

Removing the Cancer Emperor's Clothes: the successful campaign to get cigarettes in plain packs



Simon Chapman & Becky Freeman
School of Public Health



THE UNIVERSITY OF
SYDNEY

What I will cover today

- › The role of packaging , esp. in tobacco promotion
- › The goals of plain packaging
- › Definition/scope of plain packaging
- › History of advocacy for plain packs
- › Industry reaction
- › Legal arguments



What is packaging?



Same manufacturer

Same product

Same taste

Same function



Different package means:

- ☑ Different target audience
- ☑ Different time and place to use

Which means: **BIGGER total market**



A “Badge Product”

“The Company is very aware that every customer carries the Rothmans logo, on the package, with him or her all the time. **That package comes out many times a day, and every time it is seen makes a personal comment about the person who carries and shows it.** Trust in its quality must never be compromised through any lapse of attention to the smallest detail.”

Rothmans of Pall Mall Canada Ltd., 1982

“... if you smoke, a cigarette pack is one of the few things you use regularly that makes a statement about you. A cigarette pack is the only thing you take out of your pocket 20 times a day and lay out for everyone to see. That's a lot different than buying your soap powder in generic packaging.”

- Brown and Williamson (1995)

“The proof is that when we offered them Marlboro at half price – in generic brown boxes – only 21% were interested, even though we assured them that each package was fresh, had been sealed at the factory, and was identical (except for the different packaging) to what they normally bought at their local tobacconist or cigarette machine.”

Reported in *Forbes*, February 9, 1987



“The product itself . . . is very interesting, because in the cigarette business there is very little to distinguish . . . because we all use the same kind of tobacco. . . But it’s very difficult for people to discriminate, blind tested. Put it in a package and put a name on it, and it has a lot of product characteristics.”

Donald Brown, President, Imperial Tobacco (Canadian subsidiary of BAT), 1989, trial testimony.

- › Cigarette packaging conveys brand identity through **brand logos, colours, fonts, pictures, packaging materials and shapes.**
- › The world's most popular cigarette brand, Marlboro, can readily be identified through its iconic red chevron. The Marlboro brand is estimated to be worth \$US27 billion, making it the tenth most valuable brand in the world.



Image: PM's "Canadian" Marlboro – reference:
<http://www.smoke-free.ca/Filtertips-5/Marlboro.htm>

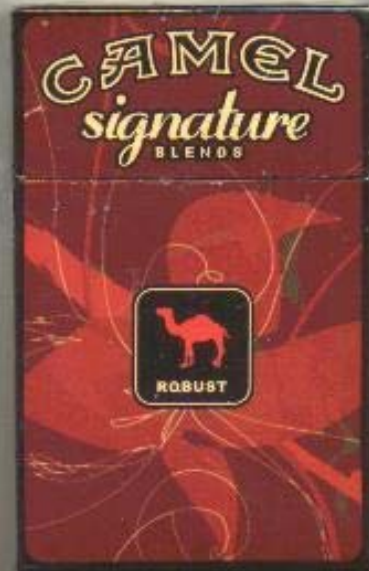
Changes in tobacco marketing

- › As marketing restrictions for tobacco products increase, how has cigarette packaging changed as the last bastion of communicating with the consumer?
- › The rise of the flip-top
- › Purse pack and female smokers
- › Shorter smokes
- › “Premiumising” a brand
- › Thinking bigger... and smaller
- › Increasing pack size
- › Limited editions

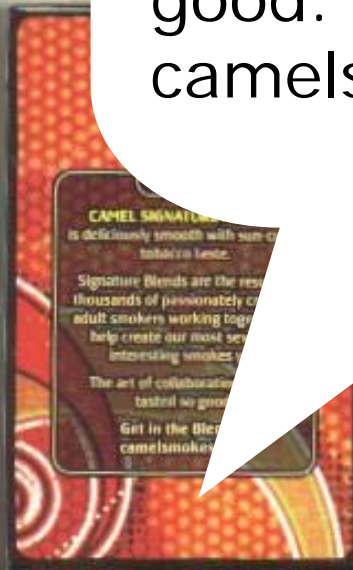


THE UNIVERSITY OF
SYDNEY





Signature blends are the result of thousands of passionately creative adult smokers working together to help create our most severely interesting smokes yet. The art of collaboration never tasted so good. Get in the blend @ camelsmokes.com





