

JOINT STATEMENT
25 JUNE 2014



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IP Associations' strong concerns with the Irish Government's decision to proceed with plain packaging legislation

The signatories of this Statement view with great concern the announcement by the Minister of Health for Ireland, on 10 June, that the Government has approved the publication and presentation to Parliament of the Public Health (Standardised Packaging of Tobacco) Bill 2014.

The signatories of this Statement, leading organisations whose aims include the safeguarding of the integrity of European Trade Mark and Design laws and the proper protection of trade marks and designs in the EU, have been following the developments on 'plain packaging' since the adoption of the Australian legislation, imposing plain packaging requirements for tobacco products, in 2012. At the EU level, the signatories of this Statement have continuously expressed their concerns about such laws, in particular in March 2014 (<http://www.ecta.org/IMG/pdf/20140410164825983.pdf>). It should be emphasised that during the revision process of the Tobacco Products Directive (adopted in March 2014) the EU Parliament and the Council, sent strong signals to the EU Commission and the EU Member States by rejecting the introduction of extreme measures against Intellectual Property Rights (IPRs) such as mandatory plain packaging. It is to be noted the Dutch Health Minister has recently stated to his own Parliament, when reflecting on the issue of plain packaging, that *"such a measure should be thoroughly evaluated first, particularly the effects on health and intellectual property rights."*

It cannot be stated often enough that registered trade marks, and the 'goodwill' created by their long use on products, are rights of property which are to be treated like any other property. As such they are protected not only under trade mark laws (in the EU based on the Harmonization Directive) but also under the Article 1 of the First Protocol of the ECHR and Article 17 of the Charter of Fundamental Rights of the EU. The provisions of the TRIPS Agreement are of particular relevance. Although TRIPS permits measures necessary for the protection of public health, such measures must comply with other provisions, including Article 20 of TRIPS, which prohibits unjustifiable encumbrances on trade marks by 'special requirements' which are detrimental to the capability of trade marks to distinguish the products of one undertaking from

those of another. Basically, plain packaging laws amount to an indirect legislative expropriation of these valuable property rights. Even where there is a need to achieve important public objectives such as health, any proposed legislation and/or policy options

should not deviate from maintaining an appropriate balance with legitimate intellectual property rights, obtained in respect of lawful products.

It is most unfortunate, and indeed undesirable, that the Irish Government should be proceeding with this legislation at a time when the effectiveness of the Australian plain packaging law is at least uncertain and indeed is being seriously called into question. According to some media reports, tobacco sales volumes have increased since its introduction, reversing the trend of decline of recent years, whilst the illicit tobacco trade has also increased significantly. Even more seriously, the Australian law is currently the subject of challenges by five countries before the WTO, on the ground that it contravenes provisions of TRIPS and the Technical Barriers to Trade Agreement. The Government of New Zealand, which also has been contemplating plain packaging, has decided at this stage that it will not proceed until at least the challenge before the WTO is resolved.

Finally, the signatories of this Statement wish to emphasise that these concerns do not only apply in respect of tobacco products. Already there have been suggestions that similar measures, as have been proposed for tobacco products, might be applied to alcoholic drinks and to other products that are considered unhealthy. To adopt any plain packaging requirements would be setting a precedent for other products.

It is understood that the announcement of 10 June is just one step in the legislative process. The Bill will have to pass through both houses of Parliament before it becomes law. On 17 June 2014, Ireland notified its draft legislation to the EU Commission and the WTO.

The signatories of this Statement call upon the Irish Government and Parliament not to proceed with the introduction of this legislation and upon the other EU Member States to express their concerns to the EU Commission and the Irish Government.



APRAM – Association of Trademarks and Designs rights Practitioners – is an international Association for French-speaking specialists in industrial and intellectual property, in particular Trademarks and designs. The association, which now has more than 950 members, was founded 35 years ago and is open to all French-speaking lawyers practicing, all over the world, in the field of Trademarks and designs. It gathers together in-house intellectual property specialists, Attorneys at law and Trade mark Attorneys.

The purpose of the association is notably to play an active role in, and be at the forefront of, further to consultation or on its own initiative, discussions concerning intellectual property and business law in France, Europe and the world.

As a prominent international intellectual property association, **APRAM** is notably member of the OHIM's users group and the OHMI's Observatory, and is observer at the World Intellectual Property Organization (WIPO). More information about **APRAM** and its initiatives is available at <http://www.apram.com>



The Benelux Trademark Association (**BMM** or *Beneluxvereniging voor Merken- en Modellenrecht* / *l'Association Benelux pour le droit des marques et modèles*) is the professional organization that defends the interests of all trademark professionals in the three Benelux countries. The association has more than 600 members, which are active as trademark agents, in-house counsels, attorneys and academics. The **BMM** promotes trademark law and other forms of intellectual property law and guarantees the professional quality of the services rendered by its members, by organizing conferences and giving training. The organization imposes an ethical code to its members. The organization keeps close contacts with the Benelux Office for Intellectual Property Law and with OHIM. More information is available on the website <http://www.BMM.eu>.



