



Plain Packaging Update

March 2020



GALA

GLOBAL ADVERTISING LAWYERS ALLIANCE

www.galalaw.com

Argentina

To date, the discussion regarding plain packaging has been limited to tobacco products. So far, Argentina has not enacted a plain packaging law. While several proposals for tobacco plain packaging bills were introduced in the Argentinian legislature during the past several years, none of them has advanced beyond an initial stage of the legislative process.

Australia

In 2011, Australia was the first country to introduce plain packaging laws for tobacco products with the enactment of the Tobacco Plain Packaging Act 2011. The legislation requires that packaging must be a prescribed size, in a drab dark brown colour, and display graphic and text health warnings. Trademarks cannot be used, except for the name of the brand, which can appear once on the packaging in text only in a prescribed font and size. The legislation has since survived a constitutional challenge in the High Court of Australia, a challenge under a bilateral investment treaty between Australia and Hong Kong, and challenges via the WTO brought by Ukraine, Honduras, the Dominican Republic, Cuba, and Indonesia. Various local health groups have suggested that plain packaging laws should extend to products such as alcohol, fast food, and soft drinks, but no legislative action has been taken or appears to be contemplated.

Austria

Plain packaging is required for tobacco products. See "European Union" for additional requirements.

Belgium

As of January 1, 2020, neutral or plain packaging of cigarettes and other tobacco products has become compulsory in Belgium, which includes requirements such as that packaging must be in a drab dark brown standard color (Pantone 448 C) and that only the trade name may be used once. See "European Union" for additional requirements.

Bolivia

Plain packaging is not required in Bolivia. There are rules about tobacco packaging (e.g., required warnings and pictures) and food and non-alcoholic beverage labeling and packaging (e.g., a color bar system to inform consumers about certain ingredients).

Brazil

Brazil has not adopted plain packaging for any type of product. Products such as tobacco and medicines, however, contain several packaging limitations. For example, the use of expressions such as "light" or "soft" that may lead consumers to believe the tobacco product is less harmful to their health is forbidden. Medicines cannot include on the packaging images of people using the product, symbols that represent the product's flavors, or expressions suggesting that consumers' health may be affected by not using it.

Bulgaria

Under Bulgarian law, there are no plain packaging requirements. There are specific requirements, however, with respect to the packaging of certain products, such as: (i) tobacco products (see "European Union" for additional requirements); (ii) food products (the information provided on the outside of the package should not mislead the consumers in any way, including by suggesting that the food product may protect from, heal, or help diagnosis of diseases); (iii) medicinal products (information

about the active ingredient, whether the product is by prescription, etc., shall be provided on the package). However, there are no prohibitions on placing branding or logos on product packaging.

Canada

Plain packaging is required for tobacco products. All pre-packaged products must include required label declarations. Additional prescribed disclosures and restrictions apply to regulated product categories, such as food, alcohol, cosmetics, natural health products, drugs, cannabis, electronics, children's and dangerous products. French labels are required in Quebec.

Chile

HFSS foods cannot include cartoon characters on the packaging if they are targeted to children under 14 years of age. If a new pharmaceutical products bill is approved, these products will have to show the brand name in a smaller font than the active ingredient present in the drug.

China

Plain packaging is not mandatory for tobacco products, but the package must indicate tar content in each cigarette and show a warning statement such as "Tobacco is harmful to health," which must cover at least 35% of the area of the package's front or back side.

Colombia

Currently, plain packaging is not required for any product. Nonetheless, there have been unsuccessful legal attempts to implement plain packaging for tobacco. There are, however, specific rules from the health authorities concerning packaging and labels of products that may have effects on human health (e.g., tobacco, medicines, infant formula, alcoholic beverages, etc.).

Costa Rica

Plain packaging is currently not required for any product. However, there are mandatory health warnings for the labels of certain products, such as tobacco (including pictorial warnings that must cover 50% of both the front and back portions of the packages), alcohol, dietary supplements, energy drinks, toys, agrochemicals, and others.