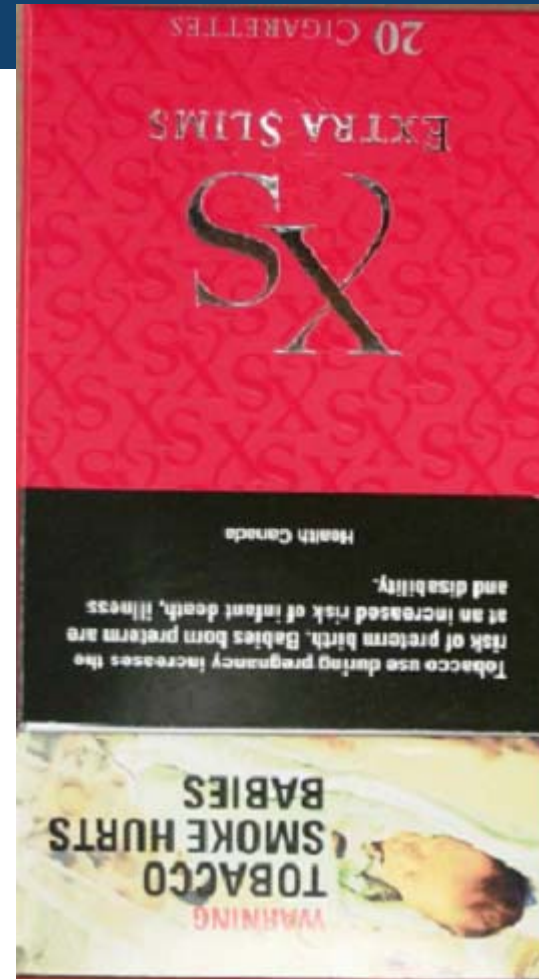
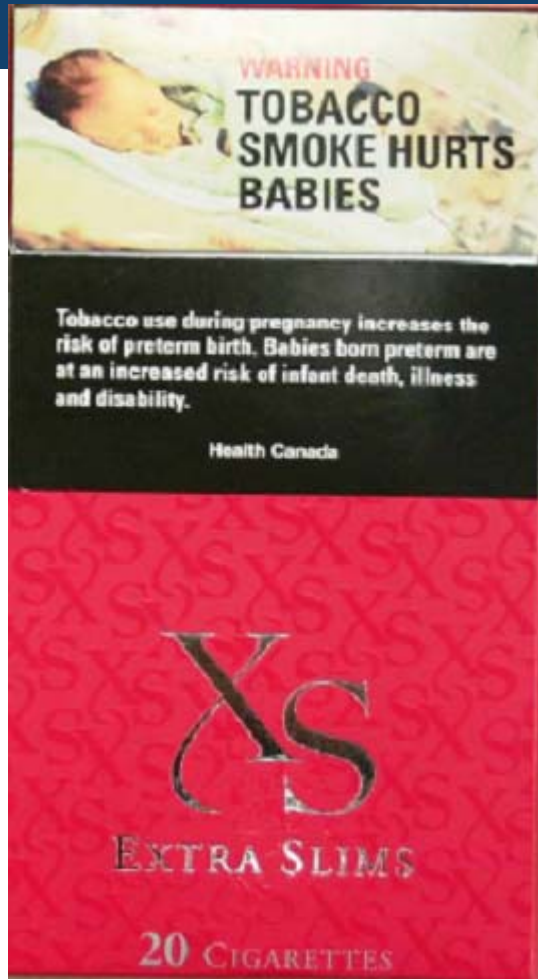
Pack shape and materials

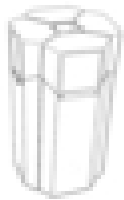




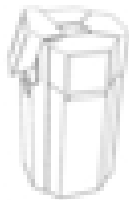


THE UNIVERSITY OF
SYDNEY





ISOMETRIC VIEW



ISOMETRIC VIEW



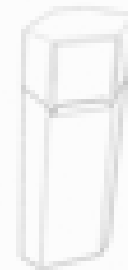
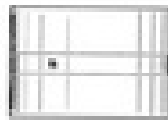
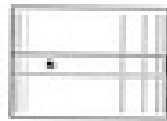
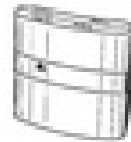
FRONT VIEW



