



**Welcome to**

**Controversial Advertising  
and Sponsorship  
Identification**

**The program will start shortly.**

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# Controversial Advertising and Sponsorship Identification

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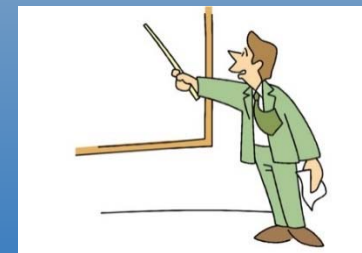


**in cooperation with**



## The Webinar Will Cover:

- Marijuana advertising
- Tobacco and e-cigarette advertising
- Alcohol advertising
- False or misleading claims in advertising
- Casino gambling and lotteries
- Sports gambling
- Station-sponsored contests
- Sponsorship identification
- and more!



# Regulation of Marijuana Advertising

## Federal Enforcement

- Controlled Substances Act – 21 U.S.C. § 843
  - “It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II”
- Sale, use, or distribution of marijuana remains a felony offense under the Act.
- Violation of the communications provisions may also be a felony and a felony conviction could jeopardize a person or company’s ability to hold an FCC license.

## Regulation of marijuana advertising (*cont.*)



### Federal Enforcement

- So far, DOJ has been “hands-off” in states where marijuana is legal, focusing instead on marijuana businesses that trigger these more serious issues:
  - Distribution to minors;
  - Revenue to criminal enterprises, gangs and cartels;
  - Distribution to states where it remains illegal;
  - Using authorized marijuana sales as a cover for other illegal activity;
  - Violence/firearms in the cultivation and distribution of marijuana;
  - Drugged driving and other public health impacts;
  - Growing of marijuana on public lands; and
  - Marijuana possession or use on federal property.

## Regulation of marijuana advertising (*cont.*)



### Federal Enforcement

- High-level FCC staff have cautioned broadcasters to NOT accept ANY marijuana advertising.
- Regardless, any broadcaster accepting marijuana advertising should use diligence to ensure client is not engaged in any of the above-mentioned serious violations and is properly licensed in the state.
- Federal enforcement policy subject to change at any time. New attorney general could change priorities and focus.

## Regulation of marijuana advertising (*cont.*)




### Federal Enforcement

- Federal Trade Commission (FTC) has not been highly involved.
  - Generally regulates truthfulness of advertising, not legality of the product.
  - But will crack down on false or unsupported claims of medical benefits.
- IRS and Treasury regulations restrict banks ability to do business with marijuana distributors.
  - Has forced marijuana business to be conducted mostly in cash.



## Regulation of marijuana advertising (*cont.*)

### State Enforcement

- State laws may also restrict advertising. Several states have enacted marijuana advertising laws.
- Colorado: 
  - Advertising only allowed where advertiser has “reliable evidence” that no more than 30% of the audience is reasonably expected to be under 21 years old.
- Laws generally target advertiser, not stations accepting advertising.
- But if ad violated state law, station could lose defense that it was simply advertising a legal product in a legal manner.

## **Regulation of marijuana advertising (*cont.*)**

### **Potential for Significant Changes at any time**

- Changes may come from states, Department of Justice, and/or Federal Trade Commission.
  - States continue toward greater legalization, but...
  - DOJ now less likely to look favorably on marijuana industry.
- Unlikely that FCC will get involved unless other agencies take the lead.

## Regulation of Tobacco Advertising

- Congress banned all ads for cigarettes, “little cigars,” smokeless and chewing tobacco in any medium of communication under the FCC's jurisdiction.
  - Includes any roll of tobacco wrapped in paper or in a substance not containing tobacco and any roll of tobacco wrapped in a substance containing tobacco that is similar to a traditional cigarette.
- Criminal statute and violation is a misdemeanor punishable by fine.

## Regulation of tobacco advertising (cont.)

- “Smokeshop” advertising allowed, but must be careful.
  - Legal for a store with “tobacco” as part of the title, to advertise as long as it sells tobacco products that may be advertised legally. DOJ opinion bans using “cigarette” in shop name.
- Events named for cigarettes (e.g., Virginia Slims Tennis Tournament) are legal provided (1) the event actually exists, (2) it is the legally-registered name of the event, and (3) the product is mentioned no more than necessary.
  - Avoid advertisements that are a sham for blatant cigarette promotion.

## Regulation of tobacco advertising (*cont.*)

### Treatment of e-cigarettes

- E-cig ads not banned but FDA requires disclosures that “*e-cigs contain nicotine and nicotine is an addictive chemical.*”
- FDA prohibits e-cig/vaping ads from making claims that they are healthier than cigarettes or that they help kick the cigarette habit.
- FDA restricts advertising directed to children and is aggressive against ads targeting children.
- Approach E-cig/vaping ads with caution, especially if there’s a large percentage of minors in the audience.

