

# Ad Law News and Views - June 16, 2023

June 29, 2023

Welcome back to Ad Law News and Views.

## Ad Law Takes DC, a Podcast Milestone, and more!

Last week, our Ad Law, State AG and Privacy team – which spans across eight states – gathered in our DC office for team-building activities. Pictures from the fun-filled days are below.



Congratulations to our [Ad Law Access Daily Podcast](#) host, Simone Roach, on recording her 250th podcast episode.

Thank you to Simone for being the voice of Kelley Drye’s Ad Law team.

To view all Ad Law Access podcast episodes click [here](#).

Be sure to register for our upcoming events, including our webinar [INFORM Consumers Act – What Online Marketplaces and Sellers Need to Know](#) and an in-person program in our New York office [Practical Privacy: Hands-On Advice for Privacy Practitioners](#).

See below for more information on topics, dates, and registration details.

## UPCOMING EVENTS

Wednesday, June 21, 2023 at 12:00 pm ET

### INFORM Consumers Act – What Online Marketplaces and Sellers Need to Know

In late June, a brand new law takes effect that could significantly affect online marketplaces and the companies that sell products there. As we discuss [here](#), the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act) requires online marketplaces to:

- (1) collect and verify certain information from “high-volume third party sellers,”
- (2) suspend sellers that fail to comply,
- (3) protect the data they collect from sellers, and

(4) make various disclosures to consumers.

The new law charges the FTC, the state AGs, and “other state officials” with enforcement; gives the FTC rulemaking authority; and authorizes substantial civil penalties for violations.

Please join us for a timely webinar on this topic. Partner [Kate White](#) will moderate a discussion with Special Counsel [Abby Stempson](#) about what the law requires, how it will affect online marketplaces and sellers, and how we anticipate the FTC and AGs will enforce it.

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Thursday, June 22, 2023 at 12:00 pm ET

## Practical Privacy: Hands-On Advice for Privacy Practitioners

In response to client requests and observing common industry pain points, Kelley Drye is coordinating an in-person practical privacy workshop with [Ketch](#) on the afternoon of June 22nd in New York City, with a focus on working through timely privacy action items for in-house counsel and privacy and compliance professionals.

In particular, the agenda topics will include:

- Working through a **data protection impact assessment** focusing on **targeted advertising/cross-context behavioral advertising**;
- Discussing common **clean room** and **generative AI** business use cases, and considerations on privacy compliance related to each different use case.

For each scenario, the goal will be to tackle best practices, how to issue spot (and what for), and what types of deliverables can help support operationalizing these practices, from completed DPIAs to creating standard operating procedures for the business.

**Practical Privacy** is also an opportunity to discuss these issues among peers, with the benefit of anecdotal benchmarking and diverse perspectives for solving real problems. Discussion facilitators will include Kelley Drye Privacy partners [Alysa Hutnik](#) and [Aaron Burstein](#), other in-house counsel, engineers and technologists, and policy stakeholders.

The event will be hosted in Kelley Drye’s New York City office. To attend this complimentary event, you’ll need to RSVP to save your spot. Because of Chatham House rules for the discussions, we will not be recording or offering a virtual option. It will be a packed but productive afternoon, and we’ll end with a networking happy hour.

[REGISTER HERE](#)

## IN THE NEWS AND LATEST UPDATES

Get these and other stories in real time when you subscribe to the Ad Law Access blog [here](#) or visit

the Advertising and Privacy Law Resource Center [here](#).

## Lawsuit Questions Use of Carbon Offsets to Substantiate Green Claims

Plaintiffs recently filed a class action lawsuit against Delta, alleging that the airline’s “carbon-neutral” claims, such as: “Carbon Neutral Since March 2020,” and “travel confidently knowing that we will offset the carbon emitted on your Delta flight,” are misleading because they are based on unreliable carbon offsets. The complaint does much more than challenge Delta’s specific claims, though. The plaintiffs claim that “nearly all offsets issued by the voluntary carbon market overpromise and underdeliver on their total carbon impact” and question whether such offsets can be used to substantiate a “carbon-neutral” claim.

