
Regulatory Oversight Podcast: 12 Days of Regulatory Insights - Day 7: New Rules in Advertising**Speakers: Mike Yaghi and Natalia Jacobo****Date Aired: December 13, 2024****Natalia Jacobo:**

Welcome back to the special holiday edition of our *Regulatory Oversight* Podcast, "The 12 Days of Regulatory Insights." This 12-episode series is focused on key highlights and trends from this past year in various areas and designed to keep our listeners informed and engaged during the holiday season.

I am Natalia Jacobo, a member of our State Attorneys General team and Regulatory Investigations, Strategy, and Enforcement practice. Before we get started today, I want to remind all of our listeners to visit and subscribe to our blogs at [RegulatoryOversight.com](https://www.regulatoryoversight.com) and [TobaccoLawBlog.com](https://www.tobaccolawblog.com), so you can stay up to date on developments and changes in the regulatory landscape.

Today, I am joined by my colleague, Mike Yaghi, to discuss the evolving landscape of advertising and marketing regulations, focusing on the impact of recent efforts to curb junk fees, state mandates for transparent pricing, and potential regulatory changes anticipated with the new administration in 2025. Mike is also a member of our State Attorneys General and Advertising and Marketing practices. He represents high-profile clients in regulatory enforcement investigations, involving all facets of their business, including advertising and sales practices, monthly membership programs, and auto-renewal programs. Mike, thank you for joining me today.

This past year, junk fees were a hot topic at both the federal and state level. For example, the Federal Trade Commission's proposed rule to curb unfair or deceptive fees garnered support from a coalition of 19 state attorneys general. How significant is this move in the broader context of advertising transparency, and what challenges might businesses face in complying with these new requirements?

Michael Yaghi:

Yes. Hi, Natalia. It's great to be with you today. Thanks for having me. I think these are important topics, so I'm happy to discuss these with you. Definitely, there is a heightened focus at the state level on what we call transparent pricing, right? I mean, it's commonly referred to as junk fees and hidden fees, things like that. The fact that the states earlier this year sent a comment to the FTC supporting its desire and efforts to come up with some transparency in pricing is not a shock because the states have been focused on this for quite some time, and they're really looking at a number of areas with respect to pricing.

Financial services is a big topic for them in hidden hotel fees, for example, concert ticket fees and hidden fees in the context of concert tickets. Those are some common areas. They're really focused also on rental housing fees, for example. I mean, I'm talking about the states, and this

is sort of what they were raising with the FTC. They also covered auto rental fees, telephone, telecommunication, cable fees, things of that nature.

The states are really focused in all of those areas, so it's not a shock that they sent a comment letter encouraging the Federal Trade Commission in its efforts to try to put some guardrails and some regulations around how companies disclose pricing, the required cost to buy a product or services that consumers will have to pay and the mandatory fees so that you can't avoid a fee that's required, for example, in the hotel context.

As we've seen when you go online and a lot of jurisdictions, hotels will disclose the per night charge, but then you get to your checkout cart, and there's a whole bunch of other fees added to it, and it's significantly higher, right? The resort fees, the local hotel tax fees, and all sorts of things. It's an area of focus that the states have, and they're going to push the feds to try to do something.

Obviously, with the new administration coming in, which I'm sure we're going to get to on that as well, that kind of potentially presents some challenges or maybe some changes in priorities and focus. But the states are going to remain very focused in encouraging this type of regulatory framework.

Natalia Jacobo:

Definitely, yes. That makes a lot of sense. Speaking of states, with new state regulations mandating transparent pricing and advertisements such as California Senate Bill 478, how do you foresee these changes impacting businesses and consumers? Additionally, what implications might arise as more states advance similar regulations?

Michael Yaghi:

Yes. I think California and I think followed by Minnesota as well, by the way, the couple of states that have passed price transparency laws or junk fees or regulating junk fees, California's came into effect July of this year, July 1. It mandates transparent pricing in various contexts. It basically is, like I said earlier, trying to prohibit specific industries from having mandatory fees that a consumer is required to pay for a product or service that's not in the upfront price, right? They want you to show now a total upfront price for whatever service or product the consumer is going to buy.

Minnesota passed a similar law, which takes effect January of 2025, January 1. I mean, that's coming online in less than a month now. Other states tried, right? States like Pennsylvania, Connecticut, Colorado, Virginia, a bunch of other states have all tried in 2024 to pass similar laws. I think what it's doing is it's telling the marketplace, at least in California and in Minnesota, which I think a lot of nationwide companies are going to – they're going to have to build out their advertising to really comply with some of these states, unless they want to carve out state-specific advertising, right? It makes it a little bit challenging when you're running national ads that run in California or Minnesota, for example. You're not going to be able to hide.

