

Closing the loopholes in bans on tobacco advertising, promotion and sponsorship

The Framework Convention on Tobacco Control is particularly forthright when it comes to tobacco advertising, promotion and sponsorship: Article 13 obliges Parties to the Convention to impose a *comprehensive* ban on *all* forms of advertising, promotion and sponsorship. Where Parties' domestic constitutional principles prevent such a ban, Parties are obliged to impose restrictions to the greatest extent possible.

The reasoning behind this? Bans on advertising, promotion and sponsorship have been shown to reduce tobacco consumption. (See research references at end of document) But bans only work if they are comprehensive. The tobacco industry find ways around bans unless they are comprehensive..

Parties to the FCTC, at their first two conferences, recognised that the determination of the tobacco industry to circumvent any bans imposed had resulted in a range of new advertising, promotion and sponsorship practices. There was a need to equip countries to counter these emerging practices through legislation.

Furthermore, multinational tobacco corporations in their quest for global markets routinely employ cross-border advertising, promotion and sponsorship. This makes it all the more difficult for individual countries to ensure the effective banning of adverts and promotions for tobacco.

The response of Parties to the FCTC was:

- To develop guidelines as a matter of urgency in order to provide the best possible advice on closing loopholes in domestic legislation designed to give effect to the ban on tobacco advertising, promotion and sponsorship.
- To request an outline of what a possible protocol on cross-border advertising, promotion and sponsorship might contain.
- To further request a set of recommendations on how cross-border advertising, promotion and sponsorship could be tackled through improved cooperation among countries, without a protocol.

All three documents have been prepared and will be considered at the 3rd Conference of the Parties.

The Framework Convention Alliance (FCA) believes that the guidelines are excellent and should be adopted in their entirety, without alteration. The FCA also advocates the adoption of the recommendations on measures to facilitate international cooperation for the elimination of cross-border tobacco advertising, promotion and sponsorship.



However, the FCA believes that the conference should defer a decision on the question of developing a protocol on cross-border advertising, promotion and sponsorship until it is clearer exactly what value a protocol would add. This will happen once Parties have implemented truly comprehensive domestic bans – as outlined in the new guidelines – and begun to cooperate in addressing cross-border advertising, promotion and sponsorship.

Beating the industry at its game

In order to achieve a comprehensive ban on all tobacco advertising, promotion and sponsorship, there is a need for governments to look beyond “traditional” forms of advertising, sponsorship and promotion. Modern marketing techniques include such techniques as brand stretching, brand merchandising, point of sale promotion, product placement, corporate promotion and “corporate social responsibility” activities. The tobacco industry is adept at resorting to any of these approaches (and then some!), and governments need to become equally familiar with the range of options in order to pass and enforce effective laws.

The guidelines prepared under the mandate of the COP go a long way to equipping countries to meet the challenge. Fortunately, the FCTC provides them a good starting point with its wide definitions of advertising and sponsorship.

Article 1 of the FCTC

Tobacco advertising and promotion means “any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”.	Tobacco sponsorship means “any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”.
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The proposed guidelines build on these definitions and on the experience of countries that have been able to implement comprehensive advertising, promotion and sponsorship bans. They show a grasp of the huge variety of advertising, promotion and sponsorship options available to the industry, many of them indirect (for instance, incentive schemes for retailers and loyalty programmes for consumers).

These are some of the recommendations in the guidelines:

- A ban on the display and visibility of tobacco products at the point of sale.
- A ban on tobacco product vending machines which are themselves a form of advertising and promotion.

- Requiring plain “no brand” packaging of tobacco products, effectively banning promotion and advertising on the package itself.
- A ban on advertising and promotion on the actual tobacco product.
- A ban on internet sales of tobacco products because this process inherently involves advertising and promotion.
- A ban on brand stretching and brand sharing.
- A ban on tobacco company contributions to “socially responsible causes” on the grounds that such activities amount to tobacco sponsorship.
- A ban on tobacco companies publicising any “social responsible” business practices.

Artistic expression and social debate

The draft guidelines recognize that “a comprehensive ban on tobacco advertising, promotion and sponsorship need not interfere with legitimate types of expression, such as journalistic, artistic or academic expression or legitimate social or political commentary”.

Where films, plays or computer games feature the use of tobacco, the guidelines propose:

- The producers must certify they have not received any benefit in return for this depiction.
- They should not be permitted to identify particular brands.
- They should be required to display prescribed anti-tobacco advertising at the beginning of the play, film or computer game..
- The age rating system for films should take account of the use of tobacco and ensure entertainment aimed at children does not depict the use of tobacco.

Across borders

The guidelines point out that individual countries have the power to make an impact on cross-border advertising and promotion if they take action in relation to cross-border advertising, promotion and sponsorship:

- That is originated in their countries.
- That is transmitted from their countries using cross-border communications technology.
- That enters their territory.

The guidelines also recommend that laws on tobacco advertising should deal with all entities in the marketing chain and should oblige internet content hosts, content navigators and access providers to remove or disable content which advertises or promotes tobacco products and/or use.

Penalties

When it comes to penalties, the guidelines propose that sanctions should be “effective, proportionate and dissuasive” and that they should apply to corporate entities as well as individuals. A guiding principle should be that the cost of

sanctions should outweigh the potential economic benefits to be derived by breaking advertising, promotion and sponsorship laws. Some of the specific penalties recommended are fines, corrective advertising and the suspension or cancellation of licenses to operate. The last penalty rests on instituting a system of licensing for tobacco manufacturers, wholesalers, importers and retailers

Recommendations on international cooperation

The recommendations on immediate measures to strengthen counter-action to cross-border tobacco advertising, promotion and sponsorship centre on establishing good information exchange systems, responding to notifications received from other FCTC parties, and providing access to appropriate expertise.

Some sources for research on advertising and tobacco use

US National Cancer Institute, *The Role of the Media in Promoting and Reducing Tobacco Use* (Tobacco Control Monograph 19, US Department of Health and Human Services, National Institutes of Health, National Cancer Institute, August 2008), available online at <http://www.cancercontrol.cancer.gov/tcrb/monographs/19/index.html>. For more information on the findings of this major monograph, see FCA Fact sheet, 'The impact of tobacco marketing on tobacco consumption and the effectiveness of comprehensive bans: Findings of the monograph on *The Role of the Media in Promoting and Reducing Tobacco Use*', available at www.fctc.org. See also H Saffer and F Chaloupka, 'The effect of tobacco advertising bans on tobacco consumption' (2000) 19(6) *Journal of Health Economics* 1117-37; H Saffer, 'Tobacco advertising and promotion' in P Jha and FJ Chaloupka (eds), *Tobacco control in developing countries* (2000) 215-36.

The Framework Convention Alliance is an international network of more than 350 non-governmental organisations dedicated to the achievement of the provisions of the FCTC.