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Analysis**When Ads Feature “Real” People, It Pays To Keep FTC Guidelines In Mind**

Venable partners **Jeffrey D. Knowles** and **Leonard L. Gordon** write in the latest edition of the *DRMA Voice* about data indicating that advertising messages delivered by celebrity endorsers appear to be less effective than those delivered by “regular” people. In their column, Knowles and Gordon point out that advertisers using the testimonials of “regular” people or producing ads in which the spokespeople appear to be regular people would do well to keep the Federal Trade Commission’s (FTC) “Guides Concerning the Use of Endorsements and Testimonials in Advertising” in mind when crafting their advertisements and those ads’ disclosures.

[Click here](#) to read their column.

NAD Says Disclosure May Not Always Remedy Apples to Oranges Comparison

A recent decision by the National Advertising Division of the Council of Better Business Bureaus (“NAD”) could have implications for future “consumers prefer”-type comparative claims, write Venable partner **Amy Ralph Mudge** and of counsel attorney **Ilene Ringel Heller** in a recent post on Venable’s advertising law blog, www.allaboutadvertisinglaw.com.

NAD, an industry self-regulatory body, recently issued an opinion suggesting that marketers making comparative claims should compare their product to the most similar competitive offering. According to the NAD, the most similar “apples to apples” product should be the one used in testing for comparative claims. NAD did say it was acceptable to make “apples to oranges” claims as long as the comparative product is disclosed clearly and there are no implied false messages that the comparative product is the most similar product or that the advertiser’s product is preferred to the entire line of the competitive product.

Another interesting facet of the NAD decision addressed a preemption argument by Marie Callender’s, one of the parties involved in the decision. The company argued that NAD should not review the product label because it had already been reviewed by the U.S. Department of Agriculture (USDA). NAD explained that although it “seeks to harmonize its decisions with applicable federal regulations and rulings, the approval of a label by [USDA’s Food Safety and Inspection Service (FSIS)] is not an indication that FSIS necessarily analyzed or issued any findings on the particular issue complained of here – whether the preference claim communicated a misleading comparative message to consumers.”

[Click here](#) to read the full post on Venable’s advertising law blog, www.allaboutadvertisinglaw.com.

FTC Holds Workshop On Mobile Payments

On April 26, the FTC hosted “Paper, Plastic...or Mobile? An FTC Workshop on Mobile Payments.” The day-long workshop examined the use of mobile payments in the marketplace and how emerging technologies affect consumers. Venable partner **Stuart P. Ingis** and associates **Michael A. Signorelli** and **Ariel S. Wolf** recapped the workshop in a recent post on Venable’s advertising law blog, www.allaboutadvertisinglaw.com.

Honors and Awards

Winner of the 2010 and 2011
Chambers USA Award for Excellence



Top-Tier Firm *Legal 500*



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



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

Mobile payment systems allow consumers to make purchases using their mobile devices, as opposed to using cash or plastic debit or credit cards. The industry is growing at a dizzying pace—mobile payments in the U.S. totaled \$240 billion in 2011 and are expected to rise to \$670 billion by 2015.

The FTC steered the discussion to three specific areas: privacy, data security and payment dispute resolution. Panelists, presenters, and moderators underscored the importance of developing a legal and regulatory framework that would encourage innovation in the industry while ensuring consumers remain protected in these areas.

In a separate presentation not scheduled on the official program, staff from the FTC Mobile Technology Unit revealed that they had conducted a study of 19 mobile payment providers to "observe what disclosures are made to consumers regarding these companies' dispute resolution policies." While the presenters emphasized that the FTC was not drawing any conclusions from the study, the slides emphasized consumers' total liability for fraudulent or unauthorized purchases as well as the sharing of consumers' personal information with third parties.

[Click here](#) to read the recap of the workshop on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Top 12 Tips For Saving Money In Litigation

Venable partner **Damon W.D. Wright** writes in a recent *National Law Journal* column that too many cases settle because the client cannot afford litigation. While settlement should always be explored, writes Wright, some disputes warrant litigation and should be tried. In the column, he outlines a dozen tips to control litigation costs.

[Click here](#) to read Wright's column.

Events

Response Expo 2012 - San Diego

May 15-17, 2012

Please join Venable at the Response Expo 2012. The event, which takes place in San Diego from May 15-17, brings together key decision-makers and industry leaders from the corporate marketing arena and direct response spectrum. Please stop by our booth, #212, and meet Venable's **Advertising and Marketing attorneys**. Venable is the proud sponsor of the Martini Party networking event, which will occur on May 16, 2012 from 4:30 p.m. - 6:00 p.m. PDT.

ACC's Social Media Day - Darien, CT

May 18, 2012

Social media has created a new frontier for many companies. The legal issues relating to social media evolve every day. This day-long program at the Woodway Country Club in Darien, CT will prepare legal professionals to confront this new reality and manage the resulting legal issues. Please join Venable partner **Leonard L. Gordon** when he presents "Managing Compliance Risks: Privacy, Consumer Protection and Social Media" on May 18, 2012 from 10:30 a.m. - 11:45 a.m. EDT.

For registration information, please [click here](#).

American Bar Association Section of Antitrust Law - Washington DC

May 22, 2012

12:30 p.m. - 1:45 p.m. EDT

Please join Venable partner **Lisa Jose Fales** when she presents "**Poultry Merger Reviews: When Can Birds of a Feather Flock Together?**" on Tuesday, May 22, 2012. This panel discussion will feature two recent mergers in the poultry industry—the case of Perdue/Coleman, which garnered Department of Justice (DOJ) review, and the case of Tyson/Georges, which sparked a civil antitrust action. Hear perspectives from counsel to the parties as well as the Section Chief from the DOJ Antitrust Division on these transactions and potential implications for the future. Noteworthy topics to be discussed include potential monopsony issues, analysis of economic harm, and proper remedies.

To register to attend this event in person, please RSVP to **Alicia Allen**.

To register for a live webcast of this event, please [click here](#).

ACI Litigating & Resolving Advertising Disputes - New York

June 19-20, 2012

Venable is a proud sponsor of the ACI Litigation & Resolving Advertising Disputes Conference. Please join Venable's [Thomas E. Gilbertsen](#) and [Amy Ralph Mudge](#). Gilbertsen will speak on the explosion of class action lawsuits, and Mudge will moderate a panel of judges providing the judicial perspective on advertising litigation.

[Click 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.

Visit Venable's advertising law blog at www.allaboutadvertisinglaw.com.

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