

ASIAN PATENT ATTORNEYS ASSOCIATION

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ANTI-COUNTERFEITING COMMITTEE - PHILIPPINES

Special Topic: "Plain Packaging Regulations: Legal Issues and Concerns"

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1. "Whether plain packaging legislation may be a breach of the Philippines' WTO obligations or the Paris Convention?"

The Philippine Senate ratified the Agreement on Trade-Related Aspects of Intellectual Property ("TRIPS"), Including Trade In Counterfeit Goods of the General Agreement on Tariffs and Trade. Articles 1-14, 40-73 on 14 December 1994. The Instrument of Ratification was signed by then Philippine President Fidel V. Ramos on 16 December 1994. The Philippine Supreme Court upheld the constitutionality of the TRIPS in *Tanada v. Angara*, 272 SCRA 18, G.R. No. 118295, on 2 May 1997.

While, to date, no plain packaging bill has yet been formally introduced in the Philippine Congress, such proposed legislation should arguably be compliant with the Philippines' WTO obligations or the Paris Convention.

The relevant TRIPS provisions that a plain packaging bill should pass muster include Articles 2.1, 7, 8, 15.4 (Article 7 of the Paris Convention), 16.1, 17 and 20 of the TRIPS Agreement in respect of the potential issues posed by such legislative initiative. Any plain packaging legislation should therefore fall within the rubric of permissible regulation under both the TRIPS Agreement and the Paris Convention.

2. "Update on the plain packaging initiative in the Philippines"

The plain packaging initiatives in this jurisdiction are undertaken mainly by anti-smoking groups, such as the New Vois Association of the Philippines, that favored the introduction of plain cigarette packaging in the Philippines. Hence, as part of their campaign on the 2016 World No Tobacco Day, the New Vois Association of the Philippines urged President Rodrigo Duterte to endorse a legislation to the Philippine Congress to standardize cigarette packs. The Association is lobbying for the introduction of plain and standardized packaging of tobacco products to complement the Graphic Health Warning Law ("GWL") passed by the previous Administration. The ongoing initiative comes after the World Health Organization (WHO) issued a statement strongly urging state-members to consider adopting plain and standardized packaging of tobacco products. The WHO had earlier exhorted said

countries to continue with the push towards eliminating the threat of tobacco-related illnesses. “Plain packaging is an important demand reduction measure that reduces the attractiveness of tobacco products, restricts use of tobacco packaging as a form of tobacco advertising and promotion, limits misleading packaging and labeling, and increases the effectiveness of health warnings,” said the WHO in a separate statement.

“Plain packaging builds upon other measures as part of a comprehensive multi-sectoral approach to tobacco control. WHO is thus calling countries to get ready for plain and standardized packaging of tobacco products,” it added.

The Philippine Department of Health (DOH), however, appears not ready to implement plain cigarette packaging, and focuses its efforts on enforcing graphic health warnings on cigarette packs under the Graphic Health Warning Act of 2014 that took effect in March 2016.

3. "Whether plain packaging legislation facilitate counterfeiting activities?"

Any impact a plain packaging legislation may have on counterfeiting activities in the Philippines is speculative in nature given that, as earlier stated, no such bill has yet to be formally introduced in the Philippine Congress as of the date of this writing.

4. "Possible novel measures and solutions to combat the rise of such counterfeiting activities."

Far from being novel measures and solutions available to them, victims of trademark infringement and unfair competition may have to rely on the traditional reliefs and remedies provided by the applicable provisions of the Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as amended. These reliefs include the grant of damages and injunction (Section 156, Intellectual Property Code); disposition or destruction of counterfeit/pirated goods (Section 157, Intellectual Property Code); prohibition against importation/border control measures (Section 166, Intellectual Property Code); and unfair competition (Sections 168 and 169, Intellectual Property Code).