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Date: Monday, January 16, 2017 10:43PM

Subject: Fw: British American Tobacco - Expert Report in Respect of Proposal to increase Graphic Health Warnings in Hong Kong to 85% _ Privileged & Confidential [HS-London_11.FID1018534]

Dear Honourable Members

I am writing in connection with the Government's proposal to change the graphic health warnings ("GHWs") on tobacco products in Hong Kong from 50% to 85%. I previously prepared a report in respect of the proposal dated 18 June 2005, in which I concluded that increasing the size of GHWs to 85% will preclude any effective or meaningful use of trademarks, thereby preventing them from performing their essential brand functions. Further, it is my opinion that the elimination of trademarks as a platform for brand communication has a number of important negative repercussions for consumers, manufacturers, and the market in general, including some unintended consequences that are at cross-purposes with the stated health goals of the initiatives. A copy of that report is attached to this e-mail for your consideration.

Yours Sincerely,

Philip C Zerrillo

Expert Report of Professor Philip Zerrillo, Ph.D.

Hong Kong

June 18, 2015

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Expert Report of Philip Zerrillo, Ph.D.

I. Introduction

A. Qualifications

1. My name is Philip Zerrillo. I am a Full Professor in the Marketing department at Singapore Management University. In addition, I have several other responsibilities at the university. I am the Dean of Post Graduate Professional Programmes, in which I develop, administer and govern graduate degree programmes in the areas of Business, Economics, Law, Accounting, Social Sciences and Information Systems. Additionally, I am the Executive Director of the Center for Practice Management, the Academic Director of the PhD in General Management, and the Executive Director and founder of the university's case writing initiative. I am also the Vice Dean of the Lee Kong Chiang School of Business.
2. I am also Executive Chairman of the Board for the Masters in Marketing (MIM) programme at Thammasat University in Thailand. I have taught graduate level courses in marketing channels and marketing strategy for 17 years in this programme. I also teach a doctoral level seminar on teaching effectiveness at Thammasat University, and am a member of the board of directors for the School of Accountancy and Commerce.
3. I am the Dr. Bienvenido Tontocco, Distinguished Chaired Professor in Retailing, at Jose Rizal University (Philippines).
4. Previously, I was a Visiting Professor at the J.L. Kellogg Graduate School of Management of Northwestern University, where I taught courses on marketing management, distribution channel management and marketing strategy. Before that, I served as the Associate Dean and Director of Executive Education at the McCombs School of Business and the Graduate Dean and Director of Graduate Studies at the college. In addition, I have taught at numerous other universities, internationally in Asia, Europe, the Middle East and the United States.
5. My field of expertise is marketing and in particular managerial marketing as it is applied in the field. I have taught graduate school courses in many management and marketing subjects, including branding and brand management. In these courses I have covered topics such as brand value, creation of new brands, brand competition, pricing, and strategy.
6. I hold a Ph.D. in Marketing from Northwestern University's J.L. Kellogg Graduate School of Management, and an undergraduate degree from The University of Texas (BBA). After my undergraduate studies I spent seven years in the finance industry, before entering the Ph.D. program. This background has given me practical insights into the financial performance of the marketing and branding functions of firms. True to this

background, much of my post graduate professional work has focused on market actions and their impact on the financial performance of firms.

7. I am a member of the Board of Directors of Sharps Compliance (NASDAQ: SMED) and have been since 1998. In my role as a board member I am currently chairman of the audit and governance committees.
8. I have consulted with numerous firms in areas such as hi-tech, oil and gas, consumer electronics, internet, metal fabrication, health and fitness, tobacco, alcohol and consumer packaged goods. I have conducted, supervised, evaluated or reviewed a great number of marketing research studies in my various roles as thesis supervisor, Ph.D. advisor, ad hoc reviewer for The Journal of Marketing and The Journal of Marketing Research and as a consultant to industries.
9. Further information about my academic and professional qualifications is provided by my curriculum vitae in Appendix A.

B. Scope of Assignment

10. I have been asked by British American Tobacco Company (Hong Kong) Limited ("**BAT (HK)**") to submit this report describing the importance of trademarks and the brands that they represent, and how they affect consumers, manufacturers, competition in the marketplace, and international trade. I have been asked in particular to opine upon the ramifications to trademarks and brands that will result from the proposed regulation to increase the size of the graphic health warnings (hereinafter "GHWs") on cigarette packages in Hong Kong to cover 85% of the package surface area, and the resulting impact on consumers, manufacturers and the marketplace. In particular, I have been asked to examine these issues in the context of Hong Kong where brand communication is highly restricted, including an extensive ban on tobacco advertising and sponsorship, and GHWs already occupy 50% of the cigarette package surface area.
11. To write this report, I have relied upon my own expertise in marketing and branding (described above). I also have reviewed and considered a wide range of authoritative writings on marketing and branding by experts in the field. Appendix B lists the materials that I considered in the course of my investigation. This report contains my findings and opinions as of the submittal date.

C. Summary of Opinions

12. It is my expert opinion that:
 - a) Trademarks (such as words, logos, images, designs or combination of these elements) and packaging are vital to brands.

