

Contractor Marketing 101: Signage for Sales

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Posted By: Thomas S. Hornig

Practice Area: Construction Law and Litigation

As the faltering economy increasingly causes companies to tighten their purse strings, many are revisiting their marketing program in an attempt to squeeze every possible benefit out of their dwindling marketing dollars. Contractors have not been immune to the economic downturn. In fact, some would argue that given the depressed state of the construction industry, construction firms should work that much harder to establish and maintain a consistent and powerful marketing strategy rather than including those budget items among the first to be cut.

Given the economic challenges and the fracturing of traditional mass marketing methods—television, radio, and newspaper¹—outdoor advertising continues as a strong medium for attractively and consistently promoting a company's message to thousands of motor vehicle drivers, passengers, and others each day, 24/7. Experts describe out-of-home advertising ("billboards") as the last "true-reach medium," which has come a long way since the paper and plaster billboards of yesteryear. Digital images, vinyl wraps, and high tech spaces and application methods have become the norm. Yet, given the advancements in the industry and technology, this form of advertising does not pose as many financial or legal hurdles as you might expect.

In evaluating the costs and benefits of an outdoor advertising program, Contractors should consider certain legal issues (before or while negotiating the advertising contract). The legal issues include:

- Zoning And Other Municipal Authorizations. Wisconsin's municipalities have varying degrees of support for outdoor advertising, whether it be billboards, ground, pylon or building signs. Municipal objections often focus on alleged safety issues and concerns for "visual pollution." Inherent in the discussion is a concern over the abridgement of free speech and due process. A sign can be "visual pollution" to one person, but clever and compelling to another. Hence, it is important to work with an outdoor advertiser and counsel with a solid understanding of local codes and politics to maximize the chances that the Contractor's advertisement will receive municipal approval. Also, the agreement between the Contractor and Outdoor Advertiser should clearly state the effect or ramifications should a proposed sign be prohibited by the local authority.²
- Ownership Of the Design. The Contractor or Outdoor Advertiser may have intellectual property rights in the image or other design elements incorporated into the outdoor advertising. Among other things, should the design be a part of a larger comprehensive branding campaign, the design may have significant economic value which should be protected or otherwise provided for in the agreement between the Contractor and Outdoor Advertiser. Moreover, a sophisticated Outdoor Advertiser will have an in-house team that is able to plan, create, and implement the advertising campaign. Clearly spelling out the ownership or licensure rights to the design should be considered.
- Unilateral Right To Approve Or Withdraw Approval Of the Advertisement. Often, Outdoor Advertisers reserve the right to approve or withdraw their approval of any advertisement, particularly if it later receives governmental or public resistance. Provisions can be drafted to address this situation.
- Defense And Indemnification. Should legal action be brought, including by an aggrieved land owner, member of the public, or municipality, issues of whether the Outdoor Advertiser will defend and indemnify the Contractor for any judgment levied against it or to reimburse it for attorneys' fees may become an issue. Providing for such situations on the front-end can help minimize or avoid costly disputes later.
- Limits On Liability. Both the Contractor and Outdoor Advertiser should document the limits of their respective liability to the other for any losses, continued rent, etc. should the outdoor advertising be destroyed or damaged due to weather or other Acts of God.

Although the legal issues may seem formidable, they are not. Most times they are easily overcome. Indeed, most contracts for any significant piece of construction are far more complex than most standard 2-page outdoor advertising agreements. Hence, the potential legal issues should not cause a Contractor to dismiss the potential for outdoor advertising. Indeed, given its cost effectiveness and the readily controllable legal issues and risks, a Contractor should consider this medium as one of the tools it uses to strengthen its image and to position itself to be first-in-mind when Wisconsin's construction industry turns around as we all believe it will.

¹ The Chicago Tribune filed for bankruptcy on December 8, 2008.

² The City of Madison's signage code is famously arcane and restrictive. Long realizing that, the City is now on year twelve of its project to update its 27-year old code. The City must recognize that the code should strike a balance between Constitutional rights, economic and artistic interests and visual pollution concerns.

