

Regulated Products and Industries

While the rules governing companies in highly regulated industries may be unique to each industry, the marketing problems faced by those companies remain nearly universal. Businesses need to find ways to advertise and market, promote their products, generate sales, increase their market share, and compete in the marketplace. These goals must be pursued in the new worlds of influencer marketing, social media, proliferating digital platforms and data-driven strategies.

The ability to market as aggressively as possible, while staying compliant with all regulatory obligations, requires legal advice finely tuned to balance legal compliance with practical business risk. Our Regulated Industries practice provides such advice to businesses large and small. We combine deep knowledge of the industries we serve with a sweeping view of the rapidly evolving marketing and advertising ecosystem. With our guidance, clients can confidently navigate the rules of their industry while competing successfully to achieve their goals.

Clients turn to us for our unique blend of legal knowledge and industry practice — combined with practical advice and industry best practices — in pursuing their business goals. A few of the regulated products and industries include the following.

Cosmetics

Cosmetics today reflect not only the promise of beauty but also the intersection of new technology with the rise of digital and social media. While innovation is critical to success, those who market cosmetics must handle the regulatory nuances that exist. There is a fine line between a cosmetic and a drug, and substantiating product claims can be difficult. We help clients avoid costly challenges from government and industry regulators, consumer class actions, and competitors. For foreign companies seeking entry into American markets, we make sure their packaging and supporting materials are fully compliant with U.S. regulations.

Dietary Supplements and OTC Drugs

At the risk of strict regulatory enforcement and ruinous class action litigation, makers of dietary supplements and over-the-counter (OTC) drugs are subject to a number of specific advertising, marketing and labeling rules. We guide clients — both domestic and foreign — through the development, manufacture and sale of these products, helping them develop advertising and marketing materials and product claims fully supported by competent and reliable scientific support.

Food

In addition to Food and Drug Administration regulations, food businesses are subject to a wide range of federal, state and local requirements. We work with both domestic and foreign food producers to identify all applicable legal obligations and to navigate compliance issues. We help them ensure that their products are appropriately labeled and marketed in a compliant manner. We work with our clients as they develop leading-edge claims that push the regulatory envelope without crossing the line.

Alcohol

In an industry where rapid changes in consumer preference meet complex regulations that vary widely from state to state — and even county to county — we ensure that our clients' marketing activities — events, tie-ins, promotions, offers, rebates and advertising — maintain their marketing edge while remaining compliant both with advertising law and with alcohol-specific rules and enforcement actions.

Gaming

Our clients have eagerly entered this new and rapidly evolving field, which is fueled by changed social norms and the drive by regulators for additional tax revenue. Our clients work with and around the gaming industry, and many of them want to accept advertising from companies in the field. In the absence of settled regulation, we help our clients prepare guidelines that afford them a measure of safety and comfort in taking on such advertising.

Cannabis

As companies clamor to do business with entities in this exploding but potentially problematic field, the current regulatory picture remains dauntingly opaque, with conflicting federal and state laws putting a damper on business activities. We have worked in industries like this before, and we are adept at helping clients navigate both the legal risks and practical obstacles they face in an environment where the laws — and the industry itself — are evolving almost in real time. [Cannabis Disclaimer](#)

Financial Products

Consumer credit, leasing, credit cards and insurance are financial products familiar to every consumer. These products and services exist in highly competitive categories, with new businesses constantly adding new product innovations and features. Each in turn has its own unique regulatory framework and enforcement history. Add to this the new world of cryptocurrencies and their supporting platforms. For all these businesses, we use our knowledge to guide clients as they market, advertise, promote and pursue their business objectives.

Packaging Compliance

When it comes to product packaging and labeling, the legal advice given is critical. Packaging and labeling are not only difficult to change, but they can be prohibitively expensive to change as well. We know the applicable industry and product regulatory framework, and we understand the business dynamics of packaging as a critical part of the consumer's pathway to purchase. We have the deep industry knowledge to help our clients make the right decisions to ensure that their packaging and labeling are both compliant and effective.

Representative Matters

- Advised a digital media holding company regarding accepting advertising for CBD/cannabis. This included advising on laws in all 50 states and managing the conflicts between the ever changing landscape of state and federal laws in this industry.
- Representing a global beer manufacturer in advertising and alcoholic beverage-specific matters, including counseling the brand and its advertising agencies, preparing terms for consumer offers, reviewing

creative and promotional concepts and establishing policies for compliance with state-specific alcoholic beverage trade practices and tied-house laws.

- Represented a multinational consumer health company in an advertising challenge brought before the NAD by a major consumer goods company, regarding the client's dietary supplement product. Achieved victory for our client by demonstrating that the core product efficacy claims were fully substantiated.
- Advised an international prestige brand on rebranding an entire line of cosmetic products, reviewing product packaging, website copy and other marketing materials. Provided guidance regarding testing and survey design, claim substantiation and regulatory compliance.
- Represented an audience intelligence and measurement company that provides software, information and advertising services for marketers, publishers and advertising agencies worldwide on the addition of advertisers in highly regulated industries such as cannabis, prescription drugs and political advertising. Provided detailed guidelines that may differ by country and state to help our client understand the complexities and challenges of these regulated areas.
- Advising an advertising agency and media company on partnerships with an online sports betting provider. Our representation includes advising on registration requirements under applicable state laws, providing customized language in the agency's agreement with the sports betting provider to insulate agency from gaming-specific risks, and reviewing advertising copy to ensure compliance with developing laws, rules, and regulations, as well as self-regulatory principles set forth by the American Gaming Association.