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Emojis and Misconduct in Business

Emojis are neither good nor bad — but using them in business communications can pose a major compliance risk. A handful of emojis have found themselves at the center of regulatory enforcements recently.

The main takeaway? When it comes to compliance, the same rules that apply to written communications apply to communicating with emojis.

1

Emojis carry the weight of words

In a business context, emojis must be treated with the same caution as every other form of communication and messaging.

2

Context matters

Emojis have different meanings across cultures and generations, so it's important to look at the entire conversation to gather the full context.

3

An emoji reaction could signal endorsement

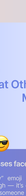
"Likes" & other reactions can be considered endorsements of racist, sexist, illegal, and other nefarious sentiments.

Emojis on Trial

Thumbs up

In 2022, a Canadian court ruled that a thumbs-up emoji sent via text from one party to another amounted to a signature agreement to a contract.

The plaintiff had texted the defendant a photo of a contract and asked for confirmation. The defendant responded with a thumbs-up emoji to indicate he'd received the contract, but the court ruled that the thumbs-up emoji was the equivalent of agreeing to the contract itself.



Rocket - Money bag - Chart increasing

This trio of emojis was ruled by a court in 2023 to objectively mean one thing: The expectation of a financial return on investment. Despite never using the word "profit," the tweet in question, issued by NBA Top Shot to promote an NFT, named qualified as an investment contract under the Howey Test, a set of criteria used to determine whether a financial product should be considered a security.

Rage

In 2023, the Financial Industry Regulatory Authority (FINRA) announced that angry emojis sent via text could be considered consumer complaints, which are reportable to FINRA.

Critics point out that when it comes to emojis, context matters — and often, so do the ages of the sender and recipient, since different generations may interpret emojis differently. Still, FINRA expects companies to make a reasonable effort to monitor emoji use.

What Other Common Emojis Might Mean

Sunglasses face

This "cool guy" emoji seems harmless enough — it's one of those emojis someone might use to lighten the tone of a message. But if it's used to convey the message, "don't worry, everything is under control" to a concerned client — and it turns out everything isn't under control — this emoji may be misconstrued as a broken promise.

Pleading

This ambiguous emoji has at least two very different meanings. A financial services client might use it to express that they're upset or worried about an investment or recommendation, in which case it could potentially be reportable to FINRA as an allegation of a false or misleading statement.

Fire

In one context, the fire emoji might mean "hot recommendation" which is highly problematic for traders, while in another it might mean "this matter requires urgent attention," which is less worrisome. Worst case scenario, it could be used by a client to convey the sentiment, "You burned me!" which could be reportable to FINRA as a "poor recommendation/poor advice" or "poor performance" Problem Code.

Luck

The four-leaf clover is a universal symbol of luck, but as an emoji in communications, its meaning isn't that cut-and-dry. It could be a genuine "good luck" wish, or it might be read as "this investment product will bring you good fortune." Since a four-leaf clover is a rare find, the emoji could also communicate the sentiment that something is extra-special, out of the ordinary.

Skull

Gen Z uses the skull emoji ironically—younger people use it instead of 😂 to express the sentiment of laughing out loud. Older people may use it to emphasize danger, as in a risky financial move or a bad agent. For emojis that have such diametrically opposed meanings, resulting misunderstandings might be comedic if not for the potentially catastrophic consequences.

Zipper face

The zipper face emoji can really only mean one thing when it comes to compliance — someone's keeping secrets. Conspiring to keep mum in the financial world comes with enormous risks, so if your institution maintains a list of banned emojis, this one should be near the top.

Wink

Some recipients of the wink emoji might read it as "just kidding." Others may hear "this is just between you and me." In some circles, it's a harmless expression to cap off a bit of banter. But perhaps most importantly, many people will interpret this emoji as flirtatious, making it a potential case of non-financial misconduct.

Eyes

Another emoji with multiple contextual meanings, "eyes" is typically used to suggest the sender is watching, or keeping an eye on something. It could be used to express interest, as in, "You've got my attention." The sender might intend to express a feeling of being scrutinized, or to indicate a sentiment like, "I'm alert to what's happening and keeping tabs." It might be used to imply that the sender has noticed something not explicitly stated, as in, "I see what you did there [and I disapprove]."

The Key Takeaway

It's wise for firms to be very clear about the difference between using emojis in general communications versus in messages concerning investments or other matters of finance. **Emojis are a ubiquitous form of communication**, and a proactive approach to managing their use through education, monitoring, and enforcement is essential for avoiding emoji-related compliance issues.

Education

Create a clear company policy on using emojis in business communications, including which ones are allowed and how they can be used.

Eyeballs

Choose a monitoring technology that flags all correspondence containing emojis — and have your compliance team review all flagged messages.

Enforcement

Enforce your firm's communication policies with clear and highly visible consequences that serve as both reminder and deterrent.

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Looking for a partner that can develop a monitoring plan and a platform that can help your team avoid misconduct?

Reach out to our compliance experts today