



The Chairman & Clerk to Panel on Health Services
Panel on Health Services
Legislative Council
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Our ref
6461/17503/30993177
Your ref
FH CR 3/3231/15
Date
19 January 2017

By email and by hand

Dear Sirs,

Government's proposal to change the graphic health warnings on tobacco products packets and retail containers as set out in the Legislative Council Paper No. CB (2)386/16-17(05) ("Proposal")

We act for British American Tobacco Company (Hong Kong) Limited ("**BAT HK**") and refer to our previous letter dated 10 January 2017 (LC Paper No. CB(2)584/16-17(24)) ("**BAT HK's 2017 Submissions**") and the meeting of the Legislative Council's Panel on Health Services ("**Panel**") on 17 January 2017 (the "**Meeting**").

In the Meeting, Hon Peter Shiu Ka-fai sought clarification from the Food and Health Bureau ("**FHB**") and deputations in attendance as to whether the FHB has provided any response to the submissions made by the deputations, in particular to letters received from lawyers.

Consistent with the submissions made by our Mr. Dominic Adrian Geiser appearing on behalf of BAT HK in the Meeting, BAT HK confirms that it has not received any written response from the Government (including the FHB) whatsoever to any of its written submissions on the Proposal to date. We also confirm that our firm has not received any such response on BAT HK's behalf. A list of submissions made on behalf of BAT HK can be found in the Schedule to this letter.

During the Meeting, Hon Paul Tse Wai-Chun, JP, specifically referred to BAT HK's 2017 Submissions as having raised very important legal issues concerning the Basic Law, principles of the common law and trademarks and thus asked the FHB to provide a formal response on the same. BAT HK would like to take this opportunity to repeat its request to the FHB for a formal response, which will undoubtedly be helpful for the Panel's discussion at the next Panel meeting.

Also, Hon Dennis Kwok Wing-hang indicated his view at the Meeting that the Government should conduct a formal and proper consultation in relation to the Proposal, which includes issuing a formal consultation document, giving time for the public to make submissions on the Proposal and issuing a formal consultation report. Hon Peter Shiu Ka-fai and Hon Paul Tse Wai-Chun, JP, also

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expressed similar views that the Government should accord procedural fairness. BAT HK fully agrees with their comments and hereby repeats its request to the Government for a formal consultation to be conducted on the Proposal.

Finally, as explained by our Mr. Dominic Adrian Geiser on behalf of BAT HK in the Meeting, BAT HK would like to remind the FHB that any attempt by the Government to implement the Proposal by negative vetting would be an unlawful exercise of power as it has no authority under the Smoking (Public Health) Ordinance (Cap. 371) to amend subsidiary legislation that restricts property rights that are protected under the Basic Law and/or the common law, for the reasons stated in BAT HK's 2017 Submissions.

Please do not hesitate to contact us should you have any queries.

Yours faithfully,

Herbert Smith Freehills

cc: Dr. KO Wing-Man, BBS, JP
Secretary for Food and Health
Food and Health Bureau,
18/F, East Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong
(By email and by hand)

cc: Mr. Rimsky Yuen, SC
Secretary for Justice
Department of Justice
G/F, Main Wing, Justice Place,
18 Lower Albert Road, Central,
Hong Kong
(By email and by hand)



Schedule

BAT HK's Previous Submissions

	Submission	Date	Status of FHB/Government response
1.	Letter from Herbert Smith Freehills ("HSF") to the Panel <i>LC Paper No. CB(2)1808/14-15(28)</i> NB: also enclosed as Annex 1 to the letter from HSF to the FHB dated 29 July 2016	23 June 2015	No direct response. No qualitative analysis / report.
2.	Letter from HSF to the Panel copied to the FHB <i>LC Paper No. CB(2)1951/14-15(01)</i>	20 July 2015	No direct response. No qualitative analysis / report.
3.	Letter from HSF to FHB	29 July 2016	No direct response. No qualitative analysis / report.
4.	Letter from HSF to FHB	30 July 2016	No direct response. No qualitative analysis / report.
5.	Letter from HSF to the Panel copied to the FHB <i>LC Paper No. CB(2)425/16-17(01)</i>	13 December 2016	No direct response. No qualitative analysis / report.
6.	Letter from HSF to the Panel copied to the FHB and the Secretary for Justice <i>LC Paper No. CB(2)584/16-17(24)</i>	10 January 2017	No direct response. No qualitative analysis / report.



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Dear Sir

Government's proposal to change the graphic health warnings on tobacco products packets and retail containers as set out in the Legislative Council Paper No. CB (2)386/16-17(05) ("Proposal")

As you are aware, we act for British American Tobacco Company (Hong Kong) Limited ("BAT HK").

We refer to the meeting of the Legislative Council's Panel on Health Services ("Panel") on 17 January 2017 (the "**Meeting**"), our letter to the Panel dated 18 January 2017 and the following submissions previously made on behalf of BAT HK to the Food and Health Bureau ("FHB") and/or the Panel regarding the Proposal:

1. Our letter to the Panel dated 23 June 2015 (LC Paper No. CB(2)1808/14-15(28)), which was enclosed as Annex 1 to our letter to you dated 29 July 2016;
2. Our letter to the Panel dated 20 July 2015 copied to you (LC Paper No. CB(2)1951/14-15(01));
3. Our letters to you dated 29 and 30 July 2016;
4. Our letter to the Panel dated 13 December 2016 copied to you (LC Paper No. CB(2)425/16-17(01)); and
5. Our letter to the Panel dated 10 January 2017 copied to you and the Secretary for Justice

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(LC Paper No. CB(2)584/16-17(24)) ("**BAT HK's 2017 Submissions**").

(together, "**BAT HK's Previous Submissions**")

We note the comments made by the Principal Assistant Secretary for Food and Health (Health) Special Duties 1, Ms Wendy Au Wan-sze, at the Meeting that some of the deputations' submissions were addressed to the Legislative Council (rather than the FHB). BAT HK notes that all of BAT HK's Previous Submissions were addressed or copied to the FHB and/or enclosed as an annexure to our letter to the FHB and/or uploaded to the Legislative Council website under the agenda item of the Panel meetings that the Under Secretary for Food and Health attended. It is clear that the FHB received a copy of all of BAT HK's Previous Submissions and it is reasonable for BAT HK to expect a formal, written response to the same to be provided by the FHB.

We would also like to remind the FHB that during the Meeting Hon Paul Tse Wai-Chun, JP, specifically asked the FHB to provide a response to BAT HK's 2017 Submissions.

Whilst BAT HK maintains that it has already given sufficient attention to the FHB on all of BAT HK's Previous Submissions, BAT HK repeats its request, by sending this letter directly to the Secretary for Food and Health, for a formal, written response to all of BAT HK's Previous Submissions.

Finally, as explained by our Mr. Dominic Adrian Geiser on behalf of BAT HK in the Meeting, BAT HK would like to remind the FHB that any attempt by the Government to implement the Proposal by negative vetting would be an unlawful exercise of power, as it has no authority under the Smoking (Public Health) Ordinance (Cap. 371) to amend subsidiary legislation that restricts property rights that are protected under the Basic Law and/or the common law, for the reasons stated in BAT HK's 2017 Submissions.

Please do not hesitate to contact us should you have any queries.

Yours faithfully,

Herbert Smith Freehills

cc: Mr. Rimsky Yuen, SC
Secretary for Justice
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cc: The Chairman & Clerk to Panel on Health Services
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