

manatt October 21, 2008



IN THIS ISSUE

- Good News for Everyone – We'll See You In Chicago on November 20th at the 30th Annual PMA Law Conference
- "We Interrupt This Program. . . Is FCC's Product Placement & Integration Proposal Necessary And Legal?"
- San Francisco Bans Tobacco Sales in Drug Stores
- UK Puts a Cork in Sexy Champagne Ad
- CBS Gets an Eyeful of Citizen "News"
- Timberland Settles Text Spam Suit for \$7 Million
- NY State Sues Student Loan Firm Over Marketing Tactics

Good News for Everyone – We'll See You In Chicago on November 20th at the 30th Annual PMA Law Conference

Most of our clients and friends are aware that the PMA Law Conference is only a few weeks away. Linda Goldstein, chair of Manatt's Advertising, Marketing & Media Division, Kerrie Campbell, chair of the firm's Consumer Product Safety Group, and the entire Manatt team look forward to seeing you there.

Linda will lend her highly sought-after legal and marketing acumen to the program once again. Always informative and engaging, this year Linda will reveal everything you need to know to create successful and lawful sweepstakes, games, and contests and present solutions to the complex challenges in text messaging, fee-based skill contests, user-generated content, new hybrid models, and more.

The recently-enacted Consumer Product Safety Improvement Act means coming to grips with many new regulatory requirements and enforcement initiatives. Kerrie will help guide you through the complexities.

RECEIVE MANATT'S FRIEND-OF-THE-FIRM DISCOUNT
Register online at pmalink.org and save \$150 off the registration fee by using promotion code **SPR150**.

UPCOMING EVENTS

October 21, 2008
ACI: Sports Sponsorship Advertising and IP

Topic:
"When Retired Players Sue: From Coscarart v. Major League Baseball to Parrish v. NFLPA"

Ronald S. Katz

"Morality and an Agreement's Mortality--Taking Appropriate Measures to Avoid the Termination of an Endorsement Deal"

Linda Goldstein

The Carlton Hotel
New York, NY

[For more information](#)

...

October 22, 2008
D.C. Bar CLE Seminar

Topic:
"Copyright Law and Litigation"

Kenneth M. Kaufman

D.C. Bar Conference Center
Washington, D.C.

[For more information](#)

...

November 20-21, 2008
PMA's 30th Annual Promotion Marketing Law Conference

Topic:

[back to top](#)

"We Interrupt This Program. . . Is FCC's Product Placement & Integration Proposal Necessary And Legal?"

In June the Federal Communications Commission issued a Notice of Inquiry and Proposed Rule Making to solicit public comment as to whether its current sponsorship identification rules sufficiently address the escalating use of commercial messages in traditional television programming and proposed changes designed to make disclosures more obvious to the viewer. In the September 19, 2008, issue of *Legal Backgrounder*, published by the Washington Legal Foundation, authors Linda A. Goldstein and Kim S. Brown explain that the proposed changes, if adopted, will dramatically and negatively impact how producers of goods and services advertise their wares and will restrict their ability to creatively integrate their brands into television programs. Read more [here](#).

[back to top](#)

San Francisco Bans Tobacco Sales in Drug Stores

A San Francisco law banning tobacco sales in drug stores went into effect on October 1 after surviving efforts by Walgreens and Philip Morris to prevent it from taking effect.

Walgreens, a major pharmacy chain, sued in California state court to temporarily block the ban, contending that its stores would lose millions of dollars while its lawsuit seeking a permanent injunction was pending. Walgreens operates 52 stores in San Francisco and says it will lose \$9 million a year under the tobacco ban.

The court rejected Walgreens' motion, finding the retailer had "some very difficult hurdles to get over" because courts are required to give deference to legislative decisions as long as the laws are "reasonably related to a rational purpose."

San Francisco argued that the law is warranted because as a "health-promoting business," Walgreens' sale of tobacco products sends an implicit message that smoking is not harmful to your health.

Only pharmacies are subject to the ban. Walgreens contends that this distinction is unconstitutionally discriminatory, since the big-

"Navigating the Potholes: The Evolving Landscape for Sweepstakes, Games & Contests"

[Linda Goldstein](#)

Topic:

"Consumer Product Safety: Hear from the Regulators How the New Laws Affect Your Promotion"

[Kerrie L. Campbell](#)

Marriott Downtown
Magnificent Mile
Chicago, IL

[For more information](#)

...

**December 4-5, 2008
Film & Television Law**

Topic:

"Product and Music Placement, Branded Entertainment: Issues and Litigation"

[Linda Goldstein](#)

Topic:

"The Value of Fame: Understanding the Right of Publicity"

[Mark S. Lee](#)

Century Plaza Hyatt Regency
Los Angeles, CA

[For more information](#)

NEWSLETTER EDITORS

[Jeffrey S. Edelstein](#)

Partner

jedelstein@manatt.com

212.790.4533

[Linda A. Goldstein](#)

Partner

lgoldstein@manatt.com

212.790.4544

box and grocery store chains exempted from the law also have pharmacies that sell prescription drugs.

But the court appeared to be swayed by research showing that Walgreens derives a significantly higher percentage of its revenue from prescription drug sales than either Safeway or Costco, both of which are exempt. According to the city, in 2007, Walgreens reported that about 65 percent of its revenue came from prescription drugs, versus 7.5 percent for Safeway and 1.5 percent for Costco. The city says this gap provides a "rational basis" for limiting the tobacco ban to drug stores.

The law was signed by Mayor Gavin Newsom on August 7. A month later, on September 8, Walgreens sued on the grounds that the law violates the equal protection guarantees of the 14th Amendment.