Croatia

Plain packaging requirements have not been introduced as such. However, standardized packaging is required for tobacco products. The Croatian Act on Restrictions on the Use of Tobacco and Related Products prohibits use of any element or feature (including texts, symbols, names, trademarks, and other signs) that promotes a tobacco product or encourages its consumption. The packaging should not suggest that a particular tobacco product is less harmful than the other, it should not refer to taste, smell, etc. Each packaging has to carry general warnings and information messages printed in a prescribed typeface, on a prescribed background, and covering a prescribed surface. The packaging should also contain health warnings printed in prescribed form.

Curacao

Plain packaging is not required in Curacao.

Cyprus

In Cyprus, there are no plain packaging requirements beyond those required by the EU Directive on tobacco products. At

present, there are no legislative plans to introduce such requirements. See “European Union” for additional requirements.

Czech Republic

Plain packaging is not required in the Czech Republic. See “European Union” for additional requirements.

Denmark

In Denmark, there are, in general, no requirements regarding plain packaging. However, there has been a discussion about plain packaging law in relation to tobacco products, but no concrete proposal has to date advanced beyond the hearing stage. Danish tobacco legislation requires a health warning imprinted on tobacco packaging which must cover 50% of the surface and include a specific image and text provided by the Ministry of Health. Furthermore, the packaging of any product must not contain false information or in any other way deceive consumers with respect to health benefits.

Dominican Republic

There are no plain packaging requirements for tobacco products or HFSS foods. However, animated characters are not permitted on products related to breast feeding.

Ecuador

While there are no specific regulations about plain packaging in Ecuador, there are other labeling requirements. Cigarette packaging must contain a warning highlighting that smoking causes cancer as well as specific pictures of the effects caused by smoking. Packages of processed foods must include traffic light labels that show the amount of sugar, fat and salt. Other health warnings are mandatory on energy drink packaging. Alcohol packaging must also include health and safety warnings.

Egypt

Egypt does not have any plain packaging requirements.

El Salvador

El Salvador has significant restrictions on what may be on the packaging of tobacco products, including information about ingredients, health warnings, and prohibitions on anything that implies that a product is less harmful.

European Union

Although plain packaging is not required, graphic health warnings with photos, text, and cessation information have to cover 65% of the front and the back of cigarette and roll-your-own tobacco packs. Member states may also take more stringent measures.

Finland

In Finland, there is no plain packaging legislation currently in force. However, there has been a discussion on requiring plain packaging for tobacco products, but no legislation has been introduced to date. See “European Union” for additional requirements.

France

Plain packaging for all tobacco products sold in France has been required since 2017. All brands must use the same totally neutral packaging, brown color background, presentation, package design, ink, font, and color and font size for the trademark, which may only appear once on the front, the top, and the bottom of the package. Health warnings are also required, and some trademarks were banned. (See “European

Union” for additional requirements.) Since 2017, health messages must be added to advertising for manufactured food and drinks products on television, cinema, radio, newspapers, and on posters and marketing flyers distributed in supermarkets. Similarly, all alcoholic beverages must bear a statement reminding customers that the consumption of alcoholic beverages during pregnancy, even in small quantities, can have serious consequences for the health of the child; this statement may be replaced by a pictogram.

Germany

In Germany, there are no plain packaging requirements beyond that required by the EU Directive on tobacco products. Medical experts do indeed demand the introduction of plain packaging for tobacco products, so far without success. See “European Union” for additional requirements.

Ghana

Although there are no plain packaging requirements in Ghana, the law does prescribe how tobacco products should be labeled (which includes language requirements, health warnings, and required disclaimers).

Greece

In Greece, the outer packaging of tobacco products and prescription medicines should not include any element of a promotional nature. See “European Union” for additional requirements on the packaging of tobacco products.

