Katten

KATTISON AVENUE

Advertising Law Insights From Madison Avenue and Beyond

Spring 2025 | Issue 14

Letter From the Editor

Against the backdrop of many significant developments in the advertising law space, we are thrilled to release the Spring 2025 issue of *Kattison Avenue*. In this edition, you will find updates on the Trump administration's imposition of tariffs on imports and their impact on retailers and consumers, UK efforts to improve online safety for children, recent decisions by the National Advertising Division (NAD) affecting advertisers and influencers, and considerations for businesses using Generative AI (GenAI) in their day-to-day operations.

First, Intellectual Property Partner and Advertising, Marketing and Promotions Co-Chair **Christopher Cole** writes about businesses that rely on tariffed imports that are considering itemizing "tariff-related" costs separately to explain the price hikes to consumers. Chris notes that, while attributing part of the cost to tariffs is not categorically prohibited, calculating and disclosing the precise amount of tariff surcharges will be subject to truth-in-advertising principles such as the California Honest Pricing Law. Then, London Deputy Managing Partner **Terry Green** discusses the United Kingdom's robust efforts to improve online safety for kids and recent guidance that all platforms under the Office of Communications' (Ofcom) Online Safety Act (OSA) must comply with to mitigate children's exposure to harmful content.

Up next, Intellectual Property Associate **Catherine O'Brien** summarizes recent NAD decisions targeting third-party marketing by celebrities and influencers. Katie describes the NAD's recent evaluations, as part of its routine monitoring program, of social media posts by third parties that found unsubstantiated claims or failure to meet disclosure standards, emphasizing that brands must exercise meaningful control over advertising claims that are made on their behalf. Finally, an article by Intellectual Property Partner **Michael Justus** explains that GenAI vendors, models and use cases are not all created equal. He advises companies to complete due diligence before selecting model providers, carefully scrutinize use cases, and implement policies and training that reflect enterprise risk tolerance.

We hope you enjoy reading this issue as much as we enjoyed putting it together. As always, Katten's team is here to answer your advertising law questions, so please don't hesitate to reach out.

Jessica G. Kraver

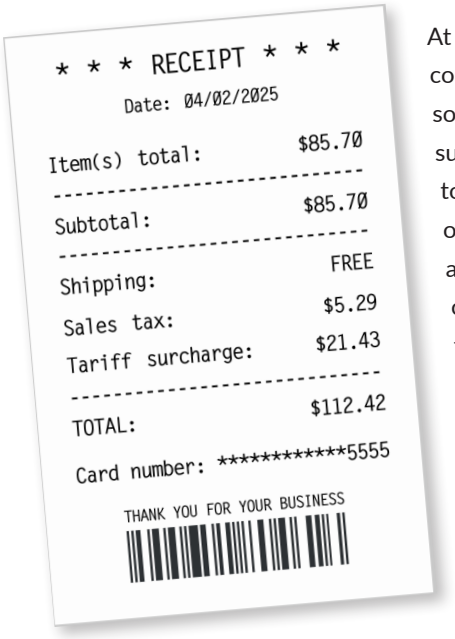
In This Issue

Tips For Companies Crafting Tariff Surcharge Disclosures

By Christopher Cole
Published by *Law360*

As the Trump administration imposes tariffs on imports, businesses that rely on these imports are facing higher costs. In response, they are considering itemizing "tariff-related" costs separately to explain the price hikes to consumers. This approach is intended to prevent the perception that businesses are simply raising prices for profit. By clearly labeling the additional charges as "tariff surcharges," companies hope to avoid accusations of exploiting economic instability to justify price increases.

Attributing part of the cost to "tariffs" is not categorically prohibited, but calculating and disclosing the precise amount of tariff surcharges will be subject to truth-in-advertising principles, including the Federal Trade Commission (FTC) "junk fee" rule and California Honest Pricing Law. This article reviews the requirements regarding disclosures of tariff surcharges.



At the outset, one should consider what labeling something a "tariff surcharge" might imply to a potential consumer of the product. In the abstract, it appears to convey a message that the amount assessed is due to forces outside of the seller's control and is used merely to offset the excess tariff costs that increase the price of the product. Although a seller could merely charge a higher price to include tariff impacts, calling out the line item informs consumers that the higher total price is not for the seller's profit and that the "base" price would be the same if it were not for the imposition of the tariff. In essence, it says, "Don't blame us for the price increase on the same item; blame the tariff." The claim is voluntary. The administration's recent statement regarding the listing of tariff surcharges by retailers could suggest that such surcharges may draw scrutiny from federal regulators.

