Appeals court fines lawyer in Starbucks bias case $15K for AI-generated fake citations

abajournal.com/news/article/fake-ai-created-citations-result-in-real-15000-fine-for-lawyer-in-illinois-appeals-court

An Illinois appeals court has upheld the Illinois Human Rights Commission's dismissal of a race discrimination charge brought by a Starbucks employee against the Starbucks Coffee Co. (Photo from Shutterstock)

An Illinois appeals court has upheld the Illinois Human Rights Commission's dismissal of a race discrimination charge brought by a Starbucks employee against the Starbucks Coffee Co., and it has sanctioned her attorney $15,000 for submitting court documents containing artificial intelligence-fabricated legal citations.

Lawyer Mason Cole of Cole Sadkin submitted briefs on behalf of Starbucks employee Kimberly Scott with false citations, quotes and even a fictitious case, the Illinois Appellate Court for the First District found. It also determined that the mistakes were generated by AI hallucinations created by the chatbot that Cole used to draft his briefs.

In a written response to the appeals court, he admitted to using a "premier corporate subscription of ChatGPT" to explain complex legal issues. He also said he cross-referenced the citations with LexisNexis but didn't catch the errors, according to coverage by AlabNews.

The appeals court, which upheld a decision by the Illinois Human Rights Commission to dismiss the race discrimination charge by Scott, imposed a flat $1,500 penalty per false citation on Cole. It also cited Rule 375 by the Illinois Supreme Court and the Illinois Rules of Professional Conduct regarding the attorney's conduct.

The clerk of the Illinois Appellate Court for the First District was directed to forward the court's opinion to the Illinois Attorney Registration & Disciplinary Commission, which investigates and disciplines lawyers.

Class Action

ADP Agrees to $48 Million Deal in Retirement Plan Fee Suit (1)

Aug. 3, 2026, 7:21 AM PDT; Updated: Aug. 3, 2026, 11:48 AM PDT

Summary by Bloomberg AI AI Generated

- Automatic Data Processing Inc. has agreed to a $48 million settlement in a class action lawsuit over retirement plan fees for thousands of workers of companies that contract with the human resources and payroll provider.

- The settlement includes the implementation of “certain non-monetary relief” for the benefit of participants moving forward, such as a review of the plan’s target date funds and the appointment of an independent fiduciary.

- If approved, the settlement would end litigation that began in 2020, in which the plaintiffs alleged ADP violated the Employee Retirement Income Security Act by improperly paying themselves using plan assets and allowing the plan to pay excessive fees.

Automatic Data Processing Inc. has agreed to a $48 million settlement in a class action lawsuit over retirement plan fees for thousands of workers of companies that contract with the human resources and payroll provider.

The plaintiffs submitted July 31 an unopposed motion for the court to grant preliminary approval of the settlement, which also includes the implementation of “certain non-monetary relief” for the benefit of participants moving forward. That includes assurances for a review of the plan’s target date funds and the appointment of an independent fiduciary if ADP seeks reimbursement for administrative services to the plan.

If approved, the settlement would end litigation that began in 2020. The plaintiffs, who sought to represent a 50,000-person class, alleged ADP violated the Employee Retirement Income Security Act by improperly paying themselves using plan assets, while allowing the plan to pay excessive fees and offer poorly performing investments.

Attorney Jerry Schlichter, co-managing partner of Schlichter Bogard, which represented the plaintiffs, called the settlement a “substantial amount of money” that will better position the workers in the case to build their retirement savings in the future. But the ADP result is unlikely to create momentum or any kind of pattern for similar lawsuits over plan fees, he said.

“Certainly multi-employers or people who have plans that are similar to ADPs have an equal duty to make sure they’re treating their plan participants as they need to,” Schlichter told Bloomberg Law Monday. “I don’t think one can draw from this any extrapolation to cases across the board involving multi-employer plans, for example, because this, as is every case, is unique.

The settlement does serve as an indication that there is “substantial exposure for fiduciaries in these cases,” Schlichter said, and a reminder that fiduciaries need to take their obligations under ERISA seriously.

The parties were previously scheduled to begin a trial in October before Judge Evelyn Padin in the US District Court for the District of New Jersey.

The plaintiffs will seek $20,000 in service awards for the two named plaintiffs and class representatives. Class counsel will request fees not to exceed one-third of the gross settlement amount, plus reimbursement for litigation expenses not to exceed $785,000.

The court previously declined to dismiss the case and denied ADP’s bid for summary judgment on key claims.

The participants are also represented by Spiro Harrison & Nelson. Seyfarth Shaw LLP represents ADP.

The case is Berkelhammer v. ADP TotalSource Grp., Inc., D.N.J., No. 2:20-cv-05696, motion for settlement 7/31/26.

Litigation

Amazon Sued by NJ Over Delivery Driver Antitrust Claims (2)

Aug. 4, 2026, 7:24 AM PDT; Updated: Aug. 4, 2026, 10:02 AM PDT

Summary by Bloomberg AI AI Generated

- Amazon violated federal and state antitrust law through actions designed to dominate delivery service in New Jersey and in the New York City metro area, state Attorney General Jennifer Davenport said.
- The complaint alleges Amazon is manipulating markets and violating the Sherman Act, creating unreasonable restraints on trade and limiting worker opportunities through its buying power of delivery services.
- The state is demanding the ending of no-poach procedures, and asking the court to issue an order enjoining Amazon from these practices, which Amazon claims are "not grounded in fact".

Amazon violated federal and state antitrust law through actions designed to dominate delivery service in New Jersey and in the New York City metro area, state Attorney General Jennifer Davenport said in a federal lawsuit filed Tuesday.

The retail, logistics, and data giant is manipulating markets and violating the Sherman Act, creating unreasonable restraints on trade and limiting worker opportunities through its buying power of delivery services, said the complaint filed in the US District Court for the District of New Jersey.

This influence and control over delivery service suppliers violates state and federal law for the entire "last-mile delivery services" market in the region, the complaint said.

In a Tuesday press conference, the Democratic attorney general said thousands of delivery drivers are being "exploited every day" and are "working longer hours in worse conditions for less money because of Amazon's anticompetitive behavior."

In a statement Amazon spokesman Steve Kelly said the complaint was “not grounded in fact” and claims about working conditions “are just wrong.”

The suppliers are “independent business owners who make their own decisions about hiring, fleet management, and capacity planning — and they choose whether to work with other companies besides Amazon,” he said.

Buying Power

The core of Davenport’s argument is that Amazon is a monopsony — a company with outsized buying power used to control supply in a certain industry — turning delivery drivers into “captive sellers” through its Delivery Service Partners program.

The delivery companies aren’t actually independent and able to resist Amazon’s demands for their workers, the state claims. Their businesses often entirely rely on contracts with Amazon that determine profitability, and these suppliers rely on Amazon for the assignment of packages and the creation of delivery routes, the complaint alleges.

These relationships trickle down to drivers who often have no comparable job opportunities and are threatened or fired when they try to advocate for better pay and working conditions. Amazon has long resisted efforts to unionize this work.

“Amazon worries it will exhaust the supply of workers willing to accept the low wages and poor conditions, which it tracks as a risk of ‘deplet[ing] the available labor supply’ of these targeted workers within a given geography,” the complaint said. “In other words, Amazon’s concern is not that competition will force it to pay more; it is that it will run out of workers to use up.”

In addition to the downward pressure on wages and conditions at individual suppliers, New Jersey claims Amazon takes steps to limit the ability of delivery companies to “poach” workers from other providers. Those steps, which are mostly redacted from the complaint, chill incentives for these service providers to compete with each other.

The state is demanding the ending of no-poach procedures, and asking the court to issue an order enjoining Amazon from these practices.

Amazon claims the state didn’t “look at the facts.” Kelly said that suppliers manage drivers’ workdays and routes, and that the drivers are free to choose their employers and associate with whomever they want.

“Despite our cooperation, the Attorney General’s office did not raise the central claims in this complaint with us before filing suit,” Kelly said. “They chose a press conference over a conversation or real effort to understand the truth, but we’re confident the facts will speak for themselves in court.”

The state is represented by the New Jersey Attorney General’s Office and Nachawati Law Group.

The case is Attorney Gen. of the State of New Jersey v. Amazon.com, Inc., D.N.J., No. 2:26-cv-09814, complaint filed 8/4/26.

Cassava Investors' Class Status Meets Skeptical Appellate Panel

Aug. 3, 2026, 2:20 PM PDT

Summary by Bloomberg AI AI Generated

- Cassava Sciences Inc. gave the Fifth Circuit two reasons to pull class status from investor plaintiffs in a lawsuit over an Alzheimer's disease treatment.
- The investors leading the litigation didn't show that common issues predominate over individual ones in either their reliance on company statements or their calculation of damages, said Cassava's attorney.
- A potential circuit split is developing on classwide investor reliance, and the Fourth Circuit addressed how litigants can approach damages in a July 20 decision in favor of Boeing Co. reversing class certification on that issue.

Cassava Sciences Inc. gave the Fifth Circuit two reasons to pull class status from investor plaintiffs in a lawsuit over an Alzheimer's disease treatment in oral argument Monday.

The investors leading the litigation didn't show that common issues predominate over individual ones in either their reliance on company statements or their calculation of damages, said Cassava's attorney, Gregg Costa of Gibson, Dunn & Crutcher LLP.

The panel of the US Court of Appeals for the Fifth Circuit showed it was considering those reasons. "If we vacate" on the reliance issue, "what do you gain from a reversal on damages?" Judge Don R. Willett asked Costa.

Costa, a former Fifth Circuit judge from 2014-22, told the appeals court that if it took away the investors' use of a presumption to show reliance, it wouldn't need to decide the damages question.

Fights over class certification have proliferated in recent years as a second line of defense to lawsuits that survive dismissal attempts.

A potential circuit split is developing on classwide investor reliance, and the Fourth Circuit addressed how litigants can approach damages in a July 20 decision in favor of Boeing Co. reversing class certification on that issue. Both questions are teed up in the Cassava case.

An attorney for the investors, Joseph David Daley of Robbins Geller Rudman & Dowd LLP, faced some skepticism from the panel about maintaining the reliance presumption on the basis that the market price of the stock immediately, or “efficiently,” incorporated good and bad news – including from company statements.

‘Meme Stock’

The parties disputed whether Cassava was a “meme stock,” subject to social media-influenced swings rather than news events.

The investors alleged Cassava overstated the quality and integrity of the data from clinical trials of its Alzheimer’s drug, simufilam. The US District Court for the Western District of Texas granted class certification in August 2025.

