Standardized Packaging of Tobacco Products

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Outline

- The Power of Branding and Antisocial Trademarks
- Standardized Packaging and WHO FCTC Guidelines
- S.A Control of Tobacco Products and Electronic Delivery Systems Bill
- Standardized Packaging Around the World
- The EVIDENCE and Litigation

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Package Design – 'The communication Life-blood of a firm'

Significantly influence product demand

Consumer choices

Attracts custom

So firms invest a lot of time and money in building brands and the law recognises and protects this effort.

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Package Design – 'The communication Life-blood of a firm'

Apple, Nike, Coke are not alone

dunhill, marlboro, pall mall, kent, peter stuyvesant and countless other brands each are linked to distinctive values and personalities.

Vital in recruiting youth smokers and maintaining smokers.

P. AITKEN, D. S. LEATHAR, A. L. SCOTT, S. I. SQUAIR, CIGARETTE BRAND PREFERENCES OF TEENAGERS AND ADULTS, HEALTH PROMOTION INTERNATIONAL, VOLUME 2, ISSUE 3, 1987, PAGES 219–226, HTTPS://DOI.ORG/10.1093/HEAPRO/2.3.219

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Standardized Packaging

Destroy the persuasive effect

Disrupt the attraction

Dress it down

Destroy positive imagery and perceptions

Reveal tobacco for what it truly is

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Standardized Packaging – WHO FCTC – Art 11

Members should ensure that tobacco product packaging and labelling do not promote a tobacco product by any means that is false, misleading or likely to create an erroneous impression about its characteristics or health effects

Including any trademark, figurative or sign that creates false impressions that a particular product is less harmful than other tobacco products.

Clear, large, visible textual and pictorial warnings must be used.

Warnings Should be 50% or more but not less than 30% of the principal display areas.

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WHO FCTC Guidelines to Implementing Art 11

"be in the form of or include pictures or pictograms."

Pictorials should be in full colour to disrupt effects of brand imagery and decrease the pack's overall attractiveness.

Paragraph 46 encourages members to adopt standardized packaging:

- Restricting or prohibiting use of **logos, colours, brand images** other than brand names in a standard colour and font

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Standardized Packaging – Proximal and Distal outcomes

Reduce Appeal;

Warnings more visible;

Reduce ability of packaging to create misperceptions about harm

Change smoking attitudes

Reduce smoking prevalence

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Australia: Tobacco Plain Packaging Act of 2011(TPP Act)

- No decorative ridges, embellishments or irregular shapes or textures must be found on both the outer and inner surfaces.
- All glues or adhesives used must be colourless.
- All containers must be of rigid cardboard, 'only cardboard'.
- All outer surfaces must be rectangular in shape and all surfaces must meet at 'firm 90 degrees angle'.
- A matt finish, in a drab dark brown colour or any other colour prescribed.
- The brand name not allowed on the tobacco product.
- Wrappers must be colourless, unmarked, unembellished and must not contain any text.
- No part of the package, inner or outer surface, wrapper or lining must produce a noise, contain or produce a scent that could be taken as tobacco promotion or advertising.

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S.A - Control of Tobacco Products and Electronic Delivery Systems Bill

- The packaging will have a uniform plain color and texture, size and shape.
- Prohibits branding, promotional elements or logos (on, inside or attached) for both the packaging and individual tobacco products.
- The Minister of health will prescribe the markings allowed on and the appearance of individual tobacco products, including the use of branding, trademarks or logos.
- Features that resemble that of food or cosmetics are also not allowed on the tobacco products.
- Provides for pictorial health warnings.
- Tobacco packaging will contain a message relating to the harmful health, social, economic or other effects related to the products; or the beneficial effects of not consuming the product.

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Standardized packaging in Other countries

Country	H/W F&B	GHW	IMPLEMENTATION DATE
ETHIOPIA	30% - 30% current	70% - 70%	2020, Feb 5
NEW ZEALAND	75% - 100%	75%-100%	2018, March
AUSTRALIA	75%- 95%	75%- 95%	2012, Dec
CANADA	**75%-75%**	**75%-75%**	**2020, Feb 7**
FRANCE	65%-65%	65%-65%	2016 May 21

HTTPS://WWW.TOBACCOCONTROLLAWS.ORG

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Graphic Warnings with no standardized packaging

Uruguay require 80% of front and back to have text and picture warnings. It does not allow brand variants but does not require plain packaging. Moving from 50% on the Left.

Kenya, 2014 similar Regulations Upheld this week by Nairobi CourtOf Appeal.

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DOES IT WORK?

- **Experimental studies**
- **Evidence linking advertising, branding to consumption and demand**
- **Post Implementation**
- **TI Internal documents**

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The Evidence – Experimental S.A

The South African study on the reactions to pictorial warning labels on tobacco packaging on students concluded that people are more responsive to pictorial warnings than they are to word warnings. Also beneficial for populations with low literacy problems.

T N Moyo Reactions to pictorial warning labels on tobacco packs among university students in Tshwane, South Africa (Unpublished Masters in Public Health thesis, University of Pretoria, 2014).

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The Evidence – Post Implementation

2019 UK STUDY shows that smokers are more likely to notice, read the health warnings closely, think about the risks of smoking and think of quitting.