1. The surcharge must be demonstrably tied to the impact of the tariff

The surcharge amount must be reasonably aligned with the impact of the tariff. For example, if a bucket of bolts is ordinarily $10 at wholesale, but $2 is added to the wholesale cost as a "tariff," a buyer, regulator or potential plaintiff will look for evidence that the tariff adds $2 to the final retail price (i.e., in this example, $12). Most products are marked up from wholesale, and tariffs are based on a percentage of wholesale costs, so calculating the precise effect of the tariff may be tricky. A tariff surcharge is not usually calculated as a percentage of the ordinary retail cost. Moreover, tariffs can be passed through directly or absorbed by the seller in whole or in part. Tariffs can also vary over time and by supplier. So, determining the surcharge amount can be complex.

If your business is investigated or sued, it likely will have to justify that the amount of the tariff surcharge is directly related to the impact of the tariff on the price charged. This leads to a few caveats:

- "Made in USA" items should have no tariff surcharge.
- Tariff surcharges must reflect actual increased costs unless some other calculation is otherwise disclosed; this will impose challenges for retailers who sell items with complex supply chains that can vary over time.
- Unless stated otherwise, some buyers are likely to assume that a tariff surcharge has not been pocketed by the seller but is rather a reflection of increased costs due to some payment having been made to the government for tariffs (more on this below).
- The seller imposing the surcharge will bear the burden of demonstrating that such charges are reasonably related to increased prices they must pay for the ability to resell the item.

2. Calling out a 'tariff surcharge' is a free speech issue

Any seller may choose how much to charge, but a lawsuit and laws underpinning it would likely seek to curtail how that

price increase is described. *See, e.g., Expressions Hair Design v. Schneiderman*, 581 US 37 (2017). The use of the term "tariff surcharge" can be construed as a description of the reason for the charge, not the amount of the charge. Therefore, a plaintiff would likely need to show the description was false or potentially misleading in order to obtain relief.

It would be false if no tariff caused the surcharge. It might be misleading if the fee was not substantially related to the underlying tariff.

3. Honest pricing and junk fee requirements

Under state and federal laws and rules relating to "junk fees," all mandatory fees must be included in any up-front price quote. *See* California "Honest Pricing" Law. SB 478[i] (applies broadly); FTC "Junk Fee Rule"[ii] (applies only to short-term lodging and tickets); *see also* Proposed NY Junk Fee Prevention Act, AB A6663[iii]; Proposed IL Junk Fee Ban Act, SB 1486[iv]. If the business intends to levy a mandatory tariff surcharge, the amount of the tariff surcharge must be included in any up-front price quote, and disclosure should not be reserved until the final buy screen (on the Internet). It is not sufficient to disclose a base price and couple it with a vague disclaimer stating "plus tariff surcharges," assuming that inclusion of those surcharges in the total price is mandatory. Moreover, these surcharges are not, strictly speaking, government fees. In other words, unlike taxes, there is no law that compels their addition to the total bill or separation out as a line item. The seller could choose to "eat" the additional costs (that is, not pass it through), or the seller could simply raise the overall price it charges without labeling any part of the price increase as a tariff surcharge. Disclosing them as tariff surcharges is voluntary.

The specific state price disclosure laws tend to be privately enforceable under state Unfair and Deceptive Acts and Practices (UDAP) laws, thus opening the door to consumer class actions. Where specific laws and rules do not apply, plaintiffs may seek to characterize the fees as unessential and over-compensatory. There have been many complaint filings already seeking to characterize failure to disclose various fees as unlawful or deceptive "drip pricing." Courts will scrutinize the relationship between the asserted surcharge and the government interests asserted to be responsible for the surcharge. *See. e.g., MetroPCS v. Picker*, No. 3:17-cv-05959-SI (N.D. CA. 2018)

4. Regardless of the amount charged, the description should not mislead

No truth-advertising laws or litigation seek to curtail what a private business may charge for its goods or services. However, they all purport to prohibit misleading descriptions of the price charged. In any category impacted by tariffs, there may be an incentive to quote the "tariff-free" price first while disclosing additional tariff costs later to enhance or sustain competitive positioning. This could violate the "junk fee" and Honest Pricing laws and rules described above. Moreover, the description of the reason for the price hike must be supported. In practice, this means that the excess fee must be traceable to actual costs imposed on the seller due to tariffs. One can envision a few traps for the unwary:

