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Banning Brand: Economic and Consumer Impact of Plain Packaging

Case Study

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Property Rights Alliance
minimal government
"small government, small taxes, free market, personal responsibility"

ABSTRACT:

Protection of intellectual property rights like trademarks that make brands possible go hand in hand with enterprise competition and rising prosperity. Corporate branding produces unique and attractive packaging, brand banning polices are meant to limit or abolish such unique and attractive packaging to limit marketing of products and services.

For tobacco plain packaging, the specific goal is to remove the attractiveness of cigarettes especially to young people so that less youth begin to smoke and current adult smokers will be less motivated to smoke.

The brand banning legislation is now extended to cover many other products that are considered "unhealthy" like sweets and confectionery, soda and sugary drinks, red meat, even alcohol.

More prohibitions invite the law of unintended consequences. From the experiences of Australia, UK, France and other countries that legislated banning brands, adverse results happened: (1) more smuggling, more consumption of the targeted goods as smuggled products are sold much cheaper than the original products; (2) more funds and profit for illegal suppliers, criminal gangs and terrorist groups; (3) less government tax revenues; and (4) less revenues for legal corporations that comply with government registration, taxation and other regulations.

Banning brand should never be a policy by governments.

KEYWORDS:

Plain packaging, standardize packaging, banning brands, trademark, IPR, public health.

INTRODUCTION

EARLY PHILOSOPHICAL BASIS OF IPR PROTECTION

> *"Man… had still in himself the great foundation of property; and that which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniences of life, was perfectly his own, and did not belong in common to others."*

— John Locke, paragraph 44, *Second Treatise on Government* (1690).

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This is among the early philosophical bases of non-physical, intellectual property rights (IPR). In 1690, the legal concept of patents for inventions was non-existent yet, but Locke expressed it as part of private property.

> *"A power 'to promote the progress of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries.' The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals."*
>
> — James Madison, *The Federalist Papers*, No. 43, 1788.

This argument by Madison should be among the basis for the enactment of the U.S.'s first copyright law of 1790.

> *"All creation is a mine, and every man, a miner…In the beginning, the mine was unopened, and the miner stood naked, and knowledgeless, upon it…Man is not the only animal who labors; but he is the only one who improves his workmanship. This improvement, he effects by Discoveries, and Inventions…*
>
> *Before (Patent laws), any man might instantly use what another had invented; so that the inventor had no special advantage from his own invention. The patent system changed this; secured to the inventor, for a limited time, the exclusive use of his invention; and thereby added the fuel of interest to the fire of genius, in the discovery and production of new and useful things."*
>
> — Abraham Lincoln, Lecture on Discoveries and Inventions (1858).

The original U.S. patent law was also enacted in 1790. Patents and copyrights are rewarded to companies in recognition for their invention and composition of new products and services. Through the latter part of this paper, it is interesting to see how the U.S. economy has developed since then.

The first U.S. Trademark Act was enacted in 1881 or nearly 100 years after the patent and copyright law. This was revised and expanded to a Trademark law of 1905.

Brands, trademarks, logos, and other signs and images reflect and summarize a company's image built for many years and decades, even centuries. They are so important that they should be equated to the company's *raison d'etre*, the reason for existence.

CURRENT SITUATION

There have been moves to ban or abolish branding for products that health practitioners identify as unhealthy and bad for the public. It started with tobacco products via a policy known as plain packaging: the removal of all colors, unique product designs, trademarks and logos, replaced by huge graphic warnings, standard colors, and staid generic packaging.

Removal of branding and plain packaging started in December 2012 in Australia. A few years after, a few European countries followed and legislated their own plain packaging laws.

TABLE 1. PLAIN PACKAGING OF TOBACCO PRODUCTS

Europe, CA	Implementation	Asia Pacific	Implementation
France	May 2016	**Australia**	Dec. 2012
UK	May 2017	**New Zealand**	March 2018
Norway	July 2017	**Thailand**	Sept. 2019
Ireland	September 2017	**Singapore**	July 2020
Belgium	Jan. 2020 manufacturers, Jan. 2021 retail level	**Malaysia**	After WTO challenge is resolved
Netherlands	Jan. 2020	**S. Korea**	Planning by 2022
Canada	Nov. 2019 manufacturers, Feb. 2020 retail level		

Later, other health and socialist activists who want more government intervention in people's lives began to propose that banning brands should extend also to sugar-sweetened food, soft drinks, fatty meals, and alcoholic products.

TABLE 2. CONSUMER GOODS TARGET FOR EXTENDED PLAIN PACKAGING (PP)

Target sectors for PP	Month reported
1. High calorie foods to beat obesity	March 2017
2. Banks and financial PP to fight debt addiction in Australia	July 2018
3. Junk foods, red meat – by Lancet Commission on Obesity	January 2019
4. Confectionery, crisps and high-sugar drinks – by IPPR, UK	June 2019
5. Cars' ads to fight traffic, climate change	August 2019

PURPOSE OF THE STUDY

This paper was made to answer (1) what are the impacts and implications to investments and the economy in general, as well as on individual consumption of the products brand banning is intended to curtail?

From a rights-based perspective, (2) to what extent should the state intervene in protecting public health without damaging private property rights and the security they provide to investments and innovation?

This is relevant to the study and measurement of the International Property Rights Index (IPRI). As it should help identify for governments, non-government organizations and corporate players the areas in the property rights ecosystem that need focused attention to ensure material prosperity.

Additional questions that need answers or may help guide facts-based public policy making:

(3) When IPRs like brand and trademarks are withheld in order to benefit consumers is it achieved without unintended consequences?

(4) As the market responds to the banning of brands are there unintended beneficiaries or unintended victims?

(5) What conclusions can developing and emerging economies draw from the experience of developed countries that instituted plain packaging?

REVIEW OF LITERATURE

Academic literature that have covered this trademark and brand protection.