- b) Trademarks perform valuable functions for both consumers and the firms that own them. A trademark identifies the brand and differentiates the product performing important navigation and reassurance functions for consumers. It signals the source or origin of the product and, as such, aids the consumer's navigation among competing products. Trademarks also symbolize a product's quality and features, and guarantee that the goods or services measure up to expectation. The existence of trademarks, and the brands they represent, is particularly important for effective market competition, as they enable firms to uniquely identify and differentiate their products other than on the basis of price alone. For manufacturers, the protection of the intellectual property rights afforded to trademark owners means that the firm can invest in the trademark and the associated brand with confidence. In addition to the firm's ability to obtain the benefits of its valuable asset sustained over time, it provides an incentive for the firm to create greater value for all stakeholders including consumers.
- c) Increasing the size of GHWs to cover 85% of the cigarette packages will make it impossible for manufacturers to use some trademarks as registered (including logos and labels) and for them to use other trademarked elements effectively. Trademarks will not be able to adequately serve their essential functions of differentiating products and uniquely identifying their origin and quality.
- d) In Hong Kong, the extensive ban on advertising and sponsorship of cigarettes means that the limited space available on cigarette packs for trademarks is the only tool manufacturers have to identify and differentiate their products from other competitive offerings. A further reduction in this already limited space will minimize or even eliminate any meaningful use of trademarks and, in doing so, destroy their value. As a result, decades of investment in brands and their related trademarks, along with their inherent goodwill, will be lost.
- e) Brands including trademarks play an important role in the cigarette market, and their erosion or elimination changes the nature of the market. In general, markets without brands become price-driven commodity markets.
- f) Commodity markets produce lower prices that encourage more consumption. Commodity markets also make the market inhospitable to firms trying to enter the market and for existing brands, particularly small brands, to compete for a greater market share. Commoditization of the cigarette market in Hong Kong and a shift to pure price driven competition could also lead to an increase in illicit trade because without the added value of brands, legitimate products will be less clearly differentiated from illicit products.
- g) Ultimately, in a commoditized cigarette market in which consumers are price sensitive and the ability to identify the products of a firm is severely limited, the incentives to invest in better quality or better service will be reduced.

- h) Moreover, firms that do not have a well-known brand would be incentivized to compete only on price and reduce the quality of their goods, ultimately affecting the consumer. The relationship between consumers and their brands is a very important means to incentivize manufacturers to honor that relationship and not behave in a purely transactional manner.

II. The Context of Packaging Regulation in Hong Kong

13. I have been given to understand that almost all forms of tobacco advertising are banned in Hong Kong under the Smoking (Public Health) Ordinance (Cap. 371) (the "**Ordinance**"). This ban covers a broad range of advertising channels including print, radio, television, the Internet, and promotional activities such as free samples or gifts. Additionally, it is my understanding that under the Smoking (Public Health) (Notices) Order (Cap. 371B) (the "**Order**"), all cigarette packages and retail containers must bear a health warning and tar and nicotine yields. This warning is required to cover at least 50% of the two largest surfaces.
14. In light of these prohibitions and the restrictions under the Ordinance and the Order, it is clear that the law in Hong Kong already severely restricts the ability of manufacturers to use their trademarks in order to differentiate their brands and communicate with consumers. In fact, one of the only forms of communication available to manufacturers under the present law, though limited, is the display of their trademarks on the tobacco package itself.

III. British American Tobacco Trademarks

15. I am advised that BAT (HK) is the proprietor or licensee in Hong Kong of the trademarks associated with the CAPRI, CASTAN, DUNHILL, HILTON, WINFIELD, VICEROY, PALL MALL, KENT, SHUANGXI, STATE EXPRESS 555 and LUCKY STRIKE cigarette brands as visible on the cigarette package or cartons of cigarettes sold in Hong Kong. These trademarks include words, stylized labels, and full pack marks, including words, signatures, crests, logos colors and designs. I have been advised that the following are examples of some label and full pack trademarks for BAT (HK) products sold in Hong Kong.

Figure 1: Label and Full Pack Registered Trademarks of BAT (HK) Products Sold in Hong Kong



IV. Introduction to Brands and Trademarks

A. The Function of Trademarks and Brands

16. Trademarks are a type of intellectual property. A trademark is a legally protected “sign,” such as a name, word, phrase, graphic, logo, image, design or combination of these elements, that acts to exclusively identify to consumers the source of the product and differentiate it from the competition.¹ It may consist of words, designs, letters, numerals or the shape of goods or their packaging.² The owner of the trademark has the exclusive right to affix the trademark to units of the product and to use the trademark in its communications. As such, trademarks are essential components of brands because they are the outward representation of the brand to consumers.³
17. In fact, some definitions of “brand” are almost indistinguishable from the definition of “trademark.” For example, the American Marketing Association defines a brand as a “name, term, sign, symbol, or design, or a combination of them, intended to identify the goods and services of one seller or group of sellers and to differentiate them from those of competition.”⁴ Trademarks are really not exactly the same thing, but rather

¹ Helmers, Christian and Mark Rogers (2010), “Trademarks and performance in UK firms,” in da Silva Lopes, Theresa and Paul Duguid (editors), *Trademarks, Brands and Competitiveness*, Routledge, page 56.

² Fogg, Janet (1998), “Brands as intellectual property,” in Hart, Susannah and John Murphy, *Brands: The New Wealth Creators*. New York: New York University Press, page 72.

³ Aaker, D. A., (1991), *Managing Brand Equity*, New York, NY: The Free Press, page 21.

