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International Advertising Association  
**European Region**

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European Commission  
Health & Consumers Directorate-General

**B-1049 Brussels**  
Belgium

November 15th 2010

Ref: **DG SANCO Public Consultation Directive 2001/37/EC**

Dear Health and Consumers Directorate-General,

The International Advertising Association, on behalf of its 20 European Chapter Countries, welcomes the opportunity to respond to the Public Consultation Document published by DG SANCO regarding the “Possible Revisions of the Tobacco Products Directive 2001/37/EC”.

Specifically we are responding to questions posed pursuant to Option 3 of “3.2 Possible Options” of the proposed revisions, i.e., “Option 3 – Introduce generic or plain packaging”.

The International Advertising Association has always advocated the freedom of commercial speech and defends a responsible communications industry against unwarranted advertising and marketing bans and restrictions.

Our concern is that a number of fundamental questions and reservations arise from the plain packaging proposal, which needs to be addressed and brought to the attention of the DG SANCO.

We strongly believe that brand differentiation exists to **facilitate consumer choice, information and convenience.**

Plain packaging will vastly increase consumer confusion without even discouraging the use of the product itself.

**Limiting the ability to brand, limits the ability to differentiate and compete.** Limiting the ability to compete is a restriction of trade.

This precedent is especially treacherous to the EU economy if not the general market economy of our society. Simply said, **all of business is based on the ability to compete**, and the EU proposal takes that away.

Plain packaging will further facilitate the production of counterfeits and bootlegging, which has already an unacceptable high level in Europe, with no guarantee about the ingredients and product safety, which is certainly not in the interest of the consumer.

It is our belief that, as a rule, **brands should not be unduly restricted with regard to legally sold products**. The beneficial effects of brands are protected by national and community trademarks.

Trademarks are recognised property rights and protected under various national and international laws and treaties to which the EU is subject to. It is our firm view that **plain packaging legislation would unduly restrict pre-existing rights of trademark owners and deprive them of their property** with regard to their established intellectual property rights.

Finally, we believe that the DG SANCO proposal aiming to prevent companies from using their own trademarks in packaging will establish a very dangerous precedent for all legally sold products.

On the basis of all the above, we sincerely ask the DG SANCO to refrain from initiatives as are outlined in the consultation document with regard to plain packaging.

We thank you for the opportunity of contributing to the consultation.

Respectfully submitted on behalf of all the IAA EU Chapter Countries,



Erich H Buxbaum  
International Advertising Association  
Regional Director Europe & Vice President

Cc: Mr. Jose Manuel Barroso, President European Commission  
Mr. John Dalli, Commissioner for Health and Consumer Policy  
Mr. P. Testori Coggi, DG Health and Consumers (SANCO)  
Mr. Joaquin Almunia, VP, Commissioner Competition  
Mr. Michel Barnier, Commissioner Internal Market and Services  
Mr. Antonio Tajani, VP, Commissioner Industry & Entrepreneurship  
Mr. Olli Rehn, Commissioner Economic and Monetary Affairs