

Heated Rivalry: Top Consumer Protection Actions

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FKKS Advertising Law Summit
February 12, 2026

Frankfurt Kurnit Klein + Selz PC



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People of California v. Jam City (2025)

- Mobile game developer driving revenue from in-app advertising



People of California v. Jam City (2025)

- Missing In-App Controls
 - 20/21 apps had no privacy settings
- “Email Only” opt-out insufficient
 - Website opt-out via email only
- Teen Data & Age Gating
 - Broken, no consent



People of California v. Jam City (2025)

- Takeaways: Spotlight on Mobile Adtech
 - Selling = targeted advertising
 - 13-15 require opt-in
 - Design Matters!

People of California v. Jam City (2025)

- Penalties
 - Implement compliant opt outs, age gates, and consent mechanisms for minors.
 - Direct all third parties to delete personal information of u16s collected pre-Oct. 1, 2024.
 - 3- year monitorship.
 - And money: \$1,400,000



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Binder v. Michael Kors (2025)

Plaintiffs alleged

- *False original prices and perpetual sales* at defendant's outlet stores violated CA, NJ, NY, and OR laws; and
- Customers overpaid due to these practices

False Reference Price:	Purchase Price:
\$168.00	\$49.00
\$168.00	\$49.00

Binder v. Michael Kors (2025)

Defendant's Motions to Dismiss

- Successful vs. select plaintiffs under NJ and NY law;
- Not successful vs. other plaintiffs under CA and OR law

Settlement

- Defendant to pay up to **\$2 MILLION**
- Distribute **\$7.6 MILLION** to customers in **\$30** certificates

Binder v. Michael Kors (2025)

Takeaways

- Remember to establish regular prices (and avoid perpetual sales) per applicable laws
- ~ 500 class actions in past 5 years, so higher practical risk



Miller v. Zale Delaware (2025)

- Robotexts are forever
- *Miller v. Zale Delaware, Inc.*
- Core Allegations
 - DNC Registry Violations
 - Lack of Consent
 - Frequency
- Est. Settlement Class: 75,483



ZALES
THE DIAMOND STORE®

Miller v. Zale Delaware (2025)

- Telemarketing Law, Crystal Clear
- Did Zales need to settle?
 - What about *Facebook v. Duguid*?
 - What about *McLaughlin v. McKesson*?
- But –
 - Quick resolution.
 - Avoid state claims (FL).
 - “Claims-made” settlement.

Miller v. Zale Delaware (2025)

- Takeaways
 - DNC scrubbing is still necessary
 - Data integrity and “wrong numbers”
 - Vendor oversight

Miller v. Zale Delaware (2025)

Total settlement amount ...

- 75,483 class members

x \$100 =

\$7,548,300



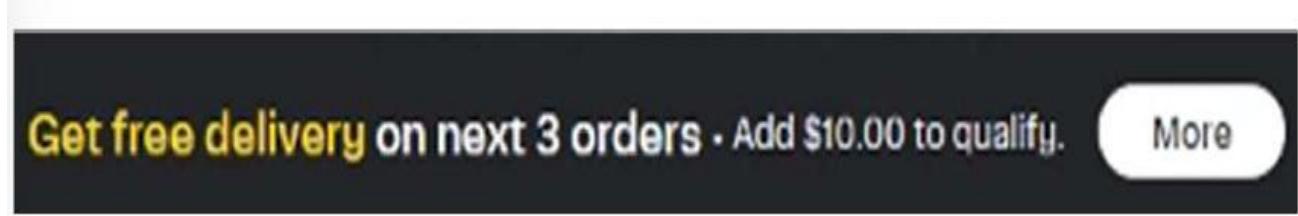
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FTC v. Instacart (2026)

FTC alleged

- False and misleading claims
 - “Free Delivery”
 - “100% Satisfaction Guarantee”
- ROSCA violations
 - Material terms not sufficiently disclosed (e.g., existence of paid subscription, when charged, refund limitations)
 - No express informed consent before charging