⁴ http://www.marketingpower.com/_layouts/dictionary.aspx?dLetter=B

trademarks are a crucial component of brands.⁵ Many brands are based on a combination of several trademarked elements⁶ that identify and differentiate one owner's product(s) from a similar offering by competitors.⁷

18. Therefore, brands and the trademarks associated with them play important roles in the marketplace. They help consumers navigate through the available choices in a product category and can provide a measure of reassurance about product quality, contents, origin and relative price. In sum, trademarks, as signals of the brand, have three important functions that combine to provide the consumer with a level of assurance:
 - “To distinguish the goods or services of one business from those of another
 - To indicate the source or origin of the goods or services
 - To serve as an indication of consistent quality....”⁸
19. Because visual identity is so important to brands, trademarks and other forms of intellectual property, such as patents and unique package design, are among a company's most valuable assets.⁹ Accordingly, the protection of trademarks and other intellectual property is vital to maintaining the value of the brand¹⁰ and protecting investment and business goodwill.
20. A strong visual identity can act as a type of shorthand expression of the brand and its features. Strong visual identity is apparent in the trademarked logos presented in Figure 2. These trademarked images combine the company's name (or, in some cases, initials which have come to stand in for the name) with a distinctive colored logo that are recognized globally.
21. Moreover in the case of fast moving consumer goods such as cigarettes, the package and trademark serve as the only point of purchase assurance to the customer that the product inside is reputable, and that the producer of that product is identifiable and potentially honorable.

⁵ Aaker, D. A., (1991), *Managing Brand Equity*, New York, NY: The Free Press, page 21.

⁶ Lindemann, Jan. (2010), *The Economy of Brands*, Palgrave MacMillan: 2010, page 7.

⁷ Murphy, J.M. (1990), *Brand Strategy*, Cambridge: Director Books, page 2.

⁸ Fogg, Janet (1998), “Brands as intellectual property,” in Hart, Susannah and John Murphy, *Brands: The New Wealth Creators*. New York: New York University Press, page 72.

⁹ H.M. Meyers and M.J. Lubliner, *The Marketer's Guide to Successful Package Design*, Chicago: American Marketing Association/NTC Business Books, 1998, p. 191.

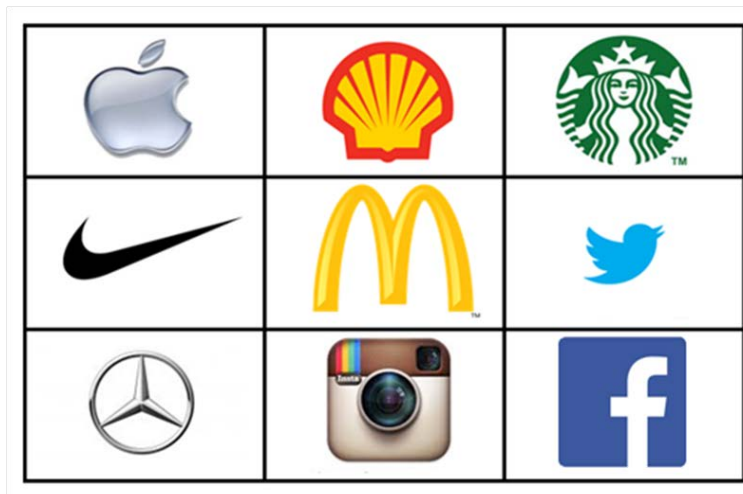
¹⁰ Fogg, Janet (1998), “Brands as intellectual property,” in Hart, Susannah and John Murphy, *Brands: The New Wealth Creators*. New York: New York University Press, page 81.

Figure 2: Logos Combine the Company Name with a Distinctive Graphic to Represent the Brand



22. In some cases, the logos are so widely recognized that the brand name is not even necessary. For example, both Twitter and Starbucks have recently dropped the brand name from their iconic logos. Figure 3 shows examples of global brands whose trademarked pictures are so ubiquitous that they communicate the brand’s identity without words.

Figure 3: Graphic Logos Can Evoke the Brand in the Customer’s Mind without the Use of Words



23. Other brands use trademarked “wordmarks” (also known as “logotype”) to give their brands strong visual identity across media. Figure 4 presents some highly-recognizable wordmarks.

Figure 4: Wordmarks or Logotype Designs are Stylized Versions of Brand or Company Names at a Glance



24. Figure 5 below shows some examples of Hong Kong brands that are recognized widely, even outside of Hong Kong.

Figure 5: Iconic Hong Kong Trademarks that are Widely Recognized



B. Effective Packages are Critical to Brand Awareness and Differentiation

25. Well-designed packaging with distinctive trademarked features plays an important role in brand identification and differentiation particularly in a market such as in Hong Kong where packaging is the last means of communication. The design of a product package is critical to the creation and maintenance of brand awareness and differentiation. An important characteristic of effective packaging design is that it is “holistic.” In other words, when it comes to effective packaging the overall effect of the package comes not

from any individual element but rather from the combination of all elements working together as a holistic design. This means that the combination trademarks that are used to create the packaging, including words, colors, images, and typefaces, cannot be easily divided without diminishing the overall effect and power of the trademark and brand. The whole is greater than the sum of the parts, and particularly greater than any one part (such as the written name only). Indeed as discussed above, some brands only use trademarked logos with no wordmarks and in other cases the trademark comprises both words and graphics, which are integrated and essential to identifying and distinguishing the brand.

26. Effective packaging also requires consistency over time. Because consumers spend just a few seconds looking at a package,¹¹ a key to effective package design and immediate consumer recognition is the maintenance of “consistency” that “identifies the product unequivocally and provides reassurance to the consumer faced with bewildering choice.”¹² Consistency in package design is also important because it takes “long and repeated exposure to develop ‘visual equity.’”¹³
27. Figure 6 shows some examples of iconic packages for brands with a strong visual identity.

