



HIGH COURT OF AUSTRALIA

5 October 2012

JT INTERNATIONAL SA v COMMONWEALTH OF AUSTRALIA; BRITISH AMERICAN
TOBACCO AUSTRALASIA LIMITED & ORS v COMMONWEALTH OF AUSTRALIA

[2012] HCA 43

On 15 August 2012 the High Court made orders in two matters concerning the *Tobacco Plain Packaging Act 2011* (Cth) ("the Act"). Today the High Court delivered its reasons in those matters. A majority of the High Court held that the Act was valid as it did not acquire property. It therefore did not engage s 51(xxxi) of the Constitution, which requires any acquisition of property effected by a Commonwealth law to be on just terms.

The Act imposes restrictions on the colour, shape and finish of retail packaging for tobacco products and restricts the use of trademarks on such packaging. The plaintiffs brought proceedings in the High Court challenging the validity of the Act, arguing that the Commonwealth acquired their intellectual property rights and goodwill otherwise than on just terms.

A majority of the Court held that to engage s 51(xxxi) an acquisition must involve the accrual to some person of a proprietary benefit or interest. Although the Act regulated the plaintiffs' intellectual property rights and imposed controls on the packaging and presentation of tobacco products, it did not confer a proprietary benefit or interest on the Commonwealth or any other person. As a result, neither the Commonwealth nor any other person acquired any property and s 51(xxxi) was not engaged.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*