- Setting tariff surcharge at the same flat amount across the board on all items sold — regardless of the amount of tariff on individual goods; this may be feasible, subject to an appropriate disclosure.
- Relatedly, describing the surcharge to suggest that the surcharge is being applied to offset the individually increased costs of every item sold; the reality may be that the surcharge applies to all items sold, so purchases of those items that are not actually subject to any tariff subsidize the purchase of other items that are impacted by the tariff.
- The tariff surcharge is too high, such that it overcompensates the seller, resulting in a windfall to the seller.
- The tariff surcharge persists well after the tariff has been removed or changed, again resulting in a windfall to the seller.
- The tariff surcharge is applied to "Made in USA" items.

Conclusion

In the coming months, "tariff surcharges" are likely to appear on bills. Given the current political environment, any company that highlights a tariff surcharge may face heightened scrutiny, which could result in regulatory enforcement and private lawsuits. Therefore, it is important for companies to ensure that any disclosures they make are both accurate and defensible.

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i "Honest Pricing" Law. SB 478

ii FTC "Junk Fee Rule"

iii Proposed NY Junk Fee Prevention Act, AB A6663

iv Proposed IL Junk Fee Ban Act, SB 1486

"Tips For Companies Crafting Tariff Surcharge Disclosures," *Law360*, May 7, 2025.

