

Ref: U.K. Department of Health April 16, 2012 consultation on Standardised Packaging of Tobacco Products

Business Action to Stop Counterfeiting and Piracy (BASCAP), an initiative of the International Chamber of Commerce (ICC), appreciates the opportunity to respond to the

BASCAP supports the protection of public health as an underlying principle. As such, the views presented herein do not address the health-related aspects of the issue and pertain primarily to extenuating negative impacts of standardised/plain packaging on intellectual property rights, counterfeiting and spillover to other industries. We preface our views with the acknowledgement that BASCAP membership comprises, inter alia, companies engaged in the manufacture and sale of tobacco products.

The views registered here are on behalf of the cross-sector representation of BASCAP member companies equally concerned about the wider implications standardised/plain packaging of tobacco products have across industries. BASCAP unites the global business community across all product sectors to address issues associated with intellectual property theft and to petition for greater commitments by local, national and international officials in the enforcement and protection of intellectual property rights.

IP rights are "a cornerstone of economic activity", providing significant value to their owners and the wider economy and necessitating the need for them effectively to be protected at both the domestic and international levels. Adopting the plain packaging policy would undermine companies' ability to develop products and services that will bring financial rewards for their work, which is in direct conflict with the statements of the U.K.'s Intellectual Property Office.¹

BASCAP is concerned that standardised/plain packaging would increase the prevalence of counterfeit goods in the market and reduce brand owners' ability to take action against such activity, besides undermining the ability of consumers to make informed purchasing decisions. Trade marks serve these important functions in the market for all branded goods. Plain packaging is likely to increase rather than decrease burdens on already overstretched public agencies working to enforce intellectual property protections in the face of escalating counterfeiting and piracy throughout the EU and worldwide.

BASCAP urges the UK to consider carefully its future actions with respect to plain/standardised packaging within the wider context of IP protection policies, laws and enforcement regimes and impacts on business and government's ability to effectively fight against the problems of counterfeiting and piracy. Specifically, public authorities should avoid implementing policies that would weaken the object and purpose of current initiatives undertaken to fight against counterfeit and illicit products or that would otherwise directly or indirectly undermine the protection or enforcement of IPR in their territory.

In view of the questions posed, BASCAP's specific responses to the Consultation questions posed are provided in Appendix A, below.

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¹ See, <http://www.ipo.gov.uk/about/press/press-release/press-release-2011/press-release-20110630.htm>.

Appendix A: BASCAP response to select questions

Question 1:

Which option do you favour?

- **Do nothing about tobacco packaging (i.e., maintain the *status quo* for tobacco packaging);**
- **Require standardised packaging of tobacco products; or**
- **A different option for tobacco packaging to improve public health.**

BASCAP favors the status quo. BASCAP believes that the UK should not impose any additional conditions on tobacco packaging because the suggested standardised packaging framework would expropriate trade mark owners' valuable property and ignore, in particular, the following::

- Companies have obtained legal trade mark rights to words and non-word marks under the U.K.'s trade mark law for tobacco related products,²
- UK's trade mark law focuses on the ability of a trade mark to distinguish the products of one undertaking from those of another,³
- Property Rights are inherent in any trade mark law. The registration of a trade mark, including non-word marks, confers property rights in the registered mark upon the owner,⁴ and
- Owners of non-word marks would be prohibited from using such marks on their products and, to the extent there are non-word elements of a mark used in conjunction with word marks, the non-word elements would be prohibited.

Question 2:

If standardised tobacco packaging were to be introduced, would you agree with the approach set out in paragraphs 4.6 and 4.7 of the consultation?

BASCAP disagrees with the proposed approaches and opposes the imposition of additional limitations and restrictions on packaging.