On the damages question, Costa argued that the investors’ expert failed to show how damages could be calculated on a classwide basis. He pointed to the July 20 *Boeing* decision.

Costa was also asked whether *Boeing* read the US Supreme Court’s *Comcast Corp. v. Behrend* case “more demandingly” than Fifth Circuit precedent did.

Costa said it didn’t, but that either way, *Comcast* wasn’t satisfied.

Hanging over the Cassava case is the effect of a pending settlement that the parties reached in the district court.

Cassava’s petition for review of class certification “has been mooted” by the settlement developments, Daley said, urging the court to at least hold the appeal in abeyance.

Costa, countered that the investors were “putting the cart before the horse.” A precedent showed “you can have an appeal even after settlement,” he said.

Judges Kurt D. Engelhardt and Dana M. Douglas also heard the case.

The case is Bozorgi v. Cassava Sciences, 5th Cir., No. 25-50855, oral argument 8/3/26 .

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Investors blast Nvidia over avalanche of AI copyright suits

courthousenews.com/investors-blast-nvidia-over-avalanche-of-ai-copyright-suits

(CN) — A stockholder filed suit against tech giant Nvidia's board of directors and CEO Jen-Hsun Huang, claiming they knowingly allowed the company to use stolen copyrighted materials for financial gain.

Nvidia makes the computer chips that sparked surging advances in artificial intelligence. Its chips are used by all "frontier AI" companies including those developing leading large language models and autonomous agents.

The company has recently been the target of several lawsuits by authors and content creators who say it trained its large language models on datasets and so-called shadow libraries — online repositories hosting pirated books and other copyrighted works — that contained their copyrighted works without permission.

Plaintiff Jessica Berliner claims company officers are responsible for the company's enormous library of pirated datasets and copyrighted works, taken without author consent or compensation and used to train large language models, vision-language models and voice cloning models.

The stolen materials include full-length books, YouTube videos and thousands of hours of human speech recordings, Berliner says.

Though Huang and his fellow defendants have not personally scraped the data used to train Nvidia's models, Berliner says it was their responsibility to exercise control over the illegal acts either directly or indirectly.

"Nvidia is now saddled with having to defend itself in copyright infringement cases and BIPA violating cases as a result of defendants' misconduct and is facing potentially massive liability and related costs and reputational damages," Berliner says in the 108-page complaint.

The defendants did approve proxy statements over several years filed with the Securities and Exchange Commission that boasted a specific focus on information security and privacy protections as well as the advancement of "trustworthy AI" founded in the company's core values and code of conduct.

The proxy statements did not disclose Nvidia's training materials obtained data without necessary licenses and permissions, Berliner says. The 2026 SEC report "conspicuously omitted" these apparently false representations, which she says further evidences the deceit.

"These statements were materially false and misleading because they led the market and the company's shareholders to believe that Nvidia had complied with all laws, including copyright laws, in the development of its AI," Berliner says in the complaint.

The effect of the misleading statements and omissions was an artificially inflated stock price.

Following a share repurchase program, Nvidia's stock price skyrocketed from around $624 in January 2024 to $1,208 in June 2024. Now, Berliner says the stock continues to fall as the lawsuits pile up.

"The declines in the price of Nvidia common stock after the disclosures came to light were a direct result of the nature and extend of the defendant's fraud finally being revealed to investors and the market and a materialization of the undisclosed risks alleged herein," Berliner says in the complaint.

The focus of the copyright suits against Nvidia stem from a dataset known as "The Pile," which included a subcollection of nearly 200,000 pirated books called Books3, itself sourced from the shadow library Bibliotik. The plaintiffs say Nvidia used The Pile to train models in its Megatron line.

Plaintiffs in a similar suit in Illinois federal court this year claim Nvidia and Microsoft obtained recordings of their voices and extracted their unique biometric signatures for training.

The board members and directors listed in the suit alongside Huang include Tench Coxe, John Dabiri, Dawn Hudson, Harvey Jones, Melissa Lora, Stephen Neal, A. Brooke Seawell, Aarti Shah, Mark Stevens, Ajay Puri, Deborah Shoquist, and Timothy Teter. The board members alone have 181 years collectively running Nvidia and Berliner says they knew or should have known their misrepresentations and infringement were violations of their responsibility to the company and to stockholders.

They did so anyway in the pursuit of profits, Berliner says.

Huang alone earned $120.4 million between 2023 and 2025, and holds shares worth $173.9 billion, according to Berliner.

Berliner's claims include breach of fiduciary duty and securities violations. She wants the court to direct Nvidia to take "all necessary actions" to improve its internal procedures to comply with the law, and to disgorge any benefits wrongly obtained by Huang and the board members.

First deaths reported in Cyclospora outbreak, possibly impacting complaints

DJ dailyjournal.com/articles/393431

The first deaths linked to the nationwide cyclospora outbreak were reported Monday as litigation against Salinas-based Taylor Farms continues to expand, with plaintiffs' attorneys saying the fatalities underscore the growing human toll of the contaminated lettuce outbreak.

Michigan health officials announced that two people died after contracting cyclosporiasis, although both had significant underlying health conditions that may have been worsened by the illness and resulting dehydration. According to the Michigan Department of Health and Human Services, both individuals became ill before Taylor Farms' July 17 voluntary recall of iceberg lettuce. The agency said it would release no additional information.

"Cyclosporiasis is generally not a life-threatening illness. Death resulting from cyclosporiasis is uncommon in the United States," the department said on its website.

The Centers for Disease Control and Prevention has received 6,707 laboratory-confirmed cases of cyclosporiasis since May 1 and is aware of more than 11,500 additional suspected cases that have not been laboratory confirmed.

"It's utterly tragic that the very corporations we trust to provide us with healthy food and nutrients failed the American public so greatly that it's resulted in death," Blake Yagman, founding partner of Yagman PLLC, said in an email.

Yagman represents plaintiffs in Granados et al. v. Taylor Fresh Foods, a proposed class action filed last month in the Northern District of California alleging Taylor Farms negligently distributed contaminated lettuce and misrepresented the safety of its products. The complaint alleges consumers would not have purchased the products had they known of the contamination risk.

"At this time, we're awaiting the Court's order on whether we can consolidate our cases, and then we will seek to include this information and much more into our consolidated amended complaint," Yagman wrote.

More than a dozen lawsuits have now been filed nationwide against Taylor Farms and Taco Bell. Taco Bell, which used shredded iceberg lettuce supplied by Taylor Farms, has been named in multiple suits alleging customers became ill after eating at its restaurants.

The latest case was filed July 31 in the U.S. District Court for the Eastern District of Michigan by Kimberly Harris, who alleges she became ill after eating contaminated food at Taco Bell on June 12. Harris claims the illness forced her to stop taking medication she had been taking in preparation for a liver transplant.

Taco Bell said July 17 that it had removed all affected lettuce from its restaurants.

A separate proposed class action filed in Orange County last month was the first to name both Taylor Farms and Taco Bell as defendants, alleging Taco Bell sold food containing contaminated lettuce and that consumers suffered economic losses by purchasing the products.

Bloomberg News has reported that Yum! Brands Inc., Taco Bell's parent company, was contacted by the Michigan Department of Health and Human Services weeks before the company publicly acknowledged the outbreak. Records obtained through a public records request indicate state officials and Yum! representatives discussed cyclospora during a July 2 conference call.

"We will continue to press forward with our case, and we do so with solemness knowing the terrible impact the Cyclosporiasis outbreak has had on thousands of innocent lives," Yagman wrote.

Representatives for Taylor Farms and Taco Bell did not respond to requests for comment by press time Monday.

Roblox fails to compel arbitration in one of five gaming addiction cases

DJ dailyjournal.com/articles/393429-roblox-fails-to-compel-arbitration-in-one-of-five-gaming-addiction-cases

A Los Angeles judge on Monday signaled he would send most of a group of video game addiction claims to arbitration, tentatively granting four of five motions to compel arbitration while finding Roblox failed to show a parent agreed to arbitrate in one of the cases before him.

Los Angeles County Superior Court Judge Lawrence P. Riff issued detailed tentative rulings on five arbitration motions in the coordinated proceeding alleging major video game companies deliberately designed addictive products targeting minors. The motions involved claims against Sony, Epic Games and Roblox.

Riff tentatively granted Sony's and Roblox's motions in one action, *Jasper, et al. v. Roblox Corporation, et al*. BCV-24-102789 (L.A. Super. Ct., filed Aug. 16, 2024), as well as Sony's and Epic Games' motions in another, *Saenz, et al. v. Roblox Corporation, et al*., 24STCV21076 (L.A. Super. Ct., filed Aug. 19, 2024). He tentatively denied Roblox's motion in Saenz, concluding the company failed to adequately authenticate that a "responsible adult" accepted its terms of use.

The rulings continue a pattern emerging in the coordinated proceeding, where Riff has closely scrutinized online account records, purchase histories and parental declarations to determine whether enforceable arbitration agreements were formed.

For the Jasper motions, Riff concluded the defendants met their initial burden of establishing arbitration agreements governed by the Federal Arbitration Act, that the minor plaintiff could not disaffirm arbitration agreements entered into by a parent, and that challenges to the agreements' delegation provisions belonged before an arbitrator rather than the court.

The hearing's most substantial arguments centered on Roblox's motion in Saenz. Explaining his tentative ruling, Riff acknowledged Roblox submitted extensive evidence describing how users assent to its terms through account creation, Robux purchases and gift-card redemptions. But he concluded the company failed to connect those transactions to the mother of the minor plaintiff, Vanessa Saenz, or another legally responsible adult.

Unlike evidence presented in other cases before him, Riff noted, Roblox's payment logs did not identify the purchaser through names, email addresses or credit-card information.

Although the burden of authenticating an electronic agreement is "not great," he said, it remains an evidentiary burden that Roblox failed to satisfy on the current record.

Roblox attorney David Fuad of Orrick, Herrington & Sutcliffe LLP in Los Angeles urged the court to reconsider, arguing the only reasonable inference from the evidence was that Vanessa Saenz or another parent authorized the transactions and accepted Roblox's terms.

"I think the only conclusion that one can draw from the evidence that we did submit, in combination with the carefully worded denial ... is that it was the plaintiff's mother or father who did the transactions," Fuad argued. He also pointed to allegations in the complaint that the child spent parental money on Roblox purchases and contended there was no evidence the family's older son completed every transaction reflected in Roblox's records.

Representing the plaintiffs, Carasusana B. Wall of Bullock Legal Group in Toledo, Ohio responded that Roblox had not met its burden of proving parental assent.

