

Guidelines Regulating MBTA Advertising
Adopted December 7, 2006

Purpose

Through these Guidelines the MBTA intends to establish uniform, viewpoint-neutral standards for the display of advertising on or in all MBTA facilities (including, but not limited to, buses, railcars, and stations). 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) 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 facilities, including, but not limited to, transit vehicles.
- (b) 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.
- (c) 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 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 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 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 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) Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, including depicting such products.
 - (iii) Profanity. The advertisement contains profane language.
 - (iv) Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual, or (b) 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 or 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, §31.¹
- (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, §31.²
- (x) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, or (2) refers to any candidate for public office.
- (xi) 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).
- (xii) 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.

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.”³

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

- (xiii) 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.
- (xiv) “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) Advertisement of Alcoholic Beverages. Advertisements related to the sale of alcoholic beverages shall contain a statement, occupying at least 3% of the area of the advertisement, that indicates the legal drinking age in Massachusetts and warns of the dangers of alcohol consumption during pregnancy, or in connection with the operation of heavy machinery, or while driving.