¹¹ Young, Scott and Vincenzo Ciummo (2009), “Package Viewing Patterns: Insights and Implications for Global Design,” *Package Design Magazine*, July 2009, pages 26-30. Accessed at http://www.prsresearch.com/fileUploads/Package_Viewing_Patterns.pdf

¹² Murphy, John M. *Brand Strategy*. Prentice Hall: 1990, page 89.

¹³ Murphy, John M. *Brand Strategy*. Prentice Hall: 1990, page 84.

Figure 6: The Visual Identity of these Iconic Packages is Widely Recognized



28. Figure 7 shows examples of Hong Kong products with iconic packaging.

Figure 7: Hong Kong Products with Iconic Packaging



V. Brands and their Trademarked Symbols Serve Important Functions in the Market

A. Benefits to Consumers

29. Particularly in a market such as in Hong Kong, in which packaging is the last means of communication, the trademarked symbols and packaging associated with brands perform essential navigation and reassurance functions for consumers. In many categories, there is a dizzying number of product choices, and the buying process can be time-consuming and even stressful. Brands, as identified by the associated trademarked elements, can help customers navigate through the huge quantity of information available. Specifically, it is the brand's trademarked elements that identify and differentiate the product and, as such, aid the consumer's navigation among competing products. Brands help consumers organize and remember a large quantity of information. They can simplify a complicated purchase decision by reducing the need to evaluate the offerings in an entire product category across multiple dimensions.
30. The presence of a strong brand can also reduce the risk involved in making a purchase decision because the consumer has confidence in the quality of the product because of its popularity and/or longevity in the market. For example, a customer interested in buying tires might be bombarded with product choices (both branded and unbranded). Instead of doing time-consuming research on the characteristics of each offering, the buyer might

just simply choose Michelin tires, confident either through past experience or reputation that he or she would be satisfied with the purchase.

31. In particular, the trademarked symbols of the brand provide reassurance that the brand's customers are getting the quality product they expect. Consumers often choose to purchase a branded rather than a non-branded product, as they believe that someone stands behind these products. The use of one's name reduces the anonymity of the supplier and hence subjects them to the evaluation and scrutiny of the consumer. As consumers repeatedly purchase and consume the product, they determine if the brand meets or fails to meet their expectations on an ongoing basis. The prominent use of trademarks identifies the owner of the brand and implicitly guarantees an assurance of quality from the brand owner to the purchaser. When consumers pay a premium price for a branded product, they are paying for an implicit guarantee of superior quality.¹⁴ Branded batteries such as Energizer provide a good example of a branded product providing both perceived and actual high quality over many of their unbranded counterparts.

B. Benefits to the Firm

32. For manufacturers, the protection of the intellectual property rights afforded to trademark owners means that the firm can invest with confidence in the trademark and the associated brand and obtain the benefits of its value and associated business goodwill sustained over time. In many cases, the brand's trademarked name (together with its associated trademarked logo or other brand markers) is the only means of communication that a competitor cannot copy. For example, one marketing reference explains it this way: "An orange ... is an orange ... is an orange. Unless, of course, that orange happens to be Sunkist, a name that 80% of consumers know and trust."¹⁵
33. A strong brand can also make it easier for a firm to enter new geographic markets. In today's world of global media and travel, it is quite likely that a foreign brand entering a new market would find that some consumers in the new market would be familiar with its brand before it even entered. Some of these consumers would likely have even tried the product while traveling or living abroad and be in a position to share their knowledge of the brand through word-of-mouth.

¹⁴ Png, I. P. L., & Reitman, D. (1995). "Why are some products branded and others not?" *Journal of Law and Economics*, 38(1), 207-224.

¹⁵ Davis, Scott M., *Brand Asset Management: Driving Profitable Growth Through Your Brands*. John Wiley & Sons, Inc.: 2002, page 203, quoting Russell Hanlin, CEO, Sunkist Growers.

C. Importance of Brands to the Efficient Functioning of the Market

34. In addition to bringing many benefits to the manufacturer and consumer, brands are important because they contribute to the efficient functioning of the market in a number of important ways.
35. **Competition:** In a sense, the brand encapsulates all of the non-price dimensions of competition. Therefore, differentiation through branding offers manufacturers an alternative to price competition. Competing on price alone is not good for the functioning of the market in the long run because price competition naturally drives out all but the lowest cost producers and leads to excessive concentration in the industry. This effect is particularly important in industries with high economies of scale, like cigarette production. In categories such as cigarettes, where the products themselves can be seen as broadly similar, trademarks and other brand elements are key sources of differentiation.
36. **Competitive Advantage in a Mature Market:** In order to understand the role of brands in markets, it is important first to examine the nature of demand in mature markets. Economists speak of two types of demand: primary demand and secondary demand. Primary demand refers to the total demand that exists in the market. The total demand for soft drinks is an example of primary demand. Secondary demand refers to the demand for a specific brand within the market; for example, the demand for Diet Coke. In mature markets, primary demand is relatively stable, and firms' efforts to increase sales are centered on efforts to increase secondary demand by stealing market share away from their competitors. In fact, "for many businesses active in mature markets, brand support and marketing can be the biggest single item of overhead cost."¹⁶
37. The tobacco market is an example of such a mature market, where consumers are well aware of the product features and benefits. In this type of market, firms' efforts are focused on stealing market share from one another not on increasing overall market demand.
38. Brands that consumers can identify by their trademarked components, are a particularly important element of the competition for secondary demand in industries like tobacco where the products are similar. Without branding in such markets, "Customers readily purchase entirely on the basis of comparative pricing ... [which] leads to cut-throat competition for consumers," as described above.¹⁷ In developing his concept of generic strategies, Professor Michael Porter has pointed out that there really are only two possible

¹⁶ Blackett, Tom, "What is a brand?" in Rita Clifton (editor) *Brands and Branding*, 2nd edition. London: The Economist in association with Profile Books, 2009, page 24.

