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**Honors and Awards**

Top ranked in *Chambers USA*

**Analysis**

## Green Guides May Be Ripe for Release

Almost two years ago, the Federal Trade Commission (FTC) released a draft of its revised Green Guides. Just prior to the release, the FTC provided a preview at the annual National Advertising Division of the Council of Better Business Bureaus (NAD) Conference. History, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent blog post, may be about to repeat itself.

The NAD recently announced the addition of a new panel on its opening day. That panel is called "Environmental Marketing Claims and FTC's Green Guides," and the sole panelist is Jim Kohm, Associate Director of Enforcement for the FTC's Consumer Protection Bureau and guardian of all things green at the FTC. Does this mean that a final version of the revised Green Guides is about to be released? Mudge and Shaheen believe the magic eight ball says "yes."

[Click here](#) to read the full post by Mudge and Shaheen on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

## Senators Push FTC to Investigate Online "Lead Generators"

A group of Democratic senators is requesting that the FTC investigate third-party online marketing companies – so-called lead generators – used by private-sector schools. Venable attorneys **Jonathan L. Pompan** and **Alexandra Megaris** write in a recent article about the request by Senators Richard Durbin (D-IL), Tom Harkin (D-IA), Frank Lautenberg (D-NJ), and Barbara Boxer (D-CA) sent to FTC Chairman Jon Leibowitz on September 21, 2012. "The FTC can and should take several steps to better protect consumers from deceptive lead generators both by educating consumers and by investigating their practices," wrote the senators.

[Click here](#) to read the article by Pompan and Megaris.

[Click here](#) to read the senators' letter.

## FTC Settlement Takes Pound of Flesh in Weight Loss Testimonial and Substantiation Case

The FTC has just confirmed that a "results will vary"-style disclaimer is not likely to disclaim anything in the eyes of a consumer, write Venable attorneys **Randal M. Shaheen** and **Maura A. Marcheski**. Instead, they say that recent action by the FTC demonstrates that marketers must consider the "net impression" their testimonials convey.

Shaheen and Marcheski point to diet plan marketer Medifast, Inc.'s recent \$3.7 million settlement with the FTC as evidence of the enforcement shift. The settlement was the result of FTC allegations that marketing claims by Medifast violated a previous settlement order the company entered into in 1992.

The 1992 order, Shaheen and Marcheski write, barred Medifast from making any future unsupported claims about a user's success in achieving or maintaining weight loss. In the recent settlement, the FTC alleged that in 2009 Medifast began running unsupported weight-loss ads across a variety of marketing channels that touted the company's low-calorie meal substitutes, including the "5 and 1" plan. Most of the



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



Top-Tier Firm *Legal 500*



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representations in the advertisements were made using consumer testimonials.

The complaint alleged that Medifast advertised that these consumer endorsers' experiences were typical although Medifast used a disclaimer at the bottom of its advertisements that stated "Results will vary." The FTC maintained that the disclaimer was not sufficient to counteract the "net impression" consumers received from the advertisements, noting that the disclaimer appeared in small type or was spoken quickly.

Shaheen and Marcheski write that the recent Medifast settlement demonstrates that no marketer should place much faith in a "results will vary" disclaimer, and the FTC appears to have laid down a marker for substantiation of weight-loss claims for low-calorie meal replacement products.

[Click here](#) to read the full post by Shaheen and Marcheski on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

[Click here](#) to read the FTC's press release announcing the Medifast settlement.

## "Your Baby Can Read" Case Instructive for Marketers

Venable Partners [Jeffrey D. Knowles](#) and [Leonard L. Gordon](#) write in the latest edition of the *DRMA Voice* that the FTC's recent judgment against Your Baby Can Read LLC (YBCR) and executives at the company holds lessons for marketers.

The FTC found that YBCR's claims required "competent and reliable scientific evidence," thus holding the claims for YBCR to the same standard as a health or safety claim. The settlement also bars the company and former CEO from using the term "Your Baby Can Read" in any context, demonstrating that a brand name can sometimes also be a claim.

They write that marketers must often defend products and claims in multiple venues simultaneously (YBCR was the subject of a recent NAD advertising review as well). Mounting concurrent defenses, or planning for the contingency of a future defense in another venue, often requires marketers and their counsel to make strategic decisions different from those that would be made when defending just a consumer class action suit or FTC enforcement action.

The settlement imposes a \$185 million judgment, which equals the company's gross sales. Upon the company's payment of \$500,000, the remainder of the judgment is suspended based on the company's failing financial condition.

[Click here](#) to read the full *DRMA Voice* piece by Knowles and Gordon.

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## Upcoming Events

### 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 the 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 as well as the ACC Nonprofit Organizations Committee.

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

### Advertising Self-Regulatory Council Annual Conferences - New York City

October 1-3, 2012

Please join Venable attorneys at this three-day meeting addressing advertising self-regulation. Venable partner [Amy Ralph Mudge](#) will speak at the Annual Conference of the National Advertising Division of the Council of Better Business Bureaus on October 1. The Children's Advertising Review Unit's Annual Conference will feature a presentation by Venable partner [Randal M. Shaheen](#) on October 3. Venable attorney [Jonathan L. Pompan](#) will address the Electronic Retailing Self-Regulation Program Summit on October 3.

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

### International Association of Privacy Professionals Privacy Academy - San Jose, CA

October 10-12, 2012

Privacy experts are headed to Silicon Valley to receive practical instruction and meaningful discussion on today's hottest privacy issues. Venable partner [Emilio W. Cividanes](#) will present "Courtroom Showdown," a mock trial set in the fictional "Data Security Breach Tribunal of the United Nations," on October 10 from 8 a.m. to 12 p.m. PDT.

To register, please [click here](#).

### **34th Annual Promotion Marketing Association Marketing Law Conference - Chicago**

November 12-14, 2012

Venable is proud to sponsor the PMA Marketing Law Conference, featuring the nation's leading speakers from the Marketing and Advertising Law Bar and from major brands and prominent regulators. Venable partner [Melissa Landau Steinman](#) serves as co-chair and will present a session on gift cards and coupons. Joining her as speakers at the conference are Venable partner [Roger A. Colaizzi](#), who will address class action and governmental investigation defense, and Venable partner [Leonard L. Gordon](#), whose topic is telemarketing law enforcement.

Please join Venable at these sessions and at our reception at the House of Blues on November 12.

To register for the PMA Conference, please [click here](#).

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Visit Venable's advertising law blog at [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

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