

E-Commerce Rulebook

EXECUTIVE SUMMARY

Marketing and advertising on the Internet comes with its own set of rules. Traditional tenets of marketing and advertising law are re-cast in light of the new flexibility and capacity offered by the Internet and e-mail. The functionality of ecommerce also has raised a number of new concerns that require careful attention to the laws being passed and the actions of regulatory and law enforcement agencies. This rulebook provides a general overview of the advertising and marketing playing field of e-commerce.

RULE #1: THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME

The first rule of marketing and advertising on the Internet is that the rules of regular advertising that forbid deception and false statements and require substantiation and adequate disclosure are still applicable to the Internet. If you could never have made the claim that your banana widget is stronger than steel on television or in the newspaper, then you cannot make that claim on the Internet.

RULE #2: MASTER THE ART OF DIS- CLOSURE

Both the FTC and the courts have held that "Banana widgets sold separately and on sale for \$11.95 only until April 15th." You have heard this kind of disclosure a million times on the radio and television, and you have seen it a million times in magazines and newspapers. Usually the disclosure is part of the fast-speak at the

end of the commercial, or it is next to an asterisk, in small print at the bottom of the page. The same qualities that make the Internet such an attractive medium provide the advertiser or marketer with many options for disclosure. When done properly, disclosures can appear in hyperlinks or contain more information than allowed in a print or audio format.

RULE #3: NEVER SEND SPAM UNLESS...

Junk mail is junk mail whether it arrives through your mail slot or e-mail inbox, and it will always be irksome to a certain majority of the population. But, the reason why direct mail advertisements continue to arrive at your home is because direct mail can be effective, which is the same reason why unsolicited commercial e-mail continues to be in your inbox. At the present time, several states have laws restricting the delivery of spam, but, if you comply with the requirements, you still can send spam.

RULE #4: THERE ARE NO SUBSTITU- TIONS IN YOUR PRIVACY POLICY

Privacy is the biggest issue raised by the Internet. Suddenly massive amounts of information are available within a couple of keystrokes and mouse clicks. Even worse, your every "move" through the Internet can be tracked and matched with your personal information. Americans have never been fond of allowing others know who they are or what they have been doing, and the Internet has caused more than 70% of America to be

very concerned about who is watching and collecting their information. Therefore, a privacy policy that states exactly what information is being collected, for what purpose and to be shared with which parties is crucial to your web presence. Additionally, your privacy policy must accurately reflect what you do with information. Any substantial change in what you do with information (such as changing from not sharing information at all, to sharing it with your affiliates) must be agreed to by everyone you have collected information from or else you must delete their information.

KELLEY DRYE COLLIER SHANNON

ADVERTISING AND MARKETING LAW PRACTICE GROUP

Kelley Drye Collier Shannon's Advertising & Marketing practice comprises attorneys with proven success in advertising litigation and NAD proceedings; expertise in the area of advertising, promotion marketing, and privacy law; and experience at the FTC, FDA, and the Offices of State Attorneys General. We help leading companies identify risks, respond effectively to inquiries, and prevail in contested proceedings.

We are a leader in advising clients on information privacy issues and have been at the forefront of developments in this growing area of law. Our privacy law group regularly advises clients regarding all aspects of privacy law, including the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Health Insurance Portability and Accountability Act, the Children's Online Privacy Protection Act, the EU Data Protection Directive (as well as EU members' state laws and the Safe Harbor negotiated between the US and the EU), the

FTC Act, and state privacy laws.

FOR MORE INFORMATION

For more information about Kelley Drye Collier Shannon, please visit: www.kelley-drye.com.