On trademark and branding, Mergest (2000) observed that:

> *"A trademark vested only after consumers came to associate a trade name with a particular product. As the Supreme Court pointed out, this made a trademark a different sort of thing entirely from a copyright or patent. It was not a reward or inducement for something new and valuable; it was a capstone cementing a tight bond between a trade name and a product…*
>
> *Emerging consumer goods giants such as Coca-Cola and Nabisco undertook massive enforcement campaigns even before Congress passed the first effective federal protection in 1905.'"*
>
> Kelly-Gagnon (2011) noted that plain packaging is *"a classic case of a policy that focuses on 'that which is seen' and ignores 'that which is not seen' directly…*
>
> *The existing scientific literature does not establish a causal link between plain packaging and tobacco consumption… What the available evidence does show is that enforcing plain packaging on tobacco products would have detrimental consequences on legal producers and their brands, without reducing the consumption of tobacco. On the contrary, instead of reducing health risks, this policy would achieve the exact opposite of its stated purpose by leading to an increase in the number of smokers. It would not be the first time that a seemingly well-intentioned policy produces harmful unintended consequences.*
>
> *Moreover, tobacco may be just the first victim in a global attack on branding. Other products deemed "sinful" may well be targeted in the future: fast food, alcohol, lottery tickets."*

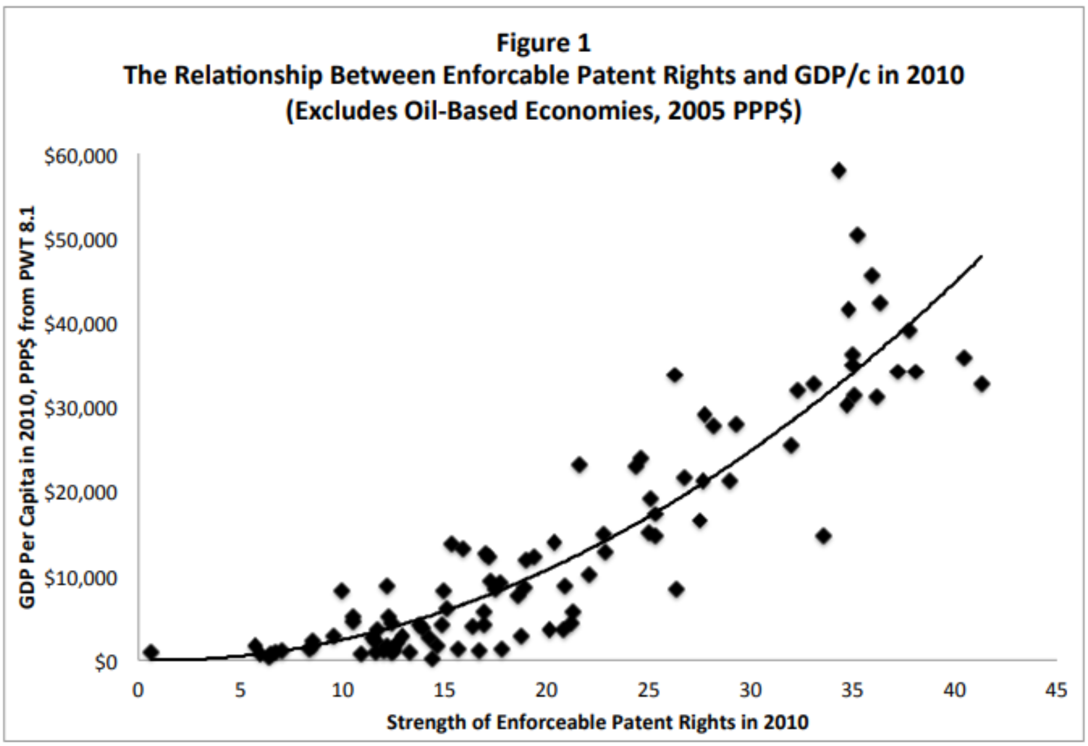
Lilico (2012), noted that:

> *"Innovation is an important source of enhanced consumer welfare. Regulations that undermine innovation can be even more destructive of consumer welfare than regulations that undermine competition. A plain packs requirement would totally eliminate pack innovations…*
>
> *Plain packs requirement should be expected to have very significant negative competition effects. (like) reducing the ability of consumers to engage in informed switching…*
>
> *If a plain packs requirement led to an increase in counterfeiting and/or contraband, there could be negative impacts on UK tobacco industry employment and upon the UK tax take from tobacco…*

As brand characteristic awareness degrades, competition initially becomes fixated on one or two brands for most price segments and eventually there is large-scale downtrading into lower-quality products…"

Haber (2016) plotted a graph of patent rights and wealth of nations and observed that:

> *"There is nothing ambiguous about the resulting pattern: there are no wealthy countries with weak patent rights, and there are no poor countries with strong patent rights. Indeed, Figure 1 shows a remarkably tight pattern: as patent rights increase, GDP per capita increases with it. Roughly speaking, for every one-unit increase in patent rights (measured from zero to fifty) per capita income increases by $780. A simple regression of patent rights and patent rights squared on GDP indicates that roughly three-quarters of the cross-sectional variance in per capita GDP around the world is explained by the strength of patent rights."*



Stephen Haber, "Patents and the Wealth of Nations" (2016).

Davidson and de Silva (2017) noted in a Commonwealth government-funded research on the impact of plain packaging in Australia, finds that "no statistically significant difference in effectiveness of the graphic health warning as a result of the policy being introduced—if anything that effectiveness declined."

DATA AND METHODOLOGY

SURVEY OF GLOBAL RANKINGS

The section will survey the global ranking of selected countries on selected indices produced by various global institutes and think tanks correlated with their country economic/GDP size; then it will continue with sub-indicators related specifically to IPR protection and see gaps.

The hypothesis is that as developed economies move into IPR-busting policies like banning brands and trademarks, their sub-indicator scores and rankings will deteriorate. Additionally, if not compensated by big improvement in other sub-sectors, their overall score and global ranking will suffer.

