La Directrice générale

Ministry of Health
College of Medicine Building
16 College Road
Singapore 169854
Attn.: Director, Epidemiology and Disease Control Division

By email: Tobacco_Control@moh.gov.sg

Paris, March 12th 2018

Re: Response to the Health Singapore "Consultation on 'Plain and Standardized Packaging' for Tobacco Products"

The Union des Fabricants (Unifab) represents companies from all economic sectors, and provides them with an Association umbrella for promoting intellectual property (IP) and fighting counterfeiting.

Today, Unifab includes more than 200 French and international companies and professional federations; it serves as unique guardian of IP rights (IPRs) of its members, and a platform for discussions on this topic. We closely monitor all sets of legislation which in one way or another affects IPRs.

We are writing to express Unifab's support for high standards of IP protection and the respect of international trade rules that are indispensable to the economic growth and sustainable development of our country.

We refer to the release by the Ministry of Health (MoH) on February 5th 2018 of its "Public Consultation on Standardized Packaging and Enlarged Graphic Health Warnings for Tobacco Products" which announces that the department is seeking the public's views on several proposed measures to standardize the appearance, shape and size of packages of tobacco products (also known as "plain packaging") in Singapore.

While Unifab has no direct or indirect link with the tobacco industry and believes that appropriate and proportionate regulation of tobacco products is both necessary and right in order to protect public health, we write to share our views and concerns with respect to plain packaging and the unintended negative consequences that would inevitably result from the implementation of such a regulation.

I. A violation of IPRs:

Trademark protection is essential in identifying and distinguishing products and its protection is a fundamental tenet of French law as well as several international agreements, including those of WTO.

While governments certainly have the authority to regulate in order to protect the public health, their proposed measures have to be consistent with international legal obligations. They should be proportionate, evidence-based and effective in achieving a specific public policy objective. In our view, plain packaging measures do not meet such requirements.

Indeed, plain packaging would constitute a major infringement of IPRs as it would prevent companies from a specific sector to use their trademark right.

It is besides, important to underline that many legal texts enounce the importance of IP. Notably the Universal Declaration of Human Rights (1948), in article 27, provides that "*everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*"

II. More counterfeits:

Plain packaging opens up opportunities for illegal trade, since counterfeiters will be able to reproduce packs with minimum effort, based on a uniform design mandated by government. Indeed, sophisticated printing technologies with the use of colors and 'stylized elements' increases the complexity in producing counterfeit packs. In a plain packaging environment, counterfeit operational agents, for example customs, may have to resort to more resource-intensive and time-consuming tools to assess the authenticity of a product and to detect fake packs.

For example, following the introduction of plain packaging in Australia, the share of illegal trade of total tobacco consumption has grown from 11.5% to 14.3%, and the number of tobacco detections nearly doubled between 2011/12 and 2012/13. In the EU, significant quantities of counterfeit tobacco products available at lower cost than the genuine products, have been detected by law enforcement agencies.

It is notable, that counterfeit cigarettes are mostly produced and marketed through criminal networks with violent and intimidating methods, and the link between the growth of illegal tobacco trade and the funding of organized crime and terrorism has been acknowledged by many government and crime agencies.

III. A threat to economy:

Plain packaging is a threat to national economies with negative effects on competition, market dynamics, retail trade and investments. It leads to down trading and potential commoditization of tobacco products, hurts investment and employment setting a negative precedent for other products and industries. As such, it represents a serious attempt to the freedom of entrepreneurship.

IV. A risk of contagion:

It is important to underline the risk of contagion that this measure could imply for other products.

Plain packaging adds up to a legal framework already heavily restrictive in terms of communication and advertisement for tobacco products, and brings down the last available space of producers to distinguish their products or use their trademarks.

We duly thank you for the attention given to our letter and remain at your disposal should you need any further information from us.

Sincerely Yours,

Delphine SARFATI – SOBREIRA
General Director UNION DES FABRICANTS