



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

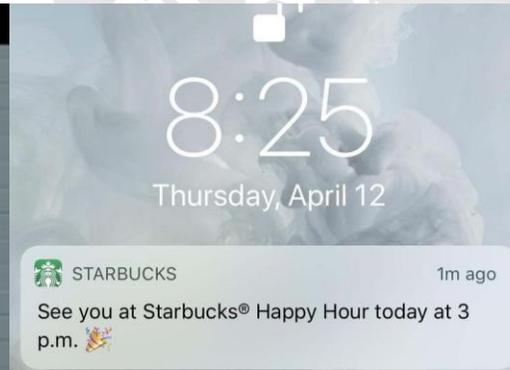
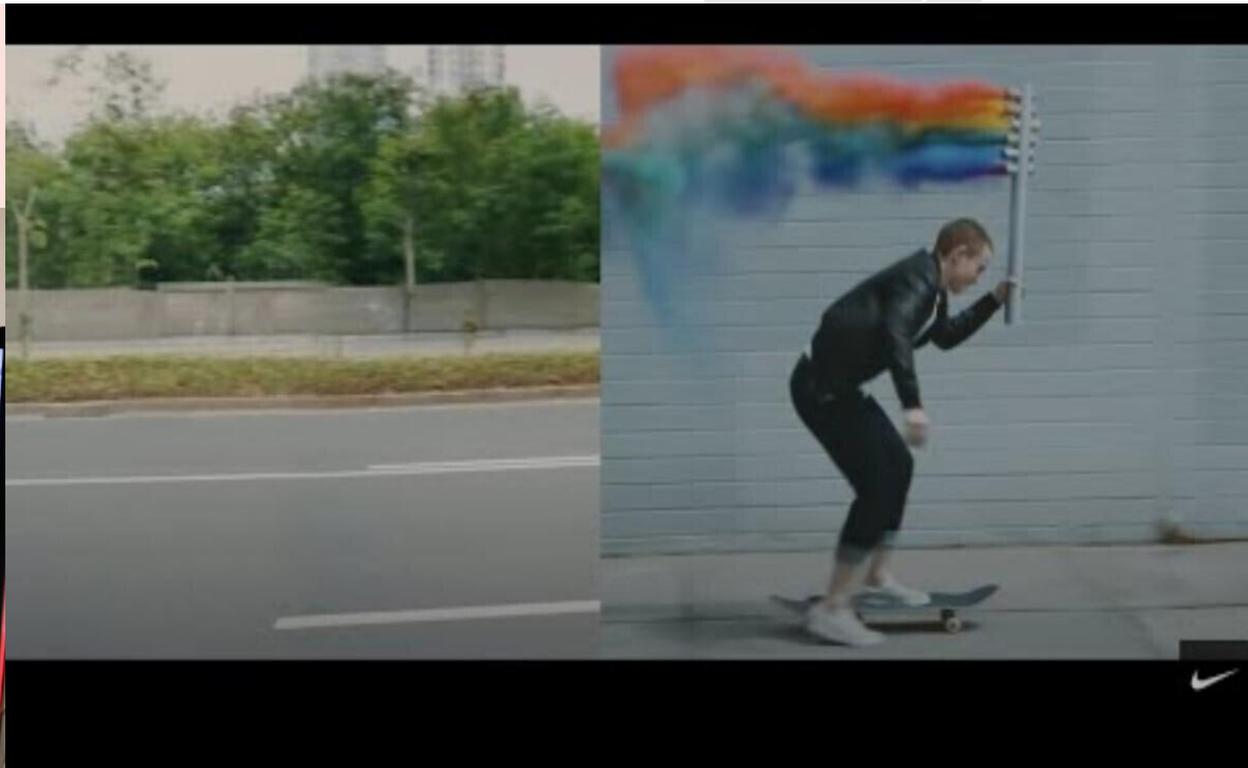
- Digital Marketing
- Digital Loyalty and Rewards
- Key Privacy Considerations
- Use of AI
- Franchise-Specific Challenges
- Best Practices



Digital Marketing



Brow Finder
Discover what you need to get your best brows ever.
Take the Quiz ->



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





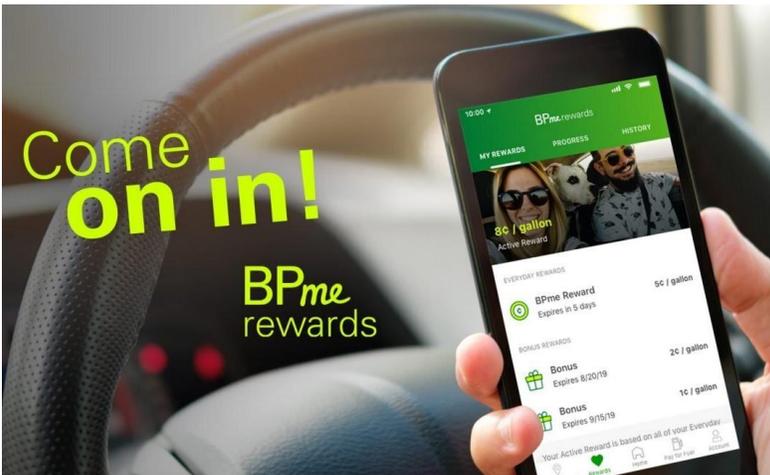
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Digital Loyalty and Rewards



Starbucks' Loyalty Program



Dunkin Donuts



Panera Bread's MyPanera



Hut Rewards from Pizza Hut



Subway MVP Rewards



Domino's Rewards



MyMcDonald's Rewards

A loyalty customer is the highest value customer.

