

CALIFORNIA

**Legal Services
Advertising**
Quarters 1-2 | 2022

INTRO

Introduction & Background

Trial lawyers and aggregators increasingly spend large sums of money on advertising to recruit new clients for class action lawsuits. In the first half of 2022, it is estimated that \$34 million were spent to air approximately 250,000 television ads for local legal services or soliciting legal claims in California's top three media markets – Los Angeles, San Francisco-Oakland-San Jose, and Sacramento-Stockton-Modesto. Much of this advertising is conducted by aggregators: businesses that recruit potential plaintiffs and then sell their information to law firms.

Consumers see doomsday ads about the lethal effects of medications or even general medical injury and can consequently stop use of medicines prescribed by their health care providers. This is often done without consulting their doctor, resulting in health problems for patients and increasing litigation risk for product manufacturers.

These over-the-top advertisements from personal injury attorneys with catchy jingles and toll-free numbers pose a serious danger. These ads undermine the simple notion that physicians and health care providers – not personal injury lawyers or the “aggregators” who run the ads for the lawyer – should dispense medical advice.

Trial lawyers continue to pump significant money into these ad buys because, armed with more clients, they can boost settlements and payouts when they go after large corporations. This ultimately leads to larger contingency fees for the lawyers themselves.

The ads do more than help recruit clients, however. They can also influence the thinking of citizens who may serve on a jury in lawsuits. A survey conducted by Trial Partners, Inc. found that 90% of jurors would be somewhat or very concerned if they saw an advertisement claiming a company's product injured people. Additionally, 72% of jurors agreed somewhat or strongly that if there are lawsuits against a company claiming its products injured people, then there is probably truth to the claim – showing just how great an impact these ads can have.

SEPTEMBER 2022

AMERICAN TORT REFORM ASSOCIATION
WWW.ATRA.ORG

INTRO



Legal Services Television Advertising in the Top Three California Media Markets Q1 – Q2 2022

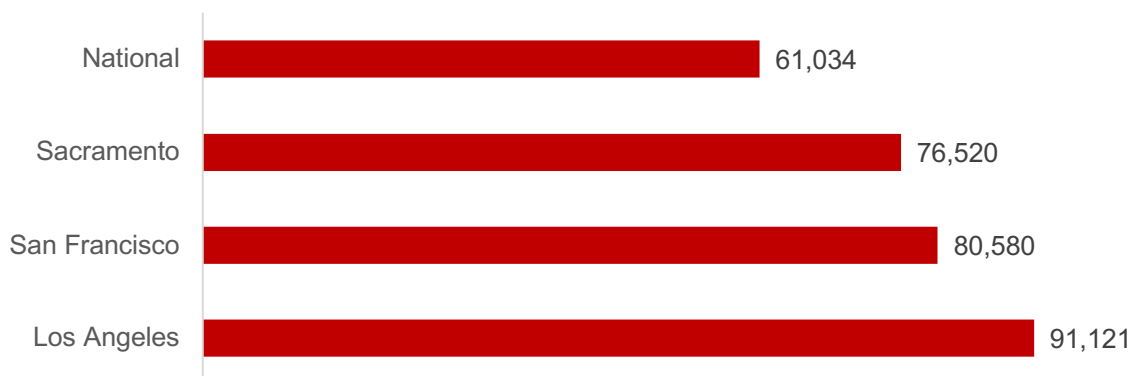
Presented by X Ante to
the American Tort Reform Association (ATRA)
September 2022

With nearly 40 million residents, California is the most populous state in the nation and its three largest media markets – Los Angeles, San Francisco-Oakland-San Jose, and Sacramento-Stockton-Modesto – are the second, sixth, and twentieth largest media markets in the country. Together, they account for nearly 10 million households with televisions.¹

In the first half of 2022 – from January through June – television viewers in these three California media markets were exposed to approximately one-quarter million locally broadcast television ads for legal services and/or soliciting legal claims. Law firms, lawyers and other legal services advertisers paid an estimated \$34 million to sponsor these ads.²

In addition to these local ads, Los Angeles, San Francisco, and Sacramento television viewers were also exposed to an additional 61,000 legal services TV ads that aired nationally across the United States at an estimated cost of \$66 million.

