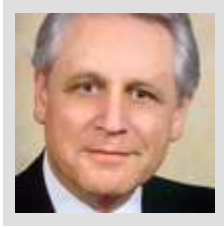


Dude Part 2 Cigars Cigarettes and Bong



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Last week, we talked about some fairly bizarre advertising requests for a smoking product, cannabis, or as it's more popularly known, "weed." But what about cigarettes, and what about stores that have "cigarette" or "tobacco" in their name, but want to advertise some other product?

This is a call I get a lot. First, most broadcasters know that you can't advertise cigarettes. Section 6 of the Federal Cigarette Labeling and Advertising Act makes it unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission. The prohibition has also been extended to smokeless and chewing tobacco.

But here's the issue: The law does not ban the advertising of smoking accessories, cigars, pipes, pipe tobacco or cigarette-making machines. Frequently, I am asked the question whether the station can take advertising or an announcer can voice an ad, where the merchant's name contains the word "cigarette," but the ad is clearly for a product other than one on the prohibited list. Is this okay?

It is difficult to respond because this is not an FCC issue. The Federal Cigarette Labeling and Advertising Act is a criminal statute -- and jurisdiction belongs to the Department of Justice, which has the exclusive authority to enforce the legal ban. Determinations on the applicability of the section are its prosecutorial discretion. It is for the Department of Justice, and ultimately the courts, to decide whether the presentation of tobacco advertisements would be prohibited.

Justice Department officials have repeatedly declined to offer advice on advertisements with cigarette in the name of the advertiser. There are no cases to guide us. The answer, therefore, is unclear. Many broadcasters have accepted such advertising and there have been no adverse consequences. But the possibility does exist, so if you accept such ads, it would be prudent to adjust the copy to avoid any reference to the prohibited products.

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