

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI-2017-085-001107**

**MINISTRY OF HEALTH**

**v**

**PHILIP MORRIS (NZ) LTD**

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**BRIEF OF EVIDENCE OF VICKERY ELIZABETH BLAKE**

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(A R Winsley)  
(41701)

I, VICKERY ELIZABETH BLAKE state:

### Introduction

1. That is my full name.
2. I am a Senior Enforcement advisor for the Ministry of Health ("the Ministry"). I have been in this position since 2003. My duties involve investigating breaches of the Smoke-free Environments Act 1990 ("the Act").
3. I am an "enforcement officer" for the purposes of enforcing the Act. I am authorised to lay charging documents in respect of any offences against Part 2 and Part 2A of the Act. **[produce exhibit]**
4. I am the investigator-in-charge for the prosecution of Philip Morris for the matters currently before the Court.

### Communication with Philip Morris

5. On 20 December 2016 I accompanied my colleagues, Jane Chambers, the manager of the Ministry's tobacco control programme and Brendon Baker, a senior advisor in that team, to a meeting with Phillip Morris. At the meeting, Phillip Morris staff demonstrated the IQOS device and HEETs sticks and showed us their website.
6. As a result of the meeting, I wrote to Phillip Morris on the same day asking them to voluntarily withdraw the product from the market, as it was the Ministry's view that the HEETs product contravened section 29 of the Act. **[produce exhibit]**
7. On 10 January 2017 I received a letter from Philip Morris' General Manager, Jason Erickson. In that letter Mr Erickson noted that Philip Morris was of the view that the HEETs product was complaint with sections 22 and 29 of the Act. Mr Erickson requested a further meeting with the Ministry.
8. On 30 January 2017 I wrote to Mr Erickson, reiterating the Ministry's view that the sale of the HEETs product was unlawful. In light of a recent article in the New Zealand Herald, I also queried Philip Morris' position that the recent importation of approximately 60,000 HEETs sticks were for internal use and not for sale.
9. Mr Erickson replied on 2 February 2017. He was of the view that section 29 did not extend to products consumed by inhalation, such as the HEETs sticks. Mr Erickson also

stated that the importation of 60,000 HEETS sticks were for internal use and were not for sale.

### **Purchase of IQOS and HEETS**

#### *Registering with IQOS*

10. In mid-January 2017 I accessed the IQOS website, [www.iqos.co.nz](http://www.iqos.co.nz). The purpose of doing so was to purchase IQOS and HEETS products from Philip Morris.
11. An invitation code was required to register, so I filled out the "Register Interest Form". I used the name "Vicki Persen" to do so.
12. On 19 January 2017 I received an email from "IQOS Support NZ". The email stated that, shortly, a sales expert would be in touch with me to organise a time to meet up and perform a guided demonstration. The email stated that if I had any questions to contact the IQOS team.

#### *Phone calls with IQOS*

13. On 30 January 2017, as I had still not been contacted by a representative, I called the IQOS number listed as 0800 810 433.
14. I spoke to a male customer service representative. I explained that I had signed up to the website to buy IQOS but no one had contacted me. I asked when I would be contacted.
15. I was told by the call-taker that as it was presently a holiday in Auckland, I may be contacted the next day on 31 January 2017.
16. I asked the call-taker about how I would get the device and how long it would take. I was told they would have to be sure I was over 18. Then, he said, I would have to be set up online, have the product explained to me and find out what were my expectations of it. He stated that if the representative had it on them, I could get it immediately. That was the end of the phone call.
17. I called the IQOS number again on 1 February 2017 as I had still not been contacted.
18. The call was answered by female call-taker. During our conversation, she told me she resided in Edinburgh and that she provided customer service for New Zealand, Britain, Canada and South Africa.

19. I asked her why I just could not just buy an IQOS device. She said it was because tobacco laws in New Zealand were really strict with lots of red tape, so I had to be verified after a guided trial.
20. She said the IQOS device itself was not the issue but that the HEETs sticks were tobacco products.
21. She told me that IQOS cost \$100 in NZ, usually being \$150 but discounted at the moment. She said that HEETs sticks range in price from \$99 to \$190 and lasted about six minutes each.
22. I asked her how long before I could actually buy the products. She said she would get the local representative to contact me once they have done all the paper work.
23. After not hearing back, I made two further calls to the 0800 number before I was contacted by an IOQS representative on 13 February 2017. I asked whether I could purchase HEETs sticks at the guided trial. The representative told me that all sales were done online other than a \$20 single pack purchased as part of the guided trial. I was told that, at the scheduled demonstration, I would get an invitation code for the IQOS website and then I could purchase HEETs.

