

CWS-026

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BEFORE THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Philip Morris Brands Sàrl,
Philip Morris Products S.A.
and
Abal Hermanos S.A.
Claimants

v.

Oriental Republic of Uruguay,
Respondent

ICSID Case No. ARB/10/7

Witness Statement of Ms. Evelin Bernedo
Vice President of Marketing and Sales for the Latin America & Canada Region,
Philip Morris International

I. Background

1. My name is Evelin Bernedo, and I am currently Vice President of Marketing and Sales for the Latin America & Canada (“LA&C”) Region of Philip Morris International (“PMI”). My predecessor in this position was Ms. Daniela Sorio, who submitted a statement in this arbitration on March 1, 2014. I have reviewed Ms. Sorio’s statement, with which I agree in its entirety. I have also reviewed and/or been briefed on relevant arguments made by Uruguay in its October 13, 2014 Counter Memorial on the Merits, (“Counter Memorial”) and supporting documents. I understand Uruguay has not questioned or objected to Ms. Sorio’s declarations in her witness statement.

2. I have worked in marketing at PMI for more than 20 years. I have held a number of positions including *Marlboro* Brand Manager (Venezuela), Group Brand

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Manager International Brands (Mexico), Senior Brand Manager *Marlboro* (Mexico), Director Marketing (Argentina). I have spent a significant amount of time working at the regional headquarters for Latin America & Canada, first during the early 1990s and most recently in my current position. In these regional roles, I have provided strategic advice to our affiliates on portfolio management and the commercialization and deployment of PMI's brands. Also, for more than six years I was Director Brand Building at PMI's global headquarters in Switzerland. In that position, I was in charge of global strategy for PMI's brands, including some of PMI's key global brands like *L&M*, *Parliament* and *Chesterfield*.

3. In 2013, I took up my present position of Vice President of Marketing and Sales for Latin America & Canada. In that capacity, my primary responsibility is to oversee PMI affiliates in the development, introduction, and marketing of new PMI products. I help PMI affiliates in the region with marketing strategies relating to PMI's international and local brands. In particular, I work on brand development, including the development of new brands for the Uruguayan market, which in recent years have included *Benson and Hedges*, *Filter Plus*, and *Silver Mint*. For these reasons I am informed about the tobacco markets in the LA&C Region, including Uruguay, both in the present and prior to my arrival. I have also become familiar with Uruguay's "single presentation" and "80/80" regulations and their very harmful effects on the brand portfolio of Abal Hermanos S.A. ("Abal"), PMI's affiliate in Uruguay.

II. Importance of Brands to PMI's Business

4. As Ms. Sorio explained in her witness statement, brands are one of PMI's most valuable assets. Brands differentiate products for consumers. They communicate

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information on the quality, origin, value, heritage, status, or taste of a particular product. Brands thereby engender loyalty among existing smokers of PMI brands and attract smokers of other brands. Brands are the primary reason that consumers are willing to pay more for branded products than they would for a generic product.

5. *Marlboro* is by far PMI's most valuable brand. The tangible aspects of the *Marlboro* brand include the characteristic chevron or "rooftop" symbol and the word *Marlboro* written in a distinctive typeface. The intangible aspects of the *Marlboro* brand include the established association in the smoker's mind between the *Marlboro* brand and the highest level of tobacco quality—an association that PMI has established over many decades by using *Marlboro* branding elements in connection with premium tobacco.

6. The commercial and economic value of the *Marlboro* brand is well-recognized. According to a 2014 study of global brands, *Marlboro* is the ninth most valuable brand in the world.¹ [[

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7. I believe that branded packaging is the most important channel for developing and maintaining a brand, especially in countries like Uruguay where virtually all advertising is banned. In many markets, it is possible to develop a brand through the price of the product, the physical product itself, the placement of the product for sale, and

¹ See BrandZ Top 100 Most Valuable Global Brands, 2014, available at: https://www.millwardbrown.com/brandz/2014/Top100/Docs/2014_BrandZ_Top100_Chart.pdf (last accessed April 16, 2015) [Exhibit C-349]. According to the 2014 study, the *Marlboro* brand is valued at more than US \$67 billion.

² See *Marlboro* Performance Data 2013-2014 [Exhibit C-489].

³ See *Marlboro* Performance Data 2013-2014 [Exhibit C-489].

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the promotion or advertising of the product. Uruguay's restriction of many of these channels means that branded cigarette packaging becomes one of the only, and therefore, in my opinion, most important channel to communicate information about a product to consumers.

III. The Impact of the Single Presentation Regulation on Abal

8. It is extremely difficult to launch a new brand from scratch. Extensive time and resources are required to introduce a product to consumers that does not carry a recognized brand. It is therefore much more common for a PMI affiliate to attempt to launch a new variant of an existing brand family, rather than a new product with a brand that is not recognized in the market .

