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What Advertisers Need to Know From the 2026 ANA Advertising Law 1-Day Conference

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On April 23, Katten's New York office hosted the 2026 ANA Advertising Law 1-Day Conference, bringing together in-house counsel, marketing and advertising professionals, and industry leaders to discuss the legal and regulatory developments reshaping advertising and consumer protection law. This year's discussions reflected a common theme: regulators are moving aggressively to keep pace with rapidly evolving technology, shifting political priorities, and increasingly sophisticated marketing practices. Below are the themes from this year's conference that advertisers should pay attention to.

FTC Enforcement: Privacy, Children's Safety and Dark Patterns

Speakers described the Federal Trade Commission's (FTC) recently released 2026–2030 strategic plan as largely consistent with prior priorities. However, they noted continued robust enforcement activity in areas including privacy, online reviews, subscription marketing and deceptive digital design practices.

- ***Privacy disclosures and consent mechanisms remain under scrutiny*:** Speakers emphasized that the FTC continues to view privacy enforcement as a core consumer protection priority, particularly where companies collect, share or monetize sensitive consumer data without clear disclosures or meaningful consent. Recent enforcement actions signal that companies should carefully evaluate whether privacy policies adequately describe third-party data sharing practices and whether consent flows for geolocation and behavioral tracking are sufficiently conspicuous and specific.
- ***FTC enforcement under the Consumer Review Rule is taking shape*:** The Consumer Review Rule (effective October 2024) prohibits deceptive review practices, including reviews generated by artificial intelligence (AI). In December 2025, the FTC sent warning letters to 10 companies regarding their review practices based on consumer complaints and corporate disclosures.

Businesses should expect heightened scrutiny of review generation practices, particularly where automated tools or incentives may affect the authenticity of consumer feedback.

- ***Dark patterns continue to be a major enforcement and monetary exposure risk*:** Recent FTC actions demonstrate the agency's willingness to pursue substantial monetary remedies where user interfaces allegedly manipulate consumer decision-making or obscure material terms. In December 2025, a grocery delivery app agreed to pay $60 million in refunds for falsely advertising free delivery while charging service fees, offering a "satisfaction guarantee" that only provided credit, using dark patterns to enroll consumers in a subscription service and restricting refund options.

FDA Enforcement, MAHA and the Expanding Scrutiny of Health and Ingredient Claims

Evolving Food and Drug Administration (FDA) enforcement priorities and broader political attention on food, wellness and ingredient transparency are reshaping advertising risk across multiple industries.

- ***Compounded GLP-1 products remain under significant scrutiny*:** The compounded GLP-1 market expanded rapidly during federal drug shortages that temporarily permitted 503A and 503B compounding pharmacies to produce versions of branded drugs despite exclusivity protections. After the FDA determined in October 2024 and February 2025 that shortages of tirzepatide and semaglutide, respectively, had resolved, many companies continued marketing compounded products, with some pivoting to "salt forms" (e.g., semaglutide sodium) or adding vitamin B-12 to invoke patient-specific exceptions. The FDA's April 2026 guidance rejected these workarounds, imposing a four-prescription monthly limit for essential copies, eliminating the personalized-products loophole and clarifying that cost is not a recognized clinical need for compounding.
- ***Weight-loss supplement and wellness product claims present heightened risk*:** FDA is actively scrutinizing supplements and wellness products that attempt to capitalize on consumer demand for GLP-1 drugs through claims that products "work like Ozempic," or "activate" or "support" the body's natural GLP-1 response. The FDA views these types of representations as implied disease or drug claims that may cause products marketed as supplements to be regulated as unapproved drugs. Careful claim substantiation and marketing review are critical in this area, and advertisers were cautioned that a supplement may be classified as an FDA-regulated drug based on the product's claimed intended use as expressed through labeling and advertising.
- ***MAHA is increasing pressure on food additives and ingredient disclosures*:** The "Make America Healthy Again" initiative is creating significant political and regulatory pressure for the FDA to take a more aggressive approach to food additives and ultra-processed foods. The FDA has increasingly relied on the Delaney Clause as a basis for action against additives linked to

cancer risk, including revoking authorization for Red Dye No. 3, removing brominated vegetable oil from approved use, and initiating proceedings involving Citrus Red No. 2 and Orange B. HHS Secretary Robert F. Kennedy Jr. has further directed the FDA to explore reforms to the self-determined Generally Recognized as Safe (GRAS) process, which could meaningfully expand FDA oversight by requiring manufacturers to submit ingredient safety determinations for agency review.

Local Regulators Are Filling the Federal Gap

With the Consumer Financial Protection Bureau (CFPB) rolling back federal oversight, local regulators are stepping in aggressively. The conference keynote by Michael Tiger, General Counsel of the New York City Department of Consumer and Worker Protection, underscored that consumer protection is central to municipal affordability agendas. New York City is pursuing enforcement on junk fees, hotel pricing transparency, predatory debt collection (through its SHIELD program) and a proposed municipal click-to-cancel rule. Litigation activity is also picking up at the local level, with enforcement actions targeting late fees and junk fees imposed by companies doing business in the city.

AI in Advertising

While companies continue integrating AI tools into day-to-day marketing functions at an accelerated pace, speakers noted that the legal and regulatory landscape remains fragmented and continues to struggle to keep pace with the technology.