Guatemala

Plain packaging is not currently required in Guatemala. However, there are two draft bills in Congress aimed at regulating labels and packaging for tobacco and food products. Legislation currently in force requires health warnings for tobacco products and alcoholic beverages, but in a way that it does not unreasonably limit use of trademarks or other distinctive signs. Health regulations prohibit the use of human models, cartoons, athletes and public characters for purposes of marketing of tobacco and alcoholic beverages.

Honduras

Honduras has no plain packaging requirements. Moreover, it has fought against interpretations made under the “Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging,” connected to the Framework Convention of the World Health Organization for Tobacco Control. Honduras has announced that accepting generic packaging could have important negative repercussions for our economy.

Hong Kong

Plain packaging is not required in Hong Kong. However, Hong Kong does have strict provisions regarding the size of a mandatory health warning on individual cigarette packets, bulk cartons, and other tobacco products. The warning must occupy 85% of the service area concerned.

Hungary

Plain packaging is required for tobacco products. Restrictions are already applicable for newly registered products, but with respect to products that were registered prior to April 30, 2016, plain packaging will take effect only from January 1, 2022. See “European Union” for additional requirements.

India

Plain packaging is not required in India. However, India has taken major anti-tobacco initiatives in recent years, such as the size of graphic pictorial warnings has been increased by 85% on the packaging of tobacco products.

Ireland

In 2015, Ireland was the first country in the EU to introduce plain packaging for tobacco products. See "European Union" for additional requirements. Ireland has also passed legislation that will require packaging and labelling restrictions on alcohol products, but the effective date of such legislation has not yet been set.

Israel

Plain packaging is required for tobacco products. Health warnings must comprise between 30% to 65% of the package size while the remaining area of the packaging, for all brands, must be in one defined color (Pantone 448), described as "drab dark brown," and will include the brand name and details relating to the manufacturer and importer.

Italy

In Italy, no specific plain packaging requirements apply to tobacco products. Products such as e-cigarettes are regulated by other provisions of law, which basically reconnect with the legislation on tobacco products. See "European Union" for additional requirements. For other particularly sensitive products, such as cannabis, no specific plain packaging requirements have been established so far.

Jamaica

Under Jamaican law, there are no specific requirements for plain packaging for any type of product. For tobacco products, rotating graphic health warnings are required on 60 percent of the two principal display areas (front and back) on both unit and outside packaging. Misleading packaging and labeling, including terms such as "light" and "low tar" and other signs, is prohibited.

Japan

Plain packaging is not required in Japan. There are various requirements for tobacco packaging, including required warnings with size requirements.

Kenya

Kenya does not have any plain packaging requirements.

Luxembourg

Plain packaging is required for tobacco products. See "European Union" for additional requirements. In addition, the packaging and presentation of food supplements must not attribute to the products the property of preventing, treating or curing a human disease or refer to such properties".

Malaysia

Malaysia is expected to introduce plain packaging for tobacco products no earlier than 2025. Under current law, only health warnings are required.

Malta

There is currently no plain packaging requirement for tobacco products in Malta. However, Maltese law imposes a number of requirements and restrictions in relation to the manufacture, advertising, promotion, labelling, and packaging of tobacco

products. For example, the advertising of tobacco products is prohibited on television, radio, cinemas, and other broadcasting media, and health warnings and graphics must cover 65% of both the external front and back surface of the packaging.

Mexico

Plain packaging is not required in Mexico. Official Mexican Standard NOM-051-SCFI/SSA1-2010 requires that pre-packaged foods and beverages have specific warning legends and seals to inform consumers about nutritional information and health risks. The use of cartoons, drawings, celebrities, gifts, offers, toys, contests, visual-space games, or social media ads are not permitted in connection with products labeled with warning legends or seals.

Netherlands

Plain packaging is required for tobacco products. See "European Union" for additional requirements. HFSS foods cannot include licensed media characters, such as SpongeBob and Mickey Mouse, on the packaging. As of 2021, food products can add the traffic light symbol nutri-score on the packaging. (HFSS foods will have the color red and healthy food will bear the color green.)

New Zealand

Standardized packaging is required for tobacco products in New Zealand. Requirements include mandatory health warning and images as well as specific rules on the use of the brand name.

