

Advertising Law

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Manatt Honored by The Association of Media & Entertainment Counsel as Law Firm of the Year

Manatt, Phelps & Phillips has been named the recipient of the Association of Media & Entertainment Counsel's (AMEC's) 2011 Law Firm of the Year Award. AMEC, the leading trade association serving general counsel and business affairs attorneys at major media and entertainment companies, will honor Manatt at a gala luncheon in Los Angeles on January 13, 2012.

AMEC's annual Counsel of the Year Awards were created seven years ago to honor excellence among in-house counsel and business affairs executives at major media and entertainment companies. In 2007, the association expanded its awards to include the recognition of law firms excelling in the entertainment practice.

For more information about AMEC, click [here](#).

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Sen. Rockefeller Targets Online Tracking for Hearing

Sen. Jay Rockefeller (D-W.V.) recently announced that he plans to hold a hearing and invite Facebook and other technology companies to testify about their use of consumers' "personal information."

Sen. Rockefeller's interest was piqued by a *USA Today* article that reiterated concerns about Facebook's ability to track users even after they log out of the social network, or when they visit other sites using the "like" button or other plug-ins.

"The *USA Today* story is disturbing. No company should track consumers without their knowledge or consent, especially a company with 800 million users and a trove of unique personal data on its users," Sen. Rockefeller said in a statement. "If Facebook or any other company is falsely leading people to believe that they can log out of the site and not be tracked, that is alarming. I take a hard line on protecting consumer privacy and intend to have a hearing on this subject where we will invite Facebook and others to explain how they

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Upcoming Events

December 12, 2011

FDLI Dietary Ingredient Regulation and Compliance Workshop

Topic: "Determining Whether a New Dietary Ingredient Notification is Necessary"

Speaker: [Ivan Wasserman](#)
Washington, D.C.

[For more information](#)

January 24-25, 2012

ACI's 25th National Advanced Forum on Advertising Law

Topic: "Capitalizing on the Mobile Marketing Message While Reducing Exposure to New and Unpredictable Liabilities"

Speaker: [Linda Goldstein](#)
New York, NY

[For more information](#)

Awards



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are using personal information.”

Facebook has denied that it uses cookies to track users after they log out.

“When someone logs off of Facebook, we delete certain cookies and reduce the amount of information we receive when the person visits websites that contain social plug-ins such as the ‘like’ button,” a Facebook spokesperson said in a statement. “We have made these practices clear in our Privacy Policy and Help Center since the launch of social plug-ins. We appreciate Sen. Rockefeller’s interest in protecting consumer privacy and look forward to discussing this with him.”

To read the *USA Today* story, click [here](#).

To read Sen. Rockefeller’s statement, click [here](#).

Why it matters: Sen. Rockefeller, Chair of the Senate Committee on Commerce, Science and Transportation, has made privacy issues a priority. In addition to his plans for an upcoming hearing, he introduced the [Do Not Track Online Act of 2011](#) to the Senate in May. The bill would create a federal registry of consumers who choose not to have information about their online activities collected.

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FTC Extends Deadline for COPPA Comments

The Federal Trade Commission has extended the deadline by three weeks for making comments on the agency’s proposed amendments to the Children’s Online Privacy Protection Act.

The extension was prompted by “popular demand” and the nature and complexity of the questions and issues raised by the proposed amendments, the agency said.

In September the agency announced [proposed revisions to the COPPA Rule](#), the first major changes since it was issued in 2000.

The revisions cover five areas of the Rule: definitions, parental notice, parental consent mechanisms, confidentiality and security of children’s personal information, and safe harbor programs.

The FTC had set Nov. 28 as the original deadline for comments. The new date is Dec. 23.

The vote for the extension was unanimous.

Why it matters: COPPA remains a priority for the FTC as well as lawmakers, who have [expressed support](#) for the proposed changes. In addition to the revisions, the FTC has lately pursued a number of civil actions pursuant to the COPPA Rule, including a [recent settlement](#) with a social networking site promoting itself as “Facebook for kids,” after the agency alleged the site illegally collected personal information from children under age 13.

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Pope Doesn’t Like Benetton’s “Unhate” Ad Campaign

Clothing company Benetton may be facing legal action as a result of its latest ad campaign.

The company launched a global print campaign, "Unhate," which features photographic images showing religious and political leaders kissing on the mouth in pairs, like President Barack Obama and Chinese leader Hu Jintao; Pope Benedict XVI and Ahmed Mohamed el-Tayeb, the head of a Cairo mosque; and Israeli Prime Minister Benjamin Netanyahu and Palestinian President Mahmoud Abbas.

Although some publications rejected the ads, versions are set to run in *Newsweek*, *The Economist*, and periodicals in France and Germany. The campaign, which the company says is "a metaphor for promoting tolerance between people from different walks of life," also includes a Web site and other social media, like a "kiss wall" on Facebook where consumers can upload their own kissing photographs.

But within hours of the launch, the Vatican requested that the image of the Pope be removed, saying it planned to take legal action to prevent further distribution of the image.

"This is a grave lack of respect for the Pope, an offence against the sentiments of the faithful and a clear example of how advertising can violate elementary rules of respect for people in order to attract attention through provocation," Rev. Federico Lombardi, a Vatican spokesperson, said in a statement, adding that the manipulation of the Pontiff's likeness was "unacceptable."

A spokesperson for the Imam's Al-Azhar Institute agreed, calling the ad "irresponsible and absurd" in a statement to the French news agency AFP.

Benetton responded by removing the ad featuring the Imam-Pope kiss and issuing an apology. "We reiterate that the meaning of this campaign is exclusively to combat the culture of hatred in all its forms," a spokesperson said. "We are therefore sorry that the use of the image of the Pope and the Imam has so offended the sentiments of the faithful. In corroboration of our intentions, we have decided, with immediate effect, to withdraw this image from every publication."

