

# Ad Law News and Views - August 22, 2024

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Congratulations to our Advertising Law attorneys who were recognized in the 2025 edition of The Best Lawyers in America©.

## UPCOMING EVENT

### Why You Should Care About the FTC's Rule on Fake Reviews

Tuesday, September 10, 2024, at 12:00 p.m. ET

Last week, the Federal Trade Commission announced its final rule designed to combat “fake” reviews and testimonials. Given the focus of the rule and the FTC’s press surrounding it, many companies may assume that they don’t need to worry about it. The rule, however, does more than just ban fraudulent conduct. It includes various provisions that reputable companies need to worry about, too, as well as the potential for civil penalties. We’ll break down the rule and explain what it means for you and your business. Join Partner, [Gonzalo Mon](#), and Special Counsel, [Ioana Gorecki](#), as they:

- Discuss the requirements of the final rule
- Explore the interplay between the rule and the FTC’s recently updated Endorsement Guides
- Provide practical advice on what to consider when working with testimonials and reviews

Register [Here](#).

## IN THE NEWS AND LATEST UPDATES

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### State AGs and Junk Fees - Where the Rubber Meets the Road

Junk fees [have made](#), and continue to make, state attorney general headlines with recent actions by [Maryland](#) and [Rhode Island](#) relating to consumer transportation. The rubber met the road when Maryland Attorney General Anthony Brown [brought charges](#) against a car dealership and its owners, and Rhode Island Attorney General Peter Neronha [filed a lawsuit](#) against a parking management company.

### NAD Decision Considers #1 Claims

LegalZoom makes various #1 claims, including that it is the “#1 choice for online small business formation,” that it is “#1 rated by small businesses,” and that it is “voted #1 by small businesses.” ZenBusiness challenged these claims in the same case we [wrote](#) about yesterday. In some industries, companies can look to empirical third-party data (such as sales data) to support these types of claims. When that doesn’t exist, companies are left to find their own support. NAD’s decision shows how tricky that can be.

## NAD Decision Considers “As Seen In” Claims

LegalZoom has a box on its website with the title “As Seen In” followed by the logos of five publications that have featured its services. In an NAD challenge, ZenBusiness argued that because LegalZoom has an affiliate relationship with some of those publications, it needs to disclose its connections to them in order to comply with the FTC’s Endorsement Guides. LegalZoom argued that mere press mentions don’t qualify as endorsements and, therefore, that a disclosure isn’t required.

## FTC Finalizes Rule on “Fake Reviews”

Yesterday, the Federal Trade Commission announced its final rule addressing consumer reviews and testimonials. With this rule, the Commission takes aim at “fake” reviews and testimonials by prohibiting their sale or purchase and allows the agency to seek civil penalties against “knowing” violators.

## FCC Proposes New TCPA Rules for AI Calls and Texts

On August 7, 2024, the Federal Communications Commission (FCC) adopted a [Notice of Proposed Rulemaking and Notice of Inquiry](#) related to the use of artificial intelligence in outbound calls and texts. Among the proposed rules are a definition of an “AI-generated call” and disclosure requirements for placing such calls. This item is the latest in a series of actions taken by the FCC this year under its authority to implement the Telephone Consumer Protection Act (TCPA) and demonstrates the agency’s continued focus on what it says is the “top category of consumer complaints that [it] receive[s].” Initial comments on the proposed rules will be due 30 days after the item is published in the Federal Register, and reply comments will be due 15 days thereafter.

## FTC Settlement with CarShield Holds Lessons on Endorsements

If you’ve watched the news recently, it’s fairly safe to predict that two things happened. First, you probably watched an announcer recount disturbing news about the current political climate. Second, following that segment, you probably watched a celebrity recount the benefits of using CarShield. (If your experience is different than mine, please let me know, so that I can change my viewing habits.) Although both of those things may continue to happen for a while, you may soon see some changes to the CarShield commercials.

## From GrubHub to StubHub: DC Sues StubHub for Deceptive Pricing and Junk Fees

In June, we [summarized](#) a number of new and pending laws specifically designed to regulate how companies display prices and fees. Although it’s important for companies to focus on those, we also noted that even in states without specific laws on point, enforcers could still rely on laws that more generally outlaw deceptive and unfair acts and practices to challenge how companies display their prices. A [new lawsuit](#) filed this week by the DC Attorney General against StubHub provides [yet](#)

[another](#) perfect example.

## Bots and False Advertising

In 2015, plaintiffs filed a lawsuit against Ashley Madison, alleging that the company had surreptitiously employed an “army of fembots” to lure unsuspecting men into cheating on their spouses. (You can read our coverage of that case and related warnings [here](#).) Not satisfied with having broken up countless homes, the bots are back, and this time they’re trying to lure people away from their money. At least that’s what Skillz Platform alleges in a false advertising lawsuit against its competitor, Papaya Gaming.

## FTC Settlement Illustrates Challenges with “Up to” Claims

“Up to” claims can be difficult to substantiate, in part, because the standard for substantiating those claims isn’t always clear. Over the years, the FTC, NAD, and courts have articulated different standards that are hard to reconcile with each other. For example, last month, we [posted](#) about a decision in which a three-judge panel with the Ninth Circuit determined that an “up to” claim reflected the “upper limit” of what consumers could expect and rejected the plaintiff’s assertions that consumers should “always” expect that. This month, the FTC announced a settlement that takes a different view.

## Cameo Settles with 30 AGs Over Endorsement Issues

Cameo is a platform where people can pay celebrities to record videos with scripted personal messages. Jimmy Kimmel recently used the platform to see if he could get George Santos to say silly things and then Kimmel aired those videos on his late night show. Santos later [sued](#) Kimmel, accusing him of copyright infringement, and the two are battling that out in court. But today, it’s Cameo that finds itself in a legal battle.

## CFPB Issues Interpretive Rule for Paycheck Advance or “Earned Wage Access” Products

Late last week, the Consumer Financial Protection Bureau (CFPB) [released](#) a proposed interpretive rule asserting that paycheck advance or earned wage access (EWA) products are considered consumer loans and therefore subject to the Truth in Lending Act (TILA), irrespective of whether the products are provided through employer partnerships or marketed directly to borrowers. The new interpretive rule, which unlike substantive rules issued under the APA do not impose new legal requirements or have the force and effect of law, explains how existing law (TILA and Regulation Z, specifically) apply to the increasingly popular financing option and replaces a 2020 advisory opinion issued in the Trump administration.

## Class Action Alleges Lululemon Engages in Greenwashing

Last week, a Florida consumer filed a putative class action against Lululemon, alleging that the company’s “Be Planet” campaign “goes too far by creating the general, express, and implied impression in consumers’ minds” that the company is contributing to a healthier planet when, in reality, the company is “causing significant damage to the environment, which is only on track to get worse.”

Be sure to check out [AG Chronicles](#): a monthly newsletter breaking down State Attorneys General consumer protection issues and highlighting news from the states. You may subscribe [here](#).