

Is the destruction of branding a solution for tobacco, alcohol and obesity problems?

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In the name of public health, public authorities have issued a flurry of regulations restricting companies in the use of their brands. A growing number of products — tobacco, as well as alcohol and certain foods — have been in the crosshairs.

But such policies may prove ineffective in lowering consumption of the products involved. They inevitably undermine the role that brands play in the market, depriving consumers and businesses of their economic benefits.

THE ECONOMIC ROLE OF BRANDS

Brands, as defined in a study, encompass any "sign" — a logo, name, word, symbol or a combination thereof — used by a manufacturer or merchant to distinguish a particular good or service.¹ Logically, brand names are placed systematically on products themselves and on their packaging.

They fulfil a vital economic role² for consumers and businesses alike.

Brands are a source of information for consumers. They make it easier to identify products, their source (who made them) and their qualities, based on past experience or word of mouth.

Brands are especially useful in identifying the characteristics of products that are hard to judge before being consumed.³ They help reduce the costs of looking for a desired product,⁴ and they serve as a guarantee of sorts that a product will be of consistent quality over time in terms of taste, texture, durability and so on.

At a time when products are increasingly sophisticated, and when consumers are urged to be vigilant, brands and their content are essential in reducing the valuable time spent visiting

supermarkets or running errands.

Brands also help companies stand out more easily from their rivals, thereby intensifying competition. In this type of environment,⁵ producers have an incentive to invest in innovating and improving their products. As they are able to reap the benefits of a better reputation and more favourable brand image, they have a direct interest in anticipating consumers' preferences and any changes in them, whether founded or not.



Concerns were expressed in the public debate over palm oil, for example. Businesses subsequently pledged to reduce the use of this oil in products bearing their brand. Similarly, to meet customers' nutritional needs, McDonald's — known for its burgers and fries — launched a range of salads to serve its customers better.⁶ In short, the existence of brands benefits consumers through the existence of quality products they desire

and prefer.

Brands are viewed nowadays as a real asset for companies: they solidify success in enhancing customer loyalty and developing goodwill.⁷ This intangible asset, although hard to quantify exactly, is evaluated in the billions of dollars in certain cases,

1. See Giovanni Ramello, "What's in a sign? Trademark law and economic theory," *Journal of Economic Surveys*, Vol. 20, No. 4, 2006, pp. 548-550. The use of brands goes back to the earliest days of organized trade. In ancient Greece, pottery makers put distinctive signs on their products. Similar practices also existed elsewhere, notably in ancient Rome and imperial China.
2. Numerous books and articles lay out the economic role of brands. Good examples are William Landes and Richard Posner, "Trademark Law: An economic perspective," *Journal of Law and Economics*, Vol. XXX, October 1987, pp. 265-309, and Ramello, 2006, *op. cit.*
3. See, for example, Philip Nelson, "Advertising as information," *Journal of Political Economy*, Vol. 82, No. 4, p. 730, with its distinction between "search qualities" (such as the colour of a dress) and "experience qualities" of a product (such as the taste of a specific brand of soft drink).
4. See Mark Lemley, "The Modern Lanham Act and the death of common sense," *The Yale Law Journal*, Vol. 108, No. 7, May 1999, p. 1690.
5. On this subject, see William P. Kratzke, "Normative economic analysis of trademark law," *Memphis State University Law Review*, Vol. 31, 1991, p. 219.
6. On this subject, see, for example, "Europe — Les salades permettent à McDonald's de se redresser," *Le Devoir*, 23 July 2004: <http://www.ledevoir.com/societe/actualites-en-societe/59697/europe-les-salades-permettent-a-mcdonald-s-de-se-redresser>.
7. See Mira Wilkins, "The neglected intangible asset: the influence of the trade mark on the rise of the modern corporation," *Business History*, Vol. 34, No. 1, 1992.

including some in the sectors threatened by recent regulations being considered in the name of public health (see Figure 1).

Without brand names, product diversification would not have occurred. The companies owning these brand names would lose out, of course, but so would consumers, who gain direct and indirect economic benefits from them.

REGULATIONS THAT PUT BRANDS UNDER INCREASING ATTACK

These benefits, however, have come under growing threat because of regulations or proposed laws attacking the optimal use of brands.⁸ Tobacco is the first sector affected, but other industries are also being targeted.

Shocking images and health warnings are already imposed on cigarette packaging in many countries, including France, covering much of a package's surface and hindering brand visibility.

