

Ref: Ireland Department of Health solicitation of views on the European Commission's revised Tobacco Products Directive

Business Action to Stop Counterfeiting and Piracy (BASCAP), an initiative of the International Chamber of Commerce (ICC), appreciates the opportunity to respond to the Ireland Department of Health's solicitation of views on the European Commission's revised Tobacco Products Directive.

BASCAP unites the global business community across all product sectors to address issues associated with intellectual property theft and to petition for greater commitments by local, national and international officials in the enforcement and protection of intellectual property rights.

BASCAP supports the protection of public health as an underlying principle. As such, our views pertain to extenuating impacts on intellectual property rights and counterfeiting, and not the health-related aspects of this issue. Furthermore, we preface our views with the acknowledgement that BASCAP membership comprises, inter alia, companies engaged in the manufacture and sale of tobacco products. Nonetheless, these views are registered on behalf of the cross-sector representation of BASCAP member companies equally concerned about the wider implications plain or standardised packaging of tobacco products, such as those contained in the EU Tobacco Products Directive have across industries.

BASCAP is concerned that measures included within the newly introduced EU Tobacco Products Directive will result in a backwash of unintended negative consequences, undermining intellectual property (IP) rights and increasing the problem of counterfeiting throughout the EU.

The ability of brand owners to market their product in unique and easily identifiable ways is fundamental to the protection of IP rights in developed societies. Removing one industry's ability to use its IP rights opens the door to extend this violation to other industries and other brand owners in the EU and elsewhere.

More immediately, the measures compromise the EU's ability to prevent other countries from introducing similar measures for other products, impacting EU business in food, beverage and spirits sectors, for example.

BASCAP asserts that provisions contained within the Tobacco Products Directive will have a damaging effect on intellectual property rights throughout the EU. Specifically, the imposition of wide-ranging restrictions on the use of trademarks, including the drastic minimization of package space available to the brand and other trademark characteristics:

- Compromises and undermines the EU's long-standing IP rights policies and the laws and enforcement regimes established to protect them.
- Increases the prevalence of counterfeit goods in the market and reduces brand owners' ability to take action against such activity, besides undermining the ability of consumers to make informed purchasing decisions. Trademarks serve these important functions in the market for all branded goods.
- Increases rather than decreases burdens on already overstretched public agencies working to enforce intellectual property protections in the face of escalating counterfeiting and piracy throughout the EU and worldwide.

The European Commission has sent a worrying signal to the business community about its commitment to respecting and protecting property rights. It is extraordinary that in the wake of rejecting the Anti-

Counterfeiting Trade Agreement (ACTA), the Commission is embarking on policies that will further weaken the IP rights of the business community, and could jeopardize its reputation as an international champion of intellectual property rights.

These measures should be a concern to all businesses that depend on the protection of intellectual property rights and the business community remains wary of the introduction of similar measures for other products in the future.

We are hopeful that the European Parliament and Member States, including Ireland, can be relied on in the next few months to review the work of the Commission in a more balanced and considered way which will yield a version of the proposed Tobacco Product Directive that respects intellectual property rights and recognizes the value of trademarks in the fight against counterfeiting and other illicit trade.

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