

Heated Rivalry: Top Consumer Protection Actions

Andrew Folks, Jason Howell

FKKS Advertising Law Summit

February 12, 2026

Frankfurt Kurnit Klein + Selz PC



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**



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



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)



Get free delivery on next 3 orders • Add \$10.00 to qualify.

More


FTC v. Instacart (2026)

Place order

Please select a delivery time



100% satisfaction guarantee

Place your order with peace of mind. 

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.


instacart+

Get unlimited free delivery for 14 days today.

Join Instacart+


FTC v. Instacart (2026)








Unlimited free delivery


Try Instacart+ for 14 days and save big.

**\$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 value)

**\$99/yr after trial**
Cancel anytime

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. The membership renews automatically. You can cancel any time in Your Account Settings. Other taxes, fees, and/or tips may apply. With Instacart+, delivery fee will not be charged on orders over \$35 per retailer; delivery subject to availability. 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)

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)



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)

amazon.com

SIGN INSHIPPING & PAYMENTGIFT OPTIONSPLEASE ORDER

Review your order

Shipping address [Change](#)
See details below.
[Add delivery instructions](#)


Payment method [Change](#)
 ending in 2871

Billing address [Change](#)
Same as shipping address

Add a gift card, promotion code, or voucher

A 30-day FREE trial of Amazon Prime has been added to your order. Your order has been upgraded to fast, FREE shipping.

After your free trial, Prime is just \$12.99/month. Cancel anytime.




Amazon Prime (30-Day Free Trial)

\$0.00

[View larger image](#)

[Delete](#)

Sold by: Amazon.com Services LLC

 Gift options not available.


Your Prime membership will be applied to post-service+0-1621614538013Wsp@amazon.com.

[Learn more](#)

Items shipped from Amazon.com

Shipping address: Domestic, 515 WESTLAKE AVE N, SEATTLE, WA, 98109-4304 United States [Change](#)

Delivery: May 23, 2021 If you order in the next 14 hours and 31 minutes [Details](#)



All-new Echo Dot (4th Gen, 2020 release) | Smart speaker with Alexa | Charcoal

\$49.99 & FREE Returns

[View larger image](#)

Quantity: 1 [Change](#)

Sold by: Amazon.com Services LLC

[Add a gift receipt](#) and see other gift options

Choose your Prime delivery option:

☐ Today 2PM - 6PM
FREE Fastest Delivery

☒ Sunday, May 23
FREE Prime Delivery

By placing your order, you agree to The Amazon Prime terms next to the order button at the top of this checkout page, including Amazon Prime's auto-renewal terms.

Do you need help? Explore our [Help pages](#) or [contact us](#).

For an item sold by Amazon.com: When you click the "Place your order" button, we'll send you an email message acknowledging receipt of your order. Your contract to purchase an item will not be complete until we send you an email notifying you that the item has been shipped.

Colorado, Louisiana and Puerto Rico Purchasers: Important information regarding sales tax you may owe in your State

Within 30 days of delivery, you may return new, unopened merchandise in its original condition. Exceptions and restrictions apply. See Amazon.com's [Returns Policy](#).

Go to the [Amazon.com homepage](#) without completing your order.

Conditions of Use | Privacy Notice | 1996-2020, Amazon.com, Inc.

Place your order

By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#).

You also agree to all of the terms found [here](#).

By placing your order, you agree to [Terms and Conditions](#), and authorize us to charge your default payment method or any other payment method on file. Your Amazon Prime membership continues until cancelled. If you do not wish to continue for \$12.99/month plus any applicable taxes after your first month, you may cancel anytime by visiting [Your Account](#). For customers in Hawaii, Puerto Rico, and Alaska please visit the [Amazon Prime Shipping Benefits](#) page to check various shipping options.

Order Summary

Items (2):	\$49.99
Shipping & handling:	\$0.00
Total before tax:	\$49.99
Estimated tax to be collected*	\$5.12
Order total:	\$55.11

[How are shipping costs calculated?](#)

Frankfurt Kurnit Klein + Selz^{PC}

34

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

Remind Me Later

Keep my benefits and remind me 3 days before my membership renews

Cancel My Benefits

Keep My Benefits

Remind Me Later

Keep my benefits and remind me 3 days before my membership renews

Continue to Cancel

Keep My Membership

2. Offer Page

Ben, before you go, consider switching to monthly payments

⚠ 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 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.

Remind Me Later

Keep My Membership

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

Keep My Membership

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.](#)

Pause on October 19, 2021

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.

End on October 19, 2021

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!



