

Twitter Goes Green: What the Social Media Platform's Decision to Allow Marijuana Advertising Means

The Bottom Line

- The federal prohibitions on marijuana and ingestible CBD make for a complicated compliance environment for media companies, advertisers, agencies and ad tech companies.
- Twitter's decision to accept advertising in the space represents a massive sea change for the industry's online advertising.
- Social media platforms that decide to accept marijuana advertising must carefully vet advertisers and ensure that all advertising on the platform is appropriately targeted and complies with state-by-state content rules.

Twitter made headlines last month when it decided to accept advertising from marijuana and ingestible CBD companies. The decision made Twitter the first major social media network – and one of only a few major media companies – to allow marijuana advertising on its platform. The decision will have significant effects not only on the marijuana industry, but on the broader media world.

Background: Marijuana Laws and Advertising

Marijuana is a Schedule I controlled substance under the United States Controlled Substances Act. This means that even in a state where marijuana is legal and licensed, the sale of marijuana is a federal crime. However, through a combination of formal and informal policies, the federal government has a non-involvement policy with state-legal marijuana.

Complicating things further, under the 2018 United States Farm Bill, industrial hemp – and cannabidiol (CBD) derived from it – is explicitly allowed, subject to certain restrictions. But the Food and Drug Administration considers CBD to be a “drug” and, although the FDA approved CBD for use in anti-epilepsy medication, its inclusion is prohibited in food or dietary supplement products. The CBD industry has pushed for the FDA to reconsider its position and create a regulatory pathway for CBD. The FDA reaffirmed its position in January, though, determining that a new regulatory pathway must

be developed by Congress for CBD to be lawfully sold as an ingredient in food and dietary supplement products. As discussed in [prior alerts](#), some states have bucked the FDA with respect to CBD and have created regulatory systems that explicitly legalize CBD in food and dietary supplement products, creating a similar federal/state divide for marijuana.

Although marijuana and CBD manufacturers and retailers are taking a risk in selling these products, the media industry largely remains on the sidelines due to the complicated compliance environment. Accordingly, legacy media companies, as well as social media companies such as Meta and Google, largely prohibit advertising for marijuana and ingestible CBD (though, many such companies do allow advertising for topical CBD). Marijuana and ingestible CBD brands instead resort to smaller niche providers to advertise their products.

Twitter's Change of Policy

Since Twitter decided in February to begin allowing advertising for marijuana and ingestible CBD on its platform, Trulieve, a major multi-state operator of cannabis dispensaries, became the first marijuana business to do so. A diverse group of companies, including the marijuana delivery service Amuse and vape brand Pax, have followed suit.

Though Twitter's embrace of the marijuana industry opens up a massive new avenue for marijuana-related companies, they will face a number of rules and limitations. Advertising will only be allowed by duly licensed companies who are approved by Twitter and will only appear in states where marijuana is legal. Twitter's guidelines for marijuana products also contain a number of content-related requirements, including prohibitions on promoting the sale of marijuana or ingestible CBD, depicting marijuana use, and targeting or appealing to individuals who are under 21 years of age.

Time will tell how the broader media industry will react to Twitter's policy shift. Twitter's competitors have not yet followed suit, and some more conservative media companies will probably avoid the marijuana industry until the federal ban on marijuana is lifted (no telling when that will happen). Still, others will watch closely with an eye to whether Twitter faces any negative consequences from its decision and if the new revenue source justifies the risk. Whatever the case may be, Twitter's decision marks a massive sea change for marijuana advertising.

For More Information

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Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may legalize or decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.