

Ad Law News and Views - March 2026

March 26, 2026

It's March Madness—and while brackets are taking shape (or falling apart), our Ad Law team is in full court press mode. Our attorneys have been speaking at and attending conferences across the country, tackling hot topics like transparent pricing, children's privacy, sustainability, and health data, with more on deck. Here are a few key events where our lawyers will be in the coming weeks. If you're attending, we'd welcome the opportunity to connect.

- March 30 – April 2: IAPP Global Summit 2026, Washington, D.C.
- March 31 – IAB Public Policy and Legal Summit, Washington, D.C.
- April 28 – IAB Health Privacy Workshop, New York, NY – Hosted in our NY office, [Register Now!](#)

IN THE NEWS

[John Villafranco and Andrea deLorimier Receive the 2026 Burton Awards for Distinguished Legal Writing](#)

Advertising Law Partner [John Villafranco](#) and Associate [Andrea deLorimier](#) have been named recipients of the 2026 Burton Awards, a national honor recognizing excellence in legal writing and co-sponsored by the American Bar Association.

John and Andrea are being recognized for their article, "FTC Consumer Protection Orders: The Case for a New Sunset Policy," originally published by the Washington Legal Foundation in May 2025. The article examines the FTC's longstanding practice of imposing consent orders with twenty-year or indefinite terms, arguing that this approach warrants reconsideration considering the agency's significantly expanded enforcement authority and the rapidly evolving business and technology landscape.

[Donnelly McDowell Quoted in Modern Retail](#)

Partner and Advertising and Marketing practice group chair [Donnelly McDowell](#) was quoted by Modern Retail in their article, "Class-action Lawsuits Over Nutritional Claims on the Rise in MAHA Era." The article covers a recent uptick in class-action lawsuits against food manufacturers in the "MAHA age," which has led to more complex consumer criticisms of food and beverage companies' health and wellness claims.

[Navigating California Kids Code Compliance After Appeals Court Decision](#)

Partner [Laura Riposo VanDruff](#) was quoted in Bloomberg Law on the growing complexity of

complying with the California Age-Appropriate Design Code Act following a recent federal appeals court decision allowing key provisions to move forward.

FTC Signals COPPA Enforcement Flexibility

Partner [Laura Riposo VanDruff](#) was quoted in Privacy Daily on the FTC's recent policy statement on the Children's Online Privacy Protection Act (COPPA). The FTC issued a policy statement saying the agency will not bring COPPA enforcement action against companies that collect and use personal information for the sole purpose of verifying age. Many attorneys agree that the statement is unlikely to have a significant impact on company practices.

Laura Riposo VanDruff Quoted in New York Times on AI and Privacy

Partner [Laura Riposo VanDruff](#) was quoted in The New York Times article, "A.I. Complicates Old Internet Privacy Risks." The article covers new privacy risks that arise from using generative artificial intelligence, as users are sharing more personal information online with chatbots than ever before. For example, a judge recently ruled that users' conversations with Claude, Anthropic's chatbot, are not protected by attorney-client privilege, even if the conversation was in preparation for a meeting with the user's attorney. Laura shared her perspective on the ruling.

LATEST UPDATES

Washington Amends State Anti-Spam Law

Last year, the Washington Supreme Court issued a significant [decision](#) in a class action lawsuit accusing Old Navy of sending emails that included false or misleading information about the duration of sales. The Court determined that including such information in the emails' subject lines violated the state's Commercial Electronic Mail Act (or "CEMA").

From MAHA to Market: FDA and Some Retailers Announcing New Policies on Colors

The Make America Healthy Again (MAHA) movement has already prompted notable [changes](#) in federal and state food policy and has prompted regulators, plaintiff's lawyers, manufacturers, retailers, and consumers to take a fresh look at how products are formulated and marketed. These efforts include soliciting information to potentially define and regulate "ultra processed foods," phasing out petroleum based synthetic food dyes, approving new natural color additives, and reconsidering the self-affirmed "Generally Recognized as Safe" process. FDA has also increased enforcement of direct to consumer prescription drug advertising laws, including actions targeting violations by social media influencers and DTC telehealth companies.

Trump Administration Directs Federal Trade Commission to Prioritize Made in USA Enforcement

On March 13, 2026, President Donald Trump issued an [executive order](#) directing the Chairman of the Federal Trade Commission (FTC) to prioritize enforcement of Made in USA claims. According to the executive order, the Trump administration is concerned that foreign manufacturers may misrepresent the origin of products in order to pass their foreign-made products to "patriotic consumers" in the U.S. The executive order also states that the administration prioritizes accurate

claims because U.S. businesses “are entitled to the undiluted branding benefits that come with supporting the American economy.”

FDA MAHA Updates: “No Artificial Color” Claims and a New Preservative Safety Reassessment

At the outset of 2026, FDA [announced](#) a series of “priority deliverables” for 2026 as part of its Human Foods Program’s (HFP) “critical role in implementing the Trump Administration and HHS Secretary Robert F. Kennedy, Jr.’s goal of Making America Healthy Again (MAHA).” Initiatives to be launched or expanded in 2026 include removing petroleum-based dyes in favor of dyes from natural sources, rigorously reviewing and banning, if appropriate, food additives with safety concerns, reforming FDA regulations to “more effectively regulate the safety of food substances and increase transparency,” and creating a Front of Package nutrition labeling program “that will help consumers quickly and easily identify healthier dietary choices.” These objectives track closely with key priorities outlined in the MAHA Commission’s [Strategy Report](#).

Fifth Circuit Vacates FTC’s Cease-and-Desist Order Against Intuit, Holding Internal Adjudication of Deceptive Advertising Claims Unconstitutional

In a significant decision with wide-ranging implications for FTC enforcement this month, the U.S. Court of Appeals for the Fifth Circuit vacated the FTC’s cease-and-desist order against Intuit, Inc. and held that the agency’s administrative adjudication of deceptive advertising claims violates the constitutional separation of powers. *Intuit, Inc. v. FTC, No. 24-60040* (5th Cir. Mar. 20, 2026). Writing for the panel, Judge Edith H. Jones concluded that deceptive advertising claims under Section 5 of the FTC Act are rooted in the common law of fraud and deceit, implicate private rights, and must therefore be heard before an Article III federal court, not an in-house administrative law judge. Judge James C. Ho concurred in full, writing separately to sound a broader alarm about the FTC’s structural constitutionality.

FTC Initiates Process to Adopt Proposed Rule on Rental Housing Fee Practices

The day after the [release of a new Advance Notice of Proposed Rulemaking \(ANPR\) on Negative Option Offers](#), the FTC [released](#) another ANPR soliciting information and comments on a prospective Rule on Unfair or Deceptive Rental Housing Fee Practices. The ANPR is not a surprise – with Chair Ferguson having previewed a forthcoming rule in a [Concurring Statement](#) in connection with the FTC’s settlement with Greystar Real Estate Partners last year.

FTC Relaunches Negative Option Rulemaking with New Questions, New Branding

Eight months after the Eighth Circuit vacated the FTC’s 2024 “Click to Cancel” Rule, the Commission is starting over by issuing a new [Advance Notice of Proposed Rulemaking](#) (“ANPRM”) yesterday that seeks public comment on whether and how to modernize the Negative Option Rule. Comments are due 30 days after publication in the Federal Register. As [we previously discussed here](#), the Eighth Circuit’s decision last July invalidated the revised and expanded rule on procedural grounds (“Vacated Rule”) and reinstated the original 1973 version of the Negative Option Rule, which only

covers prenotification plans.

AG CHRONICLES

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