

WNA

WISCONSIN NEWSPAPER ASSOCIATION

Legal Guide to Advertising

Wisconsin Newspaper Association

1901 Fish Hatchery Road • PO Box 259837 • Madison, WI 53725-9837

Phone: (608) 283-7620, (800) 261-4242 • Fax: (608) 283-7631

E-mail: info@wnanews.com • Web: www.WNAnews.com



WISCONSIN NEWSPAPER ASSOCIATION

Legal Guide to advertising



This is the first edition of the WNA Legal Guide to Advertising prepared for the Wisconsin Newspaper Association by its legal counsel, LaFollette Godfrey & Kahn. The guide is designed to give you basic information about many of the federal and state advertising laws that most affect the state's newspapers. It is not intended to provide specific legal advice or respond to a specific case or incident. If you have a specific question concerning your newspaper, contact your legal counsel or call LaFollette Godfrey & Kahn through the WNA Hot-

line at (800) 362-2664.

The WNA Legal Guide to Advertising is a work in progress. We intend to continually update and improve its content and format. We will forward new materials — new sections, new pages — to incorporate in the Guide on a regular basis. Let us know if you have any suggestions for improving the Guide.

A handwritten signature in black ink that reads "Peter Fox". The signature is written in a cursive, flowing style.

Peter Fox

WNA Executive Director

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Madison, WI 53725-9837

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INTRODUCTION

Federal and state laws regulating advertising cover a wide range of topics. Despite the variety, the basic goal of most advertising regulations is the same: to protect consumers from false, deceptive, misleading or discriminatory information.

A newspaper's advertisements reflect not only the image of the advertisers, but the image of the newspaper as well. Accordingly, a newspaper should strive for just as much accuracy in its advertisements as in its news copy.

Most advertising laws do not specify whether they apply to publishers as well as to advertisers. It is unlikely that newspapers will be held liable for violations of these general laws. Some laws, including federal and state fair housing and employment laws, specifically make publishers liable for advertising violations. On the other hand, certain advertising laws, such as those pertaining to consumer credit, specifically exclude publishers from liability. This Guide will identify those laws that contain specific provisions concerning publisher liability or non-liability.

Careful review of all advertisements decreases the potential for legal liability for the newspaper and its advertisers. Even if the newspaper is not ultimately held liable for a violation of advertising laws, its good reputation can be damaged. Reputable advertisers may be more hesitant to run advertisements in newspapers that ignore the law. In addition, newspapers should be aware that they are just as liable for defamation contained in an advertisement as for defamation contained in news copy.

Newspapers generally have a First Amendment right to reject any advertisements. This broad First Amendment right protects the paper when it rejects advertisements that seem suspicious or problematic. However, a newspaper cannot reject advertisements in an attempt to destroy competition or create a monopoly in its publication area. This means that a newspaper cannot reject an advertisement merely because the same advertiser is also running advertisements in a competitor's paper.

The relevant statutes and regulations are included in the appendix at the end of this Guide.

ADOPTIONS

Wis. Stat. § 48.825; 42 U.S.C. § 1996b

The state of Wisconsin regulates the content of advertisements pertaining to adoptions. Under Wisconsin law, it is illegal to:

- advertise for the purpose of finding a child to adopt;
- advertise that someone will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child; or
- advertise that someone will place a child for adoption.

These restrictions do not apply to certain individuals and entities, including:

- the Department of Health and Family Services;
- a county department;
- a child welfare agency licensed to place children for adoption;
- an individual or agency providing adoption information or adoption information exchange services pursuant to state law;
- an individual who has received a favorable home study in Wisconsin or in another jurisdiction; and
- an individual seeking to place his or her own child for adoption.

Lawyers who are licensed in Wisconsin may advertise their availability to practice or provide services relating to the adoption of a child. Penalties for violating these state advertising prohibitions are stiff. Violators risk a potential fine of up to \$10,000, imprisonment for up to 9 months, or both.

Federal law prohibits discrimination in adoption placements. No person or government may deny any individual the opportunity to become an adoptive parent because of the race, color or national origin of the individual, or of the child involved. Thus, newspapers should not accept adoption advertisements that discriminate on any of these bases.

Neither state nor federal law regulates advertising pertaining to surrogate motherhood. Newspapers are free to adopt their own policies on such advertisements within the constraints of other laws.

AUCTIONS

Wis. Stat. § 480.20; Wis. Admin. Code §§ RL 123.02, 123.03

Wisconsin law prohibits auctioneers and auction companies from advertising in a false, deceptive or misleading manner. In addition to that general guideline, the law requires certain information to be included in advertisements announcing that an auction will be conducted. If the auction will be conducted by an auctioneer and managed by an auction company, the advertisement must include:

- the name and state registration number of the auctioneer;
- the name, address, telephone number and state registration number of the auction company;
- a statement that the auctioneer is a “registered Wisconsin auctioneer”;
- a statement of the terms and conditions under which payment will be accepted at the auction; and
- the percentage or other amount of any buyer’s premium or surcharge which is a condition of sale.

If the auction will be conducted by an auctioneer, but not managed by an auction company, the advertisement must include all of the above, except:

- No information about an auction company is necessary.
- The auctioneer’s address and telephone number must be listed in addition to his or her name and state registration number.

