

Dispute Resolution Department

Government defies “Big Tobacco” in introducing plain packaging

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Government defies “Big Tobacco” in following through on its commitment to introduce plain packaging for tobacco products

New Requirements for Tobacco Packaging

The Irish Government has placed itself in the firing line for litigation from the tobacco industry by introducing legislation regulating tobacco packaging.

The basic aim of the legislation is to remove the last space for tobacco advertising, reducing the incidence of smoking and diminishing the industry’s power to recruit new smokers.

On 3 March 2015, The Public Health (Standardised Packaging of Tobacco) Bill 2014 passed through the final stage of the Oireachtas, making Ireland **the** first country in Europe and only the second in the world to introduce plain packaging laws for tobacco products.

On 9 March 2015, the President of Ireland, Michael D.Higgins, signed the legislation into law and it will take effect on a date to be decided by the Minister for Health.

On 11 March 2015, Britain's parliament approved legislation to ban branding on cigarette packs, with 367 MPs voting in favour of standardised packaging and 113 against it in a free vote. This means that from 2016 every packet will look the same except for the make and brand name, with graphic photos accompanying health warnings if the House of Lords also approves the move.

Legal Challenges

The intention of tobacco interests to robustly challenge any legislation were signalled by legal correspondence issued in February 2015 on behalf of JTI Ireland (owner of the Benson & Hedges and Silk Cut brands) whose Geneva-based parent, the Japan Tobacco Group threatened to sue the responsible ministers and the State if the Government did not immediately halt the progress of the plain packaging legislation in the Dáil.

On 30 March 2015, JTI Ireland became the first cigarette giant to launch a legal bid to halt the legislation when the company formally lodged papers in the High Court, naming the State, the Attorney General and the Minister for Health as defendants. The company is expected to argue that Ireland is operating outside of EU law by passing the legislation and that the State should have awaited the outcome of a British case before the European Court of Justice which bears directly on the right of an EU member state to introduce such measures.

Irish Government response

The responsible Minister James Reilly commented on 30 March 2015 that the State will defend the action “robustly in the firm belief it’s in the best interests of the health and welfare of the public, especially of children.”

Mr Reilly said the effect of the legislation could not be underestimated in Ireland or abroad. “We know the UK will have a free vote on this, hopefully before they rise for the next general election. We know that France wants to follow suit and a number of other EU countries are looking at implementing the same measures as us.”

Plain Packaging

Plain cigarette packaging refers to standardised packaging that requires the removal of all logos and trademarks and allows manufacturers to print only the brand name in a mandated size, font and place on the pack.

Under the new laws a cigarette packet shall — (a) in respect of the outer surface thereof, be of a prescribed colour with a matt finish; (b) in respect of the inner surface thereof, be of a prescribed colour; (c) not bear a mark or trade mark; (d) not have any decorative ridges, embossing or other embellishments on the outer surface thereof; (e) not contain an adhesive that is coloured or non-transparent; (f) not contain any inserted items or affixed items other than as provided for by law.

Retailers will be permitted to sell through non Plain Pack stock up until May 2017. The Government is prepared for a legal challenge from tobacco companies following the enactment of its plain-packaging Bill.

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