We start with the recent scores and rankings of selected countries in the International Property Rights Index (IPRI) 2018 and 2019 reports. As discussed in the report, IPRI is composed of three main categories – legal and political environment (LP), physical property rights (PPR) and intellectual property rights (IPR).

Developed economies with stronger rule of law and private property protection generally have higher economic or GDP size: something that leaders of developing countries should bear in mind always.

TABLE 3. IPRI SCORES AND RANK AND GDP NOMINAL VALUES

Country/ Economy	IPRI 2018		IPRI 2019		GDP size 2018	
	Rank/ 125	Overall score	Rank/ 129	Overall score	$ Billion	Rank
Australia	7th	8.33	5th	8.36	1,418	14
Canada	9th	8.30	11th	8.26	1,711	10th
US	14	8.12	12th	8.20	20,494	1st
UK	13th	8.14	15th	8.04	2,829	5th
Germany	16	7.91	17th	7.85	4,000	4th
France	23	7.18	21	7.38	2,775	6th
Singapore	5th	8.40	4th	8.46	361	36
Japan	11th	8.23	6th	8.32	4,972	3rd
Hong Kong	17	7.85	16	7.90	363	35
Taiwan	22	7.31	23	7.31	589	21
Malaysia	34	6.49	32	6.62	354	37
S. Korea	35	6.45	32	6.62	1,619	13
China	52	5.90	49	6.03	13,407	2nd
India	59	5.64	55	5.82	2,717	7th
Thailand	65	5.32	64	5.46	487	26
Indonesia	64	5.33	65	5.41	1,022	16
Philippines	70	5.22	67	5.31	331	40
Vietnam	76	5.08	83	5.08	241	47

Sources: Property Rights Alliance (PRA); IMF, World Economic Outlook (WEO) Database, April 2019.

We also survey other indices related to rule of law and IPR.

There is the World Economic Forum's (WEF) Global Competitiveness Index (GCI), the World Intellectual Property Organization's (WIPO) Global Innovation Index (GII), the World Justice Project's (WJP) Rule of Law Index (RoLI), and the U.S. Chamber of Commerce Global IP Center's (GIPC) Intellectual Property Index (IPI). Ranking of these countries in the four indices are similar with ranking in IPRI 2019 (See Appendix 1).

The RoLI score and rank countries and jurisdictions based on their performance on eight factors and 44 sub-factors. The 2019 Report involved more than 120,000 household surveys and 3,800 expert surveys in 126 countries and jurisdictions.

For the sub-sectors or sub-indicators of these indices, in the WEF's GCI, pillar #12 is innovation capability and among the sub-pillars are patent applications and trademark applications (per million population). In WIPO's GII, "knowledge creation" includes patents and industrial design by origin, and "intangible assets" include trademarks and industrial design by origins.

While Australia ranked #14 in overall GCI, it only ranked 24 and 25 in patent and trademark applications. And while it ranked #22 in overall GII, it ranked only #40 in intangible assets. This could be among the negative externalities of trademark branding (See Appendix 2).

ILLICIT TRADE INDEX

The Economist Intelligence Unit's (EIU) Global Illicit Trade Environment Index (GITEI) measures how countries and economies enable (or inhibit) illicit trade through their policies to fight smuggling and illicit trade. The index is composed of four main categories or indicators, each of which have sub-indicators. The four categories are government policy, supply & demand, transparency & trade, and the customs environment.

The index evaluates 84 economies on their structural capability to fight illicit trade, focused on laws, regulations and systems of governance that indicates an economy's potential to fight various kinds of illicit trade.

Supply and demand measures the domestic environment that encourages or discourages the supply and demand for illicit goods. It appraises costs on businesses due to corporate income tax, social security burdens, quality of state institutions, and perceptions of organized crime.

Customs environment consists of five indicators: (1) Percentage of shipments physically inspected; (2) The time taken for customs clearance and inspection, (3) The extent of automation of border procedures, (4) The presence of AEO programs; and (5) The presence of customs recording systems.

TABLE 4. GLOBAL ILLICIT TRADE ENVIRONMENT INDICES

Country/ Economy	GITEI 2018		Supply-Demand		Customs Env.	
	Rank/ 84	Overall score	Rank/ 84	Score	Rank/ 84	Score
UK	2nd	85.1	7th	79.6	**22**	**85.4**
US	3rd	82.5	9th	74.2	3rd	89.2
Australia	5th	81.0	**16**	**68.1**	**26**	**84.9**
Germany	10th	78.9	25	60.9	9th	87.4
Canada	15th	77.4	11th	72.4	**51**	**72.2**
France	19	73.8	**46**	**48.0**	13th	86.5
Singapore	25	71.1	2nd	89.9	56	69.8
Japan	14	78.2	15	68.8	20	85.7
Hong Kong	12	78.4	4th	81.4	49	74.0
Taiwan	28	69.7	19	66.7	17	86.2
Malaysia	47	60.3	20	65.9	66	53.5
S. Korea	17	75.4	23	64.2	1st	92.2
China	44	60.9	49	46.1	44	76.7
India	49	58.9	60	39.9	42	77.1
Indonesia	68	45.2	63	38.5	69	46.9
Thailand	48	59.8	31	56.3	45	75.1
Philippines	64	48.5	55	42.3	60	61.4
Vietnam	66	47.5	38	52.4	54	71.2

This estimate refers to global distribution of counterfeit goods, and, like the OECD's analysis, does not account for counterfeit goods that are produced and consumed locally.

East Asian counterfeiters often rely on free trade zones—such as those existing in China, India, Indonesia, and Malaysia—where lack of effective enforcement enables repackaging and relabeling as well as the adulteration of shipping documents in order to disguise the true manufacturer's identity and origin.