Advertisements that merely provide an auction company’s name and telephone number without reference to a specific auction are not subject to these requirements.

CIGARETTES

15 U.S.C. § 1333

Any cigarette advertisement must bear one of the following warnings:

1. SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.
2. SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
3. SUREGON GENERAL'S WARNING: Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.
4. SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

The chosen warning must be in a conspicuous and legible type in contrast to that of the other printed material in the advertisement.

The warning requirements do not apply to distributors or retailers of cigarettes who do not manufacture, package or import for sale within the United States.

CONSUMER CREDIT

Wis. Stat. §§ 423.301, 423.302, 425.305; 15 U.S.C. §§ 1662-1665 (Truth in Lending Act)

Banks, car dealerships and retail stores regularly extend credit and make short-term loans to consumers. When they do so, they are required to disclose the specific terms and conditions of that credit. This section does not cover all of the detailed federal regulations concerning the required disclosures. Instead, it focuses only on the laws pertaining to consumer credit advertising. Newspapers cannot be held liable for publishing advertisements that violate either the state or federal consumer credit laws.

The federal Truth in Lending Act applies to “credit offered or extended to a consumer primarily for personal, family or household use.” The Act has slightly different advertising regulations for closed end credit plans, open end credit plans and home equity loans. All consumer credit advertisements, however, are subject to the following two regulations:

- Catalogs and multiple page advertisements must clearly and conspicuously display a credit terms table including the information required by the Act.
- Advertisements offering consumer credit cannot state that a specific installment payment program or downpayment can be arranged unless the creditor “usually and customarily” arranges such programs or downpayments. In other words, creditors cannot advertise extremely favorable credit terms that they don’t actually offer or intend to offer.

I. Closed End Credit Plans

Companies advertising closed end credit plans (plans under which credit is extended for a particular period of time) can, but need not, state any of the following:

- the amount of the downpayment;
- the amount of any installment payment;
- the dollar amount of any finance charge;
- the number of installments; or
- the period of repayment.

If an advertisement states any of these terms, however, it must also list:

- the downpayment, if any;
- the terms of repayment; and
- the rate of the finance charge expressed as an annual percentage rate.

CONSUMER CREDIT

This requirement does not apply to advertisements discussing:

- “open end credit plans” (plans under which the creditor anticipates repeated transactions, with a finance charge being imposed from time to time on the outstanding, unpaid balance); or
- residential real estate.

II. Open End Credit Plans

Companies advertising “open end credit plans” can, but need not, include any of the following:

- terms relating to the amount of the finance charge and the circumstances under which it will be imposed;
- terms relating to other charges levied as part of the plan;
- terms relating to the security interests which may be taken as part of the plan; or
- terms relating to the customer’s billing rights.

If an advertisement does set forth any of these terms, it must also include:

- any minimum, fixed, transaction, activity or similar charge that could be imposed;
- any periodic rate that may be applied, expressed as an “Annual Percentage Rate” (if a variable rate, the advertisement must state that the annual percentage rate is variable and if it is a discounted variable rate, the advertisement must include both the initial rate and the current indexed rate); and
- any membership or participation fee that could be imposed.

III. Home Equity Loans

If advertisements about home equity loans state any specific terms of the loan, they must “clearly and conspicuously” set forth the following information:

- loan fees, if there are any, stated as a single amount or as a reasonable range even if they are determined as a percentage of the credit limit;
- the periodic rates, if used to compute finance charges, expressed as an annual percentage rate; and
- the highest annual percentage rate.

In addition, any statements about tax deductibility must not be misleading. The loan may not be referred to as “free money” or other similar terms.

CONSUMER CREDIT

If the advertisement contains an initial annual percentage rate that is not determined by the same formula used to determine later interest rates, the advertisement must state with equal prominence the current annual percentage rate that would have been applied if the initial rate had not been offered. It must also explain the period of time during which the initial rate is in effect. If the advertisement contains a statement regarding the minimum monthly payment, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

IV. Additional Requirements Under Wisconsin Law

Wisconsin law imposes some additional obligations. A merchant who complies with the federal Truth in Lending Act will have complied with Wisconsin law as well, at least as to matters specifically governed by the federal act. Under Wisconsin law, merchants cannot make any statements or representations in their advertisements with regard to the extension of consumer credit, including the rates, terms or conditions for the extension of such credit, if those statements:

- are false, misleading or deceptive; or
- omit material information with respect to the extension of credit that is necessary to make the statements therein not false, misleading or deceptive.

Wisconsin law also provides a harsh remedy for violations of these advertising requirements. Consumers that have been induced to enter into a consumer credit transaction as a result of unlawful advertising are entitled to keep the goods, services or money they received without having to pay for them. In addition, consumers can recover any money they have paid to the merchant pursuant to the transaction. Advertisers need to be especially careful that they do not run afoul of these laws.

V. Credit Repair Businesses

Credit service organizations are businesses that represent that they can improve a consumer's credit record, history or rating or obtain extensions of credit or assist a consumer in those efforts. Companies that offer such services are required to register with the State of Wisconsin Department of Financial Institutions ("DFI") and provide a \$25,000 bond or letter of credit. Some credit service organizations fail to properly register before placing newspaper advertisements.

