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Thailand poised to adopt plain packaging for tobacco products

Thailand - [Tilleke & Gibbins](#)

- Ministry of Public Health's National Tobacco Control Committee has approved draft regulation requiring plain packaging to replace all current packaging for tobacco products
- Brand owners will be required to display brand and product names in standardised manner
- Standardising all product packaging will make it easier for counterfeiters to replicate well-known brands

In a recent notification by Public Health Minister Piyasakol Sakolsattayathorn, it was announced that the Ministry of Public Health's National Tobacco Control Committee has approved a draft regulation requiring plain packaging to replace all current packaging for tobacco products. The stated reason for the change is concern that the current guidelines are no longer effective in addressing and combating the health risks posed by tobacco products.

The placement of graphic health warnings on tobacco products in Thailand began in 1992 when the country first mandated that such warnings cover 25% of product packaging. This requirement was increased to 33% in 1997 and 50% in 2005. In 2006 Thailand further restricted the ability of tobacco companies to market their products by banning the use of descriptors such as 'mild', 'medium' and 'light'. In 2011 Thailand increased the scope of the descriptor ban to also restrict words and phrases indicating the smell, taste or quality of tobacco products (eg, 'crisp', 'fresh' and 'mint'). The current legal guidelines require tobacco products to display graphic health warnings covering 85% of the packaging.

The public health minister has stated that plain packaging will be standard for all cigarette brands and will prohibit the use of distinctive logos or colours on packaging, including the use of brand images and promotional text. Brand owners will be required to display brand and product names in a standard colour and font style to be prescribed by the regulation. These changes are designed to further reduce the desirability of tobacco products by making them look as unattractive as possible.

The change will make Thailand the first country in Asia and the 11th in the world to adopt plain packaging legislation in an attempt to further discourage cigarette smoking. The regulation will have obvious consequences for brand owners in the tobacco industry, as it will reduce their ability to market and distinguish their brands through the use of their registered intellectual property. This may have the unfortunate consequence of inadvertently promoting the use of counterfeit products in the marketplace, by removing many of the barriers to entry that distinctive product packaging imposes on manufacturers of knock-off products. Standardising all product packaging will make it easier for counterfeiters to

replicate well-known brands, increasing the likelihood that consumers will be unable to distinguish between genuine and counterfeit products. As a result, unknowing consumers may face increased health risks from the use of untested products of dubious origin.

The new regulation may be vulnerable to challenge by trademark owners as an unfair taking without compensation based on their property interest in their registered intellectual property. Section 44 of the Trademark Act provides a positive right to use a registered trademark, by stating that “a person who is registered as the owner of a trademark shall have the exclusive right to use it for the goods for which it is registered”. Unlike the trademark laws of some other jurisdictions, which grant only a negative right to exclude infringing use by others, the Trademark Act grants a positive right to use a registered mark, conferring a property interest to the trademark owner. As a result, owners of registered trademarks for tobacco products are likely to challenge the application of the new law.

The new regulation is expected to come into effect on 12 September 2019.

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TAGS

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