



The Federal Trade Commission and Tobacco

The Federal Trade Commission (FTC) is a federal agency created to protect consumers from unfair or deceptive practices, regulate unfair methods of competition, and ensure that the nation's markets are dynamic and efficient.¹ In addition to serving as a regulatory agency, the FTC provides research and analysis to help advance, protect and enforce government policy.²

The FTC has long played a role in the regulation of the tobacco industry. Today, the FTC investigates unfair tobacco industry business practices and advertisements, and enforces laws that address these practices. For instance, the FTC collects information from the industry concerning cigarettes and smokeless tobacco products, and reports that information to the public and Congress. It enforces laws against false and deceptive advertising of tobacco products. The FTC also enforces federal antitrust laws that prohibit tobacco companies from engaging in anticompetitive mergers and other business practices that restrict competition and harm consumers.³ This fact sheet provides a brief overview of the FTC's role in enforcing tobacco product laws.



Investigations

One of the FTC's main responsibilities is to investigate partnerships and corporations.⁴ For example, the FTC may require an organization to provide specific information "as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships and individuals."⁵ The FTC then reports this information to the public and Congress.⁶ Since 1967, the FTC has prepared reports on the advertising and sales of cigarettes, as well as their tar, nicotine and carbon monoxide content; and, since 1987, similar reports on smokeless tobacco.⁷

Warning Labels

The FTC's regulation of tobacco dramatically changed when Congress enacted the Federal Cigarette Labeling and Advertising Act in 1965, requiring for the first time health warnings on cigarette packages.⁸ Later amendments strengthened the warnings, extended

the regulations to tobacco advertisements, and prohibited the ads to be shown on television, radio, and other electronic media.⁹ Congress also enacted legislation requiring health warnings on all smokeless tobacco packaging and advertisements.¹⁰

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in June 2009, provides the Food and Drug Administration (FDA) the authority to regulate the manufacture, marketing, and distribution of tobacco products.¹¹ The Tobacco Control Act amended the mandatory health warnings for cigarette and smokeless tobacco products,¹² and as of 2012, the FTC no longer has authority to review and approve cigarette and smokeless tobacco warning statements.¹³ The Tobacco Control Act, however, does not disturb the FTC's other existing enforcement authority regarding tobacco products, and the FTC will continue to issue annual reports to the public.

Advertisements

The FTC has broad authority to prevent “unfair or deceptive” business practices.¹⁴ As a result, the FTC can determine whether specific advertising is false or misleading and, if necessary, take action against the sponsors.¹⁵ It may also follow up on complaints from citizens about illegal advertising.¹⁶

The Tobacco Control Act does not diminish the FTC's authority to enforce regulations regarding the advertising, sale, or distribution of tobacco products.¹⁷ For example, an advertisement that violates the Tobacco Control Act is an unfair or deceptive act and subject to the jurisdiction of the FTC.¹⁸ The Tobacco Control Act, however, limits the FTC's authority to regulate false advertisements of tobacco products as they relate to tobacco product warning labels.¹⁹ The Tobacco Control Act also requires the FDA to coordinate with the FTC concerning the enforcement of the Act as it relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco.²⁰

Antitrust

The FTC is broadly authorized to prevent companies from using “unfair methods of competition” and “deceptive acts or practices” that affect commerce.²¹ For example, the FTC can bring formal actions against tobacco companies opposing mergers that lead to substantial decreases in competition and it can initiate investigations of tobacco companies for suspected antitrust violations. In other instances, the FTC has sued to block a tobacco company from acquiring a rival,²² required an intensive examination before approving an acquisition,²³ and investigated tobacco companies for price-fixing and other deceptive practices.²⁴

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NOTES

¹ 15 U.S.C. § 45(a)(2) (2010); *see also* 15 U.S.C. § 57a(a)(1)(B) (2010).

² *About the Federal Trade Commission*, Fed. Trade Comm., <http://www.ftc.gov/ftc/about.shtm> (last visited Dec. 21, 2011).

³ *See* Daniel A. Crane, *Harmful Output in the Antitrust Domain: Lessons from the Tobacco Industry*, 39 GA. L. REV. 321 (2005).

⁴ 15 U.S.C. § 46(b), (c) (2010).