Byte-Sized Protection:
Keeping Kids Safe Online, One Risk Assessment at a Time

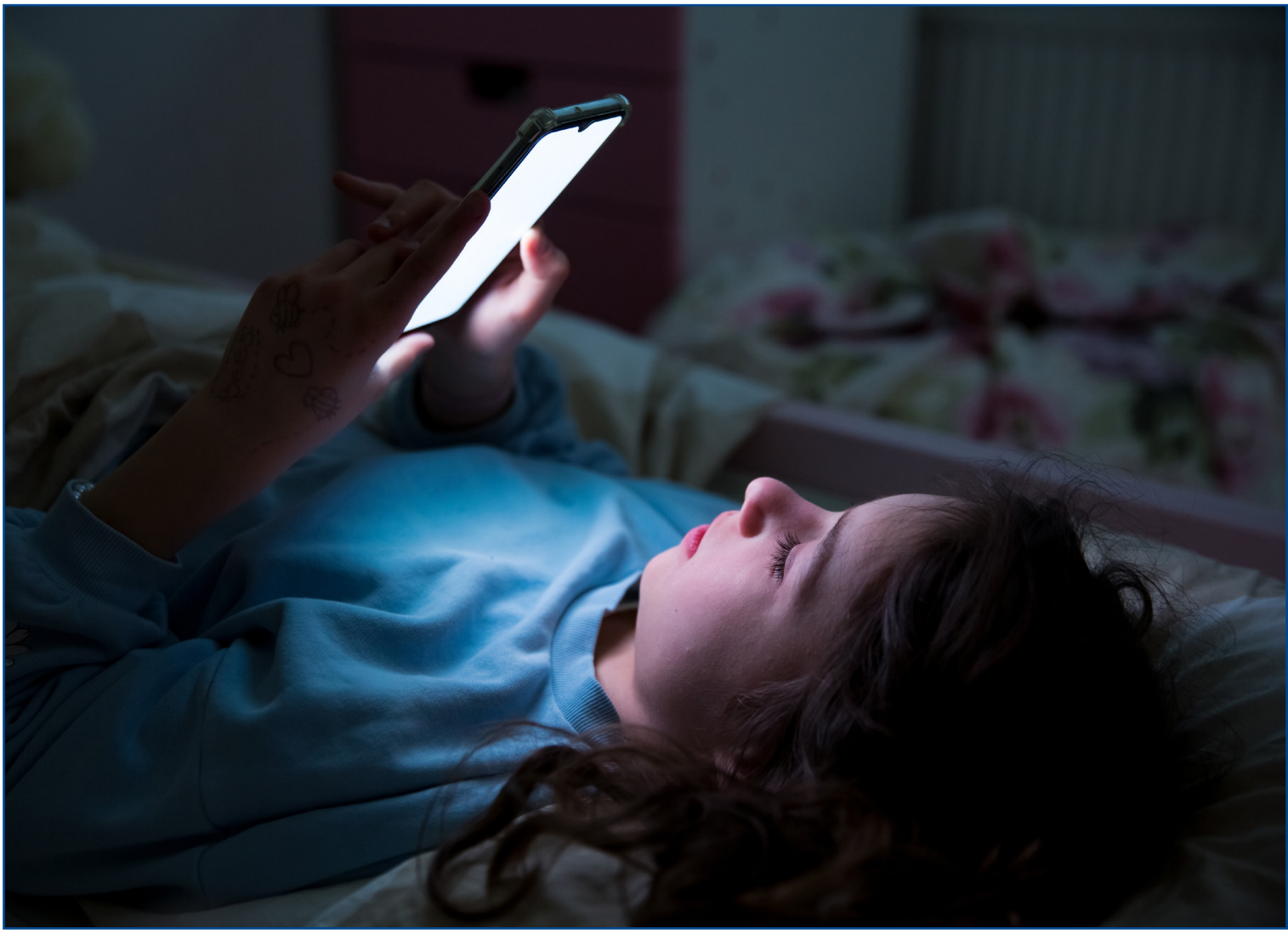
By Terry Green

The protection of children on the internet has been a huge focus in the media lately, from calls by bereaved parents traveling to the United States to calls from the Duke and Duchess of Sussex for more to be done to protect children online.

Last Thursday, April 24, the Office of Communications (Ofcom) published a major policy statement containing six volumes and eight finalized guidance as part of its Phase 2 implementation of the Online Safety Act (OSA) for protecting children from harm online. Given the media coverage and Ofcom's policy statement, the protection of children online is under even greater scrutiny than before.

As part of OSA Phase 1 implementation, Ofcom has shown it is serious regarding its enforcement of platforms' OSA duties. More information can be found in our previous article here.

In this article, which is part of a wider series about the Online Safety Act, we explore what additional measures will be implemented to keep kids safe online.



Access by Children — The Children's Access Assessment (Deadline of April 16, 2025)

From April 16, 2026, ***all*** platforms regulated under the OSA (i.e., platforms anywhere in the world with links to the United Kingdom) are expected to have completed their Children's Access Assessment. Platforms need to assess (***every 12 months*** at a minimum) whether it is likely for children to access their platform, with considerations of:

1. Is it possible for children to normally access the service; ***and***
2. Either:
    a. Are there a significant number of children who are users of the service; ***or***
    b. Is the service of a kind likely to attract a significant number of children?

Satisfying Questions 1 and 2 will result in the outcome that it is ***likely*** for children to access the assessor's platform. Whilst this is relatively easy to complete, it demonstrates the expectation from the OSA and Ofcom for ***all providers*** to consider the impact and risk of access by children on their platform ***even if they provide adult-only content*** (such as pornography). Ofcom has made this clear by citing evidence that children may be attracted to dating and pornography services. Unless platforms have implemented "highly effective age assurance," Ofcom expects the risk assessment to determine that it is ***likely*** for children to access the platform.

Protection of Children — The Children's Risk Assessment (Deadline of July 24, 2025)

The Children's Risk Assessment must be conducted ***every 12 months*** by ***all*** platforms likely to be accessed by children. It categorizes harmful content to children in three categories:

1. **Primary Priority Content (PPC)**: i) pornography; ii) content that encourages, promotes or provides instructions for suicide; iii) content of the same for deliberate self-injury; and iv) content of the same for behaviors associated with an eating disorder (*four types of PPC*).
2. **Priority Content (PC)**: Types of content as outlined by the Ofcom guidance, similar to the 17 priority illegal harms, such as abuse, hate, bullying and violence (*eight types of PC*).
3. **Non-Designated Content (NDC)**: Content that presents material risks of significant harm to children in the United Kingdom, such as body-shaming or body-stigmatizing content, or content promoting depression, hopelessness and despair (*at least two types of NDC as identified by Ofcom*).

Platforms must then conduct a risk assessment on i) the likelihood of a child encountering the harm and; ii) the impact to children from the kind of content, for each of the four PPCs, eight PCs and at least two of the NDCs identified by Ofcom, as well as any additional NDCs identified by the platform.

Non-Designated Content

Identifying and assessing NDC may be challenging as they are non-specific, and Ofcom expects platforms to be able to review their services in depth and to identify NDC. This means platforms cannot rely on Ofcom to outline the risks they need to consider and must identify and assess additional risks unique to their platforms. Platforms are likely to require expert help in assessing these risks.