FTC v. Instacart (2026)



FTC v. Instacart (2026)



	100% satisfaction guarantee
	Place your order with peace of
	mind. <small> ⓘ</small>
Subtotal	\$35.53
Service fee >	\$3.00 \$1.00
Credit/Discount applied	-\$7.11
Instacart credits applied	-\$0.38

FTC v. Instacart (2026)

Join Instacart+ for free delivery and more

 \$0 delivery fee
On orders over \$35

 5% credit back
On eligible pickup orders

 Lower service fees
On all orders

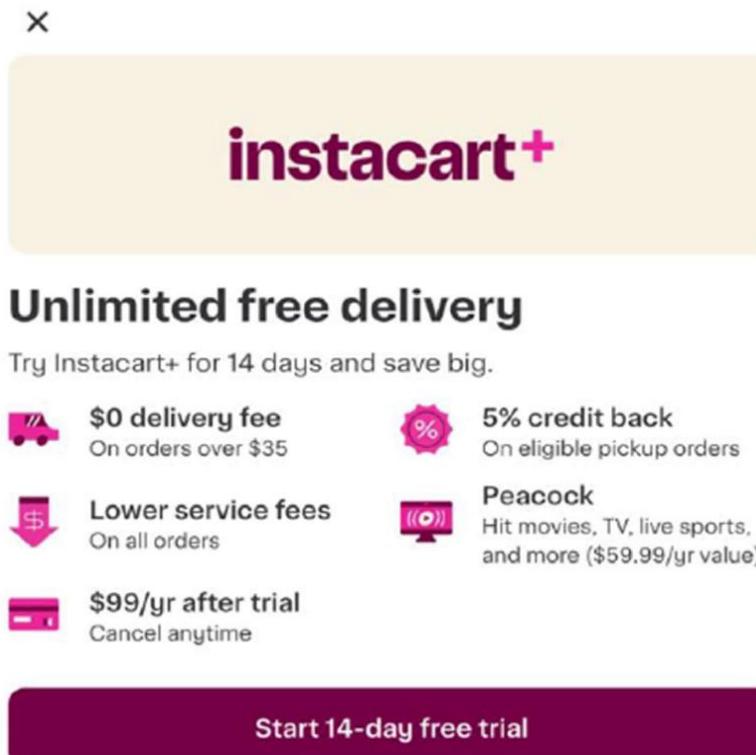
 Peacock
Hit movies, TV, live sports, and more /\$59.99/yr

Start 14-day free trial

By signing up, you agree to the [Instacart+ Terms](#) and authorize us to charge any active payment method on file after your free trial. Cancel any time in Your Account. Other fees, taxes, and or tips may apply. Additional Instacart+ benefits are subject to [additional terms](#). Instacart may modify or terminate additional benefits at any time. Redemption of Peacock benefit may be subject to a daily limit.



FTC v. Instacart (2026)



FTC v. Instacart (2026)

Stipulated Order

- DO NOT misrepresent
 - Fees, including for “free delivery” claims
 - Refund availability and limitations

FTC v. Instacart (2026)

Stipulated Order

- DO disclose material terms
 - For fees and refunds
 - For subscriptions, including existence of paid subscription, amount and frequency of charges, and each deadline to stop charges *immediately adjacent* to consent mechanism
- DO obtain express informed consent before charging for subscription

FTC v. Instacart (2025)

Stipulated Order

- Instacart settled for **\$60 MILLION**
- Compliance monitoring for 10 years



In re: AT&T Customer Data Security Breach Litigation (2025)

- Let's Raise the Bar...
- Incident #1
 - Exposing customer data on dark web
 - ~73M customers
- Incident #2
 - Hackers exploited Snowflake cloud platform vulnerabilities, stealing call & text metadata
 - ~110M customers
- Resulted in 12 class action complaints, eventually consolidated.

