Plain Packaging Measures
Proposed Joint Statement of Global IP Associations

IP Community's strong concerns on standardized/ plain packaging legislation

The signatories of this statement, representing the worldwide IP (Intellectual Property) community composed of professional representatives, in-house counsel, IP owners representing all sectors and academia, are dedicated to the safeguarding and development of Intellectual Property Rights (IPRs) in general and trademarks in particular.

IPRs are the cornerstone of the worldwide economic system which provides return on investment to owners, value at wholesale and retail levels, a safeguard for public confidence and protection to consumers.

The signatories to this statement strongly support ensuring that lawfully acquired IPRs applied to lawful products are protected against destruction, diminution and abuse. A balanced and properly functioning IP system respects the interests of IPR holders, and the public interest in protecting consumers from deception or confusion.

Trademarks and trade dress (also called 'get-up') are relied upon by consumers as signposts as to the genuine goods and services of the proprietors of such rights. They serve to indicate the source of origin and to assure consumers of the quality of the products that they purchase or are considering purchasing. This fundamental function cannot be fulfilled if trademarks are not visible or are unavailable to consumers when selecting a product. The inability to recognize a brand or trade mark on a product could lead to consumer confusion, and thereby diminish the goodwill acquired in that brand through considerable investment and effort over a significant period of time. Further, the inability to identify a product by its brand also removes a consumer's freedom of choice.

Many IP organizations have on many occasions over the past few years expressed strong concerns about legislation which severely restricts the legitimate use of trademarks and damages their value. Standardized/ plain packaging legislation precludes brand owners from the ability to make legitimate use of their trademarks. Such legislation has the potential to adversely affect the economy as a whole by facilitating and increasing counterfeiting and piracy worldwide. It also conflicts with many national and international trademark protection rules such as the WTO's agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention, as well as with international trade protection rules.

Where there is a need to achieve important public objectives such as health, any proposed legislation and/or policy option should maintain an appropriate balance with legitimate IPRs, especially when there is no compelling evidence that extreme measures will improve public objectives.

It is important to remember that the Australian law on plain packaging which entered into force in December 2012 is currently the subject of challenges by four countries before the WTO, on the basis that it contravenes provisions of TRIPS and the Technical Barriers to Trade Agreement. The panel is expected to issue its report in the second half of 2016.

The introduction of plain packaging regulation in the UK is also under challenge on the basis of non-compliance with UK and EU law.

In summary, any legislation or policy option introducing standardized/plain packaging measures:

- undermines the ability of consumers to make informed purchasing decisions,
- effectively deprives brand owners from the right to use their lawfully acquired trademarks,
- is contrary to long standing IPR regulations and international treaties,
- could cause deception and/or confusion amongst consumers,
- causes loss of revenue to governments through increased counterfeiting activities, which can in turn also give rise to consumer safety concerns (e.g. bad quality of counterfeit cigarettes),
- negatively impacts the worldwide economy by creating barriers to free trade, and by discouraging innovation and investment,
- sets a dangerous precedent for many industries.

The consequences described above do not represent an appropriate balancing between legitimate IPRs and public health objectives, especially in the absence of any compelling evidence that standardized/plain packaging will in fact achieve those objectives.

Consequently, **the signatories of this statement call upon governments not to introduce or maintain any extreme legislation or policy options such as standardized/plain packaging. It is vital that the policy makers and governments do not send alarming messages to the IP and business communities about their commitment to respecting and protecting IPRs.**

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