Platforms are also under an ***obligation to report identified NDC to Ofcom*** here. Whilst there is no specified timeframe for reporting, it is likely that newly identified NDC would have arisen during the most recent Children's Risk Assessment and should be reported accordingly upon conclusion of the risk assessment.

The Children's Risk Assessment and the Illegal Harms Risk Assessment

The Children's Risk Assessment employs the same methodology as the Illegal Harms Risk Assessment in terms of how risk assessments are conducted, which should have been in place for ***all*** platforms from ***March 16, 2025***. Platforms are expected to have evidential input into the risk assessment, such as core inputs of user data and incident reviews, as well as enhanced inputs, such as product testing data and consultations.

The same record-keeping requirements also apply, so the information captured in the Children's Risk Assessment should largely be the same as the Illegal Harms Risk Assessment.

There is an inevitable overlap of the risks considered in the Illegal Harms Risk Assessment and the Children's Risk Assessment. Ofcom still expects a separate risk assessment into the risks and harms, specifically in the context of protecting children online. However, both sets of risk assessments should work alongside each other to outline risks specific to illegal harms and/or the protection of children.

The Protection of Children Code

Similar to the recommended measures of the illegal content code of practice, Ofcom has published 70 recommended measures for user-to-user services and search services to implement following the completion of the Children's Risk Assessment.

T. Schneider/Shutterstock.com

The recommended measures under the Protection of Children Code are broadly similar to the illegal content code, such as requirements for governance and accountability, content moderation, and reporting and complaints.

However, there are additional measures such as age assurance processes and default settings for children. It is expected that the same "comply or explain" approach and the "forbearance period" of up to six months would apply. As such, by ***February 2026***, platforms should have these measures implemented, failing which enforcement penalties of ***fines of up to £18 million*** or ***10 percent of global turnover***, whichever is higher, could apply to those in default.

Next Steps

Our advice is that platforms should use their existing Illegal Harms Risk Assessment to aid construction of their Children's Risk Assessment. Adult content providers who are yet to implement "highly effective age assurance" will have to update their Children's Access Assessment once it is implemented by ***July 2025***, as such, it is unlikely they will need to conduct a Children's Risk Assessment.

Ofcom is consulting on changes to the requirement of blocking and muting user controls as well as disabling comments for services with between 700,000 and 7 million monthly UK users, as opposed to only services with 7 million monthly UK users. The consultation closes on ***July 22, 2025***, and is available here. There is also an existing consultation on the draft guidance for how to protect women and girls online, which closes on ***May 23, 2025***, and is available here.

Phase 2 implementation of the OSA is well and truly underway, with two additional risk assessments and over 70 recommended measures that will add significant obligations to platform providers on top of their duties on illegal harms. The overlap of risks should make it easier for platforms, but considerations should be made to ensure these overlapping risks and assessments complement each other and are consistent.

**Larry Wong, trainee in Katten's London office, contributed to this article.*

Influencers Say the Darndest Things: National Advertising Division Targets Third-Party Marketing in Recent Decisions

By Catherine O'Brien

From world-famous celebrities to teens reviewing products on TikTok, influencers continue to shape consumer perceptions. Recent decisions from the National Advertising Division (NAD) have brought attention to the challenges brands face when working with influencers and third-party advertisers. These cases serve as a reminder that brands must take responsibility for third-party content, ensuring all claims are substantiated, material connections are clearly disclosed and messaging complies with advertising standards.

Fame is not a proxy for disclosure

As part of its routine monitoring program, NAD recently evaluated social media posts by a famous comedian promoting a clothing brand in which he held an ownership stake and a financial services company for which he was a paid endorser. The comedian argued that his 177 million followers were aware of these relationships given his long-standing promotional ties. NAD disagreed, emphasizing that even a well-known figure cannot assume audience familiarity. It further found that hashtags indicating a "partnership," when placed below the fold, failed to meet disclosure standards. NAD reiterated that all material connections must be clearly and conspicuously disclosed — regardless of the endorser's fame.

When teen influencers go rogue

In another routine monitoring case, NAD considered a teen influencer's social media posts about a cosmetic brand's lash serum that included claims such as "naturally grown long lashes" and "this is for the girls who want naturally long lashes." NAD found that these express claims were unsupported. Given the influencer's age, NAD also found that the posts falsely implied the lash serum was safe for young eyes.

