



International Chamber of Commerce  
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An ICC initiative  
**BASCAP**  
Business Action to Stop  
Counterfeiting and Piracy

**Ref: New Zealand Department of Health 23 July 2012 public consultation on proposal to introduce plain packaging of tobacco products**

Business Action to Stop Counterfeiting and Piracy (BASCAP), an initiative of the International Chamber of Commerce (ICC), appreciates the opportunity to respond to the New Zealand Department of Health 23 July 2012 public consultation on proposal to introduce plain packaging of tobacco products.

BASCAP supports the protection of public health as an underlying principle. As such, the views presented herein do not address the health-related aspects of the issue and pertain primarily to extenuating negative impacts of plain packaging on intellectual property rights, counterfeiting and spillover to other industries. We preface our views with the acknowledgement that BASCAP membership comprises, inter alia, companies engaged in the manufacture and sale of tobacco products.

The views registered here are on behalf of the cross-sector representation of BASCAP member companies equally concerned about the wider implications plain packaging of tobacco products have across industries. 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.

IP rights are "a cornerstone of economic activity", providing significant value to their owners and the wider economy and necessitating the need for them effectively to be protected at both the domestic and international levels. Adopting the plain packaging policy would undermine companies' ability to develop products and services that will bring financial rewards for their work, which is in direct conflict with positions taken by New Zealand's Intellectual Property Office on the value of IP and the importance of its effective protection.

BASCAP is concerned that plain packaging would increase the prevalence of counterfeit goods in the market and reduce brand owners' ability to take action against such activity, besides undermining the ability of consumers to make informed purchasing decisions. Trade marks serve these important functions in the market for all branded goods. Plain packaging is likely to increase rather than decrease burdens on already overstretched public agencies working to enforce intellectual property protections in the face of escalating counterfeiting and piracy throughout the world.

BASCAP urges the New Zealand government to consider carefully its future actions with respect to plain packaging within the wider context of IP protection policies, laws and enforcement regimes and impacts on business and government's ability to effectively fight against the problems of counterfeiting and piracy. Specifically, public authorities should avoid implementing policies that would weaken the object and purpose of current initiatives undertaken to fight against counterfeit and illicit products or that would otherwise directly or indirectly undermine the protection or enforcement of IPR in their territory.

In view of the questions posed, BASCAP's specific responses to the Consultation questions posed are provided in Appendix A, below.

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## Appendix A: BASCAP response to select questions

### 1. Overall, do you support or oppose the proposal to introduce plain packaging of tobacco products in New Zealand, as outlined in this consultation document?

BASCAP opposes the proposal to introduce plain packaging of tobacco products. BASCAP believes that New Zealand should not impose any additional conditions on tobacco packaging because the suggested plain packaging framework would expropriate trade mark owners' valuable property and ignore, in particular, the following:

- Companies have obtained legal trade mark rights to words and non-word marks under New Zealand's trade mark law,<sup>1</sup>
- The trade mark law focuses on the ability of a trade mark to distinguish the goods or services of one person from those of another,<sup>2</sup>
- Property rights are inherent in any trade mark law. The registration of a trade mark, including non-word marks, confers personal property rights in the registered mark upon the owner,<sup>3</sup> and
- Owners of non-word marks would be prohibited from using such marks on their products and, to the extent there are non-word elements of a mark used in conjunction with word marks, the non-word elements would be prohibited.

### 3. Do you agree that plain packaging of tobacco products would help to discourage young people from taking up smoking?

Whether plain packaging would discourage young people from smoking is subject to debate. Notably, the UK Department of Health warned that plain packaging may actually encourage children to take up smoking as an act of rebellion in the face increasing efforts to denormalize tobacco consumption.<sup>4</sup>

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<sup>1</sup> See, e.g., Philip Morris Brands, S.A.R.L. IP No. 93736. British American Tobacco (Brands) Ltd. IP No. 96784.  
<http://www.iponz.govt.nz/cms/trade-marks/how-to-check-for-existing>.

