

Ad Law News and Views - June 1, 2022

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UPCOMING EVENTS

Wednesday, June 8, 2022 at 2:00pm ET/11:00am PT

State Attorneys General 101

State Attorneys General play an increasingly important and powerful role in enforcing consumer protection laws and establishing public health standards impacting broad swaths of business. They are the primary enforcers of consumer protection laws within their state and hold sweeping powers to protect the public they serve by launching investigations and litigation alone or in multi-state actions involving numerous states and territories across the country.

Please join us for State Attorneys General 101, a webinar covering the basics of State AG consumer protection powers, what to expect if you find yourself a target of attorneys general investigation, how to look to state attorneys general to stop improper actions of competitors, and more. Discussion topics include:

- What powers do State AGs have, and how did they get their positions?
- How do AGs set their consumer protection priorities?
- So a State AG contacted you, now what?
 - What to expect for next steps
 - Red flags that State AGs may look for
 - When should you contact outside counsel
- Your competition is playing unfair and you want it stopped! What to do?
 - Effective State AG outreach strategies
 - Pros and Cons of reporting others
 - When should you contact outside counsel

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IN THE NEWS AND LATEST UPDATES

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State Attorneys General Hold Ford Accountable for Advertising Claims

Last week, 40 State Attorneys General entered into a settlement with Ford Motor Company related to its substantiation of payload capacity claims on certain Super Duty pickup trucks and the fuel economy of certain C-Max hybrids. Ford is paying \$19 million to the participating States, plus \$200,000 in costs. The settlement itself is pretty straightforward - there are only two substantive requirements related to Ford's future conduct. Going forward, Ford cannot make false or misleading advertising claims regarding the estimated fuel economy or payload capacity of new motor vehicles.

New California Draft Privacy Regulations: How They Would Change Business Obligations and Enforcement Risk

On Friday May 27, 2022, the California Privacy Protection Agency (CPPA) Board announced its next public meeting will be on June 8, 2022. The announcement simply stated the date of the meeting, that there are "some discussion items [that] will be relevant to the Agency's rulemaking work," and that information on how to attend the meeting and the meeting agenda could be found on the [CPPA's site](#). It did not take too many Internet sleuths to review the posted agenda, and note that Agenda Item No. 3 was "*Discussion and Possible Action Regarding Proposed Regulations, Sections 7000-7304, to Implement, Interpret, and Make Specific the California Consumer Privacy Act of 2018, as Amended by the California Privacy Rights Act of 2020, Including Possible Notice of Proposed Action,*" and that the posted meeting materials included a copy of the "[Draft Proposed CCPA Regulations](#)." In addition, Agenda Item No. 4 provides for "Delegation of Authority to the Executive Director for Rulemaking Functions." Full stop, June will be an active month for California privacy rulemaking.

FTC Proposes Changes to Endorsement Guides with Expanded Liability and More Onerous Disclosure Requirements

In addition to announcing a new COPPA policy statement and related "crackdown" on children's privacy issues (discussed [here](#)) in its most recent open meeting, the FTC also [proposed changes](#) to the [FTC's Endorsement Guides](#). The changes would build on and expand previous guidance, including by expressly extending liability to endorsers, intermediaries, and platforms (in addition to advertisers), providing more guidance on how to incentivize and compile consumer reviews, and offering new examples that reflect a less flexible approach to disclosures for consumer endorsements.

State Attorneys General Defend NAAG

At the Spring National Association of Attorneys General Consumer Protection Conference, State AG staff gathered to discuss multistate investigations, enforcement priorities, and recent challenges. The introductory panel of the public portion of the conference featured State AGs Herbert Slatery (Tennessee), Kwame Raoul (Illinois), and John Formella (New Hampshire) discussing some of their priorities as members of the NAAG Consumer Protection Committee. However, due to recent circumstances [we have reported on](#), they also were asked to explain and defend the [role of NAAG](#).

FTC Announces "Crack Down" on COPPA Violations by Ed Tech

Companies

Amidst the rising focus on privacy issues affecting children and teens (which we've highlighted [here](#), [here](#), [here](#), and [here](#)), the FTC released a new Policy Statement on [COPPA](#), its signature rule protecting the privacy of kids under 13. The Policy Statement, which the FTC unveiled at its May 19 Open Meeting, focuses in particular on COPPA's application to education technologies used in and by schools to support learning (including remote learning during the pandemic). All five Commissioners voted for the Statement, including newly sworn-in Commissioner Bedoya, and four issued their own [written statements](#). After the meeting, a bipartisan group of [Senators](#), as well as [President Biden](#), released statements praising the FTC's actions.

Formula Price Gouging

Recently Georgia Attorney General Carr [warned consumers](#) of potential price gouging of baby formula and related scams. He notes price gouging protections are in effect there until at least June 14, 2022 due to a state of emergency caused by supply chain disruptions. Attorney General Carr also noted problems with inflation and gas prices.

Webinar Replay: Teen Privacy Law Update

Protecting the privacy and safety of kids and teens online is receiving enormous attention lately from Congress, the States, the FTC, and even the White House. Further, just last month, BBB National Programs unveiled a [Teenage Privacy Program Roadmap](#) offering a comprehensive framework for companies to use in identifying and avoiding online harms impacting teens.

FTC Tames Lions Making "Made in USA" Claims

Lions Not Sheep is a clothing company that, in its own words, allows consumers who wear its clothes to "show people it's possible to live your life as a LION, not a sheep." In addition to making people aware of that possibility, the company prominently advertises that its goods are "Made in the USA," "Made in America," "100% AMERICAN MADE," and - to put a finer point on it - the "BEST DAMN AMERICAN MADE GEAR ON THE PLANET."

Ten Percent and Rising: Connecticut Becomes Fifth U.S. State to Enact Privacy Law

Connecticut became the fifth state to pass comprehensive privacy legislation when Governor Ned Lamont signed "[An Act Concerning Personal Data Privacy and Online Monitoring](#)" into law. Connecticut joins California, Virginia, Colorado, and Utah in enacting new privacy laws that take effect in 2023. Out of fifty states in the U.S., ten percent have now passed a comprehensive privacy law.

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WEBINAR REPLAYS

In 2022, we have been holding at least one webinar a month. Below are links to replays of our most recent webinars. Find older webinar replays and more in the [Advertising and Privacy Law Resource Center](#).

- [Consumer Privacy Litigation Update](#)
- [Privacy Priorities for 2022: Tracking State Law Developments](#)
- [Privacy Priorities for 2022: FTC](#)
- [State Attorney General Consumer Protection Priorities for 2022](#)
- [Privacy Priorities for 2022: Legal and Tech Developments to Track and Tackle](#)
- [Teen Privacy Law Update](#)