- ***Internal AI governance is non-negotiable*:** Companies should adopt clear internal policies governing how employees may use generative AI (GenAI) tools, including guardrails around confidential information, consumer data, approvals and permissible use cases. The discussion emphasized that effective policies should facilitate compliant AI use rather than simply prohibiting adoption.
- ***Maintain meaningful human oversight over AI-generated content and decision-making***: Keeping a "human in the loop" remains critical, particularly for advertising claims, consumer-facing content and higher-risk business decisions, because AI outputs may be inaccurate or misleading. AI-generated content may also infringe pre-existing works or implicate personality and publicity rights, making standard IP clearance and legal review processes just as important for AI-assisted campaigns as for traditionally created content.
- ***Independently substantiate AI-generated claims and maintain supporting documentation*:** Companies were encouraged to maintain evidence supporting AI-generated advertising claims and avoid relying solely on AI outputs or vendor representations, as regulators are unlikely to treat AI use as a defense where claims are deceptive or unsupported.

- ***Ensure appropriate labeling, transparency and disclosure practices*:** AI-generated content and AI-enabled data practices may trigger disclosure obligations under evolving US, UK and EU regulatory frameworks, particularly where consumer targeting, personalization or synthetic content is involved.

Sustainability, Greenwashing and "Made in USA" Claims Face Mounting Litigation

Advertising litigation risk comes from multiple directions — the FTC, competitors via the Lanham Act, consumer class actions and the National Advertising Division — and speakers urged brands to pick their battles wisely.

- ***"Made in USA" claims remain highly vulnerable to challenge*:** "Made in USA" claims continue to face strict scrutiny under the FTC's demanding "all or virtually all" standard. Speakers emphasized that courts remain focused on the potential for consumer confusion regarding product sourcing, even where certain ingredients or components are widely understood within the industry to be unavailable from domestic suppliers at commercial scale, such as coffee beans or cocoa. The discussion highlighted that the practical necessity of foreign sourcing does not eliminate litigation risk where consumers could nevertheless interpret unqualified origin claims to mean all significant inputs are sourced domestically. Brands were encouraged to conduct rigorous supply chain audits, understand the origin of all raw materials and intermediate ingredients and use appropriately qualified claims, such as “Assembled in USA with Foreign and Domestic Components,” where full domestic sourcing cannot be achieved.
- ***Qualified sustainability claims provide stronger defenses against greenwashing challenges*:** Recent litigation highlights the distinction courts are increasingly drawing between narrowly framed certification claims and broader environmental benefit messaging. For example, an Illinois federal court found that "certified sustainable" claims were literally true where the products had in fact received the referenced certification, even though plaintiffs challenged the environmental practices underlying the certification process. At the same time, however, the court allowed broader "good for the environment" claims to proceed, finding that consumers could interpret those statements as independent representations about the products' environmental impact rather than mere puffery. The decision highlights the comparatively lower risk associated with narrowly framed certification claims and the heightened scrutiny applied to broader unqualified environmental benefit messaging.
- ***Enforcement decisions should account for reputational and amplification risks*:** Speakers emphasized that brands should carefully evaluate whether pursuing litigation or aggressive enforcement efforts will meaningfully protect the business or instead amplify criticism and create negative public perception. Factors such as the audience size, social media reach and visibility

of the opposing party may influence whether enforcement efforts are strategically worthwhile or risk portraying the company as a "bully."

Legal Trends in Sports Marketing: Sponsorships and Endorsements

Sports sponsorships and athlete endorsements continue to represent a significant marketing channel for advertisers seeking to leverage emotional fan connections and achieve targeted demographic reach. However, these arrangements carry distinct legal complexities that counsel must navigate carefully.

- ***Collegiate name, image and likeness (NIL) deals present unique compliance and control risks*:** Unlike traditional professional athlete endorsement arrangements, collegiate NIL deals often involve overlapping authority among universities, NIL collectives and the athletes themselves. Universities may control institutional marks and negotiate NIL agreements directly with athletes, while collectives aggregate player rights and athletes retain the ability to enter into independent arrangements. State laws and school policies may further restrict certain product categories, prohibit use of school intellectual property such as logos and colors, bar on-campus filming or require disclosure of agreements to the institution. Speakers also highlighted increased scrutiny through the National Collegiate Athletic Association's (NCAA) NILGo portal, which evaluates whether compensation reflects fair market value rather than impermissible "pay for play" arrangements, and has rejected deals involving collectives lacking legitimate commercial operations or attempts to "warehouse" athlete NIL rights for undefined future use.
- ***Force majeure provisions remain important negotiation points after COVID-era disruptions*:** The pandemic fundamentally reshaped how sponsors and teams approach nonperformance risk, particularly where games proceeded without fans or sponsorship inventory became partially unavailable. Speakers noted that modern force majeure clauses now commonly address whether sponsorship payments continue during disruptions, when termination rights arise, and how substitute benefits or refunds should be calculated where contracted entitlements cannot be delivered. Related provisions governing make-good rights, valuation methodologies and dispute resolution mechanisms have become increasingly important as parties attempt to allocate economic risk more predictably.

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