How Many Rewards Programs Are You a Member Of?





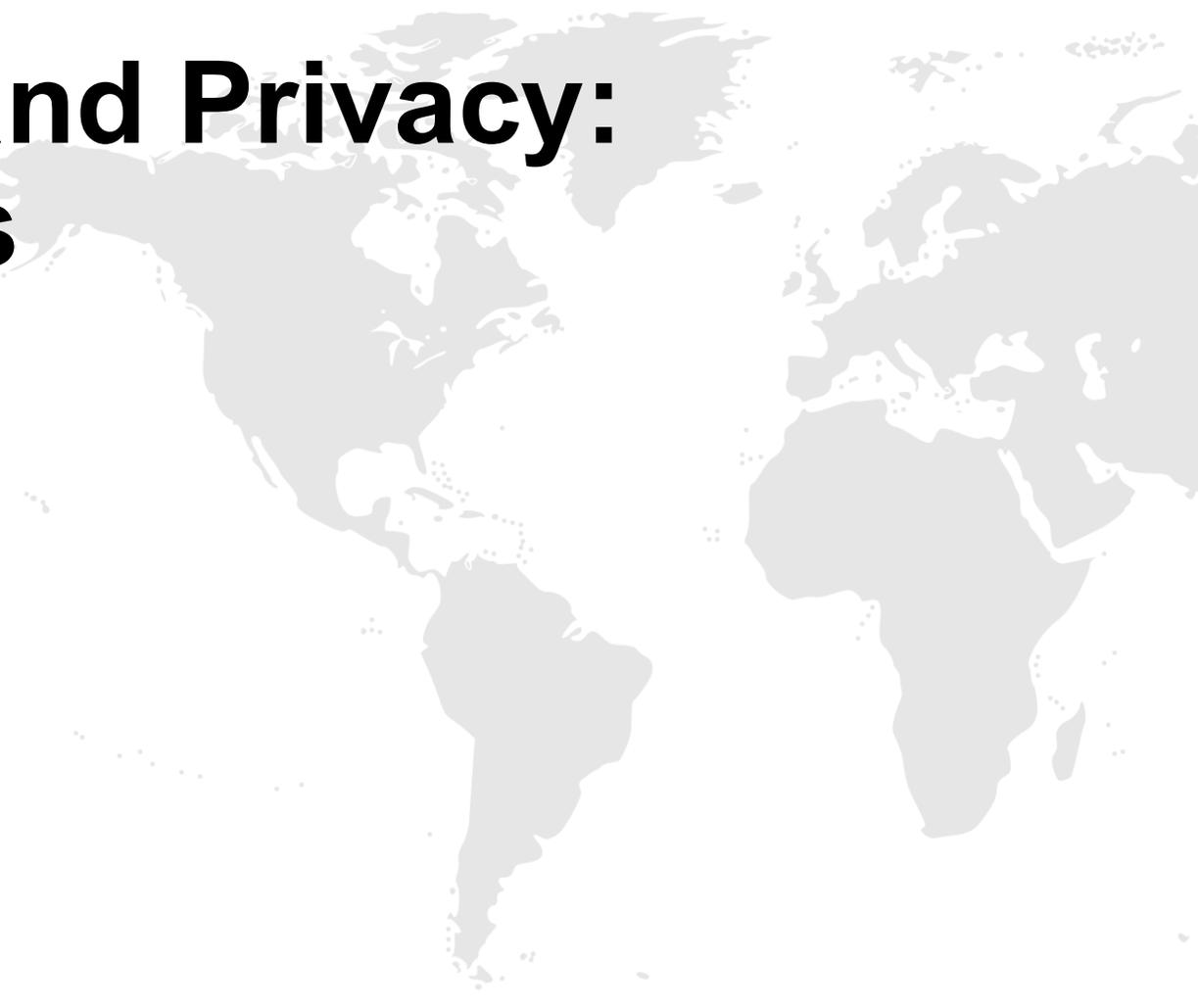
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Loyalty Programs and Privacy: Key Considerations



