

PRESS RELEASE – 23 April 2012

OBJECTION TO THE ADOPTION OF RESTRICTIVE LEGISLATION OR POLICY OPTIONS FREQUENTLY REFERRED TO AS “GENERIC” OR “PLAIN PACKAGING”.

The signatories of this statement are dedicated to the protection and development of intellectual property rights in general and trade marks in particular. Based upon the expertise and experience of their members – including professional representatives and other practitioners, in-house counsel, IP owners representing all industry lines, IP judges and law professors – they take an active, ongoing interest in legislative projects and regularly submit their comments and proposals, both on the EU and Member State level.

The signatories are all united by the principle of advancing the cause of IP laws to ensure that IP rights - and particularly, though not exclusively, trade marks and trade dress - are well protected against any abuse and misappropriation. At the same time they appreciate that the interests of right holders need to be reconciled with the public interest in a balanced and well-functioning IP system, in order to protect the consumers from deception and confusion. IP rights are a cornerstone of the European economic system and the Internal Market. They provide significant value to their owners and wider wholesale and retail circles. They are likewise essential to safeguard the public faith and the interests of consumers.

Specifically trade marks and trade dress are relied upon by consumers as signposts of genuine goods and services. This is true for both word marks and figurative marks (graphical devices), and for signs resulting from the combination of the two, as well as so called “non-traditional” trade marks such as packaging shapes and colours *per se*. Trade marks also indicate the source of goods and services to assure consumers on the quality of the products that they purchase or that they would consider purchasing. This fundamental function cannot be fulfilled if trade marks are not noticeable, or unavailable, to consumers when selecting a product. The inability to recognize a brand or trade mark on a product would lead to consumer confusion, and therefore diminish the goodwill acquired in that brand through considerable investment and effort over a significant period of time. In fact the inability to call for or recognize a brand also takes away a consumer’s freedom of choice.

The IP business and professional communities have very strong concerns that any legislation that precluded – whether fully or in part – brand owners from the ability of making legitimate use of their trade marks, would amount to an indirect legislative expropriation of private intellectual property and, as a consequence, lead to the extinction of their property rights. Any such legislation would adversely affect the markets, with harmful impacts on the economy as a whole as would be derived from escalating counterfeiting and piracy throughout the EU and worldwide. Where there is a need to achieve important public objectives, any developing legislation and/or policy options should not deviate from maintaining an appropriate balance with legitimate intellectual property and other proprietary rights.

Consequently, the signatories of this letter object to the adoption of restrictive legislation or policy options, frequently referred to as “generic” or “plain packaging”.

23 April 2012

APRAM, BMM, ECTA, GRUR, MARQUES, UNION



association des praticiens du droit des marques et des modèles

