

C Baker
M G Watson
M F Arnold
A Pugh-Thorne
M H Hinchey
G E Ward
S M H Gask
M S Mansell
P S Phillips
M D Shepherd
C J Hanson
T P M Glen
D S Baker
A J White
J G Gordon
M P L Wright
W H Viner
P G Harrison
S A Simons
A B White
T A B Green
J E N Whiting
B C Hunt

H J Ryan
E J Anderson
P G M Collins
C J Inger
D S O Mearns
C P Barrett
D Sparks
C H Evans
D Burdoyne
R W P Bligh
A D Libonati
P L Stewart
L A Muthrough
C P Buxton
C K Gordon
M S Hinchey
A S Lambrough
S D Smith
A P Williamson
A W Ryle
A Cooke
M S F Glavin
D Mactavish

S W Paine
M J Seymour
M F Stannard
N F Paine
M O P Hill
C L Pile
J C Thom
C Y S Madden
G J S Turner
D J Bailey
S Grier
A S Gordon
N B Campbell
J P Ford
I Camp
S M P Muthrough
M S Mactavish
S J McQueen
S H Mactavish
A J A Paine
J E Paine
J F Sherrington
J B Slay

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B A Lee
A C S Shaw
S Chinn
D A Payer
D A Harte
B C Rely
A G Murray-Jones
J S Roper
M A Rogers
S C J Webb
S T Whitmore
N H N Paine
Q D S Archer
S L Paine
P A Maitland
C A Pender
S A Shaw
S I S Simon
C Mann
J T Young
L M Anderson
C M Atkinson
A M Strathairn

F J Fisher
M Fothergill
P F A Green
M S Gidding
D A Latham
S M R Maitland
D I Mann
M Rowe
M M G Southold
M A Gregory
C H C Longman
M S Maitland
J Imhoffman
J N Rowe
L White
P D Gashbury
D J Paine
D Lane
M C McNeil
L D M Paine
P T Harvey
M S Maitland
L A Chisley

J Henderley
L A Sherry
B M Hinchey-Jones
J M Sainsbury
C M D Smith
K S Ashman
J N Cole
L M Condit
E M Court
D P Harlow
N P Querry
P L Sayer
G S Cheung
M Campbell
M J Cello
S P Sells
G P E Harvey
C J Roberts
Crawford
J J D Hartley
S S Stone

Our ref 25 DAL

Your ref

28th April 1994

By fax

Mr Peter Clarke
British-American Tobacco Company Limited
Millbank
Knowle Green
Staines
Middlesex
TW18 1DY

Dear Peter

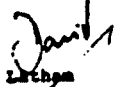
Plain Pack Proposals - INTA

You asked me whether INTA had taken a position on the Canadian plain pack matter. We will be pleased to know that they have done so, and have forwarded a copy of their submission to the Standing Committee on Health to me. I attach a copy for your information. I have copied this, as you will see, to David Bacon and to Astrid Arnold.

In addition I will be sending it to Ron Tully at TDC and others on the Plain Pack Group.

With all best wishes.

Yours sincerely,



David A Latham

enc

cc Astrid Arnold - BAT, Staines
David Bacon - BAT, Staines

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International Trademark Association
1133 Avenue of the Americas, New York, NY 10036-6710 USA
Telephone: 212-768-9887 Fax: 212-768-7796

21/437

FACSIMILE TRANSMISSION

Date: 27 April 1994

Number of Pages (including this cover sheet): 5

To:	Richard M. Berman	Fax Number: 612-540-2268
	<i>General Mills, Inc.</i>	
	Toni Polson Ashton	416-595-1163
	<i>Slm & McBurney</i>	
	David E. Clarke	613-563-9869
	<i>Gowling, Strathy & Henderson</i>	
	Robert Eck	212-878-2498
	<i>Phillip Morris, Inc.</i>	
	Jerome Gilson	312-321-4299
	<i>William Brinks Hofer</i>	
	<i>Gilson & Lione</i>	
cc:	Vincent F. Bick, Jr.	919-741-7598
	<i>R.J. Reynolds Tobacco Co.</i>	
	✓ David A. Latham	011-44-71-248-4212
	<i>Lovell White Durrant</i>	
	John McDonald	416-442-3672
	<i>Rothmans, Benson & Hedges Inc.</i>	
	Robin A. Rolfe	
	John Banks-Brooks	
	Richard Wagner	

From: Bruce J. MacPherson
International Manager

If you do not receive all the pages indicated above please call 212/768-9887 as soon as possible and ask for Dion.

