

Highlights From the 2025 ANA Masters of Advertising Law Conference

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Katten attended the 2025 ANA Masters of Advertising Law Conference in Chicago from November 3-5. The conference highlighted how fast the advertising and consumer protection landscape is evolving. States are taking divergent approaches, artificial intelligence (AI) is reshaping production and compliance risk, and familiar areas like subscriptions, influencer marketing and loyalty programs remain enforcement priorities. Below are the themes that shaped this year's discussions.

AI in Advertising

AI now influences the full spectrum of advertising creation, distribution and measurement, from creative development and production workflows to targeting and analytics. As these tools become part of everyday campaign work, contracting and production norms need to evolve to reflect how AI actually shapes deliverables.

- *Modernizing representations and warranties*: It is often difficult or impossible to make accurate representations of originality in AI-assisted deliverables, so boilerplate language that assumes full ownership of outputs may not hold up. Instead, tailor warranties and intellectual property (IP) terms to reflect how the AI tools were trained and what third-party rights or licenses may apply. Expect narrower reps, more tailored indemnities and clearer diligence expectations to replace broad, absolute assurances.
- *New expectations around digital replicas and synthetic performers*: AI now touches every stage of advertising, from content generation to performance analytics, and regulators are catching up fast. For production, SAG-AFTRA's new Commercials Contract sets boundaries between "digital replicas," which require performer consent and compensation, as well as "synthetic performers," which trigger union fund payments. Talent agreements should track these categories and reflect where collective bargaining obligations may preempt state law.

- *Embracing agentic AI while managing operational risk*: Generative and agentic AI are increasingly embedded across the campaign lifecycle to drive production efficiency, cost reduction and speed to market. Regulators, however, are pushing for more transparency, particularly when AI materially affects access, price or consumer choice.

Federal Trade Commission (FTC) Enforcement Priorities

FTC Commissioner Melissa Holyoak discussed where she expects enforcement to focus in the year ahead, highlighting three main areas of focus:

- *Advertising to children and teens*: Protecting minors online remains a top priority. She reiterated the central role of the Children's Online Privacy Protection Act (COPPA), which regulates services directed to children under 13 and to general audience platforms with actual knowledge they are collecting personal data from children. Commissioner Holyoak also noted the FTC's particular interest in obtaining verifiable parental consent for collecting children's data under COPPA.
- *Made in USA claims*: Commissioner Holyoak underscored continued enforcement of the Made in USA Labeling Rule, which requires that products advertised as "Made in USA" (without qualifiers) be "all or virtually all" made in the United States, including final assembly, significant processing and components. She also noted that such enforcement advances both consumer protection and competition objectives.
- *Pricing transparency*: Commissioner Holyoak stressed the importance of clear, upfront pricing and candid presentation of fees. While the Commission recognizes that subscription models and add-on services can provide consumer benefits, it will crack down on deceptive conduct, such as hiding fees or making cancellation unreasonably difficult. Holyoak emphasized that Restore Online Shoppers' Confidence Act (ROSCA) enforcement also remains a focus, noting the significant consumer impact of problematic subscription practices, including unexpected sign-ups and cancellation processes that are overly burdensome.

State Regulation: Moving Past a California-First Strategy

For years, brands could design to California's high standards and market-leading regulation and assume compliance in other states. With an increasing patchwork of state laws, that approach may no longer be sufficient.

- *Pricing and Promotions*: Several states now require up-front, all-in pricing for products and services, including Massachusetts. New York's algorithmic pricing law requires clear disclosure when personal data influences the price a consumer sees. Washington's Commercial Electronic

Mail Act prohibits misleading subject lines in marketing emails, meaning "limited time" or "free" offers must be accurate and substantiated.

- *Digital Replicas and Synthetic Performers*: For talent agreements, revisit rights-of-publicity language to address digital replicas and synthetic performers, including requirements under New York's Digital Replicas Act, which regulates contracts for the creation and use of digital replicas, and New York's Fashion Workers Act, which prohibits the use of a model's likeness in AI-generated content without consent.

Familiar Hot Topics That Still Drive Risk

Several long-standing compliance areas remain active, with steady regulatory attention and litigation.

- *Gamified promotions and "sweeps casinos"*: "Social casino" and "sweeps casino" models, where players purchase tokens to play games or earn sweepstakes entries, are receiving heightened scrutiny. If reward points can be redeemed for items with monetary value, the program likely requires an alternate method of entry and precise disclosures. Some states, including California, have already banned sweeps casinos altogether. Marketers should audit game mechanics, redemption paths and the availability of an alternate method of entry, and treat any feature with monetary equivalence as higher risk.
- *Auto-renewals and negative-option programs*: Auto-renewal laws remain a focus for regulators. Before collecting payment, companies must obtain express affirmative consent to renewal terms, ideally through a separate checkbox or signature line. Post-purchase, customers should receive an acknowledgment containing the renewal terms and clear cancellation instructions. Some states require notice when a promotional offer expires and before recurring charges are processed or material changes take effect.

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