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Honors and Awards

Top ranked in *Chambers USA*

Venable Attorneys Speaking at ERA D2C Convention

Venable is proud to sponsor the Electronic Retailing Association's D2C Convention in Las Vegas. Please join our Venable attorneys as they present educational sessions at ERA D2C.

Venable partner **Jeffrey D. Knowles** will present "Driving Change in Electronic Retailing: Enforcement, Self-Regulation and Legislation" on Tuesday, September 11 from 10:30 a.m. to 11:30 a.m. PDT. In addition, Venable partner **Gregory J. Sater** will moderate a panel entitled "Riding the Social Media Roller Coaster" on Tuesday, September 11 from 1:30 p.m. to 2:30 p.m. PDT.

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**.

If you are attending ERA D2C and are interested in scheduling a conversation with a Venable attorney, please [click here](#) to send us an email.

News

CARU Asks Kraft, "Where's the Fruit" in Lunchables Advertising

In an August 14 press release, the Children's Advertising Review Unit (CARU) announced that it had recommended that Kraft Foods, Inc. modify television advertisements for its Oscar Mayer Peanut Butter and Jelly Lunchables prepackaged "lunch combination."

According to CARU's press release, the television commercial promoting the product featured a child eating the peanut butter and jelly sandwich from the Lunchables kit, but not the fruit included with the meal. CARU determined that the advertisement did not depict a "nutritionally balanced meal" as defined by the group's guidelines.

CARU requires that any depiction of a nutritionally balanced meal should contain at least three of the five major food groups. In addition, the guidelines state that it is preferable for advertisements to include the food groups recommended for increased consumption by current USDA Dietary Guidelines for Americans (i.e., fruits, vegetables, fat-free or low-fat milk and milk products and whole grains).

Kraft has agreed to modify the advertising in accordance with CARU's recommendations.

[Click here](#) to read the CARU press release.

Advertising Standards Board's Facebook Ruling Throws International Advertisers a Curveball

April Dembosky reports in an August 14 *Financial Times* story about a recent ruling by Australia's Advertising Standards Bureau that raises questions about the hidden costs of social media marketing and highlights the significant differences in advertising standards from country to country.

In the ruling, the Advertising Standards Bureau ruled that companies are responsible for the content posted to social media pages promoting their brands. This includes monitoring pages and other social media presences for misleading and defamatory posts, as well as posts that violate advertising decency standards.



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011-2012



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"If the burden falls on the advertiser to review and ensure that every single thing a third party posts for truthful and accurate advertising, that would be ridiculously expensive to provide that," said Andrea Levine, director of the National Advertising Division of the U.S. Council of Better Business Bureaus. "If I were an advertiser, I'd just take that off my site."

David Ellison, the marketing services manager for the Incorporated Society for British Advertisers, told the *Financial Times* that advertisers in his country would be very interested to see the reaction of the UK's Advertising Standards Agency, or ASA, to the Australian ruling.

[Click here](#) to read the *Financial Times* story (free registration required).

FTC Extends Comment Period for Revision of Jewelry Marketing Guides

On August 15, the Federal Trade Commission (FTC) announced that it had extended the public comment period on the Commission's "Guides for the Jewelry, Precious Metals, and Pewter Industries." Comments will now be accepted until September 28, 2012.

In a June 22, 2012 press release, the FTC originally announced the call for public comments as the first step in a comprehensive review of the Guides, which were last revised in 1996. The FTC's announcement specifically requested public comment on issues concerning composite gemstones, pearls, diamonds, and precious metal alloys, as well as comments regarding any other issues or concerns relating to the Guides. The public comment period was originally scheduled to close on August 27, 2012.

According to the August 15 press release, the FTC decided to extend the comment period because of the complexity and range of issues raised in its request. The Commission also noted that a trade association representing jewelry industry members requested an extension of this deadline to allow additional time to develop comments and supporting evidence that would fully address the issues.

[Click here](#) to read the FTC's August 15 press release.

Analysis

Defending Against the Blitzkrieg Bop: Issues in Multi-Forum Advertising Challenges

Many advertisers and marketers of consumer products are waging war on multiple fronts against those alleging that their claims are false or unsubstantiated, write Venable attorneys [Amy Ralph Mudge](#), [Randal M. Shaheen](#) and [Maura A. Marcheski](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

It is increasingly common, they write, for companies to respond to an FTC investigation, defend the same campaign in a hearing before the National Advertising Division of the Council of Better Business Bureaus (NAD), comply with simultaneous investigation requests brought by states' attorneys general, and argue the merits of the advertising campaign in plaintiffs' class action litigation – all in an overlapping time frame and each resulting from the same advertisement.

In the blog post, Mudge, Shaheen and Marcheski provide a primer on the issues an advertiser should keep in mind before engaging in a multi-front defense of its company marketing claims.

Defending against this "Blitzkrieg Bop" of advertising disputes can be a challenge, they write, but by considering multi-forum cases from different angles, a company can limit its exposure and ultimate payout to settle false advertising claims.

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

NAD Finds That Nutrisystem's Pinterest Testimonials Violate FTC Guidelines

Social media presents amazing opportunities to marketers that want to attract new customers and engage existing customers in an ongoing dialogue, writes Venable partner [Gregory J. Sater](#) in the August edition of the *DRMA Voice*, but it also presents a unique set of legal risks.

Being aware of the legal principles that apply – and making sure that everyone in your organization who handles social media is aware of them – is very important, he writes. Many companies have a talented group of young, enthusiastic, Internet-savvy people working for them on social media. They are doing great work. Nevertheless, do they understand the legal trouble the company could get into because of their activities if they are not careful in what they post – and how they present it – on Facebook, Twitter, etc.? The answer, Sater says, is probably not.

He points to a recent NAD decision that examined a Pinterest “pinboard” maintained by diet company Nutrisystem. The NAD found that the consumer weight-loss stories posted to the pinboard required an additional disclosure in order to comply with the FTC’s “Guidelines Concerning the Use of Endorsements and Testimonials in Advertising.” The NAD said the “pins” on the pinboard touted weight-loss results that were not typical for Nutrisystem customers.

The key lesson from the NAD decision, Sater says, is that companies must realize their social media activities are being watched. Marketers’ actions on Facebook, Pinterest or anywhere else are no less important, legally, than advertising that is broadcast on television.

[Click here](#) to read Sater’s complete article in the *DRMA Voice*.

The \$60 Million iPad Trademark Lesson Applies to All Brands

Many businesspeople, from both start-ups and major multinational corporations, often question the value or reasoning behind the trademark advice they receive from their lawyers, write Venable partners [Justin E. Pierce](#) and [Andrew D. Price](#) in a recent post to Venable’s advertising law blog, www.allaboutadvertisinglaw.com.

Businesspeople often ask “Do we really need to do this?” after being told that extensive trademark searching must be done to find a potential brand name that is legally available. Pierce and Price maintain that although the cost of careful trademark work can sometimes seem to outweigh its benefits, the cost of cutting corners can be much higher.

The authors point to recent media reports that Apple paid \$60 million to acquire the rights to the iPad trademark in China. Apple paid for a trademark that it thought it already owned for a simple reason: the chain of title was not properly recorded with the local trademark office. It was as if Apple moved into a house where the title search said another party was the owner.

Apple had good intentions and did the right thing to start – it obtained a valid assignment of the trademark rights to iPad in China from a company that earlier acquired the rights from the original owner. However, there was yet another wrinkle: Apple launched the iPad tablet in China when the trademark office records showed the rights were still owned by the third party.

In the end, Pierce and Price write, acquiring the iPad trademark in China could end up costing Apple much more than \$60 million.

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

Upcoming Events

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. Venable is also the sponsor of the Pre-Moxie Awards Gala Reception.

Association of Corporate Counsel Annual Meeting - Orlando

September 30-October 3, 2012

Venable is pleased to support and sponsor the 2012 ACC Annual Meeting. We hope that you will join us at our educational sessions, where several of our attorneys will share their insights and recommendations, and at our show floor booth, #307. Venable is also the 2012 sponsor of the ACC IT, Privacy and E-Commerce Committee and the ACC Nonprofit Organizations Committee.

To view the program, please [click here](#).

[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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