Katten

KATTISON AVENUE

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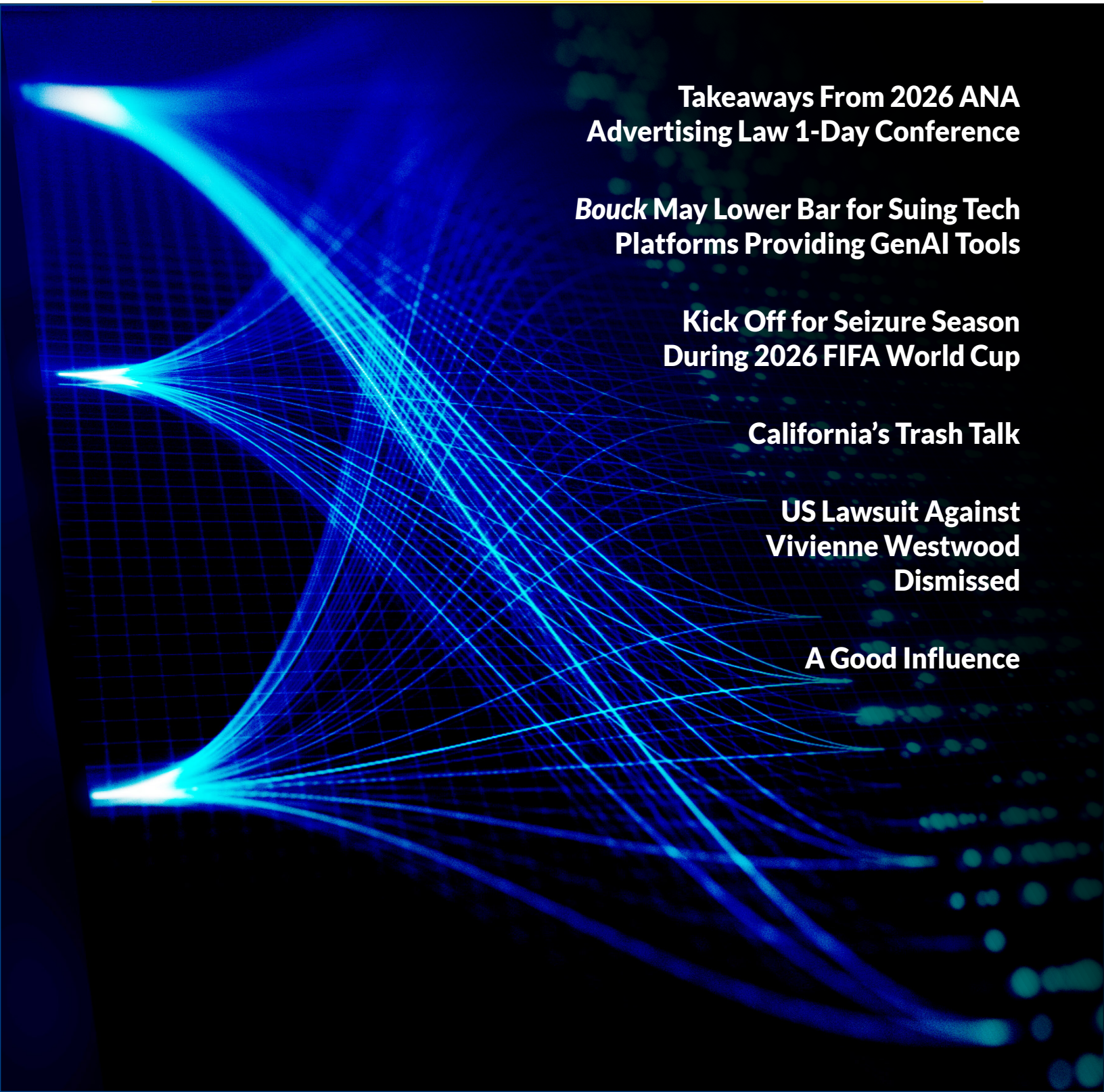
Advertising Law Insights From Madison Avenue and Beyond



Letter From the Editor

This spring, advertising trends are blooming across digital platforms, influencer partnerships and generative artificial intelligence (GenAI), and regulators are watching closely. The Spring 2026 issue of *Kattison Avenue* opens with Intellectual Property Associate Katie O'Brien recounting key takeaways and considerations for advertisers from this year's Katten-hosted ANA Advertising Law 1-Day Conference, which revolved around a common theme: regulators are moving aggressively to keep pace with rapidly evolving technology, shifting political priorities and increasingly sophisticated marketing practices.

Next, Commercial Litigation Associate Asena Baran delves into a recent decision from the Central District of California that may narrow Section 230 protections for tech platforms using GenAI tools to create unlawful advertising, potentially exposing them to direct liability for illegal or false content. Then, with the 2026 FIFA World Cup fast approaching, Advertising and Brand Litigation Associate Matthew Messina explains how trademark owners can use targeted, venue-specific "Schedule A" litigation to combat counterfeit merchandise while navigating courts' increasing scrutiny of broad online enforcement tactics.

