

ADVERTISING & MARKETING

Husch Blackwell counsels businesses and advertising agencies across all phases of marketing and advertising campaign development and deployment. We guide advertisers and agencies on strategies for promoting products and services that minimize the risks that accompany online and print advertising, food labels, product claims, coupons, sweepstakes, endorsements, and sponsorships.

Our team of marketing compliance attorneys strives to help clients quickly and efficiently comply with all applicable laws, state and federal regulatory regimes, and rights of publicity. We advise clients on general advertising terms and usage and on regulatory compliance and enforcement across numerous federal and state government agencies, including the Federal Trade Commission (FTC), Food and Drug Administration (FDA), and National Organic Program. Our group also works closely with our firm's State Attorneys General practice team to coordinate compliance and dispute resolution efforts with state AG offices across the country. Additionally, our team assists clients with consumer advocacy and industry self-regulatory groups such as the National Advertising Division (NAD) of the Better Business Bureau, the Children's Advertising Review Unit, and the Distilled Spirits Council's Advertising Code Board.

Specifically, members of our team have developed deep experience advising clients on the following advertising and marketing-related challenges.



The advice and service that we get from Husch Blackwell are second to none. We work with several other firms for matters outside of intellectual property, and the experience just simply is not the same. Most importantly, the Husch Blackwell team offers the one thing that all clients are ultimately looking for in an attorney: SUCCESS.

— Jamie Hawken,
President, Utility
Concrete Products
LLC —

Contact Information

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Lanham Act/False Advertising Litigation

Our team tackles false advertising claims across numerous product classes, mobilizing quickly and gaining a quick understanding of the relevant facts in order to scope and structure litigation strategy. Working when needed with our Class Action Defense team, our advertising litigators, we have successfully handled matters involving pharmaceuticals, consumer products, sporting goods, human and pet foods, alcohol and beverages, computer software and applications, agricultural equipment, and medical devices, among other areas.

Advertising Review and Substantiation

Our team advises on a wide variety of premarket advertising issues and works across clients' legal and marketing departments to meet their advertising goals. In addition to reviewing advertising materials for legal risks, our subject matter experts assist clients in evaluating the information needed to substantiate claims, especially those that require the development of competent and reliable scientific evidence or the consumer surveys.

Contests & Sweepstakes

Our team advises clients on the structure, operation, and consideration of promotional contests and sweepstakes. We work with clients to draft official rules and disclosures and to advise on registering the contest or sweepstakes with all relevant authorities.

Raffles

Our team works closely with the firm's Nonprofit Organizations & Religious Institutions group to advise clients on the laws and regulations concerning raffles. Our team counsels nonprofits through these challenges to establish legally compliant raffles.

Reward and Loyalty Programs

We counsel clients on the numerous legal challenges associated with reward and loyalty programs, including state and federal consumer protection laws, unfair and deceptive trade practices regulations, data privacy and security, and regulations relating to money transfer and transmission.

ESG and Sustainability

As consumer and investor awareness of environmental, social, and governance (ESG) issues continues to grow, our team has developed a focus on advising clients regarding the use ESG concepts in marketing and advertising copy and product labels. Our team offers practical solutions to mitigate risk and to avoid potential reputational harm from making unwarranted or false claims and so-called greenwashing claims.

Representative Experience

Managed the legal aspects of relationships with advertising agencies and media buyers for an annual advertising budget of more than \$1 billion and developed forms to be used by

media buyers for online advertising purchases and television and movie product placements.

Defended advertising company Vertis in right of publicity lawsuit filed by basketball's Michael Jordan, who sought more than \$10 million in damages over an advertising tribute. Obtained dismissal of claims for client.

Counsel to 500 agricultural biotechnology corporation, responsible for reviewing print, radio, and television advertising content.

Represented a telecommunications client before the National Advertising Division and prevailed in a challenge of rival telecommunications company's advertisement.

Successfully defended pharmaceutical manufacturer in U.S. International Trade Commission (ITC) against competitor's claim that generic drug was marketed unfairly.

Secured victory for pharmaceutical manufacturer in federal court litigation brought by a competitor alleging false advertising and unjust enrichment, among other counts, in connection with the manufacture and sale of a medical cream. Complaint dismissed without prejudice.

Counseled animal health companies on advertising and marketing of animal drug, grooming products and other pet accessories as "organic," "cruelty free," "sustainable," "natural," etc.

Assist in reviewing and developing claim substantiation for product promotional and advertising campaigns.

Reviewed dairy company marketing regarding "free of"

claims and substantiations required by state regulators to determine compliance.

Monitor and consult with various consumer packaged goods companies regarding marketing claims and developments before the FTC, NAD, and consumer litigation.

Consult with food, agribusiness, and consumer goods companies on ESG related marketing and translating CSR successes into substantiated marketing.

Develop state law compliant sweepstakes and couponing programs for dairy products.

Consult with distribution company on sustainability, recycling, and composting marketing of paper and plastic products.

Consult with clients regarding ever changing state laws and regulations applying to industrial hemp and CBD labeling and marketing.

Vet marketing and labeling of industrial hemp and CBD containing foods, dietary supplements, and cosmetics.

Assist animal health company in reviewing safety, labeling, and marketing of flea and tick products, including EPA minimum risk pesticides.

Assist dairy processing company in evaluating Federal Milk Marketing Order petitions and develop strategy for addressing concerns with petitions.

Counseled alcohol beverage company on cross-marketing with cannabis influencer.

Act as primary regulatory counsel for liquor importer and assist with labeling and marketing inquiries.

Guide start-up energy drink company in formulation, FDA labeling, and substantiation of marketing claims for products.