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Announcement:

Venable Expands Market-Leading Advertising Law Practice with Addition of Daniel Blynn

On February 11, Venable announced that experienced advertising and consumer class action attorney Daniel S. Blynn has joined the firm's Advertising, Marketing and New Media practice.

Mr. Blynn has a longtime practice focusing on litigation stemming from false advertising and other consumer claims. He has handled numerous private consumer actions, as well as regulatory and enforcement proceedings brought by the Federal Trade Commission (FTC) and state attorneys general, including cases involving the FTC Act, Lanham Act and state consumer protection laws.

He also advises clients on such issues as advertising substantiation, native advertising and federal and state telemarketing laws and regulations.

[Read the full press release here.](#)

[View Blynn's biography here.](#)

Analysis:

\$1.7MM Verdict Shows Beasties Can't, Won't & Don't Stop Defending IP Rights

Launching an advertisement, production, or publication without obtaining the necessary third-party intellectual property rights can have costly consequences, writes Venable attorney [Linda J. Zirkelbach](#) in a recent post to Venable's advertising law blog. If you want proof, look no farther than a jury's recent awarded of \$1.7 million to the Beastie Boys and related plaintiffs in a lawsuit alleging Monster Energy used Beastie Boys music and referred to the group in a promotional video without securing proper permission from the group.

Next up, the Beastie Boys are now seeking an additional \$2.4 million in attorneys' fees and costs after the court found that the jury had sufficient circumstantial evidence to find Monster Energy's infringement to be "willful" and therefore award more significant damages under the Copyright Act. In addition, Capitol Records, LLC, and Universal-Polygram International Publishing, Inc., have now sued Monster Energy in a related case.

Read the blog post to [learn why the often-difficult practice of rights clearances can be a walk in the park compared to dealing with allegations of infringement.](#)

Some Waivers Are Really Too Good To Be True

In every contract parties try to limit their liability, writes Venable partner [Joshua J. Kaufman](#) in a recent post to Venable's advertising law blog. As a result, drafters often include very broad limitations of liability.

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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

This, he writes, is an effective strategy until the limitations on liability become so broad that they go against public policy and state statutes.

That is exactly what happened when a California Court of Appeals ruled in a recent case involving a cast member of "The Real Housewives of Orange County" that one cannot waive liability for intentional torts.

The trick, according to Kaufman, is to limit as much liability as possible while ensuring the agreement remains within the parameters of the law and enforceable.

Read Kaufman's blog post to [learn more about strategies for creating broad liability waivers that will remain enforceable](#).

ROSCA Enforcement Roars to Life

The Restore Online Shoppers' Confidence Act (ROSCA) was passed into law in 2010, and then, not much happened, write Venable attorneys [Jeffrey D. Knowles](#), [Leonard L. Gordon](#) and [Shahin O. Rothermel](#) in the January issue of *Response Magazine*. Until the fall of 2014, that is.

Almost four years after the passage of ROSCA, the Federal Trade Commission (FTC) brought its first case alleging ROSCA violations. Then it announced another and another — all within the span of a month. That was followed by the appointment of an FTC staffer to oversee all of the Commission's ROSCA cases, a good sign that these initial ROSCA cases will not be the FTC's last.

Read the *Response* article to [learn the ins and outs of ROSCA and what marketers need to do to mitigate the risk of continuity and other marketing programs](#).

Paid Search Terms: Another Shovel to Bury You With?

Most advertisers know that making advertising claims about weight loss and "body shaping" products without the scientific evidence to substantiate those claims is risky business, writes Venable partner [Gregory J. Sater](#) in the February edition of the *DRMA Voice*. However, many marketers may not realize that the FTC is increasingly looking at whether the paid search terms used by marketers to promote products also meet the substantiation sniff test.

Sater points to the FTC's January settlement with Nourish Life LLC, which specifically called out the marketer's practice of buying the paid search terms "autism treatment," "speech delay treatment," "verbal apraxia treatment" and other such terms to promote a dietary supplement it claimed would promote speech development in children. He also notes that the FTC took a similar approach four years ago in the Biersdorf case.

Sater writes that in both the Nourish Life and Biersdorf cases, the paid search terms were just one aspect of advertising campaigns that the FTC alleged were broadly deceptive. However, he writes, in future cases the FTC is, at a minimum, likely to use paid search term purchases to interpret the implied meaning and "net impression" of marketers' advertising claims.

[Read the article to learn more about this evolving frontier in FTC litigation.](#)

Upcoming Events:

FDLI Food Week 2015 – Washington, DC
February 24-25

Venable attorney [Heili Kim](#) will present "Marketing Trends – How America's Food Choices are Changing" on February 24 from 9:00 a.m. - 9:45a.m. at the FDLI Food Week 2015 Conference. Food Week 2015 is a unique combination of two advanced conferences addressing the latest emerging issues in food regulation. The agenda on February 23 will focus on the topic of food safety and globalization. The agenda on February 24 will center on food advertising, labeling, and litigation – with panels highlighting class action litigation, claim substantiation, and marketing trends.

[Follow this link to view the Food Week 2015 agenda and register for the event.](#) Use promo code **FOOD15** to take advantage of an exclusive 15% discount.

2015 Grocery Manufacturers Association Litigation Conference – Fort Myers, FL

February 24-26

Venable partner **Angel Garganta** will lead "'All Natural' and other Industry Class Action Litigation: Year in Review" on Wednesday, February 25 from 9:10 to 10:00 a.m. ET. This session will review recent developments in class action litigation against the food and beverage manufacturers, including updates on "all natural" claims and new litigation aimed at private labels products.

For more information and to register, please [visit the GMA Litigation Conference website](#).

[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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