

2015 Luxury & Fashion Industry Conference

16 October 2015

Baker & McKenzie New York



2015 Luxury & Fashion Industry Conference

Online Distribution / E-Commerce / Luxury and Fashion Online

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Agenda

- Connecting in the Internet of Luxury Things
- Native advertising hashtags and competition law
- Direct marketing and anti-spam law compliance
- Social media listening, mobile tracking and data privacy



US - EU Data Privacy Safe Harbor is dead, long live EU (and EU States') Privacy Laws

- What happened, why and how?
- What happens next?
- What should U.S. companies do next?
 - updating notices
 - updating filings
 - updating contracts with vendors and customers
 - withdraw from U.S. Department of Commerce's List?

Connecting in the Internet of Luxury Things

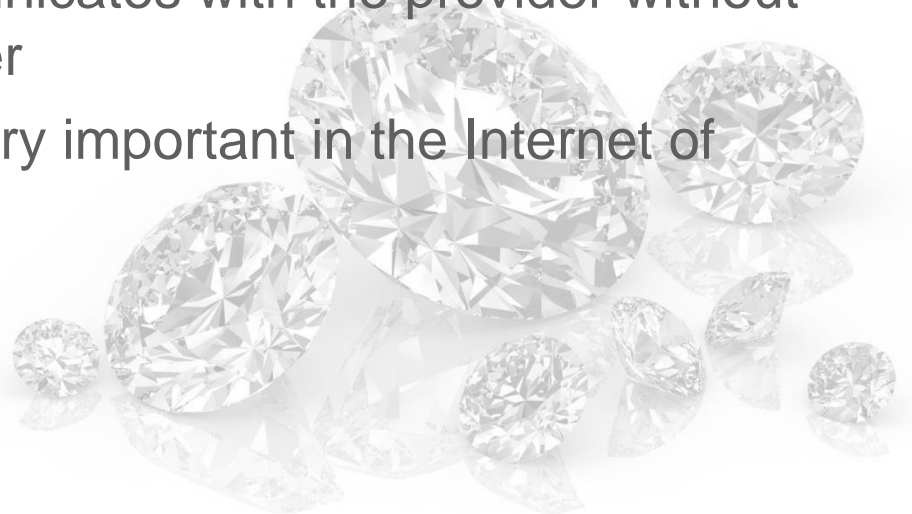
European Cookie Rules and Use of Cookies

- Cookie Directive (2009/136/EC) and its effect
 - Tightened the rules for the use of cookies and similar technologies (web beacons, tracking pixels), see Art. 5 para. 3 of e-Privacy Directive (2002/58/EC)
 - Sufficient Information + opt-in approach
 - Different interpretations in member states on how to obtain consent (e.g. express or implied) lead to various compliance approaches
 - Cookie Rules also apply to similar technologies and can apply to Non-European providers
- Usage of Cookies
 - on websites (e.g. content of a virtual shopping cart, tracking/analyzing website usage)
 - on other devices or programs (e.g. smart phones, video game consoles, apps, games etc.)



Cookies in the Luxury & Fashion Industry

- Websites / online distribution
- Apps for mobile devices
 - e.g. Makeup Genius by L'Oreal
- in the Internet of (Luxury) Things
 - smart wear (e.g. smartwatches, smart glasses, smart shirts, smart backpacks, smart gloves)
 - smart wear often communicates with the provider without further actions of the user
 - Cookies therefore are very important in the Internet of Things
- Problems e.g.
 - Consent Requirements
 - Data Security / Big Data



Connecting in the Internet of Luxury Things

- The data privacy and security challenge
- How to keep data subjects apprised of data collection, processing, transfers, usage
 - choice
 - tutorials
 - real time notice
 - interfacing with employer programs, enterprises
- Need for crisp vendor contracts



Native advertising hashtags and competition law

Native advertising hashtags and competition law

- Business models and phenomena
- Rules on separating editorial content, advertisements across geographies
- Subliminal advertising
- Disclosures and disclaimers



Direct marketing and anti-spam law compliance

Direct marketing and anti-spam law compliance

- Opt-in, Opt-out and Opt-in-between
- Email, Text, posts, tweets and beyond
- You CAN SPAM in the USA – but mind the TCPA
- EU data protection and anti-spam laws
- German double opt-in
- CASL
- How to implement a compliance program



Direct marketing and anti-spam law compliance

Consent requirements for direct marketing in Germany:





	Recipient = consumer		Recipient = entrepreneur			
	Use of personal data		Use of personal data		No use of personal data	
✉	No objection		No objection		No objection	
☎	Consent (opt-in)		Advertiser in Germany: consent (opt-out)	Advertiser abroad: presumed consent	Presumed consent	
@	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in)	Exception*: no objection
📱	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in)	Exception*: no objection

***Exception if**

- electronic mail address obtained in connection with the sale of goods or services,
- advertising of own similar goods or services, and
- information of right to object when address is recorded and each time it is used

Direct marketing and anti-spam law compliance

Consent requirements for direct marketing in Austria:

	Recipient = consumer		Recipient = entrepreneur		
	Use of personal data		Use of personal data		No use of personal data
	No objection		No objection		No objection
	Consent (opt-in)		Consent (opt-in)		Consent (opt-in)
	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in) Exception*: consent (opt-out)
	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in)	Exception*: consent (opt-out)	Rule: consent (opt-in) Exception*: consent (opt-out)

- *Exception if
- contact information obtained in connection with the sale of goods or services,
 - advertising of own similar goods or services,
 - information of right to object when address is recorded and each time it is used, and
 - as regards emails only: Email address is not contained in general opt-out register.

Social media listening,
mobile tracking and data
privacy

Social media listening, mobile tracking and data privacy

- CFAA and foreign computer interference laws
- California privacy law – update your privacy policy
- FTC guidance and enforcement
- EU data protection laws



Questions?



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