According to Deputy City Attorney Vince Chhabria, San Francisco is the first city to implement such an ordinance.

Walgreens has said it will appeal. Tobacco giant Philip Morris also lost a bid to prevent the law from taking effect.

[back to top](#)

UK Puts a Cork in Sexy Champagne Ad

The UK's advertising watchdog has banned a print ad by Saile and Sabga Champagne for associating alcohol with seduction.

The ad, which ran in the in-flight magazine of Irish budget airline Ryanair, featured a woman wearing a bikini and stiletto heels pouring champagne onto the chest of a man wearing just shorts and lying between her widely spread legs.

The Advertising Standards Authority (ASA), which registered its own complaint, said the ad could be viewed as a metaphor for seduction, because the models were "scantily clad," arranged in a pose normally associated with intimacy, and shown in a "glamorous" setting.

A separate complaint that the ad depicted alcohol being handled irresponsibly was not upheld.

The ASA also banned a commercial for Young's Chip Shop Fillets. The watchdog said the ad exaggerated the product's nutritional

OUR PRACTICE

Whether you're a multi-national corporation, an ad agency, a broadcast or cable company, an e-commerce business, or a retailer with Internet-driven promotional strategies, you want a law firm that understands ... [more](#)

- [Practice Group Overview](#)
- [Practice Group Members](#)

INFO & RESOURCES

- [Subscribe](#)
- [Unsubscribe](#)
- [Sarbanes-Oxley Act](#)
- [Newsletter Disclaimer](#)
- [Technical Support](#)
- [Manatt.com](#)

benefits and implied that it was low in saturated fat. Rival food marketer Birds Eye filed the complaint with the agency.

The ad touted the fillets as "better for you" because they now are made "with a blend rich in sunflower oil" and contain less than "5 percent saturated fat," or 40 percent less than two years ago. It also claimed the fillets are a "natural source of omega 3."

Young's countered that the ad was not designed to suggest the fillets were low in saturated fat, but just that they were lower than before. It argued further that the omega 3 content surpassed the European Union's recommended daily intake.

[back to top](#)

CBS Gets an Eyeful of Citizen "News"

Allowing users to upload videos is a popular trend with television news networks. Several, including CBS, Fox News, CNN, and The Associated Press, have taken this a step further, creating iPhone applications that permit users to submit videos of breaking news.

What they weren't anticipating, perhaps, is what some people consider "news."

Lately, pornographic images have been popping up on CBSeyemobile.com, right smack in the middle of serious pieces about presidential debates and meltdowns on Wall Street.

CBS says it has a moderator, but apparently the safeguard is not foolproof. A CBS spokesman downplayed the incident. "We've been posting user-generated content since April, and this is the first known incident along these lines. It was removed promptly and we will redouble our efforts in this regard."

Ads also appeared on the clips via AdMob, a mobile advertising marketplace connecting advertisers with mobile publishers.

An AdMob spokesperson said in a statement, "CBS notified AdMob of an inappropriate piece of content on this application and we worked with CBS to immediately remove all ads from this application until it is fixed. AdMob has a clear and consistent policy against running ads on mobile sites or applications with inappropriate content. CBS has clear guidelines around user-generated content and immediately removed the content and banned the user that uploaded it from any future use of the

application."

[back to top](#)

Timberland Settles Text Spam Suit for \$7 Million

Timberland has agreed to pay \$7 million to reimburse people who received unauthorized text messages advertising its products.

The reimbursement was part of a settlement of a class action lawsuit charging the clothing company with sending commercial text messages violating the federal Telephone Consumer Protection Act.

Timberland and e-commerce provider GSI, who was also a defendant in the lawsuit, denied any wrongdoing and faulted a third-party company that they contend was supposed to obtain consent from the recipients.

Although the volume of spam text messages is a fraction of that of spam e-mails, they are considered more egregious because some mobile users pay for each text message they get. A few cell phone companies have sued text spammers in an attempt to block them from sending unsolicited text messages.

[back to top](#)

NY State Sues Student Loan Firm Over Marketing Tactics

New York Attorney General Andrew Cuomo is preparing to sue Goal Financial, charging the student loan company with violating state and federal laws by enticing borrowers with gifts such as iPods and cash and misleading consumers about loan terms and benefits.

The lawsuit is part of an investigation by the Attorney General's office into the student loan industry launched early last year. A state official said it is nearing agreements with about a dozen loan companies on appropriate marketing tactics.

As of 2006, Goal Financial was among the nation's largest ten loan consolidation companies, making \$8.7 billion worth of loans since 2001.

Early last year, the Attorney General's office launched a probe into ties between student loan companies and college financial aid offices. The investigation uncovered gifts and other incentives being made to college aid officials, apparently to encourage them to steer potential borrowers to specific lenders. In the end, several of the country's biggest student loan companies signed a code of conduct drafted by the Attorney General's office.

The Attorney General summarized his concerns over the firm's marketing practices in a July letter to the company. Among the problematic practices listed were gifts to persuade borrowers to apply for loans, incentives for students who induced their classmates to apply, and misleading advertising touting private student loans, which are not guaranteed by the federal government, as better than federal student loans. Typically, federal loans carry better terms, with fixed rates.

The letter also expressed concern with a Web site, eStudentLoan.com, which provides a tool to help students pick a loan with the best terms. However, according to the Attorney General, the Web site did not disclose that the Web site was owned by Goal Financial, or that only loans from lenders who paid a commission to Goal Financial were included.

[back to top](#)