Plain/standardised packaging undermines the U.K.'s own stated benefits of trade marks and the role of trade marks for purposes of consumer protections. In view of the long term investments in and uses of some trade marks by their owners, consumers rely on trade marks [brands] every day.⁵ This reliance occurs over time based upon the consistency of the product placed in the market by the trade mark owner and trade marks (word or non-word registered marks) provide consumers with that essential guarantee as to the origin of the goods.⁶

In addition to the consumer protection elements of a trade mark, there are other related financial elements to the registered mark or value added elements to owning a mark. As the U.K.'s Intellectual Property Office makes clear, a registered trade mark is an asset that has value because, for example, it can be sold.⁷

Requiring common colours, fonts, and packaging size prevents legal businesses the ability to use their intellectual property assets. In addition, plain/standardised packaging eliminates the consumers' ability to distinguish the goods of one undertaking from those of another, which is contrary to the U.K.'s own statements

² See, e.g., *Philip Morris Trade Mark 1046101. The Mark is limited to the colour red as shown in the representation on the form of application; British American Tobacco (Brands) Inc., Trade Mark 736543, mark is an image of a penguin, no words.*

³ U.K. Trade Marks Act 1994, as Amended, Part I, 1. <http://www.ipo.gov.uk/tmact94.pdf>.

⁴ U.K. Trade Marks Act 1994, as Amended, Part I, 2. <http://www.ipo.gov.uk/tmact94.pdf>.

⁵ U.K. Intellectual Property Office, *Quick Facts*, p. 3. <http://www.ipo.gov.uk/tm-quickfacts.pdf>.

⁶ U.K. Intellectual Property Office, *Quick Facts*, p. 8. <http://www.ipo.gov.uk/tm-quickfacts.pdf>.

⁷ U.K. Intellectual Property Office, *Quick Facts*, p. 9. <http://www.ipo.gov.uk/tm-quickfacts.pdf>.

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regarding the important role of trade marks play in consumer protection and the ability of businesses to compete in the market place.

Maintaining the status quo avoids the Government's expropriation of private property owned by the trade mark owners. The enterprises that own trade marks in the U.K. would be deprived of the use of their trade mark assets if additional restrictions and limitations are imposed. Some of the trade marks that are currently registered and commercially used would be effectively prohibited under a plain/standardised packaging framework and the remaining trade marks would not be available for use as currently used due to new restrictions and limitations.

Question 5:

Do you believe that requiring standardised tobacco packaging would have trade or competition implications?

BASCAP believes that plain/standardised packaging effectively eliminates the use of trade marks and therefore restrains trade, interferes with legitimate economic growth and has detrimental impacts on trade and competition. Limiting and restricting certain forms of trade marks from their use and the complete prohibition on the use of other forms of trade marks, i.e., non-word marks, undermines the U.K.'s aims to encourage trade, growth and jobs. Trade marks and product trade dress together indicate the source of goods and/or services and assure accountability and contribute to consumer protections.

Standardising packaging and dictating the appearance and fonts minimizes or eliminates the underlying purpose of trade marks and other intellectual property such as trade dress to the point that there would likely be no competition in this product sector.

The packaging industry anticipates that plain/standardised packaging will harm its industry. A plain/standardised packaging policy will decrease incentives to develop new processes and methods to improve packaging,⁸ which decreases competition, innovation and motivation among packaging companies to patent new processes, methods or machinery that could be created. Instead, plain packaging is likely to provide counterfeiters with the ability to offer illegal alternative packaged products with minimal manufacturing steps and easier to duplicate packaging. The legitimate packaging industry will have little to no incentive to invest in new packaging innovations that they could patent or protect with other forms of intellectual property. This lessens competition to improve packaging and would increase the threat of trade in illicit goods to the detriment of legitimate trade.

Question 6:

Do you believe that requiring standardised tobacco packaging would have legal implications?

BASCAP underscores two significant legal implications arising from the imposition of a plain/standardised packaging policy. First, owners of U.K. registered trade marks will have the use of some marks encumbered and the use of non-word marks wholly prohibited and expropriated. The expropriation of property will result, most likely, in the initiation of domestic legal actions. Second, the plain/standardised packaging policy and the effects of encumbering the use of trade marks and expropriation of trade marks could be the bases for a complaint against the U.K. for violation of its international obligations under the World Trade Organization's (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

⁸ The ECMA "represents 500 carton producers in nearly all countries in the European Economic Area. Around 70% of the total carton market volume in Europe, and a current workforce of about 45.000 people are represented in ECMA."

<http://www.europeanvoice.com/article/imported/plain-packaging-for-cigarettes-will-ease-counterfeiting/74307.aspx>.