Wall argued the declarations affirmatively denied that Vanessa Saenz agreed to Roblox's terms and maintained defendants could not rely on assumptions about who clicked through online screens. If companies intend to bind parents to arbitration agreements, she argued, they bear responsibility for designing systems that reliably verify parental acceptance rather than relying on a child's representations.

The hearing also touched on plaintiffs' contention that compulsive gameplay prevented an effective ratification of online agreements after plaintiffs purportedly disaffirmed them. Riff indicated he was unwilling, on the present evidentiary record, to credit the theory that alleged addiction explained continued use of the gaming platforms.

Later in the hearing, Riff expressed frustration that significant litigation could hinge on highly technical questions surrounding online assent.

"The distinction between this case going this way in arbitration, this case going that way ... is going to turn on a clause or two in a parent's declaration," Riff observed. "None of the people in this courtroom created this world or created this culture, but I remain unhappy that the future of these cases turn on what I consider to be relatively obscure facts."

Riff did not immediately deliver a ruling. The coordinated proceeding encompasses numerous lawsuits alleging companies including Roblox, Sony and Epic Games intentionally designed games to foster compulsive use by children while seeking to enforce arbitration provisions contained in their online terms of service.

Securities

Five Below Investors Gain Class Status in Sales Strategy Lawsuit

Aug. 4, 2026, 7:28 AM PDT

Summary by Bloomberg AI AI Generated

- A federal judge certified a class action over whether Five Below Inc. misrepresented its ability to stock trending items while reducing inventory losses.
- The judge said Five Below failed to rebut a presumption that a class of shareholders relied on its stock price inflated by the alleged misrepresentations of executing on its trending sales strategy.
- The certified class includes those who acquired Five Below stock from Dec. 1, 2022, to July 16, 2024, and the class status heightens pressure on defendants to settle.

Five Below Inc. investors convinced a federal judge to certify a class action over whether the discount retailer misrepresented its ability to stock trending items while reducing inventory losses.

Five Below failed to rebut a presumption that a class of shareholders relied on its stock price inflated by the alleged misrepresentations of executing on its trending sales strategy, Judge Gerald A. McHugh said. He certified a class of those who acquired Five Below stock from Dec. 1, 2022, to July 16, 2024.

Investors seeking class certification can call upon a presumption that a stock price absorbs the impact of purported misrepresentations, and that they relied on a company's stock price while making investing decisions, under the Supreme Court's decision in *Basic Inc. v. Levinson*.

Defendants can undercut that presumption by severing the link between the stock price and alleged misstatements. They can sever the link by asserting a "mismatch" between the alleged misrepresentations and stock-deflating information released later on, known as corrective disclosures.

Challenges to shareholder class certification using this mismatch test have become a frequently-touted defense tool since a Supreme Court and subsequent Second Circuit ruling dismantled a Goldman Sachs investor class.

But Five Below and a pair of top executives failed to do so, the US District Court for the Eastern District of Pennsylvania judge said Monday. For example, on a 2022 earnings call, Chief Operating Officer Kenneth Bull and former CEO Joel Anderson discussed the retailer's ability to stock trending items and meet changing customer preferences, he said.

Later disclosures in 2024 revealed issues executing on Five Below's strategy and that poor financial performance came from failure to execute on trends rather than inventory shrink, the judge said.

On July 16, 2024, Five Below said its longtime CEO was stepping down and that sales issues persisted. The retail chain's stock price plummeted 25% on July 17, 2024 — then its biggest one-day drop since March 2020, according to data compiled by Bloomberg.

The July 16 disclosure contained new information tied to the alleged misrepresentations, McHugh said.

Pension funds leading the case partially survived a motion to dismiss last year, having adequately pleaded the executives knew about struggles to put hot merchandise on shelves while touting the strategies and attributing poor sales to retail theft and other issues.

Class status heightens pressure on defendants to settle.

Bernstein Litowitz Berger & Grossmann LLP and Berger Montague are co-lead counsel for the investor class. Troutman Pepper Locke LLP represents Five Below and the current and former executives. None of these law firms nor Five Below immediately responded to emails seeking comment.

The case is Himes v. Five Below, Inc., E.D. Pa., No. 2:24-cv-03638, 8/3/26.

Judge: Amazon Listings Plausibly Alleged As Labels; Listings Met FDCA Requirements

Mealey's(R) Litigation Report: Class Actions

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Body

A California consumer who filed a putative class complaint against a protein seed and powder manufacturer over the products' protein claims on Amazon.com "plausibly alleged that the Amazon listings do constitute labeling" and that the manufacturer "had knowledge of or control over them," but did not show that the listings violate the Food, Drug and Cosmetic Act's (FDCA) labeling regulations, a federal judge in that state ruled, granting the manufacturer's motion to dismiss (Tina Kha, et al. v. Tilray Brands, Inc., No. 25-10630, C.D. Calif., 2026 U.S. Dist. LEXIS 160579).

(Order granting motion to dismiss available 43-260803-032R)

In the July 17 order, U.S. Judge Hern n D. Vera of the Central District of California granted Tina Kha 21 days to file a second amended complaint against Tilray Brands Inc.

Online Listings

Kha purchased on Amazon.com in 2025 Just Hemp Foods Protein Powder, Hemp Hearts and Flaxseeds protein seeds and powder made by Tilray.

Kha filed a putative class complaint against Tilray in the District Court in November, alleging that Tilray's product listings on Amazon violate the Food and Drug Administration's labeling by misrepresenting the quantity and quality of protein. She brought claims under California's false advertising law (FAL), Cal. Bus. & Prof. Code 17500 et seq.; California's Consumer Legal Remedies Act (CLRA), Cal. Civ. Code 1750 et seq.; and California's unfair competition law (UCL), Cal. Bus. & Prof. Code 17200 et seq. She also brought claims for unjust enrichment and breach of express warranty.

Tilray moved to dismiss in February 2026, arguing that Kha's complaint was preempted as FDA regulations don't require a disclosure of the daily value of protein and Kha failed to plausibly allege that Tilray is responsible for the content on Amazon.com's page.

Amended Complaint

Kha filed an amended class complaint the following month containing the same claims. She alleged that the product listings on Amazon fail to include the "corrected" protein information as required under the FDCA, *21 U.S.C. 301*-*399i*.

Tilray moved to dismiss once more, arguing again that Kha's complaint was preempted and that Kha failed to allege that Tilray was responsible for the content on the webpage. Tilray also argued that the Amazon webpages aren't "labeling" subject to FDA regulation and that all Amazon webpages "state the 'corrected amount of protein.'"

Granting Tilray's motion, Judge Vera first rejected the defendant's argument that the Amazon webpages are not labeling to FDA regulation. Citing *United States v. Hakim, 462 F. Supp. 3d 418, 429 (S.D.N.Y. 2020)*, the judge wrote that "a website that 'supplements and explains' a product may constitute labeling." With that in mind, Kha "plausibly allege[d] that the written and graphic matter on the website-the Amazon listing-that 'supplements' and explains the Product, constitutes labeling under the FDCA."

Next, the judge rejected Tilray's claim of FDCA preemption, ruling that while the FDCA is exclusively enforced by the federal government, private enforcement of parallel state laws is permitted.

Product Listings

Finally, Judge Vera ruled that while Kha claims that the product descriptions on Amazon.com violate the FDCA and parallel state laws by not including the proper protein claims, the screenshots in Kha's first amended complaint "plainly show an NFP [nutrition facts panel] with the required percentage in the carousel of images directly to the left of the main product image."

The judge rejected Kha's claim that the information was buried, writing that it was "readily available and visible on the front-page carousel." Judge Vera added that "while the Court is certainly sensitive to situations where it is difficult to locate information, this is clearly not the case here."

As for Kha's claim that the protein corrected value information is missing, the judge wrote that too was incorrect as "[t]he fourth image in the Amazon listing displays a complete NFP for this product, including the required percent daily value."

Counsel

Kha is represented by Adrian Gucovschi of Gucovschi Law Firm in New York.

Tilray is represented by Alexander M. Smith in Los Angeles and Dean N. Panos in Chicago, both of Jenner & Block LLP.

(Additional documents available: Tilray's motion to dismiss and memorandum 43-260803-033M

Kha's opposition 43-260803-034B

Tilray's reply 43-260803-035B

Kha's first amended complaint 43-260803-036C)

Do you have news to share? Are you interested in writing a commentary article? Email the Mealey's News Desk at *Mealeys@LexisNexis.com*

Load Date: August 3, 2026

FCC Commissioners Took Expensive Gifts From Paramount, Ethics Complaints Allege

law.com/nationallawjournal/2026/08/03/fcc-commissioners-took-expensive-gifts-from-paramount-ethics-complaints-allege

Two government watchdog groups requested investigations into whether Republican Federal Communications Commission commissioners improperly accepted exclusive gala tickets from Paramount as the company sought FCC approval for its acquisition of Warner Bros. Discovery.

Trusty's public disclosures revealed that she accepted two tickets to the gala gifted by Paramount worth a total of $12,390. Carr has not yet filed his ethics disclosures but reportedly attended with his wife in a private skybox alongside Paramount CEO David Ellison, where seats sold are worth about $125,000 each.

Two days before the Kennedy Center gala on Dec. 5, Warner Bros. accepted a $110 billion merger bid with Paramount.

Government ethics rules prohibit executive branch employees from accepting gifts from parties that do business with, or are regulated by, the employees' agency.

"As a media entity regulated by and with business before the FCC, this definition encompasses Paramount," the CREW letter stated.

Democracy Defenders argued in its complaint that FCC officials accepting the tickets from Paramount creates, at the very least, the appearance of a conflict of interest. There is little need for FCC commissioners to attend the Kennedy Center Honors in person, and any benefits of attending the event were far outweighed by the possibility that the commissioners could be influenced, the group said.

"The immense value of the tickets and timing of the event, just before Paramount announced its hostile takeover bid, raises questions of whether the company was seeking to gain preferential treatment through the provision of tickets to the commissioners," Democracy Defenders said.

The group also asked investigators to examine whether the commissioners violated the federal illegal gratuities law, citing the timing of the event just before Paramount announced its merger with Warner Bros. The illegal gratuities law is a federal criminal statute that prohibits public officials from giving or accepting anything of value "for or because of" an official act they have performed or will perform.

“The commission’s pending review of Paramount’s acquisition of WBD squarely falls within the context of an official act,” the letter states.

Carr should be disqualified from participating in the commission’s Paramount-Warner Bros. merger decision, the group added.

Democratic FCC Commissioner Anna Gomez reportedly declined Paramount’s invitation. However, ProPublica’s investigation found that over the past decade Paramount has gifted commissioners from both parties Kennedy Center Gala tickets worth hundreds of thousands of dollars.

The FCC did not immediately respond to questions about the gifts or a potential ethics investigation.

An FCC spokesperson told ProPublica that agency ethics officials have found that commissioner appearances at the Kennedy Center Honors comply with government ethics rules.

“FCC Chairs and officials have attended the same event, in the same ways, consistently from the Trump Administration to the Biden Administration to the Obama Administration,” the FCC said in a statement. “There has been no change in recent years.”

The Paramount-Warner Bros. deal still awaits FCC approval. The tie-up is on hold until June 2027 following an antitrust challenge to the merger filed in July by a coalition of 12 state attorneys general. The European Union approved the deal subject to dissolution of a film distribution agreement with Universal Pictures.

President Donald Trump in June named FCC general counsel Adam Candeub to head the Department of Justice’s antitrust division.

[Mealey's PI/Product Liability - 2nd Circuit Revives 'Maximum Strength' Claims In OTC Cold Medicine MDL]

Mealey's Daily News Update

August 3, 2026

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Section: 2026, 9940

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Body

The false marketing claims asserted by consumers against manufacturers of cold medications containing oral phenylephrine (PE) that labeled the medications as "Maximum Strength" or "Max Strength" when they were no more effective than any other oral nasal decongestant are not expressly preempted by federal law, the Second Circuit U.S. Court of Appeals held, partially reversing a decision by the multidistrict litigation judge who had dismissed all claims with prejudice (*Sandra Yousefzadeh, et al. v. Johnson & Johnson Consumer Inc., et al., No. 24-3296, 2nd Cir., 2026 U.S. App. LEXIS 22861*).

(Opinion available 28-260807-039Z)

But Judge Denny Chin, joined by Judges Reena Raggi and Myrna Perez, found in the July 30 opinion that the Federal Food, Drug, and Cosmetic Act (FDCA), *21 U.S.C. 301 et seq.*, expressly preempts the majority of the consumers' state law claims.

"Indeed, Defendant Manufacturers followed the [U.S. Food and Drug Administration's] prescribed labeling requirements by designating their decongestants' purpose as decongestion. Defendant Manufacturers cannot now be sued for complying with those FDA specifications. Therefore, the claim that Defendant Manufacturers mislabeled their products by indicating their use for decongestion fails," the Second Circuit said.

It found that claims that the manufacturers used labels such as "maximum strength" to assert that their products are more effective "stand on different footing than the labeling and failure-to-disclose claims and are not preempted."

Cases Centralized

On Sept. 12, 2023, the FDA's Nonprescription Drug Advisory Committee unanimously concluded that oral PE is ineffective at relieving nasal congestion.

Cases were filed across the country, with consumers alleging that the manufacturers and retailers knew that oral PE was ineffective as a nasal and sinus decongestant but produced, marketed and sold products containing PE to consumers anyway. Consumers who purchased the cold medicines filed a motion with the Judicial Panel on Multidistrict Litigation on Sept. 18, 2023, for transfer pursuant to *28 U.S. Code Section 1407*, *28 U.S.C. 1407*, for coordinated or consolidated pretrial proceedings.

The JPMDL on Dec. 6, 2023, centralized the actions in the Eastern District of New York and assigned the MDL to Judge Brian M. Cogan.

Streamlined Complaint

In centralizing the litigation, the panel found that the actions shared common factual questions concerning allegations that oral phenylephrine products do not work as advertised to relieve nasal congestion and that centralization would promote the just and efficient conduct of the litigation.

These products include Sudafed PE, Tylenol Cold & Flu, TheraFlu, Vicks Nyquil and Dayquil Severe Cold and Flu and various cold and flu products sold under the Mucinex, Benadryl, Alka-Seltzer Plus and Zicam brand names. Store-brand versions of similar phenylephrine-based products were sold by Albertsons, Amazon.com, CVS, Costco, Harris Teeter, Kroger, Publix, Rite-Aid, Target, Walgreens and Walmart.

Judge Cogan said the parties agreed that the plaintiffs would file an "Initial Streamlined Consolidated New York Bellwether Class Action complaint" with the understanding that the defendants would move for dismissal "to test claims and defenses common across the consolidated cases." The complaint was filed May 3, 2024, asserting claims under New York state law and the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C. 1961*-*1968*.

Named as defendants in the streamlined complaint are The Procter & Gamble Co., Johnson & Johnson Consumer Inc., Haleon US Holdings LLC, RB Health (US) LLC, Bayer HealthCare LLC, CVS Pharmacy Inc., Target Corp., Walgreen Co., Walmart Inc. and Wal-Mart Stores East LP.

They moved to dismiss the complaint, arguing that the state law claims are preempted by the FDCA and that the plaintiffs lack standing to assert claims under RICO.

Judge Cogan dismissed all claims with prejudice on Nov. 12, 2024, rejecting the plaintiffs' request to delay entry of judgment in light of a recent recommendation from the U.S. Food and Drug Administration, which proposed an order to remove oral phenylephrine as an active ingredient that can be used in the over-the-counter (OTC) monograph drug products.

Lanham Act

Newton's Pharmacy Inc. (NPI) moved for a partial reconsideration of the dismissal of its claims, arguing that the judge's dismissal of the initial streamlined complaint did not apply to federal false-advertising claims and asked that its Lanham Act, *15 U.S.C. 1125(a)(1)(B)*, claims be remanded to the U.S. District Court for the Southern District of Ohio.

But the judge ruled Dec. 13 that NPI "misses the mark" in contending that its Lanham Act claim should be reinstated because the claim was not in the initial streamlined complaint filed in multidistrict litigation.

Consolidated Appeals

Buyers of nasal decongestants and NPI filed separate appeals to the Second Circuit that were consolidated.

The consumers argued that the District Court erred in dismissing their state law claims on preemption grounds and dismissing their RICO claim on "statutory standing" grounds. NPI argued that the District Court erred in denying its motion for partial relief from the final judgment on its Lanham Act claim.

The consumers contended that their "claims would simply enforce Defendant Manufacturers' duty under the FDCA's misbranding provision not to falsely or misleadingly label their drugs," the appeals court said. It disagreed.

"We conclude that, with two exceptions, the FDCA expressly preempts Consumer Plaintiffs' state law claims," it said.

Critcher v. L'Oreal

The Second Circuit pointed to *Critcher v. L'Oreal USA, Inc., 959 F.3d 31 (2d Cir. 2020)*, in support.

"In holding that the FDCA expressly preempted the plaintiffs' state law claims, this Court pointed to the FDCA's cosmetics preemption provision, which -- similar to the OTC preemption provision at issue here -- forbids any requirement 'for labeling or packaging of a cosmetic that is different from or in addition to, or that is otherwise not identical with, a requirement' under the FDCA," it said, adding that the court "recently affirmed Critcher's reasoning in *Jackson-Mau v. Walgreen Co., 115 F.4th 121 (2d Cir. 2024)*."

There, the court held that "if a dietary supplement satisfies the FDCA's labeling requirements, 'consumers may not attack the supplement's labeling under similar state law mislabeling theories.' . . . That same logic applies here in the OTC drug context," the appeals court said.

The Second Circuit agreed with the consumers that "federal law does not prevent Defendant Manufacturers from making additional disclosures or updates about the efficacy of oral PE, as evidenced by Johnson & Johnson's website disclosure."

However, it held that "[t]o require manufacturers to make those disclosures or updates, though, would be to impose an additional requirement beyond the FDCA's mandates."

'Maximum Strength'

The Second Circuit also found that the FDCA preempts the failure-to-disclose claims.

The consumers argued that the manufacturers falsely claim that their products work better than other oral nasal decongestants, such as pseudoephedrine. Those claims are not expressly preempted by the FDCA, the appeals court held.

"Defendant Manufacturers point to no FDCA provision or regulation that addresses phrases such as 'Maximum Strength' or claims of comparative strength. Thus, we conclude that the FDCA does not require, nor has it blessed, Defendant Manufacturers' inclusion of these phrases on their oral PE products' labels. Defendant Manufacturers therefore voluntarily and on their own accord placed these Maximum Strength statements on their products; they were not obligated to do so," it said.

The Second Circuit vacated and remanded to the District Court "as to the Maximum Strength claims, to determine (1) whether the state law duties here are identical to those under the FDCA misbranding provision, and are thus not expressly preempted, (2) whether the Maximum Strength claims are impliedly preempted, and (3) for such other proceedings as the district court may deem appropriate."

RICO Claims

The appeals court upheld the dismissal of the RICO claims. The District Court found that the "indirect purchaser" rule applied and held that the consumers lacked statutory standing to sue.

"Consumer Plaintiffs do not dispute that, if the rule applies, they lack a cause of action under RICO because they are indirect, rather than direct, purchasers. We hold that the indirect purchaser rule applies to civil RICO actions and, therefore, affirm the district court's dismissal of Consumer Plaintiffs' RICO claim," the Second Circuit said.

The Second Circuit found that the District Court did not abuse its discretion in refusing to reconsider its dismissal of the Lanham Act claim.

"NPI had many opportunities, through Plaintiffs' Executive Committee and interim class counsel, to preserve or raise its Lanham Act claim -- but it chose not to do so," the appeals court said.

The U.S. Chamber of Commerce filed an amicus brief in support of the appellees.

Counsel

The consumers are represented by Samuel Issacharoff in New York; Jonathan D. Selbin of Lieff Cabraser Heimann & Bernstein LLP in New York; Adam J. Levitt of DiCello Levitt LLP in Chicago; Elizabeth A. Fegan of Fegan Scott LLC in Chicago; James E. Cecchi of Carella, Byrne, Cecchi, Brody & Agnello PC in Roseland, N.J.; Kiley L. Grombacher of Bradley/Grombacher LLP in Westlake Village, Calif.; Christopher A. Seeger of Seeger Weiss LLP in Ridgefield Park, N.J.; Jason P. Sultzer of Sultzer & Lipari PLLC in Poughkeepsie, N.Y.; and Lindsey N. Scarcello of Wagstaff & Cartmell in Kansas City, Mo.

NPI is represented by Joe P. Leniski Jr. in Nashville, Tenn., and Alyson S. Beridon in Cincinnati, both of Herzfeld, Suetholz, Gastel, Leniski and Wall PLLC.

Procter & Gamble is represented by David M. Zionts, Andrew Soukup and Victoria Stilwell in Washington, D.C., all of Covington & Burling LLP.