When I say mandatory fees, those are fees that the consumer is going to be required to pay when they make the final decision to purchase whatever product or service. If it's a fee that's

avoidable, meaning you could check a box and say, "No, I don't want to pay that fee," that's different.

But in the context, for example, hotels, when you're required to pay a daily, for example, hotel tax or a daily property fee like \$50 or \$100 per person to use the hotels, the resort facilities, for example. If that's a mandatory fee in California, Minnesota, for example, that fee has to be included in the very upfront price that's in the advertisement. You can't any longer say \$300 a night for the hotel room, and then you get to your checkout page, and it's \$450 a night. It's like where did that extra \$150 come from? It came from all these other added fees that you can't avoid.

Interestingly, those laws also exclude, though, taxes, for example, or required taxes, government-imposed charges. There's a little bit of a distinction there between the mandatory businesses fees being charged versus when you have to disclose government taxes or similar fees that are collected for a government payment. But I think it's going to change the national landscape and advertising unless companies want to carve out specific ads for these states that have those laws.

With the trend, like I mentioned with all these other states that we're trying to pass similar laws, they definitely – I think companies are going to see that it's just probably easier to try to comply with those statutes in California and Minnesota, and you'll probably see that more on a national level. It's not going to go away in 2025. States are going to continue to try to pass similar laws.

With the new administration coming in at the federal level, they might see a need to do it even more aggressively because time will tell what the new priorities will be. Is the FTC going to move away from this, for example? We don't really know per se. But the new administration coming in could impact those priorities. States are going to take up the mantle to keep that enforcement moving forward in the consumer advertising context.

Natalia Jacobo:

Yes. That makes a lot of sense. That was actually going to be my next question is as we look ahead to 2025 with the new administration taking office, I know you mentioned some direction they might be taking. But what potential changes or new regulatory actions do you anticipate in the advertising and marketing space?

Michael Yaghi:

Yes. I know I touched on that. When the first Trump administration came in, a lot of the states basically focused on ramping up some of their enforcement, right? Because they were concerned maybe the federal government wasn't going to be as focused on consumer protection issues. I think there's a similar concern coming into the next administration again, so it's not unlike 2016 when the first Trump administration was coming into office. I think you're going to see a lot of states still focus and refocus on these pricing issues, price transparency, junk fees, hidden fees. You're probably going to see an uptick in that enforcement.

I wouldn't say you'd see a drop, but you're definitely going to see an uptick. Even if the federal government – let's just assume they stayed on course, and the Federal Trade Commission was still trying to work on some sort of regulation around transparency, and the priorities don't

change under the next administration. You're still going to see enforcement with the states. I don't think that's going to slow down vis-à-vis, whatever the federal government does.

Really, even under the current administration, the comment letter that the state sent to the Federal Trade Commission saying, "We support these types of regulations because we want to make sure there is price transparency to consumers," they're going to just continue to do it really regardless of what the next administration is going to do. If anything, you might see a little bit more aggressive enforcement if the new administration's priorities kind of pull back from price transparency. Who knows whether the FTC would have passed regulations in this area or not, but the fact that the states are encouraging and supporting the federal government from doing it isn't going to negate their efforts or slow down their efforts to protect consumers if they view pricing as hidden or not fully disclosed.

I think you're going to see it in a number of contexts. It's not just consumer finance. It's not just garden variety advertising. You're going to see it in any context if it's healthcare-related, consumer finance, but other contexts as well. It doesn't have to be a finance transaction like we've talked about. It could be buying a product or a service across any industry, right? If fees are hidden or not fully transparent or disclosed, the states are going to stay focused on that topic, and they're going to be policing the marketplace.

Companies probably want to make sure they're at least compliant with California and Minnesota laws. Then if they want to run those ads in national campaigns that are compliant with both those laws, that would at least reduce their potential, I'll say, exposure to an enforcement action under garden variety UDAP laws, consumer protection statutes because states are going to still rely on those broad statutes if they think fees aren't fully disclosed or clear and conspicuous in a transaction.

These pricing transparency laws make it a little bit clearer for consumers and companies because it draws those requirements out in a more detailed way, specific to mandatory fees that can't be avoided versus discretionary fees that consumers could avoid if they don't want to purchase, add on those added features, added cost. But the states, they're certainly not going to wait for transparent laws like California and Minnesota. But they're going to continue to work on those, and the enforcement's going to just continue into the New Year and beyond, quite frankly.

Natalia Jacobo:

Yes, definitely. That makes a lot of sense. Well, Mike, I want to thank you for joining me today. I know our listeners enjoyed your valuable insights. I want to thank our audience for tuning in to this special holiday series. Tune in next time as we continue our "12 Days of Regulatory Insight" series. Please make sure you subscribe to this podcast via Apple Podcasts, Google Play, Stitcher, or whatever platform you use. We look forward to next time.

Michael Yaghi:

Goodbye. Thank you.

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