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O'Keeffe/OU=CBR/O=IPAustralia@IP_Australia;
Date: 21-09-2009 16:49:43
Subject: B09- 4084- Meeting with Philip Morris[SEC=UNCLASSIFIED]

Please find attached an Engagement Brief B09-4084 titled "Meeting with Philip Morris".

This brief has been approved by Ian Goss, General Manager, Business Development and Strategy Group, IP Australia.

The Action Officer is Leo O'Keeffe and his contact number is 6283 7929.

Kostas Arvanitis

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Attachments

B09-4084 - Meeting with Philip Morris.doc

IP Australia

Parliamentary Secretary
For Meeting
cc Minister

B09/4084

MEETING WITH ANNA STEFANATOS FROM PHILIP MORRIS LIMITED

Purpose: To provide you with background information for your meeting with Philip Morris Limited (PML)

Meeting Arrangements

Date: 23 September 2009
Time: 10:30 am - 11:30 am
Venue: 17A Yarra St, Geelong
Present: Parliamentary Secretary Richard Marles, Karyn Murray (Adviser), Anna Stefanatos (Philip Morris Limited)

Recent Dealings: Mr James Arnold (Director Corporate Affairs, Philip Morris Limited) met with Ian Goss and Leo O'Keeffe (IP Australia) on 17 September 2009.

Key Issues: The National Preventative Health Taskforce has recommended the introduction of plain packaging of tobacco packages. This would prohibit brand imagery, colours, corporate logos and trade marks from these products.

PML is concerned 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 TRIPS and the Paris Convention.
- Plain packaging would be a form acquisition of property.

The Government is yet respond to the Taskforce's recommendations. Given the breath of the recommendations, a whole of government approach may be required.

IP Australia considers that plain packaging may not be consistent with Australia's intellectual property treaty obligations (**Attachment A**). Whether or not a requirement of plain packaging would actually constitute an acquisition of property is debateable. However, that may not prevent tobacco companies from seeking compensation. Requiring plain packaging would make it easier for counterfeit products to be produced and would make it difficult to readily identify these counterfeit goods. IP Australia is not able to give an opinion on the likely rise in the level of counterfeiting.

IP Australia is not able to advise on whether there is a link between plain packaging and the level of smoking.

Plain packaging was considered in the United Kingdom and was not implemented.

Lobbyist Register: NO. Anna Stefanatos is the Regulatory Affairs Manager of Philip Morris Limited.

Ian Goss (6283 2008)
(Mobile: 0404 481 347)
General Manager
Business Development & Strategy Group
IP Australia
17 September 2009
Contact: Leo O'Keefe (6283 7929)

Consultation: NIL

Output Info: IP Australia 1.3

NOTED/PLEASE DISCUSS

Richard Marles / /

Plain Packaging and International Treaties

The first part of Article 20 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) requires that:

“The 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.”

Requiring plain packaging would be regarded as encumbering the ability of an entity to distinguish its goods through its trade marks from those of other entities. IP Australia's understanding is that this Article was drafted with the intention of restricting mechanisms like plain packaging.

However, Article 8(1) of TRIPS allows for members to adopt measures necessary to protect public health. This Article could be seen as possibly allowing plain packaging as it could be regarded a necessary measure for protecting public health and therefore avoids the requirements of Article 20. But the final part of this Article stipulates that measures like this have to be consistent with the rest of the provisions of TRIPS. Therefore it seems unlikely that this Article could be used to avoid Article 20.

Other relevant articles are Article 7 of the *Paris Convention for the Protection of Industrial Property* (Paris Convention) and TRIPS Article 15(4). Article 7 states that:

“The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.”

Article 15(4) of TRIPS is the same but extends to services as well. These articles would appear to make it difficult to restrict the ability of trade applicants to register trade marks for products like tobacco.

Ministerial Coversheet

FOI 145 of 1660

Date Due in MLO:	22 Sep 09	Ministerial Item:	B09/4084
Action Division:	IP Aust	Current Division:	IP Aust
Action:	Engagement	Minister Office:	Marles
Subject:	Philip Morris Ltd, Anna Stefanatos, Meeting request - National Preventative Health Taskforce		

Ministerial Type:	Engagement Brief	Attachments:	Y (1)
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Start Date:	23 Sep 09 10:30:00	End Date:	23 Sep 09 11:30:00
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Venue:
17A Yarra St, Geelong

Present:

Media Release:	N
Speech:	N
Dept. Officer to Attend:	N
Adviser:	Murray, Karyn (Marles)
Talking Points:	N
Special Arrangements:	

Instructions:

Please provide IP Australia's view on Philip Morris' submission to the National Preventative Health Taskforce Consultation: Australia, the Healthiest Country by 2020. Does IP Australia agree with the views presented in this submission? If so, how, if not, why not.