SUBJECT: Canadian Plain Packaging Proposal

Attached for your files is the letter from Rich Berman to the Canadian Parliament's Standing Committee on Health providing INTA's comments on the plain packaging proposal for tobacco products.

Thanks to everyone, especially David Clarke, for your help and guidance on this issue.

Best regards,

Founded in 1878 as The United States Trademark Association



502592604



International Trademark Association

1120 Avenue of the Americas, New York, NY 10036-6710 USA

Telephone: 212-768-9887 Fax: 212-768-7796

April 27, 1994

The Honorable Roger Simmons
Chairman
Standing Committee on Health
House of Commons,
Parliament Hill,
Ottawa, Canada
K1A 0A6

Dear Mr. Chairman:

Re: Plain Packaging of Tobacco Products

On behalf of the International Trademark Association (INTA), I wish to express the Association's concern regarding the potential impact that the plain packaging proposal for tobacco products being studied by your Committee may have on trademark owners generally and the public at large. The law of trademarks is the oldest, most pervasive, and in many respects, the most legally complex area of intellectual property law. The plain packaging proposal for tobacco products being considered by Parliament would restrict trademark owners in exercising their right to identify their goods in such a manner so as to distinguish those goods from others in the marketplace. Indeed, the plain packaging proposal is the antithesis of all that the law of trademarks seeks to protect, i.e., the prevention of public deception as to the origin and consistency of goods and services.

INTA is a 116 year-old, not-for-profit, worldwide membership organization representing over 2,700 corporations, package design firms, law firms and professional associations in 99 countries. In Canada, there are over ninety INTA members, including some of Canada's most prominent firms. Canadian members, directly or indirectly, represent the interests of the vast majority of Canadian trademark owners. INTA's membership, which crosses all industry lines and includes both manufacturers and retailers, is united in our goals of supporting the essential role trademarks play in promoting effective commerce, protecting the interests of consumers, and encouraging free and fair competition. Because of its diverse membership and as a matter of overall INTA policy, the Association does not take positions on matters of public policy unless the underlying principles and functions of trademarks or the trademark system are involved.



International Trademark Association

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April 27, 1994
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The Association, therefore, takes no position on the public policy and health issues as they relate to the plain packaging of tobacco products, nor does the Association take a position as to any legislation which does not relate directly to the rights of trademark owners. INTA's concern relates only to the plain packaging proposal that restricts the use of distinctive packaging which includes the trademark logo or symbol (commonly referred to as "trade dress") by tobacco companies, and the precedent that such a proposal would set for all trademark owners wishing to distinguish their goods from the goods of others. The deleterious effects of requiring plain packaging on tobacco products would be significant on the economic benefits derived from trademarks, particularly in terms of job creation, and on government and private efforts to combat counterfeit goods and to maintain control over those responsible for any product. Accordingly, INTA strongly recommends that the Standing Committee on Health reject the plain packaging proposal. Perhaps a brief explanation of these issues might assist the Standing Committee on Health in its deliberations to reach the same conclusion.

The Economic Benefits of Trademarks

Because trademarks are an integral part of free-market economies, their significance often remains unnoticed. In examining a trademark's worth, it should be viewed from two perspectives:

- the trademark's general benefit, indeed its incalculable benefit, in molding a productive and efficient economy; and
- the trademark's contribution to the direct and indirect job creation capability of a manufacturer.

Those trademarks that are adequately protected under a jurisdiction's laws provide us meaning and assurance in a complex world marketplace. Trademarks have meaning because they are identifiers and symbols. They are words, names, logos and sometimes even sounds that enable consumers to distinguish one company's goods or services from those of its competitors. Trademarks are used in virtually every type of product and service, from basic commodities such as bananas to industrial products such as airplane parts. A trademark, because it may be composed of numerous elements, includes the package design (trade dress). For example, the distinctive yellow package of Kodak™ film is just as much of a trademark as is the word/name Kodak™.

