



Insights: Publications

5 Key Takeaways | Mad Men, Meet the Law: Advertising Rules, Risks and Realities

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Kilpatrick Partner [Laura Miller](#) and Gildan Activewear's [Harris Henderson](#) (Deputy General Counsel) recently spoke at the firm's In-House Counsel Summit on the topic of "Mad Men, Meet the Law: Advertising Rules, Risks and Realities." This presentation covered a wide range of modern advertising issues and how regulators and brands approach them. Laura and Harris discussed risks in company's advertising and marketing programs, while offering practical risk-mitigation strategies to keep compliant, yet competitive. Key takeaways from the presentation include:

1. Monitor and Document Music Rights with Influencers

- Monitor influencer content for unauthorized third-party IP and secure platform-specific clearances.
- Ensure influencers only use pre-approved audio assets and licensed versions of tracks to avoid lawsuits, takedowns or muted content.
- Build creator-friendly usage guidelines and provide influencers with approved audio links, caption requirements, and platform best practices to reduce compliance issues.
- Document rights, including preserving screenshots of tracks contained in platform commercial libraries.

2. AI Washing

- AI washing occurs when companies exaggerate or overstate the AI capabilities of their products or services.
- The FTC's "Operation AI Comply" signaled increased scrutiny of unsupported AI claims and marketing hype.
- Advertisers should ensure that AI-related messaging aligns with actual product functionality and consumer expectations to avoid deceptive advertising allegations.
- Advertisers should maintain evidence supporting assertions such as "AI-powered," "autonomous," or "predictive" and coordinate with legal and technical teams on accurate descriptions.

3. Managing User-Generated Content

- Advertisers should obtain affirmative consent before using user-generated content, even when content is publicly posted online.

- Consent can be informal, such as direct messages requesting permission, but companies should maintain records of approvals.
- Broader commercial or off-platform use of fan content may require more detailed agreements or licenses.

4. Synthetic Performers and Digital Replicas

- New York and California's recently-enacted synthetic performer laws require advertisers to conspicuously disclose when AI-generated performers are used in advertisements.
- The New York Fashion Workers Act separately requires written informed consent before creating or using a model's digital replica or AI-enhanced likeness.
- Ensure agreements specify permitted platforms, territories, campaign duration, and whether synthetic performers or digital replicas can appear in future edits or derivative campaigns.
- Advertisers using AI-generated models or digital replicas must evaluate disclosure and deception risks together.

5. Made in USA Claims

- An unqualified "Made in USA" claim requires that a product be "all or virtually all" made in the United States under FTC standards.
- Qualified claims such as "Made in USA with imported parts" or "Assembled in USA" may reduce risk when products contain foreign content.
- A March 2026 Executive Order directed the FTC to prioritize enforcement against false or unsubstantiated American-origin claims, especially in e-commerce.

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