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Advertising and Marketing 2026

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USA – New York: Trends and Developments

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USA – NEW YORK



Trends and Developments

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Trends and Developments in New York Advertising and Marketing Law

Advertising law used to sound simple: tell the truth, support objective claims, do not hide material information, make sure the fine print matches the headline. Those rules remain in place, but they no longer describe the full job.

New York regulators now look beyond words in an advertisement to the machinery around the sale.

- How was the price selected?
- What did the company know about the customer?
- Did software personalise the offer?
- Was the person in the ad real?
- Was a subscription easy to start and hard to stop?
- Did reviews reflect genuine consumer experiences?
- Did the advertised price omit unavoidable costs?

That shift matters because marketing is now inseparable from product design, data collection and payment systems. A campaign may move through recommendation engines, dynamic pricing tools, influencer programmes, synthetic media platforms, checkout screens and recurring billing systems, each of which can create legal exposure. Regulators increasingly treat the entire path from attention to payment as one connected consumer representation.

New York has placed itself at the front of this movement. During 2025 and 2026, the state adopted or advanced major measures involving artificial intelligence, consumer protection and personalised pricing. The Attorney General has also signalled a willingness to use expanded authority against junk fees, hard-to-cancel services and technology-driven sales practices. Federal rules still matter – particularly for fee disclosures, reviews, endorsements and health claims – but state officials are becoming the primary architects of the compliance landscape.

For advertisers, agencies and consumer-facing businesses, the message is straightforward: legal review cannot arrive five minutes before launch with a red pen and a request to enlarge a disclosure. Lawyers, marketers, product teams, data scientists and billing personnel need to understand the offer together, because the most serious problems may be embedded in the system before anyone writes the headline.

New York's new consumer protection era

The largest structural change is the FAIR Business Practices Act, signed in December 2025. The law updates New York General Business Law Section 349 (the state's central consumer protection statute) by expressly prohibiting unfair and abusive practices, not just deceptive ones.

That vocabulary change is consequential. Deception law traditionally asks whether a representation or omission is likely to mislead a reasonable consumer. The new unfairness standard reaches practices that cause or are likely to cause substantial injury that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits. The abusive-practices standard can reach conduct that materially interferes with a person's ability to understand a term or takes unreasonable advantage of a person's lack of understanding.

In plain language, New York can now challenge conduct even when a company technically disclosed what it was doing. A disclosure does not automatically cleanse a sales process designed to confuse, pressure or trap the customer, and scrutiny extends to how an offer works, how choices are presented and whether the transaction exploits predictable consumer behaviour.

The Attorney General has exclusive authority to enforce the new unfair and abusive categories. Private plaintiffs retain their cause of action for deceptive practices but do not receive a general right to sue over every allegedly unfair or abusive act. Even so, the statute broadens enforcement reach and extends protection beyond individual consumers to businesses, non-profits and other marketplace participants.

Campaign review should therefore go beyond asking whether the claim is literally accurate to querying whether an ordinary person would understand the real bargain before committing, whether an important term appears only when backing out is burdensome, whether the interface creates false urgency and

whether the company exploits information or leverage the customer cannot counter.

The synthetic spokesperson has entered the building

Artificial intelligence has made it cheap and fast to create people who never existed. A synthetic model can demonstrate a product, deliver a testimonial-style script or appear in a polished commercial without a studio or human performer. New York has responded with a first-in-the-nation disclosure requirement for advertisements using certain AI-generated synthetic performers.

The law took effect on 9 June 2026 and requires a person who produces or creates an advertisement with actual knowledge that it includes a covered synthetic performer to make a conspicuous disclosure. The statutory definition focuses on a digital asset created, reproduced or modified through generative AI or software that gives the impression of a human performance while not being recognisable as a specific natural person.

The definition matters because the law targets synthetic human performances, not every use of AI in production. Software that cleans up audio, adjusts colour, generates a background or translates the language of a human performer will not trigger the requirement. Audio-only advertisements are excluded. Promotions for expressive works (films, television programmes, streaming productions and video games) also receive an exemption when the synthetic performer is used consistently with the work being promoted.

Penalties are modest compared with the cost of a national campaign: USD1,000 for a first violation and USD5,000 for subsequent ones. The reputational consequences may be larger. A brand that conceals synthetic talent risks turning an ordinary campaign into a story about manipulation, reflecting the law's broader judgement that customers should know when apparent human performance is machine-generated.

The practical challenge is operational. Large campaigns involve agencies, production companies, technology vendors, media buyers and platforms, and the organisation responsible for the final advertisement may not know how every asset was created. Contracts should address whether synthetic performers are being used, who must approve them, who prepares the disclosure and who bears responsibility for vendor misinformation.

