



28 April 2022

Tobacco advertising on Network 10

Broadly speaking, there is a prohibition on the advertising or promotion of any tobacco or tobacco-related products on Australian TV.

This prohibition is detailed within the *Tobacco Advertising Prohibition Act 1992* (the **TAP Act**).

The TAP Act describes at length what comprises a tobacco advertisement:

Section 9. Meaning of *tobacco advertisement*

Basic meaning

(1) Subject to this section, for the purposes of this Act, a tobacco advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) smoking; or
- (b) the purchase or use of a tobacco product or a range of tobacco products; or
- (c) the whole or a part of a trade mark that is registered under the *Trade Marks Act 1955* in respect of goods that are or include tobacco products; or
- (d) the whole or a part of a design that is registered under the *Designs Act 2003* in relation to products that are or include tobacco products; or
- (e) the whole or a part of the name of a person:
 - (i) who is a manufacturer of tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products; or
- (f) any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products).

There are potentially significant financial penalties for broadcasting tobacco advertising as set out in Section 13 of the TAP Act:

Section 13. Tobacco advertisements not to be broadcast

(1) A person must not broadcast a tobacco advertisement in Australia or Norfolk Island on or after 1 July 1993 otherwise than as permitted by section 14.

Penalty: 120 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in section 14: see subsection 13.3(3) of the *Criminal Code*.

(2) This section has effect subject to section 26A.

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The maximum penalty for an offence against the Act is \$25,200 for an individual and \$126,000 for a corporation.

The TAP Act does provide an exemption where such advertising was accidental or incidental.

Section 14. Accidental or incidental broadcast permitted

A person may broadcast a tobacco advertisement if:

- (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting the other matter).

Network 10's legal, regulatory and classification staff will make a considered decision on any applicable footage to see if it can be accommodated within these incidental parameters. However, Network 10 reserves the right to request edits to remove or modify any such depictions. The best and preferred option is to not include any tobacco advertising.

Note: the advertising of electronic cigarettes is restricted in some states.

Reference

Tobacco Advertising Prohibition Act 1992

State and Territory Tobacco advertising legislation

Department of Health and Aging publication – *Easy guide to the Tobacco Advertising Prohibition Act 1992*

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