- 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

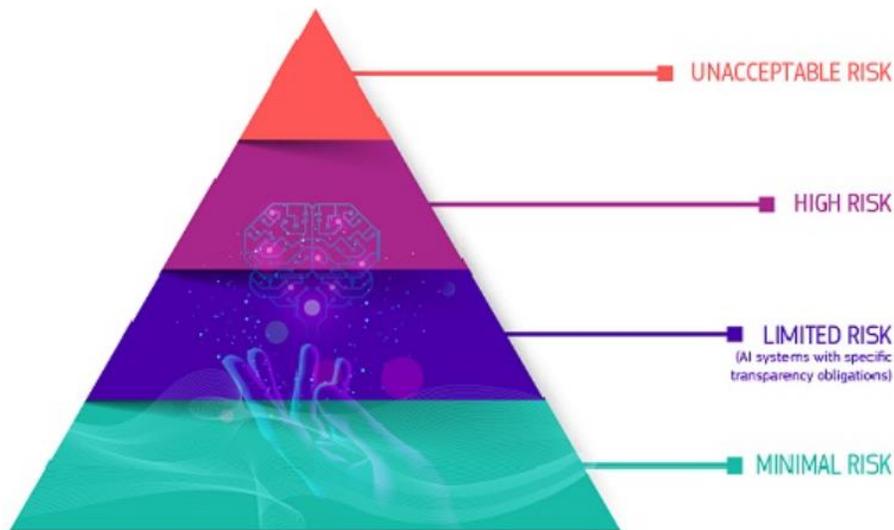
Scenario 2: The Misleading AI Chatbot

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

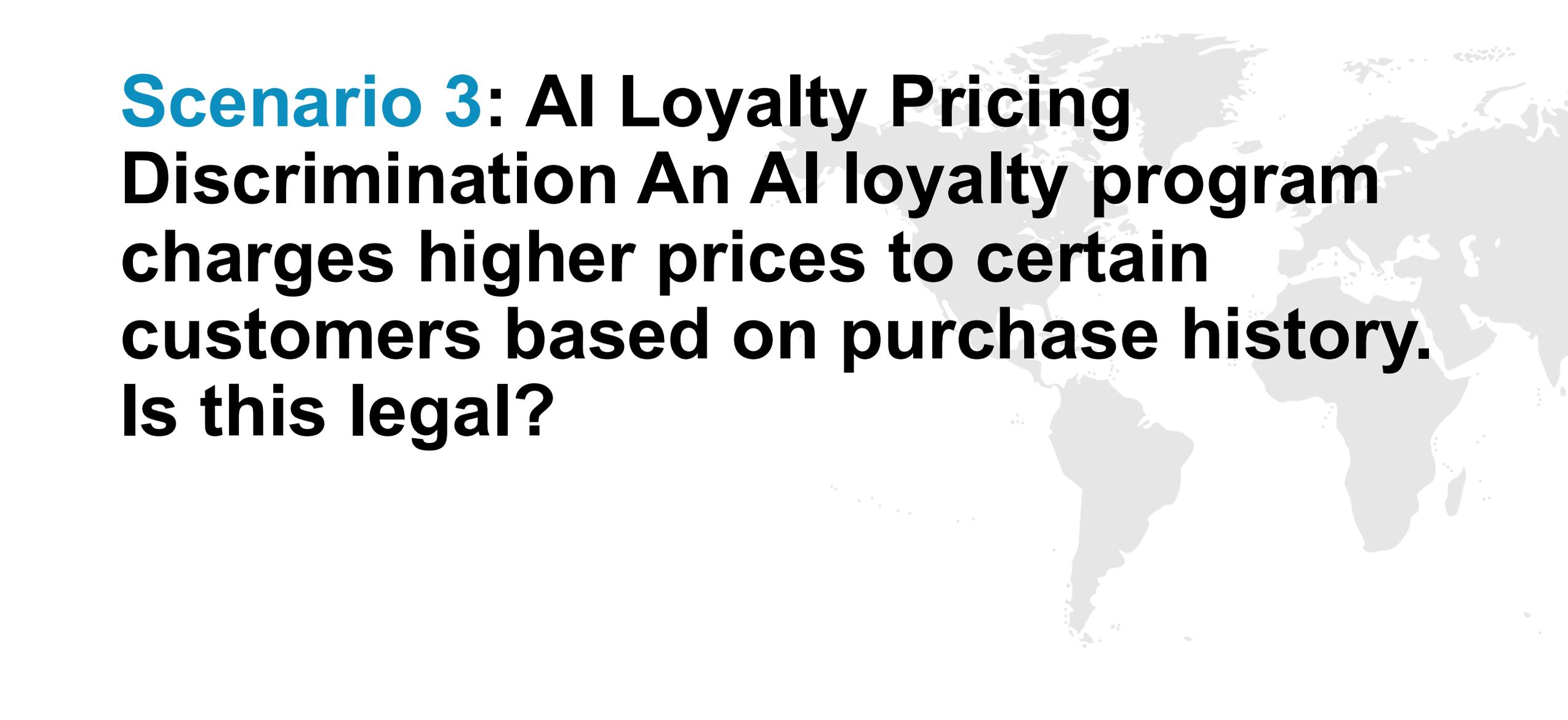
The Big Legal Headache: Privacy, AI, and Franchise-Specific Challenges

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