

A Cheat Sheet from the National Advertising Division Conference 2024

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Earlier this week we met up in lower Manhattan with friends, colleagues and many news faces at the 2024 National Advertising Division (“NAD”) conference. As always, it was great to see and hear from experienced practitioners, the NAD attorneys as well as representatives from the Federal Trade Commission on hot topics in advertising ranging from green washing to privacy and dark patterns to subscriptions. If you didn’t make it this year, we prepared a quick cheat sheet to keep you informed:

Artificial Intelligence – AI is now part of daily life and so it is not shocking the NAD attorneys and the FTC representatives spent a good amount time discussing the legal implications of this emerging technology. If we learned nothing else from the conference this year, we learned that the FTC is spending time learning and thinking about AI. In particular, we heard that the FTC is looking into platform AI tools and we should expect

to hear some statements on those in the coming months. FTC Commissioner Melissa Holyoak talked about targeted enforcement actions instead of sweeping rules as the agency grapples with the complexities of the technology and the many, many ways in which businesses are applying AI. The agency seems concerned that AI can and has been used to perpetrate fraud (we have already seen some FTC enforcement on this front). At the same time, it also knows that AI is here to stay and can be used in very beneficial ways (think how voice cloning helps those unable to speak). Samuel Levine, Director of the Bureau of Consumer Protection at the FTC also spoke about the enforcement action against Rite Aid, which concluded with a stipulated order prohibiting the company from using facial recognition technology for security or surveillance for five years to settle charges that the retailer failed to implement reasonable procedures to prevent harm to consumers in its use of AI technology in its stores.

Consumers Reviews – Consumer reviews have been a hot topic at the NAD conference for a number of years now. You'd think it would cool off. Not that case this year because the FTC accounted its Final Rule Banning Fake Reviews and Testimonials just a few months ago. The rule is effective October 21, 2024. Violations of the rule will allow the FTC to seek civil penalties of up to \$51,744 per violation as well as other relief. One of the most interesting parts of the rule relates to review suppression and how companies can legally withhold reviews based on certain criteria.

Influencers – We got to hear from Emese Gormely, a real live content creator and podcast host. She told her tales from the front lines of Instagram and sponsored content. We also heard from a panel of legal experts on current trends in influencer marketing. The controversial topic of platform disclosure tools reared its head and we saw first-hand how *some* platforms have disclosures tools that may look clear and conspicuous on their own platforms, but when you share the content to other platforms, those disclosures disappear, rendering the tools completely ineffective. Also, disclosures that leave us guessing at the sponsor's identity are probably ineffective. In addition, the panel discussed how sometimes content paid for by brands featuring influencers still needs disclosure even it is shared on the brand's social media feed.

Until next time...