

Tiffany Ferris, Joseph Lawlor in Ad Age: 5 Tips for Brands Advertising in the COVID-19 Era

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PRACTICES Intellectual Property, Advertising, Marketing and Promotional Law, Social Media, Litigation, Media and Entertainment Litigation

Advertisers, facing numerous challenges stemming from the COVID-19 pandemic, should heed these tips to ensure their advertising does not create more challenges than it solves.

Consider COVID-19 Claims Carefully

More than ever, advertisers must scrutinize express and implied claims to make sure that they are truthful, not misleading and are adequately substantiated. The Federal Trade Commission [FTC] has issued dozens of warnings, including to the provider of “sound healing” services who claimed it had “developed a set of programs with frequencies that target Coronavirus/SARS viral infections” and a seller of a facial cleansing brush who claimed it could “fight off corona.”

The FTC will closely scrutinize claims that any product can cure, treat, or prevent COVID-19. Brands should also carefully consider any claims of improved or strengthened immunity and claims that cleaning products can kill COVID-19.

Be Smart About User-Generated Content

Shelter-in-place and social distancing orders have impacted brands’ abilities to produce new content. It is difficult to shoot a new campaign when groups of people cannot congregate or are not “essential.”

User-generated content can be valuable, but best practices still apply during a pandemic. It is critical to obtain rights to all content used, particularly because COVID-19 has not put a damper on those asserting infringement claims. In fact, since the World Health Organization declared COVID-19 a global pandemic, more than 100 copyright infringement lawsuits have been filed in the U.S. alone.

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