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From: ACG [admin@a-cg.com]

Sent: Mon 7/8/2013 12:42 PM

To: ACG

Cc:

Subject: TOBACCO PRODUCTS DIRECTIVE - VOTE AGAINST EXTREME MEASURES ON 10 JULY!

Attachments:

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*The Anti-Counterfeiting Group - ACG - is a not for profit trade association founded in the UK in 1980. It campaigns against the trade in fakes on behalf of consumers and legitimate business interests, in partnership with government and law enforcement agencies, and other rights organisations. Our ultimate aim is to change society's perception of counterfeiting as a harmless activity, by exposing the worldwide economic and social cost of intellectual property crime. [www.a-cg.org](http://www.a-cg.org)*

We write to you on behalf of our members, who make practically every kind of product you can think of, and are under constant attack from the serious organised criminals who counterfeit their goods on a global scale.

The EU Commission's **Proposal for a revised Tobacco Products Directive** ('the TPD') potentially affects all our members, especially if the practice of trying to legislate against IP rights in order to address unrelated health issues continues to gather momentum. If it succeeds, other health-sensitive products, such as foodstuffs, will also become targets for such attempts - for example, alcoholic drinks are already in the frame for packaging changes in the UK.

We wish to make the following points ahead of the ENVI Committee's vote on 10 July. Given our remit, we are not in a position to engage in the debate about e-cigarettes and vaporisers, and will confine our comments to issues of immediate relevance to our members' interests.

Smoking is a threat to public health not because of too much branding, or insufficient health warnings, nor because the packaging is too attractive or certain types of cigarette could be regarded as undesirable (menthol or slims, for example, which the TPD seeks to ban).

It is an addiction which needs concerted investment (a) in education to discourage young people from take-up and (b) in providing proper support for existing smokers to quit. We fully support any initiative with these objectives.

But more regulation is not the answer, as evidenced by the limited effect of existing legislation on the smoking problem. Tobacco is already one of the most heavily regulated markets, but counterfeiting of tobacco products, and their consumption, has continued to rise and will be further fuelled by the TPD (18% of the fake goods seized by EU Customs in 2011 were cigarettes<sup>[1]</sup>).

The implications of an increase are serious, while there is no hard evidence to justify the impact on industry and the increased threats posed by the illicit tobacco trade.

As the EU's 2020 Strategy underlines<sup>[2]</sup>, the protection of IP rights is a cornerstone of the EU economy and a key driver for its further growth in areas such as research, innovation and employment. Effective IPR enforcement is also essential for health and safety, as counterfeit products can pose a serious threat to citizens.

## EVIDENCE

**There is no reliable and objective evidence:**

(a) to suggest that the risks, and effects on legitimate rights, can be balanced by an equivalent impact on smoking;

(B) to support the claim that packaging plays any part in the decision to start or continue to smoke.

But there is, for example, a significant body of independent and peer-reviewed research into what causes young people to start smoking. Peer pressure, parental influence, social and cultural norms, price and access are all identified as causal factors, but packaging and product shape are never cited (see for example the UK's NHS study *Smoking, Drinking and Drug Use Among Young People in England - 2010* <http://www.ic.nhs.uk/pubs/sdd10fullreport>).

§ health warnings have already achieved their aim - numerous court decisions have found that awareness of the health risks of smoking in the EU is universally high

§ studies supporting more regulation confuse the decision to smoke with the decision for smokers which brand to choose

In particular, we ask the Committee to recognise that **the TPD is based on unfounded and outdated notions of smoking behaviour** (that packaging influences take-up and prevalence) and that:

§ it is not based on any reliable evidence that its measures will reduce smoking

§ it will fail to achieve the goal of reducing smoking because it will not address the real issues behind the health problem

§ it will undermine the very health objectives it claims to be serving, leading to cheaper legitimate product and more illicit product becoming more available e.g. to the youth market

§ it will cause serious damage to free and fair competition and innovation, limit consumer choice and lead to down-trading

§ it is also constitutionally flawed and infringes fundamental rights

**RISKS**

**The illegal trade in tobacco products** is already an extremely serious problem in Europe, resulting in tax losses of around €10 billion annually, providing organised crime with huge profits, and accounting for over one in ten cigarettes smoked in the EU.

The TPD risks **further increasing this illicit trade** by:

§ banning packaging that counterfeiters currently find difficult to copy (such as bevel edge packs or slide packs)

§ banning whole categories of products that are currently used by millions of consumers

§ allowing Member States to introduce their own plain packaging legislation

§ creating a new demand for fake products in the 'original' packaging

These measures will provide new opportunities for criminals to satisfy consumer demand with smuggled and/or counterfeit product.

**THE CONSEQUENCES of increased illicit consumption** include:

§ reduced tax and VAT revenue from the lawful sale of tobacco products

§ increased health risks from fake cigarettes

§ insufficient resources to tackle the growth in illicit trade

§ making illicit tobacco products more widely available outside regulated channels, at prices far below that of legal product, and e.g. more accessible to minors

TO MEMBERS

**TRACK AND TRACE proposals will not address the problem**

There has been no cost-benefit analysis done on the traceability and security features of the TPD, which extends the scope of these requirements to the entire supply chain (except retail):

- § covert security features do not prevent counterfeiting of the pack and visible markings
- § implementation costs will be exorbitant
- § enforcement will be very difficult
- § the TPD's target is only the intra-EU illicit trade (one third of the problem)
- § the other two-thirds which are smuggled into the EU and sold through illicit channels will not be impacted
- § all track and trace provisions should be aligned with the EU's international law obligations and international protocols

In conclusion, we call on the ENVI Committee members **to vote against extreme measures** such as those introducing **plain packaging**, excessively large **health warning labels** on packaging, **banning** of **menthol** and **slim** cigarettes, and **arbitrary prohibition of trade marks and branding** as proposed in Article 12.

If adopted, these measures would:

- § undermine the legal protection for IP and other fundamental rights
- § interfere to an excessive extent with legitimate trade
- § increase the threat to public health from counterfeiting
- § further fund organised crime

Your vote will protect the safety of our citizens and the principles of free trade which are so important for EU industry, and our future growth.

Yours sincerely



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[1] [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm)

[2] [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm)