

Regulatory Oversight Newsletter — September 2024

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Regulatory Oversight Blog

Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

Regulatory Oversight will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

Troutman Pepper Spotlight

TROUTMAN PEPPER WELCOMES FORMER VIRGINIA CHIEF DEPUTY AG

By Chuck Slemp

Chuck Slemp, former Chief Deputy Attorney General (AG) of Virginia, has joined Troutman Pepper's Regulatory Investigations, Strategy + Enforcement (RISE) practice and nationally recognized State AG team.

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Podcast Updates

NAVIGATING ESG: THE GROWING IMPORTANCE AND COMPLIANCE CHALLENGES (PART ONE)

By [Stephen C. Piepgrass](#) and [Michael Yaghi](#)

In the first of a two-part series focused on the complexities of environmental, social, and governance (ESG) standards, Troutman Pepper Partner Mike Yaghi is joined by Brooke Hopkins and Rob Sayegh from Alvarez & Marsal. They dive into the growing importance of ESG, particularly in Europe, where stringent regulations like the Corporate Sustainability Reporting Directive (CSRD) are being implemented. The discussion contrasts this with the ongoing political debate in the U.S., highlighting the need for companies to prepare for upcoming ESG

requirements by 2026.

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Dear Mary Advice Column

ENSURING PROPER LEGAL INVOLVEMENT IN THE INCIDENT RESPONSE PROCESS

By Troutman Pepper

Dear Mary,

I'm the general counsel of an organization and have recently started getting involved in the cybersecurity side of things. As I'm getting my bearings, I've noticed that our security team doesn't always involve the legal department when an incident is suspected. While I understand that not every incident requires our involvement, I'm concerned that we're being left out of matters that do need legal oversight, and when we are involved, it's often too late. What can I do to help address this?

– Living in FOMO

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NOTIFYING LAW ENFORCEMENT OF SECURITY INCIDENTS

By Troutman Pepper

Dear Mary,

I recently experienced a security incident at my company and am considering whether to report it to law enforcement. While I want to cooperate and help catch the cybercriminals responsible, I am worried that law enforcement might come after my company for... I am not exactly sure what.

What should I do?

– Not Guilty

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2024 State AG Elections Update

2024 AG ELECTIONS SET FOLLOWING PRIMARIES IN MISSOURI AND WASHINGTON

By [Troutman Pepper State Attorneys General Team](#)

After primary voting concluded in Missouri and Washington yesterday, the slate of state attorney general (AG) candidates is set for the November 5 general elections, where at least six new AGs will fill offices across the U.S.

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Solar Energy Updates

REGULATORS PROMOTE “ALL-OF-GOVERNMENT” SOLAR ENERGY MARKET INITIATIVE

By [Amy Pritchard Williams](#), [Michael Yaghi](#), [Kalama Lui-Kwan](#), [Massie P. Cooper](#), [Daniel Waltz](#), [Chris Capurso](#), and Whitney Shephard

On August 7, the U.S. Department of Treasury hosted a virtual briefing to discuss the steps that the Biden-Harris administration is taking to address perceived unfair and deceptive practices in the consumer solar energy industry. Deputy Secretary of Treasury Wally Adeyemo, along with Federal Trade Commission (FTC) Chair Lina Khan and Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra, announced a new interagency consumer solar industry initiative directed at both sales and financing of residential systems. Each made statements about the unique effort to root out anti-competitive and sometimes-fraudulent activity by a handful of “bad actors” who are taking advantage of the burgeoning industry. The presenters also noted that they will be coordinating with state attorneys general (AG) and state financial regulators.

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State AG and DOT Partnership Updates

PENNSYLVANIA AG AND DOT PARTNER ON NEW AIRLINE COMPLAINT FORM

By [Troutman Pepper State Attorneys General Team](#)

On July 31, Attorney General (AG) Michelle Henry announced a new way for Pennsylvania residents — or those traveling through Pennsylvania — to file complaints against airlines. The move is in response to allegations of a nationwide increase in complaints regarding airline handling of flight delays, cancellations, and other air travel-related issues. This announcement also comes on the heels of the latest airline disaster caused by the CrowdStrike computer meltdown.

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Advertising + Marketing Updates

FTC ISSUES FINAL RULE ON FAKE REVIEWS AND TESTIMONIALS

By [Clayton Friedman](#) and [Blake Christopher](#)

Earlier this month, the Federal Trade Commission (FTC) announced a final rule to combat fake reviews and testimonials.

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NEW STATE JUNK FEE LAWS SET CORPORATE ADVERTISING BAR—FOR NOW

By [Clayton Friedman](#), [Michael Yaghi](#), and [Natalia Jacobo](#)

As U.S. elections heat up, Republicans have put Democrats on the defense about the economy and the public's perception of it. One talking point for Democrats in response, including in President Joe Biden's last two State of the Union addresses, has been federal efforts to combat so-called junk fees.

Still, the strongest regulations are coming from states, and companies will need to keep an eye on all of these laws to comply.

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DISTRICT OF COLUMBIA AG SUES STUBHUB FOR ALLEGED “DARK PATTERNS” AND HIDDEN FEES

By [Troutman Pepper State Attorneys General Team](#)

On July 29, the attorney general (AG) for Washington, D.C. sued StubHub, Inc. (StubHub) for violations of the district's Consumer Protection Procedures Act. The complaint accuses StubHub of employing “dark patterns,” including the use of hidden fees that mislead consumers and inflate ticket prices.

