

Welcome

We are delighted to welcome you to our quarterly newsletter focusing on the global hot topics for advertising, media and consumer brands executives.

To support you as we progress through 2023 and beyond, we want to highlight some key trends, legislation updates and best practices from across the globe to protect and enhance your business.

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Blogs

To keep up to date with our latest news, please sign up to our useful blogs:

[Our Global IP & Technology Law blog](#) is a source for news and insights into international legal issues involving intellectual property and technology, such as trademark and brand protection; patent prosecution and protection; trade secrets, data protection and privacy; and advertising and media issues.

[Privacy World](#) is a source of news and insights on cybersecurity, privacy and data protection regulations and developments impacting businesses around the globe.



Global

[Global Compliance Challenges Facing the Advertising Media & Brands Industry](#)

Have you seen our [annual global compliance challenges report](#) yet? In this report, our legal specialists summarize the regulatory landscape at present relating to recession proofing your business, managing the cost-of-living crisis, data and technology, global brand and product anti-counterfeiting trends, tax policy and workforce challenges. We also provide insights into the rise of environmental, social and governance (ESG), mitigating risks, and the top advertising, media and brands hot topics.

We also recently hosted a webinar series focusing on the challenges the industry faces; recordings of the sessions are available:

- [Managing the Cost-of-Living Crisis and Recession Proofing Your Business](#)
- [Global Data, Technology and Tax](#)
- [Anti-counterfeiting, Brand Protection Trends and Advertising, Media and Brands Hot Topics](#)
- [The Rise of ESG and Global Workforce Challenges](#)
- [Summary Broadcast & Market Forecast](#)

For further information, contact [Carlton Daniel](#) or [Marisol Mork](#).

[Congratulations to Alan Friel on Being Named a “Trailblazer” for Media and Advertising Law](#)

Partner [Alan Friel](#) has been [recognized](#) by the *National Law Journal* as a “Trailblazer” for Media and Advertising Law in 2023. The Trailblazers list spotlights professionals who are “agents of change” in their respective practice areas.

In the profile published by the *National Law Journal*, Alan discusses how the practice of law in media, advertising, IP and technology has evolved over the course of his career and best practices for businesses leveraging new technologies.

Alan, who serves as chair of the firm’s Data Privacy, Cybersecurity & Digital Assets Practice, is one of 12 lawyers nationwide selected to the list.

He leads a global team of professionals who keep the firm’s clients ahead of the curve with cutting-edge transactional, regulatory, policy, cybersecurity and contentious capabilities in dynamically evolving data and digital markets. Alan remains at the forefront of emerging media and tech, advising publishers and other online services, advertisers, ad-tech companies, marketing services providers, data brokers, e-commerce merchants, software and software-as-a-service (SaaS)/platform-as-a-service (PaaS) providers, and other data controllers and processors of all sorts, on related legal issues.

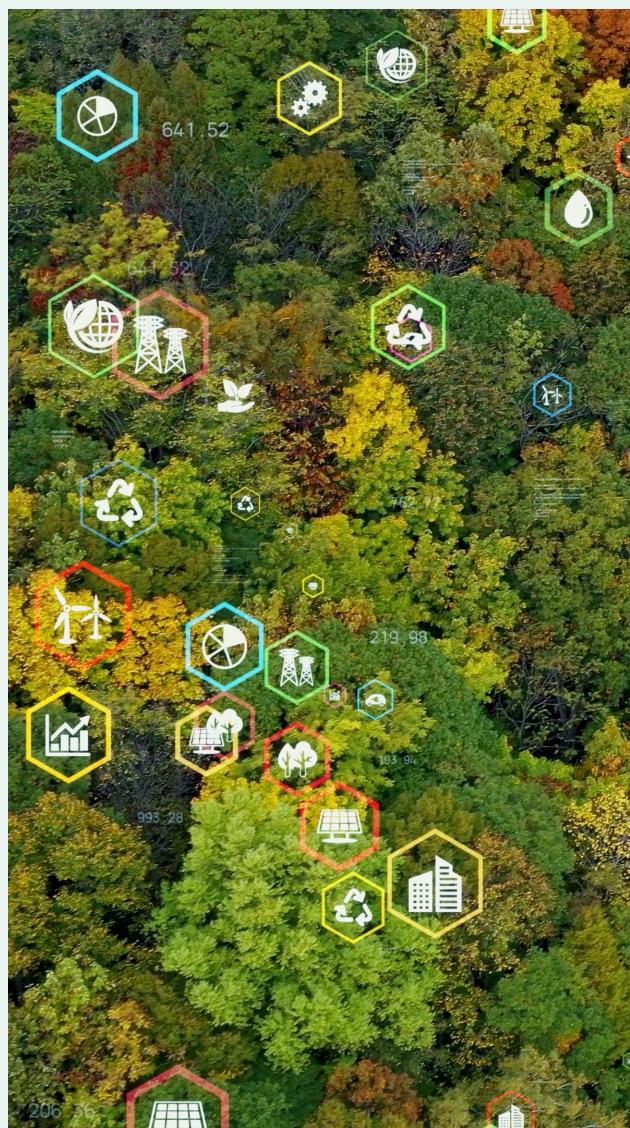
[ESG Newsletter](#)