## Update On Inform Consumers Act (And Reminder About Our June 21 Webinar)

In May, we published a [blogpost](#) about the INFORM Consumers Act and its upcoming (now imminent) effective date of June 27, 2023. As that date grows closer, online marketplaces and sellers can learn all about the law by signing up for our June 21 webinar – [INFORM Consumers Act – What Online Marketplaces and Sellers Need to Know](#). The webinar takes place from 12:00 pm – 1:00 pm ET and you can sign up [here](#).

## Jones v. Google reminds us that private rights of action could come from anywhere

As most privacy watchers know, one of the hot-button issues in the ongoing debate over federal legislation is whether the law should include a private right of action (PRA). As we also know, some existing federal privacy laws include a PRA (e.g., the [Cable Communications Policy Act](#)) and some don’t (e.g., the [Children’s Online Privacy Protection Act](#)).

## NAD Takes Strict Position on Employee “Endorsements”

In 2019, the FTC announced a [settlement](#) with a retailer over allegations that it had encouraged employees to write favorable reviews of its products without disclosing they worked for the company. Most observers weren’t surprised that the FTC found that conduct to be problematic or that the terms of the settlement required the company to instruct employees to clearly disclose that worked for the company when reviewing its products. But employee reviews often involve more subtle issues, and a recent NAD decision on some of those issues may surprise some readers.

## When Chatbots Go Rogue

Last week, a mental-health chatbot used by the National Eating Disorder Association suddenly [began giving diet advice](#) to people seeking help for eating disorders. The rogue chatbot had apparently been developed as a closed system, but the software developer rolled out an AI component to the chatbot in 2022. NEDA claims it was not consulted about the update and did not authorize it. The organization has now taken the chatbot offline.

## Texas AG’s Broad Jurisdiction Results in Settlement with VW and Audi

Last month, the Texas Attorney General agreed to [a settlement in principle](#) with car manufacturers Audi and Volkswagen requiring them to pay a civil penalty of \$85 million for alleged violations of the Texas Clean Air Act and environmental regulations. In 2015, the Texas AG filed separate consumer protection and environmental lawsuits against Volkswagen and Audi alleging that the companies used illegal emission-evading technology to defeat state emission tests. Texas had settled its consumer protection at the same time as a [multistate settlement agreement](#) in November 2016.

## NAD Addresses Hyperlinked Disclosures

When a disclosure is necessary to prevent an ad from being misleading, the disclosure must be presented in a “clear and conspicuous” manner. Exactly what that means depends a lot on the context, but one question we get regularly is whether disclosures can be presented through a hyperlink. In a recent decision involving ads for a meal kit company, NAD looked at FTC guidance and considered just how much of a disclosure can appear on a separate page.

## Talking Trash at the FTC: Event Recap

The FTC held its *Talking Trash at the FTC* workshop, a four-hour event intended to examine “recyclable” claims in ads. We’ve sifted through some of the trash and pulled out a few things worth noting.

## With July 1st in view, Google updates CCPA contract terms

Google updated its privacy terms earlier this month, shifting away from offering many of its advertising services on a “service provider” basis. With the change, Google states that its Customer Match, Audience Partner API, and certain audience-building services no longer meet the CCPA’s strict new requirements to be offered on a “service provider” basis. The implication of this change is that companies leveraging these services are “selling” or “sharing” personal information and will need to offer consumers an opportunity to opt out.

## FTC Adopts Policy Statement on Biometric Data

During the Federal Trade Commission’s (FTC) Open Meeting on May 18, the Commissioners unanimously voted to adopt the [Policy Statement on Biometric Information and Section 5 of the FTC Act](#). The Policy Statement broadly defines biometric data, catalogues the risks the Commission believes are posed by technology that utilizes biometric information, and imposes substantive requirements on companies employing these technologies.