Newspapers may contact Paul Egede of the DFI's Division of Wisconsin Consumer Act at (608) 264-7969 to verify that a prospective advertiser in this field is properly licensed.

CONSUMER LEASES

15 U.S.C. § 1667 (Consumer Leasing Act)

Consumer leases are commonly used in connection with motor vehicles or large household appliances. Companies that offer such leases may be subject to the federal Consumer Leasing Act. The Act applies to leases for:

- the use of personal property (and not real property);
- a period of time exceeding four months;
- a total contractual obligation not exceeding \$25,000; and
- primarily personal, family or household purposes.

The Act does not apply to leases for agricultural, business or commercial purposes, or to leases made to a government or governmental agency or instrumentality, or to an organization.

If a lease is covered by the Act, certain advertising restrictions apply. If the advertisement states the amount of any payment or explains that any or no initial payment is required, it must also clearly and conspicuously state:

- that the transaction advertised is a lease;
- the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;
- whether a security deposit is required;
- the number, amount and timing of scheduled payments; and
- that an extra charge may be imposed at the end of the lease term, if the lease term is based on the anticipated residual value of the property.

If an advertisement does not discuss an initial payment or the amount of any payment, none of the above requirements apply.

References to charges that are part of the total amount due at lease signing or delivery may not be more prominent than the disclosure of the total amount due. Those references may not be obscured, and although there is no minimum type size, the references must be legible. Only one set of disclosures is required in a multiple page advertisement, although specific references to the disclosures should be made on other pages that mention required payments. Newspapers cannot be held liable for running an advertisement that violates the Act.

DECEPTIVE ADVERTISING

I. **General:** *Wis. Stat. § 100.18*

Although Wisconsin has a number of specific deceptive advertising regulations, it also has a catch-all provision, Wis. Stat. § 100.18, that prohibits the dissemination of most information that is untrue, deceptive or misleading. This provision includes advertisements but goes well beyond the advertising field. Any advertisements that you suspect are not entirely forthright or honest could be subject to this provision. Although the newspaper will not likely be held liable for running an advertisement in violation of this provision, it will reflect poorly on the newspaper. Remember, a newspaper may reject an advertisement for almost any reason. If you feel uncomfortable about an advertisement, you do not have to run it.

- It is deceptive advertising for a business to pretend that it is a private party attempting to buy or sell products or services. If a business is advertising that it will buy or sell something, it must “affirmatively and unmistakably” indicate that it is a business entity and not a private party.
- A business cannot advertise a close-out sale if it is not actually going out of business, unless it is merely closing out seasonable merchandise or any merchandise having a designated model year.
- Advertisements offering the opportunity to buy or sell items are deceptive if they are part of a scheme or plan whose real purpose is not to buy or sell the items as advertised. Newspapers are not liable for violations of this section if they act in good faith and have no knowledge of the deceptive character of the advertisement.
- An advertisement cannot represent that the price of any merchandise is a manufacturer’s or wholesaler’s price unless the price is not more than the price that retailers regularly pay for the merchandise.
- A car dealer cannot compare new motor vehicle prices to the manufacturer’s suggested retail price unless it is “clearly and conspicuously” disclosed that the latter price is a manufacturer’s suggested retail price and may not represent actual sale prices.
- A company from outside a given region cannot use the name of that region in its corporate or trade name if the use of that name creates the misrepresentation that the business is located in that community or region.

Persons suffering monetary damage as a result of violations of these provisions can recover their losses plus reasonable attorney fees.

DECEPTIVE ADVERTISING

II. Collection Agencies: *Wis. Admin. Code § DFI-Bkg 74.06*

If collection agencies mention their rates in advertisements, the full rate or rates charged must be stated as a percentage or dollar amount. Collection agencies are also prohibited from making any false, misleading or deceptive statements or omitting material necessary to make their statements not false, misleading or deceptive.

III. Insurance

Insurance advertisements are subject to a broad variety of regulations, most of which simply attempt to prohibit the distribution of false, misleading or deceptive information. Detailing all these regulations is beyond the scope of this Guide. Insurers should be familiar with these rules. If the newspaper or the insurer has any concerns, however, the pertinent insurance advertising rules can be found in Wis. Admin. Code § Ins. 2.16 (life insurance and annuities), and Wis. Admin. Code § Ins. 3.27 (casualty insurance).

IV. Securities: *Wis. Stat. § 551.53*

Advertisements for securities cannot contain untrue statements of material facts or omit material facts necessary to make the advertisement not misleading. The advertisement may also need to be filed with the Wisconsin Division of Securities.

V. Telecommunications: *Wis. Stat. § 100.207(2)*

Advertisements for the rates, terms or conditions for telecommunications cannot be false, misleading or deceptive. They also cannot omit material information that is necessary to make the statement not false, misleading or deceptive.

DRUGS

Wis. Stat. § 100.182; 21 U.S.C. § 352(n)

Advertisements concerning legal drugs cannot contain any untrue, deceptive or misleading representations about the effects of the drug. Any drug mentioned in an advertisement must be approved for human consumption by the Food and Drug Administration (“FDA”). No person may advertise a drug that the person knows is intentionally manufactured substantially to resemble a controlled substance.

