

Responsible Advertising & Branding in the Cannabis Industry



WM Policy is the government relations, research, education, and public engagement arm of Weedmaps.

The WM Policy staff—with decades of legislative, regulatory and public policy experience, and an impressive record of achievement in local, state and national political campaigns; far reaching and impactful policy development; effective and creative public awareness efforts; and powerful, change-making coalition building—works with lawmakers, advocates, industry groups and other allies to forge safe, open, and sensible cannabis policy across the country and around the world.



Executive Summary

The Importance of Advertising in the Legal Cannabis Industry

Advertising is critical to a well-functioning legal cannabis market, as it allows licensed businesses to compete against the unregulated market, build brand awareness, foster customer loyalty, and increase revenue. Advertising also helps consumers and patients identify licensed cannabis brands and retailers, which is key in shifting consumption to the legal market. While there may be concerns about cannabis advertising directly or inadvertently promoting harmful consumption or reaching youth audiences, careful policy formulation can support legal cannabis businesses and protect public health and safety.

Digital Advertising and Cannabis

Technology is essential for reaching the modern consumer. Legal cannabis businesses must be permitted to advertise on digital platforms, including mobile devices, just as any other industry. Cannabis businesses should be required to adhere to the same guidelines as any other advertiser on digital platforms, but with extra caution regarding youth audiences.

Ensuring a Safe Cannabis Market with Reasonable Regulations

Advertising regulations for the cannabis industry should protect youth populations under 21 years old, while not being so strict as to significantly limit the reach of legitimate advertisements.

The Current State of Advertising in the United States

Cannabis advertising regulations across the country are inconsistent at best. Different states have established widely varying restrictions on advertisements, with some areas even banning depictions of the cannabis plant itself.

Policy Recommendations

1. Ensure that licensed businesses have the flexibility to advertise across various mediums, including digital and mobile platforms.
2. Prohibit cannabis advertisements from featuring individuals under the age of 21 and appealing to youth audiences.
3. Ensure that advertising policies facilitate online ordering for delivery and in-store pick-up.
4. Place reasonable restrictions on advertisements from making false or misleading claims on public health matters.
5. Allow advertisements to describe the intended effect of a cannabis product.
6. Allow retailers to have visible storefronts and signage.

The Importance of Advertising in the Legal Cannabis Industry

An important and effective way to support the legal cannabis industry is to allow businesses to advertise. The ability to advertise across various mediums is crucial to the success of many businesses, and it is especially critical for the cannabis industry. Global advertising spending is expected to reach \$875 billion USD by 2026, with cannabis advertising spending in North America reaching \$3.4 billion USD.^{1,2}

Advertising allows businesses to provide information about their products or services, build brand awareness, increase revenue, and foster customer loyalty. In the cannabis industry, advertising enables licensed businesses to compete against the unregulated market, promotes consumer and patient knowledge of legal cannabis products and retailers, and allows small and social equity-owned businesses to compete against large, multi-state operators.

North American Cannabis Advertising Spending

Source: Statista



Competing with the Unregulated Market

Once cannabis is legalized in a state, both policymakers and cannabis business owners face a common obstacle: convincing consumers to buy cannabis from licensed retailers instead of unregulated sources. Nearly a century of cannabis criminalization has led to a persistent and robust unlicensed market, even in states that have legalized adult-use cannabis. One way to help minimize the unlicensed market is by allowing licensed businesses to distinguish themselves and their products through advertising. Research shows that consumers favor legal cannabis, and advertising makes it easier for those consumers to identify licensed retailers and brands.³ Conversely, a ban on cannabis advertising would make it exceedingly difficult for consumers to learn about licensed cannabis businesses and products.