## Regulation of Alcohol Advertising

- No federal restrictions on beer, wine or distilled spirits ads nor on liquor store ads or prices.
- Industry voluntary standard guidelines that alcohol ads should only be placed where 70%+ of the audience expected to be of age.
- In Colorado:
  - Alcoholic beverage retailers and suppliers cannot advertise an alcohol content greater or lesser than the actual alcohol content of the beverages they sell.

# Prohibition on False or Misleading Material

## False or Misleading Claims in Advertising

- FCC advises that broadcasters are responsible for material that airs, including ads. Broadcasters responsible to the community and must act with reasonable care to ensure that ads are not false or misleading.
  - Don't knowingly run ads you have reason to believe are false.
- FTC frequently fields complaints on medical devices, products, or procedures (e.g., medical marijuana, weight loss products, dietary supplements).

## Prohibition on False or Misleading Material (*cont.*)

### Hoaxes

- FCC prohibits broadcasting false information concerning a crime or catastrophe if (1) the licensee knows the information is false, (2) it is foreseeable that airing the information will cause substantial public harm, and (3) airing the information does, in fact, directly cause substantial public harm.
- Programming with disclaimer is presumed to not pose a *foreseeable* harm if the disclaimer clearly characterizes program as fiction and it is presented in a reasonable way under the circumstances.
- Develop written guidelines specifically prohibiting the deliberate broadcast of false, misleading or deceptive material.



# Casino Gambling and Lotteries

## Casino Gambling

- Broadcaster ads for commercial casinos permitted in the state of the station's community of license or in other states, if the state law permits these ads.
- In Colorado, casinos can be advertised as long as the activity is legal where conducted. Casino gambling is regulated by the Colorado Department of Revenue.
  - Legal in Black Hawk, Central City and Cripple Creek.
- Exception to state laws exists for gaming by Native American tribes on tribal lands. Under federal law, broadcasters generally allowed to air ads for tribal gaming.
  - There are casinos operating legally on tribal land in the cities of Towaoc and Ignacio.

## Casino Gambling and Lotteries (*cont.*)

### Lotteries

- Three elements of a lottery are (1) prize; (2) chance; and (3) consideration. A promotion that has all three elements or that is not exempt under law should not be conducted or promoted.
- *State lotteries.* Broadcasters are generally allowed to advertise and promote lotteries conducted by non-profit groups or governmental entities.
  - Legal to advertise Colorado's state-sponsored lottery as well as other state's lotteries. Colorado lottery is administered by the Colorado Department of Revenue.
- *Private lotteries.* Broadcasters allowed under federal law to advertise promotional lotteries conducted by commercial organizations (including the station), provided the lottery is "occasional" and "ancillary" to the primary business if state law permits it.
  - In Colorado permissible if by a non-profit with a license from the Colorado Secretary of State and has been in existence in Colorado for at least five years. Illegal for commercial or for-profit enterprises.

## Sports Gambling

- Supreme Court decision overturned the Professional and Amateur Sports Protection Act (“PASPA”) which barred states from legalizing betting on sports and restricted advertising sports betting. It leaves each state to regulate as it may wish.
- Broadcasters must wait on taking ads until states decide on lifting laws against sports betting. State may still need to adopt regulations to implement the law.
- Congress could adopt legislation limiting sports betting.
- Consider restrictions that may exist in program license agreements that restrict advertising.

## Station Contests

- A contest is any arrangement in which a prize (or anything of value) is offered to the public. Contests have only two of the three ingredients that constitute a lottery, (1) prize, (2) chance, and (3) consideration (“*no purchase necessary*”).
- An ad promoting a contest conducted by the station must not be misleading, false or otherwise deceptive.
  - Fully and precisely disclose all material terms of the contest, including (1) how to enter or participate, (2) eligibility requirements, (3) entry deadlines, (4) whether prizes can be won, (5) when prizes can be won, (6) the extent, value and nature of the prizes, (7) time and means selecting winners, and (8) tie-breaking procedures.
  - Terms may be disclosed online, with site announced on-air
  - Contest should be conducted with no variation in material terms and if a change is necessary announce the change as soon as possible.

## Sponsorship Identification

- Applies to all programming for which station receives consideration.
- If a station broadcasts any material for which it has received or will receive any money, service, or other valuable consideration, it must fully identify the sponsor which paid or promised to pay for broadcast of that material.
  - Reciprocal of payola and plugola.
- Sometimes when it is clear that the mention of the name of a product constitutes a sponsorship, that is sufficient.

# Got Questions?

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