

Ad Law News and Views - April 25, 2020

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RECENT NEWS

[Supreme Court Confirms Profits Remedy in Trademark Cases is Not Conditioned on Proof of Willfulness](#)

The Supreme Court issued a much-awaited opinion holding that a plaintiff is not required to prove willful infringement in order to seek a trademark infringer's profits under the Lanham Act. This decision resolved a split among the Circuits and changes the law in a number of Circuits, including the Second and Ninth Circuits, where a high volume of trademark infringement cases are heard.

[FTC Delivers \\$9.3 M Reminder About Mail Order Rule](#)

The FTC announced that online retailer Fashion Nova had agreed to pay a record \$9.3 million to settle charges that it violated the Mail Order Rule by failing to properly notify customers and give them the chance to cancel their orders when the company couldn't ship items on time, and that it unlawfully used gift cards to compensate customers for unshipped items, instead of providing refunds.

[Finding Fevers: FDA Relaxes Rules On Temperature-Detecting Cameras](#)

These are cameras that can detect human temperature in comparison to their surroundings to help identify fevers. [Reuters reported](#) last week that Amazon implemented thermal cameras at its warehouses to scan for feverish employees. This has prompted many to wonder how telethermographic devices are regulated. In its "[Enforcement Policy For Telethermographic Systems During the COVID-19 Public Health Emergency](#)," FDA explains that use of such cameras to detect human temperature – even when used outside of a medical facility such as in an airport – may render the systems medical devices typically subject to pre-market clearance, registration, listing, and quality regulations. However, during the current pandemic, FDA is relaxing those regulations provided that the systems meet performance and labeling criteria.

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KELLEY DRYE'S COVID-19 RESPONSE

To help clients navigate the new challenges of COVID-19, Kelley Drye has produced a number of articles, webinars, and blog posts that cover a range of topics and collected them on the [COVID-19 Response Resource Center](#).

PODCASTS

This week saw one new episode of the Ad Law Access podcast:

Answering Retailer Questions Related to COVID-19 Issues

As [retailers](#) have shifted to online and ship to store/ship from store sales, we've been getting a variety of questions from our retailing clients.

On the latest episode, Advertising and Marketing chair [Christie Grymes Thompson](#) and partner [Kristi Wolff](#) answer retailer questions regarding pricing, shipping, refunds, customer reviews, and telethermographic cameras (cameras that can detect human temperature).

Listen on [Apple](#), [Google](#), [SoundCloud](#), [Spotify](#), or [wherever you get your podcasts](#).

The Ad Law Access podcast provides audio updates on advertising and privacy law trends, issues, and developments. New episodes will be announced at [AdLawAccess.com](#); the Ad Law Access podcast is available now through [Apple](#), [Spotify](#), [Google Podcasts](#), [SoundCloud](#), and [wherever you get your podcasts](#).

UPCOMING EVENTS

ABA SPRING MEETING 2020

Kelley Drye lawyers are taking part in the American Bar Association's Antitrust Section Spring Meeting, this time virtually. This year, there is no charge!

The Antitrust Section's first ever Virtual Spring Meeting is offering a wide range of new content, live streamed programs, and networking events available via [www.ourcuriousamalgam.com](#).

What to Expect in FTC CP Enforcement

April 30, 2020

12:00 PM - 1:00 PM

From record fines to novel theories of harm, the FTC has pursued vigorous consumer protection enforcement under Chairman Simons. Join partner [Christie Thompson](#) and other panelists for a discussion on recent FTC enforcement and priorities, including impacts, if any, of COVID-19 on enforcement priorities, as well as in the areas of privacy, data security, marketing, advertising, and fintech, consider whether FTC enforcement has expanded in reach, and implications for future CP enforcement.

[Event Website](#)

For the full lineup, please visit [ourcuriousamalgam.com](#).

COVID-19 and Beyond: How to Connect to New FCC Telehealth Funding

April 28, 2020

12:00 PM - 1:00 PM EST

On April 2, 2020, the FCC issued a Report and Order (FCC-20-44) establishing the COVID-19 Telehealth Program and adopting the Connected Care Pilot program. The COVID-19 Telehealth Program will provide \$200 million in funding, appropriated by Congress as part of the CARES Act, to help health care providers provide connected care services to patients at their homes or mobile locations. The three-year Connected Care Pilot Program will provide universal service support to help defray certain health care provider costs incurred in delivering connected care services, with a primary focus on services aimed at low-income or veteran patients.

Join us on April 28 as we discuss the policy behind and the details of each program, including, healthcare provider eligibility criteria, funding coverage, and key application considerations for the COVID-19 Telehealth Program in particular.

[Register Here](#)

WEBINARS

This year, in conjunction with the launch of the [Advertising and Privacy Law Resource Center](#), we have been holding a series of webinars:

REPLAYS:

Replay recent webinars below or find these and other webinars on the [Advertising and Privacy Law Resource Center](#):

[Advertising 101 Webinar](#)

[Privacy 101 Webinar](#)

[Influencer 101 Webinar](#)

[**Pretty Up: Cosmetics False Advertising Litigation Trends and Marketing Compliance Webinar**](#)

IN CASE YOU MISSED IT

[TCPA Tracker - April 2020](#)

[FCC/FTC Stake out Aggressive Robocall Position, Tell Gateway VoIP Providers to Block COVID-19 Robocalls – or Be Blocked Themselves](#)

[FTC Guidance on AI: Don't Surprise Consumers – Or Yourself](#)

[Be Careful About Changing Refund Policies Under Covid-19](#)