



Podcast Transcript

AD Nauseum – Checking In With the FTC

Date: August 14, 2025

Guest: Amy Mudge and Daniel Kaufman, **Host:** Connor Corbett

Run Time: 18:24

For questions and comments contact:



Amy Ralph Mudge

Partner
Washington, D.C.
T: +1.202.861.1519 | amudge@bakerlaw.com



Daniel Kaufman

Partner
Washington, D.C.
T: +1.202.861.1523 | dkaufman@bakerlaw.com

Corbett: Thank you for joining us for another episode of BakerHosts AD Nauseum, a podcast series focusing on new and trending advertising issues, with an emphasis on the FTC and the NAD. I'm Connor Corbett, your new host of AD Nauseum, and you're listening to BakerHosts.

We are once again joined by Amy Mudge and Daniel Kaufman, two partners from BakerHostetler's Advertising, Marketing and Digital Media team. Together, they have decades of advertising experience and approach advertising issues from multiple perspectives. On today's episode of AD Nauseum, Amy and Daniel are back to discuss recent FTC enforcement trends, highlighting a return to traditional consumer protection cases such as fraud, earnings claims, and debt relief. They will also explore emerging issues, including Made in the U.S.A. claims, updates to COPPA regulations, and the implications of the bipartisan Take It Down Act, targeting nonconsensual intimate content. With that said,

welcome to AD Nauseam and let's turn it over to Amy and Daniel for this week's episode: Checking in with the FTC.

Mudge: Welcome back, everyone to AD Nauseam. We have been suffering here at your favorite podcast through a steamy summer in the nation's capital, AKA The Swamp. Needless to say, though, a lot has been going on here, a lot that doesn't have to do with advertising law necessarily, but new leadership has been in place at the FTC for half a year now. So, we thought it would be a good idea to check in and see what is happening on the enforcement front.

Kaufman: Yeah, Amy and I'm really happy for the Baker air conditioning. We do support folks here very well with very strong air conditioning.

Mudge: I have a blanket on me now, Daniel. It is feast or famine. Outside versus inside.

Kaufman: Yeah, but look, we're going to talk about enforcement here, and it is, at the outset, it is always important to keep in mind when you see a case that is being announced early on in the administration, where we're still in the early days, it is a very safe bet that case originated in the administration prior. Anyone knows it takes a long time for cases to get developed, but nevertheless it is really significant to take a look at the types of cases that they are supporting and bringing to a close, as well as what they're saying about priorities. And of course, we do know, of course, that a number of investigations have been brought to a close by the new FTC leadership for a variety of reasons.

Mudge: Indeed. But Daniel, I like to divert and obfuscate, so let's focus on summer again. And now that we are knee deep into it, I really hope we have lots of listeners that have vacations coming up. Maybe they'll listen to our podcast from the beach, but we should also chat about great beach reads. Daniel, what books do you like to pull out of your beach bag?

Kaufman: So, past few years I have just become a really big Stephen King fan, especially. I just love his books. They're so entertaining. I think he is a great writer. For beach reads, and it is like it is tough, it is dark, it is compelling. It is funny. It is engaging. So, anything Stephen King keeps me very happy.

Mudge: Didn't see that coming.

Kaufman: Really?

Mudge: No, I didn't. I didn't.

Kaufman: His book on the Kennedy Assassination is one of my favorite books. I highly recommend it.

Mudge: Daniel, I'm going to the beach next week. I'm going to actually put that on the list. And if I don't like it, you'll hear all about it. I would say I used to love a good legal thriller like the old Grisham, Scott Truro days. I just haven't been able to find something to fit into that genre, and I also used to read books about people behaving badly. And I just feel like we have too much of that now in the real

world. I don't want that. So, where I've landed is celebrity bios, and there are so many of them. I mean, Cher Part One, if you haven't looked at it. The Ina Garten one, it is just like there is a new awesome one every day. So, that is where I go.

Kaufman: Yeah, the Ina one is, a friend of mine gave me a copy of that one. So, that is definitely on my to read list.

Mudge: That is a G slash PG one. Ina's had a very prim and proper life. I was expecting a little bit of, a little bit more sex and scandal, but we don't agree on everything, but she is our favorite cookbook author.

Kaufman: So, any beaches in particular that you enjoy, Amy?

Mudge: I love them all. I love a good Caribbean, that super blue water, so I can't see the creepies and we're just headed to Bermuda, which is just an awesome place to go.

Kaufman: Oh, that is awesome.

Mudge: And well, I know your answer to this, but what about you, Daniel?

Kaufman: Oh, I go to Cape Cod every summer, to Provincetown. I love the beaches there. And I will say old school, I still have such fond memories of, wasn't the nice beach, but Brighton Beach in Brooklyn. And just enormous crowds there and being able to get a knish on the boardwalk. But literally every spot of sand taken up by blankets and people growing up in Brooklyn. That was always a lot of fun.

Mudge: Alright, let's turn back to the agency. I really hope though all of our listeners will find a knish somewhere before we continue.

