

# Advertising, Marketing, and Promotional Law

## Practices and Industries

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### PRIMARY CONTACTS

**Suzie Trigg**

+1 214.651.5098

**Maral M. Kilejian**

+1 972.739.8774

**Tiffany Ferris**

+1 214.651.5152

**Joseph Lawlor**

+1 212.659.4985

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In today's competitive environment, compliance with advertising laws is critical as brands face more scrutiny than ever before. Our Advertising, Marketing, and Promotional Law Practice Group provides clients with practical guidance to help manage their advertising legal risks related to consumer legal actions and competitors' potential claims, as well as to regulatory and enforcement actions. Our team regularly advises clients on all issues relating to the creation, structure, production, implementation, and defense of advertising, marketing, and promotional campaigns across all types of media.

We represent clients in state and federal court and before the National Advertising Division (NAD) to assert challenges and defend against false advertising claims. Advertisers and challengers have come to rely on our team to successfully challenge unfair, deceptive, or misleading advertising as well as to defend adequately substantiated claims. Our team routinely advises clients as to the strategic choice of which is the best forum to address their advertising related disputes.

Bolstered by our firm's complementary and highly regarded practice areas in technology transactions, regulatory, trademark, copyright, media, and privacy, our team offers a unique comprehensive approach to every matter. We have experience in a broad range of industries, including restaurants, retail, hospitality, fitness, healthcare, personal care products, consumer packaged goods, cosmetics, dietary supplements, jewelry, automotive, professional services, and home goods.

Our team regularly provides clients and their marketing teams with guidance in the following areas:

### **Advertising and Marketing Counseling**

- Reviewing all types of advertising and promotions across all forms of media
- Substantiation of claims, including FDA and FTC regulated claims
- Regulated industry matters, including at the state and federal level, as well as through self-regulated industry agencies
- Advising as to potential third-party claims, including competitor Lanham Act claims and consumer demands
- Required and recommended disclaimers and disclosures
- Marketing to children, including COPPA related requirements
- Media-platform specific matters
- Compliance with CAN-SPAM Act
- Advice on trademark and copyright related concerns
- Negotiating, preparing, and reviewing agreements with domestic and international marketing agencies, as well as licensing, joint marketing, and co-branding agreements

## **Regulatory, Consumer, and Competitor Enforcement and Litigation**

- Responding to enforcement and warning letters from both the FTC and FDA
- Representing clients in federal court and before the NAD
- Responding to and negotiating settlements of consumer demands

## **Contests and Sweepstakes**

- Developing and implementing contests and sweepstakes
- State registration and bonding requirements
- Preparing and reviewing rules, disclosures, and promotion materials
- Post-promotion advice regarding prize fulfillment and preparation of releases, including winner and guest affidavits
- Advice on international contests and sweepstakes matters

## **Promotional Programs**

- Negotiating, preparing, and advising on cause marketing and charitable initiatives
- Structuring and implementing loyalty programs
- Coupon review, including advice on dissemination through varied platforms
- Structuring and implementing text message promotions
- Advice on social media campaigns, general social media asset management, and crisis response
- Negotiating, preparing, and reviewing sponsorship and endorsement agreements

## **Packaging and Labeling**

- Reviewing and providing guidance on all types of packaging and labeling materials
- Navigating the requirements imposed by federal and state regulations, including the Food, Drug, and Cosmetics Act, Federal Trade Commission guidelines, Federal Communications

Commission regulations, the Fair Packaging and Labeling Act, California's Proposition 65, and consumer product safety regulations

- Trade dress clearance