

ADVERTISING HANDOUTS

MARIJUANA

On October 22, 2019, the Michigan Marijuana Regulatory Agency issued an updated Advisory Bulletin including marketing and advertising restrictions for both medical marijuana and recreational marijuana. Reviewing marijuana ads for compliance with Michigan state laws remains one of the most popular issues raised by those who call into the legal hotline. We've broken down this updated guidance with the hope of providing clarity on this topic.

ALL MARIJUANA ADS

When reviewing any marijuana ads, we recommend you follow these guidelines:

- REJECT any ad containing the word “dispensary.”
- Do NOT accept ads that contain any deceptive, false, or misleading statements.
- Do NOT accept advertising containing any health claims.
- Do NOT place advertisements in a prominent place in a publication that could be visible to the general public when stored in a newsrack.

MEDICAL MARIJUANA

When reviewing medical marijuana ads, we recommend you follow these guidelines:

- Do NOT advertise medical marijuana in your publication unless there is reliable evidence that at least 70% of your audience is reasonably believed to be over the age of 18.
- Do NOT run advertisements that target medical marijuana products to individuals under the age of 17.
- All medical marijuana ads MUST run with the following required warning statement: “For use by registered qualifying patients only. Keep out of reach of children. It is illegal to drive a motor vehicle while under the influence of marihuana. National Poison Control Center 1-800-222-1222.”
- Do NOT accept advertising that offer medical evaluations to prospective patients.
- Products MUST be referred to as “medical marijuana” for use by existing patients or registered primary caregivers.

RECREATIONA MARIJUANA

When reviewing recreational marijuana ads, we recommend you follow these guidelines:

- Do NOT advertise recreational marijuana in your publication unless there is reliable evidence that at least 70% of your audience is reasonably believed to be over the age of 21.

- Do NOT run advertisements for recreational products targeting individuals under the age of 21.
- All recreational marijuana ads MUST run with the following required warning statement: “For use by individuals 21 years of age or older only. Keep out of reach of children. It is illegal to drive a motor vehicle while under the influence of marihuana. National Poison Control Center 1-800-222-1222.”

Federal Marijuana Law (The U.S. Postal Service)

The USPS isn't a stranger to weighing in on marijuana and controlled substances advertising. In December 2015, the USPS declared it illegal to mail advertisements, including in newspapers, that had offers to buy or sell marijuana. This strong position arose after the Oregon district sought to block newspapers from mailing ads within states where marijuana had been legalized. Six years later and the Post Office has become vocal again. In the final quarter of 2021, the USPS issued updated guidance on permitted mailings with an eye on advertising marijuana. The USPS also raised a red flag where publications have had either loose inserts that became visible during the mailing process or advertising on the front or back page. Although it is unclear how these issues came to the Post Office's attention, it is possible that these concerns were investigated following postal customer complaints around the country. Regardless of how, these issues may significantly impact MPA members in the coming months.

The Federal Legal Landscape: Is Advertising Marijuana Illegal?

Although medical and recreational marijuana use is now legal in many states, both uses of marijuana remain illegal under federal law. Marijuana is still restricted under the Controlled Substances Act (CSA) as a Schedule I controlled substance.

Under the CSA, it is “unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance.” While this doesn't preclude advertisements advocating for the legalization of marijuana, it does criminalize advertisements for the purchase, sale, or distribution of marijuana in any publication. With this in mind, there remains the risk of criminal prosecution even in the area of advertising. This conflict between the state and federal laws has created confusion for print publications.

What Is Going on at the Post Office?

As an arm of the federal government, the USPS will look to federal law, not state law, when setting and enforcing standards for mail. USPS recently updated its general standards in November 2021, in which it made clear its position that “[a]ny advertising, promotional, or sales matter that solicits or induces the mailing of any article described in PUB 52 as hazardous, restricted, or perishable is nonmailable.”

This is supported by the October 21, 2021 final rule published in the Federal Register titled “*Treatment of E-Cigarettes in the Mail*” (86 Fed Reg 58399) which provides that “certain ENDS (Electronic Nicotine Delivery Systems) products are currently, and will remain, subject to other mailability prohibitions and restrictions (e.g., *cannabis and other controlled substances*, drug paraphernalia, lithium batteries, liquids, certain chemicals found in ENDS liquids, and certain

advertisements and promotional materials).” The rule continues to call out advertising clearly as it states, “[a]s noted in the April 2021 Guidance, advertisements and promotional or sales matter regarding controlled substances and certain hazardous materials are generally also nonmailable.”

In mid-December 2021, Classification Specialist Jennifer Anderson of the U.S. Postal Service made the perspective of the USPS clear. She stated that “[a]ny advertisement related to nonmailable controlled substance[s] is prohibited as provided in DMM 601.9.4.1... Despite the sale, purchase and possession of cannabis being legal in some states, it is not legal Federally. The USPS follows Federal, not local or state, laws.”

What Does this Mean for Marijuana Advertising?

The USPS position is clear: it will consider impounding any paper it finds that clearly contains marijuana advertising. Therefore, any newspaper publishing such an advertisement is in a position of risk.