

## Tobacco companies launch legal action against plain packaging

Melissa Sweet

Sydney

The giant tobacco company Philip Morris has launched legal action against Australia's plans to make plain packaging of cigarettes compulsory from next year and plans to seek compensation for its losses.

Philip Morris Asia says that the plain packaging legislation will breach Australia's bilateral investment treaty with Hong Kong, where the company is based, and argues that removing brands from packaging devalues the company's intellectual property.

Philip Morris is also using a similar legal strategy to try to block tobacco control measures in Uruguay, under the Switzerland-Uruguay bilateral investment treaty.

Anne Edwards, a spokeswoman for Philip Morris International, said that the company believed it had a "very strong legal case" against plain packaging and would seek compensation for losses. "The damages may amount to billions of dollars," Ms Edwards told *The Australian* newspaper.

Under the terms of the treaty the parties have a three month period of negotiation, and the matter will proceed to arbitration if there is no resolution.

Jurgen Kurtz, associate professor of law at the University of Melbourne, said that it was difficult to predict the outcome of the case, particularly as governments were not able to appeal arbitration decisions.

"On balance, however, the Australian government will have strong grounds to successfully defend the case brought against it by Philip Morris," Professor Kurtz wrote in a commentary at *The Conversation*, an independent news website for the university and research sector (<http://theconversation.edu.au/big-tobacco-v-australia-taking-the-battle-to-the-global-stage-2027>).

Philip Morris's claim is the latest attack in the tobacco companies' fight against plain packaging, which is widely seen as setting a precedent for the industry internationally. The

industry recently suffered a major setback when the Australian federal opposition decided to support the government's plans for plain packaging.

British American Tobacco Australia has also threatened legal action and has been running a high profile media campaign arguing that plain packaging will encourage tobacco smuggling and will not reduce sales ([www.plainpack.com/news/latest-campaign-in-the-national-press-1.aspx](http://www.plainpack.com/news/latest-campaign-in-the-national-press-1.aspx)).

Simon Chapman, professor of public health at the University of Sydney, said that the global tobacco industry saw plain packaging as "arguably the greatest single threat it has ever faced" and that the Philip Morris action raised questions about whether trade should over-ride public health concerns.

"At the end of the day, the issue comes down to whether a nation is able to protect its sovereign interests in protecting the health of its community," he told the *BMJ*.

Australia's health minister, Nicola Roxon, said that the government would not be "deterred or intimidated by tobacco companies making threats or taking legal action."

"We believe we're on very strong ground," she told journalists.

"This is a world first, so of course you would expect tobacco companies to want to fight what our government is doing. But I think the Australian public expects us to put the interests of the public and, particularly, the health interests of the public before the interests or profits of tobacco companies," said Ms Roxon.

The legislation will restrict or prohibit the use of tobacco industry logos, colours, brand imagery, and promotional text on tobacco product packaging other than brand names and product names in a standard colour, font style, and position.

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