The ESG landscape is currently progressing at a tremendous pace. Each year, more elements are brought to the forefront and are considered by markets, investors and governments as part of their decision-making. ESG was primarily adopted as a risk management tool, but it has since evolved beyond only risk, and it now serves as a roadmap for sustainable growth and an effective business opportunity.

In this edition, we focus on:

- The Emergence of Greenwashing as an ESG Risk
- Forewarned Is Forearmed – The Importance of Horizon Scanning for ESG
- In the Know – Short, insightful updates on pensions; labor and employment; and data protection, cybersecurity and digital assets

Contacts: [Hannah Kendrick](#) or [Anita Lloyd](#)





[Webinar Materials Available: China's New Personal Data Export Restrictions](#)

Members of our Data Privacy, Cybersecurity & Digital Assets team recently hosted a webinar discussing the new requirements needed to export almost any personal data from China (except situations where higher obligation applies). This now includes executing a designated Standard Contract with the data recipient, completing a detailed Personal Information Protection Impact Assessment and filing both with the applicable Chinese authority. We also compared the PRC Standard Contract to GDPR Standard Contractual Clauses. During the webinar, an attendee asked, "Who is responsible for writing the impact assessment report?" The answer is the data controller.

For more details, you can watch the [webinar](#) and review our written summary of the changes.

[China: The New Draft Trademark Law Increases Requirements for Recognition of Well-Known Status](#)

The recently published draft amendment to the Chinese Trademark Law is proposing the introduction of important changes to the current trademark system in China. In addition to introducing tighter filing requirements and proof of use to combat trademark theft (see below), it is proposing amendments to the process for determination of a trademark's status as well known. Given that recognition of well-known status plays a critical role in trademark prosecution matters such as opposition and invalidation proceedings, these changes are of great importance to rights holders.

For further information, read our full blog or contact [Paolo Beconcini](#).

[Psychosocial Hazards and Poor Organizational Justice – Necessary Protection or a Step Too Far for Employers? \(Australia\)](#)

There is a growing emphasis on the need to properly manage psychosocial hazards in the workplace that may create a risk to workers' health and safety. But recent changes to safety laws indicate that psychosocial hazards include the potentially subjective concept of "poor organizational justice". Have things gone too far, or is "poor organizational justice" a genuine risk to workers' mental health that businesses need to address?

There is little doubt that recognition of the importance of mental health in the workplace has significantly increased in recent times. This is reflected in the recent introduction of an express requirement to address "psychosocial hazards" (those which create risks to workers' mental health) in work health and safety legislation and codes of practice across a number of Australian jurisdictions.

For further information, read our full blog or contact [Steve Bowler](#).

[Beware Trademark Squatters: The New Draft of the Chinese Trademark Amendment Aims at You!](#)

Is this the time we can really see a change in the fight against Chinese trademark squatters, or are we just adding burdens to legitimate right holders?

The China National Intellectual Property Association (CNIPA) has recently published a draft amendment to the Chinese Trademark Law. The document is still under examination and has been disclosed to the public for comments. If adopted in its current version and without further modifications, this amendment would have a considerable impact on many aspects of trademark law and practice in China. One of those aspects is the never-ending fight against trademark squatters.

For further information, read our full blog or contact [Paolo Beconcini](#)

[Intellectual Property Strategies for Development of AI in China](#)

China is at the forefront of the AI development race. While many see China's AI policies as a cover to curb freedoms and control society, the reality is that China is an active AI developer in a thriving market for AI applications in both the trade and industrial sectors.

