

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S409 of 2011

BETWEEN:

JT INTERNATIONAL SA
ACN 004 649 428
Plaintiff

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and

THE COMMONWEALTH OF AUSTRALIA
Defendant

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SUBMISSIONS FOR
THE ATTORNEY-GENERAL OF THE AUSTRALIAN CAPITAL TERRITORY
INTERVENER

PART 1: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

PART 2: BASIS OF INTERVENTION

2. The Attorney-General for the Australian Capital Territory ("ACT") intervenes pursuant to s78A of the *Judiciary Act 1903* (Cth).

PART III: STATEMENT OF APPLICABLE COSTITUTIONAL AND LEGISLATIVE PROVISIONS

3. The ACT adopts the Commonwealth's statement of applicable provisions.

PART IV: STATEMENT OF ISSUES

4. The ACT agrees with and adopts the submissions of the Commonwealth in these proceedings. The submissions which follow are intended to supplement those submissions.
5. The issue which these submissions address is confined to the question of whether, but for the operation of s 15 of the *Tobacco Plain Packaging Act 2011* (Cth) ("**the TPP Act**"), the provisions of that Act and more particularly Chapter 2 thereof would result in an acquisition of the various plaintiffs' property for the purposes of s 51(xxxi).¹ Specifically, these submissions address the question of whether, assuming (contrary to the ACT's primary position²) that the TPP effects an acquisition of copyright, registered trademarks, registered patents and/or registered designs ("**the IP rights**"), that acquisition is properly characterised as an acquisition for the purposes of s 51(xxxi)?

PART V: ARGUMENT

6. The ACT relies upon and repeats its submissions dated 5 April 2012 in proceedings No. S389 of 2011 ("**BAT**") save for the submissions at para 12 which rely upon the Agreed Facts in BAT.
7. For the reasons set out in those submissions, the ACT contends that, even if there has been an acquisition of the IP rights, there has been no acquisition of property for the purposes of s 51(xxxi) of the Constitution.

Dated: 5 April 2012


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 (intervening)**


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¹ Note that the general grant of legislative power contained in s 22 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) is subject to the restriction contained in s 23 which, in terms that echo s 51(xxxi), provides that "[s]ubject to this section, the Assembly has no power to make laws with respect to: (a) the acquisition of property otherwise than on just terms".

² Adopting the submissions of the Commonwealth.