Under the Federal Food, Drug, and Cosmetic Act, prescription drug advertisements must include:

- the established name of the drug in type at least one half as large as that used for any trade or brand name of the drug;
- the ingredients of the drug; and
- a brief summary relating to side effects, contraindications, and effectiveness, as required by federal regulations.

EDUCATION

Wis. Admin. Code Ch. EAB 5

Under Wisconsin law, anyone who wants to operate a school must first obtain the state's approval. Once a school is approved, it may advertise its programs, although all of its advertisements must include:

- the school name and address and, if different from the mailing address, the teaching location of the school;
- the fact that the school is offering educational services or vocational training for sale;
- the total cost of the program or term, if the school makes any representations as to the cost of the program; and
- whether any endorsements or recommendations in the advertisement are paid testimonials.

In addition, schools are subject to a number of regulations prohibiting the dissemination of false, misleading or deceptive information. Problematic advertisements include, but are not limited to:

- help wanted advertisements that conceal the fact that the advertiser is actually a school;
- advertisements that are misleading concerning the amount or nature of a student's financial obligation to the school;
- advertisements that are misleading concerning earning or opportunities in any vocation or field of activity; and
- advertisements in which a school claims that it is conducting a talent hunt, contest or similar test.

EMPLOYMENT

I. **Discrimination:** *Wis. Stat. §§ 111.31-111.322; 42 U.S.C. § 2000e-3(b)*

Both federal and state law prohibit employment discrimination, including discriminatory advertising. Federal law prohibits employment discrimination based on race, color, religion, sex, national origin, and age. State law goes beyond federal law and also prohibits employment discrimination based on creed, disability, marital status, ancestry, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or Wisconsin, and use or nonuse of lawful products off of the employer's premises during nonworking hours.

City ordinances may expand the list. Madison newspapers, for example, are also subject to the City of Madison Equal Opportunities Ordinance § 3.23, which makes it illegal to discriminate in employment decisions on the basis of these additional categories: physical characteristics, source of income, less than honorable discharge, physical appearance, political beliefs, and status as a student.

Employment advertisements cannot imply or express any preference, limitation, specification or discrimination based on any of these categories. The best way to avoid discriminatory advertisements is to adhere to the following rule. Advertisements should describe the position offered and not the ideal candidate.

For a list of terms to avoid in employment advertisements, refer to the Fair Housing section of this guide. In addition, avoid the use of age-related terms such as teenager, retired person, older worker, young, etc.

Employment discrimination laws generally apply only to employers with 15 or more employees, although a newspaper should avoid publishing a discriminatory advertisement even if the law permits it. A newspaper can be held liable for publishing a discriminatory advertisement.

People seeking work may use any terms they wish to describe themselves and their skills.

There are two exceptions to the general rule against advertisements expressing discriminatory preferences.

- Employers may indicate preferences based on religion, sex or national origin where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business. This exception applies only if the preference relates to the “essence” or to the “central mission” of the employer's business. A Catholic church, for example, may advertise for a Catholic priest.
- Schools or other educational institutions may advertise preferences for employees of a particular religion if that school or educational institution is owned, supported, controlled, or managed by a particular religious group, or if the curriculum is directed toward the propagation of a particular religion.

EMPLOYMENT

II. **Help Wanted:** *Wis. Stat. § 103.43*

Other than the restrictions on discriminatory advertising, there are only a few additional restrictions on general “help wanted” advertisements. Help wanted advertisements cannot contain any false or deceptive representations concerning:

- the kind and character of the work to be done;
- the amount and character of the compensation to be paid for the work;
- the sanitary or other conditions of the employment; and
- the existence of a strike or lockout at the place of employment.

Violations of this law subject the advertiser to a potential \$2,000 fine and a year in county jail. In addition, any worker bringing suit against the advertiser for damages suffered as result of an unlawful advertisement is entitled to actual damages and reasonable attorney fees.

III. **Recruitment and Get Rich Quick Schemes:** *Wis. Admin. Code Ch. ATCP 116*

Every classified advertisement department has likely received advertisements offering readers opportunities to make money from the comfort of home. Of course, the employment opportunities advertised are not always the sure-fire money-makers suggested. To guarantee that consumers are not duped into fraudulent employment schemes, the state of Wisconsin limits the content of employment recruitment advertisements.

Companies cannot advertise that they are offering work when they are actually offering “employment service,” or, in other words, assistance in obtaining work offered by someone other than the provider of the employment service. Employment service includes:

- finding work announcements or obtaining work offers;
- preparing resumes or portfolios; and
- obtaining or completing work application materials.

Advertisements inviting individuals to apply for work or to accept a work offer must clearly disclose the nature and amount of every purchase or investment required to obtain that work offer. If a purchase or investment is required and the advertisement makes any statements about potential earnings, the advertisement must disclose:

- the source from which the worker would receive the earnings, if other than the recruiter;
- the form, such as wages, salaries, commissions, or direct profits from sales, in which the recruit would receive the earnings;
- the basis on which the earnings would be paid or received, such as per unit of time worked, per unit of work completed, or per volume of sales;

EMPLOYMENT

- requirements that the recruit must meet in order to qualify for the stated earnings, including any training or probationary service requirement; and
- the nature and amount of every purchase or investment that a recruit must make in order to have a reasonable prospect of achieving the stated earnings (although this does not apply to a recruit's purchases of product inventory to fill customer orders obtained by the recruit unless the recruit is required to purchase the product inventory in order to obtain a work offer).

