



[Association] submits this complaint in reference to the Trademarks Amendment Bill 2011.

This association would like to present its protest towards the content of the Trademarks Amendment Bill 2011, especially in the matters related to the Tobacco Plain Packaging Bill 2011.

We understand that the damages that may arise from the enactment of this bill are so deeply harmful - not only to the tobacco industry and market, but also to its consumers - that we feel equally strongly about expressing our opinion against such enactment.

First of all, **Plain Packaging would produce a much undesired effect, which is the decrease of the retail price of tobacco goods.** Since the brand element would be practically banned from packaging, the cigarette purchase by the consumer would turn into a price based decision, which would consequently lead to a price dispute between the manufacturers, causing the average price per package to drop. This is nothing but an incentive towards tobacco consumption, which we believe is not one of the deliberate objectives of this measure.

The enormous reduction of the area destined to the trademarks can bring, as another harmful consequence to the consumer, a major difficulty in differentiating one product from another, which makes the confusion between them much more likely. The **counterfeiting of packaging would also be increased**, since Plain Packaging creates a generic pattern, easier and cheaper to reproduce. These are only some of the abuses of consumer rights that can be caused by Plain Packaging.

The mistreatment of trademarks and intellectual property rights that such enactment would cause is another very important aspect to be considered. The suppression of the use of trademarks implies the prohibition of differentiation and individualization of the products. In this sense, we sustain that the **“Agreement on Trade Related Aspects of Intellectual Property Rights” (TRIPS Agreement) and its principles of trademark use and property would be violated**, given the proposed legislation’s intent to prescribe specific design and space in which the brands should be printed, imposing that the brand names are used without symbols, logos or design features as well.

The TRIPS Agreement would not be the only violated international treaty if Plain Packaging is enforced. The Paris Convention, also applicable within Australian jurisdiction, requires that every trademark duly registered in its country of origin should be accepted for filing and protected as in the other signatory countries. Once Plain Packaging is in force, its rigid standards may result in rejection of tobacco's trademarks, despite their lawful registration. In addition, this Convention sets forth that not only the nature of the product should not constitute an obstacle to the registration of trademarks, but also prohibits, regarding unfair competition matters, acts that may generate confusion between products from different competitors. All of these provisions seem brutally offended by the proposed regulation.

In view of the above, we pose ourselves directly against the enactment of the Trademarks Amendment Bill 2011, once it would result in the enforcement of Plain Packaging, which we believe translate into violation of producers', retailers' and consumers' rights, trademark and intellectual property principles, as well as to the interests of the Australian society as a whole.

[Clayton Faria Machado](#)

[Presidente](#)