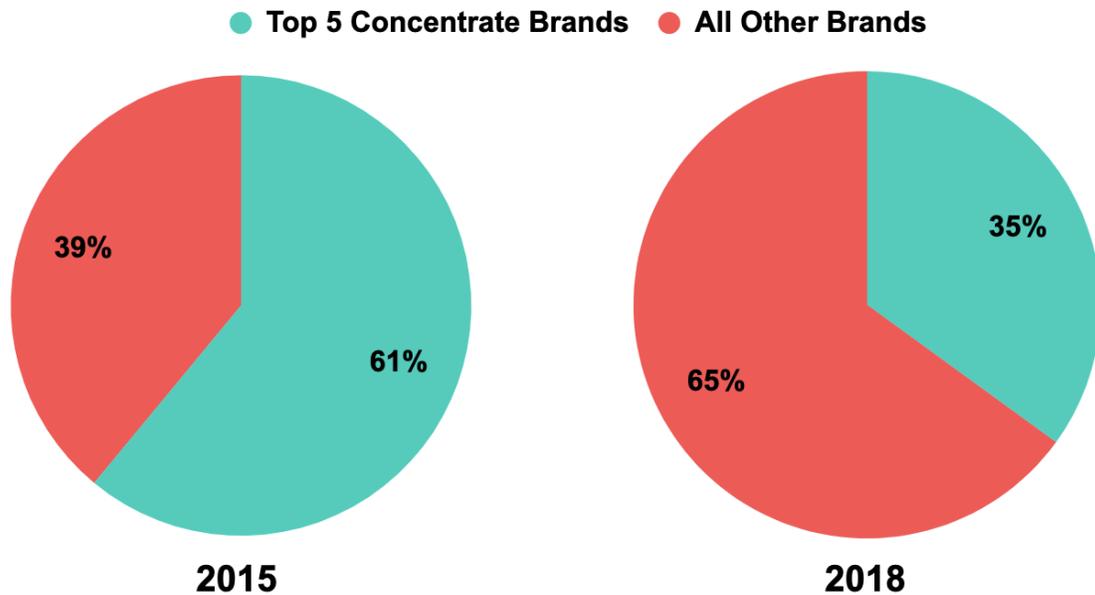
Building Brand Awareness and Customer Loyalty

Key to the success of any business is attracting new customers and retaining repeat customers. Within the cannabis industry, brand awareness is essential to running a profitable business and increasing the total market share of the legal industry. As consumers become more familiar with legal brands and retailers, they are less likely to patronize the unlicensed market.

Colorado provides a good case study on the importance of building brand awareness, especially for small businesses. In 2015, the top five concentrate brands held 61% of total cannabis sales, but by 2018, those same five brands controlled only 35% of the market.⁴ Enabling businesses to build strong brand

awareness through advertising will help foster a diversified market, leading to higher quality products and better consumer experiences.

Source: BDS Analytics



Advertising also plays a critical role in building customer trust and loyalty. Brand awareness can lead to customer retention, which is important for a successful business. Repeat customers are highly profitable and typically comprise a significant portion of revenue for a business. According to a report from Adobe, 40% of revenue in the U.S. comes from returning customers, representing only 8% of all visitors. Repeat customers also generate 3x higher revenue per visit (RPV) than new shoppers and account for more revenue during the holiday season and times of slow economic growth.⁵

Advertising and Small Businesses

Small cannabis businesses can use advertising to compete against large, multi-state operators with extensive marketing budgets. According to a 2020 report from The Manifest, 88% of small businesses invest in social media advertising, and 63% utilize traditional marketing services.⁶ Online advertising is more affordable than out-of-home advertising (e.g. billboards) and print media, making it a more desirable option for small operators with limited resources. Digital advertising also allows businesses to target specific groups of people by location or interest, thus maximizing the return on their investment.

Promoting Consumer Safety

An informed cannabis consumer base is in the best interest of policymakers who wish to protect public health and safety. Cannabis products are diverse and, at times, complex, but branding and advertising can help consumers identify legal, trustworthy brands. Further, brands can educate consumers on product safety and responsible consumption by including information on laboratory testing, potency, and dosage recommendations in their branding and advertisements. A major advantage of the legal market is the ability to establish consumer trust by providing consistent, reliable products and information. Because the unlicensed market forgoes any laboratory testing, consumers are more likely to opt for trustworthy legal market products that they recognize and know to be safe and free from

contaminants. Enabling cannabis businesses to advertise will aid in creating a safer legal cannabis industry altogether.

Professionalization of the Cannabis Industry

Allowing cannabis businesses to advertise furthers the professionalization of the cannabis industry-benefiting patients, consumers, and the general public. In many ways, the cannabis industry is unique; used as both a medical treatment and a product for adult consumption, cannabis requires intentional and thoughtful regulation. However, in many other ways, the cannabis industry is a traditional consumer business involved in the producing, manufacturing, distributing, and selling of products to consumers. With reasonable safeguards, such as prohibiting advertisements from appealing to children, cannabis businesses should be allowed to advertise in a manner similar to other industries.

| Types of Advertising |
|--|
| <p>Broadcast: Advertising that airs through television or radio to reach consumers.</p> |
| <p>Digital/Online: Advertising that uses the internet to deliver promotional materials to consumers. Digital advertising typically appears on a computer, phone, or tablet and often in the form of banner ads, display ads, online videos, and social media posts.</p> |
| <p>Native: Advertisements that match the format of the platform being used to present it. Often referred to as sponsored content, native advertising is common in videos, online articles, and television.</p> |
| <p>Mobile: A form of digital advertising that occurs on mobile devices, such as smartphones and tablets.</p> |
| <p>Out-Of-Home: Out-of-home (“OOH”) advertising reaches consumers outside of the home. Examples of OOH advertising include billboards, advertisements on public transportation, and flyers.</p> |
| <p>Print: Advertising that appears on physically printed materials, such as newspapers, magazines, direct mail, and brochures.</p> |

