

BAT challenges Australia cigarette packaging law

December 1 2011, by Martin Parry

British American Tobacco on Thursday launched a High Court challenge against a law that will require plain packaging on cigarettes in Australia, claiming it infringes intellectual property rights.

Days after fellow global tobacco giant Philip Morris sued Canberra over the controversial plan, BAT filed a constitutional challenge that it said would act as a "test case" on the validity of the legislation.

BAT's claim relates to the property rights of two of its brands, Winfield and Dunhill, and, if successful, "should apply to other property and brands sold by BAT", the company said in a statement.

BAT argues that it is a legal company selling a legal product and that it is both unconstitutional and invalid for the government to remove its trademarks and other intellectual property without compensation.

Under the groundbreaking law, passed last month, all tobacco products sold in Australia must be in plain packaging from December 1, 2012.

Cigarettes will be sold in drab, olive-brown packets with large, graphic health warnings showing diseased body parts and sick babies, while brand imagery and promotional text will be banned.

The government says that tobacco use costs the country more than Aus\$30 billion (US\$29 billion) a year in healthcare and lost productivity.

But the proposal to remove all logos and to print company names in a uniform font has angered tobacco firms, who say it will cut profits and result in fake products flooding the market because plain packaging is easier to reproduce.

Last week Hong Kong-based Philip Morris Asia launched a bid to suspend the law and said it wanted substantial compensation for the loss of trademarks and investments in Australia under a bilateral investment treaty with Hong Kong.

PMA expects damages to amount to billions of dollars and that the legal process will take two to three years, while its Australian affiliate Philip Morris Limited also intends to pursue action in the High Court.

BAT spokesperson Scott McIntyre said Canberra had left it no option.

"Obviously we'd rather not be in a situation where we're forced to take the government to court, but unfortunately for taxpayers the government has taken us down the legal path," he said.

"Health Minister (Nicola) Roxon will now waste millions of taxpayers' dollars on legal fees defending plain packaging even though she has said herself there is no proof it will reduce smoking rates."

BAT argues that the legislation would result in a black-market boom, leading to taxpayers missing out on billions of dollars in excise duties, while organised crime gangs would make a fortune.

"Worse still, cheaper, more accessible illegal tobacco will actually increase smoking rates, which is the opposite effect to what the minister is hoping to achieve," said McIntyre.

But Roxon vowed that Australia would not cave in to the pressure.

"(Cigarette firms) have fought governments tooth and nail around the world for decades to stop tobacco control," she said in a statement.

"Let there be no mistake, big tobacco is fighting against the government for one very simple reason -- because it knows, as we do, that plain packaging will work."

Although Australia would be the first country to mandate plain packaging, New Zealand, Canada and Britain have considered a similar approach and are watching developments.

Anti-smoking group Quit called BAT's move "desperate".

"What we are seeing is a tobacco industry completely on the ropes," said Quit executive director Fiona Sharkie.

"It is pulling out any dirty trick or tactic in an attempt to undermine this important legislation which will prevent countless Australians from becoming addicted to their deadly products in the future."

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