In re: AT&T Customer Data Security Breach Litigation (2025)



Neiman Marcus

In re: AT&T Customer Data Security Breach Litigation (2025)

- Failure to safeguard customer information
 - Lack of reasonable cybersecurity protocols
- Delayed notification
 - Failed to timely notify customers of breach once AT&T became aware
- Sensitive data exposure
 - Full names, SSNs, DOB, phone numbers, account passcodes

In re: AT&T Customer Data Security Breach Litigation (2025)

- Supply Chain & Vendor Oversight
- Your data is a liability
- Delete what you don't need!

*In re: AT&T Customer Data Security
Breach Litigation (2025)*

Total Settlement Amount ...

\$177,000,000



FTC v. Amazon (2025)

FTC alleged

- Flows tricked consumers into enrolling into Prime
- Cancellation flow too complex
- Execs should be individually liable for FTC Act and ROSCA violations

FTC v. Amazon (2025)

No thanks, I do not want fast, free shipping

Get FREE Two-Day Shipping

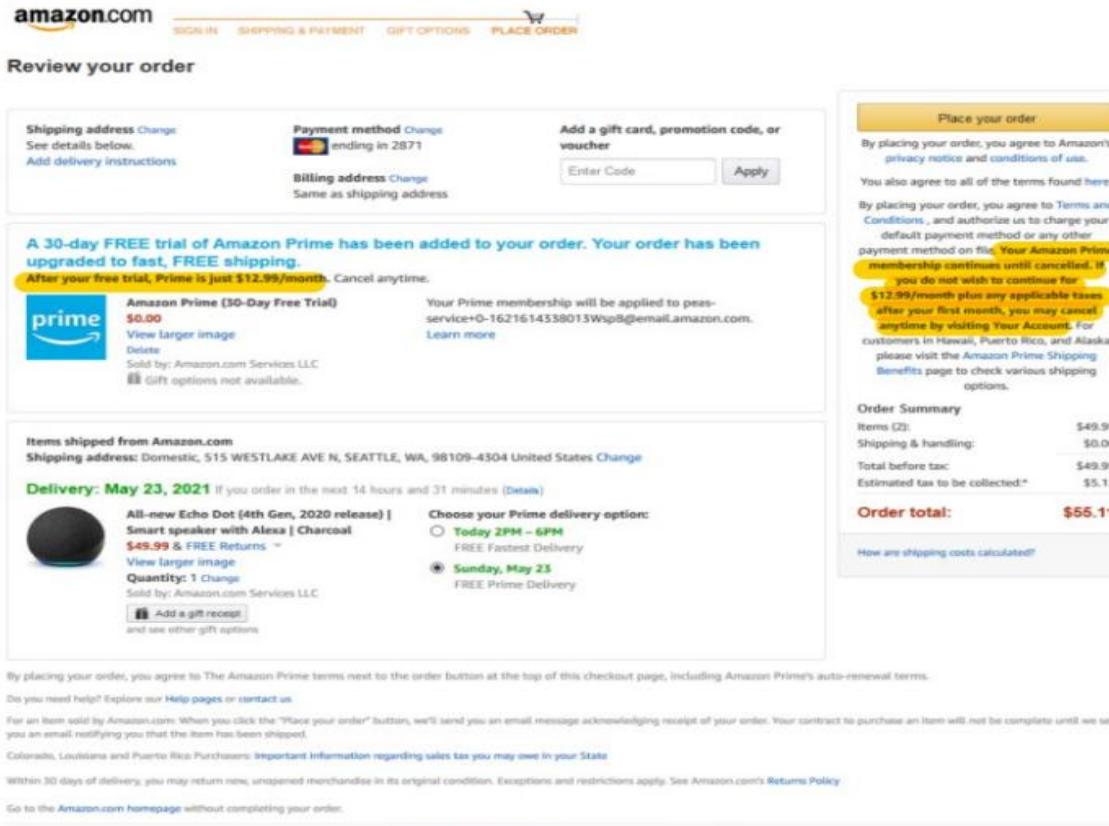
Enjoy Prime FREE for 30 days

No thanks

Get FREE Prime Delivery with Prime

Enjoy Prime FREE for 30 days

FTC v. Amazon (2025)