If a purchase or investment is required, the advertisement cannot make any false, deceptive or misleading representations concerning the identity of the recruiter, the nature of the work, the amount of potential earnings, or the status of the recruit as an employee or an independent contractor.

The Wisconsin Department of Agriculture, Trade and Consumer Protection has prosecuted several companies for violations of these provisions. Violations may result in fines up to \$10,000 and intentional violations could result in imprisonment for up to one year.

FAIR HOUSING

Wis. Stat. § 106.04; 42 U.S.C. § 3604

The Federal Fair Housing Act (FHA) prohibits discrimination in the sale, rental or financing of residential dwellings on the basis of race, color, religion, sex, handicap (meaning any physical or mental impairment that substantially limits one or more major life activities), familial status (meaning children under 18, parents who live with children under 18 or pregnant women), and national origin. In addition to these bases, Wisconsin law also prohibits housing discrimination on the basis of sexual orientation, marital status, lawful source of income, age, and ancestry.

City ordinances may impose additional restrictions. For example, City of Madison Equal Opportunities Ordinance § 3.23, makes it illegal to discriminate in housing on the basis of physical characteristics, arrest record or conviction record, less than honorable discharge, physical appearance, political beliefs, and status as a student.

Discriminatory housing advertisements violate both federal and state law. Unlike most advertising laws, the FHA and state law hold newspapers liable for publishing discriminatory advertisements and subject them to potential damages, fines and penalties. Newspapers should actively police housing advertisements to ensure compliance with the law.

Nonetheless, the Department of Housing and Urban Development (HUD), the federal organization charged with enforcing the FHA, has explained that it will not pursue publishers for discriminatory advertising unless an advertisement is clearly in violation of the federal act. Where the language of an advertisement might be viewed by an ordinary reader as non-discriminatory, HUD will not prosecute the case.

Housing discrimination includes:

- publishing discriminatory advertising;
- refusing to sell, rent or otherwise making housing unavailable to protected persons;
- discriminating against protected persons by denying them the availability or changing the terms or conditions of providing residential real estate-related transactions relating to the sale, rental, financing or appraisal of the residential property;
- denying protected persons access to a multiple-listing service, real estate brokers' organization, or other brokerage services;
- discriminating against protected persons in the terms or conditions of access to or membership in such services or organizations; and
- intimidating, threatening or interfering with persons who exercise or seek to enjoy their fair housing rights.

FAIR HOUSING

Housing advertisements that fall within the following categories are not subject to the FHA:

- certain dwellings or housing communities intended as “housing for older persons”;
- housing at private clubs “not in fact open to the public”;
- housing that imposes reasonable limits on the maximum number of occupants, as long as the limits do not operate to discriminate against any protected class;
- housing that is restricted to persons with handicaps or accessible to handicapped persons;
- housing offered exclusively to members of a religious group, provided by a religious organization or its non-profit affiliates as long as membership in that religion is not restricted because of race, color or national origin; and
- housing involving rentals where occupants share a living area, such as apartments or dormitories.

People who are seeking housing are free to identify themselves in whatever manner they please, including mentioning any protected categories to which they may belong.

HUD has determined that certain terms may indicate discriminatory preferences or limitations by conveying that housing units are available or not available to individuals because of their inclusion in a protected class. Housing advertisements need not be obviously discriminatory on their face to violate the federal act. The Act does not require that the advertisement have a discriminatory effect. Thus, even terms that create a perception of discrimination are problematic. The best way to avoid problems is to follow the general rule: Advertisements should describe the property and not the ideal inhabitants.

The following list includes terms that, although sometimes neutral, can be construed as discriminatory and are best avoided.

Race

Black or African-American

White or Caucasian

Asian or Oriental

Indian or Native American

Hmong

Color

Black

White

Colored

FAIR HOUSING

Religion

Christian

Catholic

Protestant

Jew

Church, Temple, Synagogue, Mosque

Religious symbols such as the crucifix, Star of David, fish with reference to Jesus

Newspapers should not identify property as being close to a place of worship because it may imply a religious preference. Advertisements may use secularized terms or symbols relating to religious holidays such as Christmas or Easter.

Sex (can use in advertisements seeking roommates)

Male, Man or Gentleman

Female, Woman or Lady

Handicap or Disability

Able-bodied

Healthy

Crippled

Deaf

Blind

Alcoholic

Mentally Ill

Retarded

Physically Fit

Advertisements may describe accessibility features, or explain that housing is restricted to persons with handicaps or that certain units are reserved for persons with handicaps on a priority basis.

