

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

85983

October 7, 2010

Australian Cabinet  
Level 25, 1-1 Eagle Street  
Brisbane, QLD 4000  
Australia

Dear

Correspondence Received	
<input checked="" type="checkbox"/> Substantive response	To be signed by: <input type="checkbox"/> DPM
<input type="checkbox"/> Constituent response	<input checked="" type="checkbox"/> Chief of Staff
<input type="checkbox"/> Acknowledgment	<input type="checkbox"/> Adviser
25 OCT 2010	
<input type="checkbox"/> Refer to policy area for appropriate action	<input type="checkbox"/> URGENT
<input type="checkbox"/> Refer to appropriate Minister	<input type="checkbox"/> No Further Action
<input type="checkbox"/> Refer to appropriate Tsy Minister	<input type="checkbox"/> Other .....

On behalf of the nearly 2,000 state legislators who are members of the American Legislative Exchange Council (ALEC), I am pleased to enclose an ALEC resolution respectfully urging you to uphold intellectual property rights (IPR) by opposing plain packaging initiatives being proposed and implemented in your nation. This resolution passed unanimously at the August 5, 2010 meeting of ALEC's International Relations Task Force and was subsequently approved by our Board of Directors.

The importance of IPR protection to international economic health cannot be overstated, and trademarks are fundamental to market competition, enabling a company to differentiate its brand from another and are often an organization's most valuable asset. Plain packaging laws amount to a government seizure of trademarks. While we recognize the good intent of plain packaging regulations, there is no meaningful evidence that plain packaging reduces tobacco use. However, there is research suggesting that plain packaging can result in an increase in tobacco use due to the proliferation of cheaper, counterfeit products. It is easier for counterfeiters to manufacture a plain packaged item.

Further, Australia is party to several multilateral and bilateral trade agreements and treaties that contain IPR provisions including the Paris Convention for the Protection of Industrial Property, WTO Technical Barriers to Trade Agreement and the WTO Trade-Related Aspects of Intellectual Property Agreement. Plain packaging legislation is inconsistent with these agreements. The violation of these treaties by developed nations sends a clear message to the developing world that these agreements are not binding international law but rather suggestions setting a dangerous precedent and encouraging further disregard of IPR.

IPR are essential to international competitiveness in an innovation economy. We urge you to protect IPR and oppose and repeal plain packaging legislation wherever it appears.

Very respectfully,

Representative  
National Chair, ALEC



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**Resolution Urging the Obama Administration to Protect Intellectual Property Rights and Oppose Plain Packaging Initiatives Proposed by Trading Partners Worldwide**

**WHEREAS**, protection and enforcement of intellectual property rights (IPR) are crucial to the future of the innovation-based economy; and

**WHEREAS**, the Obama Administration released the 2010 Joint Strategic Plan on Intellectual Property Enforcement in June highlighting the importance of IPR to the U.S. economy; and pledged to work with U.S. trading partners and within international organizations to better enforce American intellectual property rights in the global economy; and

**WHEREAS**, the Obama Administration pledged to initiate a comprehensive review of current efforts in support of U.S. businesses that have difficulty enforcing their intellectual property rights in overseas markets; and

**WHEREAS**, U.S. intellectual property is worth an estimated \$5.5 trillion, more than the GDP of any country, and IP-related industries account for more than half of all U.S. exports, helping to drive 40% of America's domestic growth; and

**WHEREAS**, intellectual property, including trademarks, are essential to a company's ability to compete and thrive in the global economy; and plain packaging legislation is, in effect, a government seizure of a corporation's most valuable asset, its brand, trademark and/or logo; and

**WHEREAS**, the American Legislative Exchange Council (ALEC) recognizes the importance to the market economy of protecting IPR, including trademarks; and

**WHEREAS**, plain packaging proposals mandate that consumer products be packaged in plain or brown matte paper, using standardized font, no color and without logos or any other identifying characteristics; and

**WHEREAS**, legislatures in a number of countries and regions including but not limited to Australia, Canada and the European Union (EU) are considering policies that would result in plain packaging mandates; and

**WHEREAS**, compliance with plain packaging regulations would wipe out the value of goodwill accrued by a company over many years through the development of its trademark and branding; and

**WHEREAS**, IPR protection provides predictability and certainty for consumers and producers; and

**WHEREAS**, IPR protection, including the protection of trademarks, is codified in the Paris Convention for the Protection of Industrial Property to which the United States and said countries that are considering plain packaging regulations are signatories; and

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**WHEREAS**, the United States along with all other members of the World Trade Organization (WTO), including the countries considering plain packaging legislation, are parties to the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement, which has codified the importance of protecting IPR, including trademarks; and

**WHEREAS**, the United States along with all other members of the WTO, including the countries considering plain-packaging legislation, are parties to the Technical Barriers to Trade (TBT) Agreement which requires that technical regulations, including packaging and labeling requirements, should avoid unnecessary obstacles to trade; and

**WHEREAS**, a number of countries currently considering plain packaging proposals have bilateral trade agreements with the United States which have provisions protecting IPR, including trademarks; and

**WHEREAS**, plain packaging and labeling requirements would appear to be inconsistent with the IPR provisions in TRIPS, the TBT and certain bilateral free trade agreements entered into by the United States and set a dangerous precedent that could further erode current international IPR protection and enforcement efforts; and

**WHEREAS**, the U.S. Chamber of Commerce and other U.S. organizations recognize that plain packaging is likely to increase the incidence of counterfeiting and will harm brands and industries by decreasing the amount of differentiation between products and introducing an element of risk into the market; and

**WHEREAS**, plain packaging will decrease consumer confidence in goods because of a lack of knowledge as to the origin and quality of the product; and

**NOW THEREFORE, BE IT RESOLVED** that ALEC call upon the Obama Administration's new IP Enforcement Coordinator, Victoria Espinel, to continue to uphold intellectual property rights by speaking out against calls for plain packaging legislation by our trading partners; and

**BE IT FURTHER RESOLVED**, that ALEC urge legislatures around the world to reject plain packaging legislation it is asked to consider; and

**BE IT FURTHER RESOLVED**, that ALEC will submit this resolution to Victoria Espinel, U.S. IP Enforcement Coordinator at the U.S. Office of Management and Budget, U.S. Trade Representative Ron Kirk, U.S. Department of Commerce, the Australian government, the British Parliament, the European Union's European Economic and Social Committee, the Director General Trade and the governments of countries that consider enacting plain packaging regulations in the future.



**Australian Government**

**The Treasury**

**Parliamentary Services Unit  
The Treasury  
Langton Crescent  
Canberra ACT 2600**

**29 OCT 2010**

**National Chair  
American Legislative Exchange Council  
1101 Vermont Avenue  
NW 11th Floor  
WASHINGTON DC 20005**

**Dear**

**Thank you for your letter of 7 October 2010 to the Deputy Prime Minister concerning intellectual property rights.**

**As the matter falls more directly within the portfolio responsibilities of the Minister for Health and Ageing, the correspondence has been referred to the Minister for Health and Ageing for her attention.**

**Yours sincerely**

**Manager  
Parliamentary Services Unit**



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National Chair  
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As the matter falls more directly within the portfolio responsibilities of the Minister for Health and Ageing, the correspondence has been referred to the for her attention.

Yours sincerely

Manager  
Parliamentary Services Unit

Senior Adviser to the  
Minister for Health and Ageing

Referred for your Minister's attention and appropriate action, please.

Manager  
Parliamentary Services Unit