

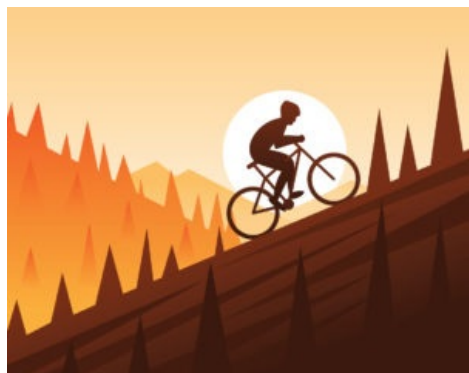
Peloton Faces Uphill Ride on “Ever-Growing” Claims

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Peloton Interactive sells exercise bikes and treadmills that can stream live and on-demand fitness classes. For a while, the company advertised that its library of classes was “ever-growing.” Although that may have been true when the company first made the claim, things changed. In response to a lawsuit related to the music used in some classes, Peloton cut more than half of its content in 2019. Soon after, plaintiffs filed a class action lawsuit against the company, arguing that the “ever-growing” claim was false.

The case is on-going, but the New York court’s recent ruling on Peloton’s motion to dismiss touches on at least two issues



that frequently come up when we talk to clients.

Peloton argued that although it advertised that its library was “ever-growing,” the Terms of Service to which the plaintiffs agreed clearly explained that the company reserved the right to remove content from its library at any time. The court wasn’t sympathetic and relied on a principle that we’ve blogged about before. A consumer who sees an ad shouldn’t be expected to search in other places to learn about important limitations. (Click [here](#) for a different example.)

After dismissing Peloton’s argument that the “ever-growing” claim was puffery, the court considered Peloton’s argument that the claim is true because the company consistently adds new content to its library. In other words, “ever-growing” was a representation about updates, not a representation about the aggregate size of the library. The court didn’t buy it. Looking at the plain meaning of the words, the court determined Peloton arguably communicated a claim about the total size of the library.

We’ll continue to watch this case as it develops but will leave you with two key points for now. First, although language in Terms of Service may protect a company against a breach of contract claim, it’s less likely to offer protection against a false advertising claim. Second, be careful about claims that suggest promises about the future. Those claims could come back to haunt you if things later

change.