The FCTC Requires a Comprehensive Tobacco Advertising Ban

The Framework Convention on Tobacco Control (FCTC), adopted unanimously by member countries of the World Health Organization in 2003, requires Parties to implement a comprehensive ban on tobacco advertising, promotion and sponsorship. The FCTC entered into force on 27 February 2005, and currently has 168 signatories and 151 Parties. The objective of the Framework Convention is:

“[T]o protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.”

Article 13 of the Framework Convention addresses tobacco advertising and recognizes that “a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.”

The FCTC establishes minimum requirements, but encourages Parties “to implement measures beyond those required by this Convention and its protocols.”

Requirements of the Framework Convention

Article 13 of the Framework Convention requires Parties to implement a comprehensive ban on tobacco advertising, promotion and sponsorship. The only exception to this commitment occurs when a Party’s constitution or constitutional principles prevents the implementation of a comprehensive advertising, promotion and sponsorship ban. Under Article 13, Parties agree to:

- Adopt a comprehensive ban on tobacco advertising, promotion and sponsorship within five years after entry into force of the Framework Convention.
- Implement a comprehensive ban on tobacco advertising and promotion, defined as “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.”
- Implement a comprehensive ban on tobacco sponsorship, defined as “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.”
- Parties that are prevented from undertaking a comprehensive ban by their own constitution are nonetheless obligated to restrict tobacco advertising, promotion and sponsorship on radio, television, print and other media, such as the internet, within a period of five years after entry into force of the Convention.
- National bans must also include cross-border advertising, promotion and sponsorship originating within a nation’s territory.

Minimum Requirements

The small number of Parties that have genuine constitutional limits on implementing a comprehensive advertising ban must nonetheless adopt restrictions covering all tobacco advertising, promotion and sponsorship. This obligation means restrictions must be applied to the maximum extent allowed by a Party’s constitution or constitutional principles. In addition, the Framework Convention establishes the following minimum requirements for all Parties:

- Prohibiting all forms of advertising, promotion and sponsorship for a tobacco product that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics,

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health effects, hazards or emissions. Some false and misleading advertising phrases include light or low tar.

- Requiring health warnings to accompany all tobacco advertising and, as appropriate, promotion and sponsorship. This obligation would apply even to Parties with comprehensive ad bans. For example, where product information is provided at the point-of-sale, Parties should also require the display of health warnings.

- Restricting the use of incentives that encourage the purchase of tobacco products by the public. This should apply only to Parties that are still in the process of undertaking a comprehensive ban or those that have constitutional constraints that preclude them from undertaking a comprehensive ban.

- Requiring the disclosure to governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship. This obligation is expressly limited to Parties that do not have a comprehensive ban. It should apply to Parties that are still in the process of implementing a comprehensive ban or those that have constitutional constraints that preclude them from undertaking a comprehensive ban.

- Prohibit tobacco sponsorship of international events, activities and participants in such events.

Exceptions

The following represent the only exceptions to a comprehensive ban on tobacco advertising and promotion that should be permitted:

- Factual information about product availability and price, such as plain black-and-white price lists, that is required where tobacco products are available for sale.

- Limited communication that is necessary on tobacco packaging to distinguish it from other products, such as the name of the manufacturer and product, but without use of colors, logos or trademarks.

- Communications between entities involved in the tobacco trade, such as manufacturers and wholesalers, and retailers, which are necessary to facilitate commerce between them.

- Unpaid depictions of tobacco products or use in media in which the depiction is incidental, as in the case of news footage, or for genuine artistic, historical, or educational purposes.

- Genuine political, social or scientific commentary or debate about tobacco products or tobacco use.

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3 FCTC, Article 2.
5 The rules of treaty interpretation provide that a treaty be interpreted in good faith, in accordance with the ordinary meaning given to its terms in their context, and in light of its object and purpose: the overall objective of the FCTC is “to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to smoke.”
6 FCTC, Article 13.4(a).
7 FCTC, Article 13.4(b).
8 FCTC, Article 13.4(c).
9 FCTC, Article 13.4(d).
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10 FCTC, Article 13.4(f).