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Domestically, the owner of a registered trade mark has a property right in the mark under the Trade Marks Act.⁹ Any limitation, restriction or, as is in this case, the complete ban on the use of the trade mark owners' property is likely to have domestic legal implications. The trade mark owners in the affected industry own registered trade marks that include non-word elements. These non-word elements of the registered marks that may be colours, designs and other elements would be prohibited by any plain/standardised packaging regulatory framework. Thus, the prohibitions on use of the trade mark owners' property amounts to the Government's expropriation of private property.

Additionally, the adoption and implementation of plain/standardised packaging would likely implicate the U.K.'s international obligations for the protection of intellectual property. As a member of the WTO, the U.K. is obligated to recognize the provisions of TRIPS.¹⁰

TRIPS Article 20 provides that "[t]he use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form, or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings". In this regard, the proposals for plain/standardised packaging would severely limit, and in some cases prohibit outright, the use of trade marks in which substantive investments have been made, violating the provisions of TRIPS Article 20.

TRIPS provides for a minimum level of trade mark protection, but also incorporates trade mark obligations found in the Paris Convention.¹¹ TRIPS Article 15(4) and Article 7 of the Paris Convention provide that the nature of the goods to which a trade mark is to be applied shall in no case form an obstacle to the registration of the trade mark. However, the plain/standardised packaging proposal effectively prevents the registration of tobacco products, based purely on the nature of the product.¹² The U.K.'s proposal would not preclude the use by other products and services of terms or other designs and elements that are banned for tobacco products, thereby resulting in discriminatory treatment contrary to the explicit provisions in TRIPS and the Paris Convention.

Question 7:

Do you believe that requiring standardised tobacco packaging would have costs or benefits for manufacturers, including tobacco and packaging manufacturers?

BASCAP is not aware of any benefits that would accrue to manufacturers as a result of a plain/standardised packaging framework. The cost to the legitimate manufacturers will be their inability to use their trade mark assets, i.e., their property, as well as the inability to fully compete in the market using these assets. The manufacturers' trade marks would be expropriated and become valueless. In addition, we would expect both industry and government to incur increased costs of combating unfair competition from counterfeiters.

In addition to the negative impacts of plain packaging on tobacco manufacturers, there will also be detrimental economic impacts on numerous service industries, including pack designers, pack manufacturers and printing and ink suppliers. The standardisation of tobacco packaging will undermine any future investment and innovation by tobacco and packaging manufacturers.

⁹ Trade Marks Act of 1994, as Amended, Part I, Sec. 2(1). A registered trade mark is a property right obtained by the registration of the trade mark under this Act and the proprietor of a registered trade mark has the rights and remedies provided by this Act. <http://www.ipo.gov.uk/tmact94.pdf>.

¹⁰ Agreement Establishing the World Trade Organization, Annex 1C, Agreement on Trade Related Aspects of Intellectual Property Rights, http://www.wto.int/english/docs_e/legal_e/04-wto.doc.

¹¹ Paris Convention for the Protection of Industrial Property, September 28, 1979 (The TRIPS text at Article 2.1 incorporates by reference the Paris Convention, Stockholm 1967.).

¹² In several jurisdictions, actual use of the trademark is required and inability to use may well lead to denial or revocation of the registration. The so-called "use it or lose it" principle.

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Any change to the packaging of tobacco products that is required as a result of standardised packaging requirements is likely to lead to significant job losses and reductions in income and economic activity, primarily as a result a consumers down trading from premium and mid-price products to the cheapest available, coupled with a shift from legitimate to illicit tobacco products.

Tobacco manufacturers

Tobacco manufacturers will face significant transition and compliance costs in the process of preparing to comply with new plain packaging requirements.

With manufacturers disabled from competing on the basis of brands, standardised packaging will also have cost implications for tobacco manufacturers as it will distort the existing premium, mid-price and budget product range, and it will ultimately result in competition on price alone with price becoming the determinant factor in purchasing. Removal of differentiation, i.e., the use of trade marks and trade dress, would reduce market value by precipitating consumer down-trading to "cheapest available" tobacco products and possibly eliminating entirely the higher price segments of the market.

