

**Editors:**

Jeffrey D. Knowles
jdknowles@Venable.com
 202.344.4860

Gary D. Hailey
gshailey@Venable.com
 202.344.4997

In This Issue:

Jeffrey D. Knowles
jdknowles@Venable.com
 202.344.4860

Thomas A. Cohn
tacohn@Venable.com
 212.370.6256

Mikhia E. Hawkins
mhawkins@Venable.com
 202.344.4573

Stuart P. Ingis
singis@Venable.com
 202.344.4613

Michael A. Signorelli
masignorelli@Venable.com
 202.344.8050

Honors and Awards

2011 *Chambers USA*
 Award for Excellence
 Winner



Law Firm of the Year,
 National
 Advertising, *U.S. News*
 and *World Report*, 2011



Top -Tier Firm, *Legal*
 500

News**NAD Issues Guidance on Offering Products in Exchange for FB “Likes”**

A recent decision by the Better Business Bureau’s National Advertising Division has created some clarity about what is, and is not, permissible in Facebook advertising. The decision, which was the result of a self-regulatory challenge brought by 1-800 CONTACTS against competitor Coastal Contacts, says that marketers need to exercise care to ensure that their statements are not deceptive or misleading when they offer free products to Facebook users in exchange for “Likes.”

Coastal Contact offered free products for “Likes” with language such as “Like This Page! So you too can get your free pair of glasses!” The company then publicized the “Likes” numbers in press releases to potential and current investors. NAD found several issues with the campaign, including that Coastal made incomplete disclosures about the offer, that some of its claims were based on a selective sample of the marketplace and that the company inflated its number of “Likes” in the press releases.

“In the last week I’ve started to see ads on national television saying, ‘Like us and you can get that,’” NAD Senior VP Andrea Levine told *Ad Age*. “So the concept of corporate ‘Likes’ being broadly procured through offers of discounts and sweepstakes is becoming very, very common and very broad, but they need to be produced through truthful promotions.”

[Go here](#) to read coverage of the decision in *Ad Age*.

FTC Dings Children’s Social Network for COPPA, Privacy Policy Violations

This week the FTC announced a settlement with Skidekids.com, which bills itself as the “Facebook and Myspace for Kids,” over alleged violations of the Children’s Online Privacy Protection Act (“COPPA”) Rule and the site’s own privacy policy. The FTC alleged that the site, which is geared for users ages 7-14, collected personal information from approximately 5,600 children without obtaining prior parental consent and that the site’s privacy policy made deceptive claims about the site’s information collection practices. The proposed settlement bars future COPPA violations as misrepresentations about the collection, use and disclosure of children’s information, and includes several other compliance requirements.

[Go here](#) to read the FTC’s press release and view the complaint.

Hoodia Settlement Highlights Trends in FTC Enforcement

On November 3, the FTC announced a settlement with Stella Labs, concerning allegations of false and unsubstantiated claims for the company’s Hoodia weight-loss products. The settlement is notable in several respects. First, it continues the FTC’s recent ratcheting up of aggressive remedies in its alleged false advertising cases, by grabbing from one principal defendant both a vacation home and hundreds of thousands of dollars in receivables to satisfy a suspended \$22.5 million judgment.

Second, the settlement out and out bans several defendants from making any weight loss claims while marketing foods, drugs or dietary supplements, and bans another defendant from marketing any foods, drugs or dietary supplements entirely. This is especially noteworthy because none of these defendants appear to be recidivists with prior consumer protection-related orders against them—another recent trend in FTC consumer fraud actions.

Finally, the FTC has inserted in the settlements an interesting provision banning defendants from providing any “means and instrumentalities” to others to engage in misrepresentations, including those prohibited by the settlement, because this is what the complaint alleged that they did. This term is defined to mean any “information, document or article referring or relating to any Covered Product...for use by trade customers in their marketing...,” with “Covered Product” defined to include any food, drug, dietary supplement or related ingredients. This “means and instrumentalities” injunction is a new development beyond the usual “assisting others” injunctive provision, and shows that the FTC is continuing to pursue broader, more aggressive injunctive remedies in its alleged consumer fraud actions.

[Go here](#) to read the FTC’s press release and view the complaint.



For more information about Venable's award-winning Advertising and Marketing practice, please visit our website at www.Venable.com/Advertising-and-Marketing.

DAA Announces Principles for Online Data Collection

This week, the Digital Advertising Alliance (DAA) announced the "Self-Regulatory Principles for Multi-Site Data," which is intended to expand the DAA's program beyond the scope of its "Self-Regulatory Principles for Online Behavioral Advertising" (OBA). These new principles establish self-regulatory standards governing the collection of Multi-Site Data, which is data collected from a particular computer or device regarding Web viewing over time and across non-affiliate websites. The Multi-Site Data Principles, like the OBA Principles, will provide protections for sensitive data concerning children, health and financial data, and will deliver greater transparency and control to consumers.

[Go here](#) to read *ADWEEK*'s coverage of the new program.

[Go here](#) to read the DAA's full text of the new Principles.

Analysis

Advocacy Groups ask FTC to Investigate Frito-Lay's Marketing to Teens.

Last month, a consortium of consumer groups asked the FTC to investigate PepsiCo and Frito-Lay in connection with several advertising campaigns by Frito-Lay's Doritos brand to determine whether the brand's immersive campaigns were deceptive. Venable partner Jeff Knowles discusses the complaint and what it means for marketers in the latest edition of the *DRMA Voice*.

[Go here](#) to read Jeff Knowles' column.

Upcoming Events

"Tracking and Targeting Customers and Prospects Online and in Social Media 2011" for the Practising Law Institute - San Francisco

November 15, 2011

[Stuart P. Ingis](#) will be presenting a session on Self-Regulation.

33rd Annual PMA Marketing Law Conference - Chicago

November 15-16, 2011

[Thomas A. Cohn](#), [Claudia A. Lewis](#), [Roger A. Colaizzi](#) and [Melissa Landau Steinman](#) will present sessions at the conference. We are pleased to offer Venable clients and friends a special discount on registration at the Promotion Marketing Association's Annual Meeting. Please use the code: `vnblelawguest2011` when registering to receive \$100 off. [Go here](#) for more information and to register.

Toy and Game Inventor Conference – Chicago

November 17-18, 2011

[Michael Sartori](#) will be speaking on "Protecting Your Idea: Trademarks, Copyrights & Patents."

"Avoiding Internet Advertising and Recruitment Pitfalls" webinar for APSCU

November 17, 2011

[Jonathan L. Pompan](#) and [Alexandra Megaris](#) will be speaking on the Misrepresentation Rule issued by the Department of Education, with a focus on the implications for Internet advertising and recruitment and the new guidance issued by APSCU. This program is approved for MCLE in New York. Credit in Virginia is pending.

ACI Advanced Summit on Defending Food & Beverage Consumer Fraud Litigation – Chicago

December 1, 2011

[Claudia A. Lewis](#) will be speaking on Minimizing the Ripple Effect of FDA and FTC Enforcement Actions.

Affiliate Summit West – Las Vegas

January 9, 2012

[Thomas A. Cohn](#) will be speaking about Affiliates Under Fire: Next Steps and Best Practices.

[Go here](#) to subscribe to Venable's Advertising and Marketing RSS feed and receive the Venable team's insight and analysis as soon as it is posted.

If you have friends or colleagues who would find this newsletter useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.