Digital Advertising and Cannabis

Digital advertising helps bolster competition in the regulated cannabis market. Technology is a central pillar of consumer practices in the 21st century, and cannabis policies should support these consumer-facing technological advancements. Digital advertising is expected to reach 55% of global advertising spending in 2022, surpassing traditional media such as print and television.⁷ In the United States, digital advertising spending is projected to reach \$210 billion in 2022.⁸ To meet the demands and preferences of modern consumers, cannabis businesses must be able to adapt to the dynamic nature of the digital economy. Cannabis policies should enable businesses to advertise on all digital and mobile platforms within the purview of reasonable restrictions.

How Modern Consumers Shop

Digital advertising is becoming increasingly popular as more consumers rely on online platforms to make informed purchasing decisions. According to research put out by Salesforce, 85% of consumers use the internet to do research before purchasing a product online, and 79% of consumers conduct online research before making an in-store purchase.⁹ On top of using digital platforms to gather information,

consumers are increasingly turning to online shopping. One survey found that in 2020, 80.9% of internet users aged 16 to 64 made an online purchase in the last month.¹⁰

Mobile Advertising

Mobile advertising, a form of digital advertising through mobile devices, is one of the most effective and discreet ways to reach consumers. Mobile advertising typically appears on social media, websites, and applications and can target consumers based on demographics, location, and interests. Because over 65% of the world's population uses a mobile phone, mobile advertising has become a preferred way for businesses to reach a large yet intentionally-curated audience. The ability to reach specific audiences is imperative in the cannabis industry because it helps ensure businesses only target populations within legal jurisdictions and those aged 21 and older.

Common Digital Advertising Terms

Banner Ad: An advertisement placed on a website or mobile application, often containing graphics, photos, or videos. Banner ads stretch across the top, bottom, or sides of a website and often redirect visitors to a new web page.

Display Ad: A general term for advertisements that appear on digital and mobile platforms. Banner ads are a common type of display ad.

Geographic Targeting/Geotargeting: Advertisements that are targeted to users based on their geographic location.

Pop-Up Ad: An advertisement that appears in a separate, usually smaller, window on top or underneath a user's webpage.

Push Notification: A pop-up message sent by a digital or mobile application to a user's electronic device.

Ensuring a Safe Cannabis Market with Reasonable Regulations

Supporting the legal cannabis industry by allowing advertising and protecting public health and safety are not mutually exclusive policy goals. Legal cannabis marketplaces are already highly regulated to ensure public safety, including strict laboratory testing standards and childproof packaging requirements, for example. Reasonable advertising rules should be adopted, but banning cannabis advertising altogether will do nothing to protect consumers and the public.

Below is a list of reasonable advertising regulations policymakers should consider, along with examples from states that have legalized adult-use cannabis.

Cannabis advertisements should not intentionally appeal to children in any manner.

Example: California

16 CCR 42 § 5040(a) Advertising Placement.

(a) Any advertising or marketing, as defined in Business and Professions Code section 26150, that is placed in broadcast, cable, radio, print, and digital communications:

- (1) Shall only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older;
- (2) Shall not use any depictions or images of minors or anyone under 21 years of age;
- (3) Shall not contain the use of objects, such as toys, inflatables, movie characters, cartoon characters, or include any other display, depiction, or image designed in any manner likely to be appealing to minors or anyone under 21 years of age;

Cannabis advertisements should not feature individuals under the age of 21.

Example: Massachusetts

935 CMR § 500.105(4)(b)3 Advertising Requirements

(b) Prohibited Practices. The following Advertising activities are prohibited:

3. Advertising that utilizes statements, designs, representations, pictures or illustrations that portray anyone younger than 21 years old;

Cannabis advertisements should explicitly include digital advertising.

Example: Montana

HB 249. 16-12-211. Limitations on advertising -- rulemaking

(a) A licensee may engage in electronic advertising such as maintaining a website and advertising on web applications, provided that no electronic advertisement produced by the licensee contains a statement or illustration that:

- (i) is false or misleading;
- (ii) promotes overconsumption of marijuana or marijuana-related products;
- (iii) depicts the actual consumption of marijuana or marijuana-related products;
- (iv) depicts a person under 21 years of age consuming marijuana;
- (v) makes any health, therapeutic, or medicinal claims about marijuana or marijuana-related products; or
- (vi) is designed in a way that is likely to appeal to minors and includes cartoons, animals, children, or any other likeness to images, characters, or phrases that are designed in any manner to be appealing or to encourage consumption of marijuana by persons under 21 years of age.

