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High Court finds government takes tobacco brands

British American Tobacco Australia (BATA) said it was pleased the High Court had today found that its trademarks, patents, designs, copyrights and brands such as Winfield and Dunhill constitute property.

The Court also found that the Federal Government has taken this property from tobacco companies through the Tobacco Plain Packaging Act.

The findings show the case was determined on very narrow grounds. The main hurdle for the tobacco industry was proving the government or a third party receives a benefit from plain packaging.

This hurdle is a peculiar requirement of the Australian Constitution which many countries don't have. Plain packaging will be very difficult for many countries to implement due to this reason.

Other countries which try to implement plain packaging will do so knowing that legally the tobacco industry has valuable intellectual property and that they are stripping it from them.

BATA spokesperson Scott McIntyre said to stop plain packaging in Australia the tobacco industry had to prove the government received a benefit from taking its property.

"The High Court has ruled we had property, that this property was taken from us but due to a quirk in the Australian Constitution we still get plain packs," Mr McIntyre said.

"If our brands constitute property then surely prohibiting their use and covering them in government messages is a benefit.

"Obviously BATA accepts the Court's decision even if we don't agree with it. We have complied with the law and will ensure all of our products meet the plain packaging implementation dates.

"What's most worrying is that the serious unintended consequences we've been so vocal about will now come home to roost.

"The illegal tobacco problem will only grow as packs will be easier to copy and hide amongst legal packs once they all look the same.

"The reality is that plain packaging is an organised crime boss's dream."

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