FRONT VIEW



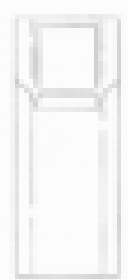
PLAN VIEW



ISOMETRIC VIEW



ISOMETRIC VIEW



FRONT VIEW



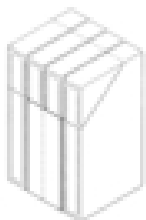
FRONT VIEW



PLAN VIEW



SIDE VIEW



ISOMETRIC VIEW



ISOMETRIC VIEW



FRONT VIEW



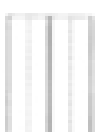
FRONT VIEW



FRONT VIEW



FRONT VIEW



FRONT VIEW



ISOMETRIC VIEW



FRONT VIEW



FRONT VIEW



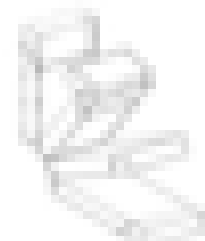
FRONT VIEW



FRONT VIEW



FRONT VIEW



ISOMETRIC VIEW



ISOMETRIC VIEW



WAFFLE EMBOSSEING DRESS UP YOUR BRAND

Waffle Embossing is an enhanced embossing technique, that allows the fine base pattern of the inner liner to be refined and redesigned.

With one aim: supporting marketing departments to boost the premium character of their brands.

Boegli-Gravures S.A. – A world leader in embossing and printing die technology for the tobacco industry.

Boegli-Gravures S.A. Tel.: +41 32 753 7080
P.O. Box 32 Fax: +41 32 753 7082
Gare 24 – 26 www.boegli.ch
CH-2074 Marin bg@boegli.ch

Pierluigi Lovaglio


Boegli-Gravures S.A.
SETTING STANDARDS



Out of the Box
innerliner

Coloured innerliner: the absolute challenge to substitute the external pattern of the second pack. It reflects harmony in capturing the essence of the brand. Enhance your communication area and boost conversion.



 **AASSEN**
PRINTING TECHNOLOGY

Advanced Printing Technology for 400, 500 & 600 cigarettes. The reference for cigarette packs and soft packs. E-mail: info@aaassen.nl www.aaassen.nl



we create...

Corporate design, Brand design, Packaging design, Graphic design, Illustrations, Advertising

vanHeertum
Design & Communication

Van Heertum B.V. - Gustafsluis 23, 1012 BP Tuitburg
The Netherlands. Tel: +31 (0)52 840 79 15, Fax: +31 (0)52 840 79 16
www.vanheertum.com

“With the uptake of printed inner frame cards what we will increasingly see is the **pack being viewed as a total opportunity for communications** – from printed outer film and tear tape through to the inner frame and inner bundle. Each pack component will provide an integrated function as part of a carefully planned brand or information communications campaign.” - *World Tobacco* (2006)