The screenshot shows the 'Review your order' page on Amazon.com. At the top, there are fields for 'Shipping address', 'Payment method', and 'Add a gift card, promotion code, or voucher'. Below these, a message states: 'A 30-day FREE trial of Amazon Prime has been added to your order. Your order has been upgraded to fast, FREE shipping.' A note below says: 'After your free trial, Prime is just \$12.99/month. Cancel anytime.' To the right, there is a 'Place your order' section with terms and conditions. The 'Order Summary' table shows:

Items	Quantity	Price
Items shipped from Amazon.com	2	\$49.99
Shipping & handling		\$0.00
Total before tax		\$49.99
Estimated tax to be collected*		\$5.12
Order total:		\$55.11

At the bottom, there are links for 'Conditions of Use' and 'Privacy Notice'.

FTC v. Amazon (2025)

1. Marketing Page

Ben, Do you still want to end your Prime benefits?

You still have **25 days left** to enjoy your Prime benefits until the next billing cycle

Prescription Delivery  Get FREE Two-Day Delivery on prescriptions from Amazon Pharmacy, plus exclusive savings.

Prime Delivery  Fast, FREE, and convenient ways to get millions of items, from unlimited Two-Day Delivery to Same-Day and 2-Hour Delivery in select areas.

Prime Video  Watch what you love with award Amazon Originals, movies and TV included in your membership.

2. Offer Page

Ben, before you go, consider switching to monthly payment

Items tied to your Prime membership will be affected if you cancel your membership.

1. By cancelling, you will no longer be eligible for your unclaimed Prime exclusive offers.

Keep Prime for just \$12.99/month

Enjoy all the benefits of Prime with the convenience of monthly payments. You will not be charged until October 19, 2021

[Switch to monthly payments >](#)

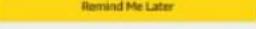
Are you a student?
[Receive government assistance?](#)

By clicking "Switch to monthly payments", your current membership will continue until October 19, 2021 after which you will be charged \$12.99 plus any applicable taxes on your default credit card or another available credit card on file. Your Prime membership will continue until cancelled.

3. Cancel Page

Ben, we're sorry to see you go. Please confirm the cancellation of your membership.

You could also consider the following:

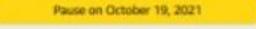
Remind Me Later  Remind me three days before my membership renews.

Keep My Membership  You will continue enjoying all the benefits of Prime. View everything included in Prime.

Pause your Prime membership:

Items tied to your Prime membership will be affected if you pause your membership.

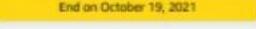
1. By pausing, you will no longer be eligible for your unclaimed Prime exclusive offers. [Click here to see your offers.](#)

Pause on October 19, 2021  Your benefits access will continue until October 19, 2021. After that date, your billing and benefits will be paused, and you will no longer be charged for your Prime membership. Use the quick-resume function anytime to regain access to your Prime benefits. [Learn More.](#)

Cancel your Prime membership:

Items tied to your Prime membership will be affected if you cancel your membership.

1. By cancelling, you will no longer be eligible for your unclaimed Prime exclusive offers.

End on October 19, 2021  Your benefits will continue until October 19, 2021, after which your card will not be charged.

FTC v. Amazon (2025)

For personal liability under
FTC Act –

- (1) Participated directly in, or
had authority to control;
- (2) Actual knowledge, reckless
indifference, or aware of high
probability of fraud...