¹⁷ Pope, Joe; David Cullwick and Jo Kennelly (1998), "Commodity Branding" in Hart, Susannah and Murphy, John, editors, *Brands: The New Wealth Creators*, MacMillan Business: 1988, page 161.

sources of sustained competitive advantage, cost advantage or differentiation.¹⁸ “You win either by being cheaper or by being different, that is, being perceived by the customer as being better or more relevant.”¹⁹ Therefore, firms that are unable to differentiate their product are left with no alternative but to compete on cost.

39. **New Entrants and International Competition:** One of the benefits of brands to market structure is that they can make it possible for new competitors to enter the marketplace and differentiate themselves from their competitors. In an unbranded commodity market, new entrants to the marketplace have a very difficult time encouraging consumers to try their product except on the basis of price. Given that they cannot effectively differentiate their products through communication about the brand, the only way to encourage trial is to compete on price. However, in a market like cigarettes where incumbents have significant scale advantages, competing on price is not likely to be an attractive option for new entrants. In contrast, in a market with brands, it is possible for a new brand to establish itself in consumers’ minds as something different from existing brands and, therefore, as something worthy of switching to. One of the keys to ensuring that a market functions efficiently is ensuring that incumbents feel a continuous threat that new entrants may enter the market and therefore continue to try to improve the quality of their products and brand reputation. In essence it ensures a “best behavior” practice on the part of market participants.
40. A further impact of the reduced power of brands is a reduction in international trade and competition in the market. For a foreign international competitor to succeed in the market, it is essential that the competitor is able to maintain some price premium over local competition in order to compensate for the added costs of doing business internationally.²⁰ It is all but impossible for a foreign competitor to maintain these margins as an incumbent, or to establish them as a new entrant, if the international foreign competitor is not able to build and maintain a strong brand.
41. **Quality, Innovation and Niche Products:** In the cigarette market, in which product configuration, method of consumption and visual characteristics are similar to one another, brands are also important because they serve as one of the few areas of competition available. The long term value generated by a firm’s efforts to deliver quality products is captured in the value of its brands. In a market where brands cannot be utilized for product differentiation, the long term value of investments in quality and innovation is greatly diminished.

¹⁸ Porter, Michael E. *Competitive Advantage*, The Free Press: 1995, page 11.

¹⁹ Lindemann, Jan. *The Economy of Brands*, Palgrave MacMillan: 2010, page 12.

²⁰ These added costs faced by foreign firms are a well-established principle of international business. They are often referred to as “the liability of foreignness.” See, for example, Srilata Zaheer, “Overcoming the Liability of Foreignness,” *Academy of Management Journal*, 1995, Vol. 38, No. 2. 341-363.

42. Reducing the value of brands in the market also has the effect of making it difficult for niche players to survive. Normally, niche players are able to survive in markets by building brands that appeal to a small segment of consumers. Without the benefit of the brand, these niche players would disappear as part of the process of industry consolidation and monopolization described above.
43. Moreover, in markets with limited differentiation and limited incentive for investment, business models that differentiate on better quality or better service are discouraged.

VI. Impact of Increased Sized Graphic Health Warnings

44. The requirement to display 50% graphic health warning on Hong Kong cigarette packages already severely limits the use of trademarks and prevents firms from designing cigarette packages holistically. However, by increasing the size of the warning to 85%, trademarks will not be able to adequately serve their essential functions.
45. Enlarging the GHWs on cigarette packages to 85% of the packages will also result in a reduction in the “visual equity” of the brands involved through a loss of consistency in the affected packages. As discussed below, reducing further and thus eliminating the impact of the trademarks on cigarette packaging will have negative implications for consumers, firms and the market in general.
46. Figure 9 below shows cigarette packs of brands sold in Hong Kong with the proposed health warning covering 85% of the packages on the right. The images clearly illustrate that the effect of GHWs covering 85% of the packages would destroy the "visual equity" of the brands involved.

Figure 9: The Proposed Health Warnings Destroy the “Visual Equity” of the Related Brands



47. Increasing the size of GHWs to cover 85% of the cigarette packages will make it impossible for manufacturers to use some of their trademarks as registered (including logos and labels) and for them to use other trademarked elements effectively.
48. With GHWs covering 85% of the package it would be impossible to effectively include all the desired information on the package. Increasing the size of the GHWs to 85% will prevent consumers' from being able to perceive the brand on cigarette packages. Without distinctive packaging to make the trademark elements stand out, a brand becomes undifferentiated from competing brands. Trademarks will not be able to effectively differentiate, and identify the origin and quality of products, which are essential functions of trademarks. The consequence of this is that the trademarks and their related brands are practically destroyed and the goodwill inherent in the trademarks and their related brands will be lost, along with the decades of significant investment it took to generate such goodwill.
49. In the case of similar products, where trademarked symbols and packaging are key sources of differentiation, the function of these brand elements as a navigational tool to consumers is critical. With less than 15% of the packaging space available for trademarks, customer confusion is a significant concern. Increased opportunity for customer confusion reduces the value of brands for the manufacturers and consumers and reduces consumer welfare.
50. Additionally, the consumer's confidence in evaluating the authenticity of the brand is diminished by the lack of trademarked packaging. That is, the package is in essence a guarantee of what is inside. The holistic representation of the package serves as a large, multi-faceted signal to the consumer of the maker and the probability that the maker is authentic. Further reducing the available space for trademarks, reduces the ability of consumers to judge with confidence whether the product within the package was actually produced by the manufacturer. Thus, in the absence of holistic and complete packaging, the opportunity for counterfeiters and other fraudulent actors to take advantage of the consumer is increased.
51. Finally, a market with differentiated products through strong brands provides more choice for the consumer, which is a vehicle towards increased consumer power in the market, driving efficiency and other improvements.
52. Manufacturers will also receive less benefit from an impaired trademark and brand. The most obvious detriment will be in the reduced ability of firms to maintain their premium brands on the basis that they will look the same as lower quality brands and will not look and feel like premium quality products. Furthermore, any measure which diminishes brand equity will reduce the ability of new tobacco firms to introduce their brands into new geographic markets and compete with the existing brands.
53. This is especially so when the markets being entered place severe restrictions on the ability of firms to utilize their trademarks and realize the value in their brands. Thus, increasing the size of GHWs on Hong Kong cigarette packages to 85% will decrease both

