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<https://www.schwabe.com/newsroom-publications-pitfalls-for-design-businesses-amid-promotion-on-the-internet>

## Op-Ed: Pitfalls for Design Businesses Amid Promotion on the Internet

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The internet has been both a blessing and a curse to architects and engineers. Design businesses' websites have evolved from clunky, text-heavy pages in the early days into visual artistic expressions of their own. For a potential client, a firm's webpage often provides the first impression of a design company's vision. Firms put a great deal of investment into their webpages, but website creation and maintenance eats away at valuable time for billable work, careful review of the pages' content can often be passed over, and updates can get backlogged. This sometimes leads to inadvertent errors and potential regulatory penalties.

The statutes and regulations governing both architects and engineers, and administered by the Oregon Board of Architect Examiners and the Oregon Board of Examiners for Engineering and Land Surveying, contain broad codes of ethics that prohibit not just outright false advertising, but also advertising that might mislead the public. The most common website errors (excluding copyright and trademark issues, which are subjects for another day) include

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misidentifying a professional's credentials, taking credit for projects designed by other professionals or firms, and unduly inflating the potential outcome of projects.

Correctly identifying a firm's professionals and their licenses and qualifications may seem simple enough, but it is the most common of problems. With limited exceptions, the regulations do not allow the use of the title "architect" or "engineer" for unlicensed designers, draftspeople or clerks – even those in training who simply have not yet received their final certification. Titles become more problematic with interstate practices. Websites know no geographic boundaries. The simplest way to avoid problems is to identify in which states a professional is licensed along with his or her other credentials.

Misidentification goes further than just an individual's qualifications. It can reach to the name of the firm as well. In Oregon, architectural firms, not just the individual architects, need to be registered with the board. The name of the firm must identify that it is practicing architecture, and it must accurately describe the firm's practice. Unless your name is Frank Lloyd Wright, you cannot use that name in the firm title. If you call yourself a "Group" or "and Associates," or simply the plural "architects," there needs to be more than one licensed architect in the firm. And while there is no firm registration requirement for engineering firms, there is the general requirement for truthful statements by engineers that would extend to firm names.

Taking credit for another's work also is a common problem, especially for startups. Often, the principals of new firms like to tout the work they had done earlier in their careers while working for others. The temptation is to pick the most impressive projects, but rarely were these new firm principals the professionals of record for such projects. The ethics rules for architects in particular require in such a case that the new firm principals not only accurately identify their own role in the project but also prominently identify the record professional on the webpage. As you can imagine, disputes arise over what "prominent" means, especially in the context of webpages – the size of font, the color of text, and whether the reader needs to scroll down to see the reference. Given that most people now view sites on their phone, how these issues play out is still evolving.

Another trending concern surrounds the use of photographs on webpages. It is quite common to use stock photos of city skylines or geographic features for emotional impact or local perspective on a webpage. However, if these pictures depict structures or even landscaping that is not the firm's product, or at least not a project that the firm had a recognized involvement in, it could amount to false advertising and infringement on the true designer's interests. Also, if the location of the project depicted is in a jurisdiction where the firm does not currently hold proper licenses, the picture alone could be seen as soliciting work in that jurisdiction and a violation of that jurisdiction's licensing laws.

As for overpromising results, this has always been a balancing act. As building technologies advance, new materials become available, and tolerances for efficiency tighten, the desire to distinguish one's product from the competition can lead to questionable claims. While in extreme cases this can lead to ethics in advertising violations, the largest risk is more common defect litigation.

In either case, it is important to accurately describe realistic expectations. The more experimental the design, the greater the need for a detailed description of the project objectives and limitations. Pretty pictures on a website do not mean that a particular design will work at a particular location, and while an explanation of such an obvious point may not necessarily be printed on the firm's webpage, it would be a good idea to bring it up in follow-up communications with a potential new client who may have gotten the wrong idea from the depictions on the website.

Firm webpages are a necessity, and all clients and potential clients expect architects and engineers to have a web presence. While impressive graphics, movement and project depictions may be the most alluring aspects of a design firm's website, it is important that the website remain accurate and avoid misconstruing both the qualifications and the experience of the firm's personnel. Misrepresentations can lead to both defect claims and regulatory penalties.

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