There are, however, several challenges related to obtaining IP protection for algorithms in China. Lack of IP protection may expose the development to theft, infringement and misuse by Chinese competitors and it may result in huge economic losses for the developers. Navigating these challenges in the proper way will be key to the selection of the appropriate business model for the exploitation and commercialization of the algorithms (e.g., licensing, assignment, JVs, cooperation and codevelopment etc.) in China.

Before entering into cooperation agreements with businesses, developers and government institutions, including R&D centers or universities in China, foreign rights holders should conduct proper due diligence of their future partners and the related projects should be secured by registration of any relevant IP (patents and trademarks *in primis*) and written agreements to ensure that joint ownership, licensees, pledges or transfer of IP rights derived from the cooperation are properly regulated. This will help avoid surprises from the application of unfamiliar Chinese laws and regulations.

For further information, read our full blog or contact [Paolo Beconcini](#).



European Union

European Union Sustainability Outlook

With the European Commission driving forward “Fit for 55” – its plan for a green transition – we have selected relevant developments in EU sustainability law and policy from the past few months. This issue covers:

Green Claims Directive

- Net Zero Industry Act
- European Hydrogen Bank
- The Critical Raw Materials Act
- Transition Pathway for the Chemical Industry
- The Basel Convention
- UN Treaty on Plastic Pollution
- Ecodesign

To find out more, read our [full insight](#) or contact [Wolfgang A. Maschek](#), [Christina Economides](#), [Nina Kuśnierkiewicz](#) or [Valerio Giovannini](#).

Italian OpenAI: May (A)I?

Artificial intelligence (AI) depends on the use of “big data” to create and refine the training models from which the AI “learns”. Although concerns have tended to focus on questions such as inherent bias within the training data, or a lack of information in relation to the way in which the AI’s algorithms operate, the Italian data protection authority (the Garante) has made an order that indicates an even more fundamental difficulty for AI developers – lawfully acquiring the data required to build training models in the first place. If training models cannot be lawfully built and expanded, then the viability of AI might be called into question.

On March 30, 2023, the Garante reached for perhaps the most draconian element of its regulatory toolkit – an order temporarily banning OpenAI LLC (OpenAI), provider of the generative AI service ChatGPT, from processing personal data of individuals who are within Italy. This “stop order” reflects the Garante’s view that urgent measures were required in light of the risks posed both to users of ChatGPT and to individuals whose personal data had been collected and used to build its training models.

To find out more about the key concerns underpinning the Garante’s finding, read our [full blog](#) or contact [Diletta De Cicco](#), [James Downes](#), [Lucia Hartnett](#) and [Malcolm Dowden](#).

The German Supply Chain Act on Corporate Diligence Obligations in Supply Chains Is in Effect

Previously, we have posted on the [German Supply Chain Act on Corporate Diligence Obligations in Supply Chains](#). That legislation is now in effect, as of January 1, 2023, and requires companies that have their central administration, their principal place of business, or any branch with over 3,000 employees in Germany to implement specific risk management practices to detect and combat child labor, forced labor, poor environmental practices and other problematic issues.

Our German supply chain team has published an [update on what is required](#).





UK

[The Subvertising Movement: Protecting Your Brand From “Brandalism”](#)

Heard of the climate activists defacing advertisements, billboards and bus shelters? Brandalism is a recent anti-advertising movement that uses a brand’s own assets and marketing channels against the brand itself, through replacing legitimate advertisements with spoofs and parodies (known as “subvertising”).

A brand needs to be prudent in response to these acts and attuned – from a public relations perspective – to the sensitivities involved. Nonetheless, these are often unsafe acts of criminal damage that aim to shock the public and defame the brand targeted. It is important for a brand to be aware of its legal rights in response – from criminal damage and defamation laws, to advertising, IP/asset/real estate protections.

By their nature, these subverted advertisements are deliberately intended to look similar to the original advert, which means there could be an infringement of copyright or trademark law if a brand’s name, logo or image is used. From an advertising law perspective, the activists are often in breach of consumer and business protection regulations because the claims they make are often untrue and/or unsubstantiated. Activists will trespass on private land, unlawfully interfere with goods and cause criminal damage in the process, all of which can be actionable.

