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TIP SHEET #5

Legal Fact Sheet on Limiting Tobacco Sponsorship at Rodeos

Key provisions in the MSA and STMSA restrict tobacco company activities relating to sponsorship, sampling, outdoor advertising, brand name merchandise, youth targeting, and the use of cartoon characters.

How do the Master Settlement Agreement (MSA) and the Smokeless Tobacco Master Settlement Agreement (STMSA) affect tobacco sponsorship?

- The MSA and STMSA are binding agreements that arose out of litigation between the major tobacco companies and over 40 states. Key provisions in these agreements restrict tobacco company activities relating to sponsorship, sampling, outdoor advertising, brand name merchandise, youth targeting, and the use of cartoon characters. Both agreements ban the tobacco companies from interfering with anti-tobacco advertising.
- To learn more about how the MSA and STMSA affect tobacco sponsorship, or to report a potential violation of the MSA or STMSA by a tobacco company, contact your state's attorney general. The National Association of Attorneys General (NAAG) website at www.naag.org has a link to each state attorney general's website.

What tobacco sponsorship activities are still allowed by the MSA and STMSA?

- One brand name (such as Skoal) sponsorship per company per year. This sponsorship can be of a national series or tour.
- Corporate (such as US Smokeless Tobacco Company) sponsorship of events if there is no reference to brand names (such as Skoal or Copenhagen) or marketing to youth.
- Sponsorship of events inside adult-only facilities, such as bar nights near rodeos.
- Product sampling and ads that are located inside adult-only facilities and are not visible from the outside.
- Vehicles bearing a brand name in a brand-sponsored event.
- Outdoor ads for a brand-sponsored event at the event site for 90 days before and 10 days after the event.

What are the major legal obstacles to closing these loopholes in the MSA and STMSA?

- The Supreme Court's current interpretation of the free speech clause of the First Amendment of the U.S. Constitution makes it very difficult for state and local governments to pass laws and ordinances that restrict tobacco advertising and sponsorship.
- Federal law regulates advertising requirements and warning labels regarding tobacco and health and prevents most state and local regulation of those activities. The Federal Cigarette Labeling and Advertising Act (FCLAA) preempts (bans) state law requirements based on smoking and health with respect to the advertising or promotion of cigarettes. The Federal Comprehensive Smokeless Tobacco Health Education Act preempts (bans) states and localities from requiring any statements relating to the use of smokeless tobacco products and health to appear on any smokeless tobacco package or advertisement unless the advertisement is an outdoor billboard.

How can sampling laws be used to address tobacco sponsorship of rodeos?

- The distribution of free samples in "adult-only facilities," or sampling booths, is often part of tobacco sponsorship at a rodeo. Unlike many types of tobacco sponsorship activities, sampling can sometimes be legally prohibited or heavily regulated by states or localities.

The loopholes can be closed with voluntary policies adopted by private rodeo committees, private venues which host rodeos, stock contractors, announcers, clowns, and other rodeo organizers and participants.

- Sampling laws are different in every state, and the laws change frequently. See the “Legal Resources” tip sheet for how to find your state’s sampling law and obtain legal assistance to help you understand it.

How can the loopholes in the MSA and STMSA be closed?

- The loopholes can be closed with voluntary policies adopted by private rodeo committees, private venues which host rodeos, stock contractors, announcers, clowns, and other rodeo organizers and participants.
- Voluntary policies can ban sponsorship, advertising, and/or tobacco-product use. See the Technical Assistance Legal Center (TALC) model rodeo sponsorship policy at <http://talc.phi.org>.

What is a voluntary policy?

- A voluntary policy is a written document prohibiting a set of activities, such as tobacco sponsorship- and advertising-related activities at a rodeo.
- It is passed and enforced voluntarily by an individual or group of individuals (such as a rodeo committee) who have authority over the activities it prohibits.
- It is not passed and enforced by a state or local government entity.

What are the advantages of a voluntary policy?

- It is easier to get passed than a law or ordinance.
- It can say whatever the drafters want it to say.
- It is a way of creating change when passing a law or ordinance is barred by preemption or not yet politically feasible.

What are the disadvantages of a voluntary policy?

- It does not have the force and effect of law.
- The people who pass it get to determine how to apply and enforce it.

What are some tips for writing a good voluntary policy?

- Include definitions of important terms.
- Be as specific as possible about what the policy covers.
- Be clear about who is responsible for implementing and enforcing the policy.
- Include persuasive findings, especially when introducing the policy to a potentially resistant individual or organization. For example, see the TALC model policies at <http://talc.phi.org>.