THE UNIVERSITY OF
SYDNEY

The cigarette itself



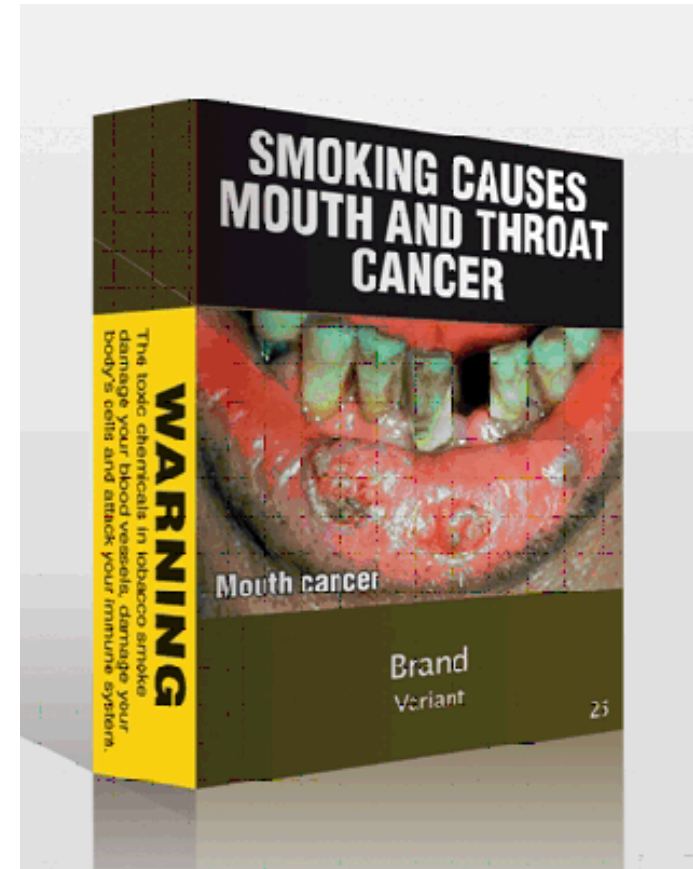
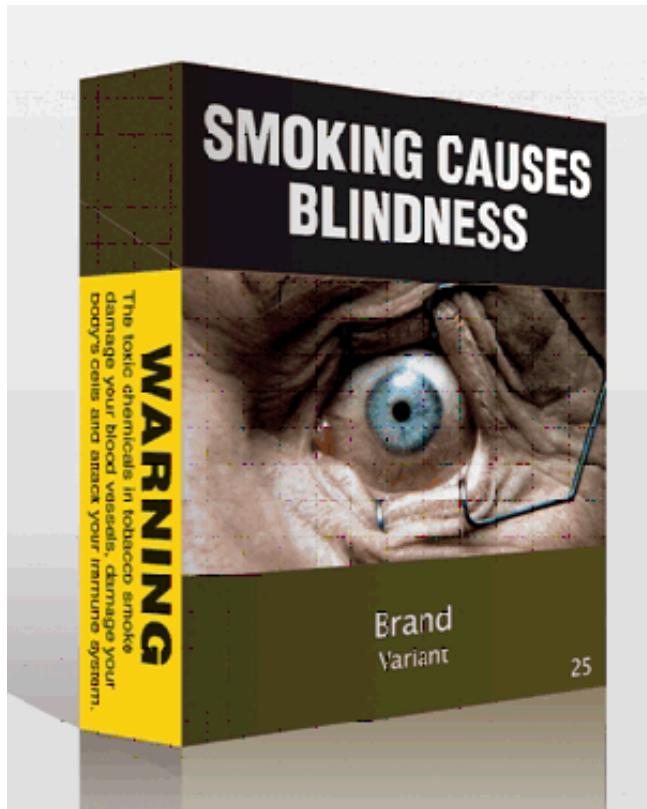
Goal:

standardise the appearance of all cigarette packages thus greatly reducing the status signalling role and consumer appeal of the product and prevent undermining of health warnings





The Australian cigarette pack in 2012





THE UNIVERSITY OF
SYDNEY

A short history

Beede and Lawson (1992)

Beede and Lawson (1991)

Centre for Behavioural Research in Cancer (Australia) (1992)

Centre for Health Promotion, University of Toronto (1993)

Goldberg et al. (1995)



