

Misleading Advertising Could Have Legal Ramifications

BY JENIFER PUTNAM
TBR Staff

A catchy phrase in advertising could catch a company a lot of flack if not properly reviewed and assessed, local advertising agents and attorneys say.

Savannah attorney Kathleen Aderhold will lecture on that subject and other legal ramifications at the monthly Savannah Advertising Federation meeting at 11:45 a.m. Wednesday at the Savannah Golf Club.

Aderhold's speech, "Why it's Important to Have Your Attorney Review All Advertising Materials" will cover misleading or incorrect copy, contractual agreements that might hinder advertising in some areas or publications and other business decisions that might conflict with certain types of advertising.

Aderhold, a graduate of Vanderbilt University in Nashville, Tenn. and Georgia State University in Atlanta, owns the firm of Kathleen Aderhold & Associates, and was recently appointed by the Savannah Superior Court Judges to the prestigious Tri-partid Committee.

For 15 years Aderhold has been practicing family, criminal and general trial law in Savannah. She is the past president of the Savannah chapter of the Georgia Association of Women Lawyers, past president of Savannah Younger Lawyers and past president of Savannah Association of Criminal Defense Attorneys.

While negotiating a movie and book contract for a client, Aderhold said she discovered all the possible legal ramifications of advertising and marketing on contracts and business decisions. Since then, she has

suggested that her clients let her review advertising and marketing material to avoid potential problems.

One problem that commonly plagues businesses, Aderhold said, is typos. For instance, a sale may be published on the wrong day or sale items may be published at the wrong price and then businesses are forced to make good on their promises.

Advertising agencies also may need to be wary of words or phrases with dual meanings, Aderhold said.

A word with a dual meaning might be clever advertising, but if one of those meanings is unfavorable for the client or misrepresents the product, the business owner could have trouble, she said, citing Wimpy from the Popeye cartoons who consistently

mised fellow diner patrons with his famous line, "I'll gladly pay you Tuesday for a hamburger today."

False advertising is a problem for the agent and client if they knew or should have known its falsehood, said Tobin Spirer, chairman & CEO of Spirer Communications Inc. on Hilton Head Island.

"Everything must be based in fact," Spirer said. "What should govern advertising always is the truth."

Spirer said there are no gray areas in truth and advertising as false advertising could lead to a libel lawsuit. He said it is not enough that a famous person uses or even likes a product; if they haven't signed an endorsement agreement, their name and image can't be used in advertising the product.

Advertisers also must avoid copyright infringement in text and pictures, Spirer said. Quotes must

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**Kathleen Aderhold
Lawyer, Aderhold and Associates**



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be attributed and images must be used with permission. Spirer said advertisers use images from several different sources with different rules regulating their use. If the agency set up the photo shoot, they need to make sure that any models signed releases to protect the agency and the client. Agencies also need releases to use stock footage from stock houses or even royalty-free images. Exceptions rarely exist, but Spirer said advertisers are allowed to use crowd shots such as at a concert without express permission because of the unreasonableness of obtaining permission from such a large group of people.

Another potential problem, Aderhold said, is contractual agreements. A non-compete agreement in Savannah may allow a business owner to operate a similar business in neighboring Bryan County, but advertising would not be allowed in Savannah for the length of the agreement.

Along the same lines, a local business with a similar name to a national business may be fine as long as its advertising remains local. However, if it starts advertis-

ing regionally, it could draw the attention of the national company, forcing a name change.

"I think it's important that any business have an ongoing relationship with an attorney," Aderhold said. "Your attorney may consider some of these issues that you might not think about."

Rules also may be different across state lines, said Ted Robertson of Robertson & Markowitz Advertising and Public Relations in Savannah. Whenever the agency is unsure, Robertson said he runs the ad by the Office of Consumer Affairs.

"If you're in doubt, it's better to be safe than sorry," Robertson said.

In promotions, Robertson said advertising agencies also must be sure that what they're proposing does not fit the description of a lottery. Once again, if unsure, he suggests checking with consumer affairs.

The Savannah Advertising Federation meeting is open to all members and their clients. Founded in 1953, Federation members meet the second Wednesday of each month at the Savannah Golf Club.

To reserve a seat, contact ssearcy@mem-day.org or at (912) 352-4535.

(Details: www.SavannahAdFed.com or www.aderhold-law.com) ■