<sup>2</sup> Trade Marks Act 2002 (Public Act 2002, No. 49), Section 5(1).  
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM164240.html>;  
<http://www.legislation.co.nz/act/public/2002/0049/latest/DLM164240.html?search=ts+act+trade+marks+act+resel&sr=1>.

<sup>3</sup> Trade Mark Act 2002 (Public Act 2002, No. 49), Section 9.  
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM164240.html>;  
<http://www.legislation.co.nz/act/public/2002/0049/latest/DLM164240.html?search=ts+act+trade+marks+act+resel&sr=1>.

<sup>4</sup> UK Department of Health, Consultation on the Future of Tobacco Control, 3.77, p. 41, 31 May 2008 (the "2008 Consultation Document"), available at  
[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_085651.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_085651.pdf).

## Appendix A: BASCAP response to select questions

5a. If adopted, do you think plain packaging of tobacco products might have any unintended or undesirable consequences, such as: unacceptable implications for consumers (eg, limitations on consumer choice)?

Plain packaging's impact on consumers will be to pose even greater threats to them. Plain packaging will

- make it more difficult for consumers (and law enforcement agencies) to distinguish genuine from counterfeit products,
- make it more difficult to avoid the increased health damage caused by counterfeit tobacco,<sup>5</sup>
- reduce the consumer's ability to detect illicit product,
- expose consumers to greater risks,<sup>6</sup> and
- reduce future cost burdens for illicit traders as it will not be necessary to keep up with the manufacturer's evolving pack developments.<sup>7</sup>

Governments have encouraged enterprises to register their marks, emphasizing that trade marks are indicative of product/service reputation, reliability and, therefore, provide consumers with confidence in branded goods and services. New Zealand's Intellectual Property Office explains the benefit and purpose of trade marks by writing that

The main purpose is to create a distinctive and preferably memorable brand that customers associate with quality products or services. Satisfied customers will be more likely to buy the same brand again and refer the brand to others.<sup>8</sup>

As customers learn to value and trust a trade mark, they may be willing to pay more for a product or service bearing that mark. This enables a business owning a quality trade mark to stand out in the market place and gain a competitive edge over its competitors.<sup>9</sup>

On the one hand, the New Zealand Government proclaims that there are consumer protection functions of trade marks while at the same time seeking to enact and pursue plain packaging legislative changes that eliminate the consumer protection functions it promotes. The visibility of trade marks assist consumers in making choices in the market. Plain packaging suppresses the freedom of communication between manufacturers and consumers thereby increasing the likelihood of consumer confusion and exposing consumers to greater risks. Plain packaging severely limits the ability of consumers to exercise choice and it removes an important tool for consumer recourse and accountability for poor product performance, quality and other concerns. Plain packaging would decrease differentiation between genuine and fake products resulting in the consumers' inability to perceive differences between products in the market.<sup>10</sup>

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<sup>5</sup> Bill Francis, "Dying for a Smoke: Secret Ingredients in knock-off cigs," Daily Star (UK) (July 24, 2011). The author notes that counterfeit cigarettes can contain high levels of cadmium, lead, as well as arsenic.

<sup>6</sup> "Plain Packaging and Illicit Trade in the U.K.," Transcrime—Joint Research Centre on Transnational Crime, pp. 20, (May 2012). [http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain\\_packaging\\_and\\_illicit\\_trade\\_in\\_the\\_UK.pdf](http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf).

<sup>7</sup> The Impact of Plain Packaging on the illicit trade in tobacco products, Pr P.Chaudhry and A.Zimmerman, June 29, 2012

<sup>8</sup> New Zealand Intellectual property Office, <http://www.iponz.govt.nz/cms/trade-marks/what-is-a-trade-mark>.

<sup>9</sup> New Zealand Intellectual property Office, <http://www.iponz.govt.nz/cms/trade-marks/what-is-a-trade-mark>.

