

February 11, 2015

Tinder Swipes Left on Gap's New Ad Campaign: A Reminder to Always Check Terms of Service

Tinder, a popular mobile dating app, recently shut down an ad campaign from Gap, stating that the campaign violated the app's terms of service. Gap's failure to comply with Tinder's terms of service is a cautionary tale for advertising on social media platforms.

With each new social media platform that captivates consumers, brands are aggressively expanding their advertising efforts to meet consumers on these platforms. For creative brands, this sometimes leads to engaging in native advertising, or advertising that takes on the form of a platform's content. For example, Facebook is a platform that allows for both traditional and native advertising. On the one hand, brands can advertise on Facebook by purchasing ad space on the platform, similar to how they would purchase ad space in a magazine. On the other hand, brands can create and advertise on their own Facebook brand pages, which are similar to user pages in how they look and deliver content.

Native advertising is especially crucial for brands that want to advertise on social media platforms that don't sell ad space, like Tinder. However, because native advertising takes advantage of a platform's service instead of banner space, brands who engage in native advertising are subject to the platform's terms of service, just like any other user.

Gap recently announced plans to launch a native ad campaign on Tinder as part of its #SpringIsWeird campaign. Tinder is a dating app that uses geolocation technology to "match" users who are within a specific distance of each other. Users can then view the profiles of their "matches" and swipe right if they like the match, and swipe left if they don't. Gap planned to create its own Tinder profiles that would advertise promotions for the clothing retailer. Soon after Gap's announcement, however, Tinder announced that advertising on its app violated Tinder's terms of service and, therefore, Tinder would be removing Gap's profile from the app.

"Just because a campaign is permitted on one platform does not necessarily mean it can be run on any others."

Tinder's terms of service state that the app is "for personal use only" and that users may not use the app "in connection with any commercial endeavors." In fact, the terms explicitly ban "organizations, companies, and/or businesses" from using the app altogether.

Interestingly, other companies and organizations have successfully launched native ad campaigns on the app in the past. For example, the TV shows *Suits* and *The Mindy Project* each introduced a native ad campaign involving Tinder profiles for their show's characters. With the *Suits* campaign, Tinder users who "matched" with one of the show's characters received access to exclusive sneak peeks and video clips of the show. The Immigration Council of Ireland used the app to increase awareness about sex trafficking by creating Tinder profiles that showed examples of sex trafficking victims. In addition, Social Tees

For more information, please contact any of the following members of Katten's Advertising, Marketing and Promotions practice.

Doron S. Goldstein
+1.212.940.8840
doron.goldstein@kattenlaw.com

Jennifer C. Greenberg
+1.212.940.8552
jennifer.greenberg@kattenlaw.com

Roger P. Furey
+1.202.625.3630
roger.furey@kattenlaw.com

Animal Rescue, a nonprofit pet adoption organization, populated Tinder with profiles of adoptable pets, and Domino's Pizza gave away free pizza and discounts to Tinder users who "matched" with its own Tinder profile.

It is unclear why Tinder allowed these other campaigns, but not Gap's, though it may simply come down to the other campaigns having made specific arrangements with Tinder. With the campaign for *The Mindy Project*, for example, Tinder entered into a cross-promotional partnership with Fox in which Fox aired an episode of the show that made numerous references to the app around the same time as the Tinder campaign.

Gap's oversight is a reminder to all advertisers to read and comply with any applicable terms of service prior to engaging in any promotional activities on a social media platform, whether a contest, sweepstakes, or other advertising or marketing campaign. Each social media platform is governed by its own terms – just because a campaign is permitted on one platform does not necessarily mean it can be run on any others.

Katten

Katten Muchin Rosenman LLP www.kattenlaw.com

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2015 Katten Muchin Rosenman LLP. All rights reserved.

*Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997).
London: Katten Muchin Rosenman UK LLP.*