VENABLE LLP

advertising and marketing

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News:

Angel Garganta Discusses Slack Fill in *WSJ*

Venable partner **Angel A. Garganta** was quoted in a June 11, 2015 *Wall Street Journal* story on laws and regulations governing slack fill, the practice of putting less product in a package than what is perceived. Some consumer product makers have used the process for years. Federal regulations allow the practice under several circumstances, including protecting products during shipping, unavoidable settling of contents, and the limitations of machines used to close packing.

According to Garganta, states have wide leeway to increase empty space in packing. California, for example, allows more "safe harbors" that companies can use to justify larger packaging.

Read the *Wall Street Journal* slack fill story (registration may be required).

Analysis:

Bamboo Claims Have FTC Ravin' About Rayon

Just about everyone agrees that bamboo textiles sound much more attractive than similar items made of rayon, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to the firm's advertising law blog. At one level, it's understandable when some marketers advertise rayon textiles as "bamboo," because the heavily processed plant matter used to make the textile was originally from a bamboo plant.

However, the problem with the practice, write Mudge and Shaheen, is that the Textile Fiber Products Identification Act, which is enforced by the FTC, has established generic names for manufactured fibers that must be used in labeling and advertising. While "rayon" and "viscose" are on the list, "bamboo" definitely is not.

While the FTC has said it won't quibble with terms like "rayon from bamboo," the Commission takes stand-alone bamboo claims seriously, suing several companies for such claims and sending dozens of warning letters to others over the past several years. And some signs indicate the FTC may be preparing to administer another wave of canings to companies using the popular, but prohibited, bamboo claim.

Read the full blog post to **learn more about the pitfalls of bamboo claims**.

Read the full Textile Fiber Products Identification Act.

FTC Brings the Doom to Deceptive Crowdfunding

It doesn't take much surfing around Kickstarter or other crowdfunding sites to find a previously funded project with a long stream of comments from disgruntled backers who never received their promised rewards. Last week, the FTC brought a smile to the face of many a stiffed backer, write Venable attorneys **Melissa Landau Steinman** and **Laura Arredondo-Santisteban** in a post to the firm's advertising

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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* 2015

Top-Tier Firm *Legal 500*

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law blog. That is because the Commission announced that it used Section 5 of the FTC Act to take action against Forking Path, Co. and Erik Chevalier, creator of one of the most notorious failed Kickstarter projects, a board game titled "**The Doom that Came to Atlantic City.**"

According to the FTC, the case was brought as part of the Commission's FinTech project, which seeks to protect consumers seeking to take advantage of new technologies. This may be the first FTC crowdfunding case, but the states have been very active in the area. At least 22 states have enacted rules regulating crowdfunding. In addition, the Securities and Exchange Commission announced this March the adoption of final rules to facilitate smaller companies' access to capital and regulate certain types of crowdfunding projects involving stock and equity investments.

Read the full blog post to **learn more about the FTC's crowdfunding enforcement**.

Read the FTC's press release here.

Read this recent *New York Times* article to learn more about state regulation of crowdfunding.

Use Your Head to Minimize Dress Code Liability Risk

On June 1, 2015, the U.S. Supreme Court ruled that an employer's dress code prohibiting all headwear is not necessarily a defense against liability under Title VII of the Civil Rights Act of 1964 in cases where the employer suspects, without confirmation from the applicant, that the applicant wears a head scarf for religious reasons. Six days later, the *New York Times* published "A Muslim Lawyer Refuses to Choose Between a Career and a Head Scarf" in its feature, "The Working Life."

In a recent client alert Venable attorneys **Douglas B. Mishkin** and **Nicholas M. Reiter** write that employers would do well to understand the Court's ruling and consider the issues raised by the *Times* article. Learning what the law requires is essential to minimizing the risk of legal liability. Understanding the person behind the religious garment or practice is the key to making diversity work for your organization and its personnel.

Read the client alert to **learn more about the ruling, the column, and best practices for employers when faith and dress code cross paths**.

Read the Supreme Court decision here.

Read the *New York Times* piece here.

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