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**Honors and Awards**

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Do you enjoy the insights provided each week by Venable's Advertising Law News and Analysis? Here's an opportunity to learn directly from Venable attorneys and have them answer your questions on two of the hottest topics facing marketers today. Venable partners **Jeffrey D. Knowles** and **Gregory J. Sater** both have session concepts in contention for a spot on the agenda at the Electronic Retailing Association's **2013 D2C Conference**. The agenda for D2C, the largest direct response industry conference in the nation, is determined via crowdsourcing.

[Click here](#) to learn more about the proposed sessions and [vote](#) for both Sater's "Producing the Perfect Beauty or Fitness Infomercial" panel (#6 on the ballot) and Knowles' "Three Rs Marketers Must Remember" panel (#15 on the ballot).

**News**

## FTC Chairwoman Addresses AAF's Advertising on the Hill Day, Provides Broad Guidance

On April 17, Federal Trade Commission (FTC) Chairwoman Edith Ramirez addressed the audience at the American Advertising Federation's "Advertising on the Hill Day." During the speech, Chairwoman Ramirez provided broad guidance on a number of topics, including the newly released .com Disclosures, green claims, privacy, and a host of other topics.

[Click here](#) to read the full text of the Chairwoman's speech.

**Analysis**

## Bringing a Legal Challenge? Expect One in Return.

In the April issue of the *DRMA Voice*, Venable partner **Gregory J. Sater** provides analysis of what happened when Rug Doctor Inc. and Bissell Homecare Inc. recently went head-to-head in a pair of dueling false advertising cases brought before and decided by the National Advertising Division (NAD) of the Council of Better Business Bureaus.

These two cases are instructive on several levels, Sater writes, because they show that:

- comparative advertising claims can be made, but they are very likely to draw a challenge from a competitor;
- when defending a challenge, an advertiser needs to rely on the specific type of testing that would be considered standard in the applicable industry;
- even if the appropriate testing does show some level of superiority, the imagery that is shown in the advertising cannot overstate that superiority, and disclosures should explain exactly what criteria was being compared; and
- if you bring a legal challenge against a competitor, expect to receive one in return.

[Click here](#) to read Sater's *DRMA Voice* column.

## NAD Says Doctor-Recommended Claims Need a Second



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



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## Opinion

According to a recent NAD decision, marketers using claims that a product is "doctor-recommended" require more than a talking head in a white lab coat. In a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com), Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) write that NAD's decision reiterated the self-regulator's long-standing position that "doctor-recommended" claims are very powerful and persuasive to consumers.

According to the decision, such claims must be supported by well-conducted survey evidence showing that a substantial portion of relevant doctors, selected at random, recommend the product in their ordinary practice. NAD maintained that a doctor recommending a product, even if truthful, is not sufficient to back up such a claim. It also noted that doctors who sell the product are also not sufficient to substantiate the claim, as these doctors do not represent a random sample. NAD did permit the advertiser to continue its claim that the product was "doctor-formulated," rejecting the challenger's claim that this would be confusing to consumers as being the same as a "doctor-recommended" claim.

It is worth noting, write Mudge and Shaheen, that NAD also stuck to its prior position on natural claims and recommended that the company cease calling its product "natural." While the product was free of certain chemicals such as formaldehyde, and the undecylenic acid contained in the product is a fatty acid found naturally in the body, NAD found it had to undergo significant processing before being added to the product. So regardless of the original source of the ingredient, if there is significant chemical alteration, the product cannot be called "natural" per the NAD.

[Click here](#) to read the full text of the blog post, which provides a more in-depth analysis of the case.

## Opting out of .com Disclosures Not an Option

Last month, the FTC released its updated .com Disclosures guidance. The document updated the Commission's guidance on the applicability of FTC rules and guidance on online activities for the first time since May 2000.