Crawford Moodie, Leonie S Brose, Hyun S Lee, Emily Power & Linda Bauld (2019) How did smokers respond to standardised cigarette packaging with new, larger health warnings in the United Kingdom during the transition period? A cross-sectional online survey, Addiction Research & Theory, DOI: 10.1080/16066359.2019.1579803

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The Evidence – Post Implementation

Reduced appeal of tobacco:

Research suggest that plain packaging is severely restricting the ability of the pack to communicate and create appeal with adolescents and young people.

V. White, T. Williams, A. Faulkner, and M. Wakefield. "Do larger graphic health warnings on standardised cigarette packs increase adolescents' cognitive processing of consumer health information and beliefs about smoking-related harms?" Tobacco Control, 2015; 24:ii50-ii57. Available from: http://tobaccocontrol.bmj.com/content/24/Suppl_2/ii50.full.

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The Evidence – Post Implementation

Increased Quit Attempts

S. Durkin, E. Brennan, K. Coomber, et al. “Short-term changes in quitting-related cognitions and behaviours after the implementation of plain packaging with larger health warnings: Findings from a national cohort study with Australian adult smokers.” Tobacco Control 2015;24:ii26–32.

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The Evidence – Post Implementation

A reduction of misperceptions that some cigarettes were less harmful than others

R. Maddox et al. “Plain packaging implementation: perceptions of risk and prestige of cigarette brands among Aboriginal and Torres Strait Islander people.” 29 December 29, 2015 DOI: 10.1111/1753-6405.12489.

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The Evidence – Post Implementation Review

Australia – Post Implementation review , 2016 - regulations have statistically, significantly reduced the appeal of cigarettes, with a downward trend in sales.

- It concludes that:

the measure is having a positive impact on reducing the appeal, the potential of packaging to mislead consumers, and enhance the effectiveness of GHW. Showing also positive changes in smoking behaviours.

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The Evidence – TI own words

The WTO in its report recognised the importance of TI documents. Used this to deny TI arguments that branding had no influence on smoking initiation.

- **The Panel concluded that TI was conscious of the power of branding**

"[the] evidence indicates to us that the tobacco industry and its marketing agencies consider that tobacco packaging (including word, design, shape, and other features) can communicate a wide range of imagery relating not only to the characteristics of the product but also projecting images about its consumer, such as modernity, a youthful image, Inner Substance & Outward Style, Inner Confidence & Outward Success, [o]utgoing/sociable, [m]ost popular, be associated with doing one's own thing to be adventurous, different, adult, or whatever else is individually valued, tough/rugged, trendy, [or] expensive looking."

See WTO Panel Report paras 7.732 – 7.737

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Litigation - Delay, Destroy, Dilute

The industry has vowed that plain packaging measures "must be fought with all the resources and energy corporate affairs can muster."

The measures are bad for their business, reducing the ability of brand and package design to lure customers and in turn reduce tobacco profits.

Overall, TI has lost the legal battles but it has Delayed implementation.

Belgium – BAT is challenging plain packaging in Belgium which was to enter into force for manufacturers on January 1, 2020.

A number of cases have also mushroomed with TI challenging the extension of Tobacco Regulation to E-Cigarettes. USA, Israel and Ban on e-cigarette challenged in Uganda.

Australia JT International SA v. Commonwealth of Australia (2012)

The High Court found it Constitutional; The Court ruled that there had been no "acquisition" because neither the Government nor any third party acquired any benefit as a result.

Very important for S.A because the Constitution provides for compensation when there is Expropriation. But similarly expropriation occurs when the state acquires

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UK – BAT v UK Department of Health

- Justice Green - the High Court of Justice dismissed the tobacco companies' claims, said the plain packaging restrictions were justified, did not violate the property rights, and were supported by the WHO FCTC.
- Important for SA, emphasises that property deprivations are allowed if they are justified.

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France - Japan Tobacco International and Others v. Ministry of Health (plain packaging laws) (2016)

- Dismissed – finding that to the extent there is any infringement of property rights, the infringement is justified by the public health objective.
- S.A Gvt has a DUTY to implement measures that protect public health.

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WTO 800 PAGED PANEL REPORT

- Dismissed complaints by Honduras, the Dominican Republic, Cuba and Indonesia, that Australia's measures breached the WTO agreements.
- Concluding that the measure is suitable to, and does in fact, contribute to Australia's objective of reducing the use of, and exposure to, tobacco products.
- That it is a justified restriction on the use of trademarks, and does not violate trademark protections under TRIPS
- Important as S.A has WTO Obligations

Panel Report, Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging requirements Applicable to Tobacco Products and Packaging, WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R.

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LITIGATION – LESSONS for S.A

The Constitutionality or Legality hinges on the EFFECTIVENESS of the measure to achieve its public health objectives

There is no right to trademark property under the S.A Constitution. Instead it is the right not to be ARBITRARILY DEPRIVED of trademark property.

As a FCTC signatory S.A has the obligation to implement the evidence-based FCFC provisions.

The WTO provides leeway in implementing public health policy; as long as the measure is **necessary** to achieve the purpose and is not **discriminatory**.

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THANK YOU!

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