

SPT FOI Meeting with PMI
27th October 2011

> . . . !

(X)

From:
Sent:
To:
Cc:
Subject:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Out of scope

-----Original Message-----

From: [REDACTED]
Sent: 27 October 2011 10:26
To: [REDACTED]
Cc: Andrew Layton; [REDACTED] Edmund Quilty
Subject: Meeting with, Phillip Morris

Hi [REDACTED]

I gather that you are meeting with Phillip Morris today because they want to discuss infringement/enforcement issues with you.

I know you're aware of the plain packaging issue, but just to let you know that we have recently declined invitations for John to meet Phillip Morris [REDACTED] specifically on plain packaging, saying that we think the timing is not right - better after the consultation is launched (due end of this year). We have also declined a similar invitation for one of the Appointed Persons, who is acting for Phillip Morris, to come and discuss it with Andy [REDACTED]

Should you need them, lines (cleared with DH as the lead) are:

* The position under IP law is not clear-cut, but we do not believe that international IP law poses an unassailable barrier to the introduction of plain packaging. Are aware that others take a different view.

* The UK's Tobacco Control Plan highlights the need to explore other aspects of this proposal, such as whether the evidence base supports it, as well as any implications for competition and trade, and the likely impact on the illicit tobacco market.

Precedent for protectionism

* The focus here is on the control of tobacco to facilitate an improvement in public health - a very specific solution to a very specific problem. Believe that in such limited circumstances it will not provide a useful precedent for other areas of policy.

~~X~~
Consultation

* Govt will consult on options to reduce the promotional impact of tobacco packaging, including plain packaging, before the end of 2011.

[REDACTED]

Out of scope.

[REDACTED]

STP FOI Readout from meeting
on 27th October 2011

[REDACTED]
[REDACTED]
From: [REDACTED]
Sent: 28 October 2011 10:51
To: [REDACTED]; Edmund Quilty
Cc: [REDACTED]; Andrew Layton; [REDACTED]
Subject: RE: Handling contacts with the tobacco industry in future

[REDACTED] others

A quick readout from yesterday

No mention of TRIPS, thankfully, and I used the agreed line when "enforcement will suffer if plain packaging happens" inevitably was raised, with no comeback from PMI.

[REDACTED]

[REDACTED]

Out of scope

Interestingly, industry's own figures agree with HMRC's: levels of counterfeit cigarettes in the UK market have been falling for the last 5 years or so. When I probed why that might be, the suggestion was:

- greater awareness of dangers of illegal tobacco and links to organised crime
- UKBA, HMRC efforts
- better management of distributors at the EU level - getting retailers & wholesalers to refuse to sell product in suspicious quantities ("So, you want to buy a lorry load of these in this low-tax Member State because...?")

Other things gleaned from the conversation:

- a £0.5m containerload of cigarettes brought into the UK would probably make £4m in profit, so huge margins, according to PMI
- on tech protection methods, they said tax stamps were easy to forge but they would be rolling out a new system of pack-specific verification codes called Codentify - type the serial number into a website and it'll tell you where the cigarettes were sold/taxed etc.

- when prompted they did say they were seeing more use of small packets for smuggling*

- [REDACTED]
- there are EU-level stats for counterfeit tobacco to a method endorsed by OLAF, the European Anti-Fraud Office (http://ec.europa.eu/anti_fraud/index_en.html), published annually in April/May, which one could consider for citation e.g. in the IP crime report.

Soft copy of stats to ERE when I get it.

[REDACTED]

[REDACTED]

out of scope

[REDACTED]

[REDACTED]

From: Andrew Layton
Sent: 21 December 2010 14:11
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Plain packaging (of tobacco products) - implications
Attachments: RE: Plain packaging (of tobacco products) - implications

Both

To see that John A wrote as directed, and that John N responded above

Andy

-----Original Message-----

From: John Alty
Sent: 20 December 2010 16:54
To: 'John Noble'
Cc: Andrew Layton
Subject: RE: Plain packaging (of tobacco products) - implications

Dear John

Many thanks for forwarding the BBG's submission to the Commission. I read it with interest and hope that the Commission will take appropriate action on the issue of gathering evidence to inform this process.