For further information on Brandalism and legal implications please contact [Carlton Daniel](#) or [David Holland](#).

[De-risking Your Supply Chain](#)

Supply chains are facing a barrage of challenges. Minor irritants that historically may have just made business a bit more difficult to transact can, in the current environment, cumulatively exert significant pressure. Additionally, overreliance on a third party or failure to spot the weakest links in your supply chain could have a catastrophic impact.

In our latest insight, we consider how to identify pinch points in your supply chain and de-risk them.

Read the [full insight](#) or view our [take away](#) version. For further information please contact [John Alderton](#), [Jane Haxby](#), [Carlton Daniel](#), [Charlotte Møller](#), [Fergus Gallagher](#), [Nicola A. Smith](#) or [Chris Webber](#).

[UK Data Protection Law Reform: Battle Lines Drawn?](#)

The UK’s Data Protection and Digital Information (No 2) bill passed its second reading in the House of Commons on April 17, 2023. Completion of that formal stage in parliamentary proceedings confirms approval of the bill in principle. From there, the bill moves into its committee stage for more detailed scrutiny. The second reading debate highlighted the issues most likely to dominate discussions during that committee stage.

To find out more, read our [full blog](#) or contact [David Naylor](#) or [Francesca Fellowes](#).

[Greenwashing: A New UK Regulator Investigation and Further Guidance for Businesses](#)

In the first few months of 2023, the UK Regulator – the Competition and Markets Authority (CMA) – continues to be active in cracking down on misleading green claims, this time targeting the fast-moving consumer goods industry (FMCG).

At the end of January, the CMA [announced](#) that it is investigating FMCG for the use of green claims in labelling, advertising and marketing material. In particular, the CMA is concerned with “broad eco-statements” – misleading claims about the recyclability of a product and brands labelling themselves as sustainable. A wide range of products potentially fall within the remit of the investigation, with the CMA [describing](#) FMCG as “essential items used by people on a daily basis and repurchased regularly, such as food and drink, cleaning products, toiletries, and personal care items.”

To find out more, read our [full blog](#) or contact [Carlton Daniel](#).





US

[UNSUBSCRIBED! – FTC Proposes Substantial Amendments to the Negative Option Rule To Cover all Autorenewals, Including B2B Services, and Add New Disclosure, Consent, and Cancellation Requirements](#)

In March, the Federal Trade Commission (FTC) released its Notice of Proposed Rulemaking, Negative Option Rule (Rule), which proposes to substantially amend the existing Negative Option Rule and set higher standards for autorenewal promotions and sales than under existing federal or state laws and regulations. If promulgated, the revised Rule will apply to many more businesses and scenarios than are currently subject to autorenewal regulation. Once the proposed Rule is published in the Federal Register, which will be shortly, interested parties have 60 days after the date of publication to comment on the proposed Rule, which covers all forms of so-called “negative option” marketing and sales in all media, including negative options sold in a business-to-business (B2B) context (think about autorenewal terms in business services contracts), for month-to-month autorenewing terms (think about “no contract” cell, internet, media or entertainment services, and even autorenewing monthly residential and commercial real estate tenancies) and for both the sale of goods and services. Other notable additions include enhanced disclosure, consent and cancellation requirements, as well as a powerful misrepresentation prohibition and annual reminders.

For further information, read our [full blog](#) or contact [Kyle Dull](#), [Alan Friel](#) or [Katy Spicer](#).

[Recent Data Confirms Surge in Union Activity in US Workplaces](#)

Since approximately mid-2021, unions have been aggressively seeking to reassert their relevance in the US workplace. Extensive media coverage of high-profile union organizing campaigns at Amazon, Apple, Starbucks, Trader Joe’s and other well-known large companies has chronicled those efforts, but unions have been hard at work seeking to organize employees at employers of all sizes and in diverse industries and service sectors. These efforts have been undertaken at a time when union density – the percentage of the workforce represented by a labor union – is at a record low level. (Union density in 2022 in the private sector US workforce was 6.0 percent.) Data recently released by the National Labor Relations Board (NLRB) – the federal administrative agency that oversees the relationship between employees, employers and unions – as well as data from a Bloomberg Law analysis, show the extent of those efforts and their impact on union membership.

For further information, read our [full article](#) or contact [Daniel Pasternak](#).