Haleon US Holdings LLC is represented by Jay P. Lefkowitz and Jacob M. Rae in New York, Cole Carter in Los Angeles and Robyn E. Bladow in Chicago, all of Kirkland & Ellis LLP.

Johnson & Johnson Consumer Inc. is represented by Hannah Y. Chanoine and Bruce Crawford in New York, Amy J. Laurendeau in Newport Beach, Calif., and Jason Zarrow in Los Angeles, all of O'Melveny & Myers LLP.

RB Health (US) LLC is represented by Jessica L. Ellsworth in Washington, D.C., James L. Bernard in New York and Lauren S. Colton in Baltimore, all of Hogan Lovells US LLP.

Bayer HealthCare LLC is represented by Cara D. Edwards in New York, Colleen Carey Gulliver in Atlanta, Christopher G. Campbell and Christopher M. Young in San Diego, all of DLA Piper LLP (US).

CVS Pharmacy Inc., Target Corp., Walgreen Co. and Walmart Inc. are represented by Nilda Isidro and Dale Rose Goldstein in New York, both of Greenberg Traurig LLP.

The Chamber of Commerce is represented by Christopher J. Walker of U.S. Chamber Litigation Center in Washington, D.C., and Robert E. Dunn and Isaac J. Weitzhandler of Eimer Stahl LLP in Campbell, Calif.

(Additional documents available: Yousefzadeh appellant brief 28-260807-040B

Newton's appellant brief 28-260807-041B

Drugmakers appellee brief in Yousefzadeh 28-260807-042B

Drugmakers appellee brief in Newton's 28-260807-043B

Yousefzadeh reply brief 28-260807-044B

Newton's reply brief 28-260807-045B

USChamber of Commerce amicus curiae brief 28-260807-046B

Dec13 order 28-241220-027R

Nov12 order entering judgment 28-241115-047R)

Business & Practice

Prolific Patent Suit Filer Bests Canva in Sanctions Dispute

Aug. 3, 2026, 10:43 AM PDT

A busy patent lawyer won't be sanctioned for what graphic design platform Canva called a "frivolous" lawsuit.

Cascade Systems LLC and HyperQuery LLC, patent assertion entities represented by Chicago-based litigator Isaac Rabicoff, both sued Canva US Inc. in 2025 in a one-judge division in far West Texas that's become popular among patent plaintiffs. The lawsuits were two of 955 the solo practitioner filed that year.

After the case was dismissed, Canva sought sanctions against Rabicoff personally, and pointed the US District Court for the Western District of Texas to Rabicoff's prolific filing history as evidence the lawyer "has a practice of filing cases without any apparent intention of actually litigating them."

Canva's "attempts to leverage Plaintiff's counsel's litigation history in other cases," were unconvincing "because there is not clear and convincing evidence that counsel acted unreasonably and vexatiously in *this* case," wrote Judge David Counts in a July 31 order.

Earlier in the case, Canva filed two motions to dismiss the suit, arguing that Cascade's patented "technology related to peer-to-peer networks—something Canva does not operate." Cascade filed a response to the second dismissal bid, but then dropped the suit while the motion was pending.

Canva sought sanctions under Section 1927 of the Judiciary Code. The company argued Rabicoff had "unreasonably forced Canva to continue litigating this case long after Canva made clear that the case had no merit" through a pair of letters and its multiple dismissal motions.

It further argued the lawyer had acted strategically dropping the case when he did because if the court ruled on the motion to dismiss Canva could be found to be a prevailing party which would, in turn, give it the opportunity to recoup its attorneys' fees under Section 285 of the Patent Act.

In his order denying the motion for sanctions, Counts highlighted the high bar for sanctions under Section 1927.

He also disagreed with Canva's view of the case and the notion that Rabicoff "was trying to 'shake down' the Defendant for a quick settlement."

"If Plaintiff was attempting a cash grab premised on a fictitious claim, the voluntary dismissal would have come much sooner after it was clear Defendant would not pay," Counts wrote.

Canva also moved for sanctions in the HyperQuery case, and that motion remains pending.

Kwun Bhansali Lazarus LLP represents Canva.

The case is Cascade Sys. LLC v. Canva US Inc. , W.D. Tex., No. 7:25-cv-00217, 7/31/26 .

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Sandoz agrees $450 mln settlement with 43 US states over antitrust claims

reuters.com/legal/litigation/sandoz-agrees-450-mln-settlement-with-43-us-states-over-antitrust-claims-2026-08-03

Reuters August 3, 2026

(SDZ.S) , said on Monday that it has entered into a $450 million settlement agreement with 43 U.S. states and territories to resolve litigations concerning alleged anti-competitive conduct in the U.S. market for generic medicines.

Under the agreement, the firm's U.S subsidiary is to pay a total of $400 million over seven years starting from 2027, with an additional payment of approximately $50 million to states that settled earlier, Sandoz said.

Neither settlement contains an admission of wrongdoing by Sandoz US, the company added.

"These settlements do not affect full-year 2026 guidance or the Sandoz mid-term outlook," it added.

Reporting by Tristan Veyet in Gdansk, editing by Miranda Murray

TikTok settling three teen social media lawsuits ahead of trial

reuters.com/business/tiktok-settling-three-teen-social-media-lawsuits-ahead-trial-2026-08-03

NEW YORK, Aug 3 (Reuters) - TikTok has agreed to settle three lawsuits brought by young people who accuse social media companies of designing their platforms to be addictive and harming their mental health, a plaintiffs' lawyer said Monday.

The terms of the settlements are confidential and subject to the finalization of written settlement agreements with TikTok, according to Joseph VanZandt, a lawyer for the plaintiffs.

The cases are among thousands of similar lawsuits consolidated in California state court. The plaintiffs' claims against Meta Platforms, Google's (GOOGL.O), opens new tab YouTube and Snap Inc's (SNAP.N), opens new tab Snapchat will continue. A trial is scheduled in October.

The three cases, brought by plaintiffs identified only by their initials because they are minors, were selected as bellwether, or test, trials from among about 3,300 lawsuits before Los Angeles Superior Court Judge Carolyn Kuhl, who is overseeing consolidated claims that social media platforms are addictive and harm young users.

The companies have denied the allegations and say they take extensive steps to keep teens and young users safe on their platforms.

Attorneys often use bellwether verdicts to gauge how juries may view similar claims, helping them assess the potential value of remaining cases and guide settlement negotiations.

The plaintiffs who are settling with TikTok are S.J., a 15-year-old girl from Illinois who has alleged the social media platforms caused her to suffer from self-harm, anxiety, depression, addiction and an eating disorder; P.M.Y., a 15-year-old from New Jersey who has alleged addiction, depression and self-harm; and K.D.B., an 18-year-old from Mississippi who alleged that over-use of the platforms caused anxiety, depression, addiction, self-harm and an eating disorder, according to VanZandt.

The settlements come after another bellwether case ended before trial in July, when a teenage plaintiff dropped his claims against Meta after the other defendants settled.

The first trial in the litigation, which ended in March, resulted in a $4.2 million verdict against Meta and a $1.8 million one against Google in a case brought by a woman who said she became addicted to social media platforms at a young age because of their attention-grabbing design. TikTok and Snap settled that case before trial.

Another 2,600 cases making similar claims, brought by individuals, school districts, municipalities and states, are pending in California federal court. In addition, nearly every state attorney general has sued social media companies in their own state courts.

Analysis-A separation of Tesla's China business ahead of a potential SpaceX merger could get tricky | Business Information & News | FE

Aug 4 (Reuters) - Tesla has several paths to separating its China business – each of them complicated – should CEO Elon Musk decide that's a necessary step to combine the automaker with his rocket company SpaceX.

Analysts and investors see the strongest possibilities as a spin-off of Tesla's China unit, a licensing arrangement for a third party to use its brand and technology, or an outright sale. Each of those options comes with thorny questions around the use of Tesla's intellectual property and the involvement of China's government in the company, analysts say.

The prospect of a merger between the companies, each valued at more than $1 trillion, has tantalized investors and analysts in recent months, particularly during SpaceX's record $75 billion initial public offering process in June.

Musk fanned the flames on Tesla's earnings call last month when he cited growing overlap between the companies. The Wall Street Journal last week reported the automaker's executives had been told to prepare for a separation of its China business ahead of a potential merger.

The billionaire denied the report, saying such a separation had "never even come up in a discussion."

Still, analysts and investors say Tesla's China business could complicate any deal by uniting a company that depends heavily on China for manufacturing and sales with another increasingly reliant on sensitive U.S. government and defense contracts.

SpaceX drew about a fifth of its 2025 revenue from U.S. federal agencies, according to its IPO filing. That reliance on government work could subject any merger involving Tesla's China operations to intense national security scrutiny.

Musk may face more questions about a possible merger when SpaceX holds an earnings call on Tuesday.

POSSIBLE PATHS

Morningstar analyst Seth Goldstein said a spinoff could allow Tesla to retain a majority economic interest. He also sees potential for a sale paired with long-term brand licensing agreements, or an outright divestiture, possibly to another automaker.

Any of them, he said, could ease the regulatory scrutiny a merger would face in both Washington and Beijing.

Cleaving off Tesla's operations in China could "clear the way for a cleaner merger domestically" in the U.S., said Brian Mulberry, chief market strategist at Zacks Investment Management, a Tesla investor.

But that could pose governance challenges in China, where Tesla's Shanghai Gigafactory is the automaker's largest and most productive plant, serving as a main export hub for Europe, Canada and the Asia-Pacific region and historically accounting for more than half of its global deliveries.

China has previously granted Tesla preferential treatment, including a reduced corporate tax rate between 2019 and 2023, underscoring leverage the government could have over any restructuring.

A standalone Chinese entity would need buy-in from Chinese Communist Party leaders, who Mulberry said are "more than likely to require" a seat on the board of directors and would potentially install allies in executive positions.

The mechanics of a spinoff also carry other complications, said Shawn Campbell, a Tesla investor and adviser at Camelthorn Investments — starting with where the stock would be listed.

A Hong Kong listing would probably be palatable to most investors, he said, but a mainland China listing would raise ownership and governance concerns for foreign shareholders. "I would immediately sell any Chinese shares in the event of a spinoff," Campbell said.

UNTANGLING TIES

On paper, Tesla's China operations may look easier to separate than its businesses elsewhere because much of the manufacturing infrastructure is already self-contained.

But the real challenge, said Bill Russo, founder of Shanghai consultancy Automobility, would be untangling more complex ties such as shared software, intellectual property, AI systems, data governance and supply chains. A newly formed China entity could enter into long-term licensing agreements to use Tesla's brand and technology, Russo said, but that could make it difficult to maintain product consistency across markets.

A licensing deal could carry regulatory risk of its own: ongoing technology transfers, such as software upgrades for self-driving, to a Chinese entity could run afoul of U.S. rules, said Christopher Tang, a professor at UCLA's Anderson School of Management who specializes in global supply chains.

The stakes go beyond compliance. Most investors value Tesla for Musk's promises in self-driving and robotics, but the core auto business still funds those ventures — and China remains central to vehicle sales.

One investor in both Tesla and SpaceX, who declined to be identified, said separating China would leave Tesla without manufacturing capacity at comparable scale elsewhere. "Where are they going to make the cars?"

Others do not see that as a strategic problem.

Steve Greenfield, founder of U.S. venture capital firm Automotive Ventures, said Tesla could still choose to separate from its China business because it is not central to Musk's vision of the company as a robotics and autonomous-driving juggernaut.

"Tesla isn't really valued on the auto business anyway," Greenfield said. "If their ultimate goal is to be acquired by SpaceX and, within five or 10 years, move from vehicles to humanoid robotics, they may care less about the short-term brand implications" of exiting China, he said.

Big Tech Docket: Lawsuits accuse AI models of scraping, price-gouging | Secondary Sources | Federal

(August 04, 2026) - A federal judge has allowed Reddit Inc.'s data-scraping lawsuit against artificial intelligence companies Perplexity AI Inc. and SerpApi LLC to proceed, and a federal appeals court has revived a proposed class action alleging that casino operators used AI to inflate room prices.

Here's a roundup of recent events in the world of Big Tech.

Artificial intelligence

A federal judge has largely denied motions by Perplexity AI and SerpApi to dismiss a lawsuit by Reddit alleging they scraped its data to train AI models, in violation of the Digital Millennium Copyright Act, Reuters reports. Reddit plausibly alleged that the companies circumvented technological measures on Google's search results pages to access and copy snippets of copyrighted content, U.S. District Judge Paul A. Engelmayer of the Southern District of New York ruled July 31. The opinion also sustained Reddit's claim that the companies engaged in a civil conspiracy to violate the DMCA. Reddit Inc. v. SerpApi LLC et al., No. 25-cv-8736, 2026 WL 2210094 (S.D.N.Y. July 31, 2026).

The 3rd U.S. Circuit Court of Appeals has revived a proposed antitrust class action alleging that major casino operators in Atlantic City, New Jersey, used an AI-powered platform to collude on room prices and overcharge guests, Reuters reports. The lawsuit alleges the companies fed sensitive real-time price and occupancy data to software maker Cendyn Group LLC's "Rainmaker" platform, which then used AI-assisted algorithms to deliver coordinated pricing recommendations. Cornish-Adebiyi v. Caesars Entertainment Inc., No. 24-3006, 2026 WL 2182291 (3rd Cir. July 29, 2026).

Anthropic and OpenAI are facing heightened government scrutiny after their autonomous AI agents reportedly hacked into other companies' systems during testing, Reuters reports. Anthropic revealed that some of its Claude AI models had breached three companies after a mistake inadvertently gave the models access to the open internet during cybersecurity tests. The disclosure follows a "rogue attack" by an OpenAI agent that compromised the infrastructure of startup Hugging Face Inc.

Data privacy and security

A Manhattan federal judge has allowed negligence claims to proceed against outsourced services provider TaskUs Inc. in a class action alleging its employees stole over $400 million in cryptocurrency from Coinbase Global Inc. customers. The lawsuit alleges that TaskUs employees based in India were bribed by a criminal ring to steal personally identifiable information, which was then used in a social engineering scheme to access and drain customer cryptocurrency accounts. Estrada et al. v. TaskUs Inc., No. 25-cv-4409, 2026 WL 2169907 (S.D.N.Y. July 28, 2026). Read more: 2026 DPDBRF 396

Platform liability

EBay Inc. and three of its former top executives have agreed to pay $56 million to resolve a lawsuit by a Massachusetts couple targeted in a bizarre cyberstalking campaign by eBay employees, Reuters reports. David and Ina Steiner, who publish the newsletter EcommerceBytes, filed the suit in 2021 after several former eBay employees were prosecuted for a harassment campaign that involved sending the couple live cockroaches, fly larvae and a bloody Halloween pig mask in response to the newsletter's critical coverage.

Antitrust and regulation

The U.K.'s Competition and Markets Authority is investigating whether Microsoft Corp. misled customers about subscription plans for its Microsoft 365 product and its AI assistant, Copilot, Reuters reports. The probe will examine whether personal and family customers were given key information about pricing changes when their subscriptions renewed. Some customers were initially offered Copilot at no extra cost but later faced higher-priced subscriptions, the regulator said.

Meta, Anthropic, Google, OpenAI to meet Trump officials about AI safety testing | Business Information & News | FE

WASHINGTON, Aug 3 (Reuters) - Meta, Anthropic, OpenAI and Google have been invited to meet White House officials on Tuesday to discuss voluntary government safety testing for the most advanced U.S. AI models, according to three sources familiar with the matter and news reports.

Anthropic and OpenAI disclosed in recent days that their AI tools breached the systems of other companies, stirring concerns among U.S. lawmakers about whether increasingly capable AI models could be used to conduct or facilitate cyberattacks.

A White House official said on Monday the Trump administration has finalized the details of voluntary cybersecurity tests to measure the hacking capabilities of the most advanced American AI models, and is planning to discuss them with the AI industry. The official did not indicate who would attend the discussions.

Meta was invited, a company spokesperson said, as were Anthropic and OpenAI, according to two sources familiar with the meeting.

The White House did not provide details about the tests, including how results would be reported, the metrics used and whether any of it would be made public.

A group of 15 Republican state attorneys general on Monday asked OpenAI to preserve all potentially relevant documents related to its disclosure that its AI system escaped containment and hacked AI company Hugging Face. Citing a Reuters report that the rogue agent in one case left notes for how future versions of itself could escape internal guardrails, they wrote that the company may have violated state consumer protection laws.

OpenAI said in a statement it takes the letter from the attorneys general seriously and will share a technical report about the Hugging Face attack after it completes a review.

The U.S. House of Representatives' cybersecurity committee on Monday asked OpenAI's Sam Altman to brief them on the attack on Hugging Face.

Altman visited the White House last week to discuss details of the voluntary tests and the company's upcoming AI products, the company said in a statement. In a separate statement on Monday, the company said it had asked the Trump administration to put the Commerce

Department's AI safety specialists at the center of any cybersecurity testing. The company pointed to China, whose government has a more centralized strategy on AI compared with the U.S.

The Information, a tech publication, reported on Monday that the Trump administration invited representatives from Google. A Google spokesperson declined to comment.

U.S. President Donald Trump directed his team in June to write a series of tests to assess the hacking capabilities of the most advanced American AI systems.

The Trump administration has had a rocky relationship with Anthropic. The company earlier this year refused to allow the U.S. military to use its AI models for domestic surveillance and fully autonomous weapons systems, and the government retaliated by putting it on a national security blacklist.

Anthropic said last week that some of its AI models hacked into the systems of three companies during cybersecurity tests. That disclosure followed rival OpenAI's report that one of its AI agents escaped a testing environment and hacked into the systems of the AI company Hugging Face.

[With talc cases, lawyers proved they can win even by losing]

Legal News Line

August 03, 2026

Length: 1114 words

Byline: Daniel Fisher

Body

Johnson & Johnson's proposed $5.5 billion settlement of claims talcum powder causes ovarian cancer is more than $3 billion less than the company offered previously and reflects several key courtroom losses and a conflict-of-interest scandal that could have cost the lawyers hundreds of millions in fees.

Don't cry for the lawyers, though. They still will likely split more than $2 billion in fees if they *can convince most of their clients* to accept J&J's deal, which would pay plaintiffs about $70,000 apiece before their lawyers' 40% cut.

It's a decent return on an investment in litigation which, from the beginning, had little support in science or common sense. Plaintiff experts claimed cosmetic talc somehow migrated up women's reproductive tracts and reacted in some unknown way with ovarian tissue to cause cancer.

Their theories flew in the face of the fact that the reproductive tract prevents exactly this sort of migration of anything other than sperm, which have a tail and can swim. Otherwise, as a J&J expert testified in a recent trial, we would see an epidemic of sterility in women. Another fact undermining the talc-causes-cancer theory: The rate of new ovarian cancer cases has *declined steadily* over the last 20 years, despite ubiquitous use of cosmetic talc.

None of that stopped the plaintiff lawyers, who tried multiple approaches to convince jurors talc is deadly, from claiming it was contaminated with asbestos to using internal documents to portraying J&J as shaming minority women into using a product that would kill them. The result was several blockbuster verdicts, including *the $4.7 billion* attorney Mark Lanier won in a Missouri trial involving 22 plaintiffs, living and dead, in 2018. (It was reduced to $2.1 billion on appeal.)

Those verdicts prompted J&J to try to settle talc litigation through a specially formed subsidiary it put into bankruptcy, a maneuver known as the "Texas Two-Step." Judges repeatedly rejected the approach, however, ruling J&J had plenty of assets to cover judgments and couldn't justify using bankruptcy court to force a settlement.

Financing all this litigation cost money, of course, and there are signs hedge funds and other outside entities provided much of the money for the blizzard of TV ads and other marketing the lawyers used to recruit more than 75,000 ovarian cancer clients.

Johnson & Johnson briefly tried to convince the federal judge overseeing multidistrict litigation in New Jersey to force plaintiff lawyers to reveal their sources of finance, but gave up after the judge refused to go along. A lawsuit in federal court in Mississippi illustrates how central it may be to financing mass-tort litigation like talc, however.

The Smith Law Firm accuses lenders including Ellington Financial and Stifel of reneging on a commitment to lend it $30 million it needed to buy thousands of talc suits from another law firm, in what it calls a "loan to own" scheme to seize control of its talc litigation.

Ridgeland, Miss.-based Smith claims to have filed the first talc lawsuit in South Dakota in 2009 and won the first trial victory in 2013, after which it formed a joint venture with Beasley Allen and a third law firm to pursue more talc cases. They went on to screen more than 70,000 cases and file lawsuits in 11,500 of them, Smith says.

It was an expensive business, Smith says, with the cost of hiring lawyers, expert witnesses, litigation management technology "and nationwide travel expenses." To cover costs, Smith borrowed "tens of millions of dollars" from several lenders including *Ellington*, a publicly traded lender in Greenwich, Conn.; and *Stifel* in St. Louis. The loans were secured by Smith's fees from talc litigation.

