KILPATRICK TOWNSEND

5 KEY TAKEAWAYS

The Law of Advertising

Kilpatrick Townsend partners Ty Lord and Laura Miller and **Jeremy Liebman**, Senior Counsel at Krispy Kreme, recently discussed "The Law of Advertising" at an Association of Corporate Counsel CLE (Charlotte Chapter).

Key takeaways from the presentation include:

1

Increase the Legal IQ of the Marketing Team

- They train your business to spot hot button issues.
- Partner with the business so that feel comfortable getting legal involved early.

See It All: Context Matters

- Don't review advertising statements in a vacuum; other content and imagery can convert puffery into a claim that requires substantiation.
- Substantiation must support the claim. Get behind the testing to ensure compliance.

2

3

Consumer Protection is Key

- Literally true statements can nevertheless deceive consumers. Consumer perception is the key question.
- Promotions must disclose a material connection between the advertising and the influencer. Consumers have a right to know when influencers have received something of value from the advertiser when reviewing a post.

Promotions on Social Media ARE Advertising

- Sharing, re-posting, retweeting photographs requires permission from the original posters. Sending a Direct Message asking for permission is not onerous and gets advertisers the permissions they need.
- Spot right of publicity issues in photographs and images.

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5

No Good Deed…

- Think through the logistics and messaging of a promotion to prevent consumer deception.
- Charitable sales promotions, cause marketing and commercial co-venture

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