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Outside Counsel Cynthia Martens follows with an update on California's new textile and apparel Extended Producer Responsibility (EPR) law, its registration requirements and the July 1 deadline for producers, despite pending industry litigation. After, we hear again from Asena, along with Financial Markets and Funds Associate Alexander Kim and Litigation Partner and Deputy General Counsel David Halberstadter, who share the outcome of a lawsuit that we've previously reported on against Vivienne Westwood by three UK-based graffiti artists. Finally, Cynthia tells us about a new project of the BBB National Programs' Center for Industry Self-Regulation, the Institute for Responsible Influence, which has introduced a certification program for influencers that drills down on disclosure requirements and other legal fundamentals with the aim of increasing consumer trust.

Thank you, as always, to our readers, and we hope that you enjoy this edition of our newsletter. If you have advertising law questions, please don't hesitate to reach out to me or Katten's Advertising and Brand Litigation team.

Jessica G. Kraver

In This Issue

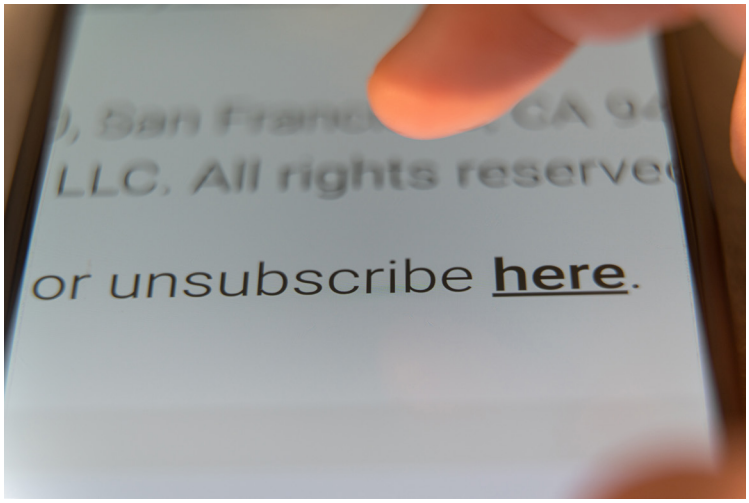
What Advertisers Need to Know From the 2026 ANA Advertising Law 1-Day Conference

By Katie O'Brien

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:** The 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.

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- **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.

Bouck Could Make It Easier to Sue Tech Companies That Provide Generative AI Tools to Advertisers on Their Platforms



By Asena Baran, Alexander Kim and David Halberstadter

According to industry leaders, the future of advertising will be generated by artificial intelligence (AI) and sponsored by tech companies.[1] For advertisers and social media platforms that serve them, the recent decision out of the Central District of California in *Bouck v. Meta Platforms, Inc.*, Case No. 25-cv-05194-RS, 2026 U.S. Dist. LEXIS 62626, *2-3 (C.D. Cal. Mar. 24, 2026), carries potential practical implications. Most significantly, Section 230 of the Communications Decency Act may no longer shield social media platforms from liability for advertising content produced by the platforms' generative AI (GenAI) tools, if other courts follow suit and treat such outputs as the platforms' own creations rather than third-party content. This shift matters because being deemed the "creator" of unlawful advertising, rather than a "material contributor," can expose a platform to direct claims, including Lanham Act false advertising claims.

Prior to the *Bouck* decision, Section 230 would generally shield a company that provides so-called "interactive computer services" (e.g., services that provide access to the internet) from liability for AI-powered advertising on their platforms.[2] Section 230 prevents such a tech company from being treated as the "publisher or speaker" of third-party content published on its platform, unless the company is "responsible, in whole or in part, for the creation or development" of the content.[3] In line with Congress's policy "to promote the continued development of the Internet,"[4] California courts have confirmed that social media companies are not liable for the "creation or development" of unlawful advertising published by third parties on their platforms, and possess Section 230 immunity if their AI tools merely maximize engagement with advertisements.[5] An AI tool that suggests the inclusion of viewership-enhancing elements (such as keywords) in the published content but leaves the selection of those elements to the user, or provides for "algorithmic amplification" to target certain audiences, is "content neutral," even if the company providing the tool knows that the third parties are using it to promote unlawful content.[6] This makes sense because the AI tool functions the same way regardless of whether an advertiser uses it for an unlawful purpose.

EDITORIAL RECREATION OF A MOCK ADVERTISEMENT - FOR ILLUSTRATIVE PURPOSES ONLY.

By the same logic, a social media platform should be immune to liability under Section 230, even if the AI tool offered to advertisers on its platform uses a GenAI model. The content created using GenAI depends on user input, and a GenAI tool functions the same way regardless of whether the content prompted by the user has an unlawful purpose.[7] Nevertheless, in *Bouck*, the court found that Section 230 did not bar claims against Meta Platforms, Inc. (Meta) arising from a third-party investment scam on Meta's platforms where the plaintiffs alleged that scammers used Meta's GenAI tools to help create the fraudulent advertisements.[8]