**Number of Legal Services Television Advertisements
January - June 2022**



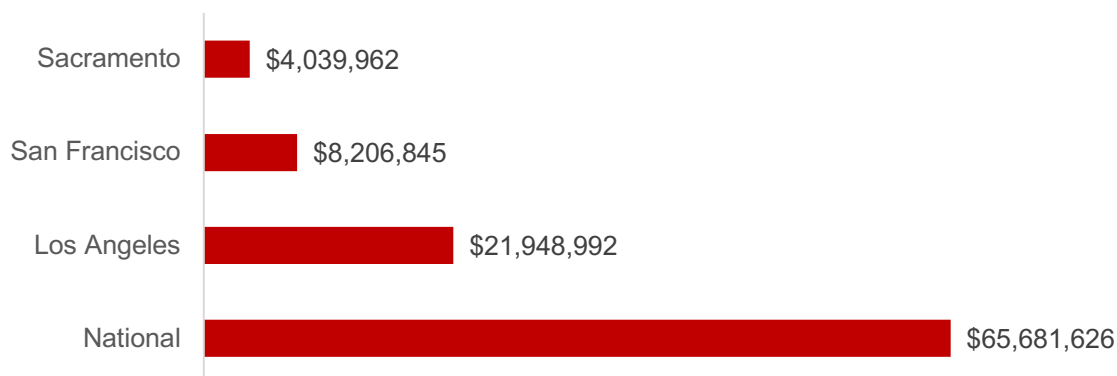
This combined total of approximately 310,000 local and national TV legal services ads means that, on average, a legal services ad aired every minute of every day in the top three California media markets in the first half of 2022. Advertisers also spent approximately \$100 million on these local and national ads, or an average of more than \$500,000 per day.

¹ The 2021 ranking of local television markets and estimates of their size by The Nielsen Company can be found at:
<https://oaaa.org/Portals/0/Public%20PDFs/OAAA%202021%20NIELSEN%20DMA%20Rankings%20Report.pdf>

² All television advertising data analysis by X Ante utilizing Kantar CMAG data.

Local TV advertising captures ads related to legal services and/or the solicitation of legal claims on local broadcast networks. Ad spending figures are estimates based on publicly-available ad rate information. Data are estimates and may vary over time due to revisions to account for duplicates or errors and the availability of updated ad rate information.

Legal Services Television Advertising Estimated Spending January - June 2022

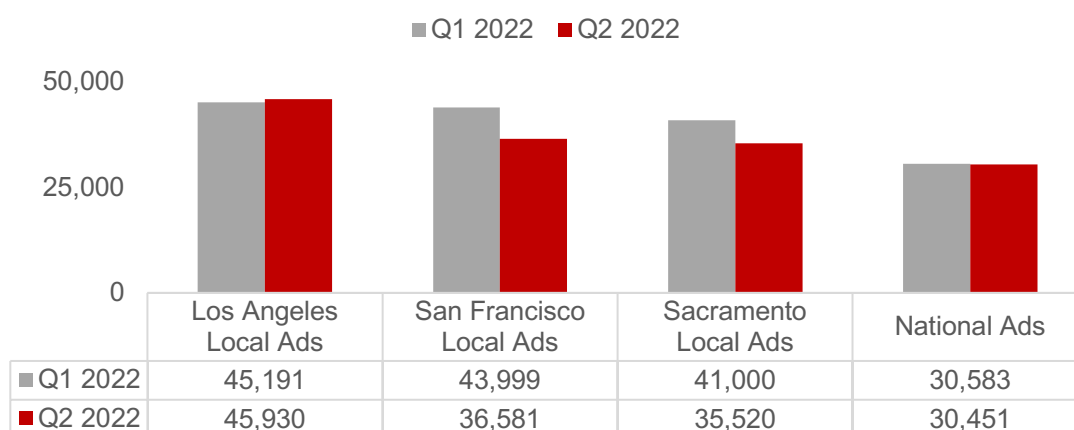


Quarterly Trends

More legal services ads aired in Los Angeles in the first and second quarters than in either of the other two top California media markets or than aired nationally. More than 45,000 ads aired in Los Angeles in each of the first two quarters of 2022 and there were approximately 700 more ads in the second than in the first quarter.

Similar to Los Angeles, more than 40,000 legal services ads aired locally in both the San Francisco and Sacramento areas in the first quarter of 2022. However, the number of these ads declined in both media markets in the second quarter. Approximately 5,500 fewer ads aired in Sacramento – a 13% decrease – and legal services advertisers sponsored 7,400 fewer local San Francisco ads in the second quarter – a 17% decrease.