When the price knows who you are

Personalised pricing has moved from technical curiosity to political and legal issues. Online businesses can observe browsing history, location, purchasing behaviour, device information and other signals, then use algorithms to decide which offer a person sees. The same product may appear at different prices to different customers simultaneously.

New York's surveillance-pricing disclosure law, effective November 2025, requires covered businesses to tell consumers when a price was set by an algorithm using their personal data. Unlike vague privacy language, the required message connects data collection to an immediate economic consequence.

The Attorney General's January 2026 inquiry into Instacart illustrates the concern. The office demanded information after reports that customers could see materially different prices for the same grocery items at the same stores. An inquiry does not establish wrongdoing, but it shows how quickly algorithmic pricing can become an enforcement matter.

The debate has already moved beyond disclosure. In June 2026, the New York Legislature passed the One Fair Price Act, which would prohibit surveillance pricing while preserving ordinary discounts, coupons and promotions. A public sale available to everyone differs from quietly estimating that a particular customer may be willing, hurried or wealthy enough to pay more.

For marketing teams, the issue extends beyond the data science department. Personalised prices affect claims about savings, value and fairness. "Our best price" becomes risky when the system calculates a different best price for each person, and comparison advertising becomes harder when the advertised figure is not broadly available. Loyalty programmes merit review if benefits depend on extensive data collection or produce opaque pricing differences.

The checkout page is now part of the ad

Few subjects unite consumers like the surprise fee. A customer finds a ticket or hotel room at an attractive price, invests time in the purchase and learns near checkout that mandatory charges substantially increase the total. This practice, commonly called drip pricing, has attracted sustained attention in New York and at the Federal Trade Commission.

The FTC's Rule on Unfair or Deceptive Fees took effect on 12 May 2025 and applies to live-event tickets and short-term lodging. Businesses in those categories must display the total price more prominently than other pricing information. The total includes mandatory fees; taxes, reasonable shipping and optional goods or services may be handled separately.

The rule does not require every fee to disappear but rather requires the unavoidable portion of the price to appear early and clearly enough for meaningful comparison shopping. That principle fits New York's broader direction under the FAIR Business Practices Act: a fee structure can be troublesome because of when and how it is revealed, even if the fee appears somewhere on screen.

This changes the legal significance of the checkout flow. Marketers may view the landing page as the advertisement and the payment page as operational, but regulators treat both as parts of the same offer. A low headline price creates the initial impression; later screens determine whether it was accurate.

Businesses outside ticketing and lodging should not assume the issue stops at the edge of the federal rule. New York's expanded unfairness authority provides a path to challenge hidden or unavoidable fees in other industries. New York City's consumer protection officials also have authority over deceptive trade practices and pricing within the city.

Subscriptions, cancellation mazes and the return of common sense

Subscription businesses offer genuine convenience but also create a temptation to make enrolment frictionless and cancellation exhausting. A consumer may join in two clicks, then be required to call during limited hours, navigate retention screens or discover that cancellation takes effect only after another billing cycle.

The FTC attempted to create a national click-to-cancel requirement through amendments to its Negative Option Rule. A federal appellate court vacated the amended rule on 8 July 2025, because the agency had not completed a required preliminary regulatory analysis. That decision removed the rule before its major provisions took effect; it did not authorise deceptive subscription practices.

The FTC retains authority under Section 5 of the FTC Act, and in March 2026 it opened a new rulemaking on negative-option programmes. New York's automatic-renewal law also remains relevant, requiring clear disclosure of material renewal terms, affirmative consent before charging and an acknowledgment explaining cancellation. For certain online enrolments, New York requires a cost-effective, timely and easy-to-use online cancellation mechanism.

The FAIR Business Practices Act adds another layer. A cancellation process that interferes with understanding or exploits consumer inertia may attract scrutiny even when the initial enrolment disclosure is technically present. Overall design matters.

Marketers should pay particular attention to free trials, introductory prices and annual commitments. Customers should understand when billing begins, how much it will cost, how long the commitment lasts and how to stop future charges. Retention offers should not obscure the cancellation choice or force the customer to decline repeatedly.

AI claims still have to survive contact with reality

Generative AI has produced a familiar advertising cycle: a new technology appears, marketers attach ambitious promises to it and regulators ask for evidence. The FTC's Operation AI Comply has targeted companies that allegedly exaggerated what AI products could accomplish or used AI language to dress up familiar schemes.

The legal standard is not exotic. Objective performance claims require a reasonable basis before they are made. If software is said to automate nearly all of a

complicated task, the company should have evidence it does so under conditions customers will actually encounter. Testimonials and demonstrations must reflect genuine results; material limitations belong near the claim.

Good compliance begins with specificity. "AI-powered" is often too vague. Marketing teams should identify what the system does, what tasks remain with the user, what inputs are required and what results have been tested. Product teams should approve the description; legal reviewers should ask for evidence behind measurable promises; and customer support data can reveal whether the advertised experience matches reality.

