

Marijuana advertising brings new risks, rewards

The first of 2023 has brought an onslaught of advertising for recreational marijuana. We may laugh when we say it, but this is a “green” crop for advertising vehicles of all kinds. Still, it raises some issues newspapers are pondering.

Back in January, the Press Association suggested it get a memo out to members about the issue of running advertising for recreational marijuana. It is legal in Missouri to sell the product and, of course, to advertise the product for sale. It is viewed as a money crop in many cities in the state, as the cities (and counties in some area) move to institute a sales tax on the product in hopes of catching a small stream of this revenue.

The issue is not advertising in the state. The issue is mailing a product that contains advertising for what is a federally-controlled drug. Running advertising for recreational marijuana is potentially a federal felony, to be blunt. But it is also speech, which is protected by the First Amendment, and it is commercial speech about a lawful activity in Missouri.

If your newspaper wants to participate in this revenue stream, I urge you to send an email to either Ted Lawrence (tlawrence@mopress.com) or Mark Maassen (mmaassen@mopress.com) and they’ll be happy to forward a copy to you.

Or, right now there’s a link to the memo on the mopress.com website front page!

The reason I urge you to review this is to fully understand the potential legal issues I’ve noted above and to make a decision that you are comfortable with in terms of running such ads.

Meanwhile, I will point out that this is somewhat different than the situations where a significant number of hotline calls fall. This is an issue where the paper faces potential significant legal concerns. That differs

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from so many situations involving alcohol and tobacco advertising.

So often, your advertising staff wants to know what they should tell local bars and liquor stores about running ads for buying alcohol and tobacco. My advice seems to be something simple – tell them you will publish whatever they bring you (so long as it meets your community standards).

There is a simple reason for that – your newspaper faces limited (if any) risk in regard to publishing such advertising. Yes, there are federal regulations that relate to the sale of alcohol, including restrictions on pricing and related issues. Tobacco is similarly regulated.

But penalties for violating those standards fall on the advertiser only. There is no liability that attaches to the newspaper – but the advertiser faces a risk of losing their liquor license if they violate those regulations, for example. So that is why I always recommend that your paper suggest to its advertiser that it consult its own lawyer.

When it relies on its own lawyer, it is able to be certain its legal advice is accurate. And if it’s not, well, that’s between the lawyer and his or her client. I don’t want your advertisers coming back to you and complaining that because what you told them about running such ads was wrong, they have now lost their key to their business. You cannot afford the risk of playing “lawyer” for these clients.

Tobacco advertising is similarly federally regulated and again, the penalties do not attach to the newspaper, so leave the legal advising up to your customers’ attorneys and you just promise them you’ll get their ads in.

And, as you all know, the other advertising land mine out there is real estate advertising. The federal Housing and Urban Development folks do continue to watch for discriminatory language in ads. There are lists online that are touted as “magic” words to avoid.

While such lists are educational, they are not fail-safe and the best advice HUD gives to newspapers is to “describe the property, not the renter or buyer being sought.” In other words, the property is probably “perfect” for whoever wants it and it’s their decision that it’s perfect for them, and not the advertiser’s suggestion.

Rehash for some of you readers, I know, but a reminder never hurts! Hope to see you at the Missouri Press Advertising and Marketing Executives meeting in Springfield in April! It’s always good to hear what questions your paper is having!



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