

METRO INTERNAL PROCEDURES AND INTERPRETIVE AIDS FOR REVIEWING PROPOSED COMMERCIAL ADVERTISING

The following are the internal procedures and interpretive aids for the Guidelines Governing Commercial Advertising adopted by the Washington Metropolitan Area Transit Authority (“WMATA”) on August 3, 1972, as most recently amended November 19, 2015 (the “Guidelines”).¹ These internal procedures and interpretive aids help WMATA’s advertisement review panel (“Panel”) apply the Guidelines to all advertisements submitted for review by its third-party advertising vendor (“Vendor”). WMATA reserves the right to revise or amend the internal procedures and interpretive aids without notice.

I. Composition of WMATA’s advertisement review Panel

- A. WMATA shall utilize a three-person Panel to review advertisements that are identified by WMATA’s third party advertising Vendor as potentially violating the Guidelines. The Panel shall consist of one person from the Marketing Department and two attorneys from the Legal Department.
- B. Each Panel member shall be generally familiar with the law governing advertising in non-public forums.
- C. All members of the Panel shall review past advertisements that have been considered by the Panel to familiarize themselves with how the Guidelines have been applied in the past.
- D. If the Panel is unable to reach a consensus on whether an advertisement violates the Guidelines, the advertisement shall be submitted to outside counsel with demonstrated extensive experience in First Amendment law for advice in order for the Panel to make a final determination.

II. Submission of advertisements through third-party advertising vendor

- A. All advertisements submitted for advertising through WMATA’s third-party advertising vendor (“Vendor”) shall be reviewed initially for compliance with the Guidelines by the Vendor. If the Vendor believes an advertisement is prohibited by a Guideline or is unsure whether an advertisement may violate a Guideline, it shall submit the advertisement to the Panel for review and a decision.
- B. Periodically, members of the Panel shall meet with any employees of Vendor responsible for initially reviewing advertisements to discuss the Guidelines and these internal procedures and interpretive aids.
- C. Advertisements submitted in any language other than English shall be accompanied by a certified English translation.

III. Panel review of advertisements

- A. When an advertisement is submitted to the Panel to determine if it complies with or violates the Guidelines, each member shall review the advertisement.
- B. If any advertisement submitted to the Panel contains a link to a website, a QR code, or a reference to a website (for example, but not limited to, “check out our website for more information”), the Panel shall access the website and endeavour to review:
 - 1. Any page linked directly from the advertisement;
 - 2. Any homepage for the website;
 - 3. Any page directly accessible from the above pages that purports to provide background information on the content, meaning, and/or purpose of the advertisement, which may include pages that describe the advertiser and their self-stated mission and/or purpose; and
 - 4. Any page linked from one of the foregoing pages that suggests it contains content that would violate the Guidelines if it appeared on the face of the advertisement.
- C. To the extent technically practical, download or otherwise save page(s) that the Panel reviewed in making its determination. If a website contains content that does not download (for example, but not limited to, images or link titles), the page shall be printed or saved in another manner that preserves as much information as possible

¹ Effective as of November 1, 2024.

from the reviewed pages.

- D. If an advertisement does not include a link, QR code, or other reference to a website, the Panel generally will not consider the website during its review. However, if any advertisement presents information that is not readily known to or understood by the Panel, the Panel may perform enough research regarding the information presented by the advertisement to educate itself in order to make an informed decision as to whether the advertisement violates the Guidelines.
- E. The Panel will not provide advisory opinions or feedback on potential advertisements.
- F. Panel decisions are final. The Panel will not consider requests for reconsideration or additional explanation.