As you know, this is also a topical issue for the Government here in the UK. This is of course a Department of Health lead, and our particular focus is on the impact with regard to intellectual property, but I recognize it's important to you and your members. We are due to meet on 18 January and I suggest we cover this then

Best wishes

John

-----Original Message-----

From: John Noble [<mailto:jn@britishbrandsgroup.org.uk>]
Sent: 08 December 2010 14:21
To: John Alty
Cc: Andrew Layton
Subject: Plain packaging (of tobacco products) - implications

Dear John

You will know of the suggestion in DG Sanco's consultation on the Possible revision of the Tobacco Products Directive that tobacco products be packaged in plain packaging, with branding removed. We also discussed the matter when we met earlier this year.

As the voice for brands in the UK, the British Brands Group wishes to ensure that the full role and benefits of branding are understood and taken into account when formulating policy, in whatever area.

Branding plays a crucial role in informing and reassuring consumers and contributes directly to effective markets (by providing the basis for competition, on quality as well as price, and stimulating investments in innovation and reputation). The value of brands to consumers, to the companies that own them and to economies (£33billion is invested annually in the UK in brand-building) is testament to their influence.

We believe that removing brand imagery from tobacco packaging, without assessing the likely impact on the many areas touched by branding, may well have unforeseen, damaging consequences without necessarily achieving the policy goals being sought. It is also likely to increase the problem of illicit trade and have significant implications for IP rights, hence this email. This view is expressed further in our attached submission to DG Sanco.

We would be delighted to discuss this matter – and the wider implications of branding to competitiveness and innovation – in more detail, should this be helpful.

Best wishes

John Noble

British Brands Group

100 Victoria Embankment, London EC4Y 0DH

Tel: 01730 821212 Fax: 01730 821213

www.britishbrandsgroup.org.uk <<http://www.britishbrandsgroup.org.uk/>>

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(11)

From: John Noble [jn@britishbrandsgroup.org.uk]
Sent: 10 November 2011 16:03
To: Andrew Layton
Cc: [REDACTED]
Subject: Australia passes legislation to remove branding from tobacco products
Attachments: ACG BBG Plain packaging 1111.doc

Dear Andy

Following the news today on Australia's move towards plain packaging of tobacco products, we have issued the attached press release.

I am just sending this to you for information.

Best wishes
John

British Brands Group

100 Victoria Embankment, London EC4Y 0DH

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SPT FOI press release 10th November 2011



Press Release



The Anti-Counterfeiting Group
Campaigning Against the Trade in Fake.
www.a-cg.org

Thursday 10th November 2011

Plain packaging – Australia takes leap in the dark

Today's announcement that the Australian Government has approved legislation to remove branding from tobacco packaging sends a shock wave to those who understand the value of branding and intellectual property rights to consumers. Meanwhile there is no evidence of a positive impact on health.

The Australian Senate's decision to remove branding from tobacco packaging opens the door for plain packaging to become a reality. This development, based on the unproven premise that branding promotes smoking, ignores the crucial role that branding plays in providing consumers with high quality, consistent products they can trust. Meanwhile, the intellectual property rights of legitimate companies will be essentially requisitioned.

The extent to which branding promotes smoking must be open to question, with graphic health warnings being so prominent. Branding does however help consumers to understand differences between products, to distinguish between products almost instantly and to buy with total confidence. Branding is also crucial to the working of markets, providing the very basis for competition and encouraging producers to invest in quality, new and better products and stronger reputations. These positive effects have been ignored in Australian policy.