In global counterfeiting, China plus Hong Kong corner the bulk of such IPR infringement. In the U.S. Chamber of Commerce-GIPC Report of 2016, of the estimated $461 B global physical counterfeiting, 72% were from China. Note that the Chamber is a private organization, not a U.S. government body and hence, more objective in their assessment of the degree of IPR stealing (See Appendix 3).

COUNTRY IMPACT OF BANNING TOBACCO BRANDS

1. Australia. Australia was the first country in the world to legislate brand bans of cigarettes in December 2012. KPMG data show that the estimated share of illicit and smuggled tobacco rose from 11.5% of total tobacco consumption in 2012 (before ban implementation) to 13.5% in 2013, 14.7% in 2014, and further up to 15% in 2017 (See Appendix 4).

In addition, the Australia Institute of Health and Welfare (AIHW) in its National Drug Strategy Household Survey (NDSHS) noted that the most recent batch of data from 2016 reported that for the first time in 23 years no statistically significant decline in the overall daily smoking rate between 2013 (12.8%) and 2016 (12.2%).

2. France. Senator Xavier Iacovelli organized a conference in France in late November 2018. The conference's communiqué showed that despite a significant fall in the number of smokers, "France remains the number one country in Europe for the illicit trade of cigarettes. In France, black market tobacco counts for 25% of total consumption, with illicit trade translating into a loss of €3 billion in fiscal revenues nationally, compared to €20 billion for the European Union (EU) as a whole." (Illicit Trade, December 2018)

3. Canada. Even before banning tobacco brands was legislated, high tobacco taxes and other restrictions had opened the door for contraband tobacco and illicit products to enter the marker as they are attractive to people who want cheaper products. See for instance these two reports:

(a) Federal, provincial governments target illegal tobacco with new funding
By Molly Hayes, published March 30, 2018,

> *"In Ontario, it's believed that roughly one third of cigarettes are from an illicit source… The RCMP has estimated that there are roughly 175 organized-crime groups in Canada with ties to the illicit tobacco market."*

(b) "Contraband tobacco 'out of control' in Ontario, convenience store lobby says",
CBC News • Nov 15, 2017 (See Appendix 5)

4. UK. Tobacco smuggling apprehended by the government has not waned.

Cigarette Seizures	April 2016 to March 2017	April 2017 to March 2018	April 2018 to March 2019
Volume (sticks)	1.35 B	1.48 B	1.33 B
Revenue value	£447.4 M	£519.5 M	£ 480.7 million

https://www.gov.uk/government/publications/tackling-tobacco-smuggling-2013-to-2014-outputs/outputs-for-april-2016-to-march-2018

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Christopher Snowdon, head of lifestyle economics at the Institute for Economic Affairs, observed that smoking prevalence has been declining even before a ban on tobacco brands was implemented. Then one year after the ban the smoking rate went up before resuming the downtrend (See Appendix 6).

5. Ireland. From The Conversation, "The smuggling of counterfeit cigarettes – manufactured in Eastern Europe and Asia – into Ireland and across the border was identified in 2018 as a significant threat by Her Majesty's Revenue and Customs (HMRC)."

6. New Zealand. Customs New Zealand investigations manager Bruce Berry said that "The types of concealments we've seen for tobacco rivals what we're seeing for drugs… Mr Berry doesn't believe the seizure of the 1.8 million cigarettes is the tip of the iceberg, however.
'We've seen a steady rise in tobacco smuggling cases.'" (TVNZ, Nov. 2018)

7. Malaysia. While Malaysia still has to legislate PP, a good paper criticizing this policy was made by Etienne Sanz de Acedo, "The IP squeeze: Brand restrictions around Malaysia" (2019). She wrote,

> *"The sky is the limit when one believes there is no downside to plain packaging. For example, there even have been calls in Australia to plain package financial services — lest consumers be induced by brands to take on bad loans.*
>
> *With plain packaging, trademarks will cease to serve their function to distinguish one producer from another. This will ultimately hurt consumers.*
>
> *Ultimately, the question is whether taking such a radical step as removing trademarks from legal products that consumers trust and rely upon will be beneficial for a country overall. And what could come next?"*

BANNING BRAND FOR CONFECTIONERY, CRISPS AND HIGH-SUGAR DRINKS

In a recent paper, "Ending the Blame Game: The Case for a New Approach to Public Health and Prevention" published by the Institute for Public Policy and Research (IPPR, UK), June 2019, they made this recommendation (page 31), among others:

> *"Create a new 'social contract' between government and food businesses to make the healthy choice the easy one. We currently live in a 'pro-obesity society', where the unhealthy option is cheaper and easier to access. We must reduce the visibility and availability of harmful food products whilst increasing relative cost. We put forward several recommendations to achieve this:*
>
> *- Plain packaging for confectionery, crisps and high-sugar drinks: This would level the playing field between confectionary products and fruit and vegetables which do not benefit from the same level of branding and product recognition. This mirrors the action taken against smoking without reducing the availability of confectionary…."*

The Daily Mail reported (June 3, 2019) that "The plans were backed by Dame Sally Davies, England's Chief Medical Officer."

Chris Snowdon (2019) has a good assessment of this policy, he wrote:

> *"Banning advertising is a hunch-based policy, but the Department of Health's impact assessment is obliged to make it look evidence-based…*
>
> *There is no meaningful difference between the state banning an advert because it disapproves of the product being advertised – or the views of the person featured in it – and the state censoring an article, speech or play being it doesn't like what is being said. If a ban on cakes, ice creams and jam being advertised before the watershed becomes law, it will give licence to every obsessive, single-issue fanatic to press for further prohibitions. Once we start banning inoffensive adverts for harmless products, the censoriousness will become a runaway train."*

By Richard J. Hillgrove VI-13 December 2017:

> *"We're waking up to the new rally cry of "Sugar Kills" and big brands like Coca-Cola and Pepsi should be worried.*
>
> *If a plain-packaging Armageddon happens and Brand Finance's latest predictions are right, the beverage industry alone could face a whopping $293bn (£217bn) loss in the value contributed by its brands globally."*

"Sell high calorie foods in plain packaging to beat obesity, says Brain Prize winner",
Ian Sample, Science editor (6 Mar 2017).