- Although the teen influencer was not paid for the post, NAD emphasized that a material connection can still exist when free or discounted products are provided, even if no explicit endorsement is required in return. As a result, NAD advised the brand to ensure clear disclosures of these material connections and recommended removing the unsupported claims from the videos.

Instructing third parties to remove unsubstantiated claims is not enough

In response to a complaint filed by a competitor, NAD evaluated comparative and energy-saving claims made by third-party dealers on behalf of a hot tub manufacturer. The statements, which positioned the brand as a leader in energy-saving technology, were found to be unsupported.

Although the manufacturer argued that it had not authorized the claims and had asked its third-party dealers to remove them, NAD held the company responsible for ensuring the accuracy of advertising made on its behalf. The decision reinforces NAD's expectation that once a company becomes aware of inaccurate or unsubstantiated third-party claims, it must take prompt and effective action to stop their dissemination.

NAD scrutiny can invite class action litigation

At the beginning of the year, NAD reviewed an influencer's posts that used branded hashtags to promote a company's clothing products, which failed to clearly disclose the influencers' material connection to the brand. Even after revisions were made to include a disclosure such as "#gifted," NAD found the language unclear and the placement insufficient, particularly when disclosures appeared below Instagram's "More" button, requiring users to expand the caption to see them. Now, the company is facing a $50 million class action lawsuit alleging its influencers hid paid brand partnerships.

What these decisions mean for the advertising landscapes

These NAD decisions reflect a broader regulatory landscape in which brands are expected to exercise meaningful control over advertising claims made on their behalf. Failure to do so, even with good intentions or unsuccessful corrective efforts, can result in unnecessary exposure. In a fast-paced digital environment where endorsements can travel far and fast, preventative diligence remains the best defense.

Choose Your GenAI Model Providers, Models and Use Cases Wisely

By Michael Justus

Generative AI (GenAI) vendors, models and use cases are not created equal. Model providers must be trusted to handle sensitive data. Models, like tools in a toolbox, may be better suited for some jobs than others. Use cases vary widely in risk.

Due diligence is wise when it comes to selecting GenAI model providers (e.g., tech companies and others offering models) and their models. For example, DeepSeek dominated headlines in early 2025 as a trendy pick for high-performance and lower-cost GenAI models. But not everyone is sold. A number of US states and the federal government are reportedly implementing or considering bans because the models allegedly transfer user data to China, among other concerns.

Before selecting a provider and model, it is important to learn where the provider is located; where data is transferred and stored; where and how the training data was sourced; compliance with the NIST AI risk management framework, ISO/IEC 42001:2023 and other voluntary standards; impact or risk assessments under the EU AI Act, Colorado AI Act and other laws; guardrails and other safety features built into the model; and performance metrics of the model relative to planned use

cases. This information may be learned from the "model card" and other documentation for each model, conversations with the provider and other research. Additionally, the contractual terms governing the provider relationship and model usage are critical. Key issues include intellectual property (IP) ownership, confidentiality and data protection, cybersecurity, liability, reps and warranties, and indemnification.

Once the appropriate provider and model are selected, the job is not done. Use cases must also be scrutinized. Even if a particular GenAI model is approved for general use, ***what it is used for*** still matters significantly. It may be relatively low risk to use an AI model for one purpose (e.g., summarizing documents), but the risk may increase for another purpose (e.g., autonomous resume screening). Companies should calibrate their risk tolerance for AI use cases, leaning on a cross-functional AI advisory committee. Use cases should be vetted to mitigate risks including loss of IP ownership, loss of confidentiality, hallucination and inaccuracies in outputs, IP infringement, non-unique outputs, and biased and discriminatory outputs and outcomes. If employees are already using GenAI in an ad hoc manner before a formal governance framework is implemented, identify such use through the advisory committee and other outreach, and prioritize higher-risk use cases for review and potential action.

Once enterprise risk tolerance is calibrated, AI usage policies and employee training should be rolled out. The policy and training should articulate which models and use cases are (and are not) permitted and explain the "why" behind the decisions to help contextualize important risks for employees. Policies should consider both existing laws and voluntary frameworks like NIST and ISO/IEC, and should remain living documents subject to regular review and revision as the legal and technological landscapes continue evolving rapidly. Employee training is not only a good idea but may also be a legal mandate, e.g., under the "AI literacy" requirement of the EU AI Act for companies doing business in the European Union.