9. *Marlboro's* new "brand architecture" that PMI began to roll out globally in 2008 illustrates how PMI leverages existing brands to develop and deploy new brand variants. The new brand architecture divides the *Marlboro* brand into three *Marlboro* families or "pillars": *Marlboro* Flavor, *Marlboro* Gold, and *Marlboro* Fresh. Each pillar has five variants, thereby allowing for many more *Marlboro* variants in total. All of the brand variants display the *Marlboro* branding, in the form of the classic or stylized *Marlboro* chevron rooftop and the word "*Marlboro*" in distinctive typeface. Several variants within each of the three pillars employ novel coloring. For example, three of the brand variants in each of the *Marlboro* Fresh pillar and the *Marlboro* Gold pillar are colored black. The following graphic illustrates the new architecture:⁴

⁴ See Philip Morris International 2011 Annual Report at pp. 8-10 [Exhibit C-143]; Witness Statement of Daniela Sorio, March 1, 2014 ("Sorio Witness Statement"), at para. 16 [Exhibit CWS-008].



10. The new brand architecture has been a great success where it has been introduced. The *Marlboro* Fresh variants have been particularly successful in Latin America and Asia.⁵ In Argentina, where the new architecture has been in place since 2008, *Marlboro* and its brand variants accounted for almost a quarter (24.1%) of the entire tobacco market in 2014.⁶

⁵ See Sorio Witness Statement at para. 17 [Exhibit CWS-008].

⁶ See Philip Morris International 2014 Annual Report at pp. 46, 50 [Exhibit C-487]; *Marlboro* Performance Data 2013-2014 [Exhibit C-489].

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11. Abal had planned to introduce the new brand architecture in Uruguay in 2008. [[

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12. Nevertheless, I understand that after the initial introduction of *Marlboro Fresh Mint* in 2008, Abal did not introduce any further components of the new architecture in Uruguay, because of the single presentation regulation. The single presentation regulation required Abal to withdraw seven of its thirteen existing variants from the market in Uruguay in 2009, including three of its four *Marlboro* variants, among them *Marlboro Fresh Mint*. The single presentation regulation made it impossible to market more than one brand variant at the same time. Thus, Abal was prevented from introducing the new worldwide *Marlboro* brand architecture in Uruguay.

IV. Impact of the 80/80 Regulation on Abal

13. The 80/80 regulation limited the space available for branding elements to only 20 percent of the surface of tobacco packages in Uruguay. In such a small space,

⁷ See, e.g., PMLA&C Strategy Review: Uruguay, June 2008, at p. 33 [Exhibit C-362]; PMLA&C Strategy Review: Uruguay, August 2008, at p. 20 [Exhibit C-363]; PMLA&C Strategy Review: Uruguay, August 2008, at p. 6 [Exhibit C-323]. Exhibit C-363 does not include all pages of each presentation. Exhibit C-323 is a partial version of Exhibit C-363, and contains the missing pages relevant to Abal's plans to introduce the new architecture.

⁸ See PMLA&C Strategy Review: Uruguay, June 2008, at p. 33 [Exhibit C-362].

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the ability of branding elements on a package to differentiate products in the marketplace is significantly diminished.

14. As Ms. Sorio explained in her statement, the reduction of the space available to display branding elements to only 20 percent of the package not only distorted the valuable *Marlboro* branding elements, but also rendered other PMI brands virtually unrecognizable. In order to fit the *Marlboro* chevron in only 20 percent of the surface of the package, Abal had to shrink the *Marlboro* name and distort the *Marlboro* chevron by widening the distinctive angle of the rooftop. The pictures below reproduced from Ms. Sorio's statement show the distortion of the *Marlboro* brand as a result of the 80/80 regulation.⁹

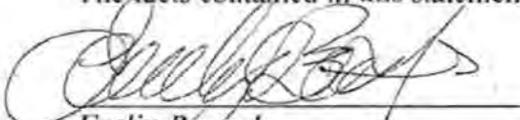


15. The 80/80 regulation also damaged other Abal brands. For example, Abal discontinued both the *Galaxy* brand and a *Premier* brand variant after the 80/80 regulation. I understand it was difficult, if not impossible, to create versions of the *Galaxy* and *Premier* brands that would be distinctive given the small space available for displaying the branding elements on packages after the 80/80 regulation.

⁹ See Sorio Witness Statement at paras. 19-22 [Exhibit CWS-008].

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The facts contained in this statement are true to the best of my knowledge.



Evelin Bernedo

Date: April 16, 2015

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