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Honors and Awards

Law Firm of the Year, National

Analysis:

NAD Follows FTC's Lead, Weighs in on Paid Search Ad Claims

You might as well call January "search engine marketing month," write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to Venable's advertising law blog. First, it was the Federal Trade Commission (FTC) and now the National Advertising Division (NAD) of the Council of Better Business Bureaus has also weighed in with a case of first impression over use of ad copy in paid search results.

The upshot of the NAD decision, write Mudge and Shaheen, is that the self-regulatory body has made it clear that it believes that the material terms of an offer promoted in a sponsored search box likely must include all material terms, and clicking to find the details may not suffice. As with banner ads, they write, advertisers should take a hard look at whether their message really is amenable for use in the small real estate of a sponsored search box.

Read the blog post to [learn more about the NAD's decision](#).

Claiming a Product "May Help" Not Likely to Help With NAD

Almost all advertising lawyers struggle with finding the level of clarity and specificity that is most appropriate for a specific claim, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to Venable's advertising law blog. Naming a competitor in a superiority claim can incite a challenge, but a more vague statement of general superiority can force you to substantiate your claim with respect to a significant majority of the market. And choosing the right course can be even more difficult when it comes to health claims.

Unfortunately, Mudge and Shaheen write, a recent NAD case involving dietary supplements shows that employing "wiggle room" language such as "may help" or "can help" is unlikely to reduce a marketer's substantiation burden, at least at the NAD. While it can be appropriate to add "may" to health claims if testing and support show that the product has been shown effective for some but not all users, similar words cannot be used to mean "the product might work, but no promises and we really aren't even sure."

Read the blog post to [learn why NAD doesn't plan to let marketers wiggle out of substantiating performance claims](#).

Commerce and Treasury Move Quickly on New Cuba Rules

On January 16, the Department of Commerce's Bureau of Industry and Security (BIS) and the Department of the Treasury's Office of Foreign Assets Control (OFAC) put into effect their Final Rules officially altering the 1960 U.S. embargo against Cuba. These Rules signify government-wide implementation of the historic

Advertising, *U.S. News and World Report*, 2012 and 2014



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policy changes announced by President Obama on December 17, 2014, write Venable attorneys [Ashley W. Craig](#), [Lindsay B. Meyer](#), and [Carrie A. Kroll](#) in a recent client alert.

The changes to OFAC's Cuban Assets Control Regulations and BIS' Export Administration Regulations will result in changes to regulations administered by the Departments of State, Transportation, and Homeland Security. Although the updated regulations do not wipe out the embargo, they liberalize former policies, are the most significant changes to American policy towards the island nation in decades, and, the authors write, likely will signal the opening for U.S. business interests in Cuba.

Read the client alert to [learn how the amendments will affect the ability of financial services, travel, insurance, trade and shipping, telecommunications, and transportation companies to do business in Cuba.](#)

Upcoming Events:

[Changing the Research Paradigm for Nutrients: An Alternative to RCTs](#)

January 23, 2015 | 2:00 – 3:00 p.m. ET

On January 23, Venable LLP, Organic & Natural Health Association, and GrassrootsHealth will present a complimentary live webinar titled "Changing the Research Paradigm for Nutrients: An Alternative to RCTs" at 2:00 p.m. ET. The webinar will discuss how population-based nutrient research will create a paradigm shift to significantly affect the legal definition of "competent and reliable scientific evidence." Venable partner [Todd A. Harrison](#) will speak on the panel.

[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, 2015

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 during her presentation "Advocacy Update – FTC, ERSP and More" at 10:45 a.m. ET on January 28.

[Click here to learn more about the conference and register.](#) Use the code **INVTCD15** when registering to save \$100.

["Legal Issues in Running Social Media and Mobile Sweepstakes and Contests," a Lorman Webinar](#)

February 12, 2015 | 1:00 - 2:30 p.m. ET

As consumers shift more of their time and attention from traditional forms of media to social and mobile media, marketers are devoting more resources to reaching eyes and ears through new media. And while there's nothing new about prize promotions such as sweepstakes and contests, merging such promotions with social and mobile media can be a particularly efficient and effective way of engaging consumers. Venable partner [Melissa Landau Steinman](#) will present a webinar on the ever-evolving laws and regulations governing prize promotions. She will also discuss how conducting a prize promotion through

new media can raise a host of – sometimes unanticipated – legal issues.
For more information and to register, please [visit the Lorman website](#).

Digital Entertainment World – Los Angeles, CA
February 10 - 12

Venable LLP is pleased to sponsor Digital Entertainment World (DEW). DEW is the hub for those in the business of creating and monetizing digital entertainment content. Venable partner **Po Yi** will moderate a panel titled "The Role of Brands in Creating Effective, Impactful & Monetizable Digital Content" on February 11 from 11:35 a.m. - 12:15 p.m. PT, and Venable partner **Brett Garner** will speak on the panel "The Artist and Technology" on February 11, from 5:15 - 5:55 p.m. PT.

[Follow this link to view the DEW agenda and register for the conference.](#)

[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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