Nicaragua

There are no plain packaging requirements in Nicaragua. However, there are strict regulations regarding aspects such as color, shape, text and labeling. Furthermore, the packaging must include a standardized health warning. There are no active initiatives to introduce plain packaging regulations.

Nigeria

Plain packaging laws do not apply with respect to any products in Nigeria. As a party to the WHO Framework Convention on Tobacco Control, a text-only health warning is required for packaging of tobacco products presently. However, by 2024, upon implementation of the National Tobacco Control Act of 2015 and the National Tobacco Control Regulations of 2019, a combined picture and text health warning will be required to be displayed on at least 60% of tobacco products' packaging.

Norway

Plain packaging is required for tobacco products. The packaging cannot include trademarks or any other elements connected to brand building. The packaging must also include a standardized health warning.

Panama

In Panama, there is no plain packaging legislation currently in force. Although plain packaging is not required, graphic health warnings with photos, text, and health information must cover 60% of the front and the back of all cigarette packages.

Paraguay

Although plain packaging of tobacco products is not required in Paraguay, there are some restrictions on tobacco advertising and packaging. There is also legislation being considered regarding food labeling, to inform consumers about processed foods.

Peru

Although Peru does not have any plain packaging requirements, under Peruvian food law, it is not possible to use children's characters or other elements that attract the attention of children under 16 years of age.

Poland

Plain packaging of tobacco products is not required in Poland. See "European Union" for additional requirements. According to the Polish law, the entire labelling on food designated for retail sales must be in Polish. Poland also takes a strict approach on the peel-off labels attached on the prepackaged food. The authorities consider such type of label as misleading to consumers.

Portugal

In Portugal, there are no plain packaging requirements. Nevertheless, there are various restrictions on packaging for specific types of products (e.g., tobacco products). See "European Union" for additional requirements. For products containing dangerous substances or mixtures that are supplied to the general public, the packaging must not include any designs that are likely to appeal to children, be misleading to consumers, or be similar to the designs used for food, animal feed, medicinal, or cosmetic products.

Romania

Packaging is heavily regulated in Romania. The purpose of the regulations is to provide consumers with necessary, sufficient, and easy-to-compare information, in order to enable them to choose the product that meets their needs in terms of their financial needs and possibilities, as well as to know the possible risks. For example, if sugars are naturally present in fruit nectar, the following indication must appear on the label: "contains naturally occurring sugars." Please see "European Union" for additional requirements.

Russia

There are no plain packaging requirements in Russia. There are, however, labeling requirements for tobacco products, including that the packaging shall contain a pictorial warning and health-warning messages.

Rwanda

There are no plain packaging requirements in Rwanda.

Serbia

Serbia does not require plain packaging. Each unit packet and any outside packaging of tobacco products for smoking must carry the following general warning: "Smoking kills – Tobacco smoke harms people close to you" (in Serbian), covering 30% of the external front surface, and any of eleven information messages, covering 40% of the external back surface of the unit packet and any outside packaging.

Singapore

All tobacco products must have standardized packaging and graphic health warnings from July 1, 2020 onwards. Logos and promotional information are not allowed on the packaging. Product and brand names must be presented in a standardized font style and colour.

Slovakia

Slovak law does not require plain packaging for tobacco products. Tobacco brands still have some limited space for logos and branding on tobacco products. See "European Union" for additional requirements.

South Africa

In May 2018, the South African government's Department of Health released the Draft Control of Tobacco Products and Electronic Delivery Systems Bill for public comment. The Bill's main objectives are to regulate and standardize the packaging and appearance of tobacco product and electronic delivery systems and to place stricter controls over the advertising and sale of those products, even ones that do not contain nicotine. Some drastic features of the proposed law include the overall ban on advertising and sponsorship of or by tobacco products and electronic delivery systems and the introduction of standardized packaging and labelling of those products. Regulations need to be passed under the law to prescribe, *inter alia*, texture and plain color packaging, size and shape of packaging, prohibitions on the use of branding, promotional elements and logos, and rules about how the brand and product name may appear on pack.