On April 16, Venable partners [Jonathan L. Pompan](#) and [Ellen Traupman Berge](#) presented a LeadsCouncil webinar titled "The FTC's Revised .com Disclosures Guide: What Third Party Advertisers and Lead Generators Need to Know." During the presentation, Berge and Pompan outlined the scope of the FTC's guidance and provided numerous illustrated examples of advertisements that do and do not conform to the FTC's updated guidance.

[Click here](#) to view the slides presented by Berge and Pompan during the webinar.

## FTC Unveils Top Three Consumer Protection Priorities

Chuck Harwood, Acting Director of the FTC's Bureau of Consumer Protection (BCP) detailed the priorities of his bureau during a breakfast last week at the spring meeting of American Bar Association's Antitrust Section, write [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent blog post to Venable's advertising law blog.

Harwood identified BCP's top three enforcement priorities as:

- preventing scams and fraud;
- protecting consumers on the electronic marketplace including protection from identity theft; and
- policing advertising of unfair and overhyped health claims by dietary supplement and food marketers.

Harwood also mentioned two additional priorities for BCP: monitoring telemarketing activities and policing green or environmental claims.

FTC Chairwoman Edith Ramirez is expected to name a permanent BCP director soon. Mudge and Shaheen write that if there is a new BCP head named, these priorities could change, but any dramatic changes would be surprising.

[Click here](#) to read the blog post by Mudge and Shaheen on Venable's advertising law blog,

## Upcoming Events

### **Electronic Retailing Association Hong Kong Conference 2013: Building Business in Asia**

April 20, 2013

This event will improve your knowledge of conducting business in Asia. Venable partner **Roger A. Colaizzi** will present "China, Culture of Counterfeit," highlighting recent developments in industry's efforts to combat the counterfeiting epidemic. This lively panel discussion will explore intelligent strategies in combatting counterfeiting and review the latest developments from Mainland China in 2012.

[Click here](#) to register.

### **Electronic Transactions Association Annual Conference - New Orleans**

April 30 - May 2, 2013

The ETA Annual Conference and Expo is a premier business and networking event for the payments industry. This event is the largest in ETA history, reflecting the rapid growth in the \$3.6 trillion payments business. Venable partner **Jamie Barnett, Rear Admiral (Ret.)** will speak on the intersection of electronic payments and cybersecurity. Come meet our attorneys on the show floor at booth #1117.

[Click here](#) to register.

### **Understanding the Consumer Financial Protection Bureau - George Mason University School of Law, Arlington, VA**

May 2, 2013

Please join the GMU Law School's Law & Economics Center for a full day of informative sessions about the CFPB. Panels will include prominent practitioners, academics, and CFPB representatives. Venable partners **Ronald R. Glancz** and **Ralph E. Sharpe** will welcome and moderate, and Venable partner **Jonathan L. Pompan** will speak on "CFPB Enforcement Activities" from 4:45 p.m. - 6:00 p.m. ET. Application for approval for this program is pending with the Virginia Mandatory Continuing Legal Education Board for 7 CLE hours (0 ethics).

[Click here](#) to register.

### **New York City Bar Center for CLE - New York**

May 3, 2013, 9:00 a.m. to 1 p.m. EDT

Please join Venable partner **Melissa Landau Steinman** when she presents "Sweepstakes, Promotions and Marketing Laws: Comprehension & Compliance." Topics of discussion will include the laws governing sweepstakes and skill contests, social media, mobile marketing, drafting official rules and disclosures, use of intellectual property, and the gift-card/coupon interface.

CLE credit is available.

[Click here](#) for more information and to register.

### **ERA'S Government Affairs Fly-In 2013 - Washington, DC**

May 21-23, 2013

Please join Venable at the Electronic Retailing Association's 2013 Government Affairs Fly-In. The event presents an outstanding opportunity to learn more about the regulatory and legislative efforts affecting the electronic retailing industry and to meet with lawmakers and senior agency officials. Venable's **Jeffrey D. Knowles** will be among the dozen senior-level speakers from Capitol Hill, federal agencies, industry self-regulatory bodies, policy think tanks, and the electronic retailing industry.

[Click here](#) to learn more and to register.

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

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