Accepting the plaintiffs' allegations as true, the court concluded that Section 230 would not shield Meta from liability if Meta's AI tools "literally *generat[ed]*, using artificial intelligence, the [fraudulent] images and text in the advertisements."[9] Underlining this reasoning by way of example, the court observed that if the scammers prompted Meta's AI tool to generate "an ad promising astronomical weekly investment returns," and if the AI "generated a slew of ads saying just that *and* new ads with language like 'Tired of living paycheck to paycheck? Break the cycle and start earning steady weekly income with our proven system,'" the scammers "did not come up with that (patently fraudulent) language; ***it was all Meta***."[10] Meaning, even if Meta's AI tool generates many versions of an advertisement that a user may choose from, any version that includes text or images selected entirely by the algorithm, with only "inspiration from the scammers" (i.e., not explicitly requested by the user's prompt), is — as the plaintiffs allege — the literal creation of Meta's AI tool.[11]

The court's conclusion that plaintiffs plausibly alleged that content generated using Meta's AI tools can be "the creation of Meta" is unprecedented.[12] Prior to the *Bouck* decision, no court in the Ninth Circuit allowed a claim to proceed on the theory that a social media platform may be liable as the "creator" of unlawful advertising generated through its AI tool by a third party. In fact, the court could have denied Meta immunity under Section 230 simply on the basis that plaintiffs plausibly alleged Meta "materially contributed to the creation of the ads" generated through its AI tool, rather than concluding that the allegations supported treating the advertisements as Meta's own creation.[13]

The distinction between liability for material contribution to the creation and liability as the creator is monumental: "material contribution to the creation" sounds in aiding and abetting liability; "creation" begets direct liability. Whereas liability for aiding and abetting requires a plaintiff to prove that a defendant acted with knowledge or intent to further the underlying violation of law,[14] depending on the cause of action, direct liability may be imposed without a further showing of knowledge or intent. For example, "intent is not a required element of a Lanham Act false advertising claim,"[15] but to establish that a social media platform aided and abetted a violation of the Lanham Act by materially contributing to the creation of false advertising, a plaintiff would still need to show that the platform knew its AI tool was being used for false advertising. This is not easy to do and would likely require showing that the platform had knowledge beyond what could be derived by processing the generated content through a routine review process.[16] But to establish that a social media platform directly violated the Lanham Act as the "creator" of false advertising, a plaintiff would only need to show that the platform provided the AI tool that generated the ad. In effect, as mentioned above, *Bouck* could make it easier to sue tech companies that provide GenAI tools to advertisers on their platforms.

Importantly, *Bouck* is a ruling at the motion to dismiss stage — the court accepted the plaintiffs' allegations as true and did not make any factual findings on the merits. Still, by allowing claims to survive dismissal on the theory that a platform's GenAI tools can make it a "creator" of unlawful content, *Bouck* may lower the barrier for plaintiffs to initiate lawsuits against social media platforms and proceed to discovery, potentially impacting the business of AI-generated advertising. But the decision is not binding and may never be affirmed by the Ninth Circuit, and other appellate circuits might never follow suit. It may simply reflect an increasing wariness about the AI boom and a desire to hold internet service providers liable for unchecked technological advancement. Still, social media companies should beware.

[1] *See* Vincent Kilbride, *AI Is Turning the Ad Business Upside Down*, The Economist (Jun. 18, 2025), https://www.economist.com/business/2025/06/18/ai-is-turning-the-ad-business-upside-down ("For brands placing ads, "AI has the most potential to improve business outcomes that they've seen in the last 20 years," believes Sean Downey, president for the Americas at Google."); Mike Haddad, *AI Needs Regulation, but What Kind, and How Much?*, The Economist (Apr. 20, 2024), https://www.economist.com/schools-brief/2024/08/20/ai-needs-regulation-but-what-kind-and-how-much? ("Lawmakers worry that overly strict regulation could stifle innovation in a field where America is a world leader; they also fear that regulation could allow China to pull ahead in AI research.").

[2] 47 U.S.C. § 230(f)(2)

[3] *Id.* at §§ 230(c)(1), 230(f)(3).

[4] *Id.* at § 230(b)(1).

[5] *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1196–97 (N.D. Cal. 2009); *Suddeth v. Meta Platforms, Inc.*, Case No. 25-cv-08581-RS, 2026 U.S. Dist. LEXIS 62629, *4–9 (C.D. Cal. Mar. 24, 2026).

[6] *Id.*

[7] *See* Laurie Harris, *Generative Artificial Intelligence: Overview, Issues, and Considerations for Congress*, Library of Congress (Apr. 2, 20205), https://www.congress.gov/crs-product/IF12426

[8] *See* 2026 U.S. Dist. LEXIS 62626 at *2–3.

[9] *Id.* at *9 (emphasis in original).

[10] *Id.* at *13 (emphasis in original and added).

[11] *Id.* at *12–14 (citing Carafano v. Metrosplash.com, Inc., 339 F. 3d 1119, 1124 (9th Cir. 2003)).

[12] *Id.* at *14.

[13] *See Forrest v. Meta Platforms, Inc.*, 737 F. Supp. 3d 808, 818 (N.D. Cal. 2024); *see also Bouck*, 2026 U.S. Dist. LEXIS 62626 at *10 (finding averments that Meta's AI tools generated the text and images used in the ads "are stronger" than averments that Meta's tools "optimiz[ed] the appearance of an ad to drive engagement" as in *Forrest*).

