



IBA/IFA JOINT CONFERENCE

May 6-7, 2025 | Washington, DC

Digital Marketing and Loyalty Programs

Moderators: Alan Greenfield, Greenberg Traurig LLP, USA; and Peter Snell, Cassels, Canada

Speakers: Jill Murphey, The Wendy's Company, USA; Elise Troll, Kennedy Van der Laan, The Netherlands; Dr. Benedikt Rohrßen, Taylor Wessing, Germany



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Welcome

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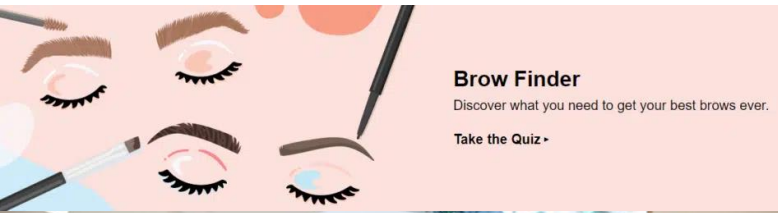


Agenda

- Digital Marketing
- Digital Loyalty and Rewards
- Key Privacy Considerations
- Use of AI
- Franchise-Specific Challenges
- Best Practices



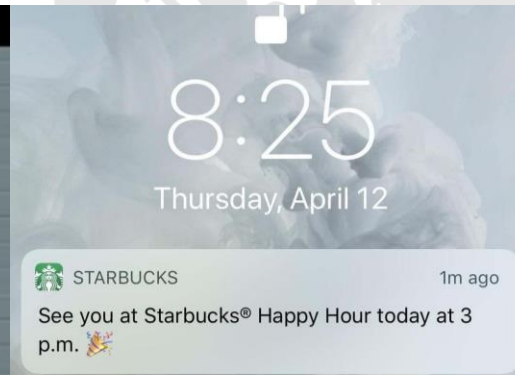
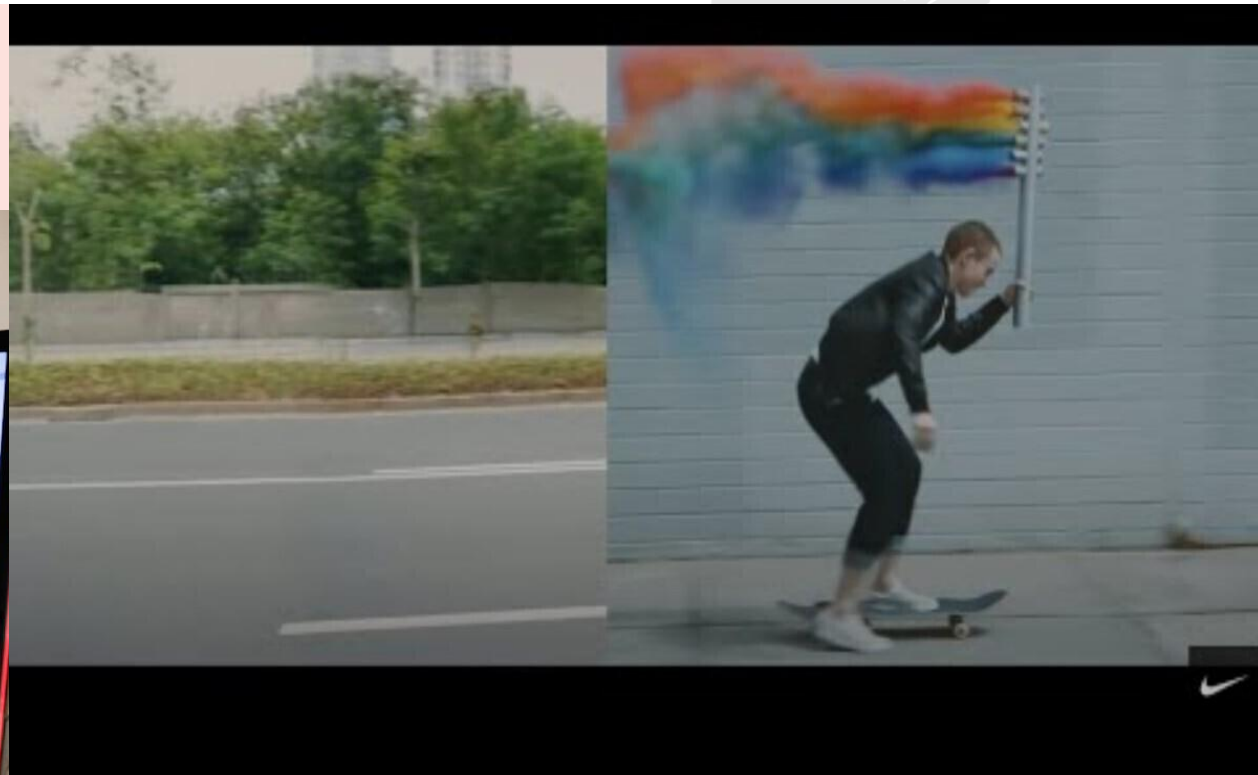
Digital Marketing



Brow Finder

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What Comes to Mind (In One to Two Words) When Someone Says Digital Marketing?