John Noble, Director of the British Brands Group, stated, "Branding fulfils many significant and positive functions for both consumers and markets. Take it away and consumers lose out and markets become commoditised, with price rather than quality being the influencing factor."

Removing branding from packaging is also expected to fuel the trade in counterfeits. Ruth Orchard, Director General of the Anti-Counterfeiting Group, said, "Plain packaging represents an invitation to counterfeiting. If put into practice for the tobacco industry, this could impact on all sectors where counterfeiting is rife. It creates a trading environment where packaging is no longer distinctive and products become easy to replicate illegally."

When branding and intellectual property rights are used to achieve policy goals, it is crucial that policy is grounded on a full understanding supported by robust evidence and that a proportionate approach is adopted. Intellectual property rights, granted by the state and governed by international treaties, must also be taken into account as rights will exist in packaging designs.

ENDS

NOTES TO EDITORS

Implementation

The legislation requires companies to comply with the legislation in Australia by 1st December 2012.

Anti-Counterfeiting Group

The Anti-Counterfeiting Group (ACG) is a not for profit trade association, recognised as a leading authority on the worldwide trade in fakes. ACG was founded in the UK in 1980 with just 18 members (mostly in the automotive industry) who discovered that they had a common problem with counterfeits. Today ACG represents over 170 organisations globally, operating in, or providing specialist advice to, most industry sectors where counterfeiting is an issue.

For more information please visit the website: www.a-cg.org.uk.

British Brands Group

The British Brands Group was founded in 1994 as a non-profit-making membership organisation. Its primary role is to provide the voice for brands, speaking out when commercial and regulatory issues threaten the ability of branding to be a positive force in society. Member companies manufacture familiar and popular branded products in a wide range of product categories, of which tobacco is but one.

For more information please visit the website: www.britishbrandsgroup.org.uk.

For more information, please contact:

John Noble, British Brands Group, on +44 (0)1730 821212

or

[REDACTED]

(18)

From: John Noble [jn@britishbrandsgroup.org.uk]
Sent: 22 March 2013 15:01
To: [REDACTED]
Cc: [REDACTED]; Andrew Layton; [REDACTED]
Subject: Standardised "plain" packaging - illicit trade implications
Attachments: Packaging Presentation (APPPG) 0213.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear [REDACTED]

Following Wednesday's valuable meeting with the Alliance for Intellectual Property, you asked for further information on standardised "plain" packaging and its implications for illicit trade.

In short, as you will understand, there is no hard evidence in this area. Such a policy is as yet untried and insufficient time has elapsed since Australia introduced the measure to understand its effects.

What we do already know however are some of the factors that are likely to come into play and it is these that we urge policymakers to consider and assess. We hope of course though that policymakers will abide by their own guidelines for evidence-based policy making in any event.

At the meeting, I indicated that there are both supply- and demand-side factors that are likely to increase levels of illicit trade.

On the supply side, the significant simplification of production that comes with standardisation will act in favour of the counterfeiter, making it easier, more profitable and potentially attracting new players to the illicit market. The illicit supply chain already has distribution networks in place to reach consumers and we maintain that these do not exercise age controls as retailers selling legitimate product are required to do. Any growth in trade through illicit retail channels as a result of this policy would therefore lead to the opposite result to the one intended.

One of the best reports in this area is one delivered recently by UK packaging manufacturers to the All Party Parliamentary Packaging Group and I attach this. This conveys the complexity of manufacturing and materials of differentiated packs, and the fact designs change, representing obstacles to counterfeiting. These would disappear were plain packaging introduced.

[REDACTED] is sending [REDACTED] the promised report by Transcrime, which assesses the implications of plain packaging on illicit trade, and the recent circular to the Minister for IP and others, which I understand she will cc to you.

Under a policy of "plain" packaging, tobacco products would look essentially the same and we consider it reasonable to assume that consumers will increasingly believe products to be largely the same. This is likely to fuel price-focused competition and make it harder for consumers to distinguish between genuine and fake, two of the demand-side factors to be considered. (We believe price and retail channel rather than packaging may well become the main ways for consumers to suspect a product to be fake).

