Never Say Never, And Other Lessons from Kanye

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We didn’t comment when Kanye West interrupted Taylor Swift at the MTV Video Music Awards. And we’ve stayed silent during his other controversies. But when Kanye gets sued over false advertising, we can stay silent no longer. (After all, we’ve previously posted about Kim Kardashian’s Ad Law troubles.) This week, a disgruntled fan filed a putative class action accusing Kanye and his business partner Jay Z of fraudulently inducing consumers to subscribe to Tidal, a subscription-based music service owned by the two artists.

Earlier this year, Kanye announced that he would release his long-anticipated album, The Life of Pablo, exclusively on Tidal. In February, Kanye tweeted: “My album will never never never be on Apple. And it will never be for sale… You can only get it on Tidal.” (That’s four “nevers” in 107 characters, if you’re counting.) Fans took this seriously, and rushed to sign up. In just over a month, Tidal’s subscriber base tripled, potentially saving the service from collapse.

Less than two months after Kanye promised the album would never (x4) be available anywhere else, it became available on Apple Music, on Spotify, and on Kanye’s own online marketplace. Many fans became angry that they had signed up for Tidal based on Kanye’s promise, and one of them filed a lawsuit. The complaint alleges that the representations of exclusivity constitute false advertising, and that they have had a “grave impact” on the privacy of the millions of subscribers who were “uniformly tricked” into handing over their private data and credit card information. The complaint asks the court to grant damages, disgorgement of profits, and restitution. In addition, the plaintiff wants Tidal to delete information it has collected from subscribers and to cancel the negative option aspects of outstanding free trials.

It’s too early to tell how this case will turn out, but the issues raised by the complaint aren’t unique to celebrities. We’ve often worked with companies that get excited about the launch of a new product or service, and want to make far-reaching promises. For example, a company may promise that something will always be exclusive, that a feature will always be free, or that some things never change. Think carefully about making these promises because some consumers will take you at your word. If the market changes and you want to go back on your promises, those consumers may not be forgiving.