*Meeting with sales representative*

24. On 14 February 2017 a salesperson named Matt contacted me and we arranged to meet at Starbucks on Lambton Quay, Wellington at 2.30pm on that day.
25. I said I would bring a friend and he said that sounded good.
26. At about 2.30pm my colleague Brendon Baker and I met with Matt. Matt introduced himself and told us he had been doing this gig since November. We went into the café and sat at a table.
27. Matt asked if Brendon had signed up to the IQOS website and he said no. Matt told Brendon that he could not stay as he could not be seen to be promoting the product. Brendon said to Matt that he had seen it advertised in Japan and was interested but that he was not a smoker. Matt said Brendon could not stay for the discussion and, if he did, Matt would lose his job. Brendon left and moved to another table.
28. Matt told me this product is not for non-smokers and he is not allowed to promote product in any way as it is tobacco.

29. Matt showed me the IQOS device and explained how it heated the HEETS stick rather than burning them. We chatted about the product as he set up my invitation code.
30. Matt told me that three other people are doing a similar job in the Auckland area and that they all worked for Philip Morris. I said that the HEETS sticks seemed like a good idea for people who did not want to give up tobacco altogether.
31. Matt said that he would set me up, give me an invitation code, and that I should go away and look at the site which would answer all my questions. He would give me a call in a couple of days and if I wanted to take it any further we would meet up again.
32. At that time Matt said he would give me the IQOS device for ten days as a free trial following a guided demonstration. Matt said that I would still need to buy the HEETS sticks as he could not give those away.
33. Matt told me he would contact me again in the next couple of days and arrange for a guided demonstration.

*Access to IQOS website*

34. Following the meeting with Matt, I was able to access the IQOS website and view the order forms and product information.
35. On 15 February 2017 I received an email from IQOS to confirm my registration. **[produce exhibit].**
36. On 20 February 2017 I downloaded the IQOS user guide. **[produce exhibit].**
37. I noted that HEETS 10-pack cartons were selling for \$190 NZD. On the same webpage were the words "SMOKING KILLS".

*Guided demonstration*

38. On 1 March 2017 someone named Matt called me and arranged to meet me the same day for my guided demonstration. This time he was accompanied by a woman, also from Phillip Morris. Matt showed me the IQOS device and how it worked.
39. His colleague demonstrated heating and cleaning the IQOS device. She said that she was a "packet a day girl" until she discovered IQOS. She said IQOS was great. She said there was no taste of smoke, only tobacco. She said that she had been living in Australia and IQOS was not available there. She said the product was launched in the

New Zealand market, as it is an easier market than Australia to test it out and iron out any problems.

40. Matt helped me set up my phone to order IQOS. They told me I would need to choose from 3 flavours. They emphasised if I had any problems I should call. I said I was only a social smoker so the IQOS device was perfect for me.

*Online purchase of IQOS and HEETS*

41. After the meeting, I returned to the Ministry of Health offices and ordered the IQOS device. I used the name "Vicki Persen" and gave a friend's residential address. I purchased one IQOS device and a 5-pack carton of HEETS Amber, totalling \$199.00
42. On 2 March 2017 I received an email from Philip Morris (New Zealand) Limited to confirm my order and payment of \$199.00. The tax invoice was for the New Zealand branch of Philip Morris. **[produce exhibit]**
43. On 3 March 2017 a courier package arrived to the address I specified on the order form. It contained the IQOS device and the HEETS sticks. I took photographs of the unopened package. **[produce exhibit]**.
44. The IQOS package remained locked in a cupboard at my home address until I brought it to my work office on 6 March 2017. At this time I opened the package and photographed the contents **[produce exhibit]**.
45. On 7 March 2017 I received an email from "IQOS iOpinion Forum" asking me to take part in a survey to share my feedback on IQOS. If I completed the survey, the email stated, I would be eligible for 100 points which would be worth \$1 and go towards the purchase of IQOS-related rewards.

*Delivery to expert*

46. On 20 September 2017 I took the IQOS device and HEETS sticks from where they had been secured and delivered them to CRL, where I handed the products to Ben Rumsey.

*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: *EBL. VICKERY ELIZABETH BLAKE*

Date: *19 December 2017.*