"Mandatory plain packaging poses $187bn threat to snacks, drinks and confectionery markets",
By John Glenday (07 December 2017):

Some of the world's biggest brands including Coca-Cola and Kraft could be facing a multi-billion dollar hit if plain packaging regulations are extended to areas such as alcohol, confectionery, snacks and fizzy drinks.

According to consultancy Brand Finance as much as £187bn could be wiped off the cumulative worth of businesses operating in these sectors should mandatory plain packaging policies be enacted, with Pepsi being the biggest single casualty – losing over a quarter of its enterprise value.

> *"Predicted loss of brand contribution to companies at risk is only the tip of the iceberg. Plain packaging also means losses in the creative industries, including design and advertising services, which are heavily reliant on FMCG contracts."*

For beverages alone, potential losses according to Brand Finance would be up to $293 billion.
(Source: http://www.cityam.com/277059/plain-packaging-could-cost-major-fmcg-firms-187bn)

"Could financial plain packaging break Australia's debt addiction?"
By Michael Janda (24 Jul 2018):

> *Plain packaging for loans: In the same way that the Government banned tobacco advertising and forced the companies to show the after effects on their packaging, perhaps lenders should be made to do something similar.*
>
> *Given that home loans and credit cards are not linked with gruesome cancers, something more akin to the plain packaging aspect of tobacco regulation seems most applicable.*
>
> *This would allow banks and other lenders to advertise the products they have available, their interest rates and conditions, but not to use emotive messaging to sell their loans.*

"Let's suck the glamour from the car industry – and save our cities – by killing off its cretinous marketing"
By Isabella Kaminski (3 August 2019):

> *Or we could take the nuclear option: banning advertising and overt branding altogether. Cigarette marketing has been increasingly restricted, from the 1960s when television*

advertising was banned to 2016 when plain packaging was introduced, and over that time smoking rates and related deaths have fallen.

"Experts urge governments to launch 'Big Tobacco'-style fight on junk food firms with taxes on red and processed meats and cigarette-style health warnings on packaging"
By Ben Spencer (27 January 2019):

A major report today calls on all governments to unite against 'Big Food' in the way they once took on 'Big Tobacco'.

The Lancet Commission on Obesity, compiled by 43 academics from 14 countries, accuses politicians of 'decades of inertia'.

If banning brand is extended to other products the adverse business impact will be huge. Among the brand value of products targeted by activists in 2018 are: #5 Coca Cola, $66.3 Billion, #10 McDonalds, $43.4 Billion, #22 Pepsi Cola, $20.8 Billion, #33 Budweiser, $15.6 Billion (See Appendix 7)

For beverages, beer is a big candidate for a future brand ban. The potential business damage to the world's most famous brands would be huge too. Famous beer brands and their 2019 value: #1 Budweiser, $7.5 Billion ; #2 Bud Light, $7.0 Billion, #3 Heineken, $6.8 Billion, #4 Harbin, $5.2 Billion, #5 Kirin, $4.1 Billion (See Appendix 8).

And other consumer goods – soda, cigarettes, burgers, alcohol, sweet drinks. From Brand Finance, global rank 2019: #38 Coca Cola, $36.2 B, #39 Marlboro, $33.6 B, #43 McDonalds, $31.5 B, #45 Moutai (spirits), $30.5 B, #84 Nestle, $19.6 B (See Appendix 9).

BOX 1: Philippine Case: High and Rising Taxes Leading to More Smuggling

The Philippine government is not yet considering the plain packaging option. However, various administrations keep raising tobacco excise taxes. There was the Sin Tax law of 2012, then TRAIN law of 2017, and another "sin tax" hike law in 2019. Tobacco alternatives like vaping and e-cigarettes will also be taxed at the same levels as regular cigarettes.

One immediate result is the downshift of smokers' preference from branded, legal tobacco to the cheaper, illicit and smuggled products.

Sir Isaac Newton's third law of motion, "For every action, there is an equal and opposite reaction," is easily transported to economics, "For every government intervention and taxation, there is an equal and opposite distortion."

Consider these reports.

1. "DoF Warns Cigarette Smuggling May be Helping Finance Terrorism" (May 01, 2018, *BusinessWorld*):

"Illegal money can end up funding terrorist activities,' Finance Secretary Carlos G. Dominguez said Thursday, without providing details of a definite link to terrorist groups…

Customs Commissioner Caesar R. Dulay has said that smuggled cigarettes are currently flooding the market."

2. "Cigarettes Top Fake-Goods Seizures Amid Rising Taxes" (February 01, 2019, *BusinessWorld*)

"[In 2018] The interagency National Committee on Intellectual Property Rights (NCIPR) seized a total of P23.6 billion worth of fake goods, much higher than the 2017 level of P8.2 billion… cigarettes accounted for 85.81% of the value or P20.25 billion… IPOPHL Director General Josephine R. Santiago said that the report shows how illegal traders 'are apparently shifting to heavily-taxed goods.'"

