

Wash, Fine, Repeat? SEC Enters Fray of Agencies Monitoring Companies' AI Use

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Sheppard Mullin partner Jeff Kern was quoted in the Legal Tech News article, "Wash, Fine, Repeat? SEC Enters Fray of Agencies Monitoring Companies' AI Use" about the Securities and Exchange Commission's (SEC) recent charges against investment advisers Delphia (USA) Inc. and Global Predictions Inc. for making inaccurate statements about their purported use of artificial intelligence (AI). The charges offer clues as to what the SEC is looking at in its efforts to curb so-called AI washing practices.

Kern referred to these cases as "low hanging fruit" because the companies made false statements. "The combination of a blatant misstatement of fact with a new technology that could be seductive – that's the SEC sweet spot," he said.

AI can refer to a spectrum of different technologies. The SEC, however, is unlikely to get to such a granular, technical-level to determine whether statements qualify as unlawful activities and what could push companies to one side of the line or the other is the extent to which they use the technology as a selling point. The SEC is equipped to dig beyond businesses' SEC filings, to examine social media posts, statements made on companies' websites and any marketing material. While it's unclear if the agency "tested" the AI products in these cases—to the extent there was such technology to test—it may be able to in future investigations. "I think they're going to get subject matter experts, just like they have for digital assets. But in this case, you don't need to be a technological genius to bring the case," Kern said.

Kern advised companies leveraging AI or technical claims to prepare for increased scrutiny from various agencies, including the SEC. Beyond SEC filings, he stressed that the agency is equipped to examine social media posts, website statements, and marketing materials.

Read the full article here. (Subscription required.)

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