Cannabis advertisements should not make false or misleading claims.

Example: Colorado

1 CCR 212-3-3-705 - Advertising General Requirement: No Deceptive, False or Misleading Statements

A Regulated Marijuana Business shall not engage in Advertising that is deceptive, false, or misleading. A Regulated Marijuana Business shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a patient or consumer.

Cannabis advertisements should not depict or promote harmful consumption.

Example: Maine

18-691 C.M.R ch.1 § 5.2 Prohibitions

B. Advertising for a marijuana establishment may not:

- (4) Depict activities or conditions considered risky when under the influence of marijuana, such as operating a motorized vehicle, boat or machinery, being pregnant or breastfeeding;
- (12) Contain material that encourages excessive or rapid consumption.

Cannabis advertisements should not encourage illegal activity, including crossing state borders with cannabis.

Example: Oregon

OAR § 845-025-8040(1)(C) Advertising Restrictions

(1) Marijuana advertising may not:

- (c) Specifically encourages the transportation of marijuana items across state lines or otherwise encourages illegal activity;

The Current State of Cannabis Advertising in the United States

Across the United States, cannabis advertising policies are inconsistent and vary widely, with differing rules depending on the state and even the local government. For example, some states prohibit outdoor advertisements from including cannabis plants, such as Washington, whereas other states are more permissive of cannabis imagery, such as Nevada. Navigating these differing advertising policies can be difficult for businesses, particularly those operating in multiple jurisdictions.

Adding to the complexity of cannabis advertising policies is cannabis' classification as an illegal Schedule I substance under the federal Controlled Substances Act (CSA). Section 843 of the CSA generally bans the advertising of any Schedule I substance, yet most legal states permit some form of cannabis advertising. Because of the incongruence between federal and state laws, many states have elected to take a cautious and restrictive approach in their cannabis advertising policies. Many private technology companies have also opted to ban cannabis advertising on their platform, fearing potential ramifications from the federal government. Removal of cannabis from the list of federally-generated list of controlled substances would (among other significant changes) likely allow for more expansive cannabis advertising policies.

Policy Recommendations

Ensure that licensed businesses have the flexibility to advertise across various mediums, including digital and mobile platforms.

Licensed cannabis businesses should have a reasonable degree of flexibility to advertise across all available mediums. These mediums include, but are not limited to, digital, mobile, print, out-of-home, radio, television, podcasts, mail, and event sponsorship. While digital advertising currently dominates the advertising market and is important in operating a business in the 21st century, other forms of advertising should not be overlooked. Furthermore, cannabis businesses should be permitted to include information on pricing, available products, discounts and promotions, hours of operation, and other information pertinent to consumer purchasing decisions.

Prohibit cannabis advertisements from featuring individuals under the age of 21 and appealing to youth audiences.

Cannabis advertisements should be prohibited from featuring any individuals under the age of 21 and should only target medical and adult-use consumers. Policymakers should adopt a touch-and-feel approach to advertising rules regarding the use of cartoon logos or whimsical trademarks.

Ensure that advertising policies facilitate online ordering for delivery and in-store pick-up.

Online ordering through digital platforms should be expressly permitted, as cannabis delivery and pickup play a crucial role in supporting the legal market and ensuring patients can easily access their medicine. Those with mobility restrictions or transportation limitations rely on delivery to obtain their medical cannabis, and online ordering for curbside or in-store pickup allows consumers to purchase their desired cannabis products before traveling to a retailer. During the COVID-19 pandemic, delivery and curbside pickup became the primary way consumers purchased cannabis. These purchasing options allowed consumers, particularly patients, to purchase cannabis safely. Some states, such as Pennsylvania and Nevada, have now permanently adopted curbside pickup, recognizing its popularity and importance to many consumers. Making the purchase of legal cannabis accessible and convenient for patients and adult consumers is a key way to displace the unregulated market, therefore cannabis advertising policies should allow for the online ordering of cannabis on digital platforms.

Place reasonable restrictions on advertisements from making false or misleading claims on public health matters.

While the medical benefits of cannabis are numerous, cannabis advertisements should be explicitly prohibited from making intentionally false or misleading claims on public health matters. Advertisements are an effective way of disseminating information to consumers, but cannabis businesses should be barred from misleading consumers to make a profit.

Allow retailers to have visible storefronts and signage.

Retailers should be able to maintain visible storefronts and signage to promote their business and allow customers to locate their shop. Allowing visible storefronts will also force businesses to compete on store quality, cleanliness, and curbside appeal. This has the added benefit of increasing build-out expenditure by business owners which, in turn, increases their desires to maintain compliance.

Endnotes

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