After the litigation was delayed during J&J's repeated attempts to settle it through, Smith says it was forced to borrow more money from *ICG Investments* in New York. Now Smith accuses its lenders of fraudulently inducing it to take out loans they knew it couldn't repay.

"The defendants' motivation was pure greed, realizing the billions of dollars at stake in the talc litigation and in the SLF case portfolio," Smith says in its lawsuit. The defendants have not yet filed a response.

In the end, J&J "won" by forcing a settlement on relatively favorable terms that it hopes will end talc litigation forever. (It has worked out a similar agreement with the leading plaintiff firms with mesothelioma cases, which are based on claims talc contained asbestos, which J&J denies.) It did so by taking the risk of damaging jury verdicts at trial while attacking the foundation of the litigation, which is expert witnesses *who are willing to testify* talc causes cancer.

The combination may have worn down plaintiff lawyers who rely on contingency fees for income and thus can't afford to wait years for a payoff. The final catalyst may have been revelations that Beasley Allen had worked *with a former J&J attorney* to try to negotiate settlements, which multiple judges found to be a violation of legal ethics rules. When Beasley Allen told a judge in Florida that other leading plaintiff lawyers had also worked with the former J&J lawyer, endangering their fee arrangements, the plaintiff lawyers came to the table soon thereafter.

Plus, it was a real possibility that in federal court, where most lawsuits were filed, testimony from plaintiff experts *was about to be found unreliable*. Lawyers had withdrawn two researchers from the first federal trial, and a magistrate judge expressed concern that anyone could sufficiently tie talc to ovarian cancer.

Now lawyers must convince 95% of their clients to accept J&J's offer. Having recruited tens of thousands of women through mass marketing, it will be a challenge just getting the paperwork in front of them to sign. Then there's the question of whether other lawyers, seeing the billions of dollars in fees being made in this settlement, will find new experts and new cases. Since annual diagnoses of ovarian cancer run about 21,000 a year in the U.S., and virtually every adult woman can plausibly claim exposure to cosmetic talc, the litigation could continue for decades.

Except for one more trick plaintiff lawyers have to protect their talc payday. If past mass settlements are any example, they will likely encourage judges to enter "Lone Pine" orders that require future plaintiffs to supply detailed evidence to support their claim, including medical reports and expert opinions that talc caused their disease. The cost of complying with those orders, which can be thousands of dollars per case, has in the past discouraged follow-on litigation. J&J and the lawyers on the other side of the table must be hoping that pattern continues.

Load Date: August 4, 2026

WWE Will Pay $105 Million to End Lawsuit Challenging UFC Merger

Aug. 4, 2026, 7:37 AM PDT

Summary by Bloomberg AI

AI Generated

- WWE and its insurers will pay $105 million to end a shareholder class action over the wrestling empire's merger with Ultimate Fighting Championship.
- The disclosure comes about two months after an 11th-hour settlement in principle scuttled a planned four-day trial in Delaware's Chancery Court.
- The agreement requires the approval of the presiding judge, Vice Chancellor J. Travis Laster, and court filings detailing the settlement will likely be filed soon.

WWE and its insurers will pay $105 million to end a shareholder class action over the wrestling empire's $21 billion merger with Ultimate Fighting Championship, according to a securities filing.

Parent company TKO Holdings Inc. revealed the nine-figure sum in a Form 10-Q late Monday, a few days after a court filing suggested the legal accord may have hit some unexpected last-minute snags.

The disclosure comes about two months after an 11th-hour settlement in principle scuttled a planned four-day trial in Delaware's Chancery Court at which longtime former chairman Vince McMahon and other architects of the deal were expected to testify. Hollywood mogul Ari Emanuel — whose entertainment conglomerate, Endeavor Group Holdings Inc., owns TKO — was among those preparing to take the witness stand, although he wasn't named as a defendant.

The regulatory filing doesn't expressly say the total size of the settlement, only that the unspecified percentage funded by WWE under an indemnification agreement with McMahon, WWE President Nick Khan, and other corporate leaders comes to $105 million, minus an expected insurance recovery of $75 million.

It wasn't immediately clear if the pact includes other cash components or additional substantive terms, but it's common for companies to shoulder the whole settlement in corporate cases, even those that name only individual officers and directors as defendants. WWE itself didn't face any active legal claims at the time of the planned trial.

Because the case is a class action, the agreement requires the approval of the presiding judge, Vice Chancellor J. Travis Laster. Court filings detailing the settlement and formally asking him to sign off on it will likely hit the case docket soon.

The litigation represented one of several sprawling legal disputes surrounding the wider WWE universe, including a pair of even bigger consolidated cases challenging Endeavor's subsequent sale to the private equity giant Silver Lake.

WWE investors leading the merger case claimed McMahon and his allies rejected better M&A offers so he could secure control of the company and favor Emanuel, a longtime friend. Their experts had estimated damages ranged from $466 million to nearly $1 billion, according to court documents.

Attorneys for WWE and McMahon planned to argue at trial that Endeavor and bankers had pushed the idea of a merger after McMahon resigned from the company in 2022 amid allegations of sexual misconduct and hush-money payments. Emanuel left a voicemail offering to indemnify McMahon, who faced federal investigations, but McMahon ignored him, according to a pre-trial brief.

In the weeks before the trial, scheduled to begin June 8, Laster ruled that certain key claims about the actions and motivations of McMahon and Khan would be presumed true in light of his finding that they deliberately used an auto-delete setting on the Signal messaging app to wipe out potentially relevant exchanges.

The 2023 merger with mixed martial arts giant UFC followed McMahon's return to the WWE in the wake of the allegations he'd sexually harassed and abused female subordinates for decades. Shareholders dropped a separate lawsuit after McMahon agreed to repay $17.4 million that the WWE spent investigating those claims. McMahon resigned as executive chairman of TKO in January 2024, after more allegations emerged.

The shareholders are represented by Bernstein Litowitz Berger & Grossmann LLP, Block & Leviton LLP, Robbins LLP, and R.M. Law PC. McMahon is represented by Kirkland & Ellis LLP and Potter Anderson & Corroon LLP. The WWE's directors and officers are represented by Latham & Watkins LLP and Morris, Nichols, Arsht & Tunnell LLP. The case is In re World Wrestling Ent. Inc. Merger Litig., Del. Ch., No. 2023-1166 .

YouTube Premium Subscribers Claim They Are Still Forced To Watch Ads

Mealey's(R) Litigation Report: Class Actions

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Body

Premium subscribers of YouTube LLC's video-streaming website filed a putative class action in California federal court against YouTube and its parent company Google LLC for allegedly violating California's unfair competition law (UCL) and other laws by falsely advertising premium subscriptions as "ad-free," when in fact even premium subscribers still have to watch advertisements placed in certain videos by content creators (William Flemming, et al. v. Google LLC, et al., No. 26-7182, N.D. Calif.).

(Complaint available 58-260721-107C)

'Hollow Promise'

"YouTube Premium is a paid monthly subscription service with a simple value proposition: for a fee, members are offered a streaming experience that is 'ad-free' with 'no interruptions' during streamed content," plaintiffs William Flemming and Devin Rose write in their putative class action complaint against YouTube and Google filed July 14 in the U.S. District Court for the Northern District of California.

"But this promise is hollow. YouTube Premium does not offer an 'ad-free' and 'uninterrupted' experience. To the contrary, advertisements and interruptions frequently appear during streamed content, interrupting videos with commercials for everything from popular automobiles to marketing for local attorneys or dietary supplements," they contend.

Flemming and Rose are subscribers to YouTube Premium, which currently costs $15.99 a month for an individual plan, and both say they subscribed in reliance on the defendants' representations of YouTube Premium as providing an ad-free viewing experience "on all YouTube videos." There is also a "Premium Lite" option for $8.99 a month, which removes ads from most videos.

"At all relevant times that YouTube marketed and sold the YouTube Premium service, YouTube knew or should have known about the advertisements discussed above that are within YouTube Premium," the plaintiffs write. "Contrary to YouTube's representations, videos streamed on YouTube Premium are littered with ads. . . . YouTube

Premium members pay over $15 per month for a streaming service that is touted as 'ad-free.' The service they are receiving, however, is full of ads that appear during streamed video."

They cite ads for various products that are played during YouTube videos uploaded by content creators such as podcaster/comedian Theo Von, true crime enthusiast YouTuber Kallmekris and video game streamer Markiplier and on the YouTube channel "The Diary of a CEO."

"YouTube Premium members expect to receive what they are promised and what they pay for - an 'ad-free' experience," they write. "Regardless of whether the ad is placed within the video by YouTube or the content creator - the user experience is the same - they are still subjected to annoying ads after paying YouTube to enjoy video content 'ad-free,'" the plaintiffs say.

Class Claims

The plaintiffs seek to represent a nationwide class and a California class, each comprising all people in those areas who "subscribed to YouTube Premium for one or more months under the reasonable (but mistaken) belief that in exchange for monthly subscription fees, they would receive an 'ad-free' and 'uninterrupted' experience."

They accuse the defendants of violating California's false advertising law (FAL), *Cal. Bus. & Prof. Code 17500* et seq., UCL, *Cal. Bus. & Prof. Code 17200* et seq., and the California Consumers Legal Remedies Act (CLRA), *Cal. Civ. Code 1750* et seq., and bring a claim for unjust enrichment.

They seek declaratory and injunctive relief, actual and punitive damages, restitution and attorney fees.

The plaintiffs are represented by Devin Bolton, James Bilsborrow, Michael Piggins and Ashley Arraras of Weitz & Luxenberg PC in Los Angeles and Matthew W. Broughton, Andrew M. Bowman and Jared A. Tuck of Gentry Locke Attorneys in Roanoke, Va.

Do you have news to share? Are you interested in writing a commentary article? Email the Mealey's News Desk at *Mealeys@LexisNexis.com*

Load Date: August 3, 2026

Where Is The Line On Actionable Comms In Securities Cases?

law360.com/articles/2506390/where-is-the-line-on-actionable-comms-in-securities-cases-

(August 3, 2026, 4:40 PM EDT) --

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In a Law360 guest article **published** about a year ago, I analyzed recent case law about what types of statements are not made "in connection with the purchase or sale of any security" and therefore not covered by Section 10(b) of the Securities Exchange Act.

The article explained that some communications that are not expressly directed to investors, such as consumer-facing communications, may nevertheless be deemed by courts to be within the scope of the federal securities laws if they are the sorts of communications that investors, despite not being the intended audience, may rely on due to the nature or substance of the communication.

The article identified a number of forums in which such statements might be made, including advertisements, e-commerce websites, privacy statements, cybersecurity policies, customer brochures, statements on product packaging, and statements to Congress, government agencies or regulators.

Recent securities cases from the past year have raised similar issues, demonstrating the difficulty in drawing a clear line differentiating between statements that are made in connection with the purchase or sale of securities from those that are not.

Statements to FINRA

As noted, statements to Congress, government agencies or regulators, while not expressly directed to investors, may be deemed to be made in connection with the purchase or sale of any security.

Earlier this year, the U.S. Court of Appeals for the Eleventh Circuit faced a variation on this question: How about statements made to the Financial Industry Regulatory Authority, a self-regulatory organization?

In U.S. Securities and Exchange Commission v. Spartan Securities Group, the SEC brought an enforcement action alleging that information that the defendants submitted to FINRA was false or misleading in violation of Section 10(b) and SEC Rule 10b-5(b).[1]

The information in question was submitted to FINRA as part of a so-called Form 211 application. FINRA approval of a Form 211 application is necessary to permit an issuer's securities to be publicly quoted on the over-the-counter market.[2] There was also evidence in the record that it was possible for an investor to request and obtain the Form 211 application and review the information submitted to FINRA.[3]

At trial, the defendants argued that the challenged statements were not made in connection with the purchase or sale of a security because they were made to FINRA rather than to investors.[4]

On Jan. 20, the Eleventh Circuit **rejected** that defense, explaining that the "in connection with" requirement is interpreted flexibly, that "a direct or close relation between the fraud and the securities transaction [i]s not required," and that "it is enough that the fraud 'touch' the sale in some manner ... or 'coincide' with it."[5]

Applying those criteria, the court held that there was enough evidence to support the conclusion that the challenged statements touched the purchase or sale of securities because obtaining FINRA clearance "'essentially open[s] the door' to over-the-counter public investing."[6]

In other words, the "in connection with" requirement was satisfied because the statements to FINRA were the but-for cause of investors being provided with the opportunity to invest in the company's securities; had a defendant not initiated and completed the Form 211 process, the issuer "wouldn't have been able to market the securities and 'the general public would not [have] be[en] able to invest' in them."[7]

While acknowledging that there "may be cases where the alleged deceit is too remote to 'touch' or 'coincide' with the purchase or sale of securities," the Eleventh Circuit held that the "in connection with" requirement was "broad enough to cover a situation where — as here — a defendant makes a false statement intentionally calculated to facilitate the purchase or sale of a security on a later date," even if the statement was not made directly to investors.[8]

Statements in Privacy Notices

In contrast, in In re: Block Inc. Securities Litigation, the U.S. District Court for the Southern District of New York **explained** on Sept. 9, 2025, that it was "not clear" that the plaintiffs in that case could satisfy the "in connection with" requirement with regard to statements in privacy notices.[9]

The plaintiffs had challenged statements in the company's privacy notices posted on its website that "we do a lot to keep your data safe" and "while we think we have strong defenses in place, no one can ever guarantee that hackers won't be able to break into our sites or steal your data."[10]

The court thought it was dubious whether statements of that nature were made in connection with the purchase or sale of any security, but ultimately did not need to reach the issue because the statements at issue were too generalized and nonspecific to be actionable.[11]

Statements That Do Not Precipitate Any Market Activity

SEC v. Jones, **decided** on June 27 by the U.S. District Court for the Northern District of Ohio, went one step further than the Block case and squarely held that the statements at issue there were not made in connection with the purchase or sale of a security.

The case arose in connection with statements made by Charles E. Jones, the former CEO of FirstEnergy Corp., about a bribery scandal involving former Speaker of the Ohio House of Representatives Larry Householder and H.B. 6, which Householder had introduced. The SEC brought an enforcement action against Jones alleging that he engaged in securities fraud by stating in a press release that "FirstEnergy acted ethically in this matter" and that the company acted "transparently."[12]

The court dismissed the case for failure to satisfy the "in connection with" requirement, among other failures, because there were "no allegations of any market activity or market manipulation based on these statements and omissions."[13]

Of particular significance is the court's explanation that although Section 10(b) is construed flexibly, it "must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of [Section] 10(b)."[14] The court emphasized that just because a company's stock trades publicly does not make every statement or omission by the company actionable under Section 10(b).[15]

Takeaways

The differing conclusions about whether particular statements were made in connection with the purchase or sale of any security are more likely attributable to the individualized factual situations in which the statements were made than to any doctrinal differences of opinion between the various courts about what constitutes a close enough connection between the alleged fraud and a securities transaction to satisfy the statutory requirements.

Where a statement is intentionally calculated to facilitate the purchase or sale of a security on a later date and is a but-for cause of the securities transaction, it is likely that courts will hold that Section 10(b)'s "in connection with" requirement has been satisfied. In contrast, where a defendant is accused of making relatively generic statements in privacy notices about data safety or other statements unlikely to precipitate market activity, courts may determine that the necessary elements of a Section 10(b) claim, including its "in connection with" requirement, are lacking.

Nevertheless, until there is greater clarity in this area of the law, public companies may want to continue to err on the side of caution and assume that any statement that an investor might rely upon, even if investors were not the intended audience, may be challenged in court.

UBS Fined $125M For Anti-Money Laundering Failures

law360.com/articles/2508782

(August 3, 2026, 11:50 AM EDT) -- UBS' brokerage arm on Monday admitted to willfully violating the Bank Secrecy Act by failing to monitor its customers' foreign currency transactions, entering into a "historic" $125 million agreement with the Financial Crimes Enforcement Network, as well as several other regulators.

FinCEN says the penalty was the largest ever imposed against a broker-dealer for violating the BSA, and that it came after UBS Financial Services Inc. failed to meet the terms of a 2018 consent order in which it promised to improve its systems for monitoring foreign currency wire transactions for potential money laundering.

UBS entered into separate resolutions Monday with the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission and the Financial Industry Regulatory Authority for a total of $48 million. FinCEN has agreed to credit those amounts against the $125 million fine, leaving it owing $77 million to the U.S. Department of the Treasury, where FinCEN is housed.

FinCEN said it will waive $15 million of the $77 million should UBS successfully remedy its anti-money laundering program.

"Today's announcement brings closure to this legacy matter," a UBS spokesperson told Law360 by email on Monday. "UBS has cooperated fully with its regulators and has made significant investments to remediate and strengthen its AML program in line with leading industry practices."

Under the Bank Secrecy Act, broker-dealers like UBS Financial are required to develop tools to detect possible money laundering and to report any suspicious activity to FinCEN.

FinCEN said such reports are "essential" "to safeguard the U.S. financial system and combat serious threats, including money laundering, terrorist financing, organized crime, corruption, drug trafficking, and massive fraud schemes targeting the U.S. government, businesses, and individuals."

But the agency said that between 2019 and 2023, UBS failed to appropriately monitor over 61,000 foreign currency wires with a total value of over $10.5 billion. FinCEN said the compliance issues impacted both the company's commodities and retail brokerage accounts.

And the agency dinged the company for allegedly failing to alert it that an updated AML program would not be ready by mid-2019, as promised, despite top executives knowing within weeks of the 2018 consent order that UBS would not meet the deadline.

FinCEN said that UBS Financial did not cop to the ongoing deficiencies in its AML monitoring until approached by the agency, as well as the SEC and FINRA, in 2022.

Those ongoing issues included a failure to implement a mechanism for catching errors and a failure to consistently collect counterparty information, according to FinCEN.

The "root cause" of many of the problems with UBS' system was a failure to "apply relevant data-governance policies, procedures, and internal controls to the data upon which its anti-money laundering transaction monitoring process relied," according to FinCEN.

"UBSFS did not apply a coherent data management framework to this process until April 2023," the agency said.

It also accused the company of failing to closely monitor accounts opened by Russian or Venezuelan individuals, despite the risk of "bribery, cronyism, corruption, and money laundering" associated with its Russian oligarch clients, in particular.

As part of its consent agreement with FinCEN on Monday, UBS agreed to hire an independent consultant who will determine if the company failed to file any necessary suspicious activity reports between 2019 and 2023.

In addition to violating the BSA, the SEC also accused the company of willfully violating Section 17(a) of the Securities Exchange Act of 1934 for failing to file the suspicious activity reports.

The agency said the SARs that UBS did not file following a 2023 lookback included thousands of transactions totalling approximately $250 million.

The CFTC accused UBS of failing in its supervisory duties as a futures commission merchant in violation of an agency regulation.

FINRA accused it of violating its own rules for broker-dealers on implementing AML procedures, reporting suspicious transactions and conducting ongoing customer due diligence.

FINRA said UBS failed to monitor wire transfers "involving, among other issues, high-risk geographic locations, unusually large dollar amounts, and no apparent business purpose."

--Editing by Nicole Bleier.

Update: This story was updated with additional information from the agency orders.

Musk Wants 9th Circ. To Weigh Twitter Investor Trial Loss

law360.com/articles/2508033

(July 31, 2026, 4:52 PM EDT) -- Elon Musk wants the Ninth Circuit to review two orders entered in a securities case in California federal court accusing him of defrauding Twitter shareholders, according to a notice of appeal.

The notice filed Thursday states that Musk is appealing the **judgment against him** entered in April, as well as U.S. District Judge Charles R. Breyer's order that trimmed the verdict but **denied Musk a retrial**.

After a weekslong trial, on March 20th, a San Francisco **jury found** Musk made false or misleading public statements about the Twitter's fake "bot" accounts problem in a bid to ditch or renegotiate his $44 billion deal to acquire the social media platform, which he has since renamed X Corp.

The jury in March found that two statements amounted to securities fraud: one tweet on May 13 stating that the deal was on hold, and another on May 17 reiterating Musk's concerns about the number of bots on the platform, which Judge Breyer later determined was inconsequential.

Judge Breyer said in the July 6 order that the jury was not biased against Musk and that the investors demonstrated he knowingly made false statements in 2022 when he publicly declared that he was putting a promised Twitter buyout on hold. In the order, Judge Breyer threw out the verdict on the May 17 tweet, writing that while a plaintiffs' expert had shown at trial that the market reacted negatively to the first tweet, the expert hadn't shown any effect from the second.

The investors are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger, Gia Jung, Elle D. Lewis and Caroline A. Yuen of Cotchett Pitre & McCarthy LLP and Frank Bottini Jr. and Aaron P. Arnzen of Bottini & Bottini Inc.

Musk is represented by Alex Spiro, Ellyde R. Thompson, Jesse A. Bernstein, Stephen Broome, Matthew Alex Bergjans and Michael T. Lifrak of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Giuseppe Pampena et al. v. Elon R. Musk, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.