But that isn't all. New regulations imposing plain or generic packaging prohibit companies from using elements of graphic design (logos, drawings, colours or other distinctive markings) referring to a brand and helping to differentiate their products.

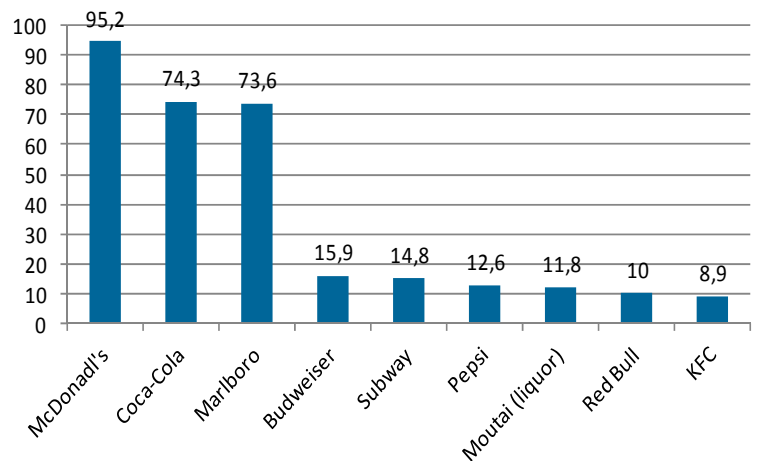
Australia became the first country to impose plain packaging for cigarettes, effective December 2012. This idea is being examined in other countries, including New Zealand⁹ and the United Kingdom.¹⁰ Laws to this effect have been proposed in France and are being discussed at the European level.¹¹

This trend is not limited to tobacco products. Similar proposals are being considered for other items.

Thailand is looking at imposing shocking images on alcoholic drinks, with the image rotating every 1,000 bottles.¹² Some countries, including the members of the European Union (EU), the United States and, paradoxically, Australia, have opposed this at the World Trade Organisation (WTO), arguing, for example, that this would require halts in production every three or four minutes.¹³

Figure 1

Examples of the estimated value of brands in the tobacco, alcohol, soft drink and fast food sectors in 2012 (in billions of dollars)



Source: MillwardBrown, BrandZ Top 100 Most Valuable Global Brands, 2012.

Nor is plain packaging for alcoholic drinks a taboo topic. This idea was raised explicitly by the British government in a public consultation on its alcohol "strategy."¹⁴

In the name of fighting obesity, plain packaging has also been in the public debate, notably in the United Kingdom and Australia, for fast food and a whole range of fatty or sugary items, including soft drinks, candy, etc.¹⁵

If public authorities continue on this path, consumers will soon have trouble selecting their brands, not only of cigarettes, whisky, beer or wine but also of chips, colas, candy and any other product that pressure groups may find harmful to the health.

Such policies are all the more counterproductive in that they risk failing to meet their health goals, since they defy economic logic and consumer sovereignty.

8. This Note does not examine the legal issues raised by neutral packaging in terms of trademark law.

9. See "Proposal to introduce plain packaging of tobacco products in New Zealand," New Zealand Ministry of Health, July 2012: <http://www.health.govt.nz/publication/proposal-introduce-plain-packaging-tobacco-products-new-zealand>.

10. See Lorraine Conway, "Plain packaging of tobacco products," House of Commons, United Kingdom, September 2012: <http://www.parliament.uk/briefing-papers/sn06175>.

11. On this subject, see the European Commission proposal to revise the 2001 directive on tobacco products, "Tobacco products: towards bigger health warnings and ban of strong flavourings," 19 December 2012: http://europa.eu/rapid/press-release_IP-12-1391_en.htm. A proposal soon to be discussed in the European Parliament and the Council of Ministers, it leaves the choice of adopting plain packaging in "duly justified" cases up to member states at this stage.