To view the images in the campaign – with the exception of the Pope-Imam kiss – click [here](#).

Why it matters: The clothing company is not a stranger to controversy, having previously run ad campaigns featuring a nun kissing a priest, patients dying of AIDS, and inmates on death row. The legality of the company's current campaign and the use of the images of well-known figures are questionable, although Benetton spokesperson Luca Biondolillo told *USA Today* that the campaign is not intended for commercial purposes. "This is not a product advertising campaign. It makes no reference to our products," he said. But in addition to the Vatican protest, a White House spokesperson said that it "has a long-standing policy of disapproving the use of the president's name and image for commercial purposes."

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NAD Reviews Biodegradability Claims

The National Advertising Division recommended that Ecologic, the maker of a product intended to improve the biodegradability

of plastic goods, modify certain environmental claims made in its advertising.

The Eco-One additive “enhances the biodegradability of plastic products in biologically active landfills,” the advertiser claimed, and “Products made with Eco-One are scientifically proven and have been analyzed by independent tests, each one validating Eco-One claims.”

While the technical evidence relied upon by the advertiser indicated that biodegradation under certain controlled conditions was meaningful, plastic products are typically disposed of in landfills that do not meet the controlled conditions of testing, the NAD said.

The testing methodology at issue “was meant to simulate conditions in anaerobic digesters in very specific conditions, not landfill conditions,” the NAD noted. Because the testing mimics a rare disposal environment, both the Federal Trade Commission’s Green Guides and the NAD have previously recognized that it cannot provide the basis for biodegradability claims.

The NAD said it appreciated Ecologic’s argument that an increasing number of “biologically active” landfills with anaerobic conditions similar to those in the testing methodology exist in the United States, but said the evidence in the record failed to justify a departure from its and the FTC’s long-standing position that the testing methodology must resemble landfill environments in order to support biodegradability claims.

Ecologic should “modify its claim to make clear that any claim to ‘enhance biodegradation’ is qualified by denoting in the main claim (not by disclosure) that the testing utilized optimized, high-solids anaerobic-digestion conditions which are not present in the vast majority of landfills in the United States today,” the NAD said.

Ecologic pointed to the [FTC’s proposed revisions to the Green Guides](#), which it argued allows for claims of biodegradation when the advertised product degrades in the manner expected by consumers. To that end, Ecologic commissioned an independent, third-party survey, which it said “demonstrate[s] that Eco-One-treated products will biodegrade in precisely the manner expected by consumers.” Because the advertiser didn’t claim that Eco-One resulted in 100% degradation, but “enhances” degradation, it argued that its claim was adequately supported. The survey results showed that of more than 2,000 adult U.S. consumers, 93% said that it was permissible to label a package “biodegradable” if that package would ultimately decompose in a landfill environment.

However, the NAD said that the survey evidence was insufficient support without conducting tests that measure biodegradability in a representative landfill environment.

Other claims – such as “Eco-One is 100% organic and non-starch-based” and “Eco-One is accepted by major national brands” – had sufficient support and were substantiated, the NAD said.

To read the NAD’s press release about the decision, click [here](#).

Why it matters: The NAD noted in its decision that biodegradability claims are “scrutinized carefully,” and relied upon the FTC’s Green

Guides to help determine that Ecologic's claims should be qualified. Marketers making environmental claims should be careful to substantiate their advertising in light of enhanced scrutiny from regulators, the forthcoming revised Green Guides, and an increasing number of consumer suits alleging [false advertising over green claims](#).

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FTC Sues Over "Assistance and Support" for Telemarketing Violations

The Federal Trade Commission filed suit against Sonkei Communications alleging that the company violated the Telemarketing and Consumer Fraud and Abuse Prevention Act and the Federal Trade Commission Act by providing substantial assistance and support to companies employing deceptive telemarketing practices.

According to the agency, Sonkei provided services to telemarketers who offered credit card services, home security systems, and grant procurement programs.

Sonkei altered the name of the calling party on the recipient's caller ID, the agency said, and was aware that its clients made telemarketing calls that did not name the telemarketer making the call or the seller on whose behalf the call was made.

Instead of the caller's true identity, when a Sonkei client made a robocall, a recipient's caller ID would display "SERVICE MESSAGE" or "SERVICE ANNOUNCEMENT," the FTC said.

The illegal phone calls have been going on since at least 2008 and have resulted in tens of thousands of complaints, according to the FTC complaint, which also named Peter J. Turpel and Joseph Turpel, the company's officers and co-owners.

"Defendants were aware or consciously avoided knowing that their clients made telemarketing calls that transmitted or caused to be transmitted caller names that did not name the telemarketer initiating the call or the seller on whose behalf the telemarketing call was made," according to the complaint. Further, the defendants "were aware or consciously avoided knowing that their telemarketing clients called consumers' telephone numbers on the National Do Not Call Registry."

The Department of Justice filed the complaint on behalf of the FTC in California federal court. In addition to monetary civil penalties – up to \$11,000 for each violation of the Telemarketing Sales Rule prior to Feb. 9, 2009, and \$16,000 per violation after that date – the complaint seeks permanent injunctive relief against the defendants.

To read the complaint in *U.S. v. Sonkei Communications*, click [here](#).

Why it matters: The agency said the civil action was "part of its ongoing efforts to crack down on illegal pre-recorded robocalls." Under the FTC's Telemarketing Sales Rule, it is illegal for an entity to provide "substantial assistance or support" to any seller or telemarketer when that entity "knows or consciously avoids knowing" that the seller or telemarketer is engaged in a violation of the Rule.

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