[Human vs. AI Analysis of USPTO Updates – How Does Bard Fare?](#)

Generative artificial intelligence is a type of artificial intelligence (AI) that can generate a wide range of content types in response to user prompts. Examples of such content can include text, images, audio and video content, etc. There has been pervasive use of generative AI over the past few months, to create essays, works of art, music, and even source code for computer programs, as well as to take standardized examinations such as the LSAT, classroom exams, and even bar exams. OpenAI’s ChatGPT and Google Bard are the most recent prominent generative AI entries.

To evaluate the capabilities of generative AI, we selected the USPTO’s recent announcement about grants of digital patents as a topic, and compared a blog that we prepared and a blog that generative AI (here, Google Bard) prepared. The resulting blogs, and our commentary on them, can be found in our [full blog](#).

Please contact [Christopher Adams](#) and [Frank Bernstein](#) for further information.

[National Advertising Division’s 2022 Annual Report: An Advertising Compliance Roadmap for the Year Ahead](#)

“[N]o legacy is so rich as honesty”¹ might fairly summarize the FTC’s theme to the advertising industry for 2023, as gleaned from the [National Advertising Division \(NAD\) 2022 Annual Report](#). “FTC leadership,” the NAD Report elaborates, “sent a consistent, strong message that national advertisers should take a hard look at their own advertising” to create marketing from a consumer protection and truth-in-advertising standpoint. Nothing less will do.

The NAD Report makes clear the FTC’s focus on ensuring that advertisers improve consumer trust in their practices going forward. Consistent with this message, the FTC has been busy rulemaking to address data protection and privacy, disclosures, endorsements and reviews, children’s advertising, and health-related product claims. And, while this rulemaking is underway, NAD continues to ensure its self-regulatory process is consistent with FTC priorities and the evolving rules of the road.

If you are part of the advertising industry or have been tasked with ensuring your company’s advertising compliance, this post will be useful in highlighting NAD’s guidance to use as roadmap for the year ahead.

For further information, [continue reading](#) our blog, or contact [Katy Spicer](#), [Marisol Mork](#), [Kyle Dull](#), [Eleanor Hagan](#) or [Ekaterina Long](#).

[Too Good a Deal? JC Penny Hit With Class Action Suit Over False Reference Pricing](#)

Competition in the world of online sales is intense, but companies that used inflated original prices to lure customers face consequences.

JC Penny, for example, has been hit with a class action lawsuit in the Southern District of California over its alleged advertising practice of using “false reference pricing.” The three-count complaint claims the nationwide retailer violated California’s unfair competition laws, false advertising laws, and Consumer Legal Remedies Act because of its supposed sale pricing practices. Do the claims have merit?

The plaintiff, Maria Carranza, contends that JC Penny is engaging in a scheme to fabricate false “original” (or “reference”) prices before offering products for sale at a supposed “discount.” Carranza claims that JC Penny falsely advertises its products on its e-commerce website by listing a high reference price and the corresponding sale price. The issue? The products, [Carranza claims](#), were *never* sold at the listed reference price as advertised. Rather, as stated in the Complaint, the “original” prices are “false or severely outdated reference prices, utilized only to perpetuate defendant’s false discount scheme.” JC Penny faced a similar “price anchoring” class action suit in [2012](#). Part of that proposed settlement provided for “improvements” to the retailer’s price comparison advertising policies and practices, including “periodic monitoring and training programs” designed to ensure compliance with California’s advertising laws.

For further information, [continue reading](#) our blog or contact [Marisol Mork](#) or [Eleanor Hagan](#).

[Revamping of Cosmetics Regulation and Safety](#)

President Biden signed into law the “Consolidated Appropriations Act, 2023” on December 29, 2022 (the enactment date). The act includes the Modernization of Cosmetics Regulation Act of 2022 (MOCRA) which increases the authority of the US Food and Drug Administration (FDA) to regulate cosmetics and provide enhanced protections for consumers. The new law includes funding authorizations for implementation totaling US\$165 million over federal fiscal years 2023 through 2027. We have prepared a summary of the key updates in MOCRA, timing of the changes, and other insights the cosmetics industry needs to be prepared.

For further information, read the [full publication](#) here or contact [John E. Wyand](#), [Jennifer M. Tharp](#) or [Jennifer Satterfield](#).



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