Were differentiated, full colour packs to be as influential with consumers as supporters of the "plain" packaging policy purport, then it is logical to anticipate a growth in imports of such packs from countries where such designs are still permitted. We are unclear about such effects but for those convinced of the appeal of coloured packs per se, continued demand for the 'original' packaging is a logical corollary.

The potential appeal to consumers of the illicit retail channel is important to assess when anticipating trends

[REDACTED] ... [REDACTED]

in illicit trade. You may therefore be interested in a study by SKIM [\[link\]](#), commissioned by Philip Morris, which assesses whether illicit channels may become more appealing when products in the legitimate market look the same.

The counter arguments, as I understand them, are that packs are already easy to counterfeit so plain packs will make no difference. The attached report to the APPPG addresses that point well. It is also argued that covert anti-counterfeiting measures will be unaffected. This I understand to be correct but these only work when the specific pack is subject to security scanning. You will know better than I the number of tobacco packs that are security scanned each year. If the illicit market grows and scanning activity remains unchanged (a reasonable assumption in light of resources available for enforcement), the result will be a growth in consumer access to fakes.

We do not presume to tell Government how to regulate tobacco products. All we urge is that factors such as these are explicitly taken into account and rigorously assessed, in the absence of hard evidence. If this is not undertaken (and it is currently largely absent from the Impact Assessment as the DoH itself admits), the policy risks incurring negative unintended consequences.

I have covered here the illicit trade aspects of the policy, as that was our discussion on Wednesday. There are also other likely market effects (I will send you something on this shortly) and of course implications for IP, including TRIPs compliance, and world trade. You will know, for example, that Australia's legislative move is being challenged at the World Trade Organization.

I am copying [REDACTED] at ACG on this email since she is also involved in this consultation and has expertise in this field. If we can help any further on the points I have raised, please do not hesitate to let me know.

Best wishes
John

British Brands Group

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[REDACTED]

SPT FOI BBG re European national brand
associations position paper.

(24)

From: Andrew Layton
Sent: 04 April 2013 14:03
To: [REDACTED]
Subject: FW: Packaging of tobacco products - draft Directive - Call for branding implications to be assessed
Attachments: Position Paper National Brands Associations 250313.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

-----Original Message-----

From: John Noble [<mailto:jn@britishbrandsgroup.org.uk>]
Sent: 04 April 2013 10:51
To: Andrew Layton
Cc: [REDACTED]
Subject: Packaging of tobacco products - draft Directive - Call for branding implications to be assessed

Dear Andy

Please find attached a position paper from European national brand associations, including the British Brands Group, on the draft Directive on the control of tobacco products. I send you this for information.

The paper assesses the impact on the market and consumer behaviour of a significant reduction in branding and differentiation. You know of our concern that there are effects that can be reasonably anticipated that are likely to be undesirable and, more to the point, work at odds with the desired policy goal.

You know how keen we are to ensure that any proposed policy that inhibits differentiation and branding in a market is fully assessed from both producers' and consumers' perspectives. Without such scrutiny, damaging unintended consequences are likely to result.

Please let me know if you wish to discuss any aspect of the attached paper in greater detail and I look forward to staying in touch on this subject.

Best wishes

John

British Brands Group

100 Victoria Embankment, London EC4Y 0DH

SPT FOI email re APRAM.

(22)

[REDACTED]

From: [REDACTED]
Sent: 27 May 2014 08:01
To: [REDACTED]
Subject: FW: APRAM's submission to the consultation on "Plain packaging for tobacco products"
Attachments: APRAM UK Standardised Packaging Proposal.pdf; Présentation APRAM version anglaise.pdf; EUROPEANSISTERORGANISATIONJOINTSTATEMENTPRESSRELEASE23APRIL2012.doc; APRAM comments on Plain Packaging Proposal.pdf

-----Original Message-----

From: [REDACTED]
Sent: 10 July 2012 08:20
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: APRAM's submission to the consultation on "Plain packaging for tobacco products"

Hi Jan

Would you like me to offer the same wording as the response for ASIPI?