SVP - INT'L STORES

VP - PRIME &
MARKETING

VP - PRIME

FTC v. Amazon (2025)

Summary Judgment Decision

- Amazon violated ROSCA as a matter of law by failing to disclose material terms **before** obtaining customer billing info
- 2 of 3 Execs could be held individually liable

FTC v. Amazon (2025)

Stipulated Order

- DO NOT misrepresent any Material term in transaction with a subscription
- DO comply with ROSCA
 - Clearly and conspicuously disclose material terms (e.g., consumer will be charged, charges may increase and will recur unless consumer cancels, amount and frequency of charges, and how to stop future charges)
 - Get express informed consent for subscription enrollment
 - Offer simple cancellation mechanism—cannot be difficult, costly, confusing, or time consuming

FTC v. Amazon (2025)

Stipulated Order

- Beyond ROSCA, Amazon must
 - Provide a clear button to decline enrollment (no dark patterns-like language such as “No thanks, I don’t want free shipping”)
 - Mention Prime in call-to-action button
 - If autorenewal, use “renew” or similar wording on all sign-up pages
 - Disclose price and autorenewal feature on all sign-up pages

FTC v. Amazon (2025)

Stipulated Order

- Amazon settled for **\$2.5 BILLION**
 - \$1 billion civil penalty; and
 - \$1.5 billion consumer redress
- Compliance monitoring for 10 years

Amazon & Instacart (2025)

Takeaways

- Dark patterns enforcement
- Keep an eye on customer complaints
- Double check sign-up disclosures, consent mechanism, and cancel flows



Let's Connect!



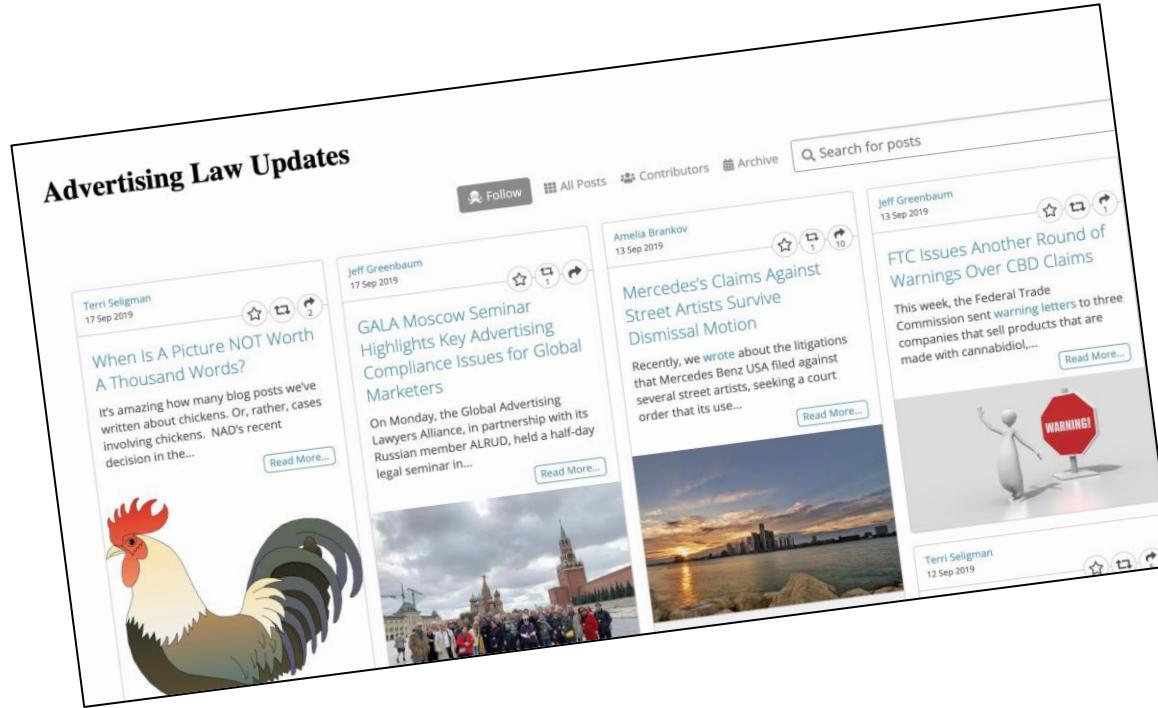
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For more ...