Spain

Plain packaging is not required in Spain. No legislative plans are in progress at present, despite the recommendations of health and scientific groups, and the petitions of consumer associations asking since 2015 for the application of plain packaging to tobacco products. The advertising of tobacco and alcohol products is heavily regulated, however. See "European Union" for additional requirements.

Sweden

There are no plain packaging requirements in Sweden. While the Swedish government has not ruled out the introduction of such legislation, a government inquiry report has identified that it would require amendments to the Freedom of the Press Act, which do not appear likely in the foreseeable future. See "European Union" for additional requirements.

Switzerland

Plain packaging is not required for tobacco products, neither under the current law nor in the draft of the future Tobacco Products Act (likely in force in mid-2022). However, current and (draft) future laws prohibit references on the tobacco products and packaging to disease-curing, soothing, or preventive effects, as well as indications, trademarks, and figurative signs which give the impression that a particular product is less harmful than others, such as "light," "mild," "organic," "natural," and "without additives."

Tanzania

There are no plain packaging requirements in Tanzania.

Trinidad & Tobago

Although Trinidad's "Tobacco Control Act" requires plain packaging for tobacco and tobacco products, the law has not yet taken effect, since the regulations implementing the law have not been finalized.

Turkey

Starting on January 5, 2020, plain packaging has been required for tobacco products in Turkey. The brand can only be written in plain text. Colors, fonts, and other details are regulated as well.

Ukraine

Plain packaging is currently not required for any product. However, there are requirements for the packaging of certain products, such as tobacco products (health warning must

cover 50% of both the front and back sides of the packaging), alcohol, medicines, and some others. On 28 January 2020, an anti-tobacco bill was submitted to the Ukrainian Parliament. The bill is aimed at tightening regulations on the packaging of tobacco products, including introduction of plain packaging regulation (a brown and green mix color packaging).

United Arab Emirates

UAE does not have any plain packaging requirements.

United Kingdom

Plain packaging (called “standardised packaging” in the UK legislation) is required for certain tobacco smoking products. Cigarette packs and hand-rolling tobacco packs must bear no logos or promotional images, be of a required shape, use drab brown colour on the outside, and bear graphic health warnings. Brand names and variants are only permitted in a standardised font and size.

United States

While the United States does not have any plain packaging requirements, tobacco products are required to have certain health warnings. There are packaging requirements that apply to other types of products as well, such as food, drugs, and alcohol.

Uruguay

Tobacco products must be labeled in a specific brown and dark green mix color. Regulations also specify fonts, characters size, position and color (grey) applicable to brands. Labeling cannot include any decorative element. Misleading descriptive elements are also prohibited.

Venezuela

Although plain packaging is not currently required in Venezuela, graphic warnings must be 100% over one side, and 30% on the other. There has also been some discussion of plain packaging regulations coming.

Zimbabwe

The drive to enforce “plain packaging” for products which are considered to be the cause of health issues has not yet taken hold in Zimbabwe. However, regulations related to the tobacco industry mandate a number of elements to be present on tobacco packages and any advertising concerning smoking products. Chief among these are requirements to prominently display health messages or health warnings and accurate information on the ingredients and any other toxic ingredients. The appearance of all tobacco packs is standardized, with specific font sizes, label sizes, and position of the warnings on the pack.

For more information about advertising law around the globe, GALA recently released the second edition of *Advertising Law: A Global Legal Perspective* which is a detailed report on advertising law in more than 65 countries. The book can be purchased on Amazon.com or you can contact GALA for a free electronic version.

To keep up with current international advertising law developments,
visit our blog at blog.galalaw.com.



28 Liberty Street, 35th Floor, New York, NY 10005 - 212.705.4895 | sbess@galalaw.com

www.galalaw.com

This report is not meant to be comprehensive or to be a substitute for legal advice. For complete information and legal guidance, please contact legal counsel in the appropriate jurisdiction.