IV. Guidance for determining if advertisements violate the Guidelines

- A. The Panel shall apply the Guidelines consistently. It shall not reject advertisements because of the particular viewpoint stated or the identity of the advertiser.
- B. An advertisement that otherwise violates the Guidelines is prohibited even if it also encourages or promotes the purchase or use of goods or services.
- C. An advertisement for an educational institution is not prohibited solely because it refers to its mission or describes itself using general terms that do not refer to a specific issue (for example, but not limited to, describing itself or its educational offerings as “diverse,” “traditional,” or guided by religious tenets) so long as the advertisement does not otherwise violate the Guidelines.
- D. Interpretive aids for Guideline 1: “All advertising shall comply with the spirit of all applicable laws and regulations of the various jurisdictions in which it is displayed unless inconsistencies among the various jurisdictions prevents such compliance. Advertisements will not be accepted that are false, misleading or deceptive.”
 - 1. Advertisements that are obscene, indecent, or defamatory, that depict graphically violent or graphically sexual material, or that are otherwise legally actionable are prohibited.
 - 2. Advertisements that contain profanity or fighting words are prohibited. “Profanity” is grossly offensive language that is considered a public nuisance or as otherwise defined by the Federal Communications Commission. “Fighting words” are words that naturally tend to provoke violent resentment, inflict injury, or incite an immediate breach of the peace.
 - 3. Upon request, advertisers must provide evidence demonstrating compliance with this Guideline.
 - 4. All advertisements must clearly identify the entity submitting the advertisement. Advertisements that appear as if a third party is the advertiser are prohibited.
- E. Interpretive aids for Guideline 4: “Medical and health-related messages will be accepted only from government health organizations, or if the substance of the message is currently accepted by the American Medical Association and/or the Food and Drug Administration.”
 - 1. “Medical and health-related messages” are statements that refer to particular drugs, supplements, medical products, treatments, or other health-related services to combat illnesses, diseases, or health conditions and make representations or statements about the efficacy, benefits, or side effects of the drugs, supplements, medical products, treatments, or other health-related services being advertised.
 - 2. “Medical and health-related messages” must be both (a) factual in nature or presented as opinions of experts, medical professionals, or government officials; and (b) capable of verification by the American Medical Association and/or the Food and Drug Administration.
 - 3. Guideline 4 does not prohibit advertisements that identify a particular drug, supplement, medical product, treatment, or other service without making the type of representations or statements described in this section.
 - 4. Guideline 4 does not prohibit advertisements for fitness products or services, such as gyms, yoga studios, or other fitness training, unless the advertisement makes the type of representations or statements described in this section.
 - 5. Guideline 4 does not prohibit advertisements for a weight-loss program unless the advertisement contains the

types of representations or statements described in this section.

6. Upon request, advertisers must provide evidence demonstrating compliance with this Guideline.

F. Interpretive aids for Guideline 8: “No implied or declared endorsement of any product or service or message by WMATA is permitted.”

1. All advertisements must clearly identify the entity submitting the advertisement to avoid any confusion regarding whether it is a WMATA or WMATA-endorsed advertisement.

G. Interpretive aids for Guideline 9: “Advertisements intended to influence members of the public regarding an issue on which there are varying opinions are prohibited.”

1. The Panel determines an advertisement’s intent from review of the face of the advertisement and review of any relevant websites in accordance with section III.

2. An “issue on which there are varying opinions” does not mean any topic on which people might disagree. For example, an advertisement for a sports team does not involve an “issue on which there are varying opinions” merely because some people support other teams. Rather, an “issue” for purposes of Guideline 9 is “a point, matter, or dispute, the decision of which is of special or public importance[.]” (Dictionary.com definition of “issue.”) Advertisements that include such issues generally promote a message to the public about substantive ethically, socially, or politically controversial or divisive topics, as illustrated in this section.

3. Guideline 9 prohibits the following types of advertisements:

- a. Supporting, opposing, or promoting a political party;
- b. Supporting, opposing, or promoting any person holding any government position or any candidate for such a position;
- c. Supporting, opposing, or promoting a ballot measure or proposed measure;
- d. Supporting, opposing, or promoting a law, ordinance, regulation, or policy or proposed law, ordinance, regulation, or policy;
- e. Supporting, opposing, or promoting a constitutional amendment or amendments or a proposed constitutional amendment or amendments;
- f. Supporting, opposing, or promoting a governmental investigation or proposed government investigation;
- g. Supporting, opposing, or promoting a governmental action or inaction, other than offering goods and/or services to the government;
- h. Supporting, opposing, or promoting any civil, criminal, or administrative proceeding, or any ruling in such a proceeding;
- i. Supporting, opposing, or promoting a strike, walkout, boycott, divestment, embargo, or similar activity;
- j. Supporting, opposing, or promoting a policy or policies of a business or nonprofit entity other than encouraging or promoting the purchase or use of goods or services of the advertiser;
- k. Supporting, opposing, or promoting any foreign nation, group of foreign nations, foreign interest, or related entity, or any policy of or action/inaction of any foreign nation, group of foreign nations, foreign interest, or related entity, unless for a commercial purpose, such as tourism or sports-related advertisements;
- l. Describing or promoting a view of the role that any particular group (including groups characterized by their race, religion, ethnicity, nation origin, sexual orientation, disability status, marital status, age, or ideology) has played or should play in any government, society, or country.
- m. Describing or promoting a particular view, interpretation, or meaning of historical events, historical documents (for example, but not limited to, the Declaration of Independence or Constitution), laws, statutes, regulations, or other government policies.
- n. Supporting, opposing, or promoting a rally, protest, march, demonstration, or other similar event that