Packaging Manufacturers

Proposals for standardised packaging threaten UK jobs in the packaging supply chain,¹³ seriously impacting many packaging and packaging supply chain businesses,¹⁴ including those involved in marketing, brand creation, and design. Other industries in the fast-moving consumer goods (FMCG) sector may also be impacted negatively through an economic 'ripple effect' down the supply chain.

This would impact the packaging/carton industry that has invested significantly in sophisticated hi-tech equipment and processes to meet the needs of the tobacco industry, including the regulatory requirements directed by Government. That investment has been both financial and in the development of a skilled workforce, processes of innovation, and a high level of manufacturing competence. The introduction of plain packaging would negate the benefits of the investment that has been made.

A change of this scale will create significant excess capacity in the carton manufacturing industry as a whole. The industry will consolidate and shed jobs.

UK Government

Unbranded packaging will be significantly easier to counterfeit. Despite highly specialised technology developed over many years to safeguard the regulated supply chain, the U.K. Treasury is still losing £3.1bn a year in lost revenue.

"We believe that plain packaging would strengthen the position of counterfeit and contraband products in the market, undermining volumes for bona fide manufacturers, reduce government revenues and boost the criminal economy"¹⁵.

The unintended consequences of plain packaging from a tobacco packaging manufacturers perspective were outlined in AMCOR's submissions to Australia Department of Health and Ageing¹⁶ and the Australian Government's House of Representatives¹⁷, as follows:

¹³ "Plain Packaging and The Risk to Jobs" UNITE parliamentary briefing February 2012

¹⁴ http://www.thetelegraphandargus.co.uk/business/9739308.Bradford_packaging_firms_call_for_a_re_think_on_plain_packs_for_cigarettes/

¹⁵ Tobacco Manufacturers Association Briefing May 2012 – 'Packaging Companies Opposed to 'Plain Packaging' of Tobacco Products'.

¹⁶ <http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/plainpack-tobacco-submissions>.

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Lower barriers of entry

The move to a generic approach to packaging will lower the barriers of market entry for counterfeiters with only one pack design to replicate. Furthermore, the level of technical difficulty and requirements to produce tobacco packaging will be substantially reduced and upfront investment required for market entry significantly lowered.

Creation of scale in the counterfeit market

The proposed uniform requirement for tobacco packaging will provide the opportunity and incentives for the creation of scale in the counterfeit tobacco market with tobacco markets effectively transitioning from a market with a large number of brands and distinct product differentiation to a wide open market using a generic pack for all brands. This will create a single, generic tobacco brand market. As a result, the counterfeit tobacco market will become substantially larger. The parameters for participation in the market will be reduced from the need to recreate multiple pack designs, to only having to recreate one uniform pack design.

The combination of reduced barriers of entry and creation of scale will provide a major incentive for both existing and new entrants into the counterfeit tobacco market. Given the relatively high rates of taxation applied to tobacco products in the U.K., counterfeit tobacco is an extremely lucrative market, in which significant profits can be made (for more, see response to Question 9 below).

By increasing the opportunity and incentive to create scale that does not exist in the current market, the plain packaging/standardisation proposal's capacity to expand the counterfeit tobacco market cannot be underestimated.

Limited capacity to authenticate and differentiate between products

Adopting a generic approach to tobacco packaging will fundamentally change the role that packaging plays in enabling consumers and others to authenticate and differentiate between tobacco products. As such, AMCOR pointed out that standardised packaging will reduce the capacity of:

- i. consumers; to verify the product they are purchasing is authentic,
- ii. manufacturers; to include anti-counterfeiting cues, and
- iii. enforcement authorities; to recognise counterfeit tobacco products.

Generic packaging will also ensure that tobacco is seen more as a commodity and hence the key point of difference will become price.

Unlikely to comply with mandated regulatory standards

Counterfeit cigarettes are not produced under regulated conditions and as such there are no controls over hygiene, ingredient composition or the level of toxic materials. Research from other countries highlights that, unlike legal tobacco products, which are manufactured and sold in compliance with strict regulatory requirements such as health warnings and maximum tar and nicotine levels, illicitly traded products, are produced partly or fully outside of this regulatory framework.