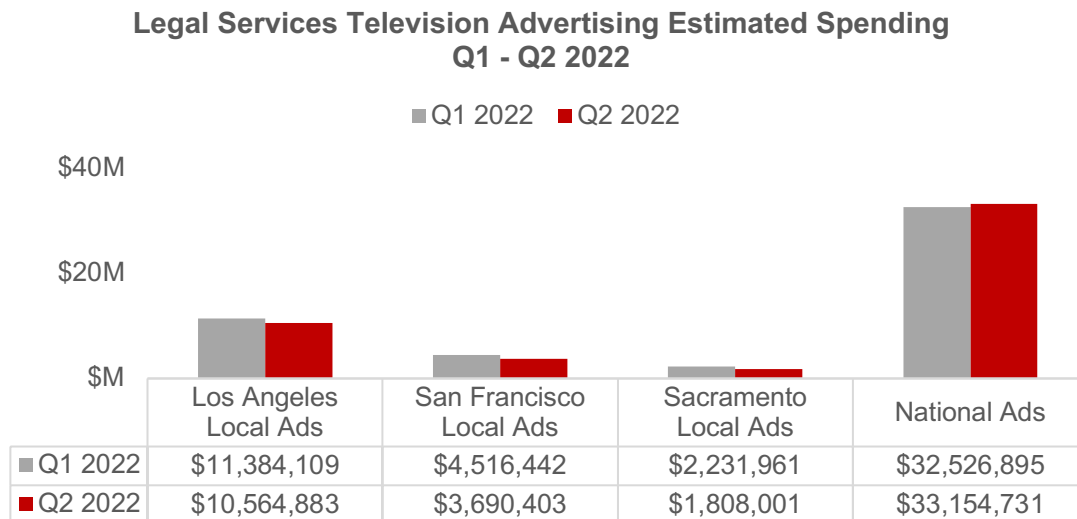
Number of Legal Services Television Advertisements Q1 - Q2 2022



Not surprisingly, given its large audience of approximately 7.5 million television households, far more was spent on legal services advertising in Los Angeles than in the other two top California media markets. Estimated spending on these ads in Los Angeles topped \$11 million in the first quarter and \$10 million in the second.

Quarterly estimated spending on local legal services TV advertising in San Francisco decreased from \$4.5 million in the first quarter to \$3.7 million in the second quarter. Local legal services ad spending also dropped in Sacramento from \$2.2 million in the first quarter to \$1.8 million in the second quarter.

However, the amount spent on national legal services ads in the second quarter increased by 2% (more than \$600,000 more than in the first quarter) when spending topped \$33 million.



Advertising Comparisons

The volume of legal services television advertising in each of the three top California media markets exceeded other categories of television advertising.

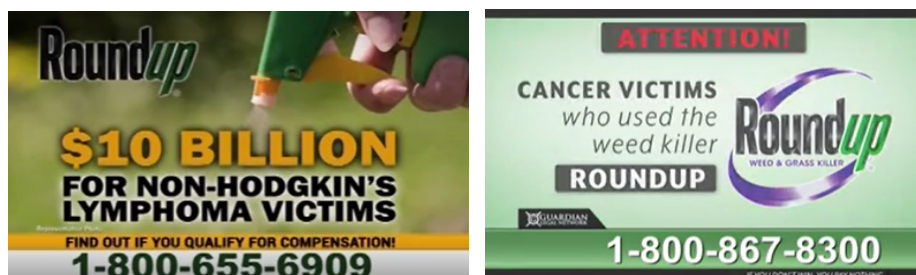
In Los Angeles, there were 11 times as many local legal services ads from January through June of 2022 as there were ads for home centers and hardware stores. Fifteen times as many legal services ads aired locally in Sacramento as local ads for pizza restaurants and delivery. The number of local TV ads for furniture stores in San Francisco was only one-tenth of the total number of local legal services ads there.

Mass Tort Legal Services Advertising

Legal services advertising on television includes ads soliciting claims alleging injuries caused by consumer products, pharmaceutical drugs, and medical devices. In recent years, three of the top targets of these types of ads have been Roundup weed killer, the herbicide paraquat, and talcum powder. Advertisers aired TV ads on all these topics in the top California media markets in the first half of 2022.

Roundup Weed Killer

The weed killer Roundup has been the top target of mass tort product liability litigation television advertising since 2015 with an estimated \$131 million spent on more than 625,000 ads that have aired nationally and locally across the United States.



Screenshots of Roundup litigation ads airing in California in the first half of 2022

In the first half of 2022, approximately 260 of these ads aired across the Los Angeles, San Francisco, and Sacramento media markets at an estimated cost of \$45,000. Among these markets, the most Roundup litigation ads – 106 – aired in San Francisco and the most spent on these ads – \$32,000 – was in Los Angeles. This was quadruple the amount spent on Roundup ads in San Francisco and six times the amount spent in Sacramento.

Paraquat Herbicide

More recently, another agricultural product, paraquat herbicide, has emerged as a top target of mass tort litigation advertising. Since the beginning of 2021, more TV ads have aired across the country soliciting claims alleging injuries caused by paraquat than mass tort ads related to any other product. More than \$24 million has been spent on more than 150,000 of these ads since 2021.

Consistent with the emergence of paraquat as a top mass tort ad target, local ads soliciting these claims in the largest California media markets dwarfed local Roundup litigation TV advertising there from January through June 2022.