THE UNIVERSITY OF
SYDNEY

Canadian House of Commons

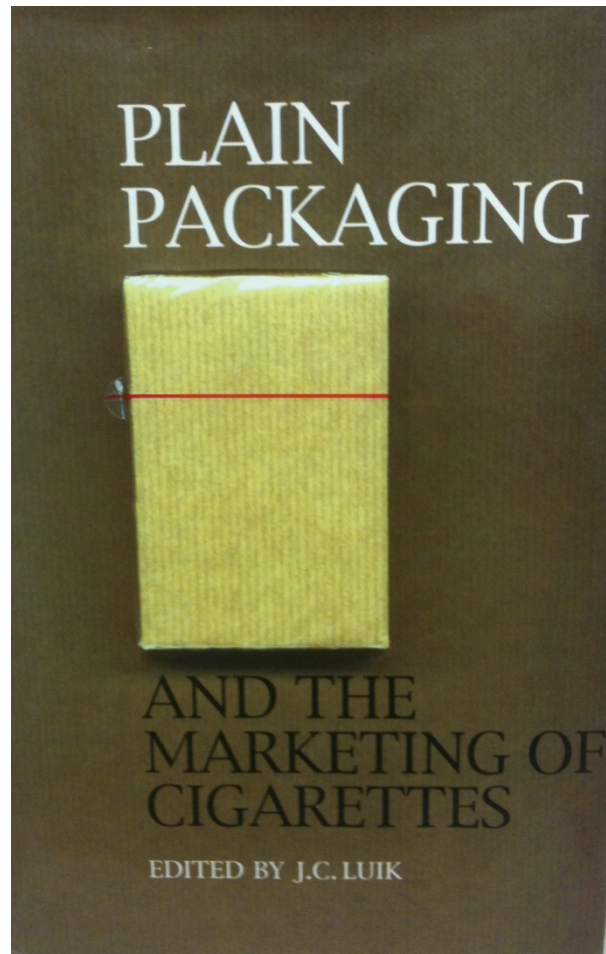


Lawyers for Philip Morris, R.J. Reynolds, 1994



THE UNIVERSITY OF
SYDNEY

Industry commissions an “independent” book



Dr John Luik, tobacco industry consultant

“We are concerned that tobacco manufacturers continue to think of cigarette packs as being a way either of exploiting the aspirational nature of their products or conveying implied health messages. . . . we believe that the advantages and disadvantages of plain packaging should be carefully assessed”

U.K. House of Commons Health Select Committee,
2000

The case for the plain packaging of tobacco products

Becky Freeman¹, Simon Chapman¹ & Matthew Rimmer²

School of Public Health, University of Sydney, Australia¹ and Australian Centre for Intellectual Property in Agriculture, Australian National University College of Law, Australia²

ABSTRACT

Aims The Framework Convention on Tobacco Control (FCTC) requires nations that have ratified the convention to ban all tobacco advertising and promotion. In the face of these restrictions, tobacco packaging has become the key promotional vehicle for the tobacco industry to interest smokers and potential smokers in tobacco products. This paper reviews available research into the probable impact of mandatory plain packaging and internal tobacco industry statements about the importance of packs as promotional vehicles. It critiques legal objections raised by the industry about plain packaging violating laws and international trade agreements. **Methods** Searches for available evidence were conducted within the internal tobacco industry documents through the online document archives; tobacco industry trade publications; research literature through the Medline and Business Source Premier databases; and grey literature including government documents, research reports and non-governmental organization papers via the Google internet search engine. **Results** Plain packaging of all tobacco products would remove a key remaining means for the industry to promote its products to billions of the world's smokers and future smokers. Governments have required large surface areas of tobacco packs to be used exclusively for health warnings without legal impediment or need to compensate tobacco companies. **Conclusions** Requiring plain packaging is consistent with the intention to ban all tobacco promotions. There is no impediment in the FCTC to interpreting tobacco advertising and promotion to include tobacco packs.



TOBACCO JOURNAL INTERNATIONAL

4/2008



Plain packaging
can kill
your business



THE UNIVERSITY OF
SYDNEY

TOB
INT

4/2008

Journal.com G 12419

Um, doh!!
that's the
general idea

...