Familial Status

Children or Kids

Pregnant

Adult

Single

One person

Traditional Family

Empty Nesters

No playground

FAIR HOUSING

National Origin or Ancestry

Mexican, Hispanic or any other designation of nationality
Spanish-speaking or any other language-based designation
Foreigner

Sexual Orientation

Heterosexual
Homosexual
Gay
Lesbian
Bi-Sexual
Straight

Marital Status

Married
Single
Bachelor
Newly-weds
Divorced

Lawful Source of Income

Employed or Unemployed
Executive
Professional
Welfare

Age

Elderly
Older Persons
Senior Citizens
Senior Discount
Mature

Others Terms to Avoid

Private
Restricted
Exclusive
Board or Membership Approval
Executive

An advertiser may list preferences or requirements that do not distinguish on the basis of a protected class. Examples would include terms such as non-drinkers only, non-smokers only, no pets, security deposit required, and references required.

FAIR HOUSING

Advertisements for residential real estate, if large enough, must contain an equal housing opportunity logotype, statement or slogan so as to educate prospective buyers or tenants that the property is available to everyone. Advertisers may choose which item to use. All logotypes, statements and slogans must be clearly visible and must be printed in display face roughly equivalent to other print found in the advertisement. Most classified advertising is small enough to be exempt from this requirement.

HUD recommends the following sizes for logotypes:

Size of Advertisement	Size of Logotype in Inches
1/2 page or larger	2x2
1/8 page to 1/2 page	1x1
4 column-inches to 1/8 page	1/2 x 1/2
Less than 4 column-inches	Do not use

The logotype looks like:



It can be downloaded from www.hud.gov/fhe/fheologo.html. The slogan is “Equal Housing Opportunity.” The statement should read:

We are pledged to the letter and spirit of U.S. and state policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, lawful source of income or age.

Property owners may undertake an affirmative marketing program to attract persons who would not ordinarily be expected to apply for their housing. An advertiser engaging in such a plan must first receive HUD’s written approval.

Newspapers should inform advertisers that all housing advertisements will be accepted only if they comply with state and federal fair housing laws. If an advertisement copy submitted by the advertiser appears improper, the newspaper should work with the advertiser to develop acceptable alternative language.

FAIR HOUSING

An advertisement salesperson is not responsible for determining whether an advertiser has a discriminatory intent, but salespeople should not knowingly assist advertisers in developing acceptable advertisement copy if the advertiser's discriminatory intent is known.

Periodically (at least once a month for weekly newspapers and once a week for daily newspapers), a newspaper should print the following statement or one substantially similar to it at the beginning of its real estate advertising section:

All residential real estate advertised herein is subject to the Federal Fair Housing Act and Wisconsin Open Housing Law. The Fair Housing Act makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation or discrimination." In addition to the protections noted above, the Wisconsin Open Housing Law prohibits discrimination based on sexual orientation, disability, marital status, lawful source of income, age or ancestry. We will not knowingly accept any advertising for residential real estate that appears to violate or does violate federal and/or state law.

The publisher's notice should include the Equal Housing Opportunity logotype.

Human models in photographs, drawings or other graphic displays may not be used to advertise preferences or limitations based on a protected category. Advertisers should not use racially mixed models to advertise one development and not others. HUD suggests that if models are used in advertisements, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and when appropriate, families with children. Models do not need to reflect the exact percentage of the various protected groups in the population.

FIREARMS

Newspapers are free to publish advertisements for the sale of firearms.

Newspapers should be aware, however, that several lawsuits have been brought against publishers by victims of gun-related accidents, attempting to hold publishers liable for gun-related advertisements. Although these lawsuits are rare and difficult for plaintiffs to win, defense costs could be quite expensive.

FLAG

Wis. Stat. § 946.06

The United States flag may not be used for commercial advertising purposes.

FOOD

I. General Requirements: *Wis. Stat. §§ 100.183, 100.184*

Advertisements concerning food cannot contain any untrue, deceptive or misleading statements. It is illegal to advertise a food product that is below and inferior to the usual and ordinary grade for that product, without plainly and conspicuously stating this fact. If advertisements featuring food for sale in package form include the retail price, they must also include the actual weight or volume of the contents of the package set forth plainly and conspicuously in no less than 5-point type.

II. Butter: *Wis. Stat. §§ 97.03(3), 100.36*

An article of food cannot be advertised as “butter” unless all of the fat contained in that article is butterfat. The term “butter,” “cream,” “creamery,” or “dairy” cannot be used in connection with a butter substitute unless at least 40 % of the substitute is butterfat.

III. Seeds: *Wis. Stat. § 94.41(2); Wis. Admin. Code § ATCP 20.06*

It is illegal to disseminate any false or misleading advertisements, or make any false or misleading claims concerning agricultural or vegetable seeds. Seed advertisements cannot use the words “state tested” or “state” or “State of Wisconsin Department of Agriculture,” or “State Seed Laboratory” or similar words to give the impression that the state guarantees the data on any seed label or the quality of any lot of seed.

GAMES OF CHANCE

Wis. Stat. ch. 563 and §§ 100.17, 945.1

I. Bingo and Raffles

Bingo and raffles are regulated by the State of Wisconsin. Certain religious, charitable and service groups are permitted to offer bingo and raffles, but they must first obtain a license from the state. Newspapers should check with any groups advertising bingo or raffles to be sure that they are aware of these licensing requirements.

II. Lotteries

State law prohibits anyone but the state itself and certain Native American tribes from running a lottery. A lottery is defined as “an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill.” Newspapers should alert advertisers if a promotional scheme appears to be a lottery; papers should also refrain from advertising any illegal lotteries.

