

Vice Advertising I - Tobacco

One of the most controversial advertising issues today is the government's attempt to regulate the advertising of "vice" products. For nearly two decades, the Supreme Court has tinkered with the analysis used for measuring the constitutionality of official restrictions on commercial speech, until it settled on a four-part test known as the "Central Hudson" test.

THE "CENTRAL HUDSON" TEST

Regulations affecting commercial speech do not violate the First Amendment if:

1. The regulated speech concerns an illegal activity
2. The speech is misleading
3. The government's interest in restricting the speech is substantial, the regulation in question directly advances the government's interest
4. The regulation is narrowly tailored* to serve the government's interest

*The original Central Hudson test required that the government prove the regulation was no more restrictive of speech than necessary to serve its interest, but in a 1989 case the Supreme Court modified the test slightly to the form above.

In recent years, many advertisers have begun to realize what the tobacco companies learned long ago: out of home advertising is an effective way to reach a target audience. Accordingly, advertisers for legal goods that are often considered "vice" products (e.g. cigars, smokeless tobacco, beer, wine, and distilled spirits), as well as lawful gambling, have increasingly considered and used out of home advertising. With this recent increase in business, it is not surprising that some of the questions most often asked of OAAA concern restrictions on advertising these products.

In this series, OAAA will provide answers to some common questions on the topic. However, it is important to remember that just because one can advertise these products doesn't mean one should. With great power comes great responsibility.

Can cigarettes be advertised on billboards?

In 1999, Massachusetts promulgated comprehensive regulations governing the advertising and sale of cigarettes, smokeless tobacco, and cigars. Members of the tobacco industry filed suit challenging the regulations. In a 2001 opinion, a highly fractured Court held that Massachusetts' outdoor and point-of-sale advertising regulations related



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to smokeless tobacco and cigars violate the First Amendment. The majority opinion stated "[w]e conclude that the Attorney General has failed to show that the outdoor advertising regulations for smokeless tobacco and cigars are not more extensive than necessary to advance the state's substantial interest in preventing underage tobacco use."

However, in 1998 the six largest tobacco companies voluntarily signed a "Master Settlement Agreement" (MSA) involving 46 states. Under the terms of the MSA, the tobacco companies must refrain from advertising tobacco products via the outdoor medium.

The MSA does not prohibit package stores from advertising the availability of tobacco products, so long as specific brands are not mentioned.

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CALENDAR

February 22-25

Digital Signage Expo 2011
Las Vegas, NV

March 2

Webinar: Transit Series 1 - Bus
2-3 pm ET

March 7-9

2011 4A's Conference
Austin, TX

March 16

Webinar: Taxes
2-3 pm ET

March 23

Webinar: TAB EYES ON VIII
2-3 pm ET

April 11-13

OAAA/TAB National Convention & Trade Show
Miami Beach, FL

April 11

FOARE Board Meeting
Miami Beach, FL

April 11

OAAA Board of Directors Meeting
Miami Beach, FL

April 13

OAAA OBIE Awards
Miami Beach, FL

April 20

Webinar: OAAA Convention Recap and OBIE Award Winners
2-3 pm ET

April 27

Webinar: Transit Series 2 - Rail
2-3 pm ET

April 28

Webinar: OAAA Biennial Membership Meeting
2-3 pm ET

OBIE Judges Narrow it Down

The 2011 OBIE Awards jury convened on February 4 at the Hotel Victor in South Beach to judge this year's entries. The judges reviewed more than 1,000 images over the course of the day to determine the best creative executions of the year.

As the judges discussed and debated campaigns, they expressed a great respect for the out of home medium. "From an advertising point of view, outdoor is probably the most difficult medium [to create for], because it has to be so simple and so quick and so telegraphic," said Tracy Wong, WONG-DOODY. "I started off in this business as an art director by trade and I felt like, if you could do great outdoor, you could pretty much do everything."

"The challenge with outdoor is you have a very brief time to interact with the person," said Jonathan Schoenberg, TDA. "You can't tell a big story, but you

can tell a loud story, which I like a lot. And that's both the challenge and the opportunity. You have to communicate succinctly and quickly, but at the same time, you have a great opportunity to bring people joy."

Wong, who was this year's Chief Judge, was also pleased with the diversity of the entries. "What I enjoyed today was seeing a mix of what I feel is pretty old school...good straight-forward stuff that will always work...and then also seeing the end of that range, which is video-based and more interactive. It's an interesting tie, I think, for the business."

The finalists for the 2011 OBIE Awards will be announced in next week's *Outdoor Outlook*. The winning campaigns will be honored on Wednesday, April 13, at the 2011 OBIE Awards Gala on the closing night of the OAAA/TAB National Convention & Trade Show at the Fontainebleau Miami Beach.

Convention Speaker Spotlight: Martin Lindstrom



Martin Lindstrom is a recipient of *TIME* Magazine's "World's 100 Most Influential People." He is a trusted advisor to numerous Fortune 100 companies including McDonald's Corporation, PepsiCo, Nestlé, American Express, Microsoft Corporation, The Walt Disney Company, and GlaxoSmithKline.

