

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Innovation, Industry, Science and Research Portfolio
Additional Estimates Hearing 2010-11
23 February 2011

AGENCY/DEPARTMENT: IP AUSTRALIA

TOPIC: Plain packaging of tobacco products – FOI inquiry

REFERENCE: Written Question – Senator Birmingham

QUESTION No.: AI-41

In light of the government's pursuit to introduce plain packaging of tobacco products IP Australia released a series of documents under FOI that show the staff inside IP Australia are concerned about plain packaging and its legality. Can you advise on what dates IP Australia has been consulted by the Department of Health on the legality of plain packaging prior to the government's announcement in April last year?

The internal IP Australia documents also show that staff think DFAT negotiators on the World Trade Organisation's international intellectual property agreement, TRIPS, believe it was negotiated to stop policies like plain packaging, specifically Article 20 related to encumbering trademarks. Has IP Australia met with the DFAT to discuss the matter, if so when was that, and what was the resolution of that discussion?

ANSWER

The Department of Foreign Affairs and Trade is the agency responsible for providing advice on whether Australia is compliant with its legal obligations under international treaties and agreements.

There were emails, conversations and/or meetings between the Department of Health and Ageing and IP Australia on the issue of the legality of plain packaging on the following dates:

22 June 2009, 3 September 2009, 1 February 2010, 2 February 2010, 4 March 2010, 8 April 2010, 23 April 2010, 27 April 2010, and 28 April 2010.

There were also emails between the Department of Health and Ageing, the Department of Foreign Affairs and Trade and IP Australia on the issue of plain packaging on the following dates:

1 February 2010, 19 February 2010, 4 March 2010, and 11 March 2010.

The issues discussed in these communications included, but were not limited to, legal issues. Consideration of the legal issues resolved that the World Trade Organisation trade related aspects of Intellectual Property Agreement allows a country to restrict the use of trade marks where justifiable and reasonable. Also, although use of trade marks would be restricted, tobacco companies would not lose their title in registered marks nor would they lose the right to prevent others from using those marks.