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2012**Happy Birthday to Us!**

This week's issue marks the first birthday of Venable's Advertising Law News and Analysis. We would like to thank the thousands of readers who read and engage with the newsletter each week.

Because it's our birthday, we'd like to ask you for a gift. Please tell us how we're doing; we want to hear from you. [Click here](#) to send us an email with your comments.

News**Olympic Advertising Police Scour London for Rogue Ads**

According to a story published by UK newspaper *The Independent*, hundreds of uniformed officers began scouring the streets of London this week, on the hunt for ambush marketing activities and advertisements by companies seeking to leverage the Olympic brand without being official sponsors. Under special brand protection legislation passed for the games, the agents have the power to enter shops or offices and bring legal action against companies violating the law.

Although many of the words whose use in advertisements is regulated seem obvious, such as "Olympic" and "medals," others, such as "London," "summer" and "sponsors," are much more mundane, causing some to question the breadth of the legislation.

Please see the Analysis section, below, for a related article on Olympic advertising.

[Click here](#) to read the story in *The Independent*.

NAD Decision Pins Down Nutrisystem on Social Media Testimonials

Recently, the National Advertising Division (NAD) of the Council of Better Business Bureaus – an industry self-regulatory body that reviews national advertising for truthfulness, accuracy, and substantiation – found that consumer weight loss stories posted to the social networking site Pinterest by Nutrisystem, Inc. required additional disclosures to avoid misleading consumers.

At issue were testimonials posted to one of the company's "pinboards" on the social networking site. The pinboard, titled "Real Customers. Real Success." featured photographs of Nutrisystem customers with each customer's name, total weight loss, and a link to the Nutrisystem website appearing below each photo. The NAD determined that the "pins" touted weight loss results that were atypical for Nutrisystem customers and thus should be qualified with a disclosure of the results consumers can expect to achieve using Nutrisystem's weight loss program, in accordance with Federal Trade Commission (FTC) guidelines for consumer testimonials.

Nutrisystem informed the NAD that the typical results disclosures were inadvertently omitted from the pinboard, the pins had appeared on Pinterest for less than two months, and the typicality disclosures were added immediately upon receipt of the NAD's letter inquiring into the weight loss "pins." The disclosure that Nutrisystem posted reads, "Results not typical. On Nutrisystem®, you can expect to lose at least 1-2 lbs. per week. Individuals are remunerated. Weight lost on prior Nutrisystem® program."



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

[Click here](#) to read the NAD's press release about the decision.

FTC Examines Commercial Use of Facial Recognition

On July 18, Maneesha Mithal, Associate Director of the FTC's Division of Privacy and Identity Protection, testified before the Senate Judiciary Committee's Subcommittee on Privacy, Technology and the Law. Mithal's testimony stated that the FTC is examining the benefits to consumers, as well as privacy and security concerns regarding the commercial uses of facial recognition technologies for applications ranging from the biometric identification of individuals to the determination of demographic information and simple recognition of a human face in a photograph.

The testimony mentions that the FTC will make recommendations later this year on best practices for companies utilizing facial recognition technology. According to the FTC's press release, the recommendations will draw on comments from a recent FTC workshop on facial recognition technology and on the three core principles from the agency's March 2012 Privacy Report – privacy by design, simplified consumer choice and transparency.

[Click here](#) to read the press release and access a copy of Mithal's prepared testimony.

Analysis

As "Green" Claims Proliferate, Industry Waits for Green Marketing Guides

The clock continues to tick on the release of the FTC's final revised Green Marketing Guides, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

They say that although predicting the timing of the government's release of regulatory guidance is almost entirely guesswork, there are a number of factors that indicate the long-awaited "Green Marketing Guides" may be released this year, including the presidential election and possible turnover at the FTC.

As companies wait for guidance, so-called green marketing claims continue to proliferate, often with shocking creativity.

[Click here](#) to read the full post on www.allaboutadvertisinglaw.com.

Going for the Gold Without Getting Disqualified — Marketing Around the Olympics

As anticipation of the Olympics grows, companies big and small are jockeying for the attention of fans by associating themselves with the games, writes Venable attorney [Jonathan L. Pompan](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

For the Olympics, the host organizing committee, individual country committees and television partners, this means big business due to the sale of sponsorships and the licensing of use of their intellectual property. However, as recent news reports indicate, for non-sponsors, ambush marketing related to the Olympics can mean big headaches.