includes any content that would otherwise be prohibited by the Guidelines.

- p. Supporting, opposing, or promoting an ethical, social, or humanitarian cause, mission, call to action, awareness campaign, position statement, or other similar effort unless solely for a commercial purpose.
 - 4. Guideline 9 does not prohibit advertisements for a newspaper, magazine, other publication, TV program, film, theatrical performance, concert, podcast, or other media solely because the medium's content addresses political issues or contains political messages, so long as the advertisement does not otherwise violate the Guidelines.
 - 5. Guideline 9 does not prohibit advertisements for employment, including encouraging enlistment in a branch of the military or application for a job with federal, state, or local governments, solely because the employer's missions, policies, practices, or tactics are the subject of "varying opinions," so long as the advertisement does not otherwise violate the Guidelines.
 - 6. Guideline 9 does not prohibit advertisements that encourage or promote the purchase or use of goods or services because others may be opposed to their purchase or use, so long as the advertisement does not otherwise violate the Guidelines. For example, an advertisement for a fast food restaurant with an image of a hamburger does not violate Guideline 9 because some people may oppose the consumption of meat. Likewise, an advertisement from a charitable or religious organization that provides free meals or services to the poor is not prohibited because some people may be opposed to that organization, so long as the advertisement does not otherwise violate the Guidelines.
 - 7. Guideline 9 does not prohibit advertisements that promote medical services that may be the subject of public debate and controversy (for example, but not limited to, abortion, pregnancy care, gender-affirming medical treatment, in-vitro fertilization, vaccines, etc.) if the advertisement is limited to describing the services available, so long as the advertisement does not otherwise violate the Guidelines.
 - 8. Guideline 9 does not prohibit advertisements soliciting donations so long as the advertisement does not otherwise violate the Guidelines.
- H. Interpretive aids for Guideline 12: "Advertisements that promote or oppose any religion, religious practice or belief are prohibited."
 - 1. Guideline 12 does not prohibit advertisements for a newspaper, magazine, other publication, TV program, film, theatrical performance, concert, podcast, product, or other media solely because the medium's content addresses religion, religious practices, or religious beliefs or contains religious messages, so long as the advertisement does not otherwise violate the Guidelines.
 - 2. Guideline 12 does not prohibit advertisements for an institution solely because of its affiliation with a religion or because it displays a religious, institutional logo, slogan, phrase, symbol, or any other word(s) or image(s), so long as the advertisement does not otherwise violate the Guidelines.
- I. Interpretive aids for Guideline 13: "Advertisements that support or oppose an industry position or industry goal without any direct commercial benefit to the advertiser are prohibited."
 - 1. Guideline 13 prohibits advertisements that support or oppose industry, trade, or professional group members (for example, but not limited to, aerospace, doctors, manufacturing, organics, green energy, teachers, pilots, etc.) by seeking to influence the public or government policy regarding them without direct commercial benefit to the advertiser.
- J. Interpretive aids for Guideline 14: "Advertisements that are intended to influence public policy are prohibited."
 - 1. Guideline 14 prohibits advertisements that seek to influence lawmakers, regulatory agencies, judges, and any other government officials in the conduct of their duties, other than those offering goods and/or services to the government, so long as the advertisement does not otherwise violate the Guidelines.
 - 2. Guideline 14 prohibits advertisements that call on the public to contact, lobby, or otherwise influence lawmakers, regulatory agencies, judges, and any other government officials to support or oppose a matter

under consideration or likely to be considered by them, other than those offering goods and/or services to the government, so long as the advertisement does not otherwise violate the Guidelines.

3. Content that involves “public policy” for purposes of Guideline 14 includes content that is described under Guideline 9.