the ability of foreign firms to enter the Hong Kong market and the ability of Hong Kong firms to expand abroad. Foreign firms will not be able to communicate to Hong Kong consumers about their brands, and Hong Kong firms will not have strong domestic brands to use as a base to launch their efforts in new markets. The effect of these two factors will be to reduce both the likelihood of new entrants and the basis for non-price competition in the market.²¹

54. The elimination or minimization of cigarette brands will also impact the market structure and market dynamics. First, competition will shift from brand competition to price competition. In the short term, a lack of competitive dimensions could lead to market rigidity, with little switching by consumers among brands. This market rigidity will further discourage innovation and investment and will hasten competition on price alone. It will also give an advantage to domestic brands that are likely to be able to compete more effectively on price.
55. The impact of the loss of brand differentiation in the Hong Kong tobacco market will differ among firms depending upon the extent to which they have already established their market position and depending upon the nature of their business model. Firms for which the business model depends upon the use of diversity so as to appeal to the niche tastes and firms that are currently seeking to enhance their market position by winning market share from the leading firms stand to suffer more than firms relying on one dominant brand – indeed, the latter may gain in the short run (in terms of market share) because they will still benefit from being known as a market leader and will be subject to less competitive pressure from other firms. Nonetheless, even as their market share increases, margins on these brands will decrease and eventually be eroded more or less completely, as the market evolves to pure price competition.
56. As cigarettes become commodity products resulting in competition on price alone, price conscious smokers will likely navigate toward low value, non-premium brands. The focus on commodity pricing likely will result in lower prices to consumers, a result which could also lead to increased purchases and consumption.
57. Commoditization of the market and a shift to pure price driven competition could also lead to an increase in illicit trade, since without the added value of brands, legitimate products will be less clearly differentiated from cheaper illicit products both in terms of appearance and perceived quality and value.
58. In sum, it is my opinion that increasing the size of GHWs to 85% will preclude any effective or meaningful use of trademarks, thereby preventing them from performing their essential brand functions. Further, it is my opinion that the elimination of trademarks as a platform for brand communication has a number of important negative

²¹ See, for example, Srilata Zaheer, “Overcoming the Liability of Foreignness,” *Academy of Management Journal*, 1995, Vol. 38, No. 2. 341-363.

repercussions for consumers, manufacturers, and the market in general, including some unintended consequences that are at cross-purposes with the stated health goals of the initiatives.

Dated: June 18, 2015

A handwritten signature in black ink, appearing to read "Philip Zerrillo", written over a horizontal line.

Philip Zerrillo, Ph.D.

Appendix A: CV of Philip Zerrillo

PHILIP C. ZERRILLO PH.D.

EDUCATION

Ph.D. Northwestern University, J.L. Kellogg Graduate School of Management (Marketing)

B.B.A. The University of Texas (Austin) Marketing

HONORS

2013

The Dr. Benvenuto Tantocco Distinguished Chair in Retailing, Jose Rizal University (Philippines)

2007

Journal of Business to Business Marketing (Best paper Award)

1993

Institute for the Study of Business Markets NCR AT&T Doctoral Award Competition "Most Outstanding Doctoral Dissertation Submission", Grand Prize Award

1990-1992

Northwestern University, J.L. Kellogg Graduate School of Management, "Steel Resource Foundation" Doctoral Fellowship

1989-1993

Northwestern University, J.L. Kellogg Graduate School of Management, Doctoral Fellowship

1982

The University of Texas, "The Most Outstanding Scholar Award"

ACADEMIC EXPERIENCE

2010- Present Full Professor (Practice) Singapore Management University.
-Dean Post Graduate Professional Programmes (Law, Business, Information Sciences, Economics, Social Sciences, Accounting)
-Executive Director Case Writing Initiative
-Executive Director Center for Management Practice
- Academic Head Ph.D. in Business (General Management)

2010- Present Executive Chairman of the Board -Thammasat University MIM (Thailand)

2008-2010 Visiting Professor – Northwestern University, Kellogg Graduate School of Management

2005-Present Lecturer- Goizueta School of Business, Research fellow Zyman Institute for Brand Science (ZIBS), Emory University

1999-2004	Associate Dean and Executive Director, Executive Education, University of Texas at Austin
2000-2002	Graduate Business Dean, The University of Texas at Austin
1997-2001	Director of Dallas Based Executive MBA Program (Focusing on Technology)
1993-1998	Assistant Professor- The University of Texas Graduate School of Business (Marketing Core, Channels and Distribution Policy, Pricing, Marketing Strategy Global Studies)
1997-1998	Visiting Professor-Northwestern University, J.L. Kellogg Graduate School of Management (Channels and Distribution Policy, International Distribution)
1991-1993	Lecturer- Northwestern University, J.L. Kellogg Graduate School of Management (Distribution Channels)

