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Issue Editors

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Roger A. Colaizzi
racolaizzi@Venable.com
202.344.8051

Gary D. Hailey
gdhailey@Venable.com
202.344.4997

Gregory J. Sater
gjsater@Venable.com
310.229.0377

In This Issue

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Edward P. Boyle
epboyle@Venable.com
212.808.5675

Emilio W. Cividanes
ecividanes@Venable.com
202.344.4414

Douglas C. Emhoff
demhoff@Venable.com
310.229.9941

Stuart P. Ingis
singis@Venable.com
202.344.4613

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Jonathan L. Pompan
jlpompan@Venable.com
202.344.4383

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

News

Recent NAD Decision Illuminates FDA's "Light" Requirements

On February 5, the National Advertising Division of the Council of Better Business Bureaus (NAD) announced that Anheuser-Busch could support the claim that Michelob ULTRA Light Cider contains one-third fewer calories than an average of "the leading regular ciders."

Although NAD's jurisdiction does not include claims that use language mandated by federal law or regulation, the self-regulatory body agreed with Anheuser-Busch that the claim conforms to the requirements of the Food and Drug Administration's (FDA) Nutrition Labeling and Education Act of 1990 (NLEA). Under NLEA, a product may be described as "light" on its label if the food derives less than 50 percent of its calories from fat and the product has at least one-third fewer calories than an appropriate reference food.

Instead, NAD was interested in the comparative claim that Michelob ULTRA Light Cider contains one-third fewer calories than competitors. After reviewing the calorie content and market share of the leading regular hard ciders, as well as other factors, NAD determined that Anheuser-Busch could support its "light" claim for the cider.

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

[Click here](#) to read the text of the FDA's food labeling guidelines for "light" foods (See 21 CFR 101.56(b)).

Analysis

CA Supreme Court Rules Song-Beverly Doesn't Apply to Online Downloadable Purchases

On February 4, 2013, the California Supreme Court held in *Apple Inc. v. Superior Court (Krescent)* that the Song-Beverly Credit Card Act's prohibition against recording customers' personal identification information as a condition of credit card purchases does not apply to online purchases in which the product is downloaded. This decision will provide significant relief to online retailers, write Venable attorneys [Edward P. Boyle](#), [Emilio W. Cividanes](#), [Douglas C. Emhoff](#), [Stuart P. Ingis](#), and [Melissa C. McLaughlin](#) in a recent client alert.

For now, the Venable attorneys write, retailers can rest assured that online transactions involving downloadable products do not fall within the scope of the Credit Card Act. However, the Court invited the California Legislature "to revisit the issue of consumer privacy and fraud prevention in online credit card transactions."

It is important to note that this decision does not conclusively settle all issues regarding online transactions. The Court declined to decide whether the law applies to online transactions that do not involve downloadable products, or to mail order or telephone order transactions. Finally, the Venable attorneys write, the Court's decision will have little, if any, immediate impact on the dozens of ongoing class action lawsuits in which plaintiffs allege that retailers' in-person collection of their ZIP codes violates the Credit Card Act.

Melissa C. McLaughlin
mcmclaughlin@Venable.com
310.229.0343

Honors and Awards

Top ranked in *Chambers USA*
2012



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



Top-Tier Firm *Legal 500*



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 full text of the alert.

Comments in Four Loko Settlement May Drive Marketers to Drink

On February 12, The Federal Trade Commission (FTC) announced its final settlement with the marketer of Four Loko Malt beverages. The FTC alleged that the marketer of Four Loko falsely claimed that a 23.5-ounce can contained alcohol equivalent to drinking two 12-ounce beers when in fact each can contained closer to the alcohol equivalent of four or five beers.

Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) write in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com, that the FTC received more than 250 comments on the proposed settlement with the marketer of Four Loko. Two of those proposed changes, the inclusion of an "alcohol facts" panel on the packaging and the requirement that serving size information be included on alcohol containers holding more than two servings, were included in the final order.

Mudge and Shaheen write that the influence of these comments in modifying the order, coupled with the welcome mat that the FTC has laid out for commenters, may increase the number of comments future proposed administrative orders receive, leaving companies settling with the FTC with one more thing to worry about.

