

The MTA's Advertising Policy: Frequently Asked Questions

In April 2015, the MTA Board revised its policy for ads that are displayed in and on MTA facilities and adopted new standards for what ads are permitted and what ads are prohibited. Most notably, the MTA Advertising Policy now permits only commercial ads, governmental notices or messages, or certain public service announcements and no longer allows political ads.

The following are answers to some questions that advertisers have raised about the MTA's new Advertising Policy. They are intended only for general guidance, however, and if there is any inconsistency between them and the MTA Advertising Policy, the MTA Advertising Policy will control.

The MTA Advertising Policy prohibits all political ads, and the MTA is committed to ensuring that it is enforced in a viewpoint neutral fashion. If any advertiser or member of the public believes that the policy is being enforced in a viewpoint discriminatory manner by the MTA or its advertising licensee, please contact:

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What ads will the MTA run under its new Advertising Policy?

There is a two-part test. First, a proposed ad needs to fall into one of the categories of "Permitted Advertising" defined in Section IV(A) of the policy. Second, the proposed ad cannot fall into one of the categories of "Prohibited Advertising" defined in Section IV (B) of the policy. In other words, proposed ads must satisfy both of these criteria. For example, even though ads promoting a commercial product and certain public service announcements qualify as "Permitted Advertising," the MTA will not run them if they prominently or predominately advocate a political message.

What ads qualify as "Permitted Advertising"?

Only commercial ads, governmental notices or messages, or certain public service announcements.

What is a commercial ad?

Commercial ads include ads that promote a commercial transaction for the advertiser's commercial or proprietary benefit, or promote the brand of an advertiser who engages in commercial transactions. They also include ads that promote services or events for the advertiser's commercial or proprietary interest or more generally promote an entity that engages in such activities.

What is a governmental notice or message?

A notice or message from the MTA or one paid for by the federal government, New York State, New York City, or of any of the other seven county governments within the Metropolitan Transportation Commuter District.

What is a permissible public service announcement?

An announcement paid for by a government or by a tax-exempt nonprofit corporation that relates directly to one of these topics and is not otherwise prohibited under the policy:

- prevention or treatment of illnesses;
- promotion of safety or personal well-being;
- education or training;
- art or culture;
- provision of children and family services;
- provision of services and programs that provide support to low-income citizens, senior citizens, or people with disabilities; and
- solicitation by broad-based contribution campaigns that provide funds to multiple charitable organizations active in these above-listed areas

What is a political ad?

As revised, the MTA's Advertising Policy does not allow ads that promote or oppose a political party, a ballot referendum, or any political candidate. It also does not allow ads that are political in nature. Some examples of ads that are political in nature are ads that are about actions or policies of any governmental entity or ads that prominently or predominately advocate or express political messages.

Who reviews proposed ads?

These FAQs refer to the MTA, but MTA relies on independent advertising licensees to handle its advertising and for the most part relies on it to apply the Advertising Policy. MTA reviews proposed ads only when an independent advertising licensee has determined that an ad does not, or may not, comply with the Advertising Policy and has referred it to the MTA. The MTA works with its independent advertising licensees to try to ensure that the Advertising Policy is being followed but must rely on its independent advertising licensees in the first instance to identify problematic ads.

Must an ad identify who is paying for it?

Yes. To avoid the appearance that MTA is endorsing ads, every ad should clearly communicate who is paying for it or its sponsor, whether directly or through its context. If it does not, the MTA may ask an advertiser to include an explicit statement.

Must an ad clearly identify what is being advertised?

Yes. Every commercial ad should clearly communicate the commercial subject of the advertisement. Every public service announcement must clearly communicate that it directly relates to one or more of the permissible topics for public service announcements. Advertisers will submit to the advertising licensee along with their proposed ad a form that identifies the goods, products, services, events, or other commercial transaction or entity that the ad is intended to promote, or, for a public service announcement, the permissible topic to which it directly relates. The MTA may ask an advertiser to include an explicit statement in the ad if the MTA believes that it does not clearly communicate what is being advertised.

Do the requirements that an ad identify who is paying for it and what is being advertised preclude teaser ad campaigns?

Not necessarily. A teaser ad campaign—one that begins with ads that do not clearly communicate who is paying for the ad or what good, product, service, event, or other commercial transaction is being advertised—may be permitted but only if that information will be clearly communicated in follow up ads posted within a reasonable amount of time, and only with the MTA’s approval after consultation with the advertising licensee.

If there are multiple ads in an advertising campaign does each ad have to identify who is paying for it and what is being advertised?

Yes. Each individual ad that is part of an advertising campaign must communicate who is paying for it or its sponsor, whether directly or through its context, and what is being advertised even if the ads will be displayed in close proximity to one another or as part of an interconnected campaign.

Will the MTA look at a website listed in an ad or at an advertiser’s public statements to determine whether the ad is permitted under the Advertising Policy?

If an ad clearly communicates its commercial subject or its public service topic and the reference to the website is incidental, the MTA generally will not take into account the website’s contents. However, if an ad does not clearly communicate its commercial subject or its public service topic, or the reference to the website is prominent, the MTA may look at the website’s contents and take them into account. The MTA will take into account an advertiser’s public statements about its proposed ad in determining whether it may be displayed.

May an ad that promotes a commercial transaction or that qualifies as a public service announcement also be prohibited as a political ad?

Yes. An ad that qualifies as a commercial ad or a public service announcement still may be a political ad. For example, an ad that prominently or predominately advocates or expresses a political message will not be accepted for display even if it also mentions or promotes a commercial product such as a bumper sticker, a T-shirt, or event, or a TV show, a news program, a DVD, a book, a movie, or some other media product (“Media Products”).

In reviewing ads for Media Products, the MTA will distinguish between ads where the title of the Media Product and advertising copy merely identify the topic of the Media Product, on the one hand, and ads where the title of the Media Product and advertising copy advocate a political position of the advertiser, on the other hand. In determining whether an ad is a political ad, one factor among others that the MTA may consider is whether the advertiser is a media company whose business is to regularly engage in the distribution of Media Products.

May a proposed ad be preliminarily reviewed early on in the creative process to determine if it will comply with the MTA Advertising Policy?

Yes. Preliminary concepts for ads may be submitted to MTA's advertising licensee for review. If the independent advertising licensee determines that a preliminary concept would not, or might not, comply with the Advertising Policy, then it will often forward such preliminary concepts to MTA for review. Note that if a proposed concept for ads is provisionally approved, the final ads must still be submitted and approved under the procedures set forth in the Advertising Policy and described in these FAQs.

If MTA's advertising licensee approves an advertisement without submitting it to MTA for approval and MTA subsequently determines that such advertisement is not permitted by the Advertising Policy, may MTA require the removal of such ad?

Yes. MTA may require the removal of any ad that it determines at any time does not comply with the Advertising Policy. Given the large number of ads handled by MTA's advertising licensee, it is possible that such an ad may not have been submitted to MTA for review by the MTA's advertising licensee. Even if MTA reviewed and approved an ad, it may remove it if it later determines that the ad does not comply with the Advertising Policy.

Does the Advertising Policy apply to both static ads and digital ads?

Yes.

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