

# Ad Law News and Views - October 15, 2021

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### **FTC Blankets Companies With Warning Letters Over Endorsements and Reviews**

The FTC sent [warning letters](#) to more than 700 companies recommending that recipients review their practices related to endorsements and reviews to ensure that those practices comply with the law. The warning letters are explicitly meant to serve as a predicate for what could be a sweep of civil penalty investigations of advertisers. In the Commission's announcement of the warning letters, it emphasized that, in the Commission's view, the blanket warning letter to over 700 companies in nearly every industrial sector "puts those businesses on notice that deceptive practices in the future could result in penalties of up to \$43,792 per violation."

### **CPRA Update: California Legislature Makes Technical Changes to CPRA**

Last week, California's Governor Gavin Newsom signed into law [AB 694](#), which makes a few technical changes to the California Privacy Rights Act (CPRA). The relevant changes to the CPRA are summarized below.

As defined in the CPRA, "personal information" does not include publicly available information or lawfully obtained, truthful information that is a matter of public concern. The bill modifies the definition of "publicly available" by removing the apparently superfluous language "or by the consumer."

### **Cracks in the Privacy Wall Between Kids and Teens: Is Teen Privacy Legislation on the Horizon?**

Since Congress enacted the Children's Online Privacy Protection Act (COPPA) in 1998, the regulatory wall between kids and teens has been a remarkably durable one. During all this time, COPPA, the primary U.S. law protecting kids' privacy, has protected children under 13 but hasn't provided any protections for teens. While California's privacy law grants some rights to teens under 16, these protections are narrow (opt-in for data sharing) and only apply within that state. This means that teens are generally treated like adults for purposes of privacy in the U.S.

It's not exactly clear why [COPPA's](#) age 13 cut-off was chosen the first place. First year of teen-hood? Bar Mitzvah age? The age when children become too independent and tech-savvy to let their parents control their media? (Ahem - that happened at age six in my house.) Whatever the reasons for the original choice, age 13 has stuck, even as concerns about teens' privacy and use of social media

have grown, and [Senator Markey](#) and others have repeatedly proposed extending privacy protections to teens.

### **California Imposes New Restrictions on Recyclability Claims**

Last week, California's Governor signed a law that will likely impose significant limitations on companies' abilities to make recyclability claims or use the popular "chasing arrows" symbol in California.

The law states that using a "chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or Recycling Symbol any other symbol or statement" on a product or package to indicate that it is recyclable, "or otherwise directing the consumer to recycle the product or packaging" is deceptive or misleading, unless the product or package is considered recyclable pursuant to specific criteria to be developed by the state's Department of Resources Recycling and Recovery.

### **Pushing the Boundaries of Existing Authority: Section 19 Post-AMG Capital Management**

The Commission, making good on promises to creatively explore all of its options for enforcement, [announced by a 3-2 vote](#) that it had reached a settlement pursuant to Section 19 of the FTC Act with Resident Home LLC and its owner Ran Reske. At issue were allegedly false claims that the company's imported mattresses are made from materials fully manufactured in the United States. As part of the settlement, Resident Home and Reske agreed to pay \$753,000.

### **Hope Emerges at Senate Data Security Hearing - But Will Congress Grab the Brass Ring?**

On October 6, 2021, the Senate Commerce Committee conducted its second in a series of hearings dedicated to consumer privacy and data, this time addressing [Data Security](#). Similar to last week's [privacy hearing](#), the witnesses and Senators appeared to agree that federal data security standards - whether as part of privacy legislation or on their own - are urgently needed. If there were to be consensus around legislative principles, the hearing provides clues about what a compromise might look like.

### **FTC Threatens 70 Colleges with Civil Penalties in Attempt to Resurrect Penalty Offense Authority**

Making good on promises to creatively explore all of its options for enforcement, the FTC yesterday [notified](#) 70 for-profit higher educational institutions that it intends to use its long dormant Penalty Offense Authority to obtain civil penalties when institutions make misrepresentations about their programs and job and earnings prospects. The move closely follows recommendations proposed in a paper authored by Commissioner Rohit Chopra and Bureau of Consumer Protection Director Sam Levine, which we previously discussed [here](#).

### **Soltani Appointed as Inaugural California Privacy Protection Agency Executive Director**

During last month's California Privacy Protection Agency Board (CPPA) meeting, the only substantive [agenda](#) item, addressed in closed session, was a discussion of two key appointments: the first Executive Director and a Chief Privacy Auditor, as required by [CPRA's 1798.199.30](#). On October 4, 2021, the five-person CPPA board announced that they appointed Ashkan Soltani to the Executive Director position. Soltani brings to the table a variety of privacy experiences as a former FTC Chief Technologist, a Senior Advisor to the U.S. Chief of Technology Officer in the White House Office of Science and Technology Policy for the Obama Administration, and one of the architects

behind the CCPA and CPRA.

## Food Industry Litigation and Regulatory Highlights, July - September 2021

If the summer slide and the start of school kept you too busy to follow what's going on in the food scene, we hear you! Catch up on key developments below in this issue of our [Food Industry Litigation and Regulatory Highlights](#).

### NAD Decision Addresses Sustainability Claims

Last week, we [posted](#) about an NAD case involving green claims that Georgia-Pacific made for its Quilted Northern Ultra Soft & Strong Bathroom Tissue. In that post, we examined issues related to how a company substantiates claims about its present achievements and future goals. Today, we'll look at the same case, but focus on issues related to "sustainability" claims (and some broader principles that apply outside the "green" context).

### FTC Chair Khan's Vision for Privacy - and Some Dissents

Last week, we [wrote](#) about FTC Chair Khan's [memo](#) describing her plans to transform the FTC's approach to its work. This week, she followed up with a no-less-ambitious [statement](#) laying out her vision for data privacy and security, which she appended to an agency Report to Congress on Privacy and Security ("report"). Together, these documents outline a remarkably far-reaching plan to tackle today's data privacy and security challenges. As noted in the dissents, however, some of the stated goals may exceed the bounds of the FTC's current legal authority.

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## TOP AD LAW ACCESS BLOG POSTS

A collection of the most read new and old [Ad Law Access](#) blog posts:

- [Six FTC Rules and Guides You Should Know](#)
- [Privacy Law Update: Colorado Privacy Bill Becomes Law: How Does it Stack Up Against California and Virginia?](#)
- [FTC Chair Khan Unveils Her Plans for the Agency...But Leaves a Lot Unsaid](#)
- [Allbirds Faces Lawsuit Over Green Claims](#)
- [Health and Fitness Apps and IoT Technologies Should Take Note: FTC Expands Interpretation of its Health Breach Notification Rule](#)
- [CPRA Update: How to Prepare for Privacy Compliance as an Employer](#)
- [Post-AMG Scorecard \(Updated\): FTC Claims for Monetary Relief in 13\(b\) Actions Dwindle](#)

- [CARU Announces Changes to Guidelines for 2022](#)
- [TCPA Tracker – August 2021](#)
- [Second Circuit Limits Copyright Damages To Those Incurred Within Three Years Prior to Suit](#)
- [eHarmony Agrees to Pay up to \\$2.2 Million to End Auto-Renewal Suit](#)
- [FTC/FDA Cease and Desist Letters to Companies Touting Diabetes Cures: Is the FTC Testing the Limits of Its Civil Penalty Authority?](#)
- [CPRA Update: What is a “Contractor?”](#)
- [Ad Law Access Podcast – Deepfake Best Practices Amid Developing Legal Practices](#)
- [Florida Takes Page Out of TCPA’s Book with New Legislation](#)
- [Seventh Circuit Reminds Insurance Policyholders to Shop Carefully for TCPA Coverage](#)
- [Supreme Court Defines ATDS Under The TCPA](#)
- [Smart \(CA\) TVs Are Listening: California Assembly Passes Voice Recognition Device Bill Headed to Senate](#)
- [Read This Before Scanning A Driver's License In New Jersey](#)
- [The CCPA Non-Discrimination Right, Explained](#)
- [No More Deference for Amazon’s Reference Prices](#)
- [Privacy Litigation Trend: The Latest on Session Replay Lawsuits, and Practical Considerations for Risk Mitigation](#)
- [Fashion Sustainability Claims Can’t Shake Scrutiny](#)
- [Peloton Faces Uphill Ride on “Ever-Growing” Claims](#)
- [Amazon Pays \\$2 Million to Settle Reference Price Allegations](#)
- [Earth Day = Green Guides](#)
- [Deepfake Best Practices Amid Developing Legal Practices](#)
- [FDA Is Still Keeping Up With The Kardashians](#)
- [The Pink Tax: Discrimination or Actual Differentiation?](#)
- [What You Should Know about the FTC’s Mail Order Rule](#)

## **UPCOMING EVENTS**

### **Consumer Litigation Under the California Consumer Privacy Act (CCPA)**

Lexology

October 27, 2021", "Webinar

[Laura VanDruff](#)

Aaron Burstein

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