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[Redacted] PH3/DOH/GB
29/10/2012 14:40

To [Redacted] H3/DOH/GB@DOH
cc
bcc

Subject Fw: High Court of Australia holds Tobacco Plain Packaging Act 2011 valid [SEC=UNCLASSIFIED]

[Redacted]

----- Forwarded by [Redacted] PH3/DOH/GB on 29/10/2012 14:40 -----



[Redacted]@health.
gov.au
15/08/2012 03:29

To [Redacted] PH3/DOH/GB@DOH,
cc [Redacted]@health.gov.au,
[Redacted]@health.gov.au,
[Redacted]@health.gov.au

Subject High Court of Australia holds Tobacco Plain Packaging Act 2011 valid [SEC=UNCLASSIFIED]

Dear Tobacco Control Colleagues

As some of you will already be aware, that the High Court of Australia handed down its orders in the proceedings between JT International v Commonwealth and British American Tobacco Australasia v Commonwealth.

The Chief Justice announced that, by at least a majority, the Court held that the *Tobacco Plain Packaging Act 2011* is not contrary to s 51(xxxi) of the Constitution of Australia and is valid.

He then proceeded to pronounce the Court's orders, which are as follows:

JTI International v Cth

- (1) Demurrer over-ruled
- (2) Enter judgment for the defendant
- (3) Plaintiff pay the Defendant's costs.

BATA v Cth

The questions be answered as follows:



- (1) Apart from s 15 of the TPP Act, would all or some of the provisions of the TPP result in an acquisition of property of any, and if so what, property of the plaintiffs or any of them otherwise than on just terms, of a kind to which s 51(xxxi) of the Constitution applies? No
- (2) Does the resolution of question (1) require the judicial determination of any and if so what disputed facts following a trial? No
- (3) If the answer to Question 1 is "yes" are all or some, and if so which, provisions of the TPP Act whole or in part beyond the legislative competence of the Parliament by reason of s 51(xxxi) of the Constitution? Does not arise
- (4) Are some, and if so which, provisions of the TPP Act in whole or in part beyond the legislative competence of the Parliament by reason of the matters raised in paragraphs 10-12 of the statement of claim? No
- (5) What order would be made in relation to the costs of the questions reserved? Plaintiffs pay the costs of the Defendant.

In other words, a comprehensive win, by at least a majority, for the Commonwealth of Australia.

I attach for your information a short statement from the Court of its decision, and also a copy of its orders. You will see that the Court will publish its reasons at a later date.

I am sure you will agree with me that this is a significant win for tobacco control internationally. Our plain packaging measures will continue as planned, with all tobacco products for retail sale in Australia from 1 December 2012 required to be in plain packaging and with new, bigger graphic health warnings.

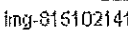
Kind regards,

 Assistant Secretary | Tobacco Control Taskforce | Population Health Division | Department of Health and Ageing | @health.gov.au

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Plain packaging orders PR FINAL.rtf

ORDER

Matter No S409/2011

JT INTERNATIONAL SA

v

COMMONWEALTH OF AUSTRALIA

Matter No S389/2011

BRITISH AMERICAN TOBACCO AUSTRALASIA LIMITED AND ORS

v

COMMONWEALTH OF AUSTRALIA

Matter No S409/2011

1. The demurrer by the plaintiff to the defence of the defendant be overruled.
2. Judgment be entered in the action for the defendant.
3. The plaintiff pay the defendant's costs in this action, including the demurrer.

Matter No S389/2011

The questions reserved on 28 February 2012 for determination by the Full Court under s 18 of the *Judiciary Act* 1903 (Cth) be answered as follows:

Question 1

Apart from s 15 of the *Tobacco Plain Packaging Act* 2011 (Cth), would all or some of the provisions of the *Tobacco Plain Packaging Act* 2011 (Cth) result in an acquisition of any, and if so what, property of the plaintiffs or any of them otherwise than on just terms, of a kind to which s 51(xxxi) of the Constitution applies?

Answer

No.

Question 2

Does the resolution of Question 1 require the judicial determination of any and if so what disputed facts following a trial?

Answer

No.

Question 3

If the answer to Question 1 is "yes" are all or some, and if so which, provisions of the *Tobacco Plain Packaging Act 2011* (Cth) in whole or in part beyond the legislative competence of the Parliament by reason of s 51(xxxi) of the Constitution?

Answer

Does not arise.

Question 4

Are all or some, and if so which, provisions of the *Tobacco Plain Packaging Act 2011* (Cth) in whole or in part beyond the legislative competence of the Parliament by reason of the matters raised in pars 10-12 of the statement of claim?

Answer

No.

Question 5

What order should be made in relation to costs of the questions reserved?

Answer

The plaintiffs pay the defendant's costs.



HIGH COURT OF AUSTRALIA

15 August 2012

JT INTERNATIONAL SA v COMMONWEALTH OF AUSTRALIA;
BRITISH AMERICAN TOBACCO AUSTRALASIA LIMITED & ORS v COMMONWEALTH
OF AUSTRALIA

[2012] HCA 30

On 17-19 April this year the High Court heard challenges by several tobacco companies to the validity of the *Tobacco Plain Packaging Act 2011* (Cth) ("the Act"). The plaintiffs sought to rely upon the restraint upon the legislative power of the Commonwealth Parliament found in s 51(xxxi) of the Constitution, which empowers the Parliament to make laws with respect to "the acquisition of property on just terms". The plaintiffs argued that some or all of the provisions of the Act were invalid because they were an acquisition of the plaintiffs' property otherwise than on just terms.

At least a majority of the Court is of the opinion that the Act is not contrary to s 51(xxxi). Today the Court made orders accordingly.

The Court will publish its reasons for decision at a later date.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*