Lindstrom's global audience is estimated to be millions. He is a regular contributor to *The Wall Street Journal*, *Newsweek*, *TIME*, *The Economist*, *The New York Times*, *BusinessWeek*, *USA Today*, *Fast Company*, *Harvard Busi-*

ness Review, and has appeared on NBC's *Today*, ABC News, CNN, CBS, Bloomberg, FOX, and BBC.

His book, *BRANDsense*, was acclaimed by *The Wall Street Journal* as "...one of the five best marketing books ever published." Lindstrom's latest book, *Buyology*, was voted "pick of the year" by *USA Today*. His five books on branding have been translated into more than 30 languages and published in more than 60 countries worldwide.

Martin Lindstrom will be a featured speaker on the first morning of general sessions at the OAAA/TAB National Convention & Trade Show at the Fontainebleau Miami Beach. Lindstrom will discuss how his books relate directly to the out of home industry. [Grab Your Share and register today!](#)

Census 2010

Census 2010 will have a significant political impact as district lines are redrawn due to population shifts.

In the last decade, the US population grew to more than 308 million, an increase of 9.7 percent. Because growth has been faster in the South and West, those regions will gain congressional seats at the expense of the Midwest and Northeast. Adding congressional seats to "red" states could benefit Republicans.

Redistricting is handled by governors and state legislatures, with court guidance in some cases.

Here are the winners and losers:

Gained Seats:	Lost Seats:
Texas - 4	Ohio - 2
Florida - 2	New York - 2
South Carolina - 1	Iowa - 1
Georgia - 1	Missouri - 1
Arizona - 1	Illinois - 1
Utah - 1	Michigan - 1
Nevada - 1	Louisiana - 1
Washington - 1	Pennsylvania - 1
	New Jersey - 1
	Massachusetts - 1

Vice (continued)

Other common questions include:

Q: Can I advertise price?

A: Yes, as long as the brand isn't mentioned (e.g. \$5.00 per pack)

Q: Can I advertise brands that aren't covered by the MSA?

A: Yes, the MSA provisions prohibiting billboard advertising only apply to the companies that signed the agreement.

Q: Can I advertise price comparisons?

A: Yes, such as "Cigarettes sold here are cheaper than in neighboring states."

Next week's article will evaluate cigar, electronic cigarettes, and smokeless tobacco advertisements.

For questions about "vice" advertising, please contact Myron Laible at mlaible@oaaa.org or Kerry Yoakum at kyoakum@oaaa.org.

Industry Champion Honored in MO House Chamber

Bill May, longtime executive director and counsel for the Missouri Outdoor Advertising Association (MOAA), knows his way around the state Capitol. But, May was surprised – and honored – when a top member of the Missouri House escorted him to the podium in the House chamber.

On February 9, Speaker Pro Tem Shane Schoeller began the legislative session by introducing May as a special friend, and explaining that he represented the outdoor advertising industry.

"I had just experienced something that has never happened to me before in the more than 25 years I have been walking the Capitol hallways," May said in an email report to outdoor operators. "I love representing you guys. It's never boring."

In Missouri, the outdoor industry is supporting legislation that would allow billboards to be relocated when Interstates are widened, saving time and tax dollars. Last week, the proposal (Senate

Bill 120) cleared a Senate committee. In the House, Rep. Schoeller is the bill's sponsor.

Other State Activity

Georgia

An industry-backed vegetation bill cleared a House committee last week. OAAA members in Georgia have reported that the election results improved the industry's prospects in the legislature.

Kentucky

Federal regulators have requested inventory details from Kentucky. The outdoor industry is scheduled to meet with the in-state official from the Federal Highway Administration on February 24 in Frankfort.



Bill May is recognized by Rep. Schoeller in Missouri House chamber

South Dakota

South Dakota is considering legislation that would strengthen local authority to ban billboards. The proposal cleared a House committee; however, a broad business coalition has been organized to oppose the bill.

Virginia

A billboard company recently filed suit in Virginia to allow outdoor advertising of alcohol. Because the new state attorney general believed the state would likely lose in court, Virginia decided to allow alcohol ads on billboards. However, this decision has sparked debate in the legislature.

Ohio

Success in Ohio last week showcases the outdoor industry's partnership with law enforcement. A quick arrest in a child pornography case "was made possible due to a tip that came in from someone who saw our target on the billboards," said Patrick Sedoti, Chief Deputy US Marshal for the Southern District of Ohio.

Eye Catcher



Out of Home Industry Welcomes Transportation Leaders to WV

Congress has started hearings on a new long-term Highway Bill. The first House hearing was held on February 14 in Beckley, WV, home of the top Democrat on the House Transportation & Infrastructure Committee (Rep. Nick J. Rahall).

House hearings will continue through mid-March across the country. Chairman John Mica (R-FL) wants to speed up road projects and allow more private financing of transportation.

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Outdoor Outlook is produced by OAAA as a member service. Previous issues can be found at www.oaaa.org.