. A detailed break-down of all Cheyenne's sales of flavored little cigars and flavored cigars in comparison to your other non-flavored tobacco products, including total sales, monthly sales, sales per distributor, and sales per retailer.

³ 15 U.S.C. § 1332.

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Please produce the requested information by October 16, 2009. In addition, please inform Committee staff by October 9, 2009, as to whether you will provide the requested information voluntarily.

An attachment to this letter provides additional information on how to respond to Committee requests. If you have questions regarding this request, please contact David Levis or Paul Jung of the Committee staff at (202) 226-2424.

Sincerely,



Henry A. Waxman
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and
Investigations

Enclosure

cc: The Honorable Joe Barton
Ranking Member

The Honorable Greg Walden
Ranking Member
Subcommittee on Oversight and
Investigations