YEARLY VISITING POSITIONS

2010-Present	Washington University St. Louis (Shanghai Campus)
1997-Present	Visiting Professor-Thammasat University, Bangkok, Thailand
1997-Present	Visiting Lecturer-Hebrew University, Jerusalem, Israel
2009-Present	Lecturer Owen School of Management- Vanderbilt University
2008-Present	Smith School of Business- University of Maryland (Shanghai)
2002-2006	Visiting Professor IMADEC University, Vienna, Austria
2004-2006	Visiting Professor Helsinki School of Economics- Singapore
2000-2003	Visiting Professor Aoyama Gakuin University, Tokyo, Japan
2002-2003	Sun Yat Sen University, Guangzhou, China

RECENT INDUSTRY EXPERIENCE

2007- Present	Monitor Consulting
2005	Principal, Business Asia 101- focusing on business event planning and networking

1996-2001 CEO, Farig Consulting,- Key Corporate Clients 3M, PPG, Motorola, Accenture, E-Partners solutions, Input /Output KUHF Radio, On-air investment and business show host Rauscher Pierce Refsnes, Registered representative

BOARDS AND ADVISORY BOARDS

2010- Present Thammasat University- Executive Chairman of the Board MIM programme

1998-Present Sharps Compliance, Lead Director, Audit Committee Chairman Member (NASDAQ), Medical waste disposal

2002-2005 Tholos International, European based video conferencing company

1999-2001 GKS Services, (Founder- acquired by Applied Materials), Data mining applications for semiconductor fabrication applications

1996-2000 Garden.Com (NASDAQ), Internet based distribution of garden products

1997-2000 Exterprise Incorporated, (acquired by Commerce One) Business-to-business exchange software

TEACHING HONORS AND ACTIVITIES

2011 Outstanding Professor Address- SMU MBA commencement

2008 Northwestern University, Faculty Honor Roll

2008 Chosen to Deliver "Goizueta MBA Final lecture" Student recognition of the outstanding professor asked to deliver their farewell lecture"

2005-2007 Emory University. "Special Faculty Recognition for Outstanding MBA Teaching"

2000-2005 University of Texas Teaching Honor Roll - During every teaching semester

2001-2005 Doctoral Teaching Seminar for Doctoral Candidates, Thammasat University

2002 MBA Class of 1997 Alumni Award "The Professor with the Greatest Impact"

2002 MBA Class of 2002, "Outstanding Contributor to Student Life"

1994-1998 The University of Texas, Finalist, "The Joseph Beasley Award for Teaching Excellence"

1997-1999 Member of "Northwestern University, J.L. Kellogg Graduate School of Management Teaching Honor Roll" for teaching excellence

- 1993-1996 The University of Texas, Graduate Business Council, "Outstanding Marketing Core Instructor"
- 1995 Guest Lecturer, University of Texas, Graduate School of Business course on "Teaching Effectiveness"
- 1992-1993 Member of "Northwestern University, J.L. Kellogg Graduate School of Management Teaching Honor Roll" for teaching excellence and outstanding representation of the student honor code

RECENTLY PUBLISHED RESEARCH

- James C Anderson, Philip Zerrillo and Lihua Wang, "Inter Organizational Properties and Inter-organizational Perceptual Agreement: A Model and Empirical Test in Marketing Channel Relations" December 2007, (Winner of Best Paper Award)
- Frenzen, Jonathan, Paul Hirsch and Philip C. Zerrillo, "Consumption Preferences and Changing Lifestyles," Neil Smelzer and Richard Swedberg (eds.), *The Handbook of Economic Sociology*, Russell Sage, Princeton NJ. (1994)
- Iacobucci, Dawn and Philip C. Zerrillo, "Multiple Levels of Relational Phenomenon," Dawn Iacobucci (ed.) *Relationships in Marketing*, Russell Sage, Princeton NJ. (1996)
- Iacobucci, Dawn and Philip C. Zerrillo, "The Relationship Life Cycle: I) A Network-Dyad-Network Dynamic Conceptualization, and II) The Application of Some Classic Psychological Theories to its Management," Jagdish Sheth and Charles Frame (eds.) *Review of Marketing*, JAI Press, Greenwich, (Forthcoming, 1996)
- Peterson Robert, Karen Smith and Philip Zerrillo, "Trademark Dilution and the Practice of Marketing" *Journal of the Academy of Marketing Science*, Vol 27, No. 2 pp 255-268 (1999)
- Shervani, Tasadduq and Philip Zerrillo, "The Albatross on New Product Innovations," *Business Horizons*, Vol 40 No.1, (Jan 1997) pp.57-62 (Also republished *Engineering Management Review* Winter 1997, Vol 4 Pg 26-32) Also Republished JPIM On-line Hot Topic, review Dec 2000) (Also republished Euskotek, *Revist de la Red ParquesTecnologicos* Numero 6 Ano1999,)
- Zerrillo, Philip C., Jon M. Flemming and Angela McKee, "Vertical Territory and Customer Resale Restrictions a New Rule of Reason Approach," *Iowa Law Review: Journal of Corporation Law*, (May 1997)
- Zerrillo, Philip and Dawn Iacobucci, "Trade Promotions a Call For a More Rational Approach," *Business Horizons*, Vol 38 No.4, (July-August) (1995) pp. 69-76
- Zerrillo, Philip and Angela McKee, "Vertical Restraints and Consumer Welfare, Clear Distinctions for Restraints: Via a Modified Rule of Reason Approach" *Contemporary Knowledge of Relationship Marketing*, Emory University Center for Relationship Marketing June 1996,

Zerrillo, Philip and Ravi Raina, "A Vertical View of Marketing Networks: A New Entrants Approach" Dawn Iacobucci (ed.) Relationships in Marketing, Russell Sage, Princeton NJ. (1996)

Philip C Zerrillo and Greg M. Thomas, "Developing Brands in Emerging Markets, a Framework for Growth," Journal of Place Branding Fall 2007.