[14] *See, e.g., Rosemond v. United States*, 572 U.S. 65, 75–76 (2014); *U.S. S.E.C. v. Fehn*, 97 F.3d 1276, 1288 (9th Cir. 1996).

[15] *POM Wonderful LLC v. Purely Juice, Inc.*, 362 Fed. Appx. 577, 579 (9th Cir. 2009).

[16] *See Bouck*, 2026 U.S. Dist. LEXIS 62626 at *17.

The 2026 FIFA World Cup: Kick Off for Seizure Season 2026

By Matthew Messina

Kick-off of the FIFA World Cup 2026™ is almost here. The 2026 tournament marks the first time three nations will jointly host soccer's most significant event, with the United States hosting for the second time, alongside North American neighbors Mexico and Canada. Over the course of six weeks, the United States will host 78 matches across 11 cities from coast to coast.

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The tournament will culminate in New Jersey at MetLife Stadium in East Rutherford. At each match, in each city and outside each venue, you can expect to meet counterfeit merchandiser John Doe, ready to sell counterfeit World Cup merchandise to any willing purchaser on their way into and out of the stadium.

Trademark owners looking to enforce their rights and protect their brands, from the International Federation of Association Football (FIFA) to national federations to sponsors, have powerful enforcement tools at their disposal, but none more powerful and immediate than the "Schedule A" litigation scheme. However, courts have become increasingly skeptical of Schedule A litigation, and are making rulings and imposing standing orders systematically limiting the scheme's reach. This summer's World Cup is an opportunity for mark owners to use the Schedule A tool as it was originally intended, targeting John Doe outside venues. For trademark and brand owners, the work should begin well before any complaint is filed, with counsel investigating potential sellers, collecting evidence of contacts with the forum, documenting John Doe and his agents, purchasing samples of infringing merchandise, preparing witness affidavits and shaping any requested relief around the relevant geography, timing and upcoming matches.

For the last fifteen years, at least, mark owners have been employing a creative combination of Federal Rule of Civil Procedure 65 and the Trademark Counterfeiting Act of 1984 to counteract bootlegging, and seize and restrain ongoing sales of counterfeit merchandise. Typically, the complaint names "John Does 1–100, Jane Does 1–100, and XYZ Company" as defendants, attaching a sealed list of defendants as "Schedule A." This mechanism combines five unusual, often disfavored, litigation tactics: 1) emergency proceedings, 2) *ex parte* seizure orders, 3) seizure without deprivation hearings, 4) Doe defendants, and 5) nationwide restraining orders. Merchandisers and brand owners see this strategy as one of the only ways to effectively stem the flood of illegal, bootleg merchandise by sellers who are not easily identifiable and who may not be susceptible to normal service of process and litigation practices.

Last summer, dubbed the Summer Concert (Seizure) Season, artists and promoters were denied nationwide temporary restraining orders (TRO) against John Doe ***before*** summer tours began, amid increasing judicial skepticism of the Schedule A scheme. From this, we learned that more narrowly tailored enforcement methods were necessary. Hypothetical injury and conclusory allegations based on past experiences were not enough to pass judicial scrutiny. To successfully obtain a TRO,

targeted, venue-specific relief obtained ***after*** tours began and injury was "concrete and ongoing" was necessary. Specificity and certainty are key, even if the offenders are unidentified John Does.

District of New Jersey: A New Hotbed for Schedule A Litigation

With the World Cup Final taking place in New Jersey, a jurisdiction that is no stranger to Schedule A litigation, John Doe is sure to be outside MetLife Stadium for the match.

Historically, the Northern District of Illinois has been the favored jurisdiction for filing Schedule A cases, with the court even offering a "Schedule A Template" on its website. However, the last year has shown judges in the Northern District of Illinois are growing increasingly skeptical of the Schedule A litigation model, with one judge pausing his Schedule A docket and another openly challenging plaintiffs' generalized allegations and joinder practices. On March 9, the Seventh Circuit issued a ruling rejecting personal jurisdiction in a Schedule A case based solely on website screenshots, reinforcing limits on the theory that a seller's willingness to ship to Illinois, without proof of actual sales, is sufficient to establish jurisdiction. *See Liu v. Monthly*, 170 F.4th 1090 (7th Cir. 2026).

With the game changing in Illinois, plaintiffs have altered their pattern of play, instead filing cases in New Jersey.

In September 2025, District of New Jersey Chief District Judge Renee Marie Bumb issued Standing Order 2025-4 (Order) in response to the "uptick" in Schedule A cases filed in the jurisdiction. The Order sets a strict set of rules to curb abuse of the Schedule A scheme, striking a balance that lays out a mechanism for mark owners to utilize the Schedule A scheme with boundaries, while curbing due process concerns.

Judge Bumb's Order puts personal jurisdiction at the forefront of the inquiry, with the main concern being the targeting of large swaths of online sellers. Judge Bumb reasons, "[t]he law is well-settled that simply being an online seller on Amazon isn't enough … [a] plaintiff cannot create personal jurisdiction by ordering a

product to be shipped to the forum." Failure to comply with the Order will result in dismissal with prejudice.

First, to satisfy Federal Rule 20 and permissive joinder under the Order, each complaint must consist of a single defendant or group of defendants acting under the same operator, with separate filing fees paid for each separate complaint.

