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If You Like What You Read, Give Us a Click!

We are very excited to announce that Venable's advertising law blog, www.allaboutadvertisinglaw.com, has been named to the 2014 *ABA Journal* Blawg 100. This honor makes the blog eligible for election into the publication's Blogging Hall of Fame. But we need your votes to get there!

Please take a moment and [click here to vote](#). You will need to register your email with the *ABA Journal* then you can find our blog under the dropdown menu called Torts/Consumer. Thank you for your readership and support. We look forward to another year of blogging.

Analysis

Don't Let Shoddy Disclaimers Shoot You in the Foot

There are times when a marketer has to deploy a website disclaimer, email, Facebook post, or other communication tool in an effort to dispel consumer confusion and head off an advertising lawsuit, writes Venable attorney [Kimberly Culp](#) in a recent post to Venable's advertising law blog.

In the post, she outlines best practices and uses a recent case in the Northern District of California, *United Tactical, LLC v. Real Action Paintball, Inc.*, to illustrate how poorly crafted disclaimers and failure to implement a comprehensive and coherent defensive strategy can cause more damage than the claim that the disclaimers are intended to prevent.

Read the post to [learn about three practices that can help your advertising avoid self-inflicted wounds](#).

[Read the Court's Order in the *United Tactical* case.](#)

NAD Says MOM's Preference Claims Taste a Tad Off

When Post Foods challenged Malt-O-Meal's (MOM Brands) claim that consumers preferred MOM's Fruity Dyno-Bites over Post's Fruity Pebbles, the National Advertising Division (NAD) responded with a heaping helping of reminders about the substantiation requirements for taste preference tests, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog.

When substantiating preference claims with taste tests, the authors write, the best way to avoid heartburn is to keep geographic diversity, the product's target audience, and the ASTM Standard Guide for Sensory Claim Substantiation in mind when developing and conducting the tests.

[Read the full blog post for tips on serving up fully substantiated preference claims.](#)

[Read NAD's press release about the MOM decision.](#)

FDA's New Regs May Require More Information Than Consumers Really Want

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Honors and Awards

Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2012 and 2014



Top ranked in *Chambers USA* 2014



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

Just in time for the nation's holiday caloric glut, the Food And Drug Administration (FDA) finalized two new rules that require chain restaurants, similar food establishments, and vending machine operators with 20 or more locations to list caloric information for food items on their menus, write Venable attorneys **Ralph S. Tyler**, **Heili Kim**, and **Matthew S. Poliner** in a recent post to Venable's advertising law blog.

The new rules are required by the Affordable Care Act and are premised on the belief that consumers will make healthier food choices if they know how many calories food items contain. In the blog post, the authors outline the rules requirements, including what types of establishments and food are, and are not, subject to the new rules, which take effect in December 2015 for restaurants and December 2016 for vending machines.

[Read the blog post to get the skinny on the new rules.](#)

Follow these links to read the text of the FDA's new rules for [food establishments](#) and [vending machines](#).

California Gives Minors a Digital Privacy Do Over

Kids say the darndest things, write Venable attorney **Randal M. Shaheen** and **Laura Arredondo-Santisteban** in a recent post to Venable's advertising law blog, and a new California law is intended to ensure those comments – the online ones, at least – don't follow minors for the rest of their lives.

In January 2015, California law SB 568, "Privacy Rights for California Minors in the Digital World," will go into effect, allowing minors to remove certain posted online content as well as restricting certain types of online advertising directed to minors. Section 22581 of SB 568 requires website and mobile app operators to permit minors to remove or request removal of content or information posted on the operator's website by the minor.

The California law defines "minor" to include anyone under 18, a significant departure from the Children's Online Privacy Protection Act (COPPA) and other federal privacy legislation, whose protections apply only to children under the age of 13.

Read the full blog post to [learn more about SB 568 and the implications of its requirements.](#)

[Read the full text of SB 568 here.](#)

Ninth Circuit Provides Guidance on Terms of Use Enforceability

In a recent client alert, Venable attorneys **Armand J. (A.J.) Zottola** and **Robert F. Parr** write that brands should pay close attention to a Ninth Circuit Court of Appeals decision that reinforces online contract formation principles and provides helpful guidance to companies of all sizes that use websites and/or mobile applications to promote their businesses and connect with customers.

The case, *Nguyen v. Barnes & Noble Inc.*, addressed the enforceability of terms of use posted on websites when those terms are merely notices that consumers are not required to accept through an affirmative act, such as checking an "I agree" box.

The authors write that, among other things, this decision demonstrated that drafting properly customized terms of use for a particular website is only half the battle. All terms of use must be presented and implemented in a manner that would make them enforceable. In addition, Zottola and Parr write, brands should be especially cautious when considering how to implement online agreements on mobile applications.

Read the client alert to [learn how the Nguyen decision may affect your business.](#)

[Read the Court's Opinion in *Nguyen v. Barnes & Noble Inc.*](#)

Upcoming Events

["Maximize Your Business Performance – Intellectual Property Strategies for Online Lead Generators](#)

and Marketing Services," a LeadsCouncil Webinar

December 17, 2014 | 2:00 p.m. ET

Strategic management of IP enhances business performance and provides businesses with distinct competitive advantages in the marketplace. Many online lead generators, however, fail to effectively manage or even use their IP rights to achieve and support their business objectives. This webinar with Venable attorneys **Jonathan L. Pompan**, **Justin E. Pierce**, and **Kristina Montanaro Schrader** will cover the basics of how IP rights such as patents, trademarks, copyrights, and trade secrets apply to the business of online lead generation, and how online lead generators can better use intellectual property to maximize their business performance.

[Click here for more information about the event.](#)

"Perfecting the Charitable Promotion: Legal, Financial and Practical Considerations for Commercial Co-Ventures" at the GWSCPA 2014 Nonprofit Finance and Accounting Symposium – Washington, DC

December 18, 2014 | 9:10 – 10:25 a.m. ET

In this program, you will hear from three professionals, including Venable attorney **Kristalyn J. Loson**, who are well versed in the related areas of promotions and charitable fundraising. They will explain the myriad legal and regulatory issues involved, as well as the latest developments in promotional campaigns. By attending this program, nonprofits will get a better understanding of the state regulatory requirements, general advertising concerns, and relevant federal tax issues they need to navigate in order to tap into the power of promotional campaigns.

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

The Canadian Institute's 21st Annual Advertising & Marketing Law Program – Toronto, ON

January 26-27, 2015

Giving great advice means recognizing, anticipating, and reacting to the latest developments. Equip yourself to do just that at The Canadian Institute's 21st Annual Advertising & Marketing Law program. Stay current in this dynamic field with practical, in-depth, and innovative strategies and solutions from practice leaders, industry experts, and key regulators. Venable partner **Amy Ralph Mudge** will discuss third-party liability, native advertising, and the rise of class actions in Canada during her presentation "Emerging Issues to Watch" at 1:30 p.m. on January 27.

Click here to [learn more about the conference and register](#). Use the code **265SAME** when registering to save \$200.

Electronic Retailing Association's Great Ideas Summit – Miami, FL

January 26-28, 2014

Join Venable at ERA's Great Ideas Summit, the conference that brings together the direct response industry's most influential leaders to hold high-powered meetings and exchange ideas. Join Venable partner **Amy Ralph Mudge** for an in-depth discussion of current FTC and state AG enforcement priorities, as well as how the coming changes in Washington will affect the direct response industry.

Click here to [learn more about the conference and 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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