Plain packaging
can kill
your business

WHO Framework Convention on Tobacco Control

Plain packaging

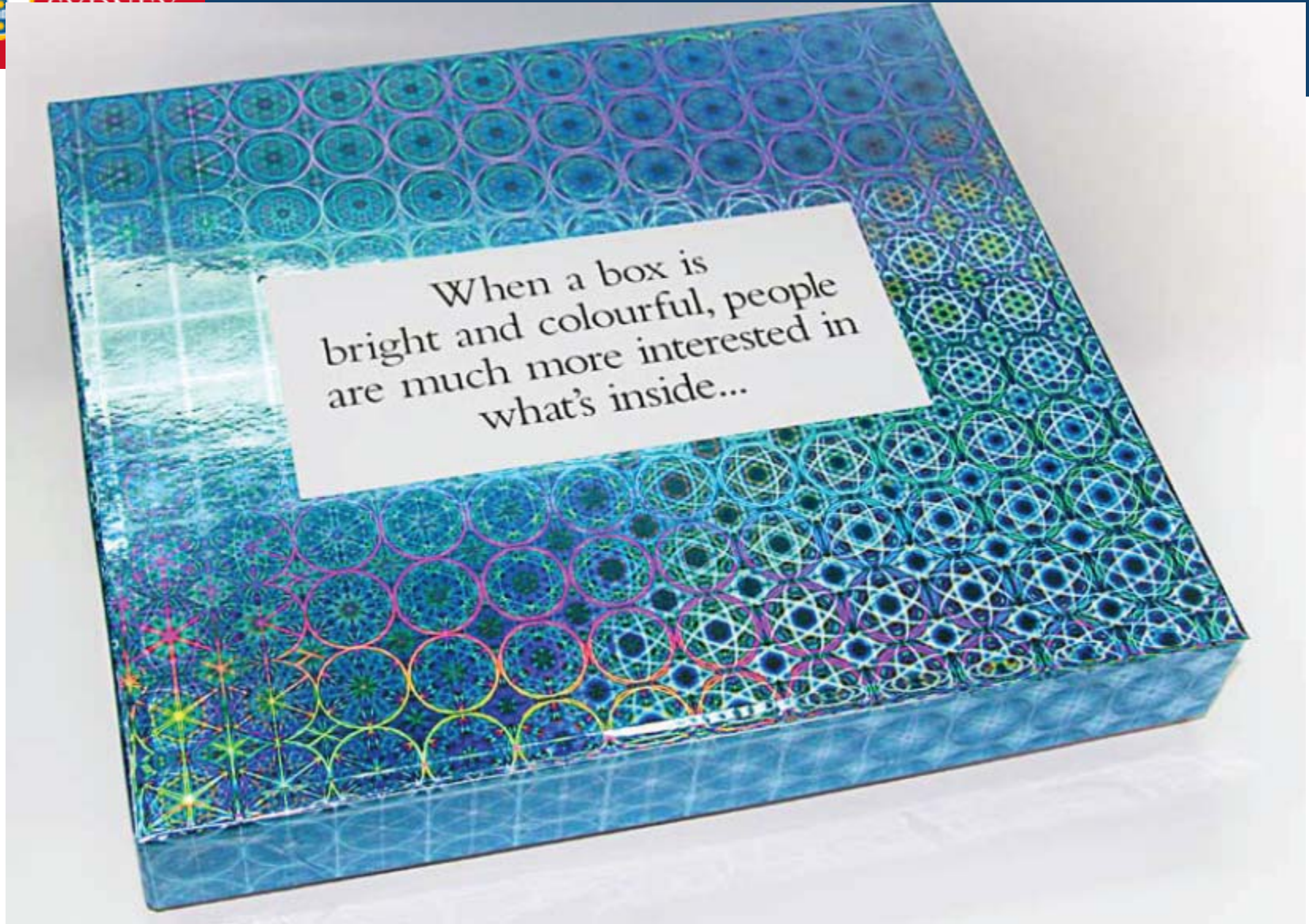
Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others.







When a box is
bright and colourful, people
are much more interested in
what's inside...





Current cigarette packaging says a lot.



Chocolate
Frog

Which one would
your kids pick?

*“In our opinion, [after taxation] the other two regulatory environment changes that concern the industry the most are **homogenous packaging** and below-the-counter sales. Both would significantly restrict the industry's ability to promote their products.”*

- Morgan Stanley Research (2007)

Anti-Tobacco Plans for England Should Not Upset Investors

Equity 

Govt Has Published Plans That Are Likely to Have Little Bite

- **Govt has published "New Tobacco Control Strategy for England"** — This morning a 72-page document was published outlining the next phase in the government's plans to reduce smoking. In theory this should have most impact on Imperial Tobacco, as ~20% of Imperial's profit comes from the UK (and about 15% from England). In practice we think there is little that should worry shareholders.
- **We think this document shows anti-tobacco regulators are running out of big ideas** — The latest proposals seem to us to be long on aspirations and short on concrete actions. The most bullish interpretation (for shareholders) is that the anti-tobacco advocates are running out of practical ideas to regulate the industry further.
- **Bans on vending; boosts to anti-smuggling officers and to NHS services** — The government says it will ban vending machines (which sell less than 1% of cigarettes in the UK) and increase the number of overseas Customs officers. It will also strengthen the already-best-in-class Stop Smoking services provided by the National Health Service. It will also consider passing laws to allow policemen to confiscate cigarettes from children and banning smoking in outside areas like entrances to buildings. And it will consider imposing plain packaging.
- **The most important issue is plain packaging, but there is no advance here** — We have always said that, for investors, the No1 regulatory issue is plain (or generic) packaging: we believe greying out all packs would lead to rapid down-trading. However, the government is no further along with this idea, saying it believes the evidence needs to be "carefully examined" (see page 3). For the first time, it says it needs to give weight to the legal implications of plain packaging.