<sup>10</sup> "Plain Packaging and Illicit Trade in the U.K.," Transcrime—Joint Research Centre on Transnational Crime, p. 2 (May 2012). [http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain\\_packaging\\_and\\_illicit\\_trade\\_in\\_the\\_UK.pdf](http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf).

## Appendix A: BASCAP response to select questions

**5b. If adopted, do you think plain packaging of tobacco products might have any unintended or undesirable consequences, such as: legal implications (eg, implications for freedom of expression under the Bill of Rights Act)?**

BASCAP underscores two significant legal implications arising from the imposition of a plain packaging policy. First, owners of New Zealand registered trade marks will have the use of some marks encumbered and the use of non-word marks wholly prohibited and expropriated. The expropriation of property will result, most likely, in the initiation of domestic legal actions.

Second, the plain packaging policy and the effects of encumbering the use of trade marks and expropriation of trade marks could be the bases for a complaint against New Zealand for violation of its international obligations under the World Trade Organization's (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).<sup>11</sup> International opposition to Australia's plain packaging law has resulted in several WTO Members challenging the law and, now, the establishment of a dispute settlement panel to consider Australia's legislation.<sup>12</sup>

Domestically, the owner of a registered trade mark has a personal property right in the mark under the Trade Marks Act.<sup>13</sup> Any limitation, restriction or, as is in this case, the complete ban on the use of the trade mark owners' property is likely to have domestic legal implications. The trade mark owners in the affected industry own registered trade marks that include non-word elements. These non-word elements of the registered marks that may be colours, designs and other elements would be prohibited by any plain/standardised packaging regulatory framework. Thus, the prohibitions on use of the trade mark owners' property amounts to the Government's expropriation of private property.

As outlined above, the adoption and implementation of plain packaging would likely implicate New Zealand's international obligations for the protection of intellectual property. As a member of the WTO, New Zealand is obligated to recognize the provisions of TRIPS.<sup>14</sup>

TRIPS Article 20 provides that "[t]he use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, 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". In this regard, the proposals for plain packaging would severely limit, and in some cases prohibit outright, the use of trade marks in which substantive investments have been made, violating the provisions of TRIPS Article 20.

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<sup>11</sup> World Trade Organization, DS 434. [http://www.wto.int/english/tratop\\_e/dispu\\_e/cases\\_e/ds434\\_e.htm](http://www.wto.int/english/tratop_e/dispu_e/cases_e/ds434_e.htm). This dispute arises from Ukraine's challenge to Australia's plain packaging legislation. Although Australia has rejected the formation of a panel, Ukraine will be able to renew its WTO request for a panel later this year. Furthermore, Australia's law is challenged by other WTO members.

<sup>12</sup> Ukraine's initial filing of a complaint has now progressed to the creation of a dispute settlement panel (DS 434), [http://www.wto.int/english/tratop\\_e/dispu\\_e/cases\\_e/ds434\\_e.htm](http://www.wto.int/english/tratop_e/dispu_e/cases_e/ds434_e.htm). In addition to Ukraine, Honduras and the Dominican Republic have filed complaints, DS 435 and DS 441, respectively.

<sup>13</sup> Trade Mark Act 2002 (Public Act 2002, No. 49), Section 9. <http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM164240.html>; [http://www.legislation.co.nz/act/public/2002/0049/latest/DLM164240.html?search=ts\\_act\\_trade+marks+act\\_resel&sr=1](http://www.legislation.co.nz/act/public/2002/0049/latest/DLM164240.html?search=ts_act_trade+marks+act_resel&sr=1).

<sup>14</sup> Agreement Establishing the World Trade Organization, Annex 1C, Agreement on Trade Related Aspects of Intellectual Property Rights, [http://www.wto.int/english/docs\\_e/legal\\_e/04-wto.doc](http://www.wto.int/english/docs_e/legal_e/04-wto.doc).

