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In This Issue

Honors and Awards

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

Analysis:

NAD Decides It's Okay to be F***ing Great

In advertising, the line between acceptable humor/puffery and false disparagement of a competitor can be razor-thin. And this is just the question the National Advertising Division of the Council of Better Business Bureaus (NAD) addressed in a recent challenge to **advertising by Dollar Shave Club (DSC)**, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent blog post.

In a decision that Mudge and Shaheen call quite possibly NAD's finest hour, the self-regulatory body held that calling a product "f***ing great" is "merely puffery." In the decision, the partners write, NAD tried to draw the line by looking at whether the superlative is used in a way that suggests it is better "in some recognizable or measurable way."

NAD found that the very detailed way in which DSC's ads discussed the price difference between its own and a competitor's product made it clear that DSC's razors did not have all of the benefits of pricier razors. However, the ads questioned whether men need the added bells and whistles to get a good shave.

Read the blog post to learn why NAD found DSC's claims to be puffery and how the company's proactive disclosures about shipping and handling costs cut off other potential trouble at the pass.

Read NAD's announcement about the Dollar Shave Club decision here.

FTC Action Changes Free-Trial Disclosure Standards

Risk-free trials, writes Venable partner **Gregory J. Sater** in the July edition of the *DRMA Voice*, are rarely risk-free for marketers. To illustrate this point, he mentions the FTC's recent case against an online marketer of anti-aging skin care products that could signal the start of a government crackdown on marketers who offer online risk-free trials without making very detailed, very clear, and very conspicuous disclosures up front—of all the material terms and conditions that apply.

Sater writes that the FTC latched onto the idea that the marketer's disclosures, even if visible, failed to articulate the material terms of the offer. Because of this, he writes, it is a good time for marketers offering free trials to review their pre-enrollment disclosures, the fairness of their terms and conditions, and their back-end customer service practices, before the FTC does.

Read the *DRMA Voice* column to learn how the FTC's recent action sets a new standard for online disclosures.

Read the FTC's press release and complaint here.

NAD Scrubs Beauty Product Claims

In advertising law circles, it is a widely held opinion that beauty industry competitors do not challenge one another sufficiently before the NAD. Because of that lack of engagement, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to the firm's advertising law blog, NAD brings more monitoring challenges to beauty product advertising than it does for many other industries.

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However, they write, after NAD's far-reaching ruling in a recent challenge brought by Unilever against a competitor, the stage may be set for an increase in competitor challenges in the beauty industry. And if NAD's decisions about product labeling and "free of" claims in the recent challenge are any indication, advertisers on the receiving end of these proceedings might not find them "cruelty free."

Read the blog post to learn how NAD's decision may change advertising claims in the beauty industry and beyond.

Read NAD's press release about the decision here.

Fourth Circuit Decision a Tough Pill to Swallow for Supplement Plaintiffs

On June 19, the U.S. Court of Appeals for the Fourth Circuit handed down its decision in a multidistrict false advertising class action litigation. The result, writes Venable attorney **Daniel S. Blynn** in a recent blog post, was a significant victory for the defendants and for dietary supplement marketers nationwide.

The Court's decision made clear that in order for a false advertising case to proceed beyond the dismissal stage, the complaint must allege that there is not a single qualified expert who would opine that the challenged representation is truthful. The ruling, Blynn writes, should prove a useful tool for any dietary supplement manufacturer that finds itself defending against class action allegations of unfair, deceptive, or misleading advertising or marketing.

Read Blynn's blog post to learn how and why the decision changes the class action defense game for dietary supplement marketers.

Read the Court's decision here.

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