

**Editor:**

**Jeffrey D. Knowles**  
[jdknowles@Venable.com](mailto:jdknowles@Venable.com)  
202.344.4860

**In This Issue:**

**Jeffrey D. Knowles**  
[jdknowles@Venable.com](mailto:jdknowles@Venable.com)  
202.344.4860

**Sharon A. Blinkoff**  
[sablinkoff@Venable.com](mailto:sablinkoff@Venable.com)  
212.370.6241

**Thomas A. Cohn**  
[tacohn@Venable.com](mailto:tacohn@Venable.com)  
212.370.6256

**Frederick M. Joyce**  
[rjoyce@Venable.com](mailto:rjoyce@Venable.com)  
202.344.4653

**Michael A. Signorelli**  
[masignorelli@Venable.com](mailto:masignorelli@Venable.com)  
202.344.8050

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**Honors and Awards**

2011 *Chambers USA* Award for  
Excellence Winner

**News****President Obama Nominates Maureen Ohlhausen to the FTC**

In a move the *Washington Post* said highlighted the FTC's increased focus on technology policy issues, President Obama on Tuesday nominated Maureen Ohlhausen to the FTC. Ohlhausen, who is currently a partner at a DC law firm, was Director of the FTC's Office of Policy Planning from 2004-08. If confirmed, she would replace Commissioner William Kovacic.

[Click here](#) to read the *Washington Post* article.

**FCC Proposes Rules to Stop "Mystery Fees" on Phone Bills**

The Federal Communications Commission has launched a rulemaking proceeding aimed at protecting consumers from "mystery fees" and so-called "cramming", which is the placement of unauthorized charges on a customer's monthly telephone bill. For now, the FCC is merely soliciting comments on these proposals; however, given its finding that "cramming is a significant and ongoing problem that has affected consumers for over a decade," some regulatory action after public comments are received may be in the offing.

[Click here](#) to read analysis by Venable's [Frederick Joyce](#).

[Click here](#) to read the FCC's press release.

**Dot Com Disclosures Comments Due August 10th**

On May 26, the Federal Trade Commission announced plans to update its *Dot Com Disclosures: Information About Online Advertising* guidance document. The Commission will accept public and industry comments in regard to the document, which has not been updated since the dawn of the commercial Internet, until August 10.

[Click here](#) to read the FTC's announcement.

[Click here](#) and turn to page 45 to read analysis by Venable's [Jeffrey Knowles](#) and [Michael Signorelli](#) in *Response* magazine.

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## Analysis

### Federal Trade Commission Announces Proposed Biersdorf Settlement

On July 5th the Federal Trade Commission announced a proposed settlement with Biersdorf, Inc. over slimming claims made in advertising for its Nivea Silhouette cream, and the use of Google AdWords used to drive traffic to its website for Silhouette. Under the terms of the proposed settlement, Biersdorf will be required to pay a \$900,000 monetary judgment and enter into a 20-year consent decree prohibiting it from:

1. representing that use of Silhouette or any other topical product causes substantial weight or fat loss or a substantial reduction in body size;
2. claiming that any drug, dietary supplement, or cosmetic causes weight or fat loss, or a reduction in body size, unless the claim is backed by two randomized, double-blind, placebo-controlled human clinical studies; and
3. making any other claim regarding health benefits of a drug, dietary supplement, or cosmetic, unless it possesses competent and reliable scientific evidence.

The ad claims in issue were: the stated claim that Nivea Silhouette cream, with Bio-Slim Complex, redefines the appearance of the user's silhouette and noticeably firms skin in just four weeks; and the claim made by the ad visuals which showed a woman who after her treatment was able to get into jeans that she had not been able to wear for some time. The Google AdWords in issue were "stomach fat," "Nivea Slim Silhouette," and "thin waist." Use of these keywords in consumer Google searches produced a link to Nivea's My Silhouette webpage as a sponsored result at the top of the search results.

The Commission took the position that the slimming silhouette, reduction in body size, and fat loss claims were implied weight loss claims, and therefore should be dealt with under the Commission's "red flag" weight loss business guidance. One of those red flags is any claim that a product "you can wear or apply to your skin ... will cause you to lose weight." Chairman Liebowitz was quoted in the FTC news release on the case as saying that "the real skinny on weight loss is that no cream is going to help you fit into your jeans," and that "the tried and true formula for weight loss is diet and exercise."

Of note here is the use of the Commission's new three-tiered order approach. Since the Commission viewed this as a first-tier case because of the weight loss claims, the order will require Biersdorf to have two adequate and well controlled clinical studies before it can make slimming or measurable inch loss claims. This is in contrast with the Commission's order against QVC issued less than two years ago, which made the very same claims. QVC was only required by its order to have competent and reliable scientific evidence before it disseminated a covered claim for loss of inches.

We do not expect the Biersdorf order to signify a change in the Commission's interest in cosmetic products, or impact on the treatment or level of substantiation required for standard cosmetic firming claims. The Commission has a history of taking action against "cellulite creams" that go beyond addressing the appearance of cellulite, into express or implied weight loss claims. To go beyond these standard claims, and promise (as Biersdorf did) a reduction in circumference or body size, will be viewed by the Commission as a weight loss claim which requires "drug studies" for proper substantiation.

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## Upcoming Events

### **Cosmoprof North America 2011**

July 31- August 2, 2011

Sharon Blinkoff will be speaking on the panel *It's All In The Details: A Legislative Update*.

### **Affiliate Summit East 2011**

August 21-23, 2011

Tom Cohn will be speaking on the panel *Using Testimonial Claims in Social Media Platforms*.

### **LeadsCon East**

August 24-25, 2011

Jonathan Pompan will be speaking at this event.

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