## Appendix A: BASCAP response to select questions

TRIPS provides for a minimum level of trade mark protection, but also incorporates trade mark obligations found in the Paris Convention.<sup>15</sup> TRIPS Article 15(4) and Article 7 of the Paris Convention provide that the nature of the goods to which a trade mark is to be applied shall in no case form an obstacle to the registration of the trade mark. However, the plain packaging proposal effectively prevents the registration of tobacco products, based purely on the nature of the product.<sup>16</sup> New Zealand's proposal would not preclude the use by other products and services of terms or other designs and elements that are banned for tobacco products, thereby resulting in discriminatory treatment contrary to the explicit provisions in TRIPS and the Paris Convention.

### 5c. If adopted, do you think plain packaging of tobacco products might have any unintended or undesirable consequences, such as: adverse implications for competition or trade?

BASCAP believes that plain packaging eliminates the use of trade marks, which in turn restrains trade, interferes with legitimate economic growth and has detrimental impacts on trade and competition. Limiting and restricting certain forms of trade marks from their use and the complete prohibition on the use of other forms of trade marks, i.e., non-word marks, undermines New Zealand's aims to encourage trade, growth and jobs. Trade marks and product trade dress together indicate the source of goods and/or services and assure accountability and contribute to consumer protections.

Plain packaging and standardizing the appearance and fonts eliminate the underlying purpose of trade marks and other intellectual property such as trade dress to the point that there would likely be no competition in this product sector.

The packaging industry anticipates that plain packaging will harm its industry because it will decrease competition, innovation and motivation among packaging companies to patent new processes, methods or machinery that could be created. Currently, the ability for manufacturers to innovate and change pack designs creates a barrier to entry for counterfeiters.<sup>17</sup> Instead, plain packaging is likely to provide counterfeiters with the ability to offer illegal alternative packaged products with minimal manufacturing steps and easier to duplicate packaging. The legitimate packaging industry will have little to no incentive to invest in new packaging innovations that they could patent or protect with other forms of intellectual property. This decreases competition to improve packaging and would increase the threat of trade in illicit goods to the detriment of legitimate trade.

### 6a. Are you concerned that a plain-packaging regime might lead to an increase in illicit tobacco trade and related 'black market' or criminal activity? If so, can you provide any evidence to support your concern? For example.

The black market represents between 7% and 10% of the global economy. Cigarette smuggling, in particular, is one of the major sources of income for criminal organizations and could represent up to US\$ 50 billion dollars of revenue.<sup>18</sup>

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<sup>15</sup> Paris Convention for the Protection of Industrial Property, September 28, 1979 (The TRIPS text at Article 2.1 incorporates by reference the Paris Convention, Stockholm 1967.).

<sup>16</sup> In several jurisdictions, actual use of the trademark is required and inability to use may well lead to denial or revocation of the registration. The so-called "use it or lose it" principle.

<sup>17</sup> The Impact of Plain Packaging on the illicit trade in tobacco products, Pr P.Chaudhry and A. Zimmerman, June 29,2012.

<sup>18</sup> Global risks 2011,6<sup>th</sup> Edition, An initiative of the risk response network, World Economic Forum, January 2011

## Appendix A: BASCAP response to select questions

### 6b. What difference would plain packaging make to the incentives or opportunity for the supply of counterfeit or contraband (ie, smuggled or non-duty paid) cigarettes?

BASCAP believes that plain packaging will exacerbate the problem of illicit trade in tobacco products. Plain packaging will likely make it easier for counterfeiters because of the decreased level of package differentiation, while at the same time making it more difficult for enforcement agencies to detect counterfeits.<sup>19</sup> Currently, counterfeiters must replicate the various trade marks, designs and packaging of multiple companies and brands, expending their resources to make counterfeit versions of many different product lines and features. Despite their own need to make a variety of packages, counterfeiters' profits make their "investment" worthwhile to engage in this activity. If plain packaging is implemented, it will be easier for counterfeiters to produce a variety of products, simplifying their task and further incentivizing them to participate in the illicit trade.