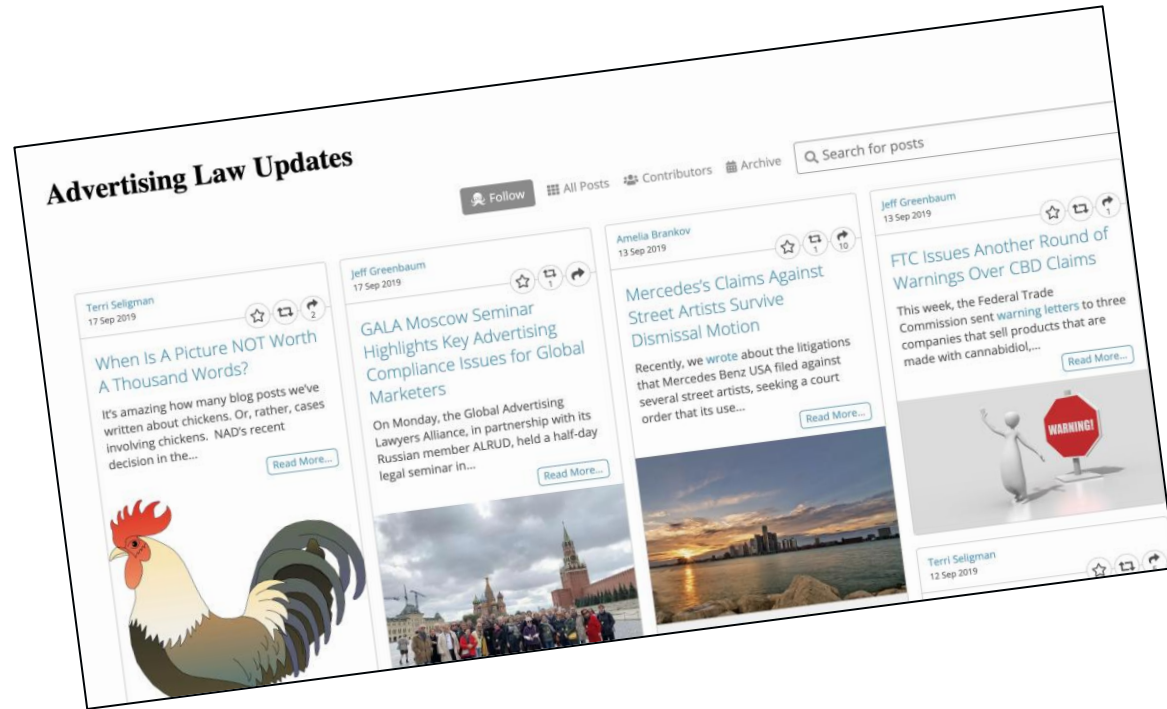
Jason Howell

jhowell@fkks.com

Andrew Folks

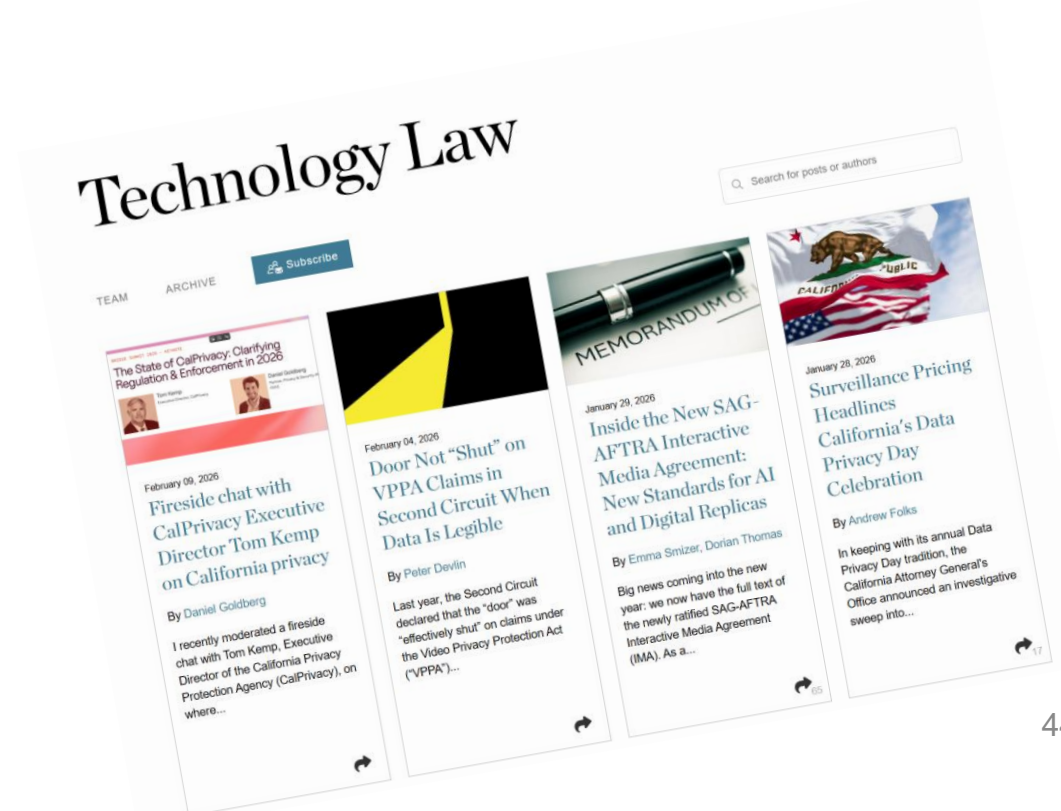
afolks@fkks.com

For more ...



advertisinglaw.fkks.com

technologylaw.fkks.com



Frankfurt Kurnit Klein + Selz PC