CZECH ASSOCIATION FOR BRANDED PRODUCTS – (ČSZV – České sdružení pro značkové výrobky) represents leading manufacturers, importers and distributors of fast moving consumer goods (FMCG) operating on the Czech market. The main objective of the Czech Association for Branded Products is to protect and support the common interests of branded products manufacturers in areas affecting their production, marketing, distribution, sale and IP rights in the Czech Republic.

For more information please see www.cszv.cz.

ECTA

European Communities Trade Mark Association

ECTA, the European Communities Trade Mark Association, was formed in 1980. ECTA numbers approximately 1,500 members, coming from all the Member States of the European Union and with associate members from all over the world. It brings together all those persons practicing professionally in the Member States of the European Community in the field of Trade Marks, designs and related IP matters. These professionals are lawyers, Trade Mark advisors, Trade Mark attorneys, in-house counsels and others who can be considered specialist practitioners in these areas.

www.ecta.eu



Counterfeiting and piracy have become a global epidemic, leading to a significant drain on businesses and the global economy, jeopardizing investments in creativity and innovation, undermining recognized brands and creating consumer health and safety risks. In response, ICC launched BASCAP to connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy; to amplify the voice and views of business to governments, public and media; and to increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm.

Visit BASCAP on the web at: www.iccwbo.org/bascap

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MARQUES is the European association representing brand owners' interests. The **MARQUES** mission is to be the trusted voice for brand owners.

Established in 1986 and later incorporated in the United Kingdom as a not-for-profit company limited by guarantee, **MARQUES** unites European and international brand owners across all product sectors to address issues associated with the use, protection and value of IP rights, as these are vital to innovation, growth and job creation, which ultimately enhance internal markets. Its membership crosses all industry lines and includes brand owners and IP professionals in more than 80 countries. The trademark owners represented in the Association together own more than two million trademarks which are relied upon by consumers as signposts of genuine goods and services.

MARQUES is an accredited organisation before the Office for Harmonisation in the Internal Market (OHIM), appointed observer at the OHIM Administrative Board and Budget Committee, an official non-governmental observer at the World Intellectual Property Organisation and a registered interest representative organisation (ID 97131823590-44) in the Transparency Register set up by the European Parliament and the European Commission, which extends and replaces the former Register of Interest Representatives, opened by the commission in 2008.

An important objective of **MARQUES** is to safeguard the public interest by ensuring the proper protection of trademarks and to preserve the interests of trademark proprietors with regard to the regime of trademark protection. **MARQUES** attempts to achieve these objectives by advancing the cause of trademark laws, which protect the public from deception and confusion. Intellectual property rights are a crucial aspect of the global economy and trademarks play a significant role in free trade and competition in the marketplace.

More information about **MARQUES** and its initiatives is available at www.marques.org.



Funded in 1872, l'Union des Fabricants is a French organization recognized of public utility. It includes more than two hundreds enterprises from all sectors of activity. Unifab promotes international protection of intellectual property fighting against counterfeiting. It carries lobbying, training and sensitization operations.



Foundation - In 1961, twenty two far-sighted Patent Attorneys from nine European countries founded the "union of European Patent Attorneys" with the intention of providing European colleagues with a forum for discussing and influencing forthcoming draft laws and international agreements, and also helping the profession in Europe to grow together. Although originally restricted to Patent Attorneys in the countries of the European Economic Community, union has meanwhile removed these limitations from its statutes today welcomes free and employed intellectual property practitioners from all (geographical) European countries, as expressed in the present name "union of European Practitioners in Intellectual Property". Still retained are the limitations to European membership and the concentration of activities on problems and developments which especially affect the professionals in Europe.

Aims – union, also referred to as UNION-IP, is an association of practitioners in the field of Intellectual Property, that is, of individuals whose principal professional occupation is concerned with Patents, Trademarks, Designs or Copyright and related subjects and who carry on their profession independently or as employees. UNION-IP is a private, free, international association that is not dependent on any national or international authority: it approves its own members, in accordance with its statutes, in total independence, and likewise decides on its own activities and its own budget. It aims on the one hand to work continuously on current developments in Intellectual Property in Europe, especially by making early submissions during the preparation of proposed laws and treaties with the intention of influencing them and on the other hand to devote itself to the improvement of professional and personal understanding between European practitioners in the Intellectual Property field in different countries and different branches of the profession.

For more information: <http://www.union-ip.org>