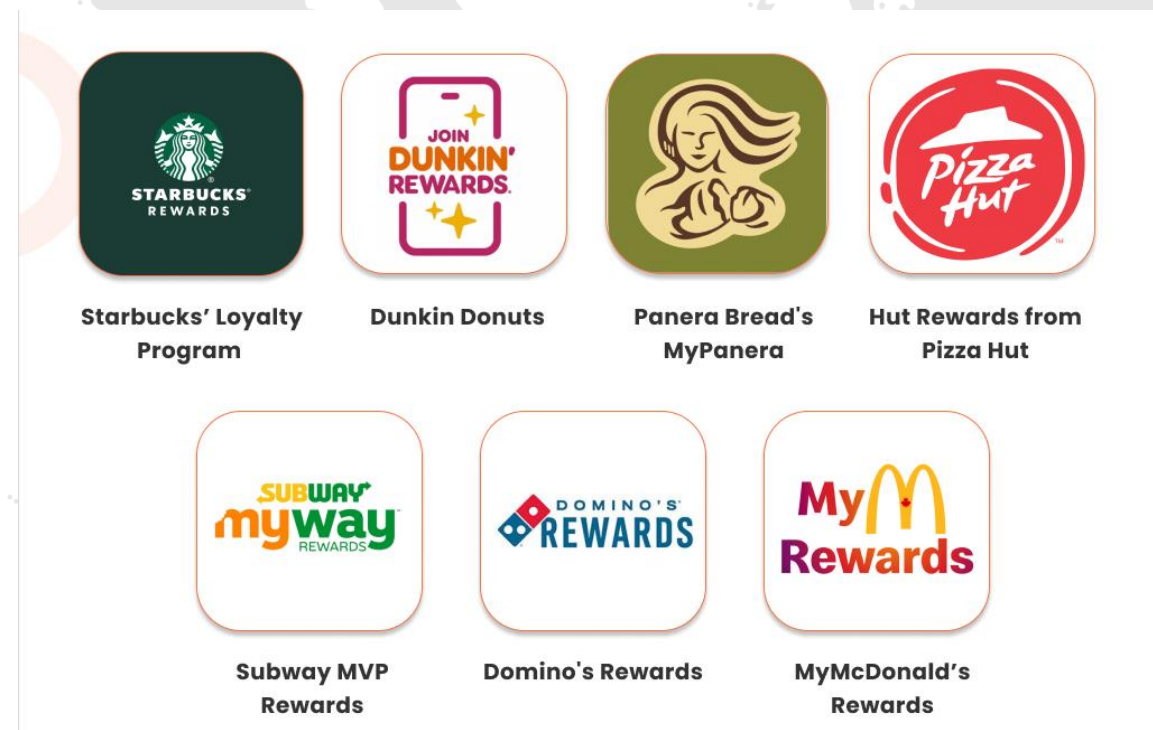
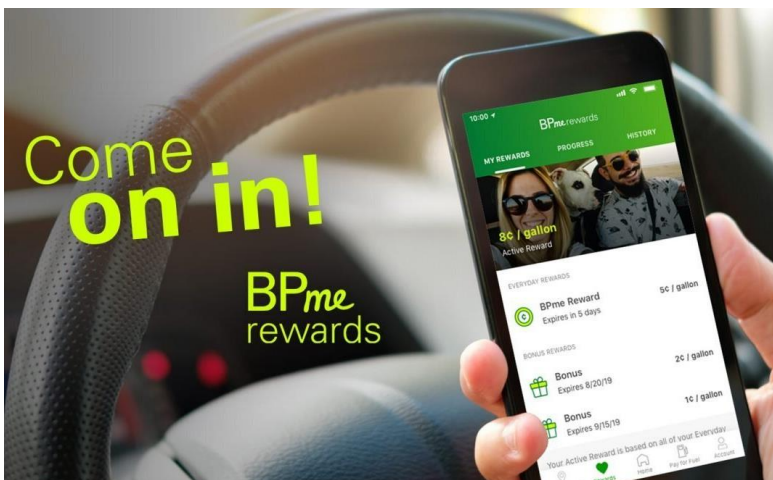
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Digital Loyalty and Rewards



A loyalty customer is the highest value customer.

How Many Rewards Programs Are You a Member Of?





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Loyalty Programs and Privacy: Key Considerations



- Legal basis
- Transparency
- Data minimization
- Automated decision-making

Scenario 1: Franchisee Data Ownership Battle

A franchisee claims ownership over customer data collected via the franchisor's loyalty program. Who owns the data?

AI in Franchising: How Are Brands Really Using It?



- Efficiency
- Enhancing customer experience
- Personalization at scale

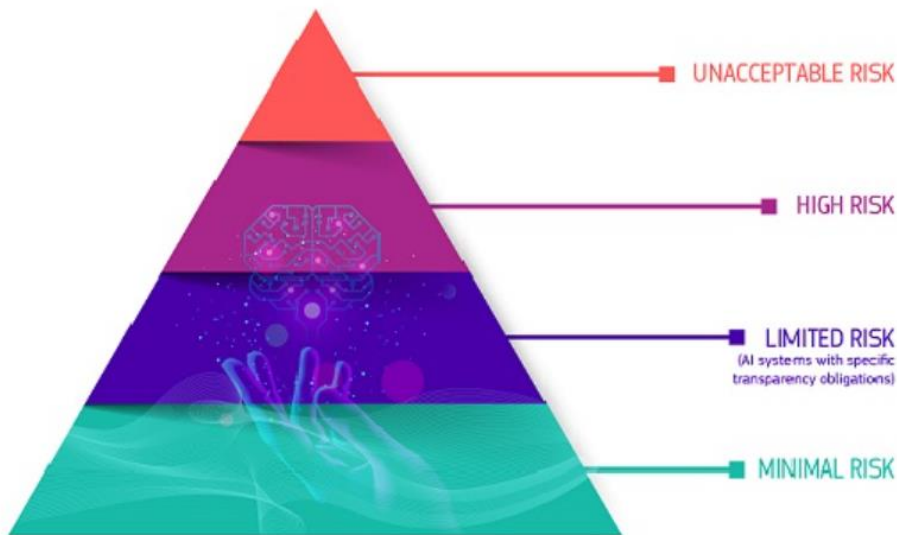
Scenario 2: The Misleading AI Chatbot

A franchisee's AI-powered chatbot misrepresents pricing, leading to customer complaints. Who is liable?


The Big Legal Headache: Privacy, AI, and Franchise-Specific Challenges

A risk-based approach

The AI Act defines 4 levels of risk for AI systems:



- **Unacceptable risks**
 - *Prohibited* practices, e.g. manipulative influence on purchasing decisions
- **High-risk AI: Only ~5-15% of AI**
 - *Strict conformity* assessment; e.g. credit-worthiness checks (possibly)
- **Limited/minimal risk: 85-95% of AI**
 - *Transparency* obligations (if any), e.g. chatbots
“Vast majority of AI systems currently used in EU fall into this category” ([COM](#))



Scenario 3: AI Loyalty Pricing Discrimination

An AI loyalty program charges higher prices to certain customers based on purchase history. Is this legal?

The Big Legal Headache: Privacy, AI, and Franchise-Specific Challenges (Cont'd)

The AI Act addresses the placing on the market, putting into service and use of AI systems, e.g.:

Use of AI in Marketing / Sales	Obligations According to AI Act
<ul style="list-style-type: none">• Use of subliminal stimuli on decision-making• Social scoring• Facial recognition by untargeted scrapping	<p>Prohibited practices if undue influence, especially: manipulative or deceptive techniques or exploiting vulnerabilities (Article 5(1)(a-c, e); Recital 29 ff. AI Act)</p>
<ul style="list-style-type: none">• Creditworthiness checks <u>if</u> related to access to „essential private services“ (undefined, likely incl. housing, electricity, telecom services, cf. Recital 58)• Biometrics (unless for verification)	<p>Generally high-risk AI (Annex III No. 1, 5 AI Act), except for fraud detection, operator (deployer) obligations (Articles 26-27 AI Act), e.g.:</p> <ul style="list-style-type: none">• Data governance• Human oversight• Traceability• Transparency vis-à-vis data subjects
<ul style="list-style-type: none">• Dynamic pricing• Personal pricing• Chatbots• ...	<p>Generally low-risk or minimal-risk AI, unless they work with:</p> <ul style="list-style-type: none">• Manipulative or deceptive techniques or exploitation of vulnerabilities (age, disability, social or economic situations)• Tools which evaluate creditworthiness (except for fraud detection) and thus restrict access to essential private services

Best Practices: What Should Franchisors and Lawyers Be Doing Now?

- Conduct AI risk assessments for marketing and sales applications
- Map the AI value chain to clarify roles and responsibilities (provider, deployer, importer, etc.)
- Implement transparency and human oversight measures, especially where AI affects pricing or targeting
- Review franchise agreements and digital tools licenses for compliance clauses and liability allocation