



Mark it: 4 big trademark, copyright and advertising trends we are watching for 2022

Intellectual Property Update

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An ever more competitive marketplace and a rapidly evolving legal landscape mean that protecting your intangible assets and mitigating intellectual property risks are more challenging than ever.

Here are four big trends we have been following closely – we expect the significance of these trends will only grow in the coming months.

- 1. The volume of false advertising claims will grow:** In today's consumer landscape, brand content and advertising are being woven into consumers' lives in new and imaginative ways. This expansion, unsurprisingly, has triggered a growing volume of false advertising claims. Add to this recent changes in the law for application of injunctive relief and profits awards under the Lanham Act – which will likely contribute further to the volume and complexity of claims.
- 2. You will pay closer attention to your trade dress and unconventional trademarks:** Your brand is your image – but it is more than just a name or a logo. Instant consumer recognition may derive from the look of your packaging, a unique store layout, a jingle, or the color, sound or even the smell associated with your product. In 2022, companies eager to differentiate themselves in the marketplace will increasingly be asserting the importance of their trade dress.
- 3. The FTC will be scrutinizing your influencer endorsements:** Companies have come to rely heavily on online

reviews and endorsements from social media influencers and celebrities to reach consumers – but those forms of advertising are all facing tighter scrutiny. Now that the FTC is asserting its authority in this area via the Penalty Offense Authority, we can expect action in this area to increase.

4. The rise of NFTs means the rise of novel legal issues: NFTs (or non-fungible tokens) are probably the most buzzed-about– and least understood – asset now invading our news feeds. As businesses and investors seek new ways to monetize digital content, we anticipate a novel collision of First Amendment, copyright and trademark issues.

Our lawyers practice at the vanguard of trademark, copyright and broader IP law, and work on notable matters in every key jurisdiction. We translate that advantage to you via pragmatic and effective commercial guidance and solutions.

Find out more about these swiftly evolving areas of law and how they affect your business by contacting Gina Durham.

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