

LEGAL AND PRIVACY

FBI seeks U.S. advertiser lobby help over investigation into media-buying practices

October 10, 2018



The Federal Bureau of Investigation is the United States' leading investigating agency for domestic crimes. Image credit: FBI

By MICKEY ALAM KHAN

The United States' Federal Bureau of Investigation and the U.S. Attorney's Office for the Southern District of New York has initiated a criminal investigation into industry media-buying practices, putting the country's leading ad agencies within its cross-hairs.

Subscribe to **Luxury Daily**
Plus: Just released
State of Luxury 2019 **Save \$246 ▶**

The FBI has sought the cooperation of the [Association of National Advertisers](#), also known as the ANA, and its brand-advertiser members by reaching out to the New York-based trade body's outside legal counsel, Reed Smith. The move comes two years after the ANA accused media-buying agencies of padding fees from media buying to the detriment of advertisers.

"The opening of a federal criminal investigation is a significant event to the industry and to ANA members," said ANA CEO Bob Liodice in a letter sent to members. "As such, you may want to forward this memorandum to your CEO, CFO, or legal counsel (internally or externally)."

While the ANA views the FBI's investigation as important, the organization cannot provide help to the FBI other than to share communication and information with members, Mr. Liodice said in his letter.

"The ANA will not play a coordinating role on decisions or information between or among member companies and will not be a conduit between the **FBI** and member companies regarding individual company information," he said. "The FBI is aware of our communication with members and has requested we do so in order to obtain assistance."



Bob Liodice is CEO of the Association of National Advertisers, the premier lobby for advertisers in the United States

Here is the ANA's letter sent this morning to its members:

ANA

October 10, 2018

Request for Assistance by the FBI

You may have read the September 27, 2018 *Wall Street Journal* article reporting that the FBI has commenced a criminal investigation into media buying practices.

Consistent with the Journal report, the FBI contacted our outside counsel, Reed Smith LLP, requesting the cooperation of the ANA and its membership in a criminal investigation into media buying practices underway by the FBI and the United States Attorney's Office for the Southern District of New York. Reed Smith's Douglas Wood, the ANA's general counsel, and his partner, Steven A. Miller, formerly a senior federal prosecutor in Chicago and now specializing in complex financial investigations, have had limited discussions with the FBI. Our board of directors executive committee has approved, at the recommendation of our general counsel, that we:

- Inform our members of the FBI outreach to Reed Smith/ANA.
- Clearly explain the role of the ANA and the requested role of member companies.
- Share information about potential next steps member companies can take with the FBI if they believe they have been victimized.

As further background, the ANA's 2016 K2 Intelligence report titled *An Independent Study of Media Transparency in the U.S. Advertising Industry* (the "K2 Intelligence Report") was recently followed by a McKinsey report titled *Truth in Advertising Achieving Media Transparency with Rebates to Fuel Growth*. Within the past two weeks, ID Comms, an industry consultant, released a survey that reported trust between advertisers and agencies continues to be a serious problem. The conclusion of these reports is that concerns over questionable media buying practices continues. The K2 Intelligence Report, in particular, raises very serious issues about practices that may have financially harmed ANA members. The ANA has previously provided members with a variety of resources and studies that can assist in reviewing and evaluating media buying relationships, re-establishing media buying contracts, and evaluating internal marketing processes.

Some points of interest about the FBI investigation:

- In industry-wide investigations, particularly one with dozens or even hundreds of potential victims, *federal law enforcement often needs assistance in identifying potential victims, witnesses, and evidence*. It also needs to set priorities for its investigation.
- The starting point is to identify those advertisers which believe they may have been defrauded. We suggest to members who think they may have been defrauded to retain counsel (through their own engagements and at their own cost), review their media buying history and contracts, perform audits for indications of fraud, and get advice on their options. If members choose, Reed Smith can provide guidance and work in coordination with members' legal counsel. Reed Smith has been deeply involved in the subject matter underlying the K2 Intelligence Report for several years.
- Given that Reed Smith represents the ANA, it has established practices to ensure separate protection of the attorney/client privilege for the ANA and for ANA members that may retain it. Reed Smith can also consult with

and coordinate activities with a member's separate legal counsel, or members can proceed entirely on their own.

- Options can then include cooperating with the FBI, or doing nothing. *Each member's decision to cooperate with the FBI and federal law enforcement, or take any other action or no action, is entirely voluntary and up to the member company.*

While we view the FBI's investigation as important, the ANA itself cannot provide help to the FBI other than to share communication and information with our members. The ANA will not play a coordinating role on decisions or information between or among member companies and will not be a conduit between the FBI and member companies regarding individual company information. The FBI is aware of our communication with members and has requested we do so in order to obtain assistance.

The opening of a federal criminal investigation is a significant event to the industry and to ANA members. As such, you may want to forward this memorandum to your CEO, CFO, or legal counsel (internally or externally).

Should you wish to directly speak to either Mr. Wood (dwood@reedsmith.com or 212.549.0377) or Mr. Miller (samiller@reedsmith.com or 312.207.3857), feel free to reach out to them.

Regards,

(Signed)

Bob Liodice
Chief Executive Officer, ANA

© 2020 Napean LLC. All rights reserved.

Luxury Daily is published each business day. Thank you for reading us. Your **feedback** is welcome.