

**IN THE DISTRICT COURT
AT WELLINGTON**

CRI-2017-085-001107

MINISTRY OF HEALTH

v

PHILIP MORRIS (NZ) LTD

BRIEF OF EVIDENCE OF BRENDON NEVILLE BAKER

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(A R Winsley)
(41701)

I, **BRENDON NEVILLE BAKER** state:

Introduction

1. That is my full name. I reside in Wellington.
2. I am a Senior Advisor at the Ministry of Health. I have a policy role in the Tobacco Control Programme (“the Programme”). The Programme aims to reduce the serious harms caused by tobacco use.
3. I have been in this position since 2004. Part of my role includes administration of the Smoke-free-Environment Act 1990 (“the Act”) and liaising with Smoke-free Enforcement Officers. Since beginning work in the tobacco policy area, I have developed a good working knowledge of the Act and related compliance and enforcement activity.

Meeting with Philip Morris 20 December 2016

4. On 20 December 2016 I accompanied Jane Chambers, Ministry of Health manager of the Programme, and Vicki Blake, Smoke-free enforcement officer to a meeting with Philip Morris (New Zealand) Limited (“Phillip Morris”). Philip Morris is one of the major companies in New Zealand that sells and distributes tobacco products.
5. The principal reason for the meeting was that the Ministry of Health believed that one of the products sold by Philip Morris, namely the HEETS sticks, was a tobacco product for oral use other than smoking under the Act. As such, it was the Ministry of Health’s view that the advertisement and sale of the product contravened section 29 of the Act.
6. At the meeting, Philip Morris staff demonstrated the IQOS device (the heating device that heats the tobacco). Philip Morris staff, including Anna Stefanatos, stated that the way the IQOS product worked did not contravene the Act.



Meeting with Philip Morris salesperson

7. On 12 February 2017 I accompanied Vicki Blake to a meeting with a Philip Morris representative ("the representative"). I understood Vicki had arranged to buy an IQOS device from the representative as a part of the Ministry of Health's ongoing investigation.
8. At 2.30 pm Vicki and I met with the representative outside the StarBucks café on Lambton Quay, Wellington. He was a male, likely in his 20s, who was dressed in smart casual clothing. He introduced himself as the IQOS representative from Phillip Morris.
9. We went inside the café, where the representative asked me if I had signed up to the IQOS website. I said no. The representative said that I could not stay for the remainder of the discussion, because he could not be seen to be promoting the product to anyone who had not expressed interest by registering on the www.iqos.co.nz website.
10. I said to the representative that I had seen it advertised in Japan and was interested in the product, but that I was not a smoker. I said that I had told Vicki about the product and that is how she became interested in purchasing it. The representative again said that I could not stay for the discussion between Vicki and him, because I had not registered on their website.
11. We all moved upstairs within the café where I moved and sat at a table on my own a few meters away. I was not involved in the discussion, nor could I hear what was being said. The conversation went on for about 15-20 minutes.

Importation

12. Every manufacturer and importer of tobacco products must file annual returns with the Ministry of Health pursuant to section 35 of the Act.
13. In the tobacco products return filed by Phillip Morris on 31 January 2017, Phillip Morris showed that they imported approximately 76,000 sticks of their HEETS product into New Zealand during the 2016 calendar year. [produce exh]
14. I have corresponded with New Zealand Customs (Customs), principally Ms Kirsty Marshall, over the IQOS product issue. Customs had asked the Ministry for its view of the IQOS product. I informed Customs that the Ministry was of the view that selling the product was a breach of section 29(2) of the Act.



This statement is true to the best of my knowledge and belief and I make this statement knowing that it might be admitted as evidence at a court hearing and that I could be prosecuted for making a statement that is known by me to be false and intended by me to mislead.

Signed: 

Date: 20/12/17.