PUBLISHED CASES

2011 Memaska Steel (Singapore Management University case Series, European Case Clearing House)

2011 With Kevin Sproule, Hammerlick Brewing (Singapore Management University case Series, European Case Clearing House)

2012 With Havovi Joshi and S.N. Venkat Tata Salt- What to do When a a Challenger Brand Grows Up? Case A

2012 With Havovi Joshi and Sn Venkat Tata Salt Case B. (Singapore Management University case Series, European Case Clearing House)

2012 Minh Long Porcelain (Singapore Management University case Series, European Case Clearing House)

2013 Minh Long Porcelain Case B. (Singapore Management University case Series, European Case Clearing House)

2013 Tata Starbuck, Brewing a Perfect Blend (Singapore Management University case series. European Case Clearing House)

EXPERT TESTIMONY

Latin America Courier, and Pegaso Express V. Airborne Express Inc., Airborne Express Inc., Airborne Freight Corporation, George Trevino DHL Holdings (USA) Inc, DHL Danzas Air and Ocean North America, DHL Worldwide Express Inc., and DHL International De Mexico S.A. Friedman V. 24hr Fitness

JK Enterprises LLC., DBA Jeremy Franklin Suzuki, Et.al, v. American vs. American Suzuki Motor Corporation, et.al.

Stripes LLC, vs. Carlson Worldwide Inc., TGI Friday's, Inc, and TGI Friday's, of Minnesota Inc.

EXECUTIVE EDUCATION/CONSULTING

Developed and delivered executive training for consulting firms, (Accenture, Monitor Consulting, Deloitte consulting) universities (Thammasat (Thailand), Northwestern University Kellogg Graduate School of Management, University of Maryland, The

University of Texas, Help Institute of Malaysia, Songang (Korea), Tech de Monterrey (Mexico)), and private clients including Genentech, Cargill, Imperial Tobacco (UK), 3M, LG, CP Food (Thailand), Baxter, Scott & White Hospitals, Texas Instruments, Freescale, Motorola, General Electric etc.

Recent consulting engagements: Motorola, Input/Output, 3M, 24Hr Fitness, Foley Lardner, Batesville Casket, LG Electronics, Imperial Tobacco, Suffolk Group, Orrick Hamilton, Countrywide Financial, CP Food.

CONTACT INFORMATION

Philip C. Zerrillo Ph.D.
Singapore Management University
Dean
Executive Director
Full Professor

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Cell: [REDACTED]
Email: [REDACTED]

September 2012

Appendix B: Documents Considered

Books

- Aaker, David A. *Managing Brand Equity*. New York, NY: The Free Press, 1991.
- Davis, Scott M. *Brand Asset Management: Driving Profitable Growth Through Your Brands*. John Wiley & Sons, 2002.
- Hart, Susannah and John Murphy, *Brands: The New Wealth Creators*. New York: New York University Press, 1998.
- Lindemann, Jan. *The Economy of Brands*. Palgrave MacMillan, 2010.
- Meyers, H.M. and M.J. Lubliner. *The Marketer's Guide to Successful Package Design*. Chicago: American Marketing Association/NTC Business Books, 1998.
- Murphy, John. M. *Brand Strategy*. Prentice Hall, 1990.
- Porter, Michael E. *Competitive Advantage*. New York, NY: The Free Press, 1985

Articles and Reports

- Blackett, Tom. "What is a brand?" in *Brands and Branding*, 2nd edition, edited by Rita Clifton. London: The Economist in association with Profile Books, 2009.
- Helmers, Christian and Mark Rogers (2010), "Trademarks and performance in UK firms," in da Silva Lopes, Theresa and Paul Duguid (editors), *Trademarks, Brands and Competitiveness*, Routledge, page 56.
- Fogg, Janet (1998), "Brands as intellectual property," in Hart, Susannah and John Murphy, *Brands: The New Wealth Creators*. New York: New York University Press, page 72.
- Png, I. P. L., & Reitman, D. (1995). "Why are some products branded and others not?" *Journal of Law and Economics*, 38(1), 207-224.
- Pope, Joe; David Cullwick and Jo Kennelly (1998), "Commodity Branding" in Hart, Susannah and Murphy, John, editors, *Brands: The New Wealth Creators*, MacMillan Business: 1988, page 161.
- Young, Scott and Vincenzo Ciummo (2009), "Package Viewing Patterns: Insights and Implications for Global Design," *Package Design Magazine*, July 2009, pages 26-30. Accessed at http://www.prsresearch.com/fileUploads/Package_Viewing_Patterns.pdf

Zaheer, Srilata. "Overcoming the Liability of Foreignness." *Academy of Management Journal* 38 (1995).

Online Resources

American Marketing Association Dictionary. Available at:
<https://www.ama.org/resources/Pages/Dictionary.aspx?dLetter=B&dLetter=B>.