

## Cannabis Business Executive - Cannabis and Marijuana industry news



### The Future of Cannabis Advertising and Marketing: Proceed with Caution

October 8, 2018 by [Alex Leonowicz](https://www.cannabisbusinessexecutive.com/author/alexleonowicz/) (<https://www.cannabisbusinessexecutive.com/author/alexleonowicz/>)

By Alex Leonowicz

Make no mistake. The U.S. cannabis industry is here to stay. It's one of the nation's fastest growing industries. Over 50 percent of the states now allow for medical cannabis. Nine states permit its use recreationally. Four more states are anticipated to allow for medical or recreational cannabis by the end of 2018.

While this billowing industry continues to develop at breakneck speed, cannabis marketing and advertising regulations have struggled to keep pace. The result is a patchwork of varying state and local laws – each with their own nuances and pitfalls.

#### A Patchwork of Varying State Laws

In California, for example, any advertising or marketing placed in broadcast, cable, radio, print, or digital communications shall only be displayed where at least 71.6 percent of the audience is reasonably expected to be 21-years of age or older.

In Colorado, a retail marijuana establishment shall not engage in advertising that specifically targets persons located outside the state of Colorado. Unsolicited pop-up advertising on the internet is also prohibited.

In Connecticut, an advertisement for marijuana or any marijuana product shall not contain any statement that falsely disparages a competitor's product.

In Hawaii, a dispensary cannot display marijuana or manufactured marijuana products in windows in public view.

These represent only a portion of cannabis advertising regulations now in effect. Plus, there are new rules being approved by various states and other municipal entities all the time. Smart owners and managers will want to learn everything they can about ad guidelines in their state and city.

#### Going Digital

Digital advertising presents its own challenges – particularly when such advertisements cross states lines triggering federal laws. For starters, the Controlled Substance Act specifically prohibits any advertisement that promotes the sale of a Schedule I substance, such as cannabis. Therefore, in the eyes of the federal government, all cannabis advertising is illegal.

Each social media channel also has its own internal regulations as it relates to cannabis. For example, Instagram prohibits any cannabis seller from promoting their business by providing contact information (phone numbers, street addresses, e-mail) or by using the "Contact Us" tab in Instagram Business Accounts. It does, however, allow cannabis advocacy content as long as it is not promoting the sale of the drug. Conveniently, the policy does not prohibit the listing of one's website which would – theoretically – allow you to drive customers directly to your website where all of your contact information is provided.

## Radio and Television Ads

Radio and television advertisements are also ridden with potential liability. The Federal Communications Commission (FCC), which regulates interstate and international communications, has not banned cannabis advertising, per se, but is scrutinizing television and radio stations at the time of annual license renewal. Not to mention, cannabis companies must also deal with the Food and Drug Administration (FDA) ensuring that all of its packaged products comply with labeling and advertising rules.

Shares

## Mail Advertisements

Even traditional mailings present a problem. The U.S. Postal Service is a federal agency. Therefore, it must follow federal laws which strictly prohibit the advertisement of Schedule I substances, such as cannabis.

In 2015, the USPS clarified its position regarding cannabis advertising stating that it would first notify the sender of such advertising that the materials could not be sent. However, if the mailer insists upon the materials being sent, it would be forced to report the materials to local inspection services or law enforcement authorities.

## Now What?

Despite the tangled web of rules, regulations and guidelines, there are still a number of ways in which cannabis companies can advertise and market their product.

- **Local and Regional Print Publications**— Local publications may be willing to allow you to place ads in their publication. Ensure that the publications stay local and do not cross state lines.
- **Satellite Radio**— The FCC does not consider satellite radio a broadcast service. Therefore, it is not subject to the same regulations as traditional radio stations. Cannabis advertisements placed on satellite radio would appear to be permitted.
- **Promote the Brand**—Rather than promoting the use of cannabis or the product itself, promote your brand. Apparel adorned with your company name and logo is an excellent way to build brand recognition among cannabis consumers.
- **Placement of Ads on Websites** — Rather than using Twitter or Instagram to advertise your cannabis products, consider contacting appropriate websites directly regarding placement of your ad.
- **Avoid Unsubstantiated Medical Claims**— Unless you can point to verified medical research (Hint: There isn't very much.) stay away from making unsubstantiated medical claims regarding the use of cannabis.

## The Lessons of Tobacco and Liquor Advertising

The long and controversial history of alcohol and tobacco advertising provides a useful analogy for cannabis companies. In fact, the similarities are striking. Review the advertising regulations for these respective industries. The cannabis industry is likely to follow a similar path, except it doesn't want to make the same mistakes.

## Self-Regulation and Corporate Citizenship

Despite the vast number of current rules and regulations, the laws related to cannabis advertising will not keep pace with the exponential growth of this new industry. For the cannabis industry, the best route forward is self-regulation of its advertising – with emphasis on accurate, responsible and safe messaging and images.

The opportunity is there for the cannabis industry to show exemplary values and corporate citizenship from its very formation. If the cannabis industry and its participants can band together, self-regulate and benefit from the painful experiences of the alcohol and tobacco segments, its future may be even brighter than we thought.

## About The Author:



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