Furthermore, plain packs are simply easier to copy because it is the branding on the packs that the counterfeiters find most difficult to copy.<sup>20</sup> Removing the branding will make counterfeiting easier, less expensive, and will reduce barriers to entry for counterfeiters and provide them with an opportunity to maximize their profits even more. The history of the counterfeit trade is informative in this respect. Enforcement actions and seizures underscore the point that counterfeiters have concluded that the potential profits are worth the effort to produce the numerous package designs and apply the various trade marks of the more popular brands.

The profits made by illicit traders are difficult to quantify concretely. But, there have been efforts. The Sunday Telegraph (Australia) reported that information contained in Australian Customs documents reflect a significant enforcement challenge related to organized crime's attempts to smuggle tobacco products (legal and counterfeit) into Australia, amounting to 924 tons of tobacco and 322 million cigarettes during a four-year period.<sup>21</sup> The Telegraph reported that Australian Customs points to organized crime behind the efforts to smuggle the products into Australia because of the potential for vast profits. The Australian Customs documents indicated that a 6 meter-long shipping container typically held more than nine million cigarettes and that smugglers can sell 10 million cigarettes for about \$3-\$4 million dollars-- a 4900% profit.

Another example is a report of the U.S. Government Accountability Office (GAO). The GAO reported that the opportunity to earn illegal profits in the cigarette industry is significant given the growing trend of counterfeit cigarettes and internet cigarette sales.

Industry estimates that counterfeiters may realize over half a million dollars (\$550,000) in profit for every 40-foot shipping container.<sup>22</sup> The estimate of \$550,000 profit for a container of counterfeits compares favorably with another estimate that a "load" could provide profits of €475,000.<sup>23</sup>

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<sup>19</sup> Plain Packaging and Illicit Trade in the UK, Transcrime—Joint Research Centre on Transnational Crime (May 2012), [http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain\\_packaging\\_and\\_illicit\\_trade\\_in\\_the\\_UK.pdf](http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf).

<sup>20</sup> Blaschke, A., President European Carton Makers Association, Plain packaging for cigarettes will ease counterfeiting, 10 May 2012, available at <http://www.europeanvoice.com/article/imported/plain-packagingforcigarettes-will-ease-counterfeiting/74307.aspx>.

<sup>21</sup> Renee Viellaris, "Tobacco Gangs Cash In," Sunday Telegraph (Sydney Australia), Local Section (September 30, 2012), <http://www.news.com.au/national/tobacco-gangs-cash-in/story-fndo4bst-1226483988035>.

<sup>22</sup> Robert Duncan, British American Tobacco, "The Cost of Counterfeiting," Slide 31 (March 2012).

<sup>23</sup> An estimate by Danish Customs is that a "load" could generate profits as high as €475,000. Irina Caunic and Gabriela Prelipcean "The Market for Counterfeit Goods and Financing of the Extremist Organizations in Europe in the Last Decade",

## Appendix A: BASCAP response to select questions

Globally, trade in counterfeit tobacco products continues to be a major challenge for global enforcement authorities. The World Customs Organization's (WCO) 2010 Tobacco Report included reporting from 67 of its 177 member customs administrations that 3.2 billion illicit cigarettes (sticks) were seized.<sup>24</sup>

Based upon the global trade in counterfeit cigarettes as evidenced by seizures, counterfeiters have concluded, apparently, that the massive profits justify the risks of being caught or losing an occasional shipment. The willingness to take these risks is occurring in an environment that requires them to invest in producing many different packages to replicate genuine brands. Plain packaging creates risks of increased counterfeiting because it will be easier to reproduce genuine looking packaging and reduce production costs of counterfeits.<sup>25</sup>

Based on all the enforcement actions taken to intercept counterfeit tobacco products, it has become evident that:

- counterfeiters have the skills necessary to make counterfeits nearly indistinguishable from genuine products at a lower price,
- Standard size, color and other packaging elements eases and facilitates production of counterfeit versions of any brand because startup of a counterfeit operation will only require "decent" reproduction of plain packaging, which will be easier than duplicating traditional branded packs,
- Eliminating the need to reproduce the many different branded packs, the decreased need for skills and duplication of packs (brands) will make counterfeiting more accessible and less costly than under current conditions, including new entrants into the counterfeiting business, and
- plain packaging makes counterfeiting easier and more profitable.<sup>26</sup>

### 6c. Do you have any views as to the role the tobacco supply industry itself should play in preventing illicit tobacco trade?