The banning of brands is a historic policy reversal from upholding private property rights and protecting intellectual property rights. Increased property right protections and economic freedom have coincided with advances in science that together allow people across the world to live longer, wealthier, and healthier lives. Data from the historical Maddison Project:

TABLE 5. REAL GDP PER CAPITA IN 2011 US$, MULTIPLE BENCHMARKS

Economy	1700	1800	1900	1913	1950	1980	2000	2016
United States	1,375*	1,980	6,252		15,241	29,613	45,887	53,015
Germany	912	958	4,596		5,536	22,053	33,975	46,841
Australia		679*	5,992		13,542	22,883	36,001	44,783
Canada		1,545*	4,630		12,022	24,988	37,446	42,969
United Kingdom	1,591	2,205	5,608		9,441	20,593	34,390	39,162
France	1,350	1,442*	4,214		6,869	22,713	31,771	38,758
Japan	840	856	1,575		2,519	20,408	33,294	36,452
Singapore				1,237	2,439	9,287	39,287	67,180
Hong Kong		1,113*		2,314	4,013	16,216	38,153	47,043
Taiwan		907*		1,207	1,393	9,615	31,937	42,304
S. Korea		477*		690	1,122	5,645	22,930	36,151
Malaysia				1,539	2,667	7,011	12,269	22,687
Thailand				1,020	991	3,327	6,921	14,341
China				881	757	1,690	4,071	12,320
Indonesia				1,267	1,175	2,578	3,472	10,511
Philippines				1,210	1,310	3,043	4,187	7,223
Vietnam				983	890	1,076	2,243	6,031
India	1,200	1,067		1,340	1,417	1,143	2,003	5,961

Source: Maddison Project Database, version 2018.
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* Data for: US in 1520; Australia, Canada, France, HK, S. Korea and Taiwan in 1820.

CONCLUSIONS AND RECOMMENDATIONS

From the foregoing discussions and tables including those in the Appendix, we summarize the impact of banning brands on consumers and the economy in general as follows:

Banning brands will result in a soured investment environment, there is danger that one's corporate brand meticulously built over many decades and worth several hundred million dollars can be forfeited and discarded by government dictate. Individual consumers will have little brand choices and just pick the cheapest among generic-branded products – without regard to their reputation.

The state can protect public health without damaging private property right protections and security of innovation. In the first place, public health is not really in danger, people are living longer and healthier. As shown in the cases of Australia, France, UK and other countries, plain packaging has not contributed to reducing smoking incidence. Many smokers do not quit, they simply switch to cheaper products, that are often counterfeit or other type of illicit product.

When IPRs like brands and trademarks are denied it is individual choices and the freedom to form a reputation with the consumer that is infringed. When brands are visible brand owners have the incentive to compete on their brand's reputation, they are forced to into a virtuous spiral to compete with other brands to win the most desired reputation.

The law of unintended consequences always kick in. The unintended beneficiaries of banning brands are the smugglers and producers of illicit products, criminal gangs and terrorist groups, plus certain corrupt government officials that allow illicit goods to be sold and circulated. The unintended victims are the consumers who will have fewer or zero brand choices. Evidence has shown they will continue their consumption of the "sin" products but will choose the cheaper, illicit products. Government tax revenues can also decline because of this.

Banning brands is ineffective at achieving its policy goal, damages the intellectual property environment, and cedes market share to criminal syndicates that prefer to remain anonymous rather than earn a reputation: a failed policy. IPRs like trademarks and brands should be protected for consumer welfare, not prohibited.

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APPENDIX

APPENDIX 1. FOUR INDICES: GLOBAL COMPETITIVENESS, GLOBAL INNOVATION, INTELLECTUAL PROPERTY, AND RULE OF LAW

Country/ Economy	GCI 2018		GII 2019		IPI 2019		RoLI 2019	
	Rank/ 140	Score	Rank / 126	Score	Rank / 50	Score	Rank / 126	Score
US	1st	85.6	3rd	61.73	1	42.66	20	0.71
Germany	3rd	82.8	9th	58.19	5	40.54	6th	0.84
UK	8th	82.0	5th	61.30	2	42.22	12	0.80
Australia	14	78.9	22	50.34	14	36.06	11	0.80
France	17	78.0	16	54.25	4	41.00	17	0.73
Singapore	2nd	83.5	8th	58.37	10	37.12	13	0.80
Japan	5th	82.5	15	54.68	8	39.48	15	0.78
Hong Kong	7th	82.3	13	55.54	--	--	16	0.77
Taiwan	13	79.3	--	--	20	28.05	--	--
S. Korea	15	78.8	11	56.55	13	36.06	18	0.73
Malaysia	25	74.4	35	42.68	24	22.37	51	0.55
China	28	72.6	14	54.82	25	21.45	82	0.49
Thailand	38	67.5	43	38.63	42	14.50	76	0.50
Indonesia	45	64.9	85	29.72	45	12.87	62	0.52
Philippines	56	62.1	54	36.18	37	16.20	90	0.47
India	58	62.0	52	36.58	36	16.22	68	0.51
Vietnam	77	58.1	42	38.84	43	13.81	81	0.49

Sources: WEF-GCI, WIPO-GII, USCC GIPC-IPI, WJP-RoLI

APPENDIX 2. IPR, PATENT AND TRADEMARK, KNOWLEDGE CREATION AND INTANGIBLES

Country/ Economy	GCI 2018 report		GII 2019	
	Patent applic.	Trademark applic.	Knowledge creation	Intangible assets
Australia	24	25	21	40
UK	19	18	5th	12
US	13	33	3rd	32
Germany	5th	12	6th	5th
France	12	21	16	10th
Singapore	14	22	27	46
Japan	1st	40	11	22
Hong Kong	26	17	39	35
Taiwan	2nd	n/a	--	--
Malaysia	42	55	71	51
S. Korea	3rd	23	8th	3rd
China	32	45	4th	1st
India	61	92	42	81
Indonesia	99	97	101	68
Thailand	68	67	54	61
Philippines	80	98	64	63
Vietnam	89	79	80	53

Sources: WEF-GCI, WIPO-GII.

