

Legal challenge to British proposed ban on cigarette packaging

Rex Features

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Cigarette manufacturer Philip Morris has said it could sue the British Government for up to £11 billion over plans to ban branding on cigarette packets because they say it would be an infringement on intellectual property rights, and undermine the value of their brand. VoR's Brendan Cole spoke to Fabio Angelini, a lawyer at Desimone Partners in Rome.

Similar cases are already underway in Australia, where the government was the first to enforce plain packaging, with companies taking legal action against the state via the World Trade Organisation.

In a move that will anger health campaigners, eight international trademark rights groups in Europe have joined forces to demand that governments abandon their plans.

The UK government has conducted a consultation with its Department of Health on potential legislation which would force cigarette makers to sell their products in plain packages with graphic health warnings and no branding.

The maker of Marlboro cigarettes said it "is prepared to protect its rights in the courts and to seek fair compensation for the value of its property," the company has told the UK government in response to its consultation.

The UK government said in April it wanted to implement plain packaging after a review found it could reduce the incidence of children taking up smoking. It published draft regulations in June, and launched a six-week consultation that ended last week.

Philip Morris submitted its response to the UK government after the consultation.

"'Standardised packaging' is a euphemism for government-mandated destruction of property," Philip Morris said in its submission. "It is unlawful, disproportionate, and at odds with the most basic requirements of the rule of law."

If it goes ahead, Britain would be the second country after Australia to ban cigarette branding.

Fabio Angelini, who is currently the law committee chairman at the European Communities Trade Mark Association, told VoR: "What [the government] is doing is depriving trademark owners of a number of trademarks that they legitimately own. Trademarks are colours. Trademarks are the design of the packaging. And the moment at which governments take away the possibility for trademark owners to distinguish their goods and services, they are taking property [from] legitimate owners and, therefore, damaging consumers and companies as well.

"We believe that the moment in which governments decide to take away something that does not belong to the government it is fair to say that there is an aspect of expropriation, which should be considered.

"The value? That's an entirely different issue. We're not concerned about the value. What we are concerned about is

that it is a slippery slope. If you begin to take away the rights of trademarks owners, they will not stop at anything. They will not stop at tobacco. They will end up with alcohol, even sodas and comfort foods. They can go anywhere.

“We see this as something impinging upon individual liberties.”

(VoR)