These concerns were echoed by the European Carton Makers Association (ECMA) in its submission to the EU TPD Review where ECMA observed that plain packaging would lead to increased counterfeit trade, which in turn would result in "three significant negative effects":

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- "Loss of responsible manufacturing of tobacco cartons in the EU.
- Health risk for consumers: Counterfeit products are unregulated and there is no control over hygiene, ingredient composition and level of toxic materials.
- Loss to the public purse: Counterfeiting already costs EU governments €10bn per annum. This is only likely to increase further with Plain Packaging."¹⁸

Question 9:

Do you believe that requiring standardised tobacco packaging would increase the supply of, or demand for, illicit tobacco or non-duty-paid tobacco in the United Kingdom?

BASCAP believes that plain/standardised packaging will exacerbate the problem of counterfeiting and illicit trade in tobacco products. The U.K. should consider the available data as it represents a fraction of the illicit trade in counterfeit tobacco products. This will no doubt continue to be a major enforcement challenge. At the European Union level, the annual statistics for border measures demonstrate the clear challenge counterfeiting presents. Since 2006, the statistics on tobacco seizures show the following:

- 2006, EU Customs seizure reports over 73 million seized (nearly 57.4% of all items seized; €230 million losses);
- 2007, EU Customs seizure reports 27.1 million seized (about 34.3% of all items seized);
- 2008, EU Customs seizure reports 41.9 million seized (about 23.4% of all items seized);
- 2009, EU Customs seizure reports 41 mil (tobacco/tobacco products [cigars/cigarette paper, etc.], about 35% of total items seized); and
- 2010, EU Customs seizure reports 42.7 mil (about 33.5% of all items seized).¹⁹

Specifically in the U.K., various sources have reported the ongoing trade of illicit tobacco products. Specific examples include:

- June 2, 2012, Mirror reports 4 million counterfeits smuggled, detected in Belfast,
- May 12, 2012, Liverpool Echo reports market value of £8 million (empty counterfeit pouches and hand rolling tobacco, duty stamps),
- March 17, 2012, Nottingham Evening Post, 680,000+ seized and 15 kilograms of tobacco,
- Feb. 26, 2012, the Sunday Mirror, reports 25% of all cigarettes are either counterfeit or smuggled, problem expected to worsen when increased duties go into effect,
- Feb 3, 2012, Guardian reports on research done by Engineering & Technology, finds that from June 2010 to June 2011, counterfeit tobacco/cigarette seizures by trading standards officers tripled from 43 in 2008-09 to 134 in 2010-2011,
- 10.4 million cigarettes intercepted, duty should have been £1.9 million (Nov 16, 2011) <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/36-north-seized>, and
- Feb 4, 2011, Newcastle Evening Chronicle reports 600,000+ cigarettes seized from smugglers and 350 KG of hand rolling tobacco (during a 3-month period).

Plain/standardised packaging will likely make it easier for counterfeiters because of the decreased level of package differentiation.²⁰ Currently, counterfeiters must replicate the various trade marks, designs and

¹⁸ See www.ecma.org - European Carton Makers Association (ECMA) submission re EU TPD Review

¹⁹ http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm.

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packaging of multiple companies and brands, expending their resources to make counterfeit versions of many different product lines. Despite their own need to make a variety of packages, counterfeiters' profits make their "investment" worthwhile to engage in this activity. If plain/standardised packaging is implemented, the counterfeiting challenge will be easier and simpler and will, most likely, increase their profits.

Any detailed analysis of the trade in counterfeit goods will demonstrate the flexibility and adaptability of counterfeiters to a changing trade environment. In the U.K., despite its emphasis on the illicit trade in tobacco products by dedicating more resources to combat the problem, its illegal market is still above the average of EU member states.²¹

Implementing the plain/standardised packaging policy will reduce barriers to entry for counterfeiters and provide them with an opportunity to maximize their profits even more. The history of the counterfeit trade is informative in this respect. In the May 2008 Consultation on the Future of Tobacco Control, the document notes that "despite significant success in reducing smuggling in recent years, the UK market is still characterised by high levels of illicit tobacco use"²² and that "illicit tobacco is linked to organised crime and smuggling of other illicit goods such as drugs, alcohol and weapons".²³ If plain/standardised packaging is introduced the situation is likely to worsen.