Screenshots of paraquat litigation ads airing in California in the first half of 2022

An estimated \$565,000 was spent on 2,500 paraquat litigation ads across the Los Angeles, San Francisco, and Sacramento media markets during this period. Los Angeles accounted for approximately 65% of the ads aired and 80% of the estimated ad spending for a total of just over 1,600 ads airing at an estimated cost of \$450,000 in the first half of 2022. The number of ads soliciting paraquat claims airing locally in Los Angeles tripled from the first to the second quarters.

Talcum Powder

Second only to Roundup litigation advertising, more has been spent on U.S. TV ads soliciting claims alleging a link between the use of talcum powder and incidences of cancer than on any other product. An estimated \$109 million has been spent on more than 370,000 talc litigation ads since 2015.



Screenshots of talcum powder litigation ads airing in California in the first half of 2022

In the first half of 2022, more than 1,800 talcum powder litigation ads aired in the three largest California media markets at an estimated cost of approximately \$290,000. Of these markets, San Francisco had the most ads seeking talcum powder claims, with 915 ads. The highest spending on these ads was in Los Angeles at nearly \$190,000 from January through June 2022.

Source material

Data analysis in this report provided by X Ante used data from Kantar Media CMAG. X Ante monitors and reports on advertising and monitoring by lawyers, law firms and other soliciting legal claims on television, radio, online, social media and elsewhere. The television advertising coverage includes expenditures and commercial occurrences by attorneys and law firms in 210 media markets and on 12 national broadcast networks, 8 Spanish-language networks, and more than 80 national cable networks. X Ante has provided this data and analysis to prominent law firms and Fortune 500 companies.

In compiling this report, X Ante examined comprehensive data sets on commercial occurrence and expenditure information for television advertisements sponsored by attorneys and/or law firms seeking claimants on local broadcast television networks in the selected media markets.

The data examined included monthly totals of estimated spending on legal services advertising and the number of times these ads aired each month from January through June 2022.

The data was gathered and provided by the Campaign Media Analysis Group (CMAG), a Kantar Media Solution, that monitors, codes and aggregates television advertising information 21 hours a day (5:00 AM - 2:00 AM) utilizing the MediaWatch Technology – an automated, patented and proprietary system. The monitored stations constitute the principal stations in each market, typically including the network affiliates and major independents.

CMAG staff watch, review, and code every ad to determine the messages used in each and the content information is merged with the automated placement and spending information.

The system is designed to capture new commercials as they first air and then track every succeeding airing of each commercial across the universe of TV platforms outlined above.

The spot occurrence and placement data are automatically assigned by the system. The spending rates are estimated according to quarterly polling by Kantar Media of television stations and advertising industry sources to determine average 30-second advertising daypart-level rates and program rates for sports and special programming for the upcoming quarter. To account for the time it takes for any given rate to populate within the system, CMAG uses an average cost function based on rates from historical program averages airing in the same market on the same station during the same daypart. These temporary estimates are updated with actual sourced rates when they become available.

Several weeks after the local data is produced, Kantar Media receives the results from a national broadcasting industry survey conducted monthly by the Television Bureau of Advertising (TVB). This new information provides a national advertising growth trend as reported by responding stations. Expenditures are adjusted to reflect these industry spot revenue patterns. Once this final rate data is available, all temporary rates calculated using the average cost function are replaced with the final data.

Conclusion

Trial lawyers across the United States identify jurisdictions friendly to their work and relentlessly pursue new clients in search of the next large payout from a trial or settlement.

The Federal Trade Commission sent letters to various law firms and others, flagging their ads soliciting clients for personal injury lawsuits against drug manufacturers as potentially “unlawful” in September 2019.

A Public Opinion Strategies survey found that 72% of Americans saw ads by law firms about pharmaceutical lawsuits in 2016. Further, the survey states that one-in-four people who saw one of these ads concerning a medicine they take, say they would immediately stop taking the medicine without consulting their doctor.

Such ads have been associated directly with patients’ deaths. A 2019 FDA study shows the real-life consequences of these ads. The report found 66 reports of adverse events following patients discontinuing their blood thinner medication (Pradaxa, Xarelto, Eliquis or Savaysa) after viewing a lawyer advertisement. The median patient age was 70 and 98% stopped medication use without consulting with their doctor. Thirty-three patients experienced a stroke, 24 experienced another serious injury, and seven people died. Dr. Ilana Kutinsky who has testified before Congress on the issue and was doctor for one of the deceased, stated: “Patients are dying because they are afraid to take the medications prescribed for them due to the fear brought on by these negative and one-sided campaigns.”

While there are not enough bandages to cover the injuries trial lawyer advertising has caused, we can take steps to inform the general public. Through education we can shine a spotlight on the aggregators who mislead consumers and sell their information to law firms. By arming everyday Americans with this knowledge, we can help push back against trial lawyers and engage with our local leaders for potential solutions and policy changes.