

## • **WILL AUSTRALIAN TOBACCO IP GO UP IN SMOKE?**

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Proposed tobacco-related legislation in Australia has given rise to a claim for compensation that may illustrate perfectly the value of intellectual property.

The Australian proposals require the removal of all logos from cigarette packets, which would have to be a drab olive-green colour and be plastered with graphic health warnings. All wording including brand names would be in a plain font uniform to all brands.

Tobacco companies are concerned that the inability to use distinctive logos and other trademarks on packets would hinder brand recognition and significantly decrease the value of their Australian intellectual property. The Associated Press reports that Philip Morris Asia Limited, which owns the Australian affiliate Philip Morris Limited, has already filed a notice of claim, arguing the legislation violates a bilateral investment treaty between Australia and Hong Kong which protects companies' property, including intellectual property.

In a letter to Australian legislators last year <http://www.inta.org/Advocacy/Documents/February242010.pdf>,

the International Trademarks Association noted that Australian intellectual property legislation creates property rights in intellectual property and that the Australian constitution provides that acquisitions of property by the Australian government must be "on just terms". It was suggested therefore that since the legislation effectively constituted a deprivation of use of a trademark, it could be considered an acquisition and could hence give rise to a right to "just terms" and based on past case law this would constitute payment of the fair market value of the trade mark.

With one well-known Australian tobacco trademark valued at AUS\$40 billion, such claims could prove to be the ultimate demonstration of the value of protecting intellectual property rights.

**FOR MORE INFORMATION,  
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