

Tackling Digital Class Notice With Rule 23 Changes

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The proposed changes to Rule 23 of the Federal Rules of Civil Procedure, scheduled to take effect on Dec. 1, 2018, will officially recognize the use of electronic notice in class action administrations.

Today's digital advertisements come in all shapes and sizes, appearing on traditional websites, social media platforms, search engines and video platforms across all devices, including mobile phones, tablets and desktop computers. Digital notice is no longer merely a supplement to print notice; digital notice itself meets the core notice requirements in certain notice plans. As such, notice experts now commonly use digital advertising such as banner notifications, social media and paid search advertising as the primary methods of reaching and communicating with the class, particularly when direct outreach is limited or unavailable.

Class action administrators have been using electronic notice for years; not only in the form of email communications with the class, but by leveraging digital media to help efficiently and cost-effectively reach class members and drive them to an informational website. Navigating this digital landscape can be daunting, but the tips below provide a guide for developing a digital program that includes multiple methods of digital notice.

Traditional Banner Notification

Traditional banners, the long, rectangular bars at the top of many websites, were among the first form of internet advertising, but they have taken different shapes and forms over the years. The Interactive Advertising Bureau, or IAB, and other organizations have developed standard unit sizes and best practices to improve the user experience across the web and reduce the intrusion that some ads may have caused viewers when they visited a site.

Administrators strategically place banner ads on websites that appeal to a particular class or those that employ an advertising network. These networks may include thousands of sites, allowing administrators to reach more class members through a single buying source. Advertising networks, when used correctly, help drive reach and frequency, critical to a notice program that satisfies Rule 23 requirements.

A proficient notice expert will develop a program that can segment out different audiences based on users' online, and sometimes offline, habits. For example, a targeted ad buy can segment and serve banner advertisements to an audience of "women aged 25-54 with an income of \$50,000 or more who have purchased shoes online." Those ads can be delivered via pages visited frequently by the target audience, such as shopping or lifestyle sites, but may also appear on sites that are completely unrelated but are known to be frequented by that target audience, according to accepted research.



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Social Media Notification

Social media sites are also frequently used to give notice to a class. Facebook is the most commonly used platform, but Instagram, Twitter, LinkedIn, YouTube and Reddit have been integrated into programs when appropriate to the class.

It is important to distinguish that there are both organic and inorganic approaches to social media. In one's personal time, for example, he or she uses social media in its organic form to share photos and updates about life with friends and family. These posts spread organically without the need to extend reach through paid promotion or sponsorship. Conversely, when the objective is to actively promote a message, a sponsored or paid post, similar to a traditional ad, must be purchased. This is an inorganic approach, but it enables a message to be displayed a certain number of times (impressions) for a set duration to a defined audience.

On most social media platforms, the ad content appears similar to an organic post and integrates seamlessly within a user's news feed, though it is usually identified as "Sponsored By..." or "Promoted Post." However, most ad content does operate like organic posts in that it can be "liked" and "shared" by users. Thus, paid posts can help disseminate the notice to an audience that may have otherwise been missed through a traditional banner ad campaign, or help bolster claims rates by enabling people to share information about the class action.

Social media can (and should) also be used for its intended purpose: to communicate with people. When running a notice program on social media, remember that people expect interaction and engagement by the posting organization. Attorneys should work with the administrator's notice team to prepare responses to frequently asked questions when users interact with a post and ask questions.

Consideration also needs to be taken when deciding what social media platform will best reach the class. Instagram, for example, is a photo- and video- based platform so it is important to understand (a) whether the core message can be conveyed visually to maximize interaction; and (b) how likely are class members to consume content on Instagram. LinkedIn, conversely, is a content-driven platform that draws professionals; therefore messages should contain content of a business nature that resonates with working professionals.

Sponsored Search Advertising

An effective digital notice program must be multidimensional, maximizing the engagement with potential class members across multiple online venues. Sponsored search postings are a critical piece of the puzzle, reaching class members as they are seeking information through an internet search. In April 2018, Google recorded 11.28 billion explicit core searches[1] while Microsoft recorded 4.27 billion explicit core searches in the United States[2]; the data easily quantifies the value of advertising in these venues.