12. See, for example, "Comments from the European Union on Notification G/TBT/THA/332," March 2010.

13. See "Minutes of the meeting of 23-24 June 2010," Committee on Technical Barriers to Trade, WTO, p. 52.

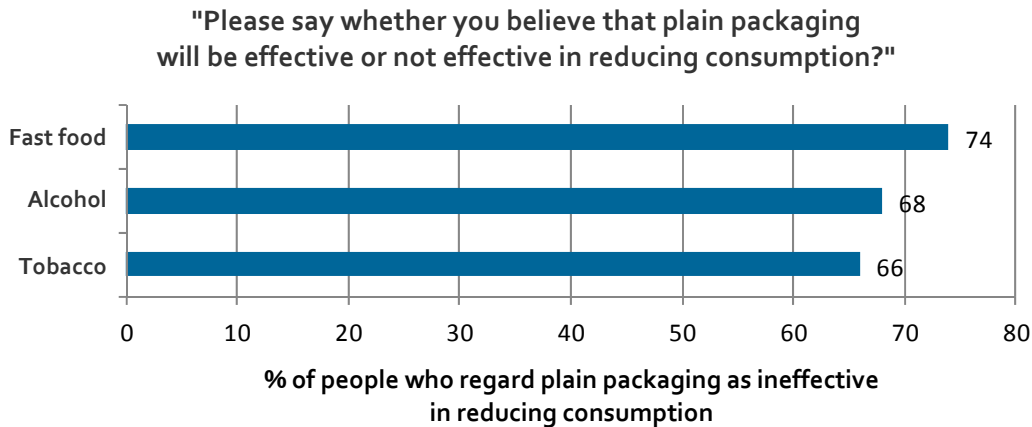
14. See the open consultation on the "Government's Alcohol Strategy," United Kingdom, 26 March 2012: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/12-03-26-alcohol-torcfe/>.

15. On this subject, see Rory Harrington, "Fears that 'plain packaging' proposal for tobacco may spread to food," published at [foodproductiondaily.com](http://www.foodproductiondaily.com):

<http://www.foodproductiondaily.com/Packaging/Fears-that-plain-packaging-proposal-for-tobacco-may-spread-to-food>. See also "Plain packaging for junk food? Health experts call for govt intervention," *The Conversation*, 19 September 2012: <http://theconversation.edu.au/plain-packaging-for-junk-food-health-experts-call-for-govt-intervention-9664>.

Figure 2

Effectiveness of plain packaging in lowering tobacco, alcohol and fast food consumption — poll conducted in Australia in 2011



Source: Institute of Public Affairs (Australia), 2011, available at: <http://www.ipa.org.au/publications/1926/new-poll-more-australians-agree-we-are-becoming-a-nanny-state-70-think-food-tobacco-alcohol-plain-packs-ineffective>.

A COUNTERPRODUCTIVE POLICY IN TERMS OF HEALTH?

The justification for plain packaging is that it may dissuade current or future consumers from using certain products. It is aimed at adolescents in particular. Behavioural studies, based on interviews, group discussions and so on, show that there clearly would be differences of perception regarding branded cigarette packages and "generic" packages.¹⁶

However, it would be premature to conclude from this that consumers will refuse a product simply because of a change of appearance in its packaging.¹⁷

Economic theory and experience both show that a decline in brands is not synonymous with reduced consumption.

It is possible in theory to distinguish between two cases.

The first is to assume that consumers will remain able to identify their favourite products despite the absence of distinctive signs on the packaging. To the extent that demand holds up, this will enable companies to continue to finance and maintain the quality of brand name products. In any event, there would be no change here in consumption patterns, making the destruction of brand visibility through regulations useless, although it would be

an everyday nuisance for consumers. As noted by the famous economist Ludwig von Mises, "[o]ne does not make a man happier by preventing him from discriminating between a brand of cigarettes or canned food he prefers and another brand he likes less."¹⁸

The second case is to assume that consumers cannot — or prefer not to — distinguish between former brand name products and "generic" products. But brands are primarily a means of allotting market share among consumers who have already decided to buy a product. They are not a means of attracting new consumers.

As such, this means consumers will substitute "generic" products for former brand name products. Manufacturers of former brand name products will have little choice but to go bankrupt or to try lowering the prices of their products by not, for example, maintaining the same level of quality.

The result? Destroying brands in favour of plain packaging could end up lowering the prices of the targeted products.¹⁹ Lower prices are a factor that generally favours higher, not lower, consumption.

In the early 1990s, California provided a full-scale experiment in this regard, confirming what can happen. As generic cigarettes made a breakthrough, their market share rose from 11% in 1988 to 40% in 1993, with prices 20% to 50% lower than brand name cigarettes. According to a study, "[t]here was an increase in the smoking initiation rates among 12 to 17 years olds. (...) There was also no noticeable reduction of adult smokers quitting."²⁰ Imposing generic packaging followed by the destruction of brand name cigarettes risks leading eventually to similar effects on tobacco prices and consumption.

It is hardly absurd to imagine that extending this type of regulation to other products — alcoholic or sweetened drinks, fast

16. For a look at peer-reviewed studies using empirical data on tobacco, see D. Mizerski, "Plain Packaging of Cigarettes: An Ineffective Remedy with Unintended Consequences," Australian and New Zealand Marketing Academy Conference 2011, Edith Cowan University: <http://anzmac.org/conference/2011/Papers%20by%20Presenting%20Author/Mizerski,%20Dick%20Paper%20587.pdf>.

