

# ANZA POLICY ON TRADEMARK ELIMINATION VIA PLAIN PACKAGING



## Introduction

The Association of New Zealand Advertisers (ANZA) supports the right of governments to regulate to protect public health. We do not believe that "plain packaging" regulations will achieve the health objectives that policy-makers wish to pursue. We also believe that such requirements undermine lawful protection of intellectual property and violate international agreements.

## Principles

### 1. Intellectual Property Rights

- a. Effective protection of intellectual property rights is an essential element of a thriving economy, generating jobs and growth by fostering competition and spurring innovation.
- b. Intellectual property has long been recognised in this country as a commercial right. Individuals and businesses have been able and indeed encouraged to acquire and make use of their intellectual property. Anything which dilutes that principles of intellectual property rights across products or services which may be legally advertised is an unacceptable restriction on commercial enterprise.
- c. Trademark protection is essential in identifying and distinguishing products in the marketplace. The protection of such property is a fundamental tenet of law whose vital importance is enshrined in domestic laws the world over as well as in several international agreements, including the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights and the Paris Convention on Industrial Property.

## **2. Government Regulation**

- a. ANZA recognizes that governments have the authority to regulate when necessary to protect the public interest. Nonetheless:
  - i. Such measures should be consistent with fundamental tenets of law and international legal obligations.
  - ii. They should be proportionate, evidence-based and effective in achieving a specific purpose.
  - iii. They should be adopted only after careful deliberation and consideration of the potential for unintended consequences.

Plain packaging rules that mandate trademark elimination do not meet these standards.

- b. There are ways to regulate effectively in the public interest. Mandating destruction of intellectual property is not among them, and we urge government to forego it.

## **3. Unintended Consequences**

- a. A brand, as the sum of all its components, denotes a certain quality or characteristic. As a mark of quality, it establishes a market position and value. From the perspective of brand owners, branded products or services also command higher prices.
- b. Without branding, awareness and trust in that brand will diminish. As the strength of branding is weakened, so price will become a more influential stronger determinant of purchase decision (for those who choose to consume). Consequently, as pricing becomes a stronger tactical tool as brand measures weaken, so the opportunity for lower priced competitors to thrive, and increase consumption of that category.