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

[Click here](#) to read the FTC's final order and press release in the Four Loko case, as well as the letter the FTC sent to commenters.

CFPB to Focus on Use of Social Media by Financial Services Providers

On January 22, the Federal Financial Institutions Examination Council (FFIEC) released a notice and request for public comment to proposed guidance on the applicability of consumer protection and compliance laws, regulations, and policies to activities conducted via social media. The request for comment, writes Venable partner [Jonathan L. Pompan](#) in a recent post to Venable's advertising law blog, covers nonbank entities supervised by the Consumer Financial Protection Bureau (CFPB) and state regulators, as well as banks, savings associations, and credit unions supervised by other federal regulators.

The CFPB and other agency members of the FFIEC will issue supervisory guidance to the institutions under their purview after consideration of comments received from the public. Pompan writes that the guidance is a useful tool for supervised nonbank entities and banks that fall under the scope of the CFPB, as well as for depository financial institutions, because federal and state regulators frequently use FFIEC guidance to assess compliance with consumer financial protection laws. Interested parties have until March 25 to submit comments on the proposed guidance.

[Click here](#) to read Pompan's full post on Venable's advertising law blog, www.allaboutadvertisinglaw.com, and learn more about the impact of the proposed guidance.

[Click here](#) to read the full text of the proposed guidance in the *Federal Register*.

Upcoming Events

[Electronic Retailing Association Great Ideas Summit - Miami](#)

February 25-27, 2013

Venable is proud to sponsor the VIP Reception of ERA's Great Ideas Summit 2013. Also, please join Venable partner [Jeffrey D. Knowles](#) as he presents the educational session "Up, Down and Sideways - How Enforcement Actions Traverse the Value Chain" on Tuesday, February 26. Meet the attorneys of [Venable's Advertising and Marketing Group](#) on the show floor at booth #304.

[Click here](#) to learn more about ERA GIS 2013 and register.

International Home and Housewares Show - Chicago

March 2-5, 2013

The International Home + Housewares Show offers you the opportunity to see first-hand consumer lifestyle and product trends for all areas of the home, both inside and out, under one roof. Venable partner **Randal M. Shaheen** will host a representative from a big-box retailer and a recycling-management executive to present "How to Make Green by Being Green and Staying Clear of the FTC." Join us and learn how to green your business – in more ways than one.

[Click here](#) to register for Housewares.

Venable is a sponsor of the **DRMA Chicago Networking Bash**, which occurs during the Housewares show, on March 4. Please join our attorneys for an evening of networking with direct-to-consumer professionals.

Engredea, Natural Products Expo West and Nutracon - Anaheim, CA

March 6-10, 2013

Venable is a proud sponsor of this conference, which brings together the community of leading suppliers and manufacturers to source new ingredients, packaging, technologies, equipment, and services in the global nutrition industry. Venable partner **Todd A. Harrison** will speak about the regulatory issues of marketing omega-3 products at the Nutracon conference on March 6. Venable partner **Claudia A. Lewis** will speak on medical foods at Engredea on March 9. Come see us on the Engredea show floor at booth #355.

[Click here](#) to register.

International Association of Privacy Professionals Global Summit 2013 - Washington, DC

March 6-8, 2013

Venable is a sponsor of this conference which hosts more than 1000 privacy professionals from across the globe. Venable partner **Stuart P. Ingis** will speak on a panel addressing Do Not Track. Please visit Venable on the show floor at booth #7.

[Click here](#) to register.

2013 Association of National Advertisers Advertising Law and Public Policy Conference - Washington, DC

March 19-20, 2013

Venable is proud to sponsor this conference and to host a cocktail reception honoring women in advertising on Tuesday, March 19. Venable partner **Amy Ralph Mudge** will moderate a thought-provoking panel entitled "Have Women In Advertising Really Come a Long Way, Baby?" The panel will discuss images of women in advertising in traditional as well as new media, and whether those idealized images should provoke self-regulation or even government enforcement.

[Click here](#) to register.

[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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575 7th Street, NW, Washington, DC 20004

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