

E-commerce and Retail Sales

As e-commerce draws much of the retail industry into its orbit, retail marketers face a range of novel legal needs tied to marketing and advertising law. Our E-Commerce and Retail Sales practice is a natural outgrowth of the firm's historic connections to the advertising and retail industries and to the laws surrounding both. Sophisticated marketers in all sectors rely on us to apply those laws to the arenas of e-commerce, digital marketing and social media.

E-Tailing

We have been a prominent participant in the rise of e-tailing, from its earliest beginnings to the latest tech-driven platforms. Our clients look to us for sound guidance in areas where the legal groundwork is still incomplete. We advise on business practices, draft all applicable contracts, ensure legal compliance with evolving regulations and defend clients when challenged. We also work with them to adapt traditional marketing tools — promotions, pricing, sales, celebrity tie-ins — to the new e-tailing environment.

Negative Option and Auto Renewal

The widespread use of trial offers, negative options and auto renewals — all fundamental to the way products and services are sold online — has drawn much attention from both regulators and the class action bar. As regulation continues to expand, we advise clients on processes and procedures that comply with existing rules and anticipate new ones.

Reviews and Rankings

The rise of customer reviews and product rankings as online marketing tools has been accompanied by heightened scrutiny and a marked increase in challenges. As new regulation and ongoing litigation shift the ground rules, we take a proactive approach to compliance. We work with our clients to establish strong standards and procedures, and we provide the tools to ensure that their use of reviews is fully defensible.

Text Message Marketing

While the ubiquity of smartphones allows for new ways of marketing, reaching out to consumers through either phone or text carries risks that can result in significant liability. We work closely with our clients to ensure they obtain appropriate consent from their customers and that their text messaging programs are fully compliant with the Telephone Consumer Protection Act (TCPA).

Sales Price Advertising/Coupons and Discounts

Nothing helps generate sales better than a good discount, and we help our clients navigate the various federal and state laws that apply to sales price advertising so they can offer discounts with minimal risk. We understand both the regulatory and class action climates in this space, and we are adept at balancing our clients' need to compete with their avoidance of undue legal risks.

Warranties and Guarantees

Manufacturer warranties, price guarantees and other product-related promises are an integral part of the modern marketing mix. We work with our clients to determine which of these work best for them, and we help them draft appropriate language.

Retail Policies

From returns to layaway plans, most retailers need a variety of policies to operate their business from day to day. We work closely with our clients to determine what policies are necessary from business and legal perspectives and to ensure these policies are compliant with all applicable regulations.

Representative Matters

- Advised a major publishing company and leading language learning company on updating its free trial offer, negative option marketing, and referral practices and terms to comply with important changes in state and federal laws that impact the sale of its digital content.
- Helped a home security company transition from its door-to-door business model to an entirely online business model in response to the COVID-19 pandemic. This included creating e-commerce terms for its updated website, reviewing its online automatic renewal terms and sale disclosures, and advising on how the door-to-door and other home security laws impact its online businesses.
- Structured a new subscription and automatic renewal program for a nationwide cosmetics subscription box service that experienced a surge in sales during the pandemic. Advised on a program that facilitates donations to charities benefitting first responders and other frontline workers, helping the client comply with charitable solicitation laws and associated registration requirements, including sign-up processes and disclosures.
- Provided comprehensive advice to a major drone and technology manufacturer with respect to its planned roll-out of a potential direct-to-consumer racing drone. Advised the client on its terms and conditions and sales policies, as well as the regulatory landscape applicable to its e-commerce business, GDPR and other international privacy concerns, the use of brand ambassadors, fundraising via social platforms, and packaging and labeling.
- Serving as advertising and retail counsel to a leading cosmetics retailer and e-commerce brand, advising on product substantiation and regulatory concerns; gift cards, loyalty, subscriptions and rewards; TCPA and CAN-SPAM compliance; charitable promotions; social media promotions, sweepstakes, native advertising and influencers/endorsements; SAG and production matters and NFTs.
- Advised a top broadcaster in the launch of its new streaming service. The campaign was reliant on trial offers, auto renewals and negative option sales practices. Compliance with federal and state laws and appropriate disclosures were required throughout the consumer sales cycle.