Adam Spielman
+44-20-7986-4211
adam.spielman@citi.com

Plain Packaging of Tobacco Products

[HOME](#) | [BACKGROUND](#) | [ISSUES WITH PLAIN PACKAGING](#) | [RETAILERS & CONSUMERS](#) | [IN THE NEWS](#) | [DOCUMENTS & STUDIES](#)


GO

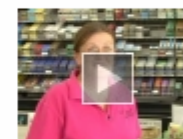
Future?

Share this:

VIEWS OF RETAILERS AND THE PUBLIC



Retailers and the public speak out against plain packaging.



Barb
Adelaide, Australia
"People will still smoke"



Rod
London, UK
"It's rather pointless"

[More videos](#) ▶

BACKGROUND

Plain Packaging means no trademarks, logos, colours or graphics



ISSUES WITH PLAIN PACKAGING

Plain packaging will create problems for [retailers and consumers](#) and also presents many other issues.



Illicit trade

Various experts have expressed



Trademark rights

Business groups, legal experts



No evidence

There is no evidence that plain

1. Job loss in packaging industry
 2. Retailer difficulties – inventory control; serving customers
 3. Prices would decrease
 4. Smoking (esp youth) would increase
 5. Simple packages would increase counterfeit
 6. What product is next? (slippery slope)
 7. Not stopped sales of marijuana and other drugs
 8. No evidence plain packaging decrease smoking – packaging only affects market share.
 9. No country has ever done this – so no evidence it will work
-

The Principle of the Dangerous Precedent

“Every public action which is not customary either is wrong, or if it is right it is a dangerous precedent. It follows that nothing should ever be done for the first time.”

F. W. Cornford

Microcosmographia Academica (1908)



Industry Arguments

Consumers would just place in other containers



Tobacco's arguments

- Constitution: If Australian government **acquires** property, it must do so on just terms
- Breach of WIPO's Paris Convention re right to register trademarks
- Breach of the WTO TRIPS Agreement

Acknowledgement: Prof Mark Davison, Law, Monash University

The Constitutional Argument

- There is no '**acquisition**' of property.
- 'The mere extinguishment or deprivation of rights in relation to property does not involve acquisition'
Deane J, Tasmanian Dams case
- **All** cases support the proposition there is no acquisition eg
 - Commonwealth v Tasmania (1983) 158 CLR 1
 - Australian Tape Manufacturers Assn v Commonwealth (1993) 176 CLR 480
 - Mutual Pools & Staff Pty Ltd v Commonwealth (1994) 179 CLR 155
 - Newcrest Mining (WA) Ltd v Commonwealth (1997) 190 CLR 513
 - Nintendo Co Ltd v Centronic Systems Pty Ltd (1994) 181 CLR 284
 - Commonwealth v WMC Resources Ltd (1988) 194 CLR 1.



The WIPO Paris Convention argument

- There is a right to **register** a trade mark under the Paris Convention
- There is no right to **use** a registered trade mark or object to regulatory limitations on its use.
- The proposed legislation affects **use**, not registration.



**WIPO to tobacco industry 31st August, 1994 and
Director General WIPO to WHO, February 1995**

- ‘the fact that a mark has been registered for such goods does not give the right ... to be exempted from any limitation or prohibition of use of the mark ... ’



TRIPS Arguments

- *Article 16*

- Rights Conferred*

- 1. The owner of a registered trademark shall have the exclusive right to **prevent all third parties ... from using** in the course of trade, identical or similar signs ...
- There is **NO** positive right for the owner to use a trademark. **EC-Geographical Indications** .