Finally, some have recommended the application and use of anti-counterfeiting technology devices to help prevent counterfeiting of plain packaging packs. It should be noted that whilst a large number of anti-counterfeiting technologies are offered for cigarette packs or any other type of packaging, none of these will, in themselves, prevent counterfeiting. Moreover, the addition of anti-counterfeit measures will not prevent other forms of illicit trade, such as illicit whites and loose tobacco. The smuggling of cigarettes into a country avoiding required excise payments or the illegal manufacture of cigarettes within a country will continue regardless of whether anti-counterfeit measures are added to packs or not.

Question 11:

Do you believe that requiring standardised tobacco packaging would have any other unintended consequences?

The U.K. Government is already aware of potential for "unintended consequences", including that plain packaging for tobacco products would become a model for regulators to follow with other product categories. In its 2008 Consultation document, the Government acknowledged that "the introduction of plain packaging for tobacco products may set a precedent for the plain packaging of other consumer products that may be damaging to health, such as fast food or alcohol."²⁴ The possible adoption of tobacco-like controls in other sectors is not conjecture in view of the development earlier this year when the U.K. Government announced an "alcohol strategy" inquiry and indicated that one of the things to examine is "plain packaging and marketing bans".²⁵

²⁰ Plain Packaging and Illicit Trade in the UK, Transcrime—Joint Research Centre on Transnational Crime (May 2012), http://transcrime.cs.unim.it/tc/fso/publicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf.

²¹ Executive Summary, Plain Packaging and Illicit Trade in the UK, Transcrime—Joint Research Centre on Transnational Crime, p. 1 (May 2012). In 2000, the U.K. dedicated £209 million for 3 years, including 1,000 customs staff and the purchase of x-ray scanners; in 2006, an additional 200 staff.

http://transcrime.cs.unim.it/tc/fso/publicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf.
²² Consultation on the Future of Tobacco Control at 2.29, May 2008, http://www.plain-packaging.com/downloads/UK_DOH_consultation_paper.pdf.

²³ Consultation on the Future of Tobacco Control at 2.31, May 2008, http://www.plain-packaging.com/downloads/UK_DOH_consultation_paper.pdf.

²⁴ Department of Health Consultation on the Future of Tobacco Control at 3.81, 31 May 2008. http://www.plain-packaging.com/downloads/UK_DOH_consultation_paper.pdf.

²⁵ UK Government's Alcohol Strategy, **Terms of reference and call for evidence.**

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/12-03-26-alcohol-torcfel/>.

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BASCAP urges the U.K. Government to resist implementing plain/standardised packaging for tobacco products because it will result in efforts to expand bad policy to other industry sectors. Having acknowledged the Government's awareness of this unintended consequence in 2008, it should not knowingly adopt this policy. BASCAP believes that the adoption of plain/standardised packaging will create a bad precedent that will be used to fuel calls to expand to other industries, e.g., including non-alcoholic beverages and foods. The current and proposed restrictions, limitations and prohibitions for tobacco products are already being discussed as they might apply to other products.

Question 15:

Please include any further comments on tobacco packaging that you wish to bring to our attention. We also welcome any further evidence about tobacco packaging that you believe to be helpful.

BASCAP is concerned that provisions of the World Health Organization's (WHO) Framework Convention on Tobacco Controls (FCTC) and its implementing Guidelines are the bases for the U.K.'s proposed adoption of plain/standardised packaging. It is clear that the FCTC's Article 11 addresses packaging and labelling of tobacco products.²⁶ Nevertheless, neither Article 11 nor Article 13 mandates plain or standardised packaging. Moreover, the implementing Guideline for Article 11 that refers to plain packaging states:

Parties *should consider* adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). (Emphasis added.)

This might be considered by some to be a recommendation, but it falls far short of being a requirement. By contrast, the U.K. and all WTO Member States have binding obligations as to trade marks and it is our view that relying upon the FCTC and its Guidelines to implement plain/standardised packaging would result in a violation of international legal obligations.

²⁶ Framework Convention on Tobacco products, Article 11, "Packaging and Labelling of Tobacco Products", <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>.