

# Tobacco Packaging: Smoke Signals From India

Plain tobacco packaging legislation has been implemented in countries including Australia and the United Kingdom, and while India has made moves to follow suit, there is as yet no sign of any such laws. Naomi Jeffreys reports ahead of a special session at the Annual Meeting.

On Wednesday, May 24, INTA will tackle plain packaging in India in its session **RW20 Regional Update: Limits on Trademark Rights in India—Focus on Plain Packaging and Surrogate Advertisement.**

The speakers include Chander Lall (Senior Advocate, India), and Hemant Singh (Inttl Advocare, India).

In 2012, a Bill was submitted to India's Parliament which sought an amendment to The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. The aim was to reduce the consumption of tobacco and highlight the negative effects of tobacco on the country's health.

However, as of this year, no more legislative changes have been aimed at introducing plain packaging in the country.

## Plain Packaging Overseas

Since December 1, 2012, Australia has sold tobacco products in plain

packaging. The measures include health warnings covering 75 percent of the front of most tobacco products and 90 percent of the back, according to the country's Department of Health.

There are also stronger penalties for tobacco smuggling offenses.

Mr. Singh says that a study last year in Australia "revealed that the decrease in the consumption of tobacco between 2012 and 2015 had been merely 0.55 percent. That, to my mind, favors not plain packaging but statutory warnings."

"We also need to look at the other factors which are compromised with plain packaging and they need to be factored in before it can be adopted," he says.

"We can't learn much from Australia yet—the reports don't offer any positive or negative figures to suggest it has helped a reduction of smoking.

"I'm not sure there are sufficient statistics for anyone to learn from. It is still early days to see the long-term benefits or any impact at all."

## India and Plain Packaging

In India, a lot has been happening on the legislative front, says Mr. Singh, with the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 initially prescribing that 40 percent of the principal display area of cigarette packets should bear specific health warnings.

That was increased to 85 percent in April last year through a Health Ministry notification.

He adds that many non-governmental organizations in India have been trying to persuade the government to legislate for plain packaging.

However, according to Mr. Lall, "nothing has really happened" despite the proposed legislation.

## The INTA Session

INTA's session will focus on the limits on trademark rights imposed by lawmakers who have introduced plain packaging for tobacco products, and how the tobacco industry has mastered the art of surrogate advertisements and product placement in films and cinema.

It will also seek to explore the middle path that rights owners and lawmakers have to walk so that trademarks owners' rights to market their products are not defeated by public health measures, but public health is not compromised.

"In India we have many restrictions in terms of the manner of branding and freedom in cigarettes. If there is plain packaging then any scope for branding is gone," says Mr. Singh.



istock / licentia amphidada



Chander Lall

“

There will be several brands that become completely redundant; in effect it means the property and worth of the brand will lose value as it becomes unusable.

”

"If you adopt plain packaging we are also compromising the ability of the brand to distinguish itself from others."

Mr. Lall adds that plain packaging goes against the "very concept of trademark law" and will mean that rights owners can't "brand how they wish to."

"Branding is about source identification and such source identification compels brand owners to maintain quality. It is unclear why this category of producers (cigarette manufacturers) and consumers (smokers) should be deprived of this important function."

## Trademark Owners and Plain Packaging

Trademarks are the most valuable form of IP, argues Mr. Singh, and it takes time to build a valuable brand, which "needs to be protected against imitations." Brand owners invest a lot of money into protecting their rights, he adds.



Hemant Singh

“

We can't learn much from Australia yet—the reports don't offer any positive or negative figures to suggest it has helped a reduction of smoking.

”

"When you put a plain packaging regulation in place, a brand owner is restricted on how it can use the brand," he adds.

Mr. Lall agrees. "There will be several brands that become completely redundant; in effect it means the property and worth of the brand will lose value as it becomes unusable.

"It could lead to a substantial loss and have an impact in countries where these brand owners reside. There is a strong argument to suggest that plain packaging for tobacco is a bad idea as there is no evidence to suggest that it actually reduces and discourages smoking," he concludes. ●

## INTA's Position

**INTA Board Resolution of May 2, 2015:** "Restrictions on Trademark Use through Plain and Standardized Product Packaging"

1) Plain and highly standardized packaging measures being considered or imposed by governments should be rejected or repealed since they violate various international treaties and national laws on trademark protection including provisions of the Paris Convention (e.g., Articles 6quiquies, 7 and 10bis), the Technical Barriers to Trade Agreement (e.g., Article 2.2), and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) (e.g. Articles 2, 8.1, 15.4, 17, 20 and 26), in particular Article 20 which states that "the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements such as ... 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;" and

2) Governments should use less drastic alternatives to address health and safety goals, such as public educational campaigns which do not violate international and national law and expropriate valuable trademark rights. ●

The RW20 session will be held in Hall 8.0, A2, on Wednesday 24 May, from 11:45 am to 1:00 pm