17. Mizerski, 2011, *op. cit.*, p. 5, concludes that "mandated plain cigarette packages probably will not have an effect in lowering smoking by adolescents or adults." See also Christopher Snowdon, "Plain Packaging: Commercial expression, anti-smoking extremism and the risks of hyper-regulation," Adam Smith Institute, 2012.

18. Ludwig von Mises, *Human Action*, Ludwig von Mises Institute, 1998, p. 377.

19. On this subject, see, among others, the study by Michel Kelly-Gagnon, "Plain Packaging and its Unintended Consequences," Montreal Economic Institute, August 2011: <http://www.iedm.org/35937-plain-packaging-and-its-unintended-consequences>. See also Jorge Padilla, *The Impact of Plain Packaging in Australia: A Simulation Exercise*, LECG Consulting, February 2010, which estimates that the prices in Australia could fall by 4.8% to 19.2% with the introduction of plain packaging.

20. See Mizerski, 2011, *op. cit.*, p. 5, and the references cited there.

food, candy, etc. — will lead to similar effects on consumption. It's no surprise that, even in Australia, the country of plain packaging, more than two-thirds of those polled judged these regulations as ineffective (see Figure 2).

But if plain packaging proves ineffective, in particular due to the lower prices it engenders for the targeted products, might raising taxes help overcome these unintended effects?²¹

TAXING MORE TO OVERCOME THE PERVERSE EFFECTS OF DESTROYING BRANDS?

Proposals of this type are certainly possible on paper: tobacco taxes do keep going up. But this ignores the fact that taxes already account for about 80% of the final price of cigarettes, in France, for example (with a roughly similar situation elsewhere), nurturing a flourishing black market.

Establishing plain packaging will favour the black market in two ways.

First, unless this approach is adopted everywhere, brand name cigarettes will themselves become the object of illicit trafficking, which by definition escapes regulation.

Second, many consumers could refuse to pay so much in taxes to get the same unbranded products they can get on the black market (before, they at least got brand name cigarettes and the assurance of dealing with the producer of their choice). This risks causing a huge upsurge in the black market, especially since it is easier to counterfeit generic cigarettes than brand name cigarettes.

The experience worldwide is unambiguous: the consumption of illicit products is far more hazardous for the health.²² And if it increases, the risks to consumers' health will rise, not fall.

If plain packaging is applied to alcohol, given that it is also highly taxed in many countries, the effects on the black market and on health will be similar.²³

As regards other products, such as soft drinks, fatty foods, sweetened products, etc., expansion of a black market is less plausible. The effect on obesity rates would be minimal, however, with consumers turning instead to other products that are just as high in calories, if not higher, as has been observed with the taxation of soft drinks.²⁴

CONCLUSION

To fight smoking, alcoholism or obesity, regulations prohibiting the use of brands and imposing plain packaging are being advanced. They already cover tobacco, but similar measures are being discussed for alcohol and a range of other products (soft drinks, chips, fatty or sugary products, etc.).

This bureaucratisation of product marketing will cause irreparable harm to the market economy in its ability to meet consumers' needs. Companies will be robbed of an intangible asset that encourages them to invest in maintaining their reputation, their brand image and the quality of their products.

Consumers will also be hit hard by the drawbacks of this type of policy. Deprived of an effective source of product information and identification, they will be disoriented and will have to settle for lower-quality or contraband supply, with increased health risks.

The destruction of brands creates an unnecessary market failure. It is not a solution to the problems linked to tobacco, alcohol or obesity.

21. See Harry Clarke and David Prentice, "Will Plain Packaging Reduce Cigarette Consumption?," *Economic Papers*, Vol. 31, No. 3, September 2012, pp. 303-317.

22. See Valentin Petkantchin, "What if tobacco were simply prohibited?," Institut économique Molinari, February 2012, p. 3. Available at: http://www.institutmolinari.org/IMG/pdf/noteo112_en.pdf.

23. *Ibid.* Contraband alcohol may contain hazardous substances and may be unfit for human consumption, with consequences up to and including death.

24. See Valentin Petkantchin, "La taxe 'sodas', une mesure inefficace pour régler les problèmes d'obésité et de déficit public," Institut économique Molinari, October 2011. Available at: <http://www.institutmolinari.org/la-taxe-sodas-une-mesure,1214.html>.



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