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News**Jon Leibowitz Announces Departure From FTC**

Last week, Federal Trade Commission (FTC) Chairman Jon Leibowitz announced that he would leave the FTC after four years at the helm of the consumer protection agency. Leibowitz's last day at the FTC will be February 15.

According to the FTC's press release and a *New York Times* story announcing Leibowitz's decision to leave the agency, his leadership of the FTC was marked by a strong commitment to online privacy, as well as muscular enforcement of competition and consumer protection laws. The *Times* story also provides a broad overview of potential successors to Leibowitz.

Leibowitz has not publicly announced his professional plans after leaving the agency.

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

[Click here](#) to read the *New York Times* story announcing Leibowitz's decision to leave the FTC (subscription may be required).

Analysis**Lessons from FTC's *POM Wonderful* Decision**

The FTC has issued a final opinion and order finding that POM Wonderful LLC and other related parties violated the FTC Act by making false or misleading claims to promote their pomegranate products. The FTC's decision, Venable partner **Gregory J. Sater** writes in the February edition of the *DRMA Voice*, affirms in large part the previous ruling by an administrative law judge. Now, POM and the other named parties have the right to petition for review of this decision by the U.S. Circuit Court of Appeals. This, writes Sater, means that the POM saga will continue to drag on.

Sater's article highlights a few of the key points of the 53-page decision that marketers should consider, including:

- The FTC is entitled to rely on its own analysis of an advertisement so long as the advertisement's claims are "reasonably clear."
- The use of medical language and imagery can convey disease claims by contributing to the overall "net impression" of the advertising campaign, even if disease claims are not expressly made.
- The use of tentative language such as "preliminary," "promising," "may," or "can" does not necessarily mitigate product efficacy messages in POM's advertisements.
- Key personnel, such as POM's COO, can be held individually responsible and subject to the *POM* order because of the FTC's finding that he had participated in or had the authority to control the advertising.

[Click here](#) to read the full text of Sater's analysis and learn what other insights FTC's *POM Wonderful* decision has for marketers making aggressive advertising claims.

No CDA Immunity for Fake News Site Affiliate Network

The FTC has become increasingly aggressive in holding advertisers responsible for advertising claims



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made by their affiliate networks and marketers, write Venable attorneys [Leonard L. Gordon](#) and [Maura A. Marcheski](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Gordon and Marcheski point to the FTC's move last year to amend its complaint against LeanSpa, a marketer of acai berry and colon cleanse products, to add claims against LeadClick, which served as LeanSpa's affiliate ad network. The FTC alleged that LeadClick (and LeanSpa) paid affiliate marketers to publish fake news stories touting the LeanSpa products and drive traffic to LeanSpa. In a novel defense to the FTC's claim, LeadClick argued that its actions were immune under section 230 of the Communications Decency Act (CDA). Last week, a federal district judge in Connecticut denied LeadClick's motion to dismiss, finding the CDA did not provide immunity from the FTC's allegations.

[Click here](#) to read the full text of the post by Gordon and Marcheski which discusses how the FTC alleges LeanSpa and LeadClick worked together and explains LeadClick's CDA defense.

Upcoming Events

[ABA Antitrust Section, Private Advertising Litigation, Media and Technology, & Consumer Protection Committees - Webinar](#)

February 11, 2013

Join the ABA for this webinar entitled "Social Media Marketing Series #5: Sweepstakes, Contests & UGC Promotions." Venable partner [Melissa Landau Steinman](#) will join a distinguished panel to discuss how social-media marketing promotions may be regulated and to share strategies for creating legally compliant promotions that will meet the exacting standards of both the judicial courts and the court of public opinion. This webinar is free and open to all.

[Click here](#) to register.

[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 over 1000 privacy professionals from across the globe. Venable partner [Stuart P. Ingis](#) will speak on a panel addressing Do Not Track. Please visit Venable at the show floor at booth #7.

[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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