

CONSUMER PROTECTION AND ADVERTISING

Navigating COVID-19: Top Consumer Protection and Marketing Issues

The business practices of consumer-facing companies are under scrutiny during the COVID-19 pandemic, and in-house counsel must ensure their companies are complying with various federal and state consumer protection laws and regulations as companies adjust to the new normal. Manatt advises and defends clients, including large retailers and consumer brands, with respect to the broad range of consumer protection and advertising laws and regulations. We stand ready to assist clients with the numerous issues they may face in connection with COVID-19.

Key Issues to Consider

False Advertising Litigation Concerning Coronavirus Communications

The Issue: Advertisers need to tread carefully when advertising products that appear to address COVID-19-related issues, including making hygiene or disinfectant claims. Additionally, advertisers may wish to challenge unscrupulous advertising by their competitors seeking to take advantage of consumers during this pandemic.

How Manatt Can Help: Manatt's advertising litigators have experience bringing false advertising suits against competitors and defending such lawsuits brought by competitors and consumers across the country as well as providing proactive advice to ensure clients' marketing and messages comply with NAD and FTC guidance and applicable law. Manatt's advertising partners also have extensive experience with bringing and defending NAD challenges.

Ability to Make Outbound Calls Under the TCPA, TSR and State Telemarketing Laws

The Issue: In this current environment, companies should be aware of how the Telephone Consumer Protection Act (TCPA) and state laws may impact their calling practices. More specifically, standard calling practices may be impacted by declared states of emergency, while certain coronavirus-related "emergency" messages may be exempt from the TCPA's purview.

How Manatt Can Help: Manatt's dedicated TCPA team can advise as to how clients' calling practices might need to change during this pandemic in order to adhere to the TCPA and state law equivalents. This would include discussion of possible exemptions and recommendations on how to mitigate risk during this period of uncertainty.

Force Majeure Clauses in Sponsorship, Media, Vendor, Marketing and Promotion Agreements

The Issue: Advertisers should assess the adequacy and completeness of their force majeure clauses to address delays and cancellations based on public health and safety concerns, even without specific governmental orders or guidance, and the effect such delays or cancellations have on the parties' respective rights and obligations such as make goods, fee adjustments and termination.

How Manatt Can Help: Manatt has dedicated partners looking at force majeure clauses and other excuses for performance of contractual obligations, and advising clients as to their options. Manatt can review and analyze applicable agreements to determine the application of any force majeure or other suspension clauses and strategic use of such clauses, as well as assist clients to strengthen such clauses in existing or future contracts. Manatt can also advise clients on their options when force majeure has been asserted against them.

Compliance With Retail Price Gouging Laws and Defending Related Actions

The Issue: Price gouging laws, effective in more than 35 states, can impact retailers' ability to increase prices on various goods, particularly during a declared state of emergency. State attorneys general have informed retailers of their obligations to prohibit price gouging, and putative class actions have started rolling in.

How Manatt Can Help: Manatt's consumer protection team can guide retailers through the nuances of the applicable price gouging statutes, their triggers and their implications. Should an action be filed, our litigators can defend you wherever the action is brought.

Cause Marketing Initiatives

The Issue: As nonessential physical retail has been largely shut down across the country, companies launching new products or services online during the pandemic may pledge to donate a portion of the proceeds from online sales to a COVID-19-related fund. Brands may also participate in other charitable causes through donation or sponsorships, including through social media platforms.

How Manatt Can Help: Brands participating in charitable promotions may be subject to various state charitable solicitation laws. Manatt can assist such companies with regulatory compliance as well as in connection with the negotiation of various contracts related to participating in such promotions.

We're Here to Help:



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