A qualified notice team will create a list of keywords that relate to the litigation and develop a bid strategy for each keyword that, when searched, will populate with a link to the settlement website at the top of the sponsored results, typically on the first page of the

search engine. Sponsored search postings are not only an effective way to get the informational website in front of the users but, unlike most other digital advertising options, advertisers are only charged when the ad is clicked, making it a cost-effective solution. When used in combination with effective search engine optimization, or SEO, strategies, or methods of driving the website to the top of the search results, a sponsored search post can provide direct access to a case website for interested users.

Effective Use of Targeting

It's nearly impossible to be "off grid" in today's world. Online and offline habits and activities, including website visits, purchases and email subscriptions, are tracked through a series of algorithms and data-mining tools, creating a digital profile for every individual. When providing required notice to a class, this trove of data becomes incredibly useful, and can be leveraged to ensure the target audience has an adequate opportunity to view the notice.

Aside from demographical targeting, notice experts can use behavioral, contextual, geographic targeting, and remarketing to reach an audience. Behavioral targeting uses a person's online patterns to serve them an ad as they navigate the web. For example, a digital shopper who reads reviews and prices out new laptops on a tech site may continue to see ads for laptops as they check the local weather or read the news.

Contextual targeting, on the other hand, places ads alongside relevant content. For example, someone is reading about cold symptoms when an ad for cough medicine appears. Geographic targeting uses a person's location to serve an ad. It can be drilled down to minute levels such as zip codes or in some instances, a particular radius of an area (commonly called geofencing), like a concert venue or sports stadium. Remarketing is used to remind a person to return to a website they recently visited. For example, a class member who lands on an informational website but takes no action, such as filing a claim form, can later be served an ad during their web navigation that reminds them to return and take an action.

In context, as potential claimants navigate the web, a multi-dimensional notice program can continue to serve the claimant notice and, ultimately, prompt them to visit the site and file a claim form.

These tools help develop specific and targeted notice programs while reducing wasted impressions on users who are not likely to have an interest in the litigation. It is also more cost-efficient than running a print-only program; with available analytics, targeting techniques can be optimized in real-time by media experts, improving the effectiveness and driving potential class members to the informational website.

Analytics

All websites should encompass data collection tools, or analytics, that offer insight into how people are interacting with a website. Key analytics can track which websites users visited before landing on a site, how they navigate within the site, what they search for and download, and other behaviors helpful to evaluating a digital notice program.

Analytics provide critical information that enables website operators to tailor their site and

advertising techniques in a way that encourages visitors to take a particular, defined action. In the case of a class action settlement, this action is most commonly submitting a claim, but it could also be agreeing to the terms of a settlement, downloading an opt-out form or another action that's required. Like targeting, analytics support the optimization of digital programs in real-time by continually identifying where people are coming from and what actions they were taking prior to landing on the informational site.

Best Practices in Digital Notice Format Design

Design and content flexibility vary by platform; traditional digital advertisements, restricted only by dimensional boundaries, allow more flexibility in social media and sponsored search postings. The challenge is to ensure the notices remain relevant and eye-catching. This is achieved by using short, concise language and providing a "call to action," encouraging the viewer to complete an action, such as "learn more" or "click here."

The use of relevant images plays an important role; research has shown that when people hear information they are likely to remember only 10 percent of that information three days later. However, if a relevant image is paired with that same information, people retained 65 percent of the information three days later, underscoring the importance of including visuals whenever possible.[3]

Sponsored and promoted posts along with sponsored search advertising all have very strict text and character limitations for both headline and body copy. For example, Facebook's current guidelines for the newsfeed allows for a 25-character headline and 125-character body (inclusive of spaces).[4] Therefore the message needs to be specific, short and precise. It is important to note that Facebook may reject an advertisement that contains too much text in the advertisement's image. Twitter is famous for its 140-character limit on tweets, but recently made changes to their advertising guidelines, allowing up to 280 characters for an imageless tweet.[5]

An experienced notice team will provide guidance throughout the development of a digital notice program to ensure its effectiveness. Understanding these key principals will enable counsel to ask the right questions and confirm their administrator is transparent about the targeted audience, methods of reach and frequency measurement.

Above all, it is important to remain flexible when launching a digital notice campaign; one-size-fits-all notice programs are a thing of the past.

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as legal advice.

[1] A core search requires user engagement with the results.

[2] Source: <https://www.statista.com/statistics/265796/us-search-engines-ranked-by-number-of-core-searches/>

[3] Source: <https://www.hubspot.com/marketing-statistics>

[4] <https://www.facebook.com/business/ads-guide>

[5] <https://business.twitter.com/en/help/campaign-setup/advertiser-card-specifications.html>