

Where there's smoke, there's fire: UAE's drafts plan for plain cigarette packaging

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The UAE Ministry of Health has recently proposed legislation which would lead towards plain cigarette packaging designs. Should the proposed legislation be adopted, plain cigarette packaging would likely take effect from as early as 2016.

In a nutshell, the plain packaging of cigarettes would entail that cigarette manufacturers would be banned from featuring any branding on the boxes which would be replaced with large health warnings taking up to 70% of the cover of the cigarette pack. Accordingly, the cigarette packaging would contain a standard appearance and colour across all brands with the brand name only being displayed in a mandatory reduced size in a standardized font and location. The current UAE packaging requirements were introduced in 2012 and require manufacturers to cover 50% of the cigarette packet with pictorial warnings in Arabic and English. However at present, logos, designs and colours are allowed to be depicted on the cigarette boxes.

Famously, Australia has led the way in adopting plain packaging legislation. With the enactment of the Tobacco Plain Packaging Act in 2011, Australia became the first country to require tobacco products to be sold in plain packaging. All products on sale since December 2012 must be plain packaged for the Australian market.

The main purpose of the proposed new tobacco packaging with graphic health warnings is to ultimately create a deterrent effect and create a general awareness about the impacts of smoking. Various studies which suggest that the use of colours on cigarette packaging is enticing to the consumers and that in the contrary plain packaging increases negative perceptions and feelings about the pack and about the overall act of smoking.

The long standing debate between the tobacco companies and the health community has been ongoing for many years and one that extends beyond the scope of the present article. However, separately, tobacco companies are also seriously concerned that the proposed plain packaging requirements will contribute to an increase in the problem of illicit trading and counterfeiting of cigarettes.

In addition, the proposed legislation has caused the tobacco companies to question whether they are being singled out from other industries. The recurring argument that tobacco companies have highlighted is that a company's brand is ultimately its 'calling card'. Without being able to depict its logo's, design and trademarks and even colours on their packaging, tobacco companies are ultimately being denied a right which other brand owners are freely allowed to exercise. Since the packaging of the product is ultimately the distinctive element which allows consumers to decipher in their choice of product, the debate around the subject also has serious implications on intellectual property rights. The tobacco industry has long argued that the plain packaging of cigarettes is equivalent to an acquisition of intellectual property without payment of any adequate compensation.

It is undeniable that the rights attaching to a trademark are governed by its registration in addition to its marketplace perception. In fact, the fundamental characteristic of a trademark is its distinctiveness, meaning its capability to distinguish the goods or services of its owner from those of others. The proposed legislation effectively contradicts the very essence of the trademark principles

by requiring plain packaging and a standard appearance across all brands. The question arises as to whether there is a legitimate justification for legislation of this nature and whether the rights conferred under the trademark law can ultimately be bypassed for the purposes of seeking to deter smoking?

In summary, it is apparent that the issue of plain packaging extends far beyond the debate over health and raises the question as to whether tobacco companies should be allowed to display their unique brands, designs and trademarks in the same manner as exercised by other companies in different industry sectors.