APPENDIX 3. SELECTED ECONOMIES' SHARE OF GLOBAL PHYSICAL COUNTERFEITING

Rank/ 38	Country/ Economy	Est. global physical counterfeiting, $ M	Share of total, %
1	China	285,451	72.00%
2	Ukraine	1,981	0.43%
3	India	1,772	0.38%
4	Russia	1,727	0.37%
5	Turkey	1,721	0.37%
6	Argentina	1,714	0.37%
7	Thailand	1,680	0.36%
8	Indonesia	1,603	0.35%
9	Vietnam	1,533	0.33%
15	Malaysia	1,355	0.37%
21	S. Korea	1,151	0.37%
25	USA	872	0.19%
26	Singapore	859	0.19%
27	Canada	804	0.17%
28	Taiwan	753	0.16%
31	UK	510	0.11%
33	Japan	495	0.11%
34	Germany	421	0.09%
35	France	416	0.09%
36	Australia	399	0.09%
	Top 38 Total	**461,000**	**100.0%**

Source: US Chamber of Commerce, Global Intellectual Property Center (GIPC), "Measuring the Magnitude of Global Counterfeiting, 2016.
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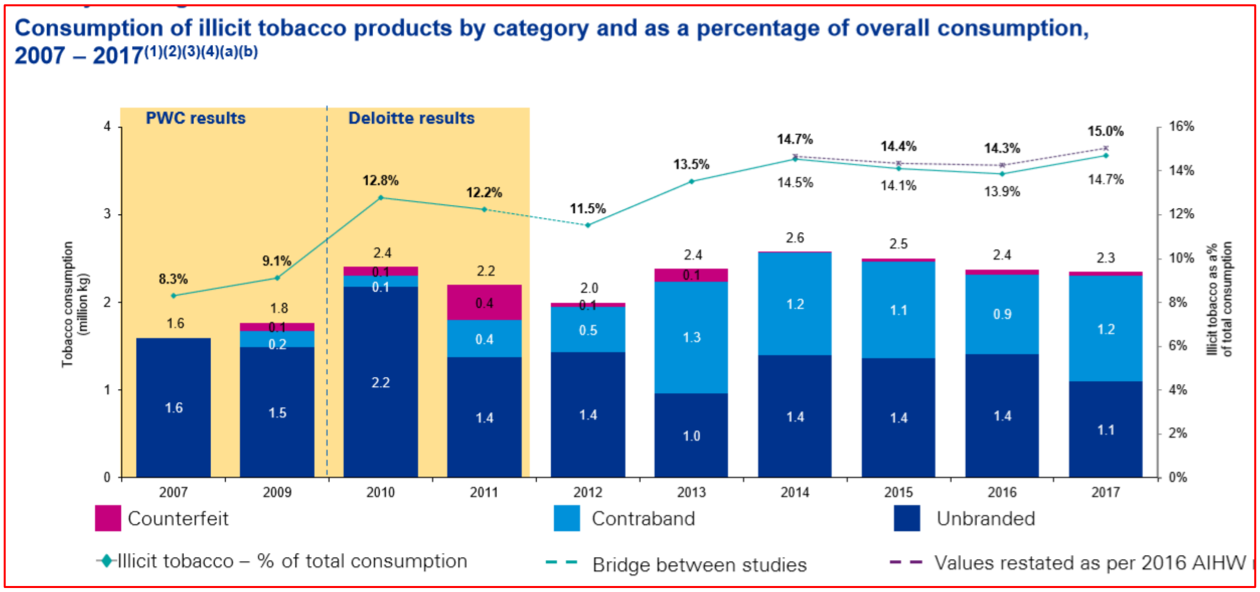
APPENDIX 4. AUSTRALIA'S SMUGGLED TOBACCO CONSUMPTION



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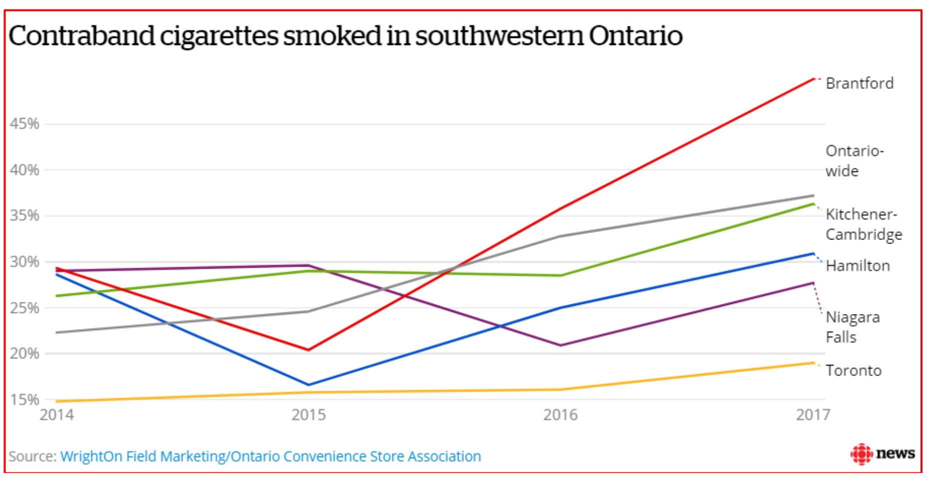
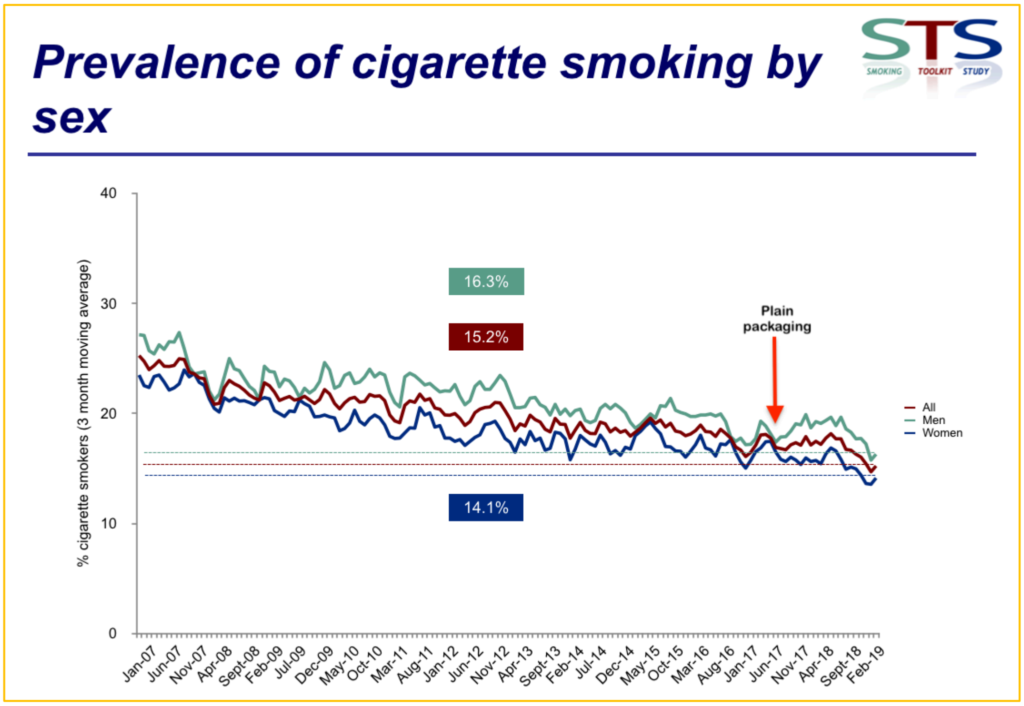
APPENDIX 5. ONTARIO, CANADA SMUGGLED TOBACCO CONSUMPTION.