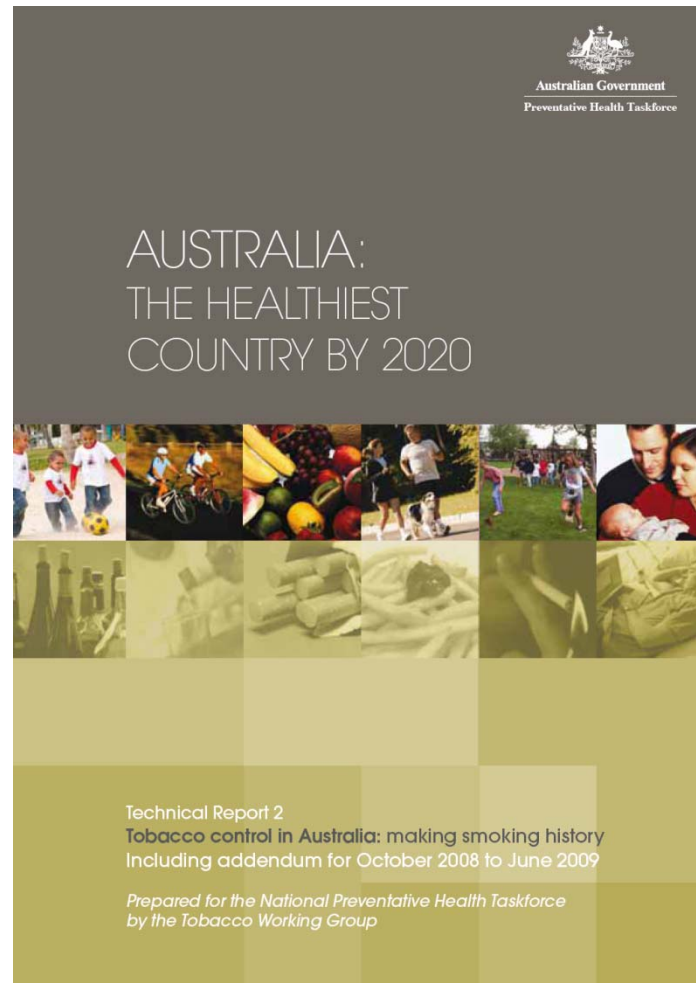


Doha Declaration, 2001

- ... the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. ... we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health ...



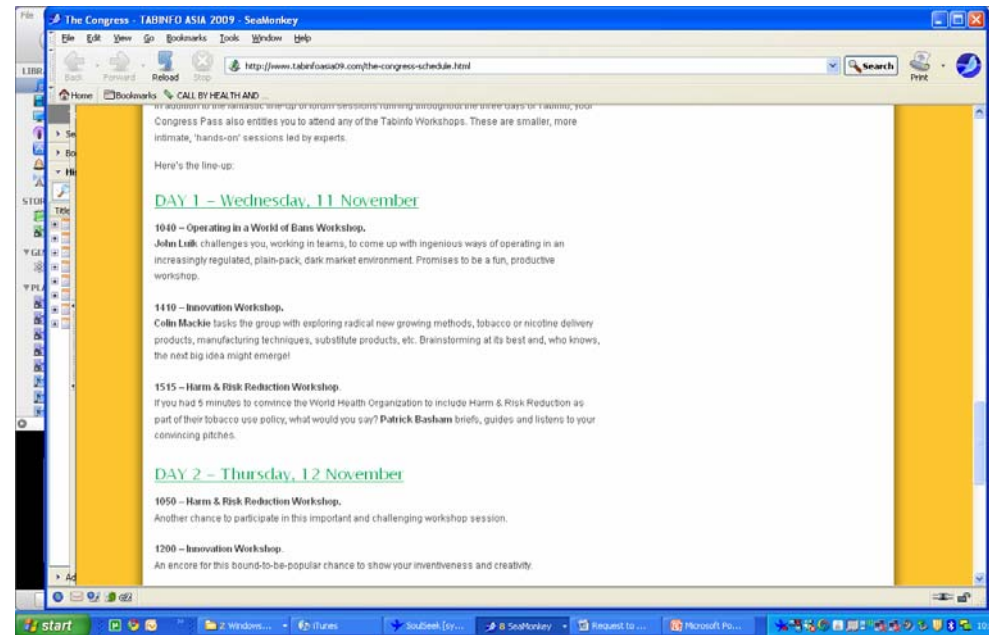
Preventative (sic) Health Task Force Report 2009



- › April 2011: A survey of 4,500 Victorians showed very strong support.
- › 72% of all people approve of the policy - and 57% of smokers.

› 1040 – Operating in a World of Bans Workshop.

John Luik challenges you, working in teams, to come up with ingenious ways of operating in an increasingly regulated, plain-pack, dark market environment. Promises to be a fun, productive workshop.



2009 World Tobacco Trade Conference,
Bangkok