

When it comes to marijuana ads, media has protections

This summer, the *St. Louis Post-Dispatch* ran a story regarding a news release that had been given to some medical marijuana dispensaries, advising them that advertising for some of their sales promotions could violate state regulations on dispensing “medical marijuana as part of a promotional event.”

That press release from the state Department of Health and Senior Services, as well as situations arising in some other states and cautionary bulletins from those states, caused some Missouri Press Association member newspapers concern over whether they might have liability for advertising of medical marijuana products in Missouri.

Most newspapers understand that they are liable, ultimately, for the content of any advertising they publish and that general good business precautions need to be taken in reviewing any ads that come in for publication. But the good news is that in Missouri, state and federal laws do provide protection for the media from concerns over the statements that might be made by vendors of such medical marijuana products.

The concern of the state cited in the *Post-Dispatch's* article related to issues such as advertising discounts on products, particularly in connection with holidays or other special events, although the state recognized that giving discounts was a permissible activity.

Missouri's medical marijuana statutes are contained in Chapter 195 of the Missouri statutes and Section 195.244 specifically states that it is unlawful for a person “to place in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution

of imitation controlled substances.” A similar statute covers the sale of drug paraphernalia. None of the other statutes in that chapter specifically relate to advertising of medical marijuana.

However, Missouri does have a number of statutes relating to Unlawful Merchandising Practices, all contained in Chapter 407 of the Missouri statutes. One of those (Section 420.020) prohibits the use of “deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce....” Thus, that statute could create some potential for liability for merchandisers of medical marijuana who “overpromise” the results that may be achieved by such products.

The good news is that the media, while serving as the vehicle over which such ads might run, are not personally liable for such unlawful content “when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser”.

And federal law offers the media similar protections for the acts of aggressive merchandisers of medical marijuana or any other product. The Federal Trade Commission does regulate “any advertisement ... which is misleading in a material respect” and takes into account issues such as whether the ad “fails to reveal

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facts material in the light of such representations” or consequences that can result from the use of the product being advertised.

However, again, federal law also exempts members of the media “unless he has refused, on the request of the (Federal Trade) Commission, to furnish the

Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, ... who caused him to disseminate such advertisement.”

Therefore, it appears clear that under both Missouri law and federal law, members of the media publishing advertising relating to medical marijuana which are found to be false, misleading or deceptive, are given means of extricating themselves from that litigation.

That doesn't mean caution should be disregarded. Any time an advertisement is deemed by a newspaper to be objectionable, the paper has an absolute right to not publish the ad because the advertiser is always free to take an objectionable ad to another publisher. But it does provide some relief from publishers having to personally determine whether every promise made in such an ad is truthful.