"Thank you for sending me a copy of the response you sent to the Department of Health. The Government has an open mind on the issue of plain packaging and will carefully consider all responses before making any final policy decisions."

-----Original Message-----

From: John Alty
Sent: 09 July 2012 16:40
To: Andrew Layton
Cc: [REDACTED]
Subject: FW: APRAM's submission to the consultation on "Plain packaging for tobacco products"

Please see below email and attachments from APRAM. Be grateful for a response if you feel one is necessary.

Thanks
[REDACTED]

-----Original Message-----

From: Secretariat [<mailto:secretariat@apram.com>]
Sent: 09 July 2012 16:19
To: John Alty
Subject: APRAM's submission to the consultation on "Plain packaging for tobacco products"

Dear Sir

On behalf of APRAM, an International IP association, we take the liberty to send you our submission to the consultation launched on "Plain packaging for tobacco products". APRAM, together with other IP associations, already expressed its strong concerns against plain

packaging for tobacco products before the Commission and the severe implications on trade marks' rights.

You will find attached the following documents :

- APRAM's submission on the consultation launched by the UK government on plain packaging,
- Position paper addressed to DG SANCO in 2011 (public consultation revision of tobacco Directive)
- Joint statement of sister associations of April 2012
- A Presentation of APRAM

Yours faithfully



President of APRAM

SPT fol email re meeting
request from PML

(9)

From: Andrew Layton
Sent: 14 October 2011 10:25
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: tobacco plain packaging

We can. But my instinct is to refuse a meeting at this stage.

Andy

-----Original Message-----

From: [REDACTED]
Sent: 14 October 2011 10:23
To: Andrew Layton; [REDACTED]
Cc: [REDACTED]
Subject: RE: tobacco plain packaging

Andy,

As you know, we have already advised John that we should not meet with Philip Morris until after the consultation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: 13 October 2011 16:45
To: [REDACTED]
Cc: Andrew Layton
Subject: FW: tobacco plain packaging

[REDACTED]

PSB. How would like to respond to [REDACTED] request for a meeting on behalf of Philip Morris please?

-----Original Message-----

From: [redacted] [mailto:[redacted]@powellgilbert.com]

Sent: 13 October 2011 14:51

To: [redacted]

Cc: [redacted]

Subject: tobacco plain packaging

Dear [redacted],

As I mentioned in my slightly garbled message left on your phone just now, I wondered if I could have a quick chat with you on the subject of tobacco plain packaging? I am not sure if you have focused on it yet, but there is to be a Government consultation before the end of the year in relation to "options to reduce the promotional impact of tobacco packaging, including plain packaging" for cigarettes. We are assisting Philip Morris in preparation for the consultation, looking particularly at the potential impact on Philip Morris's trade marks. We are thinking about things like section 3(4) of the Trade Marks Act, the revocation for non-use provisions, article 1 of the First Protocol of the Convention on Human Rights, art. 2.1 and art. 20 of TRIPS, etc.

We assume that the UK IPO will be involved in the consultation, given its affect on IP rights, and therefore were wondering whether there would be any chance of setting up a meeting with someone at your end who would be involved? Phillip Morris is very keen to start explaining its point of view at the earliest opportunity, and has accumulated a lot of material that is relevant to the issues. I would be grateful if we could have a quick chat in the next day or two so that I can explain a bit more.

As I mentioned in my message, I am currently attending PTMG in Prague and am about to head back into the lectures. But if there is any time we could talk tomorrow, that would be great, or alternatively on Monday.

Many thanks and kind regards

[redacted]

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