

The Role of Artificial Intelligence

6th Edition: Trends in Marketing Communications Law

The use of artificial intelligence (AI) in the fashion and beauty industries — and the marketing of the same — has steadily gained traction over the last few years and it's not hard to see why. AI provides a myriad of opportunities and potential applications within the fields of fashion and beauty, but it can also be a double-edged sword presenting several potential legal issues.

The fashion and beauty industries have begun implementing AI over the last several years, offering a number of new and innovative services like bespoke digital styling solutions, the ability to “try-on” clothing and makeup digitally, creating individualized apparel, accessories, and makeup products and targeted marketing and sales, all of which employ AI to track, understand and respond to their customers' preferences. Specifically, brands have been employing the use of technology such as magic mirrors (allowing consumers to test merchandise digitally) and data analysis to prepare personalized products (anything from hair color, to bespoke clothing, to customized makeup palettes tailored to complexion and coloring). Brands can track consumer purchases, analyze purchase history (both frequency and content), and use the data to more effectively market and sell personalized styles. The attraction for consumers is clear — not only do these opportunities save time, but they also provide unique products and services, an increasingly hot commodity nowadays.

Although the collection and analysis of personalized data provides an invaluable opportunity to gain and retain customers and create targeted marketing, it also presents data privacy and security issues. Consumers are increasingly concerned about the protection of their data, and the constant evolution and globalization of laws governing the collection and use of consumer data (and the steep penalties for noncompliance) make data security even more of a priority. Further, the collection of sensitive data — photographs of physical characteristics and facial features, biometric data — is even more heavily regulated. Companies must implement and maintain adequate security controls, confirm compliance with relevant regulations, and respond quickly to any threatened breach.

AI is also gaining traction in the actual design process, with the use of algorithms that analyze existing designs and sales patterns, identifying the elements that are most profitable, before utilizing that data to create a design that incorporates those specific elements. In conjunction, AI is being used elementally to generate specific fabric patterns and designs, clothing silhouettes and fashion sketches. When a design is created entirely through AI or in collaboration with some human oversight, to whom would that design belong? The designer? The individual who built the machine or program? Fashion design is notoriously difficult to protect, but how might designers pursue protection, when actual ownership is, as yet, an undetermined legal question?

When utilizing AI in any step of the design process, companies should ensure that the governing services contract directly addresses the ownership of any intellectual property created thereunder in order to protect themselves against potential challenges.

Key Takeaways

- Using AI is an attractive and potentially lucrative endeavor that may trigger complex legal issues. However, particular attention must be paid to data protection and intellectual property ownership.
 - Companies in the fashion and beauty industries using AI should consult with legal counsel before implementing AI so that privacy and data security and issues of intellectual property ownership can be properly addressed and managed before any potential issue arises.
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