III. Guessing Contests

Advertisers are allowed to set up an “enigma, guessing or puzzle contest, offering to the participants therein any premium, prize or certificate entitling the recipient to a credit upon the purchase of merchandise in any form whatsoever” as long as the purpose is not to defraud consumers. Any advertisements for such a contest must clearly state the prizes offered.

MISCELLANEOUS

I. Blind-Made Goods: *Wis. Stat. § 47.03(3)*

Products cannot be advertised as being blind-made unless at least 75% of the labor involved in creating the product was performed by blind or visually impaired persons. Violators may be fined up to \$1,000, imprisoned up to one year, or both.

II. Gasoline: *Wis. Stat. § 100.18(6); Wis. Admin. Code Ch. ATCP 113*

Gasoline or motor fuel advertisements cannot mislead prospective purchasers. If the advertisement suggests that the gasoline is of greater value for cars because it contains high octane value components, it must clearly state the actual octane value. If an octane value is stated, that value must be determined by a method recognized by the American Society for Testing Materials (check with the state Department of Agriculture, Trade and Consumer Protection with any questions). In addition, no advertisements may suggest that gasoline is aviation gasoline when the product is not suitable for aviation use.

Any advertisements listing the price of gasoline or motor fuel must show that price as a single gallon unit price including all applicable taxes. The taxes can also be listed separately, but the single gallon unit price with the taxes must be included in the advertisement.

III. Plumbing: *Wis. Stat. § 145.11*

No one may advertise as a plumbing contractor, master plumber or plumber unless that person is a licensed master plumber or employs a licensed master plumber. Advertisements must include the master plumber's license number.

IV. Rustproofing Warranties: *Wis. Stat. § 100.205(5)(a)*

Advertisements concerning motor vehicle rustproofing warranties cannot be untrue, deceptive or misleading. Violators face a potential \$10,000 fine.

PRICE COMPARISONS

Wis. Admin. Code Ch. ATCP 124

Price comparison advertising is a form of advertising whereby current prices are compared with former or future prices to demonstrate price reductions or cost savings. Examples include comparisons such as “50% off,” “save 1/3,” “half price sale,” “was \$20, now half price,” “\$10 value, now \$8,” and “was \$7, now \$6.” The state of Wisconsin regulates these advertisements to guarantee that consumers are not misled by price comparisons based on arbitrary or inflated prices. All sellers are covered by the law, except for banks, savings and loan associations, insurance companies and public utilities. A person who suffers a monetary loss because of an illegal price comparison can sue the violator and recover twice the amount of the loss, together with costs and reasonable attorney fees.

If a seller chooses to run a price comparison, the comparison must be based on a price that the seller or a competitor has offered or will offer in the regular course of business. If the products or services compared differ in any material way, the general nature of the differences must be conspicuously disclosed in the advertisement.

If the seller uses its own former prices as a comparison, the seller must have actually sold the product or services at those prices within the 90 days preceding the date of the advertisement. If the seller did not actually sell any of the products or services at those prices within the 90 day period, it can still use those prices as a comparison if the products were actually offered for sale for at least four weeks during that 90 day period. The seller may also choose to use prices from a time period prior to the last 90 days if the seller discloses the date, time or seasonal period when the product or services were actually sold or actually offered for four weeks at those prices. In addition, a seller cannot make a price comparison with a price that exceeds the seller’s costs plus the percentage markup that the seller regularly uses in the actual sale of that type of product or service.

If the seller uses its own future prices as a comparison, the advertisement must clearly disclose that the price comparison is based on a future price increase. If the effective date of the price increase is more than 90 days after the price comparison is first advertised, the effective date must be clearly disclosed in the advertisement. The future price increase must actually take place within 90 days or on the day it is advertised to take effect; and such increase must stay in effect for at least four consecutive weeks except where compliance becomes impossible because of circumstances beyond the seller’s control.

PRICE COMPARISONS

Comparisons with competitor's prices cannot be made unless:

- the competitor's price is a price at which the competitor sold or advertised consumer property or services for sale at any time within the 90 days preceding the date of the advertisement;
- the competitor's price is representative of prices in the area and not an isolated price; or
- disclosure is made that the price used as a basis for comparison is not the seller's own price.

SALES TAX

Wis. Stat. § 77.52(4)

Retailers may not advertise that they will absorb or assume any part of the state sales tax, or that they will not add the sales tax to the selling price, or that they will refund any sales tax paid. Violators are guilty of a misdemeanor.

TELEPHONE – 900 NUMBERS

15 U.S.C. § 5701; 16 C.F.R. § 308.3

The federal “Telephone Disclosure and Dispute Resolution Act” and related regulations govern the advertising of 900 numbers. Advertisements for 900 numbers must be:

- in the same language as the advertisement itself;
- of a color or shade in contrast to that of the advertisement; and
- parallel with the base of the advertisement.

The cost of a 900 number must be explained clearly and include the following information:

- the total cost of the call if based on a flat fee rate;
- the cost per minute plus any minimum charges if based on a per minute rate; if the length of the call can be determined in advance, the advertisement should also state the maximum charges for listening to the entire call; and
- the cost of the initial connection, any minimum charges and the range of rates that may be charged if based on a variable rate basis.