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TICKETING COMPANY AGREES TO COVID-19 CUSTOMER REFUNDS

By [Troutman Pepper State Attorneys General Team](#)

California Attorney General (AG) Rob Bonta has [settled](#) with StubHub, Inc. (StubHub) for alleged violations of the Unfair Competition Law and False Advertising Law. The complaint accuses StubHub of making misleading statements to induce the public to purchase tickets on its platform. Specifically, the complaint highlights StubHub's “FanProtect” guarantee, which promised full refunds for canceled events — a promise that StubHub allegedly failed to honor during the COVID-19 pandemic.

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Antitrust Updates

STATE AGS SAY KROGER-ALBERTSONS MERGER WILL INCREASE GROCERY MARKET COMPETITION

By [Troutman Pepper State Attorneys General Team](#) and [McKayla Riter](#)

As litigation to block the proposed Kroger-Albertsons merger wages on at the state and federal level, four state attorneys general (AG) have jumped into the fray in support of the merger as the cases heat up on all fronts.

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Other State AG Actions

NEW HAMPSHIRE AG FILES CRIMINAL CHARGES AGAINST OWNER FOR CPA VIOLATIONS

By [Troutman Pepper State Attorneys General Team](#)

On August 20, New Hampshire Attorney General (AG) John Formella announced the arrest of Ricky Southers, the owner of Southers Construction, Inc., for allegedly violating the terms of an injunction issued under the state's Consumer Protection Act (CPA). Earlier this year, Formella filed a civil complaint against Southers and his construction company, alleging numerous and repeated violations of the CPA. The court ordered a temporary restraining order, followed by an injunction, which imposed strict requirements on how Southers can operate his business in the state. Southers has been charged with criminal violations after allegedly failing to comply with the temporary restraining order and injunction.

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BATTLE OVER MILLIONS: NORTH CAROLINA AG FIGHTS TO KEEP SMITHFIELD'S ENVIRONMENTAL FUNDS FROM SCHOOLS

By [Troutman Pepper State Attorneys General Team](#)

In a recent development, North Carolina Attorney General (AG) Josh Stein announced his intention to appeal a Wake County Superior Court decision regarding allocation of environmental grant funds from Smithfield Foods. The ruling, which favors redirecting these funds exclusively to public schools, has sparked a legal debate with significant implications for environmental initiatives and educational funding in the state.

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Tobacco Updates

INDUSTRY URGES SCOTUS TO CONSIDER FDA GRAPHIC CIGARETTE WARNINGS

By [Bryan Haynes](#), [Agustin Rodriguez](#), and [Zie Alere](#)

In August, a group of tobacco companies filed a [petition](#) for certiorari at the U.S. Supreme Court, seeking review of a lower court's holding that the First Amendment does not prohibit the U.S. Food and Drug Administration (FDA) from requiring graphic warnings on cigarette packs. As we noted in prior [coverage](#), the March 2020 FDA rule at issue would require new textual health warning statements alongside color, photorealistic images displayed on the top 50% of the front and rear panels of cigarette packs and the top 20% of cigarette advertisements.

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Cannabis Regulatory Updates

CANNABIS RESCHEDULING: CLOSING OF THE COMMENT PERIOD AND WHAT LIES AHEAD

By [Jean Smith-Gonnell](#) and [Cole White](#)

The proposed rescheduling of cannabis from Schedule I to Schedule III under the Controlled Substances Act (CSA) marks a pivotal moment in the evolution of U.S. cannabis policy but may bring few practical changes to state-licensed markets. On May 20, the U.S. Department of Justice (DOJ) and the Drug Enforcement Administration (DEA) issued a Notice of Proposed Rulemaking (NPRM) to initiate the change, launching a 60-day public comment period that concluded on July 22. The proposal has stirred significant interest and debate among stakeholders, including state regulators, advocacy groups, health experts, individuals, and licensed businesses, resulting in the posting of more than 43,000 comments.

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KEY REGULATORY CHANGES IN COLORADO'S MARIJUANA INDUSTRY – WHAT BUSINESSES NEED TO KNOW

By [Jean Smith-Gonnell](#) and [Cole White](#)

Just before the close of the Colorado legislature's 2024 session in mid-May, lawmakers approved a bill aimed at streamlining several deficiencies in the state's regulation of marijuana businesses. While not all of the bill's intended fixes were passed, certain provisions will facilitate significant changes for businesses, including for licensing processes, contaminant testing protocols, reporting obligations, compliance procedures, and operations management practices.

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COMPLYING WITH INFORMATION REQUESTS: UTILITY MAKES NOVEL PROPOSAL TO “SNITCH” ON SUSPECTED CANNABIS GROWERS

By [Jean Smith-Gonnell](#), Mackenzie W.J. Jessup, and Robyn Lin

What's Happening

The Maine Public Utilities Commission (the commission) heard an unusual pitch: an electric utility proposed to voluntarily report to law enforcement if residential utility usage suggested illegal marijuana grow enterprises — without the law enforcement agency submitting a subpoena or obtaining a warrant. Although the commission ultimately rejected the proposal, the utility cited its high identification success rate and the burden of responding to subpoenas (sometimes as many 50 for a single location), as its motivation for this proposal.

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STATE AGS TAKE ACTION TO QUELL PROLIFERATION OF INTOXICATING HEMP PRODUCTS

By [Jean Smith-Gonnell](#), [Chris Carlson](#), and [Nick Ramos](#)

Concerns over consumer protection are mounting as the sales of intoxicating hemp products continue to rise. In response to a fragmented regulatory landscape that has led to inconsistent enforcement and compliance challenges, state attorneys general are stepping in to fill the void left by the absence of comprehensive federal regulations. These state-level actions aim to safeguard consumers and stabilize the rapidly growing hemp

industry.

[Read the full article on *Cannabis Business Times*.](#)

Stephanie Kozol, Senior Government Relations Manager – State Attorneys General, also contributed to this newsletter.

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

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