That meaning, given through product differentiation and identification, bridges the gap between the consumer and manufacturer where the distribution of goods has extended to cover vast portions of the globe. In other words, because the modern practice of self-service retailing takes the consumer even further from the production source, the identification of the desired goods or services has become essential if consumers are to routinely and quickly select the product that meets their needs and expectations.

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Trademarks also offer a guarantee of consistency in product and/or service standards. Reputable manufacturers realize that they cannot afford to sacrifice the value of their trademarks by lowering such standards. Whether brands are marketed in one or one hundred countries, are firmly established or still seeking their niche, or are manufactured to satisfy general or local tastes and standards, they carry the same benefits of meaning and assurance.

Attempting to quantify the precise value of these benefits to the domestic and international economies is as futile as endeavoring to determine the monetary value of the wheel. However, trademarks provide the impetus for the trademark owner to offer its goods and services at a consistent level which, in turn, permits consumers to discover meaning and maintain faith in the marketplace. It makes the world smaller by increasing economic interdependence while simultaneously increasing the size of various markets.

At the local level, trademarks significantly contribute to job creation at all levels -- from factory floor technicians and sales clerks, to marketing and package design professionals. Examples of some of the jobs that are dependent upon trademarked goods include:

- For Manufacturer's-- brand management positions, market researchers, in-house legal counsel, graphic artists, sales managers, logistics personnel, factory workers.
- For Suppliers-- Marketing consultants, outside legal counsel and paralegals, trademark search firms, market research firms, advertising agencies, publishers, communications managers.
- For Distributors/Retailers-- distribution managers, truck drivers, sales clerks, warehousemen, freight handlers.

For every new branded product launched, the potential for creating new jobs, not to mention the substantiation for current levels of employment, increases exponentially. The spin-offs from providing consumers with differentiated products of reliable consistency in standards provides manufacturers, suppliers and retailers with an opportunity to satisfy the consumer's needs while expanding the economic wealth of the local community. Governments, in turn, benefit from the increased revenue base resulting from individual and corporate income taxes, as well as sales and property taxes.

Potential Harm From Plain Package Counterfeits

To reemphasize, trademarks are important to the public consumer as they provide two primary functions:

- Trademarks assure consistency of the contents of the goods.



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International Trademark Association

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- Trademarks provide a means by which proper accountability by those responsible for the goods is assured.

Therefore, reducing a company's ability to distinguish its goods from others in the marketplace may lead to an increase in the ease of deception and lessen the role trademarks play in affording accountability of the company for its goods.

If any industry is forced to package its goods in a generic or plain manner, the copying of these packages is facilitated, giving rise to the possibility of counterfeit goods reaching the marketplace. Two negative consequences result touching on matters of public interest or public policy. First, it facilitates deception of the public as to the source or origin of the goods. Second, it may reduce the accountability of a manufacturer or retailer for their goods and their contents. Indeed, one of the issues currently occupying the minds of the public today relates to the contents of tobacco products. By facilitating the introduction of counterfeit goods, it becomes more difficult to track goods of dubious origin. Even the most fervent anti-smoking advocates must consider the risks associated with increasing the ease by which deception as to source and quality might occur against the unproven benefits of plain packaging.

Trademark Protection is Essential

INTA's mission of ensuring that trademarks, no matter their origin, familiarity or purpose, are protected as essential instruments of commerce also is shared by consumers and legitimate businesses alike. Loss of protection means loss of meaningful choice and of the assurance of standards of product or service consistency. Without adequate protection, trademarks will no longer be able to perform their obvious economic functions of facilitating trade, promoting efficiency, and preserving and creating employment.

Again, INTA urges the Standing Committee on Health to consider the deleterious ramifications of plain packaging requirements. We believe that public health policy should not be made by restricting long established intellectual property rights that historically have proven to be beneficial to the public.

The Association would be pleased to work with you or provide any further information you may need on this matter. Please do not hesitate to call me at (612) 540-2281 or to call David Clarke, a member of INTA's Board of Directors, at (613) 232-1781. Thank you for this opportunity to provide input to the Committee's deliberations.

Sincerely yours,


Richard M. Berman
President

cc: David E. Clarke, Esq.