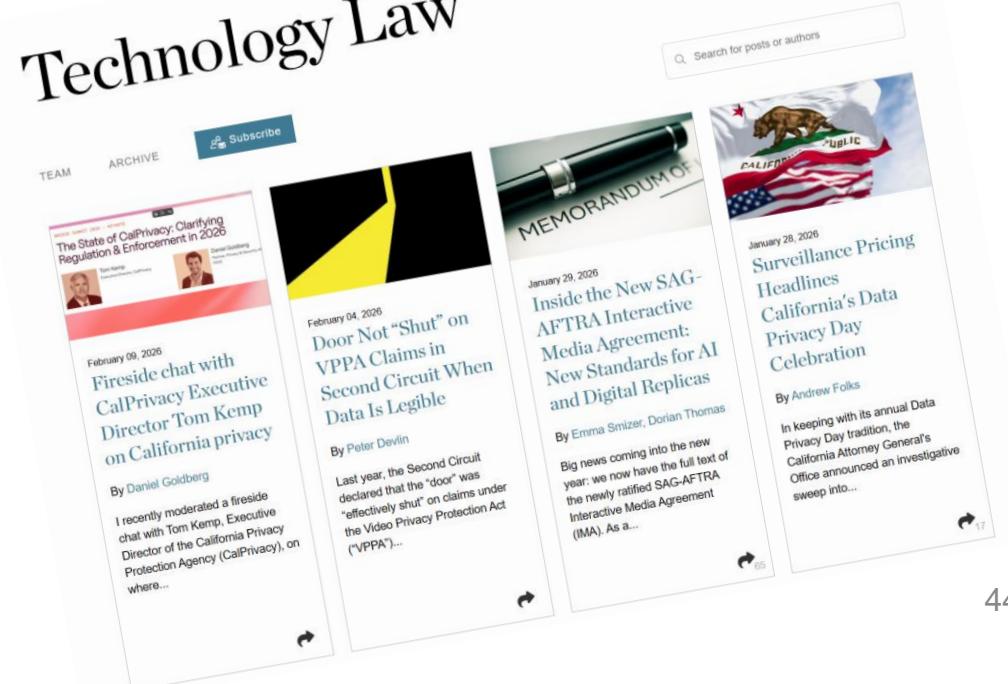
The screenshot shows a blog homepage with a header "Advertising Law Updates". The main content area displays several blog posts. The first post, by Terri Seligman on 17 Sep 2019, is titled "When Is A Picture NOT Worth A Thousand Words?" and features an image of a rooster. The second post, by Jeff Greenbaum on 17 Sep 2019, is titled "GALA Moscow Seminar Highlights Key Advertising Compliance Issues for Global Marketers" and includes an image of the Kremlin. The third post, by Amelia Brankov on 13 Sep 2019, is titled "Mercedes's Claims Against Street Artists Survive Dismissal Motion" and features an image of a person standing next to a "WARNING!" sign. The fourth post, by Jeff Greenbaum on 13 Sep 2019, is titled "FTC Issues Another Round of Warnings Over CBD Claims" and includes an image of a sunset over a city skyline.

advertisinglaw.fkks.com

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technologylaw.fkks.com

Technology Law



The screenshot shows a blog homepage with a header "Technology Law". The main content area displays several blog posts. The first post, by Daniel Goldberg on February 09, 2020, is titled "Fireside chat with CalPrivacy Executive Director Tom Kemp on California privacy" and features an image of a microphone. The second post, by Peter Devlin on February 04, 2020, is titled "Door Not 'Shut' on VPPA Claims in Second Circuit When Data Is Legible" and includes an image of a black and yellow striped flag. The third post, by Emma Smizer and Dorian Thomas on January 29, 2020, is titled "Inside the New SAG-AFTRA Interactive Media Agreement: New Standards for AI and Digital Replicas" and features an image of a pen. The fourth post, by Andrew Folks on January 28, 2020, is titled "Surveillance Pricing Headlines California's Data Privacy Day Celebration" and includes images of the California state flag and the American flag.