All additional fees that might be charged to the caller must be identified in the advertisement. If the caller has the option of being transferred to another 900 service, the advertisement must also include the cost of this other call.

The cost of the call must be placed near each display of the 900 number. When the advertisement contains more than one 900 number with the same cost, the disclosure must only be next to the largest display of the number. The type size of the disclosure must be at least one-half that of the 900 number display to which it applies.

900 number advertisers that announce that prizes or awards will be distributed to winners of sweepstakes are required to disclose in their advertisements the odds of winning. The advertisement must also clearly and conspicuously state that a call to the 900 number is not required to participate and must identify a free alternative method of participation.

If a 900 number advertiser offers information on a federal program, but is not operated or expressly authorized by a federal agency, the advertisement must conspicuously disclose that the advertiser is not authorized, endorsed or approved by any federal agency. This type of disclosure must appear in the top one-third of the advertisement and be of sufficient size and location to be noticeable and understandable to consumers.

TELEPHONE – 900 NUMBERS

900 number advertisers cannot refer to an 800 or other toll-free number unless there is no charge to the consumer for placing a call to that number. If a 900 number is primarily directed to children under the age of 18, any advertisements must clearly disclose that individuals under 18 need parental permission before placing a call. Such a disclosure must be at least $\frac{1}{2}$ the size of the displayed 900 number. 900 number advertisers cannot direct their advertisements to children under the age of 12, unless the service advertised is proven to be a bona fide educational service.

UNITED STATES CURRENCY, STAMPS AND SEALS

18 U.S.C. §§ 504, 713; 31 C.F.R. 411.1

I. Currency

Advertisements may contain black and white or color illustrations of United States currency as long as they are less than $\frac{3}{4}$ or more than $1\frac{1}{2}$ in linear dimension of each part of the currency illustrated. Color illustrations must be one-sided only. Negatives, plates or computerized files used in making the illustration should be destroyed or deleted after their final use.

II. Stamps

Advertisements may contain black and white illustrations of cancelled or uncanceled U.S. and foreign postage stamps in any size. Colored illustrations of cancelled stamps are permitted in any size; colored illustrations of uncanceled stamps must be less than $\frac{3}{4}$ or more than $1\frac{1}{2}$ in linear dimension of each part of the stamp.

III. Seals

The following seals may not be used in any advertisement for the purpose of conveying a false impression of sponsorship or approval by the United States government:

- the great seal of the United States;
- the seals of the United States President or the Vice President; and
- the seal of the United States Senate.

WISCONSIN NEWSPAPER ADVERTISING CASE LAW

Wisconsin appellate courts have not heard many cases involving newspaper advertising. The two decisions that the courts have published have been quite favorable to the newspaper industry.

The Wisconsin Court of Appeals discussed newspapers' First Amendment rights with respect to advertisements in *Wisconsin Ass'n of Nursing Homes, Inc. v. The Journal Co.*, 92 Wis. 2d 709, 285 N.W.2d 891 (Ct. App. 1979). In that case, the Milwaukee Journal published a series of investigative reports concerning nursing homes. In response, an association of nursing homes submitted a full-page advertisement to the paper attempting to refute the allegations in the reports. The paper refused to publish the advertisement and the association brought a lawsuit seeking to compel publication. The court dismissed the lawsuit, stating that "a court can no more dictate what a privately owned newspaper can print than what it cannot print." The court also explained that a newspaper's discretion to publish advertisements is no different than its discretion to publish editorials.

Similarly, in *Hatheway v. Gannett Satellite Information Network, Inc.*, 157 Wis. 2d 395, 459 N.W.2d 873 (Ct. App. 1990), the Wisconsin Court of Appeals held that a newspaper did not have to publish advertisements from gay and lesbian organizations because a newspaper's classified advertising section is not subject to Wisconsin's Open Housing Law. Under Wisconsin law, newspapers can discriminate in choosing their advertisements on the basis of sexual orientation if they are so inclined. HUD has made clear, however, that under the Federal Fair Housing Act, newspapers should not discriminate in choosing housing advertisements on the basis of protected categories.

RESOURCES FOR ADVERTISING-RELATED QUESTIONS

WNA Media Hotline

LaFollette, Godfrey & Kahn
One East Main Street
P.O. Box 2719
Madison, WI 53701-2719
(800) 362-2664
(608) 257-3911

Wisconsin Newspaper Association

1901 Fish Hatchery Road
P.O. Box 259837
Madison, WI 53725-9837
(608) 283-7620
Fax: (608) 283-7631
(800) 261-4242

Newspaper Association of America (NAA)

René P. Milam
Vice President and General Counsel
Kevin McCourt
Vice President of Advertising and Exhibition Sales
529 14th Street, Suite 440
Washington, D.C. 20045
(703) 648-1065
www.naa.org

National Fraud Information Center

(800) 876-7060

Federal Trade Commission

(800) 876-7060

Better Business Bureau of Wisconsin

(800) 273-1002

Wisconsin Department of Agriculture, Trade and Consumer Protection

Consumer Protection Hotline
(800) 422-7128

Wisconsin Equal Rights Commission

201 E. Washington Ave. Room 407
Madison, WI 53702
(608) 266-6860