Kaufman: Yeah. Okay, Amy. So, look, there is a lot going on at the agency that certainly has raised eyebrows, but we thought today it would be really helpful to focus on the enforcement actions that we're seeing. And we know that is particularly important information for our audience who wants to know more about where FTC enforcement may be heading for the next few years. And at this point, we've seen a pretty solid chunk of cases coming out.

Mudge: Daniel, you are so politic. The eyebrows definitely have been raised, but I think you're focusing on the stuff that, yeah, our listeners should be focused on because this is the premier advertising agency and knowing what these priorities are going to be is super important. But look, at the outset, we've seen a bunch of cases and matters that I think are best described as traditional bread and butter FTC stuff, fraud, hardcore fraud, and then fraud adjacent allegations. Cases that involve the FTC running into court and getting ex parte TROs. Things involving earning claims, debt collection, payment processing, debt relief, all old, cool stuff.

Kaufman: The TROs really jumped at me like it has been a while since we've seen a stream of TRO cases, and there is there is a fair amount of them. And look, we were promised a bit of a back to the basics and cop on the beat enforcement, and we are certainly seeing some of those with cases that seem to allege

straightforward violations of the FTC Act. Cases that you would have seen five, ten years ago from other FTCs. So, nothing too shocking there on the cases that are coming up, and the cases are generally being approached in a pretty consistent manner with FTC precedent.

Mudge: I guess when we think of themes that we're seeing, we've seen two cases dealing with substance use clinics as well as allegations of violations of the impersonation rule. Now we saw a few of these under Chair Khan, the prior FTC, but it does appear that these are issues that will remain important to this FTC.

Kaufman: I think that is right. And look, we haven't seen any Made in the U.S.A. cases yet, but we are certainly nevertheless seeing a really big push on that issue with tweets, blog posts, and a bunch of warning letters on the issue of Made in the U.S.A. claims.

Mudge: Indeed, and Chair Ferguson decreed, July is Made in U.S.A. month. It is like, well, those warning letters a bit. There were a few letters that went to companies that the FTC alleges were making false Made in U.S.A. claims or variations of those that perhaps suggest that this FTC intends to use warning letters a bit more frequently than some other FTCs, which is great. I'm a huge fan of the warning letter here. Giving companies an opportunity to course correct. They also just sent a few letters to some platforms and raise concerns about third-party vendors on their sites that may be making false Made in U.S.A. claims. A great use of a warning letter.

Kaufman: Yeah, look, our colleague Randy Shaheen wrote a really interesting blog on this point. Of course, everything Randy writes and says is always interesting.

Mudge: Indeed.

Kaufman: Indeed, but the blog noted that there are limits on the ability of the FTC to go after claims that are made by third parties on platforms. But that said, look, we know platforms don't want parties to be selling products on their sites through deception. So, I definitely agree we'll be seeing more Made in the U.S.A. stuff over the next year. It is a popular area of concern on both sides of the aisle and also on different demographics and industries throughout the country.

Mudge: So, I guess we should discuss a few updates on the rulemaking front. Certainly, rulemaking was the big focus of the last FTC, almost less than enforcement. And the first thing we did see this new FTC though move forward with changes to COPPA for the Children's Online Privacy Protection. And those changes will require additional consent for kids' data that is used for targeted advertising and also broadening the definition of personal information even further to include things like biometrics. And we all know Congress continues to consider broader changes to COPPA, and we know kids are a big focus. And if you have a website that appeals to kids, and we're not just talking about COPPA kids, those under 13 kids, really anyone, even in their teenage years, and are somehow getting information from those kids, you really do want to make sure you're up to date on your COPPA requirements and then take a close look at how you're handling

teens and how those relate to state laws and other emerging regimes. But Daniel, what else is going on with privacy? It is not just kids' stuff.

Kaufman: Yeah, definitely not just kids' stuff, but we also, we haven't seen any big new privacy case yet, but I thought one thing that was really significant and there's always been a pattern over the years at the FTC when a company that has collected a lot of data over the years, and I guess every company has at this point, but when they go into bankruptcy and there is a push to sell that data. In the past, FTC chairs or Bureau directors have written letters to the bankruptcy trustees, reminding them that promises that were made to consumers about that data survive the bankruptcy generally, and that is a really important concept that if data was collected and there is a bankruptcy, those same protections should apply in the ultimate transaction that may involve the sale of that data. So, I was glad to see Chair Ferguson did send the letter in connection with the bankruptcy, reiterating that tried and true FTC principle. That you got to look carefully at those sales when a bankruptcy is happening and maintain the promises that were set for it when data was collected.

Mudge: Yeah, I mean, data is currency. 100%. Alright. So, Daniel, I'd love your take on what else is going on with rulemaking specifically.

Kaufman: So, there were two other real major rule making developments since Chairman Ferguson took over and that was separate courts that invalidated both CARS rule and much more recently, the Click to Cancel rule. Now, to be clear, the new administration filed a brief fully supporting the Click to Cancel rule as written but both rules were stricken down purely on procedural grounds and look, rulemaking in the 2020s is never going to be an easy thing.

