

Ad Law News and Views - May 2, 2020

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RECENT NEWS

[Apple, Google Must Vet Tracing Apps](#)

Any lawsuits against the companies would likely allege that “they should have the set a standard higher” and known about any vulnerabilities of the apps, said [Alysa Hutnik, chair of Kelley Drye & Warren LLP’s privacy practice](#).

[FTC Sends Warning Letters to Ten MLMs about COVID-related Product and Earnings Claims](#)

Last week, the FTC sent [warning letters](#) to ten multi-level marketing companies alleging that the companies failed to stop their participants from making deceptive product and earnings claims related to COVID-19. The letters request that the companies report within 48 hours what actions they have taken to stop their distributors from claiming their products can treat or prevent COVID-19, that MLM business opportunity participants are likely to earn substantial income, or both.

[The CCPA Non-Discrimination Right, Explained](#)

This post looks at what the non-discrimination right prohibits (and allows), as well as some of the important questions that the statute and draft regulations leave open. Critical practical issues include being able to (1) distinguish between lawful denials of CCPA rights and impermissible discrimination, and (2) justify the magnitude of financial incentives offered in connection with personal information collection, retention, and sale. With about two months before the CCPA’s July 1 enforcement date, it’s important for businesses to confirm how they are addressing this often overlooked right and square away any final adjustments that may be prudent.

[Arbitration of CCPA Claims](#)

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[Earth Day 2020: Fashion Brands Continue Focus on Green Marketing](#)

To celebrate the 50th Anniversary of Earth Day, we looked at the increasingly pressing topic of green marketing in the fashion industry. Recent [studies](#) have shown that environmentally conscious consumers continue to grow in number and demand products that have a reduced effect on the environment. To meet this demand and as part of social responsibility initiatives, fashion brands are increasing “sustainable” practices, recycling materials, upcycling other products, and working to reduce textile waste and environmental harms. As companies look to communicate those efforts to consumers, they must proceed with caution to avoid allegations of “greenwashing” or overstating the environmental benefits.

Receive posts as they happen by subscribing to the [Ad Law Access blog](#) by [email](#) or [RSS feed](#).

ON DEMAND CONTENT

We have pulled together a selection of on demand content that we hope you find useful:

Webinars

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

[Advertising 101 Webinar](#)

Covering the basics of advertising law:

Regulatory Overview

Claim Substantiation and Puffery

Disclosures

Endorsements and Testimonials

Made in USA Claims

Green Guides

Promotions

[Privacy 101 Webinar](#)

Walks through topics such as:

Privacy law 101

Data security and breaches

E-Mail, calls, and text marketing

[Influencer 101 Webinar](#)

Covers the legal issues surrounding social media influencers:

Key legal requirements for influencer campaigns

Notable enforcement actions, and what you can learn from them

Practical tips for managing influencers

Pretty Up: Cosmetics False Advertising Litigation Trends and Marketing Compliance Webinar

Topics include:

Class action litigation trends impacting the personal care products industry from year 2019, and our expectations for year 2020;

Beyond food and beverage: an overview of how key terms such as “healthy,” “natural” and “no preservatives” are being used for personal care products;

Advertising risk migration strategies; and

Other practical takeaways

Our Labor and Employment practice presented a two-part series “Getting Back to Work,” to guide employers through the snares of legal, logistical and practical considerations as the nation returns to work.

Part 1 - Preparations and Considerations for Employers

Part 2 - When the Rubber Hits the Road

PODCASTS:

- [Answering Retailer Questions Related to COVID-19 Issues](#)
- [Update on ATDS Definition Under the TCPA](#)
- [Price Gouging](#)

The Ad Law Access podcast is available now through [Apple](#), [Spotify](#), [Google Podcasts](#), [SoundCloud](#), and [wherever you get your podcasts](#).

ABA SPRING MEETING 2020:

Kelley Drye attorneys took part in the American Bar Association’s Antitrust Section Spring Meeting - this time virtually.

You can rewatch the sessions below:

Briefing with the State Enforcers

State Attorneys General play a crucial role in enforcing state and federal antitrust and consumer

protection laws. Watch partner [Bill MacLeod](#), and other panelists who represent antitrust and consumer protection bureaus from across the country as they discuss recent enforcement activities and the ongoing missions of state enforcement agencies.

What to Expect in FTC CP Enforcement

From record fines to novel theories of harm, the FTC has pursued vigorous consumer protection enforcement under Chairman Simons. View partner [Christie Thompson](#) and other panelists discussing 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.

COVID-19 RESOURCES

In addition to the webinars mentioned above, Kelley Drye is making the following COVID-19 resources available:

KELLEY DRYE'S COVID-19 RESPONSE

Kelley Drye's [COVID-19 Response Resource Center](#) is a dedicated source that provides guidance and addresses questions about legal and business concerns arising from the Coronavirus outbreak. Our priority is to closely monitor and track developments to help you stay informed, so that you can respond to the shifting landscape. To receive Kelley Drye's updates on COVID-19 legal issues, [sign up here](#).

COMMLAW MONITOR

As the COVID-19 pandemic rapidly unfolds, the Federal Communications Commission (FCC) has been active to keep communications services available through various waivers, extensions, and other regulatory relief. Kelley Drye's Communications Practice Group is tracking these actions and what they mean for communications service providers and their customers. [CommLaw Monitor](#) will provide regular updates to its analysis of the latest regulatory and legislative actions impacting your business and the communications industry. Click on the "[COVID-19](#)" blog category for previous updates. If you have any urgent questions, please contact your usual Kelley Drye attorney or any member of the [Communications Practice Group](#).

COVID-19 DAILY WASHINGTON UPDATE

The Washington Update is a daily synopsis of federal government actions related to the COVID-19 pandemic. The synopsis covers actions coming from Congress, the White House and various federal agencies, including the CDC, the Departments of Labor, Health and Human Services, Homeland Security and Treasury/IRS, the Food and Drug Administration and the Federal Trade Commission, among others. You can sign up to receive the daily Washington Update by subscribing to our COVID-19 interest area [here](#). Archived editions of the Washington Update can be found [here](#).

IN CASE YOU MISSED IT

[Supreme Court Confirms Profits Remedy in Trademark Cases is Not](#)

Conditioned on Proof of Willfulness

FTC Delivers \$9.3 M Reminder About Mail Order Rule

Finding Fevers: FDA Relaxes Rules On Temperature-Detecting
Cameras