

# IP Australia

Parliamentary Secretary  
For Meeting  
cc Minister

B10/636

## MEETING WITH MS ANNA STEFANATOS FROM PHILIP MORRIS LIMITED (PML)

**Purpose:** To provide you with background information prior to your meeting with PML.

### Meeting Arrangements

Date: 3 March 2010  
Time: 11.00am – 12.00pm  
Venue: 17A Yarra Street Geelong  
Parliamentary Secretary the Hon Richard Marles MP,  
Ms Karyn Murray (Adviser), Anna Stefanatos (Philip Morris Limited)

- IP Ans → to be  
consider of int'l agreement  
need to show  
public policy  
advantages.  
=> need to  
show that  
will actually  
reduce  
smoking

**Recent Dealings:** Ms Stefanatos met with you on 23 September 2009 to discuss issues regarding plain packaging (B09/4084 refers). Earlier, Mr James Arnold (Director Corporate Affairs, Philip Morris Limited) had met with Mr Ian Goss and Mr Leo O’Keeffe (IP Australia) on 17 September 2009.

**Key Issues:** As previously briefed, the National Preventative Health Taskforce (a health advisory body) has made a recommendation in its *National Preventative Health Strategy, Australia: the healthiest country by 2020* to introduce plain packaging of tobacco products. The Department of Health and Ageing has advised IP Australia that there have been no developments on the preparation of the whole-of-government response.

In addition, Senator Fielding has proposed in a private member’s Bill to prohibit the use of trademarks, logos and words other than permitting a brand name in a mandated size and font on cigarette products, and requiring cigarettes to be packaged in plain matt brown paper. The Senate has referred the Bill to the Community Affairs Legislation Committee for consideration and report by 17 March 2010. The Department of Health and Ageing has advised it will be making a submission to the inquiry.

In January, the US Chamber of Commerce sent IP Australia a copy of legal advice which PML had sought from a US-based law firm (Sidley Austin). The advice contains comments citing concerns that Senator Fielding’s Bill, if enacted, would be inconsistent with a number of international intellectual property and trade agreements. A copy is provided at **Attachment A**.

At the meeting, PML plans to discuss further expert opinion on plain packaging. It is not known if this further expert opinion is the legal advice provided to IP Australia. However, we expect the issues raised will reiterate concerns that:

- There is no evidence to support a link between plain packaging and the level of smoking.
- Brand owners will not be able to use their brands to distinguish their products and will have to use price differentiation which could result in tobacco products becoming cheaper.
- The illicit trade in tobacco products would increase.
- Acceptance would be contrary to international agreements such as Trade Related Aspects of Intellectual property (TRIPS) and the Paris Convention, for example, it would

be the imposition of a special requirement on the use of a trademark in the course of trade.

- These plain packaging restrictions are unfair or amount to expropriation of US investments in Australia, and compensation claims may be due under the Australia-US Free Trade Agreement.

The key issue in relation to plain packaging is whether such measures serve the public interest. For example, any restrictions on the right to use a trade mark would limit its intended purpose in the economy and have implications for both traders and consumers. Plain packaging restrictions should only be introduced if there is a clear public interest to be served.

**Lobbyist Register:** NO. Anna Stefanatos is the Regulatory Affairs Manager of PML.

*Slipstream Version 1 March 2010*

Ian Goss (02 6283 2008) (0404 481 347)  
General Manager

Consultation: DoHA.

NOTED/PLEASE DISCUSS

Business Development & Strategy Group  
IP Australia

Output Info: IP Australia 1.3

1 March 2010

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Richard Marles / /