Bottom line: all businesses and their employees will soon be using GenAI in day-to-day operations, if they are not already. To mitigate risk, carefully select your vendors, models and use cases, and implement policies and training that reflect enterprise risk tolerance.

Recognitions

Managing Intellectual Property 2025 Americas Awards Honor Katten and Karen Artz Ash

In its 2025 Americas Awards, *Managing Intellectual Property* ranked Katten as the Firm of the Year – Trademark Disputes in the US Midwest region, and individually recognized New York Intellectual Property (IP) Partner and National Co-Chair of our Trademark/Copyright/Privacy Group **Karen Artz Ash** as Practitioner of the Year in the category of Trademark Prosecution.

In addition, IP Partners **Kristin J. Achterhof**, Advertising, Marketing and Promotions co-chair, and **Deepro Mukerjee**, IP Department chair, were both finalists for Litigator of the Year, with Kristin being named in Illinois and Deepro being named in New York. Kristin accepted Katten's award on the firm's behalf at an April 24 ceremony in New York, where the Americas Awards winners were revealed and celebrated.

Read the article.

Katten IP Practice Receives Acclaim in *World Trademark Review 1000*, 2025

World Trademark Review recognized Katten and nine of the firm's IP attorneys, as well as Chairman Emeritus Roger Furey, in the 2025 edition of *WTR 1000 – The World's Leading Trademark Professionals*, a research directory that identifies the leading trademark practitioners and firms in key jurisdictions worldwide.

WTR 1000 recognized the firm nationally as well as regionally in Illinois, New York and Washington, DC. The individually ranked Katten attorneys include IP Partners **Kristin J. Achterhof**, **Jessica Kraver**, **Karen Artz Ash** and **Floyd Mandell**, national co-chairs of our Trademark/Copyright/Privacy Group, **Bret Danow, Michael Justus**, **Terence Ross**, and **Nathan Smith**, along with IP Counsel **Carolyn Passen** and Litigation Partner and Deputy General Counsel **David Halberstadter**.

Read the article.

News to Know

Law360 Quotes Michael Justus on Key Copyright Case Regarding AI Training and Fair Use

On February 12, a Delaware federal court rejected ROSS Intelligence Inc.'s fair use defense for using copyrighted material to train its artificial intelligence (AI) program in the bellwether AI copyright case, *Thomson Reuters Enterprise Centre GmbH et al. v. ROSS Intelligence Inc*. **Michael Justus**, head of Katten's firmwide AI Working Group, was quoted by *Law360* on the ruling, which is regarded as potentially influential in ongoing disputes over AI training as it relates to key issues in the fair use analysis such as market impact and transformative use.

The ruling held, under the fourth fair use factor, that there was a potential market to license data from Thomson Reuters' Westlaw platform for AI training, which weighed against fair use. Mike commented that this aspect could be influential for future cases. "There's been highly publicized deals where some rights holders have chosen to license materials for AI training," he said. "So this is an argument you're going to see every plaintiff make — that in their particular industry, whatever that may be, they or someone else is either already licensing data for AI training or has the potential to do so."

Read the article.

UK-Based Graffiti Artists Sue Vivienne Westwood in California for Misuse of Their Tags

In this article, **David Halberstadter** and Commercial Litigation Associate **Asena Baran** discuss a lawsuit against Vivienne Westwood and retailers of the brand, brought by UK-based graffiti and street artists Cole Smith, Reece Deardon and Harry Matthews, for the fashion house's allegedly unauthorized use of their tags "to lend credibility and an air of urban cool" to its apparel. The artists, known professionally as DISA, SNOK and RENNEE, respectively, argue that their tags are, like their name or signature, "deeply personal and determinative of their identity." In turn, they claim that Vivienne Westwood's use of their tags falsely represents their endorsement of the fashion house to the consumer and causes "the world to think that they are corporate sellouts, willing to trade their artistic independence, legacy and credibility for a quick buck."

Read the article.

Online Advertisements Found to Monetize Piracy and Child Pornography

This article by **Christopher Cole** discusses reports from ad fraud researchers that have purportedly found evidence that online ads for mainstream brands have appeared on websites dedicated to the display and sharing of child pornography, while some others have appeared on sites that facilitate sharing of video content. There is little doubt that major brands whose ads may have appeared on such sites were unaware of this and, moreover, this is not a victimless crime — monies generated from misspent digital advertising can be used to fund terrorism, human trafficking and other criminal activity. This should be of keen interest to all advertisers, particularly public companies.

Read the article.

