



August 1, 2013

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Honors and Awards

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Analysis

Sorry, Charlie: Taylor Swift Contest Makes Case for Solid Promotion Rules

Last week, a radio station in Boston made headlines when it canceled its “Taylor Swift’s Biggest Fan” contest. A 39-year-old man named Charles, bolstered by votes from users of the social media sites 4Chan and Reddit, had taken the lead in the contest and was set to win tickets to one of Swift’s concerts and a backstage meet-and-greet with the 23-year-old pop star.

The reason for the cancellation of the contest was not Charles’s age, or the creepiness of the pleas to vote for him, but because some contestants employed spam-bots to drive votes and rig the results. The contest’s official rules contained language allowing the sponsor to terminate the contest and rescind any prize if the rules or integrity of the contest have been violated or compromised.

The cancellation of the Taylor Swift contest is a perfect illustration of why having a solid set of official rules in place is critical before a contest launches, writes Venable attorney **Maura A. Marcheski** in a recent post to Venable’s advertising law blog.

[Click here](#) to read the full text of Marcheski’s post on Venable’s advertising law blog, www.allaboutadvertisinglaw.com.

The Devil is in the Details for Number 1 Claims

The National Advertising Division of the Council of Better Business Bureaus (NAD) has a history of closely scrutinizing so-called #1 claims to ensure consumers receive complete and accurate information, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen**, and former Venable summer associate Kristen Cobb* in a recent post to Venable’s advertising law blog, www.allaboutadvertisinglaw.com.

In NAD’s view, such claims are not puffery. Instead, the claims convey the message that a product is the bestselling brand in the United States, unless other appropriately qualifying information is provided. The authors write that NAD expects #1 claims to be substantiated by market data, sales information, and/or consumer perception data. In addition, the advertising self-regulatory body requires that #1 claims include clear and conspicuous disclosures that inform consumers of the nature and scope of the data supporting the claim.

In their blog post, the authors analyze NAD’s recent decision regarding claims for Laura Mercier’s “Tinted Moisturizer.” In this matter, the marketer’s claim was supported by reliable data, but undone by the language used to define the market space. According to Mudge, Shaheen, and Cobb, this case demonstrates that even a seemingly simple advertising claim can be fraught with regulatory peril.

[Click here](#) to read the full blog post by Mudge, Shaheen, and Cobb and learn more about NAD’s standards for substantiating so-called #1 claims.

* Cobb was a Venable summer associate and is not admitted to practice law.



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011-2012



Top-Tier Firm *Legal 500*

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Can Website Disclaimers Stop Declaratory Judgment Suits?

Fresh off its Supreme Court win in May, Monsanto notched another appellate victory in a case relating to its patents on "Roundup Ready" genetically modified seeds, writes Venable attorney [Martin L. Saad](#) in a recent edition of Venable's *IP Buzz* newsletter.

The appellate win defeated an attempt by a group of organic farmers to challenge Monsanto's patents in a declaratory judgment action, alleging that they feared being sued by Monsanto in the event that Roundup Ready seed inadvertently contaminates their crops. However, writes Saad, Monsanto had made repeated representations on its website and via its legal counsel before and during the litigation that it would not sue the plaintiffs.

On June 10, the Federal Circuit affirmed the lower court ruling, finding that the farmers could not establish a substantial risk that Monsanto would sue and, therefore, did not have standing.

The court's decision made repeated references to the statement on Monsanto's website that it would not sue farmers who inadvertently ended up with trace amounts of Monsanto seeds in their fields. Saad writes that while the court did not decide whether this statement alone would have been sufficient to avoid the farmers' declaratory judgment action, companies seeking to dodge such suits may be wise to consider a carefully crafted website disclaimer as a line of defense.

[Click here](#) to read Saad's full analysis of the case in the June issue of Venable's *IP Buzz*.

Nonbank Supervision, Substantive Rulemaking Dominate CFPB Agenda

In July, the Consumer Financial Protection Bureau (CFPB) unveiled the semi-annual update of its rulemaking agenda. In a recent client alert, Venable partner [Jonathan L. Pompan](#) provides analysis of the document and the agency's regulatory priorities.

Among CFPB's top priorities is the enlargement of its "larger participant" supervisory program for nonbanks. According to Pompan, that enlargement may include targeting consumer credit products and pre-paid cards marketed by nonbank entities. CFPB expects to make its next announcement on this topic in the form of a notice of proposed rulemaking on or before November 2013.

Pompan also writes that mortgage disclosures, debt collection, and payday/deposit advance lending are high on the CFPB's list, and that marketers should expect to see movement on each of those issues over the next six months.

[Click here](#) to read the full text of Pompan's piece and access a copy of the CFPB's full list of regulatory priorities.

Upcoming Events

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

August 6, 2013 1:00 p.m. - 2:30 p.m. EDT

Join Venable attorneys [Melissa L. Steinman](#) and [Mikhia E. Hawkins](#) for a live webinar sponsored by Lorman Education Services where they will provide an in-depth review of the legal issues relating to conducting prize promotions through social and mobile media.

[Click here](#) to learn more and register with a 20% discount.

[Council for Responsible Nutrition Workshop and Conference 2013 - Park City, UT](#)

September 18-21, 2013

The Council for Responsible Nutrition (CRN) is the leading trade association representing dietary supplement manufacturers and ingredient suppliers. During CRN's dietary supplements conference, Venable partner [Claudia Lewis](#) will join a panel to discuss "How Non-compliance with FDA Regulations Can Result in a Private Cause of Action for Consumers." Venable is also a proud sponsor of the invitation-only Board of Directors dinner.

[Click here](#) to learn more.

ERA D2C Convention 2013 - Las Vegas

September 24-26, 2013

Venable is a proud sponsor of the Electronic Retailing Association's D2C Convention. Please join our attorneys as they host the Pre-Moxie Awards reception, present two educational sessions, and honor Venable partner [Jeffrey D. Knowles](#) as the winner of the 2013 ERA Lifetime Achievement Award.

To obtain a discounted exhibitor hall pass that will allow you access to the expo as a Venable guest, [click here](#) and register using the **code EI320D26**.

[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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