



TRELLIS

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How It Ads Up – Small Business Advertising Legal 101

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

You've perfected that recipe, opened that storefront, put that money down. You've finalized the logo, locked in the domain name, and you are ready to let the masses embrace your brilliant ideas! If you build it, they will come, right? Well... not always. Sometimes you have to tell those eager masses that you exist. Enter: advertising. Advertising isn't just fancy super bowl commercials and full-page ads in Vanity Fair. It includes any time you're promoting your business, whether that's to the social media masses or a sign on the road. But you can't just launch a website with images you googled or start filming ads with your favorite hit songs, and you can't just drop a sign on the side of a highway. This resource covers important legal considerations when it comes to advertising your business, organization, fundraiser, or anything where you're asking people to buy into the goods, services, and opportunities you offer. This is just a general guide as your business is unique so it's important to talk to an expert to help you understand your specific needs.

1. Make sure someone else doesn't own the intellectual property you are using.

In the simplest terms, [intellectual property](#) is the ownership rights of one's own creative expression. This includes things like copyrights, trademarks, and patents. [Copyrights](#) apply to created *works*, such as photos, drawings, writing, and music. [The Federal Copyright Act of 1976](#) prevents the unauthorized copying of a work of authorship. The Copyright Act protects the author's rights in the work as soon as the work is created and even without registering the work. You can't use someone else's copyrights without their permission (a license), especially if you're a business.

Your safest bet is to use your own images and audio or get written permission if you're able before using any for your business, and as always, speak to a lawyer if you're not sure what qualifies. Read more about copyrights in our [blog post about it here](#). [Trademarks](#), on the other hand, refer to identifiable marks, such as a logo. A trademark infringement would be if you took someone else's logo and passed it off as your own, or tried to design something so similar enough to it someone wouldn't be able to distinguish between the two. If you're designing products, you can't just put a favorite cartoon character or sports logo on it (without a license to sell or distribute it) because someone else owns the rights to use that, and you definitely don't want to advertise anybody else's trademarks as your own.

2. Make sure your language is not untruthful or misleading.

Under US consumer protection laws, advertising – including product labeling – cannot be false or misleading. What constitutes false advertising includes the demonstrably false language, like saying you're a medical doctor when you aren't or adding a phony seal of approval to your ad, but it also

includes things you may have not thought about, like unproven health claims. The federal agencies that enforce consumer protection laws and the courts have found all kinds of claims to be false or misleading to a reasonable consumer, such as saying in an Instagram post that your product treats or cures a disease (which might violate a number of other drug labeling rules) or sticking an “[environmentally friendly](#)” claim on a product when neither the item nor its packaging is actually good for the environment.

3. If you have products, are you required to follow any specific labeling laws?

In addition to being subject to requirements that products and their advertising are not false and misleading, product labels may also be subject to specific label requirements. People look to product labels for important information like nutrition, ingredients, directions and safe use warnings, and these products are regulated to make sure important disclosures are made when they might contain allergens or be harmful to specific groups. If you’re selling goods, depending on how far and wide you’re selling them, you will want to check with a lawyer or labeling expert to make sure your products don’t require any specific disclosures or have any rules about what they can and can’t say. Read our blog about [commercial speech](#) for more information on the regulation of products and ads.

4. Does your industry have any other specific advertising rules?

Pennsylvania, federal laws, and other governing bodies around your industry may regulate what you can and can’t say in your advertising. For example, among Pennsylvania lawyers’ advertising rules, we are not allowed to include any celebrity endorsements and must include specific information. Check if your industry has anything specific you must say (or do) or can’t say (or do).

5. Do you have an entity or a DBA?

Did you know that you can’t advertise your business in Pennsylvania or make money under a business name that isn’t your own name without registering with the proper state offices? When a single individual or partners want to do business under a name other than their own name(s) without filing for a legal business structure (like an LLC or corporation), [they need to file what is called a DBA](#), which stands for “Doing Business As,” and is also sometimes called a fictitious name or trade name. This is because customers have to be able to identify who they are doing business with and how to contact them in the case of legal service. If you want to enforce a contract or legal matter under the name of the DBA, then you need to have it registered. If you just have a DBA and not a separate entity like an LLC, another person or entity can file a DBA or entity with the same name as your DBA. Ultimately, we [recommend an entity](#) to give you the most protection, but if you don’t, you at least need a DBA.

Furthermore, if you have an entity but are advertising your goods or services under a different name than the entity name, you need to make sure you file a DBA owed by that entity.

6. Is your ad in compliance with any registration or zoning rules?

Did you know many states and municipalities have very specific rules around signage and outdoor ads? Mostly, they just want to make sure you aren’t saying anything offensive that passersby will have to see every time they drive their kids to daycare. Other types of ads may be regulated too, like radio or broadcast. In many cases, if you’re working with a company to help put up your outdoor advertising or build your 30-second spot, that company can help you make sure you have the right registrations and are in compliance with specific rules, but before you invest in that jumbo print, it’s definitely worth checking before you’re forced to take it down and get a fine.

Next Steps:

- Trellis Legal LLC provides free initial consultations and are happy to help you figure out your best course of action, and any special advertising considerations for your business. We can work to help you decide what kind of entity or DBA is right for you.