Second, the Order requires litigants to plausibly plead personal jurisdiction, including contacts with the forum if specific jurisdiction is invoked. As a refresher, *general* jurisdiction applies when a defendant is "at home" in the forum state. For a defendant to be subject to *specific* jurisdiction under the Due Process Clause, three requirements must be met: (1) the defendant's contacts with the forum state show the defendant purposefully availed themself of the privilege of conducting business in the forum state or purposefully directed their activities at the state (i.e., made sales in the state); (ii) the plaintiff's alleged injury must have arisen out of the defendant's forum-related activities; and (iii) the exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice. *See, e.g.*, *Liu*, 170 F.4th at 1093.

Third, the Order is clear that the court will not allow plaintiffs to deviate from traditional and typical service requirements, as more lenient courts have allowed in the past. Under the Order, a particularized defendant and case-specific showing must be made before any form of alternate service is authorized by the court. In other words, personal service is the default, as with almost all other cases filed in federal court.

Fourth, the court will not automatically grant *ex parte* TRO motions. Plaintiffs will be required to show, at a minimum, that personal jurisdiction exists as to each defendant.

Fifth, the court is unlikely to seal any filings, considering the basis for such requests is typically driven by the *ex parte* TRO motions disfavored by the Order. In the past, Schedule A plaintiffs have succeeded in sealing the list of defendants, and often even the entire complaint, citing concern that the defendants will dissipate assets or destroy evidence. The District of New Jersey

is one of many courts across the country that have come to particularly disfavor this aspect of the Schedule A scheme.

Sixth, any complaint filed must be accompanied by a declaration from counsel, identifying: any pending cases brought by the plaintiff(s) against any of the named defendants prior to this suit, the case number(s), whether the intellectual property at issue is the same, and the status and disposition of the other case(s) (e.g., pending, settlement, dismissal or other disposition).

Judge Bumb's concerns are clearly tied to the targeting of online sellers and insufficient contacts with the forum state. However, when it comes to John Doe's physical presence outside of MetLife Stadium, counterfeit merchandise in hand, the equation changes.

Merch Traffic, LLC v. John Doe: The Boss Wins in New Jersey

A recent case shows that when mark owners follow the lessons of last summer and pursue in-person bootleg merchandisers after a tour has commenced, injunctive relief is still attainable, even in the District of New Jersey.

On April 9, Plaintiff Merch Traffic, LLC filed suit against Doe defendants in the District of New Jersey, seeking a preliminary injunction against bootleg merchandisers selling counterfeit Bruce Springsteen tour merchandise. On April 13, US District Judge for the District of New Jersey Evelyn Padin granted a preliminary injunction and seizure order, authorizing law enforcement to confiscate bootleg Bruce Springsteen merchandise outside venues on Springsteen's tour. Critically, Plaintiff Merch Traffic, LLC filed the complaint after the tour and the defendants' infringing activities had begun. Judge Padin's Order barred defendants and their agents from using the mark "Bruce Springsteen & the E Street Band" on or in connection with the sale, manufacturing or distribution of any clothing or other merchandise bearing the mark. Further, the Order allowed law enforcement to seize and impound infringing merchandise. The Order also set specific boundaries for the relief granted, with seizure permitted within a four-mile radius of the venues, from four hours before to four hours after a performance. Law enforcement was ordered to serve a copy of the Order, together with the complaint, at the time of seizure. Defendants served were permitted to object and move for relief within 10 days of seizure.

The successes of Springsteen this summer and Phish last summer indicate that obtaining a seizure and restraining order for defined tour dates across the country is possible where the motion is made after the tour begins, once John Doe is present, and the injury is concrete and ongoing.

Applying Summer Concert Lessons to the World Cup

Against the backdrop of mounting judicial skepticism toward the online Schedule A model and New Jersey's reformed procedural landscape, the World Cup creates the conditions for the Schedule A enforcement tool to return to its original purpose.

Like summer concert tours, the World Cup will invite massive physical-venue counterfeiting opportunities, as opposed to online counterfeiting. John Doe, as an in-person seller, is identifiable (or at least locatable), present in the jurisdiction and engaged in conduct the court can observe. The Springsteen case should serve as a template for mark owners with stakes in the World Cup — seek targeted, venue-specific relief with a cognizable geographic and temporal scope. The deficiencies with the online Schedule A scheme that Judge Bumb's Order seeks to target are addressed under this in-person model. Personal jurisdiction problems fall away when defendants are physically operating in the forum; joinder problems fail to materialize when a plaintiff targets sellers at the same event; and service of process is not subject to heightened scrutiny when sellers are personally served by law enforcement at the time of seizure.

