

MARIJUANA ADVERTISING ON SOCIAL MEDIA

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In 2017, there were a reported 2 billion active users on Facebook, and more than 1 billion people used the social networking site on a daily basis; additionally, there were a reported 1.5 billion active users on YouTube and 700 million on Instagram.¹ These numbers are sure to rise in the next few years, both as the world's population grows and as digital marketing becomes even more prominent.



Among the billions of social media users, a percentage is dedicated to businesses that use social media as part of their marketing strategies. The sheer number of people using services like Facebook and Instagram daily makes it easy for businesses to find their intended audiences and market their products accordingly.

Considering these statistics, and with the legalization of marijuana (medical, recreational or both) in 30 states, it's no surprise that those in the cannabis industry are also turning to social media for marketing purposes.

However, this situation has come with its own set of unique challenges for marijuana businesses and the attorneys representing them. Although marijuana has been legalized at the state level in several places, it is still illegal under the federal Controlled Substances Act,² raising some concerns regarding both the legality and the ethicality of advertising marijuana products on social media.

Facebook Algorithms & Monitors: Tracking Illegal Content

Facebook in particular has stringent rules³ regarding what can and cannot be posted on its site. According to its advertising policies, businesses cannot promote illegal

products; additionally, Facebook's community standards state that posts may be removed if they do not adhere to community guidelines.

How does Facebook track down illegal content? The social media platform relies on both artificial intelligence and people⁴ to monitor content posted on the site. For example, an algorithm might be programmed to flag posts with the words "pot" or "weed" in them. Human monitors would then review the flagged posts and determine whether the content is appropriate.

Facebook also relies on its users to flag content that they consider inappropriate or that violates its community standards. Every post comes equipped with a "report" option, encouraging users to provide feedback on posts they see in their feeds. After providing feedback, users have the option to report a post if they believe it violates Facebook's community standards.

Facebook's algorithms and monitors play a large role in finding illegal content, and this discovery often results in a page being shut down due to the promotion of marijuana, regardless of its legality at the state level.

Instances of marijuana-related pages being shut down are not uncommon on Instagram (another Facebook-owned company) either. In January, CNET reported that the Instagram account of Essence, a dispensary located on the Las Vegas Strip, was shut down six times, despite being a legitimate business (with licenses to show for it).⁵ Similarly, a legal dispensary in Fort Collins, Colorado, had its page shut down on seven different occasions.⁶

Whichever methods sites like Facebook rely upon to track and remove prohibited content, they do not appear to be 100 percent effective, as some cannabis-related businesses continue to operate online without incident. Such instances

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highlight Facebook’s inconsistency when it comes to flagging and responding to reportedly illegal content.

While this inconsistency can certainly harm legal marijuana businesses (especially if their pages are repeatedly shut down), it also provides opportunities for illegal businesses to promote themselves and spread information that might be inaccurate. This outcome can be particularly frustrating for legal marijuana businesses, especially if their pages are shut down while some illegal businesses continue to post without consequence.

Ethical Concerns

Further complicating matters are the various ethical concerns surrounding the advertisement of a federally illegal substance.

For example, advertising the medicinal benefits of a marijuana product, directly or indirectly, could be problematic, as there is very little scientific evidence backing up such claims.⁷ This circumstance is further exacerbated by the fact that Congress says marijuana has no medicinal benefits and has it listed as a Schedule 1 drug under the Controlled Substances Act. Statements relating to the medical benefits of cannabis products are potentially misleading or inaccurate, leading to a host of possible problems for an uninformed consumer.

Additionally, although Nevada’s advertising rules that relate to marijuana businesses ban any kind of advertising that might appeal to children,⁸ Facebook is available for use by anyone 13 years old or older.⁹

Facebook’s inconsistency when it comes to monitoring and/or removing content creates the potential for the dissemination of misleading or false information regarding marijuana, which could have dangerous implications, especially for users under 21 years old.

To avoid these issues, some marijuana businesses might choose to share information that is purely educational in tone, carefully avoiding

the use of slang terms and making sure all their posted information is accurate.

However, as many in the cannabis industry can attest, hosting only educational content does not necessarily protect a social media page from being shut down.

State Advertisement Guidelines and Social Media Use

For those in the marijuana industry, advertising of any kind is a tightrope-walk. It is important for businesses to be aware of the risks involved in advertising on social media, especially if the products advertised are federally illegal.

In Nevada, marijuana businesses must adhere to the strict advertising guidelines set forth by the Department of Taxation.¹⁰ Each advertisement goes through a thorough review process and must be approved by the department before it is disseminated. A business could face fines or the suspension and/or revocation of its license if it severely or repeatedly violates the rules.

As far as social media advertising is concerned, attorneys should advise their clients to assume that federal law enforcement agencies are monitoring their social media accounts at all times, and either choose to accept the risks or avoid using social media altogether. This advice is obviously in addition to counselling them regarding the federal status of marijuana and the risks involved in participating in a marijuana business.

It is also important to remind clients that a social media site is under no obligation to maintain or permit their company’s advertisements or accounts. Therefore, marijuana clients should be advised that they could lose the media presence in which they’ve invested so much time in an instant, and be left with virtually no recourse.

In general, those businesses that understand the risks involved and still wish to advertise and market their marijuana products on social media

should follow all of Nevada’s advertising rules and regulations.

Again, it is important to note that while these rules provide some protections, they do not prohibit pages from being shut down, nor do they provide protection from the federal government, should it wish to shut down their businesses. **NL**

1. See <https://sproutsocial.com/insights/facebook-stats-for-marketers/>.
2. See <https://www.deadiversion.usdoj.gov/21cfr/21usc/811.htm>.
3. See <http://www.facebook.com/policies/ads/> and <https://www.facebook.com/communitystandards#violence-and-graphic-content>.
4. See <https://www.npr.org/sections/twotwo-way/2017/05/03/526727711/facebook-plans-to-add-3-000-workers-to-monitor-remove-violent-content>.
5. See <https://www.cnet.com/news/weed-dispensaries-tech-companies-google-instagram-ces-2018/?ftag=COS-05-10aaa0b&linkId=47161984>.
6. See <https://www.coloradoan.com/story/news/2017/08/25/fort-collins-marijuana-businesses-keep-getting-kicked-off-facebook/590693001/>.
7. See <https://www.webmd.com/pain-management/features/medical-marijuana-research-web#1>.
8. See <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/Forms/Marijuana-Advertising-Submittal-Request.pdf>.
9. See <https://www.facebook.com/policies/>.
10. See <https://tax.nv.gov/FAQs/Marijuana-Proposed-Temporary-Regulation-T002-17/>.



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