Sponsoring the Olympics, Pompan writes, offers huge potential benefits for companies. Over the past several years, large companies have paid millions of dollars simply for the right to associate their brands with the games. For advertisers that venture into this area of advertising and marketing, he says, there are significant inherent legal risks in associating their companies with Olympic indicia, trademarks and slogans and other intellectual property without permission. Companies that operate outside the rules could find themselves on the wrong end of a legal action.

[Click here](#) to read Pompan's full post on www.allaboutadvertisinglaw.com.

FTC Showing Renewed Interest in "Made In USA"

Claims

Marketers periodically feel the call to tell customers their products are Made in America, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com. However, marketers making those claims would be well-served to exercise caution.

In addition to the strict substantiation standard outlined in the FTC's Made in USA Enforcement Policy Statement, it appears the FTC is showing renewed interest in Made in USA claims.

Over the past several months, write Mudge and Shaheen, the FTC has closed at least three separate investigations into companies using Made in USA claims to market products that were not made in the USA.

[Click here](#) to read the full post on www.allaboutadvertisinglaw.com.

[Click here](#) to read the FTC's Made in USA Enforcement Policy Statement.

Upcoming Events

[LeadsCon East 2012 - New York](#)

July 24-25, 2012

LeadsCon is the pioneering conference and summit for the online lead generation and broader customer acquisition industry. Venable attorney [Jonathan L. Pompan](#) will moderate a discussion entitled "Co-reg, Destination Sites, and Up-sells, 'Oh My!'" on Wednesday, July 25 from 11:30 a.m. - 12:00 p.m. EDT. A panel of leading advertisers will discuss the challenges of online and telephonic lead generation.

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

[15th Annual NBJ Summit - Dana Point, CA](#)

July 24-27, 2012

Venable is a proud sponsor of the 2012 NBJ Summit, hosted by *Nutrition Business Journal* and New Hope Natural Media. Please join Venable partner [Jeffrey D. Knowles](#) and Venable partner and former FDA Chief Counsel [Ralph S. Tyler](#) on Friday, July 27 from 9:00 a.m. - 11:40 a.m. PDT. Their session and panel discussion will provide insiders' views of regulatory activity by the FDA and FTC as well as predictions for the future.

[3rd Annual DRMA Summer Bash - Irvine, CA](#)

July 26, 2012

Venable is a proud sponsor of the Direct Response Marketing Alliance's Summer Bash. Join the attorneys of Venable's [Advertising and Marketing Group](#) for an evening of wine tasting and networking, held at the Shady Canyon Country Club in Irvine, CA.

[American Bar Association Annual Meeting - Chicago](#)

August 2-7, 2012

Venable's attorneys will present sessions at this conference, which provides top-notch continuing education to the nation's lawyers. Please join Venable partner [Ralph S. Tyler](#) as he presents "Overriding the Experts: Executive Rejection of Administrative Agency Expertise." Also, Venable partner [Amy Ralph Mudge](#) will moderate a panel discussion titled "Government Cases and Class Actions: Making and Breaking the Links."

[2012 Electronic Retailing Association D2C Convention - Las Vegas](#)

September 11-13, 2012

Venable is a proud sponsor of the ERA D2C Convention. The ERA is the only trade association in the U.S. and internationally that represents leaders of the direct-to-consumer marketplace, which includes members that maximize revenues through direct-to-consumer marketing on television, online, mobile and on radio. Please visit the attorneys of our [Advertising and Marketing Group](#) at booth #915.

Two Venable attorneys are presenting educational sessions at ERA D2C. Join Venable partner [Jeffrey D. Knowles](#) as he presents "Driving Change in Electronic Retailing: Enforcement, Self-Regulation and Legislation." Venable partner [Gregory J. Sater](#) will moderate a panel entitled "Riding the Social Media Roller Coaster."

To obtain a complimentary exhibitor-hall pass that will allow you to attend the expo as a guest of Venable, please click [here](#) and register, using the code **VBND3607**.

[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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