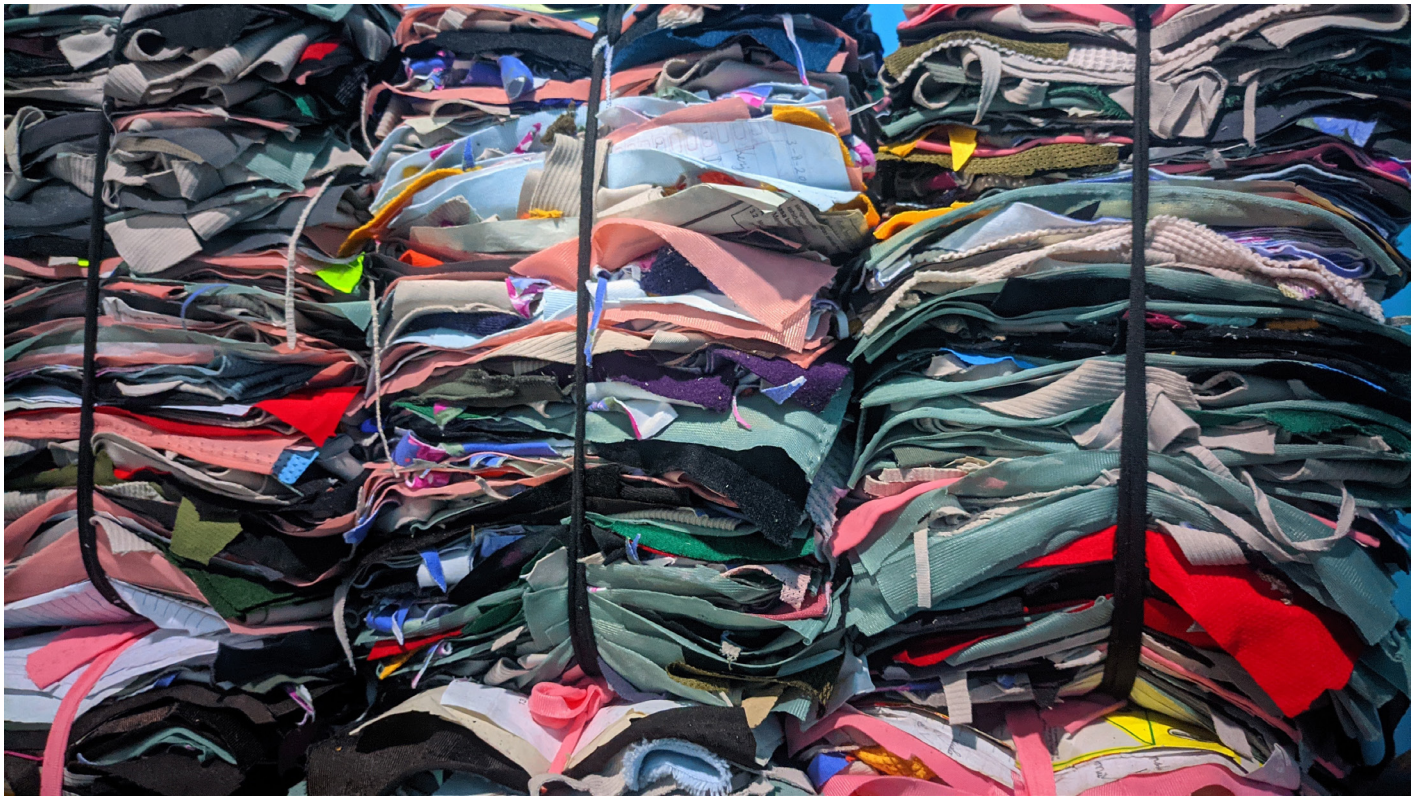
The World Cup thus offers mark owners an opportunity to obtain *ex parte* seizure relief within proper procedural constraints. That is, if practitioners prepare accordingly by investing in pre-suit investigation and collecting evidence of contacts with the forum, setting the stage for personal jurisdiction and later compliance with Rule 11. Upon filing of complaints, specificity and particularized facts collected during the investigative period are critical. Litigants should request relief tailored to the harm, with geographic and temporal limitations, specifically identifying the upcoming matches and their locations.

The World Cup has the potential to generate a wave of physical-venue enforcement cases that may restore some judicial goodwill toward the Schedule A scheme, with the first match on US soil being USA v. Paraguay at SoFi Stadium (referred to by FIFA as Los Angeles Stadium) in Inglewood, CA. The Schedule A model of enforcement has rapidly transformed over the last 15 years, opening a Pandora's Box of procedural shortcuts. Courts around the country have made clear that enough is enough. This summer, mark owners who embrace transparency, proportionality and specificity may find courts are more likely to grant relief than throw up a red card.

California's Trash Talk

The registration deadline for apparel and textile producers under the state's new Extended Producer Responsibility (EPR) law is July 1, 2026.

By Cynthia Martens



Under the Responsible Textile Recovery Act of 2024, which aims to make textile and apparel producers responsible for the cost of consumer textile and apparel waste, all producers of covered products in California must register with the state-selected Producer Responsibility Organization (PRO) by July 1. The PRO is responsible for overseeing textile waste collection, implementing appropriate waste management and processing infrastructure, and representing members before regulatory authorities, among other activities.

The law contains sweeping definitions of apparel and textiles; the sale of a covered product is deemed to occur in California if the product is delivered to the consumer in the state.

For many fashion businesses, compliance with the new law requires a careful analysis of the cascading definition of "producer." Specifically, the law defines as "producer" any "person who manufactures a covered product and who owns or is the licensee of the brand or trademark under which that covered product is sold, offered for sale, or distributed for sale in or into the state." If there is no such person in California, then the producer "is the owner of a brand or trademark or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the covered product is sold, imported for sale, offered for sale, or distributed for sale in or into the state, regardless of whether the trademark is registered." In the absence of a brand owner or exclusive licensee in California, the producer "is the person that imports the covered product into the state for sale or distribution," and, failing that, the producer is the "distributor, retailer, or wholesaler who sells the product in or into the state."

