



Webinar Series

AdMatters

Notes

- *AdMatters is presented for educational purposes only.*
- *AdMatters does not constitute legal advice and does not create an attorney-client relationship.*
- *Please contact us to discuss the specific facts and circumstances of any situation requiring legal advice and the current state of the law applicable thereto.*



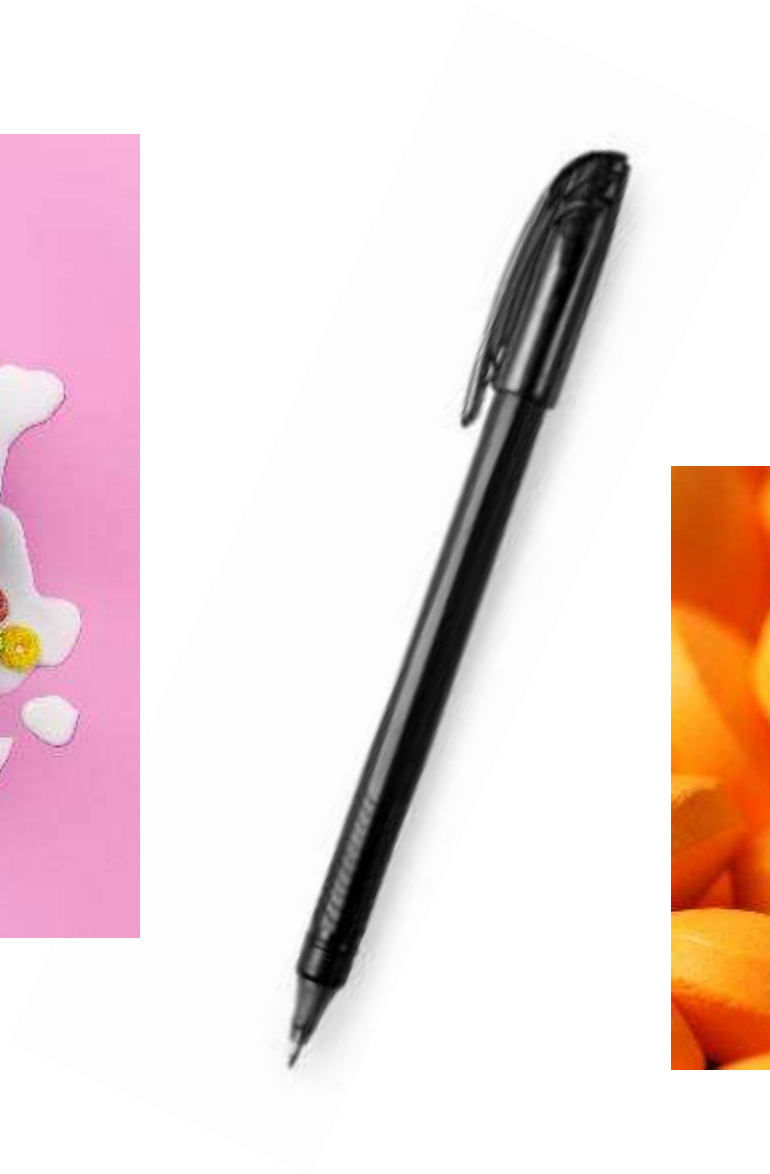
Webinar Series

AdMatters

Episode 1

Foundations of U.S. Advertising Law

Joey Morris
July 2026





Virtually all businesses are engaged in some form of advertising.

Websites

Catalogs

Social media

TV/Radio

Packaging

Labels

Direct mail

Billboards

Endorsements

Paid search results

Loyalty programs

Emails

Texts

Sponsorships

Influencers

Sweepstakes

Events

Placements

Well-executed advertising . . .

- Informs consumers
- Builds brand awareness
- Directs products/services to their target markets
- Differentiates products/services from those offered by competitors
- Supports public image
- Reinforces purchasing decisions
- Sustains ongoing brand loyalty

Well-executed advertising . . .

Drives **SALES**



Well-executed advertising . . .

Drives **REVENUES**



Well-executed advertising . . .

Drives **PROFITS**



But when advertising goes wrong

- Consumer confusion
- Negative publicity
- Weakened brand value
- Damage to public image
- Damage to public image
- Regulatory investigations
- Claims by competitors and consumers

But when advertising goes wrong

- Lost **SALES**
- Lost **REVENUES**
- Lost **PROFITS**



Why *AdMatters*?

- Virtually every business is engaged in some form of advertising.
- Understanding risks associated with advertising is essential for success.

Sources of U.S. Advertising Law

Sources of U.S. Advertising Law

- Federal law
- State law
- Industry self-regulation

Federal Law

Federal Law Sources

- FTC Act
- FTC regulations
- FTC policy guidance
- Industry-specific rules
- Activity-specific rules
- Lanham Act
- Trademark law
- Copyright law

FTC Section 5(a)

“[U]nfair or deceptive acts or practices in or affecting commerce . . . are . . . unlawful.”

15 U.S.C. § 45(a)(1)

The Three **Golden** Rules

1. Advertising must be **truthful** and **non-deceptive**
2. Advertising must not be **unfair**
3. Advertising must be **supported by evidence**

Ads are viewed from the perspective of the “reasonable consumer”

- Overall context of an advertisement is more important than particular words in determining the message it conveys
- Context includes words, pictures, presentation, layout, etc.

Advertiser's intent is **irrelevant**

- An advertiser's responsibility is not limited to messages it intended to convey
- An advertiser is responsible for **all reasonable interpretations**

When is an ad truthful?

- An ad is truthful if
 - it conveys an **accurate overall impression** of the quality, characteristics, or capabilities of a product or service
 - that is properly **supported by evidence.**

When is an ad deceptive?

- An ad is deceptive if it involves a representation or omission that is
 - **material**; and
 - **likely to mislead** a reasonable consumer.

When is an ad deceptive?

- Consider both **express** and **implied** claims.
 - An express claim is one literally made in an ad.
 - An implied claim is one made indirectly or by inference.

When is an ad deceptive?

- **Express** claim:

Zippy Mouthwash
prevents colds!



WANT A COLOR COPY OF THIS FOR FRAMING?

March 1939



**To guard against, to treat Sore Throat
gargle Listerine—reduces mouth germs 98%**

Do you realize that even in normal mouths millions of germs breed, waiting until resistance is low to strike?

Among them are the *Micrococcus Catarrhalis*, associated with head-colds; the dangerous *Streptococcus Antrax* (pus), *Parastreptococcus* (pus-forming), and the *Streptococcus Hemolyticus*, so largely responsible for sore throat.

How important it is to help nature fight these germs by means of a mouth wash and gargle capable of swiftly destroying them.

Fifty years of medical, hospital, laboratory, and general experience clearly prove Listerine to be the ideal antiseptic and germicide for this purpose.

It is non-poisonous, safe in use, full strength in any amount, and is, at the same time, one of the most powerful germicides known when used full strength.

Within 15 seconds it kills the *Bacillus Typhosus* (typhoid) and even *Staphylococcus Antrax* (pus), the germs generally used to test antiseptic power because of its resistance to germicides.

Recent exhaustive tests show that full strength Listerine, when used as a gargle, reduces the number of germs in the mouth 98%. Thus, the mouth is left healthy, fresh, clean.

Under all ordinary conditions of health, the morning and night gargle with Listerine is deemed sufficient. But when you are coming down with a cold or sore throat, it is wise to gargle with Listerine every two hours in order to combat the swiftly multiplying germs. Listerine Pharmaceutical Company, St. Louis, Mo., U. S. A.



THE SAFE ANTISEPTIC

Kills 200,000,000 germs in fifteen seconds (fastest killing time accurately recorded by science)

To guard against, to treat Sore Throat
gargle Listerine—reduces mouth germs 98%

When is an ad deceptive?

- **Implied** claim:

Fresh-ee
Mouthwash kills
germs that cause
colds!



"I gargle LISTERINE twice a day and have had fewer sore throats"
John Thomas, Louisville

"It's slick for giving quick relief for sore throat"
Raymond, Harris

"I haven't had a cold in the three years I've been using LISTERINE"
John Albert, Harris

"I don't have sore throats like I used to"
Raymond, Harris

Listerine gargle kills millions of germs associated with colds and sore throats

If you are a regular user of Listerine Antiseptic because you like the wonderful freshening effect, you've probably made this happy discovery: that you have fewer colds and sore throats—and milder ones—than you used to. Bacteria are not an all-surprising. Remember, that when Listerine Antiseptic is used as a gargle, it kills on throat and mouth surfaces, literally, millions of the bacteria associated with colds and simple sore throat. Even 4 hours after its use, tests have shown germ reductions in mouth mucus ranging up to 64%.

Get in the habit of using Listerine Antiseptic twice a day—at least during the winter months, too, if your health is not better. At the same time note how much cleaner and fresher your mouth is—how much sweeter your breath.

LISTERINE PHARMACEUTICAL CO.
St. Louis, Mo.

LISTERINE
The Unsurpassed Antiseptic

Now a finer Cough Drop by LISTERINE

Widely Medicated

Listerine gargle kills millions of germs associated with colds and sore throats

Cleans out germs!

A clean, fresh mouth
is always important
...*especially now!*

Fights sore throat!

Soothes tender tissues!

Tastes wonderful!

LAVORIS
MOUTHWASH AND GARGLE

Yes, this is the time of year when regular use of Lavoris makes a lot of sense. A refreshing Lavoris gargle cleans mouth and throat... removes the germ-laden film in which colds get a foothold. You can feel Lavoris at work. Its cleansing, stimulating action brings comfort to irritated tissues. Gargling with Lavoris is a wise habit now more than ever—and it tastes so good your whole family will want to use it.

LAVORIS

The SPARKLING RED mouthwash that tastes good ... does good!



Yes, this is the time of year when regular use of Lavoris makes a lot of sense. A refreshing Lavoris gargle cleans mouth and throat... removes the germ-laden film in which colds get a foothold. You can feel Lavoris at work. Its cleansing, stimulating action brings comfort to irritated tissues. Gargling with Lavoris is a wise habit now more than ever—and it tastes so good your whole family will want to use it.

LAVORIS
MOUTHWASH AND GARGLE



When is an ad deceptive?

- Consider what an ad does **not** say.
- Does the ad fail to include information that leaves consumers with a false impression about the product?

When is an ad deceptive?

- **Omission:**

“All #1 Hits!”

but

Not original recordings
by original artists



When is an ad unfair?

- An ad is unfair if it involves:
 - **substantial consumer injury** that a consumer could not reasonably avoid; and
 - it is **not outweighed** by an **offsetting benefit** to consumers or competition.

Substantiation

- Advertisers must have a **reasonable objective factual basis** that supports their claims.
- Advertisers must have substantiation for their claims **before** publication.

Substantiation

Smooth-O Cream
is recommended by
2 out of 3
Dermatologists!



Substantiation

This is America's
best-selling fine
camera.



Substantiation

America's Top Selling Straight Whisky



Substantiation



*Controlled test on
102 people shows*
1/2
**AS MANY COLDS
FOR LISTERINE
USERS**

Gargle twice daily—keep well—stay on the job

Don't be one of those thousands who every year suffer from influenza. You pay the penalty in discomfort, lost health, and lost wages due to absence from work.

Get plenty of rest. Don't overeat. Avoid severe exposure. And gargle with full strength Listerine morning and night every day. Because a controlled test on 102 people now shows Listerine's amazing ability to prevent colds and to reduce their severity when contracted.

Is it really colds? *

Widespread tests, full strength Listerine as before, if used continuously through the winter months as directed above, will result in measurably fewer colds. Let the tests speak for themselves.

Of 102 persons observed for a period of approximately thirty-one days, known as "controls," did not gargle with Listerine at all; one-third gargled twice a day; the other third five times a day, the full strength solution.

Now, note these amazing results:

Those who did not gargle, contracted twice as many colds as those who gargled Listerine twice a day. The colds were four times as severe and lasted three times as long.

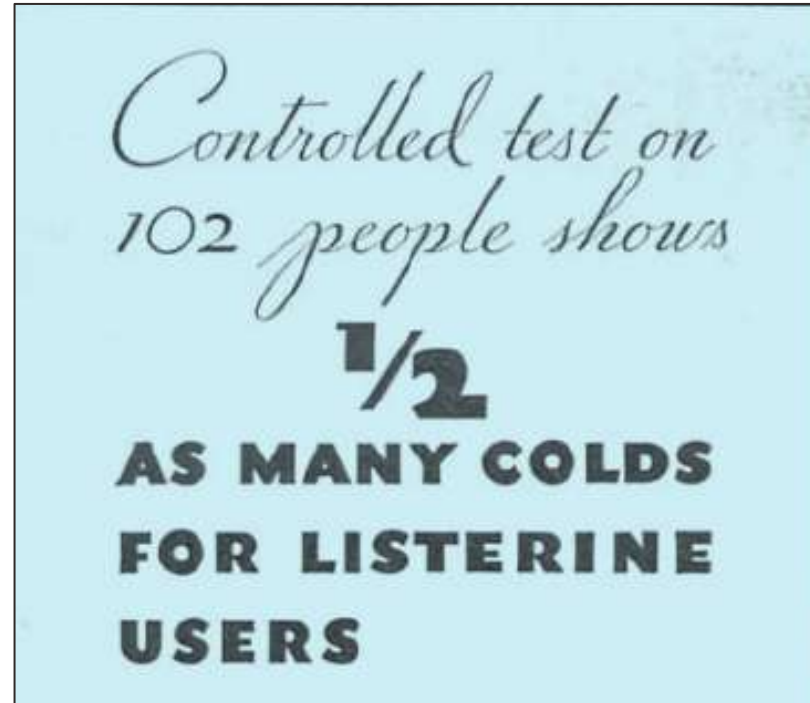
Three times as many colds

Those who did not gargle Listerine had three times as many colds as those who gargled five times a day. The colds were four times as severe and lasted four times as long.

The secret—germicidal action with safety

Each molecule of Listerine's amazing germicidal action. Good full strength is full a germ in the shortest time accurately recorded by science. So it reduces mouth bacteria 99%, or more, and maintains substantial solution for hours.

It's really responsible for Listerine's safety in absolute safety to freedom from irritating properties. Contrast Listerine's soothing and healing effect on throat to that of harsh mouthwashes which actually irritate it, thus slowing germ's escape routes. Always ask for Listerine. It's safe. Listerine. The Natural Company, Inc., New York, N.Y.



*Controlled test on
102 people shows*
1/2
**AS MANY COLDS
FOR LISTERINE
USERS**

Of 102 persons observed for a period of seventy-five days, one-third, known as "controls," did not gargle with Listerine at all; one-third gargled twice a day; the other third five times a day, the full strength solution.

Now, note these amazing results:

Those who did not gargle, contracted twice as many colds as those who gargled Listerine twice a day. The colds were four times as severe and lasted three times as long.

Three times as many colds

Those who did not gargle Listerine had three times as many colds as those who gargled five times a day. The colds were four times as severe and lasted four times as long.

FTC Regulations

- Consumer reviews and testimonials
- “Made in the USA” labeling
- Retail food store advertising and marketing
- Negative option plans
- Franchises and business opportunities
- Hidden or misleading fees

FTC Policy Guidance

- “Green Guides”
- Social media influencers and product reviewers
- Business opportunities
- Telemarketing
- Comparative advertising

Other Federal Rules (Industry-Specific)

- Food and Drug Administration
 - Prescription drugs, medical devices
- Consumer Financial Protection Bureau
 - Consumer financial products/services

Other Federal Rules (Industry-Specific)

- Federal Communications Commission
 - Telephone, wireless, broadband services
- Alcohol and Tobacco Tax and Trade Bureau
 - Alcohol products

Other Federal Rules (Industry-Specific)

- Securities Exchange Commission
- Environmental Protection Agency
- Department of Agriculture
- Department of Transportation
- National Highway Traffic Safety Administration

Other Federal Rules (Activity-Specific)

- CAN-SPAM Act
 - Commercial marketing via e-mail
- Telephone Consumer Protection Act (TCPA)
 - Telemarketing, robocalls, robotexts, junk faxes

Other Federal Rules (Activity-Specific)

- Telemarketing and Consumer Fraud and Abuse Prevention Act
 - Telemarketing practices
- Children's Online Privacy Protection Act (COPPA)
 - Online advertising and data collection directed at children under 13

Section 43(a) of the Lanham Act

- Authorizes civil action where an advertisement is **likely to cause confusion** or mistake
 - about the advertiser's **association** with another person or
 - about another person's **sponsorship or approval** of the advertiser's goods or services.

15 U.S.C. § 1125(a)

False association, sponsorship, or approval



Nike, Inc. v. S2, Inc d/b/a The Shoe Surgeon, et al.
No. 1:24-cv-05307-NRB (S.D.N.Y.)

False association, sponsorship, or approval

Nike's Asserted Mark	Infringing New Shoes
	 7
	 8
	 9

Nike, Inc. v. S2, Inc d/b/a The Shoe Surgeon, et al.
No. 1:24-cv-05307-NRB (S.D.N.Y.)

Section 43(a) of the Lanham Act

- Authorizes civil action where an advertisement
 - misrepresents the nature, characteristics, qualities, or geographic origin of the advertiser's or another person's goods or services.

15 U.S.C. § 1125(a)

False advertising

BINGO CASH (Papaya)



BINGO FOR CASH (Skillz/Golden Wood)



*Skillz Platform, Inc. v. Papaya Gaming, Ltd., et al.
No. 1:24-CV-01646-DLC (S.D.N.Y.)*

False advertising

Case 1:24-cv-01646-DLC Document 188 Filed 04/23/24 Page 1 of 3

COURT
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SKILLZ PLATFORM, INC.,
Plaintiff,
v.
PAPAYA GAMING, LTD., and PAPAYA
GAMING, INC.,
Defendants.

PLEASE CHECK (X) YOUR ANSWERS

All jurors must agree on the answers to all of the questions:

LIABILITY

1. Did Skillz establish by a preponderance of the evidence that Papaya engaged in false advertising in violation of the Lanham Act?
YES ☒ NO ☐

2. Did Skillz establish by a preponderance of the evidence that Papaya engaged in a deceptive sales practice in violation of the SBA?
YES ☒ NO ☐

[If you answered "no" to each preceding question, proceed to the final page and sign this form. If you answered "yes" to either one of the preceding questions, proceed to the next section.]

UNNECESSARY DISCOVERY

4. Did Skillz establish by a preponderance of the evidence that it is entitled to discovery?
YES ☒ NO ☐

SPECIAL VERDICT FORM

1. Did Skillz establish by a preponderance of the evidence that Papaya engaged in false advertising in violation of the Lanham Act?

YES



NO

☐

Skillz Platform, Inc. v. Papaya Gaming, Ltd., et al.
No. 1:24-CV-01646-DLC (S.D.N.Y.)

False advertising

Case 1:24-cv-01646-DLC Document 888 Filed 06/03/26 Page 1 of 3

COURT
CD-484
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4/13/2024
01:25:44

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SKILLZ PLATFORM, INC.,
Plaintiff,
-v-
PAPAYA GAMING, LTD., and PAPAYA
GAMING, INC.,
Defendants.

PLEASE CHECK (X) YOUR ANSWER

All jurors must agree on the answers to all of the questions.

LIABILITY

1. Did Skillz establish by a preponderance of the evidence that Papaya engaged in false advertising in violation of the Lanham Act?
YES ☒ NO ☐

2. Did Skillz establish by a preponderance of the evidence that Papaya engaged in deceptive business practices in violation of the FDCA?
YES ☒ NO ☐

[If you answered "no" to each preceding question, proceed to the final page and sign this form. If you answered "yes" to either one of the preceding questions, proceed to the next section.]

MONEY JUDGMENT

4. Did Skillz establish by a preponderance of the evidence that it is entitled to damages?
YES ☒ NO ☐

SPECIAL VERDICT FORM

4. Did Skillz establish by a preponderance of the evidence that it is entitled to damages?

YES ☒

NO ☐

If yes, in what amount? \$ 420M

5. Did Skillz establish by a preponderance of the evidence that it is entitled to Papaya's additional profits?

YES ☒

NO ☐

If yes, in what amount? \$ 719M

Skillz Platform, Inc. v. Papaya Gaming, Ltd., et al.
No. 1:24-CV-01646-DLC (S.D.N.Y.)

Lanham Act Section 43(a) - Remedies

- Actual damages
- Disgorgement of profits
- Enhanced damages
- Attorneys' fees ("exceptional cases")
- Injunctive relief

Trademark

- Action for unfair competition arising from infringement of trademark under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).
- If federally-registered trademark, action for infringement under Section 32 of the Lanham Act (15 U.S.C. § 1114).

Copyright



Starbucks Corp. v. Brandpat, LLC d/b/a Starbuds Flowers
No. 1:24-cv-04927-LGS-VF (S.D.N.Y.)

Copyright



(U.S. Copyright Reg. No. VA 875-932)
(U.S. Trademark Reg. Nos.: 1,815,937,
2,266,352, 3,298,945, and 3,259,865)



(U.S. Copyright Reg. No. VA 1-768-520)
(U.S. Trademark Reg. Nos.: 4,538,053 and
4,572,688)

Starbucks Corp. v. Brandpat, LLC d/b/a Starbuds Flowers
No. 1:24-cv-04927-LGS-VF (S.D.N.Y.)

Copyright



*Starbucks Corp. v. Brandpat, LLC d/b/a Starbuds Flowers
No. 1:24-cv-04927-LGS-VF (S.D.N.Y.)*

Copyright

Case 1:24-cv-04927-LGS-VF Document 1 Filed 06/03/24 Page 1 of 61

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STARBUCKS CORPORATION,	CASE NO.
Plaintiff,	
vs.	
BRANDPAT, LLC d/b/a STARBUCKS FLOWERS,	
Defendant.	

COMPLAINT

Starbucks Corporation ("Starbucks"), by and through its undersigned attorneys, Simonson Derris, LLP and Hengman LLP (to be admitted pro hac vice), file its Complaint against Defendant Brandpat, LLC d/b/a Starbucks Flowers ("Starbucks"), alleges as follows:

NATURE OF THE CASE

1. This is an action involving Plaintiff Starbucks, one of the most well known and famous brands in the United States (and world), and Defendant Starbucks, a defendant entity operating a mobile business out of a so-called food truck, deliberately copying the trademark property Starbucks has developed.

2. Starbucks has invested in a substantial intellectual property portfolio consisting of federally registered copyrights and federally registered and non-convertible trademarks. At the forefront of Starbucks' widely recognized intellectual property are its famous "Siren" design logos shown below.

COUNT I
FEDERAL COPYRIGHT INFRINGEMENT OF THE
STARBUCKS COFFEE SIREN COPYRIGHT
U.S. COPYRIGHT REG. NO. VA 875-932
(17 U.S.C. § 501(a))

COUNT II
FEDERAL COPYRIGHT INFRINGEMENT OF THE
40TH ANNIVERSARY SIREN COPYRIGHT
U.S. COPYRIGHT REG. NO. VA 1-768-520
(17 U.S.C. § 501(a))

COUNT III
FEDERAL TRADEMARK INFRINGEMENT OF THE REGISTERED
STARBUCKS SIREN MARKS (15 U.S.C. § 1114)

Starbucks Corp. v. Brandpat, LLC d/b/a Starbuds Flowers
No. 1:24-cv-04927-LGS-VF (S.D.N.Y.)

Federal Law Sources: Summary

- Government enforcement
 - FTC Act §5(a)
 - FTC regulations
 - FTC policy guidance
 - Industry-specific rules
 - Activity-specific rules
- Competitor enforcement
 - Lanham Act §43(a)
 - Trademark
 - Copyright

State Law

State Law Sources

- Little FTC Acts
- False advertising laws
- Pricing laws
- Regulatory oversight
- Common law
 - Unfair competition
 - Trademark infringement
 - Trade disparagement
- Rights of publicity

Little FTC Acts

- Vary from state to state
 - Standing
 - Consumer injury/public interest elements
 - Damages
 - Availability of enhanced damages
 - Recovery of attorneys' fees

False Advertising Laws

- Some states have statutes that specifically prohibit false advertising.
 - N.Y. Gen. Bus. Law § 350
 - Cal. Bus & Prof. Code § 17500

Pricing Laws

- A number of states have statutes addressing transparency in pricing.
 - Fla. Stat. § 531.44 (unlawful to represent “price in any manner calculated to mislead or in any way deceive”)
 - N.Y. Agriculture & Markets Law § 214-h (requiring unit pricing)

Pricing Laws

- Junk fees and “drip pricing” are a recent focus of state legislation.
 - Cal. Civil Code § 1770(a)(29)
 - Minn. Stat. § 325D.44, *et seq.*

Other State Law Sources

- Regulatory
 - Insurance
 - Real estate
 - Medical professions
 - Law
- Common Law
 - Unfair competition
 - Trademark infringement
 - Trade disparagement

Right of Publicity

- Right of a person to control the commercial exploitation of his or her identity and to prevent its commercial appropriation by others without permission.

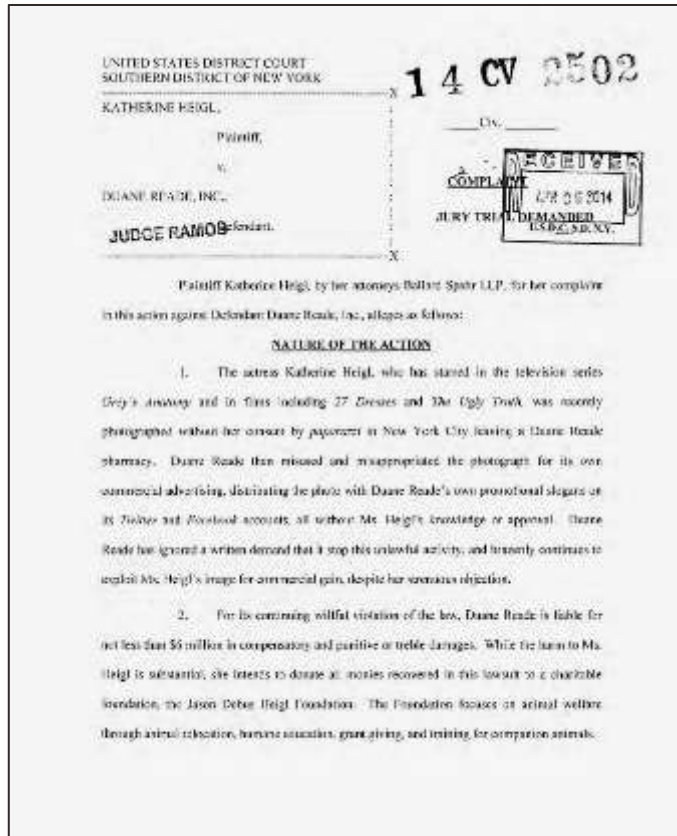
Right of Publicity

- Name
- Likeness
- Voice
- Photograph
- Signature
- Distinctive gestures or mannerisms
- Distinctive combination of elements, *e.g.*, manner of dress, hair style, physical objects

Right of Publicity

- Right can survive individual's death.
- Compensatory damages, advertiser's profits, punitive damages, attorneys' fees

Right of Publicity



Right of Publicity

Case 2:26-cv-05019-CAS-MAR Document 1 Filed 05/08/26 Page 1 of 28 Page ID
#1

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

13 Dua Lipa,
14 Plaintiff,
15 v.
16 Samsung Electronics America, Inc.;
17 Samsung Electronics Co., Ltd.; and
18 Dates 1-10, inclusive,
19 Defendants.

CASE NO. 2:26-cv-05019
COMPLAINT
Demand For Jury Trial

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Right of Publicity



State Law Sources: Summary

- Little FTC Acts
- False advertising laws
- Pricing laws
- Regulatory oversight
- Common law torts
- Rights of publicity

Industry Self-Regulation

National Advertising Division (NAD)

- Founded by advertising industry in 1971
- Not a governmental entity
- Provides independent industry self-regulation

National Advertising Division (NAD)

- Resolves challenges to advertising claims
- Streamlined adversarial process
- Decision in SWIFT track proceeding available in approximately 1 month

National Advertising Division (NAD)

- Issues detailed, influential written decisions
- Appeal available to National Advertising Review Board (NARB)
- Can refer advertisers who refuse to comply with its decisions to the FTC for enforcement action

Summary

Sources of U.S. Advertising Law

- Federal Law
 - FTC Act
 - Lanham Act
 - Industry-specific rules
 - Activity-specific rules
 - Trademark
 - Copyright
- State Law
 - Little FTC Acts
 - Pricing laws
 - Regulatory oversight
 - Common law
 - Right of publicity
- National Advertising Division

Ideas? Questions? Comments?

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