From: Eamon Delaney <eamondelaney2@gmail.com>
Sent: Tuesday, 6 March 2018 9:49 PM
To: MOH Tobacco Control (MOH) <Tobacco_Control@moh.gov.sg>
Subject: Re: Response to Ministry of Health's Public Consultation on potential adoption of Standardised Packaging

To : Ministry of Health

College of Medicine Building

16 College Road

Singapore 169854

Attn.: Director, Epidemiology and Disease Control Division

Re: Response to the Ministry of Health's Public Consultation on the potential adoption of Standardised Packaging

I write in my capacity as Executive Director of The Hibernia Forum, an Ireland-based independent advocacy group dedicated to the principles of a free market, individual liberty and responsible and prudent Government. Specifically, the Hibernia Forum calls for a restraint and accountability in Government spending, reasonable and fair taxation, as well as support for small business and entrepreneurs.

The Hibernia Forum seeks to enhance the competitive atmosphere in which both smaller and larger employers and job creators can operate.

In mid-2016, the Hibernia Forum were signatories to the International Coalition Letter Against Plain Packaging, which was sent to the then-Director General of the World Health Organisation Dr Margaret Chan on behalf of 47 think tanks, advocacy groups and organisations in response to proposed plain (standardised) packaging measures, and by the announcements by several countries of their interest in these policies.

This letter articulated our opposition to plain packaging for a number of reasons, ranging from its undermining of important Intellectual Property (IP) rights to its ineffectiveness as a tobacco control measure. We remain opposed to plain packaging, and believe that the arguments *against* its introduction have only strengthened in the time since the International Coalition Letter Against Plain Packaging was sent.

Below are a number of points that we hope the Singapore Ministry of Health will take under consideration as part of this consultation:

1. **Plain Packaging Erodes Intellectual Property Rights**

Plain packaging prohibits the use of trademarks and therefore significantly erodes the value of this intellectual property – a dangerous precedent to set for commerce in general. Denying a manufacturer the right to use its trademark to identify its product strikes at the very core principles of corporate identity and freedom.

Trademarks, brands, and logos are a critical way to provide brand information to consumers which is an assurance that they are purchasing a legitimate, quality product. When this

brand information is silenced through policies such as plain packaging, it has dangerous effects for consumers.

By not allowing companies to use their trademarks, plain packaging forces consumers to make uninformed decisions and in many cases puts them in danger by forcing them to enter the illicit "black" market in search of goods.

2. **Plain Packaging Has Not Worked In The Countries Where It Has Been Introduced**

Plain packaging was first introduced in Australia in late-2012. Over five years later, it is now clear that it has been a failure on multiple levels. Perhaps most importantly, official data published by the Australian Institute of Health and Welfare revealed that the introduction of plain packaging coincided with a halt in the long-term decline in smoking rates:

> "*While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 year period (2013 to 2016)".*[i]

In spite of the failure of plain packaging in Australia, the French government also introduced the measure. Tobacco products have been in plain packaging in France since January 2017, and speaking in the parliament almost one year later, French Health Minister Agnes Buzyn clearly acknowledged the measure has failed:

> "*We know that [plain packaging] doesn't lead smokers to stop smoking… Unfortunately… official cigarette sales have increased in France: plain packaging therefore did not contribute to reducing official tobacco sales".*[ii]

3. **Plain Packaging Exacerbates The Tobacco Black Market**

Analysis by KPMG has revealed that the level of illegal tobacco in Australia has grown considerably since plain packaging was introduced in late 2012. This reached 13.9% of total consumption, equating to AU$1.61 billion in lost excise for the Australian government in 2016.[iii] In addition, the Australian Border Force has seized considerable volumes of illegal cigarettes, many of which contain "metal shavings and even bird droppings".[iv]

In The United Kingdom meanwhile, counterfeit 'plain' packs have been discovered, demonstrating that criminals are taking advantage of the new rules, which have made it more straightforward to copy packs:

> "*Following a tip-off, Retail Express was sold a plain pack counterfeit of a premium brand by a London newsagent for £10.50. The retailer took a legitimate pack out of the gantry and swapped it out with a fake pack, while processing the card transaction".*[v]

4. **Plain Packaging Sets A Dangerous Precedent For Other Products**

There has been an international trend toward plain packaging for different items such as alcohol, sugary foods, drinks, and even baby formula and toys, in some cases encouraged by the WHO:

> "*We are also watched by sugar and alcohol products manufacturers, who see the tobacco control movement as a precursor to threats they now face from public health campaigns. These industries fear a united international community acting on behalf*

of consumers. In the coming days, I hope their fears will be fully justified as we take further steps to end the tobacco epidemic".[vi]

Countries renowned for their robust defence of property rights drive economic growth and stability. Weakening intellectual property rights is not only detrimental to the economy, but it can also place the public's health and safety at risk. In order for countries to remain economically successful, it needs to robustly protect and enforce these rights, rather than weaken them with measures like plain packaging.

Many reputable intellectual property and business organisations – including the International Trademark Association (INTA), the International Chamber of Commerce (ICC) and MARQUES[vii] – continue to raise concerns over plain packaging and to oppose the measure.

Conclusion

Taking the above points into account, we urge the Singapore Government to focus on strengthening the protection of intellectual property rights instead of infringing on them by pursuing ineffective and detrimental trademark infringement policies such as "plain packaging".

Furthermore, we strongly encourage the Singapore Government to review the available and emerging evidence on the impact of plain packaging in Australia, France, the United Kingdom and Ireland (to be fully implemented from September 2018) before proceeding further with any plans to implement such a damaging policy in Singapore.

Thank you for taking the time to consider this consultation submission.

Eamon Delaney

Executive Director

The Hibernia Forum

http://www.hiberniaforum.ie/

Ireland

i National Drug Strategy Household Survey (NDSHS) at: https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/summary.

ii See: http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp.

iii See KPMG 2016 Full-Year Report "Illicit Tobacco in Australia", March 2017, page 6. Available at: https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illict-tobacco-Report-2016.pdf.

iv See: http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470 and: http://www.dailytelegraph.com.au/news/nsw/illicit-tobacco-imports-ripping-off-aussie-taxpayers-of-at-least-640-million/news-story/e8c1ff8ad04a466c94f4cba17c38e273.

v See: https://www.betterretailing.com/first-fake-plain-packs-discovered.

vi See: http://www.who.int/fctc/secretariat/head/statements/2016/cop7-head-secretariat-speech/en/.

vii See: https://www.inta.org/Advocacy/Pages/RestrictionsonTrademarkUsethroughPlainandStandardizedProductPackaging.aspx. See joint statement from APRAM, BMM, ICC-BASCAP, ECTA, MARQUES, UNION DES FABRICANTS and UNION-IP on plain packaging: http://www.marques.org/positionpapers/default.asp. See also, "the ICC Discussion Paper on Labelling and Packaging Measures Impacting on Brand Assets", February 2017, available at: http://www.iccwbo.be/wp-content/uploads/2017/03/20170302-ICC-paper_LabellingPackaging-measures.pdf, and "The ICC Intellectual Property Roadmap - Current and emerging issues for business and policymakers", 2017, at: https://iccwbo.org/publication/icc-intellectual-property-roadmap-current-emerging-issues-business-policymakers/.