The law provides a carve-out for entities (including affiliates) with under $1 million in annual global turnover and for exclusive sellers of secondhand apparel or textiles, while allowing any producer identified within the definition to assume producer responsibility, thereby "relieving from those duties and liabilities any other person who manufactures, distributes, imports, offers for sale, or sells the covered product." Fashion businesses, therefore, may need to revisit their licensing and distribution agreements to explicitly assign producer responsibility to one entity along the California supply chain.

Each year, the California Department of Resources Recycle and Recovery (CalRecycle) will post a list of compliant producers, detailing the reported brands of covered products for each. Retailers, importers, distributors and online marketplace providers are tasked with monitoring the list of compliant producers and are prohibited from selling, distributing, offering for sale or importing a covered product into California, "unless the producer of the covered product is listed as in compliance pursuant to this section for that brand and covered product."

Civil penalties for noncompliance are stiff: CalRecycle can impose sanctions of $10,000 per day for violations of any provision of the law, or as much as $50,000 per day for intentional or knowing violations. In assessing civil penalties, CalRecycle will consider factors such as the nature and extent of a violation, the economic effect of the penalty, the violator's good faith attempts at compliance, the willfulness of the noncompliance and the deterrent effect of a penalty.

CalRecycle selected Landbell USA as the PRO earlier this year — other candidates were the Circular Textile Alliance and the Textile Renewal Alliance. Landbell USA is the US subsidiary of the German Landbell Group, which helps global businesses comply with environmental regulations.

In late March, the American Apparel & Footwear Association (AAFA), a trade organization that counts over 1,100 members, filed a petition in Sacramento County Superior Court, asserting that CalRecycle's designated PRO fails to meet statutory requirements and seeking a preliminary injunction. Specifically, the AAFA asserts that Landbell USA, as the subsidiary of a foreign for-profit entity, is not truly a US nonprofit organization and is not formed by producers.

A hearing is slated for August 7, but in the interim, producers remain subject to the law's registration deadline.

UK-Based Graffiti Artists Dismiss Their US Lawsuit Against Vivienne Westwood


By David Halberstadter and Asena Baran

We have previously reported on the lawsuit that UK-based graffiti artists Cole Smith, Reece Deardon and Harry Matthews filed against Vivienne Westwood and retailers of the brand for the British fashion house's allegedly unauthorized use of their tags "to lend credibility and an air of urban cool" to its apparel. *Smith v. Vivienne Westwood, Inc.*, Case No. 2:25-cv-01221 (C.D. Cal. Filed 02/12/25)

The plaintiffs, known professionally as DISA, SNOK and RENNEE, respectively, claimed that Vivienne Westwood used images of their graffiti to adorn items of clothing without permission. In our previous reporting, we raised a number of key questions about the viability of the plaintiffs' claims, including whether the artwork, which likely was not commissioned by the owners of the buildings on which it appeared, would be considered illegal and therefore not protectible under US law.

On April 30, the plaintiffs and Vivienne Westwood jointly filed a stipulation to dismiss the entire action with prejudice, with each of the parties bearing its own attorneys' fees and costs. The court filing is silent as to whether the dismissal was part of a more comprehensive settlement agreement, whether any money changed hands or whether the fashion house agreed to discontinue its sales of the offending apparel. In any event, so ends the most recent dispute between so-called "street artists" and retailers that lies at the intersection of graffiti, fashion and advertising.

Robert Way/Shutterstock.com

A Good Influence

The Better Business Bureau (BBB) has launched a new institute to help digital content creators comply with Federal Trade Commission (FTC) guidelines and marketing best practices.

By Cynthia Martens

The Institute for Responsible Influence (IRI), a new project of BBB National Programs' Center for Industry Self-Regulation, has introduced a certification program for influencers, encouraging them to increase consumer trust by drilling down on disclosure requirements and other legal fundamentals. The IRI encourages brands and agencies to use the new certification "as a vetting tool for partnerships to ensure they are working with creators who have been trained in responsible best practices for influencer marketing."

The 90-minute training program, open to (adult- and human-only!) creators at $100 per person, consists of 11 interactive modules that coach participants on the FTC Endorsement Guides, intellectual property basics and best practices in the advertising industry. After completing the ungraded modules, participants are asked to take a 25-question final assessment, with a passing score of 80 percent required for certification. However, creators can retake the assessment as many times as necessary.

Once certification is complete and influencers have signed the IRI's Best Practices Pledge, they receive email instructions regarding acceptance of a Responsible Influence Certification seal from Credly.

The IRI is also developing a searchable roster of certified creators, promising extra visibility as well as access to networking opportunities, workshops and professional support. "We will assist by monitoring your content for alignment with the best practices you agreed to when completing your certification," the IRI notes. "When we identify posts that do not align with those best practices, we will reach out to offer guidance on how to correct or update the content."