⁵ 15 U.S.C. § 46(a) (2010).

⁶ 15 U.S.C. § 46(a), (b) (2010). The FTC is required to “keep the public informed” by annually collecting detailed information from cigarette manufactures regarding practices and product ingredients. 15 U.S.C. §§ 1331(1), 1335a (2010). These regulations primarily disclose information about the tobacco products and do not provide the FTC with the power to regulate the product in any additional manner. Similarly, smokeless tobacco manufacturers are required to report their products’ ingredients to the FTC, which in turn reports to Congress. 15 U.S.C. § 4403 (2010).

⁷ FED. TRADE COMM’N, *FTC CIGARETTE REPORT FOR 2007 AND 2008 1* (2011), *available at* <http://www.ftc.gov/os/2011/07/110729cigarettereport.pdf>; *FTC SMOKELESS TOBACCO REPORT FOR 2007 AND 2008 1* (2011), *available at* <http://www.ftc.gov/os/2011/07/110729smokelesstobaccoreport.pdf>; *Tobacco*, FTC, <http://www.ftc.gov/bcp/menus/resources/guidance/tobacco.shtm> (last visited Dec. 21, 2011). The FTC submits annual reports pursuant to the Federal Cigarette Labeling and Advertising Act. 15 U.S.C. § 1331 (2011).

⁸ 15 U.S.C. § 1331 (2011).

⁹ 15 U.S.C. §§ 1333, 1335 (2011).

¹⁰ 15 U.S.C. § 4402 (2010). The Smokeless Tobacco Act prohibits advertisement of smokeless tobacco products on television or radio. *Id.* § 4402 (c). The Act also directs the FTC to issue implementing regulations governing the format and display of required health warnings, and to review and approve plans specifying how smokeless tobacco companies intend to comply with the rotational warning requirements specified in the Smokeless Tobacco Act and the implementing regulations. 15 U.S.C. § 4402 (1986).

¹¹ *Family Smoking Prevention and Tobacco Control Act of 2009* (2009), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ031.111.pdf.

¹² 15 U.S.C. § 1333 (2010); 15 U.S.C. § 4402 (2010); *see also* 21 U.S.C. § 387c (a)-(b) (2010).

¹³ *Memorandum to Potential Cigarette Manufacturers and Importers*, FED. TRADE COMM’N (Mar. 21, 2011), <http://www.ftc.gov/bcp/policystmt/cigarettememo.shtm>. Tobacco product manufacturers, importers, distributors, and certain retailers must submit a plan to FDA specifying the methods they will use to rotate, display, and distribute the specified health warning label statements required to appear in advertising and packaging.

¹⁴ 15 U.S.C. § 45 (2010). Unfair practices are defined as those that “caused or likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. § 45(n) (2010).

¹⁵ 15 U.S.C. § 57a (2010). Such enforcement actions are brought under Section 5 of the FTC Act. 15 U.S.C. § 45(a)(1); *see also* 16 C.F.R. § 3.11 (2010); 16 C.F.R. § 3.54 (2010).

¹⁶ To file a complaint with the FTC, go to <https://www.ftccomplaintassistant.gov/>.

¹⁷ 21 U.S.C. § 387n (2010).

¹⁸ 21 U.S.C. § 387n (2010). The FTC has authority to regulate unfair or deceptive acts. 15 U.S.C. § 57a (2010).

¹⁹ The Tobacco Control Act limits the applicability of sections 12 through 15 of the FTC Act to tobacco products. 21 U.S.C. § 387c (a)-(b) (2010).

²⁰ 21 U.S.C. § 387n(b) (2010).

²¹ 15 U.S.C. § 45 (2010). Unfair methods of competition include corporate acquisitions that may tend substantially to lessen competition, 15 U.S.C. § 18, and certain forms of price discrimination.

²² *F.T.C. v. Swedish Match*, 131 F.Supp.2d 151 (D.D.C. 2000).

²³ *By Unanimous Vote, FTC Closes Its Investigation into Proposed Merger of R.J. Reynolds and Brown & Williamson*, FED. TRADE COMM. (June 22, 2004),

<http://www.ftc.gov/opa/2004/06/batrjr.htm>.

²⁴ Crane, *supra* note 3, at 330.