

ASH briefing: The UK ban on tobacco advertising

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Overview

The first phase of the Tobacco Advertising and Promotion Act came into effect on 14 February 2003. The ban is broadly defined: a prohibition on any advertisement that has the purpose or effect of promoting a tobacco product. That includes *at least* adverts in print and broadcast media, billboards, the Internet, direct mail, and product placement – but in line with good practice, the legislation does not specify different types of advertising. The legislation also bans promotions, free gifts, coupons and sponsorships, where the aim or effect is to promote a tobacco product. Some limited advertising is permitted at the point of sale and regulations allow for ‘brand-sharing’ – the advertising of tobacco brands through non-tobacco products - provided that the branding of the non-tobacco product is sufficiently distinct from the tobacco brand. The legislation was fully implemented on 31 July 2005, when international tobacco sponsorship (Formula One, World Snooker) are banned.

Legal position

- The tobacco advertising and sponsorship ban is implemented under the [Tobacco Advertising and Promotion Act 2002](#) which gained royal assent on 7 November 2002. The Act bans most forms of tobacco advertising, promotion and sponsorship, specifies a few practical exemptions (eg. specialist tobacconists, intra-trade advertising), details offences and defences and establishes enforcement responsibilities.
- The Act came into force on 20 November 2002 with a [Commencement Order](#) which sets out a timetable for banning most forms of tobacco advertising in the UK. The full package of legislation consists of the Act (primary legislation) and four sets of regulations (secondary legislation).
 1. [Tobacco Advertising and Promotion \(Point of Sale\) Regulations](#)
 2. Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations
 3. [Tobacco Advertising and Promotion \(Brandsharing\) Regulations](#)
 4. [Tobacco Advertising and Promotion \(Sponsorship\) Transitional Regulations.](#)

- The regulations deal with transitional arrangements for sponsorship, the particular arrangements for 'brand-sharing' and for advertising at the point of sale (ie. in shops) as well as for specialist tobacconists. The point of sale regulations were laid in March 2004. They were challenged by the tobacco industry but the industry lost its case and the regulations entered into force on 21 December 2004.
- A [*European Union directive*](#) that was agreed on 2 December 2002 supplements the UK legislation. This deals with four types of cross-border advertising: internet; radio; printed publications and international sponsorships. This came into effect on 31 July 2005. However, the directive is subject to a legal challenge from the German government which alleges it goes too far in banning advertisements in printed publications that do not cross borders (eg. German local newspapers). In addition, a number of other European countries have not yet transposed the directive into national legislation. This means that tobacco sponsored sport is still being held in Spain and the Czech Republic, for example, contrary to the law. The European Union has threatened legal action against these Member states.
- Television advertising was already banned under the EU [*'Television without frontiers' directive 89/552/EEC*](#).

Timetable

- **Main advertising ban – 14 February 2003:** The ban on tobacco advertising came into effect on 14th February. This put an end to most conventional advertising – billboards, magazines, newspapers, direct mail, internet advertising etc. Direct mail is banned unless in response to specific request by an individual – in such a case, a tobacco company is allowed to make single communication with that individual.
- **Promotions and old direct mail – 14 May 2003:** Promotions such as gift coupons were banned from 14 May 2003.
- **Domestic tobacco sponsorships – 30 July 2003:** Transitional regulations outlawed tobacco sponsorship for cultural and sporting events from 30th July 2003. This does not apply to 'corporate' sponsorship, which does not aim to promote a product.
- **Point of sale – 21 December 2004:** The regulations cover advertising in shops and on vending machines. The regulations permit one single A5 sized ad (21cm x 15cm) in retail outlets and ads no bigger than actual pack size on vending machines.

- **Specialist tobacconists – 21 December 2004:** These regulations specify the extent of advertising permitted for tobacco products other than cigarettes on sale in specialist tobacconists.
- **Brandsharing – 31 July 2005:** These regulations prohibit the promotion of a tobacco product by another product and vice versa (e.g. through perfume/clothing, etc.). Use of the same brand name is prohibited unless the branding (e.g. colour, typeface, etc.) is sufficiently distinct.
- **International sponsorships – 31 July 2005:** (Formula One, World Snooker) Tobacco sponsorship of international sports was banned in July 2005, in line with the European Union directive agreed on 2 December 2002.

Exemptions

Exemptions are made for:

- Advertising in publications within the tobacco trade;
- Adverts in publications for which the UK is not the principal market (except in flight magazines);
- Advertisements that are not for cigarettes or hand-rolling tobacco within specialist tobacconists, where over 50% of the sales are cigars, snuff, pipe tobacco and smoking accessories;
- Responses to individual requests from members of the public (this is the only ‘direct mail’ that is allowed);
- Brand-sharing – the brand name can be used if it is made sufficiently distinct from the tobacco brand;
- Advertising at the point of sale – in shops, on vending machines, and on internet sites selling cigarettes – this is strictly limited and defined in regulations;
- Advertising that has been created from imaginative use of display of tobacco products – this could be regulated but no regulations have been published;
- It is a defence for the advertiser to claim they did not know or could not foresee the effect would be to promote tobacco.

Weaknesses and loopholes

[The ASH response](#) to the government’s consultation highlighted several potential problems:

- **Brand-sharing definition:** it is unclear where the boundary between a tobacco ad and a genuine non-tobacco ad will be. However, to date it appears that the tobacco industry has not attempted to exploit this potential loophole.

- **Brand-sharing enforcement:** the burden of proof is on the authorities to show, beyond reasonable doubt, that a given ad has the purpose or effect of promoting tobacco. Yet the whole purpose of brand sharing is to introduce ambiguity.
- **Point of sale:** there was no justification for allowing advertisements simply because they are fixed on a place where tobacco is sold (often in sweet shops).
- **Display:** the government has declined to introduce restrictions on display but international experience shows that display of products can be configured to produce a promotional effect. There are signs that this is happening in the UK and the case for display regulations being implemented is growing.

Internet advertising

Section 2 of the Tobacco Advertising and Promotion Act prohibits the transmission of a tobacco advertisement in electronic form. It also bans any business operating in the UK from advertising or allowing tobacco advertising to be accessed from its website. Detailed regulations controlling tobacco advertising on the Internet are due to be issued in June 2006.