



**LICENSING EXECUTIVES SOCIETY
INTERNATIONAL**

Advancing The Business of Intellectual Property Globally

LES submission to the Public Consultation on the possible revision of the Tobacco Products Directive 2001/37/EC

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The EU Commission, DG SANCO, recently launched the Public Consultation on the revision of the Tobacco Products Directive 2001/37/EC which includes possible policy options for the future such as plain or generic packaging. LES International (LESI), through its European Committee, welcomes the opportunity to respond to DG SANCO on its consultation on the future of tobacco control.

LES International (LESI) is an association of 32 national and regional societies, each composed of men and women who have an interest in the transfer of technology, or licensing of intellectual property rights - from technical know how and patented inventions to software, copyright and trademarks. The LESI family is business-oriented for the most part, and its over 10,000 individual members include management representatives from companies both large, medium and small, scientists, engineers, academicians, governmental officials, lawyers, patent and trademark attorneys and consultants. The formal objectives of LES International, which were adopted more than 20 years ago, are as follows:

1. To function as a non-profit professional society encouraging high professional standards among individuals engaged in the transfer and licensing of technology and industrial or intellectual property rights.
2. To assist its members in improving their skills and techniques in licensing through self education, the conduct of special studies and research, the sponsorship of educational meetings, the publication of statistics, reports, articles and other material, and the exchange of ideas related to domestic and foreign licensing.
3. To inform the public, international bodies, governmental bodies, and the business community concerning the economic significance of licensing and the high professional standards of those engaged in the licensing profession.
4. To make available to its members the latest, most accurate, information on licensing

LESI is strictly non-political and is free to grow by the creation of member societies throughout the world irrespective of politics or the state of technology development.

LESI is very concerned as plain packaging requires a removal of brands, trademarks and logos from the product's packaging. LESI believes that plain packaging legislation which has the effect of depriving one industry sector of their trademark rights sets a dangerous legislative precedent for other industries. Thus such plain packaging legislation will directly impact the interests and rights of trade mark owners across the EU.

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A World Wide Organization of Licensing Executives Member Societies:

Andean Community. Arab Countries. Argentina. Australia and New Zealand. Austria. Benelux. Brazil. Britain and Ireland. Chile. China. Chinese Taipei. Czech Republic. France. Germany. Hungary. India. Israel. Italy. Japan. Korea. Malaysia. Mexico. Philippines. Poland. Russia. Scandinavia. Singapore. South Africa. Spain and Portugal. Switzerland. Turkey. USA and Canada.



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IP rights are a cornerstone of economic activity providing significant value to their owners and wider wholesale and retail economy and are vital to boost Europe's innovation and growth.

LESI submits the following comments:

While LESI supports measures to achieve public health objectives, the considered policy option would be inconsistent with the EU legal framework and International intellectual property treaties and obligations, particularly with respect to the protection of trademarks.

Trademarks and trade dress play an integral role in facilitating consumer choice by distinguishing products from one enterprise which consumers know and trust from those of another unknown origin. Consumers have a right of being fully informed about products that are lawfully sold in a market and of being able to identify without risk of confusion the quality associated to the product of their choice. Trademarks fulfil these essential functions and this inability to recognize a brand or trademark on a product will lead to consumer confusion, and therefore diminish the goodwill acquired in a trademark and their associated products through investment and effort over time.

In particular, the proposed restrictions are contrary to the harmonised EU and international systems of trade mark protection since the restrictions would be based on the nature of the goods and services for which trademarks are registered. Those international protection systems include Articles 15(4), 20 and 8(1) of the World Trade Organisation's agreement on Trade Related Aspects of Intellectual Property Matters ('TRIPS') and Articles 6 quinquies and 7 of the Paris Convention.

Article 20 of TRIPS, which the EU has accepted and joined as a member, stating 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...”*. **Article 15(4)** adds that *«The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.»* **And Article 8.1 - Principles** *“ Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.”*

Plain packaging is in breach of WTO members' international obligation to protect intellectual property rights. It also contradicts the constitutions and other internal legislation of the EU member states with respect to their international IP commitments.

Moreover, plain packaging of products amount to a legislative expropriation of private intellectual property. Indeed, brand owners would be legislatively precluded from using their trademarks which would, as a consequence, lead to the extinction of their property rights, i.e. expropriation. The application for registration of a trademark (and thus, the registration itself) is a substantive interest giving rise to rights of a proprietary nature. Therefore issues arise as to a just compensation for that expropriation of trademark owners, as they would in the case of legislated plain packaging.



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Moreover, LESI believes that plain packaging makes it far too easy for counterfeiters to operate.

As such, LESI opposes the plain packaging provision outlined in the Public Consultation Document based on the reasons set forth above and respectfully requests that the EU Commission consider alternative policy options that can achieve important public health initiatives without undermining the intellectual property rights of its members and international treaties.

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