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Insights: Publications

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

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Kilpatrick Partners **Laura Miller** and **Ty Lord** and Hanesbrand's **Harris Henderson** (Vice President, Deputy General Counsel) recently spoke at the Association of Corporate Counsel (ACC) Charlotte Chapter 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, Ty, 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. **Synthetic Performers and Digital Replicas**
    - New York's synthetic performer law requires advertisers to conspicuously disclose when AI-generated performers are used in advertisements beginning in June 2026.
    - 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.

3. **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.

4. **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.

5. **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.

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