

TURKEY

Plain packaging: an overview

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Plain packaging has become a hot topic in Turkey as controlling the consumption of tobacco has been one of the top priorities of the Turkish government. The government has adopted the 2015-2018 National Programme and Action Plan for Tobacco Control, which stipulates the implementation of necessary provisions related to plain packaging into the relevant legislation.

The Ministry of Health added a provision in relation to standardised packaging to the draft omnibus bill in 2016. However, the Ministry later announced the removal of the provision based on the reason that it has been adopted by Australia only, the efficiency of this measure is debatable and there is a possibility of facing lawsuits by tobacco companies based on the international trade laws as reported by the Turkish media. Although there is no legislation introduced by the government so far, considering the new announcements made by the Minister of Health, plain packaging is expected to be adopted, in the light of the decisions of some countries which adopted laws with such provisions and studies proving the efficiency of the measure.

Beside the uncertainty about whether plain packaging will be adopted, several arguments have been raised on how it will affect the trade mark law. Proponents of plain packaging could argue that the removal of colourful elements from tobacco packs due to standardised packaging is compatible with Article 5/1 (f) of the Turkish Industrial Property Code, which stipulates that signs that are capable of misleading the public about the nature, quality and geographical origin of the goods and services cannot be registered, since those colourful signs – especially the ones in light colours – can be deceptive and create an impression that a particular tobacco is less hazardous

than others.

On the other hand, it could be also argued that plain packaging jeopardises the function of trade marks of indicating the origin of goods and prevents the customers from making choices by distinguishing the goods of one company from the goods of other companies, which is the fundamental function of a trade mark. It might be also asserted that standardising the appearance of the tobacco packs and limiting the use of trade marks only to standard texts risks brand image. In addition to these, although it is stated that trade marks can still be registered despite the plain packaging implementations, opponents could argue that standardised packaging annihilates the right of the owners to enjoy and use their trade marks in the form they are registered. Considering the Turkish government's determination to prevent prevalence of tobacco consumption, it is likely that Turkey will soon introduce plain packaging as a tool to control tobacco use. However, the effect of this measure to the trade mark law seems to continue to be a hot topic for discussion in Turkey in the coming years.