



Warner Legal Corner

AUTOMOTIVE LEGAL TOPICS

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Proactively Managing Social Media Risk

The rules regarding advertising claims and endorsements have remained largely unchanged for decades. Social media has not changed these rules, but has accelerated both their application and the opportunities for something to go awry. In particular, as content creation has spread to a wider variety of sources, brands are faced with the challenge of more exposure (and therefore more risk) with fewer or different control mechanisms.

Managing risk in this environment requires flexibility, creativity and, perhaps most importantly, process. As companies manage these risks, they should focus on:

- **Clarity and Disclaimers.** Advertising claims regarding the company's products and services should be drafted as clearly as possible, ideally without requiring any disclaimers. If disclaimers are required, they need to be clear and conspicuous. In social media, this means that the consumer does not have to scroll or click through to read any applicable disclaimers. In other words, the full claim and all disclaimers should be fully visible at all applicable times.

- **Endorsements.** With the increased use of endorsements in social media, companies are well advised to provide simple and clear guidance to all endorsers regarding the approved claims, all required disclaimers and the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials.

- **Training, Monitoring and Enforcement.** Regardless of the source of the content, companies need to have policies in place to train and monitor the claims being made about its products and services, as well as a method for identifying and addressing any activity that is out of compliance with those policies. A consistently applied policy is the key to a defensible process.

For more information from Warner's Advertising and Marketing Law Practice Group, visit their [webpage](#) or log onto www.wnj.com.

ATTORNEY SPOTLIGHT

Janet Ramsey



Janet's experience with advertising litigation began with a dog – a cool, confident and edgy Chihuahua. Warner's client, Wrench LLC, had created a popular character that was used by Taco Bell in its advertising. "Yo quiero Taco Bell" and the accompanying advertisements featuring the Chihuahua character went viral before social media even existed. In 2003, a federal jury awarded Warner's client \$30.1 million for Taco Bell's use of the Wrench LLC character. Since that time, Janet has worked with clients on a wide range of advertising issues, from false advertising litigation to managing social media risks.

Janet's practice has grown to include a wide range of complex commercial litigation issues, but the core focus of each project remains the same – developing a winning narrative. Her ability to manage the complexities of wide-ranging litigation while staying laser-focused on the ultimate goal is the key to her success. As Janet explains: "A great attorney, and especially a great litigator, has to do much more than simply specialize in a narrow area of law. They have to be a compelling storyteller, an efficient and effective project manager, a tireless detective and a focused problem solver. The key to achieving all of this is having the right team, and no one beats Warner's team."

Janet has been named among the Best Lawyers in America® in Commercial Litigation for almost a decade and a Michigan Super Lawyers Rising Star or Super Lawyer since 2009. She serves on the firm's Litigation Steering Committee and Professional Staff Committee. She is also a certified mediator, an experienced trial advocacy teacher and a frequent lecturer on a wide range of topics, including advertising and marketing law, eDiscovery and intellectual property litigation.

Checkout Janet's full bio [here](#).



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