Source: https://www.cbc.ca/news/canada/hamilton/contraband-cigarettes-hamilton-1.4403220

APPENDIX 6. ENGLAND SMOKING PREVALENCE, MONTHLY ESTIMATES BY STS



Source: Snowdon, "Plain packaging - what happened?" May 20, 2019.

APPENDIX 7. FAMOUS GLOBAL BRANDS, GLOBAL RANK AND BRAND VALUE

2010	Brand	$ bill.	2014	Brand	$ bill.	2018	Brand	$ bill.
1	Coca Cola	70.45	1	Apple	118.86	1	Apple	214.48
2	IBM	64.73	2	Google	107.44	2	Google	155.51
3	Microsoft	60.90	3	Coca Cola	81.56	3	Amazon	100.76
4	Google	43.56	4	IBM	72.24	4	Microsoft	92.72
5	GE	42.81	5	Microsoft	61.15	5	Coca Cola	66.34
6	McDonalds	33.58	9	McDonalds	42.25	10	McDonalds	43.42
18	Marlboro	19.96	24	Pepsi Cola	19.12	22	Pepsi Cola	20.80
23	Pepsi Cola	14.06	32	Kellogg's	13.44	33	Budweiser	15.63
27	Nescafe	12.75	34	Budweiser	13.02	37	Nescafe	13.05
30	Budweiser	12.25	38	Nescafe	11.41	53	Kellogg's	10.63
35	Kellogg's	11.04	54	Nestle	8.00	57	Starbucks	9.62
46	Heinz	7.53	65	Shell	6.29	62	Nestle	8.94
57	Nestle	6.55	68	KFC	6.06	84	Jack Daniels	5.64
61	Sprite	5.78	72	Sprite	5.65	85	Corona	5.52
78	Jack Daniels	4.04	76	Starbucks	5.38	86	KFC	5.48

Source: Interbrand

APPENDIX 8. TOP 15 BEER BRANDS, 2019

Global rank		Brand name	Country	Value, $ bill.	
2019	2018			2019	2018
1	2	Budweiser	US	7.52	7.08
2	1	Bud Light	US	6.98	7.38
3	3	Heineken	Netherlands	6.77	6.09
4	5	Harbin	China	5.18	3.54
5	8	Kirin	Japan	4.08	2.78
6	6	Corona	Mexico	4.01	3.42
7	11	Snow	Hong Kong	3.67	2.42
8	4	Brahma	Brazil	3.64	3.72
9	7	Skol	Brazil	3.43	3.32
10	10	Guinness	Ireland	2.88	2.53

Source: Brand Finance, Beers 25 2019, https://brandirectory.com/rankings/beers-25-2019

APPENDIX 9. MOST VALUABLE CONSUMER BRANDS IN GLOBAL 500, 2019.

Global rank		Brand name	Country	Value, $ bill.	
2019	2018			2019	2018
38	37	Coca Cola	US	36.19	30.38
39	36	Marlboro	US	33.57	30.51
43	44	McDonalds	US	31.49	24.87
45	54	Moutai (spirits)	China	30.47	18.61
84	68	Nestle	Switzerland	19.64	19.37
90	61	Pepsi	US	18.52	20.03

Source: Brand Finance, Global 500 2019, January 2019, https://brandirectory.com/reports/global-500-2019

APPENDIX 10. LIFE EXPECTANCY AT BIRTH, YEARS

Economy	1970	1980	1990	2000	2010	2017
Australia	71.0	74.3	77.0	79.2	81.7	82.5
Canada	72.7	75.1	77.4	79.1	81.2	82.5
France	71.7	74.1	76.6	79.1	81.7	82.5
United Kingdom	72.0	73.7	75.9	77.7	80.4	81.2
Germany	70.6	72.7	75.2	77.9	80.0	81.0
United States	70.8	73.6	75.2	76.6	78.5	78.5
Hong Kong	71.4	74.7	77.4	80.9	83.0	84.7
Japan	72.0	76.1	78.8	81.1	82.8	84.1
Singapore	68.3	72.2	75.3	78.0	81.5	82.9
S. Korea	62.2	66.0	71.6	75.9	80.1	82.6
Vietnam	59.6	67.6	70.5	73.3	75.1	76.5
China	59.1	66.8	69.3	72.0	75.2	76.4
Malaysia	64.4	68.0	70.7	72.8	74.2	75.5
Thailand	59.4	64.4	70.3	70.6	73.9	75.5
Indonesia	54.5	59.6	63.3	66.3	68.2	69.4
Philippines	60.8	62.2	65.3	67.2	68.3	69.2
India	47.7	53.8	57.9	62.6	66.6	68.8

Source: World Bank, World Development Indicators (WDI) database, July 2019.

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