Financial Industry Concerns Cause FCC to Delay Implementation of Broad Consent Revocation Requirement under TCPA

In this article, Litigation Partner **Ted Huffman** discusses a controversial new rule by the Federal Communications Commission (FCC), set to take effect on April 11, to modify consent revocation requirements under the Telephone Consumer Protection Act (TCPA). But each of the rule's mandates, as codified at 47 CFR § 64.1200(a)(10), did not go into effect on that date. Just four days before, the FCC issued an Order delaying the rule's requirement that callers must "treat a request to revoke consent made by a called party in response to one type of message as applicable to all future robocalls and robotexts . . . on unrelated matters." The plain language of the rule states that consumers may use "any reasonable method" to revoke consent to autodialed or prerecorded calls and texts, and that such requests must be honored "within a reasonable time not to exceed ten business days." The rule also delineates certain "per se" reasonable methods by which consumers may revoke consent.

Read the article.

US House of Representatives Pass the Take It Down Act

This article by Privacy, Data and Cybersecurity Partner and Co-Privacy Officer **Trisha Sircar** delves into S.146, the Take It Down Act, which the US House of Representatives voted 409- 2 to pass on April 28. The bill aims to stop the misuse of Artificial Intelligence (AI) created illicit imagery and Deepfake Abuse, and will be enforced by the Federal Trade Commission (FTC). The bill requires online platforms to remove nonconsensual intimate imagery (NCII) within 48 hours of a request and also makes it illegal for a person to "knowingly publish" authentic or synthetic NCII, outlining separate penalties for when the image depicts an adult or a minor.

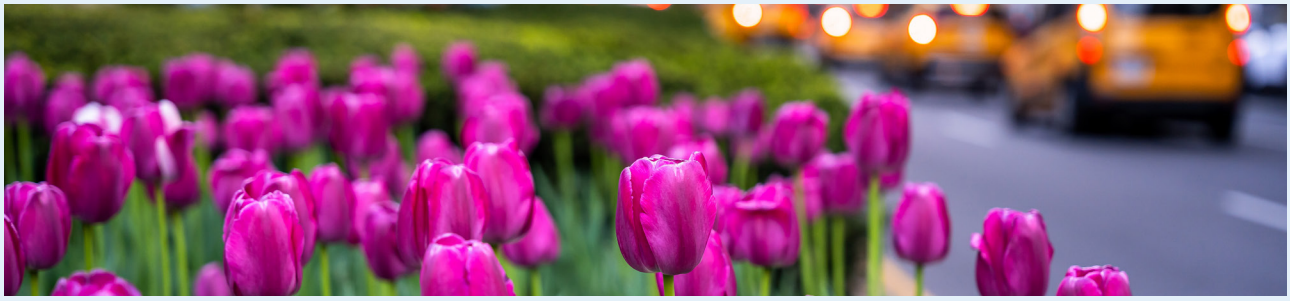
Read the article.

Events

ANA Advertising Law 1-Day Conference

On March 26, Katten hosted the Association of National Advertisers (ANA) Advertising Law 1-Day Conference, with several Katten attorneys serving as speakers. Advertising, Marketing and Promotions Partner and Co-Chair **Christopher Cole** and **Jessica Kraver** presented during "What to Expect From the FTC Under the New Administration," a panel about the consumer protection priorities of the FTC under the second Trump administration. Then, **Kristin Achterhof** and Appeals and Critical Motions Partner **Timothy Gray** presented "Recent Developments in Advertising Law: Trends and Key Decisions," which explored recent court decisions and developing legal trends affecting advertisers, brands and agencies. Additionally, **Michael Justus** spoke on the "AI as Co-Creator: Legal Updates and Compliance Strategies" session, covering litigation and regulatory updates regarding AI and GenAI as it relates to advertising and creative industries.

Read more about the event.



Katten's Advertising, Marketing & Promotions Practice

Katten represents advertisers, advertising and promotions agencies, technology developers, content producers, and media and entertainment companies, in reimagining the connection to consumers. From clearance, privacy and regulatory obligations to smooth product launches and brand integration, we address concerns in a variety areas, including: ad, marketing and promotional programs; agency-client relationships; branded entertainment; contests and sweepstakes; internet distribution; licensing and vendor agreements; litigation (comparative and false advertising, First Amendment issues, Lanham Act, unfair competition laws, etc.); privacy and data security; talent and production agreements; user-generated content; and sponsorships.

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