Mudge: But those were huge developments, and I will say Daniel, you've written some great blogs for those folks who want to dive more deeply into those procedural issues, but I'm pretty sure the CARS rule will not be revived for some time, if ever, but that is a fairly niche rule. It really remains to be seen what will happen with Click to Cancel, which obviously is a lot broader applicability. But given the FTC's existing authority under ROSCA and the FTC Act, there may not be the interest in reopening the record and spending a lot of time and resources to get a revised Click to Cancel rule done.

Kaufman: Yeah, though we certainly know, look, the FTC remains very interested in subscription issues and Congress is also looking at the Click to Cancel rule. There's been some legislative proposals to redo and reimpose the rule or to do some sort of ROSCA 2.0. So, it is an area that definitely still has a lot of interest. But in terms of other authorities, Congress did pass the bipartisan Take It Down Act, which will go into effect next May, and that law requires platforms to remove nonconsensual online publication of intimate visual depictions.

Mudge: Well, I think we can all get behind that. The FTC has authority to enforce this act, and it covers not just real images, but also covers AI generated deep fakes and Ferguson has indicated that the agency will devote substantial resources towards enforcing this new and important act.

Kaufman: Yeah. So, there is one recent case announcement that I actually think warrants a bit of a deeper dive and that is an action involving a telemedicine firm that was selling a GLP-1 weight loss program.

Mudge: Okay, in this case actually is one of our favorite law school issue spotting cases that we'll talk about but at the outset, this was the first FTC involving semaglutide or GLP-1. And let's also be clear at the outset, this stuff works. I can personally attest to this stuff that it works quite well. Oh, and I am open to sponsorship for anyone on these points and maybe our podcast would be open to taking some money as well.

Kaufman: Oh, absolutely. We are ready to run commercials here. Absolutely.

Mudge: Oh, Daniel is open. Daniel's got his purses open. Bring on the sponsorships. Alright. We never talked about this. I'm glad we're on the same page, Daniel. It is time to monetize, alright? It is time, but let's get back. This is an important case. And look, we are used to weight loss cases. Daniel, while he was at the agency bringing them, I've defended them for many years, but mostly they focus on unproven remedies, unproven claims, hundreds of these cases over the years. But this is really different.

Kaufman: Yeah. We've got a product here that works well, and the FTC nevertheless gets an Eight-Count Complaint and settlement here with issues ranging from testimonials to reviews to cancellation issues that we've even got an EFTA account.

Mudge: EFTA, that sounds not great. You mean the Electronic Funds Transfer Act?

Kaufman: Yeah, that is it.

Mudge: Alright. Well, I don't know if we're going to get too deep into that one. I always think the testimonial issues are interesting. It is important that even if you have a great product that you're selling, be careful about using those testimonials and here what the agency alleged was, the people in the testimonials didn't actually use the product, and that the before pictures were edited. And look, to be clear, I'm very sure that there were some real solid pictures they could have used, but for whatever reason, allegedly, they didn't here.

Kaufman: Yeah. And we talked about the product here, but the claims the company were making were a bit unclear according to the FTC about what the product here actually was. They were marketing a GLP program and consumers would get the assessment and the prescription, but it is alleged that it was unclear that consumers would have to separately purchase the actual product, which of course is a pretty significant additional cost.

Mudge: Well, bottom line is they should have done a better job at clearly conveying what their program included and didn't include. Needless to say, this led to a lot of complaints and to chargebacks, and that led us to the cancellation challenges. But there really wasn't sufficient customer service people at the company to

handle the requests. And of course, there were those dreaded internal emails that came about that frankly made it clear there wasn't really an effort to facilitate cancellation. One e-mail stated, quote, team, we really cannot cancel subscription unless people dispute, charge back with their credit card companies, which is obviously not the right way to handle cancellation requests.

Kaufman: Yeah. And then we've got the review issues with allegations of fake reviews, incentivized reviews, and offers of gift cards to customers who would agree to change or remove negative reviews. And we certainly know reviews are another area the FTC will remain focused on for the next few years.

Mudge: Well, certainly with the new rule, I would expect we'd see some activity there. So, look, our advice would be, not surprisingly, don't do what these guys allegedly did. But summing it all up, the FTC is certainly creating some political shock waves in other areas, not something we delved into today, but when it comes to enforcement, really, what the Agency does, we aren't seeing shock waves, some straightforward cases that seem consistent with back to basic consumer protection principles.

Kaufman: Yeah. And with that, thank you so much for joining us and we will continue to keep a close watch on what is going on at the FTC and keep you posted here on AD Nauseum.

Corbett: Thank you, Amy and Daniel. If you have any questions for Amy or Daniel, their contact information is in the show notes. For more information on the latest developments in ad law, visit our ADventures in Law blog at www.adventures-in-law.com and check out all AD Nauseum episodes by subscribing to BakerHosts wherever you get your podcasts. As always, thanks for listening to BakerHosts.

Comments heard on BakerHosts are for informational purposes and should not be construed as legal advice regarding any specific facts or circumstances. Listeners should not act upon the information provided on BakerHosts without first consulting with a lawyer directly. The opinions expressed on BakerHosts are those of participants appearing on the program and do not necessarily reflect those of the firm. For more information about our practices and experience, please visit bakerlaw.com.