

Guidelines Regulating MBTA Advertising

Adopted November 23, 2015

Amended November 20, 2017

Purpose

Through these Guidelines the MBTA intends to establish uniform, viewpoint-neutral standards for the display of advertising. In setting its advertising standards, the MBTA seeks to fulfill the following goals and objectives:

- (a) maximization of revenue generated by advertising;
- (b) maximization of revenue generated by attracting, maintaining, and increasing ridership;
- (c) maintaining the safe and orderly operation of the MBTA;
- (d) maintaining a safe and welcoming environment for all MBTA passengers, including minors who travel on or come in contact with the MBTA system; and
- (e) avoiding the identification of the MBTA or the Commonwealth of Massachusetts with advertisements or the viewpoints of the advertisers.

The MBTA reserves the right, from time to time, to suspend, modify or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its primary transportation function and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

Advertising Program and Administration

- (a) These guidelines shall apply to advertising on or in all MBTA equipment and facilities (including but not limited to land, terminals, stations, garages, yards, shops, structures, rolling stock, vehicles, fences, equipment, electronic and hard copy media, websites and other personal property) unless otherwise expressly provided by contract regarding a premise covered by an alcoholic beverages license.
- (b) The MBTA shall, from time to time, select an “Advertising Contractor” who shall be responsible for the daily administration of the MBTA’s advertising program in a manner consistent with these Guidelines and the terms of its agreement with the MBTA. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections and posting of advertising displays on or in all MBTA equipment and facilities.
- (c) The Advertising Contractor shall provide, or shall subcontract for, all employees and equipment necessary to perform the work and provide the services required by the MBTA.
- (d) The MBTA shall designate an employee (typically, the Director of Marketing Communications) as its “Contract Administrator” to be the primary contact for the Advertising Contractor. Questions regarding the terms, provisions and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

### MBTA Operations and Promotions

The MBTA has the unqualified right to display, on or in its equipment and facilities, advertisements and notices that pertain to MBTA operations and promotions, consistent with the provisions of its agreement with the Advertising Contractor.

### Disclaimer

The MBTA reserves the right, in all circumstances, to require that an advertisement on or in its equipment and facilities include a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, the MBTA.

### Advertising Standards

- (a) The MBTA intends that its equipment and facilities constitute nonpublic forums that are subject to the viewpoint-neutral restrictions set forth below. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in MBTA equipment and facilities.
- (b) The MBTA shall not display or maintain any advertisement that falls within one or more of the following categories:
  - (i) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the MBTA will determine whether a reasonably prudent person, knowledgeable of the MBTA's ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
  - (ii) Smoking. The advertisement promotes the sale or use of, or depicts, tobacco or tobacco-related products, products that simulate smoking or are modeled on tobacco products, including but not limited to cigarettes, cigars, and smokeless (e.g. chewing) tobacco and electronic cigarettes, or promotes the sale, use or cultivation of marijuana or marijuana-related products.
  - (iii) Profanity. The advertisement contains profane language.
  - (iv) Firearms. The advertisement either (a) advertises a firearm or a brand of firearms, (b) contains an image of a firearm in the foreground of the main visual or (c) contains image(s) of firearm(s) that occupy 15% or more of the overall advertisement.

- (v) Violence. The advertisement contains an image or description of graphic violence, including but not limited to (1) the depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.
- (vi) Unlawful goods or services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- (vii) Unlawful conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
- (viii) Obscenity or nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws ch. 272, §31.<sup>1</sup>
- (ix) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws ch. 272, §31.<sup>2</sup>
- (x) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political

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1 Mass. Gen. Laws ch. 272, §31, defines “obscene” as follows: “matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value” Mass. Gen. Laws. ch. 272, §31, defines “nudity” as follows: “uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.”<sup>2</sup>

2 Mass. Gen. Laws ch. 272, §3 I, defines “minor” as “a person under eighteen years of age.”

campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, (2) promotes or opposes a political party for local, state, or federal election, or (3) promotes or opposes a candidate or group of candidates. For purposes of these Guidelines, the term “candidate” shall include any person actively campaigning for office, any person who has filed their candidacy or declared their intent to run for office, or any person who has been reported in the mainstream media as likely to run for a particular public office.

- (xi) Political Issues or Matters of Public Debate. The advertisement concerns political issues or expresses or advocates an opinion, position or viewpoint on a matter of public debate about economic, political, moral, religious or social issues.
- (xii) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by the MBTA or the Commonwealth of any service, product or point of view, without prior written authorization of the MBTA (through its General Manager) or the Commonwealth (through the Secretary of the Executive Office of Transportation and Construction).
- (xiii) False, misleading, or deceptive commercial speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is false, misleading or deceptive.
- (xiv) Libelous speech, copyright infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject the MBTA to litigation.
- (xv) “Adult”-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated "X" or “NC-17,” video games rated M or AO, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites and escort services.

(c) Limited Display of Advertisements:

Alcohol. The MBTA may display advertisements that advertise an alcohol product or a brand of alcohol products in the following limited circumstances only:

- (i) The advertisement appears in an MBTA rail station, bus shelter or billboard, provided however that no alcohol advertisements shall be affixed in rail stations where weekday average Student Pass usage exceeds 10% of station ridership, as determined by the MBTA in its sole estimation;
- (ii) Up to fifteen (15) exterior full-body or Ultra Super King train wraps may be displayed across the MBTA subway system (Red, Green, Blue and Orange lines) at any one time, with a maximum of 4 per line;
- (iii) In addition to these Guidelines, the Advertising Contractor shall ensure compliance with the Outdoor Advertising Association of America's Code of Industry Principles as they concern alcohol advertisements.

The MBTA Advertising Manager may delay implementation of any part of this section.