

Protection, enforcement and promotion of intellectual property rights are essential to the future of any knowledge-based economy. IPR protection is one of the key priorities for the Polish Presidency and AmCham PL fully supports it.

Therefore, AmCham PL is very concerned about the proposal to introduce plain or generic packaging. Below we present arguments against plain packaging.

1. Under the rule of the Constitution of Poland plain or generic packaging would:
 - raise the allegation of defying the constitutional principle of business activity freedom - the possibility to introduce manufactured goods to the market is an element of constitutionally protected freedom to conduct business activity. In order to do this effectively, an entrepreneur needs to be able to differentiate his/her products from competition's. Trademarks are used to differentiate products. When there is no possibility to use a trademark, the right to conduct business activity freely is defied.
 - raise the allegation of defying the proportionality principle – i.e. how far a regulator may interfere and restrict the rights of entrepreneurs in order to achieve a particular objective. The purpose of the *plain packaging* concept according to its authors is to limit tobacco product consumption. This, however, has not been supported by any research that would confirm the effectiveness of this solution
 - raise the allegation of defying the constitutional principle to protect ownership and other property rights.
2. Plain or generic packaging is contrary to the binding provisions of the Industrial Ownership Act dated June 30th, 2000, which does not provide for:
 - excluding the ability to use accrued rights to protect already registered trademarks
 - the possibility to restrict registered trademarks with regard to any products, including tobacco products.
3. Plain or generic packaging is contrary to the Paris Convention on the protection of intellectual property which states, among others, that:
 - a product type cannot be an obstacle to register the trademark
 - a trademark registered in one country can be registered and protected in the same way it is protected in other countries (one can't be denied the right to register a trademark and a trademark's registration can't be cancelled).
4. Plain or generic packaging is contrary to the provisions of an agreement on trade-related aspects of intellectual property rights (TRIPS) which state, among others, that:
 - the ability to utilize a trademark commercially shouldn't be unreasonably impeded by specific requirements, such as (...), the necessity to utilize the trademark in a specific form or a harmful way that disallows one to differentiate goods or services provided by one entrepreneur from goods or services provided by another entrepreneur
 - again a product type cannot be an obstacle to register the trademark.
5. Plain or generic packaging is contrary to bilateral agreements on mutual support and protection of investment (e.g. the Treaty of 1990 on Trade and Economic Relationships between Poland and the United States) which refer to equal and fair treatment of investors in a country accepting an investment. The *Plain packaging* concept may be deemed as unfair treatment of tobacco investors due to the object of their business activity.

For consumers plain or generic packaging means:

- significant limitation to make a conscious decision when purchasing tobacco products – trademarks are basic characteristics that allow consumers to differentiate products from various producers;
- significant difficulty to introduce a new brand of products (no possibility to differentiate visually), which will also limit the choice for consumers;
- significant difficulty to differentiate counterfeit products from original products that don't fulfill legal requirements for the amount of harmful substances;
- prosecution of illegal goods will be more difficult.

In terms of competition in the market, plain or generic packaging means:

- limiting the possibility to differentiate products from various competitors;
- limiting the ability to introduce new players to the market/introduce new products;
- can bring unjustified competitive advantage to recognizable product names.

Plain or generic packaging implies additional, unwanted consequences such as risk that it will be much easier and cheaper to counterfeit standardized packages by organized crime groups.

AmCham PL supports and understands the aim of the European Union to improve public health, but the proposed plain or generic packaging will have serious consequences of both legal and economic nature. Therefore, AmCham PL does not support introduction of plain or generic packaging.