The FTC monitors social media platforms for misleading promotional posts and fake product reviews as well, issuing warning letters and reminding recipients of the risk of substantial civil penalties for noncompliance with federal advertising guidelines.

Recognitions

Katten IP Practice Ranked by *World Trademark Review 1000*

Eight Katten attorneys and four practice areas were recognized in the 2026 edition of *World Trademark Review (WTR) 1000: the World's Leading Trademark Professionals*, including Advertising and Brand Litigation Co-Chair **Kristin J. Achterhof** (Enforcement and Litigation), Trademark/Copyright/Privacy Co-Chairs **Karen Artz Ash** (Prosecution and Strategy) and **Floyd Mandell** (Enforcement and Litigation), Litigation Partner and Deputy General Counsel **David Halberstadter** (Enforcement and Litigation), Intellectual Property Partners **Bret Danow**, **Jessica Kraver** and **Nathan Smith** (all in the category of Prosecution and Strategy), and Counsel **Carolyn Passen** (Enforcement and Litigation). *WTR 1000* identifies the top trademark professionals in key jurisdictions around the globe.

Read the full article here.

Katten Partners Named Notable Women in Law in Chicago

In March, **Kristin J. Achterhof** was honored on the *Crain's Chicago Business* list of Notable Women in Law. The distinction celebrates senior-level women attorneys in Chicago who are making an impact in their practices, firms and the legal community. This honor follows a long list of industry accolades for Kristin, including being named a 2025 finalist for Litigator of the Year in Illinois by *Managing Intellectual Property (Managing IP)* and listed among its "Trade Mark Stars." Throughout her career, Kristin has been honored as one of *Managing IP*'s Top 250 Women in IP and recognized for her work by *Chambers USA*, *The Best Lawyers in America*, The Legal 500 United States as a Leading Partner, and Super Lawyers, with an appearance on the Top 50: Women Illinois Super Lawyers list.

Read the full article here.

News to Know

EPR Compliance: Your Questions Answered

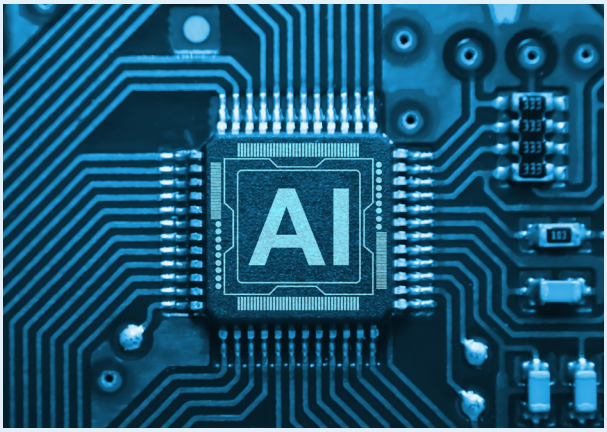
In this article, Intellectual Property Partner and Advertising and Brand Litigation Co-Chair **Christopher Cole** discusses one of today's most urgent compliance topics, involving Extended Producer Responsibility (EPR) laws, now on the books in seven states. The article aims to answer questions that Katten frequently receives regarding the definition of EPR laws, states that advertisers should worry about, registration requirements and other obligations, costs, fines for noncompliance and court challenges to EPR program implementation.

Read the full article here.

Property Rights in the Age of Generative AI

In March, **Christopher Cole** attended the Federal Trade Commission's consumer protection-focused conference featuring academic research regarding consumer protection issues of interest to the FTC, for the first time since before the COVID-19 pandemic. In this article, he outlines the conference's heavy economic focus and topics centered on areas of emerging enforcement interest, such as data collection from digital sales, the FTC's continued focus on big players in the tech industry, artificial intelligence and the impact of influencers, and data brokers.

Read the full article here.



Events

Legal Standards for Green Marketing Claims

Christopher Cole served as a panelist on the "Legal Standards for Green Marketing Claims" webinar on April 24, hosted by the Environmental Law Institute. The panel covered the current state of green marketing, including the legal standards applied to general environmental benefit claims, sustainability claims, recyclability claims and more. Presenters highlighted common challenges advertisers face when trying to avoid making misleading impressions while substantiating environmental claims and communicating sustainability initiatives.

Learn more about the webinar here.

2026 ANA Advertising Law 1-Day Conference

On April 23, Katten's New York office hosted the ANA Advertising Law 1-Day Conference, with several Katten attorneys serving as speakers. **Jessica Kraver** and Health Care Partner **Kate Hardey** spoke on the "Regulatory Enforcement: What Advertisers and Agencies Need to Know" session, followed by **Nathan Smith** and Health Care Counsel **Paul DeMuro, PhD,** on the panel, "AI in Advertising: Managing Legal Risk While Moving Fast." Additionally, Sports and Sports Facilities Partner and Co-Chair **Daniel Render** and Entertainment and Media Partner **Scott Cutrow** presented on "Sports Marketing and Sponsorships: Legal Issues Impacting Campaigns and Partnerships." Advertising and Brand Litigation Co-Chairs **Kristin J. Achterhof** and **Christopher Cole** also spoke during the panel on "Litigation Trends Every Brand Should Watch."

Read more about the event here.

Katten's Advertising and Brand Litigation 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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