Plain packaging will clearly make it more difficult for enforcement agencies to detect counterfeits. There have been recommendations advocating the application and use of anti-counterfeiting technology devices to help prevent counterfeiting of plain packaging packs. It should be noted that a large number of such anti-counterfeiting technologies are already employed by the tobacco industry. Despite these efforts, the counterfeiters still manage to produce billions of counterfeit cigarettes a year, often successfully mimicking anti-counterfeit technologies by copying micro-printing or mimicking printing technologies. Thus, arguing that the ability to apply anti-counterfeit technologies to plain packs will prevent counterfeiting ignores the simple truth that counterfeiters can already circumvent these measures. Moreover, the addition of anti-counterfeit measures will not prevent other forms of illicit trade, such as illicit whites and loose tobacco. The smuggling of cigarettes

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2011 2nd International Conference on Humanities, Historical and Social Sciences, IPEDR vol.17 (2011).  
<http://www.ipedr.com/vol17/65-CHHSS%202011-H10119.pdf>.

<sup>24</sup> World Customs Organization, Customs and Tobacco Report 2010,  
[http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Enforcement/WCO\\_Customs\\_Tobacco\\_2010\\_public\\_e\\_n.pdf](http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Enforcement/WCO_Customs_Tobacco_2010_public_e_n.pdf).

<sup>25</sup> "Plain Packaging and Illicit Trade in the U.K," Transcrime—Joint Research Centre on Transnational Crime, p. 2 (May 2012).  
[http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain\\_packaging\\_and\\_illicit\\_trade\\_in\\_the\\_UK.pdf](http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf).

<sup>26</sup> "Plain Packaging and Illicit Trade in the U.K," Transcrime—Joint Research Centre on Transnational Crime, pp. 19, 20 (May 2012). [http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain\\_packaging\\_and\\_illicit\\_trade\\_in\\_the\\_UK.pdf](http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf).

## Appendix A: BASCAP response to select questions

into a country avoiding required excise payments or the illegal manufacture of cigarettes within a country will continue regardless of whether anti-counterfeit measures are added to packs or not.

### 7. Do you have any comments to make on any aspect of the Regulatory Impact Statement that forms part of this consultation?

BASCAP is concerned that provisions of the World Health Organization's (WHO) Framework Convention on Tobacco Controls (FCTC) and its implementing Guidelines are the basis for New Zealand's proposed adoption of plain packaging. The non-binding Guidelines for implementing Article 11 that refers to plain packaging states:

Parties *should consider* adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). (Emphasis added.)

BASCAP believes that the Government of New Zealand confuses its obligations and requirements under the FCTC and the Guidelines.

The Punta del Este Declaration recalls various relevant obligations under the WTO Agreements and declares that "*parties may adopt measures* to protect public health, including regulating the exercise of intellectual property rights in accordance with national public health policies, *provided that such measures are consistent with the TRIPS Agreement*."<sup>27</sup>

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<sup>27</sup> Punta del Este Declaration on the Implementation of the WHO Framework Convention on Tobacco Control, Conference of the Parties to the WHO Framework Convention on Tobacco Control, Fourth session, Punta del Este, Uruguay (Nov. 19, 2010). Recital 4 states: "The Parties to the WHO Framework Convention on Tobacco Control declare: (4) That in the light of the provisions contained in Articles 7 and 8 of the TRIPS Agreement and in

the Doha Declaration, *Parties may adopt measures* to protect public health, including regulating the exercise of intellectual property rights in accordance with national public health policies, *provided that such measures are consistent with the TRIPS Agreement*." [http://apps.who.int/gb/fctc/PDF/cop4/FCTC\\_COP4\(5\)-en.pdf](http://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4(5)-en.pdf).