

Alert | Marketing, Advertising, Sweepstakes & Promotions Law



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Forget About Fake News, How About Fake People? California Starts Regulating Bots as of July 1, 2019

California SB 1001, Cal. Bus. & Prof. Code § 17940, *et seq.*, takes effect July 1, 2019. The law regulates the online use of “bots” – computer programs that interact with a human being and give the appearance of being an actual person – by requiring disclosure when bots are being used.

The law applies in limited cases of online communications to (a) sell commercial goods or services, or (b) influence a vote in an election. Specifically, the law prohibits using a bot in those circumstances, “*with the intent to mislead the other person about its artificial identity for the purpose of knowingly deceiving the person about the content of the communication in order to incentivize a purchase or sale of goods or services in a commercial transaction or to influence a vote in an election.*” Disclosure of the existence of the bot avoids liability.

As more and more companies use bots, artificial intelligence, and voice recognition technology to provide customer service in online transactions, businesses will need to consider carefully how and when to disclose that their helpful (and often anthropomorphized) digital “assistants” are not really human beings. In a true customer-service situation where the bot is fielding questions about warranty service, product returns, etc., there may be no duty. But a line could be crossed if any upsell is included, such as “Are you interested to learn about our latest line of products?”

Fortunately, the law doesn't expressly create a private cause of action against violators. However, it remains to be seen if lawsuits nevertheless get brought under general laws prohibiting unfair or deceptive trade practices alleging failure to disclose the existence of a bot.

Also, an exemption applies for online "platforms," defined as: "any public-facing Internet Web site, Web application, or digital application, including a social network or publication, that has 10,000,000 or more unique monthly United States visitors or users for a majority of months during the preceding 12 months." Accordingly, operators of very large online sites or services are exempt.

For marketers who use bots in customer communications – and who are not large enough to take advantage of the "platform" exemption – the time is now to review those practices and decide whether disclosures may be appropriate.

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