Reviews, influencers and the manufactured crowd

Modern advertising borrows credibility from the crowd. Star ratings, testimonials, creator endorsements and before-and-after images can persuade more effectively than a slogan. That credibility disappears when the crowd is manufactured.

The FTC's rule addressing fake reviews and testimonials took effect in October 2024. It prohibits practices such as buying or selling fake reviews, using testimonials from non-existent people, misrepresenting company-controlled review sites as independent and offering compensation conditioned on a review expressing a particular sentiment. The rule also addresses review suppression and fake social media indicators.

The NextMed matter illustrates the risk. In 2025, the FTC alleged that the New York-based telehealth company used unsubstantiated weight-loss claims, fake testimonials, photographs of non-existent customers and practices that distorted the review record. The final order required USD150,000 for consumer refunds and imposed restrictions on advertising, billing and cancellation practices.

The case tied together several current themes: allegedly undisclosed costs, unsupported weight-loss claims, inauthentic testimonials, and problematic membership and cancellation practices. Regulators treated them not as isolated defects but as parts of one sales system.

Influencer programmes deserve the same integrated review. A creator must clearly disclose a material connection to the brand. Free products, commissions, employment relationships and family ties all matter. Disclosures should appear where viewers will notice and understand them, using plain language rather than ambiguous hashtags.

Brands also need controls over vendors that collect reviews or recruit creators. A contract can prohibit fake engagement and conditioned positive reviews, but the brand should also monitor what is actually happening. Outsourcing the programme does not outsource the reputational damage.

Health and weight-loss marketing remain high-risk zones

Health claims receive close scrutiny because consumers may spend money, delay medical care or expose themselves to physical risk. The enormous interest in GLP-1 weight-loss drugs has created a particularly active market for telehealth programmes, supplements, coaching services and related products.

Advertisers in this area should assume regulators will examine the full economic promise, not only the clinical claim. What does the price include? Are medication, lab work and consultations extra? Is the customer committing for a year? Are weight-loss figures supported by reliable evidence? Do before-and-after photographs depict real customers? Are safety limitations clear?

NextMed also shows how a health campaign can create overlapping problems involving substantiation, pricing, testimonials, recurring billing and cancellation. Those risks are especially acute when a programme combines medical claims with recurring charges and complex treatment costs.

New York's expanded consumer protection law raises the stakes. Health marketers often sell to people who are anxious, frustrated or unfamiliar with complex medical and financial terms. Practices that exploit that vulnerability may fit an abusive-practices theory, particularly when the company controls information needed to understand the bargain.

The best defence is disciplined claim development. Medical and scientific personnel should review clinical statements; evidence should match the exact product, population and result advertised. Typical results disclosures should rest on real data; pricing should reflect what a typical customer will pay; and customer service and refund patterns should be monitored for signs of misunderstanding.

What New York businesses should expect next

The next phase of advertising law in New York will likely be shaped by three forces.

- First, state regulation of AI will continue to expand. The synthetic-performer law and surveillance-pricing rules address different subjects but share a concern: people should know when automated systems materially shape what they see or pay. Future proposals may reach AI-generated endorsements, automated targeting, discriminatory outcomes and the use of personal data to influence purchasing behaviour.
- Second, enforcement will focus increasingly on architecture. Regulators will examine whether interfaces encourage mistaken beliefs, pricing systems treat customers fairly and cancellation processes are designed to wear them down. Legal teams will need access to product specifications and customer journeys, not merely screenshots after development is complete.
- Third, the line between federal and state enforcement will remain fluid. Federal priorities change with administrations, court decisions and agency leadership. New York has shown a willingness to fill perceived gaps and develop its own standards, leaving national companies to navigate state disclosure and design requirements even when federal law is unsettled.

Companies can prepare without turning every campaign into a legal seminar. Map the customer path. Identify where data affects offers or prices. Separate optional charges from unavoidable costs. Confirm that subscription cancellation works as promised. Keep support for objective claims. Track the origin of reviews, endorsements and synthetic media. Give legal and compliance teams time to understand the system.

The broader lesson is that advertising law is becoming a form of product governance. Creative work still matters, but New York increasingly expects the commercial system behind a campaign to be as honest as the words on the page.

The bottom line

New York's recent developments do not signal the end of persuasive marketing. They demand persuasion that respects the customer's ability to understand and choose.

Brands can still use AI, personalise experiences, offer subscriptions, recruit influencers and promote ambitious products. But they must disclose synthetic performers when required, explain when personal data affects price, present mandatory fees early, make cancellation workable and support claims with evidence. They should also ask whether the transaction is fair even after every disclosure has been written.

Madison Avenue has always adapted to new media. Its next adaptation is to a legal environment in which code, data and interface design speak as loudly as copy. In New York, those elements are now part of the advertisement – and regulators are listening.

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