

DirectConnect - October 2021

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In this issue of Direct Connect, the big news is the FTC making good on its promise to use its [Penalty Offense Authority](#) to make sweeping civil penalty threats to industry. In [this week's notice](#), the FTC purports to put more than 1,100 direct selling companies and others in the gig economy on notice of the potential for civil penalties for eight categories of misrepresentations related to "money-making opportunities" (a previously unused and still undefined term).

The cover letters to industry also reference the notice of Penalty Offense Authority published last week on endorsements and testimonials. From the FTC's perspective, why not? Throwing in the notice on endorsements and testimonials along with the "money-making opportunities" notice opens up the companies on today's list to threats of civil penalties both for misrepresentations related to the business opportunity and endorsements. But as we've discussed extensively here, the FTC's legal authority to use the Penalty Offense Authority to circumvent notice and comment rulemaking and open up civil penalties in this way is far from certain.

Also in this issue of Direct Connect: food and supplement litigation and regulatory highlights, California updates its automatic renewal law, and Rohit Chopra leaves the FTC to head the CFPB.

[Next Up – Earnings Claims: Notice of Penalty Offenses Sent to 1,100 Direct Selling Companies and Others in the Gig Economy](#)

In its third recent Penalty Offense Authority notice, the FTC today [notified](#) more than 1,100 companies offering "money-making opportunities" that it intends to pursue civil penalties of up to \$43,792 per violation for misrepresentations related to potential earnings and related characteristics about the opportunity. [Recipients](#) of the notice include virtually every major direct selling company and others in the gig economy such as Amazon, DoorDash, Lyft, and Uber.

[It Ain't Easy Being Yeezy: California Sues Kanye West's Apparel Brand for Alleged Shipping Delays](#)

As supply chain woes continue, late last week several District Attorneys on behalf of the State of California filed a lawsuit against Kanye West's apparel brand, Yeezy, alleging that the Yeezy companies violated state law because they failed to ship items within thirty days and failed to provide adequate delay notices, or provide an offer of a refund. According to the Complaint, the issues could go back at least four years, preceding the current COVID-related delays. The state seeks civil penalties, restitution, injunctive relief, and attorneys' fees.

[California Updates its Automatic Renewal Law](#)

In 2017, California [updated its automatic renewal law](#) to create some of the strictest requirements in the country. Now, just four years later, the Governor Newsom signed a new law that will impose even stricter requirements.

[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](#).

Chopra Confirmed as Next CFPB Director; Departure Leaves FTC Evenly Divided

The Senate yesterday confirmed current [FTC Commissioner Rohit Chopra](#) as the new Director of the [Consumer Financial Protection Bureau \(CFPB\)](#). The 50-48 vote to confirm was along party lines and followed Vice President Harris's breaking of a 50-50 tie to invoke cloture and end debate on Chopra's nomination.

Resources

Advertising and Privacy Law Resource Center

The Advertising and Marketing and Privacy and Information Security practice groups at Kelley Drye have organized this Advertising and Privacy Law Resource Center to help your company navigate the legal landscape. While this practical site is not exhaustive, it addresses key legal topics relevant to advertising and marketing, privacy, data security, and consumer product safety and labeling. Feel free to contact us to discuss any specific claims, privacy or data security practices, or for any other questions.

Advertising and Privacy Law Desktop Reference Guide

The laws regulating advertising and privacy can seem daunting. The potential for liability arising from inaccurate or misleading advertising or lax privacy practices can be significant, both as a consequence of regulatory enforcement and of litigation. The Advertising & Marketing and Privacy & Information Security practice groups at Kelley Drye & Warren LLP have organized this "Advertising and Privacy Law Desktop Reference Guide" to help your company navigate the legal landscape. While this practical guide is not exhaustive, it addresses key legal topics relevant to advertising and marketing, privacy, data security, and consumer product safety and labeling.

TCPA Tracker

The TCPA (Telephone Consumer Protection Act) Tracker is produced as a collaborative effort between Kelley Drye's [Litigation, Advertising/Privacy